

IN THE CHILDREN'S COURT OF VICTORIA
FAMILY DIVISION

APPLICANT: DEPARTMENT OF FAMILIES, FAIRNESS AND HOUSING

CHILDREN: WE & WL*

MAGISTRATE: J BOWLES

DATE OF HEARING: 17, 18 AUGUST 2022

DATE OF DECISION: 2 SEPTEMBER 2022

CASE MAY BE CITED AS: DFFH v WE & WL [2022] ChCV 1

REASONS FOR DECISION

Catchwords: Child protection – family reunification order (FRO) – children initially placed with their maternal grandmother – application to extend FRO – the Secretary of the Department of Families, Fairness and Housing (the Secretary) then placed the children with their father, intending to transfer parental responsibility to him – whether the Secretary has power to direct that a parent is to resume parental responsibility when there is an application to extend a FRO before the Court – no express provision in the *Children, Youth and Families Act 2005* (the Act) which precludes the Secretary from being able to exercise administrative power in these circumstances – s. 288A of the Act – Secretary's non-compliance with certain statutory requirements, including pursuant to s. 288A(1) directing in writing that a parent resume parental responsibility for the child to the exclusion of the Secretary – the Children's Court does not have the power to conduct a judicial review of an administrative decision of the Secretary – future direction of the case – upon s. 288A direction and notices being given – 'on and from the date of the direction' under s. 288A(1) the FRO ceases – unless there is an application to extend a family preservation order simultaneously filed on the date of direction, there will not be any order before the Court to extend.

APPEARANCES:

PARTY

DFFH

MOTHER

FATHER

COUNSEL

MR ROCHE

MR ELISHAPOUR

IN PERSON

* This decision has been anonymised.

HER HONOUR:

Background

1. This matter involves two children: WE who is now 7 years of age and WL who is 5 years of age. Their mother and father do not reside together and are not in a relationship together.
2. On 7 July 2021 the Department of Families, Fairness and Housing (the Department) issued a Protection Application by Emergency Care. The Application was listed before the Children's Court on 9 July 2021. The Court made an interim accommodation order (IAO) on 9 July 2021 to the maternal grandmother. The Order was unopposed by the parents. The mother was initially able to reside at the maternal grandmother's home with the children, until breach of IAO proceedings were initiated and the IAO was varied.¹
3. On 5 October 2021 the protection application was proved on likelihood on s. 162(1)(e) *Children, Youth and Families Act 2005* (CYFA).² A family reunification order (FRO) was made until 8 July 2022. There were 21 conditions attached to the FRO, including that the mother may live with the maternal grandmother.³
4. A respite condition was not included on the FRO.
5. On 31 May 2022 a delegate of the Secretary of the Department of Families, Fairness and Housing (the Secretary) filed an application to extend the FRO to 8 January 2023.
6. A confidential Court report dated 24 June 2022 in support of the application to extend the FRO was filed and served.
7. Since the proceedings commenced in the Children's Court, the children had at all times been in the care of their maternal grandmother. However, on 8 August 2022 the Secretary placed the children with their father, intending to transfer parental responsibility to him. He resides approximately 100 kilometres away from the maternal grandmother.
8. In Mr Elishapour's written submission dated 18 August 2022 he stated that there were no circumstances open on the materials that necessitated the removal of the children from

¹ 12 August 2021. The mother was unable to reside with her mother and the children until she completed a detox and rehabilitation program. Her contact condition was varied having regard to the possibility of her attending the detox and rehabilitation program.

² Section 162(1)(c) CYFA was struck out.

³ Condition 12.

the maternal grandmother and that at no stage was the mother advised the children would be moved.⁴

9. In the Confidential Court Report dated 24 June 2022 the Department referred to the progress it understood the father had made, that the children were part way through a progression plan with their father, including unsupervised overnight contacts during the school term; with the goal being reunification to the father by 10 July 2022.⁵
10. A Conciliation Conference Addendum Report dated 15 August 2022 was prepared for the Conciliation Conference which was listed for 17 August 2022.⁶ In the Conciliation Conference Addendum Report it was confirmed that the children had completed a transition plan to their father and had been in the primary care of their father since 6 August 2022.⁷ The disposition had changed to a 6 month family preservation order (FPO) to the father.⁸
11. The Conference was vacated as the parties sought to make submissions to the Court seeking clarification of the current legal position and to determine how this matter should proceed. Counsel for the mother had a conflict of interest and the case was adjourned overnight for alternative counsel to be briefed and for submissions to be made.
12. Written submissions were filed on 18 August 2022 and were supplemented by detailed oral submissions.⁹ I have had regard to all of the submissions made. However, in this judgment I will not recite or refer to all of them. The father did not have any submissions he wished to make. He has participated since the proceedings were initiated. He has represented himself, save for being legally represented on 9 July 2021 when the matter was first listed before the Court. He is supportive of the Department's position for the children to remain in his care. The mother does not support the children being placed with him and seeks for them to be returned to the care of the maternal grandmother.

⁴ At [3.2] and [3.4].

⁵ At page 4.

⁶ The Court ordered that the parties comply with the Conciliation Conference Guidelines. The Guidelines require the Department "to file with the Court and serve on the legal representatives the Conciliation Conference Addendum Report at least 10 days (but no more than 14 days) prior to the date fixed for the Conciliation Conference." [2.4] Guidelines for Conciliation Conferences. On the basis of the dates on the CC Addendum Report and the date of the CC, there was non-compliance with this order.

⁷ At page 1. There is a discrepancy in the documents as to whether the children returned to their father on 6/8/2022 or 8/8/2022.

⁸ At page 3.

⁹ The parties were provided with the opportunity to file and serve any further written submissions on or before 24/8/2022. The Department filed further written submissions on 24/8/2022. On 26/8/2022 counsel for the mother filed and served an email attaching a link to the case of *AA v Secretary to the Department of Health and Human Services & Ors* [2020] VSC 400.

13. The CYFA provides a legislative framework while a FRO is in force for the Secretary to direct that a parent of the child is to resume parental responsibility to the exclusion of the Secretary. Section 287(1)(e) CYFA provides that:

'A family reunification order ...

(e) must provide that if, while the order is in force, the Secretary is satisfied that it is in the child's best interests, the Secretary may in writing direct that a parent of the child is to resume parental responsibility for the child to the exclusion of the Secretary.'

14. The mechanics and effect of this provision are expanded in s. 288A CYFA.

15. It is conceded by the Secretary that she did not direct in writing that the parent, in this case the father, resume parental responsibility for the children to the exclusion of the Secretary.

16. The parties raised a number of legal issues concerning the validity of decisions which had been made and also regarding future applications. The ultimate positions of the parties were:

- the Secretary and the father sought for him to resume parental responsibility to the exclusion of the Secretary; and
- the mother sought for the children to be returned to the care of the maternal grandmother.

What are the parties seeking?

17. Mr Roche on behalf of the Secretary submitted that:

- The Secretary has conceded that the Secretary had fallen into serious error. It is necessary for steps to be taken to remedy the legal status of the children in the father's care consistent with the disposition contained within its Addendum Report¹⁰ of a FPO to the father for 6 months.
- The current legal status of the children be remedied by the Secretary giving a direction and notices pursuant to s. 288A of the Act so that the FRO is taken to be a FPO which continues to be subject to the extension application.
- Upon the direction and notices being given pursuant to s. 288A that current conditions on the order numbered 13 and 20 be deleted.

¹⁰ Conciliation Conference Addendum Report completed by AH, Child Protection Practitioner dated 15 August 2022.

18. Mr Elishapour on behalf of the mother contended that the current legal status of the children means that they should be returned to the care of the maternal grandmother. However, DFFH says it should remedy the legal status of the children but that it is not in the children's best interests to be removed from the care of their father.¹¹
19. Mr Elishapour submitted that the following should occur:
- That the Court order that the purported reunification was void and any action taken in consequence of that determination was carried out without power.
 - That any purported changes to the status quo should be fairly and appropriately litigated, by way of notice, natural justice to the parties and filing of the necessary applications.
 - As a necessary consequence of this, the mother seeks the children be returned to the maternal grandmother immediately and for her contact to be reinstated.
20. Mr Elishapour also submitted that the Court, in considering whether to grant the relief sought, should have regard to the operation and limitations imposed on extending the period of the FRO under s. 287A and the impact that further delay would have on the mother's right to litigate the extension application.

Does the Secretary have power to direct that a parent is to resume parental responsibility when there is an application to extend a FRO before the Court?

21. The first threshold issue raised by the parties is whether the Secretary has the power to direct that a parent is to resume parental responsibility when there is an application to extend a FRO before the Court.
22. Mr Roche submitted that the Secretary does have the power to confer parental responsibility whilst there is an application to extend the FRO before the Court. The Applicant had filed an application to extend the FRO whilst the FRO was in force. Pursuant to s. 293(2) and (3) CYFA, the order continues in force until the application is determined. Contrary to Mr Elishapour's submission, Mr Roche contended that on a plain reading of s. 288A there is nothing which purports to limit the power of the Secretary when there is an application to extend a FRO before the Court. He also relied upon clause 32 of the *Children, Youth and Families Amendment (Child Protection) Bill 2021* to which I refer below.

¹¹ Written submissions of the Applicant dated 18/8/2022 at paragraph 2.

23. The Secretary placed the children with their father after the application to extend the FRO was served and filed. Mr Elishapour submitted that there is no express provision allowing for the Secretary to administratively convert a FRO to a FPO whilst there is an active application before the court and in the absence of an express provision and as a matter of ordinary principles of statutory interpretation, there is no basis or need for the implication of any such power.¹²
24. He submitted that the Secretary did not have the power to place the children with the father when there was a live application before the Court. If the Secretary did have this power, there would be a denial of natural justice and procedural fairness as the parent/s, in this case the mother, would not be able to be heard. It was submitted that the power for the Secretary to administratively change parental responsibility was limited to circumstances where there were no additional applications before the Court.
25. Mr Elishapour also relied upon s. 288A and s. 287 and noted that there is not a provision that consequently converts any application filed to extend a FRO into an application to extend a FPO.¹³
26. Mr Elishapour submitted that the Secretary does not have that power. He submitted that where there is a live application before the court, natural justice requires the parties to be given an opportunity to have a fair hearing. The mother's rights would be abrogated if the Secretary had that power. It would fundamentally change the case which the mother would have to meet. There is no express provision in the Act which provides that the Secretary has the power to unilaterally determine an opposed application. It cannot be inferred that that the Secretary could have the power to make such a significant direction which converts a FRO to an FPO.
27. Putting to one side that the Secretary in this case did not comply with s. 287(1)(e) and s. 288A(2) CYFA and accordingly did not transfer parental responsibility to the father, when regard is had to the current wording of the Act, I do not accept the submission made by Mr Elishapour that when there is an application to extend a FRO before the Court that the Secretary does not have the power to direct a parent to resume parental responsibility.

¹² Ibid; at [24.1].

¹³ Refer to paragraphs 24.1 to 24.3 inclusive of Mr Elishapour's submissions dated 18 August 2022.

28. There is no express provision in the Act which precludes the Secretary from being able to exercise administrative power in these circumstances. This interpretation is consistent with the Explanatory Memorandum and the wording of clause 32 of the *Children, Youth and Families Amendment (Child Protection) Bill 2021* which is expressed in the negative. If passed, clause 32 of the Bill would prohibit the Secretary from being able to direct a parent to resume parental responsibility unless there is not an application to extend a FRO before the Court. The Bill has not been passed. It is currently before the Legislative Council. It was passed by the Legislative Assembly on 14 October 2021.

29. Clause 32 provides as follows:

(1) *In section 287(1) of the Principal Act –*

- a. *in paragraph (d)(iii), for “child; and” substitute “child”;*
- b. *paragraph (e) is repealed.*

(2) *After section 287(1) of the Principal Act insert –*

“(1A) A family reunification order must provide that –

(a) the Secretary, while the order is in force, may in writing direct that a parent of the child is to resume parental responsibility for the child to the exclusion of the Secretary; and

(b) the Secretary may only direct the parent to resume responsibility if –

(i) the Secretary is satisfied that it is in the child’s best interests; and

(ii) there is no application before the Court that has not yet been determined for –

.....

(D) the extension or revocation of the family reunification order”.
(emphasis added)

30. Clause 1 of the Explanatory Memorandum sets out the main purposes of the Bill. Relevant to this matter it provides:

‘to limit the circumstances in which the Secretary may direct a parent to resume parental responsibility of a child under a family reunification order ...’ *(emphasis added)*

31. In relation to Clause 32 the EM states:

‘Subclause (2) inserts new section 287(1A) into the Principal Act which requires that a family reunification order must provide that the Secretary, while the family reunification order is in force, may direct in writing that a parent is to resume parental responsibility for the child, to the exclusion of the Secretary, if the Secretary is satisfied that it is in the child’s best interests and there are no unresolved applications before the Court for any of the specified orders. This introduces a limitation on the Secretary’s power to make a direction if there is an unresolved application for a specified order before the Court.’

32. A plain reading of the current legislation does not preclude the Secretary from making such a direction if there is an outstanding application to extend or revoke a FRO. The proposed amendment inserting s. 287(1) would expressly prohibit the Secretary being able to direct a parent to resume parental responsibility if there is a prescribed outstanding application before the Court. The use of the words ‘to limit’ and that ‘this introduces a limitation on the Secretary’s power to make a direction’ in the Explanatory Memorandum is consistent with there not currently being a limitation on the powers of the Secretary.
33. Mr Elishapour urged caution to be adopted when considering a Bill and an accompanying Explanatory Memorandum. While I agree with that as a general proposition, a plain reading of the current legislation does not preclude the Secretary from making such a direction while an undetermined application to extend the FRO is before the Court. Clause 32 merely reinforces the meaning to be derived from a plain reading of the current legislation.

Section 288A of the CYFA

34. In this case, the Secretary concedes that the intention in placing the children with their father was for the father to resume parental responsibility immediately. However, the Secretary did not comply with certain statutory requirements, including pursuant to s. 288A(1) CYFA directing in writing that a parent resume parental responsibility for the child to the exclusion of the Secretary.
35. Nor did the Secretary comply with the requirements in s. 288A(2) CYFA.
36. If under a FRO the Secretary directs that a parent or parents of a child are to resume parental responsibility for the child to the exclusion of the Secretary, s. 288A(2) CYFA provides that:
- ‘The Secretary must give a copy of a direction under this section to –*
- (a) the Court; and*
 - (b) the child and*
 - (c) the parent of the child.’*
37. There is a recognition in the legislation that upon the Secretary determining that a parent is to resume parental responsibility and the FRO ceasing¹⁴ it may be necessary for conditions to be changed. The clearest example would be that a contact condition for a

¹⁴ Pursuant to s. 288A(1)(f) CYFA.

parent is otiose as the child has been returned to that parent's care and parental responsibility has been conferred on that parent.

38. Section 288A(3) CYFA provides that:

'The Secretary may apply to the Court to determine that the order is to include conditions.'

39. Section 288A(4) CYFA provides that:

'The Court may determine that the order is to include conditions of a kind referred to in s. 281, without requiring the parties to attend, or be represented at the proceeding.'

40. As a result of the Secretary's non-compliance with the statutory requirements, her decision to return the children to their father's care has resulted in the untenable situation that certain conditions on the Court order either cannot be complied with or are impractical or irrelevant.

41. The Court includes conditions on orders which are in the best interests of a child. For the Secretary as a model litigant to display such a wanton disregard to the legislative requirements and conditions on the court orders is appalling.

42. Whilst the Secretary had parental responsibility and could place the children in their father's care independently of s. 288A, this is conceded not to have been the Secretary's intention and the failure to give the required direction in writing has meant that the father has not yet resumed parental responsibility and the FRO remains in operation. Until Mr Roche foreshadowed that the Secretary would be seeking that conditions on the FRO numbered 13 and 20 be deleted, the Secretary had not applied to the Court pursuant to s. 288A(3) to determine that the order is to include conditions. Nor could the Secretary do so in the absence of compliance with s. 288A(1).

43. The artifice which has resulted is that since the children were returned to their father's care on 8 August 2022, not only is there a difficulty with conditions 13 and 20 but there are additional conditions which cannot be complied with or are now impractical, irrelevant or inadequate. The conditions which have been impacted by the decision to return the children to their father's care are detailed in the following Table:

Condition No.	Condition (summary)
13	Father must not live or have contact with the child other than Court ordered contact. ¹⁵
17	Mother must allow the child to be taken to the doctor for regular check-ups

¹⁵ See the definition of "contact" in s. 3(1) CYFA.

	as required by DFFH or the doctor and must allow reports to be given to DFFH.
18	Mother must allow the child WE to go to school every day unless she is ill and a medical certificate is obtained.
19	Mother may have daily contact (monitored in the home; supervised outside the home) with the child at times and places as agreed between the mother and the carer. The condition detailed what needed to occur for the mother's contact to progress from supervised to monitored to unsupervised.
20	Father may have supervised contact with the child for a minimum of once per week for two hours at times and places as agreed between the parties. ¹⁶ The condition provided for contact via electronic means to be a minimum of twice per week whilst the children were living at the maternal grandmother's due to the distance which needed to be travelled by the children for contact to occur. The condition detailed what needed to occur for the father's contact to progress from supervised to monitored to unsupervised.

Powers to review an administrative decision made by the Secretary

44. Mr Elishapour submitted that the Court should return the children to their maternal grandmother. He referred to the requirement for the mother to be accorded procedural fairness, that the Secretary had not complied with s. 287(1)(e) or s. 288A(2), that it was not in the best interests of the children for them to reside with their father as there were major protective concerns with him and the children had been prematurely removed from a stable placement.
45. A direction made by the Secretary pursuant to s. 288A(1) CYFA is an administrative decision. The relief which Mr Elishapour is seeking from the Children's Court is detailed in paragraphs 43, 43.1 and 43.2 of his written submissions dated 18 August 2022. The Children's Court of Victoria is a Court created by statute. Mr Elishapour has not referred to any statutory provision in the CYFA which gives the Children's Court the power to review and confirm, vary or set aside an administrative decision made by the Secretary concerning a child. The CYFA does, however, vest that jurisdiction in VCAT pursuant to s. 333(1)(a) of the Act.
46. In addition the Supreme Court of Victoria has jurisdiction to review an administrative decision pursuant to Order 56 of the *Supreme Court (General Civil Procedure) Rules 2015*:

¹⁶ A "contact" condition is inconsistent with the legal status of a parent who has day to day care of a child on an FPO pursuant to s. 280(1)(c) CYFA.

56.01 Judgment or order instead of writ

- (1) *Subject to any Act, the jurisdiction of the Court to grant any relief or remedy in the nature of certiorari, mandamus, prohibition or quo warranto shall be exercised only by way of judgment or order (including interlocutory order) and in a proceeding commenced in accordance with these Rules.*
- (2) *The proceeding shall be commenced by filing an originating motion in Form 5G naming as defendant—*
 - (a) *a person, if any, having an interest to oppose the claim of the plaintiff; and*
 - (b) *the court, tribunal or **person in respect of whose exercise of jurisdiction or failure or refusal to exercise jurisdiction the plaintiff brings the proceeding.***
- (3) *A person named as defendant in accordance with paragraph (2)(b) who is **sued in the capacity of a judicial or public authority or as the holder of a public office** shall be described in the originating motion by the name of that authority or the name of that office. (emphasis added)*

47. I am satisfied that the Children’s Court does not have the power to conduct a judicial review of an administrative decision of the Secretary or to grant the relief sought by the mother. See in particular the judgment of Incerti J in *AA v Secretary to the Department of Health and Human Services & Ors* [2020] VSC 400 at [226]–[236].

48. As I have stated Mr Elishapour referred to the best interests of the children. The best interests provisions in Part 1.2 of the CYFA do not create jurisdiction. Although their function is very important, their role is limited to determining how conferred jurisdiction is to be exercised.

Section 288A of the CYFA (continued)

49. Section 288A CYFA prescribes the procedure whereby if the Secretary is satisfied that it is in the child’s best interests, the Secretary may in writing direct that a parent of the child is to resume parental responsibility for the child to the exclusion of the Secretary. Upon the procedure in the Act being complied with, namely the Secretary directing that a parent or parents are to resume parental responsibility for the child to the exclusion of the Secretary and the Secretary giving a copy of a direction to the Court, the child and the parent of the child,¹⁷ then **on and from the date of the direction**, the following occurs:

- (a) *the Secretary ceases to have parental responsibility for the child; and*
- (b) *the parent resumes parental responsibility for the child as specified in the direction; and*
- (c) *the family reunification order is **taken to be a family preservation order** giving the Secretary responsibility for the supervision of the child and placing the child in the day to day care of the parent or parents who have parental responsibility for the child; and*

¹⁷ Section 288A(2) CYFA.

- (d) *the **conditions of the family reunification order continue to apply as conditions of the family preservation order**; and*
- (e) *Division 3 applies to the order; and*
- (f) *the order **ceases to be a family reunification order for the purposes of this Act.***
(emphasis added)

50. Mr Roche included in his written submissions dated 18 August 2022 an extract from the Explanatory Memorandum when s. 288A was inserted into the Act pursuant to s. 29 *Children Youth and Families Amendment (Permanent Care and Other Matters) Act 2014*:

*'Clause 29 inserts a new section 288A into the Principal Act, to allow a family reunification order to **change to a family preservation order** when the parent resumes parental responsibility for the child, on the direction of the Secretary. New section 288A allows parents to resume parental responsibility for the child and **conditions to be placed on family preservation orders expediently.**' (emphasis added)¹⁸*

51. Mr Elishapour submitted that only the Court can make a protection order. Section 274 CYFA provides that the Court may make a protection order if the Court finds a child is in need of protection and if the Court makes a finding under s. 274 it may make a protection order.¹⁹

52. In my view Mr Elishapour's submission is wrong. Sections 287 and 288A CYFA expressly provide that, upon the Secretary complying with the statutory provisions, on and from the date of the direction the FRO is taken to be a FPO, the conditions of the FRO continue to apply as conditions of the FPO and the order ceases to be a FRO.

53. On the basis that the Secretary is satisfied that it is in the children's best interests for the father to resume parental responsibility for the children to the exclusion of the Secretary²⁰ and the Secretary complies with her statutory obligations, on and from the date of the direction the FRO is taken to be a FPO.²¹

Future direction of the case

54. Pursuant to s. 215B(1) CYFA the Court has broad power to direct the conduct of its proceedings.

¹⁸ Explanatory Memorandum *Children, Youth and Families Amendment (Permanent Care and Other Matters) Bill 2014* (Vic) 10.

¹⁹ Section 275 CYFA.

²⁰ Section 287(1)(e) CYFA.

²¹ Section 288A(1)(c) CYFA.

55. When this matter came before me, both parties were seeking an indication from the Court regarding how this matter should proceed. None of the parties before the Court have submitted that there should not be ongoing DFFH involvement with the children.
56. In Mr Roche's final paragraphs of his written submissions,²² he has proposed that upon the s. 288A direction and notices being given, the FRO is taken to be a FPO which continues to be subject to the extension application and then proposes conditions 13 and 20 be deleted.
57. Mr Roche has submitted that 'the order' in s. 293(3) CYFA refers to the FRO made by the Court. When the Secretary changes the nature of 'the order' it does not extinguish 'the order' and nor does it create a new order. *'The order is taken to be a FPO and continues to be subject of the extension application under s 293 of the Act.'*²³ He has further submitted that conditions 13 and 20 of the FRO need to be deleted. I disagree. Section 288A(1)(c), (d) and (f) CYFA clarify that it is a FPO which is in place and that the order ceases to be a FRO for the purposes of this Act. Accordingly *'on and from the date of the direction'*²⁴ the FRO ceases. There is no FRO before the court to vary or extend. Unless there is an application to extend a FPO simultaneously filed on the date of direction, there will not be any order before the Court to extend.²⁵
58. The power by which a FRO is taken to be a FPO is an exercise of the decision-making power of the Secretary conferred by Parliament in s. 288A CYFA. I do not accept Mr Elishapour's submissions to the extent that they indicate that the Court has the power to qualify the exercise of this power conferred on the Secretary.²⁶ I am satisfied that the Court does have a role under s. 288A CYFA but that role is conditional upon and is limited to:
- a copy of the s. 288A(2) direction being given by the Secretary to the Court;²⁷
 - an application by the Secretary for the Court to determine that the order is to include conditions;²⁸

²² Refer to written submissions 18/8/2022 at [19] and [20] and written submissions 24/8/2022 at [27] and [28].

²³ Submissions dated 24/8/2022 at [15].

²⁴ Section 288A(1) CYFA.

²⁵ C/F the judgement of Chambers J *In the Matter of ZB* 16 September 2020 at [21].

²⁶ See for example [14], [14.1], [19] and [20] of the submissions dated 18/8/2022.

²⁷ Section 288A(2)(a) CYFA.

²⁸ Section 288A(3) CYFA.

- the Court may determine that the order is to include conditions of a kind referred to in s. 281, without requiring the parties to attend or be represented at the proceeding;²⁹ and
- if the Court makes a determination under s. 288A(4), the order is taken to include those conditions as if they were included under s. 281.³⁰

59. Mr Elishapour raised concerns regarding delay in this matter and its potential impact on the mother's right to litigate the extension application.³¹ In my view, given the positions of the parties, there would be little utility in a further Conciliation Conference being listed. I also consider that the matter is unlikely to resolve at a Readiness Hearing. In light of what has occurred in this case, the matter should be fixed for a contested hearing, should be afforded priority and a special mention to ensure the matter is prepared for contest should be fixed on a date no later than 4 weeks before the contest date.

Jennifer Bowles
Magistrate
Children's Court of Victoria

2 September 2022

²⁹ Section 288A(4) CYFA.

³⁰ Section 288A(5) CYFA.

³¹ See paragraph [44] of his submissions dated 18 August 2022.