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LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

DOMESTIC VIOLENCE AND PROTECTION ORDERS REGULATION 2009

SUBORDINATE LAW SL2009–10

EXPLANATORY STATEMENT

Circulated by authority of the
ACT Attorney General
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Outline

The *Domestic Violence and Protection Orders Regulation 2009* (the Regulation) is made under sections 26 and 118 of the *Domestic Violence and Protection Orders Act 2008* ('the Act').

The protection orders scheme provided by the Act has two broad purposes. The first is to prevent violence between family members and others who are in relevant relationships, for the purposes of the Act. The second is to facilitate the safety and protection of people who fear or experience violence by providing a legally enforceable mechanism to prevent violent conduct and allow for the resolution of conflict without the need to resort to adjudication.

More specifically, the Act addressed issues raised by the ACT Supreme Court in Si bhnf Cc v Ks bhnf Is [2005] ACTSC 125 (2 December 2005) ('Si v Ks'). As well as government and non-government groups who are significantly involved in the ACT protection orders scheme. The problems enunciated in Si v Ks regarded incompatibility between the *Domestic Violence and Protection Orders Act 2002* (ACT) and the *Human Rights Act 2002* (ACT). The issues raised by the users of the *Domestic Violence and Protection Orders Act 2001* (ACT) concerned the practicability of the Act, as well as the limits on the Act's coverage of intimate relationships in which family violence dynamics arise.

The Act and the Regulation proceed from the large body of empirical research indicating that domestic violence is a particular form of interpersonal violence that warrants a legally enforceable protective response.

The Regulation is comprised of procedures for the administration of protection order applications by the Magistrates, the Registrar and the Deputy Registrars.

The content of the Regulation was formed on the basis of consultations with the ACT Magistrates, the ACT Magistrates Court Registrar and Deputy Registrars, and government and non-government stakeholders in the ACT protection orders scheme.

The vast majority of the clauses in the Regulation carry over existing provisions from the *Domestic Violence and Protection Orders Regulation 2002* (ACT). In this Regulation, they are more logically sequenced and cast in language consistent with that used in the Court Procedures Rules 2006 and in contemporary ACT legislation, generally.

The additional provisions are responses to issues that were raised by the Regulation's principal users. These issues turned on the Regulation's practicability.

For example, the new regulation 12 enables the registrar to ask for further particulars from an applicant for a non-emergency protection order, before the Magistrates Court hearing on the application. This ensures that the relevant facts are before the presiding magistrate at the beginning of the hearing. Similarly, regulation 6 enables the registrar to not accept an application for a non-emergency protection order, when the

application appears to the registrar, on its face, to be an abuse of the Magistrate's Court process and/or to be frivolous or vexatious.

In broad terms, the Regulation sets out:

- that the Magistrates Court registrar (the registrar) need not accept an application for a non-emergency protection order, when the application appears to the registrar, on its face, to be an abuse of the Magistrates Court process and/or to be frivolous or vexatious; etc. (**Part 2 Applications generally**);
- the conduct of preliminary conferences between applicants and the respondents to reduce resort to adjudication, and to ensure where adjudication is necessary, that the presiding magistrate (the magistrate) has, the relevant facts and the issues in contention, at the beginning of the hearing; etc. (**Part 3 Preliminary conferences**);
- that hearings are usually in public; the procedure if the respondent or the applicant or both are not present at a hearing; the order in which the case is presented; that the Magistrates Court may join a child as a party; when applications can be heard together; and what a respondent must do upon being served; etc. (**Part 4 Hearings before Magistrates Court**);
- what evidence is admissible, and when and how, etc. (**Part 5 Evidence**);
- when a party can discontinue a matter; when the Magistrates Court can adjourn, stay and dismiss a proceeding; and when the registrar can adjourn a hearing; etc. (**Part 6 Discontinuance and adjournments**).
- how a Magistrate is to appoint a litigation guardian for a person with a legal disability or with legal disabilities, and how the litigation guardian is to represent that person, etc. (**Part 7 People with a legal disability**);
- who is permitted to represent parties and how, etc. (**Part 8 Representation**).
- how interlocutory matters are managed (**Part 9 Interlocutory matters**).
- procedures for the payment of costs, etc. (**Part 10 Costs**); and
- what the Magistrates Court may do, if there has been a failure to comply with a requirement of the Act or a direction given by the Magistrates Court in relation to a proceeding. (**Part 11 Proceedings and orders**).

Details of regulations

Part 1 - Preliminary

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

Regulation 2 – Commencement – provides for commencement of the regulations.

The regulations commence upon commencement of the Act.

Regulation 3 – Dictionary – provides that the dictionary is part of the regulations.

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

Regulation 5 – Offences against regulation—application of Criminal Code etc – provides for other legislation, such as the Criminal Code and Legislation Act, applying to the offences against this regulation.

Part 2 – Applications generally

Regulation 6 – Rejecting applications—abuse of process etc—Act, s 22 (3) – provides for certain circumstances in which the Registrar need not accept an application for a non-emergency protection order, when the application appears to the registrar, on its face, to be an abuse of the Magistrate’s Court process and/or to be frivolous or vexatious.

Regulation 7 – Court to be told about relevant contact orders – requires an applicant for a protection order to advise the Magistrates Court of any family contact order, or pending application for one, of which they are aware.

Part 3 – Preliminary conferences

Regulation 8 – Objects of preliminary conferences – sets out the objects of a preliminary conference and what a preliminary conference must attempt to do. Essentially, the objects of the conference are to find out whether the proceeding may be settled by consent before it is heard by the Magistrates Court; to determine and delimit the issues to be decided in the proceeding; and to ensure the parties are taking those steps necessary to expedite the proceeding. Further, the conference must try to identify the facts agreed on, the issues in contention, and unusual or urgent factors that require special attention.

Regulation 9 – Exceptions to requirement for preliminary conference— Act, s 24 – provides that a registrar need not hold a preliminary conference for an application for an emergency order, if the registrar is satisfied that the conference will not partly or totally achieve its objects.

Regulation 10 – Notice of, and nonattendance at, conferences – lays down who the registrar must tell, in writing, when and where the preliminary conference is to be held and that non-attendance by a party will be reported to the Magistrates Court. It also specifies the conditions that must obtain for the Registrar to be able to make the latter report to the Magistrates Court .

Regulation 11 – Admissibility of preliminary conference evidence – provides that statements made during a preliminary conference are not admissible evidence, except in particular circumstances.

Regulation 12 – Asking for further particulars—Act, s 26 – enables the registrar to request an applicant for a non-emergency protection order for further particulars, on or before the return date, as per section 26 of the Act.

Part 4 – Hearings before Magistrates Court

Regulation 13 – Hearings usually in public – This regulation requires that hearings be in public, unless certain conditions obtain. This regulation should be read in conjunction with regulations 14 and 15. It also needs to be read with the provisions about restrictions on the publication of proceedings reports, in part 13 of the Act.

Regulation 14 – Public hearing not required – sets out the circumstances in which a public hearing is not required.

Regulation 15 – Closed hearings in special circumstances – provides the circumstances in which the presiding magistrate may order that a hearing or part of a hearing for a non-emergency application order be held in private. The circumstances are that he or she is satisfied that it is in the public interest or in the interests of justice to do so. This regulation also provides that it is an offence to contravene an order made by a magistrate under this section.

Regulation 16 – Order of presentation of cases – provides for the order in which the parties to an application may present their case.

Regulation 17 – If applicant not present at return of application – provides that if the applicant is not present at the time set down for hearing, then the Magistrates Court must either dismiss the application or adjourn the hearing.

Regulation 18 – If certain respondent not present – provides for the procedure the Magistrates Court must follow, where the respondent to an application for a non-emergency protection order is not present, in certain specified circumstances. The Court must either decide the application in the respondent's absence or, if the Court

considers it appropriate, adjourn the proceedings and issue a warrant for the respondent to be arrested and brought before the court.

Regulation 19 – Procedure if neither party appears – provides that the Magistrates Court may dismiss the proceedings, but may not order costs, if neither the applicant nor the respondent appears, either personally or via their representative.

Regulation 20 – Court may join child as party – allows the Magistrates Court to join a child as a party to an application, where the applicant for a protection order has sought a condition mentioned in section 48(2)(4) or (3) of the Act. That section prohibits someone from doing certain things in relation to a child of the aggrieved person. 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 21 – Applications heard together – allows the Magistrates Court to hear two or more applications together, in certain conditions. These conditions are that there is a common question of fact to be decided; or the applications relate to the same event or series of events; or the Court gives leave for the applications to be heard together.

Regulation 22 – Obligation on respondent – requires the respondent to an application to advise of an address for service in the first affidavit filed by the respondent or, if the applicant does not file an affidavit, to file a notice of intention to appear and serve a copy of the notice on the applicant.

Part 5 – Evidence

Division 5.1 Giving and taking evidence

Regulation 23 – Giving evidence – carries over the existing requirement that evidence in protection order proceedings must be given orally, except in one circumstance. That circumstance is where the parties agree that evidence may be given by affidavit, or the Magistrates Court gives leave for evidence to be given by affidavit.

Regulation 24 – Additional information – provides that an applicant for a non-emergency application order may, at the hearing, rely on and present information other than that which is stated in the application to support the application.

Regulation 25 – Court may inform self – provides that the Magistrates Court may inform itself in any way that it considers appropriate in a proceeding.

Division 5.2 Affidavits

Regulation 26 – Affidavit—time for swearing – provides that an affidavit for use in a proceeding may be sworn at any stage before or after commencement of the proceeding. 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 31.

Regulation 27 – Affidavit—form – provides for the particular form that must be used for an affidavit that will be used in a proceeding.

Regulation 28 – Affidavit—irregularity – provides that an affidavit which is irregular in form may be filed and served. It also provides that the affidavit may be used in a proceeding with the Magistrates Court’s leave. This regulation also specifies what the Magistrates Court must be satisfied of, for an affidavit to be used in a proceeding, when section 19 or 20 of the *Oaths and Affirmations Act 1984 (ACT)* applies to that affidavit.

Regulation 29 – Affidavit—annexures and exhibits – stipulates when documents may be either attached or made an exhibit to an affidavit and how an exhibit to an affidavit in a proceeding must be identified and made.

Regulation 30 – Affidavit—alterations – provides that if an affidavit contains an alteration on its face, then the affidavit may still be filed, unless the Magistrates Court otherwise orders. This regulation also states when such an affidavit may be used in a proceeding without the leave of the Magistrates Court. This regulation applies to a document verified by affidavit, as it was the affidavit.

Regulation 31 – Affidavit—reliance – provides that if an affidavit is to be used in proceedings, it must be filed and a copy served on each other party within the time the

Magistrates Court orders, or in sufficient time before the hearing to allow each party to make and file, and serve a copy of, an affidavit in reply.

Division 5.3 Subpoenas

Regulation 32 – Subpoena—issue – provides for how the Magistrates Court may, and how the registrar must, issue certain subpoenas. This regulation applies to three types of subpoenas: a subpoena to give evidence, a subpoena for production of a document or thing, and a subpoena to do both.

Regulation 33 – Subpoena—copies – requires that a party to a proceeding who requests the registrar to issue a subpoena under regulation 32, must file three copies of the subpoena.

Regulation 34 – Subpoena—timing of service – provides that a subpoena must be served within a reasonable time to allow the served party to comply with the subpoena.

Regulation 35 – Subpoena—requirement for compliance – provides that a person must comply with a requirement of a subpoena, unless certain conditions specified in regulation 35(3) obtain. This regulation also states what the Magistrates Court may do, if the person fails to comply with a requirement of a subpoena. Failing to comply with a requirement of a subpoena, without a reasonable excuse, is an offence against the Criminal Code, chapter 7 (Administration of justice offences).

Regulation 36 – Evidence from outside ACT – provides for the manner in which a person outside the Territory may satisfy a subpoena through sections 20(1) and 32(1) of the *Evidence (Miscellaneous Provisions) Act 1991* (ACT).

Regulation 37 – Subpoena—production by non-party – provides that a person who is not a party to proceedings may satisfy the requirements of a subpoena to produce a document or a thing, if the person produces the document or thing to the registrar in accordance with this regulation.

Regulation 38 – Subpoena—setting aside – provides when the Magistrates Court may set aside part or the whole of a subpoena, on the application of a person named in

the subpoena. It also specifies how this application must be filed and to whom it must be served.

Regulation 39 – Production on notice – provides for the production of a document or thing by a person served a notice to produce a document or thing by a party to the proceeding. It also states that the person must produce the document or thing if it is in their possession, unless the Magistrates Court orders otherwise.

Division 5.4 Examination

Regulation 40 – Order for examination of witnesses – 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. It also states what the examiner and applicant must do, if the Court makes such an order. If the documents filed in the proceedings are insufficient to inform the examiner the questions to be asked in the examination, the Regulation further requires the Magistrates Court to state the questions in the order or by subsequent order,

Regulation 41 – Examination procedure and objections – sets out the procedure to be followed in the examination pursuant to an order of the Magistrates Court made under regulation 40. It affords certain rights to a party to the proceeding and their lawyer, and a person being examined.

Regulation 42 – After examination – 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. It also provides that the evidence given by someone in the examination is admissible at the hearing of the proceeding, unless the Magistrates Court is satisfied that the person who gave the evidence can attend court to give the evidence.

Regulation 43 – Entitlement to expenses – provides that a person attending before an examiner is entitled to be paid reasonable expenses, in the same way as if the person was required to attend before the Magistrates Court.

Regulation 44 – Examiner’s reports – 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. This regulation also enables the Magistrates Court to make any order it considers appropriate, upon receiving the report.

Division 5.5 Defences

Regulation 45 – Notice of grounds of defence – provides that a respondent in a proceeding may file a notice of defence in proceedings, at any time before the end of the proceeding. It also requires that the notice be signed by the respondent, the respondent’s lawyer or an authorised agent.; and that the registrar must serve the notice on the applicant. This regulation should be read in conjunction with regulation 46.

Regulation 46 – Reliance on undisclosed defence – 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 47 – Reply to notice of grounds of defence – provides the procedural requirements for an applicant filing a reply to a respondent’s notice of defence. The applicant is not required to file a reply, but may do so. It also requires that the registrar must serve the reply on the defendant.

Part 6 – Discontinuance and adjournments

Regulation 48 – Discontinuance – provides that an applicant may discontinue a proceeding at any time, before the proceeding is finally decided. It also provides that discontinuance does not prevent a further application being made in relation to the same or substantially the same matter and that discontinuance is not a defence in a proceeding on any further application.

Regulation 49 – Adjournment by court – provides that the Magistrates Court may adjourn a hearing, at any time, in any way, and on terms, it considers appropriate.

Regulation 50 – Return date notice on adjournment – provides that if a hearing is adjourned, then the return date notice set by the registrar, under section 22 of the Act, must be amended to state the new time and place for the hearing. This regulation also provides that the amended return date must be served on any party to the proceeding who is not present and not otherwise aware of the new time and place.

Regulation 51 – Adjournment of hearing by registrar – provides for when the registrar may and when he or she must adjourn the hearing, where a magistrate is not available at the time fixed for the hearing.

Part 7 – People with legal disability

Regulation 52 – Litigation guardian—appointment – provides who may be appointed as a litigation guardian for a person with a legal disability in a proceeding and how the appointment is made. This regulation should be read in conjunction with the definition of *manager*, in the dictionary of the *Guardianship and Property Management Act 1991* (ACT). It should also be read in conjunction with regulation 57.

Regulation 53 – Litigation guardian—powers – specifies that the litigation guardian may or must do anything in respect of proceedings under the Act, if the Act states that a person may or must do something.

Regulation 54 – Litigation guardian—responsibilities – sets out the responsibilities of a litigation guardian in respect of proceedings under the Act.

Regulation 55 – Litigation guardian—removal – provides that the Magistrates Court may remove a person who is a litigation guardian of a person with a legal disability and order that the proceeding be stayed until an alternative person has been appointed as litigation guardian. 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 56 – Right of appearance – 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. This regulation specifies what the person or their representative may and must do. It also states that a person who is not a lawyer is not entitled to receive or recover remuneration or consideration for appearing on behalf of another person. The

regulation provides that this prohibition does not prevent an employee from receiving wages or salary, if they are appearing for their employer in the ordinary course of their duties.

Regulation 57 – Representation of parties with legal disability – provides that the Magistrates Court may adjourn proceedings, so as to allow a person under a legal disability to obtain representation. It also provides that the Court may give to the person, and/or tell the public advocate, whatever information that is necessary to the person obtaining representation.

Regulation 58 – Representation by Legal Aid Office – provides that the Magistrates Court may specifically ask the Legal Aid Office (A.C.T.) to arrange representation for a child in proceedings, if the child is the applicant or a party joined under regulation 20 (Court may join child as a party) or if the Magistrates Court adjourns the proceedings under regulation 57 to allow the child to obtain representation.

Part 9 - Interlocutory matters

Division 9.1 Motions

Regulation 59 – Interlocutory applications – provides that interlocutory applications may only be made by motion filed and served, in accordance with the regulation.

Regulation 60 – Motion without notice – provides that an applicant may move the Magistrates Court without having filed a notice of motion, in certain circumstances specified in this regulation.

Regulation 61 – Notice of motion – specifies the matters that must be contained in a notice of motion. It also requires that anyone who intends to rely on an affidavit at the hearing of a motion must serve and file the affidavit, and serve a copy of the affidavit, in accordance with this regulation.

Regulation 62 – Hearing of motion – provides for the powers of the Magistrates Court on hearing a motion. It requires that, as far as is practicable, a motion must include as many applications as can be dealt with conveniently at the same time. The

regulation specifies that a respondent may make any application in relation to the proceeding, upon hearing of a motion. It states what the Magistrates Court may do, in turn. The regulation states that a motion may be heard in the absence of a party.

Division 9.2 Amendments

Regulation 63 – General power of amendment – provides a general power for the Magistrates Court to order that a document filed in proceedings be amended, or give leave to a party to amend a document filed by the party in the proceeding. It also states that amendments necessary to do certain things, must be made. The regulation clearly states that it does not apply to the amendment of an order or certificate.

Regulation 64 – Simple amendment – specifies the manner in which simple amendments may be made to a document in proceedings; and how a document that has been amended in accordance with this regulation, must be endorsed, if it is filed in a proceeding.

Regulation 65 – Method of amendment of fresh document – requires that where the amendments required are not simple amendments, then the amendments must be made by filing a fresh document and a statement mentioning certain matters specified in regulation 64(2).

Regulation 66 – Service after amendment – requires that the party amending a document that has already been served must, as soon as is practicable, also serve a copy of the amended document on the previously served parties. It also specifies the procedure for this service, in the case that the amendment was made under regulations 64 (Simple amendment) or 65 (Method of amendment of fresh document).

Regulation 67 – Amendment after limitation period – provides for the amendment of documents in certain circumstances where the relevant limitation period has expired. This regulation makes clear that it does not limit the powers of the Magistrates Court under regulation 63 (General power of amendment).

Regulation 68 – Amendment of order or certificate to correct error – provides for the amendment of an order or certificate to correct a clerical mistake or error. It makes clear that regulations 64 (Simple amendment) and 65 (Method of amendment

of fresh document) do not apply in relation to an amendment made under this regulation.

Division 9.3 Stays and dismissals

Regulation 69 – Summary stay or dismissal – provides that the Magistrates Court may stay or dismiss proceedings, if, in a proceeding, it appears that there is no reasonable cause of action is disclosed or the proceeding is frivolous or vexatious or an abuse of the Court’s process. The regulation states that the Court may do this stay or dismissal either on its own motion, or on application of the respondent. It enables the Court to receive evidence on the hearing on the respondent’s application. The regulation also states that the proceeding may be stayed or dismissed either generally or in relation to the claim for relief.

Regulation 70 – Dismissal for lack of prosecution – provides that the Magistrates Court may dismiss a proceeding, or make any other order it considers just, if the applicant does not, within a reasonable time, take reasonable steps to have the proceeding heard; or unreasonably takes a step to avoid the proceeding being heard. The regulation stipulates that this may occur if a respondent makes an application for this dismissal to occur. It also states that the dismissed proceeding is to be treated as if it was discontinued. Consequently, this regulation should be read with section 48 which deals with discontinuance.

Division 9.4 Admissions

Regulation 71 – Voluntary admissions – provides a process by which a party in proceedings may admit facts in favour of the other party, in a notice mentioning those facts that is served on the other party. The regulation delimits the effect of the admission to the proceeding. It also allows the party who made the admission to withdraw it, if the Magistrates Court gives leave to the party to do so.

Regulation 72 – Notice to admit facts – provides a process for a party to proceedings to request the other party, by notice, to admit the facts or documents specified in the notice. It states that if the served party does not serve a notice on the first party disputing each of the facts or the authenticity of each of the documents, within 21 days of being served with the first notice, the facts or the authenticity of the

documents will be taken to have been admitted by that party. The regulation stipulates that the latter admission occurs, only for the proceeding. It also allows the party who made the admission to withdraw it, if the Magistrates Court gives leave to the party to do so.

Regulation 73 – Order on admissions – provides that where a party makes an admission to a proceeding on an application, then the Magistrates Court may, on the application of another party, make an order consistent with that admission. It also makes clear that the Court may do this, notwithstanding that other questions in the proceeding have not yet been decided.

Regulation 74 – Restricted effect of admissions – stipulates that an admission mentioned in Division 9.4 (Admissions) cannot be used against the party in other proceedings or in favour of anyone other than the party in whose favour the admission was made.

Division 9.5 Discovery

Regulation 75 – Admission of documents discovered – provides that a party served an affidavit of discovery is to be taken as admitting that the document described in the affidavit as an original is an original and was printed, written, signed or executed as it purports to have been or that the document described in affidavit as a copy is a true copy, unless the served party follows the procedure specified in regulation 75(4). This regulation delimits the time the served party has to follow regulation 75(4). The reference in regulation 75(4) to ‘time set under the Act for inspection of a document’ is to the time set by sections 78, 81 or 84 of the Act.

Regulation 76 – Production of documents at hearing of proceeding – provides that where a party has served an affidavit of discovery on another party under the Act, at the hearing, the served party must produce any of the documents mentioned in the affidavit that is in their possession, as if a notice to produce had also been served on them at the same time as the affidavit.

Regulation 77 – Notice for discovery – provides that any of the parties to a proceeding may serve a notice requiring the other party to give discovery of documents, if there has been an implied joinder of issues between the parties,

provided that the Magistrates Court has not otherwise ordered and a certificate of readiness for hearing has not been filed or has been filed but been withdrawn or struck out.

Regulation 78 – Discovery on notice – 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. This regulation should be read in conjunction with regulation 79.

Regulation 79 – Limitation of discovery on notice – 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 80 – Order for general discovery – provides a general power for the Magistrates Court to order a party to file and serve an affidavit of discovery of another party.

Regulation 81 – Contents of affidavit of discovery – specifies what an affidavit of discovery must state and how.

Regulation 82 – Absence of privilege – provides that a person may claim privilege from production if certain conditions obtain, including that the person has the leave of the Magistrates Court. This regulation makes clear that notwithstanding the Court has granted leave and privilege has been claimed in relation to a document, the Court may order a party to produce a document to another party.

Regulation 83 – Order for particular discovery – provides a mechanism for the Magistrates Court to order a party to file and serve an affidavit stating whether a particular document is, or has been, in the party's possession, and if the document has been, but is no longer, what has become of it.

Regulation 84 – Document mentioned in affidavit – specifies the process for a party to inspect a document mentioned in an affidavit of discovery.

Regulation 85 – Order for production – 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 86 – Power to take copies – allows a party to whom a document has been produced for inspection to make copies of the document.

Regulation 87 – Production to the court – provides that the Magistrates Court may order a party to produce a document to the court, and upon production, may deal with the document in the way it considers just.

Regulation 88 – Inspection to decide objection – allows the Magistrates Court to inspect a document in respect of which there is an objection to production on either the grounds of privilege or another ground. This regulation also permits the Court to make a decision on the validity of the objection.

Division 9.6 Interrogatories

Regulation 89 – Interrogatories without leave – specifies when a party to a proceeding may file and serve interrogatories on another party. This regulation should be read in conjunction with the rest of this Division.

Regulation 90 – Further interrogatories – specifies when and how the party on whom the interrogatories are served must answer the interrogatories. It further provides that the Magistrates Court may order that further and better answers be given to interrogatories. This regulation allows the served party to object to answering any of the interrogatories on certain grounds.

Regulation 91 – Failure to attend or give answers etc – provides that where a person fails to do certain things, pursuant to an order of the Magistrates Court under regulation 90(4), then the Court may, on the application of the serving party, make orders it considers just.

Regulation 92 – Use of parts of interrogatories – stipulates the manner in which the answers to interrogatories may be used as evidence in proceedings.

Part 10 – Costs

Regulation 93 – Costs – provides a general presumption that each party to a proceeding must bear their own costs. It also provides when the Magistrates Court may order costs and must not order costs.

Part 11 – Proceedings and orders

Regulation 94 – Proceedings—effect of failure to comply with Act etc – provides what the Magistrates Court may do, on its own initiative or on application by a party, if there has been a failure to comply with the Act or a direction given by the Magistrates Court in relation to a proceeding.

Regulation 95 – Proceedings—reservation of decision – provides that a magistrate may reserve his or her decision on a matter.

Regulation 96 – Orders—if service impracticable or impossible—Act, s 66 (2) – provides that if personal service of an application, under the Act, is not reasonably practicable, or a document not required to be personally served, cannot be served under the Act, the registrar and deputy registrars can make an order under section 66(2) of the Act, in relation to the service of the application or document. There are two provisos on the exercise of this power: that the Court has not ordered otherwise and that the Act or regulation does not provide otherwise.

Regulation 97 – Orders—review – provides that if a person has applied for leave to make an application to review an order under section 91(3) of the Act, and the Magistrates Court has given notice of the time to hear the application, but the person does not attend, the Court may either fix another time and adjourn the hearing, if it is satisfied that the notice was not adequate, or dismiss the application. This regulation also provides that if the person does attend at the fixed time, the Court may give leave to apply for review of the order, only if it is satisfied that there has been a substantial change in the circumstances relevant to the making of the order. An aggrieved person and/or their representative may only attend and take part in the hearing, with the Court's leave.

Regulation 98 – Orders—setting aside etc – This regulation empowers the Magistrates Court to set aside an order, on sufficient cause being shown, if one or more of several certain conditions apply.

Regulation 99 – Orders—time of effect – provides that an order takes effect on the day it is made.

Regulation 100 – Orders—minute – provides that if the Magistrates Court makes a final or interlocutory order in a proceeding, the magistrate constituting the Court must make and sign a minute of the order.

Regulation 101 – Orders—certified copies etc – provides that if the Magistrates Court has made an order in a proceeding, and the registrar is directed by the Court or receives an application for a certificate or certified copy of the order, the registrar must arrange for the order to be formally drawn up and filed in the Court.

Dictionary – This dictionary is the dictionary referred to in regulation 3 and provides definitions relevant to the regulations. Additional definitions are included in the Act and in the *Legislation Act 2001* (ACT).