

2016

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Family Violence Bill 2016

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2016

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Family Violence Bill 2016

A Bill for

An Act to protect people from family violence, and for other purposes

1 **Preamble**

2 1 In enacting this Act, the Legislative Assembly recognises the following
3 principles:

- 4 (a) family violence is unacceptable in any form;
- 5 (b) freedom from family violence is a human right;
- 6 (c) the justice system should respect and protect all human rights
7 in accordance with the *Human Rights Act 2004* and
8 international law;
- 9 (d) family violence is best addressed through a coordinated legal
10 and social response of assistance to victims and the prevention
11 of violence by such things as promoting the accountability of
12 perpetrators of family violence and the appropriate intervention
13 by the police and the courts.

14 2 The Legislative Assembly also recognises the following features of
15 family violence:

- 16 (a) anyone can be a victim of family violence: it occurs in all areas
17 of society, regardless of location, socioeconomic and health
18 status, age, culture, gender, sexual identity, ability, ethnicity or
19 religion;
- 20 (b) family violence is predominantly committed by men against
21 women and children;
- 22 (c) family violence extends beyond physical violence and may
23 involve the exploitation of power imbalances and patterns of
24 abuse over many years;
- 25 (d) children exposed to family violence are particularly vulnerable
26 and the exposure may have a serious impact on their current
27 and future physical, psychological and emotional wellbeing.

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Family Violence Act 2016*.

4 **2 Commencement**

- 5 (1) This Act (other than schedule 3, part 3.21) commences 6 months
6 after its notification day.

7 *Note* The naming and commencement provisions automatically commence on
8 the notification day (see [Legislation Act](#), s 75 (1)).

- 9 (2) Schedule 3, part 3.21 (Victims of Crime (Financial Assistance)
10 Act 2016) commences on the later of—

11 (a) the commencement of the *Victims of Crime (Financial*
12 *Assistance) Act 2016*; or

13 (b) the commencement of this Act, section 3.

14 **3 Dictionary**

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

16 *Note 1* The dictionary at the end of this Act defines certain terms used in this
17 Act, and includes references (*signpost definitions*) to other terms
18 defined elsewhere.

19 For example, the signpost definition ‘*firearm*—see the *Firearms*
20 *Act 1996*, section 6.’ means that the term ‘firearm’ is defined in that
21 section and the definition applies to this Act.

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

1 **4 Notes**

2 A note included in this Act is explanatory and is not part of this Act.

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

5 **5 Offences against Act—application of Criminal Code etc**

6 Other legislation applies in relation to offences against this Act.

7 *Note 1 Criminal Code*

8 The [Criminal Code](#), ch 2 applies to all offences against this Act (see
9 Code, pt 2.1).

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

14 *Note 2 Penalty units*

15 The [Legislation Act](#), s 133 deals with the meaning of offence penalties
16 that are expressed in penalty units.

1 **Part 2** **Objects and important concepts**

2 **Division 2.1** **Objects**

3 **6** **Objects of Act**

4 The objects of this Act include—

- 5 (a) to prevent and reduce family violence; and
6 (b) to ensure the safety and protection of people, including
7 children, who fear, experience or witness family violence; and
8 (c) to encourage perpetrators of family violence to be accountable
9 for their conduct.

10 **7** **How objects are to be achieved**

11 This Act aims to achieve its objects by—

- 12 (a) giving the courts power to make family violence orders to
13 protect people from family violence; and
14 (b) creating offences to enforce family violence orders; and
15 (c) ensuring that access to the courts is as simple, quick and
16 inexpensive as is consistent with justice; and
17 (d) by recognising family violence orders made elsewhere in
18 Australia and New Zealand.

19 **Division 2.2** **Important concepts**

20 **8** **Meaning of *family violence***

21 (1) In this Act:

22 *family violence* means—

- 23 (a) any of the following behaviour by a person in relation to a
24 family member of the person:
25 (i) physical violence or abuse;

- 1 (ii) sexual violence or abuse;
2 (iii) emotional or psychological abuse;
3 (iv) economic abuse;
4 (v) threatening behaviour;
5 (vi) coercion or any other behaviour that—
6 (A) controls or dominates the family member; and
7 (B) causes the family member to feel fear for the safety
8 or wellbeing of the family member or another
9 person; or
10 (b) behaviour that causes a child to hear, witness or otherwise be
11 exposed to behaviour mentioned in paragraph (a), or the effects
12 of the behaviour.

13 **Examples—par (b)**

- 14 1 overhearing threats being made in another room of the house
15 2 seeing an assault or seeing injuries on a family member who has been
16 assaulted
17 3 seeing people comfort a family member who has been abused

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

- 21 (2) Without limiting subsection (1), *family violence* by a person in
22 relation to a family member of the person includes the following:
23 (a) sexually coercive behaviour;
24 (b) damaging property;
25 (c) harming an animal;
26 (d) stalking;
27 (e) deprivation of liberty.
28 (3) In this section:

1 ***economic abuse***, of a family member, means behaviour by a person
2 that is coercive, deceptive or that unreasonably controls the family
3 member without the family member's consent including by the
4 person's exploitation of power imbalances between the person and
5 the family member—

6 (a) in a way that takes away the financial independence or control
7 the family member would have but for the behaviour; or

8 (b) if the family member is wholly or predominantly dependent on
9 the person for financial support to meet the living expenses of
10 the family member or the family member's child—by
11 withholding the financial support.

12 **Examples**

13 1 stopping the family member from having access to money to meet normal
14 living expenses

15 2 requiring the family member to transfer or hand over control of assets or
16 income

17 3 stopping the family member from trying to get employment

18 4 forcing the family member to sign a legal document such as a power of
19 attorney, loan, guarantee

20 5 forcing the family member to claim social security payments

21 ***emotional or psychological abuse***, of a family member, means
22 behaviour by a person that torments, intimidates, harasses or is
23 offensive to the family member including by the person's
24 exploitation of power imbalances between the person and the family
25 member.

26 **Examples**

27 1 stopping the family member from visiting or having contact with family or
28 friends

29 2 stopping the family member from engaging in cultural or spiritual practices

30 3 repeated derogatory or racist comments

31 4 threatening to disclose personal information about the family member

32 5 threatening to withhold medication, personal health care items or other things
33 necessary to the family member's health or quality of life

34 6 threatening to self-harm as a way of intimidating the family member

1 **9 Meaning of *family member***

2 In this Act:

3 *family member*, of a person, means—

- 4 (a) a domestic partner or former domestic partner of the person; or
5 (b) an intimate partner or former intimate partner of the person; or
6 (c) a relative of the person; or
7 (d) a child of a domestic partner or former domestic partner of the
8 person; or
9 (e) a parent of a child of the person.

10 *Note 1* A *domestic partner* need not be an adult (see [Legislation Act](#), s 169).

11 *Note 2* *Intimate partner*—see s 10.

12 *Relative*—see s 11.

13 **10 Meaning of *intimate partner***

14 (1) In section 9:

15 *intimate partner*, of a person—

- 16 (a) means someone with whom the person has an intimate
17 relationship, whether they are members of the same household
18 or not; but
19 (b) does not include—
20 (i) a domestic partner; or
21 (ii) another person with whom the person has a relationship
22 only because a service is provided between them—
23 (A) for fee or reward; or
24 (B) on behalf of another person (including a government
25 or corporation); or
26 (C) on behalf of an organisation the principal objects or
27 purposes of which are charitable or benevolent.

- 1 (2) For subsection (1), factors that indicate whether there is an intimate
2 relationship between 2 people include, but are not limited to, the
3 following:
- 4 (a) the extent to which each is personally dependent on the other;
- 5 (b) the extent to which each is financially dependent on the other
6 (including any arrangements for financial support);
- 7 (c) the length of the relationship;
- 8 (d) the frequency of contact between each other;
- 9 (e) if there is, or has been, a sexual relationship;
- 10 (f) the extent to which each is involved in, or knows about, the
11 other's personal life;
- 12 (g) the degree of mutual commitment to a shared life;
- 13 (h) if the 2 people share care or support for children or other
14 dependents.

15 **11 Meaning of *relative***

- 16 (1) In section 9:
- 17 *relative*, of a person—
- 18 (a) means the person's—
- 19 (i) father, mother, grandfather, grandmother, stepfather,
20 stepmother, father-in-law or mother-in-law; or
- 21 (ii) son, daughter, grandson, granddaughter, stepson,
22 stepdaughter, son-in-law or daughter-in-law; or
- 23 (iii) brother, sister, half-brother, half-sister, stepbrother,
24 stepsister, brother-in-law or sister-in-law; or
- 25 (iv) uncle, aunt, uncle-in-law or aunt-in-law; or
- 26 (v) nephew, niece or cousin; and

- 1 (b) if the person has or had a domestic partner (other than a spouse
2 or civil union partner)—includes someone who would have
3 been a relative mentioned in paragraph (a) if the person had
4 been married to or in a civil union with the domestic partner;
5 and

6 *Note* For ACT law, a person acquires relatives through civil union in
7 the same way as they acquire them through marriage (see *Civil*
8 *Unions Act 2012*, s 6 (2)).

- 9 (c) includes—
- 10 (i) someone who has been a relative mentioned in
11 paragraph (a) or (b) of the person; and
- 12 (ii) if the person is an Aboriginal or Torres Strait Islander
13 person, the following people:
- 14 (A) someone the person has responsibility for, or an
15 interest in, in accordance with the traditions and
16 customs of the person's Aboriginal or Torres Strait
17 Islander community;
- 18 (B) someone who has responsibility for, or an interest in,
19 the person in accordance with the traditions and
20 customs of the person's Aboriginal or Torres Strait
21 Islander community; and
- 22 (iii) someone regarded and treated by the person as a relative;
23 and
- 24 (iv) someone with whom the person has a family-like
25 relationship; and
- 26 (v) anyone else who could reasonably be considered to be, or
27 have been, a relative of the person.

28 (2) For subsection (1) (c) (iv), factors that indicate whether there is a
29 family-like relationship between 2 people include, but are not
30 limited to, the following:

- 31 (a) the extent to which each is personally dependent on the other;

- 1 (b) the extent to which each is financially dependent on the other
2 (including any arrangements for financial support);
3 (c) the length of the relationship;
4 (d) the frequency of contact between each other;
5 (e) the extent to which each is involved in, or knows about, the
6 other's personal life;
7 (f) if the people live together or relate together in a home
8 environment;
9 (g) if the relationship is regarded as being family-like by the
10 community in which each live.

11 **Example**

12 a relationship between a person with disability and the person's carer that has
13 developed into a relationship that is like that between family members

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

17 (3) In this section:

18 ***Aboriginal or Torres Strait Islander person*** means a person who—

- 19 (a) is a descendant of an Aboriginal person or a Torres Strait
20 Islander person; and
21 (b) identifies as an Aboriginal person or a Torres Strait Islander
22 person; and
23 (c) is accepted as an Aboriginal person or a Torres Strait Islander
24 person by an Aboriginal community or Torres Strait Islander
25 community.

1 **Division 2.3 Other important matters**

2 **12 Principle about procedures**

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

5 **13 Balance of probabilities**

6 If a court or a judicial officer is required to be satisfied about
7 something under this Act, the court or judicial officer must be
8 satisfied on the balance of probabilities.

1 **Part 3** **Family violence orders**

2 **Division 3.1** **Matters to be considered when**
3 **making family violence orders**

4 **14** **Matters to be considered—family violence orders**

5 (1) In deciding whether to make a family violence order, a court must
6 consider the following:

- 7 (a) the objects of this Act in section 6;
- 8 (b) the affected person's perception of the nature and seriousness
9 of the respondent's alleged conduct;
- 10 (c) the welfare of any child that is an affected person;
- 11 (d) the accommodation needs of the affected person and any child
12 of the affected person or respondent;
- 13 (e) any hardship that may be caused to the respondent or anyone
14 else by the making of the order;
- 15 (f) any previous family violence or personal violence by the
16 respondent in relation to the affected person or anyone else;
- 17 (g) any previous family violence order made in relation to the
18 respondent;
- 19 (h) any previous contravention of a family violence order by the
20 respondent;
- 21 (i) if the respondent objected to the making of an interim order—
22 the respondent's objection;
- 23 (j) the need to ensure that property is protected from damage.

24 *Note* An **affected person** includes any child who hears, witnesses or is
25 otherwise exposed to family violence committed against another person
26 (see s 8 (1), def **family violence**, par (b) and dict).

27 (2) The court may also consider anything else the court considers
28 relevant.

- 1 (3) In this section:
2 *family violence order*—
3 (a) means a protection order or an after-hours order under this Act;
4 and
5 (b) includes the following:
6 (i) a protection order under the *Personal Violence Act 2016*;
7 (ii) a protection order under the *Domestic Violence Agencies*
8 *Act 1986* as in force at any time;
9 (iii) a protection order under the *Domestic Violence and*
10 *Protection Orders Act 2001* as in force at any time;
11 (iv) a protection order under the *Domestic Violence and*
12 *Protection Orders Act 2008* as in force at any time;
13 (v) a restraining order under the *Magistrates Court Act 1930*
14 before 27 March 2002;
15 (vi) an order under a law of a State, another Territory or New
16 Zealand that has or had the same effect, or substantially
17 the same effect, as a protection order under this Act or a
18 protection order under the *Personal Violence Act 2016*.

19 **15 Family Law Act order**

- 20 (1) In deciding whether to make a family violence order, a court must
21 enquire whether a Family Law Act order applies to—
22 (a) any child of the affected person and respondent; or
23 (b) any other child that is an affected person.

24 *Note 1* A *family violence order* means a protection order or an after-hours
25 order (see dict).

26 *Note 2* The *Family Law Act 1975* (Cwlth), s 68R gives a Territory court, in a
27 proceeding for a family violence order, jurisdiction under certain
28 circumstances to revive, vary, discharge or suspend a Family Law Act
29 order.

1 (2) In this section:

2 ***Family Law Act order***—

3 (a) means a parenting order, recovery order, injunction,
4 undertaking, parenting plan or recognisance mentioned in the
5 *Family Law Act 1975* (Cwlth), section 68R; and

6 (b) includes any proceeding for a parenting order, recovery order,
7 injunction, undertaking, parenting plan or recognisance.

8 **Division 3.2 Applications for protection orders**

9 **16 Who may apply for protection order?**

10 (1) An affected person may apply to the Magistrates Court for a
11 protection order.

12 *Note 1* Only a police officer may apply for an after-hours order (see s 99).

13 *Note 2* A child younger than 10 years old cannot be a respondent to an
14 application for a protection order (see s 75).

15 (2) The following people may apply to the Magistrates Court for a
16 protection order for an affected person:

17 (a) a police officer;

18 (b) a litigation guardian for the person or any other person with a
19 right to apply for the person.

20 **Examples—s (2) (b)**

21 1 a parent or guardian of a child

22 2 an agent of the person

23 *Note 1* An ***affected person*** includes any child who hears, witnesses or is
24 otherwise exposed to family violence committed against another person
25 (see s 8 (1), def ***family violence***, par (b) and dict).

26 *Note 2* If an application is made by a police officer—the affected person, a
27 litigation guardian or any other person with a right to apply for the
28 affected person may be substituted as the applicant for the protection
29 order (see s 71).

1 *Note 3* If a form is approved under the *Court Procedures Act 2004*, s 8 for an
2 application, the form must be used.

3 *Note 4* An example is part of the Act, is not exhaustive and may extend, but
4 does not limit, the meaning of the provision in which it appears (see
5 *Legislation Act*, s 126 and s 132).

6 **17 Application forms that require affected person’s address**

7 (1) This section applies if a form approved under the *Court Procedures*
8 *Act 2004*, section 8 for an application for a family violence order
9 requires the affected person’s home or work address to be included
10 in the application.

11 *Note* An *affected person* includes any child who hears, witnesses or is
12 otherwise exposed to family violence committed against another person
13 (see s 8 (1), def *family violence*, par (b) and dict).

14 (2) The address need not be included in the application.

15 (3) For this section, if the affected person is not the applicant, *affected*
16 *person* includes the applicant.

17 **18 What if application is made for the wrong order?**

18 (1) This section applies if—

19 (a) a person applies for a protection order under this Act; and

20 (b) the order may not be made because the conduct on which the
21 application is based—

22 (i) is not conduct that the order could restrain; but

23 (ii) is conduct that an order under the *Personal Violence*
24 *Act 2016* could restrain; and

25 (c) the application has not been decided.

26 (2) The Magistrates Court may make a protection order under the
27 *Personal Violence Act 2016* even though that protection order was
28 not properly applied for if—

29 (a) the person honestly applied for the order under this Act; and

1 (b) had the application been properly made, the court could have
2 made the protection order under the *Personal Violence*
3 *Act 2016*.

4 (3) This section does not apply to a consent order under this Act.

5 *Note* A consent order may be made whether or not any ground for making the
6 order has been made out (see s 33 (2) (b)).

7 **19 What if application for the wrong order is decided?**

8 (1) This section applies if—

9 (a) a person applies for a protection order under this Act; and

10 (b) the order cannot be validly made because the conduct on which
11 the application is based is not conduct that the order could
12 restrain; and

13 (c) the application is decided before it becomes apparent that
14 paragraph (b) applies; and

15 (d) a protection order under this Act is purportedly made
16 (the *invalid order*); and

17 (e) had an application been properly made, the court could have
18 made a protection order under the *Personal Violence Act 2016*
19 of the same kind as the invalid order.

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

21 A police officer applied for an after-hours order. The conduct relied on was, in
22 fact, personal violence under the *Personal Violence Act 2016*. This section does
23 not apply because there is no equivalent order to an after-hours order under the
24 *Personal Violence Act 2016*.

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

- 1 (2) The invalid order is taken to be an order properly applied for and
2 validly made under the *Personal Violence Act 2016*.

3 **Example**

4 An interim order is made under this Act. In the proceeding to decide the
5 application for a final order the court decides that the protected person is not a
6 family member of the respondent. The court is satisfied, however, that the
7 respondent's conduct in relation to the affected person is personal violence under
8 the *Personal Violence Act 2016*. The interim order made under this Act is taken to
9 be an interim order validly made under the *Personal Violence Act 2016*.

- 10 (3) This section does not apply to a consent order under this Act.

11 *Note* A consent order may be made whether or not any ground for making the
12 order has been made out (see s 33 (2) (b)).

13 **Division 3.3 Interim orders**

14 **Subdivision 3.3.1 Making interim orders**

15 **20 Interim orders—only on application for final order**

16 (1) Subject to section 112 (Court-initiated interim orders), the
17 Magistrates Court may make an interim order only on an application
18 for a final order.

19 (2) The Magistrates Court may make an interim order—

20 (a) at any time before the application for the final order is decided;
21 and

22 (b) even if a copy of the application and a timing notice have not
23 been served on the respondent in accordance with section 45
24 (Service of applications).

25 **21 Interim orders—grounds for making**

26 A court may make an interim order if satisfied that the order is
27 necessary to do either or both of the following until the application
28 for the final order is decided:

29 (a) ensure the safety of an affected person from family violence;

1 (b) prevent substantial damage to an affected person's property.

2 *Note 1* The court must consider the matters mentioned in s 14 in deciding
3 whether to make the interim order.

4 *Note 2* An *affected person* includes any child who hears, witnesses or is
5 otherwise exposed to family violence committed against another person
6 (see s 8 (1), def *family violence*, par (b) and dict).

7 **22 Interim orders—general interim orders and special**
8 **interim orders**

9 (1) On an application for a final order, the Magistrates Court may
10 make—

11 (a) a special interim order if there is a related charge outstanding
12 in relation to the respondent; or

13 (b) in any other case—a general interim order.

14 (2) If the court makes a special interim order in circumstances where a
15 general interim order may be made—

16 (a) the operation of the special interim order is not affected by the
17 fact that a general interim order may have been made; and

18 (b) the court may set aside the special interim order and make a
19 general interim order.

20 (3) If the court makes a general interim order in circumstances where a
21 special interim order may be made—

22 (a) the operation of the general interim order is not affected by the
23 fact that a special interim order may have been made; and

24 (b) the court may set aside the general interim order and make a
25 special interim order.

1 **Subdivision 3.3.2 General interim orders**

2 **23 General interim orders—only 1 may be made**

3 Only 1 general interim order may be made in relation to an
4 application for a final order unless section 27 (General interim
5 orders—further orders) applies.

6 **24 General interim orders—length**

7 (1) A general interim order must not be in force for more than
8 12 months plus any extension under—

9 (a) section 28 (General interim orders—extension for non-service
10 of application); or

11 (b) section 29 (General interim orders—extension for non-service
12 of final order).

13 (2) However, a general interim order made as a consent order must not
14 be in force for more than 16 weeks.

15 *Note* A general interim order made as a consent order may be extended but
16 must not be in force for more than 16 weeks (see s 85).

17 **25 General interim orders—ending**

18 A general interim order ends if any of the following happens:

19 (a) if a period is stated in the order—the period, including any
20 extension under section 28 or section 29, ends;

21 (b) the interim order is revoked;

22 (c) the application for a final order on which the interim order was
23 made is discontinued or dismissed;

24 (d) a final order is made and the respondent is present when it is
25 made.

- 1 **26** **General interim orders—taken to be special interim**
2 **orders if related charges laid**
- 3 (1) This section applies if—
- 4 (a) the court makes a general interim order; and
- 5 (b) after the general interim order is made, but before the final
- 6 order is made, the respondent is charged with an offence; and
- 7 (c) the charge is related to the application for the final order.
- 8 (2) The general interim order is taken to be a special interim order—
- 9 (a) in the same terms as the general interim order; and
- 10 (b) subject to the same conditions as the general interim order.
- 11 (3) The return date for a hearing to decide the application for the final
- 12 order must be changed to a day—
- 13 (a) not earlier than the day all related charges are finalised; and
- 14 (b) not later than 21 days after the day all related charges are
- 15 finalised.
- 16 *Note* If the return date is changed under this section, the registrar may need to
- 17 serve a revised timing notice (see s 45 (6)).

- 18 **27** **General interim orders—further orders**
- 19 (1) This section applies if a general interim order has ended or is about
- 20 to end.
- 21 (2) The Magistrates Court may make a further general interim order if
- 22 satisfied there are special or exceptional circumstances (having
- 23 regard to the objects of this Act and how those objects are to be
- 24 achieved as set out in section 7) that justify the making of a further
- 25 general interim order.
- 26 *Note* Section 25 limits the length of a further general interim order.
- 27 (3) Only 1 further general interim order may be made under this section
- 28 in relation to an application for a final order.

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

3 *Note* An interim order may be amended in certain circumstances (see s 83).

4 **28 General interim orders—extension for non-service of**
5 **application**

- 6 (1) This section applies if the registrar adjourns a proceeding for a final
7 order because the respondent has not been served with a copy of the
8 application for the final order and a timing notice.
- 9 (2) The registrar may also amend a general interim order made in
10 relation to the application by extending it to take into account the
11 delay caused by the adjournment.
- 12 (3) The registrar must not extend a general interim order under
13 subsection (2) for more than 8 weeks.

14 **29 General interim orders—extension for non-service of final**
15 **order**

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

23 *Note* A further order may be made in special or exceptional circumstances
24 (see s 27).

- 25 (2) The general interim order is extended until the final order is served
26 on the respondent.

1 **Subdivision 3.3.3 Special interim orders**

2 **30 Special interim orders—ending**

3 A special interim order ends only when the first of the following
4 happens:

- 5 (a) the special interim order is revoked;
- 6 (b) the application for a final order on which the special interim
7 order was made is discontinued or dismissed;
- 8 (c) a final order is made and the respondent is present when it is
9 made;
- 10 (d) if a final order is made but the respondent is not present when
11 it is made—the final order is served on the respondent.

12 **31 Special interim orders—application not to be decided**
13 **until related charges finalised**

14 (1) If a court makes a special interim order, the court must not decide
15 the application for the final order until all related charges are
16 finalised.

17 *Note* An interim order made by a court under pt 8 (Court-initiated actions) is
18 taken to be a special interim order (see s 113).

19 (2) However, the application for the final order may be finalised by the
20 court before all related charges are finalised—

- 21 (a) if on return of the application at a preliminary conference the
22 respondent does not appear; or
- 23 (b) by consent.

24 **32 Special interim orders—final application decided**

25 (1) This section applies if—

- 26 (a) a court makes a special interim order; and
- 27 (b) all charges related to the special interim order are finalised; and

- 1 (c) the application for the final order has not yet been decided.
- 2 *Note* The court must not decide the application for the final order, unless by
3 consent or because the respondent fails to appear at a preliminary
4 conference, until all related charges are finalised (see s 31).
- 5 (2) After the final related charge is finalised by the court, the court must
6 also—
- 7 (a) if the court is the Magistrates Court—decide the application for
8 the final order; or
- 9 (b) if the court is another court—
- 10 (i) decide the application for the final order as if it were the
11 Magistrates Court; or
- 12 (ii) notify the Magistrates Court that the final related charge
13 has been decided.
- 14 (3) If a court notifies the Magistrates Court under
15 subsection (2) (b) (ii)—
- 16 (a) the court may give the Magistrates Court guidance about, or a
17 direction for, suitable conditions to be included in the final
18 order; and
- 19 (b) the Magistrates Court must decide the application for the final
20 order.
- 21 (4) A decision to dismiss the application for the final order may only be
22 made after giving the parties an opportunity to be heard.
- 23 (5) The court deciding the application for the final order under this
24 section may set a return date for the application.

25 Division 3.4 Consent orders

26 33 Consent orders

- 27 (1) On application for a final order, the court may make an interim or
28 final order with the consent of the parties to the proceeding.

- 1 (2) The order may be made—
- 2 (a) whether or not the parties have attended, or any party has
- 3 attended, before the court in relation to the application; and
- 4 (b) whether or not any ground for making the order has been made
- 5 out; and
- 6 (c) whether or not the court has considered the matters mentioned
- 7 in section 14; and
- 8 (d) without proof or admission of guilt.
- 9 *Note* Section 66 and s 67 apply to require the court to explain the order
- 10 intended to be made under this section if the party to the order is before
- 11 the court.
- 12 (3) Before making a final order under this section, the court may
- 13 conduct a hearing in relation to the particulars of the application if
- 14 the court is satisfied it is in the interests of justice to do so.
- 15 (4) If an automatic consequence flows from the making of a kind of
- 16 order and an order of that kind is made under this section, the
- 17 automatic consequence flows from the making of the order unless—
- 18 (a) this Act allows a discretion for the automatic consequence not
- 19 to flow from the making of an order of that kind; and
- 20 (b) the parties consent to the automatic consequence not flowing
- 21 from the making of the order.
- 22 (5) However, this section does not allow the court to make a protection
- 23 order—
- 24 (a) that may not otherwise be made under this Act; or
- 25 (b) for a period other than a period for which the order may be
- 26 made; or
- 27 *Note* Section 25 limits the length of general interim orders and s 35
- 28 limits the length of final orders.
- 29 (c) if section 77 (Consent orders—party with impaired decision-
- 30 making ability) applies.

1 **Division 3.5 Final orders**

2 **34 Final orders—grounds for making**

- 3 (1) A court may, on application, make a final order if satisfied that—
4 (a) the affected person has reasonable grounds to fear family
5 violence by the respondent; or
6 (b) the respondent has used family violence against the affected
7 person.

8 *Note 1* The court must consider the matters mentioned in s 14 in deciding
9 whether to make the final order.

10 *Note 2* An *affected person* includes any child who hears, witnesses or is
11 otherwise exposed to family violence committed against another person
12 (see s 8 (1), def *family violence*, par (b) and dict).

13 *Note 3* This section does not apply to consent orders (see s 33 (2) (b)).

- 14 (2) For this section—
15 (a) if some or all of the respondent's alleged behaviour in relation
16 to which the application is made appears to be minor or trivial
17 when viewed in isolation, or appears unlikely to recur, the
18 court must still consider whether the behaviour forms part of a
19 pattern of behaviour by the respondent from which the affected
20 person needs protection; and
21 (b) it is sufficient to establish that the affected person has
22 reasonable grounds to fear family violence by the respondent,
23 or that family violence has been used by the respondent in
24 relation to the affected person, if the respondent has—
25 (i) engaged in behaviour mentioned in section 8 (1),
26 definition of *family violence*, paragraph (a) in relation to
27 the affected person; and
28 (ii) the behaviour constitutes an offence.
29 (3) However, it is not necessary to prove that any particular behaviour
30 constitutes an offence to establish that family violence occurred.

1 **35 Final orders—length**

- 2 (1) A final order remains in force for—
3 (a) 2 years, regardless of whether it is stated in the order; or
4 (b) if a shorter period is stated in the order—the period stated; or
5 (c) if the court is satisfied that there are special or exceptional
6 circumstances that justify a longer period—the stated longer
7 period.

8 *Note* The Magistrates Court must, on application, extend a final order unless
9 satisfied the order is no longer necessary to protect the protected person
10 from family violence (see s 86).

- 11 (2) However, a final order made as a consent order must not be longer
12 than 2 years.

13 **Division 3.6 Conditions of family violence orders**

14 **36 Safety of affected person and children paramount**

15 In deciding the conditions to be included in a family violence order,
16 a court must give paramount consideration to the safety and
17 protection of the affected person and any child directly or indirectly
18 affected by the respondent's alleged conduct.

19 **37 Least restrictive principle**

20 A court must ensure the conditions included in a family violence
21 order are the least restrictive of the personal rights and liberties of
22 the respondent as possible that still achieve the objects of this Act
23 and give effect to section 36.

24 **38 Conditions—general**

- 25 (1) A family violence order may include the conditions the court
26 considers necessary having regard to section 36 and section 37.

- 1 (2) Without limiting subsection (1), a family violence order may do 1 or
2 more of the following:
- 3 (a) prohibit the respondent from being on premises where the
4 protected person lives;
- 5 *Note* Section 39 sets out matters to be considered when including a
6 condition prohibiting a respondent from being on premises where
7 the respondent lives.
- 8 (b) prohibit the respondent from being on premises where the
9 protected person works;
- 10 (c) prohibit the respondent from being on premises where the
11 protected person is likely to be;
- 12 (d) prohibit the respondent from being in a particular place;
- 13 (e) prohibit the respondent from being within a particular distance
14 from the protected person;
- 15 (f) prohibit the respondent locating or attempting to locate the
16 protected person;
- 17 (g) prohibit the respondent from contacting the protected person;
- 18 (h) prohibit the respondent from doing anything mentioned in
19 section 8 (1), definition of *family violence*, paragraph (a);
- 20 (i) prohibit the respondent from doing anything mentioned in
21 paragraphs (e) to (h) in relation to—
- 22 (i) a child of the protected person; or
- 23 (ii) any other child if the court is satisfied that there is an
24 unacceptable risk of the child being exposed to family
25 violence;
- 26 (j) prohibit the respondent from causing someone else to do
27 something mentioned in paragraphs (f) to (i);
- 28 (k) prohibit the respondent from taking possession of stated
29 personal property that is reasonably needed by the protected
30 person or a child of the protected person;

- 1 (l) require the respondent to give the protected person stated
2 personal property that the respondent possesses that is
3 reasonably needed by the protected person or a child of the
4 protected person;
- 5 (m) state the conditions on which the respondent may—
- 6 (i) be on particular premises; or
7 (ii) be in a particular place; or
8 (iii) approach or contact a particular person; or
9 (iv) locate or attempt to locate the protected person;
- 10 (n) require the respondent to take part in a program of counselling,
11 training, mediation, rehabilitation or assessment if satisfied that
12 having regard to the respondent's circumstances—
- 13 (i) the respondent is reasonably likely to participate in the
14 program; and
15 (ii) that the respondent's participation in the program is
16 reasonably likely to reduce the risk of the respondent
17 engaging in further family violence against the protected
18 person.

19 **Examples—par (k) and (l)—personal property**

- 20 1 personal clothing
21 2 toiletries
22 3 books
23 4 photographs
24 5 house or car keys

25 **Examples—par (n)—respondent's circumstances**

- 26 1 the respondent's work or educational commitments
27 2 the respondent's transport options
28 3 any disability the respondent may have

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

- 32 (3) A regulation may prescribe requirements for subsection (2) (n).
-

- 1 **39 Exclusion conditions**
- 2 (1) In deciding whether to include an exclusion condition in a family
3 violence order, a court must consider the following:
- 4 (a) as primary factors—
- 5 (i) the physical, emotional and psychological needs of the
6 protected people; and
- 7 (ii) any disability the protected people have; and
- 8 (b) as secondary factors—
- 9 (i) the accommodation needs of, and options for
10 accommodation available to, the protected people, the
11 respondent and any child of the protected person or
12 respondent; and
- 13 (ii) the length of time required for a person mentioned in
14 paragraph (b) (i) to find alternative accommodation.
- 15 (2) However, a court may include an exclusion condition in an interim
16 order against a respondent who is a child only if the court is satisfied
17 that adequate arrangements have been made for the child’s care
18 (including education) and safety.
- 19 **Example**
- 20 if a government agency responsible for the care and protection of children has
21 found alternative accommodation for the child
- 22 *Note* An example is part of the Act, is not exhaustive and may extend, but
23 does not limit, the meaning of the provision in which it appears (see
24 [Legislation Act](#), s 126 and s 132).
- 25 (3) If an applicant for a protection order seeks an exclusion condition in
26 relation to the respondent and the court decides to make the order
27 without the condition, the court must give reasons for the decision.
- 28 (4) In this section:
- 29 ***exclusion condition*** means a condition in a family violence order
30 prohibiting the respondent from being on premises—
- 31 (a) where the respondent lives; or

1 (b) if the respondent is a child—where the child normally receives
2 care (including education) or protection.

3 *protected people*, in relation to a respondent, means the protected
4 person and any child directly or indirectly affected by the
5 respondent's alleged conduct.

6 **40 Personal property orders**

7 In deciding whether to include a condition mentioned in
8 section 38 (2) (k) or (l), a court must consider the income, assets and
9 liabilities of the respondent and the protected person (other than a
10 protected person who is a child).

11 **41 Conditions—consent orders**

12 A final order made as a consent order may contain a condition that a
13 final order made other than as a consent order may contain, but it is
14 not necessary for the court to consider whether the condition is
15 necessary.

16 **42 Conditions may apply for shorter time than order**

17 A condition in a family violence order may have effect for a period
18 stated in the family violence order that is shorter than the period of
19 the order.

20 **Division 3.7 Effect of family violence orders**

21 **43 Offence—contravention of family violence order**

22 (1) This section applies to a person against whom a family violence
23 order is made if the person—

24 (a) was present when the family violence order was made; or

25 (b) has been personally served in accordance with this Act with a
26 copy of the family violence order.

1 (2) The person commits an offence if the person engages in conduct that
2 contravenes the family violence order (including a condition of the
3 order).

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

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

9 (3) This section applies to conduct engaged in within the ACT as well
10 as outside.

11 **44 Firearms licences**

12 (1) If an interim order or an after-hours order is made against a
13 respondent who is the holder of a firearms licence, the respondent's
14 firearms licence is suspended until the interim order or after-hours
15 order ends.

16 *Note* For the application of this section to consent orders, see s 33 (3).

17 (2) If a final order is made against a respondent who is the holder of a
18 firearms licence, the respondent's firearms licence is cancelled.

19 (3) If a respondent's firearms licence is suspended or cancelled, the
20 court or judicial officer may order—

21 (a) the seizure of the firearms licence; and

22 (b) the seizure of any firearm or ammunition in the respondent's
23 possession.

1 **Part 4** **Procedural matters**

2 **Division 4.1** **Service of applications**

3 **45** **Service of applications**

4 (1) If the Magistrates Court receives an application for a protection
5 order, the registrar must serve—

6 (a) on the respondent—

7 (i) a copy of the application; and

8 (ii) a notice stating the following (a *timing notice*):

9 (A) a return date for the application; and

10 (B) if a special interim order is made on the
11 application—that a later return date for a hearing to
12 decide the application will be set after all related
13 charges are finalised; and

14 (C) that if the respondent does not attend the hearing, the
15 Magistrates Court may decide the application in the
16 respondent's absence; and

17 (b) on the applicant—the timing notice.

18 (2) The registrar may serve a copy of the application and timing notice
19 on anyone else the registrar is satisfied has a relevant interest in the
20 proceeding for the final order.

21 **Example**

22 a parent or guardian of a child who is an affected person if the parent or guardian
23 does not live with the child

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

27 (3) If the return date set under section 48 is not the day the application
28 is received, the registrar must act under subsection (1) as soon as
29 practicable.

- 1 (4) If the return date set under section 48 is the day the application is
2 received, the registrar must act under subsection (1) after the
3 application has gone before the Magistrates Court and the court has
4 set a further return date for the application.
- 5 (5) Service on the applicant or respondent under subsection (1) must be
6 personal service unless the Magistrates Court makes an order under
7 section 46.
- 8 (6) If the return date for an application is changed under section 53
9 (Interim orders—return date for hearing to decide final order) or
10 section 26 (3) (General interim orders—taken to be special interim
11 orders if related charges laid), and the registrar has already served a
12 timing notice for the application, the registrar must serve a revised
13 timing notice on each person already served with a timing notice.

14 **46 If personal service of application impracticable**

- 15 (1) This section applies if personal service of an application for a
16 protection order is not reasonably practicable.
- 17 (2) A court may order that the application be served in the way, stated
18 in the order, that the court considers is likely to bring the application
19 to the attention of the person required to be served.

20 **47 Service of documents by police**

- 21 (1) A court may direct that a document required to be served on
22 someone be served by a police officer if the court considers that it is
23 appropriate to do so.
- 24 (2) If the court gives a direction under subsection (1), an authorised
25 police officer must, when asked to do so by the registrar, arrange for
26 the document to be served by a police officer.
- 27 (3) For this section:
- 28 *authorised police officer* means the police officer in charge of a
29 police station.

1 **Division 4.2 Pre-hearing procedures**

2 **48 Registrar sets return date**

3 (1) On receiving an application for a protection order, the registrar
4 must—

5 (a) enter the application into the Magistrates Court's record; and

6 (b) set a return date for the application.

7 *Note* The return date may be for a preliminary conference (see s 51).

8 (2) The return date must be—

9 (a) not later than 2 days after the day the application is made; or

10 (b) not later than 10 days after the day the application is made if—

11 (i) the applicant is not seeking an interim order on the
12 application; and

13 (ii) the registrar is satisfied that the longer time is necessary
14 to allow the respondent to be served with the application
15 and the timing notice.

16 (3) However, unless a magistrate otherwise directs, or gives leave to
17 accept the application, the registrar need not accept an application
18 for a protection order if the registrar is satisfied the application is—

19 (a) an abuse of process; or

20 (b) frivolous or vexatious.

21 **49 Adjournment of proceeding for non-service**

22 (1) The registrar may adjourn a proceeding for a protection order if—

23 (a) a return date has been set for the application for the order; and

24 (b) the respondent has not been served with a copy of the
25 application and timing notice under section 45 (Service of
26 applications).

27 *Note* The registrar may also extend a general interim order (see s 28).

- 1 (2) However, the registrar must not adjourn the proceeding under
2 subsection (1) more than twice.

3 **50 Preliminary conferences—objects**

- 4 (1) The objects of a preliminary conference for a proceeding for a
5 protection order are to—
6 (a) find out whether the proceeding may be settled by consent
7 before it is heard by the Magistrates Court; and
8 (b) work out and limit the issues to be decided in the proceeding;
9 and
10 (c) ensure that the parties are taking the measures necessary to
11 allow the proceeding to be heard quickly.
12 (2) Without limiting how the issues to be decided in the proceeding may
13 be worked out and limited, the preliminary conference must try to
14 identify—
15 (a) facts and issues agreed on; and
16 (b) facts and issues not agreed on; and
17 (c) any unusual or urgent factors that require special attention.

18 *Note* Before making a consent order, the court must explain certain things
19 about the order (see s 66 and s 67).

20 **51 Preliminary conferences**

- 21 (1) The registrar must hold a preliminary conference in relation to an
22 application for a protection order unless the registrar is satisfied that
23 the conference would not, completely or partly, achieve the objects
24 mentioned in section 50.

25 *Note* Words spoken or anything done at the preliminary conference that is
26 related to a question to be decided by the court in the proceeding for the
27 protection order is generally inadmissible as evidence in the proceeding
28 (see s 62).

- 29 (2) A preliminary conference need not be held before an interim order is
30 made.

1 (3) If a preliminary conference must be held, the registrar must, in
2 writing, tell each party to the application—

3 (a) when and where the conference is to be held; and

4 (b) that, if the party does not attend the conference, the
5 nonattendance must be reported to the Magistrates Court.

6 (4) The registrar must tell the Magistrates Court if a party does not
7 attend the preliminary conference if satisfied that the party was
8 given notice of the conference.

9 *Note* If the application is returned before the Magistrates Court at the same
10 time as the preliminary conference is to be held and a party to the
11 application does not attend, the application may be dealt with (see s 55,
12 s 56 and s 57).

13 (5) The failure of the registrar to hold a preliminary conference in
14 relation to an application for a protection order does not affect the
15 validity of the protection order.

16 (6) If a preliminary conference is held, and no consent order is made by
17 the end of the conference, the registrar may set a new return date for
18 a hearing to decide the application for the final order.

19 *Note* If a general interim order is made, the return date must be at least
20 21 days after the day the general interim order is made.
21 If a special interim order is made, the return date must be not earlier
22 than, and not later than 21 days after, the day all related charges are
23 finalised (see s 53).

24 **52 Preparation for hearing**

25 (1) This section applies to an application for a protection order if—

26 (a) if a preliminary conference must be held in relation to the
27 application—the conference has been held; and

28 (b) no consent order has been made as a result of the conference.

29 (2) On or before the return date for the hearing to decide the
30 application, the registrar must prepare the following documents for
31 the hearing of the application:

32 (a) a statement about who will give evidence at the hearing;

- 1 (b) a statement about how long the hearing is likely to be;
2 (c) a summary of the issues agreed to, and not agreed to, by the
3 parties at the conference.
- 4 (3) The registrar may ask an applicant for a protection order for further
5 particulars in relation to the application on or before the return date.
- 6 (4) The registrar may do anything else to assist the hearing of the
7 application that the registrar considers appropriate on or before the
8 return date.

9 **53 Interim orders—return date for hearing to decide final**
10 **order**

11 If the court makes an interim order, the return date for a hearing to
12 decide the application must be, or must be changed to be—

- 13 (a) for a general interim order—at least 21 days after the day the
14 general interim order is made; or
- 15 (b) for a special interim order—
- 16 (i) not earlier than the day all related charges are finalised;
17 and
- 18 (ii) not later than 21 days after the day all related charges are
19 finalised.

20 *Note 1* A return date may have already been set at a preliminary conference
21 (see s 51 (6)).

22 *Note 2* If the return date is changed under this section, the registrar may need to
23 serve a revised timing notice (see s 45 (6)).

24 *Note 3* An interim order made by a court under pt 8 (Court-initiated actions) is
25 taken to be a special interim order (see s 113).

26 **54 Interim orders—endorsement of consent or objection**

- 27 (1) This section applies if a court makes an interim order in the absence
28 of a respondent.

- 1 (2) If the respondent wishes to consent to the interim order becoming a
2 final order, the respondent may—
- 3 (a) fill out the endorsement copy of the interim order in
4 accordance with the instructions on the copy; and
- 5 (b) indicate on the endorsement copy that the respondent consents
6 to the interim order becoming a final order; and
- 7 (c) return it to the Magistrates Court before the return date for the
8 application for the final order.
- 9 (3) If the respondent acts under subsection (2), the interim order
10 becomes a final order on the day the Magistrates Court receives the
11 endorsement copy.
- 12 *Note* The court may make consent orders whether or not a party has attended
13 before the court, whether or not a ground for making the order has been
14 made out, whether or not the court has considered the matters
15 mentioned in s 14 and without proof or admission of guilt (see s 33).
- 16 (4) If the respondent wishes to object to the interim order becoming a
17 final order, the respondent may—
- 18 (a) fill out the endorsement copy of the interim order in
19 accordance with the instructions on the copy; and
- 20 (b) indicate on the endorsement copy that the respondent objects to
21 the interim order becoming a final order; and
- 22 (c) return it to the Magistrates Court at least 7 days before the
23 return date for the application for the final order.
- 24 (5) If the respondent acts under subsection (4), the Magistrates Court
25 may decide the application for the final order at—
- 26 (a) for a general interim order—the next return date for the
27 application for the final order; or
- 28 (b) for a special interim order—a return date for the application
29 after all related charges are finalised.
- 30 *Note* If the court makes a special interim order, the court must not
31 decide the application for the final order until all related charges
32 are finalised (see s 31).
-

- 1 (6) If the respondent wishes to object to the interim order becoming a
2 final order but does not act under subsection (4), the Magistrates
3 Court may decide the application for the final order only if the
4 respondent—
- 5 (a) attends the Magistrates Court on the return date for the
6 application for the final order; and
- 7 (b) objects to the interim order becoming a final order; and
- 8 (c) satisfies the court that the respondent—
- 9 (i) is a person with impaired decision-making ability who
10 was not represented by a lawyer, or another person with a
11 right to represent the person in the proceeding, at any time
12 before the endorsement copy was required to be returned
13 under subsection (4) (c); or
- 14 (ii) otherwise has a reasonable excuse for failing to act under
15 subsection (4).
- 16 **Examples—par (c) (i)**
- 17 1 litigation guardian
- 18 2 disability guardian
- 19 3 for a child, the child’s parent
- 20 **Examples—par (c) (ii)**
- 21 1 the respondent was injured in a car accident and unable to return
22 the endorsement copy in the time required
- 23 2 the respondent is from a non-English speaking background and
24 no-one was able to interpret the endorsement copy for the
25 respondent until after it was required to be returned
- 26 *Note* An example is part of the Act, is not exhaustive and may
27 extend, but does not limit, the meaning of the provision in
28 which it appears (see [Legislation Act](#), s 126 and s 132).

- 1 (7) If the interim order does not become a final order under
2 subsection (3) and the application may not be decided by the
3 Magistrates Court under subsection (5) or (6), the court may decide
4 that the interim order becomes a final order at—
- 5 (a) for a general interim order—the next return date for the
6 application for the final order; or
- 7 (b) for a special interim order—a return date for the application
8 after all related charges are finalised.
- 9 (8) In this section:
- 10 *endorsement copy*, of an interim order, means the copy of the
11 interim order marked as the endorsement copy under section 70 (1).

12 **Division 4.3 Hearings**

13 **55 Applicant not present at return of application**

14 If the applicant is not present, personally or by a representative,
15 when an application for a protection order is returned before the
16 Magistrates Court, the court must—

- 17 (a) dismiss the application; or
18 (b) adjourn the hearing.

19 *Note* An interim order ends if the application for a final order on which the
20 interim order was made is discontinued or dismissed (see s 25).

21 **56 Respondent not present at return of application**

- 22 (1) This section applies to an application for a protection order if the
23 respondent—
- 24 (a) has been served with a copy of the application and timing
25 notice under section 45 (Service of applications); and
- 26 (b) is not present, personally or by a representative, when the
27 application is returned before the Magistrates Court.

- 1 (2) The Magistrates Court must—
2 (a) decide the application in the respondent's absence; or
3 (b) if the court considers it appropriate—
4 (i) issue a warrant for the respondent to be arrested and
5 brought before the court; and
6 (ii) adjourn the proceeding until the respondent is brought
7 before the court.
8 (3) This section does not prevent the Magistrates Court from making an
9 interim order in the proceeding.

10 **57 Neither party present at return of application**

- 11 (1) If neither party to an application for a protection order is present,
12 personally or by a representative, when the application is returned
13 before the court, the Magistrates Court may order that the
14 proceeding be dismissed.
15 (2) If the Magistrates Court orders that the proceeding be dismissed, the
16 court must not make an order about costs.

17 **58 Hearings usually in public**

- 18 The hearing of an application for a protection order must be in
19 public unless—
20 (a) section 59 applies; or
21 (b) the court makes an order under section 60.

22 **59 Public hearing not required**

- 23 The hearing of an application for a protection order, or part of the
24 hearing, need not be in public if—
25 (a) the order sought is a consent order; or

1 (b) the part of the hearing is an application for an interim order and
2 the respondent has not been served with a copy of the
3 application and timing notice under section 45 (Service of
4 applications); or

5 (c) if the respondent has been served with the application and
6 timing notice—the respondent does not appear in the
7 Magistrates Court when the application is returned before the
8 court.

9 **60 Closed hearings in special circumstances**

10 (1) A court hearing an application for a protection order may, if
11 satisfied that it is in the interests of safety, justice or the public to do
12 so, make an order—

13 (a) permitting—

14 (i) the hearing, or part of the hearing, to take place in private;
15 and

16 (ii) stated people to be present at the hearing; or

17 (b) prohibiting or restricting the publication of—

18 (i) evidence given at, or received for, the hearing, whether in
19 public or private; or

20 (ii) a matter in a document filed in the court for the
21 proceeding; or

22 (c) prohibiting or restricting the disclosure to some or all of the
23 parties to the proceeding of—

24 (i) evidence given, or received, at the hearing, whether in
25 public or private; or

26 (ii) a matter in a document filed in the court for the
27 proceeding.

28 (2) A person commits an offence if the person fails to comply with an
29 order under this section.

30 Maximum penalty: 50 penalty units.

- 1 (3) For subsection (1), the making of an order is in the *interests of*
2 *safety, justice or the public* if the order is necessary—
- 3 (a) to protect the affected person and any child directly or
4 indirectly affected by the respondent’s alleged conduct; or
- 5 (b) to protect morals, public order or national security in a
6 democratic society; or
- 7 (c) because the interest of the private lives of the parties require
8 the privacy; or
- 9 (d) to the extent privacy is strictly necessary, in special
10 circumstances of the application, because publicity would
11 otherwise prejudice the interests of justice.

12 **61 Discontinuance**

- 13 (1) The applicant in a proceeding for a protection order may discontinue
14 the proceeding at any time before a final decision is made in the
15 proceeding by filing a notice of discontinuance.

16 *Note* If a form is approved under the *Court Procedures Act 2004*, s 8 for this
17 provision, the form must be used.

- 18 (2) If a proceeding is discontinued, the discontinuance—
- 19 (a) does not prevent a further application being made in relation to
20 the same, or substantially the same, matter; and
- 21 (b) is not a defence in a proceeding on any further application.

22 **62 Admissibility of preliminary conference evidence**

- 23 (1) This section applies to a proceeding for a protection order if a
24 preliminary conference is held in relation to the application for the
25 order.

- 26 (2) Evidence must not be given before, or statements made in, the court
27 about words spoken or anything done at the preliminary conference
28 that is related to a question to be decided by the court in the
29 proceeding unless—

- 30 (a) the parties otherwise agree; or

- 1 (b) the court is satisfied that there are substantial reasons why, in
2 the interests of justice, the evidence should be given, or
3 statements made.

4 **63 Examination of affected person by self-represented**
5 **respondent**

- 6 (1) This section applies if in a proceeding for a family violence order a
7 respondent is not represented by a lawyer.

- 8 (2) An affected person must not be examined personally by the
9 respondent.

10 *Note* An **affected person** includes any child who hears, witnesses or is
11 otherwise exposed to family violence committed against another person
12 (see s 8 (1), def **family violence**, par (b) and dict).

- 13 (3) The court must, as soon as practicable, tell the respondent—

14 (a) about this section; and

15 (b) that the respondent may not present evidence from another
16 witness in relation to a fact in issue (the **contested fact**) to
17 contradict the evidence of the affected person in relation to the
18 contested fact if the other witness's contradictory evidence has
19 not been put to the affected person in cross-examination.

- 20 (4) The court may—

21 (a) appoint a person to examine an affected person on the
22 respondent's behalf; or

23 (b) if the court considers it is in the interests of justice, do 1 or
24 more of the following:

25 (i) adjourn the proceeding to enable the respondent to get a
26 lawyer to conduct the examination;

27 (ii) make—

28 (A) an order that the person get a lawyer; and

29 (B) any other order the court considers necessary to get a
30 lawyer for the person.

1 (5) A person appointed by the court for subsection (4) (a) may ask the
2 witness only the questions that the respondent asks the person to put
3 to the affected person, and must not independently give the
4 respondent legal or other advice.

5 *Note* If the court considers a question to be unduly annoying, harassing,
6 intimidating etc, the court must disallow it or tell the witness that it need
7 not be answered (see *Evidence Act 2011*, s 41 (1) (Improper questions)).

8 (6) In this section:
9 *examine* includes cross-examine and re-examine.

10 **64 Undertakings by respondent**

11 Before a court accepts an undertaking from a respondent in a
12 proceeding for a family violence order, the court must obtain from
13 the respondent and protected person a written acknowledgement that
14 each person understands the following:

- 15 (a) a breach of the undertaking is not an offence;
- 16 (b) the undertaking is not legally enforceable;
- 17 (c) the court's acceptance of the undertaking does not stop the
18 court from making further orders against the respondent to
19 protect the protected person from family violence;
- 20 (d) evidence of a breach of the undertaking may be used in
21 evidence in a later proceeding.

22 **65 Court may inform itself**

23 The court may inform itself in any way it considers appropriate in a
24 proceeding for a family violence order.

25 **Division 4.4 Making of protection orders**

26 **66 Explaining orders if respondent present**

- 27 (1) This section applies if—
- 28 (a) a court intends to make a protection order; and

- 1 (b) the respondent is before the court.
- 2 (2) On making the protection order (other than a consent order), the
3 court must explain to the respondent, in language likely to be readily
4 understood by the respondent—
- 5 (a) the purpose, terms and effect of the order; and
- 6 *Note* Explaining the effect of the order includes explaining any
7 consequence that will automatically flow from the making of the
8 order. For example, if relevant, that any firearms licence of the
9 respondent will automatically be cancelled or suspended.
- 10 (b) the consequences that may follow if the respondent fails to
11 comply with the order; and
- 12 (c) how the order may be amended or revoked; and
- 13 (d) that the order may be enforced or amended anywhere in
14 Australia or New Zealand.
- 15 *Note* Pt 9 deals with the recognition of family violence orders from other
16 jurisdictions in Australia and New Zealand.
- 17 (3) Before making a consent order, the court must explain to the
18 respondent, in language likely to be readily understood by the
19 respondent, the matters mentioned in subsection (2) (a) to (d).
- 20 (4) A failure of the court to comply with this section in relation to a
21 protection order does not affect the validity of the order.

22 **67 Explaining orders if protected person present**

- 23 (1) This section applies if—
- 24 (a) a court intends to make a protection order; and
- 25 (b) the protected person is before the court.

- 1 (2) On making the protection order (other than a consent order), the
2 court must explain to the protected person, in language likely to be
3 readily understood by the person—
- 4 (a) the purpose, terms and effect of the order; and
- 5 *Note* Explaining the effect of the order includes explaining any
6 consequence that will automatically flow from the making of the
7 order. For example, if relevant, that any firearms licence of the
8 respondent will automatically be cancelled or suspended.
- 9 (b) the consequences that may follow if the respondent fails to
10 comply with the order; and
- 11 (c) how the order may be amended or revoked; and
- 12 (d) that, if the protected person aids or abets the respondent to
13 commit an offence against section 43 (Offence—contravention
14 of family violence order), the protected person may also
15 commit an offence; and
- 16 (e) that the order may be enforced or amended anywhere in
17 Australia or New Zealand.
- 18 *Note* The [Criminal Code](#), pt 2.4 deals with offences of aiding and abetting.
- 19 (3) Before making a consent order, the court must explain to the
20 protected person, in language likely to be readily understood by the
21 person, the matters mentioned in subsection (2) (a) to (e).
- 22 (4) A failure of the court to comply with this section in relation to a
23 protection order does not affect the validity of the order.

24 **68 Reasons for order**

- 25 (1) If a court makes a protection order, the court must record the
26 reasons for making the order.
- 27 (2) If the order is a consent order, the reason for making the order is that
28 the parties have consented to it.

- 1 **69** **Orders generally not to include protected person's**
2 **address**
- 3 (1) The protected person's home or work address must not be included
4 in a family violence order unless—
- 5 (a) the protected person agrees to the address being included; or
- 6 (b) it is necessary to include the address to allow the respondent to
7 comply with the order; or
- 8 (c) the court, registrar or another judicial officer making the order
9 is satisfied that the respondent already knows the address.
- 10 (2) For this section, if the protected person is not the applicant,
11 *protected person* includes the applicant.
- 12 **70** **Service of protection orders**
- 13 (1) If a court makes a protection order, the registrar must—
- 14 (a) if the order is an interim order—serve 2 copies of the order
15 (1 marked as the endorsement copy) on the respondent not later
16 than—
- 17 (i) for a general interim order—14 days before the return
18 date for the application for the final order; or
- 19 (ii) for a special interim order—14 days after the day the
20 special interim order is made; and
- 21 (b) if the order is not an interim order—serve a copy of the order
22 on the respondent; and
- 23 (c) give a copy of the order to—
- 24 (i) each other party to the proceeding; and
- 25 (ii) the chief police officer; and
- 26 (iii) the registrar of firearms; and

1 (iv) anyone else the court is satisfied has a relevant interest in
2 the proceeding who does not already have a copy of the
3 order.

4 **Example**
5 a parent or guardian of a child who is an affected person if the parent
6 or guardian does not live with the child

7 *Note 1* Section 108 provides for service of an after-hours order.

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

11 (2) If the registrar is serving a special interim order on a person, the
12 registrar must also give the person a notice telling the person that—

13 (a) the respondent may apply to the court for review of the order
14 under section 87 (Application for review of special interim
15 orders); and

16 (b) the court will set a return date for a hearing to decide the
17 application after all related charges are finalised.

18 (3) Service under subsection (1) (a) must be personal service unless—

19 (a) the respondent is present when the protection order is made; or

20 (b) a court makes an order under section 46 (If personal service of
21 application impracticable).

22 **Division 4.5 Other procedural matters**

23 **71 Police officer party to proceeding—substitution of** 24 **applicant etc**

25 (1) This section applies if a police officer—

26 (a) applies for a protection order for an affected person under
27 section 16 (2) (a); or

28 (b) is taken to be the applicant for a protection order under
29 section 112 (Court-initiated interim orders).

- 1 (2) The Magistrates Court may, on application or its own initiative,
2 substitute as applicant—
- 3 (a) with the protected person’s consent—the protected person; or
4 (b) a litigation guardian for the protected person or any other
5 person with a right to apply for the protected person.
- 6 (3) In a proceeding for a family violence order, the police officer may
7 be represented by—
- 8 (a) another police officer; or
9 (b) a person nominated by the chief police officer.

10 **72 Directions about procedure**

- 11 (1) If the procedure for taking a step in a proceeding is not prescribed
12 under this Act or another territory law, the Chief Magistrate may
13 give a direction about the procedure to be followed for the step.
- 14 (2) A direction is a notifiable instrument.
- 15 *Note* A notifiable instrument must be notified under the [Legislation Act](#).
- 16 (3) If the procedure for taking a step in a proceeding is not prescribed
17 under this Act (including under a direction mentioned under
18 subsection (1)) or another territory law, the Magistrates Court may
19 give a direction about the procedure to be followed in relation to the
20 step.

21 **73 Costs**

- 22 (1) Each party to a proceeding for a family violence order is responsible
23 for the party’s own costs of the proceeding.
- 24 (2) However, a court may make an order about costs against—
- 25 (a) the applicant for a family violence order only if the court is
26 satisfied the application was vexatious, frivolous or in bad
27 faith; or

- 1 (b) the respondent if the court considers it appropriate to do so.
- 2 *Note* If the Magistrates Court orders that a proceeding be dismissed under
3 s 57 (Neither party present at return of application), the court must not
4 make an order about costs (see s 57 (2)).
- 5 (3) For subsection (2) (a), an application is not a vexatious or frivolous
6 application or an application made in bad faith only because it is
7 made then discontinued.
- 8 (4) If the court orders costs against a party to a proceeding (the *payee*)
9 for a family violence order, the amount must not be more than the
10 costs reasonably incurred by the other party.
- 11 (5) The amount stated in the order—
- 12 (a) is a debt owed by the payee to the other party; and
- 13 (b) is a judgment debt enforceable in accordance with the rules
14 under the *Court Procedures Act 2004* applying in relation to
15 the civil jurisdiction of the Magistrates Court.

16 **Division 4.6 Party with impaired decision-making**
17 **ability**

18 **74 Meaning of *impaired decision-making ability***

- 19 (1) For this Act, a person has *impaired decision-making ability* if the
20 person—
- 21 (a) cannot make decisions in relation to a proceeding under this
22 Act; or
- 23 (b) does not understand the nature and effect of the decisions the
24 person makes in relation to the proceeding.
- 25 (2) For subsection (1), a person does not have impaired
26 decision-making ability only because—
- 27 (a) the person makes an unwise decision; or
- 28 (b) a disability guardian is appointed for the person; or
- 29 (c) subject to section 75, the person is a child; or

- 1 (d) the person has, or is taken to have, impaired decision-making
2 ability under another territory law or in relation to another
3 matter.

4 **75 Child respondents**

- 5 (1) A child younger than 10 years old cannot be a respondent to an
6 application for a family violence order.
- 7 (2) Unless the court otherwise orders, for a proceeding for a family
8 violence order, a respondent who is 10 years old or older but
9 younger than 14 years old is taken to have impaired
10 decision-making ability.

11 **76 Representation—party with impaired decision-making**
12 **ability**

- 13 (1) This section applies if—
- 14 (a) the court considers that a party to a proceeding for a family
15 violence order has impaired decision-making ability; and
- 16 (b) the person is not represented by—
- 17 (i) a lawyer; or
- 18 (ii) another person with a right to represent the person.

19 **Examples—par (b) (ii)**

- 20 1 a police officer
21 2 litigation guardian
22 3 disability guardian
23 4 for a child, the child's parent

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

- 27 (2) The court may, on application, or its own initiative—
- 28 (a) adjourn the proceeding so the parties can get representation or
29 appoint a litigation guardian; and

- 1 (b) give the parties information necessary to allow the parties to
2 get representation or appoint a litigation guardian; and
- 3 (c) tell the public advocate that the proceeding has been adjourned
4 so the parties can get representation or appoint a litigation
5 guardian; and
- 6 (d) ask that legal representation be arranged by Legal Aid ACT.
- 7 (3) Nothing in this section prevents a court or judicial officer from
8 making an interim order or after-hours order against a respondent
9 with impaired decision-making ability if the court is satisfied of the
10 matters mentioned in section 21 (Interim orders—grounds for
11 making) or section 100 (After-hours orders—grounds for making).
- 12 *Note* A child younger than 10 years old cannot be a respondent to an
13 application for a family violence order (see s 75).
- 14 (4) In this section:
- 15 *Legal Aid ACT*—see the *Legal Aid ACT 1977*, section 94
16 (Commission to operate as Legal Aid ACT).

17 **77 Consent orders—party with impaired decision-making**
18 **ability**

- 19 (1) This section applies if—
- 20 (a) a court is considering an application for a consent order; and
- 21 (b) the court considers that a party to the proceeding is a person
22 with impaired decision-making ability who is not separately
23 represented by a lawyer or another person with a right to
24 represent the person; and
- 25 (c) it appears to the court that the party should be separately
26 represented.
- 27 (2) The court—
- 28 (a) must not make the consent order; and
- 29 (b) may adjourn the hearing to allow the person to get separate
30 representation.

1 **Division 4.7 Appointment etc of litigation guardian**

2 **78 Litigation guardian—appointment**

3 (1) The following people may be appointed as a litigation guardian for a
4 person with impaired decision-making ability (the *assisted person*)
5 in a proceeding for a family violence order:

6 (a) an individual who is not a person with impaired decision-
7 making ability;

8 (b) the public advocate.

9 (2) A person is appointed by filing with the Magistrates Court a
10 statement—

11 (a) about whether, to the best of the person’s knowledge, the
12 assisted person already has a disability guardian; and

13 (b) to the effect that the person—

14 (i) has no interest in the proceeding that is adverse to the
15 interests of the assisted person; and

16 (ii) agrees to be appointed.

17 (3) If the assisted person already has a disability guardian, the disability
18 guardian may be appointed as the assisted person’s litigation
19 guardian only with the Magistrates Court’s leave.

20 **79 Litigation guardian—powers**

21 (1) This section applies if a litigation guardian has been appointed
22 under section 78 for a person with impaired decision-making ability.

23 (2) Anything that the person is allowed to do under this Act may be
24 done by the person’s litigation guardian.

25 (3) Anything that the person is required to do under this Act must be
26 done by the person’s litigation guardian.

27 *Note* The litigation guardian may not give the person’s evidence for the
28 person (see *Evidence Act 2011*, pt 3.2).

1 **80 Litigation guardian—responsibilities**

2 The litigation guardian of a person with impaired decision-making
3 ability in a proceeding for a family violence order must do
4 everything that is necessary in the proceeding to protect the person’s
5 interests.

6 **81 Litigation guardian—removal**

- 7 (1) A court may in a proceeding for a family violence order, on
8 application or on its own initiative—
- 9 (a) remove the litigation guardian of a person with impaired
10 decision-making ability in the proceeding; and
- 11 (b) order that the proceeding be stayed until someone else has been
12 appointed as a replacement litigation guardian.
- 13 (2) An applicant for an order under subsection (1) must, unless the court
14 otherwise directs, serve notice of the application on the person
15 whose removal is sought and on the person with impaired
16 decision-making ability in the proceeding.
- 17 (3) An application under subsection (1) may be made by a party to the
18 proceeding or anyone else.

1 Part 5 Amendment of protection orders

2 82 Amendment of protection orders—who may apply

3 The Magistrates Court may, on application by any of the following
4 people, amend a protection order:

- 5 (a) the protected person for the order;
- 6 (b) if the protected person is not the applicant for the order—the
7 applicant;
- 8 (c) the respondent to the order.

9 *Note 1* **Amend** includes extend or reduce the period for which the protection
10 order remains in force (see dict).

11 *Note 2* If a form is approved under the *Court Procedures Act 2004*, s 8 for an
12 application, the form must be used.

13 83 Amendment of protection orders

14 (1) The Magistrates Court may amend a protection order only if
15 satisfied that—

- 16 (a) either—
 - 17 (i) there has been a change in the circumstances of a party to
18 the order; or
 - 19 (ii) the order causes unnecessary hardship to the respondent;
20 and
- 21 (b) amending the order will not adversely affect the safety of the
22 protected person or a child of the protected person; and
- 23 (c) the order as amended could be made on application for a
24 protection order; and

- 1 (d) if the amendment would reduce the protection of a child who is
2 15 years old or younger—the child is no longer in need of the
3 greater protection provided by the unamended protection order.

4 **Example—par (a) (i)**

5 An interim order, when first made, did not exclude the respondent from the
6 family home. Several days after the interim order is made, the respondent
7 behaves in a way that increases the risk of harm to the protected person.
8 The protected person now needs an amendment of the interim order to
9 exclude the respondent from the family home.

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

- 13 (2) If the protection order has been amended by being extended, the
14 order must mention that it has been extended.

- 15 (3) An application for an amendment must state the grounds for the
16 application.

17 **Examples**

18 1 the protected person has had a change in circumstances since the original
19 order was made

20 2 the original order restricts the respondent's rights unnecessarily

- 21 (4) An application for an amendment must be made before the original
22 order ends.

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

26 *Note* Section 86 (Final orders—extension) expressly deals with the grounds
27 for amendment.

28 **84 Final orders—temporary amendment**

- 29 (1) The Magistrates Court may, on application, amend a final order for
30 a stated period (a *temporary amendment*).

31 *Note* If a form is approved under the [Court Procedures Act 2004](#), s 8 for an
32 application, the form must be used.

- 1 (2) The order for the temporary amendment must state—
2 (a) the date and time when the amendment starts and ends; and
3 (b) the reasons for the amendment.

4 **85 General interim orders made by consent—extension**

- 5 (1) The Magistrates Court may, on application, amend a general interim
6 order made as a consent order by extending it for an additional
7 stated period, or further additional stated period, of up to 8 weeks.
8 (2) However, a general interim order made as a consent order must not
9 be extended if the extension would mean the order would be in force
10 for more than 16 weeks.

11 **86 Final orders—extension**

- 12 (1) The Magistrates Court must, on application, amend a final order (the
13 *original order*) by extending it for a stated period unless satisfied
14 that a protection order is no longer necessary to protect the protected
15 person from family violence by the respondent.
16 (2) If the parties consent to the application to amend the original order,
17 the Magistrates Court must amend the original order without
18 considering the matter mentioned in subsection (1).
19 (3) An application to extend the original order must be made at least
20 21 days before the day the original order is to end.
21 (4) However, the Magistrates Court may allow a person to apply for an
22 extension after the period mentioned in subsection (3) if satisfied
23 that it is appropriate to do so.
24 (5) The parties may consent to an application being made after the
25 period mentioned in subsection (3).

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

Part 6 Review of orders

87 Special interim orders—application for review

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 22 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](#), s 8 for an application, the form must be used.

88 Special interim orders—review

- (1) On hearing an application for review under section 87, 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.
- (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 protected person.
- (3) If the Magistrates Court revokes the special interim order, the court must notify the protected person in writing as soon as practicable.

1 **89 Particular final orders—application for review**

2 (1) This section applies to an application for review of a final order
3 other than a consent order (the *original order*).

4 *Note* Section 91 applies to applications for review of consent orders.

5 (2) The following people may apply to the Magistrates Court for review
6 of the original order:

7 (a) the protected person;

8 (b) if the protected person is not the applicant—the applicant;

9 (c) with the court’s leave—

10 (i) the respondent; or

11 (ii) someone else with sufficient interest in the original order.

12 **Example—someone with sufficient interest**

13 a protected person’s guardian

14 *Note 1* If a form is approved under the [Court Procedures Act 2004](#), s 8 for an
15 application, the form must be used.

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

19 (3) Before hearing an application for leave for subsection (2) (c), the
20 Magistrates Court must—

21 (a) fix a date and time to hear the application; and

22 (b) give the people mentioned in subsection (2) written notice of
23 the date and time:

24 (4) In this section:

25 *protected person* means the protected person in relation to the
26 original order.

27 *respondent* means the respondent to the original order.

- 1 **90 Particular final orders—review**
- 2 (1) On hearing an application under section 89 to review a final order,
3 the Magistrates Court must, by order—
- 4 (a) dismiss the application; or
- 5 (b) confirm the original order; or
- 6 (c) revoke the original order; or
- 7 (d) set aside the original order and make a new order.
- 8 (2) The Magistrates Court may revoke the original order—
- 9 (a) if the Magistrates Court is satisfied that the original order is no
10 longer necessary to protect the protected person; or
- 11 (b) if—
- 12 (i) the applicant for the original order applies for the review
13 of the original order; and
- 14 (ii) if the revocation would affect the protection of a child
15 who is 15 years old or younger—the Magistrates Court is
16 satisfied the child is no longer in need of the protection
17 provided by the original order.
- 18 (3) If the Magistrates Court revokes the original order, the court must
19 notify the protected person in writing as soon as practicable.
- 20 **91 Consent orders—review**
- 21 (1) A party to a proceeding for a protection order may apply to the
22 Magistrates Court for a review of a consent order (the *original*
23 *order*) only on the ground that the making of the original order was
24 induced or affected by fraud or duress, other than fraud of the party
25 or duress applied by the party.
- 26 (2) On application for the review, the Magistrates Court may—
- 27 (a) either—
- 28 (i) amend, or refuse to amend, the original order; or

- 1 (ii) declare the original order void; and
2 (b) make any order that could have been made on the application
3 in relation to which the original order was made instead of the
4 original order.

5 **92 Appealable decisions**

6 The following decisions by the Magistrates Court under this Act are
7 appealable:

- 8 (a) the making, amending or revoking of a final order;
9 (b) a refusal to make, amend or revoke a final order;
10 (c) a decision mentioned in section 91 made on the review of a
11 consent order.

12 **93 Appeals to Supreme Court**

- 13 (1) A person may appeal to the Supreme Court against an appealable
14 decision if the person was a party to the proceeding in which the
15 decision was made.
16 (2) The person must file a notice of appeal with the Supreme Court not
17 later than 28 days after—
18 (a) if the appealable decision was the making or amending of a
19 final order and the respondent was not present when the final
20 order was made or amended—the day the final order or
21 amendment is served on the respondent; or
22 (b) in any other case—the date of the order.
23 (3) However, the Supreme Court may allow a person to file a notice of
24 appeal after the period mentioned in subsection (2) if satisfied that it
25 is appropriate to do so.

1 **94 Giving notice of appeal**

2 As soon as practicable after filing a notice of appeal mentioned in
3 section 93, the appellant must—

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

7 **95 Evidence on appeal**

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

12 **96 Powers of Supreme Court on appeal**

13 On an appeal, the Supreme Court may—

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

22 **97 Effect of filing appeal**

23 The filing of an appeal against the making or amending of a final
24 order does not affect the operation of the order.

Part 7 After-hours orders

98 Meaning of *business hours*—pt 7

In this part:

business hours, of the Magistrates Court, means the time, on a day the registry of the Magistrates Court is required to be open under the [Court Procedures Rules 2006](#), between the earliest and latest times that the court would normally sit on that day.

99 Police officer may apply for after-hours order

A police officer may apply to a judicial officer for an order against a person outside the business hours of the Magistrates Court (an *after-hours order*).

Note A child younger than 10 years old cannot be a respondent to an application for a family violence order (see s 75).

100 After-hours orders—grounds for making

A judicial officer may make an after-hours order if satisfied that—

- (a) there is a risk to an affected person of family violence by the respondent; and
- (b) the order is immediately necessary to—
 - (i) ensure the safety of the affected person from the violence; or
 - (ii) prevent substantial damage to the affected person's property; and
- (c) in relation to the circumstances creating the risk mentioned in paragraph (a)—
 - (i) it is not practicable to arrest the respondent for a family violence offence; or

1 (ii) there are no grounds to arrest the respondent for a family
2 violence offence.

3 **Examples—par (c) (i)**

4 1 the respondent is in NSW and ACT police do not have the power
5 to make an immediate arrest

6 2 the respondent's immediate location is not known

7 *Note 1* The judicial officer must also consider the matters mentioned in s 14 in
8 deciding whether to make the after-hours order.

9 *Note 2* An **affected person** includes any child who hears, witnesses or is
10 otherwise exposed to family violence committed against another person
11 (see s 8 (1), def **family violence**, par (b) and dict).

12 *Note 3* An example is part of the Act, is not exhaustive and may extend, but
13 does not limit, the meaning of the provision in which it appears (see
14 [Legislation Act](#), s 126 and s 132).

15 **101 After-hours orders—application**

16 (1) An application for an after-hours order may be made by telephone.

17 (2) The police officer making the application must—

18 (a) satisfy the judicial officer about the police officer's identity,
19 rank and identification number; and

20 (b) describe the conduct the application is based on; and

21 (c) give the reasons for the application; and

22 (d) provide any other relevant information required by the judicial
23 officer.

24 (3) If it is practicable in the circumstances, the police officer must send
25 the judicial officer a brief written statement of the matters
26 mentioned in subsection (2) (b) and (c) by fax or email.

27 (4) If the statement is not sent by fax or email, the judicial officer must
28 ensure that a brief description of the conduct the application is based
29 on and the reasons for the application are part of the record of the
30 Magistrates Court.

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- 1 **102 After-hours orders—making**
- 2 (1) An after-hours order must include—
- 3 (a) the name, rank and identification number of the police officer
- 4 who applied for the order; and
- 5 (b) the protected person’s and respondent’s name; and
- 6 (c) the conditions of the order; and
- 7 (d) the time the order is made; and
- 8 (e) the name and position of the judicial officer.
- 9 (2) The after-hours order must—
- 10 (a) be sent to the police officer by fax or email if it is practicable
- 11 to do so; or
- 12 (b) otherwise be dictated to the police officer over the telephone or
- 13 by any other electronic means.
- 14 (3) If the judicial officer dictates the after-hours order over the
- 15 telephone—
- 16 (a) the judicial officer and police officer must each make a record
- 17 of the matters dictated; and
- 18 (b) the record made by the judicial officer is the original
- 19 after-hours order; and
- 20 (c) the record made by the police officer is a copy of the order.
- 21 **103 After-hours orders—refusal**
- 22 If an application for an after-hours order is refused, the judicial
- 23 officer must record in writing—
- 24 (a) the name, rank and identification number of the police officer
- 25 who applied for the order; and
- 26 (b) the name of the person against whom the order was sought;
- 27 and

- 1 (c) the name of the person for whose protection the order was
2 sought; and
3 (d) the reasons for refusing to make the order.

4 **104 After-hours orders—records**

5 The judicial officer must—

- 6 (a) if an after-hours order is made, record the reasons for making
7 the order; and
8 (b) ensure that every record made under section 102 or section 103
9 is part of the record of the Magistrates Court.

10 **105 After-hours orders—detention of person against whom**
11 **order sought**

- 12 (1) If a police officer proposes to apply for an after-hours order against
13 a person, the police officer may—
14 (a) if the police officer is reasonably satisfied of a reason
15 mentioned in section 100 (a) and (b), remove the person to
16 another place; and
17 (b) detain the person until—
18 (i) if the order is made—a copy of the order is given to the
19 person; or
20 (ii) if the application for the order is refused—the police
21 officer is notified by the judicial officer of the refusal.
22 (2) A person must not be detained under this section for longer than
23 4 hours.

24 **106 After-hours orders—length**

- 25 (1) An after-hours order remains in force until the earliest of the
26 following:
27 (a) close of business on the second business day after the day the
28 order is made;

- 1 (b) the order is revoked;
- 2 (c) a final order or interim order made against the respondent in
- 3 relation to the affected person is served on the respondent.

4 *Note* Periods of less than 5 days are to be worked out ignoring any day the

5 Magistrates Court is not open for business (see s 154).

6 (2) An after-hours order cannot be renewed or extended.

7 (3) In this section:

8 *business day* means a day the registry of the Magistrates Court is

9 required to be open under the [Court Procedures Rules 2006](#).

10 **107 After-hours orders—amendment or revocation**

11 (1) An after-hours order may be amended or revoked during business

12 hours of the Magistrates Court in the same way, and on the same

13 grounds, as a protection order may be amended or revoked.

14 (2) An after-hours order may be revoked or amended outside business

15 hours of the Magistrates Court by a judicial officer on application by

16 a police officer.

17 (3) The procedure for amending or revoking an after-hours order

18 outside business hours of the Magistrates Court is the same as the

19 procedure for making an after-hours order.

20 (4) However, the application for amendment or revocation need not

21 describe the conduct the original application for the after-hours

22 order is based on.

23 **108 Service of after-hours orders**

24 (1) A copy of an after-hours order must be served personally on the

25 respondent by a police officer.

26 (2) However, if personal service of an after-hours order is not

27 reasonably practicable, a judicial officer may order that the

28 application be served in the way, stated in the order, that the judicial

29 officer considers is likely to bring the after-hours order to the

30 attention of the respondent.

1 **109 Police required to explain after-hours orders**

- 2 (1) A police officer serving a copy of an after-hours order on a
3 respondent must, as far as practicable in the circumstances, explain
4 to the respondent the purpose, terms and effect of the order and the
5 consequences of contravening the order.
- 6 (2) The failure of a police officer to comply with subsection (1) does
7 not affect the validity of the service of the after-hours order.

8 **110 Police to give reasons for not applying for after-hours**
9 **order**

- 10 (1) This section applies if a police officer—
- 11 (a) deals with an incident in which the police officer is satisfied
12 that there are reasonable grounds, as set out in section 100, for
13 making an after-hours order; and
- 14 (b) decides not to apply for an after-hours order.
- 15 (2) The police officer must make a record of the decision, including a
16 brief note of the reasons for it.

Part 8 Court-initiated actions

111 Application—pt 8

This part applies to a proceeding for a family violence offence (a *family violence proceeding*).

112 Court-initiated interim orders

- (1) In a family violence proceeding, the court may make an interim order against the defendant if the court is satisfied that a court may, if it were acting on an application for a final order, make an interim order against the defendant.

Note The interim order must be served in accordance with s 70.

- (2) The interim order may be made—

- (a) at any time before the family violence proceeding is finalised;
or
(b) if the defendant is found guilty of the offence.

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

- (3) The interim order may be made as a consent order under section 33 as if the court were acting on an application for a final order.

- (4) The court may inform itself of any matter necessary to make an interim order under this section.

- (5) In this section:

finalised—a family violence proceeding is **finalised** if—

- (a) the charge for the offence in the family violence proceeding is withdrawn; or
(b) the director of public prosecutions declines to proceed further with the prosecution of the offence and causes it to be brought to an end; or
(c) the charge is dismissed by a court; or

- 1 (d) the person is discharged by a court following a committal
2 hearing; or
- 3 (e) the person is acquitted, convicted or found guilty of the
4 offence.
- 5 **113 Interim court-initiated protection order taken to be special**
6 **interim order**
- 7 If a court makes an interim order under section 112—
- 8 (a) an application for a final order is taken to have been made and
9 served in accordance with section 45; and
- 10 (b) the order is taken to be a special interim order; and
- 11 (c) the applicant for the protection order is taken to be—
- 12 (i) a stated police officer; or
- 13 (ii) if the protected person consents—
- 14 (A) the protected person; or
- 15 (B) a litigation guardian for the protected person or any
16 other person with a right to apply for the protected
17 person; and
- 18 (d) subdivision 3.3.3 (Special interim orders) applies to the order
19 as if the charge for the offence in the family violence
20 proceeding were an outstanding related charge; and
- 21 (e) division 4.1 (Service of applications) applies to the order; and
- 22 (f) division 4.2 (Pre-hearing procedures) applies to the proceeding
23 with any necessary changes.

-
- 1 **114** **Amendment of existing protection order if later family**
2 **violence charge**
- 3 (1) In a family violence proceeding, a court may amend an existing
4 protection order against the defendant in relation to the protected
5 person if satisfied that an amendment is necessary to protect the
6 protected person or another affected person from family violence.
- 7 *Note 1* An **affected person** includes any child who hears, witnesses or is
8 otherwise exposed to family violence committed against another person
9 (see s 8 (1), def **family violence**, par (b) and dict).
- 10 *Note 2* The court may amend a recognised non-local FVO under s 132.
- 11 (2) If the existing protection order is—
- 12 (a) a general interim order—
- 13 (i) the interim order is taken to be a special interim order;
14 and
- 15 (ii) subdivision 3.3.3 (Special interim orders) applies to it as
16 if the charge for the offence in the family violence
17 proceeding were an outstanding related charge; or
- 18 (b) a special interim order—the charge for the offence in the
19 family violence proceeding is taken to be an outstanding
20 related charge.
- 21 (3) The court may inform itself of any matter necessary to amend a
22 protection order under this section.

1 **Part 9 National recognition of FVOs**

2 **Division 9.1 Preliminary**

3 **115 Definitions—pt 9**

4 In this part:

5 *corresponding law* means a law of another jurisdiction prescribed
6 by regulation that contains provisions that substantially correspond
7 with the provisions in this part.

8 *family violence concern*—see section 116.

9 *family violence order*—see *FVO*.

10 *final FVO* means an FVO that is not an interim FVO.

11 *foreign order* means—

12 (a) a New Zealand FVO; or

13 (b) a prescribed order.

14 *FVO* (or *family violence order*) means a local FVO, an interstate
15 FVO or a foreign order.

16 *general violence order* means—

17 (a) an intervention order under the *Intervention Orders*
18 *(Prevention of Abuse) Act 2009* (SA); or

19 (b) a violence restraining order under the *Restraining Orders*
20 *Act 1997* (WA) other than—

21 (i) a violence restraining order made under that Act,
22 section 11B; or

23 (ii) a police order under that Act.

1 ***interim FVO*** means an FVO that is of an interim or provisional
2 nature and includes the following:

3 (a) an FVO made by a police officer;

4 *Note* An after-hours order is an interim FVO for this part.

5 (b) a temporary protection order under the *Domestic and Family*
6 *Violence Protection Act 2012* (Qld);

7 (c) an FVO prescribed by regulation.

8 ***interstate FVO***—

9 (a) means an order of another jurisdiction prescribed by
10 regulation; but

11 (b) does not include a registered foreign order.

12 ***interstate law enforcement agency*** means—

13 (a) the police force of another jurisdiction; or

14 (b) any other agency of another jurisdiction responsible for the
15 enforcement of FVOs in that jurisdiction.

16 ***issuing authority*** means a court or person with power to make, amend
17 or revoke an FVO under the law of a participating jurisdiction.

18 ***issuing jurisdiction***, for an FVO, means the jurisdiction in which the
19 FVO is made.

20 ***jurisdiction*** means a State or the Territory.

21 *Note* *State* includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

22 ***local FVO***—

23 (a) means a protection order or an after-hours order under this Act;
24 but

25 (b) does not include a registered foreign order.

26 ***local law enforcement agency*** means the Australian Federal Police.

27 ***make*** includes issue.

1 *New Zealand FVO* means an order made under the *Domestic*
2 *Violence Act 1995* (NZ) or under an Act repealed by that Act.
3 *non-local FVO* means an interstate FVO or a foreign FVO.
4 *participating jurisdiction* means the following jurisdictions:
5 (a) the ACT;
6 (b) a jurisdiction in which a corresponding law is enacted.
7 *properly notified*—see section 117.
8 *recognised amendment*—see section 120.
9 *recognised FVO*—see section 119 and section 144.
10 *registered foreign order* means an order of another jurisdiction
11 prescribed by regulation.

12 **116 Meaning of *family violence concern*—pt 9**

- 13 (1) For this part, an intervention order under the *Intervention Orders*
14 *(Prevention of Abuse) Act 2009* (SA) addresses a *family violence*
15 *concern* if the order is made because it is reasonable to suspect
16 that the respondent will, without intervention, commit an act of
17 domestic abuse (within the meaning of that Act).
- 18 (2) For this part, a violence restraining order under the *Restraining*
19 *Orders Act 1997* (WA) addresses a *family violence concern* if the
20 order is made because the respondent has committed, or because it
21 is feared the respondent will commit, an act of family and domestic
22 violence (within the meaning of *that Act*, section 6).
- 23 (3) For this part, a general violence order is taken to be an order that
24 addresses a *family violence concern* if—
25 (a) it is declared for this part and a corresponding law to be an
26 order that addresses a family violence concern (however
27 described) by the issuing authority that makes the order, or

- 1 (b) a registrar of a court of the jurisdiction in which the order was
2 made makes an order for this part and a corresponding law
3 declaring the FVO to be a recognised FVO (however
4 described) in that jurisdiction.

5 **117 Meaning of *properly notified*—pt 9**

- 6 (1) For this part, the making of a local FVO is *properly notified* under
7 territory law if—
8 (a) the respondent is present when the FVO is made; or
9 (b) the FVO is served in accordance with division 4.1 (Service of
10 applications).
11 (2) The making of an interstate FVO is *properly notified* under the law
12 of the jurisdiction in which it is made in the circumstances provided
13 for by the corresponding law of that jurisdiction.
14 (3) An amendment of a recognised FVO that is done in the ACT is
15 *properly notified* under territory law if—
16 (a) the respondent is present when the FVO is made; or
17 (b) the FVO is served in accordance with division 4.1 (Service of
18 applications).
19 (4) An amendment of a recognised FVO that is done in another
20 jurisdiction is *properly notified* under the law of that jurisdiction in
21 the circumstances provided for by the corresponding law of that
22 jurisdiction.

23 **118 Special provisions for registered foreign orders**

- 24 (1) For this part, a *registered foreign order* is taken to be made—
25 (a) in the jurisdiction in which it is registered as a registered
26 foreign order; and
27 (b) when it becomes a registered foreign order in that
28 jurisdiction.

1 (2) A registered foreign order is amended or revoked, for this part, if its
2 registration as a registered foreign order is amended or revoked.

3 (3) A power given under this part to amend or revoke a registered
4 foreign order is a power to amend or revoke registration of the order
5 as a registered foreign order.

6 **Division 9.2 National recognition of FVOs**

7 **Subdivision 9.2.1 General principles**

8 **119 Recognition of FVOs**

9 (1) Each of the following FVOs is a *recognised FVO* in the ACT:

10 (a) a local FVO;

11 (b) an interstate FVO made in a participating jurisdiction;

12 (c) a foreign order that is a registered foreign order in any
13 participating jurisdiction.

14 *Note* Recognition can also extend to FVOs made in jurisdictions that are not,
15 or are not yet, a participating jurisdiction (see div 9.6).

16 (2) An FVO becomes a recognised FVO when it is made.

17 *Note* A foreign order is taken to be made when it is registered as a registered
18 foreign order (see s 118).

19 (3) An FVO is a recognised FVO, subject to this part, for the period for
20 which it remains in force in the jurisdiction in which it is made.

21 **120 Amendment of FVOs**

22 (1) An amendment of a recognised FVO that is done in this or
23 another jurisdiction is a *recognised amendment* in the ACT in the
24 circumstances provided for by this section.

25 (2) An amendment of a local FVO is a recognised amendment in the
26 ACT if the amendment is done—

27 (a) in the ACT by a court or a person authorised to do so under this
28 Act; or

- 1 (b) in another participating jurisdiction by a court under a
2 corresponding law.
- 3 (3) An amendment of an interstate FVO or foreign order is a
4 recognised amendment in the ACT if the amendment is done—
- 5 (a) in the issuing jurisdiction by a court or a person authorised to
6 do so under the law of the issuing jurisdiction; or
- 7 (b) in any participating jurisdiction by a court under this part or a
8 corresponding law.
- 9 *Note* The issuing jurisdiction for a foreign order is the jurisdiction in
10 which the order is made (see s 115, def *issuing jurisdiction* and
11 s 118).
- 12 (4) An amendment is recognised from the time that it is done.

13 **121 Revocation of recognised FVOs**

- 14 (1) An FVO ceases to be a recognised FVO if the FVO is revoked in
15 this or another jurisdiction and that revocation is recognised in the
16 ACT.
- 17 (2) A revocation of a local FVO is recognised in the ACT if the
18 revocation is done—
- 19 (a) in the ACT by a court or a person authorised to do so under this
20 Act; or
- 21 (b) in another participating jurisdiction by a court under a
22 corresponding law.
- 23 (3) A revocation of an interstate FVO or foreign order is recognised in
24 the ACT if the revocation is done—
- 25 (a) in the issuing jurisdiction by a court or a person authorised to
26 do so under the law of the issuing jurisdiction; or
- 27 (b) in any participating jurisdiction by a court under this part or a
28 corresponding law.
- 29 (4) The FVO ceases to be a recognised FVO from the time it is revoked.

- 1 **122 Recognised FVO prevails over earlier comparable FVOs**
- 2 (1) A recognised FVO that is enforceable against a respondent in the
3 ACT (a *new FVO*) supersedes—
- 4 (a) any comparable recognised FVO made earlier than the new
5 FVO; and
- 6 (b) any comparable local FVO made earlier than the new FVO
7 (whether or not the local FVO is a recognised FVO).
- 8 (2) The earlier comparable FVO is superseded from the time the
9 recognised FVO becomes enforceable against the respondent.
- 10 (3) A recognised FVO that is superseded ceases to be a recognised FVO.
- 11 (4) A local FVO that is superseded is revoked.
- 12 (5) An FVO is not superseded to the extent that it relates to a protected
13 person who is not a protected person under the new FVO.
- 14 (6) Accordingly, an FVO continues to be a recognised FVO, and to
15 have effect, to the extent that it relates to a person who is not a
16 protected person under the new FVO.
- 17 (7) An FVO made by a police officer does not supersede a comparable
18 FVO made by a court (of any jurisdiction).
- 19 (8) For this section, an FVO is *comparable* with another FVO if—
- 20 (a) the FVOs are made against the same respondent; and
- 21 (b) the FVOs are made for the protection of 1 or more of the
22 same protected people.
- 23 **123 Making new orders**
- 24 (1) Nothing in this part stops a person from applying for, or an issuing
25 authority from making, a local FVO even though there is a
26 recognised FVO in force that applies to the same respondent.

1 (2) However, a police officer must not make a local FVO if the police
2 officer is aware that there is already a recognised FVO that is
3 enforceable against the respondent in relation to a protected person
4 which—

5 (a) applies to the same respondent and protected person; and

6 (b) was made by a court of any jurisdiction.

7 **Subdivision 9.2.2 Enforcement of recognised FVOs**

8 **124 Recognised FVOs and amendments are enforceable** 9 **against respondent**

10 (1) A recognised FVO, or a recognised amendment to a recognised
11 FVO, is enforceable against the respondent in the ACT.

12 (2) A recognised FVO that is a local FVO becomes enforceable against
13 the respondent in the ACT when the respondent is properly notified
14 of the making of the FVO under territory law.

15 (3) A recognised FVO that is a non-local FVO (other than a foreign
16 order) becomes enforceable against a respondent in the ACT when
17 the respondent is properly notified of the making of the FVO under
18 the law of the jurisdiction in which the FVO was made.

19 (4) A recognised FVO that is a foreign order becomes enforceable
20 against a respondent in the ACT from the time it becomes a
21 recognised FVO.

22 (5) A recognised amendment to a recognised FVO becomes
23 enforceable against the respondent in the ACT when the respondent
24 is properly notified of the variation under the law of the jurisdiction
25 in which the variation is done.

26 **125 Contravention of enforceable recognised FVOs**

27 (1) A non-local FVO that is a recognised FVO and which is
28 enforceable against a respondent in the ACT may be enforced in the
29 ACT as if—

30 (a) it were a local FVO; and

- 1 (b) the respondent had been properly notified of the making of the
2 FVO under territory law.
- 3 (2) A recognised amendment to a non-local FVO that is a recognised
4 FVO and which is enforceable in the ACT may be enforced in the
5 ACT as if it were an amendment of a local FVO.
- 6 (3) A recognised amendment to a recognised FVO made in another
7 jurisdiction that is enforceable against the respondent in the ACT
8 may be enforced as if the respondent had been properly notified of
9 the variation under territory law.
- 10 (4) This section does not affect the operation of the [Criminal Code](#),
11 part 2.7 (Geographical application).
- 12 *Note 1* The [Criminal Code](#), pt 2.7 extends the application of a territory law that
13 creates an offence beyond the territorial limits of the ACT (and
14 Australia) if the required geographical nexus exists for the offence.
- 15 *Note 2* If a respondent contravenes a recognised FVO and has been punished
16 for the contravention in another jurisdiction, the respondent is not liable
17 to be punished for the contravention under this Act (see [Legislation Act](#),
18 s 191 (2)).

19 **Subdivision 9.2.3 Enforcement of non-local FVOs**

20 **126 Non-local FVOs to be treated as local FVOs**

- 21 (1) A recognised FVO that is a non-local FVO has the same effect in the
22 ACT as a local FVO.
- 23 (2) A condition imposed by a non-local FVO has the same meaning as
24 it would have in the jurisdiction in which the FVO was made, but
25 may be enforced in the ACT as if it were a condition of a local FVO.

1 **127 Licences, permits and other authorisations**

- 2 (1) A territory law (a *relevant law*) that restricts the grant of an
3 authorisation, or that authorises or requires an authorisation to be
4 suspended or revoked, if a person is or has been subject to a local
5 FVO extends to a person who is or has been subject to any non-local
6 FVO that is a recognised FVO (as if the non-local FVO were a
7 local FVO).

8 *Note* Under s 44 (Firearms licences) a respondent's firearms licence is
9 automatically suspended or cancelled if a family violence order is made.

- 10 (2) For a relevant law—
11 (a) a non-local FVO that is a final FVO must be treated in the same
12 way as a local FVO that is a final FVO; and
13 (b) a non-local FVO that is an interim FVO must be treated in the
14 same way as a local FVO that is an interim FVO.

- 15 (3) In this section:
16 *authorisation* includes a licence or permit.
17 *grant* includes issue.

18 **128 Recognition of disqualification to hold firearms licence**

- 19 (1) If a non-local FVO that is a recognised FVO disqualifies a person
20 from holding a non-local firearms licence, or type of non-local
21 firearms licence, the person is also disqualified from holding a local
22 firearms licence or local firearms licence of the same type (as the
23 case requires).
24 (2) If the person is disqualified from holding a non-local firearms
25 licence by a recognised FVO, the registrar of firearms must—
26 (a) for an interim recognised FVO—suspend any local firearms
27 licence held by the person; and
28 (b) for a final recognised FVO—revoke any local firearms
29 licence held by the person; and
30 (c) refuse to issue a local firearms licence to the person.

- 1 (3) A recognised FVO disqualifies a person from holding a non-local
2 firearms licence or type of non-local firearms licence if the FVO
3 expressly—
4 (a) disqualifies the person from holding a non-local firearms
5 licence or type of non-local firearms licence; or
6 (b) revokes or requires the person to surrender a non-local firearms
7 licence or type of non-local firearms licence held by the person.

- 8 (4) In this section:

9 *local firearms licence* means a licence, permit or other authorisation
10 under the *Firearms Act 1996*.

11 *non-local firearms licence* means a licence, permit or other
12 authorisation to possess a firearm (within the meaning of the
13 *Firearms Act 1996*) issued under the law of another jurisdiction or
14 country.

15 **129 Recognition of disqualification to hold prohibited**
16 **weapons permit**

- 17 (1) If a non-local FVO that is a recognised FVO disqualifies a person
18 from holding a non-local weapons licence or type of non-local
19 weapons licence, the person is also disqualified from holding a
20 local prohibited weapons permit or local prohibited weapons
21 permit of the same type (as the case requires).
22 (2) The registrar of firearms must revoke any local prohibited
23 weapons permit held by a person, or refuse to issue a local
24 prohibited weapons permit to a person, if the person is disqualified
25 from holding the non-local weapons licence by a recognised FVO.
26 (3) A recognised FVO disqualifies a person from holding a non-local
27 weapons licence or type of non-local weapons licence if the FVO
28 expressly—
29 (a) disqualifies the person from holding a non-local weapons
30 licence or type of non-local weapons licence; or

1 (b) revokes or requires the person to surrender a non-local
2 weapons licence or type of non-local weapons licence held by
3 the person.

4 (4) In this section:

5 *local prohibited weapons permit* means a permit or other
6 authorisation under the *Prohibited Weapons Act 1996*.

7 *non-local weapons licence* means a licence, permit or other
8 authorisation to possess a prohibited weapon (within the meaning of
9 the *Prohibited Weapons Act 1996*) issued under the law of another
10 jurisdiction or country.

11 **130 Costs—non-local FVO**

12 (1) A non-local FVO, to the extent that it requires the payment of
13 money, cannot be enforced in the ACT.

14 (2) The recognition of an FVO made in another jurisdiction does not
15 confer power on an ACT court or tribunal to award costs in relation
16 to a proceeding relating to the FVO that occurred in another
17 jurisdiction.

18 (3) This section does not prevent a court or tribunal awarding costs in
19 relation to a proceeding in the ACT relating to the amendment or
20 revocation of a recognised FVO.

21 **Division 9.3 Amendment and revocation of**
22 **recognised non-local FVOs**

23 **131 Meaning of *court*—div 9.3**

24 In this division:

25 *court* means an ACT court that has power to make local FVOs.

- 1 **132 Power of court to amend or revoke recognised non-local**
2 **FVOs**
- 3 (1) A court may amend or revoke a recognised FVO that is a non-local
4 FVO in accordance with this division as if the FVO were a local
5 FVO.
- 6 (2) A court cannot amend or revoke a non-local FVO if it is a kind of
7 FVO that cannot be amended or revoked by a court in the
8 jurisdiction in which the FVO was made.
- 9 (3) An amendment or revocation of a recognised FVO that is done
10 under this division is not limited in its operation to the ACT.
- 11 (4) To remove any doubt, if a court amends a recognised FVO that was
12 made in another jurisdiction, the other jurisdiction continues to be
13 treated, for this part, as the jurisdiction in which the FVO was made.
- 14 **133 Application for amendment or revocation of recognised**
15 **non-local FVO**
- 16 (1) An application for the amendment or revocation of a recognised FVO
17 that is a non-local FVO may be made to a court as if it were an
18 application for amendment or revocation of a local FVO by any
19 person who would be able to make the application if the FVO were a
20 local FVO.
- 21 (2) An application—
- 22 (a) must be made to a court that would have power to hear the
23 application if the FVO were a local FVO; and
- 24 (b) must be made in accordance with any requirement that would
25 apply if the FVO were a local FVO; and
- 26 (c) may be dealt with (subject to this division) as if the FVO were
27 a local FVO.
- 28 **134 Decision about hearing of application**
- 29 (1) A court that deals with an application for amendment or revocation of
30 a non-local FVO may decide to hear or not hear the application.

- 1 (2) In making the decision, the court may consider the following matters
2 (to the extent relevant):
- 3 (a) the jurisdiction in which the respondent and the protected
4 person under the FVO generally live or are employed;
- 5 (b) any difficulty the party responding to the application may
6 have in attending the proceeding;
- 7 (c) whether there is sufficient information available to the court in
8 relation to the FVO and the basis on which it was made;
- 9 (d) whether any proceeding is being taken in relation to an alleged
10 contravention of the FVO and the jurisdiction in which the
11 proceeding is being taken;
- 12 (e) the practicality of the applicant (if not the respondent under the
13 FVO) applying for and obtaining a local FVO against the
14 respondent with similar conditions;
- 15 (f) the impact of the application on any child;
- 16 (g) any other matters the court considers relevant.
- 17 (3) Without limiting the court's power to not hear an application, the
18 court may not hear the application if the court is satisfied that there
19 has been no material change in the circumstances on which the
20 making of the order was based and that the application is in the
21 nature of an appeal against the order.
- 22 (4) For the purpose of exercising its functions under this division, a
23 court may have regard to any information that the court considers
24 relevant about the making or amendment of an FVO that is provided
25 by an issuing authority of any other jurisdiction.
- 26 *Note* Div 9.4 enables the court to obtain information about FVOs from other
27 jurisdictions.
- 28 (5) A court must refuse to hear an application for amendment or
29 revocation made by the respondent during any period in which,
30 under the law of the issuing jurisdiction for the FVO, the respondent
31 is not entitled to apply for the amendment or revocation of the FVO
32 in the issuing jurisdiction.
-

1 **Division 9.4 Exchange of information**

2 **135 Issuing authorities may obtain FVO information**

3 An ACT issuing authority may obtain information about an FVO
4 from an issuing authority of another jurisdiction, or from a local or
5 interstate law enforcement agency, and use that information for the
6 purpose of exercising its functions under this part.

7 **136 Issuing authorities must provide FVO information**

- 8 (1) An ACT issuing authority that makes, amends or revokes an FVO
9 must provide to a court of any other participating jurisdiction any
10 information about the FVO that the court reasonably requests for
11 the purpose of exercising its functions under a corresponding law.
- 12 (2) An ACT issuing authority that makes, amends or revokes an FVO
13 must provide to a local or interstate law enforcement agency any
14 information about the FVO that the law enforcement agency
15 reasonably requests for the purpose of exercising its law
16 enforcement functions.

17 **137 Law enforcement agencies may obtain FVO information**

18 A local law enforcement agency may obtain information about an
19 FVO from an issuing authority of this or another jurisdiction, or
20 from an interstate law enforcement agency, and use that information
21 for the purpose of exercising its law enforcement functions.

22 **138 Information to be provided to law enforcement agencies**

23 A local law enforcement agency must provide to an interstate law
24 enforcement agency any information it holds about an FVO that the
25 interstate law enforcement agency reasonably requests for the
26 purpose of exercising its law enforcement functions.

1 **Division 9.5** **Other matters**

2 **139** **Certificate evidence—notification**

3 (1) An authorised officer for the ACT may issue a certificate in writing
4 certifying any of the following matters:

5 (a) that the making of a local FVO has been properly notified under
6 territory law;

7 (b) that an amendment of an FVO that was done in the ACT has
8 been properly notified under the territory law.

9 *Note* Under the *Electronic Transactions Act 2001*, s 8 (1) a certificate may be
10 given electronically in certain circumstances.

11 (2) The certificate is admissible in evidence in a proceeding and is
12 evidence of the matters certified.

13 (3) A certificate in writing purporting to be signed by an authorised
14 officer of another jurisdiction and certifying any of the following
15 matters is admissible in evidence in a proceeding and is evidence of
16 the matters certified:

17 (a) that the making of an FVO in that jurisdiction has been properly
18 notified under the law of that jurisdiction;

19 (b) that an amendment of an FVO that was done in that jurisdiction
20 has been properly notified under the law of that jurisdiction.

21 (4) In a document, the words ‘authorised officer’ after a signature are
22 evidence that the person whose signature it purports to be is in fact
23 an authorised officer.

24 (5) In this section:

25 *authorised officer*—

26 (a) of another jurisdiction, means a person (whether or not
27 designated as an authorised officer) who is authorised under
28 the law of another jurisdiction to issue a certificate certifying
29 that the making or amendment of an FVO has been properly
30 notified under the law of that jurisdiction; and

- 1 (b) for the ACT, means—
2 (i) a registrar of an ACT court; or
3 (ii) a police officer for the ACT of or above the rank of
4 sergeant.

5 **Division 9.6 Application of pt 9—existing**
6 **protection orders**

7 **Subdivision 9.6.1 Preliminary**

8 **140 Meaning of *commencement day*—div 9.6**

9 In this division:

10 *commencement day* means the day this part commences.

11 **141 Enforcement of FVOs under other provisions**

- 12 (1) This part does not affect the enforceability in the ACT, otherwise
13 than under this part, of—
14 (a) any local FVO made before the commencement day; or
15 (b) any interstate FVO or foreign order registered in the ACT,
16 before the commencement day, under the *Domestic Violence*
17 *and Protection Orders Act 2008* (repealed), part 12 (Reciprocal
18 arrangements).
19 (2) However, an FVO made in the ACT before the commencement day
20 can be superseded under section 122 (Recognised FVO prevails
21 over earlier comparable FVOs), on or after the commencement day,
22 by a recognised FVO that is made later.

1 **Subdivision 9.6.2 FVOs to which scheme applies**

2 **142 FVOs made in the ACT**

3 Division 9.2 applies to any local FVO or foreign FVO that is
4 made in the ACT on or after the day the *Crimes (Domestic and*
5 *Personal Violence) Amendment (National Domestic Violence*
6 *Orders Recognition) Act 2016* (NSW) commences.

7 **143 FVOs made in other jurisdictions**

8 (1) Division 9.2 applies to an FVO made in another participating
9 jurisdiction that is a recognised FVO in that jurisdiction under the
10 corresponding law for that jurisdiction.

11 (2) To remove any doubt, section 119 (Recognition of FVOs) extends to
12 the following FVOs:

13 (a) any interstate FVO that was made in another participating
14 jurisdiction before the commencement day that is a recognised
15 FVO in that jurisdiction;

16 (b) any foreign order that became a registered foreign order in
17 another participating jurisdiction before the commencement
18 day that is a recognised FVO in that jurisdiction.

19 (3) Section 120 and section 121 extend to any amendment or
20 revocation of an FVO mentioned in subsection (2), that was done
21 in a participating jurisdiction before the commencement day, as if
22 the FVO were a recognised FVO.

23 (4) However, a non-local FVO, and any amendment of a non-local FVO,
24 does not become enforceable against the respondent in the ACT,
25 under this part, until the commencement day (even if the making of
26 the FVO, or amendment, was properly notified before that date).

1 **Subdivision 9.6.3 Extension of scheme to older FVOs**

2 **144 FVOs declared to be recognised FVOs**

- 3 (1) Each of the following FVOs is also taken to be a *recognised FVO*:
- 4 (a) an FVO that is declared by a registrar of the Magistrates Court
5 to be a recognised FVO in the ACT under subdivision 9.6.4;
- 6 (b) an FVO that is declared by a registrar of a court of another
7 participating jurisdiction to be a recognised FVO in that
8 jurisdiction under a corresponding law.
- 9 (2) A recognised FVO mentioned in subsection (1) becomes
10 enforceable against the respondent in the ACT, under this part, when
11 the declaration is made (despite section 123).

12 **145 FVOs declared to be recognised in other jurisdictions**
13 **before commencement day**

- 14 (1) To avoid any doubt, section 144 extends to an FVO declared by a
15 registrar of a court of another participating jurisdiction to be a
16 recognised FVO before the commencement day.
- 17 (2) Section 120 and section 121 extend to any amendment or
18 revocation of an FVO mentioned in subsection (1), that was done
19 in a participating jurisdiction before the commencement day, as if
20 the FVO were a recognised FVO.
- 21 (3) However, the FVO, and any amendment of the FVO, does not
22 become enforceable against the respondent in the ACT, under this
23 part, until the commencement day.

24 **Subdivision 9.6.4 Power to declare FVO to be recognised**

25 **146 Power to declare FVO to be recognised**

- 26 (1) The registrar of the Magistrates Court may, by order, declare an
27 FVO made in any jurisdiction to be a recognised FVO in this
28 jurisdiction.

- 1 (2) A declaration may be made in relation to an FVO made in any
2 jurisdiction that is in force in the issuing jurisdiction and is not a
3 recognised FVO in the ACT.
- 4 (3) The jurisdiction in which the FVO was made does not have to be
5 a participating jurisdiction.
- 6 (4) The registrar must make a declaration under this section if an
7 application for the declaration is made in accordance with this
8 subdivision, unless the registrar decides to refuse to make the
9 declaration in the interests of justice.
- 10 (5) Without limiting subsection (4), the registrar may refuse to make
11 the declaration if the registrar is not satisfied that the respondent
12 has been properly notified of the making of the FVO under the law
13 of the jurisdiction in which the FVO was made.
- 14 *Note* Under s 144, the FVO becomes enforceable against the respondent
15 when the declaration is made. Notice of the declaration is not to be
16 served on the respondent unless the person making the application
17 consents to service.
- 18 (6) However, the registrar cannot declare a general violence order to be a
19 recognised FVO in the ACT.
- 20 (7) Notice of a declaration is not to be served on the respondent unless
21 the person who makes the application consents to service.
- 22 *Note* Under s 118, a foreign order is taken to be made in any jurisdiction in
23 which it is registered as a registered foreign order. Accordingly, this
24 section extends to registered foreign orders.

25 **147 Application for order**

- 26 (1) An application for a declaration that an FVO is a recognised FVO in
27 the ACT may be made by any person who would be able to make an
28 application for an amendment of the FVO if the FVO were a
29 recognised FVO.
- 30 (2) The application must—
- 31 (a) be made in a form approved by the registrar of the Magistrates
32 Court; and

1 (b) be accompanied by any information or evidence the registrar
2 requires.

3 *Note* It is only necessary to make an application in one participating
4 jurisdiction. Under s 144, once a declaration is made in any
5 participating jurisdiction the FVO will be treated as a recognised FVO
6 in all participating jurisdictions.

7 **148 Functions of registrar may be exercised by court**

8 A court with power to make a local FVO may exercise any of the
9 functions of the registrar of the Magistrates Court under this
10 subdivision.

1 **Part 10** **Miscellaneous**

2 **Division 10.1** **Public access and publication**

3 **149** **Publication of reports about proceedings—offence**

4 (1) A person commits an offence if—

5 (a) the person publishes (completely or partly) an account or
6 report of a proceeding for a family violence order; and

7 (b) the account or report—

8 (i) identifies a party to the proceeding; or

9 (ii) identifies a person who is related to, or associated with, a
10 party to the proceeding or is, or is claimed to be, in any
11 other way concerned in the matter to which the
12 proceeding relates; or

13 (iii) identifies a witness to the proceeding; or

14 (iv) allows the identity of a person mentioned in
15 subparagraph (i), (ii) or (iii) to be worked out.

16 **Maximum penalty:** 10 penalty units.

17 *Note* It is an offence under the [Criminal Code](#), s 712A for a person to publish
18 information that identifies someone else as a person who is or was a
19 child or young person in a proceeding under this Act.

20 (2) In this section:

21 ***proceeding***, for a family violence order, includes a proceeding in
22 relation to a declaration under section 116 (Meaning of *family*
23 *violence concern*—pt 9).

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

- 1 **150 Publication of reports about proceedings—exceptions to**
2 **offence**
- 3 (1) Section 149 does not prevent—
- 4 (a) a party to a proceeding for a family violence order from—
- 5 (i) telling someone else about the contents of an order made
6 in the proceeding; or
- 7 (ii) giving someone else a copy of the order; or
- 8 (b) the publication of an account or report of a proceeding for a
9 family violence order if the publication is a permitted
10 publication about proceedings mentioned in schedule 1,
11 section 1.2.
- 12 (2) A court may make an order allowing circulation of, or may permit
13 the circulation of, information the publication of which would
14 otherwise contravene section 149 only if satisfied that—
- 15 (a) it is in the public interest; or
- 16 (b) it will promote compliance with the family violence order; or
- 17 (c) it is necessary for the proper operation of this Act.

18 **Division 10.2 Other matters**

19 **151 Deciding application if criminal proceedings**

20 The power of a court or judicial officer to make, amend or revoke a
21 family violence order in relation to a person may be exercised even
22 if the person has been charged with, or convicted or found guilty of,
23 an offence arising out of the same conduct as that out of which the
24 application for the order arose.

25 *Note* If the Magistrates Court is making an interim order and there is a related
26 charge outstanding in relation to the respondent, the court must make a
27 special interim order (see s 22).

1 **152** **Criminal and civil liability not affected by family violence**
2 **orders**

3 The making, amendment or revocation of a family violence order
4 does not, except as provided by this Act, affect the civil or criminal
5 liability of the respondent in relation to the same conduct as that out
6 of which the application for the order arose.

7 **153** **Crimes Act, s 397 (1)**

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

11 **154** **Working out time if less than 5 days**

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

15 **155** **Regulation-making power**

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

17 *Note* A regulation must be notified, and presented to the Legislative
18 Assembly, under the [Legislation Act](#).

19 (2) A regulation may create offences and fix maximum penalties of not
20 more than 10 penalty units for the offences.

1 **Part 20 Transitional**

2 **200 Existing registered orders under repealed Act**

- 3 (1) This section applies to an order that corresponds to a family
4 violence order (an *existing non-local order*)—
- 5 (a) registered under the [repealed Act](#), part 12 (Reciprocal
6 arrangements) before the commencement of part 9 (National
7 recognition of FVOs); and
- 8 (b) in force immediately before the commencement of part 9.
- 9 (2) The existing non-local order—
- 10 (a) is not affected by part 9; and
- 11 (b) the order is not a local FVO for part 9; and
- 12 (c) the repealed Act continues to apply to the order as if the Act
13 had not been repealed.
- 14 (3) If the existing non-local order becomes a recognised FVO in the
15 ACT under part 9—
- 16 (a) the order stops having affect under the [repealed Act](#); and
- 17 (b) part 9 applies to the order in the same way as it applies to any
18 other recognised FVO that is a non-local FVO.
- 19 (4) In this section:
- 20 *repealed Act* means the [Domestic Violence and Protection Orders](#)
21 [Act 2008](#).

1 **201 Transitional regulations**

- 2 (1) A regulation may prescribe transitional matters necessary or
3 convenient to be prescribed because of the enactment of this Act.
- 4 (2) A regulation may modify this part (including in relation to another
5 territory law) to make provision in relation to anything that, in the
6 Executive's opinion, is not, or is not adequately or appropriately,
7 dealt with in this part.
- 8 (3) A regulation under subsection (2) has effect despite anything
9 elsewhere in this Act.

10 **202 Expiry—pt 20**

11 This part expires 2 years after the day it commences.

12 *Note* Transitional provisions are kept in the Act for a limited time.
13 A transitional provision is repealed on its expiry but continues to have
14 effect after its repeal (see [Legislation Act](#), s 88).

1 **Part 21** **Repeals and consequential**
2 **amendments**

3 **203** **Legislation repealed**

4 The following legislation is repealed:

- 5 • *Domestic Violence and Protection Orders Act 2008* (A2008-46)
6 • *Domestic Violence and Protection Orders Regulation 2009*
7 (SL2009-10).

8 **204** **Legislation amended—schs 2 and 3**

9 This Act amends the legislation in schedules 2 and 3.

Schedule 1 Permitted publication about proceedings

(see s 150 (1) (b))

1.1 Definitions—sch 1

In this schedule:

authorised person under the *Children and Young People Act 2008*—see the *Children and Young People Act 2008*, section 26.

care and protection chapters—see the *Children and Young People Act 2008*, section 336.

1.2 Permitted publication about proceedings

Table 1.2

column 1 item	column 2 permitted publication about proceedings
1	information circulated in accordance with— (a) an order of the Magistrates Court; or (b) the written permission of a magistrate
2	information communicated to a court or tribunal under the <i>Family Law Act 1975</i> (Cwlth), section 60CF (1) or (2) (Informing court of relevant family violence orders)
3	information given to a criminal justice entity under the <i>Crimes (Sentencing) Act 2005</i> , section 136 (Information exchanges between criminal justice entities)
4	information given to the director-general in relation to the exercise of the director-general's functions
5	information given to the director-general responsible for, or an authorised person under, the <i>Children and Young People Act 2008</i> to allow the director-general to exercise the director-general's powers under the care and protection chapters of that Act

Schedule 1 Permitted publication about proceedings

Section 1.2

column 1 item	column 2 permitted publication about proceedings
6	information given to the public advocate in relation to the exercise of the public advocate's functions
7	a pleading, transcript of evidence or other document communicated to— (a) people concerned with any other proceeding in a court or tribunal for use in relation to that proceeding; or (b) people concerned with the disciplinary proceeding of a lawyer, for use in relation to that proceeding; or (c) an entity that grants legal aid, to help decide whether to provide legal aid in a particular case
8	a matter published in law reports or other technical or professional publications
9	a matter given to someone in relation to the person's professional practice
10	information about a party to a proceeding, or a family violence order made in the proceeding, communicated to another person, with the party's permission, for the purpose of organising the party's personal affairs
11	information given to a law enforcement agency under section 138 (Information to be provided to law enforcement agencies)

1 **Schedule 2** **Family violence amendments**

2 (see s 204)

3 **Part 2.1** **Bail Act 1992**

4 **[2.1] Section 16 (5)**

5 *omit*

6 decides to grant bail to an accused person in relation to a domestic
7 violence offence

8 *substitute*

9 decides to grant bail to an accused person, or is notified that bail has
10 been granted to an accused person, in relation to a family violence
11 offence

12 **Part 2.2** **Children and Young People**
13 **Act 2008**

14 **[2.2] Division 14.3.5**

15 *substitute*

16 **Division 14.3.5** **Protection orders**

17 **458** **Definitions—div 14.3.5**

18 (1) In this division:

19 *protection order* means an FVO or a PVO.

20 *relevant Act* means—

21 (a) for an FVO—the *Family Violence Act 2016*; or

22 (b) for a PVO—the *Personal Violence Act 2016*.

1 (2) In this section:

2 **FVO** means a protection order under the *Family Violence Act 2016*.

3 *Note* A protection order means an interim or final order and includes an order
4 about the seizure of a firearms licence, firearm or ammunition and an
5 order amending a protection order (see *Family Violence Act 2016*, dict,
6 def **protection order**).

7 **PVO** means a protection order under the *Personal Violence*
8 *Act 2016*.

9 *Note* A protection order means an interim or final personal or workplace
10 order and includes an order about the seizure of a firearms licence,
11 firearm or ammunition and an order amending a protection order (see
12 *Personal Violence Act 2016*, dict, def **protection order**).

13 **459 Childrens Court may make or amend protection orders**

14 (1) This section applies if an application for a care and protection order
15 for a child or young person (the **protected child or young person**)
16 has been made but not yet finally decided.

17 (2) The Childrens Court may—

18 (a) make a protection order for an affected person against a person
19 if satisfied that if an application for a protection order were
20 made under the relevant Act, the order could have been validly
21 made; or

22 (b) exercise the jurisdiction of the Magistrates Court under the
23 relevant Act to vary an existing protection order protecting an
24 affected person.

25 *Note 1* A child younger than 10 years old cannot be a respondent to an
26 application for a protection order (see *Family Violence Act 2016*, s 75
27 and *Personal Violence Act 2016*, s 14).

28 *Note 2* The Childrens Court may make an interim protection order before
29 adjourning an application or cross-application under s 431 (Interim
30 matters—Court action before adjournment).

1 (3) The Childrens Court may make a protection order or amend an
2 existing protection order—

3 (a) on its own initiative; or

4 (b) on application by a party to the proceeding for the care and
5 protection order; or

6 (c) on application by the public advocate.

7 *Note* The procedural requirements set out in ch 19 apply to a proceeding
8 involving a protection order under this division including the following:

9 • statements, documents and reports must be included in the
10 application (see s 696)

11 • oral applications may also be made (see s 698)

12 • in the proceeding, a fact is proved if it is proved on the balance of
13 probabilities (see s 711)

14 • the court may make an order imposing an obligation on a person
15 only if the person agrees to it, has been given an opportunity to be
16 heard about it or cannot be found (see s 718).

17 (4) In this section:

18 *affected person* means—

19 (a) a protected child or young person against whom family
20 violence has been, or is likely to be, committed; or

21 (b) a family member of the protected child or young person if
22 family violence has been, or is likely to be, committed—

23 (i) against the family member by the protected child or
24 young person; or

25 (ii) by another person against a protected child or young
26 person and that family violence affects the family
27 member.

- 1 *family member*, of a protected child or young person, means—
- 2 (a) a child or young person who is a brother, sister, half-brother,
3 half-sister, stepbrother or stepsister of the protected child or
4 young person; or
- 5 (b) a child or young person who lives in the same household as the
6 protected child or young person; or
- 7 (c) a parent of, or another person that has parental responsibility
8 for, the protected child or young person.

9 *family violence*—see the *Family Violence Act 2016*, section 8.

10 **460 Effect of making protection order under this Act**

11 If the Childrens Court makes a protection order under this
12 division—

- 13 (a) the order is taken to have been made under the relevant Act;
14 and
- 15 (b) the Childrens Court is taken to have exercised jurisdiction
16 under the relevant Act as the Magistrates Court when making
17 the order; and
- 18 (c) the order may be amended, revoked or appealed from under the
19 relevant Act.

20 **Part 2.3 Crimes (Sentencing) Act 2005**

21 **[2.3] Section 34 (2)**

22 *substitute*

- 23 (2) In deciding how an offender should be sentenced for an offence, a
24 court must not reduce the severity of a sentence it would otherwise
25 have imposed because—
- 26 (a) the offence is a family violence offence; or

- 1 (b) a family violence order under the *Family Violence Act 2016* or
2 a protection order under the *Domestic Violence and Protection*
3 *Orders Act 2008* (repealed) is in force against the offender in
4 relation to the family violence offence; or
- 5 (c) of an automatic forfeiture of property, a forfeiture order, or a
6 penalty order under the *Confiscation of Criminal Assets*
7 *Act 2003*.

8 **Part 2.4 Evidence (Miscellaneous**
9 **Provisions) Act 1991**

10 **[2.4] Section 37, definition of *similar act witness*, paragraph (a)**

11 *after*
12 committed on
13 *insert*
14 or in the presence of

15 **[2.5] New section 40D (c)**

16 *after the note, insert*
17 (c) is a complainant or similar act witness in the proceeding.

18 **[2.6] New section 40D (2)**

19 *insert*
20 (2) In this section:
21 ***complainant***, in a sexual or a violent offence proceeding, means the
22 person, or any of the people, against whom a sexual or violent
23 offence the subject of the proceeding is alleged, or has been found,
24 to have been committed.

Schedule 2
Part 2.4

Family violence amendments
Evidence (Miscellaneous Provisions) Act 1991

Amendment [2.6]

- 1 *similar act witness* means a witness in a sexual or violent offence
2 proceeding who gives, or intends to give, evidence in the proceeding
3 that—
- 4 (a) relates to an act committed on or in the presence of the witness
5 by the accused; and
- 6 (b) is tendency evidence or coincidence evidence under the
7 *Evidence Act 2011*.

1 **Schedule 3** **Consequential amendments**

2 (see s 204)

3 **Part 3.1** **Bail Act 1992**

4 **[3.1] Section 9B (b) (iv)**

5 *substitute*

6 (iv) an offence against the *Domestic Violence and Protection*
7 *Orders Act 2008* (repealed), section 90 (Offence for
8 contravention of protection order);

9 (v) an offence against the *Family Violence Act 2016*,
10 section 43 (Offence—contravention of family violence
11 order);

12 (vi) an offence against the *Personal Violence Act 2016*,
13 section 35 (Offence—contravention of protection order);
14 or

15 **[3.2] Section 9D**

16 *omit*

17 domestic violence offence

18 *substitute*

19 family violence offence

20 **[3.3] Section 9D (4)**

21 *omit*

22 Domestic violence

23 *substitute*

24 Family violence

1 **[3.4] Section 9F heading**

2 *substitute*

3 **9F Family violence offence—bail by authorised officer**

4 **[3.5] Section 9F (1)**

5 *omit*

6 domestic violence

7 *substitute*

8 family violence

9 **[3.6] Section 9F (6) and note**

10 *substitute*

11 (6) In this section:

12 *family member*, in relation to a person accused of a family violence
13 offence—see the *Family Violence Act 2016*, section 9.

14 *protected person*, in relation to a person accused of a family
15 violence offence—

16 (a) means a person against whom the alleged conduct making up
17 the offence was directed; and

18 (b) includes any other family member in relation to the accused
19 person.

20 **[3.7] Section 14 (2) (b)**

21 *omit*

22 domestic violence

23 *substitute*

24 family violence

1 **[3.8] Section 16 (6) and (7)**

2 *omit*

3 domestic violence

4 *substitute*

5 family violence

6 **[3.9] Section 23A (2)**

7 *omit*

8 Domestic violence

9 *substitute*

10 Family violence

11 **[3.10] Section 25 (4) (f)**

12 *omit*

13 domestic violence

14 *substitute*

15 family violence

16 **[3.11] Section 25 (4) (f) (i)**

17 *after*

18 stated person

19 *insert*

20 or engage in any other behaviour mentioned in the *Family Violence*
21 *Act 2016*, section 8 (1), definition of *family violence*, paragraph (a),
22 in relation to the stated person

1 **[3.12] Dictionary, definition of *applicable bail criteria*,**
2 **paragraph (b)**

3 *omit*

4 Domestic violence

5 *substitute*

6 Family violence

7 **[3.13] Dictionary, definition of *domestic violence offence***

8 *omit*

9 **[3.14] Dictionary, new definition of *family violence offence***

10 *insert*

11 *family violence offence*—see the *Family Violence Act 2016*,
12 dictionary.

13 **Part 3.2 Children and Young People**
14 **Act 2008**

15 **[3.15] Section 421, definition of *DVPO protection order***

16 *omit*

17 **[3.16] Section 431 (2) (d) and note**

18 *substitute*

19 (d) make an interim protection order under section 459;

1 **[3.17] Section 679 (1) (h) and (i) and notes**

2 *substitute*

3 (h) a protection order;

4 *Note* A protection order is an order under the *Family Violence Act 2016*
5 or the *Personal Violence Act 2016* made by the Childrens Court
6 under s 459.

7 **[3.18] Section 686 (1) (a) (v) and (vi) and notes**

8 *substitute*

9 (v) a protection order;

10 *Note* A protection order is an order under the *Family Violence*
11 *Act 2016* or the *Personal Violence Act 2016* made by the
12 Childrens Court under s 459.

13 **[3.19] Section 835 (1)**

14 *substitute*

15 (1) A person may appeal to the Supreme Court in relation to a matter
16 arising under this Act in accordance with section 836.

17 *Note* An appeal in relation to a protection order under the *Family Violence*
18 *Act 2016* or the *Personal Violence Act 2016* made by the Childrens
19 Court under s 459, is dealt with under the relevant Act (see s 460 (c)).

20 **[3.20] Dictionary, definitions**

21 *omit the definitions of*

22 *domestic violence*

23 *DVPO final protection order*

24 *DVPO interim protection order*

25 *DVPO protection order*

1 **[3.21] Dictionary, new definitions**

2 *insert*

3 *protection order*—see section 458.

4 *relevant Act*, for division 14.3.5 (Protection orders)—see
5 section 458.

6 **Part 3.3 Corrections Management**
7 **Act 2007**

8 **[3.22] Section 47 (6), example**

9 *omit*

10 domestic violence

11 *substitute*

12 family violence

13 **Part 3.4 Court Procedures Act 2004**

14 **[3.23] Section 15 (2) (c) (iv) (C)**

15 *substitute*

16 (C) the *Family Violence Act 2016*;

17 **[3.24] New section 15 (2) (c) (iv) (EA)**

18 *insert*

19 (EA) the *Personal Violence Act 2016*;

1 **Part 3.5** **Crimes Act 1900**

2 **[3.25] Section 191 (4) (b)**

3 *substitute*

4 (b) an application for a protection order under the *Family Violence*
5 *Act 2016* has not been made.

6 **[3.26] Section 192 (1)**

7 *omit everything before paragraph (a), substitute*

8 (1) In enforcing an order under a protection order provision, a police
9 officer may—

10 **[3.27] Section 192 (5) (b)**

11 *substitute*

12 (b) the licence has not been cancelled or suspended under a
13 protection order provision;

14 **[3.28] New section 192 (8)**

15 *insert*

16 (8) In this section:

17 *protection order provision* means—

18 (a) the *Family Violence Act 2016*, section 44 (Firearms licences);
19 or

20 (b) the *Personal Violence Act 2016*, section 37 (Interim orders—
21 respondent's firearms) or section 38 (Final orders—
22 respondent's firearms).

1 **[3.29] Section 212 (2)**

2 *omit*

3 domestic violence

4 *substitute*

5 family violence

6 **[3.30] Section 212 (5)**

7 *substitute*

8 (5) In this section:

9 *family violence offence*—see the *Family Violence Act 2016*,
10 dictionary.

11 **Part 3.6 Crimes (Restorative Justice)**
12 **Act 2004**

13 **[3.31] Section 12, definition of *domestic violence offence***

14 *omit*

15 **[3.32] Section 12, new definition of *family violence offence***

16 *insert*

17 *family violence offence*—see the *Family Violence Act 2016*,
18 dictionary.

19 **[3.33] Section 12, definition of *less serious domestic violence***
20 ***offence***

21 *omit*

1 **[3.34] Section 12, new definition of *less serious family violence***
2 ***offence***

3 *insert*

4 *less serious family violence offence* means—

- 5 (a) an offence if the conduct making up the offence is family
6 violence under the *Family Violence Act 2016* that is punishable
7 by a term of imprisonment of—
- 8 (i) if the offence relates to money or other property—
9 14 years or less; or
- 10 (ii) in any other case—10 years or less; and
- 11 (b) a contravention of a protection order under the *Family*
12 *Violence Act 2016*, section 43.

13 **[3.35] Section 12, definitions of *relevant person, relevant***
14 ***relationship and serious domestic violence offence***

15 *omit*

16 **[3.36] Section 12, new definition of *serious family violence***
17 ***offence***

18 *insert*

19 *serious family violence offence* means an offence if the conduct
20 making up the offence is family violence under the *Family Violence*
21 *Act 2016* that is punishable by a term of imprisonment of—

- 22 (a) if the offence relates to money or other property—more than
23 14 years; or
- 24 (b) in any other case—more than 10 years.

- 1 **[3.37] Sections 14 to 16 etc**
- 2 *omit*
- 3 domestic violence
- 4 *substitute*
- 5 family violence
- 6 *in*
- 7 • sections 14 to 16
- 8 • section 24
- 9 • sections 26 and 27
- 10 • section 33
- 11 **[3.38] Dictionary, definition of *less serious domestic violence***
- 12 ***offence***
- 13 *omit*
- 14 **[3.39] Dictionary, new definition of *less serious family violence***
- 15 ***offence***
- 16 *insert*
- 17 *less serious family violence offence*—see section 12.
- 18 **[3.40] Dictionary, definitions of *relevant person, relevant***
- 19 ***relationship and serious domestic violence offence***
- 20 *omit*
- 21 **[3.41] Dictionary, new definition of *serious family violence***
- 22 ***offence***
- 23 *insert*
- 24 *serious family violence offence*—see section 12.

1 **Part 3.7** **Crimes (Sentence**
2 **Administration) Act 2005**

3 **[3.42] Section 216A (5), definition of *domestic violence offence***

4 *substitute*

5 *family violence offence*—see the *Family Violence Act 2016*,
6 dictionary.

7 **[3.43] Section 216A (5), definition of *personal violence offence*,**
8 **paragraph (b)**

9 *omit*

10 domestic violence

11 *substitute*

12 family violence

13 **Part 3.8** **Crimes (Sentencing) Act 2005**

14 **[3.44] Section 3, note 1**

15 *substitute*

16 *Note 1* The dictionary at the end of this Act defines certain terms used in this
17 Act, and includes references (*signpost definitions*) to other terms
18 defined elsewhere.

19 For example, the signpost definition '*parole order*—see the *Crimes*
20 *(Sentence Administration) Act 2005*, section 117.' means that the term
21 'parole order' is defined in that section of that Act and the definition
22 applies to this Act.

- 1 **[3.45] Section 23 (4), definition of *personal violence offence*,**
2 **paragraph (b)**
- 3 *omit*
- 4 domestic violence
- 5 *substitute*
- 6 family violence
- 7 **[3.46] Section 43 (1) (b) (v)**
- 8 *omit*
- 9 domestic violence
- 10 *substitute*
- 11 family violence
- 12 **[3.47] Section 43 (7), definition of *domestic violence offence***
- 13 *omit*
- 14 **[3.48] Dictionary, definition of *domestic violence offence***
- 15 *omit*
- 16 **[3.49] Dictionary, new definition of *family violence offence***
- 17 *insert*
- 18 *family violence offence*—see the *Family Violence Act 2016*,
19 dictionary.

1 **Part 3.9** **Crimes (Sentencing)**
2 **Regulation 2006**

3 **[3.50] Section 2 (1) (d)**

4 *omit*

5 domestic violence offence

6 *substitute*

7 family violence offence

8 **Part 3.10** **Criminal Code 2002**

9 **[3.51] Section 712A (5), definition of *childrens proceeding*, new**
10 **paragraph (ca)**

11 *insert*

12 (ca) the child or young person is or was the subject of a proceeding
13 for a protection order under that Act, division 14.3.5
14 (Protection orders); or

15 *Note* A **protection order** under the *Children and Young People*
16 *Act 2008*, div 14.3.5 means a protection order under the *Family*
17 *Violence Act 2016* or *Personal Violence Act 2016*.

18 **[3.52] Section 712A (5), definition of *childrens proceeding*, new**
19 **paragraph (ga)**

20 *insert*

21 (ga) the child or young person is or was the subject of a proceeding
22 under the *Family Violence Act 2016* or *Personal Violence*
23 *Act 2016*; or

1 **Part 3.11 Dangerous Substances Act 2004**

2 **[3.53] Section 49 (2), definition of *protection order***

3 *substitute*

4 *protection order* means a final order under—

5 (a) the *Family Violence Act 2016*; or

6 (b) the *Personal Violence Act 2016*.

7 **Part 3.12 Domestic Violence Agencies**
8 **Act 1986**

9 **[3.54] Long title**

10 *omit*

11 domestic violence

12 *substitute*

13 family violence

14 **[3.55] Section 2, note 1**

15 *substitute*

16 *Note 1* The dictionary at the end of this Act defines certain terms used in this
17 Act, and includes references (*signpost definitions*) to other terms
18 defined elsewhere.

19 For example the signpost definitions '*family violence*—see the *Family*
20 *Violence Act 2016*, section 8.' means that the term 'family violence' is
21 defined in that section of that Act and the definition applies to this Act.

1 **[3.56] Sections 5 and 6 (4)**

2 *omit*

3 domestic violence

4 *substitute*

5 family violence

6 **[3.57] Sections 12 and 18**

7 *omit*

8 domestic violence

9 *substitute*

10 family violence

11 **[3.58] Dictionary, definitions of *domestic violence* and *domestic***
12 ***violence offence***

13 *omit*

14 **[3.59] Dictionary, new definitions**

15 *insert*

16 *family violence*—see the *Family Violence Act 2016*, section 8.

17 *family violence offence*—see the *Family Violence Act 2016*,
18 dictionary.

19 **Part 3.13 Evidence Act 2011**

20 **[3.60] Section 19 (c), except note**

21 *substitute*

22 (c) an offence if the conduct making up the offence is family
23 violence under the *Family Violence Act 2016*.

1 **Part 3.14 Evidence (Miscellaneous**
2 **Provisions) Act 1991**

3 **[3.61] Section 8 (c)**

4 *substitute*

5 (c) a proceeding under the *Family Violence Act 2016*; or

6 **[3.62] Chapter 4 heading**

7 *substitute*

8 **Chapter 4 Evidence in sexual, violent and**
9 **family violence offence**
10 **proceedings**

11 **[3.63] Section 36B (1), definition of *relevant person*, new**
12 **paragraph (aa)**

13 *insert*

14 (aa) an intimate partner or former intimate partner of the original
15 person; or

16 **[3.64] Section 36B (1), definition of *relevant person*,**
17 **paragraph (e)**

18 *omit*

1 **[3.65] Section 36B (2), (3) and (4)**

2 *substitute*

3 (2) In this section:

4 *intimate partner*, of a person—

5 (a) means someone with whom the person has an intimate
6 relationship, whether they are members of the same household
7 or not; but

8 (b) does not include—

9 (i) a domestic partner; or

10 (ii) another person with whom the person has a relationship
11 only because a service is provided between them—

12 (A) for fee or reward; or

13 (B) on behalf of another person (including a
14 government or corporation); or

15 (C) on behalf of an organisation the principal objects or
16 purposes of which are charitable or benevolent.

17 (3) For subsection (2), factors that indicate whether there is an intimate
18 relationship between 2 people include, but are not limited to, the
19 following:

20 (a) the extent to which each is personally dependent on the other;

21 (b) the extent to which each is financially dependent on the other
22 (including any arrangements for financial support);

23 (c) the length of the relationship;

24 (d) the frequency of contact between each other;

25 (e) if there is, or has been, a sexual relationship;

26 (f) the extent to which each is involved in, or knows about, the
27 other's personal life;

- 1 (g) the degree of mutual commitment to a shared life;
2 (h) if the 2 people share care or support for children or other
3 dependents.

4 **[3.66] Section 36C, definition of *relative of a person*, new**
5 **paragraph (c) (ia) and (ib)**

6 *insert*

- 7 (ia) if the original person is an Aboriginal or Torres Strait
8 Islander person, the following people:
9 (A) someone the original person has responsibility for,
10 or an interest in, in accordance with the traditions
11 and customs of the original person's Aboriginal or
12 Torres Strait Islander community;
13 (B) someone who has responsibility for, or an interest
14 in, the original person in accordance with the
15 traditions and customs of the original person's
16 Aboriginal or Torres Strait Islander community; and
17 (ib) someone regarded and treated by the original person as a
18 relative; and

19 **[3.67] Section 36C, definition of *relative of a person*, examples**
20 **and note**

21 *omit*

1 **[3.68] New section 36C (2)**

2 *insert*

3 (2) In this section:

4 ***Aboriginal or Torres Strait Islander person*** means a person who—

5 (a) is a descendant of an Aboriginal person or a Torres Strait
6 Islander person; and

7 (b) identifies as an Aboriginal person or a Torres Strait Islander
8 person; and

9 (c) is accepted as an Aboriginal person or a Torres Strait Islander
10 person by an Aboriginal community or Torres Strait Islander
11 community.

12 **[3.69] Section 37, definition of *less serious violent offence*,**
13 **paragraph (c)**

14 *substitute*

15 (c) an offence against the *Family Violence Act 2016*, section 43
16 (Offence—contravention of family violence order); or

17 (d) an offence against the *Personal Violence Act 2016*, section 35
18 (Offence—contravention of protection order).

19 **[3.70] Section 40AA**

20 *substitute*

21 **40AA Meaning of *sexual offence* and *violent offence*—**
22 **div 4.2.2A**

23 (1) For this division, a ***sexual offence*** includes an offence under the
24 following provisions in relation to another sexual offence:

25 (a) the *Family Violence Act 2016*, section 43 (Offence—
26 contravention of family violence order);

- 1 (b) the *Personal Violence Act 2016*, section 35 (Offence—
2 contravention of protection order).
- 3 (2) For this division, a ***violent offence*** includes an offence under the
4 following provisions in relation to another violent offence:
- 5 (a) the *Family Violence Act 2016*, section 43 (Offence—
6 contravention of family violence order);
- 7 (b) the *Personal Violence Act 2016*, section 35 (Offence—
8 contravention of protection order).

9 **[3.71] Section 40NA**

10 *substitute*

11 **40NA Meaning of *sexual offence*—div 4.2.2B**

- 12 For this division, a ***sexual offence*** includes an offence under the
13 following provisions in relation to another sexual offence:
- 14 (a) the *Family Violence Act 2016*, section 43 (Offence—
15 contravention of family violence order);
- 16 (b) the *Personal Violence Act 2016*, section 35 (Offence—
17 contravention of protection order).

18 **[3.72] Section 400 (1) (c)**

19 *substitute*

- 20 (c) a proceeding for contravening a protection order under the
21 following provisions in relation to a sexual offence:
- 22 (i) the *Family Violence Act 2016*, section 43 (Offence—
23 contravention of family violence order);
- 24 (ii) the *Personal Violence Act 2016*, section 35 (Offence—
25 contravention of protection order); or

1 **[3.73] Part 4.3 heading**

2 *substitute*

3 **Part 4.3 Evidence in family violence**
4 **proceedings**

5 **[3.74] Section 74**

6 *substitute*

7 **74 Meaning of *family violence offence*—pt 4.3**

8 In this part:

9 *family violence offence*—see the *Family Violence Act 2016*,
10 dictionary.

11 *Note* *Complainant*, for a family violence offence proceeding, is an adult who
12 is a relevant person in relation to the accused (see s 76).

13 *Relevant person*—see s 36B.

14 **[3.75] Sections 75 to 78 etc**

15 *omit*

16 domestic violence

17 *substitute*

18 family violence

19 *in*

- 20 • sections 75 to 78
21 • section 80 (1) (a)
22 • sections 81B and 81C
23 • sections 81E and 81F
24 • dictionary, definition of *complainant*, paragraph (f)

1 **[3.76] Dictionary, definitions of *domestic violence offence* and**
2 ***domestic violence offence proceeding***

3 *omit*

4 **[3.77] Dictionary, new definitions**

5 *insert*

6 *family violence offence*, for part 4.3 (Evidence in family violence
7 proceedings)—see the *Family Violence Act 2016*, dictionary.

8 *family violence offence proceeding*, for part 4.3 (Evidence in family
9 violence proceedings)—see section 75.

10 **[3.78] Further amendments, mentions of *domestic violence***

11 *omit*

12 domestic violence

13 *substitute*

14 family violence

15 *in*

- 16 • dictionary, definition of *intellectually impaired*
17 • dictionary, definition of *recorded statement*
18 • dictionary, definition of *relative*
19 • dictionary, definition of *relevant person*

20 **Part 3.15 Magistrates Court Act 1930**

21 **[3.79] Section 256 (a)**

22 *substitute*

23 (a) a proceeding under the *Family Violence Act 2016* or *Personal*
24 *Violence Act 2016*; or

1 **[3.80] Section 291H**

2 *substitute*

3 **291H Meaning of *family violence offence***

4 In this Act:

5 *family violence offence*—see the *Family Violence Act 2016*,
6 dictionary.

7 **[3.81] Section 291I and 291K**

8 *omit*

9 domestic violence

10 *substitute*

11 family violence

12 **[3.82] Section 320A heading**

13 *substitute*

14 **320A Family violence offence information**

15 **[3.83] Section 320A (1)**

16 *omit*

17 domestic violence offences

18 *substitute*

19 family violence offences

1 **[3.84] Section 320A**

2 *omit*

3 domestic violence offence

4 *substitute*

5 family violence offence

6 **[3.85] Dictionary, definition of *domestic violence offence***

7 *omit*

8 **[3.86] Dictionary, new definition of *family violence offence***

9 *insert*

10 *family violence offence*—see the *Family Violence Act 2016*,
11 dictionary.

12 **Part 3.16 Mental Health Act 2015**

13 **[3.87] Section 134 (8), definition of *domestic violence offence***

14 *substitute*

15 *family violence offence*—see the *Family Violence Act 2016*,
16 dictionary.

17 **[3.88] Section 134 (8), definition of *personal violence offence*,
18 paragraph (b)**

19 *omit*

20 domestic violence

21 *substitute*

22 family violence

1 **Part 3.17** **Prohibited Weapons**
2 **Regulation 1997**

3 **[3.89] Section 5 (6), definitions of *interim protection order* and**
4 ***protection order***

5 *substitute*

6 *interim protection order* means an interim order under—

7 (a) the *Family Violence Act 2016*; or

8 (b) the *Personal Violence Act 2016*.

9 *protection order* means a final order under—

10 (a) the *Family Violence Act 2016*; or

11 (b) the *Personal Violence Act 2016*.

12 **Part 3.18** **Residential Tenancies Act 1997**

13 **[3.90] Section 99 (3), example 1**

14 *omit*

15 domestic violence

16 *substitute*

17 family violence

1 **Part 3.19 Road Transport (General)**
2 **Act 1999**

3 **[3.91] Section 21A, definition of *relevant circumstances*,**
4 **paragraph (d)**

5 *omit*
6 domestic violence
7 *substitute*
8 family violence

9 **Part 3.20 Security Industry Act 2003**

10 **[3.92] Section 23 (2), example 4**

11 *omit*
12 *Domestic Violence and Protection Orders Act 2008*
13 *substitute*
14 *Family Violence Act 2016 or Personal Violence Act 2016*

15 **Part 3.21 Victims of Crime (Financial**
16 **Assistance) Act 2016**

17 **[3.93] Section 9**

18 *omit*
19 domestic violence
20 *substitute*
21 family violence

1 **[3.94] Section 13, definition of *class A related victim*,**
2 **paragraph (b) (ii) and note**

3 *substitute*

4 (ii) an intimate partner of the primary victim.

5 *Note Intimate partner*—see the *Family Violence Act 2016*, s 10.

6 **[3.95] Section 14, definition of *class B related victim*,**
7 **paragraph (b) (ii) and note**

8 *substitute*

9 (ii) an intimate partner of the primary victim.

10 *Note Intimate partner*—see the *Family Violence Act 2016*, s 10.

11 **[3.96] Section 38 (b) (i), example 2**

12 *omit*

13 domestic violence

14 *substitute*

15 family violence

16 **[3.97] Schedule 1, section 1.1, definition of *Domestic Violence***
17 **Act**

18 *omit*

19 **[3.98] Schedule 1, section 1.1, new definition of *Family Violence***
20 **Act**

21 *insert*

22 *Family Violence Act* means the *Family Violence Act 2016*.

1 **[3.99] Schedule 1, division 1.2.2 heading**

2 *substitute*

3 **Division 1.2.2 Family violence offences**

4 **[3.100] Schedule 1, division 1.2.2, item 19**

5 *substitute*

19	Family Violence Act	43	contravention of family violence order
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6 **[3.101] Dictionary, note 2**

7 *insert*

- 8 • child
9 • parent

10 **[3.102] Dictionary, new definition of *Aboriginal or Torres Strait Islander person***
11

12 *insert*

13 *Aboriginal or Torres Strait Islander person* means a person who—

- 14 (a) is a descendant of an Aboriginal person or a Torres Strait
15 Islander person; and
16 (b) identifies as an Aboriginal person or a Torres Strait Islander
17 person; and
18 (c) is accepted as an Aboriginal person or a Torres Strait Islander
19 person by an Aboriginal community or Torres Strait Islander
20 community.

21 **[3.103] Dictionary, definition of *Domestic Violence Act***

22 *omit*

1 **[3.104] Dictionary, new definitions**

2 *insert*

3 ***Family Violence Act***, for schedule 1 (Offences—act of violence)—
4 see schedule 1, section 1.1.

5 ***intimate partner***—see the *Family Violence Act 2016*, section 10.

6 ***relative***, of a person, means—

7 (a) means the person's—

8 (i) father, mother, grandfather, grandmother, stepfather,
9 stepmother, father-in-law or mother-in-law; or

10 (ii) son, daughter, grandson, granddaughter, stepson,
11 stepdaughter, son-in-law or daughter-in-law; or

12 (iii) brother, sister, half-brother, half-sister, stepbrother,
13 stepsister, brother-in-law or sister-in-law; or

14 (iv) uncle, aunt, uncle-in-law or aunt-in-law; or

15 (v) nephew, niece or cousin; and

16 (b) if the person has or had a domestic partner (other than a spouse
17 or civil union partner)—includes someone who would have
18 been a relative mentioned in paragraph (a) if the person had
19 been married to or in a civil union with the domestic partner;
20 and

21 *Note* For the meaning of ***domestic partner***, see the [Legislation Act](#),
22 s 169.

23 For ACT law, a person acquires relatives through civil union in
24 the same way as they acquire them through marriage (see [Civil](#)
25 [Unions Act 2012](#), s 6 (2)).

26 (c) includes—

27 (i) someone who has been a relative mentioned in
28 paragraph (a) or (b) of the person; and

- 1 (ii) if the person is an Aboriginal or Torres Strait Islander
2 person, the following people:
- 3 (A) someone the person has responsibility for, or an
4 interest in, in accordance with the traditions and
5 customs of the person's Aboriginal or Torres Strait
6 Islander community;
- 7 (B) someone who has responsibility for, or an interest
8 in, the person in accordance with the traditions and
9 customs of the person's Aboriginal or Torres Strait
10 Islander community; and
- 11 (iii) someone regarded and treated by the person as a relative;
12 and
- 13 (iv) anyone else who could reasonably be considered to be, or
14 have been, a relative of the person.

15 **[3.105] Dictionary, definition of *relevant person***

16 *substitute*

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

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

21 *Note* A ***domestic partner*** need not be an adult (see [Legislation Act](#),
22 s 169).

- 23 (b) an intimate partner or former intimate partner of the original
24 person; or

- 25 (c) a relative of the original person; or

- 26 (d) a child of a domestic partner or former domestic partner of the
27 original person; or

- 28 (e) a parent of a child of the original person.

1 **[3.106] Dictionary, definition of *relevant relationship***

2 *omit*

3 **Part 3.22 Working with Vulnerable People**
4 **(Background Checking) Act 2011**

5 **[3.107] Section 28 (2) (e), example 1**

6 *omit*

7 *Domestic Violence and Protection Orders Act 2008*

8 *substitute*

9 *Family Violence Act 2016 or Personal Violence Act 2016*

1 Dictionary

2 (see s 3)

3 *Note 1* The [Legislation Act](#) contains definitions and other provisions relevant to
4 this Act.

5 *Note 2* For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- 6 • chief police officer
- 7 • child
- 8 • civil union
- 9 • civil union partner
- 10 • director of public prosecutions
- 11 • domestic partner (see s 169)
- 12 • individual
- 13 • lawyer
- 14 • magistrate
- 15 • Magistrates Court
- 16 • parent
- 17 • police officer
- 18 • prescribed
- 19 • proceeding
- 20 • public advocate
- 21 • registrar
- 22 • registrar of firearms
- 23 • Supreme Court.

24 ***affected person*** means a person against whom family violence has
25 been, or is likely to be, committed.

26 *Note* An affected person includes any child who hears, witnesses or is
27 otherwise exposed to family violence committed against another person
28 (see s 8 (1), def ***family violence***, par (b)).

29 ***after-hours order*** means an order made under section 102, and
30 includes an order amending or revoking an after-hours order.

- 1 **amend**, a family violence order, includes amend the order by—
- 2 (a) adding further conditions, prohibitions or restrictions to the
- 3 order or amending or deleting conditions, prohibitions or
- 4 restrictions; or
- 5 (b) extending or reducing the period for which the order remains in
- 6 force.
- 7 **ammunition**—see the [Firearms Act 1996](#), dictionary.
- 8 **appealable decision** means a decision mentioned in section 92.
- 9 **application**, for a protection order, means an application for a final
- 10 order.
- 11 **Note 1** The court may make an interim order on an application for a final order
- 12 (see s 20). No separate application for an interim order is required.
- 13 **Note 2** As a protection order includes an order amending a protection order (see
- 14 def **protection order**), an application for a protection order includes an
- 15 application to amend a protection order.
- 16 **authorised person**, for schedule 1 (Permitted publication about
- 17 proceedings)—see the [Children and Young People Act 2008](#),
- 18 section 26.
- 19 **business hours**, of the Magistrates Court, for part 7 (After-hours
- 20 orders)—see section 98.
- 21 **care and protection chapters**, for schedule 1 (Permitted publication
- 22 about proceedings)—see the [Children and Young People Act 2008](#),
- 23 section 336.
- 24 **child**, of a person, includes—
- 25 (a) a child who normally lives with the person; and
- 26 (b) a child for whom the person is a guardian.
- 27 **Note** A child is someone under 18 years old (see [Legislation Act](#), dict, pt 1).
- 28 **commencement day**, for division 9.6 (Application of pt 9—existing
- 29 protection orders)—see section 140.
- 30 **consent order** means a protection order made under section 33.

- 1 **copy**, in relation to a document to be served in a proceeding,
2 means—
- 3 (a) if the document has been entered into the record of the
4 Magistrates Court—a true copy sealed or stamped with the seal
5 of the court; or
- 6 (b) in any other case—a true copy.
- 7 **corresponding law**, for part 9 (National recognition of FVOs)—see
8 section 115.
- 9 **court**, for division 9.3 (Amendment and revocation of recognised
10 non-local FVOs)—see section 122.
- 11 **disability guardian**, of a person—see the *Guardianship and*
12 *Management of Property Act 1991*, dictionary, definition of
13 **guardian**.
- 14 **family member**, of a person—see section 9.
- 15 **family violence**—see section 8.
- 16 **family violence concern**, for part 9 (National recognition of
17 FVOs)—see section 116.
- 18 **family violence offence** means an offence if the conduct making up
19 the offence is family violence.
- 20 **family violence order** means—
- 21 (a) for this Act generally—
- 22 (i) a protection order; or
- 23 (ii) an after-hours order; and
- 24 (b) for part 9 (National recognition of FVOs)—see section 115.
- 25 **final FVO**, for part 9 (National recognition of FVOs)—see
26 section 115.

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

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

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

13 ***final order*** means a protection order that is not an interim order or
14 after-hours order, and includes an order amending a final order.

15 ***firearm***—see the [Firearms Act 1996](#), section 6.

16 ***firearms licence***—see the [Firearms Act 1996](#), dictionary, definition
17 of *licence*.

18 ***foreign order***, for part 9 (National recognition of FVOs)—see
19 section 115.

20 ***FVO***, for part 9 (National recognition of FVOs)—see section 115.

21 ***general interim order***—

- 22 (a) means a protection order (including a consent order) made
23 under section 22 (Interim orders—general interim orders and
24 special interim orders); and
- 25 (b) includes an order (other than a final order) that amends or
26 revokes a general interim order.

27 ***general violence order***, for part 9 (National recognition of FVOs)—
28 see section 115.

29 ***impaired decision-making ability***—see section 74.

1 ***interim FVO***, for part 9 (National recognition of FVOs)—see
2 section 115.

3 ***interim order*** means—

4 (a) a general interim order; or

5 (b) a special interim order.

6 ***interstate FVO***, for part 9 (National recognition of FVOs)—see
7 section 115.

8 ***interstate law enforcement agency***, for part 9 (National recognition
9 of FVOs)—see section 115.

10 ***issuing authority***, for part 9 (National recognition of FVOs)—see
11 section 115.

12 ***issuing jurisdiction***, for part 9 (National recognition of FVOs)—see
13 section 115.

14 ***judicial officer*** means any of the following:

15 (a) a magistrate;

16 (b) if a territory law provides for the exercise of the Magistrates
17 Court’s jurisdiction by the registrar—the registrar;

18 (c) if a territory law provides for the exercise of the Magistrates
19 Court’s jurisdiction by a deputy registrar—a deputy registrar.

20 *Note* The [Court Procedures Rules 2006](#) may provide for the jurisdiction of
21 the Magistrates Court otherwise exercisable by a magistrate to be
22 exercised by the registrar or deputy registrar, in the cases and subject to
23 the conditions prescribed under the rules (see [Magistrates Court
24 Act 1930](#), s 4 (4)).

25 ***jurisdiction***, for part 9 (National recognition of FVOs)—see
26 section 115.

27 ***litigation guardian***, of a person, means a person appointed in
28 accordance with section 78.

29 ***local FVO***, for part 9 (National recognition of FVOs)—see
30 section 115.

1 **local law enforcement agency**, for part 9 (National recognition of
2 FVOs)—see section 115.

3 **make**, for part 9 (National recognition of FVOs)—see section 115.

4 **New Zealand FVO**, for part 9 (National recognition of FVOs)—see
5 section 115.

6 **non-local FVO**, for part 9 (National recognition of FVOs)—see
7 section 115.

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

- 11 (a) the charge is withdrawn;
- 12 (b) the charge is dismissed by a court;
- 13 (c) the person is discharged by a court following a committal
14 hearing;
- 15 (d) the person is acquitted, convicted or found guilty by a court of
16 the offence.

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

19 **participating jurisdiction**, for part 9 (National recognition of
20 FVOs)—see section 115.

21 **personal violence**—see the *Personal Violence Act 2016*, section 8.

22 **proceeding**, for a family violence order, means—

- 23 (a) a proceeding for a protection order; or

24 *Note* As a protection order includes an order amending a protection
25 order (see def **protection order**), a proceeding for a protection
26 order includes a proceeding to amend the order.

- 27 (b) a proceeding to amend or revoke an after-hours order; or
- 28 (c) a proceeding to review a family violence order under part 6; or

1 (d) for part 8 (Court-initiated actions)—the family violence
2 proceeding to the extent that the proceeding relates to the
3 exercise of jurisdiction under this Act.

4 ***properly notified***, for part 9 (National recognition of FVOs)—see
5 section 117.

6 ***protection order***—

7 (a) means—

8 (i) an interim order; or

9 (ii) a final order; and

10 (b) includes—

11 (i) an order about the seizure of a firearms licence, firearm or
12 ammunition; and

13 (ii) an order amending a protection order, including an order
14 for a temporary amendment under section 84.

15 ***protected person*** means the person protected under a family
16 violence order.

17 ***recognised amendment***, for part 9 (National recognition of
18 FVOs)—see section 120.

19 ***recognised FVO***, for part 9 (National recognition of FVOs)—see
20 section 119 and section 144.

21 ***registered foreign order***, for part 9 (National recognition of
22 FVOs)—see section 115.

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

26 (a) the person charged is—

27 (i) the respondent to the application; and

28 (ii) a family member of the affected person; and

1 (b) the offence is against the affected person, other than an offence
2 against section 43 (Offence—contravention of family violence
3 order).

4 ***respondent*** means—

5 (a) a person in relation to whom an application for a family
6 violence order has been made; or

7 (b) a person against whom a family violence order has been made;
8 or

9 (c) for part 8 (Court-initiated actions)—the defendant in the family
10 violence proceeding.

11 ***return date***, for an application for a protection order, means the day
12 fixed by the Magistrates Court for return of the application before
13 the court.

14 ***revoke*** includes cancel.

15 ***special interim order***—

16 (a) means a protection order (including a consent order) made
17 under section 22 (Interim orders—general interim orders and
18 special interim orders); or

19 (b) includes an order (other than a final order) that amends or
20 revokes a special interim order.

21 *Note* An interim order made by a court under pt 8 (Court-initiated actions) is
22 taken to be a special interim order (see s 113).

23 ***timing notice***, for an application for a protection order—see
24 section 45 (Service of applications).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 7 June 2016.

2 Notification

Notified under the [Legislation Act](#) on 2016.

3 Republications of amended laws

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

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