

Queensland



# **DOMESTIC VIOLENCE (FAMILY PROTECTION) ACT 1989**

**Reprinted as in force on 1 November 2000  
(includes amendments up to Act No. 46 of 2000)**

**Reprint No. 3A \***

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# Information about this reprint

This Act is reprinted as at 1 November 2000. 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.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 have also been made to use aspects of format and printing style consistent with current drafting practice (s 35).

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**
- **editorial changes made in earlier reprints.**

# Queensland



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# DOMESTIC VIOLENCE (FAMILY PROTECTION) ACT 1989

[as amended by all amendments that commenced on or before 1 November 2000]

**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

### 1 Short title

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

### 2 Commencement

(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.

### 3 Definitions

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 chief executive under section 87.

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

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**“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 an individual under 18 years who is—

- (a) a biological, adopted, step or foster child of the aggrieved spouse; or
- (b) another child 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.

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

**“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.

**“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

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

**“interstate order”** means an order made by a court of another State, a Territory or New Zealand under a prescribed law of the other State, Territory or New Zealand.

**“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*.

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

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

**“Magistrates Court”** has the meaning given in section 4.

**“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.

**“possession”** has the meaning given in section 5.

**“premises”** has the meaning given in section 6.

**“property”** has the meaning given in section 7.

**“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).

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

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

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

**“tenancy application”** means—

- (a) an application made under the *Residential Tenancies Act 1994*, section 150, 188 or 190, to a small claims tribunal;<sup>1</sup> or
- (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.

“**watch-house manager**” means a watch-house manager under the *Police Powers and Responsibilities Act 2000*, schedule 4.

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

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

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

#### **4 References to court and when justices may exercise power**

(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 subsections (3) and (6), 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

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

- (c) to adjourn proceedings taken with a view to the making of a domestic violence order against a respondent spouse;

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*.

(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.<sup>2</sup>

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

## 5 Meaning of “possession”

(1) “**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.

(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.<sup>3</sup>

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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.

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

## **6 Meaning of “premises”**

“**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.

## **7 Meaning of “property”**

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

- (a) the person owns; or
- (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.

## **8 Meaning of “weapons licence”**

“**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 under the *Weapons Act 1990*, section 10(3).

## **9 Meaning of court being satisfied**

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**

### **10 Purpose of this part**

(1) The purpose of this part is to help 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.

### **11 What is domestic violence?**

(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.

### **12 Who is a “spouse”?**

(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.

**(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.

### **13 What assistance can a court give to prevent domestic violence?**

**(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 part 3, division 2<sup>4</sup>) 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.

### **14 Who can apply for a protection order?**

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

- (a) an aggrieved spouse; or

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<sup>4</sup> Part 3, division 2 (Powers of court and magistrates to make temporary protection orders)



- (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.

## **15 Who can a domestic violence order protect?**

(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.

## **16 When can a court make a domestic violence order?**

(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, a Territory or New Zealand to protect himself or herself, the order may be registrable in Queensland under part 3, division 3.<sup>5</sup>

## **17 What are the conditions of a domestic violence order?**

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.

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<sup>5</sup> Part 3, division 3 (Registration of interstate orders)

## **17A What happens if circumstances change after domestic violence order is made?**

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.<sup>6</sup>

*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.

## **18 What is meant by a weapon?**

(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.

(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.

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

(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.

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<sup>6</sup> Section 51 (Application for revocation or variation)

(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*

#### **20 Power of court to make orders to protect spouse against domestic violence**

(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
  - (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.

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

(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.

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

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.

## **23 Protection order must include standard condition about weapons etc.**

(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 under the *Weapons Act 1990*, section 10(3).

(6) If the *Weapons Act 1990* does not apply to the respondent spouse because of section 2 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 2(1)(a) to (c) or (k) of the Act; or

- (b) because of section 2(1)(h) or (l) of the Act and the fact that the person is dealing with the weapon on behalf of the Commonwealth.

### **23A Action by court if respondent spouse has access to weapons through employment**

(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 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 court or magistrate under section 82.<sup>7</sup>

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

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<sup>7</sup> Section 82 (Restriction on publication of proceedings)

**24 Arrangements for surrender of revoked or suspended licences etc.**

(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 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.

(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.

(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

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- (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.

(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.

(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).<sup>8</sup>

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8 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.



**“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 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.

## **25 Court may impose other conditions**

**(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.

**(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 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

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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.

**(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
- (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—

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- (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) 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.

### **25A Orders under s 25 that include ouster condition**

(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—

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- (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.

## **26 Special condition for thing that has been used as a weapon**

**(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 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.

## **27 No weapons licence for duration of domestic violence order**

(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.

## **28 Court may allow respondent spouse to possess weapons in limited circumstances**

(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 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.

## **29 Domestic violence orders must include information about weapons**

(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.

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

(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—

- (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.

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

### **33 Court may make domestic violence order by consent**

(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).

### **34 Start of domestic violence orders and their duration**

(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.

**35 Variation of domestic violence order**

(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.

**36 Revocation of orders**

(1) A court may revoke a domestic violence order if an application for revocation is made to the court under section 51.<sup>9</sup>

(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.

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<sup>9</sup> Section 51 (Application for revocation or variation)



(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.

### **37 Commissioner must be given notices of applications to vary or revoke**

A court must not make an order under section 35 or 36 unless it is satisfied that the commissioner has been given a copy of the application.

### **38 Conferral of jurisdiction**

(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.

(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 62A<sup>10</sup> 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

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<sup>10</sup> Section 62A (Procedural provisions for tenancy application)

(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*.

### **39 Court may summons person to attend**

(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
- (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—Powers of court and magistrates to make temporary protection orders***

**39A Act of domestic violence necessary before particular temporary protection orders made**

(1) A court may make a temporary protection order against a respondent spouse under this division, other than section 39D,<sup>11</sup> 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.

**39B Form of temporary protection orders**

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

**39C Temporary protection order because of adjournment**

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;<sup>12</sup> or
- (b) the matter of making a protection order on its own initiative as mentioned in section 53(1)(b).<sup>13</sup>

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

12 Sections 48 (Appearance of respondent spouse) or 49 (Non-appearance of respondent spouse)

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

**39D Court may make temporary protection order without proof of service in certain circumstances**

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.

**39E Temporary protection order when cross application made**

(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.

### **39F Court may make temporary protection order when considering variation of domestic violence order**

(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.

### **39G Temporary protection order for application under s 54**

(1) A magistrate to whom application is made under section 54<sup>14</sup> may make a temporary protection order against the respondent spouse if it appears to the magistrate that because of distance, time or other

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

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*

#### **40 Application to register interstate order in Queensland**

(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.

#### **41 Clerk to obtain copies of order and proof of service**

(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.

#### **42 Registration of interstate order**

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

#### **43 Duty of clerk after order is registered**

(1) No later than 2 business days after the registration of an interstate order, the clerk must give the applicant and the commissioner 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.

#### **44 Effect of registration of interstate order**

A registered interstate order—

- (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.

#### **45 Variation etc. of registered interstate order**

(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.

#### **46 Applicant need not notify person against whom interstate order was made**

(1) An applicant under this division need not give notice of—

- (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.

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

**46A Definitions for div 4**

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.<sup>15</sup>

**“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.

**46B Disclosure of existence of relevant family protection order**

(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;

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15 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.

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

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

#### **46C Court to consider relevant family contact order etc.**

(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).

## **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**

(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.

#### **48 Appearance of respondent spouse**

(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 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.

**49 Non-appearance of respondent spouse**

(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<sup>16</sup> 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
- (b) adjourn the matter of the application (whether or not it makes a temporary protection order); or
- (c) subject to section 59(1),<sup>17</sup> 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).

**50 Court to ensure certain spouses understand domestic violence orders**

(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;

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16 Section 71 (Police officer must apply for protection order etc.)

17 Section 59 (Provisions concerning warrants)

- (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.

## **51 Application for revocation or variation**

(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 imposed by the order).

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

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- (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.

(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.

(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).

## **52 Duty of clerk of court to give certain notices to commissioner**

(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—

- (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.

## **53 Procedure if respondent spouse found guilty etc. of related offence**

(1) A court exercising jurisdiction under section 30<sup>18</sup>—

- (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, make a temporary protection order under section 39C(b).<sup>19</sup>

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18 Section 30 (Power of court if spouse pleads or is found guilty of related offences)

19 Section 39C (Temporary protection order because of adjournment)

(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 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***

**54 Applications by telephone, facsimile etc.**

(1) A police officer who—

- (a) must, under section 71,<sup>20</sup> make an application for a protection order under this section; or
- (b) may, under section 14(3),<sup>21</sup> 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.

(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.

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20 Section 71 (Police officer must apply for protection order etc.)

21 Section 14 (Who can apply for a protection order?)



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

(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.

## **55 Duty of magistrate upon application under s 54**

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;<sup>22</sup>
  - (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

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22 Section 20 (Power of court to make orders to protect spouse against domestic violence)

- (v) cause a copy of the order referred to in subparagraph (i) to be given to the commissioner; 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.

### **56 Duty of police officer re s 54 order**

(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.

### **57 Return date of temporary protection order**

(1) A temporary protection order made because of an application under section 54 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 30 days after the day on which the temporary protection order is made; and

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(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.

***Division 3—Other procedural provisions***

**58 Service of court orders**

(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; 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).<sup>23</sup>

(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.

## **59 Provisions concerning warrants**

(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.

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

**60 Police officer or authorised person may represent aggrieved spouse**

(1) A police officer or authorised person may appear, and act on behalf of, an aggrieved spouse in a proceeding for any application under this Act, but must not agree to an order under section 33<sup>24</sup> without the specific approval of the aggrieved spouse.

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

**61 Court may not award costs except if application malicious etc.**

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.

**62 Concurrent and other proceedings**

(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

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24 Section 33 (Court may make domestic violence order by consent)

- (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 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.

## **62A Procedural provisions for tenancy application**

(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.<sup>25</sup>

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<sup>25</sup> *Residential Tenancies Act 1994*, sections 150 (Injury to spouse), 188 (Application by tenant’s spouse for termination for damage or injury) or 190 (Application for interim order about damage or injury)

(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.<sup>26</sup>

(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.

## PART 5—APPEALS

### 63 Appeals

(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—

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<sup>26</sup> *Small Claims Tribunals Act 1973*, section 17 (Exclusion of other jurisdictions)

- (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
- (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<sup>27</sup> 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.

## **64 Institution of appeal**

(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.

(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.

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27 Section 30 (Power of court if spouse pleads or is found guilty of related offences)



(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.

#### **64A Commissioner has right to appear and be heard on appeal**

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

#### **65 Nature of appeal**

(1) Unless a judge of the District Court orders otherwise, an appeal shall be by way of rehearing 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 can not 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.

#### **66 Decision on appeal**

(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**

### **67 Police action re domestic violence**

(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.

### **69 Presence at domestic violence incident**

(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

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- (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 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;<sup>28</sup>
- (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).

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28 Section 39G (Temporary protection order for application under s 54)

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

(1) If a person is taken into custody under section 69(1), the police officer who took the person into custody must immediately deliver the person into the custody of a watch-house manager.

(2) As soon as possible after the person arrives at 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.

(3) 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.

**71 Police officer must apply for protection order etc.**

(1) Subject to this section, if a police officer takes a person into custody under section 69(1), the officer must prepare an application for a protection order in which the person is named as the respondent spouse and immediately 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 before a court under subsection (1); 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 manager for the person to be released from custody on such reasonable conditions as the

watch-house manager considers appropriate, including prescribed conditions and a condition that sets out the details of the time and place of the hearing of the application.

(4) When the person is released from custody, the watch-house manager 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.

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

(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.

**74 Police actions after protection order is made**

(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 as soon as practicable.

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

- (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.

## **75 Entry of registers**

(1) If there is a failure to enter the particulars of a person taken into custody under section 69 in the register, the failure is evidence that—

- (a) the taking of the spouse into custody under that section was unlawful; and
- (b) the custody of that spouse by a police officer and at the watch-house was also unlawful.

(2) A register kept for the purposes of section 70(1A)<sup>29</sup> shall be made available at all reasonable times to a person in respect of whose person action has been taken under authority conferred by section 69 or to another person authorised in writing by that person, to the extent that the register contains an entry or particulars relating to the person taken into custody.

(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.

## **75A When police officer to give receipt for weapons licence or weapon**

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 under the *Police Powers and Responsibilities Act 2000*, section 380<sup>30</sup> for the weapons licence or weapon.

## **78 Acting in aid of police powers**

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.

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29 Section 70(1A) was renumbered as section 70(2) under the *Police Powers and Responsibilities Act 2000*, section 461, schedule 3.

30 *Police Powers and Responsibilities Act 2000*, section 380 (Receipt for seized property)

## PART 7—MISCELLANEOUS PROVISIONS

### 80 Breach of order or conditions

(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.

(4) A respondent spouse who knowingly contravenes or fails to comply with the conditions on which the respondent spouse is released from custody under section 71(3)(d), other than that the respondent spouse 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.

### 81 Courts to be closed

(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.

## **82 Restriction on publication of proceedings**

(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
  - (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—40 penalty units or 1 year's imprisonment.

(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—
  - (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.<sup>31</sup>

### **83 Prosecution of proceedings**

(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.

### **84 Evidentiary provision**

(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

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<sup>31</sup> Section 54 (Applications by telephone, facsimile etc.)

*Domestic Violence (Family Protection) Act 1989*

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- (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 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.

## **85 Service etc. of documents**

(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 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.

## **86 Exclusion of right to compensation—liability at law**

(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.

## **87 Approved forms**

(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.

## **89 Regulations**

(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 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**

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

#### **90 Interpretation**

In this division—

**“commencement”** means the commencement of this division.

**“new Act”** means this Act after the commencement.

**“old Act”** means this Act before the commencement.

#### **91 Instruments, documents, decisions and orders to continue with certain changes**

(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—

- (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.

### **93 Higher courts may deal with pending matters**

(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.

### **94 Standard conditions not part of orders under old Act**

(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.

**95 Disposal of weapons seized under old Act**

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

***Division 2—Transitional provisions for Domestic Violence (Family Protection) Amendment Act 1999*****96 Temporary protection orders to continue to have effect**

(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.<sup>32</sup>

(3) Any express conditions of the temporary protection order continue to have effect.

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32 Part 3, division 2 (Powers of court and magistrates to make temporary protection orders)

**ENDNOTES****1 Index to endnotes**

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**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 November 2000. 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.



### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
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	SIR	= Statutory Instruments Regulation 1992
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered

### 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
2B	to Act No. 56 of 1999	1 December 1999
2C	to Act No. 5 of 2000	26 May 2000
2D	to Act No. 5 of 2000	14 July 2000
3	to Act No. 5 of 2000	28 September 2000

### 5 Tables in earlier reprints

#### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Corrected minor errors	1, 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

### **Statute 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 commenced 12 May 2000 (2000 SL No. 85)

### **Police Powers and Responsibilities Act 2000 No. 5 ss 1–2, 461 (prev s 373) sch 3 (as amd 2000 No. 22 ss 1, 28(3), 3 sch amdt 48 (as from 23 June 2000))**

date of assent 23 March 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (see s 2(1), (3) and 2000 SL No. 174)

### **Statute Law (Miscellaneous Provisions) Act 2000 No. 46 ss 1, 3 sch**

date of assent 25 October 2000

commenced on date of assent

## 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**

#### **Definitions**

**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)

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 “**watch-house manager**” ins 2000 No. 5 s 461 sch 3

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

#### **References to court and when justices may exercise power**

**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  
amd 2000 No. 46 s 3 sch

**Arrangements for surrender of revoked or suspended licences etc.**

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

**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 must be given notices of applications to vary or revoke**

**prov hdg** amd 1999 No. 56 s 3 sch  
**s 37** 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—Powers of court and magistrates to make temporary protection orders**

**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

**Applicant need not notify person against whom interstate order was made**

**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

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**s 48** ins 1992 No. 46 s 8

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**s 49** sub 1992 No. 46 s 8

**Court to ensure certain spouses understand domestic violence orders**

**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**

**prov hdg** amd 1999 No. 56 s 3 sch  
**s 52** prev s 52 ins 1992 No. 46 s 33  
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amd 2000 No. 5 s 461 sch 3 (as amd 2000 No. 22 s 3 sch)**Disposal of seized items****s 76** sub 1992 No. 46 s 25  
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pubd gaz 6 December 1996 p 1353

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