

2001

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

PROTECTION ORDERS BILL 2001

EXPLANATORY MEMORANDUM

**Circulated by authority of the
Attorney-General
Bill Stefaniak MLA**

PROTECTION ORDERS BILL 2001

Outline

This Bill consolidates the provisions of the *Magistrates Court Act 1930* dealing with restraining orders and the provisions of the *Domestic Violence Act 1986* dealing with protection orders into one Act. The procedural rules for protection orders and restraining orders are currently a mix of rules under the *Magistrates Court Act 1930* (MCA), the *Domestic Violence Act 1986* (DVA) and the *Magistrates Court (Civil Jurisdiction) Act 1982* (MCCJA). The relevant procedural rules for these orders are included as regulations under the Bill.

The consolidation is being undertaken in response to several recent Supreme Court decisions which have highlighted the need for procedural requirements to be clarified and simplified. It is intended that the new legislation will provide a clear statement of:

- powers in relation to restraining orders and protection orders;
- by whom those powers may be exercised; and
- how those powers may be exercised.

The consolidation is essentially a technical rewrite rather than a substantive law reform exercise. Where there are differences in current procedural requirements for the two types of orders, the more comprehensive provision has been incorporated into the Bill as the standard. Where there is conflict between the procedural requirements of the MCCJA and the specific procedural requirements of the substantive legislation, then the specific requirement of the substantive legislation has been included in the Bill consistently with the current legislation.

The Bill introduces a number of new terms. The term *protection order*, from the DVA, has been replaced with *domestic violence order* as this is the term by which the orders are most commonly known. The Bill also contains a new term, *personal violence*, to refer to the type of conduct in respect of which a

restraining order may currently be granted. Unlike the DVA which defines *domestic violence* and then refers for that definition as the basis for issuing a protection order, the MCA has no single term to cover “restraining order type conduct”. The new term *personal violence* structures restraining orders in a similar way. Similarly to domestic violence orders, orders issued in relation to personal violence are referred to in the Bill as *personal protection orders*. Domestic violence orders and personal protection orders are collectively referred to as *protection orders* in the Bill.

Part 10 of the current MCA includes provision for employers to take out restraining orders on behalf of an employee. The Bill provides a separate scheme for personal protection orders in respect of a workplace. A *workplace order* is a specific version of a personal protection order with appropriate modifications to fit a workplace situation.

The provisions of the Bill are explained in detail below.

Part 1 – Introductory

This part contains the formal clauses for the Bill, setting out the name of the Act, arrangements for commencement and how the dictionary and notes to the Act should be used. For the purposes of comparison, the notes include references to relevant provisions of the legislation that will be consolidated by the Act.

Part 2 – Objects, principles and general concepts

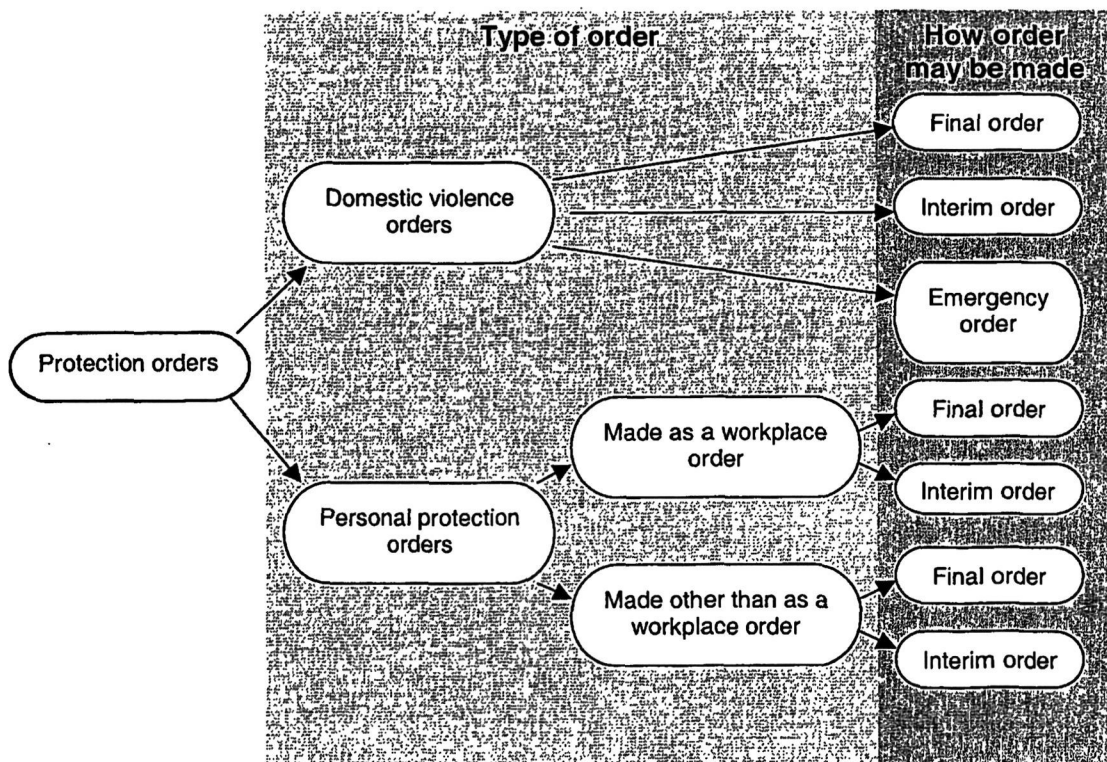
This part is a general “road marker” part and provides a description of the objects and principles of the Act and how the Act may be used.

The objects in **clause 5**, and the principle in **clause 6** are a legislative statement of the fundamental reasons for the Act and the balancing of interests that occurs in making orders. The paramount consideration under the Act is the need to ensure that an aggrieved person is protected from domestic or personal violence. This needs to be achieved, however, in the context of being least restrictive of the personal rights and liberties of the

respondent as is possible while still achieving this primary objective. The objects and principles are not new. Notwithstanding that they are not as explicitly stated in the current legislation, they do nevertheless underpin it.

Clause 7 is similar to clauses 5 and 6 in providing a statement of the principle that procedures under the Act are to be as simple, quick and inexpensive as is consistent with achieving justice.

Clause 8 sets out the various types of order that are available under the Act. The protection orders available under the Act are divided into type and length as follows:



Clause 9 defines *domestic violence*. This definition is substantively carried over from the DVA. The current definition in the DVA includes a reference to the repealed *Motor Traffic Act 1936*. As this is a transitional provision it is included in the Bill at clause 111.

The **clause 10** definition of *personal violence* is based on the power to make a restraining order under section 197 of the current MCA. The definition picks up conduct that would amount to the basis for a restraining order under the current provisions in part 10 of the MCA. Personal violence in respect of a workplace has a specific definition and this is included in the Bill in clause 44.

Part 3 – Applications

This part sets out who may apply for a protection order and what the registrar must do with an application.

Clause 11 specifies who may apply for a protection order. This clause covers all applications other than applications for an emergency order (provided for in part 7 of the Bill), or applications to amend or revoke an order (provided for in clause 13). In the case of a workplace order, the employer is defined as the aggrieved person. The categories of person who may apply for an order has been simplified in two respects:

- The existing provisions of both the MCA and DVA provide for particular persons to make an application on behalf of an aggrieved person on the basis of their relationship to the aggrieved person. The relationships that are included are generally that of a close relative or person who might be expected to have legal responsibility for the aggrieved person (eg. the parent of a child). The difficulty with specifying who may apply on behalf of a person under a legal disability as a class is that there is no guarantee that a specified person is able to effectively represent the interests of the aggrieved person. For example, a parent may no longer have the ability to exercise legal capacity in respect of a child for whom a guardian has been appointed. This is rationalised in the Bill so that the focus is on the ability of the person to make the application as a next friend of the aggrieved person, rather than on what may be a fairly arbitrary relationship.
- The bill also removes the artificial distinction between the applicant and the aggrieved person. If a person other than the aggrieved person is making

an application, the Bill makes it clear that this is done as a next friend of the aggrieved person.

The Bill preserves the current provisions whereby a police officer may make an application for an aggrieved person and the Community Advocate may make an application as a next friend of an aggrieved person who is a person with a legal disability.

Clause 12 provides generally that an application by a person under a legal disability may only be made by a next friend. The Bill preserves the current right of a child to make an application for a domestic violence order in their own right, notwithstanding that they would not otherwise have legal capacity to do so.

Clause 13 provides that an application to vary or revoke an order may be made by a person who is a party to the order or whom the Magistrates Court is satisfied has a sufficient interest in the original order. The provision would allow, for example, the guardian of an aggrieved person under a legal disability to make an application to vary an order notwithstanding that the original application may have been made by someone else as a next friend of the aggrieved person.

Clause 14 is a new provision that allows the address details of the aggrieved person to be suppressed in certain circumstances. This provision is a modification of the application procedures under the MCCJA and is a measure intended to preserve the safety of the aggrieved person.

Clause 15 sets out the basic procedural steps to be followed by the registrar once an application has been received. On receiving an application, the registrar enters the application into the record of the Magistrates Court and sets a date for the application to be returned before the court.

Clause 16 sets out the requirements for the registrar to serve copies of the application and a notice of proceedings. In addition to serving a copy of the

application on the respondent, the provision requires the registrar to serve a copy of the application and notice of hearing on a person with a relevant interest in the proceeding. This requirement would arise where the aggrieved person is a person with a legal disability. This provision is intended to replace the current provisions in the DVA and MCA that require the application and notice of hearing to be served on the person with whom a child normally resides, or a parent or guardian with whom the child does not normally reside. As with the application provisions in clause 11, instead of specifying the particular classes of person who might have an interest, a more purposive approach is taken.

Clause 17 provides that the registrar may adjourn proceedings if, on the date set for the return of the application before the Magistrates Court, the respondent has not been served with a copy of the application. The registrar may not adjourn proceedings under this provision more than twice. This restriction is included to ensure that in the event that repeated attempts to personally serve the application on the respondent are unsuccessful, there is a trigger for the Magistrates Court to consider making an order for alternate service under clause 98 of the Bill.

Clause 18 provides that the registrar must hold a preliminary conference in relation to an application. Conferences currently occur pursuant to practice directions and these requirements are formalised in the Bill.

Part 4 – Orders generally

This part sets out those matters that are common to all orders.

Clause 19 establishes that the standard of satisfaction that is required for the Magistrates Court, registrar or judicial officer to make an order is the civil standard rather than the criminal standard – ie. they need only be satisfied on the balance of probabilities.

Clause 20 establishes the basic parameters of the behaviour that a protection order may restrain. This section is supplemented, depending on the particular type of order, by additional specific conditions and prohibitions depending on whether the order is made as a final, interim, or emergency order.

Clause 21 confirms the extraterritorial effect of a protection order. For example, if a respondent breaches a protection order while in New South Wales, this would still be an offence under the Act. This clause should also be read in conjunction with part 9 of the Bill, which provides for the recognition of corresponding orders that are made in other Australian jurisdictions or in New Zealand.

Clause 22 provides that if an application is made for the wrong order, eg. an application for a domestic violence order where the relationship of the parties is such that the application should be for a personal protection order, the Magistrates Court is not prevented from making the correct order on the application.

Clause 23 is similar to clause 22. Under this provision, if an application is decided before it becomes apparent that the applicant should have applied for the other type of order, then the operation of the order is not affected by the fact that the order could not have been made on the application.

Clauses 24 and 25 provide for orders to be explained to the parties where the parties are before the Magistrates Court. This provision carries over existing requirements in the DVA and MCA.

Clause 26 requires that the reasons for an order must be recorded by the Magistrates Court.

Clause 27 is similar to clause 14 and provides for the address details of the aggrieved person to be omitted from the protection order in certain circumstances. Again, this measure is intended to preserve the safety of the aggrieved person. The inclusion of the address may be necessary where, for

example, an order contains a specific condition under clause 42 that prohibits the respondent from being on premises where the aggrieved person lives.

Clause 28 carries over existing arrangements where specific conditions in an order may have a period of effect that is shorter than the period of effect of the order as a whole.

Clause 29 allows orders under the Act to be made by consent. This provision is based on sections 206 and 206AA of the MCA. This provision should be read in conjunction with clause 92 which provides that the Chief Magistrate may authorise the registrar, or a named deputy registrar, to exercise the power of the Magistrates Court to make a consent order. This carries over the general provision in section 481 of the MCCJA specifically to protection orders. Clause 29(3) makes it clear that the automatic consequences of a protection order also apply where the order is made by consent except where there is a discretion for that consequence not to flow. For example, where the protection order is a personal protection order, the Magistrates Court may in certain circumstances order that the automatic cancellation of a firearms licence not apply. Clause 29(4) makes it clear that consent orders must be within the parameters of the Act.

Clause 30 ensures that a consent order cannot be made where a party to the proceedings is a person under a legal disability and is not represented by someone else (either a next friend or litigation guardian).

Clause 31 clarifies the process by which an order may be amended or revoked.

Clause 32 provides that a protection order made by the Childrens Court under the *Children and Young People Act 1999* is taken to have been made by the Magistrates Court and may be amended, revoked or appealed accordingly.

Clause 33 specifies how a protection order, other than an emergency order, must be served. Personal service is specified in respect of the respondent

due to the fact that the offence provision in clause 34 is predicated on personal service.

Clause 34 provides that it is an offence to breach a protection order. This clause is based on the existing offence provisions of the MCA and DVA that require that either the respondent was present when the order was made or alternatively, was personally served with a copy of the order. These requirements are aimed at providing an objective means of establishing that the respondent knew of the existence of the order.

Part 5 – Final orders

Part 5 sets out the procedure, grounds and considerations for final orders.

Division 5.1 – Final orders generally

Clause 35 provides a default period of effectiveness of 2 years for a final domestic violence order. The Magistrates Court may make a domestic violence order for a period of longer than 2 years but must be satisfied that there are special or exceptional circumstances justifying that longer period. This provision is carried over from the DVA. The provision should also be read in conjunction with clause 28 which provides that specific conditions and prohibitions may have a period of effect that is shorter than the period of effect of the order as a whole.

Clause 36 is similar to clause 35, and provides a default period of effectiveness of 1 year for personal protection orders. The MCA currently provides no default period, only that the order may be in force for a period of up to 1 year as specified by the Magistrates Court.

Clause 37 provides a specific process for seeking the extension of a final order. The process is a simplified version of the procedure outlined in the DVA. Before the Magistrates Court may grant an extension of an order, it must be satisfied that the order is still necessary to protect the aggrieved person. This is a change from the current provision in the DVA which provides for an automatic extension unless the respondent shows cause why

it should not be extended. The new provision is more consistent with the general scheme of the legislation.

Clause 38 carries over the existing provisions of both the DVA and MCA in respect of firearms licences on making a final order. Where a final order is made, any firearms licence that is held by the respondent is cancelled by force of clause 38(2). In the case of a *personal protection order*, however, an application may be made for an order that the licence not be cancelled.

Clause 39 carries over the existing provisions of the DVA and MCA in relation to the Magistrates Court being able to recommend that the parties to a proceeding undertake counselling etc.

Division 5.2 – Final orders other than workplace orders

The Division applies to final domestic violence orders and final personal protection orders that are not personal protection orders in respect of a workplace.

Clause 40 sets out the grounds for making a final order other than a workplace order. The grounds are based on the existing provisions of the DVA and MCA and are the starting point for an order. The grounds for a domestic violence order, consistently with the current DVA requirements, are simply that the respondent has engaged in domestic violence. The grounds for a *personal protection order*, consistently with the current MCA requirements, are that the respondent has engaged in personal violence and may, if the order is not made, engage in personal violence during the time the order is proposed to operate. The difference in the grounds is based on the existing legislation which treats the particular relationship of the parties in a domestic violence matter as sufficient, of itself, to give rise to the need for an order to protect the aggrieved person from the domestic violence behaviour.

The clause also clarifies, in respect of personal violence, that it is only necessary to establish that the violence may recur during the proposed period of the order, rather than at the time the order is made. This is intended to

address situations where, for example, a person may seek a personal protection order in anticipation of a respondent getting out of jail.

Clause 41 sets out the matters to which the Magistrates Court must have regard before making a final order and is based on matters currently listed in the DVA as relevant considerations.

Clause 42 lists a number of conditions and prohibitions that the Magistrates Court may include in a protection order. The list of conditions and prohibitions is based on those contained in the DVA. The court may only include these conditions if it considers that it is necessary or desirable to do so having regard to the objects and principles of the Act. Clause 42(4) clarifies that for a consent order, it is not necessary that the court consider the condition or prohibition necessary or desirable. It is only necessary that the parties consent.

Division 5.3 – Workplace orders

Workplace orders are a specific type of personal protection order and are included in a separate Division due to the different considerations that apply to these types of orders. The current provisions of the MCA focus on individual employees as the aggrieved person, with the employer able to make an application on behalf of that employee. Under the provisions of the Bill, the focus is on the workplace rather than the individual employees, with the employer becoming the aggrieved person for the purposes of making an application.

Clause 43 makes it clear that the fact of the availability of workplace orders does not create any new rights or obligations in relation to the employment relationship. It is not intended, for example, that this legislation should give rise to a cause of action by an employee against an employer who does not apply for a workplace order in a particular situation.

Clause 44 defines personal violence in relation to a workplace. The emphasis in this definition is on the relationship of the violence to the

employee is their capacity as an employee in a particular workplace. If personal violence is aimed at an employee outside of their capacity as an employee in the workplace, then that employee may need to seek a separate personal protection order against the respondent.

Clause 45 sets out the grounds for a workplace order. These grounds are similar to an ordinary personal protection order, except that the relevant behaviour is personal violence in respect of the workplace (defined in clause 46).

Clause 46 sets out the matters that must be considered by the Magistrates Court before making a workplace order. These matters are based on the matters that must be considered by the Magistrates Court in making an ordinary personal protection order.

Clause 47 lists the conditions and prohibitions that a workplace order may contain. Similarly to the conditions and prohibitions for an ordinary personal protection order, the Magistrates Court may only include such conditions and prohibitions as it considers necessary or desirable. The prohibitions and conditions are specific to a workplace situation.

Part 6 – Interim orders

This part sets out the processes and rules for interim orders. The purpose of the order is to provide protection for the aggrieved person until the application may be heard in full by the Magistrates Court.

Clause 48 clarifies that an interim order is not made on a separate application, but is made on the application for a final order.

Clause 49 provides the grounds for an interim order. The Magistrates Court must be satisfied that it is necessary to make the order to ensure the safety of the aggrieved person pending the hearing of the application. Because of the nature of the order as an interim order, these grounds are less extensive than the grounds for a final order.

Clause 50 carries over existing requirements for the Magistrates Court to consider whether family access arrangements are relevant to the making of the interim order.

Clause 51 specifies the conditions that may be included in an interim order. These carry over the existing provisions with one additional matter.

Clause 51(2) provides that the Magistrates Court may prohibit a child respondent from being on premises where the child receives care or protection only if satisfied that adequate arrangement have been made for the child's care and safety. This provision is consistent with an existing provision in the DVA in relation to emergency orders.

Clause 52 specifies that an interim order, that is made other than by consent, remains in force for a period of up to 8 weeks as specified in the order. The interim order may be made for a period of longer than 10 days only if the longer time is necessary to allow time for the application to be decided and served on the respondent. The provision should be read in conjunction with clause 58. The combined effect of these provisions is that while the initial interim order may be made for a longer period of time than under the existing provisions, there is an upper limit on the overall length of an interim order, unlike the existing provisions.

Clause 53 provides that an interim order made with the consent of the parties may be made for a period of up to 16 weeks. This the maximum period for an interim order, including extensions, under section 58.

Clause 54 provides that an interim order ceases to have effect if it is revoked, or if the application on which it is made is decided.

Clause 55 provides that where a final order is made on an application and the respondent is not present at that the time the order is made, then the interim order is taken to continue in force until such time as the final order is served on the respondent. This provision is carried over from the existing legislation.

Clause 56 provides that it is not necessary that the application be served on the respondent before the Magistrates Court may make an interim order. This is consistent with existing requirements of the DVA and MCA. The respondent would, however, need to have been served with the interim order before any offence of breach of that order may be established under clause 34.

Clause 57 is similar to clause 38 and carries over the existing provisions of both the DVA and MCA in respect of firearms licences where an interim order is made. Where an interim order is made, any firearms licence that is held by the respondent is suspended by force of this clause. In the case of an interim *personal protection order*, however, an application may be made for an order that the licence not be suspended.

Clause 58 provides for the extension of interim orders. An interim order may not be extended for a period of longer than 8 weeks unless the parties consent. There is no restriction on the number of times which an interim order may be extended other than that the total length of an interim order may not exceed 16 weeks. The maximum time limit of 16 weeks also applies to consent orders, although within the over time limit, the parties may consent to extensions of longer than 8 weeks.

Clause 59 provides that where an interim order may not be extended because of clause 58, then a further interim order on an application may be made in certain circumstances. This clause recognises that there may be situations where an application is not able to be finalised within the 16 week time limit, and there is a continuing need for an interim order. A further interim order could only be by the Magistrates Court in special or exceptional circumstances.

Clause 60 provides for the registrar to extend an interim order where the registrar has adjourned proceedings under clause 17 because the respondent has not been served with a copy of the application.

Part 7 – Emergency orders

This part carries over the effect of emergency order provisions of the DVA. Emergency orders are only available in respect of domestic violence matters. The emergency order provisions were included in the DVA as a measure to afford some protection in domestic violence situations out of court hours. Because emergency orders are sought outside of court hours, the procedures for emergency orders are quite different to the procedures provided for other types of orders. An application for an emergency order may only be made by a police officer, and the order is made by a judicial officer. Judicial officer is a term specific to part 7 and is defined to mean a magistrate, or the registrar or a deputy registrar if authorised by the Chief Magistrate under clause 92 to act as a judicial officer.

Clause 61 provides that a police officer may apply for an emergency order.

Clause 62 sets out the circumstances in which an emergency order may be made. The judicial officer must be satisfied that there are reasonable grounds for believing that the respondent may cause physical injury to the aggrieved person if the order is not made, and that arrest is not practicable. The circumstances in which an emergency order may be granted are narrower than those in which an interim order may be granted consistently with the emergency nature of the order. This provision is carried over from the DVA.

Clause 63 carries over from the DVA the existing procedure for a police officer to apply for an emergency order by telephone. In considering whether to make an emergency order, the judicial officer is required by **clause 64** to consider any relevant contact orders. This requirement is also carried over from the DVA.

Clauses 65, 66 and 67 set out formal matters in relation to how orders are made and what records must be kept. These requirements are carried over from the DVA.

Clause 68 allows a police officer to detain a person for up to 4 hours where it is proposed to obtain an emergency order against that person, consistently with the current provisions of the DVA.

Clause 69 sets out the matters that may be included in an emergency order. Consistently with clause 51(3) and the current provisions of the DVA, clause 69(3) provides that an emergency order may only prohibit a child respondent from being on premises where they normally live if the judicial officer is satisfied that adequate arrangements have been made for the child's care and safety.

Clause 70 establishes the period for which an emergency order remains in force. These provisions are carried over from the DVA.

Clauses 71 and 72 provide for the manner in which an emergency order may be varied or revoked. Outside of court hours, the application process for varying or revoking an order is the same as for the initial grant of the emergency order - ie. the order may only be varied or revoked by a judicial officer on application by a police officer. Within court hours, clause 11 provides the relevant mechanism for the parties seeking to have the order varied or revoked.

Clause 73 is similar to clause 57 in providing for automatic suspension of a firearms licence where an emergency order is made.

Clauses 74 and 75 respectively require a police officer to serve an emergency order on the respondent and to explain the effect of the order.

Clause 76 requires the recording by a police officer of reasons for a decision not to apply for an emergency order. This requirement is carried over from the DVA.

Part 8 – Review

This part deals with the review of various decisions under the Act.

Clause 77 provides for the Magistrates Court to review consent orders on the grounds that the making of the order (ie. the consent of the party) was induced or affected by fraud or duress.

Clause 78 specifies which decisions under the Act are appealable. These are any decisions to do with making varying or revoking a protection order, and any decision made on review under clause 77. A decision regarding an interim order or an emergency order is not appealable. The exclusion of interim orders and emergency orders from the appeal process is carried over from the existing provisions of the MCA and DVA.

Clause 79 establishes the right of a party to appeal to the Supreme Court from the decisions listed in clause 78. A party has 21 days in which to file a notice of appeal. The requirements for giving notice of the appeal to other parties and to the Magistrates Court are specified in **clause 80**.

Clause 81 requires the Supreme Court, in considering an appeal, to consider the evidence given in the proceedings. The Supreme Court also has discretion to receive further evidence. This provision is carried over from the MCCJA.

Clause 82 sets out what the Supreme Court may do in respect of a judgement or order that is appealed. These are standard powers.

Clause 83 provides that the lodging of an appeal does not affect the operation of the order. The order will continue to have effect unless the Supreme Court orders otherwise.

Part 9 – Reciprocal arrangements

This part provides for the recognition in the ACT of protection orders made under corresponding laws in another State, Territory, or in New Zealand. The part replaces the substantive provisions of the *Protection Orders (Reciprocal Arrangements) Act 1992*.

Clause 84 sets out the definitions for the purposes of the part.

Clause 85 provides that a person may apply to the registrar for registration of a recognised order. On receipt of the application, **clause 86** requires that the registrar must register the order and convey the relevant information to both the local police and the court where the order was originally made.

Once the order is registered, **clause 87** provides that it becomes enforceable in the Territory and may be varied or revoked accordingly. The relevant procedures for variation or revocation of the order are the procedures under this Act. Where a registered order is varied, **clause 88** requires that the registrar notify the variation to the court where the order was originally made.

Clauses 89 and 90 provide that where the registrar is notified by the originating court that an order has been revoked or varied, then the registrar must cancel the registration of the original order and, in the case of a varied order, register the varied order.

Clause 91 is complementary to clauses 89 and 90. Where a recognised court notifies the Magistrates Court that it has registered a protection order made in the Territory, then the Magistrates Court must notify that court if it varies or revokes the protection order.

Clause 92 stipulates how a registered order may be admitted as evidence in a court.

Part 10 – Administration

This part sets out matters relevant to the administration of the Act.

Clause 93 provides that the Chief Magistrate may authorise the registrar or a named deputy registrar to exercise the power of the Magistrates Court in relation to consent orders or to act as a judicial officer for the purposes of part 7 of the Act (which is about emergency orders).

Clause 94 provides that a deputy registrar may only hold a preliminary conference only if authorised to make consent orders. Preliminary conferences are required to be held by the registrar under clause 18. The definition of *registrar* includes a deputy registrar except for the purposes of holding a preliminary conference.

Clause 95 provides for the recovery of expenses in the specific case where an application is frivolous, vexatious or otherwise not made in good faith. This provision is carried over from the DVA.

Clause 96 provides for the registrar to approve forms for the purposes of the Act. This is a change from the current legislation where forms are set out in Schedules. The use of approved forms is a more flexible mechanism for dealing with what are essentially administrative matters.

Part 11 – Service

This part sets the manner in which documents may be served for the purposes of the Act.

Clause 97 sets out the manner in which documents may be served where personal service is not specified. The service methods specified are standard methods of service.

Clause 98 is also a standard provision that allows the Magistrates Court to make an order about how a document may be served where the specified method of service is not reasonably practicable or possible.

Clause 99 allows the Magistrates Court to direct that a document be served by a police officer.

Part 12 – Public Access and Publication

These provisions are carried over from the existing DVA and MCA.

Clause 99 prohibits the publication of reports about proceedings. This provision is carried over from both the DVA and MCA. **Clause 100** is an exception to this general prohibition and allows such publication as is necessary for the processes of the court and the Act. The court may also permit the circulation of information if satisfied that it is in the public interest.

Part 13 – Miscellaneous

Clause 101 provides that the fact of criminal proceedings in relation to the same behaviour that is the basis of a protection order application does not prevent the court from making a protection order. This provision is carried over from the existing DVA and MCA.

Clause 102 provides that the Act does not affect the operation of power of police in relation to recognisances to keep the peace under the *Crimes Act 1900*. This provision is carried over from the existing MCA and DVA.

Clause 103 is an interpretative provision that establishes time limits in respect of hearings.

Clause 104 provides for short periods of time to be calculated only be reference to days on which the court is operating.

Clause 105 provides that where a procedure is not prescribed under the Act, the Chief Magistrate may give directions about the procedure to be followed.

Clause 106 is a regulation making power for the Act. The regulations will contain procedural rules for proceedings under the Act.

Part 14 – Transitional

This purpose of this part is to preserve the effect of existing restraining and protection orders, and to transfer the operation of those orders to the new legislation.

Clause 107 contains definitions for the purposes of the part.

Clause 108 provides that proceedings for a protection order (under the DVA) or a restraining order (under the MCA) that have been initiated but not completed before the commencement of the Act may be continued as if they were applications made under the Act.

Clauses 109, 110 and 111 preserve the effect of orders made under the repealed legislation. These orders continue in force, and may be enforced, as if they were made under the Act.

Clause 112 is a transitional definition of domestic violence which takes account of section 129 of the repealed *Motor Traffic Act 1936*. This provision currently has a transitional application to the definition of domestic violence under the DVA and is expressed to cease to have effect on 1 January 2002. This effect is preserved.

Clauses 113, 114 and 115 preserve the effect of an automatic cancellation or suspension of a firearm licence under the DVA.

Clauses 116 and 117 similarly preserve the effect any automatic cancellations or suspensions, or any order that a firearms licence not be suspended or cancelled, made under the MCA.

Clause 118 carries over the restrictions on publication of reports of proceedings under the MCA and DVA to the new Act.

Clauses 119, 120, 121 and 122 carry over the arrangements under the *Protection Orders (Reciprocal Arrangements) Act 1992* to the new Act.

Clause 123 is a transitional regulation making power. The power is intended to allow modification of the part to take account of any unforeseen transitional provisions.

Clause 124 is a sunset clause for the transitional provisions.