

2017

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Family and Personal Violence Legislation Amendment Bill 2017

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2017

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Family and Personal Violence Legislation Amendment Bill 2017

A Bill for

An Act to amend legislation about family and personal violence, and for other purposes

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Family and Personal Violence Legislation*
4 *Amendment Act 2017*.

5 **2 Commencement**

6 (1) This Act (other than the following provisions) commences on
7 30 April 2017:

- 8 • sections 58 to 61
9 • sections 63 and 64.

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

12 (2) The provisions mentioned in subsection (1) commence on the
13 commencement of the *Family Violence Act 2016*, section 115
14 (Definitions—pt 9).

15 **3 Legislation amended**

16 This Act amends the following legislation:

- 17 • *Evidence (Miscellaneous Provisions) Act 1991*
18 • *Family Violence Act 2016*
19 • *Personal Violence Act 2016*.

6 New division 4.3.4*insert***Division 4.3.4 Recorded statement of police
interview admissible as evidence—
application for protection order****81H Recorded statement—may be admitted as evidence in
application for family violence protection order**

- (1) This section applies if a recorded statement is made in relation to an alleged family violence offence.
- (2) The recorded statement may be admitted by the Magistrates Court in a proceeding for an application for a protection order under the *Family Violence Act 2016* if—
- (a) the affected person in relation to the application for the protection order is the complainant in relation to the recorded statement; and
- (b) the respondent to the application for the protection order is the person against whom the family violence offence is alleged.

Part 3 Family Violence Act 2016

7 Section 2

substitute

2 Commencement

(1) The following provisions (the *national recognition provisions*) commence on a day fixed by the Minister by written notice:

- part 9 (National recognition of FVOs)
- section 200 (Existing registered orders under repealed Act)
- dictionary, definitions of

corresponding law

family violence concern

family violence order, paragraph (b)

final FVO

foreign order

FVO

general violence order

interim FVO

interstate FVO

interstate law enforcement agency

issuing authority

issuing jurisdiction

jurisdiction

local FVO

local law enforcement agency

make

New Zealand FVO

non-local FVO

participating jurisdiction

properly notified

recognised amendment

recognised FVO

registered foreign order.

Note A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

(2) The remaining provisions commence on 1 May 2017.

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

(3) If the national recognition provisions have not commenced within 12 months beginning on this Act's notification day, they automatically commence on the first day after that period.

(4) The [Legislation Act](#), section 79 (Automatic commencement of postponed law) does not apply to the national recognition provisions.

8 Principle about procedures

Section 12

omit

under

substitute

for

9 New section 13A*in division 2.3, insert***13A Rules of evidence**

To remove any doubt, the Magistrates Court need not comply with the rules of evidence applying in the ACT in a proceeding under this Act.

Note The Magistrates Court may inform itself in any way it considers appropriate in a proceeding for a family violence order (see s 65).

**10 Matters to be considered—family violence orders
Section 14 (1) (i)***omit***11 New section 14 (2A)***insert*

- (2A) A failure of the court to comply with subsection (1) in relation to a family violence order does not affect the validity of the order.

12 New sections 16A and 16B*insert***16A Child may apply for protection order in same application as parent**

- (1) This provision applies if a child and the child's parent are each an affected person in relation to the same or similar family violence by a respondent.
- (2) An application for a protection order by the child may be included in an application for a protection order by the child's parent.

Note The court may hear the application of the child and the child's parent separately (see s 60C).

1 **16B Applications by police officers**

- 2 (1) This section applies if a police officer makes an application for a
3 protection order for an affected person.
- 4 (2) The police officer must tell the Magistrates Court whether the
5 affected person consents to the application.

6 **13 Application forms that require affected person's address**
7 **Section 17 (2), new note**

8 *insert*

9 *Note* If a party to an application for a protection order is not represented by a
10 lawyer, any address for service given to the court must not be given to
11 the other party without the self-represented party's consent (see s 70D).

12 **14 Interim orders—only on application for final order**
13 **Section 20 (2)**

14 *substitute*

- 15 (2) The Magistrates Court may make an interim order at any time
16 before the application for the final order is decided.

17 **15 General interim orders—length**
18 **Section 24 (2) and note**

19 *omit*

20 **16 General interim orders—taken to be special interim**
21 **orders if related charges laid**
22 **Section 26 (2), new note**

23 *insert*

24 *Note* The application for the final order must not be decided until all related
25 charges are finalised (see s 31 (1)).

17 Section 26 (3) and note*substitute*

- (3) Unless section 31 (2) (Special interim orders—application not to be decided until related charges finalised) applies, the return date for a hearing to decide the application for the final order must be changed after all related charges are finalised to a day as soon as practicable after the day all related charges are finalised.

Note Under s 31 (2), an application for a final order may be finalised by the court before all related charges are finalised by consent or if a party is not present at a time when the application for the final order is returned before the Magistrates Court.

**18 Special interim orders—application not to be decided until related charges finalised
Section 31 (2) (a)***substitute*

- (a) under section 53 (Applicant not present at return of application); or
- (aa) under section 54 (Respondent not present at return of application); or

**19 Special interim orders—final application decided
Section 32 (1), note***substitute*

Note The court must not decide the application for the final order, unless by consent or because a party is not present at a time when the application is returned before the court, until all related charges are finalised (see s 31).

20 Section 32 (5)

omit

for the application

substitute

for the hearing of the application for the final order

21 New section 33A

in division 3.4, insert

33A Consent to interim order becoming final order

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

(2) If the respondent wishes to consent to the interim order becoming a final order, the respondent may—

(a) fill out the endorsement copy of the interim order in accordance with the instructions on the copy; and

(b) indicate on the endorsement copy that the respondent consents to the interim order becoming a final order; and

(c) return it to the Magistrates Court before the return date for the application for the final order.

(3) If the respondent acts under subsection (2), the interim order becomes a final order on the day the Magistrates Court receives the endorsement copy.

(4) In this section:

endorsement copy, of an interim order, means the copy of the interim order marked as the endorsement copy under section 70C (1).

1 **22** **Final orders—length**
2 **Section 35 (1), note**

3 *after*

4 family violence

5 *insert*

6 by the respondent

7 **23** **Divisions 4.1 and 4.2**

8 *substitute*

9 **Division 4.1** **What Magistrates Court must do after**
10 **receiving application for protection**
11 **order**

12 **45** **Meaning of *timing notice***

13 In this Act:

14 *timing notice*, for a preliminary conference, means a written notice
15 stating—

- 16 (a) the return date, time and place of the conference; and
17 (b) that if a party to the application does not appear at the
18 conference, the court may decide the application in the party's
19 absence.

20 **46** **Interim order not sought**

21 If the Magistrates Court receives an application for a protection
22 order and an interim order is not sought, the registrar must do the
23 following:

- 24 (a) set a return date for a preliminary conference which is as soon
25 as practicable after the day the application is received;

- 1 (b) as soon as practicable serve on the respondent—
2 (i) a copy of the application; and
3 (ii) a timing notice for the conference;
4 (c) as soon as practicable give the applicant a timing notice.

5 *Note* The application for the protection order and timing notice must be
6 served personally on the respondent (see s 70A).

7 **47 Interim order sought**

8 (1) If the Magistrates Court receives an application for a protection
9 order and an interim order is sought, the court must do the
10 following:

- 11 (a) set a return date for a hearing for the interim order which is not
12 later than 2 days after the day the application is received;
13 (b) after the hearing for the interim order—
14 (i) set a return date for a preliminary conference which is as
15 soon as practicable after the hearing; and
16 (ii) as soon as practicable serve on the respondent—
17 (A) a copy of the application; and
18 (B) a copy of the interim order; and
19 (C) a timing notice for the conference; and
20 (iii) as soon as practicable give the applicant a timing notice.

21 *Note* The application for the protection order and timing notice must be
22 served personally on the respondent (see s 70A).

23 (2) Subsection (1) (b) continues to apply even if the order is taken to be
24 a special interim order under section 26 (General interim orders—
25 taken to be special interim orders if related charges laid) before a
26 preliminary conference is held.

48 Service of application etc on others

(1) This section applies to a document required to be served under section 46 or section 47.

(2) The registrar—

(a) must also give a copy of the document to the following people:

(i) if the applicant or respondent is a child—the child's parent or guardian;

(ii) if the applicant or respondent has a disability guardian—the guardian; and

(b) may also give a copy of the document to anyone else the registrar considers appropriate.

Note Section 70F contains provisions about giving a document to a child or the child's parent or guardian.

(3) The failure of the registrar to comply with subsection (2) (a) does not affect the validity of any protection order or other order under this Act.

Division 4.2 Preliminary conferences**49 Preliminary conferences—generally**

(1) The objects of a preliminary conference in relation to an application for a protection order are to—

(a) find out whether the proceeding for the order may be settled by consent before it is heard by the Magistrates Court; and

- 1 (b) ensure the application is ready to be heard as soon as
2 practicable.

3 *Note 1* Before making a consent order, the court must explain certain things
4 about the order (see s 66 and s 67).

5 *Note 2* Words spoken or anything done at the preliminary conference that is
6 related to a question to be decided by the court in the proceeding for the
7 protection order is generally inadmissible as evidence in the proceeding
8 (see s 62).

- 9 (2) The failure of the registrar to hold a preliminary conference in
10 relation to an application for a protection order does not affect the
11 validity of the protection order.

12 **50 Adjournment of preliminary conference for non-service**

13 The registrar may adjourn a preliminary conference if—

- 14 (a) the registrar has set a return date for the preliminary
15 conference; and
16 (b) the respondent has not been served in accordance with
17 section 46 or section 47; and
18 (c) the registrar is satisfied the respondent may be served in
19 accordance with section 46 or section 47 if further time for
20 service were allowed.

21 *Note 1* The court may direct that service be effected in another way if personal
22 service is not reasonably practicable (see s 70A (2)).

23 *Note 2* The registrar may also extend a general interim order (see s 28).

24 **51 If no consent order at preliminary conference**

25 If a preliminary conference in relation to an application for a
26 protection order is held and a consent order is not made, the registrar
27 must—

- 28 (a) set a return date for a further preliminary conference which is
29 as soon as practicable after the day of the first conference; or

- 1 (b) set a return date for a hearing to decide the application for the
2 final order; or
- 3 (c) if a special interim order has been made—adjourn the
4 proceeding until all related charges are finalised.

5 **Division 4.2A Non-attendance by party**

6 **52 Meaning of *returned* before the court—div 4.2A**

7 For this division, a time when an application for a protection order is
8 *returned* before the Magistrates Court means—

- 9 (a) a return date set for a preliminary conference; or
- 10 (b) a return date set for a hearing of the application for a final
11 order.

12 **53 Applicant not present at return of application**

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

- 16 (a) dismiss the application; or
- 17 (b) adjourn the proceeding.

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

20 **54 Respondent not present at return of application**

- 21 (1) This section applies to an application for a protection order if the
22 respondent—
- 23 (a) has been served with a copy of the application and timing
24 notice under section 46 or section 47; and
- 25 (b) is not present, personally or by a representative, at a time when
26 the 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 **54A 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, at a time when the application is
- 13 returned 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 **24 Sections 55, 56 and 57**

18 *omit*

19 **25 Public hearing not required**

20 **Section 59 (a), (b) and (c)**

21 *substitute*

- 22 (a) it is a hearing for an interim order; or
- 23 (b) a party is not present at a time when the application is returned
- 24 before the court.

25 *Note* Division 4.2A provides for what happens if a party is not present when

26 an application for a final order is returned before the court.

26 New section 59 (2)*insert*

(2) In this section:

returned, in relation to an application for a protection order—see section 52.**27 New sections 60A to 60D***insert***60A Notice of grounds of defence**

(1) A respondent in a proceeding for an application for a protection order may file a notice of grounds of defence at any time before the end of the proceeding.

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

(2) The registrar must serve the notice of grounds of defence on—

(a) the applicant; and

(b) anyone else the registrar is satisfied has a relevant interest in the proceeding.

Example

a parent or guardian of a child who is an applicant if the parent or guardian does not live with the child

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

(3) The respondent does not waive any objection the respondent may have on the grounds of lack of jurisdiction in the court to decide the proceeding only because the respondent files a notice of grounds of defence.

- 1 **60B Applicant may rely on additional information in hearing**
- 2 An applicant for a protection order may in a hearing of an
- 3 application for a protection order—
- 4 (a) rely on information other than information stated in the
- 5 application; and
- 6 (b) present additional information to support the application.
- 7 **60C If child and child’s parent are affected people**
- 8 If a child and the child’s parent are an affected person in relation to
- 9 the same or similar family violence by a respondent in a
- 10 proceeding—
- 11 (a) if an application for a protection order by the child is included
- 12 in an application for a protection order by the child’s parent
- 13 under section 16A—the court may hear the application of the
- 14 child and the child’s parent separately; or
- 15 (b) if the child is not a party to the proceeding—the court may join
- 16 the child in the proceeding.
- 17 **60D Children as witnesses**
- 18 (1) A child, other than a child who is party to a proceeding, may be
- 19 called as a witness in the proceeding only with the court’s leave.
- 20 (2) In deciding whether to give leave, the court must consider—
- 21 (a) the need to protect the child from unnecessary exposure to the
- 22 court system; and
- 23 (b) the harm that could be done to the child and the child’s
- 24 relationship with a family member if the child gives evidence.
- 25 (3) If the court gives leave, the court may restrict cross-examination of
- 26 the child if satisfied that it is in the best interests of the child to do
- 27 so.

28 Discontinuance
Section 61 (1), note

substitute

Note 1 The court may make an order for costs against an applicant if satisfied the application was vexatious, frivolous or in bad faith. However, an application is not vexatious, frivolous or in bad faith only because it is made then discontinued (see s 73).

Note 2 If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

29 New section 62A

insert

62A Giving evidence by affidavit for interim order

(1) This section applies if a police officer applies for a protection order on behalf of an affected person.

(2) In a proceeding for an interim order, evidence may be given by an affidavit—

(a) made by the affected person or a police officer; and

(b) witnessed by a police officer of, or above, the rank of sergeant.

30 Service of protection orders
Section 70

omit

31 New division 4.4A*insert***Division 4.4A Service of documents****70A Personal service of application on respondent**

- (1) An application for a protection order and timing notice must be served personally on the respondent.
- (2) However, if personal service is not reasonably practicable, the court may order that the application be served in a way, stated in the order, that the court considers is likely to bring the application and timing notice to the attention of the respondent.

70B Dismissal of application for non-service

The Magistrates Court may dismiss an application for a protection order if satisfied that—

- (a) the application cannot be served on the respondent in accordance with section 70A; and
- (b) no alternative way of service would be effective to serve the application on the respondent; and
- (c) the respondent has not intentionally avoided service.

70C Service of protection orders

- (1) If a court makes a protection order, the registrar must—
 - (a) if the order is an interim order—serve 2 copies of the order (1 marked as the endorsement copy) on the respondent as soon as practicable; and
 - (b) if the order is not an interim order—serve a copy of the order on the respondent; and

- 1 (c) give a copy of the order to—
- 2 (i) each other party to the proceeding; and
- 3 (ii) the chief police officer; and
- 4 (iii) the registrar of firearms; and
- 5 (iv) if a party to the proceeding is a child—the child’s parent
- 6 or guardian; and
- 7 (v) if a party to the proceeding has a disability guardian—the
- 8 guardian; and
- 9 (vi) anyone else the court is satisfied has a relevant interest in
- 10 the proceeding who does not already have a copy of the
- 11 order.
- 12 *Note 1* Section 108 provides for service of an after-hours order.
- 13 *Note 2* Section 70F contains provisions about giving a document to a child or
- 14 the child’s parent or guardian.
- 15 (2) If the registrar serves a special interim order on a person, the
- 16 registrar must also give the person a notice telling the person that—
- 17 (a) the respondent may apply to the court for review of the order
- 18 under section 87 (Special interim orders—application for
- 19 review); and
- 20 (b) if a preliminary conference in relation to the application for the
- 21 protection order is held and a consent order is not made—the
- 22 court will set a return date for a hearing to decide the
- 23 application for the final order after all related charges are
- 24 finalised.
- 25 (3) Service under subsection (1) (a) must be personal service unless—
- 26 (a) the respondent is present when the protection order is made; or
- 27 (b) a court makes an order under section 70A (2).

- 1 (4) The failure of the registrar to comply with subsection (1) (c) (iv)
2 or (v) does not affect the validity of the protection order.

3 **70D Self-represented parties**

- 4 (1) This section applies if a party to an application for a protection order
5 is not represented by a lawyer.
- 6 (2) Unless the court requires a document to be served by a police
7 officer, the registrar must serve any document required to be served
8 by the self-represented party.
- 9 (3) Any address for service given to the court must not be given to the
10 other party without the self-represented party's consent.

11 **70E Service of documents by police**

12 A court may direct that a document required to be served on
13 someone be served by a police officer.

14 **70F Giving documents to child or child's parent or guardian**

- 15 (1) If a document is required to be given to a child, it must not be given
16 at or near the child's school unless there is no other place where the
17 document may be reasonably given to the child.
- 18 (2) If a document is required to be given to a child's parent or
19 guardian—
- 20 (a) the document need not be given if the parent or guardian is also
21 a party to the application or proceeding; and
- 22 (b) the court may order that the document is not required to be
23 given if satisfied that—
- 24 (i) giving the document is not reasonably practicable; or

- 1 (ii) there are circumstances that justify the document not
2 being given.

3 **Examples—subpar (ii)**

- 4 1 the child is estranged from the child's parent
5 2 there would be an unacceptable risk to the child's safety if the
6 parent or guardian was given the document

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

- 10 (3) In this section:

11 *guardian* includes a disability guardian.

12 **32 New section 71A**

13 *insert*

14 **71A Request for further particulars**

15 A party may only seek further particulars of an applicant for a
16 protection order with the court's leave.

17 **33 Directions about procedure**
18 **Section 72**

19 *omit*

20 **34 Costs**
21 **Section 73 (2), note**

22 *omit*

23 s 57

24 *substitute*

25 s 54A

- 1 **35** **Litigation guardian—appointment**
2 **Section 78 (1) (a)**
- 3 *omit*
4 individual
5 *substitute*
6 adult
- 7 **36** **New section 82A**
- 8 *insert*
- 9 **82A Preliminary conferences**
10 If the Magistrates Court receives an application under section 82,
11 the registrar must do the following:
12 (a) set a return date for a preliminary conference which is as soon
13 as practicable after the day the application is received;
14 (b) as soon as practicable personally serve on the other party—
15 (i) a copy of the application; and
16 (ii) a timing notice for the conference;
17 (c) as soon as practicable give the applicant a timing notice.
- 18 **37** **Amendment of protection orders**
19 **Section 83 (1) (a)**
- 20 *omit*

1 **38 Section 83 (1), example and note**

2 *omit*

3 **39 Section 83 (5) and note**

4 *substitute*

5 (5) If the parties consent to the application to amend the protection
6 order, the Magistrates Court must amend the order regardless of
7 whether or not—

8 (a) the grounds mentioned in subsection (1) (b), (c) and (d) have
9 been made out; or

10 (b) the court has considered those grounds.

11 **40 General interim orders made by consent—extension**
12 **Section 85 (1)**

13 *omit*

14 , of up to 8 weeks

15 **41 Section 85 (2)**

16 *omit*

17 **42 Final orders—extension**
18 **Section 86 (3), (4) and (5) and note**

19 *omit*

20 **43 Special interim orders—application for review**
21 **Section 87 (d)**

22 *omit*

1	44	Special interim orders—review
2		Section 88 (3)
3		<i>after</i>
4		special interim order
5		<i>insert</i>
6		and the protected person is not present in court when the order is
7		revoked
8	45	Section 89 heading
9		<i>substitute</i>
10	89	Final orders—application for review
11	46	Section 89 (1)
12		<i>omit</i>
13		other than a consent order
14	47	Section 89 (1), note
15		<i>after</i>
16		Section 91
17		<i>insert</i>
18		also
19	48	New section 89 (3A)
20		<i>insert</i>
21	(3A)	The Magistrates Court may grant leave under subsection (2) (c) only
22		if satisfied there has been a change in the circumstances of a party to
23		the order or it is in the interests of justice to do so.

1	49	Section 90 heading
2		<i>substitute</i>
3	90	Final orders—review
4	50	Section 90 (3)
5		<i>after</i>
6		original order
7		<i>insert</i>
8		and the protected person is not present in court when the order is
9		revoked
10	51	Consent orders—review
11		Section 91 (1)
12		<i>after</i>
13		may
14		<i>insert</i>
15		also
16	52	Section 91 (1)
17		<i>omit</i>
18		only

1	53	New section 91A
2		<i>insert</i>
3	91A	Preliminary conferences
4		If the Magistrates Court receives an application under section 87,
5		section 89 or section 91, the registrar must do the following:
6		(a) set a return date for a preliminary conference which is as soon
7		as practicable after the day the application is received;
8		(b) as soon as practicable personally serve on the other party—
9		(i) a copy of the application; and
10		(ii) a timing notice for the conference;
11		(c) as soon as practicable give the applicant a timing notice.
12	54	Giving notice of appeal
13		Section 94
14		<i>omit</i>
15	55	Court-initiated interim orders
16		Section 112 (1), note
17		<i>omit</i>
18		s 70
19		<i>substitute</i>
20		s 70C

1 **56 Interim court-initiated protection order taken to be special**
2 **interim order**
3 **Section 113 (a)**

4 *omit*

5 in accordance with section 45

6 *substitute*

7 on the respondent

8 **57 Section 113 (e) and (f)**

9 *substitute*

10 (e) section 47 (1) (b) (Interim order sought) applies to the order;
11 and

12 (f) section 48 (Service of application etc on others) applies to the
13 order; and

14 (g) division 4.2 (Preliminary conferences) applies to the order; and

15 (h) division 4.2A (Non-attendance by party) applies to the order.

16 **58 Definitions—pt 9**
17 **Section 115, definition of *registered foreign order***

18 *substitute*

19 ***registered foreign order*** means—

20 (a) a foreign order of another jurisdiction prescribed by regulation;
21 or

22 (b) a foreign order registered under section 134B.

**59 Meaning of *properly notified*—pt 9
Section 117**

omit

division 4.1 (Service of applications)

substitute

division 4.4A (Service of documents)

**60 Making new orders
Section 123 (2)**

omit

make

substitute

apply for

61 New division 9.3A

insert

Division 9.3A Registration of foreign orders

134A Applications for registration of foreign orders

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

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

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

1 **134B Registration of foreign orders**

- 2 (1) On receiving an application under section 134A, the registrar must
3 register the foreign order.
- 4 (2) If the registrar registers a foreign order, the registrar must—
- 5 (a) give the chief police officer a copy of—
- 6 (i) the application for registration; and
- 7 (ii) the foreign order; and
- 8 (b) tell the court that made the foreign order, in writing, that the
9 order has been registered.

10 **62 New sections 198 and 199**

11 *in part 20, insert*

12 **198 Meaning of *repealed Act*—pt 20**

13 In this part:

14 *repealed Act* means the *Domestic Violence and Protection Orders*
15 *Act 2008*.

16 **199 Applications and orders under repealed Act**

- 17 (1) This section applies if—
- 18 (a) an application for a domestic violence order is made under the
19 *repealed Act*; or
- 20 (b) a domestic violence order is made under the *repealed Act*.
- 21 (2) The application or domestic violence order is taken to have been
22 made under this Act.

- 1 (3) A proceeding for or in relation to an application for a domestic
2 violence order under the [repealed Act](#) is taken to be a proceeding
3 under this Act.

4 *Note* Any procedural requirement under this Act, the [Court Procedures](#)
5 [Act 2004](#) or any other territory law will apply to a proceeding under the
6 [repealed Act](#).

- 7 (4) To avoid doubt, if an application or an order is properly made under
8 the [repealed Act](#), or taken to have been properly made under the
9 [repealed Act](#), section 27 or section 28, it is taken to have been
10 properly made under this Act.

11 **63 New section 199 (2A)**

12 *insert*

- 13 (2A) However, part 9 (National Recognition of FVOs) does not apply to a
14 domestic violence order made under the [repealed Act](#).

15 **64 Existing registered orders under repealed Act**
16 **Section 200 (4)**

17 *omit*

18 **65 New section 200A**

19 *insert*

20 **200A Preservation of repealed Act, pt 12**

21 The [repealed Act](#), part 12 (Reciprocal arrangements) as in force
22 immediately before its repeal continues to apply in relation to an
23 order that corresponds to a domestic violence order until the
24 commencement of part 9 (National recognition of FVOs).

25 **66 Dictionary, note 2**

26 *insert*

- 27 • adult

- 1 **67 Dictionary, note 2**
- 2 *omit*
- 3 • individual
- 4 **68 Dictionary, new definition of *returned***
- 5 *insert*
- 6 ***returned***, in relation to an application for a protection order, for
- 7 division 4.2A (Non-attendance by party)—see section 52.
- 8 **69 Dictionary, definition of *timing notice***
- 9 *substitute*
- 10 ***timing notice***, for a preliminary conference—see section 45.

1 **Part 4 Personal Violence Act 2016**

2 **70 Principle about procedures**
3 **Section 9**

4 *omit*
5 under
6 *substitute*
7 for

8 **71 New section 10A**

9 *in division 2.2, insert*

10 **10A Rules of evidence**

11 To remove any doubt, the Magistrates Court need not comply with
12 the rules of evidence applying in the ACT in a proceeding under this
13 Act.

14 *Note* The Magistrates Court may inform itself in any way it considers
15 appropriate in a proceeding for a protection order (see s 59).

16 **72 Matters to be considered—protection orders**
17 **Section 11 (1) (f)**

18 *omit*

19 **73 New section 11 (2A)**

20 *insert*

21 (2A) A failure of the court to comply with subsection (1) in relation to a
22 protection order does not affect the validity of the order.

74 New sections 13A and 13B*insert***13A Child may apply for protection order in same application as parent**

- (1) This provision applies if a child and the child's parent are each an affected person in relation to the same or similar personal violence by a respondent.
- (2) An application for a protection order by the child may be included in an application for a protection order by the child's parent.

Note The court may hear the application of the child and the child's parent separately (see s 55C).

13B Applications by police officers

- (1) This section applies if a police officer makes an application for a personal protection order for an affected person.
- (2) The police officer must tell the Magistrates Court whether the affected person consents to the application.

**75 Application forms that require affected person's address
Section 14 (2), new note***insert*

Note If a party to an application for a protection order is not represented by a lawyer, any address for service given to the court must not be given to the other party without the self-represented party's consent (see s 64D).

**76 Interim orders—only on application for final order
Section 17 (2)***substitute*

- (2) The Magistrates Court may make an interim order at any time before the application for the final order is decided.

**77 Interim orders—length
Section 20 (2) and note**

omit

78 New section 24A

in division 3.4, insert

24A Consent to interim order becoming final order

- (1) This section applies if a court makes an interim order in the absence of a respondent.
- (2) If the respondent wishes to consent to the interim order becoming a final order, the respondent may—
- (a) fill out the endorsement copy of the interim order in accordance with the instructions on the copy; and
- (b) indicate on the endorsement copy that the respondent consents to the interim order becoming a final order; and
- (c) return it to the Magistrates Court before the return date for the application for the final order.
- (3) If the respondent acts under subsection (2), the interim order becomes a final order on the day the Magistrates Court receives the endorsement copy.
- (4) In this section:

endorsement copy, of an interim order, means the copy of the interim order marked as the endorsement copy under section 64C (1).

79 **Final orders—length**
Section 27 (1), note

after

personal violence

insert

by the respondent

80 **Divisions 4.1 and 4.2**

substitute

Division 4.1 **What Magistrates Court must do after**
receiving application for protection
order

39 **Meaning of *timing notice***

In this Act:

timing notice, for a preliminary conference, means a written notice stating—

- (a) the return date, time and place of the conference; and
- (b) that if a party to the application does not appear at the conference, the court may decide the application in the party's absence.

40 **Interim order not sought**

If the Magistrates Court receives an application for a protection order and an interim order is not sought, the registrar must do the following:

- (a) set a return date for a preliminary conference which is as soon as practicable after the day the application is received;

- 1 (b) as soon as practicable serve on the respondent—
2 (i) a copy of the application; and
3 (ii) a timing notice for the conference;
4 (c) as soon as practicable give the applicant a timing notice.

5 *Note* The application for the protection order and timing notice must be
6 served personally on the respondent (see s 64A).

7 **41 Interim order sought**

8 If the Magistrates Court receives an application for a protection
9 order and an interim order is sought, the court must do the
10 following:

- 11 (a) set a return date for a hearing for the interim order which is not
12 later than 2 days after the day the application is received;
13 (b) after the hearing for the interim order—
14 (i) set a return date for a preliminary conference which is as
15 soon as practicable after the hearing; and
16 (ii) as soon as practicable serve on the respondent—
17 (A) a copy of the application; and
18 (B) a copy of the interim order; and
19 (C) a timing notice for the conference; and
20 (iii) as soon as practicable give the applicant a timing notice.

21 *Note* The application for the protection order and timing notice must be
22 served personally on the respondent (see s 64A).

42 Service of application etc on others

(1) This section applies to a document required to be served under section 40 or section 41.

(2) The registrar—

(a) must also give a copy of the document to the following people:

(i) if the applicant or respondent is a child—the child's parent or guardian;

(ii) if the applicant or respondent has a disability guardian—the guardian; and

(b) may also give a copy of the document to anyone else the registrar considers appropriate.

Note Section 64F contains provisions about giving a document to a child or the child's parent or guardian.

(3) The failure of the registrar to comply with subsection (2) (a) does not affect the validity of any protection order or other order under this Act.

Division 4.2 Preliminary conferences**43 Preliminary conferences—generally**

(1) The objects of a preliminary conference in relation to an application for a protection order are to—

(a) find out whether the proceeding for the order may be settled by consent before it is heard by the Magistrates Court; and

- 1 (b) ensure the application is ready to be heard as soon as
2 practicable.

3 *Note 1* Before making a consent order, the court must explain certain things
4 about the order (see s 60 and s 61).

5 *Note 2* Words spoken or anything done at the preliminary conference that is
6 related to a question to be decided by the court in the proceeding for the
7 protection order is generally inadmissible as evidence in the proceeding
8 (see s 57).

- 9 (2) The failure of the registrar to hold a preliminary conference in
10 relation to an application for a protection order does not affect the
11 validity of the protection order.

12 **44 Adjournment of preliminary conference for non-service**

13 The registrar may adjourn a preliminary conference if—

- 14 (a) the registrar has set a return date for the preliminary
15 conference; and
16 (b) the respondent has not been served in accordance with
17 section 40 or section 41; and
18 (c) the registrar is satisfied the respondent may be served in
19 accordance with section 40 or section 41 if further time for
20 service were allowed.

21 *Note 1* The court may direct that service be effected in another way if personal
22 service is not reasonably practicable (see s 64A (2)).

23 *Note 2* The registrar may also extend an interim order (see s 23).

24 **45 If no consent order at preliminary conference**

25 If a preliminary conference in relation to an application for a
26 protection order is held and a consent order is not made, the registrar
27 must—

- 28 (a) set a return date for a further preliminary conference which is
29 as soon as practicable after the day of the first conference; or

- 1 (b) set a return date for a hearing to decide the application for the
2 final order.

3 **46 Referrals to mediation**

- 4 (1) This section applies if, at any time during the preliminary
5 conference for an application for a protection order, the registrar is
6 satisfied that the application is likely to be more effectively resolved
7 by mediation than by a hearing.

- 8 (2) The registrar must—

- 9 (a) recommend to the parties to the application that they seek
10 mediation; and

- 11 (b) give the parties information about mediation; and

- 12 (c) adjourn the preliminary conference until a stated date to allow
13 for mediation to happen.

- 14 *Note* The *Court Procedures Act 2004*, pt 5A (Mediation) applies to a
15 mediation in relation to a proceeding in a court.

16 **Division 4.2A Non-attendance by party**

17 **47 Meaning of *returned* before the court—div 4.2A**

18 For this division, a time when an application for a protection order is
19 *returned* before the Magistrates Court means—

- 20 (a) a return date set for a preliminary conference; or

- 21 (b) a return date set for a hearing of the application for a final
22 order.

48 Applicant not present at return of application

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

- (a) dismiss the application; or
- (b) adjourn the proceeding.

Note An interim order ends if the application for a final order on which the interim order was made is discontinued or dismissed (see s 21).

49 Respondent not present at return of application

- (1) This section applies to an application for a protection order if the respondent—

- (a) has been served with a copy of the application and timing notice under section 40 or section 41; and
- (b) is not present, personally or by a representative, at a time when the application is returned before the Magistrates Court.

- (2) The Magistrates Court must—

- (a) decide the application in the respondent's absence; or
- (b) if the court considers it appropriate—
 - (i) issue a warrant for the respondent to be arrested and brought before the court; and
 - (ii) adjourn the proceeding until the respondent is brought before the court.

- (3) This section does not prevent the Magistrates Court from making an interim order in the proceeding.

1 **49A Neither party present at return of application**

- 2 (1) If neither party to an application for a protection order is present,
3 personally or by a representative, at a time when the application is
4 returned before the court, the Magistrates Court may order that the
5 proceeding be dismissed.
- 6 (2) If the Magistrates Court orders that the proceeding be dismissed, the
7 court must not make an order about costs.

8 **81 Sections 50, 51 and 52**

9 *omit*

10 **82 Public hearing not required**
11 **Section 54 (a), (b) and (c)**

12 *substitute*

- 13 (a) it is a hearing for an interim order; or
- 14 (b) a party is not present at a time when the application is returned
15 before the court.

16 *Note* Division 4.2A provides for what happens if a party is not present when
17 an application for a final order is returned before the court.

18 **83 New section 54 (2)**

19 *insert*

- 20 (2) In this section:
- 21 *returned*, in relation to an application for a protection order—see
22 section 47.

84 New sections 55A to 55D

insert

55A Notice of grounds of defence

- (1) A respondent in a proceeding for an application for a protection order may file a notice of grounds of defence at any time before the end of the proceeding.

Note If a form is approved under the [Court Procedures Act 2004](#), s 8 for this provision, the form must be used.

- (2) The registrar must serve the notice of grounds of defence on—

- (a) the applicant; and
(b) anyone else the registrar is satisfied has a relevant interest in the proceeding.

Example

a parent or guardian of a child who is an applicant if the parent or guardian does not live with the child

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

- (3) The respondent does not waive any objection the respondent may have on the grounds of lack of jurisdiction in the court to decide the proceeding only because the respondent files a notice of grounds of defence.

55B Applicant may rely on additional information in hearing

An applicant for a protection order may in a hearing of an application for a protection order—

- (a) rely on information other than information stated in the application; and
(b) present additional information to support the application.

- 1 **55C If child and child's parent are affected people**
- 2 If a child and the child's parent are an affected person in relation to
- 3 the same or similar personal violence by a respondent in a
- 4 proceeding—
- 5 (a) if an application for a protection order by the child is included
- 6 in an application for a protection order by the child's parent
- 7 under section 13A—the court may hear the application of the
- 8 child and the child's parent separately; or
- 9 (b) if the child is not a party to the proceeding—the court may join
- 10 the child in the proceeding.
- 11 **55D Children as witnesses**
- 12 (1) A child, other than a child who is party to a proceeding, may be
- 13 called as a witness in the proceeding only with the court's leave.
- 14 (2) In deciding whether to give leave, the court must consider—
- 15 (a) the need to protect the child from unnecessary exposure to the
- 16 court system; and
- 17 (b) the harm that could be done to the child if the child gives
- 18 evidence.
- 19 (3) If the court gives leave, the court may restrict cross-examination of
- 20 the child if satisfied that it is in the best interests of the child to do
- 21 so.

1	85	Discontinuance
2		Section 56 (1), note
3		<i>substitute</i>
4	<i>Note 1</i>	The court may make an order for costs against an applicant if satisfied
5		the application was vexatious, frivolous or in bad faith. However, an
6		application is not vexatious, frivolous or in bad faith only because it is
7		made then discontinued (see s 67).
8	<i>Note 2</i>	If a form is approved under the <i>Court Procedures Act 2004</i> , s 8 for this
9		provision, the form must be used.
10	86	New section 57A
11		<i>insert</i>
12	57A	Giving evidence by affidavit for interim order
13	(1)	This section applies if a police officer applies for a personal
14		protection order on behalf of an affected person.
15	(2)	In a proceeding for an interim order, evidence may be given by an
16		affidavit—
17	(a)	made by the affected person or a police officer; and
18	(b)	witnessed by a police officer of, or above, the rank of sergeant.
19	87	Service of protection orders
20		Section 64
21		<i>omit</i>

88 New division 4.4A*insert***Division 4.4A Service of documents****64A Personal service of application on respondent**

- (1) An application for a protection order and timing notice must be served personally on the respondent.
- (2) However, if personal service is not reasonably practicable, the court may order that the application be served in a way, stated in the order, that the court considers is likely to bring the application and timing notice to the attention of the respondent.

64B Dismissal of application for non-service

The Magistrates Court may dismiss an application for a protection order if satisfied that—

- (a) the application cannot be served on the respondent in accordance with section 64A; and
- (b) no alternative way of service would be effective to serve the application on the respondent; and
- (c) the respondent has not intentionally avoided service.

64C Service of protection orders

- (1) If the Magistrates Court makes a protection order, the registrar must—
 - (a) if the order is an interim order—serve 2 copies of the order (1 marked as the endorsement copy) on the respondent as soon as practicable; and
 - (b) if the order is not an interim order—serve a copy of the order on the respondent; and

- 1 (c) give a copy of the order to—
2 (i) each other party to the proceeding; and
3 (ii) the chief police officer; and
4 (iii) the registrar of firearms; and
5 (iv) if a party to the proceeding is a child—the child’s parent
6 or guardian; and
7 (v) if a party to the proceeding has a disability guardian—the
8 guardian; and
9 (vi) anyone else the court is satisfied has a relevant interest in
10 the proceeding who does not already have a copy of the
11 order.
- 12 *Note* Section 64F contains provisions about giving a document to a child or
13 the child’s parent or guardian.
- 14 (2) Service under subsection (1) (a) must be personal service unless—
15 (a) the respondent is present when the protection order is made; or
16 (b) a court makes an order under section 64A (2).
- 17 (3) The failure of the registrar to comply with subsection (1) (c) (iv)
18 or (v) does not affect the validity of the protection order.

19 **64D Self-represented parties**

- 20 (1) This section applies if a party to an application for a protection order
21 is not represented by a lawyer.
- 22 (2) Unless the Magistrates Court requires a document to be served by a
23 police officer, the registrar must serve any document required to be
24 served by the self-represented party.
- 25 (3) Any address for service given to the Magistrates Court must not be
26 given to the other party without the self-represented party’s consent.

1 **64E Service of documents by police**

2 The Magistrates Court may direct that a document required to be
3 served on someone be served by a police officer.

4 **64F Giving documents to child or child's parent or guardian**

5 (1) If a document is required to be given to a child, it must not be given
6 at or near the child's school unless there is no other place where the
7 document may be reasonably given to the child.

8 (2) If a document is required to be given to a child's parent or
9 guardian—

10 (a) the document need not be given if the parent or guardian is also
11 a party to the application or proceeding; and

12 (b) the court may order that the document is not required to be
13 given if satisfied that—

14 (i) giving the document is not reasonably practicable; or

15 (ii) there are circumstances that justify the document not
16 being given.

17 **Examples—subpar (ii)**

18 1 the child is estranged from the child's parent

19 2 there would be an unacceptable risk to the child's safety if the
20 parent or guardian was given the document

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

24 (3) In this section:

25 *guardian* includes a disability guardian.

1	89	New section 65A
2		<i>insert</i>
3	65A	Request for further particulars
4		A party may only seek further particulars of an applicant for a
5		protection order with the Magistrate Court's leave.
6	90	Directions about procedure
7		Section 66
8		<i>omit</i>
9	91	Costs
10		Section 67 (2), note
11		<i>omit</i>
12		s 52
13		<i>substitute</i>
14		s 49A
15	92	Litigation guardian—appointment
16		Section 72 (1) (a)
17		<i>omit</i>
18		individual
19		<i>substitute</i>
20		adult

93 New section 76A*insert***76A Preliminary conferences**

If the Magistrates Court receives an application under section 76, the registrar must do the following:

- (a) set a return date for a preliminary conference which is as soon as practicable after the day the application is received;
- (b) as soon as practicable personally serve on the other party—
 - (i) a copy of the application; and
 - (ii) a timing notice for the conference;
- (c) as soon as practicable give the applicant a timing notice.

**94 Amendment of protection orders
Section 77 (1) (a)***omit***95 Section 77 (1), example and note***omit***96 Section 77 (5) and note***substitute*

- (5) If the parties consent to the application to amend the protection order, the Magistrates Court must amend the order regardless of whether or not—
 - (a) the grounds mentioned in subsection (1) (b), (c) and (d) have been made out; or
 - (b) the court has considered those grounds.

1	97	Interim orders made by consent—extension
2		Section 79 (1)
3		<i>omit</i>
4		, of up to 8 weeks
5	98	Section 79 (2)
6		<i>omit</i>
7	99	Final orders—extension
8		Section 80 (3), (4) and (5) and note
9		<i>omit</i>
10	100	Section 81 heading
11		<i>substitute</i>
12	81	Final orders—application for review
13	101	Section 81 (1)
14		<i>omit</i>
15		other than a consent order
16	102	Section 81 (1), note
17		<i>after</i>
18		Section 83
19		<i>insert</i>
20		also

1 **103 New section 81 (3A)**

2 *insert*

3 (3A) The Magistrates Court may grant leave under subsection (2) (c) only
4 if satisfied there has been a change in the circumstances of a party to
5 the order or it is in the interests of justice to do so.

6 **104 Section 82 heading**

7 *substitute*

8 **82 Final orders—review**

9 **105 Section 82 (3)**

10 *after*

11 original order

12 *insert*

13 and the protected person is not present in court when the order is
14 revoked

15 **106 Consent orders—review**
16 **Section 83 (1)**

17 *after*

18 may

19 *insert*

20 also

21 **107 Section 83 (1)**

22 *omit*

23 only

- 1 **108** **New section 83A**
- 2 *insert*
- 3 **83A Preliminary conferences**
- 4 If the Magistrates Court receives an application under section 81 the
- 5 registrar must do the following:
- 6 (a) set a return date for a preliminary conference which is as soon
- 7 as practicable after the day the application is received;
- 8 (b) as soon as practicable personally serve on the other party—
- 9 (i) a copy of the application; and
- 10 (ii) a timing notice for the conference;
- 11 (c) as soon as practicable give the applicant a timing notice.
- 12 **109 Giving notice of appeal**
- 13 **Section 86**
- 14 *omit*
- 15 **110 New sections 198 and 199**
- 16 *in part 20, insert*
- 17 **198 Meaning of *repealed Act*—pt 20**
- 18 In this part:
- 19 *repealed Act* means the *Domestic Violence and Protection Orders*
- 20 *Act 2008*.
- 21 **199 Applications and orders under repealed Act**
- 22 (1) This section applies if—
- 23 (a) an application for a personal protection order is made under the
- 24 *repealed Act*; or

- 1 (b) a personal protection order is made under the [repealed Act](#).
- 2 (2) The application or personal protection order is taken to have been
3 made under this Act.
- 4 (3) A proceeding for or in relation to an application for a personal
5 protection order under the [repealed Act](#) is taken to be a proceeding
6 under this Act.
- 7 *Note* Any procedural requirement under this Act, the [Court Procedures](#)
8 [Act 2004](#) or any other territory law will apply to a proceeding under the
9 [repealed Act](#).
- 10 (4) To avoid doubt, if an application or an order is properly made under
11 the [repealed Act](#), or taken to have been properly made under the
12 [repealed Act](#), section 27 or section 28, it is taken to have been
13 properly made under this Act.

14 **111 Existing registered orders under repealed Act**
15 **Section 200 (1) (a)**

16 *omit*

17 [Domestic Violence and Protection Orders Act 2008](#)

18 *substitute*

19 [repealed Act](#)

20 **112 Dictionary, note 2**

21 *insert*

- 22 • adult

23 **113 Dictionary, note 2**

24 *omit*

- 25 • individual

1 **114 Dictionary, new definition of *returned***

2 *insert*

3 *returned*, in relation to an application for a protection order, for
4 division 4.2A (Non-attendance by party)—see section 47.

5 **115 Dictionary, definition of *timing notice***

6 *substitute*

7 *timing notice*, for a preliminary conference—see section 39.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 16 February 2017.

2 Notification

Notified under the [Legislation Act](#) on 2017.

3 Republications of amended laws

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

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