

**2002**

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**PROTECTION ORDERS REGULATIONS 2002**

**SUBORDINATE LAW 2002 No 6**

**EXPLANATORY STATEMENT**

Circulated by authority of the  
Attorney-General  
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# PROTECTION ORDERS REGULATIONS 2002

## SUBORDINATE LAW 2002 No 6

### Outline

These regulations are made under section 106 of the *Protection Orders Act 2001* (“the Act”). The purpose of the Act was to consolidate the provisions in part 10 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. Both the *Domestic Violence Act 1986* and part 10 of the *Magistrates Court Act 1930* rely on a modified version of the rules in the *Magistrates Court (Civil Jurisdiction) Act 1982* as procedural rules for proceedings under those Acts.

Many of the provisions in the *Magistrates Court (Civil Jurisdiction) Act 1982* have no application to protection order proceedings. These regulations extract the applicable rules from the *Magistrates Court (Civil Jurisdiction) Act 1982* as modified by the *Domestic Violence Act 1986* and part 10 of the *Magistrates Court Act 1930* so that the Act has its own stand alone rules that are readily ascertainable.

### Details of regulations

#### Part 1 - Preliminary

**Regulation 1** is a formal regulation setting out the name of the regulations.

**Regulation 2** provides for commencement of the regulations. The commencement is linked to the commencement of the Act.

**Regulation 3** provides that the dictionary is part of the regulations.

**Regulation 4** provides that the notes to the regulations are included as an explanatory aid and are not part of the regulations.

## **Part 2 – Applicant’s obligation**

**Regulation 5** carries over the requirement from the *Domestic Violence Act 1986* for an applicant for a protection order to advise the Magistrates Court of any family contact order of which they are aware.

## **Part 3 – Preliminary conferences.**

**Regulation 6** sets out the objects of a preliminary conference. Essentially, these objects are to delineate the issues in contention. These regulations carry over the existing procedures that are set out in practice directions issued under the *Magistrates Court (Civil Jurisdiction) Act 1982*.

**Regulation 7** provides that a preliminary conference need not be held in the case of an application for an emergency order (as this would be impracticable) or if the registrar is satisfied that the conference will not achieve its objects.

**Regulation 8** sets out administrative requirements for the registrar to notify the parties of preliminary conferences.

**Regulation 9** provides that statements made during a preliminary conference evidence are not admissible except in particular circumstances.

## **Part 4 – Hearings before Magistrates Court**

**Regulation 10** carries over the existing requirement that hearings be in public. This regulation should be read in conjunction with the provisions about restrictions on the publication of reports about proceedings in part 12 of the Act.

**Regulation 11** sets out the circumstances in which public hearing is not required.

**Regulation 12** provides that the presiding magistrate may direct that a hearing or part of a hearing be held in private if satisfied that it is in the public interest or in the interests of justice to do so.

**Regulation 13** provides for the order in which the parties to an application may present their case.

**Regulation 14** provides that if the applicant is not present at the time set down for hearing, then the Magistrates Court may either dismiss or adjourn the application.

**Regulation 15** provides for the procedure to be followed by the Magistrates Court where the respondent to an application is not present. The court may either hear the application in the respondent's absence or adjourn the proceedings and issue a warrant for the respondent to be apprehended and brought before the court. This provision is carried over from both the *Domestic Violence Act 1986* and part 10 of the *Magistrates Court Act 1930*.

**Regulation 16** provides that if neither the applicant nor respondent appears, then the court may dismiss the proceedings.

**Regulation 17** allows the court to join a child as a party to an application where the applicant for a protection order has sought a condition in the order to restrain the respondent from engaging in particular conduct in relation to the child. The joining of a child as a party may be appropriate, for example, where the court considers that the interests of the child should be considered separately to the interests of the applicant.

**Regulation 18** allows the court to hear one or more applications together if there is a common question to be decided.

**Regulation 19** requires the respondent in proceedings to advise of an address for service or to file a notice of intention to appear.

## **Part 5 – Evidence**

**Regulation 20** carries over the existing requirement that evidence in protection order proceedings must be given orally. The exception to this requirement is where the parties agree that evidence may be given by affidavit, or with the leave of the Magistrates Court.

**Regulation 21** provides that the Magistrates Court may inform itself in any way that it considers appropriate. This provision is carried over from the *Domestic Violence Act 1986*.

**Regulation 22** provides that an affidavit for use in proceedings may be sworn at any stage during the proceedings. In respect of an affidavit of service, the affidavit must not be sworn more than two weeks after the date of service. This regulation should be read in conjunction with regulation 27.

**Regulation 23** provides for the particular form for an affidavit. The registrar may also approve a form for affidavits under section 96 of the Act. All approved forms are notified on the Legislation Register.

**Regulation 24** provides that an irregularity in the form of an affidavit will not necessarily be fatal to the affidavit's use in the proceedings.

**Regulation 25** stipulates when documents may be either attached or made an exhibit to an affidavit.

**Regulation 26** provides that if an affidavit contains an alteration on its face, then the affidavit may still be used in proceedings if the person before whom the affidavit is sworn has initialled the alteration.

**Regulation 27** provides that if an affidavit is to be used in proceedings, it must be filed and a copy served on the other party in sufficient time before the hearing.

**Regulation 28** provides for the issuing of summons in proceedings. There are two types of summons, a summons to give evidence, and a summons for production of a document or thing.

**Regulation 29** provides for the manner in which a party to proceedings may request the registrar to issue a summons.

**Regulation 30** provides that a summons must be served within a reasonable time to allow the served party to comply with the summons.

**Regulation 31** provides that a person must not fail to comply with a summons. Regulation 31 also specifies the circumstances in which a person is not required to comply with a summons.

**Regulation 32** provides for the manner in which a person outside the Territory may satisfy a summons through the provisions of the *Evidence (Miscellaneous Provisions) Act 1991*.

**Regulation 33** provides that a person who is not a party to proceedings may satisfy the requirements of a summons to produce if the person produces the document or thing to the registrar in accordance with the regulation.

**Regulation 34** provides that a summons may be set aside on application to the Magistrates Court.

**Regulation 35** provides for the production of a document or thing pursuant to a notice rather than a summons. This regulation only applies if the person served with the notice is also a party to the proceedings.

**Regulation 36** provides that the Magistrates Court may make an order for the examination of a witness for the purpose of a proceeding. Such an order may be made, for example, where it is not reasonably practical for the person to appear before the court.

**Regulation 37** sets out the procedure to be followed by the examiner in carrying out an order of the Magistrates Court made under regulation 36.

**Regulation 38** provides for the steps to be followed by an examiner in relation to entering evidence into the record of the court after conducting an examination.

**Regulation 39** provides for the payment of persons attending before an examiner in the same way as if the person was required to attend before the court.

**Regulation 40** provides that, in addition to the entering of evidence into the record of the court, an examiner may also make a report to the Magistrates Court about the examination.

**Regulation 41** provides that a respondent in a proceeding may file a notice of defence in proceedings at any time before the proceeding is finally decided. This regulation should be read in conjunction with regulation 42.

**Regulation 42** provides that if the respondent does not file a notice of defence, then they may only rely on an undisclosed defence with the leave of the Magistrates Court, or with the consent of the applicant.

**Regulation 43** provides for the applicant to file a reply where the respondent files a notice of defence. The applicant is not required to file a reply, but may do so.

#### **Part 6 – Discontinuance and adjournments.**

**Regulation 44** provides that an applicant may discontinue a proceeding at any time before the proceeding is finally decided. Discontinuance does not prevent a further application being made in relation to the same matter.

**Regulation 45** provides that the Magistrates Court may adjourn a hearing at any time as it considers the adjournment to be appropriate.

**Regulation 46** provides that if a hearing is adjourned, then the return date notice must be amended to state the new time for the hearing. This provision is carried over from the *Domestic Violence Act 1986*.

**Regulation 47** provides for the adjournment of proceedings by the registrar where a magistrate is not available at the time fixed for the hearing.

## **Part 7 – People with legal disability.**

This part should be read in conjunction with section 12 of the Act. Section 12 provides that a *person with a legal disability* (defined as a child or a *person with mental disability*) may only make an application for a protection order by a next friend.

**Regulation 48** provides that a respondent with a legal disability may defend the proceeding only by a litigation guardian.

**Regulation 49** specifies who may be appointed as next friend or litigation guardian of a person with a legal disability, and how they may be appointed.

**Regulation 50** specifies what a next friend or litigation guardian may do in respect of proceedings under the Act.

**Regulation 51** sets out the responsibilities of a next friend or litigation guardian in respect of proceedings under the Act.

**Regulation 52** provides that the Magistrates Court may remove a person who is a litigation guardian or next friend. This may be necessary where, for example, the Magistrates Court is satisfied that the person is no longer capable of representing the interests of the person under a legal disability.

## **Part 8 – Representation**

**Regulation 53** specifies how a party to a proceeding under the Act may appear before the Magistrates Court or the registrar. A party may choose to represent themselves, use a lawyer, or, with the leave of the court, be represented by another person. A corporation may be represented by an authorised officer of the corporation.

**Regulation 54** provides that the Magistrates Court may adjourn proceedings so as to allow a person under a legal disability to obtain representation.

**Regulation 55** provides that the Magistrates Court may specifically ask the Legal Aid Office to arrange representation for a child in proceedings. Under section 12 of the

Act, a child may make an application for a domestic violence order in their own right and in this type of case, the court may consider that representation would better protect the interests of the child.

### **Part 9 - Interlocutory matters**

**Regulation 56** provides that interlocutory applications may only be made by motion filed in accordance with the regulation.

**Regulation 57** provides that an applicant may move the Magistrates Court without having filed a notice of motion in accordance with regulation 56 in certain circumstances.

**Regulation 58** specifies the matters that must be contained in a notice of motion.

**Regulation 59** provides for the powers of the Magistrates Court on hearing a motion.

**Regulation 60** provides a general power for the Magistrates Court to order that a document filed in proceedings be amended.

**Regulation 61** specifies the manner in which simple amendments may be made to a document in proceedings.

**Regulation 62** requires that where the amendments required are not simple amendments, then the amendments must be made by filing a fresh document.

**Regulation 63** requires that the party amending a document that has already been served must also serve a copy of the amended document on the previously served parties.

**Regulation 64** provides for the amendment of documents in certain circumstances where the relevant limitation period has expired.

**Regulation 65** provides for the amendment of an order to correct a clerical mistake or error.

**Regulation 66** provides that the Magistrates Court may stay or dismiss frivolous or vexatious proceedings either on its own motion, or on application.

**Regulation 67** provides that the Magistrates court may dismiss proceedings if the applicant does not take reasonable steps to have the proceeding heard.

**Regulation 68** provides a process by which a party in proceedings may admit facts in favour of the other party.

**Regulation 69** provides a process for a party to proceedings, by notice, to require the other party to admit the facts specified in the notice. If the served party does not dispute the facts within 21 days of being served with such a notice, the facts will be taken to have been admitted by that party.

**Regulation 70** provides that where a party makes admissions, then the Magistrates Court may make an order consistent with that admission.

**Regulation 71** provides that admissions may only be used for the purposes of the particular proceeding.

**Regulation 72** provides that where a party allows discovery of a document pursuant to an affidavit of discovery, then certain presumptions about the authenticity of the document will follow.

**Regulation 73** provides that any of the parties to a proceeding may serve a notice requiring the other party to give discovery of documents.

**Regulation 74** provides for the manner in which the party who is served with a notice of discovery must comply with the notice through filing an affidavit of discovery. The period for compliance must not be less than 21 days after the day the notice is served.

**Regulation 75** provides a mechanism through which a party who is served with a notice of discovery may apply to the Magistrates Court to have discovery limited.

**Regulation 76** provides a general power for the Magistrates Court to order a party to file an affidavit of discovery.

**Regulation 77** specifies the manner in which the contents of an affidavit of discovery must be arranged.

**Regulation 78** provides that a person may claim privilege from production only with the leave of the Magistrates Court.

**Regulation 79** provides a mechanism for the Magistrates Court to order a party to file an affidavit stating whether a particular document is, or has been, in the party's possession.

**Regulation 80** specifies the process for a party to inspect a document mentioned in an affidavit of discovery.

**Regulation 81** provides a mechanism for the Magistrates Court to order the production of a document, or a copy of a document to another party in the proceedings.

**Regulation 82** allows a party who has gained discovery of a document to make a copy of the document.

**Regulation 83** provides that the Magistrates Court may order a party to produce a document to the court.

**Regulation 84** allows the Magistrates to inspect a document in respect of which there is an objection to production on either the grounds of privilege or another ground. The court may inspect the document in order to make a decision on the validity of the objection.

**Regulation 85** specifies when a party to a proceeding may file and serve interrogatories on another party.

**Regulation 86** specifies when and how the party on whom the interrogatories are served must answer the interrogatories. The Magistrates Court may order that further and better answers be given to interrogatories.

**Regulation 87** provides that where a person fails to attend pursuant to an order of the Magistrates Court under regulation 86, then the court may make such orders as it considers just.

**Regulation 88** stipulates the manner in which the answers to interrogatories may be used as evidence in proceedings.

**Regulation 89** provides a general presumption that each party to a proceeding must bear their own costs. In the event that the Magistrates Court does award costs, then those costs are recoverable under the *Magistrates Court (Civil Jurisdiction) Act 1982*.

## **Part 11 –Miscellaneous**

**Regulation 90** is a general power that allows the Magistrates Court to set aside an order if satisfied that it was made irregularly, illegally or against good faith. The court may also set aside an order if the parties consent to its being set aside.

**Regulation 91** provides a mechanism for the Magistrates Court to deal with an irregularity in a proceeding.

**Regulation 92** clarifies that an order takes effect on the day it is made.

**Regulation 93** provides that a magistrate may reserve his or her decision on a matter.

**Regulation 94** provides that the magistrate making an order under the Act must sign a minute of the order.

**Regulation 95** provides that the registrar must arrange for the order of the Magistrates Court to be formally drawn up and filed in the court.