

2010

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Family Law Amendment (Validation of
Certain Parenting Orders and Other
Measures) Bill 2010**

No. , 2010

(Attorney-General)

**A Bill for an Act to validate certain parenting
orders and amend the *Family Law Act 1975*, and for
related purposes**

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1 **A Bill for an Act to validate certain parenting**
2 **orders and amend the *Family Law Act 1975*, and for**
3 **related purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Family Law Amendment (Validation*
7 *of Certain Parenting Orders and Other Measures) Act 2010*.

8 **2 Commencement**

9 This Act commences on the day after this Act receives the Royal
10 Assent.

1

3 Schedule(s)

2

Each Act that is specified in a Schedule to this Act is amended or

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repealed as set out in the applicable items in the Schedule

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concerned, and any other item in a Schedule to this Act has effect

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according to its terms.

1
2 **Schedule 1—Validation of certain parenting**
3 **orders**
4

5 **1 Interpretation**

6 (1) In this Schedule:

7 *affected order* has the meaning given by subitems 2(1) and (3).

8 *consider* has the same meaning as in section 65DAA of the *Family Law*
9 *Act 1975*.

10 *court*, except in subitems 4(2) and (3), means a court exercising
11 jurisdiction in relation to a matter arising under the *Family Law Act*
12 *1975* or this Act.

13 *enforceable* includes able to be dealt with by proceedings under
14 Division 13A of Part VII of the *Family Law Act 1975* relating to a
15 contravention of an order.

16 *enforcement law* has the meaning given by subitem 4(3).

17 *liability* includes a duty, responsibility or obligation.

18 *Registrar* means:

19 (a) a Registrar within the meaning of the *Family Law Act 1975*,
20 to the extent that his or her powers were or are exercised
21 under a delegation of the Family Court's powers under Rules
22 of Court made under section 37A of the *Family Law Act*
23 *1975*; or

24 (b) a Judicial Registrar appointed under section 26A of the
25 *Family Law Act 1975*, to the extent that his or her powers
26 were or are exercised under a delegation of the Family
27 Court's powers under Rules of Court made under section 26B
28 of that Act; or

29 (c) a Registrar within the meaning of the *Federal Magistrates*
30 *Act 1999*, to the extent that his or her powers were or are
31 exercised:

32 (i) under section 102 of that Act; or

33 (ii) under a delegation of the Federal Magistrates Court's
34 powers under Rules of Court made under section 103 of
35 that Act.

36 *required matters*, for an order, has the meaning given by subitem 2(2).

1 *right* includes an interest, status, power or authority.

2 (2) Any other expression has the same meaning in this Schedule as in the
3 *Family Law Act 1975*.

4 **2 Meaning of *affected order* etc.**

5 (1) An *affected order* is, subject to subitem (3), an order (including an
6 interim order) in relation to a child:

7 (a) that was made or purportedly made by a court or Registrar
8 under section 65D of the *Family Law Act 1975*:

9 (i) on or after the commencement of Schedule 1 to the
10 *Family Law Amendment (Shared Parental
11 Responsibility) Act 2006*; and

12 (ii) before the commencement of this item; and

13 Note: Schedule 1 to the *Family Law Amendment (Shared Parental
14 Responsibility) Act 2006* commenced on 1 July 2006.

15 (b) that:

16 (i) provides for the child's parents to have equal shared
17 parental responsibility for the child; or

18 (ii) was made on the basis that another order provides for
19 the child's parents to have equal shared parental
20 responsibility for the child; and

21 (c) in relation to which the court or Registrar did not consider the
22 required matters for the order.

23 (2) The *required matters* for the order are:

24 (a) if the order was made or purportedly made without the
25 consent of all the parties to the proceedings:

26 (i) in any case—whether the child spending equal time
27 with each of the parents was reasonably practicable; and

28 (ii) if the order does not provide for the child to spend equal
29 time with each of the parents—whether the child
30 spending substantial and significant time with each of
31 the parents was reasonably practicable; or

32 (b) if the order was made or purportedly made with the consent
33 of all the parties to the proceedings:

34 (i) in any case—the matters referred to in paragraphs
35 65DAA(1)(a) to (c) of the *Family Law Act 1975*; and

1 (ii) if the order does not provide for the child to spend equal
2 time with each of the parents—the matters referred to in
3 paragraphs 65DAA(2)(c) to (e) of that Act.

4 (3) If a court or Registrar has:

5 (a) varied, revoked, set aside, revived or suspended an order to
6 which paragraphs (1)(a), (b) and (c) apply; or

7 (b) purported to vary, revoke, set aside, revive or suspend such
8 an order;

9 the *affected order* is that order in the form in which, and to the extent to
10 which, it purports or purported to have effect from time to time.

11 **3 Rights and liabilities under affected orders**

12 (1) Subject to item 5, the rights and liabilities of all persons are, by force of
13 this item, declared to be, and always to have been, the same as if each
14 affected order were an order in relation to which the court or Registrar
15 making the order had considered the required matters for the order.

16 (2) A right or liability conferred, imposed or affected by subitem (1):

17 (a) is exercisable or enforceable; and

18 (b) is to be regarded as always having been exercisable or
19 enforceable;

20 as if it were a right or liability conferred, imposed or affected by an
21 order made by the court or Registrar in or in relation to the proceedings
22 for the order.

23 (3) The rights and liabilities conferred, imposed or affected by subitem (1)
24 include (but are not limited to) the right of a person who was a party to
25 the proceeding or purported proceeding in which the affected order was
26 made to:

27 (a) appeal against the order; or

28 (b) apply for review in relation to the order;

29 as if the order were an order made under the *Family Law Act 1975*.

30 (4) Without limiting the grounds on which the person may appeal against
31 the order or apply for review in relation to the order, the person may do
32 so on the ground that the court or Registrar that made the order failed to
33 consider the required matters for the order.

1 (5) To avoid doubt, this item does not affect the application of
2 section 60CA of the *Family Law Act 1975* in relation to an affected
3 order.

4 Note: Section 60CA of the *Family Law Act 1975* requires the best interests of the child to be
5 the paramount consideration in a decision whether to make a particular parenting order.

6 **4 Effect of things done etc. under or in relation to rights and**
7 **liabilities**

8 (1) Any act or thing done or omitted to be done before, at or after the
9 commencement of this Schedule in relation to a right or liability
10 conferred, imposed or affected by item 3:

11 (a) has the same effect, and gives rise to the same consequences,
12 for the purposes of any written or other law; and

13 (b) is taken always to have had the same effect, and to have
14 given rise to the same consequences, for the purposes of any
15 written or other law;

16 as if it were done or omitted to be done to give effect to, or under the
17 authority of or in reliance on, an order made under section 65D of the
18 *Family Law Act 1975*.

19 (2) However, if, before the commencement of this Schedule, a court
20 purported to convict a person of an offence against an enforcement law
21 on the basis that an affected order was a valid order, nothing in this item
22 is to be taken to validate or confirm that conviction.

23 (3) An ***enforcement law*** is a provision of a law of the Commonwealth,
24 other than a law relating to contempt of court, that sets out a
25 consequence for a person if the person:

26 (a) contravenes; or

27 (b) acts in a specified way while there is in force;

28 an order, or a particular kind of order, made by a court exercising
29 federal jurisdiction (whether or not the provision also applies to other
30 orders of courts).

31 **5 Circumstances in which item 3 ceases to have effect**

32 If:

33 (a) before the commencement of this Schedule, a court or
34 Registrar made an order (the ***new order***) on the basis that an
35 affected order was or might be invalid; and

- 1 (b) the new order:
 2 (i) conferred or imposed rights or liabilities similar to or
 3 different from those purportedly conferred or imposed
 4 by the affected order; or
 5 (ii) affected rights or liabilities in the same way as they
 6 were purportedly affected by the affected order or in a
 7 different way;
 8 item 3 is to be regarded as having ceased to have effect in respect of the
 9 affected order when the new order took effect.

10 **6 Powers in relation to declared rights and liabilities**

- 11 (1) A court or Registrar may vary, revoke, set aside, revive or suspend a
 12 right or liability conferred, imposed or affected by item 3 (an *item 3*
 13 *right or liability*) as if it were a right or liability conferred, imposed or
 14 affected by an order that was made under section 65D of the *Family*
 15 *Law Act 1975*.
 16 (2) In addition to the powers of a court or Registrar under subitem (1), the
 17 court or Registrar also has power to make an order achieving any other
 18 result that could have been achieved if:
 19 (a) the affected order had been an order that was made under
 20 section 65D of the *Family Law Act 1975*; and
 21 (b) the court or Registrar had been considering whether:
 22 (i) to vary, revoke, set aside, revive or suspend that order;
 23 or
 24 (ii) to extend the time for the doing of anything in relation
 25 to the proceedings for that order; or
 26 (iii) to grant a stay of proceedings for that order.
 27 (3) This item has effect, in relation to varying, revoking, setting aside,
 28 reviving or suspending an item 3 right or liability, subject to the same
 29 conditions and limitations as apply under the *Family Law Act 1975* in
 30 relation to varying, revoking, setting aside, reviving or suspending an
 31 order that was made under section 65D of the *Family Law Act 1975*.
 32 (4) Despite subitem (3), if the affected order was made without the consent
 33 of the parties, the court or Registrar does not need to be satisfied, before
 34 varying, revoking, setting aside, reviving or suspending an item 3 right
 35 or liability, that there are circumstances justifying reconsideration of
 36 how the best interests of the child should be best served.

- 1 (5) Any of the following:
2 (a) an order under this item by the Supreme Court of the
3 Northern Territory, or the Family Court of Western Australia;
4 (b) a decree or decision of a Judge of the Supreme Court of the
5 Northern Territory, or the Family Court of Western Australia,
6 rejecting an application that he or she disqualify himself or
7 herself from further hearing a matter arising under
8 subitem (1);
9 is taken, for the purposes of section 94 of the *Family Law Act 1975*, to
10 be a decree of that court, or a decree or decision of that Judge,
11 exercising original or appellate jurisdiction under that Act.
- 12 (6) Any of the following:
13 (a) an order under this item by the Federal Magistrates Court;
14 (b) a decree or decision of a Federal Magistrate rejecting an
15 application that he or she disqualify himself or herself from
16 further hearing a matter arising under subitem (1);
17 (c) an order under this item by the Magistrates Court of Western
18 Australia constituted by a Family Law Magistrate of Western
19 Australia;
20 (d) a decree or decision of a Family Law Magistrate of Western
21 Australia rejecting an application that he or she disqualify
22 himself or herself from further hearing a matter arising under
23 subitem (1);
24 is taken, for the purposes of section 94AAA of the *Family Law Act*
25 *1975*, to be a decree of that court, or a decree or decision of that
26 magistrate, exercising original jurisdiction under that Act.
- 27 (7) An order under this item by a court of summary jurisdiction of a State
28 or Territory (other than the Magistrates Court of Western Australia
29 constituted by a Family Law Magistrate of Western Australia) is taken,
30 for the purposes of section 96 of the *Family Law Act 1975*, to be a
31 decree of that court exercising jurisdiction under that Act.

32 **7 Proceedings for contempt etc.**

33 If (whether before, at or after the commencement of this Schedule) a
34 person has:

- 35 (a) interfered with a right conferred or affected by item 3 in
36 relation to an affected order of the Federal Magistrates Court,

1 the Family Court of Western Australia, a court of summary
2 jurisdiction or a Registrar; or
3 (b) failed to satisfy or comply with a liability imposed or
4 affected by item 3 in relation to an affected order of the
5 Federal Magistrates Court, the Family Court of Western
6 Australia, a court of summary jurisdiction or a Registrar;
7 the interference or failure is, and is taken always to have been, a matter
8 that can be dealt with in the same manner as if the interference or failure
9 had been in relation to a right conferred or affected, or a liability
10 imposed or affected, by an order validly made under section 65D of the
11 *Family Law Act 1975*.

12 **8 Evidence**

13 The court record, or a copy of the court record, of an affected order may
14 be adduced in evidence to show the existence, nature and extent of each
15 right or liability conferred, imposed or affected by item 3.

16 **9 Schedule does not apply to certain orders**

17 Nothing in this Schedule applies to an order declared or held to be
18 invalid, or to have been made without power, by a court before the
19 commencement of this Schedule.

20 **10 Jurisdiction of courts**

- 21 (1) Subject to subitem (3), jurisdiction is conferred on the Family Court, the
22 Federal Magistrates Court and the Supreme Court of the Northern
23 Territory, and the Family Court of Western Australia is invested with
24 federal jurisdiction, with respect to matters arising under this Schedule.
- 25 (2) Subject to subitem (3), each court of summary jurisdiction of each State
26 is invested with federal jurisdiction, and jurisdiction is conferred on
27 each court of summary jurisdiction of each Territory, with respect to
28 matters arising under this Schedule.
- 29 (3) A court only has jurisdiction with respect to a matter arising under this
30 Schedule if it has jurisdiction with respect to an equivalent matter
31 arising under the *Family Law Act 1975*. The court's jurisdiction under
32 this Schedule is subject to the same conditions and limitations as would
33 apply to it in dealing with the equivalent matter.

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Schedule 2—Amendments

Family Law Act 1975

1 Subsections 65DAA(1) and (2)

6 Omit “If”, substitute “Subject to subsection (6), if”.

2 At the end of section 65DAA (after the notes)

8 Add:

9 *Consent orders*

10 (6) If:

- 11 (a) the court is considering whether to make a parenting order
12 with the consent of all the parties to the proceedings; and
13 (b) the order provides (or is to provide) that a child’s parents are
14 to have equal shared parental responsibility for the child;
15 the court may, but is not required to, consider the matters referred
16 to in paragraphs (1)(a) to (c) or (if applicable) the matters referred
17 to in paragraphs (2)(c) to (e).

18 (7) To avoid doubt, subsection (6) does not affect the application of
19 section 60CA in relation to a parenting order.

20 Note: Section 60CA requires the best interests of the child to be the
21 paramount consideration in a decision whether to make a particular
22 parenting order.

3 Application of amendments

24 The amendments made by this Schedule apply to any order made after
25 the commencement of this item, whether proceedings were initiated, or
26 an application for the order was made, before, at or after that
27 commencement.