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Commonwealth of Australia

THE SENATE

Presented and read a first time

**Family Law Amendment (Financial
Agreements and Other Measures) Bill
2015**

No. , 2015

(Attorney-General)

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

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Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Schedule 2, Part 1	The day after this Act receives the Royal Assent.	
4. Schedule 2, 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 after the end of that period.	

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

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

7 **3 Schedules**

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9 repealed as set out in the applicable items in the Schedule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

Schedule 1—Binding financial agreements

Family Law Act 1975

1 Before section 90A

Insert:

90AL Simplified outline of this Part

Persons who are contemplating marrying, are in a marriage or have divorced may agree on either or both of the following:

- (a) how the property or financial resources of either or both of the persons at a time before divorce are to be dealt with if the marriage breaks down;
- (b) the maintenance of either of the persons during or after the marriage.

Such an agreement is binding if the persons have each received independent legal advice about the agreement before making it or a court declares that the agreement is binding.

If an agreement is binding, a court can enforce it and cannot make an order under Part VIII about property, financial resources or maintenance covered by the agreement.

There are some limits on what provisions may be included in an agreement and when they have effect.

There are also some rules affecting proceedings to enforce an agreement if a law about proceeds of crime applies to property of either or both of the persons who made the agreement.

An agreement may be terminated by a later agreement made by the persons, if they have each received independent legal advice about the termination, or may be set aside by a court in certain limited circumstances.

1 **90AM Object of this Part and principles underlying it**

- 2 (1) The object of this Part is to provide for prospective, current or
3 former parties to a marriage to make a binding agreement about
4 either or both of the following matters that excludes the power of a
5 court to make orders under Part VIII about those matters:
6 (a) how property or financial resources either or both parties had
7 before divorce are to be dealt with if the marriage breaks
8 down;
9 (b) the maintenance of either party during the marriage or after
10 divorce.

11 Note: Section 71A provides that Part VIII does not apply to financial matters
12 or financial resources to which a financial agreement binding on the
13 parties applies.

- 14 (2) The principles underlying this object are that:
15 (a) prospective, current or former parties to a marriage should be
16 able to take responsibility for resolving the matters described
17 in paragraphs (1)(a) and (b) without involving a court; and
18 (b) such parties who make an agreement about those matters
19 should have certainty that the agreement will bind those
20 parties unless:
21 (i) they make another agreement to terminate the earlier
22 agreement; or
23 (ii) a court sets the agreement aside under this Act.

24 **2 Section 90E**

25 Before “A provision”, insert “(1)”.

26 **3 Paragraph 90E(b)**

27 Omit “the value of the portion”, substitute “the amount or proportion of
28 the value”.

29 **4 At the end of section 90E**

30 Add:

- 31 (2) Any amount, or proportion, described in paragraph (1)(b) may be
32 nil in relation to a person, or in circumstances, specified in the
33 agreement.

5 Application of amendments of section 90E

- (1) The amendments of section 90E of the *Family Law Act 1975* made by this Schedule apply in relation to financial agreements made before, on or after the commencement of the amendments.
- (2) However, those amendments do not make a provision of a financial agreement valid if, before the commencement of those amendments, a court made an order under the *Family Law Act 1975* on the basis that the provision was void because of section 90E of that Act.

6 Section 90G

Repeal the section, substitute:

90G When financial agreements are binding*General rule*

- (1) For the purposes of this Act, a financial agreement made after 26 December 2000 is binding on the parties to the agreement if and only if:
- (a) the agreement is signed by all parties; and
 - (b) either:
 - (i) all the conditions in section 90GA (about legal advice relating to the agreement) that are relevant to the agreement are met; or
 - (ii) a court has made an order under section 90GB declaring that the agreement is binding; and
 - (c) the agreement has not been terminated (before, on or after the commencement of this section); and
 - (d) the agreement has not been set aside by a court (before, on or after the commencement of this section).

Note 1: This Part commenced on 27 December 2000.

Note 2: Section 90J deals with termination of a financial agreement.

Note 3: Section 90K deals with a court setting aside a financial agreement.

Note 4: For the manner in which the contents of a financial agreement may be proved, see section 48 of the *Evidence Act 1995*.

Power of court to enforce binding financial agreement

- (2) A court may make such orders for the enforcement of a financial agreement that is binding on the parties to the agreement as it thinks necessary.

90GA Conditions relating to legal advice for financial agreement or termination agreement to be binding

- (1) For the purposes of subparagraphs 90G(1)(b)(i) and 90J(2)(b)(i), this section describes conditions for a financial agreement, or a written agreement to terminate a financial agreement, to be binding.

Note 1: The conditions all relate to the provision of independent legal advice to each spouse party before the agreement was made, but vary according to when the agreement was made.

Note 2: Section 90G describes other conditions that need to be met for a financial agreement to be binding. Section 90J describes other conditions that need to be met for a written agreement to terminate a financial agreement to be binding.

Note 3: If the conditions described in this section are not met but the other conditions described in section 90G or 90J are, the agreement will be binding if a court declares under section 90GB that the agreement is binding.

Statement about legal advice given before agreement signed

- (2) A condition for an agreement made after 26 December 2000 is that, either before or after signing the agreement, each spouse party was provided with a signed statement by a legal practitioner that, before the agreement was signed, he or she provided that party with independent legal advice about the matters described in the following table for the agreement.

Independent legal advice about agreements made after 26 December 2000

When agreement was made	Matters
1 Before 14 January 2004	(a) the effect of the agreement on the rights of that party; and (b) whether or not, at the time when the advice was provided, it was to the advantage, financially or otherwise, of that party to make the agreement; and

Independent legal advice about agreements made after 26 December 2000

When agreement was made	Matters
	(c) whether or not, at that time, it was prudent for that party to make the agreement; and (d) whether or not, at that time and in the light of such circumstances as were, at that time, reasonably foreseeable, the provisions of the agreement were fair and reasonable
2 14 January 2004 to 3 January 2010 (inclusive)	Either the matters set out in item 1 or the matters set out in item 3
3 4 January 2010 to the day before this section commenced (inclusive)	(a) the effect of the agreement on the rights of that party; and (b) the advantages and disadvantages, at the time the advice was provided, to that party of making the agreement
4 After (or when) this section commenced	The effect of the agreement on the rights of that party under this Act

- 1 Note 1: The first 3 periods reflect the periods when the precursors to this
2 section made different provision for the matters to be dealt with in
3 independent legal advice about agreements. The matters for each of
4 those 3 periods reflect the provision the relevant precursor made for
5 that period.
- 6 Note 2: This section commenced on the commencement of Schedule 1 to the
7 *Family Law Amendment (Financial Agreements and Other Measures)*
8 *Act 2015*.
- 9 Note 3: For an agreement made before 4 January 2010, the statement may
10 have been provided by the legal practitioner in the form of a certificate
11 annexed to the agreement.

Extra conditions for agreements made after 3 January 2010

- 12
13 (3) The following table sets out extra conditions for agreements made
14 after 3 January 2010.
15

Extra conditions for agreements made after 3 January 2010

When agreement was made	Extra conditions
1 Before this section commenced	The statement provided to a spouse party as described in subsection (2) is also given to the other spouse party or to a legal practitioner for the other spouse party
2 After (or when) this section commenced	(a) the statement provided to a spouse party (the <i>first party</i>) as described in subsection (2) is also given to the other spouse party or to a legal practitioner for the other spouse party; and (b) either before or after signing the agreement, the first party has made a written acknowledgement that, before signing the agreement, he or she was provided with independent legal advice about the effect of the agreement on his or her rights under this Act; and (c) the acknowledgement is also given to the other spouse party or to a legal practitioner for the other spouse party

1 *Agreement, statement and acknowledgement may be separate*

2 (4) For the purposes of subsections (2) and (3), it does not matter
3 whether or not:

4 (a) the statement is annexed to the agreement; or

5 (b) the acknowledgement (if relevant) is in the same document
6 as, or annexed to, either the statement or the agreement.

7 *Court not to consider provision of independent legal advice*

8 (5) In determining whether an agreement is binding, a court is not to
9 consider whether advice described in subsection (2) was actually
10 provided.

11 **90GB Court declaring financial agreement or termination**
12 **agreement to be binding**

13 (1) This section applies if:

14 (a) a spouse party makes an application (the *enforcement*
15 *application*) to a court for an order declaring that a financial
16 agreement, or a written agreement to terminate a financial
17 agreement, is binding on the parties to the agreement; and

1 (b) not all of the relevant conditions in section 90GA for the
2 agreement to be binding are met.

3 (2) The court must make the order if it is satisfied that it would be
4 unjust and inequitable if the agreement were not binding on the
5 spouse parties to the agreement (disregarding any changes in
6 circumstances from the time the agreement was made).

7 *Principles to be applied by court making declaration*

8 (3) To avoid doubt, section 90KA applies in relation to the
9 enforcement application.

10 **7 Section 90H**

11 Before “A financial”, insert “(1)”.

12 **8 At the end of section 90H**

13 Add:

14 *Cessation of maintenance on death of payee or payer*

15 (2) However, a provision of a financial agreement (the *maintenance*
16 *provision*) for the maintenance of a spouse party to the agreement
17 ceases to have effect on the death of:

18 (a) the spouse party; or

19 (b) the person liable under the agreement for the maintenance.

20 (3) Subsection (2) does not apply so far as the agreement provides that
21 the maintenance provision continues to have effect despite the
22 death.

23 (4) Subsection (2) does not prevent the recovery of arrears of
24 maintenance due under the maintenance provision immediately
25 before the death mentioned in that subsection.

26 *Recovery of amount paid after cessation*

27 (5) If an amount is paid purportedly under the maintenance provision
28 after it ceases to have effect under subsection (2), the amount may
29 be recovered, by action in a court:

30 (a) by:

- 1 (i) the person who was, immediately before the cessation,
2 liable under the agreement for maintenance of the
3 spouse party; or
4 (ii) that person's legal personal representative if that person
5 has died; and
6 (b) from:
7 (i) the spouse party; or
8 (ii) the spouse party's legal personal representative if the
9 spouse party has died.

10 Note: As the action is a matrimonial cause, section 39 specifies the courts
11 that have jurisdiction, subject to the rest of Part V.

12 **9 Application of amendments of section 90H**

13 Subsections 90H(2), (3), (4) and (5) of the *Family Law Act 1975* apply
14 to financial agreements made on or after the commencement of the
15 subsections.

16 **10 After section 90H**

17 Insert:

18 **90HA Maintenance of spouse party who remarries or enters** 19 **into de facto relationship**

- 20 (1) A provision of a financial agreement (the *maintenance provision*)
21 for the maintenance of a spouse party to the agreement ceases to
22 have effect when the spouse party:
23 (a) marries again; or
24 (b) enters into a de facto relationship with someone other than
25 the other spouse party.
- 26 (2) Subsection (1) does not apply so far as the agreement provides that
27 the maintenance provision continues to have effect despite the later
28 marriage or entry into a de facto relationship.
- 29 (3) Subsection (1) does not prevent the recovery of arrears of
30 maintenance due under the maintenance provision immediately
31 before the later marriage or entry into the de facto relationship.

Notice of remarriage or entry into de facto relationship

- 1
- 2 (4) If the maintenance provision ceases to have effect under
3 subsection (1), the spouse party must inform without delay the
4 person who was liable under the agreement for the maintenance of
5 the spouse party of the date of the later marriage or entry into
6 the de facto relationship.

7 *Recovery of amount paid after cessation*

- 8 (5) If an amount is paid purportedly under the maintenance provision
9 after it ceases to have effect under subsection (1), the amount may
10 be recovered, by action in a court:
11 (a) by:
12 (i) the person who was, immediately before the cessation,
13 liable under the agreement for maintenance of the
14 spouse party; or
15 (ii) that person's legal personal representative if that person
16 has died; and
17 (b) from:
18 (i) the spouse party; or
19 (ii) the spouse party's legal personal representative if the
20 spouse party has died.

21 Note: As the action is a matrimonial cause, section 39 specifies the courts
22 that have jurisdiction, subject to the rest of Part V.

23 **11 Application of section 90HA**

24 Section 90HA of the *Family Law Act 1975* applies in relation to
25 financial agreements made on or after the commencement of that
26 section.

27 **12 Section 90J**

28 Repeal the section, substitute:

29 **90J Termination of financial agreement**

30 *Termination only by agreement*

- 31 (1) The parties to a financial agreement made after 26 December 2000
32 may terminate the agreement only by later:
-

- 1 (a) including a provision to that effect in another financial
2 agreement as mentioned in subsection 90B(4), 90C(4) or
3 90D(4); or
4 (b) making a written agreement (the *termination agreement*) to
5 that effect.

6 *Conditions for termination agreement to be binding*

- 7 (2) For the purposes of this Act, the termination agreement (whether
8 made before, on or after the commencement of this section) is
9 binding on the parties if and only if:
10 (a) the agreement is signed by all parties to the agreement; and
11 (b) either:
12 (i) all the conditions in section 90GA (about legal advice
13 relating to the agreement) that are relevant to the
14 agreement are met; or
15 (ii) a court has made an order under section 90GB declaring
16 that the agreement is binding; and
17 (c) the agreement has not been set aside by a court (before, on or
18 after the commencement of this section).

19 *Court orders after termination of financial agreement*

- 20 (3) A court may, on an application by a person who was a party to the
21 financial agreement that has been terminated, or by any other
22 interested person, make such order or orders (including an order
23 for the transfer of property) as it considers just and equitable for
24 the purpose of preserving or adjusting the rights of persons who
25 were parties to that financial agreement and any other interested
26 persons.

27 Note: For the manner in which the contents of a financial agreement may be
28 proved, see section 48 of the *Evidence Act 1995*.

29 **13 Transitional and saving provisions relating to**
30 **sections 90G and 90J of the *Family Law Act 1975***

31 *Transitional provisions for court orders*

- 32 (1) An order made by a court under subsection 90G(1B) or 90J(2B) of the
33 *Family Law Act 1975* before the repeal of those subsections by this
-

1 Schedule has effect on and after that repeal as if the order had been
2 made under section 90GB of that Act (as amended by this Schedule).

3 (2) The repeal and substitution of section 90G of the *Family Law Act 1975*
4 by this Schedule does not affect the validity of an order made by a court
5 under subsection 90G(2) of that Act before the repeal.

6 (3) The repeal and substitution of section 90J of the *Family Law Act 1975*
7 by this Schedule does not affect the validity of an order made by a court
8 under subsection 90J(3) of that Act before the repeal.

9 *Effect of other court orders made on basis that financial*
10 *agreement was not binding*

11 (4) Despite sections 90G, 90GA, 90GB and 90J of the *Family Law Act*
12 *1975* (as amended by this Schedule), a financial agreement made before
13 the commencement of those sections does not bind the parties to the
14 agreement for the purposes of that Act if, before that commencement, a
15 court made an order under section 79 or 83 of that Act on the basis that
16 the agreement did not bind the parties.

17 **14 Paragraph 90K(1)(d)**

18 Repeal the paragraph, substitute:

19 (d) if the court does not set the agreement aside:

20 (i) a child of the marriage; or

21 (ii) if the applicant has caring responsibility (as defined in
22 subsection (2)) for a child of the marriage—a party to
23 the agreement;

24 will suffer hardship for a reason described in
25 subsection (2A); or

26 **15 Paragraph 90K(1)(f)**

27 Omit “Part; or”, substitute “Part.”.

28 **16 Paragraph 90K(1)(g)**

29 Repeal the paragraph.

30 **17 After subsection 90K(2)**

31 Insert:

Schedule 1 Binding financial agreements

- 1 (2A) For the purposes of paragraph (1)(d) applying to an agreement
2 described in column 1 of an item of the following table, the reason
3 for hardship is the reason described in column 2 of the item.
4

Reason for hardship if agreement is not set aside

	Column 1 Agreement	Column 2 Reason
1	A financial agreement that: (a) is expressed to be made under section 90B; or (b) is expressed to be made under section 90C and was made before the making of a separation declaration described in subsection 90DA(2) relating to the spouse parties to the agreement	The occurrence, after the making of the agreement, of a material change in circumstances that relate to the care, welfare and development of the child of the marriage
2	A financial agreement that: (a) is expressed to be made under section 90C and was made at the same time as, or after, the making of a separation declaration described in subsection 90DA(2) relating to the spouse parties to the agreement; or (b) is expressed to be made under section 90D; or a termination agreement	The arising, after the making of the agreement, of circumstances that: (a) are of an exceptional nature; and (b) relate to the care, welfare and development of the child of the marriage

5 18 Application of amendments of section 90K

- 6 (1) The amendments of section 90K of the *Family Law Act 1975* made by
7 this Schedule apply to agreements made on or after the commencement
8 of the amendments.
- 9 (2) The repeal of paragraph 90K(1)(g) of the *Family Law Act 1975* by this
10 Schedule also applies to agreements made before the repeal.
- 11 (3) However, that repeal does not affect the validity of an order made by a
12 court under paragraph 90K(1)(g) of the *Family Law Act 1975* before
13 that repeal.

19 Before section 90UA

Insert:

90UAA Simplified outline of this Division

Persons who reside in certain States or in a Territory and either are contemplating entering into a de facto relationship or are or were in such a relationship may agree on either or both of the following:

- (a) how the property or financial resources of either or both of the persons at a time before the breakdown of the relationship are to be dealt with on that breakdown;
- (b) the maintenance of either of the persons after a breakdown of the relationship.

Such an agreement is binding if the persons have each received independent legal advice about the agreement before making it or a court declares that the agreement is binding.

If an agreement is binding, a court can enforce it and cannot make an order under Division 2 about property, financial resources or maintenance covered by the agreement.

There are some limits on what provisions may be included in an agreement and when they have effect.

An agreement may be terminated by a later agreement made by the persons, if they have each received independent legal advice about the termination, or may be set aside by a court in certain limited circumstances.

90UAB Object of this Division and principles underlying it

- (1) The object of this Division is to provide for prospective, current or former parties to a de facto relationship to make a binding agreement about either or both of the following matters that excludes the power of a court to make orders under Division 2 about those matters:

- 1 (a) how, in the event of a breakdown of the relationship,
2 property or financial resources either or both parties had
3 before the breakdown are to be dealt with;
4 (b) the maintenance of either party in the event of a breakdown
5 of the relationship.

6 Note: Section 90SA provides that Division 2 does not apply to maintenance,
7 property or financial resources to which a Part VIIIAB financial
8 agreement binding on the parties applies.

- 9 (2) The principles underlying this object are that:
10 (a) prospective, current or former parties to
11 a de facto relationship should be able to take responsibility
12 for resolving the matters described in paragraphs (1)(a) and
13 (b) without involving a court; and
14 (b) such parties who make an agreement about those matters
15 should have certainty that the agreement will bind those
16 parties unless:
17 (i) they make another informed agreement to terminate the
18 earlier agreement; or
19 (ii) a court sets the agreement aside under this Act.

20 Paragraph 90UH(1)(b)

21 Omit “the value of the portion”, substitute “the amount or proportion of
22 the value”.

23 21 After subsection 90UH(1)

24 Insert:

- 25 (1A) Any amount, or proportion, described in paragraph (1)(b) may be
26 nil in relation to a person, or in circumstances, specified in the
27 agreement.

28 22 Application of amendments of section 90UH

- 29 (1) The amendments of section 90UH of the *Family Law Act 1975* made by
30 this Schedule apply in relation to Part VIIIAB financial agreements
31 made before, on or after the commencement of the amendments.
- 32 (2) However, those amendments do not make a provision of a Part VIIIAB
33 financial agreement valid if, before the commencement of those

1 amendments, a court made an order under the *Family Law Act 1975* on
2 the basis that the provision was void because of section 90UH of that
3 Act.

4 **23 Section 90UJ**

5 Repeal the section, substitute:

6 **90UJ When financial agreements are binding**

- 7 (1) For the purposes of this Act, a Part VIIIAB financial agreement
8 (except one covered by section 90UE) made after 28 February
9 2009 is binding on the parties to the agreement if and only if:
10 (a) the agreement is signed by all parties; and
11 (b) either:
12 (i) all the conditions in section 90UJA (about legal advice
13 relating to the agreement) that are relevant to the
14 agreement are met; or
15 (ii) a court has made an order under section 90UJB
16 declaring that the agreement is binding; and
17 (c) the agreement has not been terminated (before, on or after the
18 commencement of this section); and
19 (d) the agreement has not been set aside by a court (before, on or
20 after the commencement of this section).

21 Note 1: This Division commenced on 1 March 2009.

22 Note 2: Section 90UL deals with termination of a Part VIIIAB financial
23 agreement.

24 Note 3: Section 90UM deals with a court setting aside a Part VIIIAB financial
25 agreement.

26 Note 4: For the manner in which the contents of a Part VIIIAB financial
27 agreement may be proved, see section 48 of the *Evidence Act 1995*.

- 28 (2) A Part VIIIAB financial agreement covered by section 90UE is
29 binding on the parties to the agreement if, and only if, the
30 agreement has not been terminated and has not been set aside by a
31 court.

32 Note 1: This subsection (rather than subsection (1)) also applies to an
33 agreement that is treated as a Part VIIIAB financial agreement
34 because of item 87, 88, 91 or 92 of Schedule 1 to the *Family Law*

Statement about legal advice given before agreement signed

- (2) A condition for an agreement made after 28 February 2009 is that, either before or after signing the agreement, each spouse party was provided with a signed statement by a legal practitioner that, before the agreement was signed, he or she provided that party with independent legal advice about the matters described in the following table for the agreement.

Independent legal advice about agreements made after 28 February 2009

When agreement was made	Matters
1 Before this section commenced	(a) the effect of the agreement on the rights of that party; and (b) the advantages and disadvantages, at the time the advice was provided, to that party of making the agreement
2 After (or when) this section commenced	The effect of the agreement on the rights of that party under this Act

Note 1: The first period is when the precursors to this section made different provision for the matters to be dealt with in independent legal advice about agreements. The matters for that period reflect the provision the precursors made for that period.

Note 2: This section commenced on the commencement of Schedule 1 to the *Family Law Amendment (Financial Agreements and Other Measures) Act 2015*.

Note 3: For an agreement made before 4 January 2010, the statement may have been provided by the legal practitioner in the form of a certificate annexed to the agreement.

Extra conditions for agreements made after 3 January 2010

- (3) The following table sets out extra conditions for agreements made after 3 January 2010.

Extra conditions for agreements made after 3 January 2010

When agreement was made	Extra conditions
1 Before this section	The statement provided to a spouse party as described in subsection (2) is also given to the other spouse party or to a

Extra conditions for agreements made after 3 January 2010

When agreement was made	Extra conditions
commenced	legal practitioner for the other spouse party
2 After (or when) this section commenced	(a) the statement provided to a spouse party (the <i>first party</i>) as described in subsection (2) is also given to the other spouse party or to a legal practitioner for the other spouse party; and (b) either before or after signing the agreement, the first party has made a written acknowledgement that, before signing the agreement, he or she was provided with independent legal advice about the effect of the agreement on his or her rights under this Act; and (c) the acknowledgement is also given to the other spouse party or to a legal practitioner for the other spouse party

1 *Agreement, statement and acknowledgement may be separate*

2 (4) For the purposes of subsections (2) and (3), it does not matter
3 whether or not:

4 (a) the statement is annexed to the agreement; or

5 (b) the acknowledgement (if relevant) is in the same document
6 as, or annexed to, either the statement or the agreement.

7 *Court not to consider provision of independent legal advice*

8 (5) In determining whether an agreement is binding, a court is not to
9 consider whether advice described in subsection (2) was actually
10 provided.

11 **90UJB Court declaring financial agreement or termination**
12 **agreement to be binding**

13 (1) This section applies if:

14 (a) a spouse party makes an application (the *enforcement*
15 *application*) to a court for an order declaring that a
16 Part VIIIAB financial agreement, or a written agreement to
17 terminate a Part VIIIAB financial agreement, is binding on
18 the parties to the agreement; and

1 (b) not all of the relevant conditions in section 90UJA for the
2 agreement to be binding are met.

3 (2) The court must make the order if it is satisfied that it would be
4 unjust and inequitable if the agreement were not binding on the
5 spouse parties to the agreement (disregarding any changes in
6 circumstances from the time the agreement was made).

7 *Principles to be applied by court making declaration*

8 (3) To avoid doubt, section 90UN applies in relation to the
9 enforcement application.

10 **24 Section 90UK**

11 Before “A Part”, insert “(1)”.

12 **25 At the end of section 90UK**

13 Add:

14 *Cessation of maintenance on death of payee or payer*

15 (2) However, a provision of a Part VIIIAB financial agreement (the
16 ***maintenance provision***) for the maintenance of a spouse party to
17 the agreement ceases to have effect on the death of:

18 (a) the spouse party; or

19 (b) the person liable under the agreement for the maintenance.

20 (3) Subsection (2) does not apply so far as the agreement provides that
21 the maintenance provision continues to have effect despite the
22 death.

23 (4) Subsection (2) does not prevent the recovery of arrears of
24 maintenance due under the maintenance provision immediately
25 before the death mentioned in that subsection.

26 *Recovery of amount paid after cessation*

27 (5) If an amount is paid purportedly under the maintenance provision
28 after it ceases to have effect under subsection (2), the amount may
29 be recovered, by action in a court:

30 (a) by:

- 1 (i) the person who was, immediately before the cessation,
2 liable under the agreement for maintenance of the
3 spouse party; or
4 (ii) that person's legal personal representative if that person
5 has died; and
6 (b) from:
7 (i) the spouse party; or
8 (ii) the spouse party's legal personal representative if the
9 spouse party has died.

10 Note: As the action is a de facto financial cause, section 39B specifies the
11 courts that have jurisdiction, subject to the rest of Part V.

12 **26 Application of amendments of section 90UK**

13 Subsections 90UK(2), (3), (4) and (5) of the *Family Law Act 1975* apply
14 to Part VIIIAB financial agreements made on or after the
15 commencement of the subsections.

16 **27 After section 90UK**

17 Insert:

18 **90UKA Maintenance of spouse party who enters into** 19 **another de facto relationship or marries**

- 20 (1) A provision of a Part VIIIAB financial agreement (the
21 ***maintenance provision***) for the maintenance of a spouse party to
22 the agreement ceases to have effect when the spouse party:
23 (a) enters into a de facto relationship with someone other than
24 the other spouse party; or
25 (b) marries.
- 26 (2) Subsection (1) does not apply so far as the agreement provides that
27 the maintenance provision continues to have effect despite the later
28 entry into a de facto relationship or marriage.
- 29 (3) Subsection (1) does not prevent the recovery of arrears of
30 maintenance due under the maintenance provision immediately
31 before the later entry into the de facto relationship or marriage.

Notice of later entry into de facto relationship or marriage

- 1
- 2 (4) If the maintenance provision ceases to have effect under
3 subsection (1), the spouse party must inform without delay the
4 person who was liable under the provision for the maintenance of
5 the spouse party of the date of the later entry into
6 the de facto relationship or marriage.

7 *Recovery of amount paid after cessation*

- 8 (5) If an amount is paid purportedly under the maintenance provision
9 after it ceases to have effect under subsection (1), the amount may
10 be recovered, by action in a court:
11 (a) by:
12 (i) the person who was, immediately before the cessation,
13 liable under the agreement for maintenance of the
14 spouse party; or
15 (ii) that person's legal personal representative if that person
16 has died; and
17 (b) from:
18 (i) the spouse party; or
19 (ii) the spouse party's legal personal representative if the
20 spouse party has died.

21 Note: As the action is a de facto financial cause, section 39B specifies the
22 courts that have jurisdiction, subject to the rest of Part V.

23 **28 Application of section 90UKA**

24 Section 90UKA of the *Family Law Act 1975* applies in relation to
25 Part VIIIAB financial agreements made on or after the commencement
26 of that section.

27 **29 Section 90UL**

28 Repeal the section, substitute:

29 **90UL Termination of financial agreement**

30 *Termination only by agreement*

- 31 (1) The parties to a Part VIIIAB financial agreement made after
32 28 February 2009 may terminate the agreement only by later:
-

- 1 (a) including a provision to that effect in another Part VIIIAB
2 financial agreement as mentioned in subsection 90UB(4),
3 90UC(4) or 90UD(4); or
4 (b) making a written agreement (the *Part VIIIAB termination*
5 *agreement*) to that effect.

6 *Conditions for termination agreement to be binding*

- 7 (2) For the purposes of this Act, the Part VIIIAB termination
8 agreement (whether made before, on or after the commencement of
9 this section) is binding on the parties if and only if:
10 (a) the agreement is signed by all parties to the agreement; and
11 (b) either:
12 (i) all the conditions in section 90UJA (about legal advice
13 relating to the agreement) that are relevant to the
14 agreement are met; or
15 (ii) a court has made an order under section 90UJB
16 declaring that the agreement is binding; and
17 (c) the agreement has not been set aside by a court (before, on or
18 after the commencement of this section).

19 *Court orders after termination of financial agreement*

- 20 (3) A court may, on an application by a person who was a party to the
21 Part VIIIAB financial agreement that has been terminated, or by
22 any other interested person, make such order or orders (including
23 an order for the transfer of property) as it considers just and
24 equitable for the purpose of preserving or adjusting the rights of
25 persons who were parties to that Part VIIIAB financial agreement
26 and any other interested persons.

27 Note: For the manner in which the contents of a Part VIIIAB financial
28 agreement may be proved, see section 48 of the *Evidence Act 1995*.

29 **30 Transitional and saving provisions relating to**
30 **sections 90UJ and 90UL of the *Family Law Act 1975***

31 *Transitional provisions for court orders*

- 32 (1) An order made by a court under subsection 90UJ(1B) or 90UL(2B) of
33 the *Family Law Act 1975* before the repeal of those subsections by this
-

1 Schedule has effect on and after that repeal as if the order had been
2 made under section 90UJB of that Act (as amended by this Schedule).

3 (2) The repeal and substitution of section 90UJ of the *Family Law Act 1975*
4 by this Schedule does not affect the validity of an order made by a court
5 under subsection 90UJ(4) of that Act before the repeal.

6 (3) The repeal and substitution of section 90UL of the *Family Law Act*
7 *1975* by this Schedule does not affect the validity of an order made by a
8 court under subsection 90UL(3) of that Act before the repeal.

9 *Effect of other court orders made on basis that financial*
10 *agreement was not binding*

11 (4) Despite sections 90UJ, 90UJA, 90UJB and 90UL of the *Family Law Act*
12 *1975* (as amended by this Schedule), a Part VIIIAB financial agreement
13 made before the commencement of those sections does not bind the
14 parties to the agreement for the purposes of that Act if, before that
15 commencement, a court made an order under section 90SI or 90SM of
16 that Act on the basis that the agreement did not bind the parties.

17 **31 Paragraph 90UM(1)(g)**

18 Repeal the paragraph, substitute:

19 (g) if the court does not set the agreement aside:

20 (i) a child of the de facto relationship; or

21 (ii) if the applicant has caring responsibility (as defined in
22 subsection (4)) for a child of the de facto relationship—
23 a party to the agreement;

24 will suffer hardship for a reason described in
25 subsection (4A); or

26 **32 Paragraph 90UM(1)(j)**

27 Repeal the paragraph.

28 **33 After subsection 90UM(4)**

29 Insert:

30 (4A) For the purposes of paragraph (1)(g) applying to an agreement
31 described in column 1 of an item of the following table, the reason
32 for hardship is the reason described in column 2 of the item.

1

Reason for hardship if agreement is not set aside

Column 1	Column 2
Agreement	Reason
<p>1 A Part VIIIAB financial agreement that:</p> <p>(a) is expressed to be made under section 90UB; or</p> <p>(b) is expressed to be made under section 90UC and was made before the making of a separation declaration described in subsection 90UF(3) relating to the spouse parties to the agreement</p>	<p>The occurrence, after the making of the agreement, of a material change in circumstances that relate to the care, welfare and development of the child of the de facto relationship</p>
<p>2 A Part VIIIAB financial agreement that:</p> <p>(a) is expressed to be made under section 90UC and was made at the same time as, or after, the making of a separation declaration described in subsection 90UF(3) relating to the spouse parties to the agreement; or</p> <p>(b) is expressed to be made under section 90UD;</p> <p>or a Part VIIIAB termination agreement</p>	<p>The arising, after the making of the agreement, of circumstances that:</p> <p>(a) are of an exceptional nature; and</p> <p>(b) relate to the care, welfare and development of the child of the de facto relationship</p>

2

34 Application of amendments of section 90UM

3

(1) The amendments of section 90UM of the *Family Law Act 1975* made by this Schedule apply to agreements made on or after the commencement of the amendments.

4

5

6

(2) The repeal of paragraph 90UM(1)(j) of the *Family Law Act 1975* by this Schedule also applies to agreements made before the repeal.

7

8

(3) However, that repeal does not affect the validity of an order made by a court under paragraph 90UM(1)(j) of the *Family Law Act 1975* before that repeal.

9

10

11

35 Paragraph 90MG(3)(a)

12

Repeal the paragraph, substitute:

-
- 1 (a) the requirements set out in whichever one of
2 subsections 90MN(3) and (3A) applies to the agreement are
3 met; and

4 **36 Subsection 90MN(3)**

5 Omit “or termination agreement has no effect unless it complies with
6 the following requirements”, substitute “, or termination agreement,
7 made before the commencement of subsection (3A) has no effect unless
8 the following requirements are met”.

9 **37 At the end of subsection 90MN(3)**

10 Add:

11 Note: Subsection (3A) commenced on the commencement of Schedule 1 to
12 the *Family Law Amendment (Financial Agreements and Other*
13 *Measures) Act 2015*.

14 **38 After subsection 90MN(3)**

15 Insert:

- 16 (3A) A flag lifting agreement, or termination agreement, made on or
17 after the commencement of this subsection has no effect unless the
18 following requirements are met:
- 19 (a) the agreement must be signed by both spouses;
 - 20 (b) after the agreement is signed by the spouses, each spouse
21 must be provided with a copy of the agreement;
 - 22 (c) either before or after signing the agreement:
 - 23 (i) each spouse must be provided with a signed statement
24 by a legal practitioner that, before the agreement was
25 signed, he or she provided the spouse with independent
26 legal advice about the effect of the agreement on the
27 rights of the spouse under this Act; and
 - 28 (ii) each spouse must make a written acknowledgement
29 that, before signing the agreement, he or she was
30 provided with independent legal advice about the effect
31 of the agreement on his or her rights under this Act;
 - 32 (d) the statement provided to a spouse, and the acknowledgement
33 made by a spouse, as described in paragraph (c) must also be
34 given to the other spouse or to a legal practitioner for the
35 other spouse.
-

1 **Schedule 2—Other measures**

2 **Part 1—Amendments commencing soon after Royal**
3 **Assent**

4 **Division 1—Revival, variation and suspension of certain**
5 **orders etc. by family violence orders**

6 *Family Law Act 1975*

7 **1 Subsection 68T(1)**

8 Omit “earlier”, substitute “earliest”.

9 **2 Paragraph 68T(1)(b)**

10 Repeal the paragraph, substitute:

11 (b) the time specified in the interim order as the time at which
12 the revival, variation or suspension ceases to have effect; and

13 (c) the time the order, injunction or arrangement is affected by
14 an order (however described) made by a court, under
15 section 68R or otherwise, after the revival, variation or
16 suspension.

17 **3 Application**

18 The amendments of section 68T of the *Family Law Act 1975* made by
19 this Division apply in relation to revivals, variations and suspensions,
20 that are made under section 68R of that Act on or after the
21 commencement of this Division, of orders, injunctions and
22 arrangements.

23 **Division 2—Status of Family Court of Australia**

24 *Family Law Act 1975*

25 **4 After subsection 21(2)**

26 Insert:

1 (2A) The Court is, and is taken always to have been, a court of law and
2 equity.

3 **Division 3—Registries of the Family Court of Australia**

4 *Family Law Act 1975*

5 **5 Subsection 36(1)**

6 Omit “(1)”.

7 **6 Subsection 36(2)**

8 Repeal the subsection.

9 **Division 4—Offers of settlement**

10 *Family Law Act 1975*

11 **7 Subsection 117C(2)**

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

14 **8 Subsection 117C(3)**

15 Repeal the subsection.

16 **9 Application**

17 The amendments made by this Division apply in relation to offers made
18 before, on or after the commencement of this Division.

19 **Division 5—Legal aid**

20 *Family Law Act 1975*

21 **10 Section 116C**

22 Repeal the section.

1 **Division 6—Injunctions**

2 *Family Law Act 1975*

3 **11 Subsection 114(2)**

4 Repeal the subsection.

5 **Division 7—Explanation of orders etc. inconsistent with**
6 **family violence orders**

7 *Family Law Act 1975*

8 **12 At the end of subsection 60CC(1)**

9 Add:

10 Note: Section 68P also limits the effect of this section on a court making
11 decisions under that section about limiting, or not providing, an
12 explanation to a child of an order or injunction that is inconsistent
13 with a family violence order.

14 **13 After subsection 68P(2)**

15 Insert:

16 (2A) Subparagraph (2)(c)(iii) does not apply to a child if the court is
17 satisfied that:

18 (a) the child is too young to understand an explanation of the
19 order or injunction; or

20 (b) it is in the child's best interests not to receive an explanation
21 of the order or injunction.

22 (2B) Paragraph (2)(d) does not require inclusion of a matter in an
23 explanation given to a child if the court is satisfied that:

24 (a) the child is too young to understand the matter; or

25 (b) it is in the child's best interests for the matter not to be
26 included in the explanation.

27 (2C) In determining whether it is satisfied as described in
28 paragraph (2A)(b) or (2B)(b) of this section, the court may, but is
29 not required to, have regard to all or any of the matters set out in

1 subsection 60CC(2) or (3). This has effect despite section 60CC
2 (How a court determines what is in a child's best interests).

3 **Division 8—Immunity of registrars**

4 *Family Law Act 1975*

5 **14 At the end of Division 4 of Part IVA**

6 Add:

7 **38Z Protection of Registrars conducting conferences about property**
8 **matters**

9 (1) In conducting a conference that:

10 (a) is with the parties to property settlement proceedings; and

11 (b) relates to the matter to which the proceedings relate;

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

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

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

19 **Division 9—Summary decrees**

20 *Family Law Act 1975*

21 **15 After section 45**

22 Insert:

23 **45A Summary decrees**

24 *No reasonable prospect of successfully defending proceedings*

25 (1) The court may make a decree for one party against another in
26 relation to the whole or any part of proceedings if:

Schedule 2 Other measures

Part 1 Amendments commencing soon after Royal Assent

1 (a) the first party is prosecuting the proceedings or that part of
2 the proceedings; and

3 (b) the court is satisfied that the other party has no reasonable
4 prospect of successfully defending the proceedings or that
5 part of the proceedings.

6 *No reasonable prospect of successfully prosecuting proceedings*

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

9 (a) the first party is defending the proceedings or that part of the
10 proceedings; and

11 (b) the court is satisfied that the other party has no reasonable
12 prospect of successfully prosecuting the proceedings or that
13 part of the proceedings.

14 *When there is no reasonable prospect of success*

15 (3) For the purposes of this section, a defence or proceedings or part of
16 proceedings need not be:

17 (a) hopeless; or

18 (b) bound to fail;

19 to have no reasonable prospect of success.

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

21 (4) The court may dismiss all or part of proceedings at any stage if it is
22 satisfied that the proceedings or part is frivolous, vexatious or an
23 abuse of process.

24 *Costs*

25 (5) If the court makes a decree, or dismisses all or part of proceedings,
26 under this section, the court may make such order as to costs as the
27 court considers just.

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

29 (6) The court may take action under this section on its own initiative or
30 on application by a party to the proceedings.

1 *This section does not limit other powers*

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

4 Note: Part XIB also gives courts powers relating to vexatious proceedings.

5 **16 Section 102QA (note)**

6 Repeal the note, substitute:

7 Note: For example, section 45A allows a court to dismiss proceedings if it is
8 satisfied that they are vexatious.

9 **17 Subsection 117(1)**

10 Omit “subsection 70NFB(1)”, substitute “subsections 45A(5) and
11 70NFB(1)”.

12 **18 Subsection 117(1)**

13 Omit “, 117AC and 118”, substitute “and 117AC”.

14 **19 Section 118**

15 Repeal the section.

16 **20 Application**

17 (1) The amendments made by this Division apply to proceedings instituted
18 before, on or after the commencement of this Division.

19 (2) However, to avoid doubt, the repeal of section 118 of the *Family Law*
20 *Act 1975* by this Division does not affect any action taken under that
21 section before the repeal of that section.

22 **Division 10—Orders of costs against guardians ad litem**

23 ***Family Law Act 1975***

24 **21 Subsection 117(2)**

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

26 **22 Before subsection 117(3)**

27 Insert:

1 *Costs of independent children's lawyer*

2 **23 Before subsection 117(4A)**

3 Insert:

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

5 **24 Before subsection 117(5)**

6 Insert:

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

8 **25 At the end of section 117**

9 Add:

10 *Limit on orders against guardians ad litem*

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

15 **26 Application**

16 The amendments made by this Division apply in relation to persons
17 who become guardians *ad litem* in proceedings on or after the
18 commencement of this Division, whether the proceedings were
19 instituted before, on or after that commencement.

20 **Division 11—Powers of arrest**

21 ***Family Law Act 1975***

22 **27 Subsection 4(1)**

23 Insert:

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

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

1 **28 Subsection 4(1) (definition of *warrant issued under a***
2 ***provision of this Act*)**

3 Repeal the definition.

4 **29 Section 67Q (note 1)**

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

8 **30 Subsection 68C(1) (note)**

9 Omit “Section 122AA authorises”, substitute “Section 122A deals
10 with”.

11 **31 Subsection 114AA(1) (note)**

12 Omit “Section 122AA authorises”, substitute “Section 122A deals
13 with”.

14 **32 Sections 122AA and 122A**

15 Repeal the sections, substitute:

16 **122A Making arrests under this Act or warrants**

17 *Application*

18 (1) This section and section 122AA apply to any of the following
19 persons (the *arrestor*) who is authorised by this Act, or by a
20 warrant issued under this Act, the standard Rules of Court or the
21 related Federal Circuit Court Rules, to arrest another person (the
22 *arrestee*):

- 23 (a) the Marshal of the Family Court;
24 (b) a Deputy Marshal of the Family Court;
25 (c) the Sheriff of the Federal Circuit Court;
26 (d) a Deputy Sheriff of the Federal Circuit Court;
27 (e) the Sheriff of a court of a State or Territory;
28 (f) a Deputy Sheriff of a court of a State or Territory;
29 (g) a police officer;
30 (h) the Australian Border Force Commissioner;

- 1 (i) an APS employee in the Department administered by the
2 Minister administering the *Australian Border Force Act*
3 *2015*.

4 *Use of force*

- 5 (2) In the course of arresting the arrestee, the arrester:
6 (a) must not use more force, or subject the arrestee to greater
7 indignity, than is necessary and reasonable to make the arrest
8 or to prevent the arrestee's escape after the arrest; and
9 (b) must not do anything that is likely to cause the death of, or
10 grievous bodily harm to, the arrestee unless the arrester
11 reasonably believes that doing that thing is necessary to
12 protect life or prevent serious injury to another person
13 (including the arrester); and
14 (c) if the arrestee is attempting to escape arrest by fleeing—must
15 not do a thing described in paragraph (b) unless:
16 (i) the arrester reasonably believes that doing that thing is
17 necessary to protect life or prevent serious injury to
18 another person (including the arrester); and
19 (ii) the arrestee has, if practicable, been called on to
20 surrender and the arrester reasonably believes that the
21 arrestee cannot be arrested in any other way.

22 *Informing the arrestee of grounds for arrest*

- 23 (3) When arresting the arrestee, the arrester must inform the arrestee of
24 the grounds for the arrest.
25 (4) It is sufficient if the arrestee is informed of the substance of those
26 grounds, not necessarily in precise or technical language.
27 (5) Subsection (3) does not apply if:
28 (a) the arrestee should, in the circumstances, know the substance
29 of the grounds for the arrest; or
30 (b) the arrestee's actions make it impracticable for the arrester to
31 inform the arrestee of those grounds.

1 **122AA Powers to enter and search premises, and stop conveyances,**
2 **for making arrests under this Act or warrants**

3 *Power to enter premises*

- 4 (1) If the arrestee (see subsection 122A(1)) reasonably believes the
5 arrestee (see that subsection) is on premises, the arrestee may enter
6 the premises, using such force as is necessary and reasonable in the
7 circumstances, at any time of the day or night for the purpose of
8 searching the premises for the arrestee or arresting the arrestee.
- 9 (2) However, the arrestee must not enter a dwelling house between 9
10 pm one day and 6 am the next day unless he or she reasonably
11 believes that it would not be practicable to arrest the arrestee there
12 or elsewhere at another time.

13 *Power to stop and detain conveyance*

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

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

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

- 22 (4) If the arrestee stops, detains, enters or searches a conveyance under
23 this section for the purposes of arresting the arrestee, the arrestee:
24 (a) may use such assistance as is necessary; and
25 (b) must search the conveyance in a public place or in some
26 other place to which members of the public have ready
27 access; and
28 (c) must not detain the conveyance for longer than is necessary
29 and reasonable to search it; and
30 (d) may use such force as is necessary and reasonable in the
31 circumstances, but must not damage the conveyance by
32 forcing open a part of the conveyance unless:

- 1 (i) the person (if any) apparently in charge of the
2 conveyance has been given a reasonable opportunity to
3 open that part; or
4 (ii) it is not possible to give that person such an opportunity.

5 *Definition of premises*

6 (5) In this section:

7 *premises* includes a place and a conveyance.

8 **33 Application**

9 The amendments made by this Division apply in relation to arrests:

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

14 **Division 12—Family counselling and family dispute**
15 **resolution**

16 *Family Law Act 1975*

17 **34 At the end of section 10B**

18 Add:

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

22 **35 Paragraph 10F(a)**

23 Repeal the paragraph, substitute:

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

1 disputes with each other relating to the care of children;
2 and

3 **Division 13—Alternative constitutional basis for Part VII**
4 **of the Family Law Act 1975**

5 *Family Law Act 1975*

6 **36 At the end of subsection 69ZH(2)**

7 Add:

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

16 **Division 14—Family consultants and compliance with**
17 **parenting orders**

18 *Family Law Act 1975*

19 **37 Subsection 65L(1)**

20 Omit “subsection (2)”, substitute “subsections (2) and (3)”.

21 **38 At the end of section 65L**

22 Add:

23 (3) A court may make an order under subsection (1) relating to a final
24 parenting order only if the court is satisfied that exceptional
25 circumstances warrant the making of the order under
26 subsection (1).

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

3 **Division 1—Information to be provided by principal**
4 **executive officers of courts**

5 *Family Law Act 1975*

6 **39 At the end of subsection 12F(1)**

7 Add:

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

9 **Division 2—Offence of retaining child overseas**

10 *Family Law Act 1975*

11 **40 Subsection 65X(2)**

12 After “65Z”, insert “, 65ZAA”.

13 **41 Subsection 65X(2)**

14 After “65Y”, insert “, 65YA”.

15 **42 Section 65Y (heading)**

16 Repeal the heading, substitute:

17 **65Y Obligations if certain parenting orders have been made: taking**
18 **or sending a child outside Australia**

19 **43 After section 65Y**

20 Insert:

21 **65YA Obligations if certain parenting orders have been made:**
22 **retaining a child outside Australia**

23 A person commits an offence if:

- 1 (a) a parenting order to which this Subdivision applies is in force
2 in relation to a child; and
3 (b) the child has been taken or sent from Australia to a place
4 outside Australia, by or on behalf of a party to the
5 proceedings in which the parenting order was made:
6 (i) with the consent in writing (authenticated as prescribed)
7 of each person in whose favour the parenting order was
8 made; or
9 (ii) in accordance with an order of a court made, under this
10 Part or under a law of a State or Territory, at the time, or
11 after, the parenting order was made; and
12 (c) the person retains the child outside Australia otherwise than
13 in accordance with the consent or order (whether or not the
14 person took or sent the child as mentioned in paragraph (b));
15 and
16 (d) the person was a party to the proceedings in which the
17 parenting order was made, or is retaining the child on behalf
18 of, or at the request of, such a party.

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

22 Penalty: Imprisonment for 3 years.

23 **44 Section 65Z (heading)**

24 Repeal the heading, substitute:

25 **65Z Obligations if proceedings for the making of certain parenting**
26 **orders are pending: taking or sending a child outside**
27 **Australia**

28 **45 After section 65Z**

29 Insert:

30 **65ZAA Obligations if proceedings for the making of certain**
31 **parenting orders are pending: retaining a child outside**
32 **Australia**

33 A person commits an offence if:

Schedule 2 Other measures

Part 2 Amendments commencing up to 6 months after Royal Assent

- 1 (a) proceedings (the *Part VII proceedings*) for the making, in
2 relation to a child, of a parenting order to which this
3 Subdivision applies are pending; and
4 (b) the child has been taken or sent from Australia to a place
5 outside Australia by or on behalf of a party to the Part VII
6 proceedings:
7 (i) with the consent in writing (authenticated as prescribed)
8 of each other party to the Part VII proceedings; or
9 (ii) in accordance with an order of a court made, under this
10 Part or under a law of a State or Territory, after the
11 institution of the Part VII proceedings; and
12 (c) the person retains the child outside Australia otherwise than
13 in accordance with the consent or order (whether or not the
14 person took or sent the child as mentioned in paragraph (b));
15 and
16 (d) the person is a party to the Part VII proceedings, or is
17 retaining the child on behalf of, or at the request of, such a
18 party.

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

22 Penalty: Imprisonment for 3 years.

23 **46 Paragraph 65ZD(a)**

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

25 **47 Paragraph 65ZD(b)**

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

27 **48 At the end of Subdivision E of Division 6 of Part VII**

28 Add:

29 **65ZE Extended geographical jurisdiction—category D**

30 Section 15.4 of the *Criminal Code* (extended geographical
31 jurisdiction—category D) applies to an offence against
32 section 65YA or 65ZAA (retaining a child outside Australia).

1 **49 Paragraph 117A(1)(b)**

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

3 **50 Application**

4 (1) The amendments made by this Division apply to:

- 5 (a) a child taken or sent from Australia on or after the
6 commencement of this Division; or
7 (b) a child taken or sent from Australia before the
8 commencement of this Division, if the period specified in the
9 consent or order in accordance with which the child was
10 taken or sent:
11 (i) ended after that commencement; or
12 (ii) was extended so that it ended after that commencement.

13 (2) Subitem (1) does not apply to the amendments of sections 65Y, 65Z and
14 65ZD of the *Family Law Act 1975* made by this Division.

15 **Division 3—Location orders for Child Abduction**
16 **Convention**

17 ***Family Law Act 1975***

18 **51 At the end of section 67K**

19 Add:

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

24 (5) In subsection (4):

25 ***Child Abduction Convention*** means the Convention on the Civil
26 Aspects of International Child Abduction done at The Hague on
27 25 October 1980.

28 Note: The Child Abduction Convention is in Australian Treaty Series 1987
29 No. 2 ([1987] ATS 2) and could in 2015 be viewed in the Australian
30 Treaties Library on the AustLII website (<http://www.austlii.edu.au>).