

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

---

*(As read a first time)*

**FAMILY LAW AMENDMENT BILL 1989**

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SCHEDULE

AMENDMENTS TO CHANGE REFERENCES IN PART XIVA FROM  
“ATTORNEY-GENERAL” TO “MINISTER”

1987-88-89

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
THE SENATE

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*(Presented and read a first time, 16 June 1989)*

(MINISTER FOR JUSTICE, SENATOR TATE)

**A BILL**

FOR

**An Act to amend the *Family Law Act 1975* and for related purposes**

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

**Short title etc.**

5     **1.** (1) This Act may be cited as the *Family Law Amendment Act 1989*.

      (2) In this Act, "Principal Act" means the *Family Law Act 1975*<sup>1</sup>.

**Interpretation**

10     **2.** Section 4 of the Principal Act is amended by omitting "or of the Australian Capital Territory" from the definition of "Commonwealth instrumentality" in subsection (1).

**Conciliation**

**3.** Section 14 of the Principal Act is amended:

      (a) by omitting from subsections (1), (2), (2A) and (3) "or magistrate" (wherever occurring);

(b) by adding at the end the following subsection:

“(6) In this section:

‘Judge’ includes a magistrate, Judicial Registrar or Registrar.”.

### Interpretation

4. Section 60 of the Principal Act is amended by omitting paragraph (c) of the definition of “child agreement” in subsection (1) and substituting the following paragraph:

“(c) that makes provision in relation to either or both of the following:

(i) child welfare matters in relation to the child;

(ii) the maintenance of the child;

(whether or not it also makes provision in relation to other matters);”.

### Powers of court in custodial proceedings

5. Section 64 of the Principal Act is amended:

(a) by inserting after subsection (10C) the following subsections:

“(10D) A person shall not prevent or hinder the execution of a warrant issued under this section.

“(10E) If a court having jurisdiction under this Part is satisfied that a person has intentionally, and without reasonable excuse, contravened subsection (10D), the court may:

(a) order the person to pay a fine not exceeding \$1,000; .

(b) order the person to enter into a recognizance (with or without surety or security) on conditions specified by the court; or

(c) order the person to be imprisoned until he or she enters into a recognizance (with or without surety or security) on conditions specified by the court, or until the person has been imprisoned for 3 months, whichever happens first.

“(10F) Where a court makes an order under subsection (10E), the court may make such other orders as the court considers necessary to ensure the person does not again prevent or hinder the execution of the warrant referred to in subsection (10D).”;

(b) by omitting subsections (11A) and (11B) and substituting the following subsection:

“(11A) Where the child in relation to whom a warrant under subsection (9) or (10) has been issued is delivered to the person entitled to custody of, or access to, the child, that person shall, as soon as practicable after the delivery of the child, notify:

(a) the Registrar of the court that issued the warrant; and

(b) if an order under subsection 64A (1) or (4) has been made on an application by that person—the person to whom the order was directed;

of the fact that the child has been delivered to the person.”.

6. After section 64 of the Principal Act the following section is inserted:

**Power of court to require provision of information**

“64A. (1) Where:

- (a) a warrant has been issued under subsection 64 (9) or (10) in relation to a child; and
- (b) the court that issued the warrant, or another court exercising jurisdiction under this Part, is satisfied that a person (in this subsection called the ‘relevant person’) is likely to have or obtain information relating to:

- (i) the child; or

- (ii) another person who the court has reasonable cause to believe has possession of the child;

the court may, subject to this section, order the relevant person to provide, to the Registrar of the court, such information relating to the whereabouts of the child, or the other person, as the case may be, as the relevant person has or obtains.

“(2) An order under subsection (1) addressed to a person who holds a position in or in relation to a Commonwealth body does not apply to information that the person has or obtains because of holding that position.

“(3) If a court, under subsection (1), orders a person to provide information that the person has or obtains, then:

- (a) the order operates for 12 months; and

- (b) the person shall provide the information as soon as practicable, or as soon as practicable after he or she obtains it, as the case requires.

“(4) Where:

- (a) a warrant has been issued under subsection 64 (9) or (10) in relation to a child; and

- (b) the court that issued the warrant, or another court exercising jurisdiction under this Part, is satisfied that information relating to:

- (i) the child; or

- (ii) a person who the court has reasonable cause to believe has possession of the child;

is likely to be contained in, or to come into, the records of a Department or a Commonwealth instrumentality;

the court may, subject to this section, order the Secretary to the Department, or an appropriate authority of the Commonwealth instrumentality, as the case may be, to provide, to the Registrar of the court, such information relating to the whereabouts of the child, or the person, as the case may be, as is contained in or comes into the records of the Department or instrumentality.

“(5) A court shall not, under subsection (4), order a person to provide information unless a copy of the application for the order has been served on him or her in accordance with the Rules of Court.

“(6) If an application for an order under subsection (4) relates to more than one Commonwealth body, the court shall not make the order against more than one of those bodies unless the court considers that, because of exceptional circumstances, the order should be made against more than one of those bodies.

“(7) If a court considers, in relation to a Commonwealth body in relation to which it proposes to make an order under subsection (4), that:

- (a) the information sought by the order is only likely to be contained in records of the body of a particular kind; and
- (b) to apply the order to all of the records of the body would place an unreasonable burden on the body’s resources;

the court may state in the order that the order applies only to the body’s records of that kind.

“(8) If a court, under subsection (4), orders a person to provide information that is contained in, or that comes into, the records of a Commonwealth body, then:

- (a) the order operates for 12 months;
- (b) subject to paragraph (b), the person shall provide the information as soon as practicable, or as soon as practicable after it comes into the records of the Commonwealth body, as the case requires; and
- (c) the person is not obliged to cause the records of the Commonwealth body to be searched for that information more often than every 3 months.

“(9) The person to whom an order is addressed shall comply with the order in spite of anything contained in any other law.

“(10) Information provided to the Registrar of a court pursuant to this section shall not be divulged by any person who has obtained the information because of the provision of the information to the Registrar except:

- (a) to the Registrar of another court;
- (b) to a person to whom the warrant referred to in paragraph (1) (a) or (4) (a) is addressed; or
- (c) with leave of the court, to another person.

“(11) In this section:

‘appropriate authority’, in relation to a Commonwealth instrumentality, means a person who holds an office or position in, or in relation to, the instrumentality;

‘Commonwealth body’ means a Department or a Commonwealth instrumentality;

‘Department’ means a Department of State of the Commonwealth;

'Registrar' means:

- (a) in relation to the Family Court, or the Family Court of Western Australia—the Registrar, or a Deputy Registrar, of that court; and
- (b) in relation to any other court—the principal officer of that court.”.

**Child welfare provisions of registered child agreements**

7. Section 66ZD of the Principal Act is amended:

- (a) by inserting in subsection (1) “that makes provision in relation to child welfare matters” after “child agreement”;
- (b) by omitting from subsection (1) “child welfare matters dealt with in the agreement” and substituting “those matters”.

8. After section 66ZD of the Principal Act the following section is inserted:

**Child maintenance provisions of registered child agreements—where not enforceable as maintenance agreements**

“66ZDA. (1) This section applies where:

- (a) a child agreement is registered under section 66ZC;
- (b) the agreement makes provision relating to the maintenance of the child; and
- (c) the agreement is not a maintenance agreement or, if it is a maintenance agreement, the child is not a child of the relevant marriage.

“(2) Section 66N applies in relation to the variation of the child agreement, in so far as the agreement makes provision in relation to the maintenance of the child, as if the agreement were an order made by consent under this Part by the court in which the agreement is registered.

“(3) Unless the agreement otherwise provides, the provisions of the agreement relating to the maintenance of the child (other than any provisions providing for the payment by way of maintenance of a periodic sum) continue to operate in spite of the death of a party to the agreement and operate in favour of, and are binding on, the legal personal representative of that party.

“(4) If the agreement so provides, any provision of the agreement relating to the maintenance of the child that provides for the payment by way of maintenance of a periodic sum continues to operate in spite of the death of any party to the agreement who is liable to make payments pursuant to that provision and is binding on the legal personal representative of that party but, in spite of any provision of the agreement, does not continue to operate after the death of the person who is entitled to receive those payments.”.

**Heading to Division 12 of Part VII**

9. The heading to Division 12 of Part VII of the Principal Act is omitted and the following heading is substituted:

***“Division 12—Obligations created by custody and access orders”.***

**Interfering with child subject to custody order**

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10. Section 70 of the Principal Act is amended:

- (a) by inserting in subsection (3) “or section 112AD” after “this Part”;
- (b) by omitting subsections (5), (6), (7) and (8).

11. After section 70 of the Principal Act the following section is inserted:

**Warrants for arrest of persons who contravene custody or access orders**

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“70AA. (1) This section applies where:

- (a) a court having jurisdiction under this Part is satisfied, on application by a person who has been granted custody of, or access to, a child by an order under this Part or section 112AD, that there are reasonable grounds for believing that another person (in this section called the ‘alleged offender’) has contravened subsection 70 (1), (2) or (3) in relation to the order; 15
- (b) there is an application before the court for the alleged offender to be dealt with under section 112AD for the contravention; and
- (c) the court is satisfied that the issue of a warrant is necessary to ensure that the alleged offender will attend before a court to be dealt with under section 112AD for the contravention. 20

“(2) The court may issue a warrant authorising a person to whom it is addressed to arrest the alleged offender.

“(3) Where a person (in this subsection called the ‘arresting person’) arrests the alleged offender pursuant to a warrant issued under subsection (2): 25

(a) the arresting person shall:

- (i) ensure that the alleged offender is brought before a court having jurisdiction under this Part before the end of the relevant period; and 30
- (ii) take all reasonable steps to ensure that, before the person is so brought before a court, the person on whose application the warrant was issued is aware:

(A) that the alleged offender has been arrested; and 35

(B) of the court before which the alleged offender is to be brought; and

- (b) the alleged offender shall not be released before the end of the relevant period except pursuant to an order of a court having jurisdiction under this Part; 40



but nothing in this subsection authorises the keeping of the alleged offender in custody after the end of the relevant period.

“(4) Where:

- (a) the alleged offender is brought before a court under subsection (3); and
- (b) there is an application before that court for the alleged offender to be dealt with under section 112AD for the contravention referred to in paragraph (1) (a);

the court shall, without delay, proceed to hear and determine the application.

“(5) Where:

- (a) the alleged offender is brought before a court under subsection (3);
- (b) there is no application before that court for the alleged offender to be dealt with under section 112AD for the contravention referred to in paragraph (1) (a); and
- (c) the court is aware that there is an application before another court for the alleged offender to be dealt with under section 112AD for that contravention;

the court shall, without delay:

- (d) order that the alleged offender is to be released from custody on his or her entering into a recognizance (with or without surety or security) that he or she will attend before the other court on a date, at a time and at a place specified by the court; or
- (e) order the arresting person to arrange for the alleged offender to be brought before the other court on such date and at such time as the court specifies, being a date and time such that the alleged offender is to be brought before the other court as soon as practicable, and in any event not more than 72 hours, after the making of the order.

“(6) Where:

- (a) the alleged offender is brought before a court under subsection (3);
- (b) there is no application before that court for the alleged offender to be dealt with under section 112AD for the contravention referred to in paragraph (1) (a); and
- (c) so far as the court is aware, there is no application before any other court for the alleged offender to be dealt with under section 112AD for that contravention;

the court shall, without delay, order the release of the alleged offender.

“(7) If a court makes an order under paragraph (5) (e) for the alleged offender to be brought before another court, the following provisions have effect:

- (a) subject to paragraph (c), the alleged offender may be kept in custody until he or she is brought before the other court;

(b) if the alleged offender is brought before the other court as required by the order, the other court shall, without delay, proceed to hear and determine the application referred to in paragraph (5) (c);

(c) if the alleged offender is not brought before the other court as required by the order, he or she shall be released without delay. 5

“(8) Where a court hearing an application pursuant to subsection (4) or paragraph (7) (b) adjourns the hearing, the court shall:

(a) order the alleged offender to be kept in such custody as the court considers appropriate during the adjournment; or

(b) order that the alleged offender is to be released from custody, either on his or her entering into a recognizance (with or without surety or security) that he or she will attend before the court on the resumption of the hearing or otherwise. 10

“(9) Nothing in subsection (8) authorises the alleged offender being kept in custody during an adjournment of proceedings that: 15

(a) is expressed to be for a period of more than 24 hours; or

(b) continues for more than 24 hours.

“(10) A warrant issued under subsection (2) stops being in force:

(a) if a date, being a date not later than 6 months after the issue of the warrant, is specified in the warrant as the date on which it stops being in force—on that date; or 20

(b) if no date is specified as mentioned in paragraph (a)—6 months after the issue of the warrant.

“(11) In this section:

‘relevant period’, in relation to the arrest of a person, means: 25

(a) where paragraph (b) does not apply—the period starting when the person is arrested and ending 24 hours later; or

(b) where a Sunday or public holiday starts within 24 hours after the person is arrested—the period starting when the person is arrested and ending 48 hours later.”. 30

## Injunctions

12. Section 70C of the Principal Act is amended by omitting subsection (4).

13. Section 70D of the Principal Act is repealed and the following section is substituted: 35

## Powers of arrest

“70D. (1) Where:

(a) an injunction is in force under section 70C for the personal protection of a person; and

(b) a police officer believes, on reasonable grounds, that the person against whom the injunction is directed (in this section called the 40

‘respondent’) has, since the injunction was granted, breached the injunction by causing, or threatening to cause, bodily harm to the person referred to in paragraph (a);

the police officer may arrest the respondent without warrant.

5 “(2) Subsections 114AA (3), (4), (5) and (7) apply in relation to a person arrested under this section as if:

(a) the person had been arrested under subsection 114AA (1) because he or she was believed to have breached an injunction that had been granted under section 114; and

10 (b) the person on whose application the injunction was granted under section 70C were the person on whose application the injunction under section 114 had been granted.”.

### **Persons not to be imprisoned for failure to comply with certain orders**

15 **14.** Section 107 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

“(2) This section does not affect the operation of Division 2 or 3 of Part XIII.A.”.

### **Repeal of section 108**

**15.** Section 108 of the Principal Act is repealed.

### **20 Overseas enforcement of maintenance orders etc.**

**16.** Section 110 of the Principal Act is amended:

(a) by inserting “or determination (however described)” after “an order” (first occurring) in paragraphs (a), (b), (c) and (d) of the definition of “maintenance order” in subsection (1);

25 (b) by inserting “or determination” after “an order” (second occurring) in paragraphs (b), (c) and (d) of the definition of “maintenance order” in subsection (1);

30 (c) by omitting “the order” from paragraph (d) of the definition of “maintenance order” in subsection (1) and substituting “the order or determination”;

(d) by omitting paragraph (e) of the definition of “maintenance order” in subsection (1) and substituting the following paragraph:

35 “(e) to the extent provided by the regulations, an order made under section 66Z, or an order or determination (however described) that deals with matters of a kind in relation to which orders may be made under that section;”;

(e) by inserting in paragraph (2) (a) “or authorities” after “made by courts”;

40 (f) by omitting from paragraph (2) (aa) “or of a Territory” and substituting “or Territory, or of another country or a part of another country.”;

- (g) by inserting in subparagraph (2) (aa) (i) “or authority” after “made by a court”;
- (h) by inserting after paragraph (2) (aa) the following paragraph:
  - “(ab) the institution and prosecution, by an authority entitled to moneys payable under a maintenance order, in the authority’s discretion, of proceedings for the enforcement of that maintenance order by a court having jurisdiction under this Act;”.

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17. After Part XIII of the Principal Act the following Part is inserted:

**“PART XIII—SANCTIONS FOR FAILURE TO COMPLY WITH ORDERS AND CONTEMPT OF COURT**

10

***“Division 1—Interpretation***

**Interpretation**

“112AA. In this Part:

‘access order’ means an order under this Act requiring a person to be given access to a child;

15

‘applied provisions’, in relation to a sentence passed or an order made pursuant to paragraph 112AD (2) (d), means the provisions of the laws of a State or Territory, as modified by regulations under subsection 112AG (5), that, because of regulations under that subsection, apply in relation to the sentence or order;

20

‘court enforceable agreement’ means:

- (a) a child agreement registered in a court under section 66ZC;
- (b) so much of a maintenance agreement as a court has, pursuant to paragraph 87 (11) (c), ordered may be enforced as if it were an order of the court; or
- (c) a maintenance agreement registered in a court under subsection 86 (1), or deemed, by subsection 87 (6), to be registered in a court;

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‘order under this Act’, in relation to a court, means:

30

- (a) an order (however described) made by the court under this Act;
- (b) an injunction granted by the court under section 70C or 114;
- (c) an undertaking given to the court in proceedings under this Act and accepted by the court;
- (d) a court enforceable agreement; or
- (e) a recognizance:

35

- (i) entered into pursuant to an order of a court under this Act; or

- (ii) entered into for the purposes of subsection 112AE (5);

40

and includes an order, injunction, agreement or recognizance that:

- (f) is an order under this Act in relation to another court because of paragraph (a), (b), (d) or (e); and
- (g) has been registered in the first-mentioned court.

**Meaning of “contravene an order”**

“112AB. (1) A person shall be taken for the purposes of this Part to have contravened an order under this Act if, and only if:

- (a) where the person is bound by the order—he or she has:
  - (i) intentionally failed to comply with the order; or
  - (ii) made no reasonable attempt to comply with the order; or
- (b) in any other case—he or she has:
  - (i) intentionally prevented compliance with the order by a person who is bound by it; or
  - (ii) aided or abetted a contravention of the order by a person who is bound by it.

“(2) For the purposes of this Part:

- (a) an order under Part VII granting a person custody of a child shall be taken to include a requirement that persons act in accordance with subsections 70 (1) and (2) in relation to the order; and
- (b) an order under Part VII or section 112AD providing for a person to have access to a child shall be taken to include a requirement that persons act in accordance with subsection 70 (3) in relation to the order.

**Meaning of “reasonable excuse for contravening an order”**

“112AC. (1) The circumstances in which a person may be taken to have had, for the purposes of this Part, a reasonable excuse for contravening an order under this Act include, but are not limited to, the circumstances set out in subsections (2) and (3).

“(2) A person (in this subsection called the ‘respondent’) shall be taken to have had a reasonable excuse for contravening an order under this Act if:

- (a) the respondent contravened the order because, or substantially because, he or she did not, at the time of the contravention, understand the obligations imposed by the order on the person who was bound by it; and
- (b) the court is satisfied that the respondent ought to be excused in respect of the contravention.

“(3) A person (in this subsection called the ‘respondent’) shall be taken to have had a reasonable excuse for contravening an order under this Act where:

- (a) the order required a person to be given custody of, or access to, a child; and

- (b) the contravention resulted in that person being deprived of that custody or access;

if:

- (c) the respondent believed on reasonable grounds that depriving that person of the custody or access provided for by the order was necessary to protect the health or safety of a person; and 5
- (d) the person was not deprived of custody of, or access to, the child for longer than was necessary to protect the health or safety of the person last-mentioned in paragraph (c).

***“Division 2—Sanctions for failure to comply with orders***

10

**Sanctions for failure to comply with orders**

“112AD. (1) Where a court having jurisdiction under this Act is satisfied that a person has, without reasonable excuse, contravened an order under this Act, the court may, subject to subsection (5), by order, take such action or actions of the kind specified in subsection (2) as the court thinks is appropriate. 15

“(2) The court may:

- (a) impose a sentence of imprisonment on the person in accordance with section 112AE;
- (b) fine the person not more than: 20
- (i) for a natural person—\$2,000; or
- (ii) for a body corporate—\$10,000;
- (c) require the person to enter into a recognizance in accordance with section 112AF;
- (d) impose a sentence on the person, or make an order directed to the person, in accordance with section 112AG; 25
- (e) order the sequestration of some or all of the person’s property;
- (f) order the person to deliver a document to the Registrar; or
- (g) order the person to give another person access to a child in accordance with section 112AJ. 30

“(3) An order under subsection (1) may be expressed to take effect immediately, or at the end of a specified period or on the occurrence of a specified event.

“(4) Where a court makes an order under subsection (1), the court may make such other orders as the court considers necessary to ensure compliance with the order that was contravened. 35

“(5) A court shall not make an order (other than an order until further order or an order made with the consent of all the parties to the proceedings) under subsection (1) in relation to a contravention of an access order unless:

- (a) the parties to the proceedings for the order have already attended upon a court counsellor, or a welfare officer, for counselling in relation to the contravention; or 40

- (b) the court is satisfied that it is appropriate to make the order even though the parties to the proceedings have not attended upon a court counsellor, or a welfare officer, for counselling in relation to the contravention.

**5 Sentences of imprisonment**

“112AE. (1) A sentence of imprisonment imposed on a person pursuant to paragraph 112AD (2) (a) shall be expressed to be:

(a) for a specified period of 12 months or less; or

(b) for a period ending when the person:

10 (i) complies with the order concerned; or

(ii) has been imprisoned pursuant to the sentence for 12 months or such lesser period as is specified by the court;

whichever happens first.

15 “(2) A court shall not sentence a person to imprisonment pursuant to paragraph 112AD (2) (a) unless the court is satisfied that, in all the circumstances of the case, it would not be appropriate for the court to deal with the contravention pursuant to any of the other paragraphs of subsection 112AD (2).

20 “(3) If a court sentences a person to imprisonment pursuant to paragraph 112AD (2) (a), the court shall:

(a) state the reasons why it is satisfied as mentioned in subsection (2); and

(b) cause those reasons to be entered in the records of the court.

25 “(4) The failure of a court to comply with subsection (3) does not invalidate a sentence.

30 “(5) A court, when sentencing a person to imprisonment pursuant to paragraph 112AD (2) (a), may, if it considers it appropriate to do so, direct that the person be released upon the person entering into a recognizance described in subsection (6), either immediately or after he or she has served a specified part of the term of imprisonment.

“(6) A recognizance for the purposes of subsection (5) is a recognizance (with or without surety or security) that the person will be of good behaviour for a specified period of up to 2 years.

35 “(7) Without limiting the circumstances in which a court may discharge an order under section 112AK, a court that has sentenced a person to imprisonment for a period expressed as provided by paragraph (1) (b) may order the release of the person if it is satisfied that the person will, if he or she is released, comply with the order concerned.

**Recognizances**

40 “112AF. (1) This section provides for recognizances that a court may require a person to enter into pursuant to paragraph 112AD (2) (c).

“(2) A recognizance shall be for a specified period of up to 2 years.

“(3) A recognizance may be:

- (a) with or without surety; and
- (b) with or without security.

“(4) The conditions that may be imposed on a person by a recognizance include, but are not limited to, conditions of the following kinds: 5

- (a) a condition requiring the person to attend upon a court counsellor, or a welfare officer, for counselling;
- (b) a condition requiring the person to be of good behaviour.

“(5) Where a court proposes to require a person to enter into a recognizance it shall, before making the requirement, explain or cause to be explained to the person, in language likely to be readily understood by the person: 10

- (a) the purpose and effect of the proposed requirement; and
- (b) the consequences that may follow if the person fails:
  - (i) to enter into the recognizance; or 15
  - (ii) having entered into the recognizance—to act in accordance with the recognizance.

#### **Additional sentencing alternatives**

“112AG. (1) Subject to this section, where:

- (a) under the law of a participating State or a participating Territory, a court is empowered (whether generally or in particular cases) to impose a sentence or make an order of a kind to which subsection (3) applies in respect of a person convicted of an offence against the law of the State or Territory; and 20
  - (b) an arrangement under section 112AN in respect of the State or Territory makes provision for and in relation to the carrying out of sentences imposed, or orders made, of that kind under this Division; 25
- a court exercising jurisdiction in the State or Territory may, pursuant to paragraph 112AD (2) (d), impose a sentence or make an order of that kind.

“(2) A sentence imposed on a person, or an order directed to a person, pursuant to paragraph 112AD (2) (d): 30

- (a) shall be such that the total number of hours during which the sentence or order regulates the conduct of the person does not exceed the maximum period in relation to the State or Territory in which the sentence is imposed or the order is made; and 35
- (b) ceases to have effect 2 years after it was made, or after such lesser period as is specified in the order.

“(3) This subsection applies to sentences or orders of the following kinds:

- (a) a sentence or order known as: 40
  - (i) a community service order;
  - (ii) a work order;



- (iii) a sentence of periodic detention;
- (iv) an attendance centre order;
- (v) a sentence of weekend detention;
- (vi) an attendance order; or
- 5 (vii) a community based order;
- (b) a sentence or order that is similar to a sentence or order referred to in paragraph (a);
- (c) a sentence or order prescribed for the purposes of this subsection.

10 “(4) Where a court proposes to impose a sentence on a person, or make an order directed to a person, pursuant to paragraph 112AD (2) (d), it shall, before doing so, explain or cause to be explained to the person, in language likely to be readily understood by the person:

- (a) the purpose and effect of the proposed sentence or order;
- 15 (b) the consequences that may follow if the person fails to comply with the proposed sentence or order or with any requirements made in relation to the proposed sentence or order by or under the applied provisions; and
- (c) if the proposed sentence or order may be revoked or varied under the applied provisions—that the proposed sentence or order may be
- 20 so revoked or varied.

“ (5) Where a court exercising jurisdiction under section 112AD in a particular State or Territory imposes a sentence or makes an order pursuant to paragraph 112AD (2) (d), the provisions of the laws of the State or Territory with respect to a sentence or order of that kind that is imposed

25 or made under those laws shall, to the extent provided by the regulations and subject to such modifications as are specified in the regulations, apply in relation to the sentence or order.

“(6) In this section:

30 ‘maximum period’, in relation to a State or Territory, means 500 hours or such lesser period as is prescribed in relation to the State or Territory;

‘participating State’ means a State in relation to which an agreement under section 112AN is in force;

35 ‘participating Territory’ means a Territory in relation to which an agreement under section 112AN is in force.

**Failure to comply with sentence passed, or order made, pursuant to paragraph 112AD (2) (d)**

“112AH. (1) This section applies where a court has, pursuant to paragraph 112AD (2) (d):

- 40 (a) imposed a sentence on a person; or
- (b) made an order directed to a person.

“(2) If an information is laid before a magistrate, whether before or after the end of the period for which the sentence or order is to operate, or

operated, alleging that the person has, without reasonable excuse, failed to comply with the sentence or order, or with any requirements made in relation to the sentence or order by or under the applied provisions, the magistrate may:

- (a) issue a summons directing the person to appear, on a date, at a time and at a place fixed in the summons, before the court; or 5
- (b) if the information is laid on oath and the magistrate thinks that proceedings against the person by summons might not be effective— issue a warrant for the arrest of the person.

“(3) If: 10

- (a) the person is served with a summons issued under subsection (2); and
- (b) the person fails to attend before the court as required by the summons;

the court may, on proof of the service of the summons, issue a warrant for the arrest of the person. 15

“(4) If:

- (a) the person is arrested pursuant to a warrant issued under subsection (2), (3) or (6); and
- (b) the court is not sitting at the time of the arrest; 20

the person shall be brought before a magistrate who may deal with the person under subsection (5).

“(5) The magistrate may:

- (a) order that the person is to be released from custody on his or her entering into a recognizance (with or without surety or security) that he or she will attend before the court on a date, at a time and at a place specified by the magistrate; or 25
- (b) direct that the person be kept in custody in accordance with the warrant.

“(6) If: 30

- (a) on entering into a recognizance, the person is released pursuant to an order made by a magistrate under paragraph (5) (a); and
- (b) the person fails to attend before the court as required by the recognizance;

the court may, on proof of the entering into of the recognizance, issue a warrant for the arrest of the person. 35

“(7) If:

- (a) in accordance with this section, the person is brought before the court; and
- (b) the court (whether or not constituted by the judge or magistrate who imposed the sentence or made the order) is satisfied that the person has, without reasonable excuse, failed to comply with the 40

sentence or order or with any requirements made in relation to the sentence or order by or under the applied provisions;  
the court may take action under subsection (8).

“(8) The court may:

- (a) without prejudice to the continuance of the sentence or order, impose a fine not exceeding \$1,000 on the person; or
- (b) revoke the sentence or order and, subject to subsection (9), deal with the person, for the contravention in respect of which the sentence was passed or the order was made, in any manner in which he or she could have been dealt with for that contravention if:
  - (i) the sentence had not been imposed, or the order had not been made; and
  - (ii) the person was before the court under section 112AD in respect of the contravention.

“(9) In dealing with the person as mentioned in paragraph (8) (b), the court shall, in addition to any other matters that it considers should be taken into account, take into account:

- (a) the fact that the sentence was imposed or the order was made;
- (b) anything done under the sentence or order; and
- (c) any fine imposed, and any other order made, for or in respect of the contravention.

“(10) A warrant issued under subsection (2), (3) or (6) in relation to the person shall authorise:

- (a) the arrest of the person;
- (b) the bringing of the person before the court as soon as practicable after his or her arrest; and
- (c) the detention of the person in custody until he or she is released by order of the court, or in accordance with subsection (5).

### **Compensatory access orders**

“112AJ. The order that may be made by a court pursuant to paragraph 112AD (2) (g) is an order giving a person such access to a child (in addition to access provided for by an access order) as the court considers appropriate, having regard to any deprivation of access resulting from the contravention concerned.

### **Variation and discharge of orders**

“112AK. (1) Subject to this section, an order made under section 112AD may be varied or discharged:

- (a) if the court that made the order is the Family Court—by the Family Court; or
- (b) in any other case—by the court that made the order or the Family Court.

“(2) A variation of an order under section 112AD shall be such that the order, as varied, is an order that could have been made under that section in respect of the contravention in respect of which the first-mentioned order was made.

“(3) If a court discharges an order under section 112AD it may, subject to this Division, make another order under that section in respect of the contravention in respect of which the first-mentioned order was made.

“(4) Where a court varies or discharges an order made under section 112AD, the court may give such directions as to the effect of the variation or discharge as the court considers appropriate.

### **Welfare of child the paramount consideration**

“112AL. In proceedings under this Division in relation to an order under Part VII, or an order made pursuant to paragraph 112AD (2) (g), the court shall regard the welfare of the child concerned as the paramount consideration.

### **Relationship between Division and other laws**

“112AM. (1) This section applies where an act or omission by a person:

- (a) constitutes a contravention of an order under this Act; and
- (b) is also an offence against any law.

“(2) If the person is prosecuted in respect of the offence, a court in which proceedings have been brought under section 112AD in respect of the contravention of the order shall either:

- (a) adjourn those proceedings until the prosecution has been completed; or
- (b) dismiss those proceedings.

“(3) The person may be prosecuted for, and convicted of, the offence.

“(4) Nothing in this section renders the person liable to be punished twice in respect of the same act or omission.

“(5) For the purposes of subsection (4), an order made by a court pursuant to paragraph 112AD (2) (g) shall not be taken to be a punishment.

### **Arrangements with States and Territories for carrying out of sentences and orders**

“112AN. (1) The Governor-General may make arrangements with the relevant authority of a State or a Territory for:

- (a) the exercise of powers, and the performance of functions, by officers of the State or Territory; and

(b) the making available of facilities of the State or Territory; for and in relation to the carrying out of sentences imposed, and orders made, under this Division.

“(2) In this section:

‘relevant authority’ means:

- (a) in relation to a State—the Governor of the State;
- (b) in relation to the Australian Capital Territory—the Chief Minister of the Australian Capital Territory;
- (c) in relation to the Northern Territory—the Administrator of the Northern Territory; and
- (d) in relation to Norfolk Island—the Administrator of Norfolk Island.

**10 Division does not limit operation of section 105**

“112AO. Nothing in this Division is intended to limit the operation of section 105.

***“Division 3—Contempt***

**Contempt**

**15** “112AP. (1) This section applies to a contempt of a court that:

- (a) does not constitute a contravention of an order under this Act; or
- (b) constitutes a contravention of an order under this Act and involves a flagrant challenge to the authority of the court.

**20** “(2) In spite of any other law, a court having jurisdiction under this Act may punish a person for contempt of that court.

“(3) The Rules of Court may provide for practice and procedure as to charging with contempt and the hearing of the charge.

“(4) Where a natural person is in contempt, the court may punish the contempt by committal to prison or fine or both.

**25** “(5) Where a corporation is in contempt, the court may punish the contempt by sequestration or fine or both.

“(6) The court may make an order for:

- (a) punishment on terms;
- (b) suspension of punishment; or
- 30** (c) the giving of security for good behaviour.

“(7) Where a person is committed to prison for a term for contempt, the court may order the person’s discharge before the expiry of that term.”.

**Injunctions**

**35** **18.** Section 114 of the Principal Act is amended by omitting subsections (4), (5) and (6).

**Powers of arrest**

**19.** Section 114AA of the Principal Act is amended:

- (a) by omitting subsections (1) and (2) and substituting the following subsection:

“(1) Where:

- (a) an injunction is in force under section 114 for the personal protection of a person; and
- (b) a police officer believes, on reasonable grounds, that the person against whom the injunction is directed (in this section called the ‘respondent’) has, since the injunction was granted, breached the injunction by causing, or threatening to cause, bodily harm to the person referred to in paragraph (a);  
the police officer may arrest the respondent without warrant.”;
- (b) by omitting from subsection (3) “subsection (2)” and substituting “subsection (1)”;
- (c) by omitting from subparagraph (3) (a) (i) “authorised the arrest” and substituting “granted the injunction”;
- (d) by omitting from subparagraph (3) (a) (ii) “order under subsection (1) was made” and substituting “injunction under section 114 was granted”;
- (e) by omitting from paragraph (3) (b) “authorised the arrest” and substituting “granted the injunction”;
- (f) by omitting from paragraph (4) (a) “in connection with which that court or another court authorised the arrest of the person without warrant”;
- (g) by omitting subsection (6).

### Staff

20. Section 114M of the Principal Act is amended by omitting from paragraph (2) (a) “Public Service Board” and substituting “Public Service Commissioner”.

### Family Law Council

21. (1) Section 115 of the Principal Act is amended by omitting from subsections (4), (6) and (7) “Chairman” and substituting “Chairperson”.

(2) The person who, immediately before the commencement of this Act, held office as Chairman of the Family Law Council continues, subject to the *Family Law Act 1975* as in force after that commencement, to hold office as the Chairperson of the Family Law Council.

### Reparation for certain losses and expenses relating to children

22. Section 117A of the Principal Act is amended:

- (a) by omitting paragraph (1) (a) and substituting the following paragraph:

“(a) a court has found, for the purposes of section 112AD, that a person has, by removing a child from the possession of another person or by refusing or failing to deliver a child to another person, contravened:

- (i) an order under Part VII granting a person custody of the child; or
- (ii) an order under Part VII or section 112AD providing for a person to have access to the child;”;

(b) by omitting paragraph (1) (c) and substituting the following paragraph:

“(c) a court has found, for the purposes of section 112AD, that a person has, by removing a child from the possession of another person or by refusing or failing to deliver a child to another person, contravened an injunction granted, or an order made, under section 114; or”.

#### **Rules of Court**

**23. (1)** Section 123 of the Principal Act is amended by omitting from paragraph (1) (m) “108” and substituting “112AP”.

**(2)** Rules of Court made for the purposes of paragraph 123 (1) (m) of the *Family Law Act 1975* that were in force immediately before the commencement of this Act have effect, on and after that commencement, as if:

- (a) they were made for the purposes of paragraph 123 (1) (m) of that Act as amended by this Act; and
- (b) references in those Rules to section 108 of that Act were instead references to section 112AP of that Act.

#### **Amendments to change references in Part XIVA from “Attorney-General” to “Minister”**

**24.** The Principal Act is further amended as set out in the Schedule.

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**SCHEDULE**

Section 24

**AMENDMENTS TO CHANGE REFERENCES IN PART XIVA FROM  
“ATTORNEY-GENERAL” TO “MINISTER”**

The following provisions of the *Family Law Act 1975* are amended by omitting “Attorney-General” (wherever occurring) and substituting “Minister”:

Paragraph 114B (2) (b)

Subsections 114B (3) and (4)

Section 114G

Paragraphs 114J (2) (b) and (c)

Subsections 114K (1), (2), (3) and (4)

Subsection 114M (1)

Subsections 114MB (1) and (2)

Section 114MC.

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**NOTE**

1. No. 53, 1975, as amended. For previous amendments, see Nos. 63, 95 and 209, 1976; No. 102, 1977; No. 23, 1979; No. 2, 1982; Nos. 67 and 72, 1983; Nos. 63, 72 and 165, 1984; Nos. 65, 166 and 193, 1985; Nos. 76 and 168, 1986; No. 141, 1987; No. 181, 1987 (as amended by No. 8, 1988); and Nos. 8 and 120, 1988.