



Australian Capital Territory

# **Domestic Violence and Protection Orders Act 2001 (repealed)**

**A2001-89**

**Republication No 17**

**Effective: 30 March 2009**

Republication date: 30 March 2009

As repealed by A2008-46 s 201 (1)

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Domestic Violence and Protection Orders Act 2001* (repealed) (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)). It also includes any commencement, amendment, repeal or expiry affecting the republished law to 30 March 2009.

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

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- 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 includes 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.

### Modifications

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

# Domestic Violence and Protection Orders Act 2001 (repealed)

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Australian Capital Territory

# Domestic Violence and Protection Orders Act 2001 (repealed)

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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 *Domestic Violence and 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 terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*firearm*—see the *Firearms Act 1996*, section 6.' means that the term '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, s 155 and s 156 (1)).

### 4            **Notes**

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.

## 4A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## 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 facilitate the safety and protection of people who fear or experience violence by—
  - (i) providing a legally enforceable mechanism to prevent violent conduct; and
  - (ii) allowing for the resolution of conflict without the need to resort to adjudication.

### 6 Principles for making protection orders

- (1) In deciding an application for a protection order, the paramount consideration is—
  - (a) for a domestic violence order—the need to ensure that the aggrieved person, and any child at risk of exposure to domestic violence, is protected from domestic violence; and
  - (b) for a personal protection order (other than a workplace order)—the need to ensure that the aggrieved person is protected from personal violence; and
  - (c) for a workplace order—the need to ensure that employees and other people at the workplace are protected from personal violence at 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* etc?), 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* etc?**

- (1) For this Act, a person's conduct is *domestic violence* if it—
- (a) causes physical or personal 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 to a relevant person; or
  - (f) is directed at a pet of a relevant person and is an animal violence offence; or
  - (g) is a threat, made to a relevant person, to do anything to a pet of the person or another relevant person that, if done, would be an animal violence offence.

*Note* **Relevant person**—see dict.

- (2) In this Act:

***domestic violence offence*** means 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 offences); or
- (c) any of the following provisions of the Criminal Code:
  - (i) section 311 (Burglary);
  - (ii) section 316 (Going equipped with offensive weapon for theft etc);

- (iii) section 403, section 404, section 405, section 406, section 407 or section 408 (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 is about menacing driving); or
- (e) any of the following provisions of the *Firearms Act 1996*:
  - (i) section 177 (Offence—unregistered firearms);
  - (ii) section 221 or section 222 (which are about discharge of firearms or possession endangering life).

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

(3) In this section:

***animal violence offence*** means an offence against any of the following provisions of the *Animal Welfare Act 1992*:

- (a) section 7 (Cruelty);
- (b) section 7A (Aggravated cruelty);
- (c) section 8 (Pain);
- (d) section 12 (Administering poison);
- (e) section 12A (Laying poison);
- (f) section 13 (Electrical devices).

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

*personal injury* includes nervous shock.

## 10 What is *personal violence*?

- (1) For this Act (other than for division 5.3 (Workplace orders)) a person's conduct 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 conduct is not *personal violence* if it is domestic violence.

## 10A Who is a *relative*?

For this Act, a *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) if the original person has or had a domestic partner (other than a spouse)—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 domestic partner; and

*Note* For the meaning of *domestic partner*, see Legislation Act, s 169.

(c) includes—

- (i) someone who has been a relative of a kind mentioned in paragraph (a) or (b) of the original person; and
- (ii) anyone else who could reasonably be considered to be a relative of the original person.

**Examples for par (c) (ii)**

- 1 if the original person is an Aboriginal or Torres Strait Islander, the following people:
  - (a) a person the original person has responsibility for, or an interest in, in accordance with the traditions and customs of the original person's Aboriginal or Torres Strait Islander community;
  - (b) a person who has responsibility for, or an interest in, the original person in accordance with the traditions and customs of the original person's Aboriginal or Torres Strait Islander community
- 2 a person regarded and treated by the original person as a relative, for example, as an uncle or aunt

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## Part 3 Applications

### 11 Who may apply for certain non-emergency orders?

- (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 the *Court Procedures Act 2004* 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, the public advocate may make an application 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 (other than a child) may apply for a protection order—

- (a) by a next friend; or
- (b) in the person's own right with the Magistrates Court's leave.

*Note 1* *The Macquarie Dictionary* (1997) 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* A regulation may prescribe how a next friend may be appointed (see s 106 (3) (b) (i)).

- (2) An aggrieved person who is a child may apply for—

- (a) any protection order by a next friend; or
- (b) a domestic violence order in the person's own right; or
- (c) a personal protection order in the person's own right with the Magistrates Court's leave.

- (3) The Magistrates Court must give leave for an application under subsection (1) (b) or (2) (c) if satisfied that the aggrieved person—

- (a) understands the consequences of applying for a protection order; and
- (b) will understand the proceeding on the application.

**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 the *Court Procedures Act 2004* 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 the *Court Procedures Act 2004* 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.

### **18A Referral to mediation**

If, at any time during the preliminary conference for an application for a protection order, the registrar is satisfied that the application is likely to be more effectively resolved by mediation than by a hearing, the registrar must—

- (a) recommend to the parties to the application that they seek mediation; and
- (b) give the parties information about mediation; and
- (c) adjourn the preliminary conference until a stated date to allow for mediation to happen.

## 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 conduct 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 conduct 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 conduct 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 conduct 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 conduct outside ACT?**

A protection order covers conduct 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 conduct on which the application is based is not conduct 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 conduct on which the application is based is not conduct 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 conduct 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 conduct 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 domestic partners, making the conduct 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

- (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**

- (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; and

(e) that the order may be registered and enforced in a State, another Territory or New Zealand.

*Note* The Criminal Code, pt 2.4 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**

- (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 the order is that any firearms licence of the respondent is cancelled under section 38 (Firearms and final orders). That consequence automatically flows from the making of the final order. However, under section 38 (3) the Magistrates Court may, in certain circumstances (but not if the final order is a domestic violence order), 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 section 38.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (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.

### **30A Application by respondent for leave to apply for amendment or revocation**

- (1) An application for amendment or revocation of a protection order (the *original order*) must not be made by the respondent to the original order without the Magistrates Court's leave.
- (2) Before hearing the application for leave, the Magistrates Court must fix a time to hear the application, and give the respondent written notice of the time.
- (3) If the respondent does not attend at the time fixed, the Magistrates Court must—
  - (a) if satisfied that the respondent has not been given reasonable notice of the time—fix another time to hear the application, adjourn the hearing to the other time and give the respondent written notice of the time; or
  - (b) dismiss the application.

- (4) If the respondent attends at the time fixed under subsection (2) or (3) (a), the Magistrates Court may give the respondent leave to apply to amend or revoke the original order only if satisfied, on the basis of evidence provided by the respondent, that there may have been a substantial change in the circumstances surrounding the making of the original order.
- (5) To remove any doubt, a decision under subsection (4) that there may have been a substantial change does not affect the hearing and deciding of the application for amendment or revocation of the original order.
- (6) An aggrieved person for the original order is not entitled to attend or take part in a hearing under this section without the Magistrates Court's leave.
- (7) In this section:  
*aggrieved person* includes a representative of the aggrieved person.  
*respondent* includes a representative of the respondent.

### **31 Amendment or revocation generally**

- (1) A protection order may be amended if the Magistrates Court is satisfied that—
  - (a) the order as amended could be made on application for a protection order; and
  - (b) if the amendment would reduce the protection of a child who is 15 years old or younger—the child is no longer in need of the greater protection provided by the unamended 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 2008* for a care and protection order; and
  - (b) at least 1 of the grounds mentioned in that Act, section 460 (1) (b) (DVPO final protection orders) is 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) if the order is an interim order—serve 2 copies of the order (1 marked as the endorsement copy) on the respondent no later than 14 days before the return date for the application for the final order; and
  - (b) if the order is not an interim order—serve a copy of the order on the respondent; and
  - (c) give a copy of the 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—
  - (a) the respondent is present when the protection order is made; or
  - (b) the Magistrates Court makes an order under section 98 (If service impracticable or impossible).

*Note* See pt 11 (Service) for service of the order if personal service is not required.

**34 Offence for contravention of protection order**

- (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 commits an offence if the person engages in conduct that contravenes the protection order (including a condition of the order).

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

*Note* In deciding the sentence to be imposed on a person under this section, the Magistrates Court must consider the matters under the *Crimes (Sentencing) Act 2005*, s 33 (Sentencing—relevant considerations).

- (3) This section applies to conduct engaged in outside the ACT as well as conduct engaged in within 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 a stated period 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**

- (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**

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)?**

- (1) The Magistrates Court may make a final order (other than a workplace order) on application if satisfied that the respondent has—
  - (a) engaged in domestic violence; or
  - (b) 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.

- (2) If an interim order has been made on the application and the respondent has objected to the interim order, in making the final order the Magistrates Court must consider the respondent's objection.

*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 conduct;
  - (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 conduct that is domestic violence, personal violence or personal violence in relation to a workplace—that conduct;

*Note* This may include conduct 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—
    - (i) a child of the aggrieved person; or
    - (ii) any other child if the Magistrates Court is satisfied that there is an unacceptable risk of the child being exposed to domestic violence;
  - (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**

### **42A                  Definitions**

In this Act:

*aggrieved person*, for a workplace order—

- (a) means the employer of the person against whom the conduct is directed; and
- (b) if the workplace is a child facility, includes—
  - (i) a person in control of the child facility; and
  - (ii) an employee of an employer mentioned in paragraph (a).

*child facility* means—

- (a) a preschool, childcare centre, school, or other similar facility the main purpose of which is the care or education of children; or
- (b) a paediatric ward, or other facility in a hospital the main purpose of which is to provide health services for children; or
- (c) a place of care, a therapeutic protection place, an office or other facility used by or for the Territory for children or young people who are, under the *Children and Young People Act 2008*, care and protection chapters, in need of care and protection or in therapeutic protection.

*Note*                  The *Children and Young People Act 2008*, s 345 defines a child or young person in need of care and protection.

### **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 conduct 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?**

- (1) 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.
- (2) The Magistrates Court may make a workplace order in relation to a workplace that is a child facility if satisfied that the respondent poses a risk to people at the workplace, for example, children, carers or teachers.

*Note 1* This section does not apply to consent orders (see s 29 (2) (b)).

*Note 2* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**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 conduct that is domestic violence, personal violence or personal violence in relation to a workplace—that conduct;
  - (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.
- (4) If an interim order is made and the return date for the application for the final order is less than 21 days after the day the interim order is made, the Magistrates Court must change the return date for the application to a day that is at least 21 days after the day the interim order is made.

### 49 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 do 1 or more of the following until the application for the final order is decided:

- (a) ensure the safety of the aggrieved person or a child of the aggrieved person;
- (b) if the interim order is an interim workplace order—ensure the safety of the aggrieved person at the workplace, or an employee of the aggrieved person or other people at the workplace;

- (c) prevent substantial damage to the property of the aggrieved person or a child of the aggrieved person.

*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.

- (5) An interim order may require the respondent to return to the aggrieved person personal items reasonably needed by the aggrieved person or a child of the aggrieved person.

**Examples of personal items**

- 1 personal clothing
- 2 toiletries
- 3 books
- 4 photographs
- 5 house or car keys

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**51A What if respondent objects to interim order made when not present?**

- (1) This section applies if the Magistrates Court makes an interim order in the absence of a respondent and any representative of the respondent.
- (2) The respondent may—
  - (a) fill out the endorsement copy of the interim order in accordance with the instructions on the copy; and
  - (b) return it to the Magistrates Court at least 7 days before the return date for the application for the final order to which the interim order relates.
- (3) The interim order becomes a final order against the respondent—
  - (a) if—
    - (i) the Magistrates Court receives the endorsement copy from the respondent at least 7 days before the return date for the application for the final order; and
    - (ii) the respondent indicated on the endorsement copy that the respondent does not object to the interim order becoming a final order; or
  - (b) if the respondent does not return the endorsement copy to the Magistrates Court at least 7 days before the return date for the application for the final order.
- (4) A final order under subsection (3) comes into force—
  - (a) if the respondent returned the endorsement copy to the Magistrates Court and does not object to the interim order becoming final—on the day the Magistrates Court receives the endorsement copy; or
  - (b) on the return date for the application for the final order.

- (5) The Magistrates Court may decide the application for the final order if—
- (a) the respondent returns the endorsement copy to the Magistrates Court at least 7 days before the return date for the application for the final order; and
  - (b) the endorsement copy indicates that the respondent objects to the interim order becoming a final order.

- (6) In this section:

*endorsement copy*, of an interim order, means the copy of the interim order marked as the endorsement copy under section 33 (1).

*respondent* includes a representative of the respondent.

## **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**

- (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, if an emergency order is not made, the respondent may cause physical injury to, or substantial damage to the property of, the aggrieved person or a child of the aggrieved person; 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?

- (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 conduct 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 conduct 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?**

- (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**

- (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**

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**

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**

- (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 made against the respondent in relation to the aggrieved person is served on the respondent.

*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 conduct 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 (Grounds for making interim order) and s 58 (Extension of interim orders).

## **73 Firearms and emergency orders**

- (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 purpose, terms and 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**

- (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**

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**

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**

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

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

- (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

- (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**

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**

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**

- (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**

- (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**

- (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**

- (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**

- (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 rules under the *Court Procedures Act 2004* applying in relation to the civil jurisdiction of the Magistrates Court.
- (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.

## 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**

- (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

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

- (1) A person commits an offence if—
  - (a) the person publishes (completely or partly) an account or report of a proceeding on an application for a protection order; and
  - (b) the account or report—
    - (i) identifies a party to the proceeding; or
    - (ii) 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
    - (iii) identifies a witness to the proceeding; or
    - (iv) allows the identity of a person mentioned in subparagraph (i), (ii) or (iii) 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

- (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 given to a criminal justice entity under the *Crimes (Sentencing) Act 2005*, section 136 (Information exchanges between criminal justice entities); or
  - (d) information from being given to the chief executive in relation to the exercise of the chief executive's functions; or
  - (e) information from being given to the public advocate in relation to the exercise of the public advocate's functions; or
  - (f) 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
  - (g) matter being published in law reports or other technical or professional publications; or
  - (h) 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**

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 conduct as that out of which the application under this Act arose.

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

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.

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

(see s 9 (2))

<b>column 1 item</b>	<b>column 2 provision</b>	<b>column 3 description of offence</b>
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
10A	26A	common assault—summary offence
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



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<b>column 1 item</b>	<b>column 2 provision</b>	<b>column 3 description of offence</b>
25	53	sexual assault in the third degree
26	54	sexual intercourse without consent
27	55	sexual intercourse with young person
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
39	151	forcible entry on land
40	380	possession of offensive weapons and disabling substances
41	381	possession of offensive weapons and disabling substances 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
- domestic partner (see s 169)
- exercise
- Magistrates Court
- police officer
- Supreme Court.

***aggrieved person*** means—

- (a) for a domestic violence order or personal protection order—a person against whom the conduct that may be domestic or person violence has been, or is likely to be, directed; or
- (b) for a workplace order—see section 42A.

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

***ammunition***—see the *Firearms Act 1996*, dictionary.

***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).

**child facility**—see section 42A.

**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.

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

**domestic partner** includes a former domestic partner.

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

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

**domestic violence order**—see section 20 (2) (What kinds of conduct 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 *Training and Tertiary Education Act 2003*; 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 6.

**firearms licence**—see the *Firearms Act 1996*, dictionary, 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 conduct 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*, dictionary.

**relative**—see section 10A.

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

- (a) a domestic partner of the original person; or

*Note* A **domestic partner** need not be an adult (see Legislation Act, s 169).

- (b) a relative of the original person; or
- (c) a child of a domestic partner of the original person; or
- (d) a parent of a child of the original person.

**return date**, for an application, means the day fixed by the Magistrates Court for return of the application before the court.

**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.

**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.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	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

This Act was originally the *Protection Orders Act 2001*. It was renamed by the *Domestic Violence and Protection Orders Amendment Act 2005* A2005-13 s 4.

#### **Domestic Violence and 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))

#### **Legislation (Gay, Lesbian and Transgender) Amendment Act 2003 A2003-14 sch 1 pt 1.30**

notified LR 27 March 2003

s 1, s 2 commenced 27 March 2003 (LA s 75 (1))

sch 1 pt 1.30 commenced 28 March 2003 (s 2)

#### **Statute Law Amendment Act 2003 (No 2) A2003-56 sch 3 pt 3.17**

notified LR 5 December 2003

s 1, s 2 commenced 5 December 2003 (LA s 75 (1))

sch 3 pt 3.17 commenced 19 December 2003 (s 2)

#### **Justice and Community Safety Legislation Amendment Act 2004 A2004-18 pt 10**

notified LR 6 April 2004

s 1, s 2 commenced 6 April 2004 (LA s 75 (1))

pt 10 commenced 20 April 2004 (s 2)



**Court Procedures (Consequential Amendments) Act 2004  
A2004-60 sch 1 pt 1.61**

notified LR 2 September 2004  
s 1, s 2 commenced 2 September 2004 (LA s 75 (1))  
sch 1 pt 1.61 commenced 10 January 2005 (s 2 and see Court  
Procedures Act 2004 A2004-59, s 2 and CN2004-29)

**Domestic Violence and Protection Orders Amendment Act 2005  
A2005-13**

notified LR 24 March 2005  
s 1, s 2 commenced 24 March 2005 (LA s 75 (1))  
remainder commenced 25 March 2005 (s 2)

**Public Advocate Act 2005 A2005-47 sch 1 pt 1.4 (as am by  
A2006-3 amdt 1.8)**

notified LR 2 September 2005  
s 1, s 2 commenced 2 September 2005 (LA s 75 (1))  
sch 1 pt 1.4 commenced 1 March 2006 (s 2 (1) as am by A2006-3  
amdt 1.8)

**Human Rights Commission Legislation Amendment Act 2006  
A2006-3 amdt 1.8**

notified LR 22 February 2006  
s 1, s 2 commenced 22 February 2006 (LA s 75 (1))  
amdt 1.8 commenced 23 February 2006 (s 2)

*Note* This Act only amends the Public Advocate Act 2005  
A2005-47

**Animal Welfare Amendment Act 2006 A2006-17 s 6**

notified LR 10 May 2006  
s 1, s 2 commenced 10 May 2006 (LA s 75 (1))  
s 6 commenced 11 May 2006 (s 2)

**Civil Unions Act 2006 A2006-22 sch 1 pt 1.11**

notified LR 19 May 2006  
s 1, s 2 commenced 19 May 2006 (LA s 75 (1))  
sch 1 pt 1.11 never commenced

*Note* Act repealed by disallowance 14 June 2006 (see Cwlth  
Gaz 2006 No S93)

## Endnotes

3 Legislation history

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### **Sentencing Legislation Amendment Act 2006 A2006-23 sch 1 pt 1.14**

notified LR 18 May 2006  
s 1, s 2 commenced 18 May 2006 (LA s 75 (1))  
sch 1 pt 1.14 commenced 2 June 2006 (s 2 (1) and see Crimes (Sentence Administration) Act 2005 A2005-59 s 2, Crimes (Sentencing) Act 2005 A2005-58, s 2 and LA s 79)

### **Justice and Community Safety Legislation Amendment Act 2006 A2006-40 sch 1 pt 1.5**

notified LR 28 September 2006  
s 1, s 2 commenced 28 September 2006 (LA s 75 (1))  
sch 1 pt 1.5 commenced 19 October 2006 (s 2 (3))

### **Training and Tertiary Education Legislation Amendment Act 2007 A2007-12 sch 1 pt 1.8**

notified LR 13 June 2007  
s 1, s 2 commenced 13 June 2007 (LA s 75 (1))  
sch 1 pt 1.8 commenced 1 July 2007 (s 2 and CN2007-3)

### **Children and Young People (Consequential Amendments) Act 2008 A2008-20 sch 3 pt 3.11**

notified LR 17 July 2008  
s 1, s 2 commenced 17 July 2008 (LA s 75 (1))  
s 3 commenced 18 July 2008 (s 2 (1))  
sch 3 pt 3.11 commenced 27 October 2008 (s 2 (4) and see Children and Young People Act 2008 A2008-19, s 2 and CN2008-13)

### **Firearms Amendment Act 2008 A2008-25 sch 2 pt 2.3**

notified LR 15 July 2008  
s 1, s 2 commenced 15 July 2008 (LA s 75 (1))  
sch 2 pt 2.3 commenced 15 January 2009 (s 2 (1) and LA s 79)

### **Crimes Legislation Amendment Act 2008 A2008-44 sch 1 pt 1.7**

notified LR 9 September 2008  
s 1, s 2 commenced 9 September 2008 (LA s 75 (1))  
sch 1 pt 1.7 awaiting commencement (s 2)

*Note* default commencement under s 2 (2): 9 June 2009 (LA s 79 does not apply to this Act)

as repealed by

**Domestic Violence and Protection Orders Act 2008 A2008-46  
s 201**

notified LR 10 September 2008

s 1, s 2 commenced 10 September 2008 (LA s 75 (1))

s 201 commenced 30 March 2009 (s 2)

## 4 Amendment history

**Name of Act**

s 1 sub A2005-13 s 4

**Commencement**

s 2 om LA S 89 (4)

**Dictionary**

s 3 am A2008-25 amdt 2.5

**Notes**

s 4 (2), (3) exp 27 March 2004 (s 4 (3))

**Offences against Act—application of Criminal Code etc**

s 4A ins A2005-13 s 5

**Objects**

s 5 am A2005-13 s 6

**Principles for making protection orders**

s 6 am A2005-13 s 7

**What is *domestic violence* etc?**

s 9 hdg bracketed note exp 27 March 2004 (s 4 (3))

s 9 am 2002 No 51 amdt 1.32; R8 LA s 14

sub A2005-13 s 8

am A2006-17 s 6; A2006-40 amdt 1.11; A2008-25

amdt 2.6

**What is *personal violence*?**

s 10 hdg bracketed note exp 27 March 2004 (s 4 (3))

s 10 am A2005-13 s 42

**Who is a *relative*?**

s 10A ins A2005-13 s 9

am A2006-22 amdts 1.43-1.45 (A2006-22 rep before commenced by disallowance (see Cwlth Gaz 2006 No S93))

## Endnotes

4 Amendment history

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**Who may apply for certain non-emergency orders?**

s 11 hdg bracketed note exp 27 March 2004 (s 4 (3))  
am A2005-47 amdt 1.9

**Applications by people with legal disability**

s 12 sub A2005-13 s 10

**Service of application**

s 16 am 2002 No 30 amdt 3.624

**Referral to mediation**

s 18A ins A2005-13 s 11

**What kinds of conduct does protection order restrain?**

s 20 am A2005-13 s 42

**Does protection order cover conduct outside ACT?**

s 21 am A2005-13 s 42

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

s 22 am A2005-13 s 42

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

s 23 am A2003-14 amdt 1.90; A2005-13 s 42

**Explaining orders if respondent present**

s 24 hdg bracketed note exp 27 March 2004 (s 4 (3))

**Explaining orders if aggrieved person present**

s 25 hdg bracketed note exp 27 March 2004 (s 4 (3))  
s 25 am A2005-13 ss 12-14

**Consent orders**

s 29 hdg bracketed note exp 27 March 2004 (s 4 (3))  
s 29 am A2005-13 s 15

**Application by respondent for leave to apply for amendment or revocation**

s 30A ins A2005-13 s 16

**Amendment or revocation generally**

s 31 am A2005-13 s 17

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

s 32 am A2003-56 amdt 3.171; A2005-13 s 18; A2008-20  
amdt 3.23, amdt 3.24

**Service of non-emergency orders**

s 33 am 2002 No 30 amdt 3.625; A2004-18 s 31; A2005-13  
s 19

**Offence for contravention of protection order**

s 34 hdg bracketed note exp 27 March 2004 (s 4 (3))  
s 34 am A2005-13 s 20; A2006-23 amdt 1.173

**Length of final domestic violence orders**

s 35 am 2002 No 30 amdt 3.634

**Extension of final orders**

s 37 am A2005-13 s 21

**Firearms and final orders**

s 38 hdg bracketed note exp 27 March 2004 (s 4 (3))

**Recommendations for counselling etc**

s 39 hdg bracketed note exp 27 March 2004 (s 4 (3))

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

s 40 sub A2005-13 s 22

**Referral to mediation**

s 41 am A2005-13 s 42

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

s 42 am A2005-13 s 23

**Workplace orders**

div 5.3 hdg note om A2005-13 s 24

**Definitions**

s 42A ins A2005-13 s 24  
def *aggrieved person* ins A2005-13 s 24  
def *child facility* ins A2005-13 s 24  
am A2008-20 amdt 3.25

**Referral to mediation**

s 44 am A2005-13 s 42

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

s 45 sub A2005-13 s 25

**Referral to mediation**

s 46 am A2005-13 s 42

**When can interim order be made?**

s 48 am A2005-13 s 26

**Grounds for making interim order**

s 49 sub A2005-13 s 27

**What interim orders may contain**

s 51 am A2005-13 s 28

## Endnotes

4 Amendment history

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**What if respondent objects to interim order made when not present?**

s 51A ins A2005-13 s 29

**Service of application for interim order unnecessary**

s 56 hdg sub 2002 No 30 amdt 3.626

**Firearms and interim orders**

s 57 hdg bracketed note 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

**When may emergency order be made?**

s 62 am A2005-13 s 30

**How can application for emergency order be made?**

s 63 hdg bracketed note exp 27 March 2004 (s 4 (3))

s 63 am A2005-13 s 42

**What should judicial officers consider in making emergency order?**

s 64 hdg bracketed note exp 27 March 2004 (s 4 (3))

**Emergency orders**

s 65 hdg bracketed note exp 27 March 2004 (s 4 (3))

**Action on refusing order**

s 66 hdg bracketed note exp 27 March 2004 (s 4 (3))

**Records**

s 67 hdg bracketed note exp 27 March 2004 (s 4 (3))

**Detention of person against whom protection order sought**

s 68 hdg am 2002 No 30 amdt 3.634

bracketed note exp 27 March 2004 (s 4 (3))

**Length of emergency orders**

s 70 am A2005-13 s 31

**Referral to mediation**

s 71 am A2005-13 s 42

**Firearms and emergency orders**

s 73 hdg bracketed note exp 27 March 2004 (s 4 (3))

**Service of emergency orders**

s 74 sub 2002 No 30 amdt 3.627

**Police required to explain emergency order served**

s 75 am A2005-13 s 32

**Recording reasons if emergency order not applied for**

s 76 hdg bracketed note exp 27 March 2004 (s 4 (3))

**Giving notice of appeal**

s 80 hdg bracketed note exp 27 March 2004 (s 4 (3))

s 80 am 2002 No 30 amdt 3.628

**Evidence on appeal**

s 81 hdg bracketed note exp 27 March 2004 (s 4 (3))

**Powers of Supreme Court on appeal**

s 82 hdg bracketed note exp 27 March 2004 (s 4 (3))

**Definitions for pt 9**

s 84 hdg bracketed note exp 27 March 2004 (s 4 (3))

**Application for registration of recognised order**

s 85 hdg bracketed note exp 27 March 2004 (s 4 (3))

**Registration**

s 86 hdg bracketed note exp 27 March 2004 (s 4 (3))

**Effect of registration**

s 87 hdg bracketed note exp 27 March 2004 (s 4 (3))

**Amendment of registered order**

s 88 hdg bracketed note exp 27 March 2004 (s 4 (3))

**Revocation of recognised order**

s 89 hdg bracketed note exp 27 March 2004 (s 4 (3))

**Amendment of recognised order**

s 90 hdg bracketed note exp 27 March 2004 (s 4 (3))

**Notification by interstate court of registration**

s 91 hdg bracketed note exp 27 March 2004 (s 4 (3))

**Evidence of registered order**

s 92 hdg bracketed note exp 27 March 2004 (s 4 (3))

**Recovery of certain expenses**

s 95 hdg bracketed note exp 27 March 2004 (s 4 (3))

s 95 am A2004-60 amdt 1.605

**Approved forms**

s 96 am 2002 No 30 amdt 3.629

om A2004-60 amdt 1.606

**If personal service not required**

s 97 am 2002 No 30 amdt 3.630

## Endnotes

4 Amendment history

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### **Service of documents by police**

s 99 hdg bracketed note exp 27 March 2004 (s 4 (3))

### **Restriction on publication of reports about proceedings**

s 100 hdg bracketed note exp 27 March 2004 (s 4 (3))

s 100 am A2005-13 s 33

### **Limits of restriction on publication about proceedings**

s 101 hdg bracketed note exp 27 March 2004 (s 4 (3))

s 101 am 2002 No 30 amdt 3.631; A2005-13 s 34; pars renum R9 LA (see A2005-13 s 35); A2005-47 amdt 1.10; A2006-23 amdt 1.174; pars renum R12 LA (see A2006-23 amdt 1.175)

### **Deciding application if criminal proceedings**

s 102 hdg bracketed note exp 27 March 2004 (s 4 (3))

s 102 am A2005-13 s 42

### **Crimes Act, s 397 (1)**

s 103 hdg bracketed note 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)

**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 6 sub A2008-44 amdt 1.52**Domestic violence offences against Crimes Act 1900**sch 1 item 10A ins A2006-40 amdt 1.12  
om A2008-44 amdt 1.53**Domestic violence offences against Crimes Act 1900**

sch 1 item 37 om 2002 No 51 amdt 1.33

**Domestic violence offences against Crimes Act 1900**

sch 1 item 38 om A2006-40 amdt 1.13

**Domestic violence offences against Crimes Act 1900**

sch 1 item 40 sub A2006-40 amdt 1.14

**Domestic violence offences against Crimes Act 1900**

sch 1 item 41 sub A2006-40 amdt 1.14

**Dictionary**dict am 2002 No 30 amdt 3.633; A2003-14 amdt 1.91  
def **aggrieved person** sub A2005-13 s 36

## Endnotes

### 5 Earlier republications

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def **ammunition** sub A2008-25 amdt 2.7  
def **child facility** ins A2005-13 s 37  
def **de facto spouse** om A2003-14 amdt 1.92  
def **domestic partner** ins A2003-14 amdt 1.93  
def **domestic violence order** am A2005-13 s 42  
def **employer** am A2007-12 amdt 1.13  
def **firearm** sub A2008-25 amdt 2.7  
def **firearms licence** sub A2008-25 amdt 2.7  
def **personal protection order** am A2005-13 s 42  
def **relative** am A2003-14 amdt 1.94  
sub A2005-13 s 38  
def **relevant person** am A2003-14 amdt 1.95, amdt 1.96;  
A2005-13 s 39, s 40  
def **registrar** am A2004-60 amdt 1.607  
def **return date** ins A2005-13 s 41  
def **spouse** om A2003-14 amdt 1.97

## 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. 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
3	Act 2002 No 51	1 January 2003
4	A2003-14	28 March 2003
5	A2003-56	19 December 2003
6	A2003-56	28 March 2004
7*	A2004-18	20 April 2004
8	A2004-60	10 January 2005
9*	A2005-13	25 March 2005

Republication No	Amendments to	Republication date
10	A2006-3	1 March 2006
11	A2006-17	11 May 2006
12	A2006-23	2 June 2006
13	A2006-40	19 October 2006
14	A2007-12	1 July 2007
15	A2008-44	27 October 2008
16	A2008-44	15 January 2009

## 6 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date:

**Crimes Legislation Amendment Act 2008 A2008-44  
sch 1 pt 1.7**

## Part 1.7 Domestic Violence and Protection Orders Act 2001

### [1.52] Schedule 1, item 6

*substitute*

6            22            assault with intent to commit other offence

### [1.53] Schedule 1, item 10A

*omit*

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