



Australian Capital Territory

Domestic Violence and Protection Orders Regulation 2009

Subordinate Law SL2009-10

The Australian Capital Territory Executive makes the following regulation under the *Domestic Violence and Protection Orders Act 2008*.

Dated 26 March 2009.

SIMON CORBELL
Minister

ANDREW BARR
Minister



Australian Capital Territory

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Part 1 Preliminary

1 Name of regulation

This regulation is the *Domestic Violence and Protection Orders Regulation 2009*.

2 Commencement

This regulation commences on the commencement of the *Domestic Violence and Protection Orders Act 2008*.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Dictionary

The dictionary at the end of this regulation is part of this regulation.

Note 1 The dictionary at the end of this regulation defines certain terms used in this regulation, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*subpoena for production*, for division 5.3 (Subpoenas)—see section 32.’ means that the term ‘subpoena for production’ is defined in that section for division 5.3.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire regulation unless the definition, or another provision of the regulation, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

A note included in this regulation is explanatory and is not part of this regulation.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

5 Offences against regulation—application of Criminal Code etc

Other legislation applies in relation to offences against this regulation.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this regulation (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Part 2 Applications generally

6 Rejecting applications—abuse of process etc—Act, s 22 (3)

- (1) This section applies if an application for a non-emergency protection order appears to the registrar on its face to be an abuse of the Magistrates Court's process or to be frivolous or vexatious.
- (2) The registrar need not accept the application unless—
 - (a) on referral by the registrar for directions, a magistrate directs the registrar to accept the application; or
 - (b) the court gives leave to accept the application.

7 Court to be told about relevant contact orders

- (1) An applicant for a protection order must tell the Magistrates Court about any relevant family contact order, or a pending application for a family contact order, that the applicant is aware of.
- (2) The failure of the applicant to comply with subsection (1) does not affect the validity of the protection order.

Note about relationship with Family Law Act

The *Family Law Act 1975* (Cwlth), pt 7, divs 1 and 11 deal with the relationship between family violence orders and orders or injunctions mentioned in that Act, s 68P (1) (a). In particular, s 60CF imposes an obligation on certain people to inform the court of any family violence orders (including domestic violence orders) and under s 68Q certain people may apply for a declaration of the extent to which an order or injunction mentioned in s 68P (1) (a) is inconsistent with a family violence order.

Part 3 Preliminary conferences

8 Objects of preliminary conferences

- (1) The objects of a preliminary conference for a proceeding on an application for a non-emergency order are to—
 - (a) find out whether the proceeding may be settled by consent before it is heard by the Magistrates Court; and
 - (b) work out and limit the issues to be decided in the proceeding; and
 - (c) ensure that the parties are taking the measures necessary to allow the proceeding to be heard quickly.
- (2) Without limiting how the issues to be decided in the proceeding may be worked out and limited, the preliminary conference must try to—
 - (a) identify facts agreed on; and
 - (b) identify issues not agreed on; and
 - (c) identify any unusual or urgent factors that require special attention.

Note Before making a consent order, the Magistrates Court must explain certain things about the order (see Act, s 84 and s 85).

9 Exceptions to requirement for preliminary conference— Act, s 24

The registrar need not hold a preliminary conference in relation to an application for a non-emergency protection order if the registrar is satisfied that the conference would not achieve its objects (completely or partly).

Note An interim order is made on an application for a final order, but does not need its own application. Because preliminary conferences are held in relation to applications for non-emergency protection orders, a preliminary conference need not be held in relation to an interim order, as long as the preliminary conference is held in relation to the application for the final order.

10 Notice of, and nonattendance at, conferences

- (1) The registrar must, in writing, tell each party to a proceeding on an application for which a preliminary conference is to be held—
 - (a) when and where the conference is to be held; and
 - (b) that, if the party does not attend the conference, the nonattendance may be reported to the Magistrates Court.
- (2) The registrar must tell the Magistrates Court if a party does not attend the preliminary conference if satisfied that the party was given notice of the conference.

Note If the application is returned before the Magistrates Court at the same time as the preliminary conference is to be held and a party to the application does not attend, the application may be dealt with under s 18 or s 19.

11 Admissibility of preliminary conference evidence

Evidence must not be given before, or statements made in, the Magistrates Court about words spoken or anything done at a preliminary conference that is related to a question to be decided by the Magistrates Court in the proceeding unless—

- (a) the parties otherwise agree; or

- (b) the court is satisfied that there are substantial reasons why, in the interests of justice, the evidence should be given, or statements made.

12 Asking for further particulars—Act, s 26

The registrar may ask an applicant for a non-emergency protection order for further particulars in relation to the application on or before the return date for the application.

Part 4 Hearings before Magistrates Court

13 Hearings usually in public

- (1) The hearing of a proceeding before the Magistrates Court must be in public.
- (2) This section does not apply to a hearing, or part of a hearing, if—
 - (a) section 14 applies to the hearing, or part; or
 - (b) the magistrate presiding at the hearing makes an order under section 15 (Closed hearings in special circumstances).

14 Public hearing not required

The hearing of an application, or part of the hearing, need not be in public if—

- (a) the order sought is a consent order; or
- (b) the part of the hearing is an application for an interim order and the respondent has not been served with a copy of the application under the Act, section 63 (Service of applications); or
- (c) the respondent has been served with the application and the notice about the proceeding and does not appear in the Magistrates Court when the application is returned before the court.

15 Closed hearings in special circumstances

- (1) A magistrate hearing an application for a non-emergency protection order may, if satisfied that it is in the public interest or in the interests of justice to do so, by order, do any of the following:
 - (a) direct that the hearing, or part of the hearing, take place in private and give directions about the people who may be present;
 - (b) give directions prohibiting or restricting the publication of evidence given at the hearing, whether in public or private, or of matters contained in documents filed in the Magistrates Court or received in evidence by the court for the proceeding;
 - (c) give directions prohibiting or restricting the disclosure to some or all of the parties to the proceeding of evidence given at the hearing, or of a matter contained in a document filed in the court or received in evidence by the court for the proceeding.
- (2) A person must not contravene an order under subsection (1).
Maximum penalty: 10 penalty units.

16 Order of presentation of cases

- (1) In a proceeding on an application, the party (the *beginning party*) on whom the burden of proof on an issue lies must begin.

Example

If the applicant is applying for a final order on the grounds that someone has engaged in domestic violence towards the applicant, the burden of proof is on the applicant to prove that someone has engaged in domestic violence and, because of that, the applicant must begin.

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The beginning party may make an address opening the party's case and may then present the party's evidence.

- (3) If, at the end of the beginning party's evidence, no document or thing has been admitted in evidence after being tendered by the party responding to the beginning party (the *opposite party*), the opposite party may elect to present evidence or not to present evidence.
- (4) If the opposite party elects to present evidence—
 - (a) the opposite party may—
 - (i) first make an opening address; and
 - (ii) then present the party's evidence; and
 - (iii) finally make an address closing the party's case; and
 - (b) the beginning party may make an address closing the beginning party's case after the opposite party has made a closing address.
- (5) If the opposite party elects not to present evidence—
 - (a) the beginning party may make an address closing the party's case; and
 - (b) then the opposite party may make an address stating the opposite party's case.

17 If applicant not present at return of application

If the applicant is not present when an application is returned before the Magistrates Court, the court must—

- (a) dismiss the application; or
- (b) adjourn the hearing.

18 If certain respondent not present

- (1) This section applies to an application for a non-emergency protection order if the respondent—
 - (a) is the person claimed to have committed the violence that is the subject of the application; and
 - (b) has been served with a copy of the application and notice about the proceeding under the Act, section 63 (Service of applications); and
 - (c) does not appear in person at the Magistrates Court when the application is returned before the court.
- (2) The Magistrates Court must—
 - (a) decide the application in the respondent's absence; or
 - (b) if the court considers it appropriate—
 - (i) issue a warrant for the respondent to be arrested and brought before the court; and
 - (ii) adjourn the proceeding until the respondent is brought before the court.
- (3) This section does not prevent the Magistrates Court from making an interim order in the proceeding.

19 Procedure if neither party appears

- (1) If neither party to a proceeding on an application appears, either personally or by a representative, at the time and place set for the hearing of the proceeding, the Magistrates Court may order that the proceeding be dismissed.
- (2) If the Magistrates Court orders that the proceeding be dismissed, the court must not make an order about costs.

20 Court may join child as party

- (1) This section applies to a child if a protection order sought in a proceeding includes a condition mentioned in the Act, section 48 (2) (h) or (3) in relation to the child.

Note The Act, s 48 (2) (h) and (3) prohibit someone from doing certain things in relation to a child of the aggrieved person.

- (2) The Magistrates Court may join the child as a party in the proceeding.

21 Applications heard together

Two or more applications may be heard together if—

- (a) a common question of fact arises in each application; or
- (b) the applications relate to, or arise from, the same event or series of events; or
- (c) the court gives leave for the applications to be heard together.

Example

A group of people are threatened by someone. If 2 or more of the people in the group apply for an order under the Act, the applications may be heard together.

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

22 Obligation on respondent

A respondent to an application must—

- (a) in the first affidavit filed by the respondent, state an address for service; or
- (b) if the applicant does not file an affidavit—
 - (i) file a notice of intention to appear; and

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(ii) serve a copy of the notice on the applicant.

Note If a form is approved under the *Court Procedures Act 2004* for this provision, the form must be used.

Part 5 Evidence

Note about operation of Evidence Act 1995 (Cwlth)

The *Evidence Act 1995 (Cwlth)* applies to the Magistrates Court. This means that it is not necessary to include provisions dealing with, for example, the following areas dealt with in that Act (in the provision indicated):

- examination on oath (see s 21)
- court control over conduct of hearing (see pt 2.1, div 3)
- privileges (see pt 3.10)
- proof of court documents (see s 157)
- cross-examination of deponents (see pt 4.6, div 1).

Division 5.1 Giving and taking evidence

23 Giving evidence

- (1) Evidence in a proceeding on an application must be given orally.
- (2) However, evidence may be given by affidavit—
 - (a) if the parties agree to allow affidavit evidence; or
 - (b) with the leave of the Magistrates Court.

Example of when Magistrates Court might give leave

If the court is satisfied that it would be unreasonable to require the applicant to give oral evidence.

Note 1 Affidavits are dealt with in div 5.2.

Note 2 An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

24 Additional information

An applicant for a non-emergency protection order may, at the hearing of the application—

- (a) rely on information other than the information stated in the application; and
- (b) present additional information to support the application.

25 Court may inform self

The Magistrates Court may inform itself in any way it considers appropriate in a particular proceeding.

Division 5.2 Affidavits

26 Affidavit—time for swearing

- (1) An affidavit for use in a proceeding on an application may be sworn before or after the proceeding is begun.
- (2) An affidavit must not be used as evidence of the service of a document in the ACT if it is sworn more than 2 weeks after the date of service, unless the Magistrates Court otherwise orders.

27 Affidavit—form

An affidavit for use in a proceeding must—

- (a) be in the first person; and
- (b) be divided into paragraphs numbered consecutively; and
- (c) be limited, as far as possible, to 1 subject matter in each paragraph; and
- (d) have each page signed by the deponent and the person before whom it is sworn.

Note If a form is approved under the *Court Procedures Act 2004* for this provision, the form must be used.

28 Affidavit—irregularity

- (1) An affidavit that is irregular in form (including an affidavit that does not comply with the approved form for the affidavit)—
 - (a) may be filed and served; and
 - (b) may be used in a proceeding only with the Magistrates Court's leave.
- (2) If an affidavit to which the *Oaths and Affirmations Act 1984*, section 19 (Affidavit by person unable to understand English) or section 20 (Affidavit by illiterate or blind person) applies does not contain the certificate mentioned in the section, the affidavit may be used in a proceeding under the Act only if the Magistrates Court is satisfied that—
 - (a) the affidavit was read out or translated to the person who made the affidavit; and
 - (b) the person appeared to understand the affidavit; and
 - (c) the person agreed to the affidavit.

29 Affidavit—annexures and exhibits

- (1) A document to be used with an affidavit filed in a proceeding must—
 - (a) if convenient, be annexed to the affidavit; or
 - (b) if annexure is not convenient, be made an exhibit to the affidavit.
- (2) An exhibit to an affidavit in a proceeding must be identified by a certificate headed in the same way as the affidavit and made by the person before whom the affidavit is sworn.

30 Affidavit—alterations

- (1) This section applies if there is an interlineation, erasure or other alteration in the jurat or body of an affidavit.

Note A jurat is the section at the end of an affidavit that sets out who swore the affidavit, who it was sworn before and when it was sworn (see The Macquarie Dictionary, 4th ed, and Butterworths Australian Legal Dictionary).

- (2) The affidavit may be filed unless the Magistrates Court otherwise orders.
- (3) The affidavit may be used in a proceeding without the leave of the Magistrates Court only if the person before whom the affidavit is sworn has initialled the interlineation, erasure or alteration.
- (4) This section applies to a document verified by affidavit as if the document were part of the affidavit.

31 Affidavit—reliance

- (1) A party to an application who intends to rely on an affidavit at the hearing of the application must—
 - (a) file the affidavit; and
 - (b) serve a copy of the affidavit on each other party to the proceeding unless the Magistrates Court otherwise orders.
- (2) The copy of the affidavit must be served—
 - (a) in sufficient time before the hearing to allow the other party to make and file, and serve a copy of, an affidavit in reply; or
 - (b) within the time the Magistrates Court orders.

Division 5.3 Subpoenas

32 Subpoena—issue

- (1) This section applies to—
- (a) a subpoena (a *subpoena to give evidence*) to the person named in the subpoena to attend before the Magistrates Court or an examiner, to give evidence; or
 - (b) a subpoena (a *subpoena for production*) to the person named in the subpoena to attend before the court or an examiner to produce a document or thing; or
 - (c) a subpoena that is both a subpoena to give evidence and a subpoena for production.

Note If a form is approved under the *Court Procedures Act 2004* for this provision, the form must be used.

- (2) In a proceeding—
- (a) the Magistrates Court may issue the subpoena on its own initiative; and
 - (b) the registrar must, subject to any order or direction of the Magistrates Court, issue the subpoena if asked by a party to the proceeding.

33 Subpoena—copies

A party to a proceeding who asks for the issue of a subpoena under section 32 must file 3 copies of the subpoena.

34 Subpoena—timing of service

A subpoena mentioned in section 32 (Subpoena—issue) must be served within a reasonable time before the date for compliance mentioned in the subpoena.

35 Subpoena—requirement for compliance

- (1) This section applies if—
- (a) a subpoena mentioned in section 32 (Subpoena—issue) has been served on the person named in the subpoena in accordance with section 34; and
 - (b) a reasonable amount for expenses that the person would incur in complying with the subpoena on any day when the person’s attendance is required has been paid or tendered to the person when the subpoena was served or within a reasonable time before the date for compliance mentioned in the subpoena.

Note **Reasonable amount**, for expenses for a person, is defined in s (5).

- (2) The person must comply with a requirement of the subpoena.

Note Failing to comply with a requirement of a subpoena, without a reasonable excuse, is an offence against the Criminal Code, ch 7 (Administration of justice offences).

- (3) However, a person is not required to produce a document or thing because of a subpoena for production if—
- (a) the document or thing is not mentioned or otherwise adequately described in the subpoena; or

- (b) had the subpoena been issued by the Supreme Court, the person could have successfully objected to the requirement to produce the document or thing.

Examples of grounds for objecting to the requirement to produce

- 1 privilege
- 2 public interest immunity
- 3 insufficient possession, custody or control of the thing required to be produced
- 4 lateness of service of subpoena
- 5 statutory prohibition on production.

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) If a person contravenes subsection (2), the Magistrates Court may—
- (a) issue a warrant for the person to be arrested and brought before the court to give evidence or to produce the required document or thing or both; and
 - (b) order the person to pay any costs in the proceeding that result from the contravention.
- (5) For this section:

reasonable amount, for expenses for a person, means the amount that would be payable in relation to the person if the party on whose request the subpoena was issued were entitled to claim witness expenses in relation to the person as costs in the proceeding.

36 Evidence from outside ACT

If the Magistrates Court has given a direction under the *Evidence (Miscellaneous Provisions) Act 1991*, section 20 (1) (Territory courts may take evidence and submissions from outside ACT) or section 32 (1) (Use of link in proceedings) in relation to a person who is required to give evidence under a subpoena, the person satisfies the requirement by appearing and giving evidence in accordance with the direction.

37 Subpoena—production by non-party

- (1) If a person named in a subpoena for production of a document or thing is not a party to the proceeding, instead of attending and producing the document or thing as required by the subpoena, the person may produce the document or thing to the registrar not later than the day before the first date the person's attendance is required by the subpoena, unless the Magistrates Court otherwise orders.
- (2) If a document or thing is produced to the registrar under subsection (1), the registrar must—
 - (a) give a receipt to the person producing the document or thing; and
 - (b) produce the document or thing as required during the proceeding or as the Magistrates Court directs.
- (3) This section does not apply to a part of a subpoena that requires the person named to attend to give evidence in a proceeding.

38 Subpoena—setting aside

- (1) The Magistrates Court may, on the application of the person named in a subpoena, completely or partly set aside the subpoena.
- (2) An application under subsection (1) must be filed and a copy served on the party to the proceeding who asked for the subpoena to be issued.

39 Production on notice

- (1) This section applies if—
 - (a) a party to a proceeding serves on another party a notice requiring the other party to produce a document or thing at the hearing of the proceeding or before the registrar or an examiner; and
 - (b) the document or thing is in the other party's possession.

Note If a form is approved under the *Court Procedures Act 2004* for this provision, the form must be used.

- (2) The other party must produce the document or thing in accordance with the notice even though the other party has not been served with a subpoena for production in relation to the document or thing unless the Magistrates Court otherwise orders.

Division 5.4 Examination

40 Order for examination of witnesses

- (1) This section applies if, on application, the Magistrates Court makes an order for the examination of a person in or outside the ACT before a magistrate or someone else appointed by the court (the *examiner*) for a proceeding under the Act.
- (2) The examiner must—
 - (a) give reasonable notice of the appointment to the party (the *applicant*) to the proceeding on whose application the order was made; and
 - (b) unless the Magistrates Court otherwise orders, set a place and time for the examination that is as soon as practicable after the order appointing the examiner was made, having regard to the convenience of the person to be examined and any other relevant circumstance.

- (3) The applicant must promptly—
 - (a) serve a copy of the order on each other party to the proceeding; and
 - (b) give the examiner a copy of any document in the proceeding that is necessary to inform the examiner of the questions to which the examination is to relate.
- (4) If the documents filed in the proceeding are not sufficient to inform the examiner of the questions to which the examination is to relate, the Magistrates Court must, in the order or by a subsequent order, state the questions.

41 Examination procedure and objections

- (1) At an examination—
 - (a) the practice and procedure of the Magistrates Court in relation to the hearing of a proceeding apply so far as they are applicable (subject to section 40 and this section); and
 - (b) the examiner may adjourn the examination; and
 - (c) each party, and the party's lawyer, may attend; and
 - (d) unless the court otherwise orders, each party has the same rights in relation to the examination, cross-examination and re-examination of the person being examined as the party would have had if the person had given evidence at the hearing of the proceeding before the court; and
 - (e) the examiner may ask the person being examined any question about the meaning of an answer given by the person or any other matter arising in the course of the examination; and
 - (f) the deposition of the person examined must be taken down by the examiner or by a shorthand writer or someone else in the presence of the examiner; and

- (g) the deposition must contain, as far as practicable, the statement of the person examined; and
 - (h) the examiner may direct that the words of any question and the answer to the question be set out in the deposition, but subject to paragraph (g) and subsection (2) (b), the deposition need not set out every question and answer; and
 - (i) if a party to the proceeding asks, the deposition of the person examined, or the shorthand notes of the person's examination, must be read to the person and the examiner must ask the person to sign the deposition or the notes; and
 - (j) the examiner must authenticate the deposition of the person examined by the examiner's signature and must make on, or attach to, the deposition a note, signed by the examiner, of the time spent in the examination and the fees received by the examiner in relation to the examination.
- (2) If, at the examination, a party to the proceeding, or the person being examined, objects to a question asked of the person or to the production of a document or thing by the person, or the person objects to answering a question asked of the person—
- (a) the examiner must state to the parties present at the examination the examiner's opinion about the validity of the ground for the objection, but must not decide on the validity; and
 - (b) the question, the ground for objection, the answer (if any) and the opinion of the examiner must be set out in the deposition of the person being examined or in a statement attached to the deposition; and
 - (c) the Magistrates Court must, on application by a party or at the hearing of the proceeding, decide on the validity of the ground for the objection; and

- (d) if the court decides that there were no valid grounds for the objection, the court may order the objector to pay any costs of any party in the proceeding caused by the objection.
- (3) The examiner may, with the written consent of each party to the proceeding, examine another person as well as the person for whose examination the examiner was appointed, and, if the examiner does so—
 - (a) the examiner must attach to the deposition of the other person the consent of each party; and
 - (b) the person must be examined in accordance with this section.

42 After examination

- (1) The examiner must, as soon as practicable after the examination is finished, give the registrar any deposition taken at the examination and, unless the Magistrates Court otherwise orders, any exhibits that were before the examiner.
- (2) The registrar must enter into the record of the Magistrates Court any deposition received from the examiner.
- (3) The registrar must deal with any exhibit received from the examiner in the way the Magistrates Court directs.
- (4) 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 is within a convenient distance of the court and can attend before the court to give evidence.

43 Entitlement to expenses

A person attending before an examiner to be examined is entitled to be paid the same amount to meet the person's reasonable expenses in attending as the person would have been entitled to be paid if the attendance had been before the Magistrates Court to give evidence in the proceeding.

44 Examiner's reports

- (1) An examiner may make a report to the Magistrates Court about the examination and, in particular, the conduct or absence of a person.
- (2) On receiving the report, the Magistrates Court may make any order it considers appropriate.

Division 5.5 Defences

45 Notice of grounds of defence

- (1) A respondent in a proceeding on an application may file a notice of grounds of defence at any time before the end of the proceeding.

Note If a form is approved under the *Court Procedures Act 2004* for this provision, the form must be used.

- (2) The notice of grounds of defence must be signed by the respondent, the respondent's lawyer or an agent authorised in writing by the respondent to sign the grounds of defence.
- (3) The registrar must serve the notice of grounds of defence on the applicant.
- (4) The respondent does not waive any objection the respondent may have on the grounds of lack of jurisdiction in the Magistrates Court to decide the proceeding only because the respondent files a notice of grounds of defence.

46 Reliance on undisclosed defence

- (1) A respondent in a proceeding on an application may, at the hearing of the proceeding, rely on a ground of defence not mentioned in a notice of grounds of defence filed by the respondent only with the applicant's consent or with the Magistrates Court's leave.
- (2) The Magistrates Court may grant the leave on the terms (if any) the court considers just.

47 Reply to notice of grounds of defence

- (1) If the respondent in a proceeding on an application files a notice of grounds of defence, the applicant may file a reply not later than 21 days after the day when a copy of the notice is served on the applicant.

Note If a form is approved under the *Court Procedures Act 2004* for this provision, the form must be used.

- (2) A reply must be signed by the applicant, the applicant's lawyer or an agent authorised by the applicant in writing to sign the reply.
- (3) The registrar must serve the reply on the defendant.

Part 6 Discontinuance and adjournments

48 Discontinuance

- (1) The applicant in a proceeding on an application may discontinue the proceeding at any time before a final decision is made in the proceeding by filing a notice of discontinuance.

Note If a form is approved under the *Court Procedures Act 2004* for this provision, the form must be used.

- (2) If a proceeding is discontinued, the discontinuance—
- (a) does not prevent a further application being made in relation to the same, or substantially the same, matter; and
 - (b) is not a defence in a proceeding on any further application.

49 Adjourment by court

The Magistrates Court may, at any time, adjourn the hearing or the further hearing of the proceeding in the way, and on the terms, the court considers appropriate.

50 Return date notice on adjournment

If the hearing is adjourned—

- (a) the return date notice under the Act, section 22 (Registrar sets return date) must be amended to state the new time and the place for the hearing; and
- (b) the amended return date notice must be served on any party to the proceeding who is not present and not otherwise aware of the new time and place for the hearing.

51 Adjournment of hearing by registrar

- (1) This section applies if, at the time and place fixed for the hearing or further hearing of a proceeding on an application, a magistrate is not available to hear the proceeding.
- (2) The registrar may adjourn the hearing or further hearing to a time and place fixed by the registrar.
- (3) The registrar must, if asked by a party to the proceeding not earlier than 1 hour after the time fixed for the hearing without a magistrate becoming available, adjourn the hearing or further hearing to a time and place fixed by the registrar.

Part 7 People with legal disability

52 Litigation guardian—appointment

- (1) The following people may be appointed as a litigation guardian for a person with a legal disability (the *other person*) in a proceeding:
 - (a) an individual who is not a person with a legal disability;
 - (b) the public advocate.
- (2) An individual is appointed under subsection (1) by filing with the Magistrates Court a statement—
 - (a) about whether, to the best of the individual’s knowledge, the other person has a disability guardian, or manager, other than the individual; and
 - (b) to the effect that the individual—
 - (i) has no interest in the proceeding that is adverse to the interests of the other person; and
 - (ii) agrees to be appointed.
- (3) However, if the other person has a disability guardian, or manager, other than the individual, the individual may be appointed as the other person’s litigation guardian only with the Magistrates Court’s leave.
- (4) For this section:

manager—see the *Guardianship and Management of Property Act 1991*, dictionary.

Note Section 57 sets out what happens if a party with a legal disability does not have a representative, or an appropriate or suitable representative.

53 Litigation guardian—powers

- (1) This section applies if a litigation guardian has been appointed, in a proceeding, for a person with a legal disability.
- (2) Anything that the person is allowed to do under the Act may be done by the person's litigation guardian.
- (3) Anything that the person is required to do under the Act must be done by the person's litigation guardian.

Note The litigation guardian may not give the person's evidence for the person (see *Evidence Act 1995* (Cwlth), pt 3.2).

54 Litigation guardian—responsibilities

The litigation guardian of a person with a legal disability in a proceeding must do everything that is necessary in the proceeding to protect the person's interests.

55 Litigation guardian—removal

- (1) The Magistrates Court may, on application or its own initiative—
 - (a) remove the litigation guardian of a person with a legal disability in the proceeding; and
 - (b) order that the proceeding be stayed until someone else has been appointed as litigation guardian in place of the person removed.
- (2) An applicant for an order under subsection (1) must, unless the Magistrates Court otherwise directs, serve notice of the application on the person whose removal is sought and on the person under a legal disability.
- (3) An application under subsection (1) may be made by a party to the proceeding or anyone else.

Part 8 Representation

56 Right of appearance

- (1) A party to a proceeding on an application may appear before the Magistrates Court or the registrar—
 - (a) by a lawyer; or
 - (b) for an individual—personally; or
 - (c) for a corporation—by an officer of the corporation authorised by the corporation; or
 - (d) with the leave of the court or the registrar, by another person.
- (2) A person appearing in accordance with subsection (1) may address the Magistrates Court or the registrar and may examine and cross-examine witnesses.
- (3) If the Magistrates Court has given a direction under the *Evidence (Miscellaneous Provisions) Act 1991*, section 20 (1) (Territory courts may take evidence and submissions from outside ACT) or section 32 (1) (Use of link in proceedings), a person appearing in accordance with subsection (1) may appear, address the court or the registrar and examine and cross-examine witnesses in accordance with the direction.
- (4) A person who is not a lawyer is not entitled to receive or recover money or other remuneration or consideration for appearing on behalf of another person.
- (5) Subsection (4) does not prevent an employee who, in the ordinary course of employment, appears on behalf of an employer from receiving wages or salary for appearing.

57 Representation of parties with legal disability

- (1) This section applies if a party to a proceeding on an application is a person with a legal disability and—
 - (a) does not have a representative; or
 - (b) does not have an appropriate or suitable representative.
- (2) The Magistrates Court may, on its own initiative or on application by someone else—
 - (a) adjourn the proceeding so the party can get representation; and
 - (b) give the party the information necessary to allow the party to get representation; and
 - (c) tell the public advocate that the proceeding has been adjourned so the party can get representation.

58 Representation by Legal Aid Office

- (1) This section applies if—
 - (a) a party to a proceeding on an application is a child; and
 - (b) the child is either the applicant or a party joined under section 20 (Court may join child as party); and
 - (c) the Magistrates Court adjourns the proceeding under section 57 to allow the child to obtain representation.
- (2) The Magistrates Court may ask that legal representation be arranged by the Legal Aid Office (A.C.T.).
- (3) For this section:

Legal Aid Office (A.C.T.)—see the *Legal Aid Act 1977*, section 94 (Commission to operate as Legal Aid Office (A.C.T.)).

Part 9 Interlocutory matters

Division 9.1 Motions

59 Interlocutory applications

- (1) An application to the Magistrates Court in a proceeding—
 - (a) may be made only by motion; and
 - (b) may be supported by affidavit.
- (2) An applicant may move the Magistrates Court for the order sought only if—
 - (a) the applicant has—
 - (i) filed a notice of motion; and
 - (ii) served a copy of the notice on each interested party; or
 - (b) section 60 applies.
- (3) If a copy of a notice is required to be served under this section, the copy must be served not later than 3 days before the day fixed for the hearing of the motion unless the Magistrates Court otherwise orders.

60 Motion without notice

An applicant may move the Magistrates Court without having filed, or served a copy of, a notice of motion only if—

- (a) the preparation or filing of the notice, or the service, would cause undue delay or other mischief to the applicant; or
- (b) each interested party consents to the order sought by the applicant; or

- (c) the court dispenses with the requirement to file and serve the notice of motion by order.

61 Notice of motion

- (1) A notice of motion must—
 - (a) state the place, date and time fixed for the hearing of the motion; and
 - (b) if the Magistrates Court has made an order under section 60 (c)—contain a note of the order; and
 - (c) state briefly the nature of the order sought by the applicant; and
 - (d) state briefly the grounds on which the order is sought, or refer to the affidavit in which the grounds are set out; and
 - (e) name each party who would be affected by the order sought.
- (2) Anyone who intends to rely on an affidavit at the hearing of a motion must file the affidavit, and serve a copy of the affidavit on each interested party (except a party on whom service of a copy of the notice of motion was not required under section 60)—
 - (a) in sufficient time to allow the other party to make and file, and serve a copy of, an affidavit in reply; or
 - (b) within the time the Magistrates Court orders.

62 Hearing of motion

- (1) On the hearing of a motion, the Magistrates Court may—
 - (a) make, or refuse to make, the order sought by the applicant; and
 - (b) make any other order, and give any direction, it considers just.
- (2) As far as is practicable, a motion must include as many applications as can conveniently be dealt with at the same time, having regard to the nature of the proceeding.

- (3) On the hearing of a motion, any respondent may make any application in relation to the proceeding.
- (4) If, on the hearing of a motion, a respondent makes an application under subsection (3), the Magistrates Court may—
 - (a) make, or refuse to make, the order sought by the respondent on the terms it considers just, and make any other order, and give the directions, it considers just; or
 - (b) adjourn the hearing of the application and direct the notice of the application to be given to any interested party that the court considers just.
- (5) A motion may be heard in the absence of a party.

Division 9.2 Amendments

63 General power of amendment

- (1) At any stage of a proceeding, the Magistrates Court may order that a document filed in the proceeding be amended, or give leave to a party to amend a document filed by the party in the proceeding, in the way the court considers just.
- (2) The Magistrates Court may make the order on application by a party or on its own initiative.
- (3) All amendments necessary to do the following must be made:
 - (a) to work out the real questions raised by, or otherwise depending on, the proceeding;
 - (b) to correct a defect or error in the proceeding;
 - (c) to avoid multiple proceedings.
- (4) If, in a document filed in a proceeding, there has been a mistake in the name of a party to the proceeding, subsection (1) applies in relation to the person intended to be made a party as if the person were a party.

- (5) This section does not apply to the amendment of an order or certificate.

64 Simple amendment

- (1) Amendments authorised under the Act to be made to a document in a proceeding may be made by writing the alterations in the document only if the amendments are not so numerous, lengthy or otherwise of a kind that make the document difficult or inconvenient to read.
- (2) A document filed in a proceeding amended in accordance with subsection (1) must be endorsed with a statement stating the date of the amendment and—
- (a) if the amendment was made in accordance with an order of the Magistrates Court—the date of the order; or
 - (b) if not—a reference to section 63.
- (3) An endorsement mentioned in subsection (2) must—
- (a) if the amendment was made in accordance with an order of the Magistrates Court—be made by the registrar and sealed with the seal of the court; or
 - (b) if not—be made and initialled by the party making the amendment.

65 Method of amendment of fresh document

Unless section 64 applies to amendments authorised under the Act of a document filed in a proceeding, the amendments must be made by filing a fresh document and containing a statement mentioning the matters mentioned in section 64 (2).

66 Service after amendment

If a document filed in a proceeding has been served and is later amended, the party making the amendment must, as soon as practicable, serve on the parties on whom the document was served a copy of—

- (a) if the amendment is made under section 64 (Simple amendment)—a notice stating the amendment and the matters mentioned in section 64 (2); or
- (b) if the amendment is made under section 65—the fresh document filed.

67 Amendment after limitation period

- (1) This section applies in relation to an application for leave in a proceeding to make an amendment mentioned in this section if a relevant period of limitation, current at the date the proceeding was started, has ended.
- (2) The Magistrates Court may give leave to make an amendment, whatever the nature of the amendment, if a notice of motion for leave to make the amendment is filed not later than 14 days after the date of filing the claim.
- (3) The Magistrates Court may give leave to make an amendment correcting a mistake in the name or identity of a party, even if the effect of the amendment is to substitute a new party, only if—
 - (a) the court considers it appropriate; and
 - (b) the court is satisfied that the mistake sought to be corrected—
 - (i) was a genuine mistake; and
 - (ii) was not misleading or likely to cause any reasonable doubt about the identity of the person mentioned.
- (4) This section does not limit the powers of the Magistrates Court under section 63 (General power of amendment).

68 Amendment of order or certificate to correct error

- (1) The Magistrates Court may, by order, amend an order of, or certificate issued out of, the court to correct a clerical mistake or error arising from an accidental slip or omission in the order or certificate.
- (2) An order under subsection (1) may be made at any time on application by a party to the proceeding or on the Magistrates Court's own initiative.
- (3) Section 64 (Simple amendment) and section 65 (Method of amendment of fresh document) do not apply in relation to an amendment made under subsection (1).

Division 9.3 Stays and dismissals

69 Summary stay or dismissal

- (1) This section applies if, in a proceeding, it appears to the Magistrates Court, in relation to the proceeding generally or in relation to a particular application or part of the proceeding, that—
 - (a) no reasonable cause of action is disclosed; or
 - (b) the proceeding is—
 - (i) frivolous or vexatious; or
 - (ii) an abuse of the process of the court.
- (2) The Magistrates Court may, on the application of the respondent or on its own initiative, order that the proceeding be stayed or dismissed either generally or in relation to the claim for relief.
- (3) The Magistrates Court may receive evidence on the hearing of an application for an order under subsection (2).

70 Dismissal for lack of prosecution

- (1) This section applies if the applicant in a proceeding on an application—
 - (a) does not, within a reasonable time, take a step necessary to have the proceeding heard; or
 - (b) unreasonably takes a step to avoid the proceeding being heard.
- (2) The Magistrates Court may, on the application of the respondent and on the terms the court considers just, order that the proceeding be dismissed for lack of prosecution or may make any other order it considers just.
- (3) The proceeding is to be treated as if it had been discontinued.

Note Section 48 deals with discontinuance.

Division 9.4 Admissions

71 Voluntary admissions

- (1) A party to a proceeding on an application may, by notice served on another party, admit, in favour of the other party, the facts mentioned in the notice.

Note If a form is approved under the *Court Procedures Act 2004* for this provision, the form must be used.
- (2) The admission has effect only for the proceeding.
- (3) The party that made the admission may, with the Magistrates Court's leave, withdraw the admission.

72 Notice to admit facts

- (1) A party (the *first party*) to a proceeding on an application may, by notice served on another party, ask the other party to admit, for the proceeding only, the facts or documents stated in the notice.

Note If a form is approved under the *Court Procedures Act 2004* for this provision, the form must be used.

- (2) The other party is taken to admit, for the proceeding only, each of the facts, or the authenticity of each of the documents, stated in the notice if, at the end of 21 days after the day the notice is served on the party, the party has not served a notice on the first party disputing the fact or authenticity of the document.
- (3) The other party may, with the Magistrates Court's leave, withdraw an admission taken to have been made by the party under subsection (2).

73 Order on admissions

- (1) If an admission is made by a party to a proceeding on an application, the Magistrates Court may, on another party's application, make an order to which the party applying is, in the court's opinion, entitled on the admission.
- (2) The Magistrates Court may exercise its powers under subsection (1) even though other questions in the proceeding have not been decided.

74 Restricted effect of admissions

An admission mentioned in this division made for a proceeding must not be used—

- (a) against the party who made the admission in other proceedings; or
- (b) in favour of anyone other than the party in whose favour the admission was made.

Division 9.5 Discovery

75 Admission of documents discovered

- (1) This section applies if—
 - (a) an affidavit of discovery is served on a party (the *served party*) under the Act; and
 - (b) the served party is allowed, under the Act, to inspect a document mentioned in the affidavit.
- (2) The prescribed admissions by the served party in favour of the party serving the affidavit have effect unless the Magistrates Court otherwise orders.
- (3) For subsection (2), the *prescribed admissions* are—
 - (a) if the document is described in the affidavit as an original document—that the document is an original and was printed, written, signed or executed as it purports to have been; or
 - (b) if the document is described in the affidavit as a copy—that the document is a true copy.
- (4) However, subsection (2) does not operate as an admission by the served party in relation to the document if the served party—
 - (a) has, by affidavit, denied the authenticity of the document; or
 - (b) not later than 14 days after the time set under the Act for inspection of a document, serves on the party giving inspection a notice that he or she disputes the authenticity of the document.

Note Time is set under s 78, s 81 or s 84.

76 Production of documents at hearing of proceeding

- (1) This section applies if a party (the *1st party*) to a proceeding on an application serves an affidavit of discovery on another party (the *2nd party*) under the Act.
- (2) At the hearing of the proceeding, the 1st party must produce each document mentioned in the affidavit that is in the 1st party's possession as if the 2nd party had, on the day the affidavit was served, served on the 1st party a notice to produce each document mentioned at the hearing.

77 Notice for discovery

- (1) If there has been an implied joinder of issue between the parties to a proceeding on an application, any party may, unless the Magistrates Court otherwise orders, by notice for discovery filed and served on another party, require the party served to give discovery of documents.

Note If a form is approved under the *Court Procedures Act 2004* for this provision, the form must be used.

- (2) However, a party to a proceeding may require discovery under subsection (1) after a certificate of readiness for hearing has been filed only if the certificate has been withdrawn or struck out.

78 Discovery on notice

- (1) This section applies if a party (the *served party*) to a proceeding on an application is required to give discovery of documents by a notice of discovery served on the party under section 77.
- (2) The served party must give discovery of the documents within the time stated in the notice.
- (3) The time stated in the notice to give discovery of the documents must not end earlier than 21 days after the day the notice for discovery is served on the served party.

- (4) The served party must give discovery by filing and serving on the party who filed the notice for discovery (the *filing party*), an affidavit of discovery relating to any matter in question between the served party and the filing party.

Note If a form is approved under the *Court Procedures Act 2004* for this provision, the form must be used.

- (5) This section is subject to section 79.

79 Limitation of discovery on notice

- (1) The Magistrates Court may order that discovery under section 78 by a party is not required or is limited to the documents, or to the matters in question in the proceeding, stated in the order.

Note The court may state in the order that discovery is limited to a class of documents, rather than individually named documents (see *Legislation Act*, s 48).

- (2) The Magistrates Court may make the order before or after the party has been required under section 77 (Notice for discovery) to give discovery.
- (3) The Magistrates Court must, on application by a party to the proceeding, make any order under subsection (1) that is necessary to prevent unnecessary discovery.

80 Order for general discovery

The Magistrates Court may, at any stage of a proceeding, order a party to file and serve an affidavit of discovery on another party.

81 Contents of affidavit of discovery

- (1) An affidavit of discovery must name each document that is or has been in the possession of the party making the affidavit in a convenient sequence and as concisely as possible.

- (2) Each document or, if there is a group of documents of the same kind, each group must be adequately described in the affidavit of discovery to allow the document or group to be identified.
- (3) The affidavit of discovery must adequately state the grounds of any privilege from production claimed for a document in the possession of the party making the affidavit.
- (4) An affidavit of discovery must distinguish the documents that are in the possession of the party making the affidavit from the documents that have been but are no longer in the party's possession.
- (5) An affidavit of discovery must, for any document that has been but is not then in the possession of the party making the affidavit, state when the document left the party's possession and what has become of it.
- (6) An affidavit of discovery must state a time (not later than 7 days after the day the affidavit is served) when, and a place where, the documents in the affidavit may be inspected.

82 Absence of privilege

- (1) A party to a proceeding on an application may claim privilege from production of a document on the ground that it relates only to, and does not tend to prejudice, the party's own case and does not relate to or tend to support the case of an opposite party only with the Magistrates Court's leave.
- (2) Leave under this section may be granted only for special cause.
- (3) An application for leave may be made without notice to anyone.
- (4) The Magistrates Court may, at any stage of a proceeding, order a party to produce a document to another party even though leave under this section has been granted and privilege claimed in relation to the document.

83 Order for particular discovery

- (1) This section applies if, at any stage of a proceeding, it appears to the Magistrates Court from the evidence, from the nature or circumstances of the case or from a document filed in the proceeding, that there are grounds for believing that a document relating to a matter in question in the proceeding may be or may have been in the possession of a party (the *1st party*).
- (2) The Magistrates Court may order the 1st party to file and serve on another party an affidavit stating—
 - (a) whether the document is or has been in the 1st party's possession; and
 - (b) if the document has been but is not then in the 1st party's possession, when the document left the 1st party's possession and what has become of it.

Note **Document** includes a class of document (see Legislation Act, s 49).

84 Document mentioned in affidavit

- (1) If an affidavit filed by a party (the *filing party*) to a proceeding mentions a document, another party (the *notice party*) may, by notice to produce served on the filing party, require the filing party to produce the document for inspection.

Note If a form is approved under the *Court Procedures Act 2004* for this provision, the form must be used.

- (2) If a notice to produce a document is served on the filing party, the filing party must, not later than 4 days after the day of service, serve on the notice party a notice—
 - (a) stating a time (not later than 7 days after the day of service of the notice under this subsection) when, and a place where, the document may be inspected; or
 - (b) claiming that the document is privileged from production and adequately stating the grounds of the privilege; or

- (c) stating that the document is not in the filing party's possession and stating, to the best of the filing party's knowledge, information and belief, where the document is and in whose possession it is.

Note If a form is approved under the *Court Procedures Act 2004* for this provision, the form must be used.

85 Order for production

- (1) This section applies if—
 - (a) it appears from an affidavit of discovery filed by a party to a proceeding that a document is in the party's possession; or
 - (b) an affidavit filed by a party to a proceeding mentions a document; or
 - (c) it appears to the Magistrates Court from the evidence, the nature or circumstances of the case or a document filed in the proceeding, that there are grounds for believing that a document relating to a matter in question in the proceeding is in a party's possession.
- (2) The Magistrates Court may, subject to any question of privilege that may arise, order the party to—
 - (a) produce the document for inspection by another party at the time and place stated in the order; or
 - (b) file and serve on another party a copy of all or part of the document, with or without an affidavit verifying the copy made by a person who has examined the document and the copy.
- (3) An affidavit made in accordance with an order under subsection (2) (b) must, unless the Magistrates Court otherwise orders, state whether there are in the document copied any erasures, interlineations or alterations and, if so, describe each erasure, interlineation and alteration.

86 Power to take copies

A party to a proceeding on an application to whom a document is produced for inspection under the Act may make copies of the document.

87 Production to the court

- (1) The Magistrates Court may, at any stage of a proceeding, order a party to produce to the court a document in the party's possession relating to a matter in question in the proceeding.
- (2) On production of the document to the Magistrates Court, the court may deal with the document in the way the court considers just.

88 Inspection to decide objection

- (1) This section applies if—
 - (a) an application is made for—
 - (i) an order under section 85 (Order for production) for the production of a document for inspection by another party to a proceeding; or
 - (ii) an order under section 87 for the production of a document to the Magistrates Court; and
 - (b) either—
 - (i) a claim is made that the document is privileged from production; or
 - (ii) an objection to production is made on another ground.
- (2) The Magistrates Court may inspect the document to decide the validity of the claim or objection.

Division 9.6 Interrogatories

89 Interrogatories without leave

- (1) A party (the *filing party*) to a proceeding on an application may, once without the leave of the Magistrates Court, file and serve on another party (the *other party*) interrogatories relating to any matter in question in the proceeding between the parties.

Note If a form is approved under the *Court Procedures Act 2004* for this provision, the form must be used.

- (2) The Magistrates Court may, by order, give the filing party leave to file and serve further interrogatories on the other party.
- (3) However, the filing party may file and serve interrogatories on the other party after a certificate of readiness for hearing has been filed only if the certificate has been withdrawn or struck out.

90 Further interrogatories

- (1) A party (the *served party*) on whom interrogatories are served under section 89 must, within 21 days after the day of service—
 - (a) file an affidavit containing the party's answers to the interrogatories; and
 - (b) serve a copy of the affidavit on the party (the *serving party*) who served the interrogatories.

Note If a form is approved under the *Court Procedures Act 2004* for this provision, the form must be used.

- (2) The served party may, in the party's affidavit, object to answering any of the interrogatories on the ground that they are irrelevant, unnecessary, unreasonable, scandalous, vexatious, oppressive or not made honestly, or on any other ground.

- (3) The serving party may apply to the Magistrates Court for an order that answers, or further and better answers, be given if—
- (a) the served party fails to comply with subsection (1); or
 - (b) answers contained in an affidavit filed and served by the served party under subsection (1) are insufficient.
- (4) On hearing an application for an order under subsection (3), the Magistrates Court may order that answers, or further and better answers, be given in the way, whether by oral examination or otherwise, and within the time, stated in the order.

91 Failure to attend or give answers etc

- (1) This section applies if—
- (a) the Magistrates Court has made an order under section 90 (4) in relation to interrogatories; and
 - (b) the person against whom the order was made fails—
 - (i) to attend for oral examination at the time and place stated in the order; or
 - (ii) to give answers or further and better answers at the examination; or
 - (iii) to give answers, or further and better answers, in the way and within the time stated in the order.
- (2) The Magistrates Court may, on the application of the party who served the interrogatories, make the orders it considers just.

Example of order the court may make

If the party that failed is the applicant, an order that the proceeding be stayed or dismissed completely or partly in relation to any relief claimed by the applicant in the proceeding

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

92 Use of parts of interrogatories

- (1) A party to a proceeding on an application who has served interrogatories may use in evidence in the proceeding any of the answers, or any part of an answer, without using any other answers or the whole of the answer.
- (2) However, the Magistrates Court may examine all the answers given and if, in the opinion of the court, any answer or part of the answer (the *1st response*) is so connected with another answer or part of an answer, the court may refuse to admit the 1st response in evidence unless the party who served the interrogatories also tenders in evidence the other answer or part of an answer.

Part 10 Costs

93 Costs

- (1) Each party to a proceeding on an application must bear the party's own costs.
- (2) However, the Magistrates Court may order the payment of costs in a proceeding and, if it does, the court must fix the amount of the costs.
- (3) Also, the Magistrates Court must not order the payment of costs on an application if section 19 (2) (Procedure if neither party appears) applies to the proceeding on the application.
- (4) Costs under subsection (2) are recoverable as if they were costs awarded by the Magistrates Court in a civil proceeding.

Part 11 Proceedings and orders

94 Proceedings—effect of failure to comply with Act etc

- (1) A failure to comply with a requirement of the Act, or a direction given by the Magistrates Court, in relation to a proceeding is an irregularity and does not make the proceeding, or a document, step taken or order made in the proceeding, void.
- (2) If there has been a failure to comply with the Act or a direction given by the Magistrates Court in relation to a proceeding, the court may—
 - (a) set aside all or part of the proceeding; or
 - (b) set aside a step taken or order made in the proceeding; or
 - (c) declare a document or step taken to be void; or
 - (d) declare a document or step taken to be valid; or
 - (e) make another order that could be made under the Act (including an order dealing with the proceeding generally); or
 - (f) make any order dealing with the proceeding generally that it considers appropriate.
- (3) The Magistrates Court may act under subsection (2) on application by a party or on its own initiative.
- (4) An application for an order under this section must be made—
 - (a) within a reasonable time; and
 - (b) before the applicant has taken any fresh step in the proceeding after becoming aware of the failure to comply with the Act or a direction of the Magistrates Court.

95 Proceedings—reservation of decision

At the end of a hearing in a proceeding, the magistrate constituting the Magistrates Court may reserve the decision on any question of fact or law, and may deliver the decision in court on another date or a date to be set.

96 Orders—if service impracticable or impossible—Act, s 66 (2)

- (1) This section applies if—
 - (a) personal service of an application under the Act is not reasonably practicable; or
 - (b) a document that is not required to be personally served cannot be served under the Act, section 65 (If personal service not required).
- (2) The Magistrates Court may authorise the registrar or a deputy registrar to exercise the jurisdiction of the court to make an order under the Act, section 66 (2) (If service impracticable or impossible) in relation to the service of the application or document.

97 Orders—review

- (1) This section applies if—
 - (a) a person (the *applicant*) has applied for leave to make an application to review an order (the *original order*) under the Act, section 91 (3) (Application for review of particular final orders); and
 - (b) the Magistrates Court has fixed a time to hear the application, and given written notice of the time, in accordance with the Act, section 91 (4).

- (2) If the applicant does not attend at the time fixed under the Act, section 91 (4), the Magistrates Court must—
 - (a) if satisfied that the applicant has not been given reasonable notice of the time—fix another time to hear the application, adjourn the hearing to the other time and give written notice of the time in accordance with the Act, section 91 (4); or
 - (b) dismiss the application.
- (3) If the applicant attends at the time fixed for the hearing of the application, the Magistrates Court may give the applicant leave to apply to review the original order only if satisfied, on the basis of evidence provided by the applicant, that there has been a substantial change in the circumstances relevant to the making of the original order.
- (4) An aggrieved person may attend and take part in the hearing of the application only with the Magistrates Court's leave.
- (5) In this section:

aggrieved person means the aggrieved person in relation to the original order, and includes a representative of the aggrieved person.

98 Orders—setting aside etc

The Magistrates Court may, on sufficient cause being shown, set aside an order if—

- (a) the order was obtained by fraud; or
- (b) the order does not reflect the court's intention at the time the order was made; or
- (c) the order was made irregularly; or
- (d) the parties to the proceeding consent.

99 Orders—time of effect

An order takes effect on the day it is made.

100 Orders—minute

If the Magistrates Court makes an order (whether final or interlocutory) in a proceeding, a minute of the order must be made and signed by the magistrate constituting the court.

101 Orders—certified copies etc

- (1) This section applies if an order has been made by the Magistrates Court in a proceeding.
- (2) If the registrar is directed by the Magistrates Court, or receives an application for a certificate, or certified copy, of the order, the registrar must arrange for the order of the court to be formally drawn up and filed in the court.

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this regulation.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- magistrate
- Magistrates Court
- may (see s 146)
- must (see s 146)
- penalty unit (see s 133)
- public advocate.

Note 3 Terms used in this regulation have the same meaning that they have in the *Domestic Violence and Protection Orders Act 2008* (see Legislation Act, s 148). For example, the following terms are defined in the *Domestic Violence and Protection Orders Act 2008*, dict:

- application
- child, of a person
- person with a legal disability
- registrar.

examiner, for division 5.4 (Examination)—see section 40 (1).

possession includes custody and power.

subpoena for production, for division 5.3 (Subpoenas)—see section 32.

Endnotes

1 Notification

Notified under the Legislation Act on 27 March 2009.

2 Republications of amended laws

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

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