Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011

No. 189, 2011

An Act to amend legislation relating to family law, and for related purposes

Note: An electronic version of this Act is available in ComLaw (http://www.comlaw.gov.au/)

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No. 189, 2011

An Act to amend legislation relating to family law, and for related purposes

[*Assented to 7 December 2011*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011*.

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.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	7 December 2011
2. Schedule 1	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	7 June 2012
3. Schedule 2, items 1 and 2	The 28th day after this Act receives the Royal Assent.	4 January 2012
4. Schedule 2, items 3 to 29	The day this Act receives the Royal Assent.	7 December 2011
5. Schedule 2, item 30	The 28th day after this Act receives the Royal Assent.	4 January 2012
6. Schedule 2, Part 2	The day this Act receives the Royal Assent.	7 December 2011

Note: This table relates only to the provisions of this Act as originally enacted.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 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Part 1—Amendments

Family Law Act 1975

1 Subsection 4(1) (definition of *abuse*)

Repeal the definition, substitute:

abuse, in relation to a child, means:

(a) an assault, including a sexual assault, of the child; or

(b) a person (the ***first person***) involving the child in a sexual activity with the first person or another person in which the child is used, directly or indirectly, as a sexual object by the first person or the other person, and where there is unequal power in the relationship between the child and the first person; or

(c) causing the child to suffer serious psychological harm, including (but not limited to) when that harm is caused by the child being subjected to, or exposed to, family violence; or

(d) serious neglect of the child.

2 Subsection 4(1)

Insert:

exposed to family violence, in relation to a child, has the meaning given by subsection 4AB(3).

3 Subsection 4(1) (definition of *family violence*)

Repeal the definition, substitute:

family violence has the meaning given by subsection 4AB(1).

4 Subsection 4(1) (definition of *member of the family*)

Repeal the definition, substitute:

member of the family has the meaning given by subsection (1AB).

Note: The definition in subsection (1AB) applies for the purposes of the provisions specified in that subsection.

5 Subsection 4(1) (paragraph (a) of the definition of *Registry Manager*)

Omit "section 67Z", substitute "sections 67Z and 67ZBA".

6 Paragraph 4(1AB)(a)

Repeal the paragraph, substitute:

(a) the definition of ***step-parent*** in subsection (1); and

(aa) section 4AB; and

7 Paragraph 4(1AB)(c)

Omit "section 60CF", substitute "sections 60CF, 60CH and 60CI".

8 After section 4AA

Insert:

4AB Definition of *family violence* etc.

(1) For the purposes of this Act, ***family violence*** means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the ***family member***), or causes the family member to be fearful.

(2) Examples of behaviour that may constitute family violence include (but are not limited to):

(a) an assault; or

(b) a sexual assault or other sexually abusive behaviour; or

(c) stalking; or

(d) repeated derogatory taunts; or

(e) intentionally damaging or destroying property; or

(f) intentionally causing death or injury to an animal; or

(g) unreasonably denying the family member the financial autonomy that he or she would otherwise have had; or

(h) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependent on the person for financial support; or

(i) preventing the family member from making or keeping connections with his or her family, friends or culture; or

(j) unlawfully depriving the family member, or any member of the family member's family, of his or her liberty.

(3) For the purposes of this Act, a child is ***exposed*** to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence.

(4) Examples of situations that may constitute a child being exposed to family violence include (but are not limited to) the child:

(a) overhearing threats of death or personal injury by a member of the child's family towards another member of the child's family; or

(b) seeing or hearing an assault of a member of the child's family by another member of the child's family; or

(c) comforting or providing assistance to a member of the child's family who has been assaulted by another member of the child's family; or

(d) cleaning up a site after a member of the child's family has intentionally damaged property of another member of the child's family; or

(e) being present when police or ambulance officers attend an incident involving the assault of a member of the child's family by another member of the child's family.

9 Subsection 12E(3) (note)

Repeal the note, substitute:

Note: For other obligations of legal practitioners in relation to Part VII matters, see sections 60D and 63DA.

10 Subsection 12G(1) (note)

Repeal the note, substitute:

Note: For other obligations of family counsellors and family dispute resolution practitioners in relation to Part VII matters, see sections 60D and 63DA. Those sections do not apply to arbitrators.

11 Paragraph 43(1)(ca)

Omit "safety", substitute "protection".

12 After paragraph 60A(a)

Insert:

(aa) provisions dealing with the best interests of the child in court proceedings (Subdivision BA); and

(ab) provisions dealing with an adviser's obligations in relation to the best interests of the child (Subdivision BB); and

13 At the end of section 60B

Add:

(4) An additional object of this Part is to give effect to the Convention on the Rights of the Child done at New York on 20 November 1989.

Note: The text of the Convention is set out in Australian Treaty Series 1991 No. 4 ([1991] ATS 4). In 2011, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

14 Section 60C (cell at table item 1, column headed "Divisions and coverage")

After:

- object of Part and principles underlying it, and outline of Part

insert:

- best interests of the child: court proceedings
- best interests of the child: adviser's obligations

15 Section 60C (cell at table item 8, column headed "Divisions and coverage")

Omit:

- reporting of allegations of child abuse

substitute:

- reporting of allegations of child abuse and family violence

16 Subdivision BA of Division 1 of Part VII (heading)

Repeal the heading, substitute:

Subdivision BA—Best interests of the child: court proceedings

17 After subsection 60CC(2)

Insert:

(2A) In applying the considerations set out in subsection (2), the court is to give greater weight to the consideration set out in paragraph (2)(b).

18 Paragraph 60CC(3)(c)

Repeal the paragraph, substitute:

(c) the extent to which each of the child's parents has taken, or failed to take, the opportunity:

(i) to participate in making decisions about major long-term issues in relation to the child; and

(ii) to spend time with the child; and

(iii) to communicate with the child;

(ca) the extent to which each of the child's parents has fulfilled, or failed to fulfil, the parent's obligations to maintain the child;

19 Paragraph 60CC(3)(k)

Repeal the paragraph, substitute:

(k) if a family violence order applies, or has applied, to the child or a member of the child's family—any relevant inferences that can be drawn from the order, taking into account the following:

(i) the nature of the order;

(ii) the circumstances in which the order was made;

(iii) any evidence admitted in proceedings for the order;

(iv) any findings made by the court in, or in proceedings for, the order;

(v) any other relevant matter;

20 Subsections 60CC(4) and (4A)

Repeal the subsections.

21 At the end of Subdivision BA of Division 1 of Part VII

Add:

60CH Informing court of care arrangements under child welfare laws

(1) If a party to the proceedings is aware that the child, or another child who is a member of the child's family, is under the care (however described) of a person under a child welfare law, that party must inform the court of the matter.

(2) If a person who is not a party to the proceedings is aware that the child, or another child who is a member of the child's family, is under the care (however described) of a person under a child welfare law, that person may inform the court of the matter.

(3) Failure to inform the court of the matter does not affect the validity of any order made by the court. However, this subsection does not limit the operation of section 69ZK (child welfare laws not affected).

60CI Informing court of notifications to, and investigations by, prescribed State or Territory agencies

(1) If:

(a) a party to the proceedings is aware that the child, or another child who is a member of the child's family, is or has been the subject of:

(i) a notification or report (however described) to a prescribed State or Territory agency; or

(ii) an investigation, inquiry or assessment (however described) by a prescribed State or Territory agency; and

(b) the notification, report, investigation, inquiry or assessment relates to abuse, or an allegation, suspicion or risk of abuse;

that party must inform the court of the matter.

(2) If:

(a) a person who is not a party to the proceedings is aware that the child, or another child who is a member of the child's family, is or has been the subject of:

(i) a notification or report (however described) to a prescribed State or Territory agency; or

(ii) an investigation, inquiry or assessment (however described) by a prescribed State or Territory agency; and

(b) the notification, report, investigation, inquiry or assessment relates to abuse, or an allegation, suspicion or risk of abuse;

that person may inform the court of the matter.

(3) Failure to inform the court of the matter does not affect the validity of any order made by the court.

(4) In this section:

prescribed State or Territory agency means an agency that is a prescribed State or Territory agency for the purpose of section 69ZW.

22 After Subdivision BA of Division 1 of Part VII

Insert:

Subdivision BB—Best interests of the child: adviser's obligations

60D Adviser's obligations in relation to best interests of the child

(1) If an adviser gives advice or assistance to a person about matters concerning a child and this Part, the adviser must:

(a) inform the person that the person should regard the best interests of the child as the paramount consideration; and

(b) encourage the person to act on the basis that the child's best interests are best met:

(i) by the child having a meaningful relationship with both of the child's parents; and

(ii) by the child being protected from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence; and

(iii) in applying the considerations set out in subparagraphs (i) and (ii)—by giving greater weight to the consideration set out in subparagraph (ii).

(2) In this section:

adviser means a person who is:

(a) a legal practitioner; or

(b) a family counsellor; or

(c) a family dispute resolution practitioner; or

(d) a family consultant.

23 Section 60K

Repeal the section.

24 Before subsection 63DA(1)

Insert:

(1A) The obligations of an adviser under this section are in addition to the adviser's obligations under section 60D.

Note: Section 60D deals with an adviser's obligations in relation to the best interests of the child.

25 Paragraph 63DA(2)(c)

Repeal the paragraph.

26 Subsection 65DAA(5) (note 1)

Repeal the note.

27 Subsection 65DAA(5) (note 2)

Omit "Note 2:", substitute "Note:".

28 Paragraph 67A(c)

Repeal the paragraph, substitute:

(c) the reporting of allegations of child abuse and family violence (Subdivision D); and

29 Subdivision D of Division 8 of Part VII (heading)

Repeal the heading, substitute:

Subdivision D—Allegations of child abuse and family violence

30 Subsection 67Z(1)

Omit "a party to", substitute "an interested person in".

Note: The heading the section 67Z is altered by omitting "**party to proceedings**" and substituting "**interested person**".

31 Subsection 67Z(2)

Omit "party", substitute "interested person".

32 Subsection 67Z(4)

Insert:

interested person in proceedings under this Act, means:

(a) a party to the proceedings; or

(b) an independent children's lawyer who represents the interests of a child in the proceedings; or

(c) any other person prescribed by the regulations for the purposes of this paragraph.

33 At the end of subsection 67ZA(3)

Add:

Note: The obligation under subsection (2) to notify a prescribed child welfare authority of a suspicion that a child has been abused or is at risk of being abused must be complied with, regardless of whether this subsection also applies to the same situation.

34 At the end of Subdivision D of Division 8 of Part VII

Add:

67ZBA Where interested person makes allegation of family violence

(1) This section applies if an interested person in proceedings for an order under this Part in relation to a child alleges, as a consideration that is relevant to whether the court should make or refuse to make the order, that:

(a) there has been family violence by one of the parties to the proceedings; or

(b) there is a risk of family violence by one of the parties to the proceedings.

(2) The interested person must file a notice in the prescribed form in the court hearing the proceedings, and serve a true copy of the notice upon the party referred to in paragraph (1)(a) or (b).

(3) If the alleged family violence (or risk of family violence) is abuse of a child (or a risk of abuse of a child):

(a) the interested person making the allegation must either file and serve a notice under subsection (2) of this section or under subsection 67Z(2) (but does not have to file and serve a notice under both those subsections); and

(b) if the notice is filed under subsection (2) of this section, the Registry Manager must deal with the notice as if it had been filed under subsection 67Z(2).

Note: If an allegation of abuse of a child (or a risk of abuse of a child) relates to a person who is not a party to the proceedings, the notice must be filed in the court and served on the person in accordance with subsection 67Z(2).

(4) In this section:

interested person in proceedings for an order under this Part in relation to a child, means:

(a) a party to the proceedings; or

(b) an independent children's lawyer who represents the interests of the child in the proceedings; or

(c) any other person prescribed by the regulations for the purposes of this paragraph.

prescribed form means the form prescribed by the applicable Rules of Court.

Registry Manager has the same meaning as in section 67Z.

67ZBB Court to take prompt action in relation to allegations of child abuse or family violence

(1) This section applies if:

(a) a notice is filed under subsection 67Z(2) or 67ZBA(2) in proceedings for an order under this Part in relation to a child; and

(b) the notice alleges, as a consideration that is relevant to whether the court should make or refuse to make the order, that:

(i) there has been abuse of the child by one of the parties to the proceedings; or

(ii) there would be a risk of abuse of the child if there were to be a delay in the proceedings; or

(iii) there has been family violence by one of the parties to the proceedings; or

(iv) there is a risk of family violence by one of the parties to the proceedings.

(2) The court must:

(a) consider what interim or procedural orders (if any) should be made:

(i) to enable appropriate evidence about the allegation to be obtained as expeditiously as possible; and

(ii) to protect the child or any of the parties to the proceedings; and

(b) make such orders of that kind as the court considers appropriate; and

(c) deal with the issues raised by the allegation as expeditiously as possible.

(3) The court must take the action required by paragraphs (2)(a) and (b):

(a) as soon as practicable after the notice is filed; and

(b) if it is appropriate having regard to the circumstances of the case—within 8 weeks after the notice is filed.

(4) Without limiting subparagraph (2)(a)(i), the court must consider whether orders should be made under section 69ZW to obtain documents or information from State and Territory agencies in relation to the allegation.

(5) Without limiting subparagraph (2)(a)(ii), the court must consider whether orders should be made, or an injunction granted, under section 68B.

(6) A failure to comply with a provision of this section does not affect the validity of any order made in the proceedings for the order.

35 Section 68N (note)

Repeal the note.

36 Subsection 69ZH(2)

Omit "Subdivision BA", substitute "Subdivisions BA and BB".

37 Paragraph 69ZN(5)(a)

Repeal the paragraph, substitute:

(a) the child concerned from being subjected to, or exposed to, abuse, neglect or family violence; and

38 Before paragraph 69ZQ(1)(a)

Insert:

(aa) ask each party to the proceedings:

(i) whether the party considers that the child concerned has been, or is at risk of being, subjected to, or exposed to, abuse, neglect or family violence; and

(ii) whether the party considers that he or she, or another party to the proceedings, has been, or is at risk of being, subjected to family violence; and

39 At the end of subsection 91B(2)

Add:

Note: If an officer intervenes in proceedings and acts in good faith in relation to the proceedings, an order for costs, or for security for costs, cannot be made under subsection 117(2) against the officer: see subsection 117(4A).

40 Subsection 117(1)

Omit "117AB,".

41 Subsection 117(2)

Omit "and (5)", substitute ", (4A) and (5)".

42 After subsection 117(4)

Insert:

(4A) If:

(a) under section 91B, an officer intervenes in proceedings; and

(b) the officer acts in good faith in relation to the proceedings;

the court must not, because of the intervention, make an order under subsection (2) of this section against the officer, or against

an entity (including the Commonwealth or a State or Territory) by or on behalf of whom the officer was engaged or employed.

43 Section 117AB

Repeal the section.

Part 2—Application and transitional provisions

44 Definitions

In this Part:

commencement means the commencement of this Schedule.

old Act means the *Family Law Act 1975* as in force immediately before commencement.

45 Amendments that apply to proceedings instituted on or after commencement

The amendments made by items 1 to 8, 11, 13, 17 to 21, 30 to 34, 37, 38 and 40 to 43 of this Schedule apply in relation to proceedings instituted on or after commencement.

46 Section 60K of old Act to continue to apply to certain documents

Despite the repeal of section 60K of the old Act by item 23 of this Schedule, that section continues to apply in relation to a document that was, before commencement, filed in a court in accordance with subsection 60K(1) of the old Act.

47 Amendments do not affect existing orders etc. or constitute changed circumstances

(1) The amendments made by this Schedule do not affect an order made under the old Act before commencement, or a certificate given under subsection 60I(8) of the old Act before commencement.

(2) The amendments made by this Schedule are taken not to constitute changed circumstances that would justify making an order to discharge or vary, or to suspend or revive the operation of, some or all of a parenting order that was made before commencement.

Note: For the need for changed circumstances, see *Rice and Asplund* (1979) FLC 90-725.

48 Transitional, application and savings—regulations

(1) The Governor-General may make regulations dealing with matters of a transitional, application or savings nature relating to the amendments made by this Schedule.

(2) Regulations made for the purposes of subitem (1) have effect despite anything else in this Part.

Schedule 2—Other amendments

Part 1—Amendments

Bankruptcy Act 1966

1 Paragraph 35A(3)(f)

Omit "the Rules of Court made under that Act,".

2 At the end of subsection 35A(3)

Add:

Note: Rules of Court made under the *Family Law Act 1975* (rather than Rules of Court made under the *Federal Court of Australia Act 1976*) apply in relation to proceedings transferred to the Family Court under this section.

Family Law Act 1975

3 Subsection 11F(1)

Repeal the subsection, substitute:

(1) A court exercising jurisdiction in proceedings under this Act may make either or both of the following kinds of order:

(a) an order directing one or more parties to the proceedings to attend an appointment (or a series of appointments) with a family consultant;

(b) an order directing one or more parties to the proceedings to arrange for a child to attend an appointment (or a series of appointments) with a family consultant.

Note: Before exercising this power, the court must consider seeking the advice of a family consultant about the services appropriate to the parties' needs (see section 11E).

Note: The heading to section 11F is altered by inserting "**, or arrange for child to attend,**" after "**attend**".

4 Subsection 11G(2)

Repeal the subsection, substitute:

(1A) If:

(a) a person fails to comply with an order under section 11F that he or she arrange for a child to attend an appointment with a family consultant; or

(b) a child fails to attend an appointment with a family consultant as arranged in compliance with an order under section 11F;

the consultant must report the failure to the court.

(2) On receiving a report under subsection (1) or (1A), the court may make any further orders it considers appropriate.

5 Subsection 13C(1) (note 2)

After "attend", insert ", or arrange for a child to attend,".

6 Subsection 24(1)

Omit "the senior Judge Administrator", substitute "the next senior Judge".

7 At the end of subsection 37A(1)

Add:

Note: For how this section applies in relation to powers of the Court under certain provisions, see section 37AA.

8 After section 37A

Insert:

37AA Delegation to Registrars of powers exercisable by court as constituted in a particular way

(1) Without limiting subsection 37A(1), the powers that may be delegated to a Registrar under that subsection include:

(a) the powers of the Court, constituted in any way mentioned in subsection 94(2D), to hear and determine applications to which that subsection applies; and

(b) the powers of the Court, constituted in any way mentioned in subsection 94AAA(10), to hear and determine applications to which that subsection applies.

(2) If Rules of Court under subsection 37A(1) delegate powers referred to in paragraph (1)(a) or (b) of this section to a Registrar,

those Rules may specify modifications of section 37A that are to have effect in relation to the exercise by a Registrar of the delegated powers.

(3) In this section:

Registrar has the same meaning as in section 37A.

9 Subsection 55(5) (definition of *appeal*)

Repeal the definition, substitute:

appeal, in relation to a divorce order, means:

(a) an appeal, or an application for leave to appeal, against:
  (i) the divorce order; or
  (ii) an order under section 55A in relation to the proceedings in which the divorce order was made; or

(b) an intervention, or an application for a re-hearing, relating to:
  (i) the divorce order; or
  (ii) an order under section 55A in relation to the proceedings in which the divorce order was made; or

(c) an application under section 57 or 58 for rescission of the divorce order, or an appeal or application for leave to appeal arising out of such an application; or

(d) a review by the Family Court of Australia of the making, by a Registrar or a Judicial Registrar of that Court, of:
  (i) the divorce order; or
  (ii) an order under section 55A in relation to the proceedings in which the divorce order was made; or
  (iii) an order determining an application under section 57 or 58 for rescission of the divorce order; or

(e) a review by the Federal Magistrates Court of the making, by a Registrar of that Court, of:
  (i) the divorce order; or
  (ii) an order under section 55A in relation to the proceedings in which the divorce order was made; or
  (iii) an order determining an application under section 57 or 58 for rescission of the divorce order; or

(f) a review by the Family Court of Western Australia of the making, by the Principal Registrar, a Registrar, or a Deputy Registrar, of that Court of:

(i) the divorce order; or

(ii) an order under section 55A in relation to the proceedings in which the divorce order was made; or

(iii) an order determining an application under section 57 or 58 for rescission of the divorce order.

10 At the end of section 60A

Add:

; and (d) provisions about the use of family dispute resolution before applying for an order under this Part (Subdivision E).

11 Section 60C (cell at table item 1, column headed "Divisions and coverage")

After:

- how this Act applies to certain children

insert:

- family dispute resolution

12 Section 60C (cell at table item 7, column headed "Divisions and coverage")

After:

- other aspects of courts' powers in relation to child maintenance orders

insert:

- varying the maintenance of certain children

13 Section 60C (at the end of the cell at table item 7, column headed "Divisions and coverage")

Add:

- recovery of amounts paid under maintenance orders

14 Section 60C (cell at table item 12A, column headed "Divisions and coverage")

Repeal the cell, substitute:

Division 12A—Principles for conducting child-related proceedings

- principles for conducting proceedings under this Part and certain other incidental proceedings
- duties and powers of the court related to giving effect to the principles
- matters relating to evidence

15 Subsection 62G(5)

Omit "that a party to proceedings, or the child, attend", substitute "that one or more parties to the proceedings attend, or arrange for the child to attend,".

16 Subsection 62G(6)

Repeal the subsection, substitute:

(6) If:

(a) a person fails to comply with an order or direction under subsection (5); or

(b) a child fails to attend an appointment with a family consultant as arranged in compliance with an order or direction under subsection (5);

the family consultant must report the failure to the court.

17 At the end of subsection 64B(1)

Add:

However, a declaration or order under Subdivision E of Division 12 is not a ***parenting order***.

18 At the end of section 66A

Add:

; and (f) deals with the recovery of amounts paid under maintenance orders (Subdivision G).

19 At the end of paragraph 68LA(6)(a)

Add "and".

20 Subsection 69N(4)

Omit "62F(2)", substitute "13C(1)".

21 Section 69ZS (note 2)

After "attend", insert ", or arrange for a child to attend,".

22 Section 69ZU

Repeal the section.

23 Before paragraph 70NAF(3)(a)

Insert:

(aa) paragraph 70NEB(1)(da); or

(ab) paragraph 70NECA(3)(a); or

24 After paragraph 70NEB(1)(d)

Insert:

(da) if the person who committed the current contravention fails, without reasonable excuse, to enter into a bond as required by an order under paragraph (d)—impose a fine not exceeding 10 penalty units on the person;

25 After section 70NEC

Insert:

70NECA Procedure for enforcing bonds

(1) If a court has made an order under paragraph 70NEB(1)(d) requiring a person to enter into a bond in accordance with section 70NEC, the following provisions have effect.

(2) If the court (whether or not constituted by the judge, Federal Magistrate or magistrate who required the bond to be entered into in accordance with section 70NEC) is satisfied that the person has, without reasonable excuse, failed to comply with the bond, the court may take action under subsection (3).

(3) The court may:

(a) without prejudice to the continuance of the bond entered into in accordance with section 70NEC, impose a fine not exceeding 10 penalty units on the person; or

(b) revoke the bond entered into in accordance with section 70NEC and, subject to subsection (4), deal with the person, for the contravention in respect of which the bond

was entered into, in any manner in which the person could have been dealt with for the contravention if:

(i) the bond had not been entered into; and

(ii) the person was before the court under section 70NEB in respect of the contravention.

(4) In dealing with the person as mentioned in paragraph (3)(b), the court must, in addition to any other matters that it considers should be taken into account, take into account:

(a) the fact that the bond was entered into; and

(b) anything done pursuant to the bond; and

(c) any fine imposed, and any other order made, for or in respect of the contravention.

26 Subsection 70NFF(2)

After "judge", insert ", Federal Magistrate".

27 Section 96AA

Repeal the section, substitute:

96AA Appeal may be dismissed if no reasonable prospect of success

(1) If:

(a) an appeal has been instituted in a court under this Part; and

(b) having regard to the grounds of appeal as disclosed in the notice of appeal, it appears to the court that the appeal has no reasonable prospect of success (whether generally or in relation to a particular ground of appeal);

the court may, at any time, order that the proceedings on the appeal be dismissed (either generally or in relation to that ground).

(2) This section does not limit any powers that the court has apart from this section.

28 After section 98

Insert:

98AA Oaths and affirmations

(1) A Judge of the Family Court may require and administer all necessary oaths and affirmations for the purposes of the Family Court.

(2) A Judge of the Family Court may cause to be administered all necessary oaths and affirmations for the purposes of the Family Court. For this purpose, the Family Court may, either orally or in writing, authorise any person (whether in or outside Australia) to administer oaths and affirmations.

(3) The Chief Executive Officer may, in writing, authorise:

(a) a Registrar of the Family Court; or

(b) a staff member of the Family Court;

to administer oaths and affirmations for the purposes of the Family Court.

98AB Swearing of affidavits etc.

(1) An affidavit to be used in a proceeding in the Family Court may be sworn or affirmed in Australia before:

(a) a Judge of the Family Court; or

(b) a Registrar of the Family Court; or

(c) a justice of the peace; or

(d) a commissioner for affidavits; or

(e) a commissioner for declarations; or

(f) a person who is authorised to administer oaths or affirmations for the purposes of:

(i) the Family Court; or

(ii) the High Court; or

(iii) the Federal Court of Australia; or

(iv) the Supreme Court of a State or Territory; or

(v) the Federal Magistrates Court; or

(g) a person before whom affidavits can be sworn or affirmed under the *Evidence Act 1995*.

(2) An affidavit to be used in a proceeding in the Family Court may be sworn or affirmed at a place outside Australia before:

(a) an Australian Diplomatic Officer or an Australian Consular Officer, as defined by the *Consular Fees Act 1955*, who is exercising his or her function in that place; or

(b) an employee of the Commonwealth who is:

(i) authorised under paragraph 3(c) of the *Consular Fees Act 1955*; and

(ii) exercising his or her function in that place; or

(c) an employee of the Australian Trade Commission who is:

(i) authorised under paragraph 3(d) of the *Consular Fees Act 1955*; and

(ii) exercising his or her function in that place; or

(d) a notary public who is exercising his or her function in that place; or

(e) a person who is:

(i) qualified to administer an oath or affirmation in that place; and

(ii) certified by a person mentioned in any of paragraphs (a), (b), (c) and (d), or by the superior court of that place, to be so qualified.

(3) An affidavit sworn or affirmed outside Australia otherwise than before a person referred to in subsection (2) may be used in a proceeding in the Family Court in circumstances provided by the standard Rules of Court.

29 Subsection 112AH(2)

After "judge", insert ", Federal Magistrate".

30 After paragraph 123(1)(ba)

Insert:

(bb) providing for and in relation to proceedings transferred to the Family Court under section 35A of the *Bankruptcy Act 1966*; and

Part 2—Application and transitional provisions

31 Application of amendments made by items 1, 2 and 30

The amendments made by items 1, 2 and 30 of this Schedule apply in relation to proceedings transferred to the Family Court whether before, on or after the commencement of those items.

32 Saving of orders and directions under subsections 11F(1) and 62G(5)

An order or direction under subsection 11F(1) or 62G(5) of the *Family Law Act 1975* as in force immediately before the commencement of items 3 and 15 of this Schedule, or an application for such an order or direction, has effect after that commencement as if it were an order or direction, or an application for an order or direction, under that subsection of that Act as in force after that commencement.

33 Application of amendment made by item 9

(1) Subject to subitem (2), the amendment made by item 9 of this Schedule applies in relation to appeals, applications, interventions or reviews referred to in the definition of ***appeal*** as substituted by that item, whether instituted before, on or after the commencement of that item.

(2) The amendment made by that item does not affect a divorce order that has taken effect before the commencement of that item.

34 Application of amendment made by item 17

The amendment made by item 17 of this Schedule applies in relation to declarations or orders under Subdivision E of Division 12 of Part VII of the *Family Law Act 1975*, whether made before, on or after the commencement of that item.

35 Application of amendment made by item 22

The amendment made by item 22 of this Schedule applies in relation to a court, after the commencement of that item, taking an opinion expressed by a family consultant into account, whether that opinion was expressed before, on or after that commencement.

36 Application of amendments made by items 24, 25 and 26

(1) The amendment made by item 24 of this Schedule applies in relation to orders requiring persons to enter into bonds, whether made before, on or after the commencement of that item.

(2) The amendment made by item 25 of this Schedule applies in relation to bonds entered into whether before, on or after the commencement of that item.

(3) The amendment made by item 26 of this Schedule applies in relation to community service orders or orders requiring persons to enter into bonds, whether made before, on or after the commencement of that item.

37 Application of amendment made by item 27

(1) Subject to subitem (2), the amendment made by item 27 of this Schedule applies in relation to appeals whether instituted before, on or after the commencement of that item.

(2) The amendment made by that item does not affect the dismissal or stay of proceedings on an appeal before the commencement of that item.

38 Application of amendment made by item 29

The amendment made by item 29 of this Schedule applies in relation to sentences imposed, or orders made, whether before, on or after the commencement of that item.

[*Minister's second reading speech made in—*
House of Representatives on 24 March 2011
Senate on 14 June 2011]

(67/11)