

2025 SPECIALIST ACCREDITATION ASSESSMENT GUIDELINES

Family Law

2025 Specialist Accreditation Assessment Guidelines

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 Society 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, credible and reliable.

Eligibility for Accreditation

- Current financial membership of the Law Society of Western Australia
- Hold a current practising certificate
- At least five years' full-time experience in the practice of law
- Substantial involvement (at least 25%) in the practice of Family Law over at least the preceding three years
- Provide the names of three referees in support of the application
- Successful completion of the Specialist Accreditation assessment programme

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 [here](#). Such applications for exemption must be lodged no later than **4pm 11 April 2025**.

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 Accreditation Advisory Sub-Committee. To make a discretionary application, an applicant must include a formal letter with their application, addressed to the Family Law Accreditation Advisory Sub-Committee, outlining the reasons why discretion is required and why the Sub-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 [here](#).

Assessment

The Family Law Specialist Accreditation Assessment programme is in three parts. To gain accreditation candidates must obtain a satisfactory grade of at least 50% in all three parts of the assessment programme. Candidates may, in any or all of the three Parts of the Assessment programme, be assessed on any or all of the Assessment Topics and Legislation listed in Schedules 4 and 5.

- Part 1: Take Home Assessment – See Schedule 1
- Part 2: Written Examination – See Schedule 2
- Part 3: Simulated Client Interview – See Schedule 3

Timetable

6 January 2025	Applications Open
5 March 2025, 5pm	Part 1 & Part 2 – Accreditation Assessment Information Session
12 March 2025, 5pm	Part 3 – Accreditation Assessment Information Session
11 April 2025, 4pm	Applications requesting Board discretion (for those who do not meet eligibility criteria) close
11 April 2025, 4pm	Applications close
6 June 2025	Part 1: Take Home Assignment released, assignment due 27 June 2025
26 July 2025	Part 2: Written Examination
27 July 2025	Part 3: Simulated Client Interview
Early November 2025	Results sent to candidates

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Unacceptable Conduct

Candidates must not:

- Disclose or discuss the contents of the Specialist Accreditation Assessment programme material with any other person until all three assessment parts have been completed by all candidates
- Contact Sub-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 Specialist Accreditation Assessment programme

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

Performance

Specialist Accreditation is a structured assessment process that requires the candidate to draw on their existing knowledge and skills to demonstrate their competency and expertise in their chosen area of law.

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 that 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 and familiarize themselves with the material and legislation listed within Schedules 4 and 5 of these guidelines.

Legislation and Other Provisions

Candidates should be familiar with the relevant case law and legislation relating to the selected topics for assessment, and the legislation listed in Schedules 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 within their application. The resume should provide 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

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

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Applications

Applications must be made on the prescribed application form found [here](#).

The application is to include:

- A completed application form; including.
- Full details of three referees to be detailed in the application form.
- Resume of practice to be detailed in the application form.
- Other supporting documentation supporting the application.
- Payment of the application fee (\$1500 GST inclusive) payable to the Law Society of Western Australia as detailed in the application form.

Application close dates

- 11 April 2025, 4pm for applicants wishing to apply for Sub-Committee discretion because they do not meet the eligibility criteria.
- 11 April 2025, 4pm Applications close.

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

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SCHEDULE 1: Assessment Component: Part 1

TAKE HOME ASSIGNMENT

Release Date: 6 June 2025

Due Date: 27 June 2025, 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 candidate is not expected to provide any advice relating to costs agreements or disclosure statements. 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.
- ability to demonstrate a 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.
- ability to identify and address any ethical issues.

Take-Home Assignment Conditions

Candidates may use the resources of their offices to complete this exercise. However, consultation with any other person in completing the exercise is not permitted and the material submitted must be entirely your own work.

NOTE: To pass the Take Home Assignment, candidates must achieve no less than 50% in this assessment.

The completed assignment must be typed and submitted as a hard copy lodged in person or as a Word or PDF document emailed to accreditation@lawsocietywa.asn.au to arrive by no later than 4pm on 27 June 2025.

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SCHEDULE 2:

Assessment Component: Part 2 – Written Examination

Exam Date: Saturday, 26 July 2025

Exam Venue: To be Confirmed

Exam Time: To Be Confirmed The examination is divided into two sections.

The written exam will consist of extended response and multiple-choice questions which will focus on the topics for assessment set out in [Schedule 4](#).

In planning and time management, it is recommended to use the mark allocation per question as a guide.

Section A – Long Answer Questions – 70%

- In Part A of the examination candidates are required to answer BOTH extended response questions
- Questions will relate to areas of Family Law commonly encountered in practice.
- In the extended response questions, candidates will be expected to provide advice in sufficient depth to demonstrate a high level of competence in the topics raised, and the ability to identify and provide guidance on other related issues.

Section B – Short Answer Questions - 30 percent

- In Part B of the examination candidates are required to answer several short-answer questions.
- In the short answer questions candidates will be tested across areas of family law in a specialist's day-to-day practice.

NOTE: To pass the written examination, the candidate must achieve no less than 50% in Section A and Section B of this assessment.

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;
- ability to apply the practical knowledge and skills of a specialist; and
- ability to identify and address any ethical issues.

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 on the computers provided;
- Answers must be numbered correctly;
- Handwriting is not permitted;
- Each candidate will be issued an examination number; and
- The names of candidates must not appear on any material submitted for assessment.

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SCHEDULE 3:

Assessment Component: Part 3 – Simulated Client Interview

Exam Date: Sunday, 27 July 2025, by appointment

Exam Venue: Law Society of Western Australia, Level 4, 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 a maximum of 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 interactions 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 is expected to demonstrate a clear ability to take and receive instructions, deliver preliminary advice and provide information to the client in a manner that satisfies the assessment criteria, core knowledge and the performance standard. A sound knowledge of the relevant laws, rules and procedures will be required.

Candidates will be expected to give advice in the interview subject to the instructions obtained.

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.

Assessment Criteria

Candidates will be assessed on the following performance standards:

- gathering facts and assessing instructions;
- advising the client;
- rapport, empathy, attitude with the client and management of the interview;
- communicating relevantly, clearly and appropriately;
- sound knowledge of the relevant law, rules and procedure; and
- ability to identify and address any ethical issues.

NOTE: To pass the Simulated Client Interview, candidates must achieve no less than 50% in this assessment.

SCHEDULE 4: Topics For Assessment

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

- the Family Law Act, the Federal Circuit and Family Court (Family Law) Rules, the Child Support (Assessment) Act, 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 should not be considered exhaustive but should be provided as a guide to matters which might be raised in the assessment programme. It is aimed at assisting candidates in their preparation for specialist accreditation. Not all the topics listed will necessarily be tested.

Candidates will be assessed on the law as it stands on the date of assessment and at any other time that may be relevant in answering a particular question.

Candidates will be expected to:

- Be expected to display a working knowledge of all the practice areas;
- 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; and
- Demonstrate adherence to the ethical and professional “best practice” of family law.

Note: The cases and sections of the legislation are provided by way of guideline assistance only. If any new legislative reforms become effective before the date of assessment and/or new cases are delivered, practitioners will be required to be aware of the changes to the law resulting from that legislation and/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 Federal Circuit and Family Court (Family Law) Rules 2021 (Cth).

Topics are grouped under headings for convenience only – some topics could be listed under a number of headings.

TOPICS FOR ASSESSMENT

1. Divorce

- Jurisdiction
- Ground: section 48
 - meaning of separation (including separation under one roof): section 49
 - effect of resumption of cohabitation: section 50
 - requirements where marriage is less than two years: section 44 (1B)
- Declaration – children: section 55A
- Effect on wills
- Time limits for property and maintenance applications: section 44(3)
- Applications for leave to institute proceedings out of time

2. Nullity

- Grounds for nullity and consequences of nullity decrees
- Effect of Fraud

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3. Children

3.1 Dispute Resolution

- Sections 10A to 10K & 10PA *Family Law Act*
- Confidentiality re: counselling and family dispute resolution - Section 10D and H
- Admissibility of the statement made in counselling and family dispute resolution: Sections 10E and 10J
- Section 10F definition of “family dispute resolution” and s10G definition of “family dispute resolution practitioner.”
- Family Law (Family Dispute Resolution Practitioners) Regulations 2008 (Cth), regulation 25(2)
- Role of Family Relationship Centres: www.familyrelationships.gov.au/talk-someone/centres
- Section 63 DA and section 60 D obligation of advisors
- Pre-filing dispute resolution requirements and exceptions: section 60I
- Family dispute resolution not attended because of child abuse or family violence: section 60J

3.2 Jurisdictional Requirements and Discretion to Exercise Jurisdiction

- Standing:
 - section 65C
 - section 69C
- Part 3.1 FCFA Rules 2021 Necessary parties
- Best interest of children s60CC FLA 1975 and forum
- Family Law amendment bill and repealing the presumption of “equal shared parental responsibility” provisions in the *Family Law Act 1975*
- Jurisdiction for parenting orders over child in a foreign country
- Forum Non-Conveniens in Children’s matters
- Definition of “parent”: sections 60H, 60HA and 60HB:
- Court’s power to make parenting order: section 65D
- Approach to making of parenting orders: section 60CC
- Meaning of “parenting order” and matters parenting orders can deal with: section 64B
- 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
- Effect of death on parenting orders: section 65K

3.3 Parental Responsibility – Part VII, Div 2

- Family Law Amendment Act 2023(Cth)
- Sections 61A to 61F
- Definition of “major long-term issues”: section 4

3.4 Parenting orders: general principles – Part VII, Div 12A

- Pre-action procedures and exceptions: Rule 4.01 and Schedule 1 of the Federal Circuit and Family Court of Australia (Family Law) Rules 2021(Cth)
- Sections 60B, 60CA, 60CC
- Court’s power to make an order outside of what parties applied for:
- Principles in child-related proceedings: sections 69ZN and 69ZQ
- Other issues concerning Parenting Orders – stay of proceedings pending
- appeal: *Sarti and Anor & Sarti (No. 2) (2020) FLC ¶93-993*
- Section 60CC(3)(a) and children’s views:
- Ways in which views can be put before the court: section 60CD, 60CE
- Admissibility of statements by children: Family Court of Australia (Family Law) Rules 2021(Cth) rule 8.10; section 100B
- How children’s views should be considered and weighed: Family Reports/Expert Evidence
- Family Reports: Section 62G
- Independent Children’s Lawyer (ICL): Part VII, Division 10
- Child abuse:
- definition of “abuse”: section 4(1)
- Unacceptable Risk Test
- Family violence and Intervention Orders Cases, Section 68P

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- Family Violence
- Definition of “family violence”: section 4AB(1)(3)
- Long-term Supervision Orders:
- Other issues:
 - surrogacy
 - Schooling
 - travel
 - change of name:
 - child’s passport
 - Vexatious proceedings section 102QB
 - Definition of “major long-term issues”: section 4

3.5 Part VII, Divisions 4 to 6

- The parenting compliance provisions: Part VII, Division 13A
- The precondition as a preliminary issue:
 - Section 65DAAA
 - When parenting order terminates: Sections 65H, 65J and 65K
- 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
- 1980 Hague Convention on the Civil Aspects of International Child Abduction
- Part VII, Division 12, subdivisions D & E
- presumption
- Section 67ZC (1)
- Family Law Practice Direction – Medical procedure proceedings

3.6 Relocation

- Section 4 - definition of “major long-term issues”

3.7 Family Violence

- Final bias and interim hearings; s 61DA, s60CG

3.8 Parenting plans and orders (particular issues)

- Part V11 Divisions 4 to 6

3.9 Contravention of parenting orders

- The parenting compliance provisions
- Contravention list

3.10 Alteration of parenting orders: Section 65D (2)

- s65DAAA
- The precondition of fresh circumstances: changed circumstances; undisclosed material facts
- The precondition as a preliminary issue
- When the parenting order terminates:
 - Family Law Act 1975 (Cth)
 - Subsection 65H

3.11 Abduction of children – within Australia and overseas

- Part VII Division 13: Registration of State, Territory and Overseas Orders
- Family Law (Child Abduction Convention) Regulations 1986
- Part VII Division 8 - Subdivision C: Location and Recovery of Children

3.12 Child Protection Convention

- Division 4 of Part XIII AA
- Family Law (Child Protection Convention) Regulation 2003 (Cth)
- Commonwealth Child Protection Measures 111CD

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3.13 Paternity

- Part VII Division 12 – Subdivisions D and E

3.14 Reaching agreement

- Parenting plans and Consent Orders
- Section 63C

3.15 Court sanction of medical procedure

- Section 67ZC (1)

3.16 Children in detention

- Minister for Immigration and Multicultural and Indigenous Affairs v B (No 3) (2004) 219 CLR 365

4. Spousal Maintenance

- Establishing a claim
- Sections 72 to 77A
- Threshold finding under section 72; lack of adequate support and capacity to pay
- Consideration of "any other adequate reason" under section 72(1)(c)
- Consideration of section 75 (2) factors
- Consideration of section 74: exercise of discretion
- "Adequately" and "properly"
- Relationship between spousal maintenance and property orders
- Section 77 A Requirements
- In the Marriage of Clauson (1995) FLC 92-595: Cessation of spousal maintenance orders
- Registrable spousal maintenance liabilities
- Lump sum spouse maintenance
- Urgent v Interim orders

5. Child Maintenance and Support

- Primary duty to maintain children: section 66C FLA
- Jurisdictional aspects: section 66E FLA
- Adult Child Maintenance: section 66L FLA
- When Adult Child Maintenance stops & duty to inform: section 66VA
- Section 66E FLA
- Limited and Binding Child Support Agreements, section 86 of the *Assessment Act*
- Binding Child Support Agreements and the impact of COVID-19
- Child: section 24 *Assessment Act*
- Parent: section 25 *Assessment Act*
- Non-parent carer: section 25A *Assessment Act*
- Stepparent: Section 66M FLA
- The Child Support Formula – Division 2
- Re-establishment income
- General Grounds of departures: section 117(2) *Assessment Act*
- Earning Capacity section 117 (4)(d); Section 117 (7A) (7B)
- Departures from Administrative Assessments section 98B section 98C (2), section 117(2)

Court Jurisdiction s116 *Assessment Act*

- Section 106A
- Change of Assessment
- Estimates
- Section 60,61,62,63,64 Child Support (Assessment) Act 1989 (Cth)
- Objections to Registrar Decisions
- Administrative Appeals Tribunal Social Services and Child Support Division
- Abolition of AAT and transition to a new Federal administrative review body
- Court Review
- Review of AAT decisions
- Part VIII Registration Act
- Federal Circuit and Family Court of Australia (Family Law) Rules 2021

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- When another application is pending Section 116(1)(b) *Assessment Act*
- Complex applications Section 98E, Section 98R
- Disputed parentage – Section 106, 107 *Assessment Act*
- Stay orders Section 111C *Child Support Registration Act*
- Time limit on backdating assessments: section 111(1) *Assessment Act*
- 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*
- 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

6.1.1 Conceptualising a Financial Agreement

- Sections 90G & 90UJ
- Concurrent agreements under Part VIIIA and Part VIIIAB
- Property
- Financial resources
- Spousal maintenance (see further Subsection 90E and 90UH for specific drafting requirements, and Subsection 90F and 90UI)
- Incidental or ancillary matters (including adult child maintenance)
- Superannuation – Sections 90XH and 90XHA. Interplay with section 90XJ(1)(a)
- Lifestyle clauses
- Agreements with third parties
- Onus of proof
- Is the agreement binding (applying sections 90G and 90UJ)?
- Legal advice
- If the agreement does not comply with section 90G (1), can it be “saved” pursuant to section 90G(1A)?
- Grounds for setting an agreement aside – sections 90K and 90UM
- Non-disclosure of assets
- Subsection 90K(1)(b) – legal and equitable principles that may render an agreement “void, voidable or unenforceable”
- Unconscionable conduct and/or undue influence:
 - Impracticability
 - Material change in circumstances
 - Uncertainty/incompleteness
 - Mistake
 - Use of equitable and contractual principles to render enforceable an agreement.
 - Rectification
 - Part performance
 - Implied terms
 - Estoppel
 - Separation declarations: Australian Securities and Investments
 - Agreements binding on third parties.
 - Applications by third parties to set aside Financial Agreements.

7. De facto Relationships

- s 4AA FLA
- Div 2, Part VIIIAB FLA
- De Facto financial cause; s 39B
- Geographical requirements, s 90SK
- S90SB further requirements- length of relationship, child, substantial contributions

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8. Property

- Family Law Act 1975 (Cth) - Sections 79 and 78 and s90 SM
- Part VIII & Part VIIIAB of FLA, FCFCOA (Family Law) Rules 2021
- Corporatisation of de facto relationships
- Forum non-conveniens in property matters

8.1 Approach to Determining Property

Preliminary Step:

- Whether it is just and equitable to alter property interests' section 79(2) FLA

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 – definition (section 4)
- Financial resources and expectations do not constitute property but are relevant and should be identified and valued
- Duty of full and frank disclosure – Chapter 6 of FCFCOA (Family Law) Rules 2021
- Principle of “full and frank disclosure”
- Methods of obtaining financial information
- Identify and value relevant property
- treating assets of company or trusts as assets of a party/ discretionary trust: Interest in a partnership
- Superannuation:
 - valuations and expert evidence; the asset pool must be valued at the time of the final hearing:
 - income tax, capital gains tax, stamp duty and GST: *Income Tax Assessment Act*
 - Stamp Duty
 - Section 90
 - CGT
 - Add-backs-three categories
 - Inter family loans or gifts: Section 5 Limitation of Actions Act 1958 (Vic)

Step 2: Identify and evaluate the Contributions of Parties

- Section 79 (4) and section 90SM (4) - No starting point of equality
- Global c.f. Asset by Asset approach
- Court's approach Section 79(4)(a)-(c):
- direct financial contributions
- indirect financial contributions
- 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:
- Financial contributions in short marriages, post-separation contributions
- Third-party contributions (gifts, loans etc)
- Gifts and inheritances:
- Redundancy packages
- Windfalls:
- Expectation of an inheritance
- Waste:
- Vicissitudes of life
- Accident verdicts
- Relevance of domestic violence:
- Pre-marriage property and contributions
- Big money cases
- Contribution to the welfare of children of the other party from a previous relationship: Initial Contributions
- Post Separation Contributions

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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
- The various factors set out in the sub-paragraphs of Subsection 75(2) and 90SF (3) are to be applied to the extent that they are relevant
- It is not appropriate to consider and quantify each of the factors separately but to arrive at a decision of overall adjustment
- Consideration of each of the matters set out in section 75(2)/90SF (4)
- The weight given to each factor is a matter of judicial discretion: The factors are prospective but are based on the roles the parties adopted during their relationship
- Age and state of health of the parties, health of one party — short life expectancy
- Income, property and financial resources of each party and capacity for gainful employment
- Whether either party has the care of a child under 18, a large number of children in the care of one party, shared care
- Any fact or circumstance which the justice of the case requires to be taken into account: - non-disclosure of assets
- Contribution to post-separation redundancy package
- Inheritances
- Allowance for CGT, health problems with children
- Power to make substituting order in relation to a taxation debt
- Effect of orders on earning capacity
- Lack of realisability of assets
- Violence, short marriage, the impact of the relationship on earning capacity; [NOTE: arduous nature of contributions due to family violence dealt with at Step 2]
- Proposed orders to be made with one party assuming significant liabilities
- Adjustment in favour of one party where the estate is modest and one has a much higher income earning capacity;
- Section 75(2): where one party killed the other
- Treatment of one party's interest in a trust – asset -v- resource
- In addition to the cases on income, property and financial resources of each party and capacity for gainful employment
- Care for an adult child with a disability
- Assessing s 75(2) factors when taking an asset-by-asset approach

Step 4: Consider matters of justice and equity

- Sections 79(2) and 90SM (3)
- Equally applicable to sections 90SM (3) and 90SM (8) in particular

8.2 Section 106B – Transactions to Defeat Claims

8.3 Consideration of Third-Party Interests

8.4 Effect of Death on Property Proceedings

- Section 79(8) *Family Law Act 1975* (Cth)

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

8.6 Effect of Bankruptcy

- *Bankruptcy Act 1966* (Cth) – sections 35 and 35A
- Rights of creditors

8.7 Four-Step Approach to Determining Property

- Development of the concept that the Four Step Process is merely a shorthand distillation of the legislation that illuminates the path and not a legislatively mandated decision process

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8.8 Adjournment of proceedings Section 79(5)

8.9 Leave to initiate property proceedings out of time

8.10 Equitable estoppel

9. Injunctions

- Section 68B (parenting) and Section 114 (marriage and de facto)
- Section 90SS re: de facto relationships
- Relevant principles (re: power and exercise of discretion):
 - Circumstances arising out of marital relationship
 - Personal protection/non-molestation (Section 68B)
- To restrain dealings in property:
 - Undertakings as to damages
 - Personal rights v legal or equitable interests
 - Merits of claim and degree of danger of prejudice
 - Real danger of prejudice
 - Prejudice to third parties
 - Ordinary business dealings
 - Minimum restrictions imposed
 - Undertakings
- Injunctions and third parties:
 - Part VIII A FLA
 - 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*.
 - Injunctions that affect third parties
 - Injunctions directly against third parties
 - Sham/puppet/alter ego
 - Power no wider for interlocutory injunctions than for permanent injunctions
 - Injunctions against third parties in Section 106B proceedings
 - Jurisdictional questions
- Exclusive Use and Occupation:
 - Relevant matters to consider
- Ex Parte Applications:
 - Federal Circuit and Family Court of Australia (Family Law) Rules 2021 (Cth) r 5.11 Part 5.3 Applications without notice
 - preservation of evidence (search orders): Anton Pillar Orders - preservation of property (freezing orders): Mareva Orders (Interlocutory)
 - Real and urgent need to protect
 - Duty of full disclosure
 - Rule 10.18 - Usual Undertaking as to Damages

10. Evidence

- Relevant Legislation:
 - *Family Law Act 1975* (Cth)
 - *Evidence Act 1995* (Cth)
 - *Federal Circuit and Family Court of Australia Act 2021* (Cth)
 - Federal Circuit and Family Court of Australia (Family Law) Rules 2021 (Cth), Chapter 7
- Evidence - Opinion - Expert Evidence - Admissibility / Basis of Opinion / Valuation
- Evidence - Opinion - Expert Evidence - Single Experts / Other Experts
- Fresh evidence on appeal
- Evidence in state court proceedings, refer to applicable Evidence Act in the relevant State
- Unlawfully or Improperly obtained Evidence; s138 *Evidence Act*
- Recordings without consent
- Self-incrimination and certificates under s 128 *Evidence Act 1995*.
- Leave to appeal required from a declaration

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11. Enforcement

- Part VII Division 13 A – Children Contraventions of child-related orders.
- *Federal Circuit and Family Court of Australia (Family Law) Rules 2021 (Cth)*:
Chapter 11 – Financial Orders
Rules 1.33-1.34 and Rules 10.26-10.27
Part XIII – Enforcement of decrees

12. Costs

- Lawyer-client costs governed by state or territory in which the lawyer practices e.g. Legal Profession Uniform Law Application Act 2014 or Legal Profession Act of the relevant state for cases commenced after 1 July 2008 and in other limited circumstances
- *Federal Circuit and Family Court of Australia (Family Law) Rules 2021 ruling 21.09*
Federal Circuit and Family Court of Australia (Family Law) Rules 2021
Chapter 12 and Practice Directions.
- Requirement to provide cost notices prior to each Court event.
- Costs Orders – section 117
- Reasons for the making of Costs Orders
- Contracting out with client
- Conduct or parties in relation to proceedings as a litigant and conduct as parent
- Party-party costs are ordered by the Court where appropriate:
 - Section 117
 - *Federal Circuit and Family Court of Australia (Division 2) (Family Law) Rules 2001, rule 21.09*
Federal Circuit and Family Court of Australia (Family Law) Rules 2021
Chapter 19.
- Interim costs: Section 117C offers
- 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 a pre-action offer to settle
- Set aside financial agreements
- Costs in arbitration
- Costs orders against legal representatives: Executors of the deceased estate are Ordered to pay costs

13. Reviews/Appeals/Transfers

- Appeals of discretionary decisions: *House v The King* [1936] HCA 40
- Appeals from Court of Summary Jurisdiction:
 - Federal Circuit Court / Magistrates Court of Western Australia appeals and need for leave to appeal generally: section 94AAA and section 94AA *Family Law Act*:
Section 47A *Family Law Act* 1975 (Cth);
Part 2, Division 2, Division 4, Part 5, *Federal Circuit and Family Court of Australia Act* 2021(Cth)
- Appeals from Interlocutory Decree:
- Leave to appeal (and when required).
- Appeals to the Full Court: Chapter 22 *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*
- Appeals to the Full Court: Part 13.3 *Federal Circuit and Family Court of Australia (Family Law) Rules 2021 (Cth)*
- Fresh evidence:
- Stays:
 - Pending Appeal: Rules, r 22.11, *Federal Circuit and Family Court of Australia Act* 2021(Cth)section 13.12
 - pending a review: Rules, r 18.09 *Federal Circuit and Family Court of Australia Act* 2021(Cth)Chapter 14
- Summary dismissal
- relevant to the issue of:
fresh evidence

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- nature of appeals generally
- relevant to the issue of:
 - Procedure
 - Application in an Appeal for extension of time to serve Notice of Appeal
 - Slip Rule
- Appeal Pathway from the Magistrates Court of WA to the Court of Appeal (WA)
- McKenzie Friend.
- Appeal Family Court of Western Australia: Full Court considered powers of FCWA
- Senior Judicial Registrar Reviews

14. Inherent, Associated and Accrued Jurisdiction

- Associated jurisdiction
- Section 33 *Family Law Act* 1975 (Cth)
- Inherent jurisdiction:
 - Slip Rule
 - Cross-vesting:
- Accrued jurisdiction:
 - Limited statutory Jurisdiction
 - Corporations Act 2001 (Cth)

15. 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, Allegations of child abuse and family violence
- Part VII, Division 11, Family Violence
- 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
- Part VII, Division DA, Orders for information, etc. in child-related proceedings.
- 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* 2018 (Cth) – Act 97 of 2018
 - *Family Law Amendment (Family Violence and Cross-Examination of Parties) Act* 2018 (Cth) – Act 159 of 2018 (commences 11 March 2019).
- National Domestic and Family Violence Bench Book, (June 2017) Australasian Institute of Judicial Administration, online at <http://www.dfvbenchbook.aija.org.au>
- Royal Commission into Family Violence (Victoria), (2016), Summary and Recommendations Volume, see: <http://www.rcfv.com.au/ReportRecommendations>
- Not Now, Not Ever – Putting an End to Domestic and Family Violence in Queensland, Special Task Force on Domestic and Family Violence in Queensland, see: <https://www.justice.qld.gov.au/initiatives/end-domesticfamily-violence/about/not-now-not-ever-report>
- State Family Violence Acts

16. Individual State Jurisdictions

- Domestic/Family violence Family Violence Orders – s68Q FLA
- Children
- Surrogacy Legislation – Assisted Reproductive Treatment Act 2008 (Vic)
- Status of Children Act 1974 (Vic)
- Medical procedures
- Professional responsibilities and obligations

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- Child Welfare Laws s69ZK FLA

17. Court Processes

- Central Practice Direction 2021 “CPD”
- Core Principles, Item 3 CPD overarching purpose of family law practice – Division 4 “Case Management” sections 67 & 68 Federal Circuit and Family Court of Australia Act 2021 (Cth)
- Allocation between divisions of the Federal Circuit and Family Court of Australia item 4.9-4.13 CPD
- Case Management Pathway
- Steps to include:
 - Interim hearings
 - Conciliation conferences
 - Trials
 - Central Practice Direction
 - Case Management Pathway
 - Anticipated length of time
 - Likely costs (financial or otherwise)
- Dispute Resolution: Conciliation Conferences (Court based); Mediations (non-court based); Dispute Resolution Conferences (Court Based); Family Dispute Resolution (Non-Court Based) s13C FLA
- Circuits and Specialist Lists
- The Lighthouse Project
- Evatt List
- Priority Property Pool under \$500,000
- Magellan List
- Cost Disclosure Obligations Part 12.3 of the Rules
- Offers to settle Part 4.2 of the Rules
- Applying for an order for interim costs
- Order for Costs Part 12.5 Rules
- Applying for interim or procedural order without notice Part 5.2 rules
- Appointment of litigation guardian Part 3.5 Rules
- Arbitration

18. Alternative to Court Processes

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

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

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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.
- Bankruptcy Act 1966 (Cth).
- Child Support (Assessment) Act 1989 (Cth).
- Child Support (Registration and Collection) Act 1988 (Cth).
- Child Support (Assessment) Regulations 2018 (Cth).
- Child Support (Registration and Collection) Regulations 2018 (Cth).
- Corporations Act 2001 (Cth).
- Evidence Act 1995 (Cth).
- Family Law Act 1975 (Cth).
- Family Law Amendment (Western Australia De Facto Superannuation Splitting and Bankruptcy) Act 2020 (Cth).
- Federal Circuit and Family Court of Australia Act 2021 (Cth).
- Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021(Cth).
- Marriage Act 1961 (Cth).
- Trans-Tasman Proceedings Act 2010 (Cth).
- Superannuation Industry (Supervision) Regulations 1994 (Cth).
- Federal Circuit and Family Court of Australia (Family Law) Rules 2021 (Cth).
- Federal Circuit and Family Court of Australia (Division 2) (Family Law) Rules 2021 (Cth).
- Federal Circuit and Family Court of Australia (Division 2) (Bankruptcy) Rules 2021 (Cth).
- Family Law (Child Protection Convention) Regulations 2003 (Cth).
- Family Law (Child Abduction Convention) Regulations 1986 (Cth).
- Family Law (Family Dispute Resolution Practitioners) Regulations 2008 (Cth).
- The Hague Convention on the Civil Aspects of International Child Abduction, 25 October 1980.

Related Procedures Family Court

- Central Practice Direction: Family Law Case Management
- Family Law Practice Direction – Corporations Act proceedings
- Family Law Practice Direction – Medical procedure proceedings
- Family Law Practice Direction – National Contravention List
- Family Law Practice Direction – National COVID-19 List
- Family Law Practice Direction – Nullity and validity of marriage proceedings
- Family Law Practice Direction – Parenting proceedings
- Family Law Practice Direction – Passport proceedings
- Family Law Practice Direction – Priority Property Pools under \$500,000
- Family Law Practice Direction – Surrogacy proceedings
- Family Law Practice Direction – Trans-Tasman Proceedings Act proceedings
- Family Law Practice Direction – Appeals
- Family Law Practice Direction – Arbitration
- Family Law Practice Direction – Bankruptcy Act proceedings
- Family Law Practice Direction – Child support and child maintenance proceedings
- Family Law Practice Direction – Critical Incident List
- Family Law Practice Direction – Divorce proceedings
- Family Law Practice Direction – Financial proceedings
- Family Law Practice Direction – Lighthouse Project and Evatt List
- Family Law Practice Direction – Major Complex Financial Proceedings List
- FCFCOA Practice Direction – Revocation of Practice Directions and Information Notices

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- FCFCOA Practice Direction – Transitional Arrangements
- FCFCOA Special Measures Information Notice - COVID-19 Electronic Subpoena Inspection
- FCFCOA Special Measures Information Notice – Hearing protocol
- FCFCOA Information Notice: Applications for Review
- FCFCOA Information Notice: Court Record
- FCFCOA Information Notice: Subpoenas and the Department of Fairness Families and Housing Victoria

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)

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*

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- Family Court Rules 2021
- Family Violence Legislation Reform Act 2019 (WA) – Passed July 2020
- Interpretation Act 1984 (WA)
- Limitation Act 2005 (WA)
- Property Law Act 1969 (WA)
- Restraining Orders Act 1997
- Residential Tenancies Legislation Amendment (Family Violence) Act 2018 → Assent Feb 2019
- Surrogacy Act 2008
- Surveillance Devices Act 1998 (WA)
- Transfer of Land Act 1893 (WA)
- Wills Act 1970 (WA)

Related Guidelines

- Australian Solicitors Conduct Rules and relevant legislation in states and territories
- Ethical Guidelines
- Legal Profession Uniform Law Australian Conduct Rules 2015
- Federal Circuit and Family Court of Australia, Family Violence Best Practice Principles (2016)