DRAFT FOR ADVOCACY AND PARLIAMENTARY CONSIDERATION

COMPANION TO THE MODEL BILL

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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

FAMILY LAW AMENDMENT (CHILD SAFETY AND DISCLOSURES) BILL 2026

EXPLANATORY MEMORANDUM

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(Circulated as a model draft for a sponsoring member.

Not circulated by ministerial authority. Not an official EM.)

IMPORTANT NOTICE

This Explanatory Memorandum is a model document prepared so that a sponsoring member may adapt it. It is not an official EM, not an enacted instrument, and not legal advice. Notes on clauses describe the intended operation of the companion model Bill.

Abbreviations

Bill means the Family Law Amendment (Child Safety and Disclosures) Bill 2026.

CRC means the Convention on the Rights of the Child.

ICCPR means the International Covenant on Civil and Political Rights.

ICL means independent children's lawyer.

the Act means the Family Law Act 1975.

General Outline

1. The Family Law Amendment (Child Safety and Disclosures) Bill 2026 (the Bill) amends the Family Law Act 1975 to elevate child safety in parenting proceedings, provide for protective use of disclosure recordings, strengthen ICL duties, restrain unverified alienation labels where safety allegations are unresolved, and require written reasons when residence changes despite those allegations.

2. The Bill has six operative purposes.

3. First, it amends the objects and best-interests framework in Part VII so that safety from family violence, abuse, sexual harm and neglect is primary where allegations are live, and so that the child's views are given due weight consistently with CRC Article 12.

4. Second, it inserts Division 1AA to allow disclosure recordings made for a protective purpose to be admitted or considered, with privacy and harm safeguards, and to prevent adverse parenting inferences or contraventions arising merely from good-faith protective recording.

5. Third, it rewrites ICL duties in section 68LA so that the ICL must investigate safety material, put it before the court, and must not rubber-stamp residence or contact outcomes that ignore unresolved sexual-abuse or serious-violence allegations without investigation.

6. Fourth, it restrains reliance on Parental Alienation Syndrome and equivalent unverified labels as a residence-transfer ground where safety allegations remain unresolved, and requires evidence-based risk assessment.

7. Fifth, it creates Magellan-style case-management and information-sharing triggers for sexual-abuse allegations.

8. Sixth, it requires written reasons when the court changes residence or substantially increases unsupervised time despite unresolved safety allegations, and provides for guidelines, application to pending proceedings, and a post-commencement review.

9. The Bill is a public Bill of general application. It is not a private Bill for any named individual. It is intended to sit with the Migration Amendment (Child Safety and Character Consistency) instruments as part of a coherent child-safety legislative set.

Financial Impact Statement

10. The financial impact is expected to be nil to low.

11. Additional work may fall on the federal family-law courts in practice-direction updates, on legal-aid commissions in ICL training, and on the Attorney-General's Department in supporting the 18-month review.

12. No new standing appropriation is proposed. Costs are intended to be met from existing resources in the first year, subject to the usual additional-estimates process if volume requires it.

Impact analysis

13. A formal Impact Analysis is not assessed as required. The Bill regulates the exercise of existing judicial and professional powers in parenting proceedings. It does not impose a new regulatory burden on business.

14. The principal distributional effect is a transfer of interim and final parenting outcomes toward safety-first arrangements where unresolved allegations of abuse or serious violence are live, and away from residence transfers driven by unverified alienation labels.

Statement of Compatibility With Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview

15. The Bill amends the Family Law Act 1975 to prioritise child safety, enable protective use of disclosure recordings, strengthen ICL duties, restrain alienation-based residence transfers where safety is unresolved, and require reasons and Magellan-style case management.

Human rights engaged

16. The Bill engages the following rights:

the best interests of the child as a primary consideration (CRC Article 3);

the child's right not to be separated from parents unless necessary for best interests (CRC Article 9);

the child's right to express views and be heard (CRC Article 12);

protection from violence, abuse and neglect (CRC Article 19);

the child's right to health (CRC Article 24);

protection from sexual exploitation and sexual abuse (CRC Article 34);

protection of the family (ICCPR Article 23);

protection of the child as a minor (ICCPR Article 24);

fair hearing in the determination of rights (ICCPR Article 14), so far as parenting proceedings engage it;

privacy (ICCPR Article 17), in the handling of disclosure recordings.

Protection of children

17. CRC Articles 19 and 34 require protection from violence and sexual abuse. CRC Article 3 requires best interests to be a primary consideration. The Bill gives those obligations sharper statutory force inside Part VII by elevating safety where allegations are unresolved and by preventing alienation labels from overriding that elevation.

18. CRC Article 12 is advanced by requiring the child's views to be a primary consideration and by requiring ICLs and report writers to put those views fully before the court.

Family life

19. ICCPR Article 23 is engaged by parenting orders that limit contact. Limitation is permissible where lawful, necessary and proportionate to a legitimate aim. Protection of a child from unacceptable risk of abuse is a legitimate aim of the first order. The Bill does not abolish family life; it conditions contact on safety.

20. ICCPR Article 24 requires protection of the child as a minor. The Bill treats that protection as compatible with, and not subordinate to, adult contact claims.

Privacy and fair hearing

21. Admission of disclosure recordings engages privacy. The Bill answers that engagement with access restrictions, publication bans and harm safeguards. Fair hearing is preserved: parties may contest authenticity, weight, contamination and purpose. Fabrication remains sanctionable.

Conclusion

22. The Bill is compatible with human rights. To the extent that it limits parental contact or privacy in the use of recordings, the limitation is reasonable, necessary and proportionate to the legitimate objective of protecting children from violence, abuse and sexual harm.

Notes on individual clauses

Clause 1 — Short title

23. Clause 1 provides that the short title of the Bill, once enacted, will be the Family Law Amendment (Child Safety and Disclosures) Act 2026.

Clause 2 — Commencement

24. Sections 1 to 3 commence on Royal Assent. Schedules 1 and 2 commence on the twenty-eighth day after Royal Assent, allowing a short implementation window for practice directions, ICL guidance and registry protocols.

Clause 3 — Schedules

25. Clause 3 is the standard activating clause. Legislation specified in a Schedule is amended or repealed as set out in that Schedule, and any other item in a Schedule has effect according to its terms.

Schedule 1 — Amendments of the Family Law Act 1975

Item 1 — Subsection 4(1) definitions

26. Item 1 inserts the definitions on which the Schedule depends: disclosure recording; parental alienation claim; protective purpose; safety allegation; and unresolved safety allegation.

27. disclosure recording covers both a child's disclosure and a parent or carer's receipt of a disclosure, recorded for a protective purpose. The width is deliberate. A recording does not lose its character because it was made outside a police station.

28. parental alienation claim is defined functionally. It captures PAS labels and equivalent assertions whether or not dressed in clinical language.

29. unresolved safety allegation means the allegation has not been finally determined by a court, or finally and adequately investigated by a competent authority, so as to establish that there is no unacceptable risk. The definition prevents a party from treating an uninvestigated allegation as already disproved.

Item 2 — Section 60B objects

30. New subsection 60B(1A) states objects specific to safety primacy, the child's views, careful assessment of disclosures, and the prohibition on using unverified alienation claims to switch residence while safety is unresolved.

31. New subsection 60B(1B) permits regard to CRC Articles 3, 9, 12, 19, 24 and 34 and ICCPR Articles 23 and 24. It is an interpretive aid, not a freestanding cause of action.

Items 3 and 4 — Sections 60CA and 60CC best interests

32. Item 3 adds a note under section 60CA pointing to safety as a primary element of best interests.

33. Item 4 inserts subsection 60CC(1A) listing primary considerations, including protection from harm and the child's views, and subsection (1B) giving protection greater weight where an unresolved safety allegation exists.

34. Subsections 60CC(2A) to (2C) are the alienation restraint. An alienation claim cannot outweigh or cure an unresolved safety allegation; it cannot be the sole or primary reason to change residence or to expand unsupervised time with the person who is the subject of the allegation; and PAS or equivalent unverified diagnostic labels cannot be a residence-transfer ground. Ordinary evidence of coaching or influence remains available after risk is addressed.

Item 5 — New section 60CH

35. Section 60CH requires the court, where a safety allegation is live, to identify the allegation, assess unacceptable risk, consider interim protective arrangements, and reject contact-at-all-costs reasoning. Subsection (2) states expressly that family-unit and child-protection treaty articles are not to collapse into belief-management. Subsection (3) prevents a not-proved finding on abuse from being treated, of itself, as proof of alienation or as a residence-switch warrant.

Item 6 — Division 1AA disclosure recordings

36. Division 1AA (sections 60DA to 60DE) is the disclosure-recording code.

37. Section 60DA states the object: protective consideration of recordings with safeguards, and protection of good-faith recorders from punishment merely for making or using the recording in the proceeding.

38. Section 60DB sets the admission gateway: protective purpose, relevance, and fairness having regard to safeguards. Subsection (3) prevents automatic exclusion merely for lack of consent, party authorship, or general surveillance-law friction, when the recording is put before the court for a protective purpose. Subsection (4) preserves publication controls, leaves general criminal law in place except so far as the Act provides for use in Part VII proceedings, and allows exclusion for unacceptable prejudice subject to safety primacy.

39. Section 60DC mandates privacy and harm orders: restricted access, reduced retraumatisation, publication bans, and anti-harassment measures.

40. Section 60DD prevents adverse parenting inferences, and prevents treating protective recording as family violence by the recorder, abuse of process, or alienation, solely because the recording was made. Content, fabrication and non-protective purpose remain fully examinable.

41. Section 60DE prevents contempt or contravention findings under the Act merely for good-faith protective recording and tender. It does not shield fabrication or deliberate misuse.

Item 7 — Section 68LA ICL duties

42. Item 7 substitutes subsections 68LA(2) to (5) and adds (5A). The ICL must enquire into safety, put relevant safety material before the court, and must not endorse outcomes that ignore unresolved sexual-abuse or serious-violence allegations without reasonable investigation. Written reasons are required if the ICL supports a residence change or major unsupervised-time increase despite an unresolved safety allegation.

43. Subsection (3) preserves the best-interests orientation of the ICL role while requiring the child's views to be fully put, consistently with CRC Article 12. Subsection (4) states the non-rubber-stamp rule in plain terms. Subsection (5) requires the ICL to escalate investigation gaps and to oppose unsafe interim arrangements. Subsection (5A) makes compliance examinable and relevant to the weight of ICL submissions.

Item 8 — New section 62GA expert evidence

44. Section 62GA bars PAS and equivalent unverified diagnostic labels as a scientific basis for residence change. Where an alienation claim and a live safety allegation coexist, safety risk assessment comes first; opinion evidence that assumes alienation as the explanation for a disclosure without addressing the disclosure on its merits is to be excluded or given no weight; and child-protection, trauma and family-violence expertise is preferred over alienation-reunification framing alone.

45. Subsection (3) preserves ordinary factual evidence about relationships and influence. Subsection (4) imposes parallel duties on family consultants and report writers.

Item 9 — New section 60DI Magellan-style triggers

46. Section 60DI requires the court, in sexual-abuse allegation matters, to consider intensive case management, early information sharing, timely risk assessment and early protective interim dates. Delay is characterised as a case-management failure, not as a reason to prefer the alleged abuser's contact. Regulations may prescribe agencies and procedures.

Item 10 — New section 60DJ written reasons

47. Section 60DJ requires structured written reasons when residence changes or unsupervised time substantially increases despite an unresolved safety allegation. The mandatory elements include the allegation, investigation, risk findings, treatment of any alienation claim, the child's views, ICL compliance, and the best-interests explanation with safety primacy. Failure is appealable as non-observance of an Act requirement.

Item 11 — Section 67ZBB

48. Item 11 ties existing abuse-allegation duties in section 67ZBB to the new Division 1AA and related sections, so that the older machinery and the new safety code are read together.

Item 12 — New section 68LB guidelines

49. Section 68LB authorises ministerial guidelines for ICL safety duties, developed in consultation with the federal family-law courts and professional bodies, consistent with the Act and with CRC Articles 3, 12 and 19. ICLs must have regard to guidelines in force.

Schedule 2 — Application, saving and transitional

Item 1 — Definitions

50. Item 1 defines commencement day and pending parenting proceeding.

Item 2 — Application

51. The amendments apply to future and pending Part VII proceedings, including interim and final hearings after commencement. Pre-commencement final orders are not invalidated merely by commencement. Pending matters with unresolved safety allegations must be screened early for interim protection and Magellan-style management.

Item 3 — Pre-commencement recordings

52. Division 1AA applies to disclosure recordings whenever made, if used in a proceeding to which item 2 applies. Protective recordings made before commencement are not orphaned.

Item 4 — Existing ICL appointments

53. Amended section 68LA applies from commencement to ICLs already appointed in pending proceedings.

Item 5 — Practice direction

54. A practice direction may be issued within 60 days. The Act's amendments do not await that direction.

Item 6 — Review

55. An 18-month review must examine disclosure-recording practice, ICL compliance, residence changes despite safety allegations and reasons quality, and treaty consistency. The report is to be tabled in both Houses.

Notes on interaction with existing law

56. The Bill does not repeal the core best-interests provisions of Part VII. It sharpens them for safety, disclosures, ICL practice and alienation restraints.

57. The Bill does not amend the criminal law of a State or Territory except so far as section 60DB provides for use of a disclosure recording in a Part VII proceeding. Prosecution decisions remain with the relevant criminal authorities.

58. The Bill does not amend State or Territory child-protection statutes. It improves federal parenting proceedings' capacity to receive and act on safety material, including through information sharing.

59. The Bill does not enact a named individual's case. It is general legislation.

Consultation statement (model)

60. As a model draft this memorandum records the consultations a sponsoring member should undertake before introduction: the Attorney-General's Department on Part VII coherence; the federal family-law courts on Magellan-style listing and practice directions; legal-aid ICL programs on duty feasibility; and child-protection and police agencies on information-sharing protocols.

61. Consultation with organisations representing child victims of abuse, and with parent-advocacy organisations concerned with false allegations, should be recorded in any official version of this memorandum. Both perspectives are relevant; neither cancels CRC safety obligations.

Prepared as a model Explanatory Memorandum on 21 September 2026 to accompany the Family Law Amendment (Child Safety and Disclosures) Bill 2026.

Companion documents: the model Bill and the Policy Paper (FLCS-P 2026/01). Document code: EM-FLCS 2026/01.