

**FAMILY LAW ACT 1975**

**IN THE FEDERAL CIRCUIT AND  
FAMILY COURT OF AUSTRALIA  
(DIVISION 2)**

**AT NEWCASTLE**

**No. (P)NCC3896/2023**

**BETWEEN**

**STEPHEN CHRISTOPHER COOKE  
(Applicant)**

**AND**

**HEATHER ANNE COOKE  
(Respondent)**

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ORDER 23/7/2024

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TO

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**FILE NO: (P)NCC3896/2023**

**BETWEEN:**

**STEPHEN CHRISTOPHER COOKE (Applicant)**

**AND:**

**HEATHER ANNE COOKE (Respondent)**

**BEFORE:**

**JUDICIAL REGISTRAR FURNER**

**DATE:**

**23 July 2024**

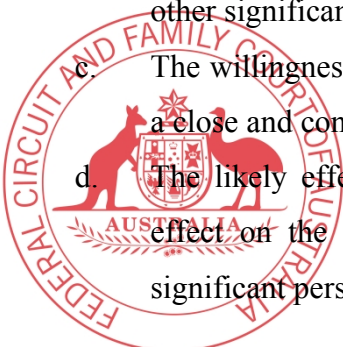
**MADE AT:**

**NEWCASTLE**

**UPON APPLICATION MADE TO THE COURT** by Mr Shepherd, Solicitor for and with the Applicant and Ms Roberts, Solicitor for and with the Respondent, all appearances by way of Microsoft Teams.

**BY CONSENT, THE COURT ORDERS THAT:**

1. That Order 2(f) made on 11 April 2024 be substituted with *“In payment of the remainder to be held jointly in the trust account of the Applicant Husband’s solicitor.”*
2. Pursuant to Rule 7.03 of *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*, Drew Cowen, Consultant Psychologist, be appointed as Single Expert to prepare a Single Expert report in relation to Christian Cooke (born on 20 August 2014) and Joshua Cooke (born on 27 January 2017), such report to address the following:
  - a. Any views expressed by the children and any factors (such as the children’s maturity or level of understanding) that are relevant to the weight that should be given to the children’s views.
  - b. The nature of the children’s relationship with each of the children’s parents and any other significant person.
  - c. The willingness and ability of each of the children’s parents to facilitate and encourage a close and continuing relationship between the children and the other parent.
  - d. The likely effect of any change in the children’s circumstances including the likely effect on the children of any separation from either of their parents or any other significant person.



- e. The capacity of each of the children’s parents and any other significant person to provide for the needs of the children including emotional and intellectual needs.
- f. The maturity, lifestyle and background of the children and of each of the children’s parents and any other characteristics of the children that the expert thinks is relevant.
- g. The attitude to the children and to the responsibilities of parenthood demonstrated by each of the children’s parents.
- h. The impact on the children of any family violence involving the children or a member of the children’s family.
- i. Whether the child is at risk of physical or psychological harm in the household of either parent.
- j. Any other matter that the expert considers relevant to the welfare of the children.

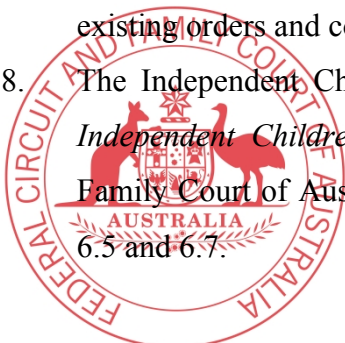
**THE COURT FURTHER ORDERS THAT:**

**Cost of Expert Report**

3. At the discretion of the Senior Judicial Registrar the issue of the payment of the cost of the Single Expert pursuant to Order 2 above may be determined by the Court on 27 September 2024, otherwise it may be determined by the Docket Registrar on 15 October 2024.

**Independent Children’s Lawyer**

4. Pursuant to s 68L(2) of the *Family Law Act 1975*, an Independent Children’s Lawyer be appointed for:
  - a. CHRISTIAN FINN COOKE, born 20 August 2014; and
  - b. JOSHUA FINN COOKE, born 27 January 2017.(“the children”).
5. Legal Aid NSW is requested to make arrangements as soon as possible for appropriate representation for the children and forthwith upon such appointment, the Independent Children’s Lawyer file a *Notice of Address for Service*.
6. The Court advise Legal Aid NSW of this order forthwith.
7. **Within 48 hours** of notification of such appointment the solicitors for the respective parents (or, if unrepresented, then the parent themselves) provide to the Independent Children’s Lawyer copies of all applications and affidavits upon which that party relies together with any existing orders and copies of any relevant reports;
8. The Independent Children’s Lawyer fulfil the requirements set out in ‘*Guidelines for the Independent Children’s Lawyer*’ as published on the website of the Federal Circuit and Family Court of Australia, and in particular carry out the tasks set out in clauses 5, 6.2, 6.3, 6.5 and 6.7.



9. The Independent Children’s Lawyer prepare a minute of the orders they will recommend be made as final orders.
10. Leave is granted for the Child Impact Report released 8 March 2024 to be released to the Independent Children’s Lawyer.
11. Leave is granted to the Independent Children's Lawyer to inspect:
  - a. Subpoena material produced in the matter;
  - b. Material produced by NSW Police on 7 December 2023 in response to the notification made under s.69ZW;
  - c. Material produced by NSW Department of Communities and justice on 7 December 2023 in response to the notification made under s.69ZW; and
  - d. Documents produced by the NSW Department of Communities and Justice in response to the s.248 Order produced on 22 December 2023.
12. Pursuant to Rule 6.27(4) of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*, the Independent Children's Lawyer may issue such subpoenas as they consider necessary for the appropriate conduct of the matter and/or as is reasonably requested by a party.
13. Pursuant to s.67ZBK no party, including the Independent Children’s Lawyer, shall issue a subpoena to the NSW Department of Communities and Justice without the prior leave of the Court.
14. In accordance with Rule 6.01 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*, each party must, within fourteen days of a receipt of such request from the Independent Children’s Lawyer:
  - a. Complete and return to the Independent Children’s Lawyer any questionnaire the Independent Children’s Lawyer may request the party to complete;
  - b. Provide any document to the Independent Children’s Lawyer that the Independent Children’s Lawyer may reasonable request the party to provide that is within the party’s power, possession or control; and,
  - c. Provide to the Independent Children’s Lawyer any particulars that they may request to assist the Independent Children’s Lawyer in attending to the issue of any necessary subpoena, including but not limited to the names, dates of birth and address for service of any third parties, and the names and contact details of any medical practitioners or educational facilities attended upon by the children and/or the parties.



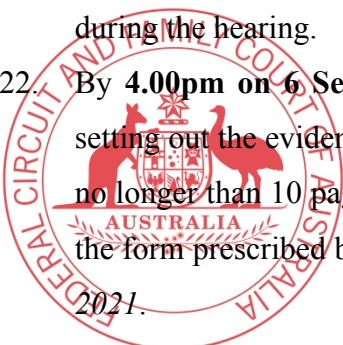
15. In the event that a party fails, neglects or refuses to comply with the requirements under the preceding Order and/or their obligations under Part 6.1 or Part 6.2 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*, the Independent Children’s Lawyer shall be at liberty to apply to relist the matter before the Docket Registrar on short notice to each other party for the purpose of seeking any Orders that may be necessary under Chapter 6 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*.
16. The parties and the Independent Children’s Lawyer are requested to consider the appropriateness of utilising the provisions of Part 8.1 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* for the purpose of narrowing any issues in dispute in the proceedings.

### **Dispute Resolution Conference – Parenting and Property**

17. Pursuant to Section 13C(1)(b) of the *Family Law Act 1975*, the parties and their legal representatives (if any) shall attend:
  - a. Part 1 of the confidential Court-based Family Dispute Resolution (FDR) Conference with a Registrar (as Family Dispute Resolution Practitioner) **on a date to be fixed NOTING THAT** this date may be earlier than the listed Interim Hearing date, with each party to attend separately at times to be advised; and
  - b. Part 2 of the confidential Court-based FDR Conference on a date and at a time to be fixed but **not later than 7 days** after the date referred to in order 14(a).
18. The matter shall be referred to the Executive Director – National Registrar Operations and Practice for allocation and listing of the FDR Conference dates.

### **Future Court Event - Interim Hearing**

19. **The Application in a Proceeding** filed on 19 July 2024 is listed before Senior Judicial Registrar Glendenning at **2:00 on 27 September 2024** for interim defended hearing, that hearing to be of no more than 2 hours duration.
20. Each party will be contacted by the Associate to Senior Judicial Registrar Glendenning with details of the manner in which the hearing will proceed and the necessary information to attend the hearing.
21. Material provided electronically as material a party or the Independent Children’s Lawyer proposes to tender at the hearing will not form part of the evidence until actually tendered during the hearing.
22. **By 4.00pm on 6 September 2024** each party must file and serve a consolidated Affidavit setting out the evidence on which they intend to rely at the interim hearing, that affidavit to be **no longer than 10** pages in length, have no more than 5 annexures and otherwise comply with the form prescribed by the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*.



23. By **4.00pm on 6 September 2024** each party and the Independent Children’s Lawyer (if applicable) must forward to the Chambers of the Senior Judicial Registrar at [Associate.SJRGlendenning@fcfcoa.gov.au](mailto:Associate.SJRGlendenning@fcfcoa.gov.au) in one single document not exceeding 8 pages:
- a. A short chronology of all relevant events;
  - b. A list of authorities to be relied upon;
  - c. A completed Outline of Case Document (Interim Hearing), in the approved form, which shall include:
    - i. A list of all documents to be read and relied upon at the interim hearing;
    - ii. An outline of the issues in dispute;
    - iii. An outline of contentions, to include those relevant facts which are agreed and contested;
    - iv. A minute of orders sought, clearly identifying those orders which may be jointly proposed by the parties, and for this purpose the parties and legal representatives are requested to confer prior to the time for filing referred to above.
24. By **4.00pm on 13 September 2024** the parties and the Independent Children’s Lawyer (if applicable) may forward to the Chambers of the Senior Judicial Registrar at [Associate.SJRGlendenning@fcfcoa.gov.au](mailto:Associate.SJRGlendenning@fcfcoa.gov.au) a combined tender bundle for the interim hearing, any such combined tender bundle to be prepared and forwarded as follows:
- a. Each other party must forthwith notify the other of any documents they seek to be included in the combined tender bundle, including specific details as to the relevant subpoena packet number(s) and page number(s);
  - b. Leave is granted to the solicitors of the parties to photocopy documents produced on subpoena or in response to an order in these proceedings, including documents to which Rule 6.37(2) of the *Federal Circuit and Family Court of Australia (Family Law) Court Rules 2021* applies (“the restricted documents”), for the sole purpose of preparing the joint tender bundle.
  - c. Where restricted documents are included in a combined tender bundle, the following constraints apply to the use of those restricted documents:
    - i. Those restricted documents are to be used for the sole purpose of the interim hearing;
    - ii. A legal representative must not:
      1. Provide a copy of any restricted document to their client, whether as part of the combined tender bundle or otherwise;
      2. Permit their client to copy any part of the combined tender bundle that includes a restricted document; or



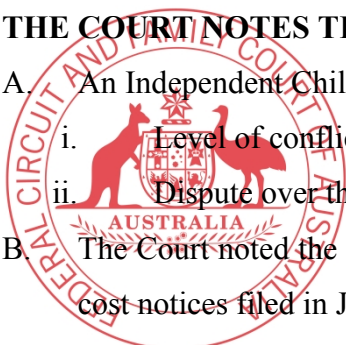
3. Allow any other person to provide any part of the combined tender bundle to their client.
  - iii. A self-represented litigant must not:
    1. Allow any other person to view or copy the combined tender bundle;
    2. Provide a copy of the combined tender bundle to any other person;
  - iv. A legal representative, including the Independent Children’s Lawyer, may provide a copy of the combined tender bundle to another lawyer briefed or engaged to appear at the interim hearing but not otherwise and any such person is subject to the same restrictions and obligations in relation to the tender bundle.
  - v. A sealed copy of these Orders must be provided to any person receiving a copy of the combined tender bundle, including solicitors or Counsel.
  - vi. At the conclusion of the interim hearing any person in possession of the combined tender bundle must immediately destroy the documents.
25. In the event of non-compliance with these filing directions the Court will at its discretion either vacate the interim hearing, conduct the matter as a procedural hearing, proceed on an undefended basis, list other matters with priority and/or make a costs order against the defaulting party.
26. Should the Independent Children’s Lawyer seek to tender any additional material not contained in the combined tender bundle then leave is granted to the Independent Children’s Lawyer to photocopy documents produced on subpoena in these proceedings, including documents to which Rule 6.37(2) of the *Federal Circuit and Family Court of Australia (Family Law) Court Rules 2021* applies (“the restricted documents”), for the sole purpose of preparing a separate tender bundle, with such material being subject to the same conditions and restrictions as outlined in orders above.

**Future Court Event - Mention**

27. All outstanding applications are adjourned to **15 October 2024 at 2.00pm** before Judicial Registrar Furner for mention, by electronic hearing.
28. Each party will be contacted by the Chambers of Judicial Registrar Furner ([casemanager.JRFurner@fcfcoa.gov.au](mailto:casemanager.JRFurner@fcfcoa.gov.au)) with the necessary information to attend the hearing, including if it is to be conducted electronically.

**THE COURT NOTES THAT:**

- A. An Independent Children’s Lawyer has been appointed for the following reasons:
- i. Level of conflict between the parties; and
  - ii. Dispute over the primary residence of the *children*.
- B. The Court noted the costs incurred and estimated to be incurred by the parties in each of their cost notices filed in July 2024.



- C. It is recommended by the Court that the FDR conference include both parenting and property and that part 2 is scheduled for a full-day event.
- D. The Executive Director – National Registrar Operations and Practice will notify all parties and legal practitioners on the record of the dates and times fixed for all parts of the FDR Conference.
- E. The FDR Conference is an opportunity for the parties to make a genuine effort to resolve their parenting dispute in a confidential, child focussed setting. The parties are to be resolution focussed and respectful during negotiations, and to be mindful of the financial and emotional costs associated with prolonged litigation.
- F. Section 114Q of the *Family Law Act 1975* provides that it is an offence punishable by imprisonment for up to one year to communicate to the public an account of family law proceedings which identifies a party to the proceedings, a witness in the proceedings, a person related to, or associated with, a party to the proceedings, or a person who is, or alleged to be, in any other way concerned in the matter to which the proceedings relate, unless specifically authorised by the court. Penalties may apply under section 114Q of the *Family Law Act 1975* to the communication of any material contained in this report other than for use in connection with the proceedings.
- G. If in any proceedings there are allegations of family violence and the provisions of s 102NA of the *Family Law Act 1975* apply (see attached Family Violence Information Sheet), any unrepresented party will not be permitted to personally cross-examine the other party/parties. Affected unrepresented parties may apply to the Commonwealth Family Violence and Cross-Examination of Parties Scheme (“the Scheme”) for representation but any such application must be made at least 12 weeks prior to the final hearing. Further information about the legislation and the Scheme can be found at Part 4 of the attached Family Violence Information Sheet.

By the Court



Registrar



## Family Violence Information Sheet

This information sheet contains important information for litigants who have experienced, or are alleged to have perpetrated, family violence. This information is not a substitute for legal advice.

### About family violence

Family violence means violent, threatening or other behaviour that coerces or controls a member of the person's family (the family member), or causes them to be fearful (section 4AB *Family Law Act 1975*).

The Federal Circuit and Family Court of Australia (the Court) takes family violence very seriously. Protecting family members from the effects of family violence and ensuring the safety of all people engaged in the family law system, including when attending court, is a high priority for the Court.

### Safety at court

Parties concerned about their safety when attending court events can contact the Court's registry in which their matter is listed to arrange a safety at court plan prior to the listing.

### Legal and support services

The Family Advocacy and Support Service (FASS) is a free legal and support service provided by Legal Aid to assist family law litigants who have been affected by family violence. Litigants can attend the free Legal Aid Family Law Duty Service. For more information about FASS, see Family Advocacy and Support Services, Legal Aid, see the Legal Aid section of Find a Lawyer or contact the Court.

### Cross-examination

Division 4 of Part XI of the *Family Law Act 1975* provides that **unrepresented litigants** will be **unable** to cross-examine the other party at an interim or a final hearing if there are allegations of family violence **and**:

- i. either party has been charged with or convicted with an offence involving violence or threat of violence involving the other party: section 102NA(1)(c)(i)
- ii. a final Family Violence Order applies to both parties: section 102NA(1)(c)(ii)
- iii. an injunction has been made under section 68B or section 114 of the *Family Law Act* for the personal protection of one party against another: section 102NA(1)(c)(iii), or
- iv. the Court makes an order that personal cross-examination should not be permitted: section 102NA(1)(c)(iv).

In matters involving alleged family violence which **do not** fall into the above categories, the Court may permit personal cross-examination by an unrepresented party but must ensure alternative protections, such as cross-examination via video link, are implemented: section 102NB.

### **These provisions apply to all proceedings under the Family Law Act, not just parenting proceedings.**

Parties who are not permitted to personally cross-examine another party may retain private legal representation or apply to the Commonwealth Family Violence and Cross-Examination of Parties Scheme (the Scheme) to obtain legal representation. The Scheme is not means or merits tested, but applicants may be required to contribute to the cost of their representation. Applications are made through the relevant state or territory Legal Aid Commission. All applications to the Scheme must be made at least 12 weeks prior to the final hearing.

### **Unrepresented litigants who do not have legal representation either privately or through the Scheme will be unable to cross-examine the other party at the final hearing.**

Further information can be found on the Court's website: [www.fcfoa.gov.au/fl/fv/overview](http://www.fcfoa.gov.au/fl/fv/overview)

This information sheet provides general information only and is not provided as legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to the Court. The Federal Circuit and Family Court of Australia cannot provide legal advice.

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## Parenting orders – obligations, consequences and who can help

This information is for parents and other people, such as grandparents, who are subject to a parenting order. It includes information, pursuant to section 65DA(2) of the *Family Law Act 1975*, about the legal obligations created by a parenting order and the consequences that may follow if it is contravened (breached).

This document also includes information, pursuant to sections 62B and 65DA(3) of the Family Law Act, about:

- courses, programs and services in the community that can help people understand their responsibilities and adjust to a parenting order, and
- the options available to ensure that people comply with (follow) a parenting order.

### It is important that you read this information

You have been given this document because a court has made a parenting order which requires you to take certain steps.

**Note** – If this document is attached to a parenting order, the information provided pursuant to section 65DA(2) of the Family Law Act forms part of the order.

It is important that you understand the terms of the order and the obligations it creates. If you are unsure about any of the terms or obligations, ask your lawyer if you have one. You can also seek legal advice about a parenting order if you were not represented at court.

### Community courses, programs and services

There are courses, programs and services in the community that can help you:

- reach an agreement with the other party
- understand your parental responsibilities, and
- adjust to and follow court orders.

For more information about these options, go to [www.familyrelationships.gov.au](http://www.familyrelationships.gov.au), call **1800 050 321** or visit a Family Relationship Centre near you.

A court may order you to attend a post-separation parenting program. You must attend. If you fail to go to a program as ordered, without reasonable excuse, you may be in breach of the parenting order and be penalised.

### What is a parenting order?

A parenting order is a set of orders made by a court about parenting arrangements for a child. A court can make a parenting order based on an agreement between the parties (consent orders) or after a court hearing or trial. When a parenting order is made, each person affected by the order must follow it.

A parenting order may deal with one or more of the following:

- who the child will live with
- how much time the child will spend with each parent and with other people, such as grandparents
- the allocation of parental responsibility
- how the child will communicate with a parent they do not live with, or other people
- any other aspect of the care, welfare or development of the child.

A parenting order can require the parties to follow certain steps before applying to a court to change an order. It can also state the process for resolving disputes that arise from the order.

If the parenting order provides that two or more people have joint decision-making about a major long-term issue in relation to a child, the decision must be made jointly. This requires each person to consult with the other person and make a genuine effort to reach a joint decision.

**Note** – The status of a parenting order may be altered if a parenting plan is developed by both parties in the future. For more information about parenting plans, go to [www.familyrelationships.gov.au](http://www.familyrelationships.gov.au), call **1800 050 321** or visit a Family Relationship Centre near you.

### Your legal obligations

- You must do everything a parenting order says. In doing so, you cannot be merely passive but must take positive action and this positive obligation includes taking all reasonable steps to ensure that the order is put into effect. You must also positively encourage your children to comply with the orders. For example where the order states your children are to spend time with another party, you must not only ensure that the children are available but must also positively encourage them to go and do so. There are agencies in the community that can help you and your family adjust to and comply with the order (see details above).

- If a parenting order has been made that provides for a child to spend time with, live with, communicate with a person, or a person is to have parental responsibility for a child, then it is an offence to send the child from Australia without an order of the Court or without the consent in writing of the person in whose favour the order has been made. Penalty is imprisonment for three years.
- The order remains in force until a new parenting order or parenting plan changes it in some way.
- Even if the needs or circumstances of you, the child or the other party change, the court order applies until it is formally changed by a court or, in some situations, you enter into a parenting plan with the other party.
- Sometimes people talk to each other about changing arrangements set out in a parenting order. These talks do not change the order.

If you and the other party agree to change the arrangements, you may enter into a parenting plan or apply for consent orders that vary the existing orders. For more information about consent orders, go to [www.fcftoa.gov.au](http://www.fcftoa.gov.au), live chat or call **1300 352 000**.

If you want to change a parenting order and the other party does not agree, family dispute resolution can help you and the other party work through your disagreement. Resolving issues this way is less formal than going to court and should cost less in money, time and emotion. If an agreement cannot be reached, you may consider applying to a court for orders.

### **Legal advice**

You should seek legal advice before deciding what to do. A lawyer can help you understand your legal rights and responsibilities, and explain how the law applies to your case. A lawyer can also help you reach an agreement without going to court. You can seek legal advice from a legal aid office, community legal centre or private law firm. Court staff can help you with questions about court forms and the court process, but cannot give you legal advice.

### **Penalties for failing to comply with a parenting order**

A court can only penalise someone for failing to comply with a parenting order, which has not been altered by a parenting plan, if another person files an application alleging the person did not comply with the order. After considering all the facts of the case and applying the law, a court may decide that:

1. the alleged contravention was not established
2. the contravention was established but there was a reasonable excuse
3. there was a less serious contravention without reasonable excuse, or
4. there was a more serious contravention without reasonable excuse.

If a court finds that you have failed to comply with a parenting order without reasonable excuse, it may impose a penalty. Depending on the situation and the type and seriousness of the contravention, a court may:

- vary or suspend the primary order
- order you to attend a post separation parenting program
- compensate for time lost with a child as a result of the contravention (make up time parenting order)
- require you to enter into a bond
- order you to pay all or some of the legal costs of the other party or parties
- order you to pay compensation for reasonable expenses lost as a result of the contravention
- order you to pay a fine
- order you to a sentence of imprisonment.

In addition to these orders, a court may also adjourn the case to allow you or the other party to apply for a further parenting order.

The penalties are listed in Division 13A in the *Family Law Act 1975*. To view the Act, go to [www.legislation.gov.au](http://www.legislation.gov.au). For more information about compliance, see the fact sheet 'Compliance with parenting orders'.

### **Where the parenting orders are inconsistent with a family violence order**

If a parenting order is made that is inconsistent with a family violence order, the family violence order is invalid to the extent of the inconsistency. If you wish to vary or revoke a parenting order or injunction, you should seek legal advice. Depending on your circumstances, options available may include appealing the parenting order or making a further application to the Court. The parenting order remains in force until it is varied or revoked, and your legal obligations remain as set out in this document.

### **Location and recovery orders**

If you breach a parenting order and you cannot be found, a court may make a location order. This order requires other people or organisations, including government departments, to give any information they have about where you and the child may be located.

If you breach a parenting order by failing to return the child as required, a court may also make a recovery order. This is an order issued to the Marshal of the Court, all officers of the Australian Federal Police and all state and territory police officers to find and recover the child. The order may also allow a search of any vehicle, vessel, aircraft or any other premises where the child may be found.

This fact sheet provides general information only and does not provide legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to the Court. The Court cannot provide legal advice.

### **More information**

For more information, including access to legislation, forms or publications mentioned in this fact sheet:

- go to [www.fcftoa.gov.au](http://www.fcftoa.gov.au)
- live chat on the website
- call 1300 352 000, or
- visit a court registry near you.

Distributed in accordance with sections 62B and 65DA of the *Family Law Act 1975*.

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