



Australian Capital Territory

Personal Violence Act 2016

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About this republication

The republished law

This is a republication of the *Personal Violence Act 2016* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 May 2017. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 1 May 2017.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register (www.legislation.act.gov.au). For more information, see the home page for this law on the register.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$150 for an individual and \$750 for a corporation (see *Legislation Act 2001*, s 133).



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Personal Violence Act 2016

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Australian Capital Territory

Personal Violence Act 2016

An Act to protect people from personal violence (other than family violence)
including personal violence in the workplace, and for other purposes

Part 1 Preliminary

1 Name of Act

This Act is the *Personal Violence Act 2016*.

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 personal violence (other than family violence); and
- (b) to facilitate the safety and protection of people who fear or experience personal violence by—
 - (i) providing a legally enforceable mechanism to prevent personal violence; and
 - (ii) allowing for the resolution of conflict without the need to resort to adjudication; and
- (c) to encourage perpetrators of personal violence to be accountable for their conduct.

Note The *Family Violence Act 2016* deals with protection orders etc for family violence.

7 How objects are to be achieved

This Act aims to achieve its objects by—

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

Division 2.2 Important concepts

8 **Meaning of *personal violence***

(1) In this Act:

personal violence means any of the following behaviour by a person in relation to another person:

- (a) physical violence or abuse;
- (b) sexual violence or abuse;
- (c) threatening behaviour;
- (d) stalking;
- (e) harassing, intimidating or offensive behaviour;
- (f) damaging property.

(2) For this Act, a reference to *personal violence* by a person in relation to a workplace means behaviour by the person of a kind mentioned in—

- (a) subsection (1) (a) to (e) in relation to a person at the workplace;
or
- (b) subsection (1) (f) in relation to property at the workplace that causes reasonable fear to a person at the workplace.

Note A workplace protection order is only available in relation to an employee, an employer or another person at a workplace and only the employer at the workplace may apply for the order (see s 13 and dict, def *affected person*).

(3) However, a person's conduct is not *personal violence* if it is family violence.

Note The [Family Violence Act 2016](#) deals with protection orders etc for family violence.

9 Principle about procedures

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

10 Balance of probabilities

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

10A Rules of evidence

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

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

Part 3 **Protection orders**

Division 3.1 **Matters to be considered when making protection orders**

11 **Matters to be considered—protection orders**

- (1) In deciding whether to make a protection order, the Magistrates Court must consider the following:
 - (a) the objects of this Act in section 6;
 - (b) any hardship that may be caused to the respondent or anyone else by the making of the order;
 - (c) any previous family violence or personal violence by the respondent in relation to the affected person or anyone else;
 - (d) any previous protection order made in relation to the respondent;
 - (e) any previous contravention of a protection order by the respondent;
 - (f) the need to ensure that property is protected from damage.
- (2) The Magistrates Court may also consider anything else the court considers relevant.
- (3) A failure of the court to comply with subsection (1) in relation to a protection order does not affect the validity of the order.

(4) In this section:

protection order—

- (a) means a protection order under this Act; and
- (b) includes the following:
 - (i) a family violence order under the *Family 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 family violence order under the *Family Violence Act 2016*.

Division 3.2 Applications for protection orders

12 Who may apply for personal protection orders?

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

Note A child younger than 10 years old cannot be a respondent to an application for a protection order (see s 69 (1)).

(2) The following people may apply to the Magistrates Court for a personal 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 If an application for a personal protection order 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 order (see s 65).

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

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).

13 Who may apply for workplace protection orders?

The employer for a workplace may apply to the Magistrates Court for a workplace protection order for an affected person.

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

13A Child may apply for protection order in same application as parent

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

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

13B Applications by police officers

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

14 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 protection order requires the affected person's home or work address to be included in the application.
- (2) The address need not be included in the application.

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

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

15 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 *Family Violence Act 2016* could restrain; and
 - (c) the application has not been decided.

- (2) The Magistrates Court may make a protection order under the *Family 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 *Family 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 25 (2) (b)).

16 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 *Family Violence Act 2016* of the same kind as the invalid order.

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

Example

A personal protection order is made as an interim order under this Act. Later, it is discovered that the parties had previously been domestic partners, making the conduct on which the application for the interim order was based family violence. The interim order made under this Act is taken to be an interim order validly made under the *Family 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).

- (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 25 (2) (b)).

Division 3.3 Interim orders

17 Interim orders—only on application for final order

- (1) 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 at any time before the application for the final order is decided.

18 Interim orders—only 1 may be made

Only 1 interim order may be made in relation to an application for a final order unless section 22 (Interim orders—further orders) applies.

19 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 personal violence;

- (b) prevent substantial damage to—
 - (i) for a personal protection order—an affected person’s property; or
 - (ii) for a workplace protection order—property at a workplace.

Note The court must consider the matters mentioned in s 11 in deciding whether to make the interim order.

20 Interim orders—length

An interim order must not be in force for more than 12 months plus any extension under—

- (a) section 23 (Interim orders—extension for non-service of application); or
- (b) section 24 (Interim orders—extension for non-service of final order).

21 Interim orders—ending

An 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 23 or section 24, 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.

22 Interim orders—further orders

- (1) This section applies if an interim order has ended or is about to end.
- (2) The Magistrates Court may make a further 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 interim order.

Note Section 20 limits the length of a further interim order.

- (3) Only 1 further interim order may be made under this section in relation to an application for a final order.
- (4) However, a further interim order must not be made as a consent order.

Note An interim order may be amended in certain circumstances (see s 77).

23 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 an 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 an interim order under subsection (2) for more than 8 weeks.

24 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) an 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 22).

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

Division 3.4 Consent orders

24A Consent to interim order becoming final order

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

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

25 Consent orders

- (1) On application for a final order, the Magistrates 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 Magistrates 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 11; and
 - (d) without proof or admission of guilt.

Note Sections 60 and 61 apply to require the Magistrates 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 Magistrates 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 Magistrates 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 20 limits the length of interim orders.

- (c) if section 71 (Consent orders—party with impaired decision-making ability) applies.

Division 3.5 Final orders

26 Final orders—grounds for making

The Magistrates Court may, on application, make a final order if satisfied that the respondent—

- (a) for a personal protection order—
 - (i) has used personal violence in relation to a person; and
 - (ii) may engage in personal violence in relation to the person during the time the order is proposed to operate if the order is not made; or
- (b) for a workplace protection order—
 - (i) has used personal violence in relation to a workplace; and
 - (ii) may engage in personal violence in relation to a workplace during the time the order is proposed to operate if the order is not made.

Note 1 The court must consider the matters mentioned in s 11 in deciding whether to make the final order.

Note 2 This section does not apply to consent orders (see s 25 (2) (b)).

27 Final orders—length

- (1) A final order remains in force for—
 - (a) 12 months, 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 Magistrates 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 personal violence by the respondent (see s 80).

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

Division 3.6 Conditions of protection orders

28 Safety of affected person paramount

In deciding the conditions to be included in a protection order, a court must give paramount consideration to the safety and protection of the affected person.

29 Least restrictive principle

A court must ensure the conditions included in a protection 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 28.

30 Conditions—personal protection orders

- (1) A personal protection order may include the conditions the Magistrates Court considers necessary having regard to section 28 and section 29.
- (2) Without limiting subsection (1), a personal protection order may do 1 or more of the following:
- (a) prohibit the respondent from being on premises where the protected person lives;

Note Section 31 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 that is personal violence in relation to the protected person;
- (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 Magistrates Court is satisfied that there is an unacceptable risk of the child being exposed to personal violence;
- (j) prohibit the respondent from causing someone else to do something mentioned in paragraphs (f) to (i);
- (k) 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.

31 Exclusion conditions—personal protection orders

- (1) In deciding whether to include an exclusion condition in a personal protection 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;
 - (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 personal 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 personal protection 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.

32 Conditions—workplace protection orders

- (1) A workplace protection order may include the conditions the Magistrates Court considers necessary having regard to section 28 and section 29.
- (2) Without limiting subsection (1), a workplace protection order may do 1 or more of the following:
 - (a) prohibit the respondent from entering the workplace;
 - (b) prohibit the respondent from being within a particular distance from the workplace;
 - (c) prohibit the respondent from doing anything that is personal violence in relation to the workplace;
 - (d) prohibit the respondent from causing someone else to do something mentioned in paragraph (c);
 - (e) state the conditions on which the respondent may—
 - (i) be in the workplace; or
 - (ii) approach or contact a particular person.

33 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 Magistrates Court to consider whether the condition is necessary.

34 Conditions may apply for shorter time than order

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

Division 3.7 Effect of protection orders

35 Offence—contravention of protection order

- (1) This section applies to a person against whom a protection order is made if the person—
 - (a) was present when the protection order was made; or
 - (b) has been personally served in accordance with this Act with a copy of the protection order.
- (2) The person commits an offence if the person engages in conduct that contravenes the protection 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.

36 Interim orders—respondent's firearms

- (1) This section applies if an interim order is made against a respondent who is the holder of a firearms licence.

- (2) Unless the Magistrates Court makes an order under subsection (3), the respondent's firearms licence is suspended until the interim order ends.
- (3) The Magistrates Court may order the non-suspension of a respondent's firearms licence—
 - (a) if the parties to a consent order agree to the non-suspension; or
 - (b) otherwise, only if the court is satisfied that the licence should not be suspended.

37 Final orders—respondent's firearms

- (1) This section applies if a final order is made against a respondent who is the holder of a firearms licence.
- (2) Unless the Magistrates Court makes an order under subsection (3), the respondent's firearms licence is cancelled.
- (3) The Magistrates Court may order the non-cancellation of a respondent's firearms licence—
 - (a) if the parties to a consent order agree to the non-cancellation; or
 - (b) otherwise, only if the court is satisfied that the licence should not be cancelled.

38 Firearm licences—other conditions and orders

- (1) If a respondent's firearms licence is suspended or cancelled under section 36 (2) or section 37 (2), the Magistrates Court may order—
 - (a) the seizure of the firearms licence; and
 - (b) the seizure of any firearm or ammunition in the respondent's possession.

- (2) If a respondent's firearms licence is not suspended or cancelled under an order under section 36 (3) or section 37 (3)—
- (a) the Magistrates Court may make conditions about the use or possession of a firearm to which the licence applies; and
 - (b) a copy of the order must be given to the registrar of firearms; and
 - (c) any condition of the licence imposed under the *Firearms Act 1996* is taken to be a condition of the order; and
 - (d) if the licence is suspended or revoked by the registrar under the *Firearms Act 1996*—
 - (i) it is a condition of the order that the respondent notifies the court about the suspension or revocation; and
 - (ii) the court may amend the order.

Part 4 **Procedural matters**

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

39 **Meaning of *timing notice***

In this Act:

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

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

40 **Interim order not sought**

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

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

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

41 Interim order sought

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

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

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

42 Service of application etc on others

- (1) This section applies to a document required to be served under section 40 or section 41.
- (2) The registrar—
 - (a) must also give a copy of the document to the following people:
 - (i) if the applicant or respondent is a child—the child’s parent or guardian;
 - (ii) if the applicant or respondent has a disability guardian—the guardian; and

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

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

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

Division 4.2 Preliminary conferences

43 Preliminary conferences—generally

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

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

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

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

Note 2 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 57).

(2) 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.

44 Adjournment of preliminary conference for non-service

The registrar may adjourn a preliminary conference if—

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

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

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

45 If no consent order at preliminary conference

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

- (a) set a return date for a further preliminary conference which is as soon as practicable after the day of the first conference; or
- (b) set a return date for a hearing to decide the application for the final order.

46 Referrals to mediation

- (1) This section applies if, at any time during the preliminary conference for an application for a protection order, the registrar is satisfied that the application is likely to be more effectively resolved by mediation than by a hearing.
- (2) The registrar must—
 - (a) recommend to the parties to the application that they seek mediation; and

- (b) give the parties information about mediation; and
- (c) adjourn the preliminary conference until a stated date to allow for mediation to happen.

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

Division 4.2A Non-attendance by party

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

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

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

48 Applicant not present at return of application

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

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

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

49 Respondent not present at return of application

- (1) This section applies to an application for a protection order if the respondent—
 - (a) has been served with a copy of the application and timing notice under section 40 or section 41; and
 - (b) is not present, personally or by a representative, at a time when the application is returned before the Magistrates Court.

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

49A 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, at a time 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.

Division 4.3 Hearings

53 Hearings usually in public

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

- (a) section 54 applies; or
- (b) the court makes an order under section 55.

54 Public hearing not required

- (1) The hearing of an application for a protection order, or part of the hearing, need not be in public if—
 - (a) it is a hearing for an interim order; or
 - (b) a party is not present at a time when the application is returned before the court.

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

- (2) In this section:

returned, in relation to an application for a protection order—see section 47.

55 Closed hearings in special circumstances

- (1) The Magistrates Court when 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; 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.

55A Notice of grounds of defence

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

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

- (2) The registrar must serve the notice of grounds of defence on—
- (a) the applicant; and
 - (b) anyone else the registrar is satisfied has a relevant interest in the proceeding.

Example

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

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

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

55B Applicant may rely on additional information in hearing

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

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

55C If child and child's parent are affected people

If a child and the child's parent are an affected person in relation to the same or similar personal violence by a respondent in a proceeding—

- (a) if an application for a protection order by the child is included in an application for a protection order by the child's parent under section 13A—the court may hear the application of the child and the child's parent separately; or

- (b) if the child is not a party to the proceeding—the court may join the child in the proceeding.

55D Children as witnesses

- (1) A child, other than a child who is party to a proceeding, may be called as a witness in the proceeding only with the court’s leave.
- (2) In deciding whether to give leave, the court must consider—
 - (a) the need to protect the child from unnecessary exposure to the court system; and
 - (b) the harm that could be done to the child if the child gives evidence.
- (3) If the court gives leave, the court may restrict cross-examination of the child if satisfied that it is in the best interests of the child to do so.

56 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 1 The court may make an order for costs against an applicant if satisfied the application was vexatious, frivolous or in bad faith. However, an application is not vexatious, frivolous or in bad faith only because it is made then discontinued (see s 67).

Note 2 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.

57 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.

57A Giving evidence by affidavit for interim order

- (1) This section applies if a police officer applies for a personal protection order on behalf of an affected person.
- (2) In a proceeding for an interim order, evidence may be given by an affidavit—
 - (a) made by the affected person or a police officer; and
 - (b) witnessed by a police officer of, or above, the rank of sergeant.

58 Undertakings by respondent

Before a court accepts an undertaking from a respondent in a proceeding for a protection 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 personal violence;
- (d) evidence of a breach of the undertaking may be used in evidence in a later proceeding.

59 Court may inform itself

A court may inform itself in any way it considers appropriate in a proceeding for a protection order.

Division 4.4 Making of protection orders

60 Explaining orders if respondent present

- (1) This section applies if—
 - (a) the Magistrates 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 unless the Magistrates Court otherwise orders.
 - (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 a State, another Territory or New Zealand has legislation that corresponds to this Act, the order may be registered, and enforced, in the State, Territory or New Zealand without notice of registration being given to the respondent.

Note Pt 7 deals with the registration of protection orders from other jurisdictions in the ACT.

- (3) Before making a consent order, the Magistrates 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 Magistrates Court to comply with this section in relation to a protection order does not affect the validity of the order.

61 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 unless the Magistrates Court otherwise orders.

- (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 35 (Offence—contravention of protection order), the protected person may also commit an offence; and
- (e) that, if a State, another Territory or New Zealand has legislation that corresponds to this Act, the order may be registered, and enforced, in the State, Territory or New Zealand without notice of registration being given to the respondent.

Note 1 Pt 7 deals with the registration of protection orders from other jurisdictions in the ACT.

Note 2 The [Criminal Code](#), pt 2.4 deals with offences of aiding and abetting.

- (3) Before making a consent order, the Magistrates 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 Magistrates Court to comply with this section in relation to a protection order does not affect the validity of the order.

62 Reasons for order

- (1) If the Magistrates 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.

63 Orders generally not to include protected person's address

- (1) The protected person's home or work address must not be included in a protection 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 or registrar 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.

Division 4.4A Service of documents

64A Personal service of application on respondent

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

64B Dismissal of application for non-service

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

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

64C Service of protection orders

- (1) If the Magistrates Court makes a protection order, the registrar must—
 - (a) if the order is an interim order—serve 2 copies of the order (1 marked as the endorsement copy) on the respondent as soon as practicable; and

- (b) if the order is not an interim order—serve a copy of the order on the respondent; and
- (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) if a party to the proceeding is a child—the child’s parent or guardian; and
 - (v) if a party to the proceeding has a disability guardian—the guardian; and
 - (vi) anyone else the court is satisfied has a relevant interest in the proceeding who does not already have a copy of the order.

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

- (2) 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 64A (2).
- (3) The failure of the registrar to comply with subsection (1) (c) (iv) or (v) does not affect the validity of the protection order.

64D Self-represented parties

- (1) This section applies if a party to an application for a protection order is not represented by a lawyer.
- (2) Unless the Magistrates Court requires a document to be served by a police officer, the registrar must serve any document required to be served by the self-represented party.

- (3) Any address for service given to the Magistrates Court must not be given to the other party without the self-represented party's consent.

64E Service of documents by police

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

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

- (1) If a document is required to be given to a child, it must not be given at or near the child's school unless there is no other place where the document may be reasonably given to the child.
- (2) If a document is required to be given to a child's parent or guardian—
- (a) the document need not be given if the parent or guardian is also a party to the application or proceeding; and
 - (b) the court may order that the document is not required to be given if satisfied that—
 - (i) giving the document is not reasonably practicable; or
 - (ii) there are circumstances that justify the document not being given.

Examples—subpar (ii)

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

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:
guardian includes a disability guardian.

Division 4.5 Other procedural matters

65 **Police officer party to proceeding for personal protection order—substitution of applicant etc**

- (1) This section applies if a police officer applies for a personal protection order for an affected person under section 12 (2) (a).
- (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 personal protection order, the police officer may be represented by—
 - (a) another police officer; or
 - (b) a person nominated by the chief police officer.

65A **Request for further particulars**

A party may only seek further particulars of an applicant for a protection order with the Magistrate Court’s leave.

67 **Costs**

- (1) Each party to a proceeding for a protection order is responsible for the party’s own costs of the proceeding.
- (2) However, the Magistrates Court may make an order about costs against—
 - (a) the applicant for a protection 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 49A (Neither party present at return of application), the court must not make an order about costs (see s 49A (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 Magistrates Court orders costs against a party to a proceeding (the *payee*) for a protection 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**

68 **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 69, 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.

69 Child respondents

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

70 Representation—party with impaired decision-making ability

- (1) This section applies if—
 - (a) the Magistrates Court considers that a party to a proceeding for a protection 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 Magistrates 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 the Magistrates Court from making an interim order against a respondent with impaired decision-making ability if the court is satisfied of the matters mentioned in section 19 (Interim orders—grounds for making).

Note A child younger than 10 years old cannot be a respondent to an application for a protection order (see s 69).

- (4) In this section:

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

71 Consent orders—party with impaired decision-making ability

- (1) This section applies if—
- (a) the Magistrates 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 Magistrates 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

72 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 protection order:
 - (a) an adult 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.

73 Litigation guardian—powers

- (1) This section applies if a litigation guardian has been appointed under section 72 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).

74 Litigation guardian—responsibilities

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

75 Litigation guardian—removal

- (1) The Magistrates Court may in a proceeding for a protection 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 Magistrates 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

76 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.

76A Preliminary conferences

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

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

77 Amendment of protection orders

- (1) The Magistrates Court may amend a protection order only if satisfied that—
 - (a) amending the order will not adversely affect the safety of the protected person or a child of the protected person; and
 - (b) the order as amended could be made on application for a protection order; and
 - (c) 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.
- (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) If the parties consent to the application to amend the protection order, the Magistrates Court must amend the order regardless of whether or not—
 - (a) the grounds mentioned in subsection (1) (a), (b) and (c) have been made out; or
 - (b) the court has considered those grounds.

78 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.

79 Interim orders made by consent—extension

The Magistrates Court may, on application, amend an interim order made as a consent order by extending it for an additional stated period, or further additional stated period.

80 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 personal 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).

Part 6 Review of orders

81 Final orders—application for review

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

Note Section 83 also 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) The Magistrates Court may grant leave under subsection (2) (c) only if satisfied there has been a change in the circumstances of a party to the order or it is in the interests of justice to do so.

(5) In this section:

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

respondent means the respondent to the original order.

82 Final orders—review

(1) On hearing an application under section 81 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 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 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 and the protected person is not present in court when the order is revoked, the court must notify the protected person, in writing, as soon as practicable.

83 Consent orders—review

- (1) A party to a proceeding for a protection order may also apply to the Magistrates Court for a review of a consent order (the *original order*) 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.

83A Preliminary conferences

If the Magistrates Court receives an application under section 81 the registrar must do the following:

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

84 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 83 made on the review of a consent order.

85 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.

87 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.

88 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.

89 Effect of filing appeal

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

Part 7 Reciprocal arrangements

90 Definitions—pt 7

In this part:

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

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

registered order—

- (a) means a recognised order registered under section 92 or section 94; and
- (b) includes a registered order amended as if it were a final order.

91 Recognised orders—applications for registration

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

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

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

92 Recognised orders—registration

- (1) On receiving an application under section 91 for registration of a recognised order, the registrar must register the order.
- (2) If the registrar registers a recognised order, the registrar must—
 - (a) give the chief police officer a copy of—
 - (i) the application for registration; and
 - (ii) the registered order; and

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

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

93 Effect of registration

A registered order—

- (a) is enforceable in the ACT as if it were a final order that had been personally served on the respondent; and
- (b) may be amended or revoked in the same way as a final order.

94 Registered orders—amendment

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

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

95 Registered orders—revocation

- (1) This section applies if a recognised court tells the registrar that a registered order has been revoked.
- (2) The registrar must—
- (a) cancel the registration of the registered order; and
- (b) tell the chief police officer and the person protected by the order about the cancellation.

96 Recognised orders—amendment

- (1) This section applies if a recognised court tells the registrar that a recognised order (the *original order*) registered under this part has been amended.

- (2) The registrar must—
 - (a) cancel the registration of the original order; and
 - (b) register the recognised order (the *amended order*) as amended.
- (3) The amended order takes effect on the cancellation of the registration of the original order.
- (4) If a breach of the original order that is not enforced before the original order is cancelled would amount to a breach of the amended order, the breach may be enforced as if it were a breach of the amended order.

97 Notification by interstate court of registration

- (1) This section applies if—
 - (a) a recognised court tells the Magistrates Court that it has registered a protection order; and
 - (b) the Magistrates Court amends or revokes the order.
- (2) The Magistrates Court must—
 - (a) tell the recognised court, in writing, that the order has been amended or revoked; and
 - (b) if the order has been amended—give the recognised court a copy of the order as amended.

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

Part 8 **Miscellaneous**

Division 8.1 **Public access and publication**

98 **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 protection 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:

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.

99 Publication of reports about proceedings—exceptions to offence

- (1) Section 98 does not prevent—
 - (a) a party to a proceeding for a protection 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 protection 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 98 only if satisfied that—
 - (a) it is in the public interest; or
 - (b) it will promote compliance with the protection order; or
 - (c) it is necessary for the proper operation of this Act.

Division 8.2 Other matters

100 Effect of availability of workplace protection orders

The availability of a workplace protection order under this Act does not create a new right or obligation in relation to any employment relationship.

101 Deciding application if criminal proceedings

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

102 Criminal and civil liability not affected by protection orders

The making, amendment or revocation of a protection 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.

103 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).

104 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.

105 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

198 Meaning of *repealed Act*—pt 20

In this part:

repealed Act means the [Domestic Violence and Protection Orders Act 2008](#).

199 Applications and orders under repealed Act

- (1) This section applies if—
 - (a) an application for a personal protection order is made under the [repealed Act](#); or
 - (b) a personal protection order is made under the [repealed Act](#).
- (2) The application or personal protection order is taken to have been made under this Act.
- (3) A proceeding for or in relation to an application for a personal protection order under the [repealed Act](#) is taken to be a proceeding under this Act.

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

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

200 Existing registered orders under repealed Act

- (1) This section applies to an order that corresponds to a protection order—
 - (a) registered under the [repealed Act](#), part 12 (Reciprocal arrangements) before the commencement of this Act, part 7 (Reciprocal arrangements); and
 - (b) in force immediately before the commencement of this Act, part 7.
- (2) The order is taken to have been registered under this Act, part 7.

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).

Schedule 1 Permitted publication about proceedings

(see s 99 (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 given to a criminal justice entity under the <i>Crimes (Sentencing) Act 2005</i> , section 136 (Information exchanges between criminal justice entities)
3	information given to the director-general in relation to the exercise of the director-general's functions
4	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
5	information given to the public advocate in relation to the exercise of the public advocate's functions

column 1 item	column 2 permitted publication about proceedings
6	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
7	matter published in law reports or other technical or professional publications
8	matter given to someone in relation to the person's professional practice
9	information about a party to a proceeding, or a protection order made in the proceeding, communicated to another person, with the party's permission, for the purpose of organising the party's personal affairs

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:

- adult
- chief police officer
- child
- director of public prosecutions
- lawyer
- magistrate
- Magistrates Court
- parent
- police officer
- proceeding
- public advocate
- registrar
- registrar of firearms
- Supreme Court.

affected person means—

- (a) in relation to personal violence at a workplace—the following people against whom personal violence has been, or is likely to be, committed:
- (i) an employee at the workplace;
 - (ii) the employee’s employer;
 - (iii) any other person in the workplace; or
- (b) in relation to other personal violence—a person against whom personal violence has been, or is likely to be, committed.

Note Personal violence does not include family violence which is dealt with under the [Family Violence Act 2016](#) (see s 8 (2)).

amend, a protection 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 84.

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 17). 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 proceeding)—see schedule 1, section 1.1.

care and protection chapters, for schedule 1 (Permitted publication about proceeding)—see schedule 1, section 1.1.

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).

consent order means a protection order made under section 25.

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.

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

employee means an individual engaged by someone—

- (a) under a contract of service; or
- (b) under a contract for services; or
- (c) under an apprenticeship; or
- (d) under an approved training contract under the *Training and Tertiary Education Act 2003*; or
- (e) to work for the person as a volunteer.

employer means someone who engages an individual—

- (a) under a contract of service; or
- (b) under a contract for services; or
- (c) under an apprenticeship; or
- (d) under an approved training contract under the *Training and Tertiary Education Act 2003*; or
- (e) to work as a volunteer.

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

final order means a protection order that is not an interim 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*.

impaired decision-making ability—see section 68.

interim order—

- (a) means a protection order (including a consent order) made under section 19 (Interim orders—grounds for making); and
- (b) includes an order (other than a final order) that amends or revokes an interim order.

litigation guardian, of a person, means a person appointed in accordance with section 72.

personal protection order means an interim or final order other than a workplace protection order.

personal violence—see section 8.

Note ***Personal violence*** does not include family violence (see s 8 (3)).

proceeding, for a protection order, includes a proceeding to review the order under part 6.

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.

protected person means the person protected under a protection order.

protection order—

- (a) means—
 - (i) an interim personal or workplace protection order; or
 - (ii) a final personal or workplace protection 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 78.

recognised court, for part 7 (Reciprocal arrangements)—see section 90.

recognised order, for part 7 (Reciprocal arrangements)—see section 90.

registered order, for part 7 (Reciprocal arrangements)—see section 90.

respondent means a person—

- (a) in relation to whom an application for a protection order has been made; or
- (b) against whom a protection order has been made.

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.

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

revoke includes cancel.

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

workplace protection order means an interim or final order restraining a person from personal violence in relation to a workplace.

Note See s 8 (2) for the meaning of personal violence by a person in relation to a workplace.

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

Endnotes

3 Legislation history

3 Legislation history

Personal Violence Act 2016 A2016-43

notified LR 18 August 2016

s 1, s 2 commenced 18 August 2016 (LA s 75 (1))

remainder commenced 1 May 2017 (s 2 and see Family Violence Act 2016 [A2016-42](#) s 2 (2) (as am by [A2017-10](#) s 7))

as amended by

[Family and Personal Violence Legislation Amendment Act 2017 A2017-10 pt 4](#)

notified LR 6 April 2017

s 1, s 2 commenced 6 April 2017 (LA s 75 (1))

pt 4 commenced 1 May 2017 (LA s 79A and see Family Violence Act 2016 [A2016-42](#) (s 2 (2) as am by this Act s 7))

4 Amendment history

Commencement

s 2 om LA s 89 (4)

Principle about procedures

s 9 am [A2017-10](#) s 70

Rules of evidence

s 10A ins [A2017-10](#) s 71

Matters to be considered—protection orders

s 11 am [A2017-10](#) s 72, s 73; ss and pars renum R1 LA

Child may apply for protection order in same application as parent

s 13A ins [A2017-10](#) s 74

Applications by police officers

s 13B ins [A2017-10](#) s 74

Application forms that require affected person's address

s 14 am [A2017-10](#) s 75

Interim orders—only on application for final order

s 17 am [A2017-10](#) s 76

Interim orders—length

s 20 am [A2017-10](#) s 77

Consent to interim order becoming final order

s 24A ins [A2017-10](#) s 78

Final orders—length

s 27 am [A2017-10](#) s 79

What Magistrates Court must do after receiving application for protection order

div 4.1 hdg sub [A2017-10](#) s 80

Meaning of *timing notice*

s 39 sub [A2017-10](#) s 80

Interim order not sought

s 40 sub [A2017-10](#) s 80

Interim order sought

s 41 sub [A2017-10](#) s 80

Service of application etc on others

s 42 sub [A2017-10](#) s 80

Preliminary conferences

div 4.2 hdg sub [A2017-10](#) s 80

Endnotes

4 Amendment history

Preliminary conferences—generally

s 43 sub [A2017-10](#) s 80

Adjournment of preliminary conference for non-service

s 44 sub [A2017-10](#) s 80

If no consent order at preliminary conference

s 45 sub [A2017-10](#) s 80

Referrals to mediation

s 46 sub [A2017-10](#) s 80

Non-attendance by party

div 4.2A hdg ins [A2017-10](#) s 80

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

s 47 sub [A2017-10](#) s 80

Applicant not present at return of application

s 48 sub [A2017-10](#) s 80

Respondent not present at return of application

s 49 sub [A2017-10](#) s 80

Neither party present at return of application

s 49A ins [A2017-10](#) s 80

Applicant not present at return of application

s 50 om [A2017-10](#) s 81

Respondent not present at return of application

s 51 om [A2017-10](#) s 81

Neither party present at return of application

s 52 om [A2017-10](#) s 81

Public hearing not required

s 54 am [A2017-10](#) s 82, s 83

Notice of grounds of defence

s 55A ins [A2017-10](#) s 84

Applicant may rely on additional information in hearing

s 55B ins [A2017-10](#) s 84

If child and child's parent are affected people

s 55C ins [A2017-10](#) s 84

Children as witnesses

s 55D ins [A2017-10](#) s 84

Discontinuance

s 56 am [A2017-10](#) s 85

Giving evidence by affidavit for interim orders 57A ins [A2017-10](#) s 86**Service of protection orders**s 64 om [A2017-10](#) s 87**Service of documents**div 4.4A hdg ins [A2017-10](#) s 88**Personal service of application on respondent**s 64A ins [A2017-10](#) s 88**Dismissal of application for non-service**s 64B ins [A2017-10](#) s 88**Service of protection orders**s 64C ins [A2017-10](#) s 88**Self-represented parties**s 64D ins [A2017-10](#) s 88**Service of documents by police**s 64E ins [A2017-10](#) s 88**Giving documents to child or child's parent or guardian**s 64F ins [A2017-10](#) s 88**Request for further particulars**s 65A ins [A2017-10](#) s 89**Directions about procedure**s 66 om [A2017-10](#) s 90**Costs**s 67 am [A2017-10](#) s 91**Litigation guardian—appointment**s 72 am [A2017-10](#) s 92**Preliminary conferences**s 76A ins [A2017-10](#) s 93**Amendment of protection orders**s 77 am [A2017-10](#) ss 94-96; pars renum R1 LA**Interim orders made by consent—extension**s 79 am [A2017-10](#) s 97, s 98**Final orders—extension**s 80 am [A2017-10](#) s 99**Final orders—application for review**s 81 hdg sub [A2017-10](#) s 100s 81 am [A2017-10](#) ss 101-103; ss renum R1 LA

Endnotes

4 Amendment history

Final orders—review

s 82 hdg sub [A2017-10](#) s 104
s 82 am [A2017-10](#) s 105

Consent orders—review

s 83 am [A2017-10](#) s 106, s 107

Preliminary conferences

s 83A ins [A2017-10](#) s 108

Giving notice of appeal

s 86 om [A2017-10](#) s 109

Transitional

pt 20 hdg exp 1 May 2019 (s 202)

Meaning of *repealed Act*—pt 20

s 198 ins [A2017-10](#) s 110
exp 1 May 2019 (s 202)

Applications and orders under repealed Act

s 199 ins [A2017-10](#) s 110
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Existing registered orders under repealed Act

s 200 am [A2017-10](#) s 111
exp 1 May 2019 (s 202)

Transitional regulations

s 201 exp 1 May 2019 (s 202)

Expiry—pt 20

s 202 exp 1 May 2019 (s 202)

Amendments

pt 21 hdg om LA s 89 (3)

Legislation amended—sch 2

s 203 om LA s 89 (3)

Firearms Act 1996

sch 2 om LA s 89 (3)

Dictionary

dict am [A2017-10](#) s 112, s 113
def *returned* ins [A2017-10](#) s 114
def *timing notice* sub [A2017-10](#) s 115