



Australian Capital Territory

Family Violence Act 2016

A2016-42

Contents

	Page
Preamble	2
Part 1	Preliminary
1	Name of Act 3
2	Commencement 3
3	Dictionary 3
4	Notes 3
5	Offences against Act—application of Criminal Code etc 4
Part 2	Objects and important concepts
Division 2.1	Objects
6	Objects of Act 5
7	How objects are to be achieved 5
Division 2.2	Important concepts
8	Meaning of <i>family violence</i> 5

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Contents

	Page
9	8
10	8
11	9
Division 2.3	Other important matters
12	11
13	12
Part 3	Family violence orders
Division 3.1	Matters to be considered when making family violence orders
14	13
15	14
Division 3.2	Applications for protection orders
16	15
17	16
18	16
19	17
Division 3.3	Interim orders
Subdivision 3.3.1	Making interim orders
20	18
21	18
22	19
Subdivision 3.3.2	General interim orders
23	20
24	20
25	20
26	21
27	21
28	22
29	22
Subdivision 3.3.3	Special interim orders
30	23

Contents

	Page	
31	Special interim orders—application not to be decided until related charges finalised	23
32	Special interim orders—final application decided	23
Division 3.4	Consent orders	
33	Consent orders	24
Division 3.5	Final orders	
34	Final orders—grounds for making	26
35	Final orders—length	27
Division 3.6	Conditions of family violence orders	
36	Safety of affected person and children paramount	27
37	Least restrictive principle	27
38	Conditions—general	27
39	Exclusion conditions	30
40	Personal property orders	31
41	Conditions—consent orders	31
42	Conditions may apply for shorter time than order	31
Division 3.7	Effect of family violence orders	
43	Offence—contravention of family violence order	31
44	Firearms licences	32
Part 4	Procedural matters	
Division 4.1	Service of applications	
45	Service of applications	33
46	If personal service of application impracticable	34
47	Service of documents by police	34
Division 4.2	Pre-hearing procedures	
48	Registrar sets return date	35
49	Adjournment of proceeding for non-service	35
50	Preliminary conferences—objects	36
51	Preliminary conferences	36
52	Preparation for hearing	37
53	Interim orders—return date for hearing to decide final order	38
54	Interim orders—endorsement of consent or objection	38

	Page
Division 4.3	Hearings
55	Applicant not present at return of application 41
56	Respondent not present at return of application 41
57	Neither party present at return of application 42
58	Hearings usually in public 42
59	Public hearing not required 42
60	Closed hearings in special circumstances 43
61	Discontinuance 44
62	Admissibility of preliminary conference evidence 44
63	Examination of affected person by self-represented respondent 45
64	Undertakings by respondent 46
65	Court may inform itself 46
Division 4.4	Making of protection orders
66	Explaining orders if respondent present 46
67	Explaining orders if protected person present 47
68	Reasons for order 48
69	Orders generally not to include protected person's address 49
70	Service of protection orders 49
Division 4.5	Other procedural matters
71	Police officer party to proceeding—substitution of applicant etc 50
72	Directions about procedure 51
73	Costs 51
Division 4.6	Party with impaired decision-making ability
74	Meaning of <i>impaired decision-making ability</i> 52
75	Child respondents 53
76	Representation—party with impaired decision-making ability 53
77	Consent orders—party with impaired decision-making ability 54
Division 4.7	Appointment etc of litigation guardian
78	Litigation guardian—appointment 55
79	Litigation guardian—powers 55
80	Litigation guardian—responsibilities 56
81	Litigation guardian—removal 56

	Page
Part 5	Amendment of protection orders
82	Amendment of protection orders—who may apply 57
83	Amendment of protection orders 57
84	Final orders—temporary amendment 58
85	General interim orders made by consent—extension 59
86	Final orders—extension 59
Part 6	Review of orders
87	Special interim orders—application for review 60
88	Special interim orders—review 60
89	Particular final orders—application for review 61
90	Particular final orders—review 62
91	Consent orders—review 62
92	Appealable decisions 63
93	Appeals to Supreme Court 63
94	Giving notice of appeal 64
95	Evidence on appeal 64
96	Powers of Supreme Court on appeal 64
97	Effect of filing appeal 64
Part 7	After-hours orders
98	Meaning of <i>business hours</i> —pt 7 65
99	Police officer may apply for after-hours order 65
100	After-hours orders—grounds for making 65
101	After-hours orders—application 66
102	After-hours orders—making 67
103	After-hours orders—refusal 67
104	After-hours orders—records 68
105	After-hours orders—detention of person against whom order sought 68
106	After-hours orders—length 68
107	After-hours orders—amendment or revocation 69
108	Service of after-hours orders 69
109	Police required to explain after-hours orders 70
110	Police to give reasons for not applying for after-hours order 70

	Page
Part 8	Court-initiated actions
111	Application—pt 8 71
112	Court-initiated interim orders 71
113	Interim court-initiated protection order taken to be special interim order 72
114	Amendment of existing protection order if later family violence charge 73
Part 9	National recognition of FVOs
Division 9.1	Preliminary
115	Definitions—pt 9 74
116	Meaning of <i>family violence concern</i> —pt 9 76
117	Meaning of <i>properly notified</i> —pt 9 77
118	Special provisions for registered foreign orders 77
Division 9.2	National recognition of FVOs
Subdivision 9.2.1	General principles
119	Recognition of FVOs 78
120	Amendment of FVOs 78
121	Revocation of recognised FVOs 79
122	Recognised FVO prevails over earlier comparable FVOs 80
123	Making new orders 80
Subdivision 9.2.2	Enforcement of recognised FVOs
124	Recognised FVOs and amendments are enforceable against respondent 81
125	Contravention of enforceable recognised FVOs 81
Subdivision 9.2.3	Enforcement of non-local FVOs
126	Non-local FVOs to be treated as local FVOs 82
127	Licences, permits and other authorisations 83
128	Recognition of disqualification to hold firearms licence 83
129	Recognition of disqualification to hold prohibited weapons permit 84
130	Costs—non-local FVO 85
Division 9.3	Amendment and revocation of recognised non-local FVOs
131	Meaning of <i>court</i> —div 9.3 85
132	Power of court to amend or revoke recognised non-local FVOs 86
133	Application for amendment or revocation of recognised non-local FVO 86

	Page
134	86
Decision about hearing of application	
Division 9.4	
Exchange of information	
135	88
Issuing authorities may obtain FVO information	
136	88
Issuing authorities must provide FVO information	
137	88
Law enforcement agencies may obtain FVO information	
138	88
Information to be provided to law enforcement agencies	
Division 9.5	
Other matters	
139	89
Certificate evidence—notification	
Division 9.6	
Application of pt 9—existing protection orders	
Subdivision 9.6.1	
Preliminary	
140	90
Meaning of <i>commencement day</i> —div 9.6	
141	90
Enforcement of FVOs under other provisions	
Subdivision 9.6.2	
FVOs to which scheme applies	
142	91
FVOs made in the ACT	
143	91
FVOs made in other jurisdictions	
Subdivision 9.6.3	
Extension of scheme to older FVOs	
144	92
FVOs declared to be recognised FVOs	
145	92
FVOs declared to be recognised in other jurisdictions before commencement day	
Subdivision 9.6.4	
Power to declare FVO to be recognised	
146	92
Power to declare FVO to be recognised	
147	93
Application for order	
148	94
Functions of registrar may be exercised by court	
Part 10	
Miscellaneous	
Division 10.1	
Public access and publication	
149	95
Publication of reports about proceedings—offence	
150	96
Publication of reports about proceedings—exceptions to offence	
Division 10.2	
Other matters	
151	96
Deciding application if criminal proceedings	
152	97
Criminal and civil liability not affected by family violence orders	
153	97
Crimes Act, s 397 (1)	
154	97
Working out time if less than 5 days	

155	Regulation-making power	Page 97
Part 20	Transitional	
200	Existing registered orders under repealed Act	98
201	Transitional regulations	98
202	Expiry—pt 20	99
Part 21	Repeals and consequential amendments	
203	Legislation repealed	100
204	Legislation amended—schs 2 and 3	100
Schedule 1	Permitted publication about proceedings	101
1.1	Definitions—sch 1	101
1.2	Permitted publication about proceedings	101
Schedule 2	Family violence amendments	103
Part 2.1	Bail Act 1992	103
Part 2.2	Children and Young People Act 2008	103
Part 2.3	Crimes (Sentencing) Act 2005	106
Part 2.4	Evidence (Miscellaneous Provisions) Act 1991	107
Schedule 3	Consequential amendments	109
Part 3.1	Bail Act 1992	109
Part 3.2	Children and Young People Act 2008	112
Part 3.3	Corrections Management Act 2007	114
Part 3.4	Court Procedures Act 2004	114
Part 3.5	Crimes Act 1900	115
Part 3.6	Crimes (Restorative Justice) Act 2004	116
Part 3.7	Crimes (Sentence Administration) Act 2005	119
Part 3.8	Crimes (Sentencing) Act 2005	119

Contents

	Page
Part 3.9	Crimes (Sentencing) Regulation 2006 121
Part 3.10	Criminal Code 2002 121
Part 3.11	Dangerous Substances Act 2004 122
Part 3.12	Domestic Violence Agencies Act 1986 122
Part 3.13	Evidence Act 2011 123
Part 3.14	Evidence (Miscellaneous Provisions) Act 1991 124
Part 3.15	Magistrates Court Act 1930 130
Part 3.16	Mental Health Act 2015 132
Part 3.17	Prohibited Weapons Regulation 1997 133
Part 3.18	Residential Tenancies Act 1997 133
Part 3.19	Road Transport (General) Act 1999 134
Part 3.20	Security Industry Act 2003 134
Part 3.21	Victims of Crime (Financial Assistance) Act 2016 134
Part 3.22	Working with Vulnerable People (Background Checking) Act 2011 139
Dictionary	140



Australian Capital Territory

Family Violence Act 2016

A2016-42

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

Preamble

- 1 In enacting this Act, the Legislative Assembly recognises the following principles:
 - (a) family violence is unacceptable in any form;
 - (b) freedom from family violence is a human right;
 - (c) the justice system should respect and protect all human rights in accordance with the *Human Rights Act 2004* and international law;
 - (d) family violence is best addressed through a coordinated legal and social response of assistance to victims and the prevention of violence by such things as promoting the accountability of perpetrators of family violence and the appropriate intervention by the police and the courts.

- 2 The Legislative Assembly also recognises the following features of family violence:
 - (a) anyone can be a victim of family violence: it occurs in all areas of society, regardless of location, socioeconomic and health status, age, culture, gender, sexual identity, ability, ethnicity or religion;
 - (b) family violence is predominantly committed by men against women and children;
 - (c) family violence extends beyond physical violence and may involve the exploitation of power imbalances and patterns of abuse over many years;
 - (d) children exposed to family violence are particularly vulnerable and the exposure may have a serious impact on their current and future physical, psychological and emotional wellbeing.

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

Part 1 Preliminary

1 Name of Act

This Act is the *Family Violence Act 2016*.

2 Commencement

This Act commences on 1 May 2017.

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

3 Dictionary

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

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

For example, the signpost definition '*firearm*—see the [Firearms Act 1996](#), section 6.' means that the term 'firearm' is defined in that section and the definition applies to this Act.

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

4 Notes

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

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

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

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

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

Note 2 Penalty units

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

Part 2 **Objects and important concepts**

Division 2.1 **Objects**

6 **Objects of Act**

The objects of this Act include—

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

7 **How objects are to be achieved**

This Act aims to achieve its objects by—

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

Division 2.2 **Important concepts**

8 **Meaning of *family violence***

- (1) In this Act:

family violence means—

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

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

Examples—par (b)

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

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

- (2) Without limiting subsection (1), *family violence* by a person in relation to a family member of the person includes the following:
- (a) sexually coercive behaviour;
 - (b) damaging property;
 - (c) harming an animal;
 - (d) stalking;
 - (e) deprivation of liberty.

(3) In this section:

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

- (a) in a way that takes away the financial independence or control the family member would have but for the behaviour; or
- (b) if the family member is wholly or predominantly dependent on the person for financial support to meet the living expenses of the family member or the family member's child—by withholding the financial support.

Examples

- 1 stopping the family member from having access to money to meet normal living expenses
- 2 requiring the family member to transfer or hand over control of assets or income
- 3 stopping the family member from trying to get employment
- 4 forcing the family member to sign a legal document such as a power of attorney, loan, guarantee
- 5 forcing the family member to claim social security payments

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

Examples

- 1 stopping the family member from visiting or having contact with family or friends
- 2 stopping the family member from engaging in cultural or spiritual practices
- 3 repeated derogatory or racist comments
- 4 threatening to disclose personal information about the family member
- 5 threatening to withhold medication, personal health care items or other things necessary to the family member's health or quality of life
- 6 threatening to self-harm as a way of intimidating the family member

9 **Meaning of *family member***

In this Act:

family member, of a person, means—

- (a) a domestic partner or former domestic partner of the person; or
- (b) an intimate partner or former intimate partner of the person; or
- (c) a relative of the person; or
- (d) a child of a domestic partner or former domestic partner of the person; or
- (e) a parent of a child of the person.

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

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

10 **Meaning of *intimate partner***

- (1) In section 9:

intimate partner, of a person—

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

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

11 Meaning of *relative*

- (1) In section 9:
- relative*, of a person—
- (a) means the 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) if the person has or had a domestic partner (other than a spouse or civil union partner)—includes someone who would have been a relative mentioned in paragraph (a) if the person had been married to or in a civil union with the domestic partner; and

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

- (c) includes—

(i) someone who has been a relative mentioned in paragraph (a) or (b) of the person; and

(ii) if the person is an Aboriginal or Torres Strait Islander person, the following people:

(A) someone the person has responsibility for, or an interest in, in accordance with the traditions and customs of the person's Aboriginal or Torres Strait Islander community;

(B) someone who has responsibility for, or an interest in, the person in accordance with the traditions and customs of the person's Aboriginal or Torres Strait Islander community; and

(iii) someone regarded and treated by the person as a relative; and

(iv) someone with whom the person has a family-like relationship; and

(v) anyone else who could reasonably be considered to be, or have been, a relative of the person.

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

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

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

Example

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

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

- (3) In this section:

Aboriginal or Torres Strait Islander person means a person who—

- (a) is a descendant of an Aboriginal person or a Torres Strait Islander person; and
- (b) identifies as an Aboriginal person or a Torres Strait Islander person; and
- (c) is accepted as an Aboriginal person or a Torres Strait Islander person by an Aboriginal community or Torres Strait Islander community.

Division 2.3 Other important matters

12 Principle about procedures

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

13 Balance of probabilities

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

Part 3 **Family violence orders**

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

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

- (1) In deciding whether to make a family violence order, a court must consider the following:
- (a) the objects of this Act in section 6;
 - (b) the affected person's perception of the nature and seriousness of the respondent's alleged conduct;
 - (c) the welfare of any child that is an affected person;
 - (d) the accommodation needs of the affected person and any child of the affected person or respondent;
 - (e) any hardship that may be caused to the respondent or anyone else by the making of the order;
 - (f) any previous family violence or personal violence by the respondent in relation to the affected person or anyone else;
 - (g) any previous family violence order made in relation to the respondent;
 - (h) any previous contravention of a family violence order by the respondent;
 - (i) if the respondent objected to the making of an interim order—the respondent's objection;
 - (j) the need to ensure that property is protected from damage.

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

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

(3) In this section:

family violence order—

- (a) means a protection order or an after-hours order under this Act; and
- (b) includes the following:
 - (i) a protection order under the *Personal Violence Act 2016*;
 - (ii) a protection order under the *Domestic Violence Agencies Act 1986* as in force at any time;
 - (iii) a protection order under the *Domestic Violence and Protection Orders Act 2001* as in force at any time;
 - (iv) a protection order under the *Domestic Violence and Protection Orders Act 2008* as in force at any time;
 - (v) a restraining order under the *Magistrates Court Act 1930* before 27 March 2002;
 - (vi) an order under a law of a State, another Territory or New Zealand that has or had the same effect, or substantially the same effect, as a protection order under this Act or a protection order under the *Personal Violence Act 2016*.

15 Family Law Act order

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

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

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

(2) In this section:

Family Law Act order—

- (a) means a parenting order, recovery order, injunction, undertaking, parenting plan or recognisance mentioned in the *Family Law Act 1975* (Cwlth), section 68R; and
- (b) includes any proceeding for a parenting order, recovery order, injunction, undertaking, parenting plan or recognisance.

Division 3.2 Applications for protection orders

16 Who may apply for protection order?

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

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

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

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

- (a) a police officer;
- (b) a litigation guardian for the person or any other person with a right to apply for the person.

Examples—s (2) (b)

1 a parent or guardian of a child

2 an agent of the person

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

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

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

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

17 Application forms that require affected person's address

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

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

- (2) The address need not be included in the application.
- (3) For this section, if the affected person is not the applicant, *affected person* includes the applicant.

18 What if application is made for the wrong order?

- (1) This section applies if—
 - (a) a person applies for a protection order under this Act; and
 - (b) the order may not be made because the conduct on which the application is based—
 - (i) is not conduct that the order could restrain; but
 - (ii) is conduct that an order under the *Personal Violence Act 2016* could restrain; and
 - (c) the application has not been decided.
- (2) The Magistrates Court may make a protection order under the *Personal Violence Act 2016* even though that protection order was not properly applied for if—
 - (a) the person honestly applied for the order under this Act; and

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

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

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

19 What if application for the wrong order is decided?

(1) This section applies if—

- (a) a person applies for a protection order under this Act; and
- (b) the order cannot be validly made because the conduct on which the application is based is not conduct that the order could restrain; and
- (c) the application is decided before it becomes apparent that paragraph (b) applies; and
- (d) a protection order under this Act is purportedly made (the *invalid order*); and
- (e) had an application been properly made, the court could have made a protection order under the *Personal Violence Act 2016* of the same kind as the invalid order.

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

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

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

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

Example

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

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

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

Division 3.3 Interim orders

Subdivision 3.3.1 Making interim orders

20 Interim orders—only on application for final order

- (1) Subject to section 112 (Court-initiated interim orders), the Magistrates Court may make an interim order only on an application for a final order.
- (2) The Magistrates Court may make an interim order—
- (a) at any time before the application for the final order is decided; and
 - (b) even if a copy of the application and a timing notice have not been served on the respondent in accordance with section 45 (Service of applications).

21 Interim orders—grounds for making

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

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

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

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

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

22 Interim orders—general interim orders and special interim orders

- (1) On an application for a final order, the Magistrates Court may make—
- (a) a special interim order if there is a related charge outstanding in relation to the respondent; or
 - (b) in any other case—a general interim order.
- (2) If the court makes a special interim order in circumstances where a general interim order may be made—
- (a) the operation of the special interim order is not affected by the fact that a general interim order may have been made; and
 - (b) the court may set aside the special interim order and make a general interim order.
- (3) If the court makes a general interim order in circumstances where a special interim order may be made—
- (a) the operation of the general interim order is not affected by the fact that a special interim order may have been made; and
 - (b) the court may set aside the general interim order and make a special interim order.

Subdivision 3.3.2 General interim orders

23 General interim orders—only 1 may be made

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

24 General interim orders—length

- (1) A general interim order must not be in force for more than 12 months plus any extension under—
 - (a) section 28 (General interim orders—extension for non-service of application); or
 - (b) section 29 (General interim orders—extension for non-service of final order).
- (2) However, a general interim order made as a consent order must not be in force for more than 16 weeks.

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

25 General interim orders—ending

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

- (a) if a period is stated in the order—the period, including any extension under section 28 or section 29, ends;
- (b) the interim order is revoked;
- (c) the application for a final order on which the interim order was made is discontinued or dismissed;
- (d) a final order is made and the respondent is present when it is made.

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

- (1) This section applies if—
 - (a) the court makes a general interim order; and
 - (b) after the general interim order is made, but before the final order is made, the respondent is charged with an offence; and
 - (c) the charge is related to the application for the final order.
- (2) The general interim order is taken to be a special interim order—
 - (a) in the same terms as the general interim order; and
 - (b) subject to the same conditions as the general interim order.
- (3) The return date for a hearing to decide the application for the final order must be changed to a day—
 - (a) not earlier than the day all related charges are finalised; and
 - (b) not later than 21 days after the day all related charges are finalised.

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

27 General interim orders—further orders

- (1) This section applies if a general interim order has ended or is about to end.
- (2) The Magistrates Court may make a further general interim order if satisfied there are special or exceptional circumstances (having regard to the objects of this Act and how those objects are to be achieved as set out in section 7) that justify the making of a further general interim order.

Note Section 25 limits the length of a further general interim order.

- (3) Only 1 further general interim order may be made under this section in relation to an application for a final order.

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

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

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

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

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

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

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

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

Subdivision 3.3.3 Special interim orders

30 Special interim orders—ending

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

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

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

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

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

- (2) However, the application for the final order may be finalised by the court before all related charges are finalised—
 - (a) if on return of the application at a preliminary conference the respondent does not appear; or
 - (b) by consent.

32 Special interim orders—final application decided

- (1) This section applies if—
 - (a) a court makes a special interim order; and
 - (b) all charges related to the special interim order are finalised; and

(c) the application for the final order has not yet been decided.

Note The court must not decide the application for the final order, unless by consent or because the respondent fails to appear at a preliminary conference, until all related charges are finalised (see s 31).

- (2) After the final related charge is finalised by the court, the court must also—
- (a) if the court is the Magistrates Court—decide the application for the final order; or
 - (b) if the court is another court—
 - (i) decide the application for the final order as if it were the Magistrates Court; or
 - (ii) notify the Magistrates Court that the final related charge has been decided.
- (3) If a court notifies the Magistrates Court under subsection (2) (b) (ii)—
- (a) the court may give the Magistrates Court guidance about, or a direction for, suitable conditions to be included in the final order; and
 - (b) the Magistrates Court must decide the application for the final order.
- (4) A decision to dismiss the application for the final order may only be made after giving the parties an opportunity to be heard.
- (5) The court deciding the application for the final order under this section may set a return date for the application.

Division 3.4 **Consent orders**

33 **Consent orders**

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

- (2) The order may be made—
- (a) whether or not the parties have attended, or any party has attended, before the court in relation to the application; and
 - (b) whether or not any ground for making the order has been made out; and
 - (c) whether or not the court has considered the matters mentioned in section 14; and
 - (d) without proof or admission of guilt.

Note Section 66 and s 67 apply to require the court to explain the order intended to be made under this section if the party to the order is before the court.

- (3) Before making a final order under this section, the court may conduct a hearing in relation to the particulars of the application if the court is satisfied it is in the interests of justice to do so.
- (4) If an automatic consequence flows from the making of a kind of order and an order of that kind is made under this section, the automatic consequence flows from the making of the order unless—
- (a) this Act allows a discretion for the automatic consequence not to flow from the making of an order of that kind; and
 - (b) the parties consent to the automatic consequence not flowing from the making of the order.
- (5) However, this section does not allow the court to make a protection order—
- (a) that may not otherwise be made under this Act; or
 - (b) for a period other than a period for which the order may be made; or
- Note* Section 25 limits the length of general interim orders and s 35 limits the length of final orders.
- (c) if section 77 (Consent orders—party with impaired decision-making ability) applies.

Division 3.5 Final orders

34 Final orders—grounds for making

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

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

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

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

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

35 Final orders—length

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

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

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

Division 3.6 Conditions of family violence orders

36 Safety of affected person and children paramount

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

37 Least restrictive principle

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

38 Conditions—general

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

(2) Without limiting subsection (1), a family violence order may do 1 or more of the following:

(a) prohibit the respondent from being on premises where the protected person lives;

Note Section 39 sets out matters to be considered when including a condition prohibiting a respondent from being on premises where the respondent lives.

(b) prohibit the respondent from being on premises where the protected person works;

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

(d) prohibit the respondent from being in a particular place;

(e) prohibit the respondent from being within a particular distance from the protected person;

(f) prohibit the respondent locating or attempting to locate the protected person;

(g) prohibit the respondent from contacting the protected person;

(h) prohibit the respondent from doing anything mentioned in section 8 (1), definition of *family violence*, paragraph (a);

(i) prohibit the respondent from doing anything mentioned in paragraphs (e) to (h) in relation to—

(i) a child of the protected person; or

(ii) any other child if the court is satisfied that there is an unacceptable risk of the child being exposed to family violence;

(j) prohibit the respondent from causing someone else to do something mentioned in paragraphs (f) to (i);

(k) prohibit the respondent from taking possession of stated personal property that is reasonably needed by the protected person or a child of the protected person;

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

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

- 1 personal clothing
- 2 toiletries
- 3 books
- 4 photographs
- 5 house or car keys

Examples—par (n)—respondent's circumstances

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

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

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

39 Exclusion conditions

- (1) In deciding whether to include an exclusion condition in a family violence order, a court must consider the following:
 - (a) as primary factors—
 - (i) the physical, emotional and psychological needs of the protected people; and
 - (ii) any disability the protected people have; and
 - (b) as secondary factors—
 - (i) the accommodation needs of, and options for accommodation available to, the protected people, the respondent and any child of the protected person or respondent; and
 - (ii) the length of time required for a person mentioned in paragraph (b) (i) to find alternative accommodation.
- (2) However, a court may include an exclusion condition in an interim order against a respondent who is a child only if the court is satisfied that adequate arrangements have been made for the child's care (including education) and safety.

Example

if a government agency responsible for the care and protection of children has found alternative accommodation for the child

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

- (3) If an applicant for a protection order seeks an exclusion condition in relation to the respondent and the court decides to make the order without the condition, the court must give reasons for the decision.
- (4) In this section:

exclusion condition means a condition in a family violence order prohibiting the respondent from being on premises—

- (a) where the respondent lives; or

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

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

40 Personal property orders

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

41 Conditions—consent orders

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

42 Conditions may apply for shorter time than order

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

Division 3.7 Effect of family violence orders

43 Offence—contravention of family violence order

- (1) This section applies to a person against whom a family violence order is made if the person—
- (a) was present when the family violence order was made; or
 - (b) has been personally served in accordance with this Act with a copy of the family violence order.

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

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

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

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

44 Firearms licences

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

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

- (2) If a final order is made against a respondent who is the holder of a firearms licence, the respondent's firearms licence is cancelled.
- (3) If a respondent's firearms licence is suspended or cancelled, the court or judicial officer may order—
- (a) the seizure of the firearms licence; and
 - (b) the seizure of any firearm or ammunition in the respondent's possession.

Part 4 **Procedural matters**

Division 4.1 **Service of applications**

45 **Service of applications**

- (1) If the Magistrates Court receives an application for a protection order, the registrar must serve—
 - (a) on the respondent—
 - (i) a copy of the application; and
 - (ii) a notice stating the following (a *timing notice*):
 - (A) a return date for the application; and
 - (B) if a special interim order is made on the application—that a later return date for a hearing to decide the application will be set after all related charges are finalised; and
 - (C) that if the respondent does not attend the hearing, the Magistrates Court may decide the application in the respondent's absence; and
 - (b) on the applicant—the timing notice.
- (2) The registrar may serve a copy of the application and timing notice on anyone else the registrar is satisfied has a relevant interest in the proceeding for the final order.

Example

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

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

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

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

46 If personal service of application impracticable

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

47 Service of documents by police

- (1) A court may direct that a document required to be served on someone be served by a police officer if the court considers that it is appropriate to do so.
- (2) If the court gives a direction under subsection (1), an authorised police officer must, when asked to do so by the registrar, arrange for the document to be served by a police officer.
- (3) For this section:

authorised police officer means the police officer in charge of a police station.

Division 4.2 Pre-hearing procedures

48 Registrar sets return date

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

- (a) enter the application into the Magistrates Court's record; and
- (b) set a return date for the application.

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

(2) The return date must be—

- (a) not later than 2 days after the day the application is made; or
- (b) not later than 10 days after the day the application is made if—
 - (i) the applicant is not seeking an interim order on the application; and
 - (ii) the registrar is satisfied that the longer time is necessary to allow the respondent to be served with the application and the timing notice.

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

- (a) an abuse of process; or
- (b) frivolous or vexatious.

49 Adjournment of proceeding for non-service

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

- (a) a return date has been set for the application for the order; and
- (b) the respondent has not been served with a copy of the application and timing notice under section 45 (Service of applications).

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

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

50 Preliminary conferences—objects

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

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

51 Preliminary conferences

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

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

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

- (3) If a preliminary conference must be held, the registrar must, in writing, tell each party to the application—
- (a) when and where the conference is to be held; and
 - (b) that, if the party does not attend the conference, the nonattendance must be reported to the Magistrates Court.
- (4) The registrar must tell the Magistrates Court if a party does not attend the preliminary conference if satisfied that the party was given notice of the conference.

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

- (5) The failure of the registrar to hold a preliminary conference in relation to an application for a protection order does not affect the validity of the protection order.
- (6) If a preliminary conference is held, and no consent order is made by the end of the conference, the registrar may set a new return date for a hearing to decide the application for the final order.

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

52 Preparation for hearing

- (1) This section applies to an application for a protection order if—
- (a) if a preliminary conference must be held in relation to the application—the conference has been held; and
 - (b) no consent order has been made as a result of the conference.
- (2) On or before the return date for the hearing to decide the application, the registrar must prepare the following documents for the hearing of the application:
- (a) a statement about who will give evidence at the hearing;

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

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

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

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

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

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

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

54 Interim orders—endorsement of consent or objection

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

- (2) If the respondent wishes to consent to the interim order becoming a final order, the respondent may—
- (a) fill out the endorsement copy of the interim order in accordance with the instructions on the copy; and
 - (b) indicate on the endorsement copy that the respondent consents to the interim order becoming a final order; and
 - (c) return it to the Magistrates Court before the return date for the application for the final order.

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

Note The court may make consent orders whether or not a party has attended before the court, whether or not a ground for making the order has been made out, whether or not the court has considered the matters mentioned in s 14 and without proof or admission of guilt (see s 33).

- (4) If the respondent wishes to object to the interim order becoming a final order, the respondent may—
- (a) fill out the endorsement copy of the interim order in accordance with the instructions on the copy; and
 - (b) indicate on the endorsement copy that the respondent objects to the interim order becoming a final order; and
 - (c) return it to the Magistrates Court at least 7 days before the return date for the application for the final order.

- (5) If the respondent acts under subsection (4), the Magistrates Court may decide the application for the final order at—
- (a) for a general interim order—the next return date for the application for the final order; or
 - (b) for a special interim order—a return date for the application after all related charges are finalised.

Note If the court makes a special interim order, the court must not decide the application for the final order until all related charges are finalised (see s 31).

- (6) If the respondent wishes to object to the interim order becoming a final order but does not act under subsection (4), the Magistrates Court may decide the application for the final order only if the respondent—
- (a) attends the Magistrates Court on the return date for the application for the final order; and
 - (b) objects to the interim order becoming a final order; and
 - (c) satisfies the court that the respondent—
 - (i) is a person with impaired decision-making ability who was not represented by a lawyer, or another person with a right to represent the person in the proceeding, at any time before the endorsement copy was required to be returned under subsection (4) (c); or
 - (ii) otherwise has a reasonable excuse for failing to act under subsection (4).

Examples—par (c) (i)

- 1 litigation guardian
- 2 disability guardian
- 3 for a child, the child’s parent

Examples—par (c) (ii)

- 1 the respondent was injured in a car accident and unable to return the endorsement copy in the time required
- 2 the respondent is from a non-English speaking background and no-one was able to interpret the endorsement copy for the respondent until after it was required to be returned

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

- (7) If the interim order does not become a final order under subsection (3) and the application may not be decided by the Magistrates Court under subsection (5) or (6), the court may decide that the interim order becomes a final order at—
- (a) for a general interim order—the next return date for the application for the final order; or
 - (b) for a special interim order—a return date for the application after all related charges are finalised.
- (8) In this section:

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

Division 4.3 Hearings

55 Applicant not present at return of application

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

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

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

56 Respondent not present at return of application

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

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

57 Neither party present at return of application

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

58 Hearings usually in public

The hearing of an application for a protection order must be in public unless—

- (a) section 59 applies; or
- (b) the court makes an order under section 60.

59 Public hearing not required

The hearing of an application for a protection order, or part of the hearing, need not be in public if—

- (a) the order sought is a consent order; or

- (b) the part of the hearing is an application for an interim order and the respondent has not been served with a copy of the application and timing notice under section 45 (Service of applications); or
- (c) if the respondent has been served with the application and timing notice—the respondent does not appear in the Magistrates Court when the application is returned before the court.

60 Closed hearings in special circumstances

- (1) A court hearing an application for a protection order may, if satisfied that it is in the interests of safety, justice or the public to do so, make an order—
 - (a) permitting—
 - (i) the hearing, or part of the hearing, to take place in private; and
 - (ii) stated people to be present at the hearing; or
 - (b) prohibiting or restricting the publication of—
 - (i) evidence given at, or received for, the hearing, whether in public or private; or
 - (ii) a matter in a document filed in the court for the proceeding; or
 - (c) prohibiting or restricting the disclosure to some or all of the parties to the proceeding of—
 - (i) evidence given, or received, at the hearing, whether in public or private; or
 - (ii) a matter in a document filed in the court for the proceeding.
- (2) A person commits an offence if the person fails to comply with an order under this section.

Maximum penalty: 50 penalty units.

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

61 Discontinuance

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

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

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

62 Admissibility of preliminary conference evidence

- (1) This section applies to a proceeding for a protection order if a preliminary conference is held in relation to the application for the order.
- (2) Evidence must not be given before, or statements made in, the court about words spoken or anything done at the preliminary conference that is related to a question to be decided by the court in the proceeding unless—
- (a) the parties otherwise agree; or

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

63 Examination of affected person by self-represented respondent

- (1) This section applies if in a proceeding for a family violence order a respondent is not represented by a lawyer.
- (2) An affected person must not be examined personally by the respondent.

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

- (3) The court must, as soon as practicable, tell the respondent—
 - (a) about this section; and
 - (b) that the respondent may not present evidence from another witness in relation to a fact in issue (the **contested fact**) to contradict the evidence of the affected person in relation to the contested fact if the other witness's contradictory evidence has not been put to the affected person in cross-examination.
- (4) The court may—
 - (a) appoint a person to examine an affected person on the respondent's behalf; or
 - (b) if the court considers it is in the interests of justice, do 1 or more of the following:
 - (i) adjourn the proceeding to enable the respondent to get a lawyer to conduct the examination;
 - (ii) make—
 - (A) an order that the person get a lawyer; and
 - (B) any other order the court considers necessary to get a lawyer for the person.

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

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

- (6) In this section:

examine includes cross-examine and re-examine.

64 Undertakings by respondent

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

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

65 Court may inform itself

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

Division 4.4 Making of protection orders

66 Explaining orders if respondent present

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

- (b) the respondent is before the court.
- (2) On making the protection order (other than a consent order), the court must explain to the respondent, in language likely to be readily understood by the respondent—

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

Note Explaining the effect of the order includes explaining any consequence that will automatically flow from the making of the order. For example, if relevant, that any firearms licence of the respondent will automatically be cancelled or suspended.

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

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

- (d) that the order may be enforced or amended anywhere in Australia or New Zealand.

Note Pt 9 deals with the recognition of family violence orders from other jurisdictions in Australia and New Zealand.

- (3) Before making a consent order, the court must explain to the respondent, in language likely to be readily understood by the respondent, the matters mentioned in subsection (2) (a) to (d).
- (4) A failure of the court to comply with this section in relation to a protection order does not affect the validity of the order.

67 Explaining orders if protected person present

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

(2) On making the protection order (other than a consent order), the court must explain to the protected person, in language likely to be readily understood by the person—

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

Note Explaining the effect of the order includes explaining any consequence that will automatically flow from the making of the order. For example, if relevant, that any firearms licence of the respondent will automatically be cancelled or suspended.

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

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

(d) that, if the protected person aids or abets the respondent to commit an offence against section 43 (Offence—contravention of family violence order), the protected person may also commit an offence; and

(e) that the order may be enforced or amended anywhere in Australia or New Zealand.

Note The [Criminal Code](#), pt 2.4 deals with offences of aiding and abetting.

(3) Before making a consent order, the court must explain to the protected person, in language likely to be readily understood by the person, the matters mentioned in subsection (2) (a) to (e).

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

68 Reasons for order

(1) If a court makes a protection order, the court must record the reasons for making the order.

(2) If the order is a consent order, the reason for making the order is that the parties have consented to it.

69 Orders generally not to include protected person's address

- (1) The protected person's home or work address must not be included in a family violence order unless—
 - (a) the protected person agrees to the address being included; or
 - (b) it is necessary to include the address to allow the respondent to comply with the order; or
 - (c) the court, registrar or another judicial officer making the order is satisfied that the respondent already knows the address.
- (2) For this section, if the protected person is not the applicant, *protected person* includes the applicant.

70 Service of protection orders

- (1) If a court makes a protection order, the registrar must—
 - (a) if the order is an interim order—serve 2 copies of the order (1 marked as the endorsement copy) on the respondent not later than—
 - (i) for a general interim order—14 days before the return date for the application for the final order; or
 - (ii) for a special interim order—14 days after the day the special interim order is made; and
 - (b) if the order is not an interim order—serve a copy of the order on the respondent; and
 - (c) give a copy of the order to—
 - (i) each other party to the proceeding; and
 - (ii) the chief police officer; and
 - (iii) the registrar of firearms; and

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

Example

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

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

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

- (2) If the registrar is serving a special interim order on a person, the registrar must also give the person a notice telling the person that—
- (a) the respondent may apply to the court for review of the order under section 87 (Application for review of special interim orders); and
 - (b) the court will set a return date for a hearing to decide the application after all related charges are finalised.
- (3) Service under subsection (1) (a) must be personal service unless—
- (a) the respondent is present when the protection order is made; or
 - (b) a court makes an order under section 46 (If personal service of application impracticable).

Division 4.5 Other procedural matters

71 Police officer party to proceeding—substitution of applicant etc

- (1) This section applies if a police officer—
- (a) applies for a protection order for an affected person under section 16 (2) (a); or
 - (b) is taken to be the applicant for a protection order under section 112 (Court-initiated interim orders).

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

72 Directions about procedure

- (1) If the procedure for taking a step in a proceeding is not prescribed under this Act or another territory law, the Chief Magistrate may give a direction about the procedure to be followed for the step.
- (2) A direction is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).
- (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)) or another territory law, the Magistrates Court may give a direction about the procedure to be followed in relation to the step.

73 Costs

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

(b) the respondent if the court considers it appropriate to do so.

Note If the Magistrates Court orders that a proceeding be dismissed under s 57 (Neither party present at return of application), the court must not make an order about costs (see s 57 (2)).

- (3) For subsection (2) (a), an application is not a vexatious or frivolous application or an application made in bad faith only because it is made then discontinued.
- (4) If the court orders costs against a party to a proceeding (the *payee*) for a family violence order, the amount must not be more than the costs reasonably incurred by the other party.
- (5) The amount stated in the order—
- (a) is a debt owed by the payee to the other party; and
 - (b) is a judgment debt enforceable in accordance with the rules under the *Court Procedures Act 2004* applying in relation to the civil jurisdiction of the Magistrates Court.

Division 4.6 Party with impaired decision-making ability

74 Meaning of *impaired decision-making ability*

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

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

75 Child respondents

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

76 Representation—party with impaired decision-making ability

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

Examples—par (b) (ii)

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

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

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

- (b) give the parties information necessary to allow the parties to get representation or appoint a litigation guardian; and
 - (c) tell the public advocate that the proceeding has been adjourned so the parties can get representation or appoint a litigation guardian; and
 - (d) ask that legal representation be arranged by Legal Aid ACT.
- (3) Nothing in this section prevents a court or judicial officer from making an interim order or after-hours order against a respondent with impaired decision-making ability if the court is satisfied of the matters mentioned in section 21 (Interim orders—grounds for making) or section 100 (After-hours orders—grounds for making).

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

- (4) In this section:

Legal Aid ACT—see the *Legal Aid ACT 1977*, section 94 (Commission to operate as Legal Aid ACT).

77 Consent orders—party with impaired decision-making ability

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

Division 4.7 Appointment etc of litigation guardian

78 Litigation guardian—appointment

- (1) The following people may be appointed as a litigation guardian for a person with impaired decision-making ability (the *assisted person*) in a proceeding for a family violence order:
 - (a) an individual who is not a person with impaired decision-making ability;
 - (b) the public advocate.
- (2) A person is appointed by filing with the Magistrates Court a statement—
 - (a) about whether, to the best of the person’s knowledge, the assisted person already has a disability guardian; and
 - (b) to the effect that the person—
 - (i) has no interest in the proceeding that is adverse to the interests of the assisted person; and
 - (ii) agrees to be appointed.
- (3) If the assisted person already has a disability guardian, the disability guardian may be appointed as the assisted person’s litigation guardian only with the Magistrates Court’s leave.

79 Litigation guardian—powers

- (1) This section applies if a litigation guardian has been appointed under section 78 for a person with impaired decision-making ability.
- (2) Anything that the person is allowed to do under this Act may be done by the person’s litigation guardian.
- (3) Anything that the person is required to do under this Act must be done by the person’s litigation guardian.

Note The litigation guardian may not give the person’s evidence for the person (see [Evidence Act 2011](#), pt 3.2).

80 Litigation guardian—responsibilities

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

81 Litigation guardian—removal

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

Part 5 Amendment of protection orders

82 Amendment of protection orders—who may apply

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

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

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

Note 2 If a form is approved under the [Court Procedures Act 2004](#), s 8 for an application, the form must be used.

83 Amendment of protection orders

- (1) The Magistrates Court may amend a protection order only if satisfied that—
 - (a) either—
 - (i) there has been a change in the circumstances of a party to the order; or
 - (ii) the order causes unnecessary hardship to the respondent; and
 - (b) amending the order will not adversely affect the safety of the protected person or a child of the protected person; and
 - (c) the order as amended could be made on application for a protection order; and

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

Example—par (a) (i)

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

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

- (2) If the protection order has been amended by being extended, the order must mention that it has been extended.
- (3) An application for an amendment must state the grounds for the application.

Examples

- 1 the protected person has had a change in circumstances since the original order was made
- 2 the original order restricts the respondent's rights unnecessarily

- (4) An application for an amendment must be made before the original order ends.
- (5) This section does not apply to a kind of amendment if this Act (apart from this section) expressly deals with the grounds for that kind of amendment or for revocation.

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

84 Final orders—temporary amendment

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

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

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

85 General interim orders made by consent—extension

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

86 Final orders—extension

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

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

Part 6 Review of orders

87 Special interim orders—application for review

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

- (a) the identity of the respondent;
- (b) an administrative defect or error in the special interim order;
- (c) whether or not there are outstanding related charges in relation to the respondent;
- (d) whether a general interim order should have been made.

Note 1 Section 22 deals with the making of general interim orders and special interim orders.

Note 2 If a form is approved under the [Court Procedures Act 2004](#), s 8 for an application, the form must be used.

88 Special interim orders—review

- (1) On hearing an application for review under section 87, the Magistrates Court must, by order—
 - (a) dismiss the application; or
 - (b) confirm the special interim order; or
 - (c) revoke the special interim order; or
 - (d) set aside the special interim order and make a new interim order.
- (2) The Magistrates Court may revoke the special interim order only if the Magistrates Court is satisfied that the special interim order is no longer necessary for the protection of the protected person.
- (3) If the Magistrates Court revokes the special interim order, the court must notify the protected person in writing as soon as practicable.

89 Particular final orders—application for review

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

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

- (2) The following people may apply to the Magistrates Court for review of the original order:
- (a) the protected person;
 - (b) if the protected person is not the applicant—the applicant;
 - (c) with the court’s leave—
 - (i) the respondent; or
 - (ii) someone else with sufficient interest in the original order.

Example—someone with sufficient interest

a protected person’s guardian

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

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

- (3) Before hearing an application for leave for subsection (2) (c), the Magistrates Court must—
- (a) fix a date and time to hear the application; and
 - (b) give the people mentioned in subsection (2) written notice of the date and time.

- (4) In this section:

protected person means the protected person in relation to the original order.

respondent means the respondent to the original order.

90 Particular final orders—review

- (1) On hearing an application under section 89 to review a final order, the Magistrates Court must, by order—
 - (a) dismiss the application; or
 - (b) confirm the original order; or
 - (c) revoke the original order; or
 - (d) set aside the original order and make a new order.
- (2) The Magistrates Court may revoke the original order—
 - (a) if the Magistrates Court is satisfied that the original order is no longer necessary to protect the protected person; or
 - (b) if—
 - (i) the applicant for the original order applies for the review of the original order; and
 - (ii) if the revocation would affect the protection of a child who is 15 years old or younger—the Magistrates Court is satisfied the child is no longer in need of the protection provided by the original order.
- (3) If the Magistrates Court revokes the original order, the court must notify the protected person in writing as soon as practicable.

91 Consent orders—review

- (1) A party to a proceeding for a protection order 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.
- (2) On application for the review, the Magistrates Court may—
 - (a) either—
 - (i) amend, or refuse to amend, the original order; or

- (ii) declare the original order void; and
- (b) 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.

92 Appealable decisions

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

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

93 Appeals to Supreme Court

- (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.
- (2) The person must file a notice of appeal with the Supreme Court not later than 28 days after—
 - (a) if the appealable decision was the making or amending of a final order and the respondent was not present when the final order was made or amended—the day the final order or amendment is served on the respondent; or
 - (b) in any other case—the date of the order.
- (3) However, the Supreme Court may allow a person to file a notice of appeal after the period mentioned in subsection (2) if satisfied that it is appropriate to do so.

94 Giving notice of appeal

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

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

95 Evidence on appeal

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

96 Powers of Supreme Court on appeal

On an appeal, the Supreme Court may—

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

97 Effect of filing appeal

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

Part 7 After-hours orders

98 Meaning of *business hours*—pt 7

In this part:

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

99 Police officer may apply for after-hours order

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

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

100 After-hours orders—grounds for making

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

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

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

Examples—par (c) (i)

- 1 the respondent is in NSW and ACT police do not have the power to make an immediate arrest
- 2 the respondent's immediate location is not known

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

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

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

101 After-hours orders—application

- (1) An application for an after-hours order may be made by telephone.
- (2) The police officer making the application must—
 - (a) satisfy the judicial officer about the police officer's identity, rank and identification number; and
 - (b) describe the conduct the application is based on; and
 - (c) give the reasons for the application; and
 - (d) provide any other relevant information required by the judicial officer.
- (3) If it is practicable in the circumstances, the police officer must send the judicial officer a brief written statement of the matters mentioned in subsection (2) (b) and (c) by fax or email.
- (4) If the statement is not sent by fax or email, the judicial officer must ensure that a brief description of the conduct the application is based on and the reasons for the application are part of the record of the Magistrates Court.

102 After-hours orders—making

- (1) An after-hours order must include—
 - (a) the name, rank and identification number of the police officer who applied for the order; and
 - (b) the protected person's and respondent's name; and
 - (c) the conditions of the order; and
 - (d) the time the order is made; and
 - (e) the name and position of the judicial officer.
- (2) The after-hours order must—
 - (a) be sent to the police officer by fax or email if it is practicable to do so; or
 - (b) otherwise be dictated to the police officer over the telephone or by any other electronic means.
- (3) If the judicial officer dictates the after-hours order over the telephone—
 - (a) the judicial officer and police officer must each make a record of the matters dictated; and
 - (b) the record made by the judicial officer is the original after-hours order; and
 - (c) the record made by the police officer is a copy of the order.

103 After-hours orders—refusal

If an application for an after-hours order is refused, the judicial officer must record in writing—

- (a) the name, rank and identification number of the police officer who applied for the order; and
- (b) the name of the person against whom the order was sought; and

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

104 After-hours orders—records

The judicial officer must—

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

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

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

106 After-hours orders—length

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

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

Note Periods of less than 5 days are to be worked out ignoring any day the Magistrates Court is not open for business (see s 154).

- (2) An after-hours order cannot be renewed or extended.
- (3) In this section:

business day means a day the registry of the Magistrates Court is required to be open under the [Court Procedures Rules 2006](#).

107 After-hours orders—amendment or revocation

- (1) An after-hours order may be amended or revoked during business hours of the Magistrates Court in the same way, and on the same grounds, as a protection order may be amended or revoked.
- (2) An after-hours order may be revoked or amended outside business hours of the Magistrates Court by a judicial officer on application by a police officer.
- (3) The procedure for amending or revoking an after-hours order outside business hours of the Magistrates Court is the same as the procedure for making an after-hours order.
- (4) However, the application for amendment or revocation need not describe the conduct the original application for the after-hours order is based on.

108 Service of after-hours orders

- (1) A copy of an after-hours order must be served personally on the respondent by a police officer.
- (2) However, if personal service of an after-hours order is not reasonably practicable, a judicial officer may order that the application be served in the way, stated in the order, that the judicial officer considers is likely to bring the after-hours order to the attention of the respondent.

109 Police required to explain after-hours orders

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

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

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

Part 8 Court-initiated actions

111 Application—pt 8

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

112 Court-initiated interim orders

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

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

- (2) The interim order may be made—
- (a) at any time before the family violence proceeding is finalised; or
 - (b) if the defendant is found guilty of the offence.

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

- (3) The interim order may be made as a consent order under section 33 as if the court were acting on an application for a final order.
- (4) The court may inform itself of any matter necessary to make an interim order under this section.
- (5) In this section:

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

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

- (c) the charge is dismissed by a court; or
- (d) the person is discharged by a court following a committal hearing; or
- (e) the person is acquitted, convicted or found guilty of the offence.

113 Interim court-initiated protection order taken to be special interim order

If a court makes an interim order under section 112—

- (a) an application for a final order is taken to have been made and served in accordance with section 45; and
- (b) the order is taken to be a special interim order; and
- (c) the applicant for the protection order is taken to be—
 - (i) a stated police officer; or
 - (ii) if the protected person consents—
 - (A) the protected person; or
 - (B) a litigation guardian for the protected person or any other person with a right to apply for the protected person; and
- (d) subdivision 3.3.3 (Special interim orders) applies to the order as if the charge for the offence in the family violence proceeding were an outstanding related charge; and
- (e) division 4.1 (Service of applications) applies to the order; and
- (f) division 4.2 (Pre-hearing procedures) applies to the proceeding with any necessary changes.

114 Amendment of existing protection order if later family violence charge

- (1) In a family violence proceeding, a court may amend an existing protection order against the defendant in relation to the protected person if satisfied that an amendment is necessary to protect the protected person or another affected person from family violence.

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

Note 2 The court may amend a recognised non-local FVO under s 132.

- (2) If the existing protection order is—
- (a) a general interim order—
 - (i) the interim order is taken to be a special interim order; and
 - (ii) subdivision 3.3.3 (Special interim orders) applies to it as if the charge for the offence in the family violence proceeding were an outstanding related charge; or
 - (b) a special interim order—the charge for the offence in the family violence proceeding is taken to be an outstanding related charge.
- (3) The court may inform itself of any matter necessary to amend a protection order under this section.

Part 9 National recognition of FVOs

Division 9.1 Preliminary

115 Definitions—pt 9

In this part:

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

family violence concern—see section 116.

family violence order—see *FVO*.

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

foreign order means—

- (a) a New Zealand FVO; or
- (b) a prescribed order.

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

general violence order means—

- (a) an intervention order under the *Intervention Orders (Prevention of Abuse) Act 2009* (SA); or
- (b) a violence restraining order under the *Restraining Orders Act 1997* (WA) other than—
 - (i) a violence restraining order made under that Act, section 11B; or
 - (ii) a police order under that Act.

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

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

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

- (b) a temporary protection order under the *Domestic and Family Violence Protection Act 2012* (Qld);
- (c) an FVO prescribed by regulation.

interstate FVO—

- (a) means an order of another jurisdiction prescribed by regulation; but
- (b) does not include a registered foreign order.

interstate law enforcement agency means—

- (a) the police force of another jurisdiction; or
- (b) any other agency of another jurisdiction responsible for the enforcement of FVOs in that jurisdiction.

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

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

jurisdiction means a State or the Territory.

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

local FVO—

- (a) means a protection order or an after-hours order under this Act; but
- (b) does not include a registered foreign order.

local law enforcement agency means the Australian Federal Police.

make includes issue.

New Zealand FVO means an order made under the *Domestic Violence Act 1995* (NZ) or under an Act repealed by that Act.

non-local FVO means an interstate FVO or a foreign FVO.

participating jurisdiction means the following jurisdictions:

- (a) the ACT;
- (b) a jurisdiction in which a corresponding law is enacted.

properly notified—see section 117.

recognised amendment—see section 120.

recognised FVO—see section 119 and section 144.

registered foreign order means an order of another jurisdiction prescribed by regulation.

116 Meaning of *family violence concern*—pt 9

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

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

117 Meaning of *properly notified*—pt 9

- (1) For this part, the making of a local FVO is *properly notified* under territory law if—
 - (a) the respondent is present when the FVO is made; or
 - (b) the FVO is served in accordance with division 4.1 (Service of applications).
- (2) The making of an interstate FVO is *properly notified* under the law of the jurisdiction in which it is made in the circumstances provided for by the corresponding law of that jurisdiction.
- (3) An amendment of a recognised FVO that is done in the ACT is *properly notified* under territory law if—
 - (a) the respondent is present when the FVO is made; or
 - (b) the FVO is served in accordance with division 4.1 (Service of applications).
- (4) An amendment of a recognised FVO that is done in another jurisdiction is *properly notified* under the law of that jurisdiction in the circumstances provided for by the corresponding law of that jurisdiction.

118 Special provisions for registered foreign orders

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

- (2) A registered foreign order is amended or revoked, for this part, if its registration as a registered foreign order is amended or revoked.
- (3) A power given under this part to amend or revoke a registered foreign order is a power to amend or revoke registration of the order as a registered foreign order.

Division 9.2 National recognition of FVOs

Subdivision 9.2.1 General principles

119 Recognition of FVOs

- (1) Each of the following FVOs is a *recognised FVO* in the ACT:
 - (a) a local FVO;
 - (b) an interstate FVO made in a participating jurisdiction;
 - (c) a foreign order that is a registered foreign order in any participating jurisdiction.

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

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

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

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

120 Amendment of FVOs

- (1) An amendment of a recognised FVO that is done in this or another jurisdiction is a *recognised amendment* in the ACT in the circumstances provided for by this section.
- (2) An amendment of a local FVO is a recognised amendment in the ACT if the amendment is done—
 - (a) in the ACT by a court or a person authorised to do so under this Act; or

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

121 Revocation of recognised FVOs

- (1) An FVO ceases to be a recognised FVO if the FVO is revoked in this or another jurisdiction and that revocation is recognised in the ACT.
- (2) A revocation of a local FVO is recognised in the ACT if the revocation is done—
 - (a) in the ACT by a court or a person authorised to do so under this Act; or
 - (b) in another participating jurisdiction by a court under a corresponding law.
- (3) A revocation of an interstate FVO or foreign order is recognised in the ACT if the revocation is done—
 - (a) in the issuing jurisdiction by a court or a person authorised to do so under the law of the issuing jurisdiction; or
 - (b) in any participating jurisdiction by a court under this part or a corresponding law.
- (4) The FVO ceases to be a recognised FVO from the time it is revoked.

122 Recognised FVO prevails over earlier comparable FVOs

- (1) A recognised FVO that is enforceable against a respondent in the ACT (a *new FVO*) supersedes—
 - (a) any comparable recognised FVO made earlier than the new FVO; and
 - (b) any comparable local FVO made earlier than the new FVO (whether or not the local FVO is a recognised FVO).
- (2) The earlier comparable FVO is superseded from the time the recognised FVO becomes enforceable against the respondent.
- (3) A recognised FVO that is superseded ceases to be a recognised FVO.
- (4) A local FVO that is superseded is revoked.
- (5) An FVO is not superseded to the extent that it relates to a protected person who is not a protected person under the new FVO.
- (6) Accordingly, an FVO continues to be a recognised FVO, and to have effect, to the extent that it relates to a person who is not a protected person under the new FVO.
- (7) An FVO made by a police officer does not supersede a comparable FVO made by a court (of any jurisdiction).
- (8) For this section, an FVO is *comparable* with another FVO if—
 - (a) the FVOs are made against the same respondent; and
 - (b) the FVOs are made for the protection of 1 or more of the same protected people.

123 Making new orders

- (1) Nothing in this part stops a person from applying for, or an issuing authority from making, a local FVO even though there is a recognised FVO in force that applies to the same respondent.

- (2) However, a police officer must not make a local FVO if the police officer is aware that there is already a recognised FVO that is enforceable against the respondent in relation to a protected person which—
- (a) applies to the same respondent and protected person; and
 - (b) was made by a court of any jurisdiction.

Subdivision 9.2.2 Enforcement of recognised FVOs

124 Recognised FVOs and amendments are enforceable against respondent

- (1) A recognised FVO, or a recognised amendment to a recognised FVO, is enforceable against the respondent in the ACT.
- (2) A recognised FVO that is a local FVO becomes enforceable against the respondent in the ACT when the respondent is properly notified of the making of the FVO under territory law.
- (3) A recognised FVO that is a non-local FVO (other than a foreign order) becomes enforceable against a respondent in the ACT when the respondent is properly notified of the making of the FVO under the law of the jurisdiction in which the FVO was made.
- (4) A recognised FVO that is a foreign order becomes enforceable against a respondent in the ACT from the time it becomes a recognised FVO.
- (5) A recognised amendment to a recognised FVO becomes enforceable against the respondent in the ACT when the respondent is properly notified of the variation under the law of the jurisdiction in which the variation is done.

125 Contravention of enforceable recognised FVOs

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

- (b) the respondent had been properly notified of the making of the FVO under territory law.
- (2) A recognised amendment to a non-local FVO that is a recognised FVO and which is enforceable in the ACT may be enforced in the ACT as if it were an amendment of a local FVO.
- (3) A recognised amendment to a recognised FVO made in another jurisdiction that is enforceable against the respondent in the ACT may be enforced as if the respondent had been properly notified of the variation under territory law.
- (4) This section does not affect the operation of the [Criminal Code](#), part 2.7 (Geographical application).

Note 1 The [Criminal Code](#), pt 2.7 extends the application of a territory law that creates an offence beyond the territorial limits of the ACT (and Australia) if the required geographical nexus exists for the offence.

Note 2 If a respondent contravenes a recognised FVO and has been punished for the contravention in another jurisdiction, the respondent is not liable to be punished for the contravention under this Act (see [Legislation Act](#), s 191 (2)).

Subdivision 9.2.3 Enforcement of non-local FVOs

126 Non-local FVOs to be treated as local FVOs

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

127 Licences, permits and other authorisations

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

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

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

- (3) In this section:

authorisation includes a licence or permit.

grant includes issue.

128 Recognition of disqualification to hold firearms licence

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

- (3) A recognised FVO disqualifies a person from holding a non-local firearms licence or type of non-local firearms licence if the FVO expressly—
- (a) disqualifies the person from holding a non-local firearms licence or type of non-local firearms licence; or
 - (b) revokes or requires the person to surrender a non-local firearms licence or type of non-local firearms licence held by the person.
- (4) In this section:

local firearms licence means a licence, permit or other authorisation under the [Firearms Act 1996](#).

non-local firearms licence means a licence, permit or other authorisation to possess a firearm (within the meaning of the [Firearms Act 1996](#)) issued under the law of another jurisdiction or country.

129 Recognition of disqualification to hold prohibited weapons permit

- (1) If a non-local FVO that is a recognised FVO disqualifies a person from holding a non-local weapons licence or type of non-local weapons licence, the person is also disqualified from holding a local prohibited weapons permit or local prohibited weapons permit of the same type (as the case requires).
- (2) The registrar of firearms must revoke any local prohibited weapons permit held by a person, or refuse to issue a local prohibited weapons permit to a person, if the person is disqualified from holding the non-local weapons licence by a recognised FVO.
- (3) A recognised FVO disqualifies a person from holding a non-local weapons licence or type of non-local weapons licence if the FVO expressly—
- (a) disqualifies the person from holding a non-local weapons licence or type of non-local weapons licence; or

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

(4) In this section:

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

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

130 Costs—non-local FVO

- (1) A non-local FVO, to the extent that it requires the payment of money, cannot be enforced in the ACT.
- (2) The recognition of an FVO made in another jurisdiction does not confer power on an ACT court or tribunal to award costs in relation to a proceeding relating to the FVO that occurred in another jurisdiction.
- (3) This section does not prevent a court or tribunal awarding costs in relation to a proceeding in the ACT relating to the amendment or revocation of a recognised FVO.

Division 9.3 Amendment and revocation of recognised non-local FVOs

131 Meaning of *court*—div 9.3

In this division:

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

132 Power of court to amend or revoke recognised non-local FVOs

- (1) A court may amend or revoke a recognised FVO that is a non-local FVO in accordance with this division as if the FVO were a local FVO.
- (2) A court cannot amend or revoke a non-local FVO if it is a kind of FVO that cannot be amended or revoked by a court in the jurisdiction in which the FVO was made.
- (3) An amendment or revocation of a recognised FVO that is done under this division is not limited in its operation to the ACT.
- (4) To remove any doubt, if a court amends a recognised FVO that was made in another jurisdiction, the other jurisdiction continues to be treated, for this part, as the jurisdiction in which the FVO was made.

133 Application for amendment or revocation of recognised non-local FVO

- (1) An application for the amendment or revocation of a recognised FVO that is a non-local FVO may be made to a court as if it were an application for amendment or revocation of a local FVO by any person who would be able to make the application if the FVO were a local FVO.
- (2) An application—
 - (a) must be made to a court that would have power to hear the application if the FVO were a local FVO; and
 - (b) must be made in accordance with any requirement that would apply if the FVO were a local FVO; and
 - (c) may be dealt with (subject to this division) as if the FVO were a local FVO.

134 Decision about hearing of application

- (1) A court that deals with an application for amendment or revocation of a non-local FVO may decide to hear or not hear the application.

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

Division 9.4 Exchange of information

135 Issuing authorities may obtain FVO information

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

136 Issuing authorities must provide FVO information

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

137 Law enforcement agencies may obtain FVO information

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

138 Information to be provided to law enforcement agencies

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

Division 9.5 Other matters

139 Certificate evidence—notification

- (1) An authorised officer for the ACT may issue a certificate in writing certifying any of the following matters:
 - (a) that the making of a local FVO has been properly notified under territory law;
 - (b) that an amendment of an FVO that was done in the ACT has been properly notified under the territory law.

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

- (2) The certificate is admissible in evidence in a proceeding and is evidence of the matters certified.
- (3) A certificate in writing purporting to be signed by an authorised officer of another jurisdiction and certifying any of the following matters is admissible in evidence in a proceeding and is evidence of the matters certified:
 - (a) that the making of an FVO in that jurisdiction has been properly notified under the law of that jurisdiction;
 - (b) that an amendment of an FVO that was done in that jurisdiction has been properly notified under the law of that jurisdiction.
- (4) In a document, the words ‘authorised officer’ after a signature are evidence that the person whose signature it purports to be is in fact an authorised officer.
- (5) In this section:

authorised officer—

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

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

Division 9.6 Application of pt 9—existing protection orders

Subdivision 9.6.1 Preliminary

140 Meaning of *commencement day*—div 9.6

In this division:

commencement day means the day this part commences.

141 Enforcement of FVOs under other provisions

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

Subdivision 9.6.2 FVOs to which scheme applies

142 FVOs made in the ACT

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

143 FVOs made in other jurisdictions

- (1) Division 9.2 applies to an FVO made in another participating jurisdiction that is a recognised FVO in that jurisdiction under the corresponding law for that jurisdiction.
- (2) To remove any doubt, section 119 (Recognition of FVOs) extends to the following FVOs:
 - (a) any interstate FVO that was made in another participating jurisdiction before the commencement day that is a recognised FVO in that jurisdiction;
 - (b) any foreign order that became a registered foreign order in another participating jurisdiction before the commencement day that is a recognised FVO in that jurisdiction.
- (3) Section 120 and section 121 extend to any amendment or revocation of an FVO mentioned in subsection (2), that was done in a participating jurisdiction before the commencement day, as if the FVO were a recognised FVO.
- (4) However, a non-local FVO, and any amendment of a non-local FVO, does not become enforceable against the respondent in the ACT, under this part, until the commencement day (even if the making of the FVO, or amendment, was properly notified before that date).

Subdivision 9.6.3 Extension of scheme to older FVOs

144 FVOs declared to be recognised FVOs

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

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

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

Subdivision 9.6.4 Power to declare FVO to be recognised

146 Power to declare FVO to be recognised

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

- (2) A declaration may be made in relation to an FVO made in any jurisdiction that is in force in the issuing jurisdiction and is not a recognised FVO in the ACT.
- (3) The jurisdiction in which the FVO was made does not have to be a participating jurisdiction.
- (4) The registrar must make a declaration under this section if an application for the declaration is made in accordance with this subdivision, unless the registrar decides to refuse to make the declaration in the interests of justice.
- (5) Without limiting subsection (4), the registrar may refuse to make the declaration if the registrar is not satisfied that the respondent has been properly notified of the making of the FVO under the law of the jurisdiction in which the FVO was made.

Note Under s 144, the FVO becomes enforceable against the respondent when the declaration is made. Notice of the declaration is not to be served on the respondent unless the person making the application consents to service.

- (6) However, the registrar cannot declare a general violence order to be a recognised FVO in the ACT.
- (7) Notice of a declaration is not to be served on the respondent unless the person who makes the application consents to service.

Note Under s 118, a foreign order is taken to be made in any jurisdiction in which it is registered as a registered foreign order. Accordingly, this section extends to registered foreign orders.

147 Application for order

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

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

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

148 Functions of registrar may be exercised by court

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

Part 10 **Miscellaneous**

Division 10.1 **Public access and publication**

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

- (1) A person commits an offence if—
- (a) the person publishes (completely or partly) an account or report of a proceeding for a family violence order; and
 - (b) the account or report—
 - (i) identifies a party to the proceeding; or
 - (ii) 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
 - (iii) identifies a witness to the proceeding; or
 - (iv) allows the identity of a person mentioned in subparagraph (i), (ii) or (iii) to be worked out.

Maximum penalty: 10 penalty units.

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

- (2) In this section:

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

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

150 Publication of reports about proceedings—exceptions to offence

- (1) Section 149 does not prevent—
 - (a) a party to a proceeding for a family violence order from—
 - (i) telling someone else about the contents of an order made in the proceeding; or
 - (ii) giving someone else a copy of the order; or
 - (b) the publication of an account or report of a proceeding for a family violence order if the publication is a permitted publication about proceedings mentioned in schedule 1, section 1.2.
- (2) A court may make an order allowing circulation of, or may permit the circulation of, information the publication of which would otherwise contravene section 149 only if satisfied that—
 - (a) it is in the public interest; or
 - (b) it will promote compliance with the family violence order; or
 - (c) it is necessary for the proper operation of this Act.

Division 10.2 Other matters

151 Deciding application if criminal proceedings

The power of a court or judicial officer to make, amend or revoke a family violence 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 conduct as that out of which the application for the order arose.

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

152 Criminal and civil liability not affected by family violence orders

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

153 Crimes Act, s 397 (1)

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

154 Working out time if less than 5 days

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.

155 Regulation-making power

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

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

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

Part 20 Transitional

200 Existing registered orders under repealed Act

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

201 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.

- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act.

202 Expiry—pt 20

This part expires 2 years after the day it commences.

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

Part 21 Repeals and consequential amendments

203 Legislation repealed

The following legislation is repealed:

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

204 Legislation amended—schs 2 and 3

This Act amends the legislation in schedules 2 and 3.

Schedule 1 Permitted publication about proceedings

(see s 150 (1) (b))

1.1 Definitions—sch 1

In this schedule:

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

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

1.2 Permitted publication about proceedings

Table 1.2

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

Schedule 1 Permitted publication about proceedings

Section 1.2

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

Schedule 2 Family violence amendments

(see s 204)

Part 2.1 Bail Act 1992

[2.1] Section 16 (5)

omit

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

substitute

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

Part 2.2 Children and Young People Act 2008

[2.2] Division 14.3.5

substitute

Division 14.3.5 Protection orders

458 Definitions—div 14.3.5

(1) In this division:

protection order means an FVO or a PVO.

relevant Act means—

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

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

- (2) In this section:

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

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

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

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

459 Childrens Court may make or amend protection orders

- (1) This section applies if an application for a care and protection order for a child or young person (the **protected child or young person**) has been made but not yet finally decided.
- (2) The Childrens Court may—
- (a) make a protection order for an affected person against a person if satisfied that if an application for a protection order were made under the relevant Act, the order could have been validly made; or
 - (b) exercise the jurisdiction of the Magistrates Court under the relevant Act to vary an existing protection order protecting an affected person.

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

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

- (3) The Childrens Court may make a protection order or amend an existing protection order—
- (a) on its own initiative; or
 - (b) on application by a party to the proceeding for the care and protection order; or
 - (c) on application by the public advocate.

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

- statements, documents and reports must be included in the application (see s 696)
- oral applications may also be made (see s 698)
- in the proceeding, a fact is proved if it is proved on the balance of probabilities (see s 711)
- the court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 718).

- (4) In this section:

affected person means—

- (a) a protected child or young person against whom family violence has been, or is likely to be, committed; or
- (b) a family member of the protected child or young person if family violence has been, or is likely to be, committed—
 - (i) against the family member by the protected child or young person; or
 - (ii) by another person against a protected child or young person and that family violence affects the family member.

family member, of a protected child or young person, means—

- (a) a child or young person who is a brother, sister, half-brother, half-sister, stepbrother or stepsister of the protected child or young person; or
- (b) a child or young person who lives in the same household as the protected child or young person; or
- (c) a parent of, or another person that has parental responsibility for, the protected child or young person.

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

460 Effect of making protection order under this Act

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

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

Part 2.3 Crimes (Sentencing) Act 2005

[2.3] Section 34 (2)

substitute

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

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

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

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

after

committed on

insert

or in the presence of

[2.5] New section 40D (c)

after the note, insert

- (c) is a complainant or similar act witness in the proceeding.

[2.6] New section 40D (2)

insert

- (2) In this section:

complainant, in a sexual or a violent offence proceeding, means the person, or any of the people, against whom a sexual or violent offence the subject of the proceeding is alleged, or has been found, to have been committed.

similar act witness means a witness in a sexual or violent offence proceeding who gives, or intends to give, evidence in the proceeding that—

- (a) relates to an act committed on or in the presence of the witness by the accused; and
- (b) is tendency evidence or coincidence evidence under the [Evidence Act 2011](#).

Schedule 3 Consequential amendments

(see s 204)

Part 3.1 Bail Act 1992

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

substitute

- (iv) an offence against the *Domestic Violence and Protection Orders Act 2008* (repealed), section 90 (Offence for contravention of protection order);
- (v) an offence against the *Family Violence Act 2016*, section 43 (Offence—contravention of family violence order);
- (vi) an offence against the *Personal Violence Act 2016*, section 35 (Offence—contravention of protection order);
or

[3.2] Section 9D

omit

domestic violence offence

substitute

family violence offence

[3.3] Section 9D (4)

omit

Domestic violence

substitute

Family violence

[3.4] Section 9F heading

substitute

9F Family violence offence—bail by authorised officer

[3.5] Section 9F (1)

omit

domestic violence

substitute

family violence

[3.6] Section 9F (6) and note

substitute

(6) In this section:

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

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

- (a) means a person against whom the alleged conduct making up the offence was directed; and
- (b) includes any other family member in relation to the accused person.

[3.7] Section 14 (2) (b)

omit

domestic violence

substitute

family violence

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

omit

domestic violence

substitute

family violence

[3.9] Section 23A (2)

omit

Domestic violence

substitute

Family violence

[3.10] Section 25 (4) (f)

omit

domestic violence

substitute

family violence

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

after

stated person

insert

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

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

omit

Domestic violence

substitute

Family violence

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

omit

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

insert

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

Part 3.2 Children and Young People Act 2008

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

omit

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

substitute

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

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

substitute

(h) a protection order;

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

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

substitute

(v) a protection order;

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

[3.19] Section 835 (1)

substitute

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

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

[3.20] Dictionary, definitions

omit the definitions of

domestic violence

DVPO final protection order

DVPO interim protection order

DVPO protection order

[3.21] Dictionary, new definitions

insert

protection order—see section 458.

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

Part 3.3 Corrections Management Act 2007

[3.22] Section 47 (6), example

omit

domestic violence

substitute

family violence

Part 3.4 Court Procedures Act 2004

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

substitute

(C) the *Family Violence Act 2016*;

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

insert

(EA) the *Personal Violence Act 2016*;

Part 3.5 **Crimes Act 1900**

[3.25] Section 191 (4) (b)

substitute

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

[3.26] Section 192 (1)

omit everything before paragraph (a), substitute

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

[3.27] Section 192 (5) (b)

substitute

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

[3.28] New section 192 (8)

insert

- (8) In this section:

protection order provision means—

- (a) the *Family Violence Act 2016*, section 44 (Firearms licences);
or
(b) the *Personal Violence Act 2016*, section 37 (Interim orders—respondent's firearms) or section 38 (Final orders—respondent's firearms).

[3.29] Section 212 (2)

omit

domestic violence

substitute

family violence

[3.30] Section 212 (5)

substitute

(5) In this section:

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

Part 3.6 Crimes (Restorative Justice) Act 2004

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

omit

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

insert

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

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

omit

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

insert

less serious family violence offence means—

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

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

omit

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

insert

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

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

[3.37] Sections 14 to 16 etc

omit

domestic violence

substitute

family violence

in

- sections 14 to 16
- section 24
- sections 26 and 27
- section 33

[3.38] Dictionary, definition of *less serious domestic violence offence*

omit

[3.39] Dictionary, new definition of *less serious family violence offence*

insert

less serious family violence offence—see section 12.

[3.40] Dictionary, definitions of *relevant person, relevant relationship* and *serious domestic violence offence*

omit

[3.41] Dictionary, new definition of *serious family violence offence*

insert

serious family violence offence—see section 12.

Part 3.7 Crimes (Sentence Administration) Act 2005

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

substitute

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

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

omit

domestic violence

substitute

family violence

Part 3.8 Crimes (Sentencing) Act 2005

[3.44] Section 3, note 1

substitute

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

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

[3.45] Section 23 (4), definition of *personal violence offence*, paragraph (b)

omit

domestic violence

substitute

family violence

[3.46] Section 43 (1) (b) (v)

omit

domestic violence

substitute

family violence

[3.47] Section 43 (7), definition of *domestic violence offence*

omit

[3.48] Dictionary, definition of *domestic violence offence*

omit

[3.49] Dictionary, new definition of *family violence offence*

insert

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

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

[3.50] Section 2 (1) (d)

omit

domestic violence offence

substitute

family violence offence

Part 3.10 **Criminal Code 2002**

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

insert

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

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

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

insert

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

Part 3.11 Dangerous Substances Act 2004

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

substitute

protection order means a final order under—

- (a) the *Family Violence Act 2016*; or
- (b) the *Personal Violence Act 2016*.

Part 3.12 Domestic Violence Agencies Act 1986

[3.54] Long title

omit

domestic violence

substitute

family violence

[3.55] Section 2, note 1

substitute

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

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

[3.56] Sections 5 and 6 (4)

omit

domestic violence

substitute

family violence

[3.57] Sections 12 and 18

omit

domestic violence

substitute

family violence

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

omit

[3.59] Dictionary, new definitions

insert

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

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

Part 3.13 Evidence Act 2011

[3.60] Section 19 (c), except note

substitute

(c) an offence if the conduct making up the offence is family violence under the *Family Violence Act 2016*.

Part 3.14 Evidence (Miscellaneous Provisions) Act 1991

[3.61] Section 8 (c)

substitute

(c) a proceeding under the *Family Violence Act 2016*; or

[3.62] Chapter 4 heading

substitute

Chapter 4 Evidence in sexual, violent and family violence offence proceedings

[3.63] Section 36B (1), definition of *relevant person*, new paragraph (aa)

insert

(aa) an intimate partner or former intimate partner of the original person; or

[3.64] Section 36B (1), definition of *relevant person*, paragraph (e)

omit

[3.65] Section 36B (2), (3) and (4)

substitute

(2) In this section:

intimate partner, of a person—

(a) means someone with whom the person has an intimate relationship, whether they are members of the same household or not; but

(b) does not include—

(i) a domestic partner; or

(ii) another person with whom the person has a relationship only because a service is provided between them—

(A) for fee or reward; or

(B) on behalf of another person (including a government or corporation); or

(C) on behalf of an organisation the principal objects or purposes of which are charitable or benevolent.

(3) For subsection (2), factors that indicate whether there is an intimate relationship between 2 people include, but are not limited to, the following:

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

(b) the extent to which each is financially dependent on the other (including any arrangements for financial support);

(c) the length of the relationship;

(d) the frequency of contact between each other;

(e) if there is, or has been, a sexual relationship;

(f) the extent to which each is involved in, or knows about, the other's personal life;

- (g) the degree of mutual commitment to a shared life;
- (h) if the 2 people share care or support for children or other dependents.

[3.66] Section 36C, definition of *relative of a person*, new paragraph (c) (ia) and (ib)

insert

- (ia) if the original person is an Aboriginal or Torres Strait Islander person, the following people:
 - (A) someone the original person has responsibility for, or an interest in, in accordance with the traditions and customs of the original person's Aboriginal or Torres Strait Islander community;
 - (B) someone who has responsibility for, or an interest in, the original person in accordance with the traditions and customs of the original person's Aboriginal or Torres Strait Islander community; and
- (ib) someone regarded and treated by the original person as a relative; and

[3.67] Section 36C, definition of *relative of a person*, examples and note

omit

[3.68] New section 36C (2)

insert

(2) In this section:

Aboriginal or Torres Strait Islander person means a person who—

- (a) is a descendant of an Aboriginal person or a Torres Strait Islander person; and
- (b) identifies as an Aboriginal person or a Torres Strait Islander person; and
- (c) is accepted as an Aboriginal person or a Torres Strait Islander person by an Aboriginal community or Torres Strait Islander community.

[3.69] Section 37, definition of *less serious violent offence*, paragraph (c)

substitute

- (c) an offence against the *Family Violence Act 2016*, section 43 (Offence—contravention of family violence order); or
- (d) an offence against the *Personal Violence Act 2016*, section 35 (Offence—contravention of protection order).

[3.70] Section 40AA

substitute

**40AA Meaning of *sexual offence* and *violent offence*—
div 4.2.2A**

- (1) For this division, a ***sexual offence*** includes an offence under the following provisions in relation to another sexual offence:
 - (a) the *Family Violence Act 2016*, section 43 (Offence—contravention of family violence order);

- (b) the *Personal Violence Act 2016*, section 35 (Offence—contravention of protection order).
- (2) For this division, a ***violent offence*** includes an offence under the following provisions in relation to another violent offence:
 - (a) the *Family Violence Act 2016*, section 43 (Offence—contravention of family violence order);
 - (b) the *Personal Violence Act 2016*, section 35 (Offence—contravention of protection order).

[3.71] Section 40NA

substitute

40NA Meaning of *sexual offence*—div 4.2.2B

For this division, a ***sexual offence*** includes an offence under the following provisions in relation to another sexual offence:

- (a) the *Family Violence Act 2016*, section 43 (Offence—contravention of family violence order);
- (b) the *Personal Violence Act 2016*, section 35 (Offence—contravention of protection order).

[3.72] Section 400 (1) (c)

substitute

- (c) a proceeding for contravening a protection order under the following provisions in relation to a sexual offence:
 - (i) the *Family Violence Act 2016*, section 43 (Offence—contravention of family violence order);
 - (ii) the *Personal Violence Act 2016*, section 35 (Offence—contravention of protection order); or

[3.73] Part 4.3 heading

substitute

Part 4.3 Evidence in family violence proceedings

[3.74] Section 74

substitute

74 Meaning of *family violence offence*—pt 4.3

In this part:

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

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

Relevant person—see s 36B.

[3.75] Sections 75 to 78 etc

omit

domestic violence

substitute

family violence

in

- sections 75 to 78
- section 80 (1) (a)
- sections 81B and 81C
- sections 81E and 81F
- dictionary, definition of **complainant**, paragraph (f)

[3.76] Dictionary, definitions of *domestic violence offence* and *domestic violence offence proceeding*

omit

[3.77] Dictionary, new definitions

insert

family violence offence, for part 4.3 (Evidence in family violence proceedings)—see the *Family Violence Act 2016*, dictionary.

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

[3.78] Further amendments, mentions of *domestic violence*

omit

domestic violence

substitute

family violence

in

- dictionary, definition of *intellectually impaired*
- dictionary, definition of *recorded statement*
- dictionary, definition of *relative*
- dictionary, definition of *relevant person*

Part 3.15 Magistrates Court Act 1930

[3.79] Section 256 (a)

substitute

- (a) a proceeding under the *Family Violence Act 2016* or *Personal Violence Act 2016*; or

[3.80] Section 291H

substitute

291H Meaning of *family violence offence*

In this Act:

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

[3.81] Section 291I and 291K

omit

domestic violence

substitute

family violence

[3.82] Section 320A heading

substitute

320A Family violence offence information

[3.83] Section 320A (1)

omit

domestic violence offences

substitute

family violence offences

[3.84] Section 320A

omit

domestic violence offence

substitute

family violence offence

[3.85] Dictionary, definition of *domestic violence offence*

omit

[3.86] Dictionary, new definition of *family violence offence*

insert

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

Part 3.16 Mental Health Act 2015

[3.87] Section 134 (8), definition of *domestic violence offence*

substitute

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

[3.88] Section 134 (8), definition of *personal violence offence*, paragraph (b)

omit

domestic violence

substitute

family violence

Part 3.17 **Prohibited Weapons Regulation 1997**

[3.89] Section 5 (6), definitions of *interim protection order* and *protection order*

substitute

interim protection order means an interim order under—

- (a) the *Family Violence Act 2016*; or
- (b) the *Personal Violence Act 2016*.

protection order means a final order under—

- (a) the *Family Violence Act 2016*; or
- (b) the *Personal Violence Act 2016*.

Part 3.18 **Residential Tenancies Act 1997**

[3.90] Section 99 (3), example 1

omit

domestic violence

substitute

family violence

Part 3.19 Road Transport (General) Act 1999

[3.91] Section 21A, definition of *relevant circumstances*, paragraph (d)

omit

domestic violence

substitute

family violence

Part 3.20 Security Industry Act 2003

[3.92] Section 23 (2), example 4

omit

Domestic Violence and Protection Orders Act 2008

substitute

Family Violence Act 2016 or Personal Violence Act 2016

Part 3.21 Victims of Crime (Financial Assistance) Act 2016

[3.93] Section 9

omit

domestic violence

substitute

family violence

[3.94] Section 13, definition of *class A related victim*, paragraph (b) (ii) and note

substitute

- (ii) an intimate partner of the primary victim.

Note ***Intimate partner***—see the *Family Violence Act 2016*, s 10.

[3.95] Section 14, definition of *class B related victim*, paragraph (b) (ii) and note

substitute

- (ii) an intimate partner of the primary victim.

Note ***Intimate partner***—see the *Family Violence Act 2016*, s 10.

[3.96] Section 38 (b) (i), example 2

omit

domestic violence

substitute

family violence

[3.97] Schedule 1, section 1.1, definition of *Domestic Violence Act*

omit

[3.98] Schedule 1, section 1.1, new definition of *Family Violence Act*

insert

Family Violence Act means the *Family Violence Act 2016*.

[3.99] Schedule 1, division 1.2.2 heading

substitute

Division 1.2.2 Family violence offences

[3.100] Schedule 1, division 1.2.2, item 19

substitute

19	Family Violence Act	43	contravention of family violence order
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[3.101] Dictionary, note 2

insert

- child
- parent

[3.102] Dictionary, new definition of *Aboriginal or Torres Strait Islander person*

insert

Aboriginal or Torres Strait Islander person means a person who—

- is a descendant of an Aboriginal person or a Torres Strait Islander person; and
- identifies as an Aboriginal person or a Torres Strait Islander person; and
- is accepted as an Aboriginal person or a Torres Strait Islander person by an Aboriginal community or Torres Strait Islander community.

[3.103] Dictionary, definition of *Domestic Violence Act*

omit

[3.104] Dictionary, new definitions

insert

Family Violence Act, for schedule 1 (Offences—act of violence)—
see schedule 1, section 1.1.

intimate partner—see the *Family Violence Act 2016*, section 10.

relative, of a person, means—

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

Note For the meaning of ***domestic partner***, see the [Legislation Act](#), s 169.

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

- (c) includes—
 - (i) someone who has been a relative mentioned in paragraph (a) or (b) of the person; and

- (ii) if the person is an Aboriginal or Torres Strait Islander person, the following people:
 - (A) someone the person has responsibility for, or an interest in, in accordance with the traditions and customs of the person's Aboriginal or Torres Strait Islander community;
 - (B) someone who has responsibility for, or an interest in, the person in accordance with the traditions and customs of the person's Aboriginal or Torres Strait Islander community; and
- (iii) someone regarded and treated by the person as a relative; and
- (iv) anyone else who could reasonably be considered to be, or have been, a relative of the person.

[3.105] Dictionary, definition of *relevant person*

substitute

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

- (a) a domestic partner or former domestic partner of the original person; or

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

- (b) an intimate partner or former intimate partner of the original person; or
- (c) a relative of the original person; or
- (d) a child of a domestic partner or former domestic partner of the original person; or
- (e) a parent of a child of the original person.

[3.106] Dictionary, definition of *relevant relationship*

omit

**Part 3.22 Working with Vulnerable People
(Background Checking) Act 2011**

[3.107] Section 28 (2) (e), example 1

omit

Domestic Violence and Protection Orders Act 2008

substitute

Family Violence Act 2016 or Personal Violence Act 2016

Dictionary

(see s 3)

Note 1 The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

Note 2 For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- chief police officer
- child
- civil union
- civil union partner
- director of public prosecutions
- domestic partner (see s 169)
- individual
- lawyer
- magistrate
- Magistrates Court
- parent
- police officer
- prescribed
- proceeding
- public advocate
- registrar
- registrar of firearms
- Supreme Court.

affected person means a person against whom family violence has been, or is likely to be, committed.

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

after-hours order means an order made under section 102, and includes an order amending or revoking an after-hours order.

amend, a family violence order, includes amend the order by—

- (a) adding further conditions, prohibitions or restrictions to the order or amending or deleting conditions, prohibitions or restrictions; or
- (b) extending or reducing the period for which the order remains in force.

ammunition—see the [Firearms Act 1996](#), dictionary.

appealable decision means a decision mentioned in section 92.

application, for a protection order, means an application for a final order.

Note 1 The court may make an interim order on an application for a final order (see s 20). No separate application for an interim order is required.

Note 2 As a protection order includes an order amending a protection order (see def **protection order**), an application for a protection order includes an application to amend a protection order.

authorised person, for schedule 1 (Permitted publication about proceedings)—see the [Children and Young People Act 2008](#), section 26.

business hours, of the Magistrates Court, for part 7 (After-hours orders)—see section 98.

care and protection chapters, for schedule 1 (Permitted publication about proceedings)—see the [Children and Young People Act 2008](#), section 336.

child, of a person, includes—

- (a) a child who normally lives with the person; and
- (b) a child for whom the person is a guardian.

Note A child is someone under 18 years old (see [Legislation Act](#), dict, pt 1).

commencement day, for division 9.6 (Application of pt 9—existing protection orders)—see section 140.

consent order means a protection order made under section 33.

copy, in relation to a document to be served in a proceeding, means—

- (a) if the document has been entered into the record of the Magistrates Court—a true copy sealed or stamped with the seal of the court; or
- (b) in any other case—a true copy.

corresponding law, for part 9 (National recognition of FVOs)—see section 115.

court, for division 9.3 (Amendment and revocation of recognised non-local FVOs)—see section 122.

disability guardian, of a person—see the *Guardianship and Management of Property Act 1991*, dictionary, definition of *guardian*.

family member, of a person—see section 9.

family violence—see section 8.

family violence concern, for part 9 (National recognition of FVOs)—see section 116.

family violence offence means an offence if the conduct making up the offence is family violence.

family violence order means—

- (a) for this Act generally—
 - (i) a protection order; or
 - (ii) an after-hours order; and
- (b) for part 9 (National recognition of FVOs)—see section 115.

final FVO, for part 9 (National recognition of FVOs)—see section 115.

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

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

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

final order means a protection order that is not an interim order or after-hours order, and includes an order amending a final order.

firearm—see the [Firearms Act 1996](#), section 6.

firearms licence—see the [Firearms Act 1996](#), dictionary, definition of *licence*.

foreign order, for part 9 (National recognition of FVOs)—see section 115.

FVO, for part 9 (National recognition of FVOs)—see section 115.

general interim order—

- (a) means a protection order (including a consent order) made under section 22 (Interim orders—general interim orders and special interim orders); and
- (b) includes an order (other than a final order) that amends or revokes a general interim order.

general violence order, for part 9 (National recognition of FVOs)—see section 115.

impaired decision-making ability—see section 74.

interim FVO, for part 9 (National recognition of FVOs)—see section 115.

interim order means—

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

interstate FVO, for part 9 (National recognition of FVOs)—see section 115.

interstate law enforcement agency, for part 9 (National recognition of FVOs)—see section 115.

issuing authority, for part 9 (National recognition of FVOs)—see section 115.

issuing jurisdiction, for part 9 (National recognition of FVOs)—see section 115.

judicial officer means any of the following:

- (a) a magistrate;
- (b) if a territory law provides for the exercise of the Magistrates Court’s jurisdiction by the registrar—the registrar;
- (c) if a territory law provides for the exercise of the Magistrates Court’s jurisdiction by a deputy registrar—a deputy registrar.

Note The [Court Procedures Rules 2006](#) may provide for the jurisdiction of the Magistrates Court otherwise exercisable by a magistrate to be exercised by the registrar or deputy registrar, in the cases and subject to the conditions prescribed under the rules (see [Magistrates Court Act 1930](#), s 4 (4)).

jurisdiction, for part 9 (National recognition of FVOs)—see section 115.

litigation guardian, of a person, means a person appointed in accordance with section 78.

local FVO, for part 9 (National recognition of FVOs)—see section 115.

local law enforcement agency, for part 9 (National recognition of FVOs)—see section 115.

make, for part 9 (National recognition of FVOs)—see section 115.

New Zealand FVO, for part 9 (National recognition of FVOs)—see section 115.

non-local FVO, for part 9 (National recognition of FVOs)—see section 115.

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

- (a) the charge is withdrawn;
- (b) the charge is dismissed by a court;
- (c) the person is discharged by a court following a committal hearing;
- (d) the person is acquitted, convicted or found guilty by a court of the offence.

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

participating jurisdiction, for part 9 (National recognition of FVOs)—see section 115.

personal violence—see the *Personal Violence Act 2016*, section 8.

proceeding, for a family violence order, means—

- (a) a proceeding for a protection order; or

Note As a protection order includes an order amending a protection order (see def **protection order**), a proceeding for a protection order includes a proceeding to amend the order.

- (b) a proceeding to amend or revoke an after-hours order; or
- (c) a proceeding to review a family violence order under part 6; or

(d) for part 8 (Court-initiated actions)—the family violence proceeding to the extent that the proceeding relates to the exercise of jurisdiction under this Act.

properly notified, for part 9 (National recognition of FVOs)—see section 117.

protection order—

(a) means—

- (i) an interim order; or
- (ii) a final order; and

(b) includes—

- (i) an order about the seizure of a firearms licence, firearm or ammunition; and
- (ii) an order amending a protection order, including an order for a temporary amendment under section 84.

protected person means the person protected under a family violence order.

recognised amendment, for part 9 (National recognition of FVOs)—see section 120.

recognised FVO, for part 9 (National recognition of FVOs)—see section 119 and section 144.

registered foreign order, for part 9 (National recognition of FVOs)—see section 115.

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

(a) the person charged is—

- (i) the respondent to the application; and

-
- (ii) a family member of the affected person; and
 - (b) the offence is against the affected person, other than an offence against section 43 (Offence—contravention of family violence order).

respondent means—

- (a) a person in relation to whom an application for a family violence order has been made; or
- (b) a person against whom a family violence order has been made; or
- (c) for part 8 (Court-initiated actions)—the defendant in the family violence proceeding.

return date, for an application for a protection order, means the day fixed by the Magistrates Court for return of the application before the court.

revoke includes cancel.

special interim order—

- (a) means a protection order (including a consent order) made under section 22 (Interim orders—general interim orders and special interim orders); or
- (b) includes an order (other than a final order) that amends or revokes a special interim order.

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

timing notice, for an application for a protection order—see section 45 (Service of applications).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 7 June 2016.

2 Notification

Notified under the [Legislation Act](#) on 18 August 2016.

3 Republications of amended laws

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

I certify that the above is a true copy of the Family Violence Bill 2016, which was passed by the Legislative Assembly on 2 August 2016.

Clerk of the Legislative Assembly

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