



Australian Capital Territory

Domestic Violence and Protection Orders Amendment Act 2016

A2016-9

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Australian Capital Territory

Domestic Violence and Protection Orders Amendment Act 2016

A2016-9

An Act to amend the *Domestic Violence and Protection Orders Act 2008*, and
for other purposes

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

J2015-781

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Part 1 Preliminary

1 Name of Act

This Act is the *Domestic Violence and Protection Orders Amendment Act 2016*.

2 Commencement

This Act commences on the day after its notification day.

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

3 Legislation amended

This Act amends the *Domestic Violence and Protection Orders Act 2008* and the *Domestic Violence and Protection Orders Regulation 2009*.

Part 2 Domestic Violence and Protection Orders Act 2008

4 Registrar sets return date Section 22 (1) (b), new note

insert

Note The return date may be for a preliminary conference (see s 24).

5 Preliminary conferences New section 24 (5)

insert

- (5) If a preliminary conference is held, and no consent order is made by the end of the conference, the registrar may set a new return date for a hearing to decide the application.

Note 1 If a general interim order is made, the return date must be at least 21 days after the day the general interim order is made. If a special interim order is made, the return date must be not before, and not more than 21 days after, all related charges are finalised (see s 34).

Note 2 The registrar must also make preparations for the hearing to decide the application (see s 26).

6 Preparation for hearings in Magistrates Court Section 26 (2)

omit

return date for the application

substitute

return date for the hearing to decide the application

7 Section 33

substitute

33 Interim orders—service of application unnecessary

- (1) The Magistrates Court may make an interim order even if a copy of the application and a timing notice have not been served on the respondent in accordance with section 63 (Service of applications).
- (2) In this section:

timing notice—see section 63 (5).

8 Sections 34 and 34A

substitute

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

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

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

- (ii) not later than 21 days after the day all related charges are finalised.

Note 1 **Finalised**—see s 42.
Related charges—see s 28B.
Special interim order—see s 28A.

Note 2 A return date may have already been set at a preliminary conference (see s 24 (5)).

Note 3 If the return date is changed under this section, the registrar may need to serve a revised timing notice (see s 63).

9 New section 36

insert

36 Interim orders—endorsement of consent or objection

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

Note For service of an interim order, see s 64.

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

Note The court may make consent orders whether or not a party has attended before the court, whether or not a ground for making the order has been made out and without proof or admission of guilt (see s 43).

- (4) If the respondent wishes to object to the interim order becoming a final order, the respondent may—
- (a) fill out the endorsement copy of the interim order in accordance with the instructions on the copy; and
 - (b) indicate on the endorsement copy that the respondent objects to the interim order becoming a final order; and
 - (c) return it to the Magistrates Court at least 7 days before the return date for the application for the final order to which the interim order relates.
- (5) If the respondent acts under subsection (4), the Magistrates Court may decide the application at—
- (a) for a general interim order—the next return date for the application for the final order; or
 - (b) for a special interim order—a return date for the application after all related charges are finalised.
- Note* If the Magistrates Court makes a special interim order, the Court must not decide the application for the final order until all related charges are finalised (see s 42B).
- (6) If the respondent wishes to object to the interim order becoming a final order but does not act under subsection (4), the Magistrates Court may decide the application for the final order only if the respondent—
- (a) attends the Magistrates Court on the return date for the application for the final order; and
 - (b) objects to the interim order becoming a final order; and

- (c) satisfies the court that the respondent—
- (i) has a legal disability and did not have a litigation guardian appointed for the proceeding at any time before the endorsement copy was required to be returned under subsection (4) (c); or
 - (ii) has a reasonable excuse for failing to act under subsection (4).

Examples—par (c) (ii)

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

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

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

Note For the grounds for making final orders (other than workplace orders), see s 46.

- (8) In this section:

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

respondent includes a representative of the respondent.

Note For review of final orders, see pt 11.

10 Interim orders—ending Section 38

omit

11 New section 41AA

insert

41AA General interim orders—ending

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

- (a) the period stated in the order ends;

Note A general interim order (other than a consent order) must not be in force for more than 2 years (see s 41A).
A general interim order made as a consent order remains in force for the period of up to 16 weeks stated in the order (see s 45).

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

12 **General interim orders—taken to be special interim orders if related charges laid**
Section 41B (3)

omit

return date for the application

substitute

return date for a hearing to decide the application

13 **Section 41B (3), new note**

insert

Note 2 If the return date is changed under this section, the registrar may need to serve a revised timing notice (see s 63).

14 **General interim orders—becoming final orders**
Section 41C

omit

15 **Section 42A**

substitute

42A **Special interim orders—ending**

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

- (a) the special interim order is revoked;
- (b) the application on which the special interim order was made is discontinued or dismissed;
- (c) a final order is made on the application and the respondent is present when it is made;

- (d) if a final order is made on the application but the respondent is not present when it is made—the final order is served on the respondent.

16 Special interim orders—application not to be decided until related charges finalised
Section 42B (2)

substitute

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

17 Service of applications
Section 63 (1) and note

substitute

- (1) If the court receives an application for a non-emergency protection order, the registrar must serve—
 - (a) on the applicant—a timing notice for the application; and
 - (b) on the relevant people—
 - (i) a copy of the application; and
 - (ii) a timing notice for the application.

18 New section 63 (4A)

insert

- (4A) If the return date for an application is changed under section 34 (Interim orders—return date for hearing to decide final order) or section 41B (3) (General interim orders—taken to be special interim orders if related charges laid), and the registrar has already served a timing notice for the application, the registrar must serve a revised timing notice on each person already served with a timing notice.

19 Section 63 (5) and note

substitute

- (5) In this section:

relevant people means—

- (a) the respondent; and
- (b) anyone else the registrar is satisfied has a relevant interest in the proceeding who does not already have a copy of the application.

Example—person with a relevant interest in the proceeding

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

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

timing notice, for an application, means a notice stating—

- (a) a return date for the application; and
- (b) if a special interim order is made on the application—that a later return date for a hearing to decide the application will be set after all related charges are finalised.

**20 Service of non-emergency protection orders
New section 64 (1A)**

insert

- (1A) If the registrar is serving a special interim order on a person, the registrar must also give the person a notice telling the person that—
- (a) the respondent may apply to the court for review of the order under section 90A (Application for review of special interim orders); and
 - (b) the court will set a return date for a hearing to decide the application after all related charges are finalised.

**21 If personal service not required
Section 65**

omit

22 Section 66

substitute

66 If personal service impracticable

- (1) This section applies if personal service of an application under this Act is not reasonably practicable.
- (2) The Magistrates Court may order that the application be served in the way, stated in the order, that the court considers is likely to bring the application to the attention of the person required to be served.

Part 3 Domestic Violence and Protection Orders Regulation 2009

23 If applicant not present at return of application Section 17, new note

insert

Note An interim order ends if the application on which the interim order was made is dismissed (see [Act](#), s 41AA and s 42A).

24 Section 96

substitute

96 Orders—if service impracticable—Act, s 66 (2)

- (1) This section applies if personal service of an application under the Act is not reasonably practicable.
- (2) The Magistrates Court may authorise the registrar or a deputy registrar to exercise the jurisdiction of the court to make an order under the [Act](#), section 66 (2) (If personal service impracticable) in relation to the service of the application.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 11 February 2016.

2 Notification

Notified under the [Legislation Act](#) on 1 March 2016.

3 Republications of amended laws

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

I certify that the above is a true copy of the Domestic Violence and Protection Orders Amendment Bill 2016, which was passed by the Legislative Assembly on 18 February 2016.

Acting Clerk of the Legislative Assembly

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