

Overview

The Family Law Amendment (Family Violence and Other Measures) Bill 2018 was passed by both house of Parliament on 22 August 2018 and received royal assent on 31 August 2018. All amendments commenced on royal assent.

Jurisdiction

The Act makes two significant changes to the exercise of family law jurisdiction by state courts.

First, by an amendment to *Family Law Act 1975* s46, the monetary limit of state courts exercising family law jurisdiction can be raised by regulation.

Currently, where the total property value exceeds \$20,000 and the respondent seeks different orders, the court must transfer the proceeding to the Family Court, Federal Circuit Court or the Supreme Court unless both parties consent to the court hearing and determining the proceeding. Through the introduction of s46A, this \$20,000 limit can be raised by regulations. Magistrates will therefore need to stay informed about any exercise of this regulation power.

This change applies to proceedings instituted after commencement.

Second, new s69GA allows the Commonwealth to prescribe certain courts as courts that have family law jurisdiction. The purpose of this provision is to allow regulations to be made to remove the current uncertainty about whether the Children's Court of Victoria has family law jurisdiction. Again, magistrates will need to keep watch for the relevant regulations.

This change applies to decisions made after commencement, regardless of when the proceedings were instituted.

Interaction between family violence intervention orders and family law orders

Under *Family Law Act 1975* s68R, a court that makes or varies a family violence intervention order has power to revive, vary, discharge or suspend certain family law orders.

Section 68T provides that, where the order or variation is of an interim nature, the revival, variation or suspension ceases to have effect at the earlier of either when the interim order stops being in force or at the end of 21 days starting when the interim order was made.

The Act removed that 21-day time period and replaced it with the earlier of the following three cut-off times:

1. When the interim order stops being in force;
2. At the time specified in the interim order as the time when the revival, variation or suspension ceases to have effect; or
3. At the time the family law order is affected by an order of a court, made under section 68R or otherwise, after the revival, variation or suspension.

The effect of this change is that the automatic 21-day cut-off has been replaced with a power to set when the interim order stops affecting the family law orders. In addition, the effect of the interim order ceases when the family law orders are affected by another court order (whether by the Magistrates' Court or otherwise).

This change applies to all exercises of power under s68R that occur after the commencement date.

Interaction between family law orders and family violence intervention orders

Section 68P requires a court to give certain explanations when the court makes an order under the *Family Law Act 1975* that it knows is inconsistent with an existing family violence intervention order.

The Act introduced amendments to s68P which mean that a court does not need to give these explanations to the child who was protected by the intervention order if it is satisfied that it is in the child's best interests not to receive that explanation.

Summary dismissal provisions

The final significant change is that the Act introduced a broader summary dismissal power than the current s118, which only provides for dismissing proceedings that are "frivolous or vexatious". The Act introduces a new s45A, which provides for summary judgment if satisfied that the other party has no reasonable prospects of success. The "no reasonable prospects of success" test does not require that the proceeding be "hopeless" or "bound to fail" (s45A(3)). Section 45A(4) reintroduces the frivolous or vexatious ground for dismissing proceedings, along with finding the proceeding is an abuse of process.

The new s45A applies to proceedings instituted before and after commencement.