

**2016**

**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**DOMESTIC VIOLENCE AND PROTECTION ORDERS  
AMENDMENT BILL 2016**

**EXPLANATORY STATEMENT**

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# DOMESTIC VIOLENCE AND PROTECTION ORDERS

## AMENDMENT BILL 2016

### Outline

#### **Purpose of the Bill**

The policy objective of the amendments is to address operational issues that have arisen from the introduction of a new special interim domestic violence order scheme.

On 27 October 2015 the *Crimes (Domestic and Family Violence) Legislation Amendment Act 2015* (the Act) was passed. The Act introduced a scheme to allow special interim domestic violence orders to be made by the court when there was an application for an interim domestic violence order, and related current criminal charge.

The special interim domestic violence order scheme commenced on 5 November 2015. After commencement, stakeholders requested a number of critical amendments not previously raised to enable the courts to use the new scheme effectively.

The purpose of this Bill is primarily to reduce red tape and to facilitate a streamlined domestic violence order scheme.

#### **Human Rights Considerations**

In Australia, one in three women experience gender-based violence in their lifetime. Section 8 of the *Human Rights Act 2004* (HR Act) provides the right to recognition and equality before the law. It is now widely accepted that gender-based violence is a form of discrimination against women and their children. The European Court of Human Rights (ECHR) has confirmed the importance of characterising gender-based violence against women as a form of discrimination that public authorities are required to eliminate and remedy<sup>1</sup>.

Australian Federal and State governments are obliged, under the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Discrimination against Women to protect the right to private and family life of victims of domestic and family violence, including through effective prosecution and punishment of offenders. In the ACT that obligation is further enshrined in section 12 of the HR Act (right to privacy and reputation).

Broadly, domestic violence orders engage, and place limitations on, the following HR Act rights:

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<sup>1</sup> *Case of Opuz v Turkey* [2009] ECHR, Application no. 33401/02 (9 June 2009).

- Section 11– Protection of family and children;
- Section 13– Freedom of movement; and
- Section 18– Right to liberty and security of person.

The Bill also engages, and supports, the following HR Act rights:

- Section 10– Protection from torture and cruel, inhuman or degrading treatment;
- Section 11– Protection of family and children;
- Section 12– Privacy and reputation; and
- Section 18– Right to liberty and security of person.

These limitations have been outlined previously in the explanatory statement accompanying the *Crimes (Domestic and Family Violence) Legislation Amendment Act 2015* and can be accessed online at [http://www.legislation.act.gov.au/es/db\\_52856/default.asp](http://www.legislation.act.gov.au/es/db_52856/default.asp). The *Domestic Violence and Protection Orders Act 2008* (the DVPO Act), and all subsequent amendments to the DVPO Act have been assessed as compatible with the HR Act.

The amendments in this Bill are procedural or administrative in nature. They do not alter the substantive methods, considerations or conditions involved in protection orders. The amendments ensure consistency with current general interim order procedures.

For these reasons, the amendments do not engage the HR Act and, even if they were considered to do so, they are considered justified and proportionate consistent with the Government’s original conclusion on the limitations on rights considered for the *Crimes (Domestic and Family Violence) Legislation Amendment Act 2015*.

# **Domestic Violence and Protection Orders Amendment Bill 2016**

## **Detail**

### **Part 1 – Preliminary**

#### **Clause 1 — Name of Act**

This is a technical clause that names the short title of the Act. The name of the Act will be the *Domestic Violence and Protection Orders Amendment Act 2016*.

#### **Clause 2 — Commencement**

This clause provides that amendments in the Act will commence the day after the Act is notified.

#### **Clause 3 — Legislation amended**

This clause identifies the legislation amended by the Act.

### **Part 2 – Domestic Violence and Protection Orders Act 2008**

#### **Clause 4 – Registrar sets return date – Section 22 (1) (b), new note**

This clause inserts a new note to clarify that a return date may be for a preliminary conference.

#### **Clause 5 – Preliminary conferences – New section 24 (5)**

This clause clarifies that if a preliminary conference is held and no consent order is made, a registrar can set a new return date for a hearing to decide the application in accordance with the remainder of the Act.

A return date must be set at least 21 days after the day a general interim order is made, and not more than 21 days after all related charges are finalised for a special interim order pursuant to section 34 of the DVPO Act.

#### **Clause 6 – Preparation for hearing in Magistrates Court – Section 26 (2)**

This clause clarifies the language used to accurately describe a return date for the hearing to decide an application.

### **Clause 7 – Section 33**

This clause substitutes s 33 and is a consequential amendment pursuant to the amendments made to s 63. Section 33 allows consistency in language with the ‘timing notice’ provisions contained in new s 63.

### **Clause 8 – Sections 34 and 34A**

This clause substitutes and combines s 34 and s 34A into one section, amending the title to clarify that the section only apply for return dates for a hearing to decide a final order, rather than a return date for a preliminary conference. The justification for these amendments has been outlined in the explanatory statement accompanying the *Crimes (Domestic and Family Violence) Legislation Amendment Act 2015* and can be accessed online at [http://www.legislation.act.gov.au/es/db\\_52856/default.asp](http://www.legislation.act.gov.au/es/db_52856/default.asp).

### **Clause 9 – New section 36**

Section 36 allows respondents to file consent or objection ‘endorsement copies’ of the proposed orders. This ensures consistency between general interim DVOs and special interim DVOs. New section 36 replaces s 41C, amending it to ensure that it applies to both general and special interim orders.

The justification for s 41C has previously been outlined in the explanatory statement accompanying the *Crimes (Domestic and Family Violence) Legislation Amendment Act 2015* and can be accessed online at [http://www.legislation.act.gov.au/es/db\\_52856/default.asp](http://www.legislation.act.gov.au/es/db_52856/default.asp).

### **Clause 10 – Interim orders—ending – Section 38**

This clause omits section 38 of the DVPO Act as its effect is achieved by new section 41AA and new section 42A.

### **Clause 11 – New section 41AA**

This clause replaces section 38 of the DVPO Act as new section 41AA, re-names it to only apply to general interim orders and amends old s 38 (c) to also ensure that an interim order ends when it is ‘discontinued’. The justification for s 38 has previously been outlined in the explanatory statement accompanying the *Crimes (Domestic and Family Violence) Legislation Amendment Act 2015* and can be accessed online at [http://www.legislation.act.gov.au/es/db\\_52856/default.asp](http://www.legislation.act.gov.au/es/db_52856/default.asp).

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

This clause clarifies the language used to accurately describe a return date for the hearing to decide an application.

### **Clause 13 – Section 41B (3), new note 2**

This clause inserts a new note in s 41B (3) to clarify that if a return date is changed the registrar may serve a revised timing notice pursuant to s 63.

### **Clause 14 – General interim orders – becoming final orders – Section 41C**

This clause omits s 41C as it is replaced by new s 36 (see clause 9).

### **Clause 15 – Section 42A**

Section 42A replaces s 38, and amends it to only apply to special interim orders. To ensure consistency in language, the term ‘discontinued’ replaces the term ‘withdrawn’ in s 42A (b). The justification for previous s 38 has been outlined in the explanatory statement accompanying the *Crimes (Domestic and Family Violence) Legislation Amendment Act 2015* and can be accessed online at [http://www.legislation.act.gov.au/es/db\\_52856/default.asp](http://www.legislation.act.gov.au/es/db_52856/default.asp).

### **Clause 16 – Special interim orders – application not to be decided until related charges finalised – Section 42B (2)**

This clause substitutes and amends s 42B (2) to allow the courts to effectively manage matters where the respondent has been served with the application and timing notice for a preliminary conference and does not appear. This amendment ensures consistency with the rest of the DVPO Act.

The justification for s 42B has previously been outlined in the explanatory statement accompanying the *Crimes (Domestic and Family Violence) Legislation Amendment Act 2015* and can be accessed online at [http://www.legislation.act.gov.au/es/db\\_52856/default.asp](http://www.legislation.act.gov.au/es/db_52856/default.asp).

### **Clause 17 – Service of applications – Section 63 (1) and note**

This clause amends s 63 (1) of the DVPO Act to clarify what documents must be served by the court when it receives an application for a non-emergency protection order and makes changes to ensure consistency in language throughout the Bill.

### **Clause 18 – Section 63 (4A)**

This clause clarifies that if the registrar has already served a timing notice for the application, and the return date is changed a new timing notice must be served.

### **Clause 19 – Section 63 (5) and note**

This clause substitutes s 63 (5) and replaces it with a new section to update and ensure consistency in language.

The term ‘timing notice’ is defined in new s 63 (5) to a notice stating the return date for the application, and if a special interim order is made, noting that a later return date for a hearing to decide the application will be set after all related charges are finalised.

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

This clause inserts a new provision clarifying that if the registrar is serving a special interim order on a person, the registrar must also give the person a notice telling them that the respondent may apply to the court for a review of the order under s 90A of the DVPO Act, and that the court will set a return date for a hearing to decide the application after all related charges are finalised.

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

This clause omits s 65 which allows the *Legislation Act 2001* to apply to the rules of non-personal service under the Act.

This amendment provides clarity and consistency with other non-personal service provisions in ACT legislation.

**Clause 22 – Section 66**

This clause amends s 66 to ensure consistency in language and is a consequential amendment as a result of clause 21 which omits s 65 of the DVPO Act (If personal service not required).

**Part 3 – Domestic Violence and Protection Orders Regulation 2009**

**Clause 23 – if applicant not present at return of application - Section 17, new note**

This clause inserts a new note that refers to the relevant sections of the DVPO Act that indicate when an interim order ends.

**Clause 24 – Section 96**

This clause is a consequential amendment as a result of clause 21 which omits s 65 of the DVPO Act (If personal service not required).