



Australian Capital Territory

Crimes (Domestic and Family Violence) Legislation Amendment Act 2015

A2015-40

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Australian Capital Territory

Crimes (Domestic and Family Violence) Legislation Amendment Act 2015

A2015-40

An Act to amend legislation about crimes of domestic and family violence, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Crimes (Domestic and Family Violence) Legislation Amendment Act 2015*.

2 Commencement

- (1) This Act (other than the following provisions) commences on the day after its notification day:
- part 4 (Evidence (Miscellaneous Provisions) Act 1991);
 - schedule 1, amendment 1.1;
 - schedule 1, part 1.2 (Confiscation of Criminal Assets Act 2003);
 - schedule 1, part 1.3 (Court Procedures Act 2004);
 - schedule 1, part 1.4 (Court Procedures Rules 2006);
 - schedule 1, part 1.6 (Crimes (Forensic Procedures) Act 2000);
 - schedule 1, part 1.7 (Crimes (Sentencing) Act 2005);
 - schedule 1, part 1.8 (Evidence Act 2011);
 - schedule 1, part 1.9 (Evidence (Miscellaneous Provisions) Regulation 2009);
 - schedule 1, part 1.11 (Supreme Court Act 1933).
- Note* The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).
- (2) The provisions mentioned in subsection (1) commence 6 months after this Act's notification day.

3 Legislation amended

This Act amends the following legislation:

- *Crimes Act 1900*
- *Domestic Violence and Protection Orders Act 2008*
- *Evidence (Miscellaneous Provisions) Act 1991*.

Note This Act also amends other legislation (see sch 1).

Part 2 Crimes Act 1900

4 Acts endangering health etc New section 28 (2) (aa)

before paragraph (a), insert

(aa) chokes, suffocates or strangles another person; or

5 Alternative verdicts for certain other offences against the person Table 49, new item 7A

insert

7A	section 27 (3) (a) (Choking etc rendering person unconscious etc)	section 28 (2) (aa)
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6 Table 49, new item 11A

insert

11A	section 28 (2) (aa) (Choking, suffocating or strangling)	section 26
-----	---	------------

Part 3 Domestic Violence and Protection Orders Act 2008

7 Registrar may adjourn proceedings etc Section 23 (2), note

substitute

Note The registrar may also extend a general interim order (see s 41E).

8 New division 4.1 and division 4.2 heading

insert

Division 4.1 Definitions

28A Meaning of *interim order*, *general interim order* and *special interim order*—Act

In this Act:

general interim order—

- (a) means a protection order (including a consent order) made under section 30A (b) (Interim orders—general interim orders and special interim orders); and
- (b) includes an order (other than a final order) that amends or revokes a general interim order.

interim order means—

- (a) a general interim order; or
- (b) a special interim order.

special interim order—

- (a) means a domestic violence order (including a consent order) made under section 30A (a) (Interim orders—general interim orders and special interim orders); and
- (b) includes an order (other than a final order) that amends or revokes a special interim order.

28B Meaning of *related* charges—Act

In this Act:

related—a charge against a person for an offence is ***related*** to an application for a final order and, if an interim order is made on the application, an interim order if—

- (a) the person charged is—
 - (i) the respondent for the application; and
 - (ii) a relevant person in relation to the aggrieved person; and
- (b) the offence is a domestic violence offence, other than an offence against section 90 (Offence for contravention of protection order).

28C Meaning of *outstanding* charges—pt 4

In this part:

outstanding—a charge against a person for an offence is ***outstanding*** until the charge is finally dealt with in any of the following ways:

- (a) the charge is withdrawn;
- (b) the charge is dismissed by a court;
- (c) the person is discharged by a court following a committal hearing;

- (d) the person is acquitted, convicted or found guilty by a court of the offence.

Note **Found guilty**, of an offence—see the [Legislation Act](#), dictionary, pt 1.

Division 4.2 Making interim orders

9 Section 29 heading

substitute

29 Interim orders—grounds for making

10 Section 30 heading

substitute

30 Interim orders—only on application for final order

11 Section 30 (3)

omit

12 New section 30A

insert

30A Interim orders—general interim orders and special interim orders

- (1) If the Magistrates Court is making an interim order on an application, the court may make—
- (a) a special interim order if—
 - (i) the application is for a final domestic violence order; and
 - (ii) there is a related charge outstanding in relation to the respondent; or

- (b) in any other case—a general interim order.
- (2) If the court makes a special interim order in circumstances where a general interim order may be made—
 - (a) the operation of the special interim order is not affected by the fact that a general interim order may have been made; and
 - (b) the court may set aside the special interim order and make a general interim order.
- (3) If the court makes a general interim order in circumstances where a special interim order may be made—
 - (a) the operation of the general interim order is not affected by the fact that a special interim order may have been made; and
 - (b) the court may set aside the general interim order and make a special interim order.

13 Section 31 heading*substitute***31 Interim orders—court consideration of children****14 Section 32 heading***substitute***32 Interim orders—respondent with legal disability****15 Section 33 heading***substitute***33 Interim orders—service of application unnecessary**

16 Section 34 heading

substitute

34 General interim order—extension of return date for final order**17 Section 34 (1) (a)**

omit

an interim order

substitute

a general interim order

18 Section 34 (1) (b) and (2)

omit

the interim order

substitute

the general interim order

19 New section 34A

insert

34A Special interim order—return date for final order

- (1) This section applies if the Magistrates Court makes a special interim order.
- (2) The return date for the application for the final order must be—
 - (a) not earlier than the day all related charges are finalised; and

(b) not later than 21 days after the day all related charges are finalised.

Note **Finalised**—see s 42.
Related charges—see s 28B.
Special interim order—see s 28A.

20 Section 35 heading

substitute

35 Interim orders—content

21 Section 36 heading

substitute

36 General interim orders—becoming final orders

22 Section 36

omit

an interim order

substitute

a general interim order

23 Section 36

omit

the interim order

substitute

the general interim order

24 Section 36 (as amended)

relocate to division 4.3 as section 41C

**25 Length of interim orders not by consent
Section 37**

omit

26 Section 38

substitute

38 Interim orders—ending

An interim order ends if any of the following happens:

- (a) for a general interim order—the end of the period stated in the order;

Note A general interim order (other than a consent order) must not be in force for more than 2 years (see s 41A).
A general interim order made as a consent order remains in force for the period of up to 16 weeks stated in the order (see s 45).

- (b) the interim order is revoked;
- (c) the application on which the interim order was made is dismissed;
- (d) 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;
- (e) 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.

**27 What if interim orders would expire before final orders
are served?
Section 39**

omit

28 Section 40 heading

substitute

40 Interim orders—respondent’s firearms

29 Sections 41 and 42

omit

30 New divisions 4.3 and 4.4

insert

Division 4.3 General interim orders—no related charges

41 General interim orders—only one may be made

Only 1 general interim order may be made in relation to an application for a final order unless section 41D (General interim orders—further orders) applies.

41A General interim orders—length

A general interim order (other than a consent order) must not be in force for more than 2 years.

Note Section 45 provides for how long a general interim order made as a consent order may be in force.

41B General interim orders—taken to be special interim orders if related charges laid

- (1) This section applies if—
- (a) the court has made a general interim order on an application;
 - and

- (b) after the general interim order is made, but before the final order is made, the respondent is charged with an offence; and
- (c) the charge is related to the application.

Note **Related** charges—see s 28B.

- (2) The general interim order is taken to be a special interim order—
 - (a) in the same terms as the general interim order; and
 - (b) subject to same conditions as the general interim order.
- (3) The return date for the application must be changed to a day—
 - (a) not earlier than the day all related charges are finalised; and
 - (b) not later than 21 days after the day all related charges are finalised.

Note **Finalised**—see s 42.
Related charges—see s 28B.
Special interim order—see s 28A.

41D General interim orders—further orders

- (1) This section applies if a general interim order has ended or is about to end.
- (2) The Magistrates Court may make a further general interim order if satisfied there are special or exceptional circumstances (having regard to the principles for making protection orders) that justify the making of a further general interim order.

Note The principles for making protection orders are set out in s 7.

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

Note An interim order may be amended in certain circumstances (see s 58).

41E General interim orders—extension of orders

- (1) This section applies if the registrar adjourns a proceeding for a final order 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 a general 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 a general interim order under subsection (2) for longer than 8 weeks.

Note A general 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 61 (2)).

41F General interim orders—expiry before final order served

- (1) This section applies if—
 - (a) a final order is made on an application for an interim order; and
 - (b) the respondent is not present at the making of the final order; and
 - (c) a general interim order made in relation to the same application would, but for this section, expire before the final order is served on the respondent.

Note A further order may be made in special or exceptional circumstances (see s 41D).

- (2) The general interim order is taken to continue in force until the final order is served on the respondent.
- (3) To remove any doubt, section 90 (Offence for contravention of protection order) applies to the general interim order continued in force.

Division 4.4 **Special interim orders—related domestic violence charges outstanding**

42 **Meaning of outstanding related charges *finalised*—div 4.4**

In this division:

finalised—an outstanding related charge is *finalised* if—

- (a) the charge is withdrawn; or
- (b) the director of public prosecutions declines to proceed further with the prosecution of the offences and causes it to be brought to an end; or
- (c) the charge is dismissed by a court; or
- (d) the person is discharged by a court following a committal hearing; or
- (e) the person is acquitted, convicted or found guilty by a court of the offence.

Note **Found guilty**, of an offence—see the [Legislation Act](#), dictionary, pt 1.

42A **Special interim orders—continue until application decided**

If the Magistrates Court makes a special interim order on an application for a final order, the special interim order continues in force until the application is decided.

42B Special interim orders—application not to be decided until related charges finalised

- (1) If the Magistrates Court makes a special interim order on an application for a final order, the Court must not decide the application until all related charges are finalised.

Note **Finalised**—see s 42.

- (2) However, the application may be withdrawn, or decided by the court by consent, before all related charges are finalised.

42C Special interim orders—final application decided

- (1) This section applies if—
- (a) the Magistrates Court has made a special interim order on an application for a final order; and
 - (b) all charges related to a special interim order are finalised; and
 - (c) the application for the final order has not yet been decided.

Note 1 **Finalised**—see s 42.

Note 2 The Court must not decide the application, unless by consent, until all related charges are finalised (see s 42B).

- (2) After the final related charge is finalised by the court, the court must also—
- (a) if the court is the Magistrates Court—decide the application for the final order; or
 - (b) if the court is another court—
 - (i) decide the application for the final order as if it were the Magistrates Court; or

- (ii) notify the Magistrates Court that the final related charge has been decided.

Note It is sufficient for a Magistrate to be satisfied on the balance of probabilities in relation to any matter to be decided in proceedings on an application.

- (3) If a court notifies the Magistrates Court under subsection (2) (b) (ii)—
- (a) the court may give the Magistrates Court guidance about, or a direction for, suitable conditions to be included in the final order; and
- (b) the Magistrates Court must decide the application for the final order.
- (4) A decision to dismiss the application may only be made after giving the parties an opportunity to be heard.
- (5) The court deciding the application for the final order under this section may set a return date for the application.

31 **Consent orders**
Section 43 (4) (b)

omit

section 45 (Length of interim orders by consent)

substitute

section 45 (Consent orders—length of general interim orders)

32 **Section 44 heading**

substitute

44 **Consent orders—party with legal disability**

33 Section 45

substitute

45 Consent orders—length of general interim orders

- (1) A general 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 61 (2) applies to a general interim order made by consent.

Note 1 Under s 61 (2), a general interim order made by consent may not be amended by extending it to be in force for longer than 16 weeks.

Note 2 A special interim order made as a consent order continues in force until the application for the final order is decided (see s 42A).

**34 Amendment generally
Section 58 (3), note 1**

substitute

Note 1 The following sections expressly deal with the grounds for amendment:

- s 61 (Extension of general interim orders made by consent)
- s 62 (Extension of final orders)
- s 78 (Emergency amendment and revocation of emergency orders)
- s 79 (Non-emergency amendment and revocation of emergency orders).

35 Section 61

substitute

61 Extension of general interim orders made by consent

- (1) The Magistrates Court may, on application, amend a general interim order that is a consent order by extending it for an additional period, or further additional period, of up to 8 weeks.

- (2) However, a general interim order must not be extended if the extension would mean the order would be in force for more than 16 weeks.

Note 1 The registrar may extend a general interim order if the application for the final order has not been served on the respondent (see s 41F) or if the registrar is exercising the Magistrates Court's jurisdiction to make a consent order.

Note 2 A special interim order made as a consent order continues in force until the application for the final order is decided (see s 42A).

36 Service of non-emergency protection orders **Section 64 (1) (a)**

substitute

- (a) if the order is an interim order—serve 2 copies of the order (1 marked as the endorsement copy) on the respondent not later than—
- (i) for a general interim order—14 days before the return date for the application for the final order; or
 - (ii) for a special interim order—14 days after the special interim order is made; and

37 New sections 90A and 90B

in part 11, insert

90A Application for review of special interim orders

The Magistrates Court may, on application by the respondent to a special interim order, give leave to the respondent to apply to the court for review of the order in relation to any of the following only:

- (a) the identity of the respondent;
- (b) an administrative defect or error in the special interim order;

- (c) whether or not there are outstanding related charges in relation to the respondent;
- (d) whether a general interim order should have been made.

Note 1 Section 30A deals with the making of general interim orders and special interim orders.

Note 2 If a form is approved under the *Court Procedures Act 2004* for an application under this section, the form must be used.

90B Review of special interim orders

- (1) On hearing an application for review under section 90A, the Magistrates Court must, by order—
 - (a) dismiss the application; or
 - (b) confirm the special interim order; or
 - (c) revoke the special interim order; or
 - (d) set aside the special interim order and make a new interim order.

Note Section 29 sets out the grounds for making interim orders and s 30A deals with whether it is a general interim order or a special interim order.

- (2) The Magistrates Court may revoke the special interim order only if the Magistrates Court is satisfied that the special interim order is no longer necessary for the protection of the person it protects.

38 Application for review of particular final orders

Section 91 (1) (a)

substitute

- (a) an application by a respondent for review of a general interim order that became final under section 41C (General interim orders—becoming final orders); and

39 Section 91 (1), note 1

omit

s 36

substitute

s 41C

40 Section 93 heading

substitute

93 Application by respondent for review of order finalised under s 41C**41 Section 93 (1)**

substitute

- (1) This section applies if a general interim order has become a final order (the *original order*) under section 41C (General interim orders—becoming final orders).

42 Section 93 (3) (a)

omit

section 36

substitute

section 41C

43 Section 94 heading

substitute

94 Review of order finalised under s 41C

44 Section 94 (2)

substitute

- (2) If the Magistrates Court makes a new general interim order, section 41C applies to the order.

**45 Deciding application if criminal proceedings
Section 113, new note**

insert

Note If the Magistrates Court is making an interim order under s 29, and there is a related charge outstanding in relation to the respondent, the court must make a special interim order.

46 Dictionary, new definitions

insert

finalised, for an outstanding related charge, for division 4.4 (Special interim orders—related domestic violence charges outstanding)—see section 42.

general interim order—see section 28A.

47 Dictionary, definition of *interim order*

substitute

interim order—see section 28A.

48 Dictionary, new definitions

insert

outstanding, for a charge, for part 4 (Interim orders)—see section 28C.

related, for a charge—see section 28B.

special interim order—see section 28A.

Part 4 **Evidence (Miscellaneous Provisions) Act 1991**

49 **Parts 1 to 3**

renumber as chapters 1 to 3

50 **Division 3.1 heading**

substitute

Part 3.1 **Preliminary—ch 3**

51 **Divisions 3.2 to 3.6**

renumber as parts 3.2 to 3.6

52 **Part 4 heading**

substitute

Chapter 4 **Evidence in sexual, violent and domestic violence offence proceedings**

Part 4.1 **Preliminary—ch 4**

36A **Failure to comply with ch 4**

- (1) If the evidence of the complainant or a similar act witness is not given in accordance with this chapter, the evidence is not inadmissible for that reason only.
- (2) Failure to comply with this chapter in relation to a proceeding does not affect the validity of the proceeding.

36D Meaning of *intellectually impaired*—ch 4

In this chapter:

intellectually impaired—a person is *intellectually impaired* if the person has—

- (a) an appreciably below average general intellectual function; or
- (b) a cognitive impairment (including dementia or autism) arising from an acquired brain injury, neurological disorder or a developmental disorder; or
- (c) any other intellectual disability.

Part 4.2 Evidence in sexual and violent offence proceedings

53 Division 4.1 heading

substitute

Division 4.2.1 Preliminary—pt 4.2

54 Section 37 heading

substitute

37 Definitions—pt 4.2

55 Section 37, definition of *less serious violent offence*

substitute

less serious violent offence means—

- (a) an offence against any of the following provisions of the *Crimes Act 1900*:
 - (i) section 21 (1) (Wounding);
 - (ii) section 22 (Assault with intent to commit other offence);
 - (iii) section 23 (1) (Inflicting actual bodily harm);
 - (iv) section 24 (1) (Assault occasioning actual bodily harm);
 - (v) section 25 (Causing grievous bodily harm);
 - (vi) section 26 (Common assault);
 - (vii) section 28 (Acts endangering health etc);
 - (viii) section 29 (4) and (5) (Culpable driving of motor vehicle);
 - (ix) section 31 (Threat to inflict grievous bodily harm);
 - (x) section 37 (Abduction of young person);
 - (xi) section 41 (Exposing or abandoning child);
 - (xii) section 116 (Destroying or damaging property); or
- (b) an offence against the *Criminal Code*, section 403 (Damaging property); or
- (c) an offence against the *Domestic Violence and Protection Orders Act 2008*, section 90 (Offence for contravention of protection order).

56 Section 37, definition of *serious violent offence*, new paragraph (a) (xiia)

insert

- (xiia) section 35 (Stalking);

57 Section 37, definition of *serious violent offence*, new paragraph (b) (iii) and (iv)

insert

- (iii) section 311 (Burglary) if the complainant was in the building at the time of the offence;
- (iv) section 312 (Aggravated burglary) if the complainant was in the building at the time of the offence.

58 Section 37, new definitions

insert

sexual or violent offence means—

- (a) a sexual offence; or
- (b) a violent offence.

sexual or violent offence proceeding means—

- (a) a sexual offence proceeding; or
- (b) a violent offence proceeding.

59 Division 4.2

renumber as division 4.2.2

60 Section 38B heading

substitute

38B Meaning of *relevant person*—ch 4**61 Section 38B (1)**

omit

For this division,

substitute

In this chapter:

62 Section 38B (as amended)

relocate to part 4.1 as section 36B

63 Section 38BA heading

substitute

38BA Meaning of *relative*—ch 4**64 Section 38BA**

omit

For this division, a

substitute

In this chapter:

65 Section 38BA (as amended)

relocate to part 4.1 as section 36C

66 Division 4.2A

renumber as division 4.2.2A

**67 Meaning of *complainant*—div 4.2A
Section 40A**

omit

68 Section 40B heading

substitute

40B Meaning of *sexual offence proceeding*—div 4.2.2A

69 Section 40B (1) (c) and (d)

substitute

(c) an appeal arising out of a proceeding mentioned in paragraph (a) or (b).

70 Section 40C heading

substitute

40C Meaning of *violent offence proceeding*—div 4.2.2A

71 Section 40C (1) (c) and (d)

substitute

(c) an appeal arising out of a proceeding mentioned in paragraph (a) or (b).

72 Section 40D heading

substitute

40D Meaning of *witness*—div 4.2.2A**73 Section 40D (2)**

substitute

Note ***Intellectually impaired***—see s 36D.

74 Division 4.2B

renumber as division 4.2.2B

75 Section 40P heading

substitute

40P Meaning of *witness*—div 4.2.2B**76 Section 40P (3)**

substitute

Note ***Intellectually impaired***—see s 36D.

77 Division 4.3

renumber as division 4.2.3

**78 Meaning of *complainant* and *sexual offence proceeding*—
div 4.3
Section 41 (2) (c)**

omit

79 **Meaning of *violent offence proceeding*—div 4.3**
Section 41A (1) (c)

omit

80 **Meaning of *sexual offence* and *violent offence*—div 4.3**
Section 41B

omit

81 **Proceedings to which div 4.3 applies**
Section 42 (1) (c) (i)

insert

Note *Relevant person*—see s 38B.

82 **Section 42 (3)**

omit

83 **Failure to comply with div 4.3**
Section 47

omit

84 **Divisions 4.4 to 4.6**

renumber as divisions 4.2.4 to 4.2.6

85 New part 4.3*insert***Part 4.3 Evidence in domestic violence proceedings****Division 4.3.1 Definitions—pt 4.3****74 Meaning of *domestic violence offence*—pt 4.3**

In this part:

domestic violence offence means an offence mentioned in the [Domestic Violence and Protection Orders Act 2008](#), schedule 1, table 1.2.

Note **Complainant**, for a domestic violence offence proceeding, is an adult who is a relevant person in relation to the accused (see s 76).
Relevant person—see s 36B.

75 Meaning of *domestic violence offence proceeding*—pt 4.3

(1) In this part:

domestic violence offence proceeding means—

- (a) a proceeding for a domestic violence offence; or
- (b) a proceeding in relation to bail for a person charged with a domestic violence offence, whether or not the person is also charged with any other offence; or
- (c) a sentencing proceeding for a person convicted or found guilty of a domestic violence offence, whether or not the person is also convicted or found guilty of any other offence; or
- (d) an appeal arising out of a proceeding mentioned in paragraphs (a) to (c); or

(e) an interlocutory proceeding in, or a proceeding ancillary to, a proceeding mentioned in paragraphs (a) to (c).

(2) In this section:

proceeding for a domestic violence offence includes—

- (a) a proceeding for a domestic violence offence and any other offence; and
- (b) a proceeding for a domestic violence offence and any other offence as an alternative to the domestic violence offence; and
- (c) a proceeding for a domestic violence offence that may result in a finding of guilt (or committal for trial or sentence) for any other offence.

76 **Meaning of *complainant*—pt 4.3**

In this part:

complainant, for a domestic violence offence proceeding—

- (a) means a person—
 - (i) against whom a domestic violence offence the subject of the proceeding is alleged, or has been found, to have been committed; and
 - (ii) who is a relevant person in relation to the accused person; but

Note **Relevant person**—see s 36B.

- (b) does not include a person who—
- (i) is a child on the day a recorded statement is made; or
 - (ii) is intellectually impaired.

Note 1 **Intellectually impaired**—see s 36D.

Note 2 Audiovisual recording and the evidence of children and people with intellectual impairment is dealt with in div 4.2.2A.

77 Meaning of *recorded statement*—pt 4.3

- (1) In this part:

recorded statement means—

- (a) an audiovisual recording—
 - (i) of a complainant answering questions of a police officer in relation to the investigation of a domestic violence offence; and
 - (ii) made by a police officer; or
- (b) an audio recording that complies with paragraph (a)—
 - (i) if the complainant does not consent to an audiovisual recording; or
 - (ii) in exceptional circumstances.

Example—exceptional circumstances

technical difficulties with the visual aspect of the recording identified following the making of the recording

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).

- (2) A police officer must, before making a recorded statement, tell the complainant that—
- (a) the recorded statement may be used in evidence at a hearing; and
 - (b) if the recorded statement is used in evidence at a hearing, the complainant may be called to give evidence under cross-examination in person at the hearing; and
 - (c) the complainant does not have to consent to the recording.
- (3) In this section:

police officer includes a person who is a member of the police force of a State or another Territory if—

- (a) provisions of the law of that State or Territory correspond (or substantially correspond) to this part; and
- (b) the person is trained in the taking of evidence under those provisions.

Note *Police officer*—see the [Legislation Act](#), dictionary, pt 1.

Division 4.3.2 Evidence may be given in closed court

78 Evidence may be given in closed court

- (1) This section applies to the complainant giving evidence in a domestic violence offence proceeding if the court considers that the complainant has a vulnerability that affects the complainant's ability to give evidence because of the circumstances of the proceeding or the complainant's circumstances.

Examples—complainant vulnerability

- 1 the complainant is likely to suffer severe emotional trauma because of the nature of the alleged offence

2 the complainant is intimidated or distressed because of the complainant's relationship to the accused person

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).

- (2) The court is not bound by the rules of evidence and may inform itself as it considers appropriate.
- (3) The court may order that the court be closed to the public while all or part of the complainant's evidence (including evidence given under cross-examination) is given.

Note The accused is entitled to a fair and public hearing, but the court may exclude the public in certain circumstances (see [Human Rights Act 2004](#), s 21 (2)).

- (4) In deciding whether to order that the court be closed to the public, the court must consider whether—
- (a) the complainant wants to give evidence in open court; and
 - (b) it is in the interests of justice that the complainant give evidence in open court.
- (5) However, an order under this section does not stop the following people from being in court when the complainant gives evidence:
- (a) a person nominated by the complainant;
 - (b) a person who attends the proceeding to prepare a news report of the proceeding and is authorised to attend for that purpose by the person's employer.

Note Publishing certain information in relation to sexual offence proceedings is an offence (see s 40).

- (6) In this section, a reference to a person giving evidence includes the person giving evidence by the playing of a recorded statement of the evidence under division 4.3.3.

Division 4.3.3 Recorded statement of police interview admissible as evidence

79 Recorded statement—requirements

- (1) A recorded statement must be made—
- (a) as soon as practicable after the events mentioned in the statement happened; and
 - (b) in the form of questions and answers.

Note If the recorded statement is to be admitted as evidence in a proceeding, the rules of evidence apply to the content of the statement.

- (2) A recorded statement of a complainant must include the following:
- (a) the name of each person present during any part of the recording;
 - (b) a statement by the complainant—
 - (i) of the complainant's name, age and whether the complainant lives in the ACT; and
 - (ii) about the truth of the representations made by the complainant in the recorded statement;
 - (c) any other matter prescribed by regulation.
- (3) As far as is practicable, a recorded statement must not contain an image of—
- (a) a child; or
 - (b) a person who is intellectually impaired.

Note 1 **Intellectually impaired**—see s 36D.

Note 2 Audiovisual recording and the evidence of children and people with intellectual impairment is dealt with in div 4.2.2A.

- (4) If any part of a recorded statement is in a language other than English—
- (a) the recorded statement must contain an English translation of the part; or
 - (b) a separate written English translation of the part must accompany the recorded statement.
- (5) A recorded statement must not be edited or changed unless—
- (a) both parties consent to the edits or changes; or
 - (b) the court hearing the proceeding in which the recorded statement is tendered otherwise orders.

Example—court ordering change

editing the recorded statement to omit inadmissible material

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).

80 Recorded statement—may be admitted as evidence

- (1) A recorded statement may—
- (a) be played at the hearing of a proceeding for the domestic violence offence to which it relates; and
 - (b) if the recorded statement is played at the hearing—be admitted as all or part of the complainant’s evidence in chief in the proceeding as if the complainant gave the evidence at the hearing in person.
- (2) However, the court may refuse to admit all or any part of the recorded statement if the court considers it is in the interests of justice to do so.
- (3) The complainant may choose not to be present in the courtroom while the court is viewing or listening to the recorded statement.

- (4) If the complainant is giving evidence by audiovisual link from an external place under division 4.2.3 (Sexual and violent offence proceedings—giving evidence by audiovisual link), the complainant must not be visible or audible to anyone in the courtroom by closed-circuit television or by means of similar technology while the court is viewing or listening to the recorded statement.
- (5) To remove any doubt, if a recorded statement is admitted as part of a complainant's evidence in chief in a proceeding, the complainant may give further evidence in chief.
- (6) This section is subject to section 81D (Recorded statement—admissibility).

81 Recorded statement—hearsay rule and opinion rule

- (1) The hearsay rule and the opinion rule do not prevent the admission or use of evidence of a representation in the form of a recorded statement only because it is in that form.

Note The hearsay rule and opinion rule will apply to the content of the recorded statement to be admitted as evidence.

- (2) In this section:

hearsay rule—see the *Evidence Act 2011*, dictionary, part 1.

opinion rule—see the *Evidence Act 2011*, dictionary, part 1.

81A Validity of proceeding not affected

- (1) The failure of a police officer to record a representation in the form of a recorded statement in accordance with the requirements of this division or any regulation does not affect the validity of a proceeding in which evidence of the representation is given.
- (2) The failure of a complainant to give evidence in accordance with this part does not affect the validity of a proceeding or any decision made in connection with the proceeding.

81B Recorded statement—represented accused person to be given copy

- (1) This section applies if—
 - (a) a recorded statement has been made in relation to a domestic violence offence that is the subject of a proceeding; and
 - (b) the accused person is represented by a lawyer in the proceeding.
- (2) The lawyer representing the accused person must be given a copy of the recorded statement as soon as practicable after the proceeding is commenced.

Note For how documents may be served, see the [Legislation Act](#), pt 19.5.

- (3) The lawyer representing the accused person must return the copy of the recorded statement by giving it to the prosecutor not later than 16 weeks after the proceeding is finalised.
- (4) The accused person must not be given, or take a copy of, the recorded statement.

81C Recorded statement—unrepresented accused person to be given access

- (1) This section applies if—
 - (a) a recorded statement has been made in relation to a domestic violence offence that is the subject of a proceeding; and
 - (b) the accused person is not represented by a lawyer in the proceeding.
- (2) The accused person must be given an audio copy of the recorded statement as soon as practicable after the proceeding is commenced.

- (3) Also, if it is reasonably practicable, the accused person must be given an opportunity to view a recorded statement that is in the form of a video recording at a police station on at least 1 of the following occasions:
- (a) when the accused person is being questioned in relation to the alleged domestic violence offence;
 - (b) at the request of the accused person, on a day arranged with the accused person;
 - (c) on another day stated in a written notice given to the accused person before committal proceedings or the trial commences.
- (4) If compliance with subsection (3) is not reasonably practicable, the accused person must be given the opportunity to view the recorded statement on a day on which proceedings relating to the offence are being held.

81D Recorded statement—admissibility

Evidence of a representation of a complainant given in the form of a recorded statement is not to be admitted if section 81B or section 81C have not been complied with, unless the court is satisfied that—

- (a) the parties consent to the recorded statement being admitted; or
- (b) the accused person or the accused person's lawyer (if any) have been given a reasonable opportunity to listen to or view the recorded statement and it would be in the interests of justice to admit the recorded statement.

81E Recorded statement—accused person to be given audio copy

- (1) This section applies if—
 - (a) the prosecutor in a domestic violence offence proceeding intends to tender a recorded statement as evidence; and
 - (b) the court accepts a plea of not guilty from the accused person; and
 - (c) the accused person has not already been given an audio copy of the recorded statement under section 81C (Recorded statement—unrepresented accused person to be given access).
- (2) The accused person must be given an audio copy of the recorded statement.

81F Recorded statement—jury trial

- (1) This section applies if—
 - (a) a domestic violence offence proceeding is a trial by jury; and
 - (b) a recorded statement is admitted in evidence in the proceeding.
- (2) The court must tell the jury that—
 - (a) admission of a recorded statement is a usual practice; and
 - (b) the jury must not draw any inference against the accused person, or give the evidence more or less weight, because the evidence is given in that way.
- (3) If the court considers that a transcript of the recorded statement would be likely to help the jury's understanding of the evidence, the court may order that the transcript be made available to the jury.

81G Recorded statement—offence to publish

- (1) A person commits an offence if the person—
- (a) publishes a recorded statement; and
 - (b) does not have authority to publish the recorded statement.

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

- (2) For this section, a person has *authority* to publish a recorded statement only if the person publishes the recorded statement in connection with—
- (a) the investigation of, or a proceeding for, an offence in relation to which the recorded statement is prepared; or
 - (b) a re-hearing, re-trial or appeal in relation to the proceeding.

- (3) In this section:

person includes the complainant in relation to the recorded statement.

publish means communicate or disseminate information in a way or to an extent that makes it available to, or likely to come to the notice of, the public or a section of the public or anyone else not lawfully entitled to the information.

86 Parts 5 to 7

renumber as chapters 5 to 7

87 Divisions 7.1 to 7.3

renumber as parts 7.1 to 7.3

88 Parts 8 and 9

renumber as chapters 8 and 9

89 Dictionary, note 2

insert

- adult

90 Dictionary, definition of *complainant*

substitute

complainant—

- for division 4.2.2 (Sexual and violent offence proceedings—general)—see section 38; and
- for division 4.2.2B (Sexual offence proceedings—giving evidence at pre-trial hearing)—see section 40N; and
- for division 4.2.3 (Sexual and violent offence proceedings—giving evidence by audiovisual link)—see section 41 (1); and
- for division 4.2.4 (Evidence of complainant’s sexual reputation and activities)—see section 48; and
- for division 4.2.6 (Sexual offence proceedings—directions and warnings to juries)—see section 68; and
- for part 4.3 (Evidence in domestic violence proceedings)—see section 76.

91 Dictionary, new definitions

insert

domestic violence offence, for part 4.3 (Evidence in domestic violence proceedings)—see section 74.

domestic violence offence proceeding, for part 4.3 (Evidence in domestic violence proceedings)—see section 75.

intellectually impaired, for chapter 4 (Evidence in sexual, violent and domestic violence offence proceedings)—see section 36D.

recorded statement, for part 4.3 (Evidence in domestic violence proceedings)—see section 77.

92 Dictionary, definitions of *relative, relevant person and sexual offence*

substitute

relative, for chapter 4 (Evidence in sexual, violent and domestic violence offence proceedings)—see section 36C.

relevant person, in relation to a person, for chapter 4 (Evidence in sexual, violent and domestic violence offence proceedings)—see section 36B.

sexual offence—

- (a) for part 4.2 (Evidence in sexual and violent offence proceedings) generally—see section 37; and
- (b) for division 4.2.2A (Sexual and violent offence proceedings—audiovisual recording of police interview admissible as evidence)—see section 40AA (1); and
- (c) for division 4.2.2B (Sexual offence proceedings—giving evidence at pre-trial hearing)—see section 40NA.

93 Dictionary, new definitions

insert

sexual or violent offence, for part 4.2 (Evidence in sexual and violent offence proceedings)—see section 37.

sexual or violent offence proceeding, for part 4.2 (Evidence in sexual and violent offence proceedings)—see section 37.

94 Dictionary, definition of *violent offence*

substitute

violent offence—

- (a) for part 4.2 (Evidence in sexual and violent offence proceedings) generally—see section 37; and
- (b) for division 4.2.2A (Sexual and violent offence proceedings—audiovisual recording of police interview admissible as evidence)—see section 40AA (2).

95 Further amendments, mentions of 4.2

omit

4.2

substitute

4.2.2

in

- section 38 heading
- section 38A heading
- dictionary, definition of *sexual offence proceeding*, paragraph (a)
- dictionary, definition of *violent offence proceeding*, paragraph (a)

96 Further amendments, mentions of 4.2A

omit

4.2A

substitute

4.2.2A

in

- section 39 (6)
- section 40AA heading
- section 40E heading
- section 40Q
- section 40S (2)
- section 102 (5)
- dictionary, definition of *audiovisual recording*
- dictionary, definition of *sexual offence proceeding*, paragraph (b)
- dictionary, definition of *violent offence proceeding*, paragraph (b)
- dictionary, definition of *witness*, paragraph (a)

97 Further amendments, mentions of 4.2B

omit

4.2B

substitute

4.2.2B

in

- section 39 (6)
- section 40N heading

- section 40NA heading
- section 40O heading
- section 102 (5)
- dictionary, definition of *sexual offence proceeding*, paragraph (c)
- dictionary, definition of *witness*, paragraph (b)

98 Further amendments, mentions of 4.3

omit

4.3

substitute

4.2.3

in

- section 39 (6)
- section 40T (4)
- section 40X heading
- section 41 heading
- section 41A heading
- section 42 heading
- section 44 heading
- section 45 heading
- dictionary, definition of *give evidence in a proceeding by audiovisual link*, paragraph (b)
- dictionary, definition of *proceeding*, paragraph (c)
- dictionary, definition of *sexual offence proceeding*, paragraph (d)
- dictionary, definition of *violent offence proceeding*, paragraph (c)

99 Further amendments, mentions of 4.4

omit

4.4

substitute

4.2.4

in

- section 48 heading
- section 49 heading
- dictionary, definition of *sexual offence proceeding*, paragraph (e)

100 Further amendments, mentions of 4.5

omit

4.5

substitute

4.2.5

in

- section 54 heading
- section 55 heading
- section 56 heading
- dictionary, definition of *civil proceeding*
- dictionary, definition of *counsellor*
- dictionary, definition of *criminal proceeding*, paragraph (b)
- dictionary, definition of *document recording a protected confidence*
- dictionary, definition of *harm*
- dictionary, definition of *preliminary criminal proceeding*

- dictionary, definition of *proceeding*, paragraph (d)
- dictionary, definition of *protected confidence*
- dictionary, definition of *protected confidence evidence*

101 Further amendments, mentions of 4.6

omit

4.6

substitute

4.2.6

in

- section 68 heading
- dictionary, definition of *sexual offence proceeding*, paragraph (f)

102 Further amendments, mentions of *div*

omit

div

substitute

pt

in

- section 19 heading
- section 22 heading
- section 31 heading
- section 33 heading
- section 100 heading

103 Further amendments, mentions of *division*

omit

division

substitute

part

in

- sections 19 and 20
- section 22
- sections 31 to 35
- section 100
- dictionary, definition of *witness with a disability*, paragraph (b)

104 Further amendments, mentions of *part*

omit

part

substitute

chapter

in

- section 2, note 1
- sections 5 to 8
- section 12
- sections 14 to 18
- section 33 (2nd mention)
- sections 90 and 91
- section 110
- section 121
- dictionary, definition of *audio link*

- dictionary, definition of *court*
- dictionary, definition of *dangerously ill person*
- dictionary, definition of *give evidence in a proceeding by audiovisual link*, paragraph (a)
- dictionary, definition of *Magistrates Court*
- dictionary, definition of *participating State*
- dictionary, definition of *proceeding*, paragraph (b)
- dictionary, definition of *recognised court*
- dictionary, definition of *State*
- dictionary, definition of *territory court*
- dictionary, definition of *tribunal*

105 Further amendments, mentions of part 4

omit

part 4

substitute

part 4.2

in

- dictionary, definition of *less serious violent offence*
- dictionary, definition of *serious violent offence*
- dictionary, definition of *similar act witness*
- dictionary, definition of *witness with a disability*, paragraph (a)

106 Further amendments, mentions of *pt*

omit

pt

substitute

ch

in

- section 5 heading
- section 6 heading
- section 8 heading
- section 11 heading
- section 12 heading
- section 14 heading
- section 16 heading
- section 17 heading
- section 90 heading
- section 91 heading
- section 110 heading
- section 121 (3), definitions of *audio link* and *territory court*

Schedule 1 Consequential amendments

(see s 3)

Part 1.1 Children and Young People Act 2008

[1.1] Section 246, definition of *privileged*, paragraph (b)

omit

division 4.5

substitute

division 4.2.5

[1.2] Section 463 (5), example

substitute

Example—par (a)

The *Domestic Violence and Protection Orders Act 2008*, s 38 (d) provides that an interim order ends in certain circumstances when the final order is made. Applying par (a), the DVPO interim protection order ends when the care and protection order is made in those circumstances.

Part 1.2 Confiscation of Criminal Assets Act 2003

[1.3] Section 176 (5)

omit

part 3

substitute

chapter 3

[1.4] Section 176 (5), note

omit

pt 3

substitute

ch 3

Part 1.3 Court Procedures Act 2004

[1.5] Section 41 (2) (d)

substitute

(d) the following sections of the *Evidence (Miscellaneous Provisions) Act 1991*:

- (i) section 11 (Consequential orders—ch 2);
- (ii) section 39 (Sexual and violent offence proceeding—evidence to be given in closed court);
- (iii) section 44 (Consequential orders—div 4.2.3);
- (iv) section 52 (c) (Application for leave under s 51);

- (v) section 61 (5) (Preliminary examination of protected confidence evidence);
- (vi) section 63 (2) (a) (Ancillary orders for protection of person who made protected confidence);
- (vii) section 78 (Evidence may be given in closed court);
- (viii) section 102 (Witness with vulnerability may give evidence in closed court);
- (ix) section 111 (4) (Prohibition of publication of evidence etc); and

Part 1.4 **Court Procedures Rules 2006**

[1.6] Rule 6703 (2), note 1

omit

div 3.4

substitute

pt 3.4

[1.7] Rule 6703 (2), note 1

omit

div 3.2

substitute

pt 3.2

Part 1.5 Crimes Act 1900

[1.8] Section 192 (1)

omit

section 40 (5) (Firearms and interim orders)

substitute

section 40 (5) (Interim orders—respondent’s firearms)

Part 1.6 Crimes (Forensic Procedures) Act 2000

[1.9] Section 38 (2) (a), note 2

omit

pt 3

substitute

ch 3

[1.10] Section 77C (2) (a), note 2

omit

pt 3

substitute

ch 3

Part 1.7 **Crimes (Sentencing) Act 2005**

[1.11] Section 52 (4) (a)

omit

part 2

substitute

chapter 2

[1.12] Section 52 (4) (b)

omit

part 4

substitute

part 4.2

Part 1.8 **Evidence Act 2011**

[1.13] Section 8, example 2

omit

pt 5

substitute

ch 5

[1.14] Section 126F (3)

omit

division 4.5

substitute

division 4.2.5 (Protection of counselling communications)

Part 1.9 Evidence (Miscellaneous Provisions) Regulation 2009

[1.15] New section 4 (3)

insert

(3) In this section:

police officer includes a person who is a member of the police force of a State or another Territory if—

- (a) provisions of the law of that State or Territory correspond (or substantially correspond) to the [Act](#), division 4.2.2A (Sexual and violent offence proceedings—audiovisual recording of police interview admissible as evidence); and
- (b) the person is trained in the taking of evidence under those provisions.

Note ***Police officer***—see the [Legislation Act](#), dictionary, pt 1.

Part 1.10 Firearms Act 1996

[1.16] Section 80 (1), note 2

omit

s 40 (Firearms and interim orders)

substitute

s 40 (Interim orders—respondent’s firearms)

[1.17] Section 97 (1), note 2

omit

s 40 (Firearms and interim orders)

substitute

s 40 (Interim orders—respondent’s firearms)

[1.18] Section 119 (1), note 2

omit

s 40 (Firearms and interim orders)

substitute

s 40 (Interim orders—respondent’s firearms)

Part 1.11 Supreme Court Act 1933

[1.19] Section 37N (4), definition of *audio link*

omit

(Definitions for pt 3)

substitute

(Definitions—ch 3)

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 24 September 2015.

2 Notification

Notified under the [Legislation Act](#) on 4 November 2015.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Crimes (Domestic and Family Violence) Legislation Amendment Bill 2015, which was passed by the Legislative Assembly on 27 October 2015.

Clerk of the Legislative Assembly

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