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|  | **THIS ACT WAS ASSENTED TO ON 24 APRIL 2020** | **MELBOURNE CHILDREN’S COURT** |
| **AND WAS AMENDED FROM 21 OCTOBER 2020** |
| **THIS ACT WAS ASSENTED TO ON 23 MARCH 2021** |
| **Children's Court**  **of Victoria** | **477 Little Lonsdale Street, Melbourne, Victoria, 3000**  **Tel: (03) 8638 3300 Fax: (03) 8601 6720** | |

**COVID-19 Omnibus (Emergency Measures) Act 2020**

**COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Act 2020**

**Justice Legislation Amendment (System Enhancements and Other Matters) Act 2021**

**1. The COVID-19 Act (No.11/2020) was assented to on 24 April 2020 and commenced operation on 25 April. It originally applied for 6 months. Its purpose was described as:**

“An Act to temporarily amend certain Acts, and to temporarily empower the making of regulations, to modify the application of the law of Victoria in certain respects for the purpose of responding to the COVID-19 pandemic.”

1. **The Amendment Act (No.27/2020) commenced operation on 21 October 2020. It made further temporary amendments to a number of Acts and extended the repeal date of the COVID-19 legislation until 26 April 2021.**
2. **Experience gained in Court operations and community public health during the COVID-19 pandemic led the Department of Justice & Community Safety [DJCS], in consultation with all of the courts and tribunals, to seek to extend temporarily or make permanent – either in an unchanged or amended form – some of the temporary amendments which had been effected by the COVID-19 Act, the Amendment Act and Regulations made under s.4 of the COVID-19 Act.**
3. **This has been achieved by enactment of the Justice Legislation Amendment (System Enhancements and Other Matters) Act 2021 (No.11/2021) [JLASA]. It was assented to on 23 March 2021 and is largely to commence operation on 26 April 2021. So far as the Children’s Court [ChCV] is concerned, JLASA’s main purposes are:**
4. **to extend until 26 April 2022 four sets of temporary provisions introduced into the Children, Youth and Families Act 2005 [CYFA] bv the COVID-19 Act;**
5. **to extend until 26 April 2023 the temporary modifications in the CYFA to the period of a family reunification order [FRO] introduced by the Amendment Act;**
6. **to make permanent – mostly in an amended form – a large number of temporary COVID-19 provisions in the CYFA and other Acts.**
7. **Any provisions of the COVID-19 Act, the Amendment Act and the associated Regulations which were not expressly extended or made permanent by the JLASA cease to be in operation (apart from some minor transitional exceptions) on 26 April 2021.**
8. **The JLASA is huge. It comprises 168 pages and makes amendments to 27 Acts and consequential amendments to 6 further Acts.** **This document details the 65 pages of its relatively complex provisions which have some relevance to the ChCV as well as several of its provisions which have relevance to other courts.**
9. **In references to an audio visual link [AVL] or audio link [AL] the JLASA has removed the words “(within the meaning of Part IIA of the Evidence (Miscellaneous Provisions) Act 1958)” from many statutory provisions. This is because JLASA/s.195 has inserted into s.38 of the Interpretation of Legislation Act 1984 definitions of the words ‘audio visual link’ and ‘audio link’ as having the meanings given by Part IIA of the EMPA.**

**EXECUTIVE SUMMARY OF AMENDMENTS**

**Relevant COVID-19 provisions in the CYFA and other Acts which are extended or made permanent by JLASA are detailed on the following pages. The most significant are summarised below. Unless otherwise indicated they are permanent amendments.**

1. **Conciliation conferences in ChCV Family Division may be conducted in person or by AVL or** **AL.**
2. **Bail justice IAO hearings remain suspended until 26 April 2022.**
3. **Extended duration provisions for making/extending a FRO remain applicable until 26 April 2023.**
4. **The ChCV may sit at any time and place. The ChCV may order that a hearing be held at an appropriate place that is not the ‘proper venue’ if it is appropriate for any reason and it is in the interests of justice that the hearing not be held at the proper venue having regard to (a) places closest to the proper venue and (b) the views of the parties.**
5. **Powers of registrars in the ChCV and the Magistrates’ Court [MCV] are expanded.**
6. **Five additional methods of service of documents are included in the CYFA:**

* **on the person by (d) confirmed electronic service; or**
* **on the person’s legal representative by (e) registered post, (f) leaving at business premises, (g) personal service or (h) confirmed electronic service.**

1. **A witness is not required to attend court on the date and time specified in a witness summons if a criminal proceeding is adjourned prior to the date and time specified in the summons.**
2. **A number of provisions of the *Evidence (Miscellaneous Provisions) Act 1958* are amended to allow the use of AVL** **and several are amended in relation to the use of** **AL. Amendments include:**

* **A child who is not an accused may not be directed to appear, give evidence or make a submission by AL unless exceptional circumstances exist.**
* **A child accused is required to appear physically unless the ChCV directs appearance by AVL which it may do if exceptional circumstances exist or an appearance by AVL is necessary for ChCV’s case management, is consistent with the interests of justice and is reasonably practicable.**
* **An adult accused who has been taken into custody and is required to be brought before a bail justice or the MCV within a reasonable time is required to be brought physically before the MCV unless he or she consents to appearance by AVL. Save for that situation, unless an adult accused being held in custody has been directed to appear physically before the MCV, he or she is required to appear by AVL on a proceeding (including a proceeding with respect to bail or sentencing) except-**
* **on a fitness to plead enquiry; and**
* **on a contested summary hearing or a committal hearing after 26 April 2022-**

**in which event personal appearance is required.**

* **A hearing by AVL or AL is not invalid merely because of a failure to comply with the complex technical requirements included in this Act.**

1. **The *Bail Act 1977* is amended to allow-**

* **an undertaking of bail by an accused and surety documents to be signed electronically;**
* **an undertaking of bail for a child accused who has a cognitive deficit to be entered by a parent or other person by electronic communication.**

1. **The *Criminal Procedure Act 2009* is amended to allow a court to determine any issue (other than whether an accused is guilty or not guilty) in any criminal proceeding without an oral hearing and entirely by written submissions and without the appearance of parties if in the interests of justice.**
2. **The *Magistrates’ Court Act 1989* is amended to allow the MCV [and the ChCV by operation of s.528 CYFA] to determine any issue in any non-criminal proceeding without an oral hearing and entirely by written submissions and without the appearance of parties if it is in the interests of justice.**
3. **Amendments are made to the *Electronic Transactions (Victoria) Act 2000* primarily in relation to witnessing by AVL and the use of electronic signatures.**
4. **Amendments are made to the *Oaths and Affirmations Act 2018* primarily to allow affidavits and statutory declarations to be validly made by AVL subject to various provisos.**
5. **The *Open Courts Act 2010* is amended to provide-**

* **permanently that handing down and delivering judgments by electronic communication; and**
* **temporarily until 26 October 2022 that a failure to hold a hearing in a court room open to the public-**

**do not contravene rules of law relating to open justice provided that certain stipulations are met.**

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| **CHILDREN, YOUTH AND FAMILIES ACT 2005 CYFA** | |
| **JLASA/ss.203-204 & CYFA/s.600ZC(2)**  **TEMPORARY PROVISIONS EXTENDED TO 26 APRIL 2022** | |
| **CYFA**  **600G to**  **600L** | **ORAL PRE-SENTENCE REPORTS**  These provisions permit the court to receive an oral PSR for a person in hearings under the **CYFA** and govern the content and use of such reports. The pre-conditions for giving an oral PSR are-   * The court is satisfied that preparation of an ordinary PSR is not practicable due to the COVID-19 pandemic. * Unless the person is over 20y6m old, there has been a PSR prepared within the previous 6 months. * The person and the Department of Justice and Community Safety both consent. * The court is satisfied it is in the interests of justice to get an oral PSR. |
| **CYFA**  **600M to**  **600O** | **ISOLATION IN DETENTION**  These provisions relate to use of isolation in a remand or youth detention centre for the purposes of detection, prevention or mitigation of COVID‑19 or other infectious disease. |
| **CYFA**  **600S**  **600T** | **YOUTH JUSTICE ATTENDANCE/REPORTING**  These provisions empower the Secretary to direct a young person required to attend a youth justice unit or to report to the Secretary, a youth justice or parole officer to do so in any manner directed, including by **AVL** or **AL**. |
| **CYFA**  **600ZA** | **BAIL JUSTICE IAO HEARINGS REMAIN SUSPENDED**   * The references to bail justice interim accommodation order hearings in ss.242(3), 247A(3), 269(5), 269(7), 270(8) are suspended. * The references to “24 hours” in ss.269(5) & 270(8) are taken to be references to “one working day”. * The consequence is that for the further period of these temporary amendments effected by s.600ZA there will continue to be no bail justice IAO hearings. There is no change to bail justice requirements in Criminal Division proceedings. |
| **CYFA**  **600ZB(2)**  **600ZB(2A)** | **APPLICATION OF PART 1.2 PRINCIPLES**  **[Best Interests and Decision-making principles]**   * There is a very complicated set of provisions in ss.600ZB(1) & 600ZB(2) providing that the best interests and decision-making principles in Part 1.2 do **not** apply to Part 8.5A [Temporary measures in response to COVID-19 pandemic] **except** for Division 4A [s.600OA-family reunification orders] and Division 5. * **JLASA/s.203** splits the s.600ZB(2) **exceptions** into ss.600ZB(2) & 600ZB(2A). The purpose of this is to repeal s.600ZB(2A) on 26 April 2022 when the sections to which it relates [ss.600S, 600T & 600ZA] are also repealed but to leave s.600ZB(2A) alive until 26 April 2023 when s.600OA is repealed by s.600ZC(3). |
| **‘BEST INTERESTS’ PRINCIPLES CONTINUE TO APPLY TO THE EXTENDED PROVISIONS GOVERNING THE DURATION OF A FRO**  If the drafting of these provisions in **CYFA**/ss.600ZB & 600ZC is difficult to decipher, do not despair. The writer believes that so far as Court operations are concerned the only significant effect of these very complicated provisions is that the best interests and decision-making principles of **CYFA**/ss.8-14 continue to apply until 26 April 2023 to any decision whether or not to apply the extended duration provisions of CYFA/s.600OA when making or extending a FRO (see next page). | |
| **CHILDREN, YOUTH AND FAMILIES ACT 2005 CYFA** | |
| **JLASA/s.204 & CYFA/ss.600OA & 600ZC(3)**  **TEMPORARY FRO PROVISION EXTENDED TO 26 APRIL 2023** | |
| **CYFA**  **600OA**  **600ZC** | **MODIFICATION OF THE PERIOD OF A FAMILY REUNIFICATION ORDER [FRO] OR EXTENSION**  Section 600OA provides that the Court may specify a period in a FRO, or extend a FRO by a period, that will have the effect that the child will be placed in out of home care for a longer cumulative period than would otherwise be permitted under ss.287A(2) or (3) or 294A(1)(b) or 296(3) or (4) if-   1. the Court is satisfied that the progress of a parent of the child towards reunification has been impeded as a result of the COVID-19 pandemic; 2. the Court is satisfied that it is in the best interests of the child to do so; 3. the additional period specified does not exceed the period for which the parent’s capacity to make progress towards reunification has been impeded as a result of the COVID-19 pandemic; and 4. the additional period of the FRO or the extension thereof will not have the effect that the child will be placed in out of home care for a cumulative period that is more than 6 months longer than would otherwise have been permitted under ss.287A(2) or (3) or 294A(1)(b) or 296(3) or (4).   **Notes**: 1. This section does not prevent periods being specified in increments under a particular provision, up to a total of 6 months.  2. Making or extending a FRO as permitted by this section can never have the effect that a child will be placed in out of home care for a cumulative period that is more than 30 months. |
| **APPARENT INCONSISTENCY BETWEEN s.287(1)(c) & s.600OA CYFA**  It appears that this amendment has introduced an unintended ambiguity into s.287(1)(c). This sub-section provides, in relation to the **making** of an FRO, that a “*FRO,* *subject to this Division, remains in force for the period (not exceeding 12 months) specified in the order*”. Prior to s.600OA ss.287A(2) & 287A(3) always operated to **reduce** that 12 months maximum period by the period that the child had already been in out of home care as defined in ss.287A(1) & 287A(4) [OHC]. For example-   * if the child had been in OHC for 5 months, the maximum length of the FRO under s.287A(2) was 12-5=7 months; whereas paradoxically * if the child had been in OHC for 14 months, the maximum length of the FRO under s.287A(3) was 24-14=10 months.   However, when read in conjunction with s.600OA there may be instances in which ss.287A(2) & 287A(3) operate to **increase** the 12 months maximum period set by s.287(1)(c). For example, provided that the pre-conditions in paragraphs (a), (b) & (c) of s.600OA(2) are met, if the child has been in OHC for 5 months the maximum length of the FRO under s.287A(2) read in conjunction with s.600OA(2)(d) is 12-5+6=13 months.  Is it intended that this 13 month period is then to be reduced to 12 months to comply with s.287(1)(c) which expressly states that the period of a FRO is *“(not exceeding 12 months*)”? On the other hand, s.287(1)(c) is said to be *“subject to this Division”* and Division 6 includes s.287A. Which phrase is to take precedence? The question appears moot.  However, this ambiguity does not arise in the case of the **extension** of an FRO since extensions are not governed by s.287(1)(c). When read in conjunction with s.600OA there may be instances in which ss.296(3) & 296(4) unambiguously operate to authorise an extension of a FRO for more than 12 months. For example, provided that the pre-conditions in paragraphs (a), (b) & (c) of s.600OA(2) are met, if the child has been in OHC for 14 months the maximum length of a FRO extension under s.296(4) when read in conjunction with s.600OA(2)(d) is 24‑14+6=16 months. | |

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| **CHILDREN, YOUTH AND FAMILIES ACT 2005 CYFA** | |
| **JLASA/Part 4 (ss.30-43)**  **PERMANENT PROVISIONS** | |
| **CYFA**  **221(2)**  **222(8)** | **CONCILIATION CONFERENCES [CC]**  These permanent amendments have been made to provisions in the **CYFA** governing conciliation conferences:   * **JLASA/s.30**: Section 221 of the **CYFA** provides that the Court may fix a time and place for the holding of a CC or may direct that a convenor fix, within 14 working days, a time and place. New s.221(2) provides that the place for the holding of the CC includes the holding of a CC by **AL** or **AVL**. * **JLASA/s.31**: Section 222 of the **CYFA** governs who is to attend a CC. New s.222(8) provides that a convenor of a CC may permit one or more persons referred to in this section to attend the conciliation by means of **AL** or **AVL**. |
| **CYFA**  **260(4A)** | **CONCILIATION COUNSELLING AS A CONDITION PRECEDENT TO IRRENCONCILABLE DIFFERENCE APP’N**  **JLASA/s.32**: New s.260(4A) of the **CYFA** provides that the person conducting conciliation counselling may permit one or more of the parties to undertake conciliation counselling, or participate in a conference, by means of **AL** or **AVL**. |
| **CYFA**  **320, 326,**  **532, 593, 594** | **REFERENCES IN CYFA TO “true copy” REPLACED BY “copy”**  **JLASA/ss.33, 34, 40, 42 & 43** replace the words “true copy” by “copy” wherever “true copy” appeared in the **CYFA**. This was done partly for consistency of use and partly because a “true copy” no longer has significant meaning in the electronic age. |
| **CYFA**  **409T(5)**  **415(7A)** | **YCO PLANNING MEETING OR GROUP CONFERENCE BY AVL / AL OR SUBMISSIONS**  **JLASA/ss.35 & 36**: A convenor of a YCO planning meeting [s.409T] or a group conference [s.415] may require or permit one or more attendees to-   1. appear by **AVL** or **AL** or 2. participate by making oral or written submissions. |
| **CYFA**  **505**  **505A** | **WHERE AND WHEN CHILDREN’S COURT IS TO BE HELD**   * Section 505 previously contained a fairly rigid stipulation, in part requiring the Children’s Court to be held at places at which the Magistrates’ Court is to be held and on such days and at such times as the President, after consulting the Chief Magistrate, appoints by notice published in the Government Gazette. Curiously, although not expressly excluded, the headquarters of each of the Courts [the Melbourne Children’s Court and the Melbourne Magistrates’ Court] never complied with s.505(1)(a), having always been in completely separate buildings. * Section 505(3) prohibited the Children’s Court from being held in the same building as that in which the Magistrates’ Court is at the time sitting unless the Governor in Council, by Order published in the Government Gazette, otherwise directs with respect to any particular building. Subject to that, s.505(4) permitted the Children’s Court to sit and act at any time and place. * The situation was further complicated by the absence of a clear link between the definition of ‘proper venue’ in s.3(1) and s.505. |
| * During the pandemic the **COVID-19 Act** suspended s.505 apart from ss.505(1)(a) & 505(4) by inserting s.600V and attempted to relate the ‘place of hearing’ to the ‘proper venue’ by inserting s.600W. * The Children’s Court understands the importance of keeping its proceedings as far as possible away from courts in which adult proceedings are being conducted but the interests of justice occasionally require them to be held at the same time in the same building. Contested Family Division cases in regional courts are a common example. A joint adult-child committal under **CYFA**/s.516A is another. |
| **CYFA**  **505**  **505A**  **516A** | **WHERE AND WHEN CHILDREN’S COURT IS TO BE HELD**   * **JLASA/s.37** permanently amends s.505 and adds s.505A to the **CYFA**. * Section 505 simply provides: “The Court may sit and act at any time and place.” * Section 505A provides:   “(1) Without limiting s.505, the Court may order that a hearing be held at an appropriate place that is not the proper venue for the hearing if the Court considers that-   1. for any reason it is appropriate that the hearing not be held at the proper venue; and 2. it is in the interests of justice that the hearing not be held at the proper venue.   (2) In determining an appropriate place to hold a hearing for the purposes of subsection (1), the Court must first have regard to-   1. places closest to the proper venue for the hearing; and 2. the views of the parties to the proceeding.”  * **JLASA/s.38** removes from s.516A(1) of the **CYFA** the reference to old s.505(3) in relation to joint adult-child committal proceedings. |
| **CYFA**  **530(5)** | **POWER TO HOLD OR RESUME PROCEEDING BY AVL / AL**  **JLASA/s.39**: Section 530 of the **CYFA** is a broad power of adjournment and of abridgement for both the Family Division and the Criminal Division of the ChCV. Section 530(5) is amended – by addition of **AL** – to read: “If the Court has adjourned the hearing of a proceeding to a particular time and, in the case of a proceeding in the Criminal Division, has remanded the child in custody or, in the case of a proceeding in the Family Division, has placed the child in a secure welfare service, it may by order direct that the child be brought before, or be brought to another place specified in the order where facilities exist to enable the child (by **AVL** or **AL**) to appear before the Court at any time before then in order that the hearing may be held or resumed.” |
| **CYFA**  **539** | **POWERS OF CHILDREN’S COURT REGISTRARS**   * Section 539 of the **CYFA** details the powers of a registrar in the Children’s Court. These have been a little more limited than the relevant powers of a registrar in the Magistrates’ Court which are detailed in s.21 of the **Magistrates’ Court Act 1989** (now also amended by **JLASA/s.54**). * To improve the operation of the ChCV, **JLASA/s.41** has made permanent amendments to s.539 of the **CYFA** which now provides [amendments shaded]: |
| “(1) A registrar has the following powers in addition to those conferred on him or her by this or any other Act-   1. power to issue any process out of the Court; 2. power to administer an oath or affirmation; 3. with the consent of the parties to a proceeding in the Family Division, power to extend an interim accommodation order of a kind referred to in s.263(1)(a) or 263(1)(b) made in respect of a child appearing on a return date in relation to a proceeding; 4. power to abridge or extend the bail of a person who has been granted bail in relation to a criminal proceeding; 5. power to endorse a warrant to arrest in accordance with s.62 of the **Magistrates’ Court Act 1989**; 6. power to make a declaration under Division 4 of Part 7 of the **National Domestic Violence Order Scheme Act 2016**; 7. power to adjourn a criminal proceeding or a proceeding under the **Family Violence Protection Act 2008**, the **Personal Safety Intervention Orders Act 2010** or the **National Domestic Violence Order Scheme Act 2016**; 8. power to abridge or extend the adjournment of a criminal proceeding or a proceeding under the **Family Violence Protection Act 2008**, the **Personal Safety Intervention Orders Act 2010** or the **National Domestic Violence Order Scheme Act 2016**; 9. power to otherwise change the time or place at which a criminal proceeding or a proceeding under the **Family Violence Protection Act 2008**, the **Personal Safety Intervention Orders Act 2010** or the **National Domestic Violence Order Scheme Act 2016** is listed before the Court.   (2) Nothing in the section empowers a registrar to vary the amount or conditions of bail.  (3) The power under subsection (1)(d) to abridge or extend the bail of a person may be exercised-   1. at any time, including on the day on which the person’s proceeding is listed before the Court; and 2. either in the presence of absence of the person.   (4) The powers under subsections (1)(g), (h) and (i) in respect of a proceeding may be exercised-   1. at any time, including on the day on which the person’s proceeding is listed before the Court; and 2. either in the presence of absence of the person.   (5) The powers under subsections (1)(d), (g), (h) and (i) may be exercised-   1. on the application of a party; or 2. on the registrar’s own initative. |
| **IS THERE A CONFLICT BETWEEN s.5AA BAIL ACT & ss.539(1)(d) & (3) CYFA?**  A question arises whether there is a conflict between s.5AA of the **Bail Act 1977** and the amended powers of a registrar to abridge or extend a person’s bail under s.539(1)(d) & (3) of the **CYFA**. Although the provisions do not sit together very comfortably, it is possible to reconcile them.  Section 5AA(2) provides: "**The court**, **at the first hearing following the grant of bail at which the child is present**, must ensure that the conditions of bail imposed by the bail justice, police officer, sheriff or person authorised under s.115(5) of the Fines Reform Act 2014comply with the requirements of s.5AAA(2). " Section 5AA(3) empowers **the court** to "make any variation to the conditions of bail that are necessary for the purposes of subsection (2)".  Act No.26/2017 amended the **Bail Act 1977** by repealing the definition of "**court**" and inserting a definition of "**bail decision maker**", meaning "any of the following **empowered under this Act** to grant bail, extend bail, vary the amount of bail or the conditions of bail or revoke bail- (a) a court..."  A registrar exercising powers under s.539(1)(d) of the **CYFA** is not a "**bail decision maker**" within the definition in the **Bail Act 1977** because the registrar's power to abridge or extend bail is not a power granted under the latter Act. Further, s.539(2) of the **CYFA** makes it clear that a registrar abridging or extending bail under s.539(1)(d) has no power to vary the amount or conditions of bail.  Hence a Children’s Court registrar could not comply with the **court's** obligation under s.5AA(3) of the **Bail Act**.  It follows that s.5AA(2) should be read as providing that **the court**, **at the first hearing following the grant of bail at which the child is present before a bail decision maker (viz. a judicial officer)**, must ensure that the conditions of bail imposed by the bail justice, police officer etc. comply with the requirements of s.5AAA(2).  An alternative way of analysing s.5AA is that the word "**hearing**" does not apply to an essentially administrative proceeding conducted by a registrar under s.539(1)(d) of the **CYFA**.  **On these analyses there is no conflict between s.539(1)(d) of the CYFA and s.5AA of the Bail Act.** However, the over-riding purpose of s.5AA is to check that conditions of bail set prior to the court’s involvement comply with s.5AAA(2) and to vary any which do not. **Accordingly, as a matter of good practice, it would be prudent for the first mention at which the child is present to be listed before a judicial officer so that s.5AA can be complied with at the earliest opportunity.** If no judicial officer is available, a registrar does have power to extend bail in these circumstances but cannot vary it. | |

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| **CYFA**  **593, 594** | **ADDITIONAL METHODS OF SERVICE OF DOCUMENTS**   * **JLASA/s.42** inserts in s.593 five additional methods of service. They are-   (d) confirmed electronic service on the person;  (e) registered postal service on the person’s authorised legal representative;  (f) leaving a copy document at the business of the person’s legal representative;  (g) personal service on the person’s legal representative; and  (h) confirmed electronic service on the person’s legal representative.   * Under new s.593(1A), personal service can be effected by placing a copy of the document on a surface in the presence of the other person. See also s.391(2A) of the **Criminal Procedure Act 2009** as amended by **JLASA/s.49.** * **JLASA/s.43** inserts in s.594 five additional methods of “service on parent or child or other person” which are similar to those added to s.593. |

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| **EVIDENCE (MISCELLANEOUS PROVISIONS) ACT 1958 EMPA** | |
| **JLASA/Part 2 (ss.3-23)**  **PERMANENT PROVISIONS EXCEPT FOR TEMPORARY s.42JA(2A)** | |
| **All of these amendments relate to Part IIA of the EMPA – Use of AVL and AL.** | |
| **JLASA/ss.5-7 – Persons other than the accused** | |
| **EMPA**  **42E(6)**  **42F(7)**  **42G** | * Section 42E(1) of the **EMPA** provides that subject to s.42F and any rules of court, a court may, on its own initative, or on the application of a party, direct that a person may appear before, or give evidence or make a submission to, the court by **AVL** or **AL** from any place within or outside Victoria, or outside Australia, that is outside the courtroom or other place where the court is sitting. * Section 42F contains special provisions with respect to a person who is a child in proceedings in the Family Division or an appeal from the Family Division. * New s.42E(6) provides that the exercise of the power conferred on a court to make a direction referred to in s.42E(1) is subject to any practice directions. * Section 42F(7) is amended to read: “A court must not make a direction under s.42E(1) that a child appear before, or give evidence or make a submission to, the court by **AL** unless it is satisfied that exceptional circumstances exist.” * Section 42G, setting out complex technical requirements for **AVLs** and **ALs**, is replaced by a similar but slightly less restrictive provision. |
| **JLASA/ss.8 & 22 – Appearance of adult accused before Magistrates’ Court** | |
| **EMPA**  **42JA(1)**  **42JA(2)**  **42JA(2A)**  **42YA**  **42JA(3)** | * Section 42JA(1) is amended to read: “Subject to subsection (2) or (3), unless the Magistrates’ Court makes a direction under s.42L(1), an accused, other than a child, being held in custody who is required to appear, or be brought, before the Magistrates’ Court on a proceeding (including a proceeding with respect to bail or sentencing), is required to appear before it by **AVL**.” * Section 42JA(2) is unchanged. In the absence of a contrary direction under s.42M(1), it requires a personal appearance of an adult accused on: (a) a fitness to plead enquiry; (b) a contested summary hearing; (c) a committal hearing. * However, new section 42JA(2A) provides that until 26 April 2022 an accused referred to in s.42JA(2)(b) or (c) is required to appear by **AVL** unless the court makes a direction under s.42L(1). **On 27 April 2022 s.42JA(2A) is repealed.** |
| * Section 42JA(3) is unchanged. An adult accused who has been taken into custody and is required to be brought before a bail justice or the Magistrates’ Court within a reasonable time, is required to be brought physically before the Magistrates’ Court unless the accused consents to appear before the court by **AVL**. |
| **JLASA/s.9 – Appearance of adult accused at other than Magistrates’ Court** | |
| **EMPA**  **42K** | Substituted s.42K provides that in the absence of a contrary direction an adult accused-   * is required to appear or be brought physically before the court on a trial (apart from the arraignment); but * may appear by **AVL** in any other instance. |
| **JLASA/ss.10 – Making direction for physical appearance of adult accused JLASA/s.11 – Making direction for AVL appearance of adult accused** | |
| **EMPA**  **42L**  **42M** | Amendments have been made to ss.42L & 42M of the **EMPA** to govern the making of ‘contrary to *status quo* directions’ for appearance of adult accused in s.42JA or s.42K proceedings. |
| **JLASA/ss.12-13 – Appearance before court of a child accused** | |
| **EMPA**  **42O**  **42P(1)**  **42P(7)**  **42P(9A)** | * Section 42O has reverted to its pre-COVID-19 form: “Unless the court otherwise directs, an accused who is a child and is required to appear, or be brought, before a court in a proceeding to which this Division applies is required to appear, or be brought, **physically** before the court.” * Section 42P(1) of the **EMPA** is unchanged. It provides that a court may direct that a child referred to in s.42O appear before it by **AVL** if it is satisfied, on an application made in accordance with this section, that appearance by **AVL** is- (a) consistent with the interests of justice; and (b) reasonably practicable in the circumstances. * Amended s.42P(7) provides that a court may also make a direction under s.42P(1) on its own initative at any time if the court is satisfied- (a) that exceptional circumstances exist; or (b) that appearance by **AVL** is-  1. necessary for the purposes of the court’s case management generally; and 2. consistent with the interests of justice; and 3. reasonably practicable in the circumstances.  * New s.42P(9A) provides that an address to a court in opposition to a direction under s.42P(1) by a victim of an offence which a child is alleged to have committed may be given in person, by **AVL** or by **AL**. |
| **JLASA/ss.14 & 20 – Practice directions etc** | |
| **EMPA**  **~~42Q~~**  **42UA** | Power in a head of jurisdiction to issue practice directions, statement or notes relating to the exercise by the court of its discretion in relation to an application made under ss.42L, 42M, 42N or 42P which was formerly in s.42Q is changed to s.42UA and is expanded to include applications under s.42E. |
| **JLASA/ss.15-16 – Technical requirements for AVL / AL appearance by accused** | |
| **EMPA**  **42R 42RA 42RB** | * Section 42R, setting out complex technical requirements for **AVL** appearance by an accused, is replaced by a similar but slightly less restrictive provision. * New s.42RA sets out pre-conditions for the making of a direction that an adult accused appear before a court by **AL** rather than **AVL**. * New s.42RB sets out technical requirements for **AL** appearance by an adult accused which are also quite complex. |
| **JLASA/s.17 – Protection of communication between accused and legal rep** | |
| **JLASA/s.18 – Application of Surveillance Devices Act 1999** | |
| **EMPA**  **42S, 42T** | Minor amendment made to wording of s.42S & s.42T to include a communication in the circumstances referred to in ss.42R(1)(b) or 42RB(1)(b). |
| **JLASA/s.19 – Putting documents to a remote person** | |
| **EMPA**  **42U(1)** | A minor technical amendment made to s.42U(1) which does not change the substance of the provision. |
| **JLASA/s.22 – Hearing not invalid because of failure of technical requirements** | |
| **EMPA**  **42Y** | **Fortunately for the ChCV, new s.42Y provides that a hearing is not invalid merely because of a failure to comply with the complex technical requirements specified in ss.42G, 42R or 42RB.** |

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| **BAIL ACT 1977 BA** | |
| **JLASA/Part 3 (ss.24-29)**  **PERMANENT PROVISIONS** | |
| **BA**  **3**  **9(3B)(a)**  **17A** | **ELECTRONIC SIGNATURE OF UNDERTAKING BY ACCUSED**   * **JLASA/s.24**: A new definition of ‘**electronic signature**’ is inserted in s.3 of the **BA**. It includes but is not limited to-  1. a person confirming their agreement by electronically selecting an option indicating affirmation; or 2. a person providing a scanned or photographed copy of a document signed by hand.  * **JLASA/s.25**: Section 9(3B)(a) of the **BA**, applicable where a surety appears before a court by **AL** or **AVL**, is amended to read: “the undertaking of bail may be constituted by- (i) the undertaking signed by the accused; and (ii) a copy of the undertaking signed by the accused which is transmitted to the surety by any means and signed by the surety (including by electronic signature).” * Existing s.5(1) of the **BA** provides that a grant of bail must require the accused to enter into a written undertaking to surrender into custody at the time and place of the hearing or trial specified in the undertaking and not to depart without leave of the court and, if leave is given, to return at the time specified by the court and again surrender into custody. * **JLASA/s.26**: New s.17A expands the concept of a written undertaking of bail for the purposes of s.5 of the **BA**. It sets out a complex procedure by which the bail decision maker or another authorised person may send copies of an undertaking of bail and a s.17 notice to the accused by electronic communication and the accused by return electronic communication confirms receipt and signs the undertaking by electronic signature. |
| **BA**  **17B** | **ELECTRONIC SIGNATURE OF UNDERTAKING BY CHILD ACCUSED’S PARENT OR SOME OTHER PERSON**   * Existing s.16B of the **BA** provides that if, in the opinion of a bail decision maker granting bail to a child, the child does not have the capacity or understanding to enter into an undertaking, the child may be released on bail if the child’s parent or some other person enters into an undertaking to produce the child at court. * **JLASA/s.26**: New section 17B expands the concept of an undertaking under s.16B by a child accused’s parent or some other person. It sets out a complex procedure by which the parent or other person may enter into the undertaking by electronic communication. |
| **BA**  **27(1A)**  **27(2)(ca)** | **ADMISSION TO BAIL**   * **JLASA/s.27(1)**: New s.27(1A) of the **BA** provides that for the purposes of s.27(1) it is sufficient compliance if a person enters an undertaking in accordance with s.17A or s.17B. * **JLASA/s.27(2)**: A registrar or deputy registrar of the Children’s Court is added as a court official before whom an undertaking may be entered. |
| **BA**  **32B** | **APPEARING OR BEING BROUGHT BEFORE A COURT IN A PROCEEDING OTHER THAN A CRIMINAL PROCEEDING**  **JLASA/s.28**: New s.32B of the **BA** provides that a person in a proceeding, other than a criminal proceeding, may appear before a court for the purposes of any **BA** provision-   1. personally; or 2. by a legal practitioner representing the person; or 3. by another person empowered by law to appear for the person.   **Note**: Section 328 of the **Criminal Procedure Act 2009** sets out how a party to a criminal proceeding may appear before a court. |

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| **CRIMINAL PROCEDURE ACT 2009 CPA** | |
| Section 528(2)(b) of the **CYFA** provides that unless the contrary intention appears in the **CYFA** or any other Act, the ***Criminal Procedure Act 2009*** in relation to proceedings in the Magistrates’ Court (other than s.54(2) [Summary case conference], Division 2 of Part 2.3 [Notice to appear] and Chapter 6 [Appeals and cases stated]) apply with any necessary modifications in the Children’s Court and to proceedings in the Court. | |
| **JLASA/Part 5 (ss.44-50)**  **PERMANENT PROVISIONS** | |
| **CPA**  **3** | **MEANING OF ‘ATTEND’ BROADENED TO INCLUDE AL**  **JLASA/s.44** adds **AL** to the definition of ‘**attend**’ which means, in relation to a person-   1. be physically present in court; or 2. if authorised or required to do so under Division 2 or 3 of Part IIA of the **EMPA**, appear or be brought before the court by **AVL** or **AL**. |
| **CPA**  **337A**  **201** | **COURT MAY DETERMINE ISSUE IN CRIMINAL PROCEEDING WITHOUT ORAL HEARING**   * **JLASA/s.48**: New s.337A(1) of the **CPA** provides that in addition to, and without limiting, s.201, a court may determine any issue (other than whether an accused is guilty or not guilty) in any criminal proceeding without an oral hearing and entirely on the basis of written submissions and without the appearance of the parties-  1. if the court is satisfied that it is in the interests of justice to do so; and 2. whether or not the parties consent to the court doing so.   Section 337A(2) provides that for the purposes of s.337A(1), in determining whether it is in the interests of justice to determine an issue in a criminal proceeding without an oral hearing, the court must have regard to-   1. the right of an accused to be present at the accused’s trial; 2. the right of an accused to a fair hearing; 3. the nature of the issue; 4. whether the accused or the offender (as the case requires) has had the opportunity to obtain legal advice; and 5. whether the parties consent to the court doing so.  * **JLASA/s.45**: Section 201 of the **CPA** – which makes similar provision for determination of issues before trials on indictment – has been substantially changed in a way that is similar to s.337A and no longer requires the consent of the parties. |
| **CPA**  **391** | **PERSONAL SERVICE**  Section 391 of the **CPA** sets out the requirements for personal service of a document. **JLASA/s.49** makes two permanent amendments to s.391:   * [s.391(2A)] ‘putting the copy down in the person’s presence etc’ applies not only to the person to be served but also to the ‘leaving with a person who appears to be 16 or older’ requirement; and * [s.391(4)(ca)] service may be effected by delivering a copy of the document by means of fax or email to the legal practitioner of the person to be served if two pre‑conditions are met. |
| **MAGISTRATES’ COURT ACT 1989 MCA** | |
| * Section 528(1) of the **CYFA** provides that the ChCV has and may exercise in relation to all matters over which it has jurisdiction all the powers and authorities that the Magistrates’ Court has in relation to the matters over which it has jurisdiction. * Section 528(2)(a) of the **CYFA** provides that unless the contrary intention appears in the **CYFA** or any other Act, the ***Magistrates’ Court Act 1989*** (except s.58 [Recall and cancellation of warrants] and Part 5 [Civil proceedings]) apply with any necessary modifications in the ChCV and to proceedings in the ChCV. | |
| **JLASA/Part 8 (ss.54-56)**  **PERMANENT PROVISIONS** | |
| **MCA**  **21** | **POWERS OF MAGISTRATES’ COURT REGISTRARS**  **JLASA/s.54** permanently expands the powers of a registrar in the Magistrates’ Court which are detailed in s.21 of the **MCA** in essentially the same way as **JLASA/s.41** expands the powers of a registrar in the ChCV detailed in s.539 of the **CYFA**. |
| **MCA**  **45** | **ATTENDANCE OF WITNESSES ON ADJOURNMENT**   * Existing s.45(1) of the **MCA** provides that a person whose attendance before the Court is a criminal proceeding has been required by witness summons must-  1. subject to s.43(6) [provision of appropriate conduct money], attend at the time and place specified in the summons; and 2. if the proceeding is adjourned, attend at the time and place to which the proceeding has been adjourned, without the issue of a further summons-   until excused by the Court. |
| * **JLASA/s.55** adds s.45(2): “A witness is not required to attend court on the date and time specified in a witness summons under subsection (1)(a), if the criminal proceeding is adjourned prior to the date and time specified in that summons.” |
| **MCA**  **125A** | **COURT MAY DETERMINE MATTER OR PROCEEDING (other than a criminal proceeding) WITHOUT ORAL HEARING**  **JLASA/s.56**: New s.125A of the **MCA** provides that the court may determine any matter in any proceeding, or determine any proceeding, without an oral hearing and entirely on the basis of written submissions and without the appearance of the parties-   1. if the court is satisfied that it is in the interests of justice to do so; and 2. whether or not the parties consent to the court doing so.   In determining whether it is in the interests of justice to determine a matter or a proceeding without an oral hearing, the court must have regard to-   1. the nature of the matter or proceeding; 2. the right to a fair hearing; 3. whether the parties have had the opportunity to obtain legal advice; and 4. whether the parties consent to the court doing so.   Section 125A does not apply to a criminal proceeding or a matter in a criminal proceeding. |
| **IS s.125A MCA APPLICABLE IN THE FAMILY DIVISION OF THE ChCV?**  It is clear from s.125A(2) that s.125A does not apply to a criminal proceeding or a matter in a criminal proceeding. Further, it is included in **MCA**/Part 7 – Miscellaneous, not in Part 5 – Civil proceedings. Hence, it appears that it could be used in an appropriate case in the Family Division of the ChCV by reliance on s.528(1) and/or s.528(2)(a) of the **CYFA** provided it was in the best interests of the subject child to do so. | |

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| **ELECTRONIC TRANSACTIONS (VICTORIA) ACT 2000 ETVA** | |
| **JLASA/Part 10 (ss.63-68)**  **PERMANENT PROVISIONS MAINLY INVOLVING WITNESSING BY AVL AND ELECTRONIC SIGNATURES** | |
| **ETVA**  **1(ba)**  **5(1)(ba)** | **ADDITIONAL PURPOSE & OUTLINE OF THE ETVA**   * **JLASA/s.63** adds an additional purpose to the previous six expressed purposes of the **ETVA**, namely: “to provide for witnessing by **AVL**”. * **JLASA/s.64** adds an additional provision outlining the **ETVA**, namely: “for the purposes of a law of this jurisdiction, witnessing may occur by **AVL**. |
| **ETVA**  **6A(1)(ab)** | **ADDITIONAL EXEMPTIONS CREATED BY REGULATIONS**   * Section 6A(1) of the **ETVA** provides that the regulations may provide that all or specified provisions of the Act do not apply-  1. to transactions, requirments, permissions, electronic communications or other matters specified, or of classes specified, in the regulations for the purposes of this section; or 2. in circumstances specified, or of classes specified, in the regulations for the purposes of this section. |
| * **JLASA/s.65** adds additional exemptions in new s.6A(1)(ab), namely that the regulations may provide that all or specified provision of the **ETVA** do not apply “to witnessing, in accordance with a law of this jurisdiction (including but not limited to witnessing by **AVL**), whether-  1. generally; or 2. to specified transactions or class of transactions; or 3. to specified documents or class of documents; or 4. to specified persons or classes of persons.” |
| **ETVA**  **9** | **ELECTRONIC SIGNATURES**  **JLASA/s.66** amends s.9 of the **ETVA** governing the use of electronic signatures. Section 9 provides [amendment shaded]:  “(1) If, by or under a law of this jurisdiction, the signature of a person is required, that requirement is taken to have been met in relation to an electronic communication if-   1. a method is used to identify the person and to indicate the person’s intention in respect of the information communicated; and 2. the method used was either- 3. as reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement; or 4. proven in fact to have fulfilled the functions described in paragraph (a), by itself or together with further evidence; and 5. the person to whom the signature is required to be given consents to that requirement being met by way of the use of the method mentioned in paragraph (a), having regard to the fact that it is not a sufficient reason to refuse to give consent merely because a person proposes to use a method mentioned in that paragraph.   (2) This section does not affect the operation of any other law of this jurisdiction that makes provision for or in relation to requiring-   1. an electronic communication to contain an electronic signature; or 2. an electronic communication to contain a unique identification in electronic form; or 3. a particular method to be used in relation to an electronic communication to identify the originator of the communication and to indicate the originator’s intention in respect of the information communicated.   (3) The reference in subsection (1) to a law that requires a signature includes a reference to a law that provides consequences for the absence of a signature. |
| **APPLICABILITY TO A COURT’S PROCESSES OF THE ETVA IN GENERAL & s.9 IN PARTICULAR**   * From time to time doubts have been expressed that the **ETVA** has any applicability to a court’s processes. In s.4 the object of the **ETVA** is certainly defined in terms that have a strong commercial flavour and do not sit entirely comfortably with the work of a court: However, limb (c) of the definition of ‘transaction’ in s.3(1) – which includes “any transaction of a non-commercial nature” – appears broad enough to include court business, at least in the ChCV. Further, the way in which DJCS has prepared for Parliament the various modifications to the **ETVA** in the context of both COVID-19 and post COVID-19 court processes supports the view that the **ETVA** does apply to courts’ processes. * The wording of s.9 – as most of the rest of the **ETVA** – is complex and not easy to decipher. Nevertheless the addition of the shaded words to the end of s.9(1)(c) is welcome as far as they go for the purposes of ChCV’s 21st century computerised operations. Although it might have been clearer had s.9(1)(c) gone further and made a lack of consent by the recipient of a court-issued document bearing an electronic signature **entirely** irrelevant, it is largely rendered so by s.533A of the **CYFA** read in conjunction with s.9(2) of the **ETVA**: * **CYFA**/s.533A: This section gives the ChCV an entirely unencumbered power to issue or transmit court documents electronically. An example of this very broad power is given after s.533A(2): **“If an Act or other law requires or permits the Court to sign or seal a document, the Court could use an electronic signature or electronic seal and the requirement is met in the same way as if the document had been signed or sealed by hand.”** * **ETVA**/s.9(2): Section 9 does not affect the operation of any other law of this jurisdiction that makes provision for or in relation to requiring electronic signatures or electronic identifiers or similar in relation to an electronic communication. | |
| **ETVA**  **12** | **WITNESSING BY AVL**  **JLASA/s.67** adds a complex new s.12 to the **ETVA**. It also adds new ss.12A & 12B providing that deeds and mortgages may be in electronic form. New section 12 provides:  “(1) A law of this jurisdiction in relation to a requirement for the presence of a witness, signatory or other person may be met by the witness, signatory or other person being present by **AVL**.  **Examples:** 1. A person observing another person by **AVL** in order to sign a document confirming that person’s identity. 2. A person observing, by **AVL**, another person writing that other person’s signature in order to sign a document as a witness to that other person’s signature.  (2) For the purposes of this section, the following requirements must be met-   1. if the transaction involved a person signing a document, the witness saw the signatory sign the document; and 2. the witness must be reasonably satisfied that the document signed as a witness is the same document or a copy of the document; and 3. all requirements for witnessing by **AVL** occurred on the same day; and 4. any other prescribed requirements (if any); and 5. the witness must ensure a statement is included on the document the witness signs that all the requirements of this section have been met.   (3) A witness need not be physically located in Victoria, unless otherwise required by a law of this jurisdiction.  (4) Nothing in this section is taken to interfere with any Act or law, including the common law or equitable duties or interests arising out of the law of misrepresentation, unconscionability, duress or undue influence.  (5) This section does not affect the operation of any other law of this jurisdiction that makes provision for or in relation to-   1. a witnessing requirement which could not be met by witnessing by **AVL**; or 2. a particular method to be used to witness a document by **AVL**. |

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| **OATHS AND AFFIRMATIONS ACT 2018 OAA** | |
| **JLASA/Part 11 (ss.69-78)**  **PERMANENT PROVISIONS MAINLY TO ALLOW AFFIDAVITS AND STATUTORY DECLARATIONS TO BE MADE BY AVL** | |
| **OAA**  **9(2)** | **OATH OR AFFIRMATION TO BE SAID ALOUD**   * Section 9 of the **OAA** provides: “A person who takes an oath or makes an affirmation must say the words of the oath or affirmation aloud in the presence of the administering officer.” |
| * **JLASA/s.69** adds a new s.9(2): “For the purposes of subsection (1), an oath or affirmation may be said aloud in the physical presence of the administering officer or by **AVL** or **AL**.” |
| **OAA**  **18A**  **29A** | **ELECTRONIC SIGNATURES AND INITIALS (affidavits & statutory declarations)**   * Part 3 of the **OAA** [ss.18-29] deals with affidavits. * **JLASA/s.70** adds a new s.18A: “A requirement under this Part for a deponent or an authorised affidavit taker to sign or initial an affidavit, a jurat, an exhibit, a certificate or other document attached to an affidavit is satisfied if the deponent or the authorised affidavit taker signs or initials the affidavit, jurat, exhibit, certificate or other document by electronic means.” * Part 4 of the **OAA** [ss.29A-38] deals with statutory declarations. * **JLASA/s.75** adds a new s.29A in relation to statutory declarations, exhibits or other attached documents which is in effectively the same terms as new s.18A. |
| **OAA**  **25**  **30** | **SIGNATURE AND OATH REQUIREMENTS**  **(affidavits & statutory declarations)**   * **JLASA/s.71** requires the deponent of an affidavit to do the things set out in ss.25(1) & 25(2) of the **OAA** in the presence (whether physically or by **AVL**) of the authorised affidavit taker. * **JLASA/s.76** requires a person making a statutory declaration and the statutory declaration witness each to do the things set out in ss.30(2), 30(3) & 30(4) of the **OAA** in the presence (whether physically or by **AVL**) of each other. |
| **OAA**  **26(5)**  **27(1A)**  **30A** | **REQUIREMENTS OF AUTHORISED AFFIDAVIT TAKER [s.26] JURAT [s.27]**   * Existing ss.26(1) to 26(4) & 27(1) of the **OAA** set out what an authorised affidavit taker before whom an affidavit is sworn or affirmed must do. * **JLASA/s.72** adds a new s.26(5): “If an affidavit has been signed and sworn or affirmed by a deponent under s.25 by **AVL**, an authorised affidavit taker may used a scanned or electronic copy of the affidavit for the purposes of complying with the requirements of this section and s.27.” * **JLASA/s.73** adds a new s.27(1A): “If an affidavit has been signed and sworn or affirmed by a deponent by **AVL** and the authorised affidavit taker has used a scanned or electronic copy of the affidavit for the purpose of complying with s.26, the authorised affidavit taker, in addition to any other requirements of this section, must state that-  1. the affidavit was signed and sworn or affirmed by the deponent by **AVL**; and 2. the authorised affidavit taker has used a scanned or electronic copy of the affidavit and not the original in completing the jurat requirements under subsection (1).”  * **JLASA/s.77** adds, in relation to statutory declarations, a new s.30A(1) which is in almost identical terms to new s.26(5) and a new s.30A(2) which is to a similar effect as new s.27(1A). |
| **OAA**  **28B**  **30B** | **AVL PROCEDURES DO NOT LIMIT OTHER DUTIES &  OBLIGATIONS**   * **JLASA/s.74** adds a new s.28B in relation to affidavits:   “(1) The use of **AVL** procedures under this Part in relation to affidavits applies subject to any express contrary intention imposed by any other duty or obligation under any Act (including a Commonwealth Act) or at common law applying to a person as a deponent or an authorised affidavit taker in relation to affidavits.  (2) Nothing in this Part limits any requirement imposed by this Part by which a person must not write or do something without first being satisfied of certain matters.”   * **JLASA/s.77** adds a new s.30B in relation to statutory declarations which is in effectively the same terms as new s.28B. |
| **OAA**  **28A** | **INABILITY TO COMPLY WITH REQUIREMENTS – ADMISSION OF PURPORTED AFFIDAVIT INTO EVIDENCE**  **JLASA/s.74** adds a new s.28A: “A court or tribunal may admit a purported affidavit that does not comply with ss.25, 26 or 27 into evidence in a particular proceeding if-   1. the purported affidavit states the reason why the deponent or authorised affidavit taker (as the case requires) was unable to comply with ss.25, 26 or 27; and 2. the court or tribunal, in considering the reason, is satisfied that it is in the interests of justice to admit the purported affidavit into evidence.” |
| **OAA**  **29**  **38** | **MINOR NON-COMPLIANCE DOES NOT AFFECT VALIDITY OF AFFIDAVIT OR STATUTORY DECLARATION** |
| For completeness it should be noted that-   * s.29 of the **OAA** is unchanged and provides: “An affidavit is not invalid merely because of an inadvertent non-compliance with a requirement imposed by [Part 3] that does not materially affect the nature of the affidavit.” * s.38 of the **OAA** is unchanged and makes the same concession for statutory declarations. |
| It is unclear whether s.29 of the **OAA** is broad enough to allow the admission of a purported affidavit to which new s.28A would have applied had s.28A(a) been complied with. | |

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| **COURT SECURITY ACT 1980 CSA** |
| **JLASA/s.106 PERMANENT AMENDMENT FIXING ERROR IN s.3(9) CSA** |
| **JLASA/s.105 TEMPORARY EXTENSION OF s.7A CSA** |
| **TEMPORARY MEASURES IN RESPONSE TO COVID-19 PANDEMIC**  Existing s.7A(3) of the **CSA** provides: “In addition to s.2(2), a reference in this Act to ‘the security, good order or management of court premises’ also includes-   1. the health of all persons who work at, attend or are in custody at the court premises during the COVID-19 pandemic; and 2. the following of any relevant directions made by an authorised officer under Part 10 of the **Public Health and Wellbeing Act 2008** in relation to the COVID-19 pandemic at the court premises.” |
| **JLASA/s.105 extends the repeal date of s.7A from 26 April 2021 to 26 October 2022.** |

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| **CRIMES (MENTAL IMPAIRMENT AND UNFITNESS TO BE TRIED) ACT 1997 CMIA** |
| **JLASA/Part 18 (ss.121-123)** |
| Some significant permanent amendments have been made to provisions involving the determination of unfitness to stand trial in criminal proceedings in the County Court or the Trial Division of the Supreme Court. However, no amendments have been made affecting the ChCV, in particular to-   * s.5A detailing the application of the **CMIA** to the ChCV; or * Part 5A [ss.38G to 38ZW] dealing with proceedings under the **CMIA** in the ChCV and appeals from those proceedings. |

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| **OPEN COURTS ACT 2013 OCA** | |
| **JLASA/Part 16 (s.110)** | |
| **PERMANENT PROVISION IN s.8A** | |
| **TEMPORARY PROVISION IN s.8B** | |
| **OCA**  **8A** | **HANDING DOWN AND DELIVERING JUDGMENTS BY ELECTRONIC COMMUNICATION DOES NOT CONTRAVENE RULES OF LAW RELATING TO OPEN JUSTICE**  New s.8A provides that a court or tribunal does not contravene any rule of law relating to open justice if, instead of handing down or delivering a judgment (including reasons, a final or interim order, a ruling, a finding, a decision or a determination) in a court room or hearing room that is open to the public, the court or tribunal-   1. gives the parties notice that the judgment is to be handed down or delivered as described in paragraphs (b) and (c); and 2. sends the judgment to the parties by electronic communication; and 3. makes the judgment available to the public generally or to a member of the public on request.   Nothing in the above permits the publication of information in connection with a proceeding if that publication is contrary to a prohibition or restriction imposed by or under this Act or any other Act [as to which, for example, see s.534 of the **CYFA**]. |
| **OCA**  **8B** | **CERTAIN MEASURES IN RELATION TO PROCEEDING OR HEARING DO NOT CONTRAVENE RULES OF LAW RELATING TO OPEN JUSTICE**  **THIS SECTION IS REPEALED ON THE DAY THAT IS 18 MONTHS AFTER ITS COMMENCEMENT**  New s.8B provides that a court or tribunal does not contravene any rule of law relating to open justice if, instead of holding a proceeding or hearing in a court room or hearing room that is open to the public, the court or tribunal-   1. arranges or provides a contemporaneous audio or audio visual broadcast of the proceeding or hearing to the public; or 2. arranges or provides an audio or audio visual recording of the proceeding or hearing within a reasonable time after the conclusion of the proceeding or hearing to- 3. the public generally; or 4. a member of the public on request; or 5. in the case of the Supreme Court, the County Court or the Coroners Court, arranges or provides a transcript of the proceeding or hearing within a reasonable time after the conclusion of the proceeding or hearing to- 6. the public generally; or 7. a member of the public on request.   Nothing in the above permits the publication of information in connection with a proceeding if that publication is contrary to a prohibition or restriction imposed by or under this Act or any other Act [as to which, for example, see s.534 of the **CYFA**]. |