

Jurisdiction of state/territory courts

Courts of summary jurisdiction, usually local, magistrates' or children's courts, have limited jurisdiction under the *Family Law Act 1975* (Cth) (*FLA*) (Sections 39, 39B, and 69J *FLA*). The position in **Western Australia** is different as it is the only state that has its own Family Court established under the *Family Court Act 1997* (WA) (*FCA*) (Sections 38 and 39 *FCA*). Courts of summary jurisdiction have jurisdiction to hear defended property proceedings in relation to property with a total value up to \$20,000 or such higher amount as prescribed by regulation (Section 46 and 46A *FLA*; Section 43A *FCA*) without restriction (Sections 39B *FLA*). They can also hear matters where the value of the property exceeds \$20,000 or such higher amount as prescribed by regulation, with the consent of all parties. If a party does not consent, the matter must be transferred to the Federal Circuit Court of Australia or the Family Court of Australia (Section 46 and 46A *FLA*; Section 43A *FCA*).

Courts of summary jurisdiction and courts prescribed in regulations under Section 69GA *FLA* also have jurisdiction in relation to children's matters. However, these courts cannot hear defended proceedings for a parenting order unless all parties consent (Section 69N *FLA*; Section 43 *FCA*). Should the parties not consent to the court determining the matter, then the court of summary jurisdiction or prescribed court must transfer the matter to the Federal Circuit Court of Australia or the Family Court of Australia. Before transferring the matter, the court of summary jurisdiction or prescribed court can make such orders as it considers necessary. If the parties consent to the court hearing a defended matter, the court of summary jurisdiction may still transfer the matter on its own initiative. Where a court is prescribed in regulations under Section 69GA *FLA*, the regulations may prescribe particular classes of proceedings in which the court has jurisdiction in relation to children's matters. The regulations may also prescribe state or territory rules of court as applying when the prescribed court is exercising its jurisdiction in relation to children's matters.

In addition to this jurisdiction, the *FLA* and *FCA* allow state and territory courts of summary jurisdiction, when making or varying a protection order under state or territory family violence legislation, to **vary a parenting order**. Section 68R *FLA* and Section 176 *FCA* permit a state or territory court with jurisdiction under Part VII Division 11 *FLA*/Part 5 *FCA* to 'revive, vary, discharge or suspend':

- > a parenting or recovery order;
- > an injunction granted under Section 68B or 114 *FLA*/Section 235 or 235A *FCA*
- > an undertaking given to a court exercising jurisdiction under the *FLA* or *FCA*;
- > a registered parenting plan; or
- > a recognisance entered into under an order under the *FLA* or *FCA*.