

2001

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Protection Orders Bill 2001

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2001

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Protection Orders Bill 2001

A Bill for

An Act about orders to protect people from violence

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

Part 1 Introductory

Section 1

1

2 **Part 1 Introductory**

3

4 **1 Name of Act**

5 This Act is the *Protection Orders Act 2001*.

6 **2 Commencement**

7 This Act commences on a day fixed by the Minister by notice in the
8 Gazette.

9 *Note 1* The naming and commencement provisions automatically commence on
10 the notification day (see *Legislation Act 2001*, s 75).

11 *Note 2* A single day or time may be fixed, or different days or times may be
12 fixed, for the commencement of different provisions (see *Legislation*
13 *Act 2001*, s 77 (1)).

14 *Note 3* If a provision has not commenced within 6 months beginning on the
15 notification day, it automatically commences on the first day after that
16 period (see *Legislation Act 2001*, s 79).

17 **3 Dictionary**

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

19 *Note 1* The dictionary at the end of this Act defines certain words and
20 expressions used in this Act, and includes references (*signpost*
21 *definitions*) to other words and expressions defined elsewhere in this
22 Act or in other legislation.

23 For example, the signpost definition *firearm*—see the *Firearms Act*
24 *1996*, section 4 (Definitions).’ means that the expression ‘firearm’ is
25 defined in that section and the definition applies to this Act.

26 *Note 2* A definition in the dictionary (including a signpost definition) applies to
27 the entire Act unless the definition, or another provision of the Act,
28 provides otherwise or the contrary intention otherwise appears (see
29 *Interpretation Act 1967*, s 11F and s 11G).

1 **4 Notes**

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

3 *Note* See *Interpretation Act 1967*, s 12 (1), (4) and (5) for the legal status of
4 notes.

5 (2) In this section:

6 *note* includes material enclosed in brackets in section headings.

7 *Note* For comparison, a number of sections of this Act contain bracketed
8 notes in their headings drawing attention to equivalent or comparable
9 (though not necessarily identical) provisions of other Acts as in force
10 immediately before the commencement of this Act. Abbreviations in
11 the notes include the following:

- 12 • DVA: *Domestic Violence Act 1986*
- 13 • MCCJA: *Magistrates Court (Civil Jurisdiction) Act 1982*
- 14 • MCA: *Magistrates Court Act 1930*
- 15 • PORAA: *Protection Orders (Reciprocal Arrangements) Act 1992*.

16 (3) Subsection (2), this subsection, and the material enclosed in brackets
17 in section headings, expire 2 years after this section commences.

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Part 2 Objects, principles and general concepts

5

5 Objects

6

The objects of this Act include—

7

(a) to provide a mechanism to facilitate the safety and protection of people who experience interpersonal violence; and

8

9

(b) to prevent violence between family members and others who are in a domestic relationship, recognising that domestic violence is a particular form of interpersonal violence that needs a greater level of protective response.

10

11

12

13

6 Principles for making protection orders

14

(1) In deciding an application for a protection order, the paramount consideration is—

15

16

(a) for a protection order (other than a workplace order)—the need to ensure that the aggrieved person is protected from domestic or personal violence; and

17

18

19

(b) for a workplace order—the need to ensure that employees are protected from personal violence in the workplace.

20

21

(2) If a protection order is to be made on an application under this Act, it must be the protection order that is least restrictive of the personal rights and liberties of the respondent as possible that still achieves the objects of the Act and gives effect to subsection (1).

22

23

24

25

7 Principle about procedures

26

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

27

1 **8 What may someone do under this Act?**

- 2 (1) A person may apply under this Act for an order to protect an
3 aggrieved person from domestic violence or personal violence by
4 someone else (the *respondent*).

5 *Note 1* Section 11 (Who may apply for certain non-emergency orders?) and
6 s 61 (Who may apply for an emergency order?) set out who can apply
7 for a protection order.

8 *Note 2* Violence is defined in s 9 (What is *domestic violence*?), s 10 (What is
9 *personal violence*?) and s 44 (What is *personal violence* for a
10 workplace?).

- 11 (2) Two types of protection order are available, a domestic violence
12 order and a personal protection order.

- 13 (3) A domestic violence order may be made as a final, interim or
14 emergency order.

15 *Note* The general rules applying to protection orders are in pt 4 (Orders
16 generally). Rules applying to particular kinds of orders are in pt 5
17 (Final orders), pt 6 (Interim orders) and pt 7 (Emergency orders).

- 18 (4) A personal protection order may be made as a final or interim order.

- 19 (5) A personal protection order made as a final order may be made as a
20 workplace order or a final order other than a workplace order.

21 *Note* Workplace orders are dealt with in div 5.3 (Workplace orders) and
22 generally dealt with in pt 4 (Orders generally) and div 5.1 (Final orders
23 generally).

24 **9 What is *domestic violence*? (DVA s 4A)**

- 25 (1) For this Act, a person's behaviour is *domestic violence* if it—

26 (a) causes physical injury to a relevant person; or

27 (b) causes damage to the property of a relevant person; or

28 (c) is directed at a relevant person and is a domestic violence
29 offence; or

Section 10

1 (d) is a threat, made to a relevant person, to do anything in relation
2 to the relevant person or another relevant person that, if done,
3 would fall under paragraph (a), (b) or (c); or

4 (e) is harassing or offensive towards a relevant person.

5 *Note* **Relevant person** is defined in the dictionary.

6 (2) In this section, a **domestic violence offence** is an offence against—

7 (a) section 34 (which is about contravening protection orders); or

8 (b) a provision of the *Crimes Act 1900* mentioned in schedule 1
9 (which deals with domestic violence crimes); or

10 (c) a provision of the *Crimes Act 1900*, part 8 (Aiding and
11 abetting, accessories, attempts, incitement and conspiracy) in
12 relation to an offence against a provision mentioned in
13 schedule 1; or

14 (d) any of the following provisions of the *Road Transport (Safety
15 and Traffic Management) Act 1999*:

16 (i) section 6 (1) (which is about negligent driving);

17 (ii) section 7 (1) (which is about furious, reckless or
18 dangerous driving);

19 (iii) section 8 (1) or (2) (which is about menacing driving).

20 (3) For this section:

21 **offence** includes behaviour, wherever engaged in, that would be an
22 offence if it were engaged in within the ACT.

23 **10 What is personal violence? (MCA s 197 (1) (a), (b), (c))**

24 (1) For this Act (other than for division 5.3 (Workplace orders)) a
25 person's behaviour is **personal violence** if the person—

26 (a) causes personal injury to someone (the **aggrieved person**) or
27 damage to the aggrieved person's property; or

28 (b) threatens to cause personal injury to the aggrieved person or
29 damage to the aggrieved person's property; or

1 (c) is harassing or offensive to the aggrieved person.

2 *Note* ***Personal violence*** is defined for a workplace in s 44.

3 (2) However, a person's behaviour is not ***personal violence*** if it is
4 domestic violence.

1

2

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Part 3 Applications

4

5

11 Who may apply for certain non-emergency orders? (DVA s 5, MCA s 198)

6

7

8

- (1) This section applies to an application for a protection order, other than an application for an emergency order or to amend or revoke a protection order.

9

10

Note If a form is approved under s 96 (Approved forms) for an application under this section, the form must be used.

11

- (2) An aggrieved person may make an application.

12

13

Note 1 Different rules may apply to an aggrieved person with a legal disability (see s 12).

14

15

16

Note 2 An aggrieved person, for a workplace order, is the employer, not the person who has suffered the violence (see dict, def of **aggrieved person**).

17

18

- (3) Also, a police officer may make an application for an aggrieved person, or help an aggrieved person to make an application.

19

20

21

- (4) Further, if the aggrieved person is a person with a legal disability, an application may be made by the community advocate as the person's next friend.

22

23

- (5) This section does not affect any other right of a person to make an application for a protection order for an aggrieved person.

24

25

26

Examples of people with right to make application for protection order

A parent or guardian of a child who is an aggrieved person, or an agent of an aggrieved person.

27

12 Applications by people with legal disability

28

29

- (1) An aggrieved person with a legal disability may apply for a protection order only by a next friend.

- 1 (2) However, a child may apply for a domestic violence order in the
2 child's own right even though the child is a person with a legal
3 disability.

4 **13 Who may apply to amend or revoke a protection order?**

5 An application to amend or revoke a protection order (the *original*
6 *order*) may be made by a party to the original order or, with the
7 Magistrates Court's leave, someone else with sufficient interest in
8 the protection order.

9 **Example of someone with sufficient interest**

10 The Magistrates Court may decide, in a particular case, that the guardian of
11 someone for whom a protection order has been made has sufficient interest to
12 apply to amend or revoke the order.

13 *Note 1* **Amend** an order includes amend the order by extending it (see dict).

14 *Note 2* If a form is approved under s 96 (Approved forms) for an application
15 under this section, the form must be used.

16 **14 Application forms that require aggrieved person's**
17 **address**

18 (1) This section applies if a form approved under section 96 for an
19 application for a protection order requires the aggrieved person's
20 home or work address to be included in the application.

21 (2) The address need not be included in the application unless the
22 aggrieved person agrees to the address being included.

23 **15 Registrar sets return date**

24 (1) On receiving an application for a protection order, the registrar must
25 enter the application into the record of the Magistrates Court and set
26 a date for the application to be returned before the court.

27 (2) The date for an application's return before the Magistrates Court is
28 the day set by the registrar that is—

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

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

Section 16

- 1 (i) the applicant is not seeking an interim order on the
2 application; and
- 3 (ii) the registrar is satisfied that the longer time is necessary
4 to allow the respondent to be served with the application
5 and the return date notice.
- 6 (3) However, the regulations may prescribe the circumstances in which
7 the registrar is not required, or must not, accept an application for
8 entry into the record of the Magistrates Court under this section.

9 16 Service of application

- 10 (1) The registrar must—
- 11 (a) serve on the applicant a notice about the proceeding stating the
12 date for the application's return before the Magistrates Court;
13 and
- 14 (b) serve a copy of the application and the notice on the relevant
15 people.
- 16 *Note* If a form is approved under s 96 (Approved forms) for a return date
17 notice, the form must be used.
- 18 (2) If the return date set under section 15 is not the day the application
19 is received, the registrar must act under subsection (1) as soon as is
20 practicable.
- 21 (3) If the return date set under section 15 is the day the application is
22 received, the registrar must act under subsection (1) after the
23 application has gone before the Magistrates Court and the court has
24 set a further date for the application's return before the court.
- 25 (4) Service on the applicant or respondent under subsection (1) must be
26 personal service unless the Magistrates Court makes an order under
27 section 98 (If service impracticable or impossible).
- 28 (5) For this section, the *relevant people* are—
- 29 (a) the respondent; and

- 1 (b) anyone else the registrar is satisfied has a relevant interest in
2 the proceeding who does not already have a copy.

3 **Example of person with a relevant interest in the proceeding**

4 A parent or guardian of a child who is an aggrieved person if the parent or
5 guardian does not live with the child.

6 **17 Registrar may adjourn proceedings etc**

- 7 (1) This section applies if—

8 (a) a date has been set for the return of an application (other than
9 an application for an emergency order) before the Magistrates
10 Court; and

11 (b) the respondent has not been served with a copy of the
12 application under section 16.

- 13 (2) The registrar may adjourn the proceeding on the application.

14 *Note* The registrar may also extend any interim order (see s 60).

- 15 (3) However, the registrar may not adjourn the proceeding under this
16 section more than twice.

17 **18 Preliminary conferences**

- 18 (1) The registrar must hold a preliminary conference in relation to an
19 application.

20 (2) However, the regulations may prescribe when a preliminary
21 conference need not be held in relation to an application.

- 22 (3) The regulations may also prescribe—

23 (a) the objects of a preliminary conference; and

24 (b) the powers that may be exercised by the person holding a
25 preliminary conference; and

26 (c) the admissibility in evidence of anything said, or any evidence
27 given, at a preliminary conference.

Part 3 Applications

Section 18

- 1 (4) The failure of the registrar to hold a preliminary conference in
2 relation to the application for a protection order does not affect the
3 validity of the protection order.

Part 4 Orders generally

19 What level of satisfaction is required for pt 5, pt 6 and pt 7?

If the Magistrates Court, the registrar or another judicial officer is required to be satisfied about something under part 5 (Final orders), part 6 (Interim orders) or part 7 (Emergency orders), the court, registrar or other judicial officer must be satisfied on the balance of probabilities.

Note **Judicial officer** is defined in the dictionary, and includes the registrar.

20 What kinds of behaviour does a protection order restrain?

(1) A protection order may be made as a domestic violence order or a personal protection order.

(2) A **domestic violence order** restrains the respondent from engaging in behaviour that constitutes domestic violence in relation to the aggrieved person and may include a prohibition mentioned in section 42 (What final orders (other than workplace orders) may contain).

Note A prohibition mentioned in s 42 may be included in an interim order (see s 51) or an emergency order (see s 69).

(3) A **personal protection order** (other than a workplace order) restrains the respondent from engaging in behaviour that constitutes personal violence in relation to the aggrieved person and may include a prohibition mentioned in section 42.

(4) A **personal protection order** that is a workplace order restrains the respondent from engaging in behaviour that constitutes personal violence in relation to the workplace and may include a prohibition mentioned in section 47 (What workplace orders may contain).

Section 21

1 **21 Does a protection order cover behaviour outside the**
2 **ACT?**

3 A protection order covers behaviour within or outside the ACT.

4 **22 What if an application is made for the wrong order?**

5 (1) This section applies if—

6 (a) a person applies for a protection order that is a domestic
7 violence order or a personal violence order (the *first order*);
8 and

9 (b) the first order may not be made because the behaviour on
10 which the application is based is not behaviour that the first
11 order could restrain; and

12 (c) the application has not been decided.

13 (2) The Magistrates Court may make another protection order even
14 though the protection order was not properly applied for if—

15 (a) the person honestly applied for the first order; and

16 (b) had the application been properly made, the court could have
17 made the other protection order.

18 (3) This section does not apply to consent orders.

19 *Note* A consent order may be made whether or not any ground for making the
20 order has been made out (see s 29 (2) (b)).

21 **23 What if an application for wrong order decided?**

22 (1) This section applies if—

23 (a) a person applies for a protection order that is a domestic
24 violence order or a personal violence order (the *first order*);
25 and

26 (b) the first order could not be made because the behaviour on
27 which the application is based is not behaviour that the first
28 order could restrain; and

1 (c) the proceeding was decided before it became apparent that
2 section 22 applied; and

3 (d) a protection order (the *order made*) was purportedly made; and

4 (e) the order made could have been validly made if applied for and
5 made as a domestic violence order or a personal protection
6 order of the kind made.

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

8 A police officer applied for a domestic violence order made as an emergency
9 order. The behaviour relied on was, in fact, personal violence. This section does
10 not apply because the order could not have been validly made as a personal
11 protection order made as an emergency order.

12 (2) If this section applies—

13 (a) the operation of the order made is not affected by the fact that
14 the order could not be made on the application; and

15 (b) the order made must be treated as if it were the kind of order
16 that could be made in relation to the behaviour mentioned in
17 the application.

18 **Example**

19 A personal protection order is made as an interim order. Later, it is discovered
20 that the parties had previously been de facto spouses, making the behaviour on
21 which the application for the interim order was based domestic violence. The
22 operation of the order is not affected by the fact that the wrong order was made,
23 and the personal protection order made as an interim order is treated as if it is a
24 domestic violence order made as an interim order.

25 (3) This section does not apply to consent orders.

26 *Note* A consent order may be made whether or not any ground for making the
27 order has been made out (see s 29 (2) (b)).

28 **24 Explaining orders if respondent present (DVA s 15)**

29 (1) This section applies if—

30 (a) the Magistrates Court intends to make a protection order; and

31 (b) the respondent is before the court.

1 (2) On making the protection order (other than a consent order), the
2 Magistrates Court must explain to the respondent, in language likely
3 to be readily understood by the respondent—

4 (a) the purpose, terms and effect of the order; and

5 *Note* Explaining the effect of the order includes explaining, if relevant, that
6 any firearms licence of the respondent will automatically be cancelled
7 or suspended under this Act.

8 (b) the consequences that may follow if the respondent fails to
9 comply with the order; and

10 (c) how the order may be amended or revoked; and

11 (d) that, if a State, another Territory or New Zealand has
12 legislation that corresponds to this Act, the order may be
13 registered, and enforced, in the State, Territory or New Zealand
14 without notice of registration being given to the respondent.

15 *Note* Part 9 (Reciprocal arrangements) deals with the registration of
16 protection orders from other jurisdictions in the ACT.

17 (3) Before making a consent order, the Magistrates Court must explain
18 to the respondent, in language likely to be readily understood by the
19 respondent, the matters mentioned in subsection (2) (a) to (d).

20 (4) A failure of the Magistrates Court to comply with this section in
21 relation to a protection order does not affect the validity of the order.

22 **25 Explaining orders if aggrieved person present**
23 **(DVA s 15 (2))**

24 (1) This section applies if—

25 (a) the Magistrates Court intends to make a protection order; and

26 (b) the aggrieved person is before the court.

27 (2) On making the protection order (other than a consent order), the
28 Magistrates Court must explain to the aggrieved person, in language
29 likely to be readily understood by the person—

- 1 (a) the purpose, terms and effect of the order; and
- 2 *Note* Explaining the effect of the order includes explaining, if relevant, that
- 3 any firearms licence of the respondent will automatically be cancelled
- 4 or suspended under this Act.
- 5 (b) the consequences that may follow if the respondent fails to
- 6 comply with the order; and
- 7 (c) how the order may be amended or revoked; and
- 8 (d) that, if the aggrieved person aids or abets the respondent to
- 9 commit an offence against section 34 (Offence for
- 10 contravention of protection order), the aggrieved person may
- 11 also commit an offence.

12 *Note* The *Crimes Act 1900*, part 8 deals with offences of aiding and abetting.

- 13 (3) Before making a consent order, the Magistrates Court must explain
- 14 to the aggrieved person, in language likely to be readily understood
- 15 by the person, the matters mentioned in subsection (2) (a) to (d).
- 16 (4) The failure of the Magistrates Court to comply with this section in
- 17 relation to a protection order does not affect the validity of the order.

18 **26 Reasons for order**

- 19 (1) If the Magistrates Court makes a protection order (other than an
- 20 emergency order), the court must record the reasons for making the
- 21 order.
- 22 (2) If the order is a consent order, the reason for making the order is that
- 23 the parties have consented to it.

24 **27 Orders generally not to include aggrieved person's**

25 **address**

- 26 (1) The aggrieved person's home or work address must not be included
- 27 in a protection order.
- 28 (2) However, the person's home or work address may be included in a
- 29 protection order if—
- 30 (a) the aggrieved person agrees to the address being included; or

Section 28

- 1 (b) it is necessary to include the address to allow the respondent to
2 comply with the order; or
- 3 (c) the Magistrates Court, registrar or another judicial officer
4 making the order is satisfied that the respondent already knows
5 the address.

6 **28 Prohibitions or conditions may be shorter**

7 A prohibition or condition in a protection order may have effect for
8 a period stated in the protection order that is shorter than the period
9 of the protection order.

10 **29 Consent orders (MCA s 206, 206AA)**

11 (1) On application for a protection order, the Magistrates Court may
12 make a protection order with the consent of the parties to the
13 proceeding.

14 (2) The order may be made—

15 (a) whether or not the parties have attended, or any party has
16 attended, before the Magistrates Court; and

17 (b) whether or not any ground for making the order has been made
18 out; and

19 (c) without proof or admission of guilt.

20 *Note* Sections 24 and 25 apply to require the Magistrates Court to explain the
21 order intended to be made under this section in certain circumstances.
22 Section 24 deals with explaining orders if the respondent is before the
23 court and s 25 deals with explaining orders if an aggrieved person is
24 before the court.

25 (3) If an automatic consequence flows from the making of a kind of
26 order and an order of that kind is made under this section, the
27 automatic consequence flows from the making of the order unless—

28 (a) this Act allows a discretion for the automatic consequence not
29 to flow from the making of an order of that kind; and

- 1 (b) the parties consent to the automatic consequence not flowing
2 from the making of the order.

3 **Example**

4 The parties to an application agree to the making of a final order. An automatic
5 consequence of that order is that any firearms licence of the respondent is
6 cancelled under s 38 (Firearms and final orders). That consequence automatically
7 flows from the making of the final order. However, under s 38 (3) the Magistrates
8 Court may, in certain circumstances, order that the licence not be cancelled. If
9 those circumstances apply and the parties agree that the firearms licence not be
10 cancelled, the firearms licence would not be cancelled under s 38.

- 11 (4) However, this section does not allow the Magistrates Court to make
12 a protection order—

- 13 (a) of a kind that may not be made under this Act; or
14 (b) for a period other than a period that that kind of order may be
15 made for (unless section 54 (Length of interim orders by
16 consent) applies); or

17 *Note* Section 35 (3) limits the length of final orders made as consent
18 orders.

- 19 (c) if section 30 applies.

20 **30 Consent orders and parties with legal disability**

- 21 (1) This section applies if—

- 22 (a) the Magistrates Court is considering an application for a
23 consent order; and
24 (b) a party to the proceeding is a person with a legal disability who
25 is not separately represented by someone else; and
26 (c) it appears to the court that the party should be separately
27 represented by someone else.

- 28 (2) If this section applies, the Magistrates Court must not make a
29 consent order.

Section 31

1 **31 Amendment or revocation generally**

2 (1) A protection order may be amended if the Magistrates Court is
3 satisfied that the order as amended could be made on application for
4 a protection order.

5 (2) If the protection order has been amended by being extended, the
6 order must mention that it has been extended.

7 (3) A protection order (the *original order*) may be revoked if—

8 (a) the Magistrates Court is satisfied that the order is no longer
9 necessary for the protection of the person it protects; or

10 (b) the applicant for the original order applies for the revocation.

11 *Note* The Magistrates Court may amend or revoke a protection order by
12 consent (see s 29).

13 (4) This section does not apply in relation to a kind of amendment or to
14 revocation if this Act (apart from this section) expressly deals with
15 the grounds for that kind of amendment or for revocation.

16 *Note* The following sections expressly deal with the grounds for amendment
17 or revocation:

- 18 • s 37 (Extension of final orders)
- 19 • s 58 (Extension of interim orders)
- 20 • s 71 (Emergency amendment or revocation of emergency orders)
- 21 • s 72 (Non-emergency amendment or revocation of emergency
- 22 orders).

23 **32 This Act and Children and Young People Act**

24 (1) This section applies if—

25 (a) an application is made under the *Children and Young People*
26 *Act 1999* for a care and protection order; and

27 (b) the criteria mentioned in that Act, section 205 (When may the
28 court make a protection order?) are satisfied; and

29 (c) the Childrens Court makes a protection order.

1 (2) The Childrens Court is taken to have exercised jurisdiction under
2 this Act as the Magistrates Court when making the protection order.

3 (3) The protection order may be amended, revoked or appealed from
4 under this Act.

5 **33 Service of non-emergency orders**

6 (1) If the Magistrates Court makes a protection order (other than an
7 emergency order), the registrar must—

8 (a) serve a copy of the protection order on the respondent; and

9 (b) give a copy of the protection order to—

10 (i) each other party to the proceeding; and

11 (ii) the chief police officer; and

12 (iii) the registrar of firearms.

13 (2) Service under subsection (1) (a) must be personal service.

14 **34 Offence for contravention of protection order (DVA s 19D)**

15 (1) This section applies to a person who is subject to a protection order
16 if the person—

17 (a) was present when the protection order was made; or

18 (b) has been personally served with a copy of the protection order.

19 (2) The person must not contravene the protection order (including a
20 condition of the order).

21 Maximum penalty:

22 (a) for a 1st offence against this section—50 penalty units,
23 imprisonment for 2 years or both; or

24 (b) for a 2nd or subsequent offence against this section—50
25 penalty units, imprisonment for 5 years or both.

26 (3) This section applies to behaviour within and outside the ACT.

1

2 **Part 5 Final orders**

3 **Division 5.1 Final orders generally**

4 *Note 1* See s 40 for the grounds for making final orders other than workplace
5 orders and s 45 for the grounds for making workplace orders.

6 *Note 2* An interim order may be granted on application for a final order (see
7 s 48).

8 **35 Length of final domestic violence orders**

9 (1) A final order that is a domestic violence order remains in force
10 for—

11 (a) 2 years; or

12 (b) if a shorter period is stated in the protection order—the period
13 stated.

14 (2) However, the Magistrates Court may make a domestic violence
15 order that remains in force for longer than 2 years if satisfied that
16 there are special or exceptional circumstances that justify the longer
17 period.

18 (3) A final order that is a domestic violence order may not be longer
19 than 2 years if made as a consent order.

20 **36 Length of final personal protection orders**

21 A final order that is a personal protection order remains in force
22 for—

23 (a) 1 year; or

24 (b) if a shorter period is stated in the protection order—the period
25 stated.

1 **37 Extension of final orders**

- 2 (1) An application to amend a final order (the *original order*) by
3 extending it may be made at least 21 days before the original order
4 is to end.
- 5 (2) However, the Magistrates Court may allow someone to apply for an
6 extension less than 21 days before the end of the original order.
- 7 (3) The Magistrates Court may amend the original order by extending it
8 only if—
- 9 (a) satisfied that a protection order is still necessary to protect the
10 aggrieved person from domestic or personal violence by the
11 respondent; or
- 12 (b) the order amending the original order by extending it is a
13 consent order.
- 14 (4) The parties may consent to an application being made out of time
15 under this section.

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

18 **38 Firearms and final orders (DVA s 14A (1), (2))**

- 19 (1) This section applies if a final order is made in relation to a
20 respondent who is the holder of a firearms licence.

21 *Note 1* *Firearms licence* is defined in the dictionary.

22 *Note 2* For the application of this section to consent orders, see s 29 (3).

- 23 (2) The firearms licence is cancelled by force of this section.
- 24 (3) However, the Magistrates Court may, on application when the final
25 order is made, order that the firearms licence not be cancelled under
26 this section if—
- 27 (a) the final order is a personal protection order; and
- 28 (b) the court is satisfied that the firearms licence should not be
29 cancelled.

1 (4) The Magistrates Court may make a consent order that the firearms
2 licence not be cancelled under this section only if the final order is a
3 personal protection order.

4 (5) The Magistrates Court may order—

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

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

8 **39 Recommendations for counselling etc (DVA s 11)**

9 The Magistrates Court may recommend that the respondent, the
10 aggrieved person or another relevant person take part in a program
11 of counselling, training, mediation, rehabilitation or assessment.

12 **Division 5.2 Final orders other than workplace**
13 **orders**

14 **40 What are the grounds for making a final order (other than**
15 **a workplace order)?**

16 The Magistrates Court may make a final order (other than a
17 workplace order) on application if satisfied that—

18 (a) the respondent has engaged in domestic violence; or

19 (b) the respondent has engaged in personal violence towards the
20 aggrieved person and may engage in personal violence towards
21 the aggrieved person during the time the order is proposed to
22 operate if the order is not made.

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

24 **41 What must the court consider before making a final order**
25 **other than a workplace order?**

26 (1) In deciding an application for a final order, the Magistrates Court
27 must consider the following:

- 1 (a) the objects of this Act (in section 5) and the principles for
2 making orders (in section 6);
- 3 (b) the welfare of each child (if any) affected, or likely to be
4 affected, by the respondent's behaviour;
- 5 (c) the accommodation needs of the aggrieved person, each child
6 (if any) of the aggrieved person, and each child (if any) of the
7 respondent;
- 8 (d) any hardship that may be caused to the respondent or anyone
9 else by the making of a protection order;
- 10 (e) if the court proposes to include in the protection order a
11 prohibition or requirement of a kind mentioned in section 42
12 (3)—the income, assets and liabilities of the respondent and the
13 aggrieved person (other than an aggrieved person who is a
14 child);
- 15 *Note* A prohibition under s 42 (3) (a) prohibits the respondent from
16 taking possession of personal property needed by the aggrieved
17 person or a child of the aggrieved person. A requirement under
18 s 42 (3) (b) requires the respondent to give the aggrieved person
19 personal property needed by the aggrieved person or a child of
20 the aggrieved person.
- 21 (f) whether contact between the aggrieved person or the
22 respondent, and any child of either of them, is relevant to the
23 making of the protection order, and to any relevant family
24 contact order of which the court is aware;
- 25 (g) if the respondent has previously engaged in behaviour that is
26 domestic violence, personal violence or personal violence in
27 relation to a workplace—that behaviour;
- 28 *Note* This may include behaviour that was an offence under the *Motor*
29 *Traffic Act 1936* (see s 112).
- 30 (h) if a protection order has previously been made in relation to the
31 respondent—the protection order;
- 32 (i) if the respondent has previously contravened a protection
33 order—the contravention;

1 (j) the need to ensure that property is protected from damage.

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

3 (2) The Magistrates Court may also consider anything else that is
4 relevant.

5 (3) A failure by the Magistrates Court to consider the matter mentioned
6 in subsection (1) (f) before making an order does not affect the
7 validity of the order.

8 (4) In subsection (1) (h) and (i):

9 *protection order* includes—

10 (a) an order under a law of a State, another Territory or New
11 Zealand that has the same effect or substantially the same
12 effect as a protection order; and

13 (b) a protection order made under the *Domestic Violence Act 1986*,
14 or a restraining order made under the *Magistrates Court Act*
15 *1930*, before the commencement of this Act.

16 **42 What final orders (other than workplace orders) may**
17 **contain**

18 (1) A final order (other than a workplace order) may contain the
19 conditions or prohibitions the Magistrates Court considers necessary
20 or desirable.

21 *Note* This Act (including this section) is subject to s 6 (Principles for making
22 orders) and the objects of the Act set out in s 5.

23 (2) Without limiting subsection (1), the order may do 1 or more of the
24 following:

25 (a) prohibit the respondent from being on premises where the
26 aggrieved person lives;

27 (b) prohibit the respondent from being on premises where the
28 aggrieved person works;

29 (c) prohibit the respondent from being on premises where the
30 aggrieved person is likely to be;

-
- 1 (d) prohibit the respondent from being in a particular place;
- 2 (e) prohibit the respondent from being within a particular distance
- 3 from the aggrieved person;
- 4 (f) prohibit the respondent from contacting, harassing, threatening
- 5 or intimidating the aggrieved person;
- 6 (g) prohibit the respondent from damaging the aggrieved person's
- 7 property;
- 8 (h) prohibit the respondent from doing anything mentioned in
- 9 paragraphs (a) to (g) in relation to a child of the aggrieved
- 10 person;
- 11 (i) prohibit the respondent from causing someone else to do
- 12 something mentioned in paragraph (f) or (g) or subsection
- 13 (3) (a);
- 14 (j) state the conditions on which the respondent may—
- 15 (i) be on particular premises; or
- 16 (ii) be in a particular place; or
- 17 (iii) approach or contact a particular person.
- 18 (3) Also, an order that includes a prohibition mentioned in subsection
- 19 (2) (a) may—
- 20 (a) prohibit the respondent from taking possession of particular
- 21 personal property that is reasonably needed by the aggrieved
- 22 person or a child of the aggrieved person; or
- 23 (b) require the respondent to give the aggrieved person particular
- 24 personal property that is in the respondent's possession and is
- 25 reasonably needed by the aggrieved person or a child of the
- 26 aggrieved person.
- 27 (4) A final order made as a consent order may contain a condition or
- 28 prohibition that a final order made other than as a consent order may
- 29 contain, but it is not necessary for the Magistrates Court to consider
- 30 whether the condition or prohibition is necessary or desirable.
-

1 **Division 5.3 Workplace orders**

2 *Note* The employer is the aggrieved person for a workplace order (see dict,
3 def of *aggrieved person*).

4 **43 Effect of availability of workplace orders**

5 The availability of workplace orders under this Act does not create a
6 new right or obligation in relation to employment relationships.

7 **44 What is *personal violence* for a workplace?**

8 For this division, a person's behaviour is *personal violence* in
9 relation to a workplace if the person—

10 (a) causes personal injury, or threatens to cause personal injury, to
11 an employee in the employee's capacity as an employee at the
12 workplace; or

13 (b) causes damage to property, or threatens to cause damage to
14 property, in the workplace in a way that causes reasonable fear
15 in an employee; or

16 (c) is harassing or offensive to an employee in the employee's
17 capacity as an employee at the workplace.

18 **45 What are the grounds for making a workplace order?**

19 The Magistrates Court may make a workplace order in relation to a
20 workplace on application if satisfied that the respondent—

21 (a) has engaged in personal violence in relation to the workplace;
22 and

23 (b) may engage in personal violence in relation to the workplace
24 during the time the order is proposed to operate if the order is
25 not made.

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

46 What must the court consider before making a workplace order?

(1) In deciding an application for a workplace order, the Magistrates Court must consider the following:

- (a) the objects of this Act (in section 5) and the principles for making orders (in section 6);
- (b) any hardship that may be caused to the respondent or anyone else because of the making of a workplace order;
- (c) if the respondent has previously engaged in behaviour that is domestic violence, personal violence or personal violence in relation to a workplace—that behaviour;
- (d) if a protection order has previously been made in relation to the respondent—the protection order;
- (e) if the respondent has previously contravened a protection order—the contravention;
- (f) the need to ensure that property in the workplace is protected from damage.

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

(2) The Magistrates Court may also consider anything else that is relevant.

(3) In subsection (1) (d) and (e):

protection order includes—

- (a) an order under a law of a State, another Territory or New Zealand that has the same effect or substantially the same effect as a protection order; and
- (b) a protection order made under the *Domestic Violence Act 1986*, or a restraining order made under the *Magistrates Court Act 1930*, before the commencement of this Act.

1 **47 What workplace orders may contain**

2 (1) The workplace order may contain the conditions or prohibitions the
3 Magistrates Court considers necessary or desirable.

4 *Note* This Act (including this section) is subject to s 6 (Principles for making
5 orders) and the objects of the Act set out in s 5.

6 (2) Without limiting subsection (1), the order may do 1 or more of the
7 following:

8 (a) prohibit the respondent from entering the workplace;

9 (b) prohibit the respondent from being within a particular distance
10 from the workplace;

11 (c) prohibit the respondent from contacting, harassing, threatening
12 or intimidating an employee at the workplace;

13 (d) prohibit the respondent from damaging property in the
14 workplace;

15 (e) prohibit the respondent from causing someone else to do
16 something mentioned in paragraph (c) or (d);

17 (f) state the conditions on which the respondent may enter or
18 approach the workplace, or approach or contact an employee.

19 (3) A workplace order made as a consent order may contain a condition
20 or prohibition that a workplace order made other than as a consent
21 order may contain, but it is not necessary for the Magistrates Court
22 to consider whether the condition or prohibition is necessary or
23 desirable.

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Part 6 Interim orders

4

48 When can an interim order be made?

5

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- (1) An interim order may be made only on an application for a final order.

7

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Note A final order includes an order amending a final order (see dict, def of *final order*).

9

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- (2) An interim order may be made at any time during the proceeding on the application for the final order that it relates to.

11

12

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- (3) Only 1 interim order may be made in relation to an application for a final order unless section 59 (May a further interim order be made?) applies.

14

49 What are the grounds for making an interim order?

15

16

17

The Magistrates Court may make an interim order if satisfied that it is necessary to make the interim order to ensure the safety of the aggrieved person until the application for a final order is decided.

18

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

19

50 What must court consider?

20

21

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23

- (1) In making an interim order, the Magistrates Court must consider whether contact between the aggrieved person or the respondent, and any child of either, is relevant to the making of the order, and to any relevant family contact order that the court is aware of.

24

25

26

- (2) A failure by the Magistrates Court to consider the matter mentioned in subsection (1) before making an interim order does not affect the validity of the order.

27

51 What interim orders may contain

28

29

- (1) The interim order may prohibit the respondent from being on premises where the aggrieved person lives or works.

Section 52

1 (2) However, the interim order may prohibit a respondent who is a child
2 from being on premises where the child normally receives care
3 (including education) or protection only if the Magistrates Court is
4 satisfied that adequate arrangements have been made for the child's
5 care (including education) and safety.

6 (3) The interim order (other than an interim workplace order) may do
7 something mentioned in section 42 (2) (What final orders (other
8 than workplace orders) may contain) (other than paragraph (a) or
9 (b)) only if the Magistrates Court is satisfied that it is necessary to
10 ensure the safety of the aggrieved person.

11 *Note 1* Section 42 (2) (a) and (b) allows the Magistrates Court to make an order
12 prohibiting the respondent from being on premises where the aggrieved
13 person lives or works.

14 *Note 2* Subsections (2) and (3) do not apply to consent orders (see s 29 (2) (b)).

15 (4) If the interim order is an interim workplace order, the order may do
16 something mentioned in section 47 (2) (What workplace orders may
17 contain) (other than paragraph (a)) only if the Magistrates Court is
18 satisfied that it is necessary to ensure the safety of an employee.

19 *Note* Section 47 (2) (a) allows the Magistrates Court to make an order
20 prohibiting the respondent from entering the workplace.

21 **52 Length of interim orders not by consent**

22 (1) An interim order (other than a consent order) remains in force for
23 the period of up to 8 weeks stated in the order.

24 *Note* The interim order may be extended so that the interim order is in force
25 for not more than 16 weeks under s 58.

26 (2) For subsection (1), the Magistrates Court may state a period of 11
27 days or longer only if satisfied that longer than 10 days is necessary
28 to decide the application for a final order and serve any final order
29 on the respondent.

30 **53 End of interim orders**

31 An interim order ends before the end of the period stated in the
32 order if any of the following happens:

- 1 (a) the interim order is revoked;
- 2 (b) the application on which the interim order was made is
3 dismissed;
- 4 (c) if a final order is made on the application and the respondent is
5 present when the final order is made—the final order is made;
- 6 (d) if a final order is made on the application but the respondent is
7 not present when the final order is made—the final order is
8 served on the respondent.

9 **54 Length of interim orders by consent**

- 10 (1) An interim order made as a consent order remains in force for the
11 period of up to 16 weeks stated in the order.
- 12 (2) To remove any doubt, section 58 (3) (Extension of interim orders)
13 applies to an interim order made by consent.

14 *Note* Under section 58 (3) an interim order may not be amended by extending
15 it to be in force for longer than 16 weeks.

16 **55 What if interim order would expire before final order
17 served?**

- 18 (1) This section applies if—
- 19 (a) a final order is made on an application; and
- 20 (b) the respondent is not present at the making of the final order;
21 and
- 22 (c) an interim order made in relation to the same application
23 would, but for this section, expire before the final order is
24 served on the respondent.
- 25 (2) The interim order is taken to continue in force until the final order is
26 served on the respondent.
- 27 (3) To remove any doubt, section 34 (which makes it an offence to
28 contravene a protection order that has been served on the
29 respondent) applies to the interim order continued in force.

Section 56

1 **56 Service unnecessary**

2 The Magistrates Court may make an interim order even if a copy of
3 the application and a notice about the proceeding stating the date for
4 the application's return before the court have not been served on the
5 respondent.

6 **57 Firearms and interim orders (DVA s 14A (3))**

7 (1) This section applies if an interim order is made in relation to a
8 respondent who is the holder of a firearms licence.

9 *Note 1 Firearms licence* is defined in the dictionary.

10 *Note 2 For the application of this section to consent orders, see s 29 (3).*

11 (2) The firearms licence is suspended by force of this section until the
12 interim order ends.

13 (3) However, the Magistrates Court may, on application when the
14 interim order is made, order that the firearms licence not be
15 suspended under this section if—

16 (a) the interim order is a personal protection order; and

17 (b) the court is satisfied that the licence should not be suspended.

18 (4) The Magistrates Court may make a consent order that the firearms
19 licence not be suspended under this section only if the interim order
20 is a personal protection order.

21 (5) The Magistrates Court may order—

22 (a) the seizure of the firearms licence for the period stated in the
23 interim order; and

24 (b) the seizure and detention for that period of any firearm or
25 ammunition in the respondent's possession.

26 **58 Extension of interim orders**

27 (1) The Magistrates Court may amend an interim order (including an
28 interim order that is a consent order) by extending it for an
29 additional period, or further additional period, of up to 8 weeks.

- 1 (2) The Magistrates Court may amend an order by extending it only if
2 satisfied that it is necessary to amend the order in that way to ensure
3 the safety of the aggrieved person until the application for a final
4 order is decided.
- 5 (3) However, an interim order may not be extended if the extension
6 would mean the interim order would be in force for more than 16
7 weeks.
- 8 (4) Subsection (2) does not apply if the order extending the interim
9 order is a consent order.
- 10 *Note* The registrar may extend an interim order if the application for the final
11 order has not been served on the respondent (see s 17) or if the registrar
12 is exercising the Magistrates Court's power to make a consent order
13 (see s 93).

14 **59 May a further interim order be made?**

- 15 (1) This section applies in relation to an application for a final order
16 if—
- 17 (a) an interim order has been made in relation to the final order;
18 and
- 19 (b) the interim order has, or is about to, end; and
- 20 (c) the interim order may not be extended under section 58.
- 21 (2) A further interim order may be made in relation to the final order
22 only if the Magistrates Court is satisfied that there are special or
23 exceptional circumstances that justify the making of a further
24 interim order.
- 25 (3) However, a further interim order may not be made as a consent
26 order.

27 **60 When may the registrar extend an interim order?**

- 28 (1) This section applies if the registrar adjourns a proceeding because
29 the respondent has not been served with a copy of the application
30 and a notice about the proceeding stating the date for the
31 application's return before the Magistrates Court.

Part 6 Interim orders

Section 60

1 (2) The registrar may also amend any interim order made in relation to
2 the application by extending it to take into account the delay caused
3 by the adjournment.

4 (3) The registrar must not extend an interim order under subsection (2)
5 for longer than 8 weeks.

6 *Note 1* An interim order may not be extended if the extension would mean the
7 interim order would be in force for more than 16 weeks (see s 58 (3)).

8 *Note 2* The registrar may also extend an interim order if the registrar is
9 exercising the Magistrates Court's power to make a consent order
10 (see s 93).

Part 7 Emergency orders

Note An emergency order is a kind of domestic violence order (see s 8 (3)).

61 Who may apply for an emergency order?

Only a police officer may apply for an emergency order.

62 When may an emergency order be made?

A judicial officer may make an emergency order on application if—

(a) the judicial officer is satisfied that—

(i) the respondent has behaved in a way that satisfies the judicial officer that there are reasonable grounds for believing that the respondent may cause physical injury to the aggrieved person if an emergency order is not made; and

(ii) the aggrieved person is a relevant person in relation to the respondent; and

(iii) it is not practicable to arrest the respondent, or there is no ground to arrest the respondent; and

(b) it is outside the sitting hours of the Magistrates Court.

63 How can an application for an emergency order be made? (DVA s 19I (1)-(3))

(1) The police officer may apply to a judicial officer by telephone for an emergency order.

(2) The police officer must—

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

(b) describe the behaviour the application is based on; and

(c) give the reasons for the application; and

Section 64

- 1 (d) tell the judicial officer about any relevant family contact order,
2 or any pending application for such an order, that the police
3 officer is aware of; and
- 4 (e) provide any other relevant information required by the judicial
5 officer.
- 6 (3) If it is practicable in the circumstances, the police officer must send
7 the judicial officer a brief written statement of the matters
8 mentioned in subsection (2) (b) and (c) by fax.
- 9 (4) If the statement mentioned in subsection (3) is not sent by fax, the
10 judicial officer must ensure that a brief description of the behaviour
11 the application is based on and the reasons for the application are
12 part of the record of the Magistrates Court.

13 **64 What should judicial officers consider in making an**
14 **emergency order? (DVA s 19F (3), (4))**

- 15 (1) In making an emergency order, a judicial officer must consider
16 whether contact between the aggrieved person or the respondent,
17 and any child of either, is relevant to the making of the order, and to
18 any relevant family contact order that the judicial officer is aware
19 of.
- 20 (2) A failure to consider the matters mentioned in subsection (1) before
21 making an emergency order does not affect the validity of the order.

22 *Note about relationship with Family Law Act*

23 The *Family Law Act 1975* (Cwlth), pt VII, divs 10 and 11 deal with the
24 relationship between domestic violence orders and contact orders within
25 the meaning of that part. In particular, s 68J imposes an obligation on
26 certain people to inform the court of any family violence orders
27 (including domestic violence orders) and under s 68S certain people
28 may apply for a declaration of the extent to which a contact order is
29 inconsistent with a family violence order.

30 **65 Emergency orders (DVA s 19I (4)-(7) (a))**

- 31 (1) An emergency order must include—

- 1 (a) the name, rank and identification number of the police officer
2 who applied for the order; and
- 3 (b) the name of the person to be protected by the order; and
- 4 (c) the terms of the order; and
- 5 (d) the time the order is made; and
- 6 (e) the name and position of the judicial officer.
- 7 (2) The emergency order must—
- 8 (a) be sent to the police officer by fax if it is practicable to do so;
9 or
- 10 (b) otherwise be dictated to the police officer over the telephone.
- 11 (3) A paper produced by the fax, or written under the dictation,
12 mentioned in subsection (2) is taken to be a copy of the emergency
13 order.
- 14 (4) A record made by a judicial officer of an emergency order dictated
15 to a police officer over the telephone is the original emergency
16 order.
- 17 **66 Action on refusing order (DVA s 19I (7) (b))**
- 18 If an application for an emergency order is refused, the judicial
19 officer must write a record of—
- 20 (a) the name, rank and identification number of the police officer
21 who applied for the order; and
- 22 (b) the name of the person for whose protection the order was
23 sought; and
- 24 (c) the reasons for refusing to make the order.

Section 67

67 Records (DVA s 19I (8))

The judicial officer must ensure that the record of the proceeding, including the order made (if any), is part of the record of the Magistrates Court.

Note The record of the proceeding consists of the documents relevant to the proceeding, including any fax received from the police officer, the written record under s 63 (4) (How can an application for an emergency order be made?) and s 66 (Action on refusing order) and any other relevant documents.

68 Detention of person against whom a protection order is sought (DVA s 19J)

(1) If it is proposed to apply for an emergency order against a person, a police officer may—

- (a) if appropriate, remove the person to another place; and
- (b) detain the person until the application for the order has been dealt with and a copy of any order made is given to the person.

(2) A person may not be detained under this section for longer than 4 hours.

69 What an emergency order may contain

(1) The emergency order may prohibit the respondent from being on premises where the aggrieved person lives.

(2) The emergency order may do something mentioned in section 42 (2) (What final orders (other than workplace orders) may contain) (other than paragraph (a)) only if the judicial officer making the order is satisfied that it is necessary to ensure the safety of the aggrieved person.

Note Section 42 (2) (a) allows the Magistrates Court to make an order prohibiting the respondent from being on premises where the aggrieved person lives.

(3) The emergency order may prohibit a respondent who is a child from being on premises where the child normally lives only if the judicial

1 officer is satisfied that adequate arrangements have been made for
2 the child's care and safety.

3 **70 Length of emergency orders**

4 (1) The emergency order remains in force until the earliest of the
5 following:

6 (a) close of business on the second day after the day when the
7 order is made;

8 (b) the order is revoked;

9 (c) a final order or interim order is made against the respondent in
10 relation to the aggrieved person.

11 *Note* Periods of less than 5 days are to be worked out ignoring any day when
12 the Magistrates Court is not open for business (see s 104).

13 (2) The emergency order cannot be renewed or extended.

14 **71 Emergency amendment or revocation of emergency**
15 **orders**

16 (1) The emergency order may be revoked or amended outside the sitting
17 hours of the Magistrates Court by a judicial officer on application by
18 a police officer.

19 (2) The procedure for amending or revoking an emergency order
20 outside sitting hours is the same as the procedure for making an
21 emergency order.

22 *Note* The procedure for making an emergency order is set out at the
23 beginning of this part.

24 (3) However, the application for amendment or revocation need not
25 describe the behaviour the application is based on.

Section 72

1 **72 Non-emergency amendment or revocation of emergency**
2 **orders**

3 An emergency order may be amended or revoked during sitting
4 hours of the Magistrates Court in the same way, and on the same
5 grounds, as an interim order may be amended or revoked.

6 *Note* For the way an interim order may be amended or revoked, see s 31
7 (Amendment or revocation generally), s 49 (What are the grounds for
8 making an interim order?) and s 58 (Extension of interim orders).

9 **73 Firearms and emergency orders (DVA s 19M)**

10 (1) If an emergency order is made in relation to a respondent who is the
11 holder of a firearms licence, the firearms licence is, by force of this
12 section, suspended until the order ends or is revoked.

13 *Note* *Firearms licence* is defined in the dictionary.

14 (2) The judicial officer who makes the emergency order may also
15 order—

16 (a) the seizure of the firearms licence for the period that the order
17 is in force; and

18 (b) the seizure and detention for that period of any firearm and any
19 ammunition for a firearm in the respondent's possession.

20 **74 Service of emergency orders**

21 A copy of an emergency order must be served on the respondent by
22 a police officer.

23 **75 Police required to explain emergency order served**

24 (1) A police officer serving a copy of an emergency order on a
25 respondent must, as far as is practicable in the circumstances,
26 explain to the respondent the effect of the order and the
27 consequences of contravening the order.

28 (2) The failure of a police officer to comply with subsection (1) does
29 not affect the validity of the service of the emergency order.

- 1 **76 Recording reasons if emergency order not applied for**
2 **(DVA s 19G)**
- 3 (1) This section applies if a police officer—
4 (a) deals with an incident in which—
5 (i) someone (the *respondent*) has behaved in a way that
6 satisfies the police officer that there are reasonable
7 grounds for believing that the respondent may cause
8 physical injury to the aggrieved person if an emergency
9 order is not made; and
10 (ii) the aggrieved person is a relevant person for the
11 respondent; and
12 (iii) it is not practicable to arrest the respondent, or there is no
13 ground to arrest the respondent; and
14 (b) decides not to apply for an emergency order.
- 15 (2) The police officer must make a record of the decision, including a
16 brief note of the reasons for it.

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Part 8 Review

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77 Review of consent orders

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- (1) A party to a proceeding may apply to the Magistrates Court for a review of a consent order (the *original order*) only on the ground that the making of the original order was induced or affected by fraud or duress, other than fraud of the party or duress applied by the party.

10

- (2) On application for the review, the Magistrates Court may—

11

- (a) amend the original order or declare the original order void; or

12

- (b) refuse to amend the original order or declare the original order void; or

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- (c) make any order that could have been made on the application in relation to which the original order was made instead of the original order.

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78 Appealable decisions

18

The following decisions under this Act are appealable:

19

- (a) the making, amending or revoking of a protection order, other than an interim order or emergency order, by the Magistrates Court;

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- (b) the refusal of the court to make, amend or revoke a protection order, other than an interim order or an emergency order;

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- (c) a decision mentioned in section 77 made on the review of a consent order.

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79 When can someone appeal to the Supreme Court?

27

- (1) A person may appeal to the Supreme Court against an appealable decision if the person was a party to the proceeding in which the decision was made.

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- 1 (2) The person must file a notice of appeal (the *notice of appeal*) with
2 the Supreme Court within 21 days after—
3 (a) if the appealable decision was the making or amending of a
4 protection order and the respondent was not present when the
5 protection order was made or amended—the protection order
6 or amendment is served on the respondent; or
7 (b) in any other case—the date of the order.
8 (3) However, the Supreme Court may allow a person to file a notice of
9 appeal after the period mentioned in subsection (2) if satisfied that it
10 is appropriate to do so.

11 **80 Giving notice of an appeal (MCCJA s 389 (2))**

- 12 As soon as practicable after filing the notice of appeal, the appellant
13 must—
14 (a) file a copy of the notice in the office of the Magistrates Court;
15 and
16 (b) serve a copy of the notice on each other party to the proceeding
17 from which the appeal arose.

18 **81 Evidence on appeal (MCCJA s 391)**

- 19 In an appeal, the Supreme Court must consider the evidence given
20 in the proceeding from which the appeal arose, and has power to
21 draw inferences of fact and, in its discretion, to receive further
22 evidence.

23 **82 Powers of Supreme Court on appeal (MCCJA s 393)**

- 24 On an appeal, the Supreme Court may—
25 (a) confirm, reverse or amend the decision or order appealed from;
26 or
27 (b) make the decision or order that, in all the circumstances, it
28 considers appropriate, or refuse to make an order; or

- 1 (c) set aside the decision or order appealed from, completely or
2 partly, and remit the proceedings to the Magistrates Court for
3 further hearing, subject to the directions the Supreme Court
4 considers appropriate.

5 **83 Effect of filing appeal**

- 6 The filing of an appeal against the making or amending of an order
7 under this Act does not affect the operation of the order appealed
8 against.

Part 9 Reciprocal arrangements

84 Definitions for pt 9 (PORAA s 3)

In this part:

recognised court means a court of a State, another Territory or New Zealand that may make a recognised order.

recognised order means an order, under a law of a State, another Territory or New Zealand, that corresponds to a protection order.

registered order means a recognised order registered under section 86 (Registration) or section 90 (Amendment of recognised order), and includes a registered order amended as if it were a final order.

85 Application for registration of recognised order (PORAA s 4)

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

Note If a form is approved under section 96 (Approved forms) for an application under this section, the form must be used.

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

86 Registration (PORAA s 5)

- (1) On receiving an application under section 85 for registration of a recognised order, the registrar must register the order.

- (2) If the registrar registers a recognised order, the registrar must—

(a) give the chief police officer a copy of—

(i) the application for registration; and

(ii) the registered order; and

Section 87

- 1 (b) tell the recognised court, in writing, that the order has been
2 registered.

3 *Note* Under the *Electronic Transactions Act 2001*, s 8 (1), information
4 required to be in writing may be given electronically in certain
5 circumstances.

6 **87 Effect of registration (PORAA s 6)**

7 A registered order—

- 8 (a) is enforceable in the ACT as if it were a final order that had
9 been personally served on the respondent; and

- 10 (b) may be amended or revoked in the same way as a final order.

11 **88 Amendment of registered order (PORAA s 7)**

12 If a registered order is amended under this Act, the registrar must
13 tell the recognised court that made the order, in writing, about the
14 amendment.

15 *Note* Under the *Electronic Transactions Act 2001*, s 8 (1), information
16 required to be in writing may be given electronically in certain
17 circumstances.

18 **89 Revocation of recognised order (PORAA s 8)**

- 19 (1) This section applies if the registrar is told by a recognised court that
20 a recognised order registered under this part has been revoked.

- 21 (2) The registrar must cancel the registration of the registered order and
22 must tell the chief police officer and the person for whose benefit
23 the recognised order was registered about the cancellation.

24 **90 Amendment of recognised order (PORAA s 9)**

- 25 (1) This section applies if the registrar is told by a recognised court that
26 a recognised order (the *original order*) registered under this part has
27 been amended.

- 28 (2) The registrar must cancel the registration of the original order and
29 register the recognised order as amended (the *amended order*).

1 (3) The amended order takes effect on the cancellation of the
2 registration of the original order.

3 (4) If a breach of the original order that is not enforced before the
4 original order is cancelled would amount to a breach of the amended
5 order, the breach may be enforced as if it were a breach of the
6 amended order.

7 **91 Notification by interstate court of registration**
8 **(PORAA s 10)**

9 (1) This section applies if—

10 (a) a recognised court tells the Magistrates Court that it has
11 registered a protection order; and

12 (b) the Magistrates Court amends or revokes the order.

13 (2) The Magistrates Court must—

14 (a) tell the recognised court, in writing, that the order has been
15 amended or revoked; and

16 (b) if the order has been amended—give the recognised court a
17 copy of the order as amended.

18 *Note* Under the *Electronic Transactions Act 2001*, s 8 (1), information
19 required to be in writing may be given electronically in certain
20 circumstances.

21 **92 Evidence (PORAA s 11)**

22 (1) A registered order is admissible in evidence in a court by the
23 production of a copy of the registered order certified as a true copy
24 by the registrar.

25 (2) The copy is evidence of the matters stated in the registered order.

Part 10 Administration

93 Authorisation of registrar

(1) If authorised, in writing, to do so by the Chief Magistrate, the registrar, or a named deputy registrar may—

(a) exercise the power of the Magistrates Court to make consent orders; or

(b) act as a judicial officer.

(2) If the registrar or a deputy registrar makes an order while authorised under this section, the order must state that the registrar or deputy registrar is authorised to—

(a) exercise the power of the Magistrates Court to make consent orders; or

(b) act as a judicial officer.

(3) If the registrar or a deputy registrar exercises the power of the Magistrates Court to make a consent order while authorised under this section, a reference to the Magistrates Court in relation to the exercise of the power, is taken to be a reference to the registrar or deputy registrar.

(4) An authorisation is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

94 Deputy registrar and preliminary conferences

A deputy registrar may hold a preliminary conference only if authorised to exercise the power of the Magistrates Court to make consent orders.

95 Recovery of certain expenses (DVA s 19E)

(1) This section applies if the Magistrates Court is satisfied that—

- 1 (a) an application is frivolous, vexatious or has not been made
2 honestly; and
- 3 (b) someone (the *person put to expense*) other than the applicant
4 has reasonably incurred expenses in relation to the proceeding
5 on the application.
- 6 (2) The Magistrates Court may order the applicant to pay to the person
7 put to expense an amount, not more than the expenses incurred, that
8 the court considers reasonable.
- 9 (3) The amount stated in the order—
- 10 (a) is a debt owed by the applicant to the person put to expense;
11 and
- 12 (b) is a judgment debt enforceable in accordance with the
13 *Magistrates Court (Civil Jurisdiction) Act 1982*.
- 14 (4) For this section:
- 15 *expenses incurred*, by someone in a proceeding, include fees
16 payable by the person to a lawyer in relation to the proceeding.

17 **96 Approved forms**

- 18 (1) The registrar may, in writing, approve forms for this Act.
- 19 (2) If the registrar approves a form for an application, the approved
20 form must be used for the application.
- 21 (3) An approved form is a notifiable instrument.

22 *Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

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2 **Part 11** **Service**
3

4 **97 If personal service not required**

5 (1) This section applies if a document required to be served under this
6 Act is not required to be served personally.

7 (2) The document may be served—

8 (a) by delivering it to the person personally; or

9 (b) by leaving it—

10 (i) at the home or work address of the person last-known to
11 the person serving the document; and

12 (ii) with a person apparently living or employed at the place
13 who appears to be more than 16 years old; or

14 (c) if the person has an address for service—by leaving it at, or
15 sending it by prepaid post to, the address for service.

16 **98 If service impracticable or impossible**

17 (1) This section applies if—

18 (a) personal service of an application under this Act is not
19 reasonably practicable; or

20 (b) a document that is not required to be personally served cannot
21 be served under section 97.

22 (2) The Magistrates Court may order that the application or document
23 be served in the way, stated in the order, that the court considers is
24 likely to bring the application or document to the attention of the
25 person required to be served.

1 **99 Service of documents by police (DVA s 29)**

2 (1) The Magistrates Court may direct that a document required to be
3 served on someone be served by a police officer if the court
4 considers that it is appropriate to do so.

5 (2) If the Magistrates Court gives a direction under subsection (1), an
6 authorised police officer must, when asked to do so by the registrar,
7 arrange for the document to be served by a police officer.

8 (3) For this section:

9 *authorised police officer* means the police officer in charge of a
10 police station.

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Part 12 Public access and publication

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100 Restriction on publication of reports about proceedings (DVA s 30)

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Note Section 101 contains an exception to this section.

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- (1) A person must not publish (completely or partly) an account or report of a proceeding on an application for a protection order under this Act that—

10

(a) identifies a party to the proceeding; or

11

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

12

13

(c) identifies a witness to the proceeding; or

14

(d) allows the identity of a person mentioned in paragraph (a), (b) or (c) to be worked out.

15

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

17

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- (2) A proceeding for an offence against this section may be begun only by, or with the written consent of, the director of public prosecutions.

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101 Limits of restriction on publication about proceedings (DVA s 30A)

24

- (1) Section 100 does not prevent a party to a proceeding on an application for a protection order from telling someone else about the contents of a protection order made in the proceeding.

25

26

- (2) Section 100 does not prevent—

27

(a) information from being circulated in accordance with—

28

(i) an order of the Magistrates Court; or

29

- 1 (ii) the written permission of a magistrate; or
- 2 (b) information from being communicated to a court or tribunal
- 3 under the *Family Law Act 1975* (Cwlth), section 68J (1) or (2);
- 4 or
- 5 (c) information from being provided to the director of public
- 6 prosecutions or a police officer in relation to the performance
- 7 of the director's or officer's functions;
- 8 (d) a pleading, transcript of evidence or other document from
- 9 being communicated to—
- 10 (i) people concerned with any other proceeding in a court or
- 11 tribunal, for use in relation to that proceeding; or
- 12 (ii) people concerned with the disciplinary proceeding of a
- 13 lawyer, for use in relation to that proceeding; or
- 14 (iii) an entity that grants legal aid, to help decide whether to
- 15 provide legal aid in a particular case; or
- 16 (e) matter being published in law reports or other technical or
- 17 professional publications; or
- 18 (f) matter from being given to someone in relation to the person's
- 19 professional practice.
- 20 (3) The Magistrates Court may make an order allowing circulation of,
- 21 or a magistrate may give permission to circulate, information the
- 22 publication of which would otherwise contravene section 100 (1)
- 23 only if the court or magistrate is satisfied that—
- 24 (a) it is in the public interest; or
- 25 (b) it will promote compliance with the protection order; or
- 26 (c) it is necessary or desirable for the proper functioning of this
- 27 Act.

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Part 13 Miscellaneous

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102 Deciding application if criminal proceedings (DVA s 16)

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The power of the Magistrates Court, the registrar or another judicial officer to make a protection order in relation to a person may be exercised even if the person has been charged with, or convicted or found guilty of, an offence arising out of the same behaviour as that out of which the application under this Act arose.

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103 Crimes Act, s 547 (1) (DVA s 32)

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This Act does not affect the operation of the *Crimes Act 1900*, section 547 (1) (which deals with the making of recognisances to keep the peace).

14

104 Working out time if less than 5 days

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

18

105 Directions about procedure

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- (1) If the procedure for taking a step in a proceeding is not prescribed under this Act, the Chief Magistrate may, in writing, give directions about the procedure to be followed for the step.

22

- (2) A direction is a notifiable instrument.

23

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

24

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27

- (3) If the procedure for taking a step in a proceeding is not prescribed under this Act (including under a direction mentioned under subsection (1)), the Magistrates Court may give directions about the procedure to be followed in relation to the step.

1 **106 Regulation-making power**

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

3 *Note* Regulations must be notified, and presented to the Legislative
4 Assembly, under the *Legislation Act 2001*.

5 (2) The regulations may deal with the following:

- 6 (a) the admissibility of evidence in proceedings;
- 7 (b) when and how warrants may be issued;
- 8 (c) what parties may be joined in proceedings, and how they may
9 be joined;
- 10 (d) when orders are made;
- 11 (e) service;
- 12 (f) discontinuance and withdrawal of proceedings;
- 13 (g) the particulars parties are required to plead in proceedings,
14 generally and in relation to particular claims or defences;
- 15 (h) how particulars must be pleaded and when further or better
16 particulars must be given;
- 17 (i) interlocutory proceedings, including the following:
- 18 (i) how interlocutory applications may be made and heard;
- 19 (ii) how documents in proceedings may be amended;
- 20 (iii) how proceedings may be summarily stayed or dismissed;
- 21 (iv) how admissions may be made;
- 22 (v) the making, filing and answering of interrogatories;
- 23 (vi) how discovery may be applied for and made;
- 24 (vii) the inspection of documents.
- 25 (j) how witnesses may be summoned;
- 26 (k) the powers of the Magistrates Court in relation to making
27 decisions and when decisions take effect;

Section 106

- 1 (l) the powers of the Magistrates Court to set aside orders;
- 2 (m) when costs may be ordered and how they may be recovered.
- 3 (3) The regulations may set out the procedures to be followed under this
- 4 Act, including procedures in relation to the following:
- 5 (a) the holding of preliminary conferences;
- 6 (b) representation, including—
- 7 (i) the appointment of next friends and litigation guardians;
- 8 and
- 9 (ii) how respondents may defend actions;
- 10 (c) the adjournment, staying, dismissal or postponement of
- 11 proceedings;
- 12 (d) hearings;
- 13 (e) giving judgment.
- 14 (4) The regulations may also prescribe offences for contraventions of
- 15 regulations and prescribe maximum penalties of not more than 10
- 16 penalty units for offences against the regulations.

Part 14 Transitional

107 Definitions for pt 14

For this Act:

commencement day means the day this Act commences.

DV Act means the *Domestic Violence Act 1986*, as in force immediately before commencement day.

dv emergency protection order means an emergency protection order within the meaning of the DV Act.

dv interim protection order means an interim protection order within the meaning of the DV Act.

dv protection order means a protection order within the meaning of the DV Act.

interim restraining order means an interim restraining order within the meaning of the MC Act.

MC Act means the *Magistrates Court Act 1930*, as in force immediately before commencement day.

Reciprocal Arrangements Act means the *Protection Orders (Reciprocal Arrangements) Act 1992*, as in force immediately before commencement day.

restraining order means a restraining order within the meaning of the MC Act.

108 What happens to proceedings already begun?

- (1) This Act applies to a proceeding on an application for a dv protection order, dv interim protection order, restraining order or interim restraining order begun, but not decided, before commencement day.

Section 109

1 (2) The proceeding is taken to be a proceeding on an application under
2 this Act.

3 (3) If a step that should have been taken under this Act has not been
4 taken because the proceeding was begun under the DV Act or MC
5 Act—

6 (a) the proceeding is not affected; and

7 (b) the Magistrates Court may take the steps the court considers
8 appropriate to decide the application that is the subject of the
9 proceeding, to the extent practicable, in accordance with this
10 Act.

11 **109 What happens to existing final orders under DV Act and**
12 **MC Act?**

13 (1) A dv protection order in force under the DV Act immediately before
14 commencement day is taken to be a domestic violence order made
15 under this Act as a final order.

16 (2) A restraining order in force under the MC Act immediately before
17 commencement day is taken to be a personal violence order made
18 under this Act as a final order.

19 **110 What happens to existing interim orders under DV Act**
20 **and MC Act?**

21 (1) A dv interim protection order in force under the DV Act
22 immediately before commencement day is taken to be a domestic
23 violence order made under this Act as an interim order.

24 (2) An interim restraining order in force under the MC Act immediately
25 before commencement day is taken to be a personal violence order
26 made under this Act as an interim order.

27 (3) If a dv interim protection order, or interim restraining order, in force
28 immediately before commencement day, was made for a period
29 longer than the period for which an interim order may be made
30 under this Act—

- 1 (a) the order expires on the day it would have expired if this Act
2 had not been made; and
- 3 (b) the order is not taken to be invalid only because it was made
4 for a period for which an interim order may not be made under
5 this Act.

6 **111 What happens to existing emergency orders under DV**
7 **Act?**

8 A dv emergency order in force under the DV Act immediately
9 before commencement day is taken to be an emergency order under
10 this Act.

11 **112 Domestic violence behaviour**

12 In considering whether someone has previously engaged in
13 domestic violence, the Magistrates Court must also consider
14 whether the person has done something in relation to a relevant
15 person that, when it was done, would have been an offence against
16 the *Motor Traffic Act 1936*, section 129 (which was about reckless,
17 dangerous or negligent driving).

18 **113 Domestic violence firearm related orders—final orders**

19 An order made under the DV Act, section 14A (2) (Protection
20 orders, interim protection orders—firearms), about the seizure of a
21 firearms licence, firearm or ammunition, is taken to be an order
22 made under section 38 (5) (Firearms and final orders) of this Act.

23 **114 Domestic violence firearm related orders—interim orders**

- 24 (1) A firearms licence suspended under the DV Act, section 14A (3)
25 (Protection orders, interim protection orders—firearms) is taken to
26 have been suspended under section 57 (2) (Firearms and interim
27 orders) of this Act.
- 28 (2) An order made under the DV Act, section 14A (3), about the seizure
29 (or seizure and detention) of a firearms licence, firearm or

Section 115

1 ammunition, is taken to be an order made under section 57 (5) of
2 this Act.

3 **115 Domestic violence firearm related orders—emergency**
4 **orders**

5 (1) A firearms licence suspended under the DV Act, section 19M
6 (Effect of orders on licences for firearms) is taken to have been
7 suspended under section 73 (1) (Firearms and emergency orders) of
8 this Act.

9 (2) An order made under the DV Act, section 19M, about the seizure
10 (or seizure and detention) of a firearms licence, firearm or
11 ammunition, is taken to be an order made under section 73 (2) of
12 this Act.

13 **116 Personal violence firearm related orders—final orders**

14 An order made under the MC Act, section 206D (2) (Seizure of
15 firearms), about the seizure of a firearms licence, firearm or
16 ammunition, is taken to be an order made under section 38 (5)
17 (Firearms and final orders) of this Act.

18 **117 Personal violence firearm related orders—interim orders**

19 (1) A firearms licence suspended under the MC Act, section 206D (3)
20 (Seizure of firearms) is taken to have been suspended under section
21 57 (2) (Firearms and interim orders) of this Act.

22 (2) An order made under the MC Act, section 206D (4), about the
23 seizure (or seizure and detention) of a firearms licence, firearm or
24 ammunition, is taken to be an order made under section 57 (5) of
25 this Act.

26 **118 Protection of proceedings**

27 (1) A proceeding to which the DV Act, section 30 (Restriction on
28 publication of reports of proceedings), or the MC Act, section 206P
29 (Restriction on publication of reports of proceedings), applied
30 immediately before commencement day is taken to be a proceeding

1 to which section 100 (Restriction on publication of reports about
2 proceedings) of this Act applies.

- 3 (2) Subsection (1) is a law to which the *Legislation Act 2001*, section 88
4 (Repeal does not end transitional or validating effect etc) applies.

5 **119 Applications under the Reciprocal Arrangements Act**

6 If, before commencement day, a person had applied under the
7 Reciprocal Arrangements Act, section 4, for registration of a
8 recognised order, but the registrar had not registered the order or
9 taken any other action required under section 5 (2) of that Act, the
10 application is taken to have been made under section 85
11 (Application for registration of recognised order) of this Act.

12 **120 What happens to orders registered under the Reciprocal**
13 **Arrangements Act?**

14 A registered order (within the meaning of the Reciprocal
15 Arrangements Act) in force immediately before commencement day
16 is taken to be a registered order under section 84 (Definitions for
17 pt 9).

18 **121 What if registrar told recognised order amended or**
19 **revoked**

- 20 (1) This section applies if, before commencement day, the registrar had
21 been told by a recognised court that made a recognised order that
22 the order had been amended or revoked but had not taken action
23 under the Reciprocal Arrangements Act in relation to the
24 information.
- 25 (2) The registrar must take action under this Act as if the registrar had
26 been told the information after the commencement of this Act.

27 **122 What if registered protection order amended or revoked?**

- 28 (1) This section applies if, immediately before commencement day—
29 (a) a recognised court had told the Magistrates Court that it had
30 registered a protection order; and

1 (b) the Magistrates Court had amended or revoked the order but
2 had not told the recognised court that the order was amended
3 or revoked or, if the order was amended, had not given the
4 recognised court a copy of the order as amended.

5 (2) The Magistrates Court must take action in relation to the
6 amendment or revocation as if it had happened after commencement
7 day.

8 **123 Modification of pt 14's operation**

9 The regulations may modify this part to make provision with respect
10 to any matter that is not, or not adequately, dealt with in this part.

11 **124 Expiry**

12 This part expires 1 year after it commences.

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Schedule 1 Domestic violence offences against the Crimes Act 1900

(see s 9 (2))

column 1 item	column 2 provision	column 3 description of offence
1	12	murder
2	15	manslaughter
3	19	intentionally inflicting grievous bodily harm
4	20	recklessly inflicting grievous bodily harm
5	21	wounding
6	22	assault with intent to commit certain indictable offences
7	23	inflicting actual bodily harm
8	24	assault occasioning actual bodily harm
9	25	causing grievous bodily harm
10	26	common assault
11	27	acts endangering life etc
12	28	acts endangering health etc
13	29	culpable driving of motor vehicle
14	30	threat to kill
15	31	threat to inflict grievous bodily harm
16	32 (1) (a)	make demand with threat to kill or inflict grievous bodily harm
17	32 (2) (a)	make demand with threat to endanger health etc
18	33	possession of object with intent to kill etc
19	34	forcible confinement
20	34A	stalking
21	36	abduction of young person
22	37	kidnapping
23	92A	sexual assault in the first degree
24	92B	sexual assault in the second degree
25	92C	sexual assault in the third degree
26	92D	sexual intercourse without consent
27	92E	sexual intercourse with young person

Schedule 1**Domestic violence offences against the Crimes Act 1900**

column 1 item	column 2 provision	column 3 description of offence
28	92F	act of indecency in the first degree
29	92G	act of indecency in the second degree
30	92H	act of indecency in the third degree
31	92J	act of indecency without consent
32	92K	acts of indecency with young people
33	92L	incest or similar offences
34	92M	abduction
35	128	destroying or damaging property
36	129	arson
37	133	possession of article with intent to destroy property
38	145 (1) (a)	being armed with weapon etc with intent to commit offence
39	146	forcible entry on land
40	493	possession of offensive weapons
41	494	possession of offensive weapon with intent
42	546A	offensive behaviour

1

2 **Dictionary**

3 (see s 3)

4 **aggrieved person** means—5 (a) in relation to behaviour for which a workplace order may be
6 sought—the employer of the person against whom the
7 behaviour is directed; or8 (b) in any other case—a person against whom the behaviour that
9 may constitute domestic or personal violence has been, or is
10 likely to be, directed.11 **amend** an order includes amend the order by extending it.12 **ammunition**—see the *Firearms Act 1996*, section 4.13 **appealable decision** means a decision mentioned in section 78.14 **application** means an application for a protection order (other than
15 an interim order).16 **Note 1** As a protection order includes an order amending or revoking a
17 protection order, an application includes an application to amend or
18 revoke a protection order.19 **Note 2** An interim order may only be made as an interlocutory step in a
20 proceeding on an application for a final order, so there is not a separate
21 application for an interim order.22 **child**, of a person, includes—

23 (a) a child who normally lives with the person; and

24 (b) a child for whom the person is a guardian.

25 **Note** A child is someone under 18 years old (see *Interpretation Act 1967*,
26 dictionary).27 **consent order** means a protection order made under section 29.

- 1 **copy**, in relation to a document to be served in a proceeding,
2 means—
- 3 (a) if the document has been entered into the record of the
4 Magistrates Court—a true copy sealed or stamped with the seal
5 of the court; or
- 6 (b) in any other case—a true copy.
- 7 **de facto spouse**, of a person, means someone of the opposite sex to
8 the person who is living with the person as the person's husband or
9 wife although not legally married to the person.
- 10 **disability guardian**, of a person—see the *Guardianship and*
11 *Management of Property Act 1991*, dictionary, definition of
12 *guardian*.
- 13 **domestic violence**—see section 9 (1).
- 14 **domestic violence offence**—see section 9 (2).
- 15 **domestic violence order**—see section 20 (2) (What kinds of
16 behaviour does a protection order restrain?).
- 17 **emergency order** means an order under part 7 (Emergency orders),
18 and includes an order amending or revoking an emergency order if
19 made outside the Magistrates Court's sitting hours.
- 20 **employee** means an individual engaged by someone—
- 21 (a) under a contract of service; or
- 22 (b) under a contract for services; or
- 23 (c) under an apprenticeship; or
- 24 (d) under a training agreement under the *Vocational Education*
25 *and Training Act 1995*; or
- 26 (e) to work for the person as a volunteer.
- 27 **employer** means someone who engages an individual—
- 28 (a) under a contract of service; or

- 1 (b) under a contract for services; or
 - 2 (c) under an apprenticeship; or
 - 3 (d) under a training agreement under the *Vocational Education*
 - 4 *and Training Act 1995*; or
 - 5 (e) to work as a volunteer.
- 6 ***family contact order***, in relation to a protection order under this Act,
7 means a contact order within the meaning of the *Family Law Act*
8 *1975* (Cwlth), part VII, division 11 (Family violence), that relates to
9 contact between the aggrieved person or the respondent, and any
10 child of either person.
- 11 ***final order*** means a protection order that is not an interim order or
12 emergency order, and includes an order amending or revoking a
13 final order.
- 14 ***firearm***—see the *Firearms Act 1996*, section 4 (Definitions).
- 15 ***firearms licence***—see the *Firearms Act 1996*, section 4, definition
16 of *licence*.
- 17 ***interim order*** means a protection order made under part 6 (Interim
18 orders) or a consent order made as an interim order, and includes an
19 order (other than a final order) that amends or revokes an interim
20 order.
- 21 ***judicial officer*** means—
- 22 (a) a magistrate; or
 - 23 (b) the registrar, or a deputy registrar, authorised as a judicial
 - 24 officer under section 93.
- 25 ***personal protection order***—see section 20 (3) (What kinds of
26 behaviour does a protection order restrain?)
- 27 ***personal violence***—see section 10 (What is *personal violence*?) and
28 section 44 (What is *personal violence* for a workplace?).

1 ***person with a legal disability*** means—

2 (a) a child; or

3 (b) a person with a mental disability.

4 ***person with a mental disability***, in relation to a proceeding, means a
5 person who is not legally competent to be a party to the proceeding
6 because of a mental or intellectual disability, and includes such a
7 person even if a disability guardian has not been appointed for the
8 person.

9 ***protection order*** means a domestic violence order or a personal
10 protection order, and includes—

11 (a) an interim order; and

12 (b) an emergency order; and

13 (c) a workplace order; and

14 (d) an order about the seizure of a firearms licence, firearm or
15 ammunition; and

16 (e) an order amending or revoking a protection order.

17 ***recognised court***, for part 9 (Reciprocal arrangements)—see section
18 84 (Definitions for pt 9).

19 ***recognised order***, for part 9 (Reciprocal arrangements)—see section
20 84 (Definitions for pt 9).

21 ***registered order***, for part 9 (Reciprocal arrangements)—see section
22 84 (Definitions for pt 9).

23 ***registrar***—

24 (a) in relation to preliminary conferences—means the registrar of
25 the Magistrates Court or any deputy registrar authorised under
26 section 93 to exercise the power of the Magistrates Court to
27 make consent orders; or

28 (b) see the *Magistrates Court Act 1930*, section 5 (1)
29 (Interpretation).

relative, of a person (the *original person*)—

(a) means the original person's—

(i) father, mother, grandfather, grandmother, stepfather, stepmother, father-in-law or mother-in-law; or

(ii) son, daughter, grandson, granddaughter, stepson, stepdaughter, son-in-law or daughter-in-law; or

(iii) brother, sister, half-brother, half-sister, stepbrother, stepsister, brother-in-law or sister-in-law; or

(iv) uncle, aunt, uncle-in-law or aunt-in-law; or

(v) nephew, niece or cousin; and

(b) includes someone who would have been a relative of a kind mentioned in paragraph (a) if the original person had been legally married to the original person's de facto spouse (if any); and

(c) includes someone who has been a relative of a kind mentioned in paragraph (a) or (b) of the original person.

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

(a) a spouse of the original person; or

(b) a relative of the original person; or

(c) a child of a spouse of the original person; or

(d) someone who normally lives, or normally lived, in the same household as the original person (other than as a tenant or boarder).

sitting hours, of the Magistrates Court, means the time, on a day when the court is open for business, between the earliest and latest times that the court would normally sit on that day.

Dictionary

- 1 ***spouse*** includes former spouse, de facto spouse and former de facto
 - 2 spouse.
 - 3 ***workplace order*** means an order under division 5.3.
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Endnote

Penalty units

The *Interpretation Act 1967*, s 33AA deals with the meaning of offence penalties that are expressed in penalty units.

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