

Queensland



DOMESTIC VIOLENCE (FAMILY PROTECTION) ACT 1989

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Warning—see last endnote for uncommenced amendments

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Information about this reprint

This Act is reprinted as at 1 December 1999. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in earlier reprints.**

Queensland



DOMESTIC VIOLENCE (FAMILY PROTECTION) ACT 1989

TABLE OF PROVISIONS

Section		Page
PART 1—PRELIMINARY		
1	Short title	7
2	Commencement	7
3	Interpretation	7
4	Meaning of “court”	9
5	Meaning of “possession”	10
6	Meaning of “premises”	10
7	Meaning of “property”	10
8	Meaning of “weapons licence”	11
9	Meaning of court being satisfied	11
PART 2—UNDERSTANDING DOMESTIC VIOLENCE (FAMILY PROTECTION) UNDER THIS ACT		
10	Purpose of this Part	11
11	What is domestic violence?	12
12	Who is a “spouse”?	12
13	What assistance can a court give to prevent domestic violence?	13
14	Who can apply for a protection order?	13
15	Who can a domestic violence order protect?	14
16	When can a court make a domestic violence order?	15
17	What are the conditions of a domestic violence order?	15
18	What is meant by a weapon?	15
19	What can happen if a respondent spouse does not comply with an order?	16

*Domestic Violence (Family Protection) Act
1989*

**PART 3—DOMESTIC VIOLENCE ORDERS—POWERS OF
COURT**

Division 1—Powers of courts to make domestic violence orders

20	Power of court to make orders to protect spouse against domestic violence	16
21	Power of court to make orders to protect relatives or associates of aggrieved spouse against violence etc.	17
22	Protection order must include standard condition to be of good behaviour etc.	17
23	Protection order must include standard condition about weapons etc.	18
24	Arrangements for surrender of revoked or suspended licences etc.	18
25	Court may impose other conditions	19
26	Special condition for thing that has been used as a weapon	21
27	No weapons licence for duration of domestic violence order	22
28	Court may allow respondent spouse to possess weapons in limited circumstances	22
29	Domestic violence orders must include information about weapons	23
30	Power of court if spouse pleads or is found guilty of related offences	23
31	Power of court to make temporary protection orders	23
32	Court may make temporary protection order without proof of service in certain circumstances	24
33	Court may make domestic violence order by consent	25
34	Start of domestic violence orders and their duration	25
35	Variation of domestic violence order	26
36	Revocation of orders	26
37	Commissioner of Police must be given notices of applications to vary or revoke	26
38	Conferral of jurisdiction	27
39	Court may summons person to attend	27

*Division 2—Registration of domestic violence orders from other
States and Territories*

40	Application to register interstate order in Queensland	28
41	Clerk to obtain copies of order and proof of service	28
42	Registration of interstate order	28

*Domestic Violence (Family Protection) Act
1989*

43	Duty of clerk after order is registered	29
44	Effect of registration of interstate order	29
45	Variation etc. of registered interstate order	30
46	Applicant need not notify interstate spouse etc.	30

PART 4—PROCEDURAL PROVISIONS

Division 1—Procedures to be followed by court on applications for protection orders

47	Service of application on respondent spouse may be accompanied by summons	32
48	Appearance of respondent spouse	32
49	Non-appearance of respondent spouse	33
50	Domestic violence orders to be explained	34
51	Application for revocation or variation	34
52	Duty of clerk of court to give certain notices to Commissioner of Police	36
53	Procedure if respondent spouse found guilty etc. of related offence	36

Division 2—Police may apply for temporary protection order in certain circumstances

54	Applications by telephone, facsimile etc.	37
55	Duty of Magistrate upon application under s 54	38
56	Duty of police officer re s 54 order	39
57	Return date of temporary protection order	39
58	Service of court orders	40
59	Provisions concerning warrants	41
60	Police officer or authorised person may represent aggrieved spouse	41
61	Court may not award costs except if application malicious etc.	42
62	Concurrent and other proceedings	42

PART 5—APPEALS

63	Appeals	43
64	Institution of appeal	44
65	Nature of appeal	45
66	Decision on appeal	45

*Domestic Violence (Family Protection) Act
1989*

PART 6—POLICE FUNCTIONS AND POWERS

67	Police action re domestic violence	46
68	Police officer may require person to provide identification	46
69	Presence at domestic violence incident	48
70	Duty of police officer who has taken a person into custody under s 69	48
71	Police officer must apply for protection order etc.	49
72	Duty of police officers to apply for protection order in certain circumstances	50
73	Entry on and search of premises	51
74	Police actions after protection order is made	53
75	Entry of registers—availability for inspection	54
76	Disposal of seized items	54
77	Arrest of certain offenders	55
78	Acting in aid of police powers	56
79	Part not to limit Part 4 of Weapons Act 1990	56

PART 7—MISCELLANEOUS PROVISIONS

80	Breach of order or conditions	56
81	Courts to be closed	57
82	Restriction on publication of proceedings	57
83	Prosecution of proceedings	59
84	Evidentiary provision	59
85	Service etc. of documents	60
86	Exclusion of right to compensation—liability at law	61
87	Minister may approve forms	61
88	Clerks to ensure forms are readily available	61
89	Regulations	61

PART 8—TRANSITIONAL

90	Interpretation	62
91	Instruments, documents, decisions and orders to continue with certain changes	62
92	Certain orders under old Act to be acted on by police	63
93	Higher courts may deal with pending matters	64

Domestic Violence (Family Protection) Act
1989

94	Standard conditions not part of orders under old Act	64
95	Disposal of weapons seized under old Act	64

ENDNOTES

1	Index to endnotes	66
2	Date to which amendments incorporated	66
3	Key	67
4	Table of earlier reprints	67
5	Tables in earlier reprints	67
6	List of legislation	68
7	List of annotations	68
8	List of forms	77
9	Table of renumbered provisions	77
10	Provisions that have not commenced and are not incorporated into reprint	80

DOMESTIC VIOLENCE (FAMILY PROTECTION) ACT 1989

[as amended by all amendments that commenced on or before 1 December 1999]

An Act to provide for protection to a person against violence committed or threatened by his or her spouse, for protection of certain other persons and for prevention of behaviour disruptive to family life

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Domestic Violence (Family Protection) Act 1989*.

Commencement

2.(1) Section 1 and this section shall commence on the day this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided by subsection (1), the provisions of this Act shall commence on a day appointed by proclamation.

Interpretation

3. In this Act—

“aggrieved person” has the meaning given in section 15(3);

“aggrieved spouse” has the meaning given in section 12(2);

“approved form” is a form approved by the Minister under section 87;

*Domestic Violence (Family Protection) Act
1989*

“associate” has the meaning given in section 15(6);

“associated domestic violence” means an act mentioned in section 21(1);

“authorised person” has the meaning given in section 14(2);

“child” of an aggrieved spouse means—

- (a) a biological, adopted, step or foster child of the aggrieved spouse;
or
- (b) another minor in the care or custody of the aggrieved spouse;
whether or not the child is a child of the respondent spouse;

“clerk” of a court means—

- (a) if the court is a Magistrates Court—the clerk of the court; or
- (b) if the court is the District Court—a registrar, within the meaning of the *District Court Act 1967*, of the court; or
- (c) if the court is the Supreme Court—a registrar of the Supreme Court;

“court” has the meaning given in section 4;

“damage” to property includes destruction or loss of the property;

“domestic violence” has the meaning given in section 11(1);

“domestic violence order” means—

- (a) a protection order; or
- (b) a temporary protection order;

“interstate order” means an order made by a court of another State or a Territory under a prescribed law of the other State or Territory;

“justice” means a justice of the peace, but does not include a justice of the peace (commissioner for declarations) within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*;

“Magistrates Court” has the meaning given in section 4;

“possession” has the meaning given in section 5;

“premises” has the meaning given in section 6;

“property” has the meaning given in section 7;

*Domestic Violence (Family Protection) Act
1989*

“protection order” means an order made under section 20(1);

“registered interstate order” means an interstate order that is registered under section 42;

“relative” has the meaning given in section 15(5);

“respondent spouse” has the meaning given in section 12(3);

“spouse” has the meaning given in section 12(1);

“temporary protection order” has the meaning given in section 13(3);

“weapon” has the meaning given in section 18(1);

“weapons licence” has the meaning given in section 8.

Meaning of “court”

4.(1) “Court” means—

- (a) if an application is made to a Magistrates Court—the Magistrates Court; or
- (b) if an application is made to a Magistrate under section 54—the Magistrate; or
- (c) if an offender pleads guilty or is found guilty in relation to an offence that involves domestic violence—the court before which the offender appears.

(2) A **“Magistrates Court”** means a court constituted by a Magistrate but, subject to subsection (3), does not include a court constituted by justices who are not Magistrates.

(3) If an application is made—

- (a) to make a domestic violence order in terms agreed to by, or on behalf of, an aggrieved spouse and a respondent spouse; or
- (b) to make or extend a temporary protection order and a Magistrate is not readily available to constitute a Magistrates Court for the purpose; or
- (c) to adjourn proceedings taken with a view to the making of a domestic violence order against a respondent spouse;

*Domestic Violence (Family Protection) Act
1989*

a Magistrates Court constituted by 2 or more justices may deal with the application.

(4) An order made, or action taken, under subsection (3) is a procedural order or action for the purposes of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

Meaning of “possession”

5. “**Possession**” of a weapon or thing includes—

- (a) having it in one’s custody; and
- (b) having it under one’s control in any place (whether or not another has custody of it); and
- (c) having an ability to obtain its custody at will; and
- (d) having a claim to its custody if the claimant has committed it to the custody of another, even though the weapon or thing is temporarily not in the control of the person having the claim.

Meaning of “premises”

6. “**Premises**” includes any, or part of any, of the following (whether a public place or private property)—

- (a) an area of land (including a road within the meaning of the *Transport Operations (Road Use Management) Act 1995*); and
- (b) a building or structure (whether movable or immovable), including a dwelling house; and
- (c) a vehicle, vessel or aircraft; and
- (d) a caravan or trailer.

Meaning of “property”

7. “**Property**” of a person (whether an aggrieved spouse, aggrieved person or another person) means property that—

- (a) the person owns; or

*Domestic Violence (Family Protection) Act
1989*

- (b) the person does not own, but—
 - (i) is used and enjoyed by the person; or
 - (ii) is available for the person's use or enjoyment; or
 - (iii) is in the person's care or custody; or
 - (iv) is at the premises at which the person is residing.

Meaning of “weapons licence”

8. “Weapons licence”, in relation to a respondent spouse, means—

- (a) a licence, within the meaning of the *Weapons Act 1990*, that is issued in the name of the respondent spouse; or
- (b) a licence on which the name of the respondent spouse is endorsed as the representative of a body corporate or firm under section 2.2(2) of the *Weapons Act 1990*.

Meaning of court being satisfied

9. If a court is to be satisfied of a matter, the court need only be satisfied of the matter on the balance of probabilities.

**PART 2—UNDERSTANDING DOMESTIC VIOLENCE
(FAMILY PROTECTION) UNDER THIS ACT**

Purpose of this Part

10.(1) The purpose of this Part is to assist in the understanding of this Act.

(2) It sets out some of the ideas and expressions that are important for an understanding of this Act.

*Domestic Violence (Family Protection) Act
1989*

What is domestic violence?

11.(1) “Domestic violence” is any of the following acts that a person has committed against his or her spouse—

- (a) wilful injury;
- (b) wilful damage to the spouse’s property;
- (c) intimidation or harassment of the spouse;
- (d) indecent behaviour to the spouse without consent;
- (e) a threat to commit an act mentioned in paragraphs (a) to (d).

Examples—

1. Following the spouse when the spouse is out in public, either by car or on foot.
2. Positioning oneself outside the spouse’s residence or place of work.
3. Injuring, or threatening to injure, the spouse’s pet.
4. Repeatedly telephoning the spouse at home or work without consent (whether during the day or night).

(2) A spouse need not personally commit the act or threaten to commit it.

Who is a “spouse”?

12.(1) A “**spouse**” means either one of a man and a woman—

- (a) who are or have been married to each other; or
- (b) who, although not married to each other, are residing or have resided together as husband and wife; or
- (c) who are the biological parents of a child (whether or not they are or have been married or are residing or have resided together).

(2) An “**aggrieved spouse**” means the spouse for whose benefit a domestic violence order is in force or may be made under this Act.

(3) A “**respondent spouse**” means a person against whom a domestic violence order is in force, is sought or may be sought, under this Act.

What assistance can a court give to prevent domestic violence?

13.(1) A court can make a domestic violence order against the respondent spouse for the benefit of the aggrieved spouse.

(2) A “**domestic violence order**” means—

- (a) a protection order; or
- (b) a temporary protection order.

(3) A “**temporary protection order**” is an order (made under section 31) for a short period until a court decides whether or not to grant a protection order (under section 20).

(4) Sometimes, the court can make a domestic violence order even though the person against whom the order is made—

- (a) is not notified about the application; or
- (b) does not appear in court.

Who can apply for a protection order?

14.(1) An application for a protection order may be made only by—

- (a) an aggrieved spouse; or
- (b) an authorised person mentioned in subsection (2); or
- (c) a police officer mentioned in subsection (3).

(2) An “**authorised person**” means a person who is authorised (in writing) by an aggrieved spouse to appear on behalf of the aggrieved spouse, unless the court believes that the authorised person is not able to assist it.

(3) A police officer who—

- (a) has investigated a matter under section 67; and
 - (b) has the reasonable beliefs mentioned in section 67(2);
- may apply for a protection order.

*Domestic Violence (Family Protection) Act
1989*

Who can a domestic violence order protect?

15.(1) As well as the aggrieved spouse, a relative or associate of the aggrieved spouse may be protected by the domestic violence order.

(2) A relative or associate is protected by being specifically named in the domestic violence order under section 21(1).

(3) The specifically named relative or associate is called an **“aggrieved person”**.

(4) The name of the aggrieved person may be specified in the domestic violence order at the time it is made or at a later time.

(5) “Relative” means a person—

- (a) whom the aggrieved spouse regards as a relative; or
- (b) who regards himself or herself as a relative of the aggrieved spouse;

if it is reasonable to regard that person as a relative, especially considering that for some people the concept of a relative may be wider than is ordinarily understood.

Examples of people who may have a wider concept of a relative—

1. Aboriginal people.
2. Torres Strait Islanders.
3. Members of certain communities with non-English speaking backgrounds.
4. People with particular religious beliefs.

(6) “Associate” means a person—

- (a) whom the aggrieved spouse regards as an associate; or
- (b) who regards himself or herself as an associate of the aggrieved spouse;

if it is reasonable to regard that person as an associate.

Examples of persons who are associates—

1. A person who works at the same place as the aggrieved spouse.
2. A person who resides at the same place as the aggrieved spouse.
3. A person who belongs to the same church, club or other type of association.

When can a court make a domestic violence order?

16.(1) Firstly, an application for a protection order may be made to a Magistrates Court by any of the persons mentioned in section 14.

(2) Secondly, a police officer may apply to a Magistrate for a temporary protection order under section 54.

(3) Thirdly, if a person is before a Magistrates Court, the District Court or the Supreme Court for an offence involving domestic violence, the court may make a domestic violence order under section 30.

(4) Fourthly, if a person has obtained an order from another State or a Territory in order to protect himself or herself, the order may be registrable in Queensland under Division 2 of Part 3.

What are the conditions of a domestic violence order?

17. If a court makes a domestic violence order—

- (a) the respondent spouse must be of good behaviour and must not commit acts of domestic violence or associated domestic violence; and
- (b) the respondent spouse must not possess a weapon, unless the court otherwise orders; and
- (c) the respondent spouse must comply with any other conditions imposed by the court and set out in the order.

What is meant by a weapon?

18.(1) “Weapon” means—

- (a) a weapon within the meaning of the *Weapons Act 1990*; or
- (b) an item prescribed by regulation as a weapon.

Examples—

1. Firearm.
2. Martial arts weapon.
3. Knuckleduster or sap glove.

*Domestic Violence (Family Protection) Act
1989*

(2) If a respondent spouse has used a thing as a weapon but it is not a weapon within the meaning of this Act, the court may (under section 26) treat it as a weapon and impose special conditions in relation to it, including prohibiting the respondent spouse from possessing it.

(3) If a respondent spouse has ever used or threatened to use a weapon, or a thing as a weapon, against an aggrieved spouse, it is important for the aggrieved spouse to tell the court about it.

What can happen if a respondent spouse does not comply with an order?

19.(1) If a respondent spouse does not comply with a domestic violence order (including a registered interstate order) a police officer can charge the respondent spouse with an offence.

(2) An aggrieved spouse, aggrieved person, or another person can complain to a police officer if the respondent spouse is not complying with the order.

**PART 3—DOMESTIC VIOLENCE
ORDERS—POWERS OF COURT**

Division 1—Powers of courts to make domestic violence orders

Power of court to make orders to protect spouse against domestic violence

20.(1) A court may make an order against a respondent spouse if the court is satisfied that—

- (a) the respondent spouse has committed an act of domestic violence against the aggrieved spouse; and
- (b) the respondent spouse—
 - (i) is likely to commit an act of domestic violence again; or

Domestic Violence (Family Protection) Act
1989

- (ii) if the act of domestic violence was a threat—is likely to carry out the threat.

(2) A spouse who counsels or procures another person to commit an act that, if done by the spouse, would be an act of domestic violence is taken to have committed the act.

Power of court to make orders to protect relatives or associates of aggrieved spouse against violence etc.

21.(1) The court may include the name of a relative or associate of an aggrieved spouse in a domestic violence order made for the benefit of the aggrieved spouse if the court is satisfied that the respondent spouse has committed, or is likely to commit, any of the following acts against the relative or associate—

- (a) wilful injury;
- (b) wilful damage to property of the relative or associate;
- (c) intimidation or harassment;
- (d) a threat to commit an act mentioned in paragraphs (a) to (c).

(2) A spouse who counsels or procures another person to commit an act that, if done by the spouse, would be an act of associated domestic violence is taken to have committed the act.

Protection order must include standard condition to be of good behaviour etc.

22. In making a domestic violence order, the court must impose a condition that the respondent spouse—

- (a) be of good behaviour towards the aggrieved spouse and not to commit domestic violence; and
- (b) be of good behaviour towards any aggrieved person named in the order and not to commit an act of associated domestic violence against the person.

*Domestic Violence (Family Protection) Act
1989*

Protection order must include standard condition about weapons etc.

23.(1) This section is subject to any court order made under section 28.

(2) In making a domestic violence order, the court must provide that the respondent spouse is not to possess a weapon for the duration of the order.

(3) In making a protection order, the court must revoke all weapons licences issued in the name of, or in relation to, the respondent spouse.

(4) In making a temporary protection order, the court must suspend all weapons licences issued in the name of, or in relation to, the respondent spouse.

(5) In making a domestic violence order, the court must remove the name of the respondent spouse endorsed on a weapons licence as the representative of a body corporate or firm under section 2.2(2) of the *Weapons Act 1990*.

(6) If the *Weapons Act 1990* does not apply to the respondent spouse because of section 1.5 of that Act, the court must order that the *Weapons Act 1990* applies to the respondent spouse for the duration of the domestic violence order, unless that Act does not apply—

- (a) because of section 1.5(1)(a) to (c) or (i) of the Act; or
- (b) because of section 1.5(1)(f), (h) or (j) of the Act and the fact that the person is dealing with the weapon on behalf of the Commonwealth.

Arrangements for surrender of revoked or suspended licences etc.

24.(1) If the respondent spouse is present in court when the court makes a domestic violence order, the respondent spouse must—

- (a) if the respondent spouse has a weapons licence and brought it to court—give the weapons licence to a police officer; and
- (b) immediately arrange with a police officer to give promptly to the officer any weapon that the respondent spouse possesses and, in any case, no later than 1 day after the day the court makes its order.

(2) Subject to subsection (3), if the respondent spouse is not present in

*Domestic Violence (Family Protection) Act
1989*

court when the court makes a domestic violence order, the respondent spouse must give—

- (a) any weapons licence of the respondent spouse; and
- (b) any weapon that the respondent spouse possesses;

to a police officer promptly after the respondent spouse is given a copy of the order and, in any case, must immediately arrange with the officer to promptly give any weapon to the officer no later than 1 day after the day the spouse is given the order.

(3) If the police officer personally serves the order on the respondent spouse at the spouse's place of residence, the spouse must immediately give the weapons licence and any weapon in the spouse's possession to the police officer.

(4) If the court considers that it is necessary or desirable to do so, the court may, in its order—

- (a) shorten the period under subsection (1) or (2) in which the respondent spouse must give weapons to a police officer; and
- (b) specify that the weapons are to be given to a police officer at a specified police station or establishment.

(5) A respondent spouse who—

- (a) lawfully possessed a weapon immediately before the order; and
- (b) complies with the order before the end of the relevant period mentioned in this section, or as ordered by a court;

does not commit an offence against the *Weapons Act 1990* merely by possessing a weapon during the period necessary to comply with this section or an order under it.

Court may impose other conditions

25.(1) If a court was to have exercised a power under section 22 or 23 and did not do so, the court is taken to have done so.

Example—

If a court does not include in a domestic violence order the conditions mentioned in section 22, the order is taken to include the conditions.

Domestic Violence (Family Protection) Act
1989

(2) When a court makes or varies a domestic violence order, it may also impose conditions on the respondent spouse that the court considers—

- (a) necessary in the circumstances; and
- (b) desirable in the interests of the aggrieved spouse, any aggrieved person and the respondent spouse.

(3) The conditions that the court may impose include, for example—

- (a) prohibiting specific behaviour of the respondent spouse that would constitute an act of domestic violence against the aggrieved spouse or an act of associated domestic violence against an aggrieved person; and
- (b) prohibiting a respondent spouse from entering or remaining in specified premises, including premises where—
 - (i) the aggrieved spouse and respondent spouse live together or previously lived together; and
 - (ii) the aggrieved spouse or an aggrieved person resides, works or frequents;

even though the respondent spouse has a legal or equitable interest in the premises; and

- (c) prohibiting the respondent spouse from approaching the aggrieved spouse or any aggrieved person, including setting a specific distance within which an approach is prohibited; and
- (d) prohibiting the respondent spouse from contacting the aggrieved spouse or any aggrieved person; and
- (e) prohibiting specified conduct of the respondent spouse towards a child of the aggrieved spouse, including prohibiting the respondent spouse's presence in a place associated with the child.

(4) In relation to property of the aggrieved spouse, a condition may require the respondent spouse—

- (a) to return the property to the aggrieved spouse; or
- (b) to allow the aggrieved spouse access to the property; or
- (c) to allow the aggrieved spouse to recover the property; or

*Domestic Violence (Family Protection) Act
1989*

(d) to do any act necessary or desirable to facilitate action mentioned in paragraphs (a) to (c).

(5) The following matters are to be of paramount importance to the court when it imposes conditions on the respondent spouse—

- (a) the need to protect the aggrieved spouse and any aggrieved persons;
- (b) the welfare of a child of the aggrieved spouse.

(6) The court may also consider—

- (a) the accommodation needs of all persons affected by the proceedings; and
- (b) the order's effect on a child of the aggrieved spouse; and
- (c) existing orders relating to guardianship or custody of, or access to, a child of the aggrieved spouse.

(7) This Act does not permit a court to make an order relating to the guardianship or custody of, or access to, a child.

Special condition for thing that has been used as a weapon

26.(1) This section applies if a court is satisfied that the respondent spouse—

- (a) has used, or threatened to use, a thing in committing an act of domestic violence against the aggrieved spouse or an act of associated domestic violence against an aggrieved person; and
- (b) is likely to use the thing again or carry out the threat.

Examples of things—

1. An animal (including a pet).
2. A bottle.
3. A baseball bat.

(2) The court may, as a condition of the domestic violence order, prohibit the respondent spouse from possessing the thing, or a thing of the same type, for the duration of the order.

(3) If the court makes an order under subsection (2), the thing is taken to

*Domestic Violence (Family Protection) Act
1989*

be a weapon and may be dealt with under this Act and the *Weapons Act 1990* as a weapon for which there is no licence.

(4) The court's power under this section does not limit its power under section 25.

No weapons licence for duration of domestic violence order

27.(1) This section applies to a respondent spouse other than a spouse whose weapons licence continues in force under section 28.

(2) The respondent spouse may not obtain a weapons licence.

(3) A weapons licence of the respondent spouse may not be renewed.

(4) A weapons licence obtained or renewed during the period of revocation or suspension is invalid.

Court may allow respondent spouse to possess weapons in limited circumstances

28.(1) This section applies only if the court is satisfied that—

(a) the respondent spouse has never used a weapon, and has never threatened to use a weapon, when committing an act of domestic violence or associated domestic violence; and

(b) the application of section 23 would deprive the respondent spouse of the means of earning a livelihood.

(2) Instead of making an order under section 23, the court may make an order that—

(a) allows the respondent spouse's weapons licence to continue in force; or

(b) does not apply the *Weapons Act 1990* to the respondent spouse.

(3) An order under subsection (2) must impose conditions that provide the most restricted opportunity for access to weapons by the respondent spouse while allowing the spouse to earn a livelihood.

(4) The court may only make the order if—

(a) the respondent spouse applies for the order as part of the

*Domestic Violence (Family Protection) Act
1989*

proceedings to decide whether or not to make or vary a domestic violence order; and

- (b) there is corroborative evidence that the application of section 23 to the respondent spouse would deprive the respondent spouse of the means of earning a livelihood.

(5) If a court makes an order under this section, section 23 does not apply to the respondent spouse.

Domestic violence orders must include information about weapons

29.(1) The purpose of this section is to ensure that a police officer has as much information available as is possible when the officer exercises a power under this Act to obtain a weapon.

(2) In making a domestic violence order, the court must specify as much information as it can about the weapons that the respondent spouse possesses.

Power of court if spouse pleads or is found guilty of related offences

30.(1) A court before which a person pleads guilty to, or is found guilty of, an offence that involves domestic violence may, on its own initiative, make a domestic violence order against the offender, if the court is satisfied that a protection order could be made under section 20 against the offender as the respondent spouse.

(2) If a domestic violence order is already in force, the court may vary the order.

(3) This section applies whether or not the court makes another order in respect of the offender.

Power of court to make temporary protection orders

31.(1) On an application being made for a protection order, the court may make a temporary protection order.

(2) A temporary protection order may be made if the court adjourns the hearing of the application for the protection order (whether the court is

*Domestic Violence (Family Protection) Act
1989*

hearing the application under section 48 or 49).

(3) Before the court can make a temporary protection order for the purposes of an adjournment, it must appear to the court that an act of domestic violence has been committed against the aggrieved spouse.

(4) The court may make a temporary protection order against the respondent spouse or offender in the same terms as a protection order.

(5) A temporary protection order need only be supported by the evidence that the court considers sufficient and appropriate having regard to the temporary nature of the order.

(6) A Magistrate to whom application is made under section 54 (Applications by telephone, facsimile etc.) may make a temporary protection order against the respondent spouse if it appears to the Magistrate that—

- (a) an act of domestic violence has been committed; and
- (b) because of distance, time or other circumstance of the case, it is not practicable to apply to a court for a protection order and for it to be heard and determined quickly.

(7) The temporary protection order under subsection (6) may be in the same terms as if the Magistrate were then and there constituting a Magistrates Court.

(8) A temporary protection order constitutes a summons to the respondent spouse directing the respondent spouse to appear at the time and place at which the order is returnable so that the respondent spouse may be heard on the matter of the making of the protection order.

Court may make temporary protection order without proof of service in certain circumstances

32. In addition to the reasons for making a temporary protection order mentioned in section 31, the court may also make a temporary protection order under section 31, or vary an order previously made under that section, if—

- (a) because the applicant has not satisfied the court that the respondent spouse has been given a document mentioned in

*Domestic Violence (Family Protection) Act
1989*

section 49(1)(a), (b) or (c) (whether or not the respondent spouse is present in court), the court has not begun to hear, or has decided not to begin to hear, the application; but

- (b) it appears to the court that the aggrieved spouse or an aggrieved person is in danger of personal injury or his or her property is in danger of substantial damage.

Court may make domestic violence order by consent

33.(1) A court may make a domestic violence order in a form agreed to by, or on behalf of, the aggrieved spouse and the respondent spouse.

(2) The order may only include matters that may be dealt with under this Act.

(3) This section is subject to section 60 (Police officer or authorised person may represent aggrieved spouse).

Start of domestic violence orders and their duration

34.(1) A domestic violence order takes effect—

- (a) on the day it is made; or
- (b) if it is made while an existing domestic violence order against the respondent spouse for the benefit of the same aggrieved spouse is in force—at the end of the existing order.

(2) Subject to subsection (3), the court may determine that a protection order continues for a period no longer than 2 years.

(3) If the court is satisfied that there are special reasons for doing so, the court may determine that a protection order continues for a period longer than 2 years.

(4) A domestic violence order continues in force for the period determined by the court and set out in the order unless it is revoked at an earlier time or the period of the order is varied.

(5) A temporary protection order continues in force until the order—

- (a) is returnable before a court unless the court extends the order; or

(b) is revoked by the court;
whichever happens first.

Variation of domestic violence order

35.(1) A court may vary a domestic violence order, including—

- (a) the conditions imposed by the domestic violence order under section 25 or 26; or
- (b) the period for which the domestic violence order continues in force.

(2) The application for a variation must be made while the domestic violence order is in force.

(3) The court may vary a domestic violence order—

- (a) on an application to vary it; or
- (b) on an application to revoke it; or
- (c) on its own initiative under section 30; or
- (d) when dealing with a contravention of the order.

(4) Before a court varies a domestic violence order, it must consider—

- (a) the grounds set out in the application for the protection order; and
- (b) the findings of the court that made the domestic violence order.

Revocation of orders

36.(1) A court may revoke a domestic violence order.

(2) A revocation takes effect on the day it is made.

(3) The court may exercise its power to revoke only on an application for revocation under section 51.

Commissioner of Police must be given notices of applications to vary or revoke

37. A court must not make an order under section 35 or 36 unless it is

satisfied that the Commissioner of Police has been given a copy of the application.

Conferral of jurisdiction

38.(1) Jurisdiction is conferred on—

- (a) every Magistrates Court and Magistrate to hear and determine all applications made to it or the Magistrate under this Act; and
- (b) every other court before which a person pleads guilty to, or is found guilty of, an offence that involves domestic violence.

(2) To avoid any doubt, the provisions of the *Justices Act 1886* apply to proceedings under this Act before a Magistrates Court or Magistrate unless the application of the Act is inconsistent with this Act.

Court may summons person to attend

39.(1) A justice may, by notice given to a person, summons the person to attend the hearing of an application for a protection order at a time and place specified in the summons—

- (a) to give evidence; and
- (b) to produce any record in the person's possession and specified in the notice.

(2) A person served with a summons to attend as a witness must not fail, without reasonable excuse—

- (a) to attend as required by the summons; or
- (b) to attend from time to time in the course of the hearing as required by the court; or
- (c) to produce any record that the person was required to produce by the summons served on the person.

Maximum penalty—10 penalty units.

(3) A person attending as a witness at a hearing must not fail—

- (a) to be sworn or to make an affirmation; or

*Domestic Violence (Family Protection) Act
1989*

- (b) without reasonable excuse, to answer a question that the person is required to answer by the court.

Maximum penalty—10 penalty units.

(4) If a person served with a summons fails to attend as mentioned in subsection (2)(a) or (b), the court may order the issue of a warrant for the person to be taken into custody by a police officer and to be brought before the court.

(5) Any justice may issue a warrant for the purposes of subsection (4).

(6) Subsection (4) does not limit any other powers of the court.

***Division 2—Registration of domestic violence orders from other States
and Territories***

Application to register interstate order in Queensland

40.(1) A person may apply to the clerk of a Magistrates Court for the registration of an interstate order.

(2) The application is to be made on the appropriate approved form.

Clerk to obtain copies of order and proof of service

41.(1) The clerk must be satisfied that—

- (a) the interstate order is in force by obtaining a certified copy of it;
and
- (b) the order was served, or was taken to be served, on the person against whom it was made.

(2) The clerk must try to obtain the copy and proof quickly, for example, if a facsimile machine is available, the clerk must try to obtain them by facsimile.

Registration of interstate order

42.(1) This section applies if the clerk is satisfied about the matters

*Domestic Violence (Family Protection) Act
1989*

mentioned in section 41(1).

(2) Subject to subsection (3), the clerk must register the interstate order.

(3) If—

- (a) the clerk believes it necessary to do so; or
- (b) the applicant asks the clerk to do so;

the clerk must refer the interstate order to the Magistrates Court for adaptation or modification.

(4) The court may vary the interstate order for the purposes of its registration by adapting or modifying it in a way that the court considers necessary or desirable for its effective operation in the State.

(5) The clerk must register the interstate order as varied.

(6) A registered interstate order is registered for the period during which the order, as originally made, is in force.

(7) A regulation may prescribe the way that the clerk is to register an interstate order.

Duty of clerk after order is registered

43.(1) No later than 2 business days after the registration of an interstate order, the clerk must give the applicant and the Commissioner of Police a certificate of the registration with a copy of the registered interstate order attached.

(2) Notice of the registration of an interstate order is not to be given to the person against whom the order was made unless the aggrieved spouse has consented to the notice.

(3) The consent must be given in writing.

(4) The clerk may not ask the applicant for any fee, or reimbursement for any expenses incurred, under this Division.

Effect of registration of interstate order

44.(1) A registered interstate order—

*Domestic Violence (Family Protection) Act
1989*

- (a) has the same effect as a protection order made under Division 1; and
- (b) may be enforced against a person as if it were a protection order that had been made under Division 1 and personally served on the person.

(2) Subsection (1) is subject to section 80(3).

Variation etc. of registered interstate order

45.(1) An application may be made to a court for—

- (a) a variation of a registered interstate order as it applies in Queensland; or
- (b) a variation of the period during which a registered interstate order has effect in its operation in Queensland; or
- (c) the cancellation of the registration of an interstate order.

(2) Any of the following persons may apply to a court for an order under subsection (1)—

- (a) the person who applied for the registration of the interstate order;
- (b) a person for whose benefit the interstate order has been made;
- (c) a person against whom the interstate order has been made;
- (d) an authorised person;
- (e) a police officer.

(3) The court may determine the application—

- (a) by varying it as it applies in Queensland; or
- (b) by varying the period during which it has effect in its operation in Queensland; or
- (c) by cancelling the registration.

Applicant need not notify interstate spouse etc.

46.(1) An applicant under this Division need not give notice of—

*Domestic Violence (Family Protection) Act
1989*

- (a) an application for registration of an interstate order; or
- (b) an application for variation or revocation of a registered interstate order;

to the person against whom the order was originally made.

(2) When an application for which notice has not been given comes before a court, the court—

- (a) may hear and determine the application in the absence of the person against whom the interstate order was originally made; and
- (b) must not refuse to hear and determine the application merely because the person against whom the interstate order was originally made has not been given notice of the application.

(3) A registered interstate order that is—

- (a) adapted or modified under section 42(4); or
- (b) varied under section 45;

is enforceable in Queensland without notice of the adaptation, modification or variation being given to the person against whom the interstate order was originally made.

(4) This section does not prevent an applicant giving notice of the application, or an order made because of the application, to the person against whom the interstate order was originally made.

(5) This section is subject to section 80(3).

PART 4—PROCEDURAL PROVISIONS

Division 1—Procedures to be followed by court on applications for protection orders

Service of application on respondent spouse may be accompanied by summons

47.(1) On application made for a protection order, a clerk of the court or a justice may, subject to subsections (2) and (3), issue a summons directing the respondent spouse to appear at the time and place set out in the summons with a view to the respondent spouse being heard on the matter.

(2) The clerk need not issue a summons under subsection (1) if the applicant asks the clerk to arrange for the application to be heard by the court for the purpose of the court making a temporary protection order.

(3) If the court refuses to make the temporary protection order and the applicant does not withdraw the application, the clerk must issue the summons.

(4) The clerk of the court must give 2 copies of the application and any summons to the police officer in charge of the Police Division in which the respondent spouse ordinarily resides or was last known to reside.

(5) The officer must cause the application and any summons to be served on the respondent spouse.

(6) If the applicant is not the aggrieved spouse, the applicant must serve the aggrieved spouse with a copy of the application and notice of the time and place that the application is to be heard.

(7) A justice may issue a summons under subsection (1) only if the justice knows that a Magistrates Court is sitting at the time and place that the justice specifies in the summons for when it is returnable.

Appearance of respondent spouse

48.(1) This section applies if a respondent spouse appears before the court that is to hear and determine the matter of an application for a

*Domestic Violence (Family Protection) Act
1989*

protection order.

(2) The court—

- (a) may hear and determine the application; or
- (b) may adjourn the matter of the application (whether or not it makes a temporary protection order); or
- (c) subject to subsection (3), may dismiss the application.

(3) The court may not dismiss an application unless—

- (a) the applicant has not appeared and, if the applicant was a police officer, no other police officer or Crown Prosecutor requests an adjournment; and
- (b) no other person eligible to apply appears.

(4) The dismissal of the application does not affect the right of the applicant to make a further application against the respondent spouse.

(5) The appearance of the respondent spouse is evidence that the respondent spouse has been served.

Non-appearance of respondent spouse

49.(1) This section applies if a respondent spouse fails to appear before the court that is to hear and determine the matter of the application for a protection order and the court is satisfied that the respondent spouse has been given the documents mentioned in any of the following paragraphs—

- (a) a copy of the application and any summons issued under section 47;
- (b) a copy of the application and the temporary protection order made because of the application;
- (c) a copy of the application and a copy of the conditions on which the person was released from the watch-house under section 71 that set out the time and place for the hearing of the application.

(2) The court may—

- (a) proceed to hear and determine the matter of the application in the absence of the respondent spouse; or

*Domestic Violence (Family Protection) Act
1989*

- (b) adjourn the matter of the application (whether or not it makes a temporary protection order); or
- (c) subject to section 59(1), order the issue of a warrant for the respondent spouse to be taken into custody by a police officer and brought before the court.

(3) Any justice may issue a warrant for the purposes of subsection (2)(c).

Domestic violence orders to be explained

50.(1) This section only applies if a respondent spouse is before a court that is about to make a domestic violence order.

(2) The court must ensure that the respondent spouse understands—

- (a) the purpose, terms and effect of the proposed order, including that the order may be enforceable in other States and Territories without further notice; and
- (b) the consequences that may follow if the respondent spouse fails to comply with the terms of the proposed order.

Examples of arrangements that the court may make to ensure the respondent spouse understands the order—

1. The clerk or another officer of the court may explain the order to the respondent spouse.

2. A local interpreter or the telephone interpreter service may be used to explain the order to the respondent spouse.

3. Explanatory notes prepared for respondent spouses, including non-English speakers, may be given to the spouse.

(3) Failure to comply with subsection (2) does not affect the validity of the domestic violence order.

Application for revocation or variation

51.(1) This section applies to an application for—

- (a) revocation of a domestic violence order; or
- (b) variation of a domestic violence order (including conditions

*Domestic Violence (Family Protection) Act
1989*

imposed by the order).

(2) The application may be made to a court by—

- (a) the aggrieved spouse; or
- (b) the respondent spouse; or
- (c) an authorised person; or
- (d) a police officer who reasonably believes that it is for the benefit of the aggrieved spouse and there is sufficient reason for taking the action.

(3) The application must be made on the approved form.

(4) Where an application under subsection (1) is made, the person who makes the application shall cause a copy of the application and a notification of the time and place at which the application is to be heard—

- (a) to be served on each person, being the aggrieved spouse or the respondent spouse, other than the person who makes the application; and
- (b) to be given to the Commissioner of Police.

(5) If it appears to a court to which application is made under subsection (1) that it is not reasonably practicable to effect service on a particular person, the court may order that the copy of the application and the notification be served on that person by such means of substituted service as the court thinks fit.

(6) Where a person on whom is served a copy of the application and a notification required by subsection (4) to be served (including by way of substituted service ordered under subsection (5)) fails to appear at the time and place at which the application is to be heard, the court, upon proof of such service—

- (a) may hear and determine the matter of the application in the absence of that person;
- (b) may adjourn the matter of the application;
- (c) where that person is the respondent spouse within the meaning of this Act, may, subject to section 59(1), order the issue of a warrant for that spouse's being taken into custody by a police

officer and production to the court.

(7) Any justice may issue a warrant for the purpose of subsection (6)(c).

Duty of clerk of court to give certain notices to Commissioner of Police

52.(1) The clerk of the court in which any of the following applications are made, or orders are granted, must give notice of the application or order to the Commissioner of Police—

- (a) an application for a protection order;
- (b) an application for a variation or revocation of such an order;
- (c) an application for—
 - (i) registration of an interstate order; or
 - (ii) variation or revocation of a registered interstate order;
- (d) an order made because of an application mentioned in paragraph (a), (b) or (c), including a temporary order.

(2) The clerk must give the notice before the end of 1 business day after the day the application is made or order is granted.

Procedure if respondent spouse found guilty etc. of related offence

53.(1) A court exercising jurisdiction under section 30—

- (a) may make the protection order before the offender is discharged by the court or otherwise leaves the court subject to the offender being given a sufficient opportunity to present evidence and to prepare and present submissions about the making of a protection order; or
- (b) may adjourn the matter of making the protection order to a later fixed time and day and may, in the meantime, exercise the jurisdiction conferred by section 31 (Power of court to make temporary protection orders).

(2) On the later day to which the matter has been adjourned, the court may receive evidence that is necessary or desirable to assist it on the matter.

(3) If the offender fails to appear at the later time and day to which the

*Domestic Violence (Family Protection) Act
1989*

matter is adjourned, the court may—

- (a) determine to make a protection order against the offender in the offender's absence; or
- (b) adjourn the matter further; or
- (c) order, subject to section 59(1), the issue of a warrant for the offender to be taken into custody by a police officer and brought before the court.

(4) Any justice may issue a warrant for the purpose of subsection (3)(c).

Division 2—Police may apply for temporary protection order in certain circumstances

Applications by telephone, facsimile etc.

54.(1) A police officer who—

- (a) must, under section 71, make an application for a protection order under this section; or
- (b) may, under section 14(3), make an application for a protection order, and who believes that because of distance, time or other circumstance of the case, it is not practicable for an application made to a court, or to be made to a court, to be heard and determined quickly;

may, by way of telephone, facsimile, telex, radio or other similar facility, apply in accordance with this section for a temporary protection order to a Magistrate.

(2) The police officer may apply for the order before the application is sworn.

(3) Before making the application, the police officer (if an application for a protection order has not already been made to a court) must prepare a form of application for a protection order under this section.

(4) The police officer must inform the Magistrate of the particulars of the application.

*Domestic Violence (Family Protection) Act
1989*

(5) A Magistrate with whom contact is made by a person claiming to be a police officer applying for a protection order under this section is entitled to presume that—

- (a) the person is who and what the person claims to be; and
- (b) the provisions of this section have been complied with.

(6) The form of application for a protection order completed under subsection (3) is to be filed in the office of the clerk of the court—

- (a) at the place where the order sought, when made, is to be returned; or
- (b) if such order is not made, would be returned were it made.

(7) On the filing of the form of application, an application for a protection order is taken to be made to the court at that place.

(8) If the police officer applied for the order before the application was sworn, the application must be sworn before it is filed under subsection (6).

Duty of Magistrate upon application under s 54

55. A Magistrate to whom an application for a temporary protection order is made under section 54 shall reduce the particulars of the application, as conveyed by the applicant, to writing in or to the effect of the approved form, and—

- (a) if the Magistrate makes the temporary protection order, shall—
 - (i) complete and sign the order;
 - (ii) record on the order the factors that cause the Magistrate to be satisfied that a protection order could properly be made by a court under section 20;
 - (iii) inform the applicant, by telephone, facsimile, telex, radio, or other similar facility, of the terms of the order and the time and place at which it is to be returned before a court;
 - (iv) as soon as is practicable, cause the written particulars of the application as conveyed by the applicant and the order referred to in subparagraph (i) to be given to the clerk of the court at the place where the order is to be returned; and

*Domestic Violence (Family Protection) Act
1989*

- (v) cause a copy of the order referred to in subparagraph (i) to be given to the Commissioner of Police; or
- (b) if the Magistrate refuses the temporary protection order, shall—
 - (i) reduce to writing the reasons for the refusal; and
 - (ii) as soon as is practicable, cause the written particulars of the application as conveyed by the applicant and the written reasons for the refusal to be given to the clerk of the court at the place where there is filed an application for a protection order against the respondent spouse.

Duty of police officer re s 54 order

56.(1) A police officer who obtains a temporary protection order under section 54 shall prepare 3 copies of the order, in or to the effect of the approved form, in the terms conveyed to the officer by the Magistrate who made the order and shall specify therein—

- (a) the name of the Magistrate who made the order; and
- (b) the date and time the order was made; and
- (c) the place and time at which the order is to be returned before a court; and
- (d) such other information as is prescribed.

(2) Of the copies prepared as required by subsection (1), 1 shall be served on the respondent spouse together with a copy of the application in connection with which the temporary protection order was made (if such copy has not already been so served) and 1 shall be given to the aggrieved spouse, in either case, as soon as is practicable.

Return date of temporary protection order

57.(1) A temporary protection order must specify the time and place at which the order is returnable before a court.

(2) If—

- (a) the court before which the order is returnable is sitting within

*Domestic Violence (Family Protection) Act
1989*

30 days after the day on which the temporary protection order is made; and

- (b) a suitable hearing day is available within the period;

the day that the order is returnable must be a day within the period.

(3) If—

- (a) the court before which the order is returnable is not sitting within 30 days after the day on which the temporary protection order is made; or

- (b) there is not a suitable hearing day available within the period;

the day that the order is returnable must be the first suitable hearing day available after the end of the period.

Service of court orders

58.(1) This section applies if a court—

- (a) has made a domestic violence order; or
 (b) revokes a domestic violence order; or
 (c) varies a domestic violence order (including the conditions imposed by it).

(2) Subject to subsection (3), the clerk of the court must—

- (a) cause a copy of—
 (i) the order; and
 (ii) in the case of a temporary protection order, a copy of the application for a protection order to which the temporary protection order relates (if a copy has not already been served);

to be given to the respondent spouse; and

- (b) cause a copy of the order to be given to the aggrieved spouse and each aggrieved person; and
 (c) cause a copy of the order to be given to the Commissioner of Police.

*Domestic Violence (Family Protection) Act
1989*

(3) Where an order referred to in subsection (1) is made in the absence of the respondent spouse or the aggrieved spouse or the clerk of the court has not caused a copy of the order to be served on the respondent spouse or given to the aggrieved spouse before the respondent spouse or, as the case may be, aggrieved spouse has departed the court precincts, the clerk shall—

- (a) in the case where a copy is to be served on the respondent spouse, cause 2 copies of the order and, in the case where a copy of the application is to be served on the respondent spouse, 2 copies of the application to be given to the officer in charge of the Police Division in which the respondent spouse was last known to the clerk to ordinarily reside; or
- (b) in the case where a copy is to be given to the aggrieved spouse, cause 1 copy of the order to be given to the officer in charge of the Police Division in which the aggrieved spouse was last known to the clerk to ordinarily reside.

(4) The officer in charge of a Police Division who receives a copy or copies of an order or an application from the clerk of the court pursuant to subsection (3) shall cause a copy of the order or, as the case requires, of the application to be served on the respondent spouse or, as the case may be, given to the aggrieved spouse as soon as is practicable.

Provisions concerning warrants

59.(1) A court shall not order the issue of a warrant under section 49(2)(c), 51(6)(c) or 53(3)(c) as a matter of course, but only where, in the circumstances of the case, the court believes it appropriate that the respondent spouse or, as the case may be, offender, be heard.

(2) Where a person is taken into custody under a warrant issued under this Act the provisions of the *Bail Act 1980* are applicable in respect of the person as if the person had been apprehended on a charge of an offence.

Police officer or authorised person may represent aggrieved spouse

60.(1) A police officer or authorised person may appear, and act on behalf of, an aggrieved spouse in any proceedings on an application under this Act, but must not agree to an order under section 33 without the

*Domestic Violence (Family Protection) Act
1989*

specific approval of the aggrieved spouse.

(2) If a court decides that an authorised person is not able to assist it, the application is taken to have been made by the aggrieved spouse.

Court may not award costs except if application malicious etc.

61. A court may not award costs on an application for—

- (a) a protection order; or
- (b) for a revocation or variation of a domestic violence order (including a variation of conditions imposed by the order);

unless the court dismisses the application as malicious, deliberately false, frivolous or vexatious.

Concurrent and other proceedings

62.(1) Any application under this Act may be made, and a court or Magistrate may, as authorised by this Act, dispose of the application notwithstanding that the respondent spouse concerned in the application has been charged with an offence arising out of conduct on which the application is based.

(2) Subsection (3) applies if a respondent spouse against whom—

- (a) a domestic violence order has been made; or
- (b) a court has refused to make a domestic violence order; or
- (c) a court has—
 - (i) revoked, or refused to revoke, a domestic violence order; or
 - (ii) varied, or refused to vary, a domestic violence order (including the conditions imposed by it); or
- (d) proceedings are current in which a protection order is sought against a respondent spouse;

is charged with an offence mentioned in subsection (1).

(3) A reference to—

- (a) the making, or refusal to make, the order, or a revocation or

*Domestic Violence (Family Protection) Act
1989*

variation; or

- (b) the existence of current proceedings mentioned in subsection (2)(d); or
- (c) the fact that evidence of a particular nature or content was given in—
 - (i) the proceedings in which the order, revocation or variation was made or refused; or
 - (ii) the current proceedings;

is inadmissible in the trial of the respondent spouse for an offence arising out of conduct on which the application for the order, revocation, or variation, or relevant to the current proceedings, is based.

(4) To allay any doubt, it is declared that, subject to this section, an application, proceeding or order under this Act in relation to the conduct of a respondent spouse does not affect any proceeding for an offence against the spouse arising out of the same conduct.

(5) The respondent spouse may be punished for the offence mentioned in subsection (4) despite any order made against him or her under this Act.

PART 5—APPEALS

Appeals

63.(1) A person who is aggrieved by an order of a Magistrates Court or a decision of a Magistrate—

- (a) to refuse an application for—
 - (i) a protection order; or
 - (ii) a revocation or variation of a domestic violence order (including a refusal to vary conditions imposed by the order); or
- (b) to make a domestic violence order; or

Domestic Violence (Family Protection) Act
1989

- (c) to revoke or vary a domestic violence order (including a variation of the conditions imposed by the order);

may appeal to the District Court at or nearest to the place where the order or decision was made.

(2) A person who is aggrieved by a decision of the District Court or the Supreme Court under section 30 may appeal the decision to the Court of Appeal.

(3) Any such appeal shall be instituted within 28 days after the day on which the order or decision is made or, where the order was made in the absence of the person who is thereby aggrieved, after the day on which a copy of the order is served on or given to that person.

Institution of appeal

64.(1) An appeal shall be instituted by—

- (a) lodging a notice of appeal in writing with the registrar of the District Court at the place where the appeal must be brought; and
- (b) serving a copy of the notice of appeal on each person, being the aggrieved spouse or the respondent spouse, other than the appellant and on the clerk of the court at the place at which is filed the application upon or in connection with which the order or decision was made; and
- (c) giving a copy of the notice of appeal to the Commissioner of Police.

(2) A notice of appeal—

- (a) shall specify with particularity the grounds of appeal and the facts that are relied upon; and
- (b) must be made on the approved form.

(3) If it appears to a Judge of the District Court to whom application is made that it is not reasonably practicable to effect service on a particular person, the Judge may order that service on that person be effected by such means of substituted service as the Judge thinks fit.

Nature of appeal

65.(1) Unless a Judge of the District Court orders otherwise, an appeal shall be by way of re-hearing on the record, and shall be in accordance with rules of Court made in exercise of the power conferred by the *District Court Act 1967* or, in so far as those rules cannot be applied to such appeals, in accordance with directions given by a Judge of District Courts.

(2) An appeal against an order does not stay the operation of the order, but—

- (a) if the order was a temporary protection order made by a Magistrate—a Magistrates Court; or
- (b) in any other case—the court that made the order;

may stay the operation of the order, or a condition imposed by the order, until the appeal is dealt with.

(3) Subsection (2) does not limit any other power to stay the operation of the order.

Decision on appeal

66.(1) If the District Court allows an appeal—

- (a) it may discharge or vary any order to which the appeal relates, as it considers appropriate;
- (b) it may make such order or decision as it considers should have been made, and every such order or decision shall take effect on and from the day on which it is made.

(2) The provisions of Parts 4 and 7 apply in relation to an order or decision of the District Court as if it were an order or decision of a Magistrates Court.

(3) A Judge of the District Court may make such order as to costs of an appeal as the Judge thinks proper.

(4) Jurisdiction is hereby conferred on the District Court to hear and determine an appeal duly instituted to the court.

(5) The decision of the District Court upon an appeal shall be final and conclusive.

PART 6—POLICE FUNCTIONS AND POWERS

Police action re domestic violence

67.(1) If a police officer reasonably suspects a person is an aggrieved spouse, it is the duty of the officer to investigate or cause to be investigated the complaint, report, or circumstance on which the officer's reasonable suspicion is based, until the officer is satisfied the suspicion is unfounded.

(2) If, after the investigation, the officer reasonably believes—

- (a) the person is an aggrieved spouse; and
- (b) there is sufficient reason for the officer to take action;

the officer may—

- (c) apply for a protection order against the spouse of the aggrieved spouse; and
- (d) take other action that the officer is required or authorised to take by this Act.

Police officer may require person to provide identification

68.(1) This section applies if a police officer has reasonable grounds for suspecting that a person—

- (a) has been involved in, or is about to be involved in, an act of domestic violence or associated domestic violence; or
- (b) is a witness to an act of domestic violence or associated domestic violence.

(2) If the police officer believes on reasonable grounds that the name and address of the person is required for the purposes of this Act, the officer may ask the person to state the person's name and address.

(3) If the person does not state a name and address, the police officer—

- (a) may require the person to state the person's name and address; and
- (b) must warn the person that failure to provide a correct name and

*Domestic Violence (Family Protection) Act
1989*

address is an offence under this Act.

(4) If the police officer believes on reasonable grounds the name or address given by the person is false, the officer—

- (a) may again require the person to state the person's name and address; and
- (b) may require evidence of the correctness of the name and address; and
- (c) must warn the person that failure to provide a correct name and address is an offence under this Act.

(5) A person who is required under subsection (3) or (4) to state the person's name and address must not fail to comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—10 penalty units.

(6) A person who is required under subsection (4)(b) to give evidence of the correctness of the name or address must not—

- (a) fail to give the evidence unless the person has a reasonable excuse for not giving the evidence; or
- (b) give false evidence.

Maximum penalty—10 penalty units.

(7) If the police officer believes on reasonable grounds that—

- (a) a person has contravened subsection (5) or (6); and
- (b) proceedings by way of complaint and summons against the person would be ineffective;

the officer may arrest the person.

(8) If—

- (a) a police officer makes a requirement under this subsection on a suspicion mentioned in subsection (1); and
- (b) a court is not satisfied that the person—
 - (i) was involved in; or
 - (ii) was about to be involved in; or

*Domestic Violence (Family Protection) Act
1989*

(iii) was a witness to;

the act of domestic violence or associated domestic violence;

the person is not guilty of an offence against this section.

(9) In this section—

“address” means current place of residence.

Presence at domestic violence incident

69.(1) A police officer who has reasonable grounds for suspecting that an act of domestic violence has been committed and—

- (a) a person is in danger of personal injury by the respondent spouse; or
- (b) a person’s property is in danger of being damaged by the respondent spouse;

may take the spouse into custody using such force as is reasonable and necessary.

(2) The spouse taken into custody may be detained in custody until—

- (a) an application for a protection order in which that person is named as the respondent spouse is heard and determined under section 71(1); or
- (b) a temporary protection order is made under section 31(6); or
- (c) an application for a protection order is completed, and arrangements are made with the watch-house keeper, under section 71(3); or
- (d) the end of 4 hours;

whichever happens first.

Duty of police officer who has taken a person into custody under s 69

70.(1) A police officer who has taken a person into custody under section 69(1) must immediately take the person to a watch-house and enter the particulars of the person in the register in the prescribed form kept at the

Domestic Violence (Family Protection) Act
1989

watch-house.

(2) While a person is held in custody under this section, it is unlawful for a police officer to deal with the person in respect of any offence committed at a time before the person was taken into custody.

(3) A regulation may provide that a police officer may search the person taken to the watch-house and take possession of anything found on the person, using such force as is reasonable and necessary.

Police officer must apply for protection order etc.

71.(1) Subject to this section, if a police officer takes a person into custody under section 69(1), the officer must promptly bring the person before the court for the hearing and determination of the application if the person is still in custody.

(2) If—

- (a) it is not practicable to bring the person taken into custody promptly before a court on an application for a protection order; and
- (b) the police officer believes that it is necessary to obtain a temporary protection order under section 54 against the person before the person is released;

the police officer may apply for a protection order under section 54.

(3) If—

- (a) it is not practicable to bring the person taken into custody before a court upon an application for a protection order; and
- (b) the police officer is not satisfied that it is necessary to obtain a temporary protection order under section 54 against the person;

the police officer must—

- (c) complete an application for a protection order; and
- (d) arrange with the watch-house keeper for the person to be released from custody on such reasonable conditions as the watch-house keeper considers appropriate, including prescribed conditions and a condition that sets out the details of the time and place of the

*Domestic Violence (Family Protection) Act
1989*

hearing of the application.

(4) When the person is released from custody, the watch-house keeper must give the person a copy of the application for the protection order and the conditions on which the person is released.

(5) Conditions on which a person is released from custody under this section continue in force until—

- (a) a court determines whether or not to make a protection order against the person; or
- (b) a court determines whether or not to make a temporary protection order against the person; or
- (c) a Magistrate determines whether or not to make a temporary protection order against the person on an application under section 54;

whichever happens first.

Duty of police officers to apply for protection order in certain circumstances

72.(1) This section applies if—

- (a) a person is released from custody on conditions under section 71; and
- (b) it is unlikely that the matter of making a protection order or a temporary protection order against the person on or in connection with the application made in relation to the person under section 71 will be determined quickly and, in any case, within 7 days after the day on which the person is released.

(2) The police officer who took the person into custody must make an application for a protection order against the person—

- (a) if the officer is satisfied that it is necessary to make an application under section 54—under that section; or
- (b) in any other case—for a temporary protection order under section 31.

*Domestic Violence (Family Protection) Act
1989*

Entry on and search of premises

73.(1) If a police officer reasonably suspects that domestic violence is occurring, or has occurred before the officer's arrival, on any premises, that member, without further or other authority than this subsection and using such reasonable force as is necessary, may enter into those premises and may remain in those premises for as long as the officer considers necessary—

- (a) to verify the grounds of suspicion; and
- (b) to ensure that, in the officer's opinion, an imminent danger of domestic violence does not exist in those premises; and
- (c) to give or arrange for such assistance as is reasonable in the circumstances to any person in those premises.

(2) A police officer who enters premises under subsection (1), upon request made of the officer by a person who appears to the officer to be concerned in the purpose of the entry, shall supply to that person the officer's name, rank, station and number (if any) in the police force.

(3) If, having entered premises (whether under subsection (1) or otherwise), a police officer has reasonable grounds for believing that an act of domestic violence or associated domestic violence is happening on the premises, or has happened on the premises before the officer's arrival, the officer, without further authority and using such force as is reasonable and necessary, may—

- (a) search the premises to establish whether—
 - (i) any spouse on the premises is in danger of domestic violence; or
 - (ii) another person on the premises is in danger of an act of associated domestic violence; and
- (b) search—
 - (i) the premises for weapons; and
 - (ii) any person on the premises whom the officer has reasonable grounds for suspecting is in possession of a weapon; and
- (c) seize any weapon found on the premises or on a person that the

Domestic Violence (Family Protection) Act
1989

officer has reasonable grounds for suspecting—

- (i) has been used for the act of domestic violence or associated domestic violence; or
- (ii) might be used for committing the act of domestic violence or associated domestic violence.

(4) For the purposes of subsection (3), an apparently reliable claim made to a police officer that a weapon has been used for committing an act of domestic violence or associated domestic violence may be accepted and acted on by the police officer.

(5) A police officer who is about to search premises entered by the officer under this section shall inform the occupier of the premises (if the occupier is present on the premises) that the occupier is entitled to accompany the member throughout the search.

(6) A police officer who seizes for retention any weapon shall, where practicable, inform the person from whose possession it is seized of the place to which the weapon is to be taken.

(7) A police officer who has exercised an authority conferred by this section shall, at the first reasonable opportunity, record in a register in the approved form—

- (a) in the case of entry of premises—
 - (i) the identification of the premises;
 - (ii) the date and time of entry;
 - (iii) the grounds for the officer's suspicion that domestic violence was occurring or had occurred on the premises;
- (b) in the case of a search—
 - (i) the identification of the person or premises searched;
 - (ii) the object of the search;
 - (iii) the description of any weapon seized;

and the officer's name, rank, station and number (if any) in the police force, and shall sign the making of the record.

Police actions after protection order is made

74.(1) This section applies if, because of a domestic violence order, a respondent spouse is to give weapons that the respondent spouse possesses to a police officer.

(2) If the respondent spouse was not in court when the court made its order, the police officer to whom the clerk of the court has given the order must ensure that the order is given to the respondent spouse promptly.

(3) The police officer must—

- (a)** if the order is given to the respondent spouse at the respondent spouse's place of residence—take all steps necessary to ensure that the respondent spouse's weapons licence and weapons are immediately seized; or
- (b)** in any other case—immediately make arrangements to ensure that the respondent spouse's weapons licence and weapons are surrendered to the police officer promptly and, in any case, no later than 1 day after the spouse is given the court order.

(4) In order to seize a weapon under subsection (3)(a), the police officer may enter and search the respondent spouse's place of residence if the officer has reasonable grounds for suspecting the weapon to be at the place.

Examples of how the police officer may have reasonable grounds for suspecting that a weapon is at a place of residence—

1. The court has specified in the order that it believes that the respondent spouse possesses a weapon.
2. The police officer checks the register of weapons licence holders and the respondent spouse's name appears in it.
3. The officer has received apparently reliable information that the respondent spouse possesses a weapon.

(5) For the purposes of subsection (4), the officer may use such force as is reasonable and necessary.

(6) A police officer must exercise the powers under this section in a way that—

*Domestic Violence (Family Protection) Act
1989*

- (a) is consistent with the court order and the need to ensure the protection of the aggrieved spouse or any aggrieved person; but
- (b) tries to minimise disruption to the respondent spouse.

Entry of registers—availability for inspection

75.(1) If a police officer fails to enter into the appropriate register the particulars required by section 70(1) or 73(7)—

- (a) in the case of a failure to comply with section 70(1)—the failure is evidence that—
 - (i) the taking of the spouse into custody as mentioned in section 69(1) was unlawful; and
 - (ii) the custody of that spouse by the police officer and at the watch-house was also unlawful; or
- (b) in the case of a failure to comply with section 73(7)—the failure is evidence that the actions of the police officer purporting to act under the authority conferred by section 73, and of all persons acting in aid of the police officer, were unlawful.

(2) A register kept for the purposes of section 70(1) or 73(7) shall be made available at all reasonable times to a person in respect of whose person, premises, or weapons action has been taken under authority conferred by section 69 or, as the case may be, section 73, or to another authorised in writing by that person, to the extent that the register contains an entry or particulars relating to such person, premises, or weapons.

(3) A failure to make a register available as prescribed by this subsection shall be prima facie evidence that there is no entry in the register of particulars relating to that person, those premises, or those weapons.

Disposal of seized items

76.(1) This section applies to a weapon seized under—

- (a) this Act; or
- (b) the *Weapons Act 1990* because the owner of, or the person who possessed, the weapon had committed, or threatened to commit,

*Domestic Violence (Family Protection) Act
1989*

an act of domestic violence or associated domestic violence.

(2) Section 6.1 of the *Weapons Act 1990* applies to the weapon as if it were a weapon held in the custody of a police officer under that Act.

(3) For the purposes of the application, the “**appointed day**” is—

- (a) if the weapon was given to a police officer or seized because of the making of a protection order—the day the order ends; or
- (b) if the weapon was given to a police officer or seized because of the making of a temporary protection order and no protection order is made following on from the temporary protection order—the day the temporary protection order ends; or
- (c) if the weapon was given to a police officer or seized because of the making of a temporary protection order and a protection order is made following on from the temporary protection order—the day the protection order ends; or
- (d) if the weapon was given to a police officer or seized because of a special condition under section 26 in a domestic violence order and the condition is revoked even though the order continues in force—the day the condition is revoked.

(4) Before the appointed day, an authorised officer may exercise the power under section 6.1(1)(b)(i)(B) of that Act.

Arrest of certain offenders

77.(1) A police officer who reasonably believes that a person is committing or has committed an offence defined in section 80, without further or other authority than this subsection and using such reasonable force as is necessary—

- (a) may arrest the offender;
- (b) may enter into and search any premises for the purpose of making such arrest.

(2) A person arrested under the authority conferred by subsection (1) shall be taken, as soon as is practicable, before justices to be dealt with according to law.

*Domestic Violence (Family Protection) Act
1989*

(3) Subsection (1) shall not be construed to prejudice the taking of proceedings against an offender by way of complaint and summons.

(4) A police officer acting under the authority of subsection (1) shall be taken to be acting in execution of the officer's duty.

Acting in aid of police powers

78. Where this Act confers authority on a police officer it is to be taken that this Act thereby confers a like authority and to a like extent on every other police officer who at the material time is acting in aid of that member.

Part not to limit Part 4 of Weapons Act 1990

79. The powers of a police officer under this Part do not limit the powers of the officer under Part 4 of the *Weapons Act 1990*.

PART 7—MISCELLANEOUS PROVISIONS

Breach of order or conditions

80.(1) A person who knowingly contravenes—

- (a) a domestic violence order, including a condition imposed by it; or
- (b) a registered interstate order, including a condition imposed by it;

commits an offence against this Act.

Maximum penalty—40 penalty units or imprisonment for 1 year.

(2) It is not necessary for the prosecution in proceedings for an offence against subsection (1)(b) to establish that the person knew, and it is not a defence that a person did not know, that an interstate order—

- (a) could be registered in another State or a Territory; or
- (b) was registered in Queensland.

(3) In a prosecution for an offence against subsection (1)(b) for a breach

*Domestic Violence (Family Protection) Act
1989*

of a condition that has been adapted, modified or varied under this Act, the prosecution must establish that the person knew that the condition had been adapted, modified or varied under this Act.

(4) A person who knowingly contravenes or fails to comply with the conditions on which the person is released from custody under section 71(3)(d), other than that the person appears before a court at a specified time and place, commits an offence against this Act and is liable to a penalty not exceeding 40 penalty units or 12 months imprisonment.

Courts to be closed

81.(1) A court hearing an application under this Act is not to be open to the public.

(2) However, the court may open the proceeding to the public or specific persons.

(3) An aggrieved spouse is entitled to have a person with him or her throughout the proceedings to provide support and other assistance.

Restriction on publication of proceedings

82.(1) A person who publishes in a newspaper or periodical publication or who, by radio broadcast or television or otherwise by any means, disseminates to the public or to a section of the public—

- (a) (otherwise than by the display of a notice in the premises of a court) a notification of proceedings under or for the purposes of this Act, identified by reference to the names of the parties to the proceedings, that are to be dealt with by the court; or
- (b) any account of proceedings under or for the purposes of this Act before a court or a Magistrate, or of any part of those proceedings, that identifies or is likely to identify—
 - (i) the aggrieved spouse, an aggrieved person, the respondent spouse, or the applicant or appellant (in either case other than a police officer); or
 - (ii) a witness in the proceedings (other than a police officer); or

Domestic Violence (Family Protection) Act
1989

(iii) a child concerned in the proceedings;

commits an offence against this Act, unless the court before which the proceedings are, are to be, or were held, or the Magistrate before whom the proceedings are or were taken, expressly permits the publication or the publication is permitted under a regulation.

Maximum penalty—

- (a) where the offender is a corporation—40 penalty units or imprisonment for 1 year;
- (b) where the offender is an individual—40 penalty units or imprisonment for 1 year.

(2) The provisions of subsection (1) do not apply in relation to—

- (a) the publishing of any publication bona fide intended primarily for use by members of any profession, being—
 - (i) a separate volume or part of a series of law reports; or
 - (ii) any other publication of a technical character; or
- (b) the publication or other dissemination of an account of proceedings or of any part of proceedings—
 - (i) to a person who is a member of a profession, in connection with the practice by that person of that profession or in the course of any form of professional training in which that person is involved; or
 - (ii) to a person who is a student, in connection with that person's studies.

(3) A person shall not be taken to have disseminated an account of any proceedings, or part of any proceedings, under or for the purposes of this Act to the public or a section of the public in respect of—

- (a) the communication by the person to persons concerned in proceedings in a court or to a police officer, of any transcript of evidence, or other document for use in connection with the proceedings;
- (b) the communication by the person of any transcript of evidence or other document to—

*Domestic Violence (Family Protection) Act
1989*

- (i) a body responsible for disciplining members of any profession; or
- (ii) persons concerned in disciplinary proceedings against a member of any profession, being proceedings before a body responsible for disciplining members of the profession.

(4) In this section (other than in subsection (3)(b)(ii))—

“**proceedings**” includes an application made to a Magistrate under section 54.

Prosecution of proceedings

83.(1) A prosecution for an offence against this Act shall be taken in a summary manner under the *Justices Act 1886*.

(2) A complaint for an offence against this Act shall be laid by a police officer, and, in the case of an offence defined in section 82, with the consent of the Minister first obtained.

Evidentiary provision

84.(1) In any proceeding with the view to giving effect to any provision of this Act a document purporting to be—

- (a) a copy of a protection order or a temporary protection order; or
- (b) a copy of an order revoking a protection order or a temporary protection order, or varying the prohibitions and restrictions imposed by a protection order or a temporary protection order;

shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the making of the order and of the matters contained therein.

(2) In any proceeding with the view to—

- (a) making a protection order or a temporary protection order; or
- (b) revoking a protection order or a temporary protection order; or
- (c) varying the prohibitions and restrictions imposed by a protection order or a temporary protection order;

the court or Magistrate may inform itself, himself or herself in such manner

*Domestic Violence (Family Protection) Act
1989*

as it or the Magistrate thinks fit and is not bound by the rules or practice as to evidence.

(3) The court or Magistrate need not have the personal evidence of the aggrieved spouse before making a domestic violence order.

Service etc. of documents

85.(1) A summons, order or other document to be served for the purposes of this Act may be served in the manner prescribed by the *Justices Act 1886* with respect to service of summonses under that Act, and if it is so served, the provisions of that Act as to proof of service shall apply to proof of service for the purposes of this Act.

(2) A document to be given to any person for the purposes of this Act shall be taken to have been duly given if—

- (a) it is given to the person personally or to a person authorised by the person to whom it is directed to accept delivery of documents on the person's behalf, either generally or in a particular case;
- (b) it is left at the place of residence or business of the person to whom it is directed last known to the person who gives it;
- (c) it is sent by post to the place of residence or business of the person to whom it is directed last known to the person who gives it.

(3) A document shall be deemed to have been received by the person to whom it is directed—

- (a) where it has been given in the manner referred to in subsection (2)(a), on the day it is so given;
- (b) where it has been given in the manner referred to in subsection (2)(b), on the day next following the day it is left at the place specified therein;
- (c) where it has been given in the manner referred to in subsection (2)(c), unless the contrary is proved, at the time it would be delivered in the ordinary course of post.

(4) If a person has given an address to a police officer under section 68, the address is taken to be the person's place of residence for the purposes of

Domestic Violence (Family Protection) Act
1989

subsection (2).

(5) A summons or warrant issued to cause a person to appear or to be brought before a Magistrates Court in connection with proceedings under this Act may be served or executed on a Sunday as on any other day.

Exclusion of right to compensation—liability at law

86.(1) No entitlement to compensation arises on account of the seizure, retention, forfeiture, destruction, sale or other disposal of any thing under this Act except that in the case of sale the owner of the thing, if the owner establishes claim, is entitled to the proceeds of sale after the expenses of sale have been met.

(2) A police officer shall incur no liability on account of any act done pursuant to this Act or any act done or omission made in good faith and without negligence for the purposes of this Act.

Minister may approve forms

87.(1) The Minister may, by Gazette notice, approve forms for the purposes of this Act.

(2) If the Minister approves a form for a purpose, the form must be used for that purpose.

(3) A notice under subsection (1) is not subordinate legislation.

Clerks to ensure forms are readily available

88. The clerk of each court is to ensure that approved forms are available on request.

Regulations

89.(1) The Governor in Council may make regulations for the purposes of this Act.

(2) The regulations may prescribe, for example—

(a) the orders made under the law of another State or a Territory that

*Domestic Violence (Family Protection) Act
1989*

- are similar to a domestic violence order; and
- (b) items that are weapons for the purposes of this Act; and
 - (c) the form of the register to be kept by each clerk of a Magistrates Court for the registration of interstate orders; and
 - (d) conditions to be accepted by a person before the person is released from custody under this Act; and
 - (e) types of cases that may be published.

PART 8—TRANSITIONAL

Interpretation

90. In this Part—

“commencement” means the commencement of this Part;

“new Act” means this Act after the commencement;

“old Act” means this Act before the commencement.

Instruments, documents, decisions and orders to continue with certain changes

91.(1) This section applies to—

- (a) an instrument or document prepared under the old Act or filed with, or issued by, a Magistrates Court, Magistrate or justice; or
- (b) an order of a Magistrates Court, or a decision of a Magistrate, made before the commencement.

(2) After the commencement, the instrument, document, decision or order continues to have the same effect under the new Act as it did under the old Act.

(3) However, a reference in the instrument, document, decision or order to—

*Domestic Violence (Family Protection) Act
1989*

- (a) an aggrieved person is taken to be a reference to an aggrieved spouse within the meaning of the new Act; and
- (b) a respondent is taken to be a reference to a respondent spouse within the meaning of the new Act; and
- (c) an interim protection order is taken to be a reference to a temporary protection order within the meaning of the new Act; and
- (d) prohibitions and restrictions is taken to be a reference to conditions imposed by the domestic violence order within the meaning of the new Act; and
- (e) firearm or other weapon is taken to be a reference to a weapon within the meaning of the new Act.

Certain orders under old Act to be acted on by police

92.(1) This section applies to a respondent against whom a protection order, or interim protection order, has been made under the old Act if—

- (a) the order is in force immediately before the commencement; and
- (b) the order directs the seizure, retention, forfeiture or disposal of any firearm or other weapon in the possession or under the direct or indirect control of the respondent.

(2) If a police officer has reasonable grounds for suspecting that the respondent spouse possesses a weapon after the commencement in breach of the order, the police officer may give a copy of the order under the old Act to the respondent and—

- (a) the respondent spouse must immediately give all weapons that the spouse possesses to the police officer; and
- (b) if the police officer has reasonable grounds for suspecting that the respondent spouse has not given all weapons that the spouse possesses to the officer—the officer may exercise the powers in section 74(4) of the new Act.

*Domestic Violence (Family Protection) Act
1989*

Higher courts may deal with pending matters

93.(1) This section applies to a person if, before the commencement, the person came before—

- (a) the District Court (other than under Part 4 of the old Act); or
- (b) the Supreme Court;

for an offence that involved domestic violence under the old Act and the proceeding was pending at the time of the commencement.

(2) The court may, after the commencement, exercise its powers under section 30 of the new Act even though it could not have exercised the powers when the person first came before it.

Standard conditions not part of orders under old Act

94.(1) To allay any doubt, but subject to subsection (2), sections 22 and 23 of the new Act do not apply to a protection order or interim protection order made under the old Act.

(2) If a protection order or interim protection order under the old Act is varied after the commencement, the court must exercise its powers under sections 22, 23 or 28 in relation to the domestic violence order.

Disposal of weapons seized under old Act

95.(1) This section applies to a weapon seized under section 34 of the old Act that has not been returned to the owner, or forfeited to the Crown, before the commencement.

(2) After the commencement, the weapon is to be dealt with under section 76 of the new Act as if it had been seized under the new Act.

(3) For the purposes of dealing with the weapon under section 76(3) of the new Act, a reference in that subsection to—

- (a) a protection order is to include a protection order under the old Act; and
- (b) a temporary protection order is to include an interim protection order under the old Act; and

Domestic Violence (Family Protection) Act
1989

- (c) a condition is to include prohibitions and restrictions under the old Act.

ENDNOTES

1 **Index to endnotes**

		Page
2	Date to which amendments incorporated	66
3	Key	67
4	Table of earlier reprints	67
5	Tables in earlier reprints	67
6	List of legislation	68
7	List of annotations	68
8	List of forms	77
9	Table of renumbered provisions	77
10	Provisions that have not commenced and are not incorporated into reprint . .	80

2 **Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 December 1999. Future amendments of the Domestic Violence (Family Protection) Act 1989 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

*Domestic Violence (Family Protection) Act
1989*

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	prev	=	previous
amd	=	amended	(prev)	=	previously
amdt	=	amendment	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
o in c	=	order in council	sch	=	schedule
om	=	omitted	sdiv	=	subdivision
orig	=	original	SIA	=	Statutory Instruments Act 1992
p	=	page	SL	=	subordinate legislation
para	=	paragraph	sub	=	substituted
prec	=	preceding	unnum	=	unnumbered
pres	=	present			

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 46 of 1992	28 May 1993
2	to Act No. 76 of 1993	17 January 1994
2A	to Act No. 19 of 1999	14 May 1999

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Corrected minor errors	2
Renumbered provisions	1

6 List of legislation

Domestic Violence (Family Protection) Act 1989 No. 42

date of assent 5 May 1989

ss 1–2 commenced on date of assent

remaining provisions commenced 21 August 1989 (proc pubd gaz 29 July 1989 p 2859)

as amended by—

Domestic Violence (Family Protection) Amendment Act 1992 No. 46

date of assent 19 August 1992

ss 1–2 commenced on date of assent

remaining provisions commenced 28 May 1993 (1993 SL No. 151)

Statute Law (Miscellaneous Provisions) Act (No. 2) 1993 No. 76 s 3 sch 1

date of assent 14 December 1993

commenced on date of assent

Statue Law (Miscellaneous Provisions) Act 1999 No. 19 ss 1–3 sch

date of assent 30 April 1999

commenced on date of assent

Road Transport Reform Act 1999 No. 42 ss 1–2(1), 54(3) sch pt 3

date of assent 2 September 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1999 (see s 2(1))

Domestic Violence (Family Protection) Amendment Act 1999 No. 56

date of assent 18 November 1999

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force

7 List of annotations

This reprint has been renumbered—see table of renumbered provisions in endnote 9.

Title amd 1992 No. 46 s 4

PART 1—PRELIMINARY

Interpretation

prov hdg sub 1999 No. 56 s 4(1)

s 3 sub 1992 No. 46 s 5

def “**approved form**” amd 1999 No. 56 s 4(3)

def “**child**” amd 1999 No. 56 s 4(4)–(5)

def “**clerk**” amd 1999 No. 19 s 3 sch

def “**commissioner**” ins 1999 No. 56 s 4(2)

*Domestic Violence (Family Protection) Act
1989*

def “**effective individual within the employing entity**” ins 1999 No. 56 s 4(2)

def “**employment**” ins 1999 No. 56 s 4(2)

def “**interstate order**” amd 1999 No. 56 s 4(6)–(7)

def “**licensed armourer**” ins 1999 No. 56 s 4(2)

def “**licensed dealer**” ins 1999 No. 56 s 4(2)

def “**otherwise surrender**” ins 1999 No. 56 s 4(2)

def “**ouster condition**” ins 1999 No. 56 s 4(2)

def “**small claims tribunal**” ins 1999 No. 56 s 4(2)

def “**tenancy application**” ins 1999 No. 56 s 4(2)

def “**variation**” ins 1999 No. 56 s 4(2)

def “**whereabouts**” ins 1999 No. 56 s 4(2)

Meaning of “court”

prov hdg sub 1999 No. 56 s 5(1)

s 4 ins 1992 No. 46 s 5

amd 1999 No. 56 s 5(2)–(3)

Meaning of “possession”

s 5 ins 1992 No. 46 s 5

amd 1999 No. 56 s 6

Meaning of “premises”

s 6 ins 1992 No. 46 s 5

amd 1999 No. 42 s 54(3) sch pt 3

Meaning of “property”

s 7 ins 1992 No. 46 s 5

Meaning of “weapons licence”

s 8 ins 1992 No. 46 s 5

amd 1999 No. 56 s 3 sch

Meaning of court being satisfied

s 9 ins 1992 No. 46 s 5

PART 2—UNDERSTANDING DOMESTIC VIOLENCE (FAMILY PROTECTION) UNDER THIS ACT

pt hdg ins 1992 No. 46 s 6

Purpose of this Part

s 10 ins 1992 No. 46 s 6

amd 1999 No. 56 s 3 sch

What is domestic violence?

s 11 ins 1992 No. 46 s 6

Who is a “spouse”?

s 12 prev s 12 om 1992 No. 46 s 8

pres s 12 ins 1992 No. 46 s 6

amd 1999 No. 56 s 7

What assistance can a court give to prevent domestic violence?

s 13 ins 1992 No. 46 s 6
amd 1999 No. 56 s 3 sch

Who can apply for a protection order?

s 14 ins 1992 No. 46 s 6

Who can a domestic violence order protect?

s 15 ins 1992 No. 46 s 6

When can a court make a domestic violence order?

s 16 ins 1992 No. 46 s 6
amd 1993 No. 76 s 3 sch 1; 1999 No. 19 s 3 sch; 1999 No. 56 s 3 sch

What are the conditions of a domestic violence order?

s 17 ins 1992 No. 46 s 6

What happens if circumstances change after domestic violence order is made?

s 17A ins 1999 No. 56 s 8

What is meant by a weapon?

s 18 ins 1992 No. 46 s 6

What can happen if a respondent spouse does not comply with an order?

s 19 ins 1992 No. 46 s 6

PART 3—DOMESTIC VIOLENCE ORDERS—POWERS OF COURT

pt hdg sub 1992 No. 46 s 7

Division 1—Powers of courts to make domestic violence orders

div hdg ins 1992 No. 46 s 7

Power of court to make orders to protect spouse against domestic violence

s 20 sub 1992 No. 46 s 7

Power of court to make orders to protect relatives or associates of aggrieved spouse against violence etc.

s 21 ins 1992 No. 46 s 7

Protection order must include standard condition to be of good behaviour etc.

s 22 ins 1992 No. 46 s 7

Protection order must include standard condition about weapons etc.

s 23 ins 1992 No. 46 s 7
amd 1999 No. 56 s 3 sch

Action by court if respondent spouse has access to weapons through employment

s 23A ins 1999 No. 56 s 9

Arrangements for surrender of revoked or suspended licences etc.

s 24 ins 1992 No. 46 s 7
amd 1999 No. 56 s 10

*Domestic Violence (Family Protection) Act
1989*

Court may impose other conditions

s 25 sub 1992 No. 46 s 7
amd 1999 No. 56 s 11

Orders under s 25 that include ouster condition

s 25A ins 1999 No. 56 s 12

Special condition for thing that has been used as a weapon

s 26 ins 1992 No. 46 s 7

No weapons licence for duration of domestic violence order

s 27 ins 1992 No. 46 s 7

Court may allow respondent spouse to possess weapons in limited circumstances

s 28 ins 1992 No. 46 s 7

Domestic violence orders must include information about weapons

s 29 ins 1992 No. 46 s 7

Power of court if spouse pleads or is found guilty of related offences

s 30 sub 1992 No. 46 s 7
amd 1999 No. 56 s 13

Power of court to make temporary protection orders

s 31 sub 1992 No. 46 s 7
om 1999 No. 56 s 14

Court may make temporary protection order without proof of service in certain circumstances

s 32 ins 1992 No. 46 s 7
om 1999 No. 56 s 14

Court may make domestic violence order by consent

s 33 sub 1992 No. 46 s 7

Start of domestic violence orders and their duration

s 34 sub 1992 No. 46 s 7

Variation of domestic violence order

s 35 sub 1992 No. 46 s 7

Revocation of orders

s 36 ins 1992 No. 46 s 7
sub 1999 No. 56 s 15

Commissioner of Police must be given notices of applications to vary or revoke prov hdg

s 37 amd 1999 No. 56 s 3 sch
ins 1992 No. 46 s 7;
amd 1999 No. 56 s 3 sch;

Conferral of jurisdiction

s 38 sub 1992 No. 46 s 7
amd 1999 No. 56 s 16

Court may summons person to attend

s 39 ins 1992 No. 46 s 7

Division 2—Registration of domestic violence orders from other States and Territories

div hdg ins 1992 No. 46 s 7
sub 1999 No. 56 s 17

Act of domestic violence necessary before particular temporary protection orders made

s 39A ins 1999 No. 56 s 17

Form of temporary protection orders

s 39B ins 1999 No. 56 s 17

Temporary protection order because of adjournment

s 39C ins 1999 No. 56 s 17

Court may make temporary protection order without proof of service in certain circumstances

s 39D ins 1999 No. 56 s 17

Temporary protection order when cross application made

s 39E ins 1999 No. 56 s 17

Court may make temporary protection order when considering variation of domestic violence order

s 39F ins 1999 No. 56 s 17

Temporary protection order for application under s 54

s 39G ins 1999 No. 56 s 17

Division 3—Registration of interstate orders

div hdg ins 1999 No. 56 s 17

Application to register interstate order in Queensland

s 40 ins 1992 No. 46 s 7

Clerk to obtain copies of order and proof of service

s 41 ins 1992 No. 46 s 7

Registration of interstate order

s 42 ins 1992 No. 46 s 7

Duty of clerk after order is registered

s 43 ins 1992 No. 46 s 7
amd 1999 No. 56 s 3 sch

Effect of registration of interstate order

s 44 ins 1992 No. 46 s 7
amd 1999 No. 56 s 3 sch

Variation etc. of registered interstate order

s 45 ins 1992 No. 46 s 7

*Domestic Violence (Family Protection) Act
1989*

Applicant need not notify interstate spouse etc.

prov hdg amd 1999 No. 56 s 3 sch
s 46 ins 1992 No. 46 s 7
amd 1999 No. 56 s 3 sch

Division 4—Relevant orders under Family Law Act 1975 (Cwlth) and Family Court Act 1997 (WA)

div hdg ins 1999 No. 56 s 18

Definitions for div 4

s 46A ins 1999 No. 56 s 18

Disclosure of existence of relevant family protection order

s 46B ins 1999 No. 56 s 18

Court to consider relevant family contact order etc.

s 46C ins 1999 No. 56 s 18

PART 4—PROCEDURAL PROVISIONS

Division 1—Procedures to be followed by court on applications for protection orders

div hdg ins 1992 No. 46 s 8

Service of application on respondent spouse may be accompanied by summons

s 47 sub 1992 No. 46 s 8

Appearance of respondent spouse

s 48 ins 1992 No. 46 s 8

Non-appearance of respondent spouse

s 49 sub 1992 No. 46 s 8

Domestic violence orders to be explained

s 50 ins 1992 No. 46 s 8
sub 1999 No. 56 s 19

Application for revocation or variation

s 51 amd 1992 No. 46 s 9, sch; 1999 No. 56 ss 20, 3 sch

Duty of clerk of court to give certain notices to Commissioner of Police

s 52 ins 1992 No. 46 s 10
amd 1999 No. 56 s 3 sch

Procedure if respondent spouse found guilty etc. of related offence

s 53 sub 1992 No. 46 s 11
amd 1999 No. 56 s 3 sch

Division 2—Police may apply for temporary protection order in certain circumstances

div hdg ins 1992 No. 46 s 11

Applications by telephone, facsimile etc.

s 54 sub 1992 No. 46 s 11
amd 1999 No. 56 s 21

*Domestic Violence (Family Protection) Act
1989*

Duty of Magistrate upon application under s 54

s 55 amd 1992 No. 46 sch; 1999 No. 56 s 3 sch

Duty of police officer re s 54 order

s 56 amd 1992 No. 46 sch

Return date of temporary protection order

s 57 sub 1992 No. 46 s 12
 amd 1999 No. 56 s 22

Division 3—Other procedural provisions

div hdg ins 1999 No. 56 s 23

Service of court orders

s 58 amd 1992 No. 46 s 13, sch; 1999 No. 56 s 24

Provisions concerning warrants

s 59 amd 1992 No. 46 s 14, sch

Police officer or authorised person may represent aggrieved spouse

s 60 sub 1992 No. 46 s 15
 amd 1999 No. 56 s 25

Court may not award costs except if application malicious etc.

s 61 sub 1992 No. 46 s 15

Concurrent and other proceedings

prov hdg sub 1992 No. 46 s 16
s 62 amd 1992 No. 46 s 16, sch

Procedural provisions for tenancy application

s 62A ins 1999 No. 56 s 26

PART 5—APPEALS**Appeals**

s 63 amd 1992 No. 46 s 17; 1999 No. 19 s 3 sch

Institution of appeal

s 64 amd 1992 No. 46 s 18, sch; 1999 No. 19 s 3 sch; 1999 No. 56 s 3 sch

Commissioner has right to appear and be heard on appeal

s 64A ins 1999 No. 56 s 27

Nature of appeal

s 65 amd 1992 No. 46 s 19; 1999 No. 19 s 3 sch

Decision on appeal

s 66 amd 1999 No. 19 s 3 sch

PART 6—POLICE FUNCTIONS AND POWERS

pt hdg sub 1992 No. 46 s 20

Police action re domestic violence

s 67 amd 1992 No. 46 sch
 sub 1993 No. 76 s 3 sch 1

*Domestic Violence (Family Protection) Act
1989*

Police officer may require person to provide identification

s 68 ins 1992 No. 46 s 21
amd 1993 No. 76 s 3 sch 1

Presence at domestic violence incident

s 69 sub 1992 No. 46 s 21
amd 1993 No. 76 s 3 sch 1; 1999 No. 56 s 28

Duty of police officer who has taken a person into custody under s 69

s 70 ins 1992 No. 46 s 21
amd 1999 No. 56 s 29

Police officer must apply for protection order etc.

s 71 ins 1992 No. 46 s 21
amd 1999 No. 56 s 3 sch

Duty of police officers to apply for protection order in certain circumstances

s 72 ins 1992 No. 46 s 21

Entry on and search of premises

s 73 amd 1992 No. 46 s 22, sch; 1999 No. 56 s 30

Police actions after protection order is made

s 74 ins 1992 No. 46 s 23
amd 1999 No. 56 s 3 sch

Entry of registers—availability for inspection

s 75 amd 1992 No. 46 s 24, sch; 1993 No. 76 s 3 sch 1; 1999 No. 56 s 31

When police officer to give receipt for weapons licence or weapon

s 75A ins 1999 No. 56 s 31A

Disposal of seized items

s 76 sub 1992 No. 46 s 25
amd 1993 No. 76 s 3 sch 1; 1999 No. 56 s 3 sch

Arrest of certain offenders

s 77 amd 1992 No. 46 s 26, sch

Acting in aid of police powers

s 78 amd 1992 No. 46 sch

Part not to limit Part 4 of Weapons Act 1990

s 79 ins 1992 No. 46 s 27

PART 7—MISCELLANEOUS PROVISIONS

Breach of order or conditions

s 80 amd 1992 No. 46 s 28, sch; 1993 No. 76 s 3 sch 1; 1999 No. 56 s 32

Courts to be closed

s 81 ins 1992 No. 46 s 29

Restriction on publication of proceedings

s 82 amd 1992 No. 46 s 30, sch; 1993 No. 76 s 3 sch 1; 1999 No. 56 s 33

*Domestic Violence (Family Protection) Act
1989*

Prosecution of proceedings

s 83 amd 1992 No. 46 sch

Evidentiary provision

s 84 amd 1992 No. 46 s 31, sch

Service etc. of documents

s 85 amd 1992 No. 46 s 32

Exclusion of right to compensation—liability at law

s 86 amd 1992 No. 46 sch

Minister may approve forms

s 87 sub 1992 No. 46 s 33; 1999 No. 56 s 34

Clerks to ensure forms are readily available

s 88 ins 1992 No. 46 s 33
 om 1999 No. 56 s 34

Regulations

s 89 ins 1992 No. 46 s 33

PART 8—TRANSITIONAL

pt hdg ins 1992 No. 46 s 33

**Division 1—Transitional provisions for Domestic Violence (Family Protection)
Amendment Act 1992**

div hdg ins 1999 No. 56 s 35

Interpretation

s 90 ins 1992 No. 46 s 33
 amd 1999 No. 56 s 3 sch

Instruments, documents, decisions and orders to continue with certain changes

s 91 ins 1992 No. 46 s 33

Certain orders under old Act to be acted on by police

s 92 ins 1992 No. 46 s 33

Higher courts may deal with pending matters

s 93 ins 1992 No. 46 s 33
 amd 1999 No. 19 s 3 sch

Standard conditions not part of orders under old Act

s 94 ins 1992 No. 46 s 33

Disposal of weapons seized under old Act

s 95 ins 1992 No. 46 s 33

**Division 2—Transitional provisions for Domestic Violence (Family Protection)
Amendment Act 1999**

div hdg ins 1999 No. 56 s 36

*Domestic Violence (Family Protection) Act
1989*

Temporary protection orders to continue to have effect

s 96 prev s 96 ins 1992 No. 46 s 33
 om R2 (see s 40 RA)
 pres s 96 ins 1999 No. 56 s 36

8 **List of forms**

Form DV1—Protection Order Declaration

pubd gaz 6 December 1996 p 1353

9 **Table of renumbered provisions**

TABLE OF RENUMBERED PROVISIONS (Reprint No. 1)
 under prev s 96 (prev s 52) of Domestic Violence (Family Protection) Act 1989 as
 inserted by s 33 of Domestic Violence (Family Protection) Amendment Act 1992

Previous	Renumbered as
3A	4
3B	5
3C	6
3D	7
3E	8
3EA	9
PART 1A	PART 2
3F	10
3G	11
3H	12
3I	13
3J	14
3K	15
3L	16
3M	17
3N	18
3O	19
PART 2	PART 3
4	20
4A	21
4B	22
4C	23
4D	24
5	25
5A	26
5B	27
5C	28

*Domestic Violence (Family Protection) Act
1989*

5D	29
6	30
7	31
7A	32
8	33
9	34
10	35
10A	36
10B	37
11	38
11A	39
12	40
12A	41
12B	42
12C	43
12D	44
12E	45
12F	46
PART III	PART 4
13	47
13A	48
14	49
14A	50
15	51
15(1A)	51(2)
15(1B)	51(3)
15(2)	51(4)
15(3)	51(5)
15(4)	51(6)
15(5)	51(7)
15A	52
16	53
17	54
18	55
19	56
20	57
21	58
21(1A)	58(2)
21(2)	58(3)
21(3)	58(4)
22	59
23	60
24	61
25	62
PART IV	PART 5
26	63
26(1A)	63(2)
26(2)	63(3)

*Domestic Violence (Family Protection) Act
1989*

27	64
28	65
29	66
29(1) (2nd sentence)	66(2)
29(2)	66(3)
29(3)	66(4)
29(4)	66(5)
PART 5	PART 6
30	67
30A	68
31	69
31A	70
31B	71
31C	72
32	73
32A	74
33	75
33(2) (2nd sentence)	75(3)
34	76
35	77
35(3)	77(2)
35(4)	77(3)
35(5)	77(4)
36	78
36A	79
PART VI	PART 7
37	80
37(1A)	80(2)
37(1B)	80(3)
37(2)	80(4)
37A	81
38	82
39	83
40	84
41	85
41(3A)	85(4)
41(4)	85(5)
42	86
43	87
44	88
45	89
46	90
PART 7	PART 8
47	91
48	92

*Domestic Violence (Family Protection) Act
1989*

49	93
50	94
51	95
52	96

10 Provisions that have not commenced and are not incorporated into reprint

The following provisions are not incorporated into this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5(c)).

Domestic Violence (Family Protection) Act 1999 No. 56 reads as follows—

Act amended

3. This Act amends the *Domestic Violence (Family Protection) Act 1989*.

Amendment of s 3 (Interpretation)

4.(1) Section 3, heading—

omit, insert—

‘Definitions’.

(2) Section 3—

insert—

“**commissioner**” means the commissioner of the police service.

“**effective individual within the employing entity**”, in relation to a respondent spouse, means any 1 of the following who is in a position to ensure that the respondent spouse does not possess weapons as part of the respondent spouse’s employment—

- (a) the employer if the employer is an individual;
- (b) another partner in a partnership in which the respondent spouse is a partner;
- (c) an individual within the entity that employs the respondent spouse.

“employment”, of a respondent spouse, includes—

- (a) self-employment; and
- (b) employment by a partnership in which the respondent spouse is one of the partners.

“licensed armourer” means a licensed armourer under the *Weapons Act 1990*.

“licensed dealer” means a licensed dealer under the *Weapons Act 1990*.

“otherwise surrender”, for a weapon, has the meaning given in section 24(7).

“ouster condition” means a condition of an order imposed under section 25 that prohibits a respondent spouse from remaining at, entering or attempting to enter, or approaching within a stated distance of, stated premises.

“small claims tribunal” means a small claims tribunal under the *Small Claims Tribunal Act 1973*.

“tenancy application” means—

- (a) an application made under the *Residential Tenancies Act 1994*, section 150, 188 or 190, to a small claims tribunal; or¹
- (b) an application under section 62A(1).

“variation”, of a domestic violence order, includes an extension of the period for which the order has effect.

“whereabouts”, of a person, means a place or locality where the person lives, works, frequents or visits.’.

(3) Section 3, definition “approved form”, ‘Minister’—

omit, insert—

‘chief executive’.

(4) Section 3, definition “child”, after ‘means’—

¹ *Residential Tenancies Act 1994*, sections 150 (Injury to spouse), 188 (Application by tenant’s spouse for termination for damage or injury) and 190 (Application for interim order about damage or injury)

insert—

‘an individual under 18 years who is’.

(5) Section 3, definition “child”, paragraph (b), ‘minor’—

omit, insert—

‘child’.

(6) Section 3, definition “**interstate order**”, ‘or a Territory’—

omit, insert—

‘, a Territory or New Zealand’.

(7) Section 3, definition “**interstate order**”, ‘or Territory’—

omit, insert—

‘, Territory or New Zealand’.

Amendment of s 4 (Meaning of “court”)

5.(1) Section 4, heading—

omit, insert—

‘References to court and when justices may exercise power’.

(2) Section 4(2), ‘, subsection (3)’—

omit, insert—

‘subsections (3) and (6)’.

(3) Section 4—

insert—

‘(5) Subsection (6) applies if an offender appears in relation to an offence involving domestic violence at a place at which a Magistrates Court is being held before 2 or more justices appointed under section 552C(3) of the Criminal Code for the place and pleads guilty to the offence.²

‘(6) The Magistrates Court, constituted by the justices exercising

² Under section 552C(3) of the Criminal Code, ‘the Attorney-General may by gazette notice appoint a justice for a place specified in the gazette notice’.

jurisdiction under section 552C(3) of the Criminal Code, may deal with an application for a domestic violence order, or make a domestic violence order on its own initiative, relating to the offence and for which the offender is the respondent spouse.’.

Amendment of s 5 (Meaning of “possession”)

6. Section 5—

insert—

‘(2) A respondent spouse does not possess a weapon if the respondent spouse has otherwise surrendered the weapon to a licensed dealer or licensed armourer under section 24.³’.

Amendment of s 12 (Who is a “spouse”?)

7. Section 12(1)—

omit, insert—

‘**12.(1)** A “spouse” means—

- (a) either 1 of a male or female who are or have been married to each other; or
- (b) either 1 of the biological parents of a child, whether or not they are or have been married or are residing or have resided together; or
- (c) either 1 of 2 persons, whether of the same or the opposite sex, who are residing or have resided together as a couple.

‘**(1A)** For subsection (1)(c), 2 persons are a couple if they reside together in a relationship that is normally considered by the community to indicate that they are a couple.

‘**(1B)** A relationship mentioned in subsection (1A) is one formed on the basis of intimacy, trust and personal commitment and does not include, for example, a relationship where the 2 persons are merely cotenants.’.

³ Section 24 (Arrangements for surrender of revoked or suspended licences etc.)

Insertion of new s 17A

8. After section 17—

insert—

‘What happens if circumstances change after domestic violence order is made?’

‘**17A.** If circumstances change after a domestic violence order is made, a person may, under section 51, apply for a variation or revocation of the order.⁴

Example of change of circumstances—

A temporary protection order is made because of an application by a police officer under section 54. The aggrieved spouse’s place of residence is stated in the order as premises that the respondent spouse is prohibited, by the order, from approaching within a stated distance of. If the aggrieved spouse changes his or her place of residence, a variation of the temporary protection order may be sought under section 51.’.

Insertion of new s 23A

9. After section 23—

insert—

‘Action by court if respondent spouse has access to weapons through employment

‘**23A.(1)** In making a domestic violence order, the court must consider whether the respondent spouse has access to a weapon as part of the respondent spouse’s employment.

‘**(2)** If the court is satisfied the respondent spouse has access to a weapon as part of the respondent spouse’s employment, the court must—

- (a) consider the circumstances of the employment; and
- (b) consider the respondent spouse’s access to the weapon; and
- (c) consider the employment arrangements and whether there is an effective individual within the employing entity on whom to serve

⁴ Section 51 (Application for revocation or variation)

the domestic violence order to ensure the respondent spouse does not possess a weapon as part of the respondent spouse's employment; and

- (d) if there is an effective individual within the employing entity on whom to serve the order—state in the domestic violence order that it is to be served on the individual.

‘(3) If the court states the order is to be served on an effective individual within an employing entity, the clerk must arrange for service of the order on the individual.

‘(4) The effective individual may disclose information about the order to another person within the employing entity to the extent necessary to ensure the respondent spouse does not possess a weapon as part of the respondent spouse's employment.

‘(5) However, the effective individual must not disclose information about the order to anyone else, other than as permitted under subsection (4) or expressly permitted by a Magistrate under section 82.⁵

Maximum penalty for subsection (5)—40 penalty units or 1 year's imprisonment.’.

Amendment of s 24 (Arrangements for surrender of revoked or suspended licences etc.)

10.(1) Section 24(1) and (2)—

omit, insert—

‘**24.(1)** If the respondent spouse is present in court when the court makes a domestic violence order and the respondent spouse has a weapons licence or a weapon, the following applies to the respondent spouse—

- (a) the respondent spouse must—
- (i) for a respondent spouse who brought the licence to court—immediately give the licence to a police officer; or
 - (ii) otherwise—immediately arrange with a police officer to give

⁵ Section 82 (Restriction on publication of proceedings)

the licence to a police officer no later than 1 day after the day the court makes its order;

- (b) the respondent spouse must immediately arrange with a police officer to give to a police officer any weapon the respondent spouse possesses, or to otherwise surrender the weapon, as soon as practicable, but no later than 1 day after the day the court makes its order.

‘(2) Subject to subsection (3), if the respondent spouse is not present in court when the court makes a domestic violence order, the respondent spouse must as arranged with a police officer—

- (a) give any weapons licence of the respondent spouse to a police officer as soon as practicable after the respondent spouse is given a copy of the order, but no later than 1 day after the day the spouse is given the copy; and
- (b) give any weapon the respondent spouse possesses to a police officer, or otherwise surrender the weapon, as soon as practicable after the respondent spouse is given a copy of the order, but no later than 1 day after the day the spouse is given the copy.’.

(2) Section 24(4)—

omit, insert—

‘(3A) Also, a respondent spouse must immediately give the weapons licence or any weapon in the spouse’s possession to any police officer (the “**surrender officer**”) if—

- (a) a police officer made arrangements under subsections (1) or (2) with the spouse about the weapons licence or any weapon in the spouse’s possession; and
- (b) the surrender officer believes the spouse has not complied with the arrangements; and
- (c) the surrender officer asks the spouse to give the officer the weapons licence or any weapon in the spouse’s possession.

‘(4) If the court considers that it is necessary or desirable to do so, the court may do any 1 or more of the following—

- (a) alter the period under subsection (1) or (2) in which the

respondent spouse must give weapons to a police officer;

- (b) specify that weapons are to be given to a police officer at a specified police station or establishment;
- (c) specify that weapons are to be given to a police officer and not otherwise surrendered.’.

(3) Section 24—

insert—

‘**(6)** If a weapon is given to a police officer under this section and the respondent spouse wants to otherwise surrender it, the respondent spouse may make arrangements with a police officer for the police officer, in company with the respondent spouse, to take the weapon to a licensed dealer or licensed armourer.

‘**(7)** In this section—

“approved receipt” means a receipt in a form that is an approved form under the *Weapons Act 1990*, section 71(2)(b).⁶

“otherwise surrender”, for a weapon, means the respondent spouse deals with the weapon in the following way—

- (a) the respondent spouse consigns the weapon to a licensed dealer or licensed armourer—
 - (i) for sale; or
 - (ii) for storage for a period that does not end before the period of the domestic violence order;
- (b) the respondent spouse obtains a copy of the approved receipt for the weapon’s consignment from the licensed dealer or licensed armourer and, if the weapon is consigned for storage, the receipt

⁶ The *Weapons Act 1990*, section 71(2) provides as follows—

‘**(2)** A licensed dealer or licensed armourer must, for each transaction for the receipt, acquisition, sale or transfer of a weapon—

- (a) enter immediately in the weapons register the particulars prescribed under a regulation; and
- (b) if the transaction involves a complete or substantially complete weapon or a major component part of a firearm—within 14 days of the transaction, notify an authorised officer in the approved form.’.

states the respondent spouse acknowledges the cost of the storage is the responsibility of the respondent spouse;

- (c) the respondent spouse gives the copy of the receipt to a police officer—
 - (i) immediately; or
 - (ii) within the time allowed under this section for giving the weapon to a police officer or, if under subsection (4) the court alters the time, within the time stated in the court's order altering the time.'.

Amendment of s 25 (Court may impose other conditions)

11.(1) Section 25(3)—

omit, insert—

'(3) The conditions the court may impose on a respondent spouse include, for example—

- (a) prohibiting stated behaviour of the respondent spouse that would constitute an act of domestic violence against the aggrieved spouse or an act of associated domestic violence against an aggrieved person; and
- (b) prohibiting the respondent spouse from doing all or any of the following in relation to stated premises even though the respondent spouse has a legal or equitable interest in the premises—
 - (i) remaining at the premises;
 - (ii) entering or attempting to enter the premises;
 - (iii) approaching within a stated distance of the premises; and
- (c) prohibiting the respondent spouse from approaching, or attempting to approach, the aggrieved spouse or an aggrieved person, including stating in the order a distance within which an approach is prohibited; and
- (d) prohibiting the respondent spouse from contacting, attempting to contact or asking someone else to contact the aggrieved spouse or

an aggrieved person, including, for example, if the aggrieved spouse or aggrieved person has taken shelter at a refuge; and

- (e) prohibiting the respondent spouse from locating, attempting to locate or asking someone else to locate the aggrieved spouse or an aggrieved person if the aggrieved spouse's or aggrieved person's whereabouts are not known to the respondent spouse; and
- (f) prohibiting stated conduct of the respondent spouse towards a child of the aggrieved spouse, including prohibiting the respondent spouse's presence at or in a place associated with the child.'

(2) Section 25(7)—

omit, insert—

'(7) A condition in an order that prohibits a respondent spouse from asking someone else to contact or to locate an aggrieved spouse or an aggrieved person does not prohibit the respondent spouse asking—

- (a) someone else who is a lawyer to contact the aggrieved spouse or aggrieved person; or
- (b) someone else, including a lawyer, to locate the aggrieved spouse or aggrieved person for a purpose authorised by an Act.'

Insertion of new s 25A

12. After section 25—

insert—

'Orders under s 25 that include ouster condition

'25A.(1) This section applies if a court makes an order under section 25 that includes an ouster condition.

'(2) The premises that may be stated in an ouster condition of the order include—

- (a) premises where the aggrieved spouse and respondent spouse live together or previously lived together; and
- (b) premises where the aggrieved spouse or an aggrieved person

resides, works or frequents.

‘(3) In imposing the ouster condition, the court must consider including in the order another condition allowing the respondent spouse—

- (a) if the respondent spouse is no longer at the premises—to return to the premises to recover stated property; or
- (b) if the respondent spouse is at the premises—to remain at the premises to remove stated property.

‘(4) For another condition under subsection (3), the court must state in the order—

- (a) if the respondent spouse is present in court when the order is made—
 - (i) the time at which, without breaching the order, the respondent spouse may return to the premises and then must leave the premises; or
 - (ii) for how long the respondent spouse may, without breaching the order, continue to remain at the premises; or
- (b) if the respondent spouse is not present in court when the order is made—
 - (i) the time at which, without breaching the order, the respondent spouse may return to the premises and must leave the premises based on the time of service of the order on the spouse; or
 - (ii) for how long the respondent spouse may, without breaching the order, remain at the premises based on the time of service of the order on the spouse.

Example for paragraph (b)(i)—

The respondent spouse may, without breaching this order, return to the premises at noon on the day after the day this order is served on the respondent spouse by a police officer. If the respondent spouse chooses to return to the premises under the order, the respondent spouse must leave the premises no later than 2 p.m. on the same day.

‘(5) Before the court makes an order that includes an ouster condition, or another condition under subsection (3), the court must consider each of the

following—

- (a) the extent to which a matter mentioned in an order must be subject to the supervision of a police officer;
- (b) if a police officer is to supervise a matter, the need to include in the order a condition that the respondent spouse must not approach within a stated distance of the stated premises.’.

Amendment of s 30 (Power of court if spouse pleads or is found guilty of related offences)

13. Section 30(2)—

omit, insert—

‘(2) If a domestic violence order is already in force, the court—

- (a) must consider the order and whether, in the circumstances, the order needs to be varied, including, for example, by varying the date the order ends; and
- (b) may vary the order if the court considers the order needs to be varied.’.

Omission of ss 31 and 32

14. Sections 31 and 32—

omit.

Replacement of s 36 (Revocation of orders)

15. Section 36—

omit, insert—

‘Revocation of orders

‘**36.(1)** A court may revoke a domestic violence order if an application for revocation is made to the court under section 51.⁷

⁷ Section 51 (Application for revocation or variation)

‘(2) In considering the application, the court must have regard to—

- (a) any expressed wishes of the aggrieved spouse; and
- (b) any current relationship between the aggrieved spouse and respondent spouse; and
- (c) whether any pressure has been applied, or threat has been made, to the aggrieved spouse by the respondent spouse or someone else for the respondent spouse; and
- (d) any other relevant matter.

‘(3) The court may only revoke the order if the court considers the safety of the aggrieved spouse or an aggrieved person would not be compromised by the revocation.

‘(4) If the court refuses to revoke the order, the court may vary the order in a way it considers does not compromise the safety of the aggrieved spouse and an aggrieved person.

‘(5) A revocation or variation under this section takes effect on the day it is made.’.

Amendment of s 38 (Conferral of jurisdiction)

16. Section 38—

insert—

‘(3) Subsection (4) applies if—

- (a) an application for a protection order, or variation of a protection order, is made to a Magistrates Court; and
- (b) an application is made under section 62A⁸ by the aggrieved spouse or respondent spouse in relation to a tenancy application.

‘(4) If the Magistrates Court considers it appropriate, it may exercise the powers and make orders that a small claims tribunal may exercise or make under—

- (a) the *Small Claims Tribunal Act 1973* for a tenancy application; or

⁸ Section 62A (Procedural provisions for tenancy applications)

(b) the *Residential Tenancies Act 1994* for a tenancy application.

‘(5) An order of the Magistrates Court about the tenancy application is taken to have been made under the *Small Claims Tribunal Act 1973* for the *Residential Tenancies Act 1994*.’.

Replacement of pt 3, div 2 hdg (Registration of domestic violence orders from other States and Territories)

17. Part 3, division 2, heading—

omit, insert—

Division 2—Powers of court and magistrates to make temporary protection orders

‘Act of domestic violence necessary before particular temporary protection orders made

‘**39A.(1)** A court may make a temporary protection order against a respondent spouse under this division, other than section 39D,⁹ only if it appears to the court, on application for a protection order, that an act of domestic violence has been committed against the aggrieved spouse by the respondent spouse.

‘(2) A temporary protection order under this division need only be supported by evidence the court considers sufficient and appropriate having regard to the temporary nature of the order.

‘Form of temporary protection orders

‘**39B.(1)** A court may make a temporary protection order against the respondent spouse in the same terms as a protection order.

‘(2) However, the temporary protection order must state the time and place at which the order is returnable before the court.

‘(3) A temporary protection order is a summons to the respondent

⁹ Section 39D (Court may make temporary protection order without proof of service in certain circumstances)

spouse directing the respondent spouse to appear at the time and place at which the order is returnable.

‘Temporary protection order because of adjournment

‘39C. A court may make a temporary protection order if the court adjourns—

- (a) the hearing of an application for the protection order, whether the court is hearing the application under section 48 or 49; or¹⁰
- (b) the matter of making a protection order on its own initiative as mentioned in section 53(1)(b).¹¹

‘Court may make temporary protection order without proof of service in certain circumstances

‘39D. A court may make a temporary protection order, or vary a domestic violence order, if—

- (a) an application is made for a protection order or for a variation of a domestic violence order; and
- (b) the court does not begin to hear, or has decided not to begin to hear, the application because the applicant has not satisfied the court that the respondent spouse has been given a document mentioned in section 49(1)(a), (b) or (c), whether or not the respondent spouse is present in court; and
- (c) it appears to the court—
 - (i) the aggrieved spouse or an aggrieved person is in danger of personal injury; or
 - (ii) property of the aggrieved spouse or an aggrieved person is in danger of substantial damage.

¹⁰ Sections 48 (Appearance of respondent spouse) and 49 (Non-appearance of respondent spouse)

¹¹ Section 53 (Procedure if respondent spouse found guilty etc. of related offence)

‘Temporary protection order when cross application made

‘39E.(1) This section applies if—

- (a) an application (the **“original application”**) for a domestic violence order has been made and is before the court; and
- (b) the person named in the original application as the respondent spouse applies for a domestic violence order (the **“cross application”**) and the aggrieved spouse named in the original application is named in the cross application as the respondent spouse; and
- (c) the cross application is made orally, or is made in writing but not served on the aggrieved spouse named in the original application at least 1 business day before the day of the hearing of the original application.

‘(2) If the cross application is made as mentioned in subsection (1)(c), the court must adjourn the hearing of the cross application and set a date by which the written cross application is to be served on the aggrieved spouse named in the original application, unless that aggrieved spouse consents to the court hearing the cross application before hearing the original application or together with the original application.

‘(3) The court may make a temporary protection order in relation to the cross application if—

- (a) the aggrieved spouse named in the original application does not consent as mentioned in subsection (2); and
- (b) at least 1 of the following persons is in danger of personal injury, or the property of at least 1 of the following persons is in danger of substantial damage—
 - (i) the person for whose benefit the domestic violence order, based on the cross application, is sought;
 - (ii) another person who is sought to be protected by the domestic violence order based on the cross application.

‘Court may make temporary protection order when considering variation of domestic violence order

‘39F.(1) A court may make a temporary protection order if—

- (a) it is hearing variation proceedings about a protection order or temporary protection order and adjourns the hearing; and
- (b) it appears to the court the temporary protection order is necessary to protect the aggrieved spouse or an aggrieved person pending its decision in the variation proceedings.

‘(2) In subsection (1)—

“variation proceedings” means proceedings—

- (a) for an application for variation of a protection order or temporary protection order; or
- (b) for varying a protection order arising because the court is acting on its own initiative under section 30 or when dealing with a contravention of the order.

‘Temporary protection order for application under s 54

‘39G.(1) A magistrate to whom application is made under section 54¹² may make a temporary protection order against the respondent spouse if it appears to the magistrate that because of distance, time or other circumstance of the case, it is not practicable to apply to a court for a protection order and for it to be heard and decided quickly.

‘(2) The temporary protection order under subsection (1) may be in the same terms as if the magistrate were then and there constituting a Magistrates Court.

‘Division 3—Registration of interstate orders’.

¹² Section 54 (Applications by telephone, facsimile etc.)

Insertion of new pt 3, div 4

18. Part 3, after section 46—

insert—

***‘Division 4—Relevant orders under Family Law Act 1975 (Cwlth) and
Family Court Act 1997 (WA)***

‘Definitions for div 4

‘46A. In this division—

“family contact order” means—

- (a) a Division 11 contact order within the meaning of the *Family Law Act 1975 (Cwlth)*, part VII; or
- (b) a Division 10 contact order within the meaning of the *Family Court Act 1997 (WA)*, section 174.¹³

“relevant family contact order” means a family contact order that relates to access—

- (a) between the aggrieved spouse and an aggrieved person; or
- (b) between the respondent spouse and either a child of the respondent spouse or a child of the aggrieved spouse.

‘Disclosure of existence of relevant family protection order

‘46B.(1) A person who applies to a court for a domestic violence order, or for the revocation or variation of a domestic violence order, and is aware of either of the following must inform the court about the order or application—

- (a) a relevant family contact order;
- (b) a pending application for a relevant family contact order.

¹³ The *Family Law Act 1975 (Cwlth)*, part VII is about children. A division 11 contact order is made under division 11 and the purpose of that division is to deal with contact orders made under the division and orders made under certain State and Territory laws about family violence. The Western Australian legislation is similar to the Commonwealth Act.

‘(2) However, the application is not invalid merely because the person does not inform the court about the order or application.

‘Court to consider relevant family contact order etc.

‘**46C.(1)** Before deciding about making, revoking or varying a domestic violence order, the court must—

- (a) consider whether contact between the aggrieved spouse, or between the respondent spouse, and any child of either of those persons is relevant to making, revoking or varying the order; and
- (b) have regard to any relevant family contact order, or pending application for a relevant family contact order, of which the court has been informed.

‘(2) However, a domestic violence order, or a revocation or variation of an order, is not invalid merely because the court does not comply with subsection (1).’.

Replacement of s 50 (Domestic violence orders to be explained)

19. Section 50—

omit, insert—

‘Court to ensure certain spouses understand domestic violence orders

‘**50.(1)** If a person is before a court that is about to make a domestic violence order for which the person is the respondent spouse, the court must ensure the respondent spouse understands the following—

- (a) the purpose, terms and effect of the proposed order, including, for example, that the order may be enforceable in other States, Territories and New Zealand without further notice to the respondent spouse;
- (b) what may follow if the respondent spouse does not comply with the terms of the proposed order;
- (c) that the respondent spouse may apply for revocation or variation of the order.

‘(2) If a person is before a court that is about to make a domestic violence order for which the person is the aggrieved spouse, the court must ensure the aggrieved spouse understands the following—

- (a) the purpose, terms and effect of the proposed order, including, for example, that the order may be enforceable in other States, Territories and New Zealand;
- (b) that the aggrieved spouse may apply for revocation or variation of the order.

‘(3) The process that a court adopts to ensure a respondent spouse understands the matters mentioned in subsection (1), or an aggrieved spouse understands the matters mentioned in subsection (2), may include using services of, or help from, other people to the extent the court considers appropriate.

Examples of services or help the court may consider appropriate—

1. The court may arrange for the clerk or a public service employee at the court, to explain the order to the spouse.
2. A local interpreter or the telephone interpreter service may be used to explain the order to the spouse.
3. Explanatory notes prepared for respondent spouses, including non-English speakers, may be given to the spouse.
4. The court may arrange with an Aboriginal local government, Torres Strait Islander local government, community justice group or group of elders for someone to explain the order to the spouse.

‘(4) Failure to comply with this section does not affect the validity of the domestic violence order.’.

Amendment of s 51 (Application for revocation or variation)

20. Section 51—

insert—

‘(4A) The clerk must cause service to be effected by a police officer on the respondent spouse, as required under subsection (4)(a), if the application—

- (a) is made by an aggrieved spouse or authorised person; and

- (b) seeks a variation of the domestic violence order to extend the protection given to the spouse or person, to extend the period or scope of the order or to add a condition to the order.’.

Amendment of s 54 (Applications by telephone, facsimile etc.)

21. Section 54(2) and (8)—

omit.

Amendment of s 57 (Return date of temporary protection order)

22. Section 57(1), after ‘protection order’—

insert—

‘made because of an application under section 54’.

Insertion of new pt 4, div 3 hdg

23. After section 57—

insert—

‘Division 3—Other procedural provisions’.

Amendment of s 58 (Service of court orders)

24. Section 58(2)(c)—

omit, insert—

- ‘(c) cause a copy of the order to be given to the commissioner; and
(d) cause a copy of the order to be given to the employer of the respondent spouse if an order is made under section 23A(2).¹⁴’.

¹⁴ Section 23A (Action by court if respondent spouse has access to weapons through employment)

Amendment of s 60 (Police officer or authorised person may represent aggrieved spouse)

25.(1) Section 60(1), ‘in any proceedings on an application’—

omit, insert—

‘in a proceeding for any application’.

(2) Section 60(2), from ‘a’ to ‘an’—

omit, insert—

‘an authorised person has made an application under this Act to a court and the court decides the’.

Insertion of new s 62A

26. Part 4, after section 62—

insert—

‘Procedural provisions for tenancy application

‘62A.(1) If there is an application for a protection order (a “**protection application**”), or an application relating to an existing protection order (also a “**protection application**”), a person may make an application under the *Residential Tenancies Act 1994*, section 150, 188 or 190, to the Magistrates Court dealing with the protection application instead of a small claims tribunal.¹⁵

‘(2) Subsection (3) applies if an aggrieved spouse or respondent spouse makes a tenancy application to a small claims tribunal and a protection application has been made or is made under this Act to a Magistrates Court.

‘(3) The court may, on application of either the aggrieved spouse or respondent spouse and if the court considers it appropriate, order the tenancy application be removed to the court despite the *Small Claims Tribunals Act 1973*, section 17.¹⁶

¹⁵ *Residential Tenancies Act 1994*, sections 150 (Injury to spouse), 188 (Application by tenant’s spouse for termination for damage or injury) and 190 (Application for interim order about damage or injury)

¹⁶ *Small Claims Tribunal Act 1993*, section 17 (Exclusion of other jurisdictions)

‘(4) If a tenancy application is dealt with by a Magistrates Court under this section, the procedures applicable to the tenancy application are the procedures under the *Small Claims Tribunals Act 1973*.

‘(5) Subsection (4) is subject to the court giving directions, before, or at any time during, the hearing of the tenancy application, about the way in which the court may exercise the powers of a small claims tribunal for a tenancy application or the service of documents for the tenancy application.

‘(6) An applicant for any of the following must give written notice to the lessor named in the tenancy application about the application and any adjournment of it—

- (a) an application under the *Residential Tenancies Act 1994*, section 150, 188 or 190 that, under subsection (1), is made to a Magistrates Court dealing with a protection application, instead of a small claims tribunal;
- (b) an application under subsection (3) to a Magistrates Court to order a tenancy application to a small claims tribunal to be removed to the court.’.

Insertion of new s 64A

27. After section 64—

insert—

‘Commissioner has right to appear and be heard on appeal

‘64A. The commissioner has a right to appear and be heard before the District Court on an appeal to the court under this part.’.

Amendment of s 69 (Presence at domestic violence incident)

28. Section 69(2)—

omit, insert—

‘(2) The respondent spouse taken into custody may be held in custody until the earliest of the following happens—

- (a) an application for a protection order in which the spouse is named

as the respondent spouse is heard and decided under section 71(1);

- (b) a temporary protection order is made under section 39G;¹⁷
- (c) an application for a protection order is completed, and arrangements are made with the watch-house manager, under section 71(3).

‘(3) If the watch-house manager reasonably believes it is necessary for arrangements to be made to safeguard the aggrieved spouse but the respondent spouse may no longer be held under subsection (2)—

- (a) the respondent spouse may continue to be held in custody until the arrangements are completed; and
- (b) the watch-house manager must record the following in the register kept under section 70—
 - (i) the reasons for the belief; and
 - (ii) the time at which the respondent spouse could no longer be held under subsection (2); and
 - (iii) the time at which arrangements to safeguard the aggrieved spouse were completed; and
 - (iv) the time at which the respondent spouse was released from custody.

‘(4) A respondent spouse may not be held under subsection (2) or (3) for more than 4 hours from when the respondent spouse is first taken into custody under subsection (1).’

Amendment of s 70 (Duty of police officer who has taken a person into custody under s 69)

29. Section 70(1)—

omit, insert—

‘**70.(1)** If a person is taken into custody under section 69(1), the police

¹⁷ Section 39G (Temporary protection order for application under s 54)

officer who took the person into custody must immediately take the person to a watch-house.

‘**(1A)** As soon as possible after the person is taken to the watch-house, the watch-house manager must enter the person’s particulars, as required under a regulation, in the register kept by the watch-house manager for the purpose.

‘**(1B)** The police officer who took the person to the watch-house is responsible for confirming the particulars the watch-house manager has entered in the register.’

Amendment of s 73 (Entry on and search of premises)

30.(1) Section 73—

insert—

‘**(8)** If a police officer (the “**first officer**”) can not comply with subsection (7), another police officer may act for the first officer and include the particulars in the register.

‘**(9)** However, if the other police officer includes the particulars in the register because the first officer can not do so—

- (a) for operational reasons—the other officer must also enter in the register the reasons for the first officer’s inability and the first officer must confirm the entries as soon as is practicable; or
- (b) for medical reasons—the other officer must also enter in the register the reasons for the first officer’s inability and, if possible, the first officer must confirm the entries as soon as practicable.’

Amendment of s 75 (Entry of registers—availability for inspection)

31.(1) Section 75(1), ‘a police officer’ to ‘or 73(7)’—

omit, insert—

‘there is a failure to enter the particulars required by section 70(1A), or section 73(7) or (9)’.

(2) Section 75(1)(a), ‘to comply with section 70(1)’—

omit, insert—

‘to enter particulars under section 70(1A)’.

(3) Section 75(1)(b), ‘to comply with section 73(7)’—

omit, insert—

‘to enter particulars under section 73(7) or (9)’.

(4) Section 75(2), ‘70(1)’—

omit, insert—

‘70(1A)’.

Insertion of new s. 75A

31A. After section 75—

insert—

‘When police officer to give receipt for weapons licence or weapon

‘75A.(1) As soon as practicable after a person gives or surrenders a weapons licence or weapon to a police officer under this Act, the police officer must give to the person a receipt for the weapons licence or weapon.

‘(2) As soon as practicable after a police officer seizes a weapons licence or weapon under this Act, the police officer must—

- (a) give a receipt for the weapons licence or weapon to the person from whom it is seized; or
- (b) if for any reason it is not practicable to comply with paragraph (a), leave a receipt for the weapons licence or weapon at the place of seizure in a conspicuous position and a reasonably secure way.

‘(3) A receipt must be in an approved form.’.

Amendment of s 80 (Breach of order or conditions)

32.(1) Section 80(1) to (3)—

omit, insert—

‘80.(1) A respondent spouse must not contravene a protection order,

temporary protection order or any other order made under this Act, including a condition imposed by the order, if—

- (a) the respondent spouse was present in court when the order was made; or
- (b) the respondent spouse was served with a copy of the order; or
- (c) a police officer told the respondent spouse about the existence of the order.

Maximum penalty—40 penalty units or 1 year’s imprisonment.

‘(2) However, a court may not find a respondent spouse contravened an order merely because a police officer told the respondent spouse about the existence of the order, unless the court is satisfied the police officer told the respondent spouse about the condition that it is alleged the respondent spouse contravened.

‘(3) It is not a defence in proceedings for an offence involving an interstate order that a person did not know the interstate order—

- (a) could be registered in Queensland; or
- (b) was registered in Queensland.’.

(2) Section 80(4), ‘person’—

omit, insert—

‘respondent spouse’.

Amendment of s 82 (Restriction on publication of proceedings)

33. Section 82(1), penalty—

omit, insert—

‘Maximum penalty—40 penalty units or 1 year’s imprisonment.’.

Replacement of ss 87 and 88

34. Sections 87 and 88—

omit, insert—

‘Approved forms

‘**87.(1)** The chief executive may approve forms for this Act.

‘**(2)** The clerk of each court is to ensure approved forms are available when asked for by a person.’.

Insertion of new division heading

35. Part 8, before section 90—

insert—

‘Division 1—Transitional provisions for Domestic Violence (Family Protection) Amendment Act 1992’.

Insertion of new div 2

36. After section 95

insert—

‘Division 2—Transitional provisions for Domestic Violence (Family Protection) Amendment Act 1999’.

‘Temporary protection orders to continue to have effect

‘**96.(1)** This section applies to a temporary protection order made under section 31 or 32 before the commencement of this section that is in force immediately before the commencement.

‘**(2)** Subject to subsection (3), the temporary protection order is taken to be made under part 3, division 2.¹⁸

‘**(3)** Any express conditions of the temporary protection order continue to have effect.’.

¹⁸ Part 3, division 2 (Powers of court and magistrates to make temporary protection orders)

SCHEDULE

MINOR OR CONSEQUENTIAL AMENDMENTS

section 3

1. Section 8(b), from ‘corporate’

omit, insert—

‘under the *Weapons Act 1990*, section 10(3).’.

2. Section 10(1), ‘assist’—

omit insert—

‘help’.

3. Section 13(3), ‘section 31’—

omit, insert—

‘part 3, division 2¹⁹’.

4. Section 16(4), from ‘State’—

omit, insert—

‘State, a Territory or New Zealand to protect himself or herself, the order may be registrable in Queensland under part 3, division 3.²⁰’.

¹⁹ Part 3, division 2 (Powers of court and magistrates to make temporary protection orders)

²⁰ Part 3, division 3 (Registration of interstate orders)

5. Section 23(5), from ‘corporate’—

omit, insert—

‘under the *Weapons Act 1990*, section 10(3).’

6. Section 23(6), ‘section 1.5 of’—

omit, insert—

‘section 2 of’.

7. Section 23(6)(a), ‘1.5(1)(a) to (c) or (i)’—

omit, insert—

‘2(1)(a) to (c) or (k)’.

8. Section 23(6)(b), ‘1.5(1)(f), (h) or (j)’—

omit, insert—

‘2(1)(h) or (l)’.

9. Section 37, heading, ‘Commissioner of Police’—

omit, insert—

‘Commissioner’.

10. Section 37, ‘Commissioner of Police has’—

omit, insert—

‘commissioner has’.

11. Section 43(1), ‘Commissioner of Police’—

omit, insert—

‘commissioner’.

12. Section 44(2)—

omit.

13. Section 46, heading, ‘interstate spouse etc.’—

omit, insert—

‘person against whom interstate order was made’.

14. Section 46(5)—

omit.

15. Section 51(4)(b), ‘Commissioner of Police’—

omit, insert—

‘commissioner’.

16. Section 52, ‘Commissioner of Police’—

omit, insert—

‘commissioner’.

17. Section 53(1)(b), from ‘exercise’—

omit, insert—

‘make a temporary protection order under section 39C(b).²¹’.

18. Section 55(a)(v), ‘Commissioner of Police’—

omit, insert—

‘commissioner’.

²¹ Section 39C (Temporary protection order because of adjournment)

19. Section 64(1)(c), ‘Commissioner of Police’—

omit, insert—

‘commissioner’.

20. Section 71(1), ‘promptly’—

omit, insert—

‘prepare an application for a protection order in which the person is named as the respondent spouse and immediately’.

21. Section 71(2)(a), from ‘promptly’ to ‘order’—

omit, insert—

‘before a court under subsection (1)’.

22. Section 71(3)(d) and (4), ‘keeper’—

omit, insert—

‘manager’.

23. Section 74(2) and (3)(b), ‘promptly’—

omit, insert—

‘as soon as practicable’.

24. Section 76(1), ‘seized under’—

omit.

25. Section 76(1)(a)—

omit, insert—

‘(a) given to, or seized by, a police officer under this Act; or’.

26. Section 76(1)(b), before ‘the Weapons Act 1990’—

insert—

‘seized under’.

27. Section 76(2), ‘Section 6.1 of the Weapons Act 1990’—

omit, insert—

‘The Weapons Act 1990, section 154,’.

28. Section 76(3) and (4)—

omit.

29. Section 90, ‘Part’—

omit, insert—

‘division’.