

ACCREDITATION SPECIALISATION APPLICATION GUIDELINES 2021

Family Law

Specialist Accreditation Application Guidelines 2021

FAMILY LAW

What is an Accredited Specialist?

A lawyer who is accredited as a specialist is recognised as having an enhanced skill level, as well as substantial involvement in established legal specialty areas. The Law Institute of Western Australia requires such specialists to demonstrate superior knowledge, experience and proficiency in a particular area of law to ensure that recognition as an accredited specialist is meaningful and reliable.

Eligibility for Accreditation

- Membership of the Law Society of Western Australia
- A current practising certificate
- At least five years' experience in practice
- Substantial involvement (at least 25%) in Family Law over the past three years
- Three references in support of the application
- Successful completion of the prescribed assessment program

Candidates who do not meet the eligibility criteria may apply for an exemption from criteria in accordance with the Application for the Committee's Discretion document found at

<https://www.lawsocietywa.asn.au/wp-content/uploads/2015/10/Application-for-the-Committees-Discretion.pdf>

Such applications for exemptions must be lodged no later than **4pm 30 April 2021**.

Note: An applicant who is not able to fully satisfy the criteria concerning:

- years of experience in practice; or
- level of involvement in the area of practice

may be accepted into the program at the discretion of the Family Law Specialist Accreditation Advisory Committee. To make a discretionary application, an applicant must include a formal letter with their application, addressed to the Family Law Specialist Accreditation Advisory Committee, outlining the reasons why discretion is required and why the committee should exercise their discretion and accept the applicant as a candidate.

IMPORTANT: Details of the conditions for gaining specialist accreditation are contained in the Accreditation Booklet – Family Law which can be found at: <https://www.lawsocietywa.asn.au/wp-content/uploads/2015/10/accreditation-booklet.pdf>

Assessment

The assessment program for Accredited Specialisation in Family Law is in three parts. To gain accreditation candidates must obtain a satisfactory mark in each of the three parts of the program. Candidates may, in any or all of the assessment program, be assessed on any or all of the Assessment Topics listed in Schedule 4 and 5.

Part 1: Mock File – See Schedule 1

Part 2: Written Examination – See Schedule 2

Part 3: Simulated Client Interview – See Schedule 3

Candidates will be examined on the law as it stands at the date of assessment.

Supplementary assessment

Candidates may be required to undertake additional assessment at the discretion of the Specialisation Board.

Exemption from Written Examination

Candidates may apply in advance for an exemption from the written examination. Please refer to the policy for considering applications for exemption from assessment components for further guidance, assessment criteria and application requirements.

Please note, any such exemption is entirely at the discretion of the Specialisation Board and will be assessed on a case by case basis.

Any application for an exemption should be made at the time of lodging the application form, which is to be lodged no later than 4pm on 30 April 2021.

Specialist Accreditation Application Guidelines 2021

FAMILY LAW

Timetable

25 March 2021	Part 1 & Part 2 - Accredited Specialisation information sessions, 5.15pm
30 March 2021	Part 3 - Accredited Specialisation information sessions, 5.15pm
30 April 2021	Applications requesting Board discretion (for those who do not meet eligibility criteria) or exemption from the Written Examination close, no later than 4pm
14 May 2021	All other Applications close, no later than 4pm
16 June 2021	Part 1: Mock File released, due 7 July 2021
14 August 2021	Part 2: Written Examination
15 August 2021	Part 3: Simulated Client Interview
Late October 2021	Results sent to candidates, candidates will be advised via email
Early December 2021	Accredited Specialisation Conferral Ceremony

Unacceptable Conduct

Candidates must not:

- Disclose or discuss the contents of the Accredited Specialisation Assessment material with any other person until all assessment tasks have been completed by all candidates.
- Contact committee members for specific advice regarding exam questions or exam outcomes.
- Engage in any other conduct which may negatively affect the fair and proper administration of the Accredited Specialisation program.

Candidates engaging in the above conduct or any other conduct deemed to be unacceptable may be excluded or disqualified from the program.

Performance Standards

Practitioners wishing to be accredited must be able to:

- (a) perform at a superior standard which is expected of practitioners wishing to hold themselves out as specialists in the area,
- (b) display a superior standard of knowledge of the law and procedure which underpins the performance of tasks in this area of practice.

Candidate Support & Resources

Candidates will be provided with a range of study support and resources to assist with preparations for the assessments as part of their application fee, including:

- Access to a Law Society NSW Assessment Sample Kit
- Assistance with the facilitation of study groups
- Candidates are recommended to read the material and legislation listed within Schedule 5 of these guidelines

Legislation and Other Provisions

Candidates should be familiar with the relevant parts of legislation relating to the selected topics for assessment, and the legislation listed in Schedule 4 and 5.

Resume of Practice

As evidence of substantial involvement, applicants must submit a resume of their professional activities relevant to practice in Family Law. The resume should give the Board an overall picture of the applicant's experience and expertise in Family Law, with an emphasis on involvement over the past three (3) years. It is not expected that a comprehensive curriculum vitae will be submitted.

No standard format is prescribed. However, applicants might find it helpful to use some or all of the following headings:

- broad description of current practice activities
- experience in specific areas of activity in Family Law
- involvement with relevant professional organisations
- relevant publications and presentations
- academic qualifications
- other.

Specialist Accreditation Application Guidelines 2021

FAMILY LAW

It is not necessary to repeat details provided on the application form.

Applications

Applications must be made on the prescribed application form found at:

<https://www.lawsocietywa.asn.au/wp-content/uploads/2015/10/Application-for-Accreditation-Specialist-Exam-2021.pdf>

The application is to include:

- A completed application form
- Your supporting documentation, including
- Three references on the prescribed reference form
- Resume of practice
- Other supporting documentation supporting the application
- Payment of the application fee (\$1100 inclusive of GST) payable to the Law Society of Western Australia

Application close dates

- 4pm Friday, 30 April 2021 for applicants wishing to apply for Board discretion because they do not meet the eligibility criteria.
- 4pm Friday 14 May 2021 for all other applications.

Enquiries:

Telephone: (08) 9324 8600

Email: accreditation@lawsocietywa.asn.au

The Address for applications is:
Family Law Accreditation
Law Society of Western Australia
PO Box Z5345
Perth WA 6831

or

DX 173 Perth

Specialist Accreditation Application Guidelines 2021

FAMILY LAW

SCHEDULE 1: Assessment Component: Part 1

MOCK FILE

Distribution Date: 16 June 2021
Submission Date: 7 July 2021, by no later than 4pm

Candidates will be required to prepare an advice for a client in the form of a letter and prepare appropriate court documents with respect to the various issues raised. This is likely to include an initiating application and relevant supporting affidavit(s) but may also or alternatively require the drafting of an agreement such as a Binding Child Support Agreement, Financial Agreement or Parenting Plan. The examiners will assess communication skills as well as legal knowledge.

Assessment Criteria

Candidates will be assessed on their:

- ability to identify relevant issues from the materials provided
- depth of knowledge of the law and skill in applying that knowledge to the given fact situation
- ability to provide practical, clear and accurate written advice
- skills in interpreting and drafting documents.

Note: Assessment criteria will be weighted to indicate to candidates priority and importance of each criteria in the assessing of candidate work. The candidate is not expected to provide any advice relating to costs agreements or disclosure statements.

Take-Home Assignment Conditions

Candidates may use the resources of their offices in completing this exercise. However, consultation with any other person in completing the exercise is not permitted.

The completed exercise must be submitted as a hard copy lodged in person or a Word or PDF document emailed to accreditation@lawsocietywa.asn.au or sent by registered post to arrive no later than 4pm on 7 July 2021.

Specialist Accreditation Application Guidelines 2021

FAMILY LAW

SCHEDULE 2: Assessment Component: Part 2 – Written Examination

Exam Date:	Saturday 14 August 2021
Exam Venue:	Law Society of Western Australia Level 5, 160 St Georges Terrace, Perth WA 6000
Exam Time:	To Be Confirmed

The examination is divided into two sections.

Section A – 60 per cent

Two essay answer questions in areas of family law commonly encountered in practice.

Section B – 40 per cent

Short-answer questions that will test across areas of family law in a specialist's day-to-day practice. In order to pass the examination, the candidate will need to achieve at least a 50 per cent score on each of Section A and Section B.

Assessment Criteria

Candidates will be assessed on their:

- ability to identify relevant issues from a given fact situation
- depth of knowledge of the law and skill in applying that knowledge to the given fact situation
- knowledge of procedural rules and practices
- ability to provide practical, clear and accurate advice.

Examination Conditions

- The written examination is an open book exam.
- Candidates may take into the examination room any books, notes or other written material.
- Portable computers may be used for reference purposes on a read-only basis so long as their use does not disturb other candidates. Access to the Internet is strictly prohibited.
- Mobile telephones are not permitted.
- Questions must be answered in the booklets or on the computers provided.
- Answers must be numbered correctly.
- Handwriting must be legible.
- Each candidate will be issued with an examination number.
- The names of candidates will not appear on any material submitted for assessment.

Specialist Accreditation Application Guidelines 2021

FAMILY LAW

SCHEDULE 3: Assessment Component: Part 3 – Simulated Client Interview

Exam Date: Sunday 15th August 2021, by appointment
Exam Venue: Law Society of Western Australia
Level 5, 160 St Georges Terrace, Perth WA 6000

The candidate will conduct a simulated first interview with a person acting in the role of a client. The exercise will take about 60 minutes, and will be recorded and the recording assessed by the examiners.

This simulated interview is intended to assess a wide range of performance standards, including those relating to interaction between the solicitor and client, taking instructions and giving advice, terms of engagement, assessing facts and legal options, canvassing the options with the client and developing the initial plan.

The candidate may (but is not required to) bring written material to the interview including instruction sheets or notes. Any file note prepared as part of the simulated interview will not form part of the final assessment for this examination component.

The candidate is expected to demonstrate a clear ability to take and receive instructions, deliver preliminary advice and provide information to the client in a manner which satisfies the assessment criteria, core knowledge and the performance standard.

Assessment Criteria

Candidates will be assessed on the following performance standards:

- gathering facts and assesses instructions
- advising
- rapport, empathy, attitude
- communicates clearly and appropriately.

A sound knowledge of the relevant law, rules and procedures will also be required. **Assessment criteria will be weighted to indicate to candidate's priority and importance of each criteria in the assessing of candidate work.**

Specialist Accreditation Application Guidelines 2021

FAMILY LAW

SCHEDULE 4: Topics For Assessment

Candidates will be expected to display a high standard of knowledge regarding:

- the Family Law Act, Family Law Rules, the Child Support (Assessment) Act, the Federal Circuit Court Act and Rules and other relevant legislation and case law
- the core knowledge areas set out in Schedule 4 of the guidelines
- state legislation relating to domestic violence, children, medical procedures and professional responsibilities, and the intersection between state and federal legislation.

The contents of Schedule 4 (March 2021) should not be taken to be exhaustive. It is aimed at assisting candidates in their preparation for specialist accreditation.

Candidates will be assessed on the law as it stands on the date of assessment.

Candidates will be expected to:

- Be able to address complex issues that might arise in any of the core knowledge areas.
- Be able to identify relevant issues and problems from the fact scenarios provided.
- Be able to provide practical, clear and accurate advice.
- Be able to draft documents in accordance with relevant procedural rules and principles.
- Demonstrate adherence to the ethical and professional “best practice” of family law.

Note: The cases and sections of legislation are provided by way of guideline assistance only. In the event that any new legislative reforms become effective before the date of assessment or new cases delivered, practitioners will be required to be aware of the changes to the law resulting from that legislation or those cases. Parts, divisions, sections, orders and rules, if cited without legislative reference, are parts, divisions, sections, orders or rules of the Family Law Act 1975 (Cth) or the Family Law Rules 2004 (Cth).

1. Divorce

- Jurisdiction.
- Ground: section 48
 - meaning of separation (including separation under one roof): section 49 Hedley v Hedley [2009] FamCAFC 179; FLC 93-413; Stanford v Stanford (2012) 247 CLR 108.
 - Effect of resumption of cohabitation: section 50
 - requirements where marriage less than two years: section 44 (1B).
 - Price and Underwood (2008) FamLR 614
- Declaration – children: section 55A.
- Effect on wills.
- Time limits for property and maintenance applications: section 44(3); Anderson v McIntosh [2013] FamCAFC 200.
- Applications for leave to institute proceedings out of time: In the Marriage of Whitford (1979) 24 FLC 90-162; Hedley

Specialist Accreditation Application Guidelines 2021

FAMILY LAW

(2009). (Note: section 44(2) now repealed – Hedley still relevant in relation to conduct of s44(3) proceedings).

- Effect of fraud: *Walton v Esposito* [2016] FamCA 336.

2. Nullity

- Grounds for nullity and consequences of nullity decrees: *Nagri v Chapal* [2012] FamCA 464; *Attorney-General (Cth) v Kevin and Jennifer* [2003] FamCA 94; *Thang & Lua* [2019] FamCA 195.

3. Children

3.1 Dispute Resolution

- Confidentiality re counselling and family dispute resolution: sections 10D and 10H. *Unitingcare – Unifam Counselling & Mediation & Harkiss & Anor* [2011] FamCAFC 159; (2011) 46 Fam LR 12; *Smith & Duke* [2015] FamCA 990; *In the Marriage of Lace* (1981) FLC 91-080; *Choat & Grendel* [2018] FamCA 579.
- Admissibility of statement made in counselling and family dispute resolution: sections 10E and 10J. *Unitingcare (supra)*; *N and G* [2008] FCWA 61 at [23].
- Definition of “family dispute resolution”: section 10F.
- Definition of “family dispute resolution practitioner”: section 10G.
- Family Law (Family Dispute Resolution Practitioners) Regulations 2008 (Cth), regulation 25(2)
- Role of Family Relationship Centres: www.familyrelationships.gov.au/talk-someone/centres
- Advisor’s obligations: sections 63DA and 60D.
- Pre-filing dispute resolution requirements and exceptions: section 60I; *Palmer & Styles* [2015] FamCA 58; *Valack & Valack* [2020] FCCA1354; *Ellwood & Ravenhill* [2019] FamCAFC 153; *Conlon* [2019] FCCA 2195
- Family dispute resolution not attended because of child abuse or family violence: section 60J; *KMA & SAN & Anor* [2008] FamCA 1211; *Colson & Olds* [2007] FamCA 668;
- Arbitration: sub-sections 10L-P and 13E-K.

3.2 Jurisdictional Requirements and Discretion to Exercise Jurisdiction

- Standing:
 - section 65C; *Aldridge & Keaton* [2009] FamCAFC 229 at [54]; (2009) FLC 93-421; *Bemert & Swallow* [2009] FamCA 5 at [219]-[220] and on appeal *Bemert & Swallow* [2010] FamCAFC 100; (2010) FLC 93-441; *Mankiewicz & Anor & Swallow & Anor* [2016] FamCAFC 153; *KAM & MJR & Anor* [1998] FamCA 1896; [1999] FLC 82-847; *Wilson and Anor & Roberts and Anor (No. 2)* [2010] FamCA 734
 - section 69C; *Tomas and Anor & Murray* [2011] FamCA 641; *Murray & Tomas and Anor* [2011] FamCA 433; *Beck and Anor & Whitby and Anor* [2012] FamCA 120; *Burton v Churchin* [2013] FamCAFC 180;
- Limits as to jurisdiction. *Re F*; *ex parte F* (1986) 161 CLR 376 (judgment of Mason and Deane JJ).
- Jurisdiction for parenting orders over child in foreign country: *Mendelson & Kerner* [2018] FCCA 3344; *Chandra & Chandra* [2017] FCCA 451
- Forum Non Conveniens in Children’s matters – *ZP v PS* [1994] HCA 29; *Voth v Manildra Flour Mills Pty Ltd* [1990] HCA 55; *Henry v Henry* [1996] HCA 51; *B & B (Re Jurisdiction)* [2003] FamCA 105; *Clayton v Bant* [2020] HCA 44

Specialist Accreditation Application Guidelines 2021

FAMILY LAW

- Definition of “parent”: sections 60H, 60HA and 60HB: Aldridge & Keaton [2009] FamCAFC 229 at [54]; (2009) FLC 93-421; Re Mark: an Application Relating to Parental Responsibilities [2003] FamCA 822; (2003) FLC 93-173; Masson & Parsons [2019] HCA 21
- Court’s power to make parenting order: section 65D(1); Doherty & Doherty [2016] FamCAFC 182; Corelli & Gunther [2015] FamCA 81;
- Approach to making of parenting orders: MRR v GR (2010) 240 CLR 461; [2010] FLC 93-424 Wing v Choi [2013] FamCA 323; Maldera & Orbel (2014) FLC 93-602
- Meaning of “parenting order” and matters parenting orders can deal with: section 64B; Kay & Jasper and Ors [2007] FamCA 1646;
- Whom parenting orders may be made in favour of: section 64C.
- Types of children parenting orders can deal with: section 65H.
- Parenting orders may be subject to later parenting plans: section 64D; Banks & Banks [2012] FamCA 158;
- Effect of death on parenting orders: section 65K; Feranti & Connor [2010] FamCA 71; Leicester & Blackett and Anor [2016] FamCA 228;
- B- and B- (Re Jurisdiction) [2003] FamCA 105; (2003) FLC 93-136; EJK v TSL [2006] FamCA 730; (2006) FLC 93-287;
- Whether Family Court of WA lacks jurisdiction and power to determine claim involving third party and make a declaration pursuant to Part VIII A of Family Law Act 1975 (Cth). Whether FCWA has accrued jurisdiction.
- Camden Pty Ltd & Laue and Ors [2018] FamCAFC 91

3.3 Parental Responsibility – Part VII, Div 2

- Meaning: sections 61B, 61C, 61D, 61DA and 61E;
- Effect of parenting order that provides for shared parental responsibility: section 65DAC:
 - How to approach the task of drafting orders for parental responsibility: Pavli v Beffa [2013] FamCA 144;
 - A parent to have no parental responsibility: Modlin v Anstead [2013] FamCA 955;
- Difference between obligations regarding day-to-day issues and “major long-term issues”,
- Definition of “major long-term issues”: section 4; Chappell [2008] FamCAFC 143; Withers & Russell and Anor [2016] FamCA 793
- Different consultation requirements for day-to-day issues and major long-term issues: 65DAE; VR & RR [2002] FamCA 320
- B v B (1997) FLC 92-755; Goode & Goode [2006] FamCA 1346; Goode v Goode (2006) FLC 93-286; Masson and Parsons [2019] HCA 21.
- Shared parental responsibility despite presumption not applying: Goode (No. 2) [2007] FamCA 315; Bookhurst [2009] FamCA 6; Pilcher & Schneider [2007] FMCAfam 1163; Muldoon & Carlyle (2012) FLC ¶93-513;

3.4 Parenting orders: general principles – Part VII, Div 5

- Pre-action procedures and exceptions: Rule 1.05 and Schedule 1 of the Family Law Rules 2004 (Cth);
- Considerations for interim and final orders: Goode & Goode [2006] FamCA 1346; [2006] FLC 93-286; C & B [2007] FMCAfam 855.
- Approach of court to determining parenting orders.

Specialist Accreditation Application Guidelines 2021

FAMILY LAW

- Best interests of children as paramount consideration: sections 60CA and 65AA; Taylor and Taylor (1996) FLC 92-661; T v S [2001] FamCA 1147; (2001) FLC 93-086; AMS v AIF [1999] 199 CLR 160.
- Relevant sections: sections 60B, 60CA, 60CC, 61DA and 65DAA.
- Relationship between section 60B and section 60CC: Goode and Goode [2006] FamCA 1346; [2006] FLC 93-286..
- Objects and principles: section 60B.
- Relevant best interest factors: section 60CC; primary and additional considerations: Aldridge v Keaton (2009) FLC 93-421; Slater & Light [2011] FamCAFC 1.
- How the court must apply the primary considerations: section 60CC(2A).
- Presumption of equal shared parental responsibility: section 61DA; Goode (No. 2) (above).
- Approach of court to these sections: Goode and Goode (supra); Taylor v Barker [2007] FamCA 1246, [2007] FLC 93-345, and obligation for court to work through primary and additional considerations in section 60CC, prior to considering whether section 61DA presumption applies, does not apply or is rebutted; In the Marriage of: Dennis Owen Brown Appellant/Husband and Leanne Faye Pedersen Respondant/Wife [1991] FamCA 84; (1992) FLC 92-271; Dundas v Blake [2013] FamCAFC 133; [2013] FLC 93-552.
- Discussion of “meaningful relationship”: G v C [2006] FamCA 994; Mazorski v Albright [2007] FamCA 520; (2007) 37 Fam LR 518; McCal v Clark [2009] FamCAFC 92; [2009] FLC 93-405; McCall v Clark (No 3) [2010] FMCAfam 1443; M & L (Aboriginal Culture) [2007] FamCA 396; [2007] 93-320; Marsden and Winch (No.3) [2007] FamCA 1364; Loddington & Deringford (No. 2) [2008] FamCA 925.
- Where presumption applies, court’s obligation to consider equal time and substantial and significant time: section 65DAA; what court considers to determine whether appropriate; section 65DAA(3) and (5); Wainder v Wainder [2011] FamCAFC 155; [2011] FLC 93-473.
- Interpretation of section 65DAA: steps for court to work through; MRR v GR (2010) 240 CLR 461.
- What is “substantial and significant time”: section 65DAA(3); KML v RAE [2006] FMCAfam 528; Eddington (No. 2) [2007] FamCA 1299; Ulster & Viney [2016] FamCAFC 133; Tibb & Sheean [2018] FamCAFC 142; Wendland & Wendland (2017) FLC 93-808.
- Meaning of “reasonably practicable”: Gladstone & Gladstone [2014] FamCAFC 185; (2014) FLC 93-608 at [52]-[65]
- Example of where presumption rebutted: H v H [2007] FMCAfam 27; Treloar & Nepean [2009] FamCAFC 206; (2009) FLC 93-407; Snell & Bagley [2011] FMCAfam 526; Gainforth & Gainforth [2012] FamCAFC 24; Luu & Xia [2013] FMCAfam 35; Marvel (No. 2) [2010] FamCAFC 101; Nawaqaliva and Marshall (2006) FLC ¶93-296
- Court’s power to make an order outside of what parties applied for: U v U (2002) 211 CLR 238; (2002) FLC 93-112; Bolitho v Cohen (2005) FLC 93-224
- Principles in child-related proceedings: sections 69ZN and 69ZQ.
- Other issues concerning Parenting Orders – stay of proceedings pending appeal: Lockley & Bardot [2016] FamCAFC 185; Sarti and Anor & Sarti (No. 2) (2020) FLC ¶93-993
- Section 60CC(3)(a) and children’s views: Bondelmonte v Bondelmonte [2017] HCA 8; (2016) 259 CLR 662; R v R: Children’s Wishes [2000] FamCA 43; Re In the Marriage of R (Children’s Wishes) [2002] FamCA 383; Re: G: Children’s schooling [2000] FamCA 462; Sagilde & Magee [2018] FamCAFC 143.
- Ways in which views can be put before the court: section 60CD, 60CE.
- Admissibility of statements by children: Family Law Rules 2004 (Cth), rule 15.02, section 100B; Duarte and Anor & Morse (2019) FLC 93-902

Specialist Accreditation Application Guidelines 2021

FAMILY LAW

- How children’s views should be considered and weighed: H v W [1995] FamCA 30; (1995) FLC 92-598; DT & JT [1999] FamCA 473
- Family Reports/Expert Evidence.
- Section 65PDAA: Gallimore and Gallimore [2018] FamCA 249
- Family Reports: Section 62G; In the Marriage of Hall (1979) 5 Fam LR 609; Gaines v Gaines [2013] FMCAfam 108; Makita (Australia) Pty Ltd v Sprowles [2001] NSWCA 305.
- Independent Children’s Lawyer (ICL): Part VII, Division 10, sections 68L and 68LA.
- Instances in which an order for an ICL can be made and criteria for appointment: Re K (1994) FLC 92-461.
- Child abuse:
 - definition of “abuse”: section 4(1)
 - section 60CC(2)(b); section 67Z; section 67ZA; section 67ZBB; and definition of “interested person”: section 67ZK
 - unfounded allegations: L & T [1999] FamCA 1699; allegations of child abuse: Part VII Division 8, subdivision D
 - unacceptable Risk Test: M v M (1988) 166 CLR 69; N & S and the separate representative [1995] FamCA 139; Banks & Banks [2015] FamCAFC 36
standard of proof: Sharwin & Weldee [2012] FamCA 1081; Re W (Sex Abuse: Standard of Proof) [2004] FamCA 768; W and W (Abuse Allegations: unacceptable risk) (2005) FLC 93-235; N and S (1996) FLC 92-665
- Section 140 Evidence Act 1995 (Cth)
- Family violence and Intervention Orders Cases, Alam v Minister for Immigration and Citizenship [2012] FMCA 616; Schieffer v Schieffer [2013] FamCA 168;
- Family Violence: Hallett & Malcolm & Anor [2020] FCCA 835; Rodelgo & Blaine [2019] FamCAFC 73; Sahrawi & Hadrami [2018] FamCAFC 170; Schieffer v Schieffer [2013] FamCA 168;
- Definition of “family violence”: section 4AB(1)(3); Part VII Division 2: section 60B(1)(b); section 60CC(2)(b); section 60CC(2A); section 60CC(3)(j) and (k); section 67ZBA; section 67ZBB.
- In the Marriage of JG v BG (1994) FLC 92-515; T v N [2003] FamCA 1129: Notice of abuse.
- Long term Supervision Orders: Aitken & Gladstone [2020] FCCA 966; Robins & Ruddock [2010] FamCA 35; Napier & Hepburn [2006] FamCA 1316; Champness & Hansen [2009] FamCAFC 96; Malburon & Waldlow [2013] FamCAFC 191; Slater & Light [2013] FamCAFC; Gorman & Huffman and Anor [2016] FamCAFC 174; (5 September 2016).
- Other issues:
 - occupancy of home
 - sexual orientation
 - religion
 - Aboriginality
 - splitting of siblings: “maternal factor”
 - “parental factor”
 - surrogacy: Farnel & Chanbua [2016] FCWA 17; Ellison and Anor & Karnchanit [2012] FamCA 602, Mason & Mason and Anor [2013] FamCA 424 Shaw & Lamb and Ors [2018] FamCAFC 42; Bernieres and Anor & Dhopal and Anor [2017] FamCAFC 180.
 - families and sperm donor fathers: Groth and Banks [2013] FCA 340; Masson and Parsons [2019] HCA 21
 - schooling
 - change of name: Darley & Darley [2016] FamCAFC 10
 - use and admissibility of academic opinion: McGregor v McGregor [2012] FamCAFC 69
 - family violence – intersection between different jurisdictions
 - child’s passport Re: child’s passport application [2008] FMCAfam 1031; Aslam & Render [2017] FCCA 3180
Related to the child or not: Maldera and Orbel [2014] FamCAFC 135
 - Vexatious proceedings s 102QB Mankiewicz and Anor & Swallow and Anor [2016] FamCAFC 153
Stay of proceedings pending appeal: Lockley & Bardot (2016) FamCAFC 185

Specialist Accreditation Application Guidelines 2021

FAMILY LAW

3.5 Relocation

- Definition of “major long-term issues”: section 4:
 - A v A: Relocation Approach [2000] FamCA 751
 - Hendy & Penningh [2018] FamCAFC 257
 - Oswald & Karrington [2016] FamCAFC 152
 - Styles v Palmer [2014] FamCA 383
 - U v U (2002) 211 CLR 238
 - M & S [2006] FamCA 1408; Hepburn v Noble [2010] FamCAFC 111; Collu v Rinaldo [2010] FamCAFC 53; MRR v GR (2010) 240 CLR 461; McCall v Clark [2009] FamCAFC 92; Starr v Duggan [2009] FamCAFC 115; Sealey v Archer [2008] FamCAFC 142; Taylor & Barker [2007] FamCA 1246.
 - Sayer & Radcliffe and Anor [2012] FamCAFC 209
 - Jurchenko & Foster [2014] FamCAFC 127
 - Wendland & Wendland [2017] FamCAFC 244
 - Grella & Jamieson [2017] FamCAFC 21
 - Boyle & Zahur and Anor (No. 2) [2017] FamCAFC 263
 - Lambton & Lambton (No. 2) [2017] FamCAFC 230
 - Vexatious proceedings s 102QB Mankiewicz and Anor & Swallow and Anor [2016] FamCAFC 153
 - Stay of proceedings pending appeal: Lockley & Bardot (2016) FamCAFC 185

3.6 Family Violence

- Final bias and interim hearings; s 61DA, s 60CG
- SS v AH [2010] FamCAFC 13
- Marvel & Marvel [2010] FamCAFC 101
- Eaby & Speelman [2015] FamCAFC 104
- Salah & Salah [2016] FamCAFC100
- Searle & Mellor [2017] FamCAFC 46
- Cimorelli & Wenlack [2020] FamCAFC 58
- Hurley & Melton (No.2) [2020] FamCA 917, Owen & Owen [2020] FamCA 90, Hills & Caldwell [2020] FamCA 574

3.7 Parenting Plans and Orders (Particular Issues)

- Part V11, Divisions 4 to 6.

3.8 Contravention of parenting orders

- The parenting compliance provisions: Part VII, Division 13A.
- Stapleton & Hayes [2016] FamCAFC 171.

3.9 Alteration of Parenting Orders: section 65D (2)

- The precondition of fresh circumstances: changed circumstances; undisclosed material facts
- The precondition as a preliminary issue:
 - In the Marriage of Rice and Asplund (1979) 6 Fam LR 570; Biggs v Hurst [2014] FamCA 217.
- The rule is Rice & Asplund is not an immutable rule:
 - Phillips & Hansford [2019] FamCAFC 165
 - SPS & PLS (2008) FLC 93-363 ; [2008] FamCAFC 16 :
 - Searson & Searson [2017] FamCAFC 119

Specialist Accreditation Application Guidelines 2021

FAMILY LAW

- When parenting order terminates:

- Family Law Act 1975 (Cth)
- sub-section 65H
- 65J and 65K.

3.10 Abduction of Children – Within Australia and Overseas

- Registration of state, territory and overseas orders: Part VII, Division 13
- Family Law (Child Abduction Convention) Regulations 1986
- Location and Recovery of Children: Part VII, Division 8 – Subdivision C
- *Garning v Dept of Communities, Child Safety and Disability Services* [2013] FamCAFC 28.

3.11 Child protection convention

- Division 4 of Part XIII AA
- Family Law (Child Protection Convention) Regulation 2003 (Cth)
- Commonwealth Child Protection Measure s 111CD
- *Bunyon & Lewis (NO 3)* [2013] FAMCA 888

3.12 Paternity

- Part VII, Division 12 – subdivisions D and E.
- *Clarence & Crisp* [2016] FamCAFC 157.

3.13 Reaching Agreement

- Parenting plans and consent orders.
- Section 63C.

3.14 Court Sanction of medical procedures

- Section 67ZC (1).
- *Re: Marion* (1992) 175 CLR 218.
- *Re: Alex* [2009] FamCA 1292.
- *Re: Jamie* [2013] FamCAFC 110.
- *Re: Carla (Medical Procedure)* [2016] FamCA 7.
- *Director Clinical Services, Child & Adolescent Health Services and Kizko v Anor* [2016] FCWA 19, [2016] FCWA 34, 2016 FCWA 75.
- *Re: Kelvin* [2017] Fam CAFC 258
- *Re: Chloe* [2018] FamCA 1006
- *Re: Matthew* [2018] FamCA 161.

Specialist Accreditation Application Guidelines 2021

FAMILY LAW

- *Gillick v West Norfolk and Wisbech Area Health Authority* [1985] UKHL 7; [1986] AC 112

3.15 Children in Detention

- *Minister for Immigration and Multicultural and Indigenous Affairs v B* (2004) 219 CLR 365.

4. Spousal Maintenance

- Establishing a claim.
- Threshold finding under section 72; lack of adequate support and capacity to pay:
 - *In the Marriage of Eliades* (1981) FLC 91-022
 - *In the Marriage of Bevan* (1995) FLC 92-600
 - *In the Marriage of Mitchell* (1995) FLC 92-601
 - *Hall & Hall* [2016] HCA 23.
- Consideration of “any other adequate reason” under section 72(1)(c)
 - *Elei & Dodt* [2018] Fam CAFC 92
- Consideration of section 75(2) factors.
- Consideration of section 74 – exercise of discretion.
- “Adequately” and “properly”: *Brown v Brown* [2007] FamCA 151; *Rollins-Wallis & Wallis* [2008] FamCA 1272.
- Relationship between spousal maintenance and property orders.
- Section 77A requirements:
 - *Doig & Doig* [1999] FamCA 1363
 - *Caska v Caska* [1998] FamCA 118.
- *In the Marriage of Clauson* (1995) FLC 92-595: Cessation of spousal maintenance orders.
- See also:
 - *In the Marriage of Vautin* (1998) FLC 92-827
 - *DJM v JLM* [1998] FamCA 97
 - *Maroney v Maroney* [2009] FamCAFC 45
 - *In the Marriage of Naphthali* (1989) FLC 92-021
 - *Hall v Hall* (2016) 332 ALR 1
 - *Malone & Malone and Ors* [2016] FamCA 432
 - *Bardsley & Bardsley* [2016] FamCA 408
 - *Sandberg & Sandberg* [2016] FamCA 357
 - *Foley and Foley* [2016] FCWA 68
 - *Ibrahim v Raad* [2018] FCCA 3753
 - *Collingridge v Aiolfi* [2019] FamCAFC 88
 - *Bodily v Hand* (2019) 59 Fam LR 425
 - *Rice v Rice* [2020] FamCAFC 174
 - *Jobling v Slade* [2020] FamCA 419
- Registrable spousal maintenance liabilities.
- Lump sum spouse maintenance.
- *Urgent v Interim orders*.

Specialist Accreditation Application Guidelines 2021

FAMILY LAW

5. Child Maintenance and Support

5.1 Child Maintenance

- Primary duty to maintain children: section 66C FLA.
- Jurisdictional aspects: section 66E FLA.
- Adult Child Maintenance: section 66L FLA.

5.2 Child Support

- Exclusive and inalienable Jurisdiction : section 66E FLA
- Love v Henderson (1996) FLC 92-653
- Limited and Binding Child Support Agreements, section 86 of the Assessment Act
- Sathra & Sathra [2013] FamCAFC 142.
- Binding Child Support Agreements and impact of COVID-19: Martyn & Martyn [2020] FamCA 526
- Child: section 24 Assessment Act.
- Parent: section 25 Assessment Act.
- Non-parent carer: section 25A Assessment Act.
- Step Parent: Section 66M FLA
- The Child Support Formula – Division 2.
- Elements of the Child Support Formula.
- Re-establishment income.
- Section 117 departures – Division 4, Part 7:
 - General Grounds of departures: section 117(2) Assessment Act
 - In the Marriage of Gyselman (1992) FLC 92-279
 - Earning Capacity section 117 (4) (d), Section 117(7A), (7B)
 - DJM v JLM [1998] FamCA 97
 - Skinner v Cluny [2013] FamCA 301
 - Child Support Registrar & Crowley [2015] FamCAFC 76
 - Departures from Administrative Assessments section 98B section 98C(2), section 117(2) – grounds for departure.
 - Billing and Tillick (Child Support) [2018] AATA 220
- Court Jurisdiction s116 Assessment Act
- Change of Assessment:
 - estimates
 - sections 60, 61, 62, 63, 64: Child Support (Assessment) Act 1989 (Cth)
 - objections to registrar decisions
- court review
 - Administrative Appeals Tribunal Social Services and Child Support Division
 - court review
 - review of AAT decisions – see above
 - Part VIII Registration Act
 - Family Law Rules division 4.2.5

Specialist Accreditation Application Guidelines 2021

FAMILY LAW

- when another application is pending: section 116(1)(b) Assessment Act
- complex applications: section 98E and section 98R
- disputed parentage: section 106, 107 Assessment Act.
- stay orders: section 111C; Child Support Registration Act; Abani v Abani (SSAT Appeal) [2014] FCCA 2058; Jones v Child Support Registrar [2007] FCA 1732; Child Support Registrar & Stinton and Anor (2020) FLC ¶98-078
- Palkvig & Bowden [2018] FamCA 973
- time limit on backdating assessments: section 111(1) Assessment Act
- Teal v Teal [2010] FamCAFC 120
- non-periodic amounts: section 123 Assessment Act
- Urgent child support: section 139(1) Assessment Act
- Order for recovery of wrongly paid child support
- section 143 Assessment Act
- Magill v Magill (2006) 226 CLR 551
- DRP v AJL [2004] FMCAfam 440: Recovery, Enforcement and Penalties.

Note:

- Assessment Act = Child Support (Assessment) Act 1989 (Cth)
- Registration Act = Child Support (Registration and Collection) Act 1989 (Cth)
- Tribunals Amalgamation Act 2015 (Cth)

6. Financial Agreements

6.1 Conceptualising a Financial Agreement

- What constitutes a financial agreement within the meaning of the Act? Senior & Anderson [2011] FamCAFC 129.
- Contractual underpinnings of a financial agreement: Sullivan & Sullivan [2011] FamCA 752.
- Concurrent agreements under Part VIIIA and Part VIIIAB.
- Piper & Mueller [2015] FamCAFC 241.

6.2 Matters That a Financial Agreement Can Deal With (sub-sections 90B, 90C, 90D, 90UB, 90UC and 90UD)

- Property.
- Financial resources.
- Spousal maintenance (see further sub-sections 90E and 90UH for specific drafting requirements, and sub-sections 90F and 90UJ).
- Incidental or ancillary matters (including adult child maintenance).
- Superannuation – sections 90XH and 90XHA. Interplay with section 90XJ(1)(a).
- Lifestyle clauses: Parkes v Parkes [2014] FCCA 102.
- Agreements with third parties.

6.3 Challenging a Financial Agreement

- Onus of proof: Hoult v Hoult [2013] FamCAFC 109.
- Is the agreement binding (applying sub-sections 90G and 90UJ)?

Specialist Accreditation Application Guidelines 2021

FAMILY LAW

- Legal advice:
 - Logan & Logan [2013] FamCAFC 151
 - Ruane & Bachman-Ruane [2009] FamCA 1101
 - Pascot & Pascot [2011] FamCA 945.
 - Hoult & Hoult [2013] FamCAFC 109.
 - Raleigh & Raleigh [2015] FamCA 625.
- If the agreement does not comply with section 90G(1), can it be “saved” pursuant to section 90G(1A)?
 - Parker & Parker [2012] FamCAFC 33
 - Abrug & Abrug [2013] FamCA 897
 - Graham & Squibb [2019] FamCAFC 33
 - Daily & Daily [2020] FamCA 486
- Ought the agreement be set aside
- Grounds for setting an agreement aside – sections 90K and 90UM
- Non -disclosure of assets:
 - Cording & Oster [2010] FamCA 511.
 - Adame & Adame [2014] FCCA 42.
 - Parke & Parke [2015] FCCA 1692.
- Subsection 90K(1)(b) – legal and equitable principles that may render an agreement “void, voidable or unenforceable”
- Unconscionable conduct and/or undue influence:
 - Saintclaire & Saintclaire [2015] FamCAFC 245.
 - Adame & Adame [2014] FCCA 42.
 - Parkes & Parkes [2014] FCCA 102.
 - Thorne & Kennedy [2017] HCA 49.
 - Frederick & Frederick [2018] FCCA 1694.
 - Gongsun & Paling (2020) FLC ¶93-987.
- Impracticability:
 - Herold & Kay [2012] FMCAfam 1071
 - Bryson & Bryson [2012] FMCAfam 197
 - Sanger & Sanger [2011] FamCAFC 210
 - Parke & Parke [2015] FCCA 1692.
- Material change in circumstances:
 - Parkes & Parkes [2014] FCCA 102
 - Fewster & Drake [2016] FamCAFC 214
 - Frederick & Frederick [2019] FamCAFC 87
 - Guild & Stasiuk [2020] FamCA 348
 - Daily & Daily [2020] FamCA 486
- Uncertainty/incompleteness: Garvey & Jess [2016] FamCA 445.
- Mistake: Phak & Xu [2015] FamCA 939; Sullivan and Sullivan [2011] FamCA 752.
- Use of equitable and contractual principles to render enforceable an agreement:
 - Rectification: Fevia & Carmel-Fevia [2009] FamCA 816.
 - Part performance.
 - Implied terms: Bryson & Bryson [2012] FMCAfam 197.
 - Estoppel.

Specialist Accreditation Application Guidelines 2021

FAMILY LAW

6.4 Agreements made prior to 2009 statutory amendments

- Black & Black [2008] FamCAFC 7.
- Retrospective operation of the post-Black statutory provisions: Wallace & Stelzer [2013] FamCAFC 199.
- Daily & Daily [2020] FamCA 486.

6.5 Third parties and financial agreements

- Separation declarations: Australian Securities and Investments Commission & Rich [2003] FamCA 1114.
- Agreements binding on third parties.
- Applications by third parties to set aside Financial Agreements.
- Grainger & Bloomfield [2015] FamCAFC 221.

6.6 Intersection with the accrued jurisdiction (actions in negligence against one's own advisors)

- Noll & Noll [2013] FamCAFC 24
- Ruane & Bachman-Ruane (Accrued Jurisdiction) [2012] FamCA 369
- F Firm & Ruane [2014] FamCAFC 189
- Gibbs & Gibbs & Ors [2017] Fam CA 7
- Bolden & Woodruff (2018) FCCA 1439
- Orwin v Rickards [2019] VSC 375.

7. Property

- Family Law Act 1975 (Cth) – Section 79 and 78
- Part VIII & Part VIII AB of FLA, F.L. Rules 2004, FCC Rules 2001
- Corporatisation of defacto relationships
- Fenton & Marvel [2013] FamCAFC 132
- Forum non conveniens in property matters - Voth v Manildra Flour Mills Pty Ltd [1990] HCA 55; Henry v Henry [1996] HCA 51; Talwar & Sarai [2018] FamCAFC 152

7.1 Four Step Approach to Determining Property

- Hickey & Hickey & Attorney-General for the Commonwealth of Australia [2003] FamCA 395
- In the Marriage of Clauson (1995) 18 Fam LR 693
- In the Marriage of Lee Steere (1985) 10 Fam LR 431
- In the Marriage of Ferraro (1992) 16 Fam LR 1
- In the Marriage of Townsend (1994) 18 Fam LR 505
- In the Marriage of Biltoft (1995) 19 Fam LR 82
- In the Matter of McLay (1996) 20 Fam LR 239

Specialist Accreditation Application Guidelines 2021

FAMILY LAW

- Campbell & Kuskey (1998) 22 Fam LR 674
- Stanford v Stanford (2012) 247 CLR 108
- Baglio & Baglio [2013] FamCA 105
- Sebastian & Sebastian (No 5) [2013] FamCA 191
- Bevan & Bevan [2013] FamCAFC 116
- Bevan & Bevan [2014] FamCAFC 19
- Vass & Vass (2015) FamCAFC 51
- Trevi & Trevi [2018] FamCAFC 173
- Pates & Pates [2018] FamCAFC 171
- Fielding v Nichol [2014] FCWA 77 (WA de facto matter with comments about Stanford/addbacks)
- Development of the concept that the Four Step Process is merely a shorthand distillation of the legislation which illuminates the path and not a legislatively mandated decision process - Bevan & Bevan [2013] FamCAFC 116; Bevan & Bevan [2014] FamCAFC 19

Preliminary Step:

It must be determined whether it is just and equitable to alter property interests *Stanford v Stanford* (2012) 247 CLR 108; *Bevan* (2013) section 79(2) FLA.

- *Redman v Redman* [2013] FamCAFC 183
- *Stanford v Stanford* (2012) 247 CLR 108
- *Watson v Ling* [2013] FamCA 57: equally applicable to sections 90SM(3) and 90SM(8) in particular
- *Bevan v Bevan* [2014] FamCAFC 19
- *Chancellor & McCoy* (2016) FCCA 53
- *Trang & Kingsley* [2017] FamCAFC 120
- *Grady & Chilcott* (2020) FamCAFC 143
- *Hunter & Borman and Anor* [2020] FamCAFC 250
- *Washburn & Pacini* [2020] FamCAFC296

Step 1: Identifying and valuing property, liabilities and financial resources

- The court seeks to ascertain the net value of all property of the parties by deducting from their total gross property their liabilities, including unsecured liabilities.
- Property is defined under section 4 of the Family Law Act.
- Financial resources and expectation do not constitute property but are relevant and should be identified and evaluated.

Specialist Accreditation Application Guidelines 2021

FAMILY LAW

- Duty of full disclosure of relevant financial circumstances: Family Court Rules FL 13:
 - principle of “full and frank disclosure”.
 - In the Marriage of Weir (1992) 16 Fam LR 154; In the Marriage of Black and Kelner (1992) 15 Fam LR 343; Chang & Su [2002] FamCA 156.
 - Tate & Tate [2000] FamCA 1040.
 - methods of obtaining financial information.
 - identify and value relevant property: In the Marriage of Duff (1977) 15 ALR 476; In the Marriage of Zorbas (1990) 14 Fam LR 226.
 - treating assets of company or trusts as assets of a party/ discretionary trust: Mercanti v Mercanti [2015] WASC 297; In the Marriage of Ashton (1986) 11 Fam LR 457; In the Marriage of Stein (1986) 11 Fam LR 353; In the Marriage of Harris (1991) 15 Fam LR 26; BP v KS [2002] FamCA 1454; Foda v Foda (1997) 21 Fam LR 653; Coventry & Coventry & Smith [2004] FamCA 249; Kennon v Spry (2008) 238 CLR 366; Harris & Dewell and Anor [2018] FamCAFC 94.
 - interest in a partnership: In the Marriage of Best (1993) 16 Fam LR 937; B v B [1999] FamCA 1142; Corbon & Klousner (2015) FamCA 842.
 - superannuation: Coghlan v Coghlan [2005] FamCA 429 - prepaid legal costs: DJM v JLM [1998] FamCA 97.
 - valuations and expert evidence: Higgins & Higgins (2016) FamCAFC 32.
 - In the Marriage of Clauson (1995) 18 Fam LR 693 - In the Marriage of Lenehan (1987) 11 Fam LR 615 - In the Marriage of Borriello (1989) 13 Fam LR 415 - In the Marriage of Harrison (1996) 20 Fam LR 322 - In the Marriage of Smith (1991) 15 Fam LR 206 - liabilities: In the Marriage of Biltoft (1995) 19 Fam LR 82.
 - notional property: De Angelis & De Angelis [1999] FamCA 1609.
 - income tax, capital gains tax, stamp duty and GST: In the Marriage of Rothwell (1993) 18 FamLR 454; Rosati & Rosati [1998] FamCA 38; Campbell v Kuskey (1998) 22 Fam LR 674; Commissioner of Taxation v Tomaras [2018] HCA 62.
 - Income Tax Assessment Act.
 - Rodgers v Rodgers (No 2) [2016] FamCAFC 104.
 - Pfenning v Snow [2016] FamCA 29.
 - stamp duty.
 - section 90: Gazzo v Comptroller of Stamps (Vic) (1981) 149 CLR 227.
 - CGT: Rosati & Rosati [1998] FamCA 38.
 - Add-backs – three categories: AJO & GRO [2005] FamCA 195; In the Marriage of Townsend (1994) 18 Fam LR 505; NHC v RCH [2004] FamCA 633; Bevan v Bevan [2013] FamCAFC 116; Trevi & Trevi [2018] FamCAFC 173.
 - Chan and Su [2002] FamCA 156.
 - Trang & Kingsley [2017] FamCAFC 120.
 - Chianti v Leume [2007] WASCA 270.
- Inter family loans or gifts: Section 5 Limitation of Actions Act (1958), Petersens (1981) FLC 91-095

Step 2: Identify and evaluate the Contributions of Parties.

- Section 79 (4) and section 90SM (4): No starting point of equality; In the Marriage of Mallet (1984) 156 CLR 605; Figgins v Figgins [2002] FamCA 688; Global v Asset by Asset approach; In the Marriage of Norbis (1986) 161 CLR 513; Cahill v Cahill (2006) FLC 93-253; In the Marriage of Lenehan (1987) 11 Fam LR 615; M v M [2006] FamCA 913; In the Marriage of Zyk (1995) 19 Fam LR 797; Pittman v Pittman [2010] FamCAFC 30.
- Court’s approach Section 79(4)(a)-(c): In the Marriage of Zyk (1995) 19 Fam LR 797; In the Marriage of Waters and Jurek (1995) 20 Fam LR 190; In the Matter of McLay (1996) 20 Fam LR 239; In the Marriage of Mallett (1984) 156 CLR 605; Steinbrenner v Steinbrenner [2008] FamCAFC 193; Brodie v Brodie [2009] FamCAFC 6; Wallis & Manning [2017] FamCAFC 14; Jabour & Jabour [2019] FamCAFC 78; Barnell & Barnell [2020] FamCAFC 102
 - direct financial contributions
 - indirect financial contributions: Palkovich & Palkovich [2016] Fam CAFC 134
 - financial contributions by or on behalf of a child of the marriage
 - non-financial contributions
 - contributions to the welfare of the family.
- Special contributions or skills: Fields & Smith [2015] FamCAFC 57; JEL and DDF [2000] FamCA 1353; Kane & Kane [2013] FamCAFC 205; Hoffman v Hoffman [2014] FamCAFC 92.
- Financial contributions in short marriages: In the Marriage of McMahon (1995) 19 Fam LR 99; In the Marriage of Goodwin and Goodwin Alpe (1990) 14 Fam LR 801; post-separation contributions: In the Marriage of Jacobson (1988) 12 Fam LR 828; (2005); Ilett v Ilett (2005) FLC 93-221; Harris & Dewell [2018] FamCAFC 94.

Specialist Accreditation Application Guidelines 2021

FAMILY LAW

- Third party contributions (gifts, loans etc): In the Marriage of Gosper (1987) 11 Fam LR 601; In the Marriage of Kessey (1994) 18 Fam LR 149; AB v ZB [2002] FamCA 1178; In the Marriage of Pellegrino (1997) 22 Fam LR 474; Mabb & Mabb and Anor [2020] FamCAFC
- Gifts and inheritances: In the Marriage of Bonnici (1991) 15 Fam LR 138; White and Tulloch v White (1995) Fam LR 696; In the Marriage of De Angelis [1999] FamCA 1609; Calvin & Mctier [2017] FamCAFC 125; Holland & Holland [2017] FamCAFC 166.
- Redundancy packages: In the Marriage of Burke (1992) 16 Fam LR 324; Tomasetti v Tomasetti [2000] FamCA 314; Perrin & Perrin (No. 2) [2018] FamCAFC 122.
- Windfalls: In the Marriage of Zyk (1995) 19 Fam LR 797; Farmer v Bramley [2000] FamCA 1615; Jabour & Jabour [2019] FamCAFC 78.
- Expectation of an inheritance: In the Marriage of White (1995) FLC 92-640; G & G [2000] FamCA 1075.
- Interest in a partnership: In the Marriage of Best (1993) 16 Fam LR 937.
- Waste: In the Marriage of Kowaliw (1981) FLC 91-092; In the Marriage of Townsend (1994) 18 Fam LR 505; Browne v Green [1999] FamCA 1483; Gao & Wang [2016] FamCAFC 183.
- Vicissitudes of life: In the Marriage of Vautin (1998) 23 Fam LR 627.
- Accident verdicts: In the Marriage of Holmes (1990) FLC 92-181; In the Marriage of Zubcic (1995) FLC 92-609; Aleksovski v Aleksovski (1996) 20 Fam LR 894; Fontana & Fontana [2018] FamCA 63.
- Relevance of domestic violence: Kennon v Kennon (1997) 22 Fam LR 1; Rosati v Rosati [1998] FamCA 38; Keating & Keating [2019] FamCAFC 46; Eaton & Eaton [2020] FamCA 446; Farina & Lofts and Anor [2019] FamCA 27; FamCA 27.Adair [2019] FamCAFC 70
- Pre-marriage property and contributions: In the Marriage of Bremner (1994) 18 Fam LR 407; Daly & Terrazas [2019] FamCAFC 142; Jabour & Jabour [2019] FamCAFC 78; Barnell & Barnell [2020] FamCAFC 102.
- Big money cases: Figgins v Figgins [2002] FamCA 688; JEL v DDF [2000] FamCA 1353.
- Contribution to the welfare of children of the other party from a previous relationship: In the Marriage of Robb (1994) 18 Fam LR 489.
- Pierce v Pierce [1999] FLC 92-844

Step 3: Identify and assess the various relevant matters set out in section 79(4) (d) to (g), which includes section 75 (2), and section 90SM(4)(d) to (g), which includes section 90SF (3) factors.

- Approach recommended by the High Court: In the Marriage of Mallet (1984) 156 CLR 605.
- The various factors set out in the sub paragraphs of subsections 75(2) and 90SF(3) are to be applied to the extent that they are relevant: In the Marriage of Colins (1990) 14 Fam LR 162.
- It is not appropriate to consider and quantify each of the factors separately but to arrive at a decision of overall adjustment: In the Marriage of Clauson (1995) 18 Fam LR 693.
- The weight given to each factor is a matter for judicial discretion: In the Marriage of Mallet (1984) 156 CLR 605.
- The factors are prospective but are based on the roles the parties adopted during their relationship: In the Marriage of Waters and Jurek (1995) 20 Fam LR 190.
- Age and state of health of the parties: W v W (1997) 21 Fam LR 343; In the Marriage of Lawrie (1981) FLC 91-102; Fontana & Fontana (2016) FamCAFC 11; health of one party – short life expectancy.

Specialist Accreditation Application Guidelines 2021

FAMILY LAW

- Income, property and financial resources of each party and capacity for gainful employment: DJM v JLM [1998] FamCA 97; Gould v Gould [2007] FamCA 609; Sindel v Milton [2010] FamCAFC 232; In the Marriage of Best (1993) 16 Fam LR 937; Surridge & Surridge (2017) FLC 93-757.
- Whether either party has the care of a child under 18: In the Marriage of Abdo (1989) 12 Fam LR 861; large number of children in the care of one party: Wayne v Wayne [2010] FamCAFC 33; Davida & Davida [2011] FamCAFC 38: shared care.
- Any fact or circumstance which the justice of the case requires to be taken into account: In the Marriage of Black and Kelner (1992) 15 Fam LR 343; Gould and Gould (2007); Sebastian & Sebastian (No 5) [2013] FamCA 191; Kane & Kane [2013] FamCAFC 205 – non-disclosure of assets.
- Contribution to post separation redundancy package: Bassi & K.D. Sales Force Specialists Pty Ltd & Maas [1999] FamCA 1352.
- Inheritances: In the Marriage of White (1995) FLC 92-640; In the Marriage of Dickson [1999] FamCA 278; Calvin & McTier [2017] FamCAFC 125.; Holland & Holland [2017] FamCAFC 166.
- Allowance for CGT, health problems with children: Rosati v Rosati [1998] FamCA 38.
- Power to make substituting order in relation to a taxation debt: Tomaras & Tomaras and Anor and Commissioner of Taxation [2017] FamCAFC 216 and Commissioner of Taxation v Tomaras [2018] HCA 62.
- Effect of orders on earning capacity: Elsey v Elsey (1996) 21 Fam LR 249.
- Lack of realisability of assets: In the Marriage of Ramsay (1997) FLC 92-742.
- Violence, short marriage, impact of relationship on earning capacity: Kennon v Kennon (1997) 22 Fam LR 1.
- Proposed orders to be made with one party assuming significant liabilities: In the Marriage of Way (1996) FLC 92-702.
- In the Marriage of Waters and Jurek (1995) 20 Fam LR 190: s 75(2) factors should be given real and not token weight.
- In the Marriage of Mitchell (1995) 19 Fam LR 44 modest size of estate compared with large disparity in income earning capacities; wife received 90% of the property pool.
- Discussion of section 75(2) where one party killed the other: Homsy and Yassa and the Public Trustee (1993) 17 Fam LR 299.
- Treatment of one party's interest in a trust – asset v resource: In the Marriage of Goodwin (1990) 14 Fam LR 801.

Step 4: Consider matters of justice and equity.

- Sections 79(2) and 90SM(3)
- Washburn & Pacini [2020] FamCAFC 296.
- Redman v Redman [2013] FamCAFC 183;
- In the Marriage of Mallet (1984) 156 CLR 605; Russell & Russell [1999] FamCA 1875; JEL v DDF [2000] FamCA 1353.
- Stanford v Stanford (2012) 247 CLR 108.
- Watson v Ling [2013] FamCA 57: equally applicable to sections 90SM(3) and 90SM(8) in particular.
- Bevan v Bevan [2014] FamCAFC 19.
- Rodgers v Rodgers (No 2) [2016] FamCAFC 104.
- Chancellor & McCoy (2016) FCCA 53.

Specialist Accreditation Application Guidelines 2021

FAMILY LAW

- In the Marriage of Zubcic (1995) FLC 92-609.
- Chang and Su [2002] FamCA 156.
- Trang & Kingsley [2017] FamCAFC 120.

7.2 Adjournment of Proceedings – section 79(5)

- In the Marriage of Grace (1997) 22 Fam LR 442
- Powers under s 90AE(2) of the Act, the Court arguably has the power to change the vesting date of the trust

7.3 Section 106B – Transactions to defeat claims

- In the Marriage of Gould; Swire Investments Ltd (1993) FLC 92-434
- Atkins & Hunt and Ors (No. 3) [2019] FamCA 977
- Atkins & Hunt and Ors (2020) FLC ¶93-992, Family Court of Australia, Full Court, 09 October 2020
- Likely significant change in financial circumstances

7.4 Consideration of Third Party Interests

- Halabi v Artillaga and Ors (1994) FLC 92-470.
- Kennon v Spry (2008) 238 CLR 366 [2008] HCA 56.
- Commissioner of Taxation v Tomaras & Ors [2018] HCA 62

7.5 Effect of Death on Property Proceedings

- Section 79(8) FLA.
- Frost (Deceased) & Whooten (2018) FLC 93-860.

7.6 Execution of Instruments by Order of Court – section 106A

- In the Marriage of Corry (1983) 9 Fam LR 201.

7.7 Effect of Bankruptcy

- Bankruptcy Act 1966 – sections 35 and 35A; In the Marriage of Guirguis and the Official Trustee in Bankruptcy (1997) 21 Fam LR 356; O’Neill and O’Neill and Tayer Pty Ltd and Kayhaven Pty Ltd and Likami Properties Pty Ltd [1998] FamCA 67; Cummings v Claremont Petroleum N.L. (1996) 185 CLR 124.
- Rights of creditors: Lemnos and Lemnos [2009] FamCAFC20; In the Marriage of Biltoft (1995) 19 Fam LR 82; Re Chemaisse; Commissioner of Taxation (Cth) (Intervener) (1990) 13 Fam LR 724.
- Sloan & Sloan [2018] FAMCA 610

7.8 Equitable Estoppel

- Sidhu v Van Dyke (2014) 251 CLR 505. . [2014] HCA 19

7.9 Leave to initiate property proceeding out of time

- Edmunds & Edmunds [2018] FamCAFC 121
- Gadzen & Simkin [2018] FamCAFC 218

Specialist Accreditation Application Guidelines 2021

FAMILY LAW

8. Injunctions

- Section 68B and section 114: Norton v Locke [2013] FamCAFC 202.
- Section 90SS re: de facto relationships. Dunworth & Falletti [2020] FamCA 178
- Relevant principles (re: power and exercise of discretion):
 - general: In the Marriage of Waugh [2000] FamCA 1183; Mullen and De Bry (2006) FLC 93-293; G & T [2003] FamCA 1076
 - circumstances arising out of marital relationship
 - personal protection/non-molestation (section 68B): In the Marriage of Kemsley (1984) 10 Fam LR 125; Oates v Crest [2008] FamCAFC 29.
- To restrain dealings in property:
 - personal rights versus legal or equitable interests: Mullane v Mullane (1983) 158 CLR 436
 - merits of claim and degree of danger of prejudice: In the Marriage of Sieling (1979) 4 Fam LR 713; Luck & Norwood (2018) FamCAFC 207
 - real danger of prejudice: In the Marriage of Stowe (1980) 6 Fam LR 757
 - prejudice to third parties: In the Marriage of Martiniello (1981) 7 Fam LR 299
 - ordinary business dealings: In the Marriage of Martiniello (1981) 7 Fam LR 299
 - minimum restrictions imposed: In the Marriage of Sieling (1979) 4 Fam LR 713
 - undertakings: Bluseas Investments Pty Ltd & Mitchell & McGillivray [1999] FamCA 745.
- Injunctions and third parties:
 - Part VIII A FLA
 - injunctions which affect third parties: R v Dovey; Ex parte Ross (1979) 141 CLR 526; In the marriage of Tiley (1980) 6 Fam LR 528; Sellers & Burns and Anor [2019] FamCAFC 113.
 - injunctions directly against third parties
 - sham/puppet/alter ego: Ascot Investments Pty Ltd v Harper (1981) 148 CLR 337
 - power no wider for interlocutory injunctions than for permanent injunctions: Re Ross-Jones, Marinovich and Marinovich (1984) FLC 91-555
 - injunctions against third parties in section 106B proceedings: In the marriage of Collins and Collins (1987) 11 Fam LR 382
 - jurisdictional questions: Yunghanns & Yunghanns & Yunghanns [1999] FamCA 64
 - circumstances in which the court may make final orders in property proceedings against a third party, and what must be satisfied for the court to exercise this power under the Family Law Act.
- Exclusive Use and Occupation:
 - relevant matters to consider: In the Marriage of Davis (1982) 8 Fam LR 975; In the Marriage of O'Dea (1980) 6 Fam LR 675; In the Marriage of Borzak (1979) 5 Fam LR 571; In the Marriage of Fedele (1986) 10 Fam LR 1069; Saveree and Elenton [2014] FamCA 38; Perdicari & Perdicari (2019) FLC ¶93-914
- Ex Parte Applications:
 - Family Law Rules 2004 (Cth) Part 5.3: applications without notice
 - real and urgent need to protect: In the Marriage of Sieling (1979) 4 Fam LR 713
 - duty of full disclosure: In the Marriage of Dean (1977) 2 Fam LR 11691
 - In the Marriage of Stowe (1980) 6 Fam LR 757
 - preservation of evidence: Anton Pillar Orders - preservation of property: Mareva Orders
 - Saltzer & Pacek (No. 3) [2020] FCCA 1381
 - Zan & Zaro [2019] FamCA 143

Specialist Accreditation Application Guidelines 2021

FAMILY LAW

9. Evidence

- Relevant Legislation:
 - Family Law Act 1975 (Cth)
 - Evidence Act 1995 (Cth)
 - Federal Circuit Court of Australia Act 1999 (Cth)
 - Family Law Rules 2004 (Cth), Chapter 15;
 - Federal Circuit Court Rules 2001 (Cth), Part 15;
- Evidence - Opinion – Expert Evidence – Admissibility / Basis of Opinion / Valuation
 - Makita (Australia) Pty Ltd v Sprowles [2001] NSWCA 305; (2001) 52 NSWLR 705; Cooke v Commissioner of Taxation [2002] FCA 1315; (2002) 51 ATR 223 at [38]; Australian Securities & Investments Commission (ASIC) v Rich [2005] NSWSC 149; (2005) 190 FLR 242 (at [329]); Sydneywide Distributors Pty Ltd v Red Bull Australia Pty Ltd [2002] FCAFC 157; McGregor & McGregor [2012] FamCAFC 69 at [75]-[107]; (2012) FLC 93-507; Paino v Paino [2008] NSWCA 276; (2008) 40 Fam LR 96;
- Evidence - Opinion – Expert Evidence – Single Experts / Other Experts
 - Bass v Bass [2008] FamCAFC 67; [2008] FLC 93-366; Danell & Saller [2015] FamCA 859; (2015) 54 Fam LR 416;
- Fresh evidence on Appeal: CDJ v VAJ (No 1) (1998) 197 CLR 172; [1998] FLC 92-828; statements by children; Abdo and Abdo (1989) FLC 92-013; Alaim & Alaim [2017] FamCAFC 170; Werth & Pocatelli (2018) FLC 93 – 843.
- Evidence in state court proceedings, refer to applicable Evidence Act in relevant State.
- Unlawfully or Improperly obtained Evidence; s138 Evidence Act; SCVG &KLD (No2) [2018] FamCA 78 Janssen & Janssen [2016] FamCA 345 (I could not find the SCVG case so may be wise to provide another precedent)
- Self-incrimination and certificates under s 128 Evidence Act 1995; Field and Kingston [2018] FamCAFC 145

10. Enforcement

- Part VII FLA, Division 13 A – children.
- Review of “reasonable excuse” for contravention of parenting order – Saldo v Tindall [2012] FamCA194.
- Family Law Rules 2004 (Cth): Chapter 20 – Financial Orders.

11. Costs

- Lawyer-client costs governed by state or territory in which lawyer practices (eg Legal Profession Act 2004 of relevant state for cases commenced after 1 July 2008 and in other limited circumstances).
- Federal Circuit Court Rules 2001 (Cth), rule 21.09.
- Family Law Rules 2004 (Cth)
 - 13.14 Failure to disclose
 - 13.14 False or misleading statements
 - 13.23 Disclosure – oppressive
 - 15.13(14) Evidence - struck out
 - 15.14(4) Evidence – cross examination of witness
 - 20.06, 20.08(2)(c) - Enforcement – must detail costs in affidavit
 - Chapter 19.
- Section 117: Penfold v Penfold (1980) 144 CLR 311; Parker v Jacks (No 3) [2009] FMCAfam 993.
- Reasons for the making of Costs Orders – section 117(2) and 117(2A)

Specialist Accreditation Application Guidelines 2021

FAMILY LAW

- Contracting out with client: *Schiliro v Gadens Ridgeway* (1995) 19 Fam LR 196; *Twigg & Co v Rutherford* (1996) 20 Fam LR 862.
- Conduct or parties in relation to proceedings as a litigant and conduct as parent *Renald & Renald (Costs)* [2018] FamCAFC 4.
- Party-party costs are ordered by the court where appropriate:
 - section 117: *Penfold v Penfold* (1980) 144 CLR 311
 - Federal Circuit Court Rules 2001 (Cth), rule 21.09
 - Family Law Rules 2004 (Cth), chapter 19.
- Interim costs: *In the Marriage of Barro* (1982) 8 Fam LR 855; *Strahan v Strahan* [2009] FamCAFC 166; *Bennison & Bennison* [2013] FamCA 11.
- Section 117C offers: *In the Marriage of Harris* (1987) 11 Fam LR 629; *In the Marriage of Kowalski* (1994) 18 Fam LR 193; *Camilleri and Camilleri* [2002] FamCA 1157.
- Written offers of settlement.
- Costs Orders against Case Guardians s116(6) (Since October 2018) acts or omissions must be unreasonable or delayed proceedings unreasonably, r 6.13.
- Costs ordered due to pre-action offer to settle – *Firmer v Britton* [2012] FamCA 576.
- Costs orders against legal representatives: *Anstis v Anstis* [1999] FamCA 842; *Yunghanns & Yunghanns & Yunghanns* [2000] FamCA 681; *Parker & Jacks (No.3)* [2009] FMCAfam 993; *Z(A Solicitor) & Limonsin* (2010) FLC 93-433..
- Executors of deceased estate Ordered to pay costs *Bain & Bain (Deceased) (Costs)* [2017] FamCAFC164.

12. Reviews/Appeals/Transfers

- Appeals from Court of Summary Jurisdiction:
 - Nature of Hearing de novo: *Harris v Caladine* (1991) 172 CLR 84.
- Federal Circuit Court / Magistrates Court of Westerns Australia appeals and need for leave to appeal generally: section 94AAA and section 94AA Family Law Act:
 - *Grayden & Grayden* [2003] FamCA 359
 - *Lawson and Lawson* [2007] FamCA 1472.
- Section 104(2) of the Federal Circuit Court of Australia Act 1999 (Cth).
- Appeals from Interlocutory Decree:
 - *In the Marriage of Tudor* (1991) 15 Fam LR 165.
- Leave to appeal.
- Appeals to the Full Court: Chapter 22, Family Law Rules.
- Fresh evidence:
 - *Collu and Rinaldo* [2010] FamCAFC 53
 - *CDJ v VAJ (No 1)* (1998) 197 CLR 172; *Allesch v Maunz* (2000) 203 CLR 172;
 - *Wall & Wall* [2002] FamCA 257; *Van Ballekom v Kelly* [2005] FLC 93-233.

Specialist Accreditation Application Guidelines 2021

FAMILY LAW

- Stays:
 - pending appeal: Family Law Rules 22.11
 - pending a review: Family Law Rules 18.09
 - Parenting Cases: Aldridge & Keaton (Stay Appeal) [2009] FamCAFC 106; Treloar & Nepean [2009] FMCAfam 847; Sheldon & Weir (Stay Application) [2011] FamCAFC 5
 - Financial Cases: Gull (Stay Application) [2009] FamCAFC 104; Jackson & Balen [2009] FamCAFC 131
- Summary dismissal:
- Lindon v The Commonwealth (No 2) (1996) 136 ALR 251
- Hunter v Morrison (Contravention) [2014] FamCA 198
- Barden v Barden [2014] FamCA 745.
- D & D [2006] FamCA 339; Simpson v Brockmann [2010] FamCAFC 37 – relevant to the issue of:
 - fresh evidence
 - nature of appeals generally
 - deals with Allesch v Maunz (2000) 203 CLR 172; CDJ v VAJ (No 1) (1998) 197 CLR 172.
- Harrell & Nesland [2020] FamCAFC 21 – relevant to issue of:
 - Procedure
 - Application in an Appeal for extension of time to serve Notice of Appeal
 - Slip Rule
- McKenzie Friend.
- Litigants in person: Best Practice Guidelines for Lawyers Doing Family Law Work, Part 4 self-represented litigants
- Appeal Pathway from Magistrates Court of WA to the Court of Appeal (WA)
 - MCG v JM [2016] WASCA 77
 - CDW v LVE [2015] WASCA 247
 - Marino & Hodney [2016] FCWA 29
 - FDR v JDL [No 2] [2016] WASCA 231
 - Eckett & Eckett [2010] FamCAFC 39
- Appeal Family Court of Western Australia: Full Court considered powers of FCWA
 - Teo v Guan [2015] FamCAFC 94
 - CDW v LVE [2015] WASCA 247
- Best practice guidelines for lawyers doing family law work, Part 12 Trials and Appeals

13. Inherent, Associated and Accrued Jurisdiction

- Associated jurisdiction.
- Section 33 Family Law Act.
- Limited Statutory Jurisdiction: Minister for Immigration and Multicultural and Indigenous Affairs v B (No 3) (2004) 219 CLR 365:
 - High Court's citation: [2004] HCA 20.
- Corporations Act 2001 (Cth).

Specialist Accreditation Application Guidelines 2021

FAMILY LAW

- Inherent: DJL v Central Authority (2000) 201 CLR 226.
- Slip Rule – Horleck v Horleck (No 2) [2008] FamCA 683; Higginson & Higginson [2013] FamCA 902.
- Cross-vesting: Re Wakim; Ex parte McNaly (1999) 198 CLR 511.
- Accrued: Warby v Warby [2001] FamCA 1469; Finlayson and Finlayson and Gillam [2001] FamCA 49; Foley v Farquharson [2003] QSC 021; Bishop & Bishop [2003] FamCA 240; Noll & Nol [2013] FamCAFC 24; Bergman v Bergman [2009] FamCAFC 27; F Firm & Ruane & Ors [2014] FamCAFC 189.
- C and C and C: Accrued Jurisdiction [2001] FamCA 459.
- Selen v Selen [2013] FamCAFC 39; Wentworth v Hamilton [2014] FamCA 533; Ruane v Bachman-Ruane (Accrued Jurisdiction) [2012] FamCA 369.

14. Family Violence

- Family Law Act 1975 (Cth):
 - Definitions: section 4AB, section 4 definitions of ‘abuse’ subparagraph (c), ‘exposed’, ‘family violence’, ‘family violence order’
 - Part II, Division 2, Family Counselling, section 10D(4)(c), exceptions to confidentiality of communications in family counselling
 - Part II, Division 3, Family Dispute Resolution, section 10H(4)(c), exceptions to confidentiality of communications in family dispute resolution
 - Part V, Division 3, Section 43(1)(ca), Principles to be applied by the Courts
 - Part VII, Division 1, Section 60CF, Obligation to inform the Court of Family Violence Orders
 - Part VII, Division 8, Subdivision D, Sections 67Z to 67ZBB, Allegations of family violence
 - Part VII, Division 11, Sections 68N to 68T, Inconsistencies between Family Violence Orders and Other Orders
 - Part VII, Division 12, Subdivision C, Section 69H, Jurisdiction of Courts
 - Part VII, Division 12A, Subdivision B, Section 69ZN(5), and Subdivision C, Section 69ZQ and Duties of the Court in conducting child related proceedings
 - Part VII, Division 12A, Section 69ZW, Evidence relating to family violence
- Amendments to the Family Law Act 1975 (Cth) relating to Family Violence:
 - Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011 (Cth) – Act 189 of 2011
 - Family Law Amendment (Family Violence and Other Measures) Act (Cth) – Act 97 of 2018
 - Family Law Amendment (Family Violence and Cross-examination of Parties) Act 2018 (Cth) – Act 159 of 2018 (commenced 11 March 2019)
- Other Resources:
 - National Domestic and Family Violence Bench Book, (June 2017) Australasian Institute of Judicial Administration, online at <http://www.dfvbenchbook.aiNja.org.au>
 - Royal Commission into Family Violence (Victoria), (2016), Summary and Recommendations Volume, see: <http://www.rcfv.com.au/Report-Recommendations>.
- See Schedule 5 for State Family Violence Acts.

15. Individual State Jurisdictions

- Domestic violence.
- Children.
- Medical procedures.
- Professional responsibilities and obligations.

Specialist Accreditation Application Guidelines 2021

FAMILY LAW

16. Court Processes

- Steps to include:
 - interim hearings
 - conciliation conferences
 - trials.
- Anticipated length of time.
- Likely costs (financial or otherwise).
- Offers to settle
- Applying for an order for interim costs
- Applying for interim or procedural order without notice
- Appointment of litigation or case guardian

16. Alternative to Court Processes

- FDR (parenting matters).
- Mediation.
- Arbitration.
- Collaborative practice.
- Agreements:
 - BFA or consent orders (financial matters)
 - orders or parenting plans (parenting).

Specialist Accreditation Application Guidelines 2021

FAMILY LAW

SCHEDULE 5: Related Legislation and Other Materials

This is not necessarily an exhaustive list. Candidates will be examined on the law as it stands on the date of assessment.

Commonwealth Legislation

- Child Support (Assessment) Act 1989 (Cth)
- Child Support (Registration and Collection) Act 1988 (Cth)
- Child Support Legislation Amendment (Reform of the Child Support Scheme – Initial Measures) Act 2006 (Cth)
- Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures) Act 2006 (Cth)
- Child Support (Assessment) Regulations 2018 (Cth)
- Child Support (Registration and Collection) Regulations 2018 (Cth)
- Family Law Act 1975 (Cth)
- Family Law Amendment (Western Australia De Facto Superannuation Splitting and Bankruptcy) Act 2020
- Federal Circuit Court of Australia Act 1999 (Cth)
- Marriage Act 1961 (Cth)
- Superannuation Industry (Supervision) Regulations 1994 (Cth)

Related Procedures Family Court

- Family Law Rules 2004 (Cth) (as amended)
- Family Law Regulations 1984 (Cth)
- Joint Practice Directions:
 - No.1 of 2020 – Core Principles in the Case Management of Family Law
 - No.2 of 2020 – Special measures in response to COVID-19
 - No.3 of 2020 – The COVID-19 List
- Practice Directions including:
 - No.1 of 2019 – Applications for leave to Appeal
 - No.1 of 2017 - Conduct of appeals
 - No.2 of 2017 - Digital Court File
 - Principal Registrar’s Notification January 2008 – consent parenting orders and allegations of abuse
 - No. 1 of 2007 – Omnibus Practice Direction
 - No 9 of 2004 Victorian and Queensland Registries: Medical Procedures Applications
 - No. 6 of 2003 – Divorce applications to be filed in Federal Magistrates’ Court Federal Circuit Court
- Federal Court and Federal Circuit Court Regulation 2012 (Cth)
- Federal Circuit Court Rules 2001 (Cth)

Specialist Accreditation Application Guidelines 2021

FAMILY LAW

- Family Law (Fees) Regulation 2012 (Cth)
- Federal Circuit Court Practice Direction No 2 of 2008 Family Dispute Resolution – Applications for orders under Part VII of the Family Law Act 1975; No 2 of 2017 Interim Family Law Proceedings (1 January 2018); No 1 of 2016 Consent Orders in proceedings involving a federal tribunal; No. 1 of 2019 – Judicial Mediations in Family Law Matters; Practice Direction No.2 of 2020 – Case Management – Family Law (Priority, Property Pools under \$500,000) Financial Cases,
- Federal Circuit Court Information Notice 2011 – Communicating with Judges’ Chambers
- Federal Circuit Court e-filing: filing by electronic communication pursuant to rules 2.07A and 2.07B of the Federal Circuit Court Rules 2001: Divorce Application, Initiating Application (Family Law), Response to Initiating Application (Family Law) and Supplementary documents
- New South Wales Legislation
- Crimes (Domestic and Personal Violence) Act 2007 (NSW)
- Children and Young persons (Care and Protection) Act 1998 (NSW)
- Duties Act 1997 (NSW)
- Legal Profession Uniform Law and Legal Profession Uniform Law (NSW) and Legal Application Act 2014 (NSW)
- Property (Relationships) Act 1984 (NSW)
- Suitors’ Fund Act 1951 (NSW)
- Status of Children Act 1996 (NSW)
- Surrogacy Act 2010 (NSW)

Queensland Legislation

- Child Protection Act 1999 (QLD)
- Domestic and Family Violence Protection Act 2012 (QLD)
- Duties Act 2001 (QLD)
- Legal Profession Act 2007 (QLD)
- Property Law Act 1974 (QLD)
- Status of Children Act 1978 (QLD)
- Surrogacy Act 2010 (QLD)

South Australian Legislation

- Children and Young People (Safety) Act 2017 (SA)
- Family Relationships Act 1975 (SA)
- Intervention Orders (Prevention of Abuse) Act 2009 (SA)
- Legal Practitioners Act 1981 (SA)
- Stamp Duties Act 1923 (SA)

Specialist Accreditation Application Guidelines 2021

FAMILY LAW

Victorian Legislation

- Assisted Reproductive Treatment Act 2008 (Vic)
- Births Deaths and Marriages Registration Act 1996 (Vic)
- Children Youth and Families Act 2005 (Vic)
- Duties Act 2000 (Vic)
- Family Violence Protection Act 2008 (Vic)
- Legal Profession Uniform Law Application Act 2014 (Vic)
- Personal Safety Intervention Orders Act 2010 (Vic)
- Property Law Act 1958 (Vic)
- Relationships Act 2008 (Vic)
- Status of Children Act 1974 (Vic)

Western Australian Legislation

- Adoption Act 2008
- Duties Act 2008 (WA)
- Evidence Act 1906 (WA)
- Family Court Act 1997
- Family Provisions Act 1972
- Family Court Rules 1998
- Family Violence Legislation Reform Act 2019 (WA) – Passed July 2020
- Interpretation Act 1984 (WA)
- Legal Profession Act 2008 (WA)
- Legal Profession Regulations 2009 (WA)
- Property Law Act 1969 (WA)
- Restraining Orders Act 1997
- Residential Tenancies Legislation Amendment (Family Violence) Act 2018 – Assent Feb 2019
- Surrogacy Act 2008
- Transfer of Land Act 1893 (WA)

Related Guidelines

- Australian Solicitors Conduct Rules and relevant legislation in states and territories

Specialist Accreditation Application Guidelines 2021

FAMILY LAW

- Ethical Guidelines
- Family Court and Federal Circuit Court, Family Violence Best Practice Principles (2015)
- Family Law Council and Family Law Section of the Law Council of Australia, Best Practice Guidelines for lawyers doing Family Law Work (2nd edn) (Note: These are currently under review)
- LIV Capacity Guidelines and Toolkit (September 2015)