

2016

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Domestic Violence and Protection Orders Amendment Bill 2016

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(Attorney-General)

Domestic Violence and Protection Orders Amendment Bill 2016

A Bill for

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:

1 **Part 1 Preliminary**

2 **1 Name of Act**

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

5 **2 Commencement**

6 This Act commences on the day after its notification day.

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

9 **3 Legislation amended**

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

1 **Part 2** **Domestic Violence and**
2 **Protection Orders Act 2008**

3 **4 Registrar sets return date**
4 **Section 22 (1) (b), new note**

5 *insert*

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

7 **5 Preliminary conferences**
8 **New section 24 (5)**

9 *insert*

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

13 *Note 1* If a general interim order is made, the return date must be at least
14 21 days after the day the general interim order is made.
15 If a special interim order is made, the return date must be not before,
16 and not more than 21 days after, all related charges are finalised
17 (see s 34).

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

20 **6 Preparation for hearings in Magistrates Court**
21 **Section 26 (2)**

22 *omit*

23 return date for the application

24 *substitute*

25 return date for the hearing to decide the application

1 **7 Section 33**

2 *substitute*

3 **33 Interim orders—service of application unnecessary**

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

7 (2) In this section:

8 *timing notice*—see section 63 (5).

9 **8 Sections 34 and 34A**

10 *substitute*

11 **34 Interim orders—return date for hearing to decide final
12 order**

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

16 (a) for a general interim order—at least 21 days after the day the
17 general interim order is made; or

18 (b) for a special interim order—

19 (i) not earlier than the day all related charges are finalised;
20 and

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

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

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

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

10 **9 New section 36**

11 *insert*

12 **36 Interim orders—endorsement of consent or objection**

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

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

- 16 (2) If the respondent wishes to consent to the interim order becoming a
17 final order, the respondent may—

18 (a) fill out the endorsement copy of the interim order in
19 accordance with the instructions on the copy; and

20 (b) indicate on the endorsement copy that the respondent consents
21 to the interim order becoming a final order; and

22 (c) return it to the Magistrates Court before the return date for the
23 application for the final order.

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

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

- 1 (4) If the respondent wishes to object to the interim order becoming a
2 final order, the respondent may—
- 3 (a) fill out the endorsement copy of the interim order in
4 accordance with the instructions on the copy; and
- 5 (b) indicate on the endorsement copy that the respondent objects to
6 the interim order becoming a final order; and
- 7 (c) return it to the Magistrates Court at least 7 days before the
8 return date for the application for the final order to which the
9 interim order relates.
- 10 (5) If the respondent acts under subsection (4), the Magistrates Court
11 may decide the application at—
- 12 (a) for a general interim order—the next return date for the
13 application for the final order; or
- 14 (b) for a special interim order—a return date for the application
15 after all related charges are finalised.
- 16 *Note* If the Magistrates Court makes a special interim order, the Court
17 must not decide the application for the final order until all related
18 charges are finalised (see s 42B).
- 19 (6) If the respondent wishes to object to the interim order becoming a
20 final order but does not act under subsection (4), the Magistrates
21 Court may decide the application for the final order only if the
22 respondent—
- 23 (a) attends the Magistrates Court on the return date for the
24 application for the final order; and
- 25 (b) objects to the interim order becoming a final order; and

- 1 (c) satisfies the court that the respondent—
- 2 (i) has a legal disability and did not have a litigation
3 guardian appointed for the proceeding at any time before
4 the endorsement copy was required to be returned under
5 subsection (4) (c); or
- 6 (ii) has a reasonable excuse for failing to act under
7 subsection (4).
- 8 **Examples—par (c) (ii)**
- 9 1 the respondent was injured in a car accident and unable to return
10 the endorsement copy in the time required
- 11 2 the respondent is from a non-English speaking background and
12 no one was able to interpret the endorsement copy for the
13 respondent until after it was required to be returned
- 14 *Note* An example is part of the Act, is not exhaustive and may
15 extend, but does not limit, the meaning of the provision in
16 which it appears (see [Legislation Act](#), s 126 and s 132).
- 17 (7) If the interim order does not become a final order under
18 subsection (3) and the application may not be decided by the
19 Magistrates Court under subsection (5) or (6), the Magistrates Court
20 may decide that the interim order becomes a final order at—
- 21 (a) for a general interim order—the next return date for the
22 application for the final order; or
- 23 (b) for a special interim order—a return date for the application
24 after all related charges are finalised.
- 25 *Note* For the grounds for making final orders (other than workplace orders),
26 see s 46.
- 27 (8) In this section:
- 28 ***endorsement copy***, of an interim order, means the copy of the
29 interim order marked as the endorsement copy under section 64 (1).

-
- 1 **12** **General interim orders—taken to be special interim**
2 **orders if related charges laid**
3 **Section 41B (3)**
- 4 *omit*
- 5 return date for the application
- 6 *substitute*
- 7 return date for a hearing to decide the application
- 8 **13** **Section 41B (3), new note**
- 9 *insert*
- 10 *Note 2* If the return date is changed under this section, the registrar may need to
11 serve a revised timing notice (see s 63).
- 12 **14** **General interim orders—becoming final orders**
13 **Section 41C**
- 14 *omit*
- 15 **15** **Section 42A**
- 16 *substitute*
- 17 **42A** **Special interim orders—ending**
- 18 A special interim order ends only when the first of the following
19 happens:
- 20 (a) the special interim order is revoked;
- 21 (b) the application on which the special interim order was made is
22 discontinued or dismissed;
- 23 (c) a final order is made on the application and the respondent is
24 present when it is made;

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

4 **16 Special interim orders—application not to be decided**
5 **until related charges finalised**
6 **Section 42B (2)**

7 *substitute*

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

13 **17 Service of applications**
14 **Section 63 (1) and note**

15 *substitute*

- 16 (1) If the court receives an application for a non-emergency protection
17 order, the registrar must serve—
18 (a) on the applicant—a timing notice for the application; and
19 (b) on the relevant people—
20 (i) a copy of the application; and
21 (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.

- 1 **20 Service of non-emergency protection orders**
2 **New section 64 (1A)**
- 3 *insert*
- 4 (1A) If the registrar is serving a special interim order on a person, the
5 registrar must also give the person a notice telling the person that—
- 6 (a) the respondent may apply to the court for review of the order
7 under section 90A (Application for review of special interim
8 orders); and
- 9 (b) the court will set a return date for a hearing to decide the
10 application after all related charges are finalised.
- 11 **21 If personal service not required**
12 **Section 65**
- 13 *omit*
- 14 **22 Section 66**
- 15 *substitute*
- 16 **66 If personal service impracticable**
- 17 (1) This section applies if personal service of an application under this
18 Act is not reasonably practicable.
- 19 (2) The Magistrates Court may order that the application be served in
20 the way, stated in the order, that the court considers is likely to bring
21 the application to the attention of the person required to be served.

1 **Part 3** **Domestic Violence and**
2 **Protection Orders**
3 **Regulation 2009**

4 **23** **If applicant not present at return of application**
5 **Section 17, new note**

6 *insert*

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

9 **24** **Section 96**

10 *substitute*

11 **96** **Orders—if service impracticable—Act, s 66 (2)**

- 12 (1) This section applies if personal service of an application under the
13 Act is not reasonably practicable.
- 14 (2) The Magistrates Court may authorise the registrar or a deputy
15 registrar to exercise the jurisdiction of the court to make an order
16 under the [Act](#), section 66 (2) (If personal service impracticable) in
17 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 2016.

3 Republications of amended laws

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

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