



Children's Court
of Victoria

**THIS ACT WAS
PASSED ON
23rd APRIL 2020**

**MELBOURNE CHILDREN'S
COURT**

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24th April 2020 – 3.30pm

COVID-19 Omnibus (Emergency Measures) Act 2020

1. This Act was passed on 23rd April 2020 in special emergency sittings of both Houses of the Victorian Parliament. Its purpose is:

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.

2. This document summarizes the provisions of the Act which have some relevance to the Children's Court [‘the CCV’].

3. The amendments relevant to the CCV are to be repealed on a day that is 6 months after the commencement of the Act. The commencement date is the day after it receives the Royal Assent.

REGULATIONS

**COA
4(1)**

• The Governor in Council, on the recommendation of the Attorney-General, may make regulations that disapply, or modify the application of, a **Justice Act provision** (other than a temporary emergency provision), a provision of a subordinate instrument made under a **Justice Act provision** or a relevant applied law that provides for or regulates any of 16 defined matters, most of which are procedural in nature.

3

• A **Justice Act provision** is one administered by any of the following Ministers, wholly or jointly: the Attorney-General or the Ministers for Corrections, Police and Emergency Services, Victim Support or Youth Justice.

8(2)

• The Attorney-General must not recommend the making of a regulation under s.4 without the consent of the relevant Head of Jurisdiction.

BAIL ACT 1977

**BA
34C**

“BROUGHT BEFORE THE COURT”

(1) If a provision of the *Bail Act* requires that a person be **brought before** a court, that requirement is satisfied by the appearance before the court of either-

- (a) a legal practitioner representing the person; or
- (b) another person empowered by law to appear for the person.

	<p>(2) For the purposes of the <i>Bail Act</i> a person may appear before a court-</p> <p>(a) personally; or</p> <p>(b) by a legal representative appearing for the person; or</p> <p>(c) by another person empowered by law to appear for the person.</p> <p>(3) An appearance by audio visual link ['AVL'] or audio link ['AL'] constitutes appearance for the purposes of the <i>Bail Act</i>.</p>
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CHILDREN, YOUTH AND FAMILIES ACT 2005

CYFA	ORAL PRE-SENTENCE REPORTS
600G to 600L	<p>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-</p> <ul style="list-style-type: none"> • 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.
600M to 600O	ISOLATION IN DETENTION
	<p>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.</p>
600Q	CONCILIATION CONFERENCE OR COUNSELLING BY AVL/AL
	<p>A convenor of a conciliation conference under s.222, or a person conducting conciliation counselling under s.260 (in relation to an irreconcilable difference application), may conduct the conference or counselling by means of AVL or AL.</p>
600R	YCO PLANNING MEETING OR GROUP CONFERENCE BY AVL/AL OR SUBMISSIONS
	<p>A convenor of a YCO planning meeting [s.409Q] or a group conference [s.415] may require one or more of the participants to attend by AVL or AL or to participate by means or oral or written submissions.</p>
600S to 600T	YOUTH JUSTICE ATTENDANCE/REPORTING
	<p>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.</p>
600U	NOTICE REQUIREMENTS TO APPEAR IN CERTAIN INTERIM ACCOMMODATION ORDER MATTERS MAY BE BYPASSED
	<p>Despite the notice requirements in s.268 (variation of IAO), s.269 (breach of IAO) and s.270 (new IAO) for a person to appear or to cause another person to appear in person before the Court, the Court may deal with the matter in the absence of the person.</p>

<p>600V</p> <p>600W</p>	<p style="text-align: center;">LOCATION OF CHILDREN'S COURT</p> <ul style="list-style-type: none"> Section 505 is amended to allow the Court to sit at any time and place, whether Gazetted or not and whether or not the Magistrates' Court is also sitting there. The Court may order that a hearing be held at an appropriate place that is not the 'proper venue' if- (a) a timely hearing cannot be held at the proper venue due to disruption caused by COVID-19; or (b) for any other appropriate reason. In determining an appropriate place the Court must first have regard to places closest to the 'proper venue'.
<p>600X</p> <p>600Y</p> <p>600Z</p>	<p style="text-align: center;">ADDITIONAL METHODS OF SERVICE</p> <ul style="list-style-type: none"> Section 600X details 5 methods of service additional to those contained in s.593. They include- (a) confirmed electronic service; (b), (d) & (e) registered postal, personal or confirmed electronic service on the person's legal representative. 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.420ZM of the <i>Criminal Procedure Act</i> (as amended). Section 600Z details 5 methods of service, similar to those in s.600X, which are additional to those contained in s.594 relating to "service on parent or child or other person".
<p>600ZA</p>	<p style="text-align: center;">BAIL JUSTICE IAO HEARINGS SUSPENDED</p> <ul style="list-style-type: none"> 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 period of these temporary amendments there will no longer be any bail justice IAO hearings. There is no change to bail justice requirements in Criminal Division proceedings.
<p>600ZB</p>	<p style="text-align: center;">APPLICATION OF 'BEST INTERESTS' PROVISIONS TO THE ABOVE AMENDMENTS</p> <ul style="list-style-type: none"> The 'best interests' provisions in Part 1.2 of the CYFA do not apply to ss.600A to 600O. The provisions in Part 1.2 of the CYFA do apply to ss.600P to 600ZA except to the extent that they relate to Chapter 5 (Children and the criminal law) or Chapter 7 (in relation to a matter under Chapter 5).
<p>530</p>	<p style="text-align: center;">POWER OF ADJOURNMENT BROADENED</p> <p>Section 530 of the CYFA is a broad power of adjournment for both the Family Division and the Criminal Division of the CCV and is probably intended to 'cover the field'. Section 530(5) is amended to allow a child on remand or in secure welfare to appear before the Court by AVL or AL in accordance with the emergency powers in Part IX of the amended <i>Evidence (Miscellaneous Provisions) Act</i>. Compare added s.420ZJ of the <i>Criminal Procedure Act</i> discussed below.</p>

CORRECTIONS ACT 1986

ALTERATION TO PRISON VISITS & MANDATORY QUARANTINE ETC

Added Part 10B of the *Corrections Act* allows for alterations to prison regimes as a consequence of the COVID-19 pandemic, including prohibition or restriction of visitor access to prisons and/or visits by **AL**, **AVL** or other means, mandatory quarantine of prisoners entering prisons, restrictions on the movement and placement of prisoners and COVID-19 based assessment and treatment of prisoners. **However, there is no equivalent amendment of the CYFA in relation to detainees in youth justice detention centres.**

COURT SECURITY ACT 1980

CSA

7A(3)

“SECURITY, GOOD ORDER OR MANAGEMENT” BROADENED

In addition to s.2(2), a reference in the CSA to “the security, good order or management of the court premises” also includes- (a) the health of all persons who work at, attend or are in custody at the court premises during the COVID-19 pandemic; and (b) a direction 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.

CRIMES (MENTAL IMPAIRMENT AND UNFITNESS TO BE TRIED) ACT 1997

CMIA

120(1)

COURT MAY DETERMINE MATTERS WITHOUT A HEARING

The court may decide any issue (other than a prescribed issue) or may determine any of the following matters (other than a prescribed matter), entirely on the basis of written submissions and without the appearance of the parties—

- (e) a review of a custodial supervision order under s.38ZI(2); or
- (f) an application under s.38ZN for variation or revocation of a CSO; or
- (g) a further review of a CSO under s.38ZO(3) or 38ZP(2).

CRIMINAL PROCEDURE ACT 2009

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* 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.

CPA

420ZI

MEANING OF ‘ATTEND’ BROADENED

The meaning of ‘attend’ in s.3 of the CPA is broadened to include the new temporary amendments to the EMPA (see below).

420ZJ

POWER OF ADJOURNMENT BROADENED

This provision broadens the power of adjournment in s.331(6)(b) of the CPA to enable an adjournment to be abridged to enable an accused to be brought to a place where **AL** facilities exist to enable a hearing to be held or continued. It is not certain whether this has application in the CCV but it is more likely that s.530 of the CYFA is intended to ‘cover the field’.

420ZK	<p>AVL OR AL ATTENDANCE FOR GROUND RULES HEARING</p> <p>A person required to attend a ground rules hearing must do so by AVL or AL and not by being physically present in court unless appropriate facilities do not exist or the court orders otherwise.</p>
420ZL	<p>COURT MAY DECIDE ISSUES WITHOUT A HEARING</p> <ul style="list-style-type: none"> • A court may decide any issue in a criminal proceeding (other than a pre-trial issue under s.199 of the CPA or a prescribed issue) entirely on the basis of written submissions and without the appearance of the parties if- <ul style="list-style-type: none"> (a) the court is satisfied that it is in the interests of justice to do so; and (b) whether or not the parties consent to the court doing so. • In determining whether it is in the interests of justice to decide an issue entirely on the basis of written submissions and without the appearance of the parties, the court must have regard to- <ul style="list-style-type: none"> (a) the right of an accused to be present at their trial; (b) the right of an accused to a fair hearing; (c) the nature of the issue; (d) whether the accused or the offender (as the case requires) has had the opportunity to obtain legal advice; and (e) whether the parties consent to the court doing so.
EVIDENCE (MISCELLANEOUS PROVISIONS) ACT 1958	
<p>EMPA</p> <p>170</p>	<p>PRACTICE DIRECTIONS, STATEMENTS OR NOTES</p> <p>The President may from time to time issue practice directions, statements or notes relating to the exercise by the court of its discretion in the making of a direction under s.42E(1).</p> <div style="border: 1px solid black; padding: 10px; margin: 10px 0;"> <ul style="list-style-type: none"> • Section 42E(1) of the EMPA provides that subject to s.42F and any rules of court, a court may, on its own initiative, 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. </div> <p>171</p> <p>The court's power to make a direction under s.42E(1) is subject to the President's direction, statement or note issued under s.170.</p>
172	<p>APPEARANCE BY AL OF A NON-ACCUSED CHILD</p> <ul style="list-style-type: none"> • Section 42F(7) which prohibits a court from making a direction under s.42E(1) that a child appear before, or give evidence or make a submission to, the court by AL is suspended. • However, a court must not make 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 apply.

169	<ul style="list-style-type: none"> • ‘Exceptional circumstances’ includes but is not limited to a state of emergency declared under s.198 of the <i>Public Health and Wellbeing Act 2008</i> in an area where an accused is required to appear before a court or required to transit through in order to appear before a court.
179 180 & 181(4)-181(5)	<p style="text-align: center;">APPEARANCE BEFORE COURT OF A CHILD ACCUSED</p> <ul style="list-style-type: none"> • Section 42O is amended to provide that unless the court otherwise directs, an accused who is a child and is required to appear, or be brought, before a court is required to appear, or be brought, physically before the court. This requirement applies whether or not the accused is being held in custody. • However, a court, on its own initiative, may direct that a child accused appear before it by AVL [or AL if s.181(5) is satisfied] if the court is satisfied that the appearance by AVL or AL is- <ul style="list-style-type: none"> (a) necessary for the purposes of the court’s case management generally; and (b) consistent with the interests of justice; and (c) reasonably practicable in the circumstances.
182	<p style="text-align: center;">TECHNICAL REQUIREMENTS FOR AL</p> <p>Section 182 sets out very prescriptive and cumbersome technical requirements for an AL by which an accused appears before a court.</p>
FAMILY VIOLENCE PROTECTION ACT 2008 PERSONAL SAFETY INTERVENT’N ORDERS ACT 2010	
FVPA 207B PSIA 181B	<p>In relation to interim extension orders-</p> <ul style="list-style-type: none"> • the reference to “28 days” in ss.107(2) & 107(4) of the FVPA is amended to “3 months”; and • the reference to “28 days” in ss.84(2) & 84(4) of the PSIA is amended to “3 months”.
OATHS AND AFFIRMATIONS ACT 2018	
OAA 49B	<p style="text-align: center;">ELECTRONIC SIGNATURES AND INITIALS</p> <p>A requirement under the OAA that a deponent or an authorised affidavit taker sign or initial an affidavit, jurat or other document may be satisfied by the deponent or the authorised affidavit taker signing or initialling the affidavit, jurat or other document by electronic means.</p>
49C	<p style="text-align: center;">EXPANSION OF “IN THE PRESENCE OF”</p> <div style="border: 1px solid black; padding: 5px; margin: 5px 0;"> <p>Section 25(1) of the OAA sets out 5 things that the deponent of an affidavit must do in the presence of an authorised affidavit taker. Section 25(2) requires the deponent to say the prescribed oath or affirmation aloud in the presence of the authorized affidavit taker.</p> </div> <p>A requirement under the OAA that a deponent or an authorised affidavit taker do a thing in relation to an affidavit in each other's presence may be satisfied by the deponent and the authorised affidavit taker doing the thing by means of AL or AVL.</p>

<p>49D</p>	<p>REQUIREMENTS RELATING TO ORIGINAL DOCUMENTS</p> <p>A requirement under the OAA that an authorised affidavit taker sign or initial the original copy of an affidavit, jurat or other document may be satisfied by the authorised affidavit taker signing or initialling a scanned hard copy or an electronic copy of the affidavit, jurat or other document.</p>
<p>49E</p>	<p>REQUIREMENTS IF A THING IS DONE ELECTRONICALLY OR BY MEANS OF AL OR AVL</p> <p>The authorised affidavit taker must, in addition to stating the matters referred to in s.27(1)(a), state the following in the jurat-</p> <ul style="list-style-type: none"> (a) that the affidavit, as signed and notated by the authorised affidavit taker, was signed or initialled by the deponent by electronic means; (b) that specified things in respect of the affidavit were done by means of AL or AVL; (c) that the affidavit, jurat or other document is a scanned hard copy or an electronic copy, not an original.
<p>49F</p>	<p>INABILITY TO COMPLY WITH REQUIREMENTS USE OF PURPORTED AFFIDAVIT</p> <p>If a court considers that it is desirable, in the interests of justice, to admit a purported affidavit in evidence in particular proceedings, the court may do so if the court is satisfied that-</p> <ul style="list-style-type: none"> (a) compliance with the OAA in relation to the purported affidavit was not reasonably practicable; and (b) the purported affidavit states the reasons why compliance with those requirements was not reasonably practicable.