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**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

DOMESTIC VIOLENCE AND PROTECTION ORDERS BILL 2008

EXPLANATORY STATEMENT

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Domestic Violence and Protection Orders Bill 2008

Outline

The Domestic Violence and Protection Orders Bill 2008 introduces a range of amendments to address matters that have evolved in recent years as a consequence of the Supreme Court decision of *SI bhnf CC v KS bhnf IS* [2005] ACTSC 125 (*I v S*) regarding the lawfulness of section 51A of the *Domestic Violence and Protection Orders Act 2001*. In addition the Bill restructures the Act, including some substantive content changes. The Bill reflects consultation process undertaken by the Department of Justice and Community Safety. It is the Government's view that these changes will substantially improve the use and understanding of the Act by the ACT community.

A major focus of these amendments is to address the incompatibility issues with the *Human Rights Act 2004 (HRA)* raised in the Supreme Court decision of *I v S*. The amendments clarify the circumstances in which an interim order can become a final order. The Bill also provides for a review mechanism at Magistrates Court level, for an order that has become final as a consequence of the interim order process. A detailed explanation regarding interim orders becoming final is contained in the detail section of this Explanatory Statement at clause 36.

Legal practitioners and the community sector identified a range of practical difficulties in using the Domestic Violence and Protection Orders Act, since the introduction of amendments to it in 2005. The 2005 consolidation of the provisions in the *Magistrates Court Act 1930* relating to restraining orders and the Domestic Violence Act provisions dealing with protection orders resulted in an awkward mixture of the procedural and substantive elements within the Act. The amendments in this Bill incorporate a substantial restructure of the 2001 Act to improve its ease of use and understanding.

The Bill responds to community concerns regarding the need to ensure all types of domestic relationships are contemplated by the Act. This Bill extends the category of relationship within the Act and now includes intimate heterosexual and homosexual relationships in circumstances where the parties do not reside together. It has long been recognised that intimate relationships such as boyfriend/girlfriend and same sex relationships of this type, share similar dynamics to those relationships already contemplated by the Act.

The Bill also clarifies that children under the age of criminal responsibility are not intended to be respondents to a protection order.

The Bill will enable interim orders to be amended and provides for short-term amendments to final orders in certain circumstances. These amendments will ensure that the Court has the capacity to be flexible, in being able to make

temporary changes to accommodate for circumstances not contemplated by the parties at the time of making the order.

The Bill extends protection to children in a number of ways. Firstly, it authorises the Department of Disability, Housing and Community Services to access information from the Courts regarding the existence and content of an order when child protection officers are investigating a child protection matter.

Secondly, the Bill strengthens provisions relating to the safety of children, by including an expanded definition of domestic violence to incorporate the psychological abuse of a child or young person. The Bill also prevents children under the age of 10 years from being named as respondents on an order.

The Bill responds to stakeholders' concerns about the reach of the provisions to workers who provide letters of support to clients under the provision dealing with the restriction of the publication of reports about proceedings. The Bill clarifies that a person is not restricted from writing a letter of support for a client to assist in organising their personal affairs, in circumstances where the client has consented to this process.

The Bill provides additional procedural powers to Court Registrars to assist in the identification of relevant issues during the conferencing stage of an order. The purpose of these provisions is to facilitate a matter that has not been resolved at the conference stage of proceedings and is subsequently set down for a hearing.

These additional powers are intended to improve decision-making by identifying what the parties would agree to and narrow the issues that are in contention.

The Bill adds the offence of trespass to the schedule of offences that are defined as domestic violence offences in the context of a domestic relationship.

This Explanatory Statement contains references that link the Bill's clauses to previous sections of the Act. For example, clauses 6 and 7 remake existing sections 5 and 6 so the explanatory statement notes that clause 6 was "(previously s 5)".

Domestic Violence and Protection Orders Bill 2008

Detail

Part 1 — Preliminary

Clause 1 — Name of Act

This is a technical clause that names the short title of the Act. The name of the Act would be the *Domestic Violence and Protection Orders Act 2008*.

Clause 2 — Commencement

This clause enables the Act to commence by 30 March 2009. The Minister may commence the foreshadowed Act at an earlier time by notice.

Clause 3 — Dictionary

This is a technical clause identifying the dictionary and includes two notes explaining conventions used to define words and terms.

Clause 4 — Notes

This is a technical clause explaining the status of notes to the Act.

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

This clause makes it clear that the *Criminal Code 2002* applies to the Act. This Act should also be read in conjunction with the *Legislation Act 2001*, which provides for interpretation, common definitions, and legislative machinery for the ACT.

Part 2 — Main principles and concepts

This part sets out the objects and principles of the Act and how the Act is to be used.

Clause 6 — Objects of Act

Clause 6 comprises two provisions. The first provision states the object of the Act in relation to domestic violence, and the second provision states the object of the Act relating to other forms of personal violence not considered to be domestic violence.

The object of the Act is to facilitate the safety and protection of people who fear or experience violence through providing a legally enforceable mechanism (namely a protection order) to prevent violent conduct, and to allow for the resolution of conflict without the need to resort to adjudication.

Clause 7 — Principles for making protection orders

Clause 7 (previously s 6) retains that the paramount consideration of the Act is to provide a legally enforceable mechanism to protect aggrieved persons and any children at risk of exposure to domestic violence or other forms of violence from domestic or personal violence.

It maintains that a protection order made under this Act must place the least restriction on the personal rights and liberties of the respondent as is possible provided that the order must still achieve the objects of the Act and give effect to the principles set out in clause 7(1).

Clause 8 — Principle about procedures

Clause 8 (previously s 7) provides that procedures under the Act are to be simple, quick and inexpensive as possible while remaining consistent with achieving justice.

Clause 9 — What may someone do under this Act?

Clause 9 (previously s 8) provides that a person may apply under this Act for an order to protect an aggrieved person from domestic or personal violence. Two types of orders are available, domestic violence orders (s 10) and personal protection orders (s 11).

Clause 10 — What conduct do domestic violence orders restrain?

Clause 10 (previously ss 8 and 20) provides that there are three types of domestic violence orders available under the Act (final, interim or emergency). It describes the type of conduct a domestic order restrains and states that an order may include a prohibition mentioned in clause 48.

Clause 11 — What conduct do personal protection orders restrain?

Clause 11 (previously ss 8 and 20) provides that three types of personal protection orders are available under the Act (final, interim and workplace). It explains the type of conduct a personal protection order restrains and states that an order may contain a prohibition mentioned in clause 48.

Clause 12 — Do protection orders cover conduct outside ACT?

Clause 12 (previously s 21) confirms that a protection order has extraterritorial effect and will include conduct that occurs both within and outside the ACT. An example demonstrating the reach of this provision is if a respondent breaches the order in NSW (outside the ACT jurisdiction) the breach would still constitute an offence under this Act.

Clause 13 — What is *domestic violence* etc?

Clause 13 (previously s 9) defines when a person's conduct is domestic violence for the purposes of this Act. The only substantive change to this section is the inclusion of the offence of trespass as a domestic violence offence. The inclusion of trespass as a domestic violence offence in this Act, is in response to concern raised in the community that its exclusion can potentially have implications for a victim's safety. Police identified circumstances where they have been obliged to grant bail to a person who has been apprehended for trespass in a domestic violence context. As trespass is currently not included as a domestic violence offence, the offender is released back into the community within a short period of time. The inclusion of trespass as a domestic violence offence gives police an option to remand an offender in custody when the offender trespasses in a domestic violence context. Its inclusion will enhance the intention of the Act to raise a

presumption against bail for domestic violence offences on the basis of protecting victims from further offences.

Clause 14 — What is *personal violence*?

Clause 14 (previously s 10) defines when a person's conduct is considered to be personal violence.

Clause 15 — Who is a *relevant person* etc?

Clause 15 (previously s 10A) defines (not exhaustively), who is a relevant person for the purpose of this Act.

This clause introduces a new category of relevant person for the purpose of the Act by providing for personal relationships such as boyfriend/girlfriend and same sex relationships of this type, where people have shared an intimate relationship but have not resided together.

This category of relationship is introduced through s 15(1)(c): *someone who is in a domestic relationship with the original person*. A 'domestic relationship' is defined by reference to the *Domestic Relationships Act 1994*, which provides for this type of relationship by stipulating that a personal relationship may exist between people although they are not members of the same household.

Clause 16 — Level of satisfaction is required for this Act

Clause 16 (previously s 19) provides that the level of satisfaction required by the Magistrates Court or judicial officer in determining something under this Act is satisfied on the balance of probability.

Clause 17 — This Act and Children and Young People Act

Clause 17 (previously s 32) provides that a protection order made by the Childrens Court under the *Children and Young People Act 2008* is taken to have been made by the Magistrates Court and may be amended, revoked or appealed under the Act.

Part 3 — Applications generally

This Part of the Bill sets out who may apply for a protection order and what the registrar must do with an application.

Clause 18 — Who may apply for certain non-emergency orders?

Clause 18 (previously s 11) specifies who may apply for certain non-emergency orders and includes an aggrieved person, police officer and any other person, for example, a parent or guardian of a child or an agent on behalf of the aggrieved person.

Regarding the agent category in this provision, the relationship between the aggrieved person and the person applying for the order is expected to be that of a close relative or a person who might be expected to have a legal responsibility for the aggrieved person. However, a person who falls into this category will also need to have the capacity to perform the function of support and advocacy, effectively. The Court, in determining if a person has sufficient

nexus with the aggrieved person, must consider the ability and capacity of that person to make the application as a 'next friend' of the aggrieved person.

This clause excludes applications for emergency orders (Part 9) and applications to amend or revoke an order (Part 7).

Clause 19 — Party with legal disability

Clause 19 (previously s 12) provides that an application by a person with a legal disability may be made by either a litigation guardian, or in the person's own right with the leave of the Magistrates Court.

If the respondent to a non-emergency protection order has a legal disability, then the respondent must have a litigation guardian.

The right of a child to make an application for a domestic violence is preserved in their own right, notwithstanding that they would not otherwise have legal capacity to do so.

Clause 20 — Certain children not respondents

Clause 20 introduces a new provision to exclude a child who is less than 10 years of age as being named as a respondent on an order. The prior reach of the legislation to children under the age of criminal responsibility is considered inappropriate due to the potential incapacity of that child to understand an order or the consequences of any breach of the order. It is not intended that this provision exclude children from being named on orders when they require protection. It relates only to children under the age of 10 named on orders as respondents.

Clause 21 — Application forms that require aggrieved person's address

Clause 21 (previously s 14) allows the address details of the aggrieved person to be suppressed in certain circumstances to preserve the safety of that person.

Clause 22 — Registrar sets return date

Clause 22 (previously s 15) sets out the basic procedural steps to be followed by a registrar once an application for a non-emergency protection order has been received.

Clause 23 — Registrar may adjourn proceedings etc

Clause 23 (previously s 17) provides that a registrar may adjourn proceedings if, on the date set for the return of the application before the Magistrates Court, the respondent has not been served with a copy of the application. The registrar may not adjourn proceedings under this provision on more than two occasions. This restriction is included to ensure that in the event that repeated attempts to serve the application personally on the respondent are unsuccessful, there is a trigger for the Magistrates Court to consider making an order for alternative service under clause 66 (where service is impracticable or impossible).

Clause 24 — Preliminary conferences

Clause 24 (previously s 18) provides that a registrar must hold a preliminary conference in relation to an application for a non-emergency protection order.

It also provides that a regulation may be made to guide a registrar in the following: whether the registrar is required to hold a preliminary conference; prescribing the objects of a preliminary conference; prescribing the powers to be exercised by the registrar during that preliminary conference; and determining the admissibility of any evidence in a preliminary conference.

The failure to hold the preliminary conference does not affect the validity of any subsequent order.

Clause 25 — Referrals to mediation

Clause 25 (previously s 18A) provides a power for the registrar to recommend a matter to mediation when the registrar believes that the matter is more likely to be effectively resolved through a mediation process. In addition, this clause outlines what a registrar must do in circumstances where they are referring the parties involved to mediation.

Clause 26 — Preparation for hearings in Magistrates Court

Clause 26 introduces a new provision. It provides that a registrar will have additional procedural powers during the conference stage of proceedings for the purpose of collating and preparing information to facilitate a future hearing at court. This provision will be utilised by registrars in circumstances where a conference for an order has not resulted in consent orders being made. It stipulates that a registrar must prepare the following documents for the hearing of the application: a statement about who will give evidence at a hearing; a statement about how long that hearing might be; and a summary of the issues that were agreed to, or not agreed to, at the conference.

The provisions mentioned in the above paragraph do not confine either party from adducing additional information outside of the particulars obtained during the conferencing process at the hearing. The reasoning for not confining the substance of the information at the hearing stage is on the basis that applications are often drafted in a short time frame and in periods of stress, where details can be easily missed.

The clause provides that the registrar is required to give the respondent a statement to the effect that if they do not attend the hearing, the Magistrates Court may decide the application in the respondent's absence. It is intended that this process will assist a Magistrate to finalise an order in the absence of a respondent on the hearing date.

The clause also provides that the registrar may do anything they consider appropriate in relation to the application on, or before, the return date. In addition it provides that regulations may prescribe other powers of the registrar to enable them to exercise a power under this function.

Clause 27 — What if applications are made for the wrong order?

Clause 27 (previously s 22) provides that if an application is made for the wrong order, eg an application for a domestic violence order where the relationship of the parties is such that the application should be for a personal protection order, the Magistrates Court is not prevented from making the correct order on the application.

Clause 28 — What if applications for the wrong order are decided?

Clause 28 (previously s 23) provides that if an application is decided before it becomes apparent that the applicant should have applied for the other type of order, then the operation of the order is not affected by the fact that the order could not have been made on the application.

Part 4 — Interim orders

This part of the Bill sets out the processes and rules for interim orders. The purpose of an interim order is to provide protection to the applicant until the application can be heard in more detail at the hearing stage.

Clause 29 — Grounds for making interim order

Clause 29 (previously s 49) provides the grounds for making an interim order. The Magistrates Court must be satisfied that it is necessary to make the order in the following circumstances: to ensure the safety of the aggrieved person or a child; to ensure the safety of an aggrieved person at the workplace or an employee of the aggrieved person at the workplace; and to prevent substantial damage to the property of the aggrieved person or a child of the aggrieved person, pending the hearing of the application for the final order.

Interim orders only exist until the application for a final order is decided. If a final order is considered as the result of an interim order, and the final order not made the interim order is inherently revoked.

Clause 30 — When can interim orders be made?

Clause 30 (previously s 48) clarifies that an interim order can only be made on an application for a final order. It also stipulates that an interim order may be made with respect to an application for a final order, unless clause 41 applies.

A final order must be applied for because the interim order only exists up until a final order is decided.

Clause 31 — What must a court consider?

Clause 31 (previously s 50) provides that the Magistrates Court must consider whether contact between the aggrieved person or the respondent and any child of either party, is relevant to the making of the order and to any relevant family contact order that the court is aware of. However, a failure to take these matters into consideration does not affect the validity of the order.

Clause 32 — Interim orders and respondents with legal disability

Clause 32 introduces a new provision for when the court is aware that the respondent to the order may have a legal disability and the court is

considering making an interim order. In these circumstances, the court must inform the public advocate of the following: about the respondent, including the respondent's contact details; the fact that the respondent may be in need of a litigation guardian for the purpose of the proceedings; and the return date for the interim order.

This section is intended to provide adequate support and assistance to a person who has or may have a legal disability, i.e. a child, in circumstances where they are being named as a respondent to an order. It is not expected that the public advocate will need to personally represent every person that falls into this category. However, it enables the public advocate to make an assessment of the respondent's circumstances and to assist in identifying a suitable person to act as a litigation guardian for the benefit of the respondent who has a legal disability. The assistance provided by a litigation in these circumstances will include: interpreting the requirements regarding the endorsement copy of the order outlined in section 36; and to assist the respondent and to provide support at the time of the hearing.

Clause 33 — Service of applications for interim orders unnecessary

Clause 33 (previously s 56) provides that it is not necessary that the application be served on the respondent before the Court can make an interim order.

Note that section 90 provides that the respondent would need to have been served with the interim order before the offence of contravention of an order can be established.

Clause 34 — Return date for final orders on making of interim order

Clause 34 (previously s 48(4)) provides that if the court makes an interim order and the return date is less than 21 days after that interim order is made then the court must change the return date to be at least 21 days after the day the interim order was made.

Clause 35 — What interim orders may contain

Clause 35(1) (previously s 51) specifies the conditions that may be included on an interim order.

Clause 35(2) stipulates that in circumstances where the respondent is a child and the interim order proposes to prohibit that child from being on premises where the child may normally receive care (including education) or protection, the Magistrates Court must first be satisfied that adequate arrangements have been made for that child's care, prior to making an order.

Clause 36 — When interim orders become final orders

Background to the Introduction of Section 51A Provisions

Section 51A of the *Domestic Violence and Protection Orders Act 2001* was adopted from the national Model Domestic Violence Law Report and allowed

for the crystallisation of an interim order into a final order, in circumstances where the respondent did not respond to the court by a specified date.

The *Domestic Violence and Protection Orders Amendment Act 2005* introduced section 51A to enable interim orders to automatically become final orders in circumstances where the respondent was served with an endorsement copy of the order and either consented to the final order being made, or did not return the appropriate copy of the interim order within the required timeframe. The Government's intention in introducing these amendments was to obviate unnecessary court appearances and consequent trauma for victims of domestic violence.

The provisions found in section 51A of the Act allowed for the crystallisation of an interim protection order into a final order when the respondent was served 21 days or more before the date scheduled for hearing the protection application. If the respondent failed to respond within the nominated period or responded by consenting to the order becoming final, the process would continue and the order became final. The respondent was equally at liberty to prevent a final order by lodging an objection and opposing the protection application at the subsequent hearing. The requirement that the respondent must complete and return the endorsement copy at least seven days before the hearing day was designed to allow the applicant an appropriate period to prepare for a contested hearing.

***I v S* Decision**

I v S raised the issue of whether section 51A is compatible with the right to fair trial found in section 21 of the *Human Rights Act 2004*. The case considered circumstances in which a respondent who had an identifiable legal disability (a minor), did not have the legal standing to respond to the requirements set out under section 51A regarding the return of the endorsement copy of the order.

Clause 36 remakes section 51A with appropriate changes. The purpose behind the introduction of section 51A (as is explained in the background) is retained in this section. However, the clause accounts for all the circumstances in which an interim order can become a final order. This clause must be read in conjunction with clause 94, which provides a review mechanism for orders that have become final under this section.

Section 36(1) provides for circumstances when a respondent objects to an interim order made when they are not present at court.

Section 36 (2) provides for circumstances in which a respondent can indicate their consent to a final order. A respondent may consent to a final order by filling out the endorsement copy of the interim order in accordance with the instructions on the copy; indicating on the endorsement copy that the respondent does not object to the interim order becoming a final order; and by returning the copy of the endorsement copy to the Magistrates Court before the return date. (See part 8 below for an explanation of 'endorsement copy'.)

Section 36(3) provides that when a respondent acts under subsection (2), the interim order will become a final order on the day that the Magistrates Court receives the endorsement copy.

Section 36(4) provides for circumstances in which a respondent can indicate their objection to the interim order becoming a final order. A respondent may indicate their objection by filling out the endorsement copy of the order; indicating on the endorsement copy that they object to the order becoming a final order; and returning the endorsement copy of the order to the Magistrates Court at least 7 days before the return date for the application for the final order to which the interim order relates.

Section 36(5) provides that if the respondent acts under subsection (4), then the Magistrates Court may decide the application.

Section 36(6) provides for circumstances when a respondent wishes to object to an interim order becoming a final order, but fails to act under subsection (4).

This provision gives a Magistrate the discretion to decide an application for a final order in the following circumstances: the respondent attends at court on the return date for the final order; and the respondent objects to the order becoming final; and the respondent or their representative satisfies the court of either of the following conditions:

- that the respondent had a legal disability but did not have a litigation guardian to assist with the process required to engage subsection (4),
- or that the respondent had a reasonable excuse for failing to return the endorsement copy as was required under subsection (4).

Examples are provided to demonstrate circumstances where a respondent has a legal disability or has a reasonable excuse for failing to return the endorsement copy as required.

Clause 36(7) provides that when an interim order does not become a final order under subsection (3) and the application may not be decided by the Magistrates Court under subsections (5) and (6), the Magistrates Court may decide that the interim order will become a final order at the end of the return date for the application.

Clause 36(8) provides definitions for 'endorsement copy' and 'respondent'. 'Endorsement copy' is discussed in part 8 below.

When making a final order under the circumstances set out in clause 36, the court must consider the criteria in clause 46 below. If the court decides that the application or evidence does not satisfy the criteria in clause 46 then the final order is not made and the interim order is inherently revoked.

Clause 37 — Length of interim orders by consent

Clause 37 (previously s 52) states that an interim order (other than a consent order) can remain in force for a period of up to 2 years. It is highly unlikely that an interim order will last longer than the time necessary to satisfy one of the possible outcomes contemplated by clause 36. As per discussion in clauses 29 and 36, an interim order only exists until a final order is decided. The period of 2 years corresponds to the maximum time for which a final order can be made, on the basis that the provisions in clause 36 will facilitate the process of an order crystallising from an interim order to a final order in all circumstances where the provisions in clause 38 and 39 do not apply.

Clause 38 — End of interim orders

Clause 38 (previously s 53) provides that an interim order ends before the period stated on the order if any of the following happens: the application on which the interim order is made is dismissed; or if the final order is made on the application in the respondent's presence when the final order is made; or when the final order is served on the respondent.

Clause 39 — What if interim orders would expire before final orders are served?

Clause 39 (previously s 55) provides that where a final order is made on an application and the respondent is not present at the time the order is made, then the interim order is taken to continue until such time as the final order is served on the respondent.

Clause 40 — Firearms and interim orders

Clause 40 (previously s 57) provides that when an interim order is made, any firearms licence held by the respondent is suspended until the interim order ends and any firearms or ammunition is to be seized and detained for the period of the order. In the case of an interim personal protection order, an application can be made under subsection (3) to request that a firearms licence not be suspended if the court is satisfied that the licence should not be suspended.

Clause 41 — May further interim orders be made?

Clause 41 (previously s 59) provides that in circumstances where an interim order cannot be extended because of clause 61(2), a further interim order on application to the court can be made in special and exceptional circumstances. This clause recognises that in certain situations an application may not be finalised before the 16 weeks period allowed in clause 61(2) for an interim order.

Clause 42 — When may the registrar extend interim orders?

Clause 42 (previously s 60) gives the registrar power to extend interim orders when the respondent has not been served with a copy of the application. It states that a registrar cannot extend an interim order for longer than eight weeks. This clause needs to be read in conjunction with clause 63(3) that stipulates that an interim order cannot be extended beyond 16 weeks.

Part 5 — Consent Orders

This is a new part of the Bill that incorporates previous provisions relating to consent orders.

Clause 43 — Consent orders

Clause 43(1) (previously s 29) provides that on application for a protection order, the Magistrates Court may make an order with the consent of the parties involved.

Subsection (2) provides that an order can be made whether or not the parties have attended at court; whether or not grounds for the order had been made out; and without proof or admission of guilt. It is foreshadowed that the regulations will empower the Magistrates Court to delegate appropriate powers and functions to a registrar or deputy registrar.

Subsection (3) provides that if an automatic consequence flows from the making of a kind of order provided for under this Part (i.e. the suspension of a firearms licence), then that automatic consequence will flow from the making of the order, unless the following two elements are satisfied:

- there is a discretion under the Act which would allow for the automatic consequences not to occur; and
- the parties consent to the automatic consequence not following.

An example is provided in the Act to demonstrate this provision.

Subsection (4) prevents the Magistrates Court from making a protection order under this clause in circumstances where it may not have otherwise been able to make it under this Act or for a period longer than is allowed for under this Act.

Clause 44 — Consent orders and parties with legal disability

Clause 44 (previously s 30) ensures that a consent order cannot be made where a party to the proceedings is a person with a legal disability who is not represented by someone else (either a next friend or a litigation guardian), and it appears to the court that the person should be represented by someone else.

This clause permits the Magistrates court to adjourn the hearing to allow the person to obtain a litigation guardian.

Clause 45 — Length of interim orders by consent

Clause 45(1) provides that an interim order made as a consent order remains in force for a period of up to 16 weeks.

Clause 45(2) clarifies that clause 61(2) applies to an interim order made by consent. Note that section 61(2) prevents the extension of an interim order beyond a period of more than 16 weeks.

Part 6 — Final orders

This part of the Bill sets out the procedure, grounds and considerations for final orders (other than workplace orders).

Division 6.1 — Final orders other than workplace orders

Clause 46 — Grounds for making final orders (other than workplace orders)

Clause 46 (previously s 40) provides that the Magistrates Court on application can make a final order, other than a workplace order, if satisfied that the respondent has engaged in domestic violence or if the respondent has engaged in personal violence towards the aggrieved person and may engage in personal violence towards the aggrieved person during the time the order is proposed to operate. The difference in grounds regarding domestic violence and personal violence recognises that domestic violence is a particular form of interpersonal violence that needs a greater protective response, which gives rise to the need to protect the aggrieved person.

The clause clarifies in respect to personal violence, that it is not only necessary to establish that violence has previously occurred, but also that it may reoccur in the future. This provision exists to protect an applicant who applies for an order on the basis that someone whom they fear may harm them is due to be released from prison.

This clause also provides that a Magistrate must consider a respondent's objection in making the final order, when the respondent has objected to the interim order.

Clause 47 — What must a court consider before making final orders other than workplace orders?

Clause 47 (previously s 41) sets out what the Magistrate must consider in deciding an application for a final order. However, a failure to consider any of these issues does not invalidate the order.

Clause 48 — What final orders (other than workplace orders) may contain

Clause 48 (previously s 42) lists conditions and prohibitions that the Magistrates Court may include on an order that they consider necessary or desirable.

Division 6.2 — Workplace orders

Workplace orders are a specific type of personal protection order and as a consequence attract different considerations.

Clause 49 — Definitions—div 6.2

Clause 49 (previously s 42) contains the definition section for workplace orders. It now defines a 'child facility' as being a place of care or a therapeutic protection place under the *Children and Young People Act 2008*, or an office or facility used by the Territory for children or young people who are, under

the *Children and Young People Act 2008*, care and protection chapters, in need of care and protection or in therapeutic protection.

This clause also includes a note that section 344 of the *Children and Young People Act 2008* defines a child or young person in need of care and protection.

Clause 50 — What is *personal violence* for a workplace?

Clause 50 (previously s 44) defines personal violence in relation to a workplace. The emphasis in this definition is on the relationship of the violence to the employee in their capacity as an employee in a workplace. If personal violence, harassment or offensiveness is aimed at an employee outside their capacity as an employee in the workplace, then that employee may need to seek a separate personal protection order against the respondent.

Clause 51 — Effect of availability of workplace orders

Clause 51 (previously s 43) stipulates that the availability of workplace orders does not create any additional obligations or rights in relation to the employment relationship. This legislation is not intended to give rise to a cause of action by an employee against an employer who does not apply for a workplace order in a given situation.

Clause 52 — Grounds for making workplace orders

Clause 52(1) (previously s 45) sets out the grounds for a workplace order. The grounds are similar to those for a personal protection order but further define the relevant behaviour, as personal violence in respect of the workplace. Note that personal violence in the workplace is defined in clause 50.

Clause 52(2) explicitly provides that a Magistrates Court can make an order in relation to a workplace that is a child facility, if satisfied that the respondent poses a risk to people at the workplace.

Clause 53 — What must a court consider before making workplace orders?

Clause 53 (previously s 46) sets out the factors that the Court must consider before making a workplace order.

Clause 54 — What workplace orders may contain

Clause 54 (previously s 47) lists the conditions and prohibitions that a workplace order may contain. The court may include such conditions and prohibitions, as it considers necessary or desirable. The prohibitions and conditions set by the Court are specific to workplace situations. An example demonstrating this provision is that the court may prohibit someone from entering or coming within a certain distance from the workplace.

Clause 54(3) has been rewritten to improve comprehension. The substantive content of this clause remains the same and states that a workplace order that

is a consent order may contain a condition or prohibition mentioned in clause 54(2).

Division 6.3 — Length of final orders etc

This division stipulates the timeframes permitted for final orders.

Clause 55 — Length of final domestic violence orders

Clause 55 (previously s 35) stipulates that a final domestic violence order can remain in place for a period of 2 years or a shorter period. The Magistrates Court may make a domestic violence order that remains in force for longer than 2 years if satisfied that special or exceptional circumstances exist. However, an order made by consent cannot be longer than 2 years. Note that specific conditions made on an order may give a shorter period of effect than the entire order. An example of this is if the order gives the respondent permission to attend their home on one occasion to collect personal belongings in company of police and this is to occur within a 7 days of the order being made.

Clause 56 — Length of final personal protection orders

Clause 56 (previously s 36) stipulates that a final personal protection order can remain in place for a period of 1 year, or a shorter period.

Clause 57 — Firearms and final orders

Clause 57 (previously s 38) provides that when a final order is made, any firearms licence held by the respondent will be cancelled by force of this section. It also provides that the court may order the seizure of any firearm licence, any firearm and ammunition in the respondent's possession.

However in respect to applications for personal protection orders, if the Court is satisfied on the facts that harm to the applicant is unlikely, it may exercise its discretion not to cancel the firearms licence.

Part 7 — Amendment of orders

This part of the Bill incorporates the previous provisions relating to the amendment of orders. It introduces new provisions relating the amendment of an interim order or to make temporary amendments to a final order, in certain limited circumstances.

Clause 58 — Amendment generally

Clause 58 (previously s 31) sets out the circumstances in which the Magistrates Court can amend a protection order.

Clause 58(1)(b) affords protection to any children named on an order in circumstances where the applicant intends to amend that order. This provision stipulates that a Magistrate will need to be satisfied in making the amendment that the child or children named on that order are no longer in need of the protection afforded by the original order. The purpose of this provision is to avoid circumstances where children may be placed at risk in circumstances when an adult applicant amends an order and little or no

consideration is given to the status of the protection of the children named on that order.

Clause 59 — Amendment of interim orders

Clause 59 is a new section that provides that the Magistrates Court may, on application by a party, amend an interim order.

Clause 59(1) stipulates that the parties who can apply for an amendment of an interim order are the aggrieved person, the respondent, or a police officer.

Clause 59(2) provides that the Magistrates Court may amend an interim order only in the following circumstances: if there has been a change in circumstances of a party to the order, or the order causes unnecessary hardship to the respondent, and amending the order will not adversely affect the safety of the aggrieved person.

It is not intended that an applicant or respondent will be able to have an order amended unless there has been a relevant change in circumstances, or the order as it stands is considered to be too restrictive of the personal rights and liberties of the respondent. Some examples of situations that might justify amendments are:

- an applicant is granted an interim order but this order does not exclude the respondent from living in the home. A number of days after the interim order is taken out, another incident occurs that gives rise to an increased risk posed by the respondent to the applicant. The applicant now requires an exclusion order to maintain his/her safety but is unable to have the order amended during the interim period; or
- an interim order has failed to take into account the respondent's employment situation and the respondent seeks to have the interim order amended in order to be able to continue to work.

Clause 60 — Temporary amendment of final orders

Clause 60 introduces a new provision that enables the court, on application by an aggrieved person or a respondent, to amend a final order temporarily, for a stated period of time. Before the court can make a temporary amendment of a final order, it must first be satisfied of the following circumstances:

- it must involve a matter of significant importance affecting at least one of the parties;
- the parties have taken reasonable steps to deal with the matter without amending the order;
- the amendment is the only reasonable way of dealing with the matter;
- the amendment will not adversely affect the safety of the complainant;
- and it is proper to amend the order given all the circumstances.

This provision is intended to assist in meeting unique needs of certain applicants and respondents that were not contemplated at the time of taking out the order.

An example of where this provision might be used is in a situation where both an applicant and respondent want to attend a funeral of a relative but a provision of the order stipulates that the respondent not attend within 100m of the applicant wherever they may be at any given time. The period of time granted for the amendment would be limited to a period necessary for the respondent to attend the service. A Magistrate may grant leave to an applicant on the basis that the circumstances giving rise to the application are of significant importance (such as the attendance at a funeral of a close family member or friend) and that alternate options have been exhausted.

The time period allowed for an interim amendment must be confined to a set period and is not to be left open ended. Clear instructions are to be given by the Court to the respondent and the applicant regarding the application of such an amendment.

Clause 61 — Extension of interim orders by consent

Clause 61(1) (previously s 58) provides that the Magistrates Court, on application, may amend an interim order that is a consent order by extending it for an additional period, or a further additional period, of up to 8 weeks.

Clause 61(2) provides that the interim order must not be extended if the extension would mean that the interim order would be in force for a period for more than 16 weeks.

Clause 62 — Extension of final orders

Clause 62 (previously s 37) provides that the Magistrates Court, on application, may amend a final order by extending it in circumstances where the court is satisfied that the aggrieved person is still in need of the protection afforded by the order. This provision also allows that an application may be made out of time when parties consent under this section. The subsequent sections set out the requirements to extend a final order.

Part 8 — Service of non-emergency protection orders

This part of the Bill incorporates previous provisions relating to service of orders.

Clause 63 — Service of applications

Clause 63 (previously s 16) sets out the requirements for the registrar to serve copies of the application and notice of proceedings. In addition to serving a copy of the application on the respondent, it requires that the registrar serve a copy of the application and a notice on the relevant people. Relevant people are described in section 63(5) as the respondent and anyone else the registrar is satisfied has a relevant interest in the proceeding. This requirement also applies when the aggrieved person is a person with a legal disability.

Clause 64 — Service of non-emergency protection orders

Clause 64 (previously s 33) specifies how a protection order, other than an emergency order, must be served. Personal service is specified in respect of

the respondent due to the fact that the offence provision in clause 92 is predicated on personal service.

The documents served for the interim order process include a document known as the endorsement copy. A respondent in receipt of an endorsement copy must indicate on the endorsement copy whether they object or consent to the order being made. The respondent must return the endorsement copy within the required time.

Clause 65 — If personal service not required

Clause 65 (previously s 97) sets out the manner in which documents may be served when personal service is not specified. The service methods specified are standard methods of service.

Clause 66 — If service impracticable or impossible

Clause 66 (previously s 98) is a standard provision that allows the Magistrates Court to make an order about how a document may be served when the specified method of service is not reasonably practicable or possible.

Clause 67 — Service of documents by police

Clause 67 (previously s 99) provides that the Magistrates Court can direct that a document be served by a police officer for a non-emergency order, when the court considers that it is appropriate that a police officer serve the document.

Part 9 — Emergency orders

Part 9 contains the provisions for emergency orders. An emergency order is available for domestic violence matters only. An emergency order is available outside of court hours to afford immediate protection to victims. The procedures for these orders differ from the procedures for other orders in this Bill. An application for an emergency order may only be made by a police officer via telephone to a judicial officer. A judicial officer is responsible for granting an emergency order.

Clause 68 — Who may apply for emergency order?

Clause 68 (previously s 61) provides that a police officer may apply for an emergency order.

Clause 69 — When may emergency order be made?

Clause 69 (previously s 62) sets out the circumstances in which an emergency order may be made. A judicial officer must be satisfied that there are reasonable grounds for believing that the respondent may cause physical injury to the aggrieved person if the order is not made, and that arrest is not practicable. The circumstances in which an emergency order may be granted are narrower than those in which an interim order may be granted.

Clause 70 — How can application for emergency order be made?

Clause 70 (previously s 63) stipulates the procedure for a police officer to apply for an emergency order via telephone. A judicial officer, in considering

whether to make an emergency order, is required to take into account any relevant contact orders and the provisions in clause 71.

Clause 71 — What should judicial officers consider in making emergency order?

Clause 71 (previously s 64) provides what judicial officers must consider in making an emergency order. However, a failure to take such matters into account does not invalidate any subsequent order made. A note has been added to this clause to take into account amendments made to the *Family Law Act 1975* (Cwlth).

Clause 72 — Emergency orders

Clauses 72 (previously s 65) sets out the formal matters in relation to how orders are made and what records must be kept.

Clause 73 — Action on refusing emergency order

Clauses 73 (previously s 66) sets out what the judicial officer must record if refusing to grant an emergency order.

Clause 74 — Records of proceedings

Clause 74 (previously s 67) states that a judicial officer must ensure that the record of proceedings, including any order made, will become part of the record of the Magistrates Court.

Clause 75 — Detention of people against whom emergency orders sought

Clause 75 (previously s 68) allows a police officer to detain a person for up to 4 hours in circumstances where they are intending to obtain an emergency order against that person.

Clause 76 — What emergency order may contain

Clause 76 (previously s 69) sets out what prohibitions and conditions can be included in an emergency order.

Clause 77 — Length of emergency orders

Clause 77 (previously s 70) establishes the period for which an emergency order remains in place.

Clause 78 & 79— Emergency and non-emergency amendment and revocation of emergency orders

Clauses 78 & 79 (previously ss 71 and 72) provide the process in which an emergency order may be varied or revoked. Outside of court hours, the application process for varying or revoking an order is the same as for the initial grant of the emergency order; that is the order may only be varied or revoked by a judicial officer on application from a police officer. Within court hours, clauses 58 and 59 and Part 11 provides the relevant mechanisms for parties seeking to have the order varied or revoked. An interim order is inherently revoked if a final order is considered as a consequence of an interim order process and the court decides not to make a final order.

Clause 80 — Firearms and emergency orders

Clause 80 (previously s 73) provides that if an emergency order is made in relation to a respondent who is the holder of a firearms licence, then that firearms licence is suspended until such time as the order ends or is revoked.

Clause 81 — Service of emergency orders

Clause 81 (previously s 74) requires that police must serve an emergency order on a respondent personally, unless the Magistrates Court makes an order under clause 66 (if service is impracticable or impossible).

Clause 82 — Police required to explain emergency order served

Clause 82 (previously s 75) requires that a police officer, when serving a copy of the emergency order on the respondent, must, as far as it is practicable to do so, explain the effect of that order and the consequences of contravening that order.

Clause 83 — Recording reasons if emergency order not applied for

Clause 83 (previously s 76) requires that a police officer record his/her reasons for not applying for an emergency order.

Part 10 — Other provisions about protection orders

This part of the Bill incorporates a range of pre-existing provisions relating to: the requirement to explain orders; the reasons for the order; the order is not to include the aggrieved person's address; that prohibitions or condition may be shorter; a recommendation can be made for counselling; and an offence for a contravention of a protection order.

Clause 84 — Explaining orders if respondent present

Clauses 84 (previously s 24), provides that orders are to be explained to the respondent when that party appears before the court.

Clause 85 — Explaining orders if aggrieved person present

Clause 85 (previously s 25) provides that orders are to be explained to the aggrieved person when that party appears before the court.

Clause 86 — Reasons for order

Clause 86 (previously s 26) requires that when the court grants a non-emergency protection order, the court must record the reason for making the order. If the order is a consent order, the court must record the reason for making the order is that the parties have consented to it.

Clause 87 — Orders generally not to include aggrieved person's address

Clause 87 (previously s 27) provides that the address of the aggrieved person (home and work) is to be omitted from the protection order in certain circumstances. This measure is designed to protect the complainant. However, there may be circumstances where it is necessary to include an address in order to afford adequate protection to the complainant by explicitly stipulating the places where a respondent cannot go.

Clause 88 — Prohibitions or conditions may be shorter

Clause 88 (previously s 28) provides that specific conditions in an order may have a shorter period of effect than the order itself as a whole. An example of this is where the order provides that a respondent can attend at a prohibited place on one occasion to collect personal items and that this is to occur within a certain timeframe.

Clause 89 — Recommendations for counselling etc

Clause 89 (previously s 39) enables the Magistrates Court to recommend that parties to a proceeding undertake counselling, training, mediation, rehabilitation or assessment.

Clause 90 — Offence for contravention of protection order

Clause 90 (previously s 34) creates an offence of breaching a protection order. To invoke this provision, the respondent must have been present at court when the order was made, or have been personally served with a copy of the protection order. A person commits an offence if the person engages in conduct (within or outside of the ACT) that contravenes the protection order (including a condition of that order).

The maximum penalty for this offence is 500 penalty units or 5 years' imprisonment or both.

Technically this provision can apply to both parties named in the order (the respondent and aggrieved family member), however the intention behind this provision is to apply to a respondent and not to an aggrieved family member in circumstances where the aggrieved family member is not acting in a vexatious manner. It is understood that the complexities and dynamics of domestic violence can lead to circumstances where an aggrieved family member may not feel confident enough to turn the respondent away or in certain circumstances be the instigator in making the prohibited contact.

Part 11 — Review of orders

This part of the Bill incorporates previous review provisions and new provisions for review at Magistrates Court level of orders.

Clause 91 — Application for review of particular final orders

Clause 91 enables the Magistrates Court to review final orders apart from final orders that are made as a consequence of an interim order process or consent orders.

The dictionary defines 'final orders' as including protection orders other than interim orders or emergency orders. 'Protection orders' is defined as including workplace orders, firearms orders and an order amending a protection order.

A party to the original order may apply for a review of a final order. A person with sufficient interest in the order may also apply for a review with the leave of the Court.

Clause 92 — Review of particular final orders

Clause 92(1) sets out the Court's powers following a hearing for a review of a final order.

Clause 92(2) provides the criteria the Magistrate must be satisfied of before deciding to revoke an order.

Clause 93 — Application by respondent to review of order finalised under s 36

Clause 93 is a new provision and responds to the incompatibility issues between the *Domestic Violence and Protection Orders Act 2001* (the Act) and the *Human Rights Act 2004*, first raised in the case of *I v S*. This decision raised questions regarding a respondent's right to fair trial in circumstances where an order under the Act had automatically become final because the respondent had not returned an endorsement copy of the order to the Court.

In order to address the right to a fair trial, this new review mechanism is being introduced to create additional access to the Court in certain circumstances.

The Court can hear an application in circumstances where the respondent would have objected to the interim order becoming a final order, but did not object at the time or did not appear at Court on the return date. To prevent abuse of the process and undermining the purpose of clause 36, the Magistrate must be satisfied that the respondent had a reasonable excuse for failing to act in accord with the provisions of clause 36.

The Court may also hear an application under this clause from respondents who have a legal disability and did not have a litigation guardian when the interim order became a final order. This can occur in circumstances where a person appears to be an adult but is in fact a minor, and does not disclose to parents or other responsible adults the fact that they have been served with court documents. Similarly, this can also occur in circumstances involving people with intellectual disabilities who may not have the capacity to engage in legal processes on their own behalf.

Finally, the Court may hear applications for review where the respondent demonstrates that there are significant changes in circumstances relevant to the making of the original order.

Clause 94 — Review of order finalised under s 36

Clause 94 states that a Magistrate on hearing an application for review under section 93 must do one of the following: dismiss the application; or confirm the original order; or set aside the original order and either make a new interim order and set a new return date for the interim order to become final.

Clause 95 — Review of consent orders

Clause 95 (previously s 77) provides that the Magistrates Court can review consent orders in circumstances where the grounds given for making the

order were induced or affected by fraud, duress, other than fraud of the party or duress applied by the party.

In reviewing the order in these circumstances, the Magistrates Court may do any of the following: amend the original order or declare the original order void; or refuse to amend the original order or declare the original order void; or make an order that could have been made on application in relation to which the original order was made instead of the original order.

Clause 96 — Appealable decisions

Clause 96 (previously s 78) specifies which decisions under the Act are appealable. A decision regarding an interim or emergency order is not appealable.

Clause 97 — When can someone appeal to Supreme Court?

Clause 97 (previously s 79) establishes the right of a party to appeal to the Supreme Court and sets out the procedure to be used in making that appeal, including the giving of notice.

Clause 98 — Giving notice of appeal

Clauses 98 (previously s 80) sets out the procedure to be used in making that appeal, including the giving of notice.

Clause 99 — Evidence on appeal

Clause 99 (previously s 81) requires that the Supreme Court, in considering an appeal, must consider evidence given in the proceeding from which the appeal arose, and has the power to draw inferences of fact, and in its discretion, to receive further evidence.

Clause 100 — Powers of Supreme Court on appeal

Clause 100 (previously s 82) sets out what the Supreme Court may do in respect of a judgment or order that is appealed.

Clause 101 — Effect of filing appeal

Clause 101 (previously s 83) provides that the lodging of the appeal does not affect the operation of the order.

Part 12 — Reciprocal arrangements

This part of the Bill replaces Part 9 of the previous Act and provides for the recognition in the ACT jurisdiction of orders made under corresponding laws in other State, Territory or New Zealand jurisdictions.

Clause 102 — Definitions—pt 12

Clause 102 (previously s 84) sets out the definitions for this section of the Act.

Clauses 103, 104 and 105 — Applications for registration of recognised orders

Clauses 103, 104, 105 and 106 (previously ss 85, 86, 87 and 88) provide that a person may apply to the registrar for registration of a recognised order. On

receipt of the application, clause 103 requires that the registrar must register the order to convey the relevant information to both the local police and the court where the order was originally made.

Once the order is registered, clause 105 provides that the order becomes enforceable in the ACT and may be varied or revoked accordingly under this Act. When a registered order is varied, clause 106 requires that the registrar notify the court where the original order was made of that variation.

Clauses 106 and 107 — Amendment and revocation of registered orders

Clauses 106 and 107 (previously ss 88 and 89) provide that where the registrar is notified by the originating court that an order has been revoked or varied, then the registrar must cancel the registration of the original order and, in the case of a varied order, register the varied order.

Clause 108 — Amendment of recognised orders

Clauses 108 (previously s 90) provides that where the registrar is notified by the originating court that an order has been revoked or varied, then the registrar must cancel the registration of the original order and, in the case of a varied order, register the varied order.

Clause 109 — Notification by interstate court of registration

Clause 109 (previously s 91) provides that where a recognised court notifies the Magistrates Court that it has registered a protection order made in the ACT, the Magistrates Court must notify that court if it varies or revokes the protection order.

Clause 110 — Evidence of registered orders

Clause 110 (previously s 92) stipulates how a registered order may be admitted as evidence in a court.

Part 13 — Public access and publication

This part replaces Part 12 of the previous Act and relates to the restrictions on the publication of reports about proceedings.

Clause 111 — Publication of reports about proceedings — offence

Clause 111 (previously s 100) provides that a person commits an offence if they publish an account or report of a proceeding on an application for a protection order. Note that clause 112 provides some exceptions to this provision.

The maximum penalty for this offence is 50 penalty units, imprisonment for 6 months or both.

Clause 112 — Publication of reports about proceedings — exceptions to offence

Clause 112 (previously s 116) limits the restriction on publication about proceedings by clarifying that clause 111 does not prevent a person who is a party to a proceeding telling someone else about the contents of a protection

order made in the proceeding and does not prevent a lawyer of a party to a proceeding from telling someone else about the content of a protection order in certain circumstances.

This clause ensures that the reach of clause 111 does not extend to services that are providing support letters or other written forms of assistance for clients when requested to do so by those clients. For example, a Legal Aid lawyer who assists a client to obtain a protection order is asked to provide a support letter for an application for housing. The content of the letter includes details about the court proceedings and as a consequence may subject the writer to liability under clause 111. It is not the intention of this section to prevent those who are assisting applicants from providing support to people in need.

Clause 112 provides an exception to clause 111 through the inclusion of item 10 in schedule 2 of the Act which provides the following: information about a party to a proceeding, or a protection order made in the proceeding, communicated to another person, with the party's permission, for the purpose of organising the party's personal affairs. As a consequence, those people who are providing support to clients in circumstances when the client has requested or consented that their support person write a letter of support will not be liable under clause 111. It is anticipated that support people will include solicitors, counsellors, psychologists, support workers and other professionals.

Part 14 — Miscellaneous

This section replaces Part 13 of the previous Act and sets out a range of additional miscellaneous matters.

Clause 113 — Deciding application if criminal proceedings

Clause 113 (previously s 102) provides that the power of the Magistrates Court or a judicial officer to make a protection order may be exercised even if the person has been charged with, or convicted or found guilty of, an offence arising out of the same conduct.

Clause 114 — Crimes Act, s 397(1)

Clause 114 (previously s 103) provides that the Act does not affect the operation of powers of the police in relation to recognisances to keep the peace under the *Crimes Act 1900*.

Clause 115 — Working out time if less than 5 days

Clause 115 (previously s 104) establishes time limits in respect to hearings.

Clause 116 — Directions about procedure

Clause 116 (previously s 105) provides that when a step in a proceeding under this Act is not prescribed in the Act, the Chief Magistrate may give directions about the procedure to be followed for that step.

Clause 117 — Recovery of certain expenses

Clause 117 (previously s 95) provides for the recovery of expenses in the case where an application is frivolous, vexatious or has not been made honestly.

Clause 118 — Regulation-making power

Clause 118 (previously s 106) is the regulation-making power under the Act. The regulations will contain procedural rules for proceedings under the Act. The language has been updated to be consistent with current legislative drafting practice.

Part 20 — Transitional

Clause 200 — Definitions—pt 20

This clause defines ‘commencement day’ as the day the foreshadowed Act commences. Commencement day is used in part 20 as a reference point for when the new provisions should be used or the old provisions used.

Clause 201 — Legislation repealed

Clause 201 repeals the *Domestic Violence and Protection Orders Act 2001* and the regulations made under that Act in 2002. Likewise, any other instruments made under the Act are also repealed.

However, clause 202 enables any repealed instruments to continue their effect until replaced. For example, a form that might have been made under the old Act can still be regarded as valid.

Clause 202 — Construction of outdated references

This clause clarifies that commonsense is to prevail when dealing with any relevant instruments, documents, forms, etc that refer to the repealed Acts, or repealed parts of Acts, and are to be treated as instruments, documents, forms etc under the foreshadowed *Domestic Violence and Protection Orders Act 2008*.

For example, if the Magistrates Court uses a form that is a form to apply for a final order under the *Domestic Violence and Protection Orders Act 2001*, then this transitional provision enables the form to be used as an application for a final order under the *Domestic Violence and Protection Orders Act 2008*.

See for example *New South Wales v Corbett* [2007] HCA 32.

Clause 203 — Applications for protection orders made but not heard under repealed Act

This clause deems an application for a protection order made under the old Act as an application for a protection order under the new Act if immediately before the new Act commenced the Court had not begun hearing the application.

Clause 204 — Proceedings begun under repealed Act

This clause enables proceedings that commenced under the old Act to be continued as proceedings under the new Act.

Clause 205 — Application for amendment or revocation under repealed Act

This clause deems an application for an amendment or revocation under the old Act to be an application under clause 91.

Clause 206 — Application by respondent for leave to apply for amendment or revocation under repealed Act

This clause deems an application for an amendment or revocation under the old Act to be an application under clause 91.

Clause 207 — Existing protection orders under repealed Act

This clause deems protection orders made under the old Act to be protection orders made under the new Act.

Clause 208 — Review of consent orders under repealed Act

This clause deems an application for a review of a consent order made under the old Act as an application for a review of consent order under the new Act if immediately before the new Act commenced the Court had not begun hearing the application.

Clause 209 — Appeals under repealed Act

This clause deems a notice of appeal under the old Act as a notice of appeal under the new Act if immediately before the new Act commenced the Supreme Court had not begun hearing the application.

Clause 210 — Protection of proceedings under repealed Act

This clause ensures there is continuity between the restriction on publication under the old Act and the restriction on publication under the new Act.

Clause 211 — Application for registration of recognised order under repealed Act

This clause deems an application for a recognised order made under the old Act to be an application for a recognised order under the new Act if immediately before the new Act commenced the registrar had not taken any action on the application.

Clause 212 — Registration of recognised order under repealed Act

This clause deems recognised orders made under the old Act to be recognised orders made under the new Act.

Clause 213 — Amendment or revocation of recognised order under repealed Act

This clause enables any amendments or revocation of recognised orders notified prior to commencement of the new Act to be dealt with under the new Act.

Clause 214 — Amendment or revocation of recognised order by Magistrates Court under repealed Act

This clause enables any amendments or revocation of recognised orders made by the Magistrates Court prior to commencement of the new Act to be dealt with under the new Act.

Clause 215 — Transitional regulations

The Executive may make regulations to address any transitional issues not contemplated by the Bill. The regulations may modify the transitional provisions of the commenced Act.

Clause 216 — Expiry—pt 20

This clause provides that Part 20 expires one year after the Act commences.

Clause 217 — Legislation amended — Schedule 3

This clause enlivens the consequential amendments set out in Schedule 3.

Schedule 1— Domestic violence offences against other legislation**Clause 1.1 — Definitions—Schedule 1**

This clause provides definitions of shortened names of existing legislation.

Clause 1.2 — Domestic violence offences against other legislation

The inclusion of trespass as a domestic violence offence will give police an option to remand an offender in custody in circumstances where this offence is committed in a context of domestic violence. Its inclusion enhances the intention of the Act to raise a presumption against bail for domestic violence offences on the basis of protecting victims from further offences. Trespass is an offence under two legislative instruments in the ACT: *Public Order (Protection of Persons and Property) Act 1971* (Cwlth) section 11, for private premises, and *Crimes Act 1900* (ACT) section 154 for government premises.

Schedule 2 — Permitted publication about proceedings**Clause 2.1 — Definitions—Schedule 2**

This clause sets out definitions referenced to the *Children and Young People Act 2008*.

Clause 2.2 — Permitted publication about proceedings

This schedule lists certain circumstances in which publications about proceedings will be permitted.

Schedule 3 — Consequential amendments

Schedule 3 provides consequential amendments to other Acts.

Dictionary

This section contains the relevant legal definition of terms used in the new Act.

An alteration to the term *relevant person* has been made to add a new category of relationship ('boyfriend/girlfriend and same sex relationship of this type') to the definition under the Act. It is intended that the Act not exclude people who have shared an intimate relationship but perhaps for a variety of reasons have not resided together. The intention is to capture relationships that have interpersonal elements but not to extend it to relationships such as neighbours. This definition provides that a personal relationship may exist between people although they are not members of the same household and whether the person is of the same or opposite sex.

A judicial officer is now defined in the dictionary section of the Act. A judicial officer is either a magistrate or, if the regulation provides for the exercise of the Magistrate's Court jurisdiction by the registrar or the deputy registrar, the registrar or deputy registrar may act in the capacity of a judicial officer.