

Enforcement of Custody Orders

Terms of Reference

In 1974 the Commission received a general reference to review the law relating to the powers of police to enforce court orders where the custody of children was involved.

Background of Reference

At the time of the reference, the only remedy generally available to a person who had a custody order in his or her favour was to apply to the court for an order of attachment or committal for contempt against the person in default. The Commission was asked to consider whether police and authorised officers of the Department of Community Welfare should be empowered to enforce child custody and access orders without further court proceedings, that is, by physically removing the child from the person in default.

Reference Withdrawn

In 1975, the *Family Law Act 1975* (Cth) ("the Act") was passed. Section 64 of the Act empowered the court to issue a warrant authorizing the person to whom it was addressed to take possession of the child and deliver the child to the person entitled to custody. Although most custody orders would be made under the Act, the Commission considered that some custody orders would still be made in proceedings covered by state law.

In a letter to the Attorney-General on 16 December 1975, the Commission drew attention to s 64 of the Act and sought instructions as to whether it should take any further steps in relation to the reference. On 27 April 1976, the Attorney-General informed the Commission that s 64 of the Act covered the matter of concern and advised the Commission that the reference was withdrawn.