

2018

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Family Law Act (Miscellaneous)  
Amendment Bill 2018**

**No.     , 2018**

*(Attorney-General)*

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

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

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act is the *Family Law Act (Miscellaneous) Amendment Act*  
6 *2018*.

7 **2 Commencement**

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



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## Schedule 1—Miscellaneous Amendments

### *Family Law Act 1975*

#### **1 Subsection 4AB(2)(j)**

After the subsection, add:

(k) abuse of process in the context of family law.

#### **2 Subsection 60CG(2)**

After the subsection, add:

(3) Upon an application being filed or the first instance of a matter being heard, whichever occurs first:

a. a risk assessment must be completed using the family violence risk assessment tool; and,

b. any matters and allegations relating to family violence must be determined at the earliest practicable opportunity.

(4) In considering what order to make, the court must consider the impact that family violence may have had on the contribution of parties and may have on the future needs of parties.

#### **3 Subsection 61DA**

Repeal the subsection.

#### **4 Subsection 61DB**

Repeal the subsection.

#### **5 Subsection 65D(1)**

Omit “subject to sections 61DA (presumption of equal shared parental responsibility when making parenting orders) and 65DAB (parenting plans)”, substitute “subject to section 65DAB (parenting plans)”.

#### **6 Subsection 65D(2)**

Omit “subject to section 61DA (presumption of equal shared parental responsibility when making parenting orders) and 65DAB (parenting plans)”, substitute “subject to section 65DAB (parenting plans)”.

1

2 **7 Subsection 61J(a)**

3 Add:

4 Note 2: To avoid doubt, children's courts, no matter how constituted, are able to  
5 make family law orders under this Act in the same circumstances that are  
6 currently applicable to courts of summary jurisdiction.

7 **8 Subsection 61J(b)**

8 Add:

9 Note 2: To avoid doubt, children's courts, no matter how constituted, are able to  
10 make family law orders under this Act in the same circumstances that are  
11 currently applicable to courts of summary jurisdiction.

12 **9 Subsection 38BAA(1)(f)**

13 At the end of the subsection, add:

14 (g) judgements in interim proceedings in short form.

15 **10 Subsection 68T(1)(b)**

16 Repeal this subsection.

17 **11 Subsection 68T(1)(a)**

18 At the end of the subsection, add:

19 (b) the date specified in the order; and  
20 (c) any further order of the court.

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## **Schedule 2—Cross Examination Amendments**

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

#### **1 Subsection 69ZX(2)**

At the end of the subsection, add:

(2A) If the court allows cross-examination of a particular witness who is a party and section 102NA or 102NB applies to the cross-examination, then the cross-examination must be conducted in accordance with that section.

Note: Sections 102NA and 102NB deal with the cross-examination of a party where there is an allegation of family violence.

#### **2 Part XI**

At the end of the part, add:

##### **102NA Mandatory requirements in specific cases**

*When this section applies to cross-examination*

(1) If, in proceedings under this Act:

- a. a party (the examining party) intends to cross-examine another party (the witness party); and
- b. there is an allegation of family violence between the examining party and the witness party; and
- c. one or more of the following is satisfied:
  - i. either party has been convicted, or is charged with, an offence involving violence, or a threat of violence, to the other party;
  - ii. a family violence order (other than an interim order) applies to both parties;
  - iii. an injunction under section 68B or 114 applies to both 2 parties;

this section applies to the cross-examination.

Note 1: This section applies both in the case where the examining party is the alleged perpetrator of the family violence and the witness party is the alleged victim, and in the case where the

1 examining party is the alleged victim and the witness party is the  
2 alleged perpetrator.

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4 Note 2: To avoid doubt, a reference to a party in this section  
5 includes a reference to a person who is a party because of the  
6 operation of a provision of this Act (for example, sections 92 and  
7 92A, which are about intervening parties). This section only applies  
8 to an intervening party if the intervening party is involved in the  
9 allegation of family violence, whether as the alleged perpetrator or  
10 as the alleged victim.

11  
12 *Where examining party does not have legal representation*

- 13  
14 (2) If the examining party is not represented by a legal practitioner,  
15 then:  
16 a. the examining party must not cross-examine the  
17 witness party personally; and  
18 b. any questions that the examining party would like to  
19 ask the witness party in cross-examination must instead  
20 be asked by a person appointed by the court;  
21 unless the court grants leave.

22  
23 Note: Despite paragraph (2)(b), there are other laws that apply to  
24 protect the witness party (for example, section 101 requires the  
25 court to forbid the asking of offensive questions and section 41 of  
26 the Evidence Act 1995 requires the court to disallow certain  
27 questions, such as misleading questions).

- 28  
29 (3) The court must not grant leave under subsection (2) unless:  
30 a. both parties consent to the cross-examination by the  
31 examining party of the witness party personally; and  
32 b. the court has considered whether the cross-examination  
33 will adversely affect the ability of:  
34 i. the witness party to testify under the cross-  
35 examination; and  
36 ii. the examining party to conduct the cross-  
37 examination; and  
38 c. the court has considered whether the cross-examination  
39 will have a harmful impact on the party who is the  
40 alleged victim of the family violence.

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42 *Where examining party has legal representation*

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- (4) If the examining party is represented by a legal practitioner, then:
- a. the examining party must not cross-examine the witness party personally; and
  - b. the cross-examination must be conducted by the examining party’s legal practitioner.

**102NB Mandatory requirements in specific cases**

*When this section applies to cross-examination*

- (1) If, in proceedings under this Act:
- a. a party (the examining party) intends to cross-examine another party (the witness party); and
  - b. there is an allegation of family violence between the examining party and the witness party; and
  - c. section 102NA does not apply to the cross-examination;
- then:
- d. the court may, if it thinks it appropriate to do so, make an order that the cross-examination must be conducted in accordance with this section; and
  - e. if the court makes such an order, then this section applies to the cross-examination.

Note 1: This section applies both in the case where the examining party is the alleged perpetrator of the family violence and the witness party is the alleged victim, and in the case where the examining party is the alleged victim and the witness party is the alleged perpetrator.

Note 2: To avoid doubt, a reference to a party in this section includes a reference to a person who is a party because of the operation of a provision of this Act (for example, sections 92 and 92A, which are about intervening parties). This section only applies to an intervening party if the intervening party is involved in the allegation of family violence, whether as the alleged perpetrator or as the alleged victim.

*Where examining party does not have legal representation*

- (2) If the examining party is not represented by a legal practitioner, then:

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- a. the examining party must not cross-examine the witness party personally; and
- b. any questions that the examining party would like to ask the witness party in cross-examination must instead be asked by a person appointed by the court.

Note: Despite paragraph (2)(b), there are other laws that apply to protect the witness party (for example, section 101 requires the court to forbid the asking of offensive questions and section 41 of the Evidence Act 1995 requires the court to disallow certain questions, such as misleading questions). Where examining party

*Where examining party has legal representation*

- (3) If the examining party is represented by a legal practitioner, then:
  - a. the examining party must not cross-examine the witness party personally; and
  - b. the cross-examination must be conducted by the examining party’s legal practitioner

*Court order*

- (4) The court may make an order under paragraph (1)(d):
  - a. on its own initiative; or
  - b. on the application of the examining party or the witness party.

**102NB Mandatory requirements in specific cases**

The Minister must cause a review of the operation of this Division to be commenced as soon as possible after:

- a. the second anniversary of the commencement of this section; or
- b. if, before the second anniversary, the regulations prescribe a day that is after the second anniversary—that day.

1 **3 Application of amendments**

2           The amendments made by this Schedule apply to cross-examinations  
3           occurring after the commencement of this Schedule in proceedings  
4           instituted before or after that commencement.  
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