



Australian Capital Territory

# **Protection Orders Act 2001      No 89**

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Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Protection Orders Act 2001* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 January 2003. It also includes any amendment, repeal or expiry affecting the republished law to 1 January 2003.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

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- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

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If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Protection Orders Act 2001

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Australian Capital Territory

# Protection Orders Act 2001

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An Act about orders to protect people from domestic violence and personal violence

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## Part 1                      Introductory

### 1                      Name of Act

This Act is the *Protection Orders Act 2001*.

### 3                      Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1*    The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act or in other legislation.

For example, the signpost definition '*firearm*—see the *Firearms Act 1996*, section 4 (Definitions).' means that the expression 'firearm' is defined in that section and the definition applies to this Act.

*Note 2*    A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156 (1)).

### 4                      Notes

(1) A note included in this Act is explanatory and is not part of this Act.

*Note*       See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of notes.

(2) In this section:

***note*** includes material enclosed in brackets in section headings.

*Note* For comparison, a number of sections of this Act contain bracketed notes in their headings drawing attention to equivalent or comparable (though not necessarily identical) provisions of other Acts as in force immediately before the commencement of this Act. Abbreviations in the notes include the following:

- DVA: *Domestic Violence Act 1986*
- MCCJA: *Magistrates Court (Civil Jurisdiction) Act 1982*
- MCA: *Magistrates Court Act 1930*
- PORAA: *Protection Orders (Reciprocal Arrangements) Act 1992*.

(3) Subsection (2), this subsection, and the material enclosed in brackets in section headings, expire on 27 March 2004.

## **Part 2**                      **Objects, principles and general concepts**

### **5**      **Objects**

The objects of this Act include—

- (a) to prevent violence between family members and others who are in a domestic relationship, recognising that domestic violence is a particular form of interpersonal violence that needs a greater level of protective response; and
- (b) to provide a mechanism to facilitate the safety and protection of people who experience domestic or personal violence.

### **6**      **Principles for making protection orders**

- (1) In deciding an application for a protection order, the paramount consideration is—
  - (a) for a protection order (other than a workplace order)—the need to ensure that the aggrieved person is protected from domestic or personal violence; and
  - (b) for a workplace order—the need to ensure that employees are protected from personal violence in the workplace.
- (2) If a protection order is to be made on an application under this Act, it must be the protection order that is least restrictive of the personal rights and liberties of the respondent as possible that still achieves the objects of the Act and gives effect to subsection (1).

### **7**      **Principle about procedures**

Procedures under this Act are to be as simple, quick and inexpensive as is consistent with achieving justice.

## 8 What may someone do under this Act?

- (1) A person may apply under this Act for an order to protect an aggrieved person from domestic violence or personal violence by someone else (the *respondent*).

*Note 1* Section 11 (Who may apply for certain non-emergency orders?) and s 61 (Who may apply for an emergency order?) set out who can apply for a protection order.

*Note 2* Violence is defined in s 9 (What is *domestic violence*?), s 10 (What is *personal violence*?) and s 44 (What is *personal violence* for a workplace?).

- (2) Two types of protection order are available, a domestic violence order and a personal protection order.
- (3) A domestic violence order may be made as a final, interim or emergency order.

*Note* The general rules applying to protection orders are in pt 4 (Orders generally). Rules applying to particular kinds of orders are in pt 5 (Final orders), pt 6 (Interim orders) and pt 7 (Emergency orders).

- (4) A personal protection order may be made as a final or interim order.
- (5) A personal protection order made as a final order may be made as a workplace order or a final order other than a workplace order.

*Note* Workplace orders are dealt with in div 5.3 (Workplace orders) and generally dealt with in pt 4 (Orders generally) and div 5.1 (Final orders generally).

## 9 What is *domestic violence*? (DVA s 4A)

- (1) For this Act, a person's behaviour is *domestic violence* if it—
- (a) causes physical injury to a relevant person; or
  - (b) causes damage to the property of a relevant person; or
  - (c) is directed at a relevant person and is a domestic violence offence; or

- (d) is a threat, made to a relevant person, to do anything in relation to the relevant person or another relevant person that, if done, would fall under paragraph (a), (b) or (c); or
- (e) is harassing or offensive towards a relevant person.

*Note* **Relevant person** is defined in the dictionary.

- (2) In this section, a **domestic violence offence** is an offence against—
  - (a) section 34 (which is about contravening protection orders); or
  - (b) a provision of the *Crimes Act 1900* mentioned in schedule 1 (which deals with domestic violence crimes); or
  - (c) the Criminal Code, section 103, 104, 106, 107 or 108 (which deal with property offences); or
  - (d) any of the following provisions of the *Road Transport (Safety and Traffic Management) Act 1999*:
    - (i) section 6 (1) (which is about negligent driving);
    - (ii) section 7 (1) (which is about furious, reckless or dangerous driving);
    - (iii) section 8 (1) or (2) (which are about menacing driving).

*Note* A reference to an offence against a Territory law includes a reference to a related ancillary offence, eg attempt (see *Legislation Act 2001*, s 189).

- (3) For this section:

**offence** includes behaviour, wherever engaged in, that would be an offence if it were engaged in within the ACT.

## 10 What is **personal violence**? (MCA s 197 (1) (a), (b), (c))

- (1) For this Act (other than for division 5.3 (Workplace orders)) a person's behaviour is **personal violence** if the person—
  - (a) causes personal injury to someone (the **aggrieved person**) or damage to the aggrieved person's property; or

- (b) threatens to cause personal injury to the aggrieved person or damage to the aggrieved person's property; or
- (c) is harassing or offensive to the aggrieved person.

*Note* **Personal violence** is defined for a workplace in s 44.

- (2) However, a person's behaviour is not **personal violence** if it is domestic violence.

## Part 3 Applications

### 11 Who may apply for certain non-emergency orders? (DVA s 5, MCA s 198)

- (1) This section applies to an application for a protection order, other than an application for an emergency order or to amend or revoke a protection order.

*Note* If a form is approved under s 96 (Approved forms) for an application under this section, the form must be used.

- (2) An aggrieved person may make an application.

*Note 1* Different rules may apply to an aggrieved person with a legal disability (see s 12).

*Note 2* An aggrieved person, for a workplace order, is the employer, not the person who has suffered the violence (see dict, def of **aggrieved person**).

- (3) Also, a police officer may make an application for an aggrieved person, or help an aggrieved person to make an application.
- (4) Further, if the aggrieved person is a person with a legal disability, an application may be made by the community advocate as the person's next friend.
- (5) This section does not affect any other right of a person to make an application for a protection order for an aggrieved person.

#### **Examples of people with right to make application for protection order**

A parent or guardian of a child who is an aggrieved person, or an agent of an aggrieved person.



## 12 Applications by people with legal disability

- (1) An aggrieved person with a legal disability may apply for a protection order only by a next friend.

*Note 1* *The Macquarie Dictionary*, 3rd ed, defines **next friend** as a person bringing action in a court of law on behalf of a minor or person of unsound mind.

*Note 2* The regulations may prescribe how a next friend may be appointed (see s 106 (3) (b) (i)).

- (2) However, a child may apply for a domestic violence order in the child's own right even though the child is a person with a legal disability.

## 13 Who may apply to amend or revoke protection order?

An application to amend or revoke a protection order (the **original order**) may be made by a party to the original order or, with the Magistrates Court's leave, someone else with sufficient interest in the protection order.

### Example of someone with sufficient interest

The Magistrates Court may decide, in a particular case, that the guardian of someone for whom a protection order has been made has sufficient interest to apply to amend or revoke the order.

*Note 1* **Amend** an order includes amend the order by extending it (see dict).

*Note 2* If a form is approved under s 96 (Approved forms) for an application under this section, the form must be used.

## 14 Application forms that require aggrieved person's address

- (1) This section applies if a form approved under section 96 for an application for a protection order requires the aggrieved person's home or work address to be included in the application.
- (2) The address need not be included in the application unless the aggrieved person agrees to the address being included.

## 15 Registrar sets return date

- (1) On receiving an application for a protection order, the registrar must enter the application into the record of the Magistrates Court and set a date for the application to be returned before the court.
- (2) The date for an application's return before the Magistrates Court is the day set by the registrar that is—
  - (a) not later than 2 days after the day the application is made; or
  - (b) not later than 10 days after the day the application is made if—
    - (i) the applicant is not seeking an interim order on the application; and
    - (ii) the registrar is satisfied that the longer time is necessary to allow the respondent to be served with the application and the return date notice.
- (3) However, the regulations may prescribe the circumstances in which the registrar is not required, or must not, accept an application for entry into the record of the Magistrates Court under this section.

## 16 Service of application

- (1) The registrar must—
  - (a) serve on the applicant a notice about the proceeding stating the date for the application's return before the Magistrates Court; and
  - (b) serve a copy of the application and the notice on the relevant people.

*Note 1* For service of the application, see s (4) and pt 11 (Service).

*Note 2* If a form is approved under s 96 (Approved forms) for a return date notice, the form must be used.

- (2) If the return date set under section 15 is not the day the application is received, the registrar must act under subsection (1) as soon as is practicable.
- (3) If the return date set under section 15 is the day the application is received, the registrar must act under subsection (1) after the application has gone before the Magistrates Court and the court has set a further date for the application's return before the court.
- (4) Service on the applicant or respondent under subsection (1) must be personal service unless the Magistrates Court makes an order under section 98 (If service impracticable or impossible).
- (5) For this section, the *relevant people* are—
  - (a) the respondent; and
  - (b) anyone else the registrar is satisfied has a relevant interest in the proceeding who does not already have a copy.

**Example of person with a relevant interest in the proceeding**

A parent or guardian of a child who is an aggrieved person if the parent or guardian does not live with the child.

## **17 Registrar may adjourn proceedings etc**

- (1) This section applies if—
  - (a) a date has been set for the return of an application (other than an application for an emergency order) before the Magistrates Court; and
  - (b) the respondent has not been served with a copy of the application under section 16.
- (2) The registrar may adjourn the proceeding on the application.

*Note* The registrar may also extend any interim order (see s 60).
- (3) However, the registrar may not adjourn the proceeding under this section more than twice.

## **18 Preliminary conferences**

- (1) The registrar must hold a preliminary conference in relation to an application.
- (2) However, the regulations may prescribe when a preliminary conference need not be held in relation to an application.
- (3) The regulations may also prescribe—
  - (a) the objects of a preliminary conference; and
  - (b) the powers that may be exercised by the person holding a preliminary conference; and
  - (c) the admissibility in evidence of anything said, or any evidence given, at a preliminary conference.
- (4) The failure of the registrar to hold a preliminary conference in relation to the application for a protection order does not affect the validity of the protection order.

## Part 4 Orders generally

### 19 What level of satisfaction is required for pt 5, pt 6 and pt 7?

If the Magistrates Court, the registrar or another judicial officer is required to be satisfied about something under part 5 (Final orders), part 6 (Interim orders) or part 7 (Emergency orders), the court, registrar or other judicial officer must be satisfied on the balance of probabilities.

*Note* **Judicial officer** is defined in the dictionary, and includes the registrar.

### 20 What kinds of behaviour does protection order restrain?

- (1) A protection order may be made as a domestic violence order or a personal protection order.
- (2) A **domestic violence order** restrains the respondent from engaging in behaviour that constitutes domestic violence in relation to the aggrieved person and may include a prohibition mentioned in section 42 (What final orders (other than workplace orders) may contain).

*Note* A prohibition mentioned in s 42 may be included in an interim order (see s 51) or an emergency order (see s 69).

- (3) A **personal protection order** (other than a workplace order) restrains the respondent from engaging in behaviour that constitutes personal violence in relation to the aggrieved person and may include a prohibition mentioned in section 42.
- (4) A **personal protection order** that is a workplace order restrains the respondent from engaging in behaviour that constitutes personal violence in relation to the workplace and may include a prohibition mentioned in section 47 (What workplace orders may contain).

**21 Does protection order cover behaviour outside ACT?**

A protection order covers behaviour within or outside the ACT.

**22 What if application made for wrong order?**

- (1) This section applies if—
  - (a) a person applies for a protection order that is a domestic violence order or a personal violence order (the *first order*); and
  - (b) the first order may not be made because the behaviour on which the application is based is not behaviour that the first order could restrain; and
  - (c) the application has not been decided.
- (2) The Magistrates Court may make another protection order even though the protection order was not properly applied for if—
  - (a) the person honestly applied for the first order; and
  - (b) had the application been properly made, the court could have made the other protection order.
- (3) This section does not apply to consent orders.

*Note* A consent order may be made whether or not any ground for making the order has been made out (see s 29 (2) (b)).

**23 What if application for wrong order decided?**

- (1) This section applies if—
  - (a) a person applies for a protection order that is a domestic violence order or a personal violence order (the *first order*); and
  - (b) the first order could not be made because the behaviour on which the application is based is not behaviour that the first order could restrain; and

- (c) the proceeding was decided before it became apparent that section 22 applied; and
- (d) a protection order (the *order made*) was purportedly made; and
- (e) the order made could have been validly made if applied for and made as a domestic violence order or a personal protection order of the kind made.

**Example of when this section does not apply because of par (e)**

A police officer applied for a domestic violence order made as an emergency order. The behaviour relied on was, in fact, personal violence. This section does not apply because the order could not have been validly made as a personal protection order made as an emergency order.

- (2) If this section applies—
  - (a) the operation of the order made is not affected by the fact that the order could not be made on the application; and
  - (b) the order made must be treated as if it were the kind of order that could be made in relation to the behaviour mentioned in the application.

**Example**

A personal protection order is made as an interim order. Later, it is discovered that the parties had previously been de facto spouses, making the behaviour on which the application for the interim order was based domestic violence. The operation of the order is not affected by the fact that the wrong order was made, and the personal protection order made as an interim order is treated as if it is a domestic violence order made as an interim order.

- (3) This section does not apply to consent orders.

*Note* A consent order may be made whether or not any ground for making the order has been made out (see s 29 (2) (b)).

## **24 Explaining orders if respondent present (DVA s 15)**

- (1) This section applies if—
  - (a) the Magistrates Court intends to make a protection order; and

- (b) the respondent is before the court.
- (2) On making the protection order (other than a consent order), the Magistrates Court must explain to the respondent, in language likely to be readily understood by the respondent—
- (a) the purpose, terms and effect of the order; and
- Note* Explaining the effect of the order includes explaining, if relevant, that any firearms licence of the respondent will automatically be cancelled or suspended under this Act.
- (b) the consequences that may follow if the respondent fails to comply with the order; and
- (c) how the order may be amended or revoked; and
- (d) that, if a State, another Territory or New Zealand has legislation that corresponds to this Act, the order may be registered, and enforced, in the State, Territory or New Zealand without notice of registration being given to the respondent.
- Note* Part 9 (Reciprocal arrangements) deals with the registration of protection orders from other jurisdictions in the ACT.
- (3) Before making a consent order, the Magistrates Court must explain to the respondent, in language likely to be readily understood by the respondent, the matters mentioned in subsection (2) (a) to (d).
- (4) A failure of the Magistrates Court to comply with this section in relation to a protection order does not affect the validity of the order.

**25 Explaining orders if aggrieved person present**  
(DVA s 15 (2))

- (1) This section applies if—
- (a) the Magistrates Court intends to make a protection order; and
- (b) the aggrieved person is before the court.



(2) On making the protection order (other than a consent order), the Magistrates Court must explain to the aggrieved person, in language likely to be readily understood by the person—

(a) the purpose, terms and effect of the order; and

*Note* Explaining the effect of the order includes explaining, if relevant, that any firearms licence of the respondent will automatically be cancelled or suspended under this Act.

(b) the consequences that may follow if the respondent fails to comply with the order; and

(c) how the order may be amended or revoked; and

(d) that, if the aggrieved person aids or abets the respondent to commit an offence against section 34 (Offence for contravention of protection order), the aggrieved person may also commit an offence.

*Note* The *Crimes Act 1900*, pt 9 deals with offences of aiding and abetting.

(3) Before making a consent order, the Magistrates Court must explain to the aggrieved person, in language likely to be readily understood by the person, the matters mentioned in subsection (2) (a) to (d).

(4) The failure of the Magistrates Court to comply with this section in relation to a protection order does not affect the validity of the order.

## **26 Reasons for order**

(1) If the Magistrates Court makes a protection order (other than an emergency order), the court must record the reasons for making the order.

(2) If the order is a consent order, the reason for making the order is that the parties have consented to it.

**27 Orders generally not to include aggrieved person's address**

- (1) The aggrieved person's home or work address must not be included in a protection order.
- (2) However, the person's home or work address may be included in a protection order if—
  - (a) the aggrieved person agrees to the address being included; or
  - (b) it is necessary to include the address to allow the respondent to comply with the order; or
  - (c) the Magistrates Court, registrar or another judicial officer making the order is satisfied that the respondent already knows the address.

**28 Prohibitions or conditions may be shorter**

A prohibition or condition in a protection order may have effect for a period stated in the protection order that is shorter than the period of the protection order.

**29 Consent orders (MCA s 206, s 206AA)**

- (1) On application for a protection order, the Magistrates Court may make a protection order with the consent of the parties to the proceeding.
- (2) The order may be made—
  - (a) whether or not the parties have attended, or any party has attended, before the Magistrates Court; and
  - (b) whether or not any ground for making the order has been made out; and
  - (c) without proof or admission of guilt.

*Note* Sections 24 and 25 apply to require the Magistrates Court to explain the order intended to be made under this section in certain circumstances.

Section 24 deals with explaining orders if the respondent is before the court and s 25 deals with explaining orders if an aggrieved person is before the court.

- (3) If an automatic consequence flows from the making of a kind of order and an order of that kind is made under this section, the automatic consequence flows from the making of the order unless—
- (a) this Act allows a discretion for the automatic consequence not to flow from the making of an order of that kind; and
  - (b) the parties consent to the automatic consequence not flowing from the making of the order.

**Example**

The parties to an application agree to the making of a final order. An automatic consequence of that order is that any firearms licence of the respondent is cancelled under s 38 (Firearms and final orders). That consequence automatically flows from the making of the final order. However, under s 38 (3) the Magistrates Court may, in certain circumstances, order that the licence not be cancelled. If those circumstances apply and the parties agree that the firearms licence not be cancelled, the firearms licence would not be cancelled under s 38.

- (4) However, this section does not allow the Magistrates Court to make a protection order—
- (a) of a kind that may not be made under this Act; or
  - (b) for a period other than a period that that kind of order may be made for (unless section 54 (Length of interim orders by consent) applies); or
- Note* Section 35 (3) limits the length of final orders made as consent orders.
- (c) if section 30 applies.

### **30 Consent orders and parties with legal disability**

- (1) This section applies if—
- (a) the Magistrates Court is considering an application for a consent order; and

- (b) a party to the proceeding is a person with a legal disability who is not separately represented by someone else; and
  - (c) it appears to the court that the party should be separately represented by someone else.
- (2) If this section applies, the Magistrates Court must not make a consent order.

### 31 Amendment or revocation generally

- (1) A protection order may be amended if the Magistrates Court is satisfied that the order as amended could be made on application for a protection order.
- (2) If the protection order has been amended by being extended, the order must mention that it has been extended.
- (3) A protection order (the *original order*) may be revoked if—
- (a) the Magistrates Court is satisfied that the order is no longer necessary for the protection of the person it protects; or
  - (b) the applicant for the original order applies for the revocation.

*Note* The Magistrates Court may amend or revoke a protection order by consent (see s 29).

- (4) This section does not apply in relation to a kind of amendment or to revocation if this Act (apart from this section) expressly deals with the grounds for that kind of amendment or for revocation.

*Note* The following sections expressly deal with the grounds for amendment or revocation:

- s 37 (Extension of final orders)
- s 58 (Extension of interim orders)
- s 71 (Emergency amendment or revocation of emergency orders)
- s 72 (Non-emergency amendment or revocation of emergency orders).

**32 This Act and Children and Young People Act**

- (1) This section applies if—
  - (a) an application is made under the *Children and Young People Act 1999* for a care and protection order; and
  - (b) the criteria mentioned in that Act, section 205 (When may the court make a protection order?) are satisfied; and
  - (c) the Childrens Court makes a protection order.
- (2) The Childrens Court is taken to have exercised jurisdiction under this Act as the Magistrates Court when making the protection order.
- (3) The protection order may be amended, revoked or appealed from under this Act.

**33 Service of non-emergency orders**

- (1) If the Magistrates Court makes a protection order (other than an emergency order), the registrar must—
  - (a) serve a copy of the protection order on the respondent; and
  - (b) give a copy of the protection order to—
    - (i) each other party to the proceeding; and
    - (ii) the chief police officer; and
    - (iii) the registrar of firearms.
- (2) Service under subsection (1) (a) must be personal service unless the Magistrates Court makes an order under section 98 (If service impracticable or impossible).

*Note* For how the order may be served on a person mentioned in s (1) (b), see pt 11 (Service).

**34 Offence for contravention of protection order (DVA s 19D)**

- (1) This section applies to a person who is subject to a protection order if the person—
  - (a) was present when the protection order was made; or
  - (b) has been personally served with a copy of the protection order.
- (2) The person must not contravene the protection order (including a condition of the order).

Maximum penalty:

- (a) for a 1st offence against this section—50 penalty units, imprisonment for 2 years or both; or
  - (b) for a 2nd or subsequent offence against this section—50 penalty units, imprisonment for 5 years or both.
- (3) This section applies to behaviour within and outside the ACT.

## **Part 5**                      **Final orders**

### **Division 5.1**              **Final orders generally**

*Note 1*    See s 40 for the grounds for making final orders other than workplace orders and s 45 for the grounds for making workplace orders.

*Note 2*    An interim order may be granted on application for a final order (see s 48).

#### **35**    **Length of final domestic violence orders**

- (1) A final order that is a domestic violence order remains in force for—
  - (a) 2 years; or
  - (b) if a shorter period is stated in the protection order—the period stated.
- (2) However, the Magistrates Court may make a domestic violence order that remains in force for longer than 2 years if satisfied that there are special or exceptional circumstances that justify the longer period.
- (3) A final order that is a domestic violence order must not be longer than 2 years if made as a consent order.

#### **36**    **Length of final personal protection orders**

A final order that is a personal protection order remains in force for—

- (a) 1 year; or
- (b) if a shorter period is stated in the protection order—the period stated.

### **37 Extension of final orders**

- (1) An application to amend a final order (the *original order*) by extending it may be made at least 21 days before the original order is to end.
- (2) However, the Magistrates Court may allow someone to apply for an extension less than 21 days before the end of the original order.
- (3) If the original order is a domestic violence order, the Magistrates Court must, on application, amend the original order by extending it for not longer than 1 year unless satisfied that a protection order is no longer necessary to protect the aggrieved person from domestic violence by the respondent.
- (4) If the original order is a personal protection order, the Magistrates Court may amend the original order by extending it only if satisfied that a protection order is still necessary to protect the aggrieved person from personal violence by the respondent.
- (5) Subsections (3) and (4) do not apply if the order amending the original order by extending it is a consent order.
- (6) The parties may consent to an application being made out of time under this section.

*Note* An interim order may be applied for on an application for extension of a final order.

### **38 Firearms and final orders (DVA s 14A (1), (2))**

- (1) This section applies if a final order is made in relation to a respondent who is the holder of a firearms licence.

*Note 1* **Firearms licence** is defined in the dictionary.

*Note 2* For the application of this section to consent orders, see s 29 (3).

- (2) The firearms licence is cancelled by force of this section.



- (3) However, the Magistrates Court may, on application when the final order is made, order that the firearms licence not be cancelled under this section if—
- (a) the final order is a personal protection order; and
  - (b) the court is satisfied that the firearms licence should not be cancelled.
- (4) The Magistrates Court may make a consent order that the firearms licence not be cancelled under this section only if the final order is a personal protection order.
- (5) The Magistrates Court may order—
- (a) the seizure of the firearms licence; and
  - (b) the seizure of any firearm or ammunition in the respondent's possession.

**39 Recommendations for counselling etc (DVA s 11)**

The Magistrates Court may recommend that the respondent, the aggrieved person or another relevant person take part in a program of counselling, training, mediation, rehabilitation or assessment.

**Division 5.2 Final orders other than workplace orders**

**40 What are grounds for making final order (other than workplace order)?**

The Magistrates Court may make a final order (other than a workplace order) on application if satisfied that—

- (a) the respondent has engaged in domestic violence; or
- (b) the respondent has engaged in personal violence towards the aggrieved person and may engage in personal violence towards

the aggrieved person during the time the order is proposed to operate if the order is not made.

*Note* This section does not apply to consent orders (see s 29 (2) (b)).

#### **41 What must court consider before making final order other than workplace order?**

- (1) In deciding an application for a final order, the Magistrates Court must consider the following:
  - (a) the objects of this Act (in section 5) and the principles for making orders (in section 6);
  - (b) the welfare of each child (if any) affected, or likely to be affected, by the respondent's behaviour;
  - (c) the accommodation needs of the aggrieved person, each child (if any) of the aggrieved person, and each child (if any) of the respondent;
  - (d) any hardship that may be caused to the respondent or anyone else by the making of a protection order;
  - (e) if the court proposes to include in the protection order a prohibition or requirement of a kind mentioned in section 42 (3)—the income, assets and liabilities of the respondent and the aggrieved person (other than an aggrieved person who is a child);

*Note* A prohibition under s 42 (3) (a) prohibits the respondent from taking possession of personal property needed by the aggrieved person or a child of the aggrieved person. A requirement under s 42 (3) (b) requires the respondent to give the aggrieved person personal property needed by the aggrieved person or a child of the aggrieved person.

- (f) whether contact between the aggrieved person or the respondent, and any child of either of them, is relevant to the making of the protection order, and to any relevant family contact order of which the court is aware;

- (g) if the respondent has previously engaged in behaviour that is domestic violence, personal violence or personal violence in relation to a workplace—that behaviour;

*Note* This may include behaviour that was an offence under the *Motor Traffic Act 1936* (see s 113).

- (h) if a protection order has previously been made in relation to the respondent—the protection order;
- (i) if the respondent has previously contravened a protection order—the contravention;
- (j) the need to ensure that property is protected from damage.

*Note* This section does not apply to consent orders (see s 29 (2) (b)).

- (2) The Magistrates Court may also consider anything else that is relevant.
- (3) A failure by the Magistrates Court to consider the matter mentioned in subsection (1) (f) before making an order does not affect the validity of the order.
- (4) In subsection (1) (h) and (i):

***protection order*** includes—

- (a) an order under a law of a State, another Territory or New Zealand that has the same effect or substantially the same effect as a protection order; and
- (b) a protection order made under the *Domestic Violence Act 1986*, or a restraining order made under the *Magistrates Court Act 1930*, before the commencement of this Act.

**42 What final orders (other than workplace orders) may contain**

- (1) A final order (other than a workplace order) may contain the conditions or prohibitions the Magistrates Court considers necessary or desirable.

*Note* This Act (including this section) is subject to s 6 (Principles for making orders) and the objects of the Act set out in s 5.

- (2) Without limiting subsection (1), the order may do 1 or more of the following:
- (a) prohibit the respondent from being on premises where the aggrieved person lives;
  - (b) prohibit the respondent from being on premises where the aggrieved person works;
  - (c) prohibit the respondent from being on premises where the aggrieved person is likely to be;
  - (d) prohibit the respondent from being in a particular place;
  - (e) prohibit the respondent from being within a particular distance from the aggrieved person;
  - (f) prohibit the respondent from contacting, harassing, threatening or intimidating the aggrieved person;
  - (g) prohibit the respondent from damaging the aggrieved person's property;
  - (h) prohibit the respondent from doing anything mentioned in paragraphs (a) to (g) in relation to a child of the aggrieved person;
  - (i) prohibit the respondent from causing someone else to do something mentioned in paragraph (f) or (g) or subsection (3) (a);
  - (j) state the conditions on which the respondent may—

- (i) be on particular premises; or
  - (ii) be in a particular place; or
  - (iii) approach or contact a particular person.
- (3) Also, an order that includes a prohibition mentioned in subsection (2) (a) may—
- (a) prohibit the respondent from taking possession of particular personal property that is reasonably needed by the aggrieved person or a child of the aggrieved person; or
  - (b) require the respondent to give the aggrieved person particular personal property that is in the respondent's possession and is reasonably needed by the aggrieved person or a child of the aggrieved person.
- (4) A final order made as a consent order may contain a condition or prohibition that a final order made other than as a consent order may contain, but it is not necessary for the Magistrates Court to consider whether the condition or prohibition is necessary or desirable.

### **Division 5.3                      Workplace orders**

*Note*        The employer is the aggrieved person for a workplace order (see dict, def of *aggrieved person*).

#### **43        Effect of availability of workplace orders**

The availability of workplace orders under this Act does not create a new right or obligation in relation to employment relationships.

#### **44        What is *personal violence* for workplace?**

For this division, a person's behaviour is *personal violence* in relation to a workplace if the person—

- (a) causes personal injury, or threatens to cause personal injury, to an employee in the employee's capacity as an employee at the workplace; or

- (b) causes damage to property, or threatens to cause damage to property, in the workplace in a way that causes reasonable fear in an employee; or
- (c) is harassing or offensive to an employee in the employee's capacity as an employee at the workplace.

#### **45 What are grounds for making workplace order?**

The Magistrates Court may make a workplace order in relation to a workplace on application if satisfied that the respondent—

- (a) has engaged in personal violence in relation to the workplace; and
- (b) may engage in personal violence in relation to the workplace during the time the order is proposed to operate if the order is not made.

*Note* This section does not apply to consent orders (see s 29 (2) (b)).

#### **46 What must court consider before making workplace order?**

- (1) In deciding an application for a workplace order, the Magistrates Court must consider the following:
  - (a) the objects of this Act (in section 5) and the principles for making orders (in section 6);
  - (b) any hardship that may be caused to the respondent or anyone else because of the making of a workplace order;
  - (c) if the respondent has previously engaged in behaviour that is domestic violence, personal violence or personal violence in relation to a workplace—that behaviour;
  - (d) if a protection order has previously been made in relation to the respondent—the protection order;

- (e) if the respondent has previously contravened a protection order—the contravention;
- (f) the need to ensure that property in the workplace is protected from damage.

*Note* This section does not apply to consent orders (see s 29 (2) (b)).

- (2) The Magistrates Court may also consider anything else that is relevant.
- (3) In subsection (1) (d) and (e):

*protection order* includes—

- (a) an order under a law of a State, another Territory or New Zealand that has the same effect or substantially the same effect as a protection order; and
- (b) a protection order made under the *Domestic Violence Act 1986*, or a restraining order made under the *Magistrates Court Act 1930*, before the commencement of this Act.

#### **47 What workplace orders may contain**

- (1) The workplace order may contain the conditions or prohibitions the Magistrates Court considers necessary or desirable.

*Note* This Act (including this section) is subject to s 6 (Principles for making orders) and the objects of the Act set out in s 5.

- (2) Without limiting subsection (1), the order may do 1 or more of the following:
  - (a) prohibit the respondent from entering the workplace;
  - (b) prohibit the respondent from being within a particular distance from the workplace;
  - (c) prohibit the respondent from contacting, harassing, threatening or intimidating an employee at the workplace;

- (d) prohibit the respondent from damaging property in the workplace;
  - (e) prohibit the respondent from causing someone else to do something mentioned in paragraph (c) or (d);
  - (f) state the conditions on which the respondent may enter or approach the workplace, or approach or contact an employee.
- (3) A workplace order made as a consent order may contain a condition or prohibition that a workplace order made other than as a consent order may contain, but it is not necessary for the Magistrates Court to consider whether the condition or prohibition is necessary or desirable.



## Part 6 Interim orders

### 48 When can interim order be made?

- (1) An interim order may be made only on an application for a final order.

*Note 1* A final order includes an order amending a final order (see dict, def of *final order*).

*Note 2* Section 13 sets out who may apply to amend or revoke an interim order.

- (2) An interim order may be made at any time during the proceeding on the application for the final order that it relates to.
- (3) Only 1 interim order may be made in relation to an application for a final order unless section 59 (May a further interim order be made?) applies.

### 49 What are grounds for making interim order?

The Magistrates Court may make an interim order if satisfied that it is necessary to make the interim order to ensure the safety of the aggrieved person until the application for a final order is decided.

*Note* This section does not apply to consent orders (see s 29 (2) (b)).

### 50 What must court consider?

- (1) In making an interim order, the Magistrates Court must consider whether contact between the aggrieved person or the respondent, and any child of either, is relevant to the making of the order, and to any relevant family contact order that the court is aware of.
- (2) A failure by the Magistrates Court to consider the matter mentioned in subsection (1) before making an interim order does not affect the validity of the order.

**51 What interim orders may contain**

- (1) The interim order may prohibit the respondent from being on premises where the aggrieved person lives or works.
- (2) However, the interim order may prohibit a respondent who is a child from being on premises where the child normally receives care (including education) or protection only if the Magistrates Court is satisfied that adequate arrangements have been made for the child's care (including education) and safety.

**Example of when Magistrates Court may be satisfied adequate arrangements made for child**

If a government agency responsible for the care and protection of children has found alternative accommodation for the child.

- (3) The interim order (other than an interim workplace order) may do something mentioned in section 42 (2) (What final orders (other than workplace orders) may contain) (other than paragraph (a) or (b)) only if the Magistrates Court is satisfied that it is necessary to ensure the safety of the aggrieved person.

*Note 1* Section 42 (2) (a) and (b) allows the Magistrates Court to make an order prohibiting the respondent from being on premises where the aggrieved person lives or works.

*Note 2* Subsections (2) and (3) do not apply to consent orders (see s 29 (2) (b)).

- (4) If the interim order is an interim workplace order, the order may do something mentioned in section 47 (2) (What workplace orders may contain) (other than paragraph (a)) only if the Magistrates Court is satisfied that it is necessary to ensure the safety of an employee.

*Note* Section 47 (2) (a) allows the Magistrates Court to make an order prohibiting the respondent from entering the workplace.

**52 Length of interim orders not by consent**

- (1) An interim order (other than a consent order) remains in force for the period of up to 8 weeks stated in the order.

*Note* The interim order may be extended so that the interim order is in force for not more than 16 weeks under s 58.

- (2) For subsection (1), the Magistrates Court may state a period of 11 days or longer only if satisfied that longer than 10 days is necessary to decide the application for a final order and serve any final order on the respondent.

**53 End of interim orders**

An interim order ends before the end of the period stated in the order if any of the following happens:

- (a) the interim order is revoked;
- (b) the application on which the interim order was made is dismissed;
- (c) if a final order is made on the application and the respondent is present when the final order is made—the final order is made;
- (d) if a final order is made on the application but the respondent is not present when the final order is made—the final order is served on the respondent.

**54 Length of interim orders by consent**

- (1) An interim order made as a consent order remains in force for the period of up to 16 weeks stated in the order.
- (2) To remove any doubt, section 58 (3) (Extension of interim orders) applies to an interim order made by consent.

*Note* Under section 58 (3) an interim order may not be amended by extending it to be in force for longer than 16 weeks.

**55 What if interim order would expire before final order served?**

- (1) This section applies if—
  - (a) a final order is made on an application; and
  - (b) the respondent is not present at the making of the final order; and
  - (c) an interim order made in relation to the same application would, but for this section, expire before the final order is served on the respondent.
- (2) The interim order is taken to continue in force until the final order is served on the respondent.
- (3) To remove any doubt, section 34 (which makes it an offence to contravene a protection order that has been served on the respondent) applies to the interim order continued in force.

**56 Service of application for interim order unnecessary**

The Magistrates Court may make an interim order even if a copy of the application and a notice about the proceeding stating the date for the application's return before the court have not been served on the respondent.

**57 Firearms and interim orders (DVA s 14A (3))**

- (1) This section applies if an interim order is made in relation to a respondent who is the holder of a firearms licence.

*Note 1* **Firearms licence** is defined in the dictionary.

*Note 2* For the application of this section to consent orders, see s 29 (3).

- (2) The firearms licence is suspended by force of this section until the interim order ends.

- (3) However, the Magistrates Court may, on application when the interim order is made, order that the firearms licence not be suspended under this section if—
  - (a) the interim order is a personal protection order; and
  - (b) the court is satisfied that the licence should not be suspended.
- (4) The Magistrates Court may make a consent order that the firearms licence not be suspended under this section only if the interim order is a personal protection order.
- (5) The Magistrates Court may order—
  - (a) the seizure of the firearms licence for the period stated in the interim order; and
  - (b) the seizure and detention for that period of any firearm or ammunition in the respondent's possession.

## **58 Extension of interim orders**

- (1) The Magistrates Court may amend an interim order (including an interim order that is a consent order) by extending it for an additional period, or further additional period, of up to 8 weeks.
- (2) The Magistrates Court may amend an order by extending it only if satisfied that it is necessary to amend the order in that way to ensure the safety of the aggrieved person until the application for a final order is decided.
- (3) However, an interim order must not be extended if the extension would mean the interim order would be in force for more than 16 weeks.
- (4) Subsection (2) does not apply if the order extending the interim order is a consent order.

*Note* The registrar may extend an interim order if the application for the final order has not been served on the respondent (see s 17) or if the registrar is exercising the Magistrates Court's power to make a consent order (see s 93).

**59 May further interim order be made?**

- (1) This section applies in relation to an application for a final order if—
  - (a) an interim order has been made in relation to the final order; and
  - (b) the interim order has, or is about to, end; and
  - (c) the interim order must not be extended under section 58.
- (2) A further interim order may be made in relation to the final order only if the Magistrates Court is satisfied that there are special or exceptional circumstances (having regard to the principles for making protection orders) that justify the making of a further interim order.

*Note* The principles for making protection orders are in s 6.

- (3) However, a further interim order must not be made as a consent order.

**60 When may registrar extend interim order?**

- (1) This section applies if the registrar adjourns a proceeding because the respondent has not been served with a copy of the application and a notice about the proceeding stating the date for the application's return before the Magistrates Court.
- (2) The registrar may also amend any interim order made in relation to the application by extending it to take into account the delay caused by the adjournment.

- (3) The registrar must not extend an interim order under subsection (2) for longer than 8 weeks.

*Note 1* An interim order must not be extended if the extension would mean the interim order would be in force for more than 16 weeks (see s 58 (3)).

*Note 2* The registrar may also extend an interim order if the registrar is exercising the Magistrates Court's power to make a consent order (see s 93).

## Part 7 Emergency orders

*Note* An emergency order is a kind of domestic violence order (see s 8 (3)).

### 61 Who may apply for emergency order?

Only a police officer may apply for an emergency order.

### 62 When may emergency order be made?

A judicial officer may make an emergency order on application if—

- (a) the judicial officer is satisfied that—
  - (i) the respondent has behaved in a way that satisfies the judicial officer that there are reasonable grounds for believing that the respondent may cause physical injury to the aggrieved person if an emergency order is not made; and
  - (ii) the aggrieved person is a relevant person in relation to the respondent; and
  - (iii) it is not practicable to arrest the respondent, or there is no ground to arrest the respondent; and
- (b) it is outside the sitting hours of the Magistrates Court.

### 63 How can application for emergency order be made? (DVA s 19I (1)-(3))

- (1) The police officer may apply to a judicial officer by telephone for an emergency order.
- (2) The police officer must—
  - (a) satisfy the judicial officer about the police officer's identity, rank and identification number; and
  - (b) describe the behaviour the application is based on; and



- (c) give the reasons for the application; and
  - (d) tell the judicial officer about any relevant family contact order, or any pending application for such an order, that the police officer is aware of; and
  - (e) provide any other relevant information required by the judicial officer.
- (3) If it is practicable in the circumstances, the police officer must send the judicial officer a brief written statement of the matters mentioned in subsection (2) (b) and (c) by fax.
- (4) If the statement mentioned in subsection (3) is not sent by fax, the judicial officer must ensure that a brief description of the behaviour the application is based on and the reasons for the application are part of the record of the Magistrates Court.

**64 What should judicial officers consider in making emergency order? (DVA s 19F (3), (4))**

- (1) In making an emergency order, a judicial officer must consider whether contact between the aggrieved person or the respondent, and any child of either, is relevant to the making of the order, and to any relevant family contact order that the judicial officer is aware of.
- (2) A failure to consider the matters mentioned in subsection (1) before making an emergency order does not affect the validity of the order.

*Note about relationship with Family Law Act*

The *Family Law Act 1975* (Cwlth), pt VII, divs 10 and 11 deal with the relationship between domestic violence orders and contact orders within the meaning of that part. In particular, s 68J imposes an obligation on certain people to inform the court of any family violence orders (including domestic violence orders) and under s 68S certain people may apply for a declaration of the extent to which a contact order is inconsistent with a family violence order.

**65 Emergency orders (DVA s 19I (4)-(7) (a))**

- (1) An emergency order must include—
  - (a) the name, rank and identification number of the police officer who applied for the order; and
  - (b) the name of the person to be protected by the order; and
  - (c) the terms of the order; and
  - (d) the time the order is made; and
  - (e) the name and position of the judicial officer.
- (2) The emergency order must—
  - (a) be sent to the police officer by fax if it is practicable to do so; or
  - (b) otherwise be dictated to the police officer over the telephone.
- (3) A paper produced by the fax, or written under the dictation, mentioned in subsection (2) is taken to be a copy of the emergency order.
- (4) A record made by a judicial officer of an emergency order dictated to a police officer over the telephone is the original emergency order.

**66 Action on refusing order (DVA s 19I (7) (b))**

If an application for an emergency order is refused, the judicial officer must write a record of—

- (a) the name, rank and identification number of the police officer who applied for the order; and
- (b) the name of the person for whose protection the order was sought; and
- (c) the reasons for refusing to make the order.

**67 Records (DVA s 19I (8))**

The judicial officer must ensure that the record of the proceeding, including the order made (if any), is part of the record of the Magistrates Court.

*Note* The record of the proceeding consists of the documents relevant to the proceeding, including any fax received from the police officer, the written record under s 63 (4) (How can an application for an emergency order be made?) and s 66 (Action on refusing order) and any other relevant documents.

**68 Detention of person against whom protection order sought (DVA s 19J)**

- (1) If it is proposed to apply for an emergency order against a person, a police officer may—
  - (a) if appropriate, remove the person to another place; and
  - (b) detain the person until the application for the order has been dealt with and a copy of any order made is given to the person.
- (2) A person must not be detained under this section for longer than 4 hours.

**69 What emergency order may contain**

- (1) The emergency order may prohibit the respondent from being on premises where the aggrieved person lives.
- (2) The emergency order may do something mentioned in section 42 (2) (What final orders (other than workplace orders) may contain) (other than paragraph (a)) only if the judicial officer making the order is satisfied that it is necessary to ensure the safety of the aggrieved person.

*Note* Section 42 (2) (a) allows the Magistrates Court to make an order prohibiting the respondent from being on premises where the aggrieved person lives.

- (3) The emergency order may prohibit a respondent who is a child from being on premises where the child normally lives only if the judicial officer is satisfied that adequate arrangements have been made for the child's care and safety.

**Example of when judicial officer may be satisfied adequate arrangements made for child**

If a government agency responsible for the care and protection of children has found alternative accommodation for the child.

## **70 Length of emergency orders**

- (1) The emergency order remains in force until the earliest of the following:
- (a) close of business on the second day after the day when the order is made;
  - (b) the order is revoked;
  - (c) a final order or interim order is made against the respondent in relation to the aggrieved person.

*Note* Periods of less than 5 days are to be worked out ignoring any day when the Magistrates Court is not open for business (see s 104).

- (2) The emergency order cannot be renewed or extended.

## **71 Emergency amendment or revocation of emergency orders**

- (1) The emergency order may be revoked or amended outside the sitting hours of the Magistrates Court by a judicial officer on application by a police officer.
- (2) The procedure for amending or revoking an emergency order outside sitting hours is the same as the procedure for making an emergency order.

*Note* The procedure for making an emergency order is set out at the beginning of this part.

- (3) However, the application for amendment or revocation need not describe the behaviour the application is based on.

## **72 Non-emergency amendment or revocation of emergency orders**

An emergency order may be amended or revoked during sitting hours of the Magistrates Court in the same way, and on the same grounds, as an interim order may be amended or revoked.

*Note* For the way an interim order may be amended or revoked, see s 31 (Amendment or revocation generally), s 49 (What are the grounds for making an interim order?) and s 58 (Extension of interim orders).

## **73 Firearms and emergency orders (DVA s 19M)**

- (1) If an emergency order is made in relation to a respondent who is the holder of a firearms licence, the firearms licence is, by force of this section, suspended until the order ends or is revoked.

*Note* **Firearms licence** is defined in the dictionary.

- (2) The judicial officer who makes the emergency order may also order—
- (a) the seizure of the firearms licence for the period that the order is in force; and
  - (b) the seizure and detention for that period of any firearm and any ammunition for a firearm in the respondent's possession.

## **74 Service of emergency orders**

- (1) A copy of an emergency order must be served on the respondent by a police officer.
- (2) Service under subsection (1) must be personal service unless the Magistrates Court makes an order under section 98 (If service impracticable or impossible).

**75 Police required to explain emergency order served**

- (1) A police officer serving a copy of an emergency order on a respondent must, as far as is practicable in the circumstances, explain to the respondent the effect of the order and the consequences of contravening the order.
- (2) The failure of a police officer to comply with subsection (1) does not affect the validity of the service of the emergency order.

**76 Recording reasons if emergency order not applied for (DVA s 19G)**

- (1) This section applies if a police officer—
  - (a) deals with an incident in which—
    - (i) someone (the *respondent*) has behaved in a way that satisfies the police officer that there are reasonable grounds for believing that the respondent may cause physical injury to the aggrieved person if an emergency order is not made; and
    - (ii) the aggrieved person is a relevant person for the respondent; and
    - (iii) it is not practicable to arrest the respondent, or there is no ground to arrest the respondent; and
  - (b) decides not to apply for an emergency order.
- (2) The police officer must make a record of the decision, including a brief note of the reasons for it.

## Part 8                      Review

### 77      Review of consent orders

- (1) A party to a proceeding may apply to the Magistrates Court for a review of a consent order (the *original order*) only on the ground that the making of the original order was induced or affected by fraud or duress, other than fraud of the party or duress applied by the party.
- (2) On application for the review, the Magistrates Court may—
  - (a) amend the original order or declare the original order void; or
  - (b) refuse to amend the original order or declare the original order void; or
  - (c) make any order that could have been made on the application in relation to which the original order was made instead of the original order.

### 78      Appealable decisions

The following decisions under this Act are appealable:

- (a) the making, amending or revoking of a protection order, other than an interim order or emergency order, by the Magistrates Court;
- (b) the refusal of the court to make, amend or revoke a protection order, other than an interim order or an emergency order;
- (c) a decision mentioned in section 77 made on the review of a consent order.

**79 When can someone appeal to Supreme Court?**

- (1) A person may appeal to the Supreme Court against an appealable decision if the person was a party to the proceeding in which the decision was made.
- (2) The person must file a notice of appeal (the *notice of appeal*) with the Supreme Court within 21 days after—
  - (a) if the appealable decision was the making or amending of a protection order and the respondent was not present when the protection order was made or amended—the protection order or amendment is served on the respondent; or
  - (b) in any other case—the date of the order.
- (3) However, the Supreme Court may allow a person to file a notice of appeal after the period mentioned in subsection (2) if satisfied that it is appropriate to do so.

**80 Giving notice of appeal (MCCJA s 389 (2))**

As soon as practicable after filing the notice of appeal, the appellant must—

- (a) file a copy of the notice in the office of the Magistrates Court; and
- (b) serve a copy of the notice on each other party to the proceeding from which the appeal arose.

*Note* For service of the notice, see pt 11 (Service).

**81 Evidence on appeal (MCCJA s 391)**

In an appeal, the Supreme Court must consider the evidence given in the proceeding from which the appeal arose, and has power to draw inferences of fact and, in its discretion, to receive further evidence.



**82 Powers of Supreme Court on appeal (MCCJA s 393)**

On an appeal, the Supreme Court may—

- (a) confirm, reverse or amend the decision or order appealed from; or
- (b) make the decision or order that, in all the circumstances, it considers appropriate, or refuse to make an order; or
- (c) set aside the decision or order appealed from, completely or partly, and remit the proceedings to the Magistrates Court for further hearing, subject to the directions the Supreme Court considers appropriate.

**83 Effect of filing appeal**

The filing of an appeal against the making or amending of an order under this Act does not affect the operation of the order appealed against.

## Part 9 Reciprocal arrangements

### 84 Definitions for pt 9 (PORAA s 3)

In this part:

*recognised court* means a court of a State, another Territory or New Zealand that may make a recognised order.

*recognised order* means an order, under a law of a State, another Territory or New Zealand, that corresponds to a protection order.

*registered order* means a recognised order registered under section 86 (Registration) or section 90 (Amendment of recognised order), and includes a registered order amended as if it were a final order.

### 85 Application for registration of recognised order (PORAA s 4)

- (1) A person may apply to the registrar for registration of a recognised order.

*Note* If a form is approved under section 96 (Approved forms) for an application under this section, the form must be used.

- (2) The application must be accompanied by the recognised order or a certified copy of the recognised order.

### 86 Registration (PORAA s 5)

- (1) On receiving an application under section 85 for registration of a recognised order, the registrar must register the order.
- (2) If the registrar registers a recognised order, the registrar must—
  - (a) give the chief police officer a copy of—
    - (i) the application for registration; and

- (ii) the registered order; and
- (b) tell the recognised court, in writing, that the order has been registered.

*Note* Under the *Electronic Transactions Act 2001*, s 8 (1), information required to be in writing may be given electronically in certain circumstances.

### **87 Effect of registration (PORAA s 6)**

A registered order—

- (a) is enforceable in the ACT as if it were a final order that had been personally served on the respondent; and
- (b) may be amended or revoked in the same way as a final order.

### **88 Amendment of registered order (PORAA s 7)**

If a registered order is amended under this Act, the registrar must tell the recognised court that made the order, in writing, about the amendment.

*Note* Under the *Electronic Transactions Act 2001*, s 8 (1), information required to be in writing may be given electronically in certain circumstances.

### **89 Revocation of recognised order (PORAA s 8)**

- (1) This section applies if the registrar is told by a recognised court that a recognised order registered under this part has been revoked.
- (2) The registrar must cancel the registration of the registered order and must tell the chief police officer and the person for whose benefit the recognised order was registered about the cancellation.

### **90 Amendment of recognised order (PORAA s 9)**

- (1) This section applies if the registrar is told by a recognised court that a recognised order (the *original order*) registered under this part has been amended.

- (2) The registrar must cancel the registration of the original order and register the recognised order as amended (the *amended order*).
- (3) The amended order takes effect on the cancellation of the registration of the original order.
- (4) If a breach of the original order that is not enforced before the original order is cancelled would amount to a breach of the amended order, the breach may be enforced as if it were a breach of the amended order.

**91 Notification by interstate court of registration**  
(PORAA s 10)

- (1) This section applies if—
  - (a) a recognised court tells the Magistrates Court that it has registered a protection order; and
  - (b) the Magistrates Court amends or revokes the order.
- (2) The Magistrates Court must—
  - (a) tell the recognised court, in writing, that the order has been amended or revoked; and
  - (b) if the order has been amended—give the recognised court a copy of the order as amended.

*Note* Under the *Electronic Transactions Act 2001*, s 8 (1), information required to be in writing may be given electronically in certain circumstances.

**92 Evidence of registered order** (PORAA s 11)

- (1) A registered order is admissible in evidence in a court by the production of a copy of the registered order certified as a true copy by the registrar.
- (2) The copy is evidence of the matters stated in the registered order.

## Part 10 Administration

### 93 Authorisation of registrar

- (1) If authorised, in writing, to do so by the Chief Magistrate, the registrar, or a named deputy registrar may—
  - (a) exercise the power of the Magistrates Court to make consent orders; or
  - (b) act as a judicial officer.
- (2) If the registrar or a deputy registrar makes an order while authorised under this section, the order must state that the registrar or deputy registrar is authorised to—
  - (a) exercise the power of the Magistrates Court to make consent orders; or
  - (b) act as a judicial officer.
- (3) If the registrar or a deputy registrar exercises the power of the Magistrates Court to make a consent order while authorised under this section, a reference to the Magistrates Court in relation to the exercise of the power, is taken to be a reference to the registrar or deputy registrar.
- (4) An authorisation is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

### 94 Deputy registrar and preliminary conferences

A deputy registrar may hold a preliminary conference only if authorised to exercise the power of the Magistrates Court to make consent orders.

**95 Recovery of certain expenses (DVA s 19E)**

- (1) This section applies if the Magistrates Court is satisfied that—
  - (a) an application is frivolous, vexatious or has not been made honestly; and
  - (b) someone (the *person put to expense*) other than the applicant has reasonably incurred expenses in relation to the proceeding on the application.
- (2) The Magistrates Court may order the applicant to pay to the person put to expense an amount, not more than the expenses incurred, that the court considers reasonable.
- (3) The amount stated in the order—
  - (a) is a debt owed by the applicant to the person put to expense; and
  - (b) is a judgment debt enforceable in accordance with the *Magistrates Court (Civil Jurisdiction) Act 1982*.
- (4) For this section:

*expenses incurred*, by someone in a proceeding, include fees payable by the person to a lawyer in relation to the proceeding.

**96 Approved forms**

- (1) The registrar may, in writing, approve forms for this Act.
- (2) If the registrar approves a form for an application, the approved form must be used for the application.

*Note* For other provisions about forms, see *Legislation Act 2001*, s 255.

- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

## Part 11 Service

### 97 If personal service not required

- (1) This section applies if a document required to be served under this Act is not required to be served personally.
- (2) The document may be served—
  - (a) by delivering it to the person personally; or
  - (b) by leaving it—
    - (i) at the home or work address of the person last-known to the person serving the document; and
    - (ii) with a person apparently living or employed at the place who appears to be more than 16 years old; or
  - (c) if the person has an address for service—by leaving it at, or sending it by prepaid post to, the address for service.
- (3) The *Legislation Act 2001*, part 19.5 (Service of documents) does not apply to the service of a document that is required to be served under this Act.

### 98 If service impracticable or impossible

- (1) This section applies if—
  - (a) personal service of an application under this Act is not reasonably practicable; or
  - (b) a document that is not required to be personally served cannot be served under section 97.
- (2) The Magistrates Court may order that the application or document be served in the way, stated in the order, that the court considers is

likely to bring the application or document to the attention of the person required to be served.

**99 Service of documents by police (DVA s 29)**

- (1) The Magistrates Court may direct that a document required to be served on someone be served by a police officer if the court considers that it is appropriate to do so.
- (2) If the Magistrates Court gives a direction under subsection (1), an authorised police officer must, when asked to do so by the registrar, arrange for the document to be served by a police officer.
- (3) For this section:

*authorised police officer* means the police officer in charge of a police station.



## Part 12 Public access and publication

### 100 Restriction on publication of reports about proceedings (DVA s 30)

*Note* Section 101 contains an exception to this section.

- (1) A person must not publish (completely or partly) an account or report of a proceeding on an application for a protection order under this Act that—
  - (a) identifies a party to the proceeding; or
  - (b) identifies a person who is related to, or associated with, a party to the proceeding or is, or is claimed to be, in any other way concerned in the matter to which the proceeding relates; or
  - (c) identifies a witness to the proceeding; or
  - (d) allows the identity of a person mentioned in paragraph (a), (b) or (c) to be worked out.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A proceeding for an offence against this section may be begun only by, or with the written consent of, the director of public prosecutions.

### 101 Limits of restriction on publication about proceedings (DVA s 30A)

- (1) Section 100 does not prevent a party to a proceeding on an application for a protection order from telling someone else about the contents of a protection order made in the proceeding.
- (2) Section 100 does not prevent—
  - (a) information from being circulated in accordance with—

- (i) an order of the Magistrates Court; or
    - (ii) the written permission of a magistrate; or
  - (b) information from being communicated to a court or tribunal under the *Family Law Act 1975* (Cwlth), section 68J (1) or (2); or
  - (c) information from being provided to the director of public prosecutions or a police officer in relation to the exercise of the director's or officer's functions;
  - (d) a pleading, transcript of evidence or other document from being communicated to—
    - (i) people concerned with any other proceeding in a court or tribunal, for use in relation to that proceeding; or
    - (ii) people concerned with the disciplinary proceeding of a lawyer, for use in relation to that proceeding; or
    - (iii) an entity that grants legal aid, to help decide whether to provide legal aid in a particular case; or
  - (e) matter being published in law reports or other technical or professional publications; or
  - (f) matter from being given to someone in relation to the person's professional practice.
- (3) The Magistrates Court may make an order allowing circulation of, or a magistrate may give permission to circulate, information the publication of which would otherwise contravene section 100 (1) only if the court or magistrate is satisfied that—
- (a) it is in the public interest; or
  - (b) it will promote compliance with the protection order; or
  - (c) it is necessary or desirable for the proper functioning of this Act.

## Part 13                      Miscellaneous

### 102    **Deciding application if criminal proceedings (DVA s 16)**

The power of the Magistrates Court, the registrar or another judicial officer to make a protection order in relation to a person may be exercised even if the person has been charged with, or convicted or found guilty of, an offence arising out of the same behaviour as that out of which the application under this Act arose.

### 103    **Crimes Act, s 397 (1) (DVA s 32)**

This Act does not affect the operation of the *Crimes Act 1900*, section 397 (1) (which deals with the making of recognisances to keep the peace).

### 104    **Working out time if less than 5 days**

If a period of less than 5 days is prescribed under this Act, the period is to be worked out ignoring any day when the Magistrates Court is not open for business.

### 105    **Directions about procedure**

(1) If the procedure for taking a step in a proceeding is not prescribed under this Act, the Chief Magistrate may, in writing, give directions about the procedure to be followed for the step.

(2) A direction is a notifiable instrument.

*Note*      A notifiable instrument must be notified under the *Legislation Act 2001*.

(3) If the procedure for taking a step in a proceeding is not prescribed under this Act (including under a direction mentioned under subsection (1)), the Magistrates Court may give directions about the procedure to be followed in relation to the step.

**106 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may deal with the following:
- (a) the admissibility of evidence in proceedings;
  - (b) when and how warrants may be issued;
  - (c) what parties may be joined in proceedings, and how they may be joined;
  - (d) when orders are made;
  - (e) service;
  - (f) discontinuance and withdrawal of proceedings;
  - (g) the particulars parties are required to plead in proceedings, generally and in relation to particular claims or defences;
  - (h) how particulars must be pleaded and when further or better particulars must be given;
  - (i) interlocutory proceedings, including the following:
    - (i) how interlocutory applications may be made and heard;
    - (ii) how documents in proceedings may be amended;
    - (iii) how proceedings may be summarily stayed or dismissed;
    - (iv) how admissions may be made;
    - (v) the making, filing and answering of interrogatories;
    - (vi) how discovery may be applied for and made;
    - (vii) the inspection of documents.
  - (j) how witnesses may be summoned;

- (k) the powers of the Magistrates Court in relation to making decisions and when decisions take effect;
  - (l) the powers of the Magistrates Court to set aside orders;
  - (m) when costs may be ordered and how they may be recovered.
- (3) The regulations may set out the procedures to be followed under this Act, including procedures in relation to the following:
- (a) the holding of preliminary conferences;
  - (b) representation, including—
    - (i) the appointment of next friends and litigation guardians; and
    - (ii) how respondents may defend actions;
  - (c) the adjournment, staying, dismissal or postponement of proceedings;
  - (d) hearings;
  - (e) giving judgment.
- (4) The regulations may also prescribe offences for contraventions of regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

### **107 Review**

- (1) The Minister must review the relevant sections of this Act and its regulations for consistency with Model Domestic Violence Laws as soon as is practicable, and no later than 27 March 2003.
- (2) The report on the review must be presented by the Minister to the Legislative Assembly within 3 sitting days of receipt of the report.
- (3) The Minister must review the operation of the provisions of this Act relating to domestic violence as soon as it is practicable after 27 September 2003 but not later than 27 March 2004.

**Part 13**                      Miscellaneous

Section 107

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- (4) The report on the review must be presented by the Minister to the Legislative Assembly within 3 sitting days of receipt of the report.
- (5) This section expires on 27 March 2004.

## Part 14 Transitional

### 108 Definitions for pt 14

In this part:

*commencement day* means the day this Act commences.

*DV Act* means the *Domestic Violence Act 1986*, as in force immediately before commencement day.

*dv emergency protection order* means an emergency protection order within the meaning of the DV Act.

*dv interim protection order* means an interim protection order within the meaning of the DV Act.

*dv protection order* means a protection order within the meaning of the DV Act.

*interim restraining order* means an interim restraining order within the meaning of the MC Act.

*MC Act* means the *Magistrates Court Act 1930*, as in force immediately before commencement day.

*Reciprocal Arrangements Act* means the *Protection Orders (Reciprocal Arrangements) Act 1992*, as in force immediately before commencement day.

*restraining order* means a restraining order within the meaning of the MC Act.

### 109 What happens to proceedings already begun?

- (1) This Act applies to a proceeding on an application for a dv protection order, dv interim protection order, restraining order or interim restraining order begun, but not decided, before commencement day.

- (2) The proceeding is taken to be a proceeding on an application under this Act.
- (3) If a step that should have been taken under this Act has not been taken because the proceeding was begun under the DV Act or MC Act—
  - (a) the proceeding is not affected; and
  - (b) the Magistrates Court may take the steps the court considers appropriate to decide the application that is the subject of the proceeding, to the extent practicable, in accordance with this Act.

**110 What happens to existing final orders under DV Act and MC Act?**

- (1) A dv protection order in force under the DV Act immediately before commencement day is taken to be a domestic violence order made under this Act as a final order.
- (2) A restraining order in force under the MC Act immediately before commencement day is taken to be a personal violence order made under this Act as a final order.

**111 What happens to existing interim orders under DV Act and MC Act?**

- (1) A dv interim protection order in force under the DV Act immediately before commencement day is taken to be a domestic violence order made under this Act as an interim order.
- (2) An interim restraining order in force under the MC Act immediately before commencement day is taken to be a personal violence order made under this Act as an interim order.
- (3) If a dv interim protection order, or interim restraining order, in force immediately before commencement day, was made for a period



longer than the period for which an interim order may be made under this Act—

- (a) the order expires on the day it would have expired if this Act had not been made; and
- (b) the order is not taken to be invalid only because it was made for a period for which an interim order may not be made under this Act.

### **112 What happens to existing emergency orders under DV Act?**

A dv emergency order in force under the DV Act immediately before commencement day is taken to be an emergency order under this Act.

### **113 Domestic violence behaviour**

In considering whether someone has previously engaged in domestic violence, the Magistrates Court must also consider whether the person has done something in relation to a relevant person that, when it was done, would have been an offence against the *Motor Traffic Act 1936*, section 129 (which was about reckless, dangerous or negligent driving).

### **114 Domestic violence firearm related orders—final orders**

An order made under the DV Act, section 14A (2) (Protection orders, interim protection orders—firearms), about the seizure of a firearms licence, firearm or ammunition, is taken to be an order made under this Act, section 38 (5) (Firearms and final orders).

### **115 Domestic violence firearm related orders—interim orders**

- (1) A firearms licence suspended under the DV Act, section 14A (3) (Protection orders, interim protection orders—firearms) is taken to have been suspended under this Act, section 57 (2) (Firearms and interim orders).

- (2) An order made under the DV Act, section 14A (3), about the seizure (or seizure and detention) of a firearms licence, firearm or ammunition, is taken to be an order made under this Act, section 57 (5).

**116 Domestic violence firearm related orders—emergency orders**

- (1) A firearms licence suspended under the DV Act, section 19M (Effect of orders on licences for firearms) is taken to have been suspended under this Act, section 73 (1) (Firearms and emergency orders).
- (2) An order made under the DV Act, section 19M, about the seizure (or seizure and detention) of a firearms licence, firearm or ammunition, is taken to be an order made under this Act, section 73 (2).

**117 Personal violence firearm related orders—final orders**

An order made under the MC Act, section 206D (2) (Seizure of firearms), about the seizure of a firearms licence, firearm or ammunition, is taken to be an order made under this Act, section 38 (5) (Firearms and final orders).

**118 Personal violence firearm related orders—interim orders**

- (1) A firearms licence suspended under the MC Act, section 206D (3) (Seizure of firearms) is taken to have been suspended under this Act, section 57 (2) (Firearms and interim orders).
- (2) An order made under the MC Act, section 206D (4), about the seizure (or seizure and detention) of a firearms licence, firearm or ammunition, is taken to be an order made under this Act, section 57 (5).

**119 Protection of proceedings**

- (1) A proceeding to which the DV Act, section 30 (Restriction on publication of reports of proceedings), or the MC Act, section 206P (Restriction on publication of reports of proceedings), applied immediately before commencement day is taken to be a proceeding to which this Act, section 100 (Restriction on publication of reports about proceedings) applies.
- (2) Subsection (1) is a law to which the *Legislation Act 2001*, section 88 (Repeal does not end transitional or validating effect etc) applies.

**120 Applications under Reciprocal Arrangements Act**

If, before commencement day, a person had applied under the Reciprocal Arrangements Act, section 4, for registration of a recognised order, but the registrar had not registered the order or taken any other action required under section 5 (2) of that Act, the application is taken to have been made under this Act, section 85 (Application for registration of recognised order).

**121 What happens to orders registered under Reciprocal Arrangements Act?**

A registered order (within the meaning of the Reciprocal Arrangements Act) in force immediately before commencement day is taken to be a registered order under section 84 (Definitions for pt 9).

**122 What if registrar told recognised order amended or revoked**

- (1) This section applies if, before commencement day, the registrar had been told by a recognised court that made a recognised order that the order had been amended or revoked but had not taken action under the Reciprocal Arrangements Act in relation to the information.

- (2) The registrar must take action under this Act as if the registrar had been told the information after the commencement of this Act.

**123 What if registered protection order amended or revoked?**

- (1) This section applies if, immediately before commencement day—
- (a) a recognised court had told the Magistrates Court that it had registered a protection order; and
  - (b) the Magistrates Court had amended or revoked the order but had not told the recognised court that the order was amended or revoked or, if the order was amended, had not given the recognised court a copy of the order as amended.
- (2) The Magistrates Court must take action in relation to the amendment or revocation as if it had happened after commencement day.

**124 Modification of pt 14's operation**

The regulations may modify this part to make provision with respect to any matter that is not, or not adequately, dealt with in this part.

**125 Expiry of pt 14**

This part expires on 27 March 2003.

## Schedule 1 Domestic violence offences against Crimes Act 1900

(see s 9 (2))

column 1 item	column 2 provision	column 3 description of offence
1	12	murder
2	15	manslaughter
3	19	intentionally inflicting grievous bodily harm
4	20	recklessly inflicting grievous bodily harm
5	21	wounding
6	22	assault with intent to commit certain indictable offences
7	23	inflicting actual bodily harm
8	24	assault occasioning actual bodily harm
9	25	causing grievous bodily harm
10	26	common assault
11	27	acts endangering life etc
12	28	acts endangering health etc
13	29	culpable driving of motor vehicle
14	30	threat to kill
15	31	threat to inflict grievous bodily harm
16	32 (1) (a)	make demand with threat to kill or inflict grievous bodily harm
17	32 (2) (a)	make demand with threat to endanger health etc
18	33	possession of object with intent to kill etc
19	34	forcible confinement
20	35	stalking
21	37	abduction of young person
22	38	kidnapping
23	51	sexual assault in the first degree
24	52	sexual assault in the second degree
25	53	sexual assault in the third degree
26	54	sexual intercourse without consent
27	55	sexual intercourse with young person

**Schedule 1** Domestic violence offences against Crimes Act 1900

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<b>column 1 item</b>	<b>column 2 provision</b>	<b>column 3 description of offence</b>
28	57	act of indecency in the first degree
29	58	act of indecency in the second degree
30	59	act of indecency in the third degree
31	60	act of indecency without consent
32	61	acts of indecency with young people
33	62	incest or similar offences
34	63	abduction
35	116	destroying or damaging property
36	117	arson
38	150 (1) (a)	being armed with weapon etc with intent to commit offence
39	151	forcible entry on land
40	380	possession of offensive weapons
41	381	possession of offensive weapon with intent
42	392	offensive behaviour

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## Dictionary

(see s 3)

*Note 1* The *Legislation Act 2001* contains definitions and other provisions relevant to this Act.

*Note 2* In particular, the *Legislation Act 2001*, dict, pt 1, defines the following terms:

- document
- exercise
- Magistrates Court
- police officer
- Supreme Court.

***aggrieved person*** means—

- (a) in relation to behaviour for which a workplace order may be sought—the employer of the person against whom the behaviour is directed; or
- (b) in any other case—a person against whom the behaviour that may constitute domestic or personal violence has been, or is likely to be, directed.

***amend*** an order includes amend the order by extending it.

***ammunition***—see the *Firearms Act 1996*, section 4.

***appealable decision*** means a decision mentioned in section 78.

***application*** means an application for a protection order (other than an interim order).

*Note 1* As a protection order includes an order amending or revoking a protection order, an application includes an application to amend or revoke a protection order.

*Note 2* An interim order may only be made as an interlocutory step in a proceeding on an application for a final order, so there is not a separate application for an interim order.

**child**, of a person, includes—

- (a) a child who normally lives with the person; and
- (b) a child for whom the person is a guardian.

*Note* A child is someone under 18 years old (see *Legislation Act 2001*, dict, pt 1).

**consent order** means a protection order made under section 29.

**copy**, in relation to a document to be served in a proceeding, means—

- (a) if the document has been entered into the record of the Magistrates Court—a true copy sealed or stamped with the seal of the court; or
- (b) in any other case—a true copy.

**de facto spouse**, of a person, means someone of the opposite sex to the person who is living with the person as the person's husband or wife although not legally married to the person.

**disability guardian**, of a person—see the *Guardianship and Management of Property Act 1991*, dictionary, definition of **guardian**.

**domestic violence**—see section 9 (1).

**domestic violence offence**—see section 9 (2).

**domestic violence order**—see section 20 (2) (What kinds of behaviour does a protection order restrain?).

**emergency order** means an order under part 7 (Emergency orders), and includes an order amending or revoking an emergency order if made outside the Magistrates Court's sitting hours.

**employee** means an individual engaged by someone—

- (a) under a contract of service; or
- (b) under a contract for services; or



- (c) under an apprenticeship; or
- (d) under a training agreement under the *Vocational Education and Training Act 1995*; or
- (e) to work for the person as a volunteer.

**employer** means someone who engages an individual—

- (a) under a contract of service; or
- (b) under a contract for services; or
- (c) under an apprenticeship; or
- (d) under a training agreement under the *Vocational Education and Training Act 1995*; or
- (e) to work as a volunteer.

**family contact order**, in relation to a protection order under this Act, means a contact order within the meaning of the *Family Law Act 1975* (Cwlth), part 7, division 11 (Family violence), that relates to contact between the aggrieved person or the respondent, and any child of either person.

**final order** means a protection order that is not an interim order or emergency order, and includes an order amending or revoking a final order.

**firearm**—see the *Firearms Act 1996*, section 4 (Definitions).

**firearms licence**—see the *Firearms Act 1996*, section 4, definition of *licence*.

**interim order** means a protection order made under part 6 (Interim orders) or a consent order made as an interim order, and includes an order (other than a final order) that amends or revokes an interim order.

**judicial officer** means—

- (a) a magistrate; or

- (b) the registrar, or a deputy registrar, authorised as a judicial officer under section 93.

***personal protection order***—see section 20 (3) (What kinds of behaviour does a protection order restrain?)

***personal violence***—see section 10 (What is *personal violence*?) and section 44 (What is *personal violence* for a workplace?).

***person with a legal disability*** means—

- (a) a child; or  
(b) a person with a mental disability.

***person with a mental disability***, in relation to a proceeding, means a person who is not legally competent to be a party to the proceeding because of a mental or intellectual disability, and includes such a person even if a disability guardian has not been appointed for the person.

***protection order*** means a domestic violence order or a personal protection order, and includes—

- (a) an interim order; and  
(b) an emergency order; and  
(c) a workplace order; and  
(d) an order about the seizure of a firearms licence, firearm or ammunition; and  
(e) an order amending or revoking a protection order.

***recognised court***, for part 9 (Reciprocal arrangements)—see section 84 (Definitions for pt 9).

***recognised order***, for part 9 (Reciprocal arrangements)—see section 84 (Definitions for pt 9).

***registered order***, for part 9 (Reciprocal arrangements)—see section 84 (Definitions for pt 9).

**registrar—**

- (a) in relation to preliminary conferences—means the registrar of the Magistrates Court or any deputy registrar authorised under section 93 to exercise the power of the Magistrates Court to make consent orders; or
- (b) see the *Magistrates Court Act 1930*, section 5 (1) (Interpretation).

**relative, of a person (the *original person*)—**

- (a) means the original person's—
  - (i) father, mother, grandfather, grandmother, stepfather, stepmother, father-in-law or mother-in-law; or
  - (ii) son, daughter, grandson, granddaughter, stepson, stepdaughter, son-in-law or daughter-in-law; or
  - (iii) brother, sister, half-brother, half-sister, stepbrother, stepsister, brother-in-law or sister-in-law; or
  - (iv) uncle, aunt, uncle-in-law or aunt-in-law; or
  - (v) nephew, niece or cousin; and
- (b) includes someone who would have been a relative of a kind mentioned in paragraph (a) if the original person had been legally married to the original person's de facto spouse (if any); and
- (c) includes someone who has been a relative of a kind mentioned in paragraph (a) or (b) of the original person.

**relevant person, in relation to a person (the *original person*), means—**

- (a) a spouse of the original person; or
- (b) a relative of the original person; or
- (c) a child of a spouse of the original person; or

- (d) someone who normally lives, or normally lived, in the same household as the original person (other than as a tenant or boarder).

**sitting hours**, of the Magistrates Court, means the time, on a day when the court is open for business, between the earliest and latest times that the court would normally sit on that day.

**spouse** includes former spouse, de facto spouse and former de facto spouse.

**workplace order** means an order under division 5.3.

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
IA = Interpretation Act 1967	renum = renumbered
ins = inserted/added	reloc = relocated
LA = Legislation Act 2001	R[X] = Republication No
LR = legislation register	RI = reissue
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
num = numbered	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

#### **Protection Orders Act 2001 No 89**

notified LR 27 September 2001

s 1, s 2 commenced 27 September 2001 (LA s 75)

remainder commenced 27 March 2002 (s 2 and LA s 79)

as amended by

#### **Statute Law Amendment Act 2002 No 30 pt 3.55**

notified LR 16 September 2002

s 1, s 2 taken to have commenced 19 May 1997 (LA s 75 (2))

pt 3.55 commenced 17 September 2002 (s 2 (1))

#### **Criminal Code 2002 No 51 pt 1.15**

notified LR 20 December 2002

s 1, s 2 commenced 20 December 2002 (LA s 75)

pt 1.15 commenced 1 January 2003 (s 2 (1))

### 4 Amendment history

#### **Commencement**

s 2 om LA S 89 (4)

#### **Notes**

s 4 [s \(2\), s \(3\) exp 27 March 2004 \(s 4 \(3\)\)](#)

#### **What is *domestic violence*?** (DVA s 4A)

s 9 hdg [brackets exp 27 March 2004 \(s 4 \(3\)\)](#)

s 9 am 2002 No 51 amdt 1.32

#### **What is *personal violence*?** (MCA s 197 (1) (a), (b), (c))

s 10 hdg [brackets exp 27 March 2004 \(s 4 \(3\)\)](#)

#### **Who may apply for certain non-emergency orders?** (DVA s 5, MCA s 198)

s 11 hdg [brackets exp 27 March 2004 \(s 4 \(3\)\)](#)

#### **Service of application**

s 16 am 2002 No 30 amdt 3.624

#### **Explaining orders if respondent present** (DVA s 15)

s 24 hdg [brackets exp 27 March 2004 \(s 4 \(3\)\)](#)

#### **Explaining orders if aggrieved person present** (DVA s 15 (2))

s 25 hdg [brackets exp 27 March 2004 \(s 4 \(3\)\)](#)

- 
- Consent orders** (MCA s 206, s 206AA)  
s 29 hdg [brackets exp 27 March 2004 \(s 4 \(3\)\)](#)
- Service of non-emergency orders**  
s 33 am 2002 No 30 amdt 3.625
- Offence for contravention of protection order** (DVA s 19D)  
s 34 hdg [brackets exp 27 March 2004 \(s 4 \(3\)\)](#)
- Length of final domestic violence orders**  
s 35 am 2002 No 30 amdt 3.634
- Firearms and final orders** (DVA s 14A (1), (2))  
s 38 hdg [brackets exp 27 March 2004 \(s 4 \(3\)\)](#)
- Recommendations for counselling etc** (DVA s 11)  
s 39 hdg [brackets exp 27 March 2004 \(s 4 \(3\)\)](#)
- Service of application for interim order unnecessary**  
s 56 hdg sub 2002 No 30 amdt 3.626
- Firearms and interim orders** (DVA s 14A (3))  
s 57 hdg [brackets exp 27 March 2004 \(s 4 \(3\)\)](#)
- Extension of interim orders**  
s 58 am 2002 No 30 amdt 3.634
- May further interim order be made?**  
s 59 am 2002 No 30 amdt 3.634
- When may registrar extend interim order?**  
s 60 am 2002 No 30 amdt 3.634
- How can application for emergency order be made?** (DVA s 19I (1)-(3))  
s 63 hdg [brackets exp 27 March 2004 \(s 4 \(3\)\)](#)
- What should judicial officers consider in making emergency order?** (DVA s 19F (3), (4))  
s 64 hdg [brackets exp 27 March 2004 \(s 4 \(3\)\)](#)
- Emergency orders** (DVA s 19I (4)-(7) (a))  
s 65 hdg [brackets exp 27 March 2004 \(s 4 \(3\)\)](#)
- Action on refusing order** (DVA s 19I (7) (b))  
s 66 hdg [brackets exp 27 March 2004 \(s 4 \(3\)\)](#)
- Records** (DVA s 19I (8))  
s 67 hdg [brackets exp 27 March 2004 \(s 4 \(3\)\)](#)
- Detention of person against whom protection order sought** (DVA s 19J)  
s 68 hdg am 2002 No 30 amdt 3.634  
[brackets exp 27 March 2004 \(s 4 \(3\)\)](#)
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## Endnotes

### 4 Amendment history

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**Firearms and emergency orders** (DVA s 19M)

s 73 hdg [brackets exp 27 March 2004 \(s 4 \(3\)\)](#)

**Service of emergency orders**

s 74 sub 2002 No 30 amdt 3.627

**Recording reasons if emergency order not applied for** (DVA s 19G)

s 76 hdg [brackets exp 27 March 2004 \(s 4 \(3\)\)](#)

**Giving notice of appeal** (MCCJA s 389 (2))

s 80 hdg [brackets exp 27 March 2004 \(s 4 \(3\)\)](#)

s 80 am 2002 No 30 amdt 3.628

**Evidence on appeal** (MCCJA s 391)

s 81 hdg [brackets exp 27 March 2004 \(s 4 \(3\)\)](#)

**Powers of Supreme Court on appeal** (MCCJA s 393)

s 82 hdg [brackets exp 27 March 2004 \(s 4 \(3\)\)](#)

**Definitions for pt 9** (PORAA s 3)

s 84 hdg [brackets exp 27 March 2004 \(s 4 \(3\)\)](#)

**Application for registration of recognised order** (PORAA s 4)

s 85 hdg [brackets exp 27 March 2004 \(s 4 \(3\)\)](#)

**Registration** (PORAA s 5)

s 86 hdg [brackets exp 27 March 2004 \(s 4 \(3\)\)](#)

**Effect of registration** (PORAA s 6)

s 87 hdg [brackets exp 27 March 2004 \(s 4 \(3\)\)](#)

**Amendment of registered order** (PORAA s 7)

s 88 hdg [brackets exp 27 March 2004 \(s 4 \(3\)\)](#)

**Revocation of recognised order** (PORAA s 8)

s 89 hdg [brackets exp 27 March 2004 \(s 4 \(3\)\)](#)

**Amendment of recognised order** (PORAA s 9)

s 90 hdg [brackets exp 27 March 2004 \(s 4 \(3\)\)](#)

**Notification by interstate court of registration** (PORAA s 10)

s 91 hdg [brackets exp 27 March 2004 \(s 4 \(3\)\)](#)

**Evidence of registered order** (PORAA s 11)

s 92 hdg [brackets exp 27 March 2004 \(s 4 \(3\)\)](#)

**Recovery of certain expenses** (DVA s 19E)

s 95 hdg [brackets exp 27 March 2004 \(s 4 \(3\)\)](#)

**Approved forms**

s 96 am 2002 No 30 amdt 3.629

**If personal service not required**

s 97 am 2002 No 30 amdt 3.630



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- Service of documents by police** (DVA s 29)  
s 99 hdg [brackets exp 27 March 2004 \(s 4 \(3\)\)](#)
- Restriction on publication of reports about proceedings** (DVA s 30)  
s 100 hdg [brackets exp 27 March 2004 \(s 4 \(3\)\)](#)
- Limits of restriction on publication about proceedings** (DVA s 30A)  
s 101 hdg [brackets exp 27 March 2004 \(s 4 \(3\)\)](#)  
s 101 am 2002 No 30 amdt 3.631
- Deciding application if criminal proceedings** (DVA s 16)  
s 102 hdg [brackets exp 27 March 2004 \(s 4 \(3\)\)](#)
- Crimes Act, s 397 (1)** (DVA s 32)  
s 103 hdg [brackets exp 27 March 2004 \(s 4 \(3\)\)](#)
- Review**  
s 107 [exp 27 March 2004 \(s 107 \(5\)\)](#)
- Transitional**  
pt 14 hdg [exp 27 March 2003 \(s 125\)](#)
- Definitions for pt 14**  
s 108 am 2002 No 30 amdt 3.632  
[exp 27 March 2003 \(s 125\)](#)
- What happens to proceedings already begun?**  
s 109 [exp 27 March 2003 \(s 125\)](#)
- What happens to existing final orders under DV Act and MC Act?**  
s 110 [exp 27 March 2003 \(s 125\)](#)
- What happens to existing interim orders under DV Act and MC Act?**  
s 111 [exp 27 March 2003 \(s 125\)](#)
- What happens to existing emergency orders under DV Act?**  
s 112 [exp 27 March 2003 \(s 125\)](#)
- Domestic violence behaviour**  
s 113 [exp 27 March 2003 \(s 125\)](#)
- Domestic violence firearm related orders—final orders**  
s 114 [exp 27 March 2003 \(s 125\)](#)
- Domestic violence firearm related orders—interim orders**  
s 115 [exp 27 March 2003 \(s 125\)](#)
- Domestic violence firearm related orders—emergency orders**  
s 116 [exp 27 March 2003 \(s 125\)](#)
- Personal violence firearm related orders—final orders**  
s 117 [exp 27 March 2003 \(s 125\)](#)

## Endnotes

### 5 Earlier republications

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**Personal violence firearm related orders—interim orders**

s 118 [exp 27 March 2003 \(s 125\)](#)

**Protection of proceedings**

s 119 [exp 27 March 2003 \(s 125\)](#)

**Applications under Reciprocal Arrangements Act**

s 120 [exp 27 March 2003 \(s 125\)](#)

**What happens to orders registered under Reciprocal Arrangements Act?**

s 121 [exp 27 March 2003 \(s 125\)](#)

**What if registrar told recognised order amended or revoked**

s 122 [exp 27 March 2003 \(s 125\)](#)

**What if registered protection order amended or revoked?**

s 123 [exp 27 March 2003 \(s 125\)](#)

**Modification of pt 14's operation**

s 124 [exp 27 March 2003 \(s 125\)](#)

**Expiry of pt 14**

s 125 [exp 27 March 2003 \(s 125\)](#)

**Domestic violence offences against Crimes Act 1900**

sch 1 item 37 om 2002 No 51 amdt 1.33

**Dictionary**

dict am 2002 No 30 amdt 3.633

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	not amended	27 March 2002
2	Act 2002 No 30	17 September 2002

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