



# **Civil Law and Justice Legislation Amendment Act 2018**

**No. 130, 2018**

**An Act to amend various Acts relating to law and  
justice, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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# Civil Law and Justice Legislation Amendment Act 2018

No. 130, 2018

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## An Act to amend various Acts relating to law and justice, and for related purposes

[Assented to 25 October 2018]

The Parliament of Australia enacts:

### 1 Short title

This Act is the *Civil Law and Justice Legislation Amendment Act 2018*.

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## 2 Commencement

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

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</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 this Act receives the Royal Assent.	25 October 2018
2. Schedule 1	The day after this Act receives the Royal Assent.	26 October 2018
3. Schedule 2, Part 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 2	The day after this Act receives the Royal Assent.	26 October 2018
5. Schedule 3	The day after this Act receives the Royal Assent.	26 October 2018
6. Schedule 4	The day after the end of the period of 3 months beginning on the day this Act receives the Royal Assent.	25 January 2019
7. Schedule 5	The day after this Act receives the Royal Assent.	26 October 2018
8. Schedule 6, Part 1	The day after this Act receives the Royal Assent.	26 October 2018
9. Schedule 6, Part 2	A day or days to be fixed by Proclamation. However, if any of the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day	

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
	after the end of that period.	
10. Schedule 6, Part 3	The 28th day after this Act receives the Royal Assent.	22 November 2018
11. Schedules 7 to 10	The day after this Act receives the Royal Assent.	26 October 2018

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

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

### **3 Schedules**

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

## Schedule 1—Amendment of the Acts Interpretation Act 1901

### *Acts Interpretation Act 1901*

#### **1 Section 1A**

Omit:

- |   |
|---|
| (d) sections 19 to 20 (which deal generally with references to Ministers and Departments in Acts, and with the effect of machinery of government changes on references to Ministers and Departments and other authorities in Acts and Commonwealth agreements). |
|---|

substitute:

- |  |
|--|
| (d) sections 19 to 20 (which deal generally with references to Ministers and Departments in Acts, with the effect of machinery of government changes on references to Ministers and Departments and other authorities in Acts and Commonwealth agreements, and with the validity of acts done by Ministers). |
|--|

#### **2 Subsection 19D(1)**

Omit “The”, substitute “Subject to section 19E, the”.

#### **3 After section 19D**

Insert:

#### **19E Validity of acts done by Ministers**

If a Minister purports to exercise a power or perform a function or duty that is conferred or imposed on another Minister by an Act, the exercise of that power or the performance of that function or duty is not invalid merely because the power, function or duty is conferred or imposed on the other Minister.



## **Schedule 2—Amendment of the Archives Act 1983**

### **Part 1—Access to records**

#### *Archives Act 1983*

##### **1 Section 40 (heading)**

Repeal the heading, substitute:

##### **40 Applications for access to records**

##### **2 Before subsection 40(1)**

Insert:

*Applications to which this section applies*

##### **3 At the end of subsection 40(1)**

Add:

Note: A determination under section 40B (applications made by persons acting in concert etc.) may have the effect that the application is taken to have been made by someone other than the person who actually made it.

##### **4 Before subsection 40(2)**

Insert:

*Assistance to make applications*

##### **5 Subsections 40(3) and (4)**

Repeal the subsections, substitute:

*Timeframe for making decision on application*

- (3) The Archives must take all reasonable steps to notify the applicant of a decision on an application to which this section applies:
- (a) as soon as practicable after the day the application is received by the Archives; and

- (b) before the end of the consideration period for the application under section 40A.

*Notice of decision relating to refusal to grant access*

## **6 Before subsection 40(8)**

Insert:

*Effect of delay in dealing with application*

## **7 Paragraph 40(8)(b)**

Repeal the paragraph, substitute:

- (b) the consideration period for the application under section 40A has ended; and

## **8 Subsection 40(9)**

Omit “expiration of the period referred to in subsection (8)”, substitute “end of the consideration period for the application under section 40A”.

## **9 Subsection 40(9)**

Omit “that subsection”, substitute “subsection (8)”.

## **10 Subsection 40(10)**

Omit “expiration of the period referred to in subsection (8)”, substitute “end of the consideration period for the application under section 40A”.

## **11 At the end of Division 3 of Part V**

Add:

### **40A Consideration period for applications for access to records**

- (1) The *consideration period* for an application to which section 40 applies is the period starting on the day after the application is received by the Archives and ending:
- (a) subject to paragraph (b), at the end of the shorter of the following periods (the *initial period*):
    - (i) 90 business days;
    - (ii) a period of business days prescribed by the regulations for the purposes of this subparagraph; or
-

- (b) if the initial period is extended on one or more occasions under this section—at the end of the initial period as so extended.

*Extending the initial period—by agreement with applicant*

- (2) The Director-General may, with the applicant's written agreement and before the end of the consideration period, by written notice given to the applicant extend the application's initial period (including that period as previously extended under this section) by a specified number of business days.
- (3) If the Director-General requests the applicant to enter into an agreement for the purposes of subsection (2), the Director-General must inform the applicant that he or she is not obliged to comply with the request.

*Extending the initial period—number of items exceeds the application cap*

- (4) The Director-General may, before the end of the consideration period, by written notice given to the applicant extend the application's initial period (including that period as previously extended under this section) by a specified number of business days, if the Director-General reasonably believes that:
- (a) the applicant has made one or more applications for which the consideration period has not ended; and
  - (b) the number of items that describe the records covered by those one or more applications exceeds the following number:
    - (i) unless subparagraph (ii) applies—25;
    - (ii) if the regulations prescribe a larger number for the purposes of this subparagraph—that larger number.
- (5) For the purposes of paragraph (4)(b), an *item* is the smallest discrete unit used by the Archives to describe a record in a series for purposes related to the care, management or retrieval of the record.

Example: For records in a file:

- (a) if the file is divided into parts—each of the parts is a separate item; and
- (b) if the file is not divided into parts—the file is a single item.

*Limit on extensions under subsection (4)*

- (6) A particular extension under subsection (4) must not have the effect that an application's initial period is extended under that subsection by more than the number of business days worked out using the following formula (rounding up to the nearest whole number):

$$\text{Unextended initial period} \times \frac{\text{Items requested}}{\text{Application cap}}$$

where:

**application cap** means the number applicable under subparagraph (4)(b)(i) or (ii).

**items requested** means the number of items that the Director-General reasonably believes describe the records covered by the one or more applications mentioned in paragraph (4)(b) in relation to the extension.

**unextended initial period** means the number of business days in the initial period under subparagraph (1)(a)(i) or (ii), disregarding any extensions under this section.

*Varying or revoking extensions under subsection (4)*

- (7) The Director-General may vary or revoke an extension under subsection (4) by written notice given to the applicant before the end of the period of the extension. This subsection does not limit subsection 33(3) of the *Acts Interpretation Act 1901*.
- (8) For the purposes of applying subsection (6) in relation to an extension that is varied under subsection (7), the number of items mentioned in paragraph (4)(b) is to be determined on the basis of applications made by the applicant as at the time of the variation.

*Matters to be taken into account for extensions under subsection (4)*

- (9) The Director-General must take into account the matters (if any) prescribed by the regulations for the purposes of this subsection in:
- (a) extending an application's initial period under subsection (4);
- or

(b) varying an extension under that subsection.

#### **40B Applications for access to records made by persons acting in concert etc.**

- (1) The Director-General may, by writing, determine that an application to which section 40 applies that was made by a person (the *first person*) is taken for the purposes of this Act to have been made by another person if the Director-General reasonably suspects that the first person:
  - (a) acts, or is accustomed to act; or
  - (b) under a contract or an arrangement or understanding (whether formal or informal) is intended or expected to act; in accordance with the directions, instructions or wishes of, or in concert with, the other person in relation to the making of such applications.
- (2) The determination has effect accordingly.
- (3) The Director-General must give written notice of the determination to both of the persons mentioned in subsection (1).

#### **12 Paragraph 42(2)(b)**

Omit “as expeditiously as practicable, give notice to the applicant of the decision reached on the reconsideration”, substitute “give notice to the applicant of the decision on the reconsideration as soon as practicable, and within 30 business days, after the day the application for the reconsideration is received by the Archives”.

#### **13 Paragraph 43(3)(b)**

Omit “14 days”, substitute “30 business days”.

#### **14 Application of amendments**

- (1) Sections 40, 40A and 40B of the *Archives Act 1983*, as in force after the commencement of this item, apply in relation to an application made after that commencement.
- (2) Paragraphs 42(2)(b) and 43(3)(b) of the *Archives Act 1983*, as in force after the commencement of this item, apply in relation to an application under section 42 of that Act for a reconsideration of a decision if the application for the reconsideration is made after that commencement.

## Part 2—Other amendments

### *Archives Act 1983*

#### **15 Subsection 3(1) (definition of *Commonwealth record*)**

Omit “or is a register or guide maintained in accordance with Part VIII”.

#### **16 Subsection 17(4)**

After “Council” (second occurring), insert “for the time being holding office”.

#### **17 Paragraph 40(1)(d)**

Omit “the Australian National Guide to Archival Material”, substitute “any index or guide published by the Archives”.

#### **18 Application of amendment—particulars of records to be provided in application**

Paragraph 40(1)(d) of the *Archives Act 1983*, as in force after the commencement of this item, applies in relation to an application made after that commencement.

#### **19 Part VIII**

Repeal the Part.

## **Schedule 3—Amendment of the Bankruptcy Act 1966**

### ***Bankruptcy Act 1966***

#### **1 After subparagraph 35(1)(b)(ii)**

Insert:

- (ia) an applicant for an order under subsection 90K(1) or (3) of the *Family Law Act 1975* in relation to the setting aside of a financial agreement of the parties to the marriage; or

#### **2 After subparagraph 35(1A)(b)(ii)**

Insert:

- (ia) an applicant for an order under subsection 90UM(1) or (6) of the *Family Law Act 1975* in relation to the setting aside of a Part VIIIAB financial agreement of the parties to the de facto relationship; or

## **Schedule 4—Amendment of the Domicile Act 1982**

### ***Domicile Act 1982***

#### **1 Subsection 3(6)**

Repeal the subsection, substitute:

- (6) This Act applies to the following Territories:
  - (a) the Australian Capital Territory;
  - (b) Norfolk Island;
  - (c) the Jervis Bay Territory;
  - (d) the Territory of Christmas Island;
  - (e) the Territory of Cocos (Keeling) Islands;
  - (f) any external Territory declared by the regulations to be a Territory to which this Act extends.



## **Schedule 5—Amendment of the Evidence Act 1995**

### *Evidence Act 1995*

#### **1 Subsection 160(1)**

Omit “fourth”, substitute “seventh”.

#### **2 Application of amendment**

The amendment of section 160 of the *Evidence Act 1995* made by this Schedule applies in relation to postal articles sent after this item commences.

## Schedule 6—Amendment of the Family Law Act 1975

### Part 1—Main amendments

#### *Family Law Act 1975*

##### 1 Subsection 4(1)

Insert:

*bankrupt*: see subsection (6).

*conveyance* includes a vehicle, a vessel and an aircraft.

*dwelling house* includes a conveyance, or a room in accommodation, in which people ordinarily retire for the night.

##### 2 Subsection 4(1) (definition of *Registry Manager*)

Repeal the definition, substitute:

*Registry Manager* means:

- (a) for the Family Court—the Registry Manager of a Registry of the Court or any other appropriate officer or staff member of the Court; or
- (b) for any other court—the principal officer of the court or any other appropriate officer or staff member of the court.

##### 3 Subsection 4(1) (definition of *warrant issued under a provision of this Act*)

Repeal the definition.

##### 3A At the end of section 4

Add:

- (6) A reference in this Act to a person, being a party to a marriage or a party to a de facto relationship, who is bankrupt includes a reference to a person:
  - (a) who has been discharged from bankruptcy; and

- (b) whose property remains vested in the bankruptcy trustee under the *Bankruptcy Act 1966*.

Note: This Act might refer to “bankrupt” or a “bankrupt party”.

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

Subsection 4(6) of the *Family Law Act 1975*, as inserted by this Part, applies in relation to proceedings instituted before, on or after the commencement of this Part.

### **4 At the end of section 10B**

Add:

- ; or (c) one or more persons who may apply for a parenting order under section 65C to deal with issues relating to the care of children.

### **5 Paragraph 10F(a)**

Repeal the paragraph, substitute:

- (a) in which a family dispute resolution practitioner:
- (i) helps people affected, or likely to be affected, by separation or divorce to resolve some or all of their disputes with each other; or
  - (ii) helps persons who may apply for a parenting order under section 65C to resolve some or all of their disputes with each other relating to the care of children; and

### **6 Subsection 11C(3)**

Repeal the subsection, substitute:

- (3) Despite subsection (2), a thing said or admission made is admissible even if the person who said the thing or made the admission had not been informed of the effect of subsection (1), if:
- (a) the thing was said or the admission was made by a person (including a child under 18) indicating that a child under 18 has been abused or is at risk of abuse; and
  - (b) for a thing or admission that was obtained improperly or in contravention, or in consequence of an impropriety or of a contravention, of an Australian law—the evidence is admissible under section 138 of the *Evidence Act 1995*;

unless, in the opinion of the court, sufficient evidence of the thing said or the admission made is available to the court from other sources.

Note: A thing that is said, or an admission that is made, by a child under 18 may relate to the child him or herself, or another child under 18.

## 7 Application of amendments

The amendment of section 11C of the *Family Law Act 1975* made by this Part applies in relation to a thing said or an admission made if the thing or admission is to be admitted, after this item commences, into proceedings (whether those proceedings are instituted before or after that time).

## 8 After subsection 21(2)

Insert:

(2A) The Court is, and is taken always to have been, a court of law and equity.

## 9 Subsection 36(1)

Omit “(1)”.

## 10 Subsection 36(2)

Repeal the subsection.

## 11 At the end of Division 4 of Part IVA

Add:

### 38Z Protection of Registrars conducting conferences about property matters

(1) In conducting a conference that:

- (a) is with the parties to property settlement proceedings; and
- (b) relates to the matter to which the proceedings relate;

a Registrar of the Family Court, of the Federal Circuit Court or of a Family Court of a State has the same protection and immunity as a Judge of the Family Court has in performing the functions of a Judge.

Note: *Registrar* is defined in subsection 4(1).

- (2) This section does not limit any other protection or immunity such a Registrar has (in relation to such a conference or otherwise).

**12 Subsection 39(6) (note)**

Repeal the note.

**13 Before subsection 44(1A)**

Insert:

*Proceedings in relation to marriages*

**14 Before subsection 44(1B)**

Insert:

*Limitation on applications for divorce orders within 2 years of marriage*

**15 Subsection 44(2)**

Repeal the subsection.

**16 Before subsection 44(3)**

Insert:

*Limitation on applications relating to certain maintenance and property proceedings*

**17 Subsection 44(5)**

Repeal the subsection, substitute:

*Proceedings in relation to de facto relationships*

- (5) Subject to subsection (6), a party to a de facto relationship may apply for an order under section 90SE, 90SG or 90SM, or a declaration under section 90SL, only if:
- (a) the application is made within the period (the ***standard application period***) of:
    - (i) 2 years after the end of the de facto relationship; or
    - (ii) 12 months after a financial agreement between the parties to the de facto relationship was set aside, or found to be invalid, as the case may be; or

(b) both parties to the de facto relationship consent to the application.

(5A) However, if proceedings are instituted by an application made with the consent of both of the parties to the de facto relationship, the court may dismiss the proceedings if it is satisfied that, because the consent was obtained by fraud, duress or unconscionable conduct, allowing the proceedings to continue would amount to a miscarriage of justice.

## 18 Application of amendments

- (1) The amendments of section 44 of the *Family Law Act 1975* made by this Part apply in relation to applications made after this item commences.
- (2) The repeal of subsection 44(2) of the *Family Law Act 1975* by this Part also applies in relation to any application made before this item commences if the respondent to the application has not filed a response to the application before that time.

## 21 Section 67Q (note 1)

Omit “Section 122AA authorises the use of reasonable force”, substitute “Section 122A deals with the use of reasonable force by certain persons”.

## 22 Subsection 67Z(4) (definition of *Registry Manager*)

Repeal the definition.

## 23 Subsection 67ZBA(4) (definition of *Registry Manager*)

Repeal the definition.

## 24 At the end of subsection 69ZH(2)

Add:

Note: The provisions mentioned in this subsection are generally expressed in terms of children, without distinguishing between children of marriages and ex-nuptial children. This section does not limit the operation of those provisions, but provides for an alternative constitutional basis (relying on paragraphs 51(xxi) and (xxii) of the Constitution), so those provisions can at least operate in relation to children of marriages even if they cannot also operate in relation to ex-nuptial children.

**25 Section 116C**

Repeal the section.

**26 Subsection 117(2)**

Omit “and (5)”, substitute “, (5) and (6)”.

**27 Before subsection 117(3)**

Insert:

*Costs of independent children’s lawyer*

**28 Before subsection 117(4A)**

Insert:

*Limit on orders relating to intervention under section 91B*

**29 Before subsection 117(5)**

Insert:

*Funding of independent children’s lawyer not to affect costs order*

**30 At the end of section 117**

Add:

*Limit on orders against guardians ad litem*

- (6) The court must not make an order under subsection (2) against a guardian *ad litem* unless the court is satisfied that one or more acts or omissions of the guardian relating to the proceedings are unreasonable or have delayed the proceedings unreasonably.

**31 Application of amendments**

The amendments of section 117 of the *Family Law Act 1975* made by this Part apply in relation to persons who become guardians *ad litem* in proceedings on or after the commencement of this Part, whether the proceedings were instituted before, on or after that commencement.

**32 Subsection 117C(2)**

Omit “the fact that the offer has been made, or the terms of the offer”, substitute “the terms of the offer”.

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### 33 Subsection 117C(3)

Repeal the subsection.

### 34 Application of amendments

The amendments of section 117C of the *Family Law Act 1975* made by this Part apply in relation to offers made before, on or after the commencement of this Part.

### 35 Sections 122AA and 122A

Repeal the sections, substitute:

#### 122A Making arrests under this Act or warrants

##### *Application*

- (1) This section and section 122AA apply to any of the following persons (the **arrestor**) who is authorised by this Act, or by a warrant issued under this Act, the standard Rules of Court or the related Federal Circuit Court Rules, to arrest another person (the **arrestee**):
  - (a) the Marshal of the Family Court;
  - (b) a Deputy Marshal of the Family Court;
  - (c) the Sheriff of the Federal Circuit Court;
  - (d) a Deputy Sheriff of the Federal Circuit Court;
  - (e) the Sheriff of a court of a State or Territory;
  - (f) a Deputy Sheriff of a court of a State or Territory;
  - (g) a police officer;
  - (i) an APS employee in the Department administered by the Minister administering the *Australian Border Force Act 2015* and who is in the Australian Border Force (within the meaning of that Act).

##### *Use of force*

- (2) In the course of arresting the arrestee, the arrestor:
  - (a) must not use more force, or subject the arrestee to greater indignity, than is necessary and reasonable to make the arrest or to prevent the arrestee's escape after the arrest; and



- (b) must not do anything that is likely to cause the death of, or grievous bodily harm to, the arrestee unless the arrester reasonably believes that doing that thing is necessary to protect life or prevent serious injury to another person (including the arrester); and
- (c) if the arrestee is attempting to escape arrest by fleeing—must not do a thing described in paragraph (b) unless:
  - (i) the arrester reasonably believes that doing that thing is necessary to protect life or prevent serious injury to another person (including the arrester); and
  - (ii) the arrestee has, if practicable, been called on to surrender and the arrester reasonably believes that the arrestee cannot be arrested in any other way.

*Informing the arrestee of grounds for arrest*

- (3) When arresting the arrestee, the arrester must inform the arrestee of the grounds for the arrest.
- (4) It is sufficient if the arrestee is informed of the substance of those grounds, not necessarily in precise or technical language.
- (5) Subsection (3) does not apply if:
  - (a) it is reasonable, in the circumstances, to assume that the arrestee knows the substance of the grounds for the arrest; or
  - (b) the arrestee's actions make it impracticable for the arrester to inform the arrestee of those grounds.

**122AA Powers to enter and search premises, and stop conveyances, for making arrests under this Act or warrants**

*Power to enter premises*

- (1) If the arrester (see subsection 122A(1)) reasonably believes the arrestee (see that subsection) is on premises, the arrester may enter the premises, using such force as is necessary and reasonable in the circumstances, at any time of the day or night for the purpose of searching the premises for the arrestee or arresting the arrestee.
- (2) However, the arrester must not enter a dwelling house between 9 pm one day and 6 am the next day unless he or she reasonably

believes that it would not be practicable to arrest the arrestee there or elsewhere at another time.

*Power to stop and detain conveyance*

- (3) If the arrestee may enter and search a conveyance under subsection (1) (disregarding subsection (2)), the arrestee may, for the purposes of effecting the entry and search, stop and detain the conveyance.

Note: The reference in subsection (1) to premises covers a conveyance: see subsection (5).

*Rules about stopping, detaining, entering and searching conveyances*

- (4) If the arrestee stops, detains, enters or searches a conveyance under this section for the purposes of arresting the arrestee, the arrestee:
- (a) may use such assistance as is necessary; and
  - (b) must search the conveyance in a public place or in some other place to which members of the public have ready access; and
  - (c) must not detain the conveyance for longer than is necessary and reasonable to search it; and
  - (d) may use such force as is necessary and reasonable in the circumstances, but must not damage the conveyance by forcing open a part of the conveyance unless:
    - (i) the person (if any) apparently in charge of the conveyance has been given a reasonable opportunity to open that part; or
    - (ii) it is not possible to give that person such an opportunity.

*Definition of premises*

- (5) In this section:

*premises* includes a place and a conveyance.

### 36 Application of amendments

Sections 122A and 122AA of the *Family Law Act 1975*, as inserted by this Part, apply in relation to arrests:

- (a) authorised by the *Family Law Act 1975* on or after the commencement of this Part; or
- (b) authorised by warrants issued on or after that commencement.

**37 Subsection 124(1)**

Omit “in accordance with this section”, substitute “by the Chief Justice of the Family Court of Australia”.

**38 Subsection 124(3)**

Repeal the subsection.

**39 Subsection 124(4)**

Omit “with the Governor of the State under section 112”, substitute “under section 122B”.

**40 Subsection 124(6)**

Omit “Governor-General”, substitute “Chief Justice of the Family Court of Australia”.

**41 Application of amendments**

- (1) The amendments of subsections 124(1), (3) and (4) of the *Family Law Act 1975* made by this Part apply in relation to an appointment of a person as a member of the Rules Advisory Committee made after this item commences.
- (2) The amendment of subsection 124(6) of the *Family Law Act 1975* made by this Part applies in relation to any appointment of a person as a member of the Rules Advisory Committee (whether the appointment is made before or after this item commences).

## **Part 2—Amendments commencing up to 6 months after Royal Assent**

### **Division 1—Offence of retaining child overseas**

#### *Family Law Act 1975*

#### **42 Subsection 65X(2)**

After “65Z”, insert “, 65ZAA”.

#### **43 Subsection 65X(2)**

After “65Y”, insert “, 65YA”.

#### **44 Section 65Y**

Repeal the section, substitute:

#### **65Y Obligations if certain parenting orders have been made: taking or sending a child outside Australia**

- (1) A person commits an offence if:
- (a) a parenting order to which this Subdivision applies is in force in relation to a child; and
  - (b) the person takes or sends the child from Australia to a place outside Australia; and
  - (c) the child is not taken or sent from Australia to a place outside Australia:
    - (i) with the consent in writing (authenticated as prescribed) of each person in whose favour the parenting order was made; or
    - (ii) in accordance with an order of a court made, under this Part or under a law of a State or Territory, at the time of, or after, the making of the parenting order; and
  - (d) the person:
    - (i) is or was a party to the proceedings in which the parenting order was made; or

- (ii) is acting on behalf of, or at the request of, a person who is or was a party to the proceedings in which the parenting order was made.

Note: The ancillary offence provisions of the *Criminal Code*, including section 11.1 (attempts), apply in relation to the offence created by this section.

Penalty: Imprisonment for 3 years.

*Exception*

- (2) Subsection (1) does not apply if:
  - (a) the person (whether or not the person is or was the party to the proceedings) takes or sends the child from Australia to a place outside Australia because the person believes the conduct is necessary to prevent family violence; and
  - (b) the conduct is reasonable in the circumstances as the person perceives them.

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

#### **45 After section 65Y**

Insert:

#### **65YA Obligations if certain parenting orders have been made: retaining a child outside Australia**

- (1) A person commits an offence if:
  - (a) a parenting order to which this Subdivision applies is in force in relation to a child; and
  - (b) the child has been taken or sent from Australia to a place outside Australia, by or on behalf of a party to the proceedings in which the parenting order was made:
    - (i) with the consent in writing (authenticated as prescribed) of each person in whose favour the parenting order was made; or
    - (ii) in accordance with an order of a court made, under this Part or under a law of a State or Territory, at the time, or after, the parenting order was made; and
  - (c) the person retains the child outside Australia otherwise than in accordance with a consent or order of a kind mentioned in

paragraph (b) (whether or not the person took or sent the child as mentioned in that paragraph); and

(d) the person:

- (i) was a party to the proceedings in which the parenting order was made; or
- (ii) is retaining the child on behalf of, or at the request of, such a party.

Note: The ancillary offence provisions of the *Criminal Code*, including section 11.1 (attempt), apply in relation to the offence created by this section.

Penalty: Imprisonment for 3 years.

*Exception*

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

- (a) the person (whether or not the person was the party to the proceedings) retains the child as mentioned in paragraph (1)(c) because the person believes the conduct is necessary to prevent family violence; and
- (b) the conduct is reasonable in the circumstances as the person perceives them.

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

## 46 Section 65Z

Repeal the section, substitute:

### **65Z Obligations if proceedings for the making of certain parenting orders are pending: taking or sending a child outside Australia**

(1) A person commits an offence if:

- (a) proceedings (the *Part VII proceedings*) are pending for the making of a parenting order to which this Subdivision applies in relation to a child; and
- (b) the person takes or sends the child from Australia to a place outside Australia; and
- (c) the child is not taken or sent from Australia to a place outside Australia:

- (i) with the consent in writing (authenticated as prescribed) of each other party to the Part VII proceedings; or
  - (ii) in accordance with an order of a court made, under this Part or under a law of a State or Territory, after the institution of the Part VII proceedings; and
- (d) the person is:
- (i) a party to the Part VII proceedings; or
  - (ii) acting on behalf of, or at the request of, a person who is a party to the Part VII proceedings.

Note: The ancillary offence provisions of the *Criminal Code*, including section 11.1 (attempts), apply in relation to the offence created by this section.

Penalty: Imprisonment for 3 years.

*Exception*

- (2) Subsection (1) does not apply if:
- (a) the person (whether or not the person is the party to the Part VII proceedings) takes or sends the child from Australia to a place outside Australia because the person believes the conduct is necessary to prevent family violence; and
  - (b) the conduct is reasonable in the circumstances as the person perceives them.

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

## **47 After section 65Z**

Insert:

### **65ZAA Obligations if proceedings for the making of certain parenting orders are pending: retaining a child outside Australia**

- (1) A person commits an offence if:
- (a) proceedings (the *Part VII proceedings*) for the making, in relation to a child, of a parenting order to which this Subdivision applies are pending; and

- (b) the child has been taken or sent from Australia to a place outside Australia by or on behalf of a party to the Part VII proceedings:
  - (i) with the consent in writing (authenticated as prescribed) of each other party to the Part VII proceedings; or
  - (ii) in accordance with an order of a court made, under this Part or under a law of a State or Territory, after the institution of the Part VII proceedings; and
- (c) the person retains the child outside Australia otherwise than in accordance with a consent or order of a kind mentioned in paragraph (b) (whether or not the person took or sent the child as mentioned in that paragraph); and
- (d) the person is a party to the Part VII proceedings, or is retaining the child on behalf of, or at the request of, such a party.

Note: The ancillary offence provisions of the *Criminal Code*, including section 11.1 (attempt), apply in relation to the offence created by this subsection.

Penalty: Imprisonment for 3 years.

*Exception*

- (2) Subsection (1) does not apply if:
  - (a) the person (whether or not the person is the party to the Part VII proceedings) retains the child as mentioned in paragraph (1)(c) because the person believes the conduct is necessary to prevent family violence; and
  - (b) the conduct is reasonable in the circumstances as the person perceives them.

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

**47A Subsections 65ZA(1) to (3)**

Repeal the subsections, substitute:

- (1) A person (the *first person*) commits an offence if:
    - (a) a parenting order to which this Subdivision applies is in force in relation to a child; and
    - (b) the first person is a captain, owner or charterer of an aircraft or vessel; and
-



- (c) another person (the *carer*) in whose favour the parenting order was made has served on the first person a statutory declaration that:
  - (i) relates to the parenting order; and
  - (ii) complies with subsection (4); and
- (d) the statutory declaration was made by the carer not earlier than 7 days before the date of service; and
- (e) the first person permits the child to leave a place in Australia in the aircraft or vessel; and
- (f) the destination of the aircraft or vessel is outside Australia; and
- (g) the child does not leave:
  - (i) in the company, or with the consent in writing (authenticated as prescribed), of the carer; or
  - (ii) in accordance with an order of a court made, under this Part or under a law of a State or Territory, at the time of, or after, the making of the parenting order.

Penalty: 60 penalty units.

- (2) Subsection (1) does not apply if the first person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

#### **47B Subsections 65ZB(1) to (3)**

Repeal the subsections, substitute:

- (1) A person (the *first person*) commits an offence if:
  - (a) proceedings (the *Part VII proceedings*) are pending for the making of a parenting order to which this Subdivision applies in relation to a child; and
  - (b) the first person is a captain, owner or charterer of an aircraft or vessel; and
  - (c) a party (the *carer*) to the Part VII proceedings has served on the captain, owner or charterer a statutory declaration that:
    - (i) relates to the Part VII proceedings; and
    - (ii) complies with subsection (4); and
  - (d) the statutory declaration was made by the carer not earlier than 7 days before the date of service; and

- (e) the first person permits the child to leave a place in Australia in the aircraft or vessel; and
- (f) the destination of the aircraft or vessel is outside Australia; and
- (g) the child does not leave:
  - (i) in the company, or with the consent in writing (authenticated as prescribed), of the carer; or
  - (ii) in accordance with an order of a court made, under this Part or under a law of a State or Territory, after the institution of the Part VII proceedings.

Penalty: 60 penalty units.

- (2) Subsection (1) does not apply if the first person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

**47C Subsection 65ZC(3)**

Omit “65ZA(2) or 65ZB(2)”, substitute “65ZA(1) or 65ZB(1)”.

**48 Paragraph 65ZD(a)**

Omit “or sent”, substitute “, sent or retained”.

**49 Paragraph 65ZD(b)**

Omit “or sending”, substitute “, sending or retaining”.

**50 At the end of Subdivision E of Division 6 of Part VII**

Add:

**65ZE Extended geographical jurisdiction—category D**

Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against any of sections 65Y to 65ZB (taking, sending or retaining a child outside Australia).

**51 Paragraph 117A(1)(b)**

Omit “or 65Z”, substitute “, 65YA, 65Z or 65ZAA”.

## **52 Application of amendments**

- (1) The amendments made by this Division apply to:
- (a) a child taken or sent from Australia on or after the commencement of this Division; or
  - (b) a child taken or sent from Australia before the commencement of this Division, if the period specified in the consent or order in accordance with which the child was taken or sent:
    - (i) ended after that commencement; or
    - (ii) was extended so that it ended after that commencement.
- (2) Subitem (1) does not apply to the amendments of section 65ZD of the *Family Law Act 1975* made by this Division.

### **52A Saving of regulations**

Regulations made for the purposes of paragraphs 65Y(2)(a), 65Z(2)(a), 65ZA(3)(a) and 65ZB(3)(a) of the *Family Law Act 1975* that are in force immediately before the commencement of this item are taken, after that commencement, to have been made for the purposes of subparagraphs 65Y(1)(c)(i), 65Z(1)(c)(i), 65ZA(1)(g)(i) and 65ZB(1)(g)(i) of that Act as amended by this Division.

## **Division 2—Other amendments**

### ***Family Law Act 1975***

#### **53 At the end of subsection 12F(1)**

Add:  
; and (c) section 12D (about Part VII proceedings).

#### **54 Subsection 67K(2)**

Omit “(including the Commonwealth central authority)”, substitute “(including one appointed as the Central Authority for the Commonwealth, a State or a Territory for the purposes of Article 29 of the Convention)”.

#### **55 Subsection 67K(3)**

Repeal the subsection, substitute:

(3) For the purposes of the Child Abduction Convention, a person (including one appointed as the Central Authority for the Commonwealth, a State or a Territory for the purposes of Article 6 of the Convention) may apply to a court for a location order.

(4) In this section:

***Child Abduction Convention*** means the Convention on the Civil Aspects of International Child Abduction done at The Hague on 25 October 1980.

Note: The Child Abduction Convention is in Australian Treaty Series 1987 No. 2 ([1987] ATS 2) and could in 2018 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

***Child Protection Convention*** has the same meaning as in section 111CA.

## **Part 3—Renumbering Part VIII B of the Family Law Act 1975**

### **Division 1—Renumbering Part VIII B of the Family Law Act 1975**

#### *Family Law Act 1975*

#### **56 Amendments of listed provisions—renumbering**

- (1) The provisions listed in column 1 of an item in the following table are renumbered as set out in column 2 of that item.

<b>Renumbering</b>		
<b>Item</b>	<b>Column 1 Provision</b>	<b>Column 2 Renumber as:</b>
1	Section 90MA	Section 90XA
2	Section 90MB	Section 90XB
3	Section 90MC	Section 90XC
4	Section 90MD	Section 90XD
5	Section 90MDA	Section 90XDA
6	Section 90ME	Section 90XE
7	Section 90MF	Section 90XF
8	Section 90MG	Section 90XG
9	Section 90MH	Section 90XH
10	Section 90MHA	Section 90XHA
11	Section 90MI	Section 90XI
12	Section 90MJ	Section 90XJ
13	Section 90MK	Section 90XK
14	Section 90ML	Section 90XL
15	Section 90MLA	Section 90XLA
16	Section 90MM	Section 90XM
17	Section 90MN	Section 90XN
18	Section 90MO	Section 90XO
19	Section 90MP	Section 90XP

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**Schedule 6** Amendment of the Family Law Act 1975  
**Part 3** Renumbering Part VIII B of the Family Law Act 1975

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<b>Renumbering</b>		
<b>Item</b>	<b>Column 1 Provision</b>	<b>Column 2 Renumber as:</b>
20	Section 90MQ	Section 90XQ
21	Section 90MR	Section 90XR
22	Section 90MS	Section 90XS
23	Section 90MT	Section 90XT
24	Section 90MU	Section 90XU
25	Section 90MUA	Section 90XUA
26	Section 90MV	Section 90XV
27	Section 90MW	Section 90XW
28	Section 90MX	Section 90XX
29	Section 90MY	Section 90XY
30	Section 90MZ	Section 90XZ
31	Section 90MZA	Section 90XZA
32	Section 90MZB	Section 90XZB
33	Section 90MZC	Section 90XZC
34	Section 90MZD	Section 90XZD
35	Section 90MZE	Section 90XZE
36	Section 90MZF	Section 90XZF
37	Section 90MZG	Section 90XZG
38	Section 90MZH	Section 90XZH

- (2) A reference in any:
- (a) law of the Commonwealth; or
  - (b) notice or other document given under a law of the Commonwealth; or
  - (c) contract, agreement, deed, judgment or other instrument;
- in force immediately before the commencement of this item, to a section of the *Family Law Act 1975* mentioned in column 1 of an item of the table in subitem (1) of this item is treated, from that commencement, as being a reference to the section mentioned in column 2 of that item of the table.

## Division 2—Consequential amendments of the Family Law Act 1975

### *Family Law Act 1975*

#### 57 Amendments of listed provisions

<b>Amendments consequential on renumbering sections of Part VIII B</b>			
<b>Item</b>	<b>Column 1 Provision</b>	<b>Column 2 Omit</b>	<b>Column 3 Substitute</b>
1	Section 90MD (note at the end of the definition of <i>declaration time</i> )	90MP(2)	90XP(2)
2	Section 90MD (definition of <i>flagging order</i> )	90MU(1)	90XU(1)
3	Section 90MD (definition of <i>flag lifting agreement</i> )	90MN	90XN
4	Section 90MD (definition of <i>in force</i> )	90MG	90XG
5	Section 90MD (paragraph (a) of the definition of <i>operative time</i> )	90MI	90XI
6	Section 90MD (paragraph (b) of the definition of <i>operative time</i> )	90MK	90XK
7	Section 90MD (paragraph (b) of the definition of <i>operative time</i> )	90MLA(2)(c)	90MXA(2)(c)
8	Section 90MD (paragraph (a) of the definition of <i>payment flag</i> )	90ML	90XL
9	Section 90MD (paragraph (a) of the definition of <i>payment split</i> )	90MJ	90XJ
10	Section 90MD (definition of <i>reversionary interest</i> )	90MF	90XF
11	Section 90MD (paragraph (b) of the definition of <i>secondary government trustee</i> )	90MDA	90XDA
12	Section 90MD (definition of <i>separation declaration</i> )	90MP	90XP
13	Section 90MD (definition of <i>splittable payment</i> )	90ME	90XE
14	Section 90MD (definition of <i>splitting order</i> )	90MT(1)	90XT(1)

**Schedule 6** Amendment of the Family Law Act 1975**Part 3** Renumbering Part VIII B of the Family Law Act 1975

<b>Amendments consequential on renumbering sections of Part VIII B</b>			
<b>Item</b>	<b>Column 1 Provision</b>	<b>Column 2 Omit</b>	<b>Column 3 Substitute</b>
15	Section 90MD (definition of <i>superannuation agreement</i> )	90MH	90XH
16	Section 90MD (definition of <i>superannuation agreement</i> )	90MHA	90XHA
17	Paragraph 90MG(3)(a)	90MN(3)	90XN(3)
18	Subparagraph 90MJ(1)(c)(ii)	90MI	90XI
19	Subsection 90MJ(5)	90MV	90XV
20	Paragraph 90ML(2)(a)	90MM	90XM
21	Paragraph 90ML(2)(b)	90MI	90XI
22	Subsection 90ML(4A)	90MLA	90XLA
23	Subsection 90ML(7) (note)	90MN	90XN
24	Paragraph 90MLA(1)(b)	90ML	90XL
25	Paragraph 90MLA(2)(c)	90MK	90XK
26	Subsection 90MM(1) (note)	90MH	90XH
27	Subsection 90MM(2) (note)	90MHA	90XHA
28	Paragraph 90MN(1)(b)	90MJ(1)	90XJ(1)
29	Paragraph 90MO(1)(b)	90MZA	90XZA
30	Subsection 90MO(1) (note)	90MM	90XM
31	Subsections 90MP(3), (4), (4A), (8), (9) and (10)	90MQ (wherever occurring)	90XQ
32	Subsection 90MS(1) (notes 2 and 3)	90MO	90XO
33	Subsections 90MT(1) and 90MU(1)	90MS	90XS
34	Subsection 90MUA(1)	90MU(1)	90XU(1)
35	Paragraph 90MV(1)(b)	90MZA	90XZA
36	Section 90MW	90MX	90XX
37	Paragraph 90MZB(2)(b)	90MY	90XY
38	Paragraph 90MZC(c)	90MZA	90XZA
39	Paragraph 90MZD(2)(b)	90MUA	90XUA



### **Division 3—Consequential amendments of other Acts: definitions**

#### **58 Amendments of definitions**

The definitions in the specified provisions of the Acts listed in this Division are amended as set out in the table.

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<b>Amendments consequential on renumbering sections of Part VIIIIB of the <i>Family Law Act 1975</i>: definitions</b>			
<b>Item</b>	<b>Column 1 Definition</b>	<b>Column 2 Omit</b>	<b>Column 3 Substitute</b>
1	paragraph (b) of the definition of <i>base amount</i>	90MT(4)	90XT(4)
2	definition of <i>family law value</i>	90MT(2)(a)	90XT(2)(a)
3	note at the end of the definition of <i>family law value</i>	90MT(1)	90XT(1)
4	paragraph (a) of the definition of <i>splitting percentage</i>	90MJ(1)(c)(iii)	90XJ(1)(c)(iii)
5	paragraph (b) of the definition of <i>splitting percentage</i>	90MT(1)(b)(i)	90XT(1)(b)(i)

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#### ***Defence Force Retirement and Death Benefits Act 1973***

##### **59 Section 49A**

#### ***Defence Forces Retirement Benefits Act 1948***

##### **60 Section 80A**

#### ***Governor-General Act 1974***

##### **61 Subsection 2A(2)**

#### ***Judges' Pensions Act 1968***

##### **62 Subsection 4(1)**

***Parliamentary Contributory Superannuation Act 1948***

**63 Section 22CA**

***Superannuation Act 1922***

**64 Section 93DA**

***Superannuation Act 1976***

**65 Section 146MA**

**Division 4—Consequential amendments of other Acts:  
other amendments**

***Income Tax Assessment Act 1997***

**66 Paragraph 126-140(1)(b)**

Omit “90MZA”, substitute “90XZA”.

***Superannuation (Unclaimed Money and Lost Members) Act  
1999***

**67 Paragraph 20F(4)(b)**

Omit “90MB(3)”, substitute “90XB(3)”.

**68 Subsection 20F(4) (note 2)**

Omit “90MB(3)”, substitute “90XB(3)”.

**69 Paragraph 24E(4)(a)**

Omit “90MB(3)”, substitute “90XB(3)”.

**70 Subsection 24E(4) (note 1)**

Omit “90MB(3)”, substitute “90XB(3)”.

## **Schedule 7—Amendment of the International Arbitration Act 1974**

### ***International Arbitration Act 1974***

#### **1 Subsection 3(1)**

Insert:

***Convention on Transparency*** means the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration, done at Mauritius on 10 December 2014.

***Transparency Rules*** means the United Nations Commission on International Trade Law Rules on Transparency in Treaty-based Investor-State Arbitration.

#### **2 Subsection 8(1)**

Omit “to the arbitration agreement in pursuance of which it was made”, substitute “to the award”.

#### **3 At the end of paragraphs 8(5)(a) to (d)**

Add “or”.

#### **4 Paragraph 8(5)(f)**

Omit “to the arbitration agreement”, substitute “to the award”.

#### **5 Application of amendments**

The amendments of section 8 of the *International Arbitration Act 1974* made by this Schedule apply in relation to any arbitral proceedings (whether commenced before or after this item commences).

#### **6 Section 18 (heading)**

Repeal the heading, substitute:

### **18 Courts and authorities in the Model Law**

#### **7 At the end of section 18**

Add:

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- (4) The following courts are taken to be competent courts for the purposes of Articles 17H (including Article 17H(3)), 27, 35 and 36 of the Model Law:
- (a) if the event referred to in subsection (5) is to occur in a State—the Supreme Court of that State;
  - (b) if the event referred to in subsection (5) is to occur in a Territory:
    - (i) the Supreme Court of that Territory; or
    - (ii) if there is no Supreme Court established in that Territory—the Supreme Court of the State or Territory that has jurisdiction in relation to that Territory;
  - (c) in any case—the Federal Court of Australia.
- (5) For the purposes of subsection (4), the event is:
- (a) for Article 17H—the recognition or enforcement of an interim measure; or
  - (b) for Article 27—the taking of evidence; or
  - (c) for Articles 35 and 36—the recognition or enforcement of an arbitral award.

## 8 Application of amendments

The amendments of section 18 of the *International Arbitration Act 1974* made by this Schedule apply in relation to any arbitral proceedings commenced after this item commences.

## 9 Subsection 21(2)

Omit “arising from arbitral proceedings that commence”, substitute “commenced”.

## 10 Subsection 22(2)

After “applies”, insert “(subject to subsection (3))”.

## 11 After subsection 22(2)

Insert:

- (3) Sections 23C to 23G (disclosure of confidential information) do not apply to arbitral proceedings to which the Transparency Rules apply, whether those Rules apply because of the operation of the Convention on Transparency or otherwise.

## **12 Application of amendments**

The amendments of section 22 of the *International Arbitration Act 1974* made by this Schedule apply in relation to any arbitral proceedings commenced after this item commences.

## **13 Paragraph 27(2)(b)**

Omit “tax or”.

## **14 Paragraph 27(2)(c)**

Repeal the paragraph.

## **15 After subsection 27(2)**

Insert:

(2AA) In settling the amount of costs to be paid in relation to an award, an arbitral tribunal is not required to use any scales or other rules used by a court when making orders in relation to costs.

## **16 Subsection 27(3)**

Omit “taxed or”.

## **17 Application of amendments**

The amendments of section 27 of the *International Arbitration Act 1974* made by this Schedule apply in relation to arbitrations commenced after this item commences.

## **Schedule 8—Amendment of the Legislation Act 2003**

### ***Legislation Act 2003***

#### **1 Paragraph 15Q(1)(c)**

Omit “, lapses, expires or otherwise ceases to be in force”.

#### **2 Paragraph 15Q(2)(e)**

Omit “, lapses, expires or otherwise ceases to be in force”.

#### **3 Subsection 15Q(3)**

After “instrument is”, insert “(subject to subsection (4))”.

#### **4 At the end of section 15Q**

Add:

- (4) Despite any other provision of this Act, a compilation of an Act or instrument is not required to be prepared or lodged for registration to take account of a retrospective commencement of an amendment of the Act or instrument. However, such a compilation of an Act or instrument may be prepared and lodged for registration.

#### **4A Subsection 15T(7) (heading)**

Repeal the heading, substitute:

*Repeal and disallowance of Act or instrument*

#### **5 Paragraph 15T(7)(a)**

Omit “, expires, lapses or otherwise ceases to be in force”.

#### **6 Subsection 15U(1) (heading)**

Repeal the heading.

#### **7 Subsection 15U(1)**

Omit “(1) The”, substitute “The”.

**8 Subsection 15U(2)**

Repeal the subsection.

**9 Paragraph 15ZA(5)(h)**

Before “an authorised version”, insert “subject to subsection 15Q(4),”.

**10 Subsection 15ZB(4)**

After “explanatory statement is”, insert “, subject to subsection 15Q(4),”.

## Schedule 9—Amendment of the Marriage Act 1961

### *Marriage Act 1961*

#### **1 Subsection 5(1)**

Insert:

*medical practitioner* has the meaning given by the *Health Insurance Act 1973*.

#### **2 Subparagraph 13(2)(a)(v)**

Omit “legally qualified”.

#### **3 Section 14**

Repeal the section, substitute:

#### **14 Persons whose consent is required to the marriage of a minor**

Before a minor may marry, consent is required from the persons specified in Schedule 1 to this Act in relation to the minor.

#### **4 Subparagraph 23B(1)(d)(iii)**

Omit “is mentally incapable of understanding”, substitute “did not understand”.

#### **5 Application of amendment**

The amendment of section 23B of the *Marriage Act 1961* made by this Schedule applies in relation to marriages that take place after this item commences.

#### **6 At the end of section 39**

Add:

- (4) An authorisation under subsection (2) is not a legislative instrument.



**7 Subsection 39B(1)**

Omit “(1) The”, substitute “The”.

**8 Subsection 39B(1)**

After “maintain”, insert “on the internet”.

**9 Subsections 39B(2) to (5)**

Repeal the subsections.

**10 Subparagraph 39FA(1)(a)(i)**

After “financial year”, insert “(except if paragraphs (1A)(b) and (c) apply in relation to the person on that day)”.

**11 Subparagraph 39FA(1)(a)(ii)**

Omit “and”, substitute “or”.

**12 At the end of paragraph 39FA(1)(a)**

Add:

(iii) is liable to pay the charge under subsection (1A); and

**13 After subsection 39FA(1)**

Insert:

*Marriage celebrants appealing decision to be deregistered*

- (1A) A person is liable to pay celebrant registration charge to the Commonwealth in respect of a financial year if:
- (a) the person is a marriage celebrant on 1 July of that financial year; and
  - (b) before that day:
    - (i) the Registrar decided to deregister the person as a marriage celebrant; and
    - (ii) the person applied to the Administrative Appeals Tribunal for review of the decision; and
  - (c) that application, or any later application to a court that relates to that application, has not been finally determined by that day; and
  - (d) that or any later application is finally determined in that financial year; and

- (e) after the application is finally determined, the person is not deregistered.

*Notice of charge*

**14 Subsection 39FA(2)**

Omit “is a marriage celebrant on 1 July in the financial year, or who becomes a marriage celebrant on a later day in the financial year, a notice”, substitute “is liable to pay the celebrant registration charge in respect of the financial year a written notice”.

**15 Before subsection 39FA(3)**

Insert:

*Exemptions*

**16 Before subsection 39FA(6)**

Insert:

*Charge debt due to the Commonwealth*

**17 Application of amendments**

The amendments of section 39FA of the *Marriage Act 1961* made by this Schedule apply in relation to financial years beginning at the same time as, or after, this item commences.

**18 Subsection 39FB(1)**

Repeal the subsection, substitute:

- (1) If a person has not, by the end of the charge payment day, paid an amount of celebrant registration charge that the person is liable to pay, the Registrar of Marriage Celebrants must, as soon as practicable after that day, send the person a written notice in accordance with subsection (2), unless the Registrar considers that the notice should not be sent at that time because:
- (a) the person’s liability to pay the charge may be affected by:
    - (i) the outcome of an application for internal review of a decision to refuse to grant an exemption; or
    - (ii) any other circumstance of which the Registrar is aware; or

- (b) the person's details have been removed from the register under paragraph 39I(2)(d) or 39K(a) before the notice is sent.

Note: Depending on the outcome of matters referred to in paragraph (1)(a), it may turn out that the person is not liable to pay the charge.

## **19 Application of amendment**

The amendment of subsection 39FB(1) of the *Marriage Act 1961* made by this Schedule applies in relation to charge payment days that occur on or after the day this item commences.

## **20 Paragraph 39FB(2)(a)**

Omit "celebrant after", substitute "celebrant on".

## **21 Subsection 39FB(3)**

Repeal the subsection, substitute:

- (3) The person is taken to have been deregistered by the Registrar of Marriage Celebrants at the start of the day specified in the notice.

Note: A person who wishes to become a marriage celebrant again may reapply under section 39D.

- (4) The Registrar of Marriage Celebrants must remove the person's details from the register of marriage celebrants.

## **22 Application of amendments**

The amendments of section 39FB (except subsection 39FB(1)) of the *Marriage Act 1961* made by this Schedule apply in relation to notices sent after this item commences.

## **23 After paragraph 39G(1)(b)**

Insert:

- (ba) comply with any disciplinary measures taken against the marriage celebrant under section 39I; and

## **24 Application of amendment**

Paragraph 39G(1)(ba) of the *Marriage Act 1961*, as inserted by this Schedule, applies in relation to disciplinary measures imposed after this item commences.

**25 Subparagraph 39G(1)(c)(i)**

Omit “entered in the register in relation to the person”, substitute “provided by the person to the Registrar”.

**26 Application of amendment**

The amendment of subparagraph 39G(1)(c)(i) of the *Marriage Act 1961* made by this Schedule applies in relation to any change that occurs after this item commences.

**27 Subsection 39G(1) (note)**

Omit “Note”, substitute “Note 1”.

**28 At the end of subsection 39G(1)**

Add:

Note 2: For subparagraph (1)(c)(i), a person may notify the Registrar by updating the person’s details using a portal provided by the Registrar.

**29 At the end of section 39G**

Add:

(3) The regulations may specify the details that must be notified to the Registrar for the purposes of subparagraph (1)(c)(i).

**30 Subparagraph 39I(4)(a)(iv)**

Repeal the subparagraph, substitute:

(iv) if the marriage celebrant has a right under section 39J to apply for review of the decision—that right; and

**31 Application of amendment**

The amendment of subparagraph 39I(4)(a)(iv) of the *Marriage Act 1961* made by this Schedule applies in relation to notices given after this item commences (whether the decision to take the disciplinary measure was made before or after that time).

**32 Paragraph 39J(1)(c)**

Omit “subsection 39FB(3)”, substitute “section 39FB”.

**33 Subparagraph 42(2)(c)(v)**

Omit “legally qualified”.

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### **34 Before Division 3 of Part V**

Insert:

## **Division 1—Registrar of Overseas Marriages**

### **60 Definitions**

In this Part:

**Registrar** means the Registrar of Overseas Marriages appointed under section 61.

### **61 Registrar of Overseas Marriages**

- (1) There is to be a Registrar of Overseas Marriages.
- (2) The Registrar is to be appointed, by written instrument, by the Minister.
- (3) The Registrar must have a seal, which is to be in the form the Minister determines.

### **62 Acting appointments**

The Minister may, by written instrument, appoint a person to act as the Registrar:

- (a) during a vacancy in the office of the Registrar (whether or not an appointment has previously been made to the office);  
or
- (b) during any period, or during all periods, when the Registrar:
  - (i) is absent from duty or from Australia; or
  - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

### **63 Register of Overseas Marriages**

- (1) The Registrar must keep a register, to be called the Register of Overseas Marriages, in the form the Minister directs.

- (2) The Register of Overseas Marriages that was kept under section 8 of the *Marriage (Overseas) Act 1955* is taken to form part of the Register kept under this section.
- (3) The Registrar must register in the Register all marriages required to be registered by this Part.
- (4) The Registrar may register in the Register:
  - (a) a marriage solemnized under the *Marriage (Overseas) Act 1955* that has not been registered under that Act; or
  - (b) a marriage (except a marriage that has been registered under the *Marriage (Overseas) Act 1955*) that was solemnized before the commencement of this Act and in respect of which a certificate has been forwarded:
    - (i) under section 25 of the *Marriage (Overseas) Act 1955*;  
or
    - (ii) under section 84 of this Act.
- (5) The Registrar must keep an index of the entries in the Register.

Note: For errors or mis-statements in the Register, see section 114.

#### 64 Searches and certified copies

- (1) A person may search the register if:
  - (a) the person satisfies the Registrar that the person has a good reason for searching the register; and
  - (b) the person has paid any fee prescribed by the regulations for the purposes of this paragraph.
- (2) After searching the register for an entry, the person may be given:
  - (a) a certified copy of the entry or extract of the entry; or
  - (b) if the Registrar finds that there is no such entry in the register—a certificate stating that fact.
- (3) A certified copy mentioned in paragraph (2)(a) or a certificate mentioned in paragraph (2)(b):
  - (a) must be certified by the Registrar by signed writing and under seal; and
  - (b) is prima facie evidence of the facts stated in the copy or certificate.

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**35 Validation of things purportedly done under the *Marriage Act 1961***

- (1) This item applies to a thing purportedly done under the *Marriage Act 1961* before the commencement of this item, to the extent that the thing purportedly done would, apart from this item, be invalid because:
- (a) Division 1 of Part V of that Act, as inserted by this Schedule, was not in force; and
  - (b) no person was validly appointed as the Registrar of Overseas Marriages.

***Validation***

- (2) The thing purportedly done is as valid and effective, and is taken always to have been as valid and effective, as it would have been if:
- (a) that Division had been in force; and
  - (b) a person had been validly appointed as the Registrar of Overseas Marriages.

**36 Paragraph 115(1)(a)**

Omit “authorised celebrants”, substitute “ministers of religion registered under Subdivision A of Division 1 of Part IV”.

**37 After paragraph 115(1)(a)**

Insert:

- (aa) a list of the persons who, or positions that, are authorised to solemnise marriages under Subdivision B of Division 1 of Part IV; and
- (ab) a list of the persons who are marriage celebrants; and

**38 Paragraph 115(1)(b)**

After “persons who”, insert “, or positions that,”.

**39 Subsections 115(2) to (4)**

Repeal the subsections, substitute:

- (2) A list of persons published under subsection (1) must show the information set out in the following table for each person included in the list.

<b>Requirements for lists</b>		
<b>Item</b>	<b>The list of persons published under this provision ...</b>	<b>must show the following information ...</b>
1	paragraph (1)(a)	the full name, designation, address and religious denomination of each minister of religion registered under Subdivision A of Division 1 of Part IV.
2	paragraph (1)(aa)	the full name, designation (if any) and address of each person in the list who is authorised to solemnise marriages under Subdivision B of Division 1 of Part IV.
3	paragraph (1)(ab)	the information required to be entered in the register of marriage celebrants for the purposes of subsection 39D(5).
4	paragraph (1)(b)	full name, designation (if any) and address of each person in the list who is a prescribed authority.

*Inclusion of names in latest list—prima facie evidence*

- (3) The inclusion of the name of a person in the latest list published under paragraph (1)(a), (aa) or (ab) is prima facie evidence that the person is authorised to solemnise marriages under Division 1 of Part IV.
- (4) The inclusion of the name of a person in the latest list published under paragraph (1)(b) is prima facie evidence that the person is a prescribed authority.

*Inclusion of positions in latest list—prima facie evidence*

- (5) The inclusion of a position in the latest list published under paragraph (1)(aa) is prima facie evidence that a person in, or acting in, the position is authorised to solemnise marriages under Division 1 of Part IV.
- (6) The inclusion of a position in the latest list published under paragraph (1)(b) is prima facie evidence that a person in, or acting in, the position is a prescribed authority.



**40 Paragraph 116(1)(c)**

Omit “or”.

**41 Paragraph 116(1)(d)**

Repeal the paragraph.

**42 The Schedule**

Repeal the Schedule, substitute:

**Schedule 1—Consent to the marriage of a minor**

Note: See section 14.

**1 Consent to the marriage of a minor**

The following table sets out whose consent is required before a minor may marry.

<b>Persons whose consent is required</b>		
<b>Item</b>	<b>If ...</b>	<b>then this person’s consent is required ...</b>
1	(a) at least one parent of the minor is alive; and (b) there is no court order in force in relation to parental responsibility for the minor; and (c) the minor does not have a guardian as referred to in item 3 or 4 of this table	each parent.
2	there is a court order in force granting parental responsibility for the minor to one or more persons (whether or not those persons are the minor’s parents)	each person who, under the order, has (whether explicitly or implicitly) parental responsibility for giving consent to the minor’s marriage.
3	there is a guardianship order in force that: (a) relates to the minor; and (b) is made by a court, tribunal or	each guardian of the minor under the order.

**Schedule 9** Amendment of the Marriage Act 1961

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<b>Persons whose consent is required</b>		
<b>Item</b>	<b>If ...</b>	<b>then this person's consent is required ...</b>
	other body of a State or Territory;	
4	a person is under an Act of the Commonwealth, a State or a Territory, or an Ordinance of a Territory, a guardian of the minor to the exclusion of any other person	each guardian of the minor under the Act or Ordinance.
5	a person is under an Act of a State or a Territory, or an Ordinance of a Territory, a guardian of the minor in addition to any other person whose consent is required in accordance with this table	each guardian of the minor under the Act or Ordinance and each other person whose consent is required in accordance with this table.
6	no other item of this table applies	a prescribed authority.

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## **Schedule 10—Amendment of the Sex Discrimination Act 1984**

### ***Sex Discrimination Act 1984***

#### **1 Section 43**

Repeal the section.

#### **2 Application of amendment**

The amendment of the *Sex Discrimination Act 1984* made by this Schedule applies in relation to acts or omissions occurring after the commencement of this item.

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*[Minister's second reading speech made in—  
Senate on 22 March 2017  
House of Representatives on 17 October 2018]*

(31/17)

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