



Queensland

Domestic and Family Violence Protection and Another Act Amendment Act 2015

Act No. 34 of 2015



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Domestic and Family Violence Protection and Another Act Amendment Act 2015

Act No. 34 of 2015

An Act to amend the Domestic and Family Violence Protection Act 2012 and the Police Powers and Responsibilities Act 2000 for particular purposes

[Assented to 17 December 2015]

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Domestic and Family Violence Protection and Another Act Amendment Act 2015*.

2 Commencement

This Act, other than part 3, commences on a day to be fixed by proclamation.

Part 2 Amendment of Domestic and Family Violence Protection Act 2012

3 Act amended

This part amends the *Domestic and Family Violence Protection Act 2012*.

4 Amendment of s 4 (Principles for administering Act)

(1) Section 4(2)(a), after ‘to their lives’—

insert—

should be

(2) Section 4(2)(b) to (e)—

renumber as section 4(2)(c) to (f).

(3) Section 4(2)—

insert—

- (b) to the extent that it is appropriate and practicable, the views and wishes of people who fear or experience domestic violence should be sought before a decision affecting them is made under this Act;

5 Replacement of s 41 (Hearing of cross applications)

Section 41—

omit, insert—

Division 1A Cross applications

41 Definitions for division

In this division—

cross application see section 41A(1)(b), (2)(d)(ii) and (3)(c).

original application see section 41A(1)(a) and (2)(d)(i).

original protection order see section 41A(3)(a).

variation application see section 41A(3)(b).

41A Application of particular provisions

(1) Sections 41B to 41E apply if—

- (a) an application (the *original application*) for a protection order has been made and is before a court; and
- (b) a second application for a protection order (the *cross application*) has been made and is before the same court or another court; and

[s 5]

- (c) a person named as a respondent in the original application is named as the aggrieved in the cross application; and
 - (d) the person named as the aggrieved in the original application is named as a respondent in the cross application.
- (2) Also, sections 41B to 41E apply if—
- (a) 2 protection orders have been made by the same court or by different courts; and
 - (b) a person named as a respondent in one of the protection orders (the *first protection order*) is named as the aggrieved in the other protection order (the *second protection order*); and
 - (c) the person named as the aggrieved in the first protection order is named as a respondent in the second protection order; and
 - (d) both of the following applications have been made and are before a court—
 - (i) an application to vary the first protection order (also the *original application*);
 - (ii) an application to vary the second protection order (also the *cross application*) made after the original application.
- (3) In addition, sections 41B to 41E apply if—
- (a) a protection order (the *original protection order*) has been made; and
 - (b) an application for variation of the original protection order (the *variation application*) has been made and is before a court; and

- (c) an application for a second protection order (also the *cross application*) has been made and is before a court; and
 - (d) a person named as a respondent in the original protection order is named as the aggrieved in the cross application; and
 - (e) the person named as the aggrieved in the original protection order is named as a respondent in the cross application.
- (4) For subsection (3), it does not matter whether the variation application was made before or after the cross application.

41B Parties must disclose cross applications

- (1) Each of the following persons must inform the court to which the original application or cross application was made about the other application—
- (a) a person who is a party to a proceeding for the original application and is aware of the cross application;
 - (b) a person who is a party to a proceeding for the cross application and is aware of the original application.
- (2) Also, each of the following persons must inform the court to which the variation application or cross application was made about the other application—
- (a) a person who is a party to the variation application and is aware of the cross application;
 - (b) a person who is a party to the cross application and is aware of the variation application.

[s 5]

- (3) In this section—
party includes an aggrieved.

41C Hearing of applications—cross applications before same court

- (1) This section applies if—
- (a) either—
 - (i) the original application and cross application are before the same court; or
 - (ii) the variation application and cross application are before the same court; and
 - (b) the court is aware of both applications.
- (2) The court must—
- (a) hear the applications together unless the court considers it is necessary to hear the applications separately for the safety, protection or wellbeing of the person named as the aggrieved in the original application, the original protection order or the cross application; and
 - (b) in hearing the applications, consider the principle mentioned in section 4(2)(e).
- (3) If the court decides to hear the applications separately, the court must give reasons for the decision.
- (4) If the court decides to adjourn the hearing of either application or both applications, the court must consider whether to make a temporary protection order under division 2 in relation to each adjourned hearing.

41D Hearing of applications—cross applications before different courts

- (1) This section applies if—
 - (a) either—
 - (i) the original application and the cross application are before different courts; or
 - (ii) the variation application and the cross application are before different courts; and
 - (b) a court hearing either application is aware of both applications.
- (2) The court must consider whether to, and may—
 - (a) hear the applications together; or
 - (b) order that the application before the court be dealt with by the other court.
- (3) In deciding whether to act under subsection (2)(a) or (b), the court must consider whether it is necessary for the applications to be heard separately for the safety, protection or wellbeing of the person named as the aggrieved in the original application, the original protection order or the cross application.
- (4) If the court decides it is necessary for the applications to be heard separately, the court must give reasons for the decision.
- (5) If the court decides to adjourn the hearing of the application before it, the court must consider whether to make a temporary protection order under division 2 in relation to the adjourned hearing.

[s 5]

41E Hearing of applications—unreasonable notice of cross application

- (1) Subsection (2) applies if the cross application mentioned in section 41A(1)(b) is not served, within a reasonable period, on a respondent to the cross application who is also the aggrieved named in the original application.
- (2) The court may hear the cross application before the original application or together with the original application only if the aggrieved named in the original application consents.
- (3) Subsection (4) applies if the cross application mentioned in section 41A(2)(d)(ii) is not served, within a reasonable period, on a respondent to the cross application who is also the applicant for the original application.
- (4) The court may hear the cross application before the original application or together with the original application only if the applicant for the original application consents.
- (5) Subsection (6) applies if the cross application mentioned in section 41A(3)(c) is not served, within a reasonable period, on a respondent to the cross application who is also the applicant for the variation application.
- (6) The court may hear the cross application before the variation application or together with the variation application only if the applicant for the variation application consents.
- (7) If the consent mentioned in subsection (2), (4) or (6) is not given, the court must—
 - (a) adjourn the hearing of the cross application; and
 - (b) if the cross application has not been served on the respondent to the application mentioned in subsection (1), (3) or (5)—set

a date by which the application is to be served.

- (8) Subsection (9) applies if the variation application mentioned in section 41A(3)(b) is not served, within a reasonable period, on a respondent to the variation application who is also the aggrieved named in the cross application.
- (9) The court may hear the variation application before the cross application or together with the cross application only if the aggrieved named in the cross application consents.
- (10) If the consent mentioned in subsection (9) is not given, the court must—
 - (a) adjourn the hearing of the variation application; and
 - (b) if the variation application has not been served on the aggrieved named in the cross application—set a date by which the application is to be served.
- (11) In this section—

reasonable period means—

 - (a) at least 1 business day before the day of the hearing of the original application or variation application; or
 - (b) within a longer period before the day of the hearing of the original application or variation application the court considers is reasonable in the circumstances.

41F Hearing of application—existing protection order

- (1) Subsections (2) and (3) apply if—
 - (a) a protection order has been made by a court; and

[s 5]

- (b) an application for another protection order has been made and is before the same court or another court; and
 - (c) a person named as a respondent in the protection order is named as the aggrieved in the application; and
 - (d) the person named as the aggrieved in the protection order is named as a respondent in the application.
- (2) Each person who is a party to a proceeding for the application and is aware of the protection order must inform the court to which the application was made about the order.
- (3) The court hearing the application must take into account the court records relating to the making of the protection order.
- (4) Subsections (5) and (6) apply if—
- (a) 2 protection orders have been made by the same court or by different courts; and
 - (b) a person named as a respondent in one of the protection orders (the *first protection order*) is named as the aggrieved in the other protection order (the *second protection order*); and
 - (c) the person named as the aggrieved in the first protection order is named as a respondent in the second protection order; and
 - (d) an application to vary either of the protection orders has been made and is before a court.
- (5) Each person who is a party to a proceeding for the application and is aware of either protection order must inform the court to which the application was made about the order.

-
- (6) The court hearing the application must take into account the court records relating to the making of both protection orders.
 - (7) In this section—
party includes an aggrieved.

Division 1B Domestic violence orders in criminal and child protection proceedings

6 Amendment of s 48 (Temporary protection order in relation to application for variation)

Section 48(2), from ‘the aggrieved’—

omit, insert—

any of the following persons from domestic violence or associated domestic violence, pending a decision on the application for the variation—

- (a) the aggrieved;
- (b) another person named in the first domestic violence order;
- (c) if the application for the variation seeks to name another person in the first domestic violence order—the other person.

7 Replacement of s 49 (Temporary protection order in relation to cross application)

Section 49—

omit, insert—

[s 8]

49 Temporary protection order in relation to particular adjourned applications

- (1) This section applies if, under section 41E, the court adjourns the hearing of a cross application or a variation application.
- (2) The court must consider making a temporary protection order in relation to the application.
- (3) However, the court may make a temporary protection order only if satisfied the order is necessary or desirable to protect the aggrieved, or another person, named in the application pending a decision on the application.
- (4) To remove any doubt, it is declared that this section—
 - (a) applies in addition to section 45; and
 - (b) does not affect the court’s power to make a temporary protection order under this division in relation to an original application or an application to vary an original protection order.

8 Amendment of s 57 (Court may impose other conditions)

- (1) Section 57(2)—
renumber as section 57(3).
- (2) Section 57—
omit, insert—
 - (2) Without limiting subsection (1), a court making a domestic violence order must consider whether to impose an ouster condition on the respondent in relation to the aggrieved’s usual place of residence.

9 Amendment of s 62 (Condition limiting contact between parent and child)

Section 62(2), note, ‘57(2)’—

omit, insert—

57(3)

10 Amendment of s 64 (Ouster condition relating to aggrieved’s usual place of residence)

(1) Section 64(1)—

omit.

(2) Section 64(2), ‘The court’—

omit, insert—

In deciding whether to impose an ouster condition on the respondent in relation to the aggrieved’s usual place of residence, the court

(3) Section 64(2)(b) to (g)—

renumber as section 64(2)(c) to (h).

(4) Section 64(2)—

insert—

(b) any views or wishes expressed by the aggrieved about imposing an ouster condition on the respondent in relation to the aggrieved’s usual place of residence;

(5) Section 64(2)(h), as renumbered, examples, ‘(f) and (g)’—

omit, insert—

(g) and (h)

(6) Section 64(2)—

renumber as section 64(1).

(7) Section 64—

insert—

[s 11]

- (2) The fact that the aggrieved does not express any views or wishes about the condition mentioned in subsection (1)(b) does not of itself give rise to an inference that the aggrieved does not have views or wishes about the condition being imposed.

11 Amendment of s 164 (Who may appeal)

Section 164—

insert—

- (d) if the person sought a temporary protection order in a proceeding under this Act—a decision to refuse to make the order.

12 Amendment of s 165 (How to start appeal)

- (1) Section 165(1), ‘clerk’—

omit, insert—

registrar

- (2) Section 165(2)—

omit, insert—

- (2) The appellant must—

- (a) serve a copy of the notice on—

- (i) the other persons entitled to appeal against the decision; and
(ii) the police commissioner; and

- (b) file a copy of the notice in the court that made the decision being appealed.

- (3) Section 165(3), ‘clerk of the court’—

omit, insert—

registrar

- (4) Section 165(3), ‘subsection (2)’, second mention—

omit, insert—

subsection (2)(a)(i)

(5) Section 165(5), before ‘court’—

insert—

appellate

13 Amendment of s 166 (Effect of appeal on decision)

Section 166(2) and (3), after ‘the court’—

insert—

or the appellate court

14 Insertion of new pt 10, div 1, hdg

Part 10, before section 195—

insert—

**Division 1 Transitional provisions for
Act No. 5 of 2012**

15 Amendment of s 195 (Definitions for pt 10)

(1) Section 195, heading, ‘pt 10’—

omit, insert—

division

(2) Section 195, ‘this part’—

omit, insert—

this division

16 Amendment of s 208 (Service and other things done in relation to continued applications)

Section 208(1), ‘this part’—

omit, insert—

[s 17]

this division

17 Insertion of new pt 10, div 2

After section 214—

insert—

**Division 2 Transitional provision for
Domestic and Family
Violence Protection and
Another Act Amendment
Act 2015**

**215 Application to make or vary domestic violence
order**

This Act, as amended by the *Domestic and Family Violence Protection and Another Act Amendment Act 2015*, applies to a proceeding for an application to make or vary a domestic violence order whether the proceeding started before or after the commencement.

18 Amendment of schedule (Dictionary)

(1) Schedule, definition *local Magistrates Court*—

omit.

(2) Schedule—

insert—

cross application, for part 3, division 1A, see section 41A(1)(b), (2)(d)(ii) and (3)(c).

local Magistrates Court means—

(a) for a respondent named in a police protection notice—a Magistrates Court within the district where the police

protection notice was issued against the respondent; or

- (b) for a respondent named in an application for a protection order prepared by a police officer under section 118(1)—a Magistrates Court within the district where the respondent was taken into custody under section 116.

original application, for part 3, division 1A, see section 41A(1)(a) and (2)(d)(i).

original protection order, for part 3, division 1A, see section 41A(3)(a).

registrar, of an appellate court, means—

- (a) if the appellate court is the District Court—a registrar under the *District Court of Queensland Act 1967*; or
- (b) if the appellate court is the Court of Appeal—a registrar under the *Supreme Court of Queensland Act 1991*.

variation application, for part 3, division 1A, see section 41A(3)(b).

- (3) Schedule, definition *clerk*, paragraphs (c) and (d)—

omit, insert—

- (c) if the court is the District Court—a registrar under the *District Court of Queensland Act 1967*; or
- (d) if the court is the Court of Appeal—a registrar under the *Supreme Court of Queensland Act 1991*.

- (4) Schedule, definitions *commencement* and *repealed Act*, after ‘part 10,’—

insert—

division 1,

[s 19]

Part 3 **Amendment of Police Powers and Responsibilities Act 2000**

19 **Act amended**

This part amends the *Police Powers and Responsibilities Act 2000*.

20 **Insertion of new s 609A**

After section 609—

insert—

609A Use of body-worn cameras

- (1) It is lawful for a police officer to use a body-worn camera to record images or sounds while the officer is acting in the performance of the officer's duties.
- (2) Use of a body-worn camera by a police officer under subsection (1) includes use that is—
 - (a) inadvertent or unexpected; or
 - (b) incidental to use while acting in the performance of the officer's duties.
- (3) Subsection (1) does not affect an ability the police officer has at common law or under this Act or another Act to record images or sounds.
- (4) To remove any doubt, it is declared that subsection (1) is a provision authorising the use by a police officer of a listening device, for the purposes of the *Invasion of Privacy Act 1971*, section 43(2)(d).
- (5) In this section—

body-worn camera means a device—

 - (a) worn on clothing or otherwise secured on a person; and

- (b) designed to be used to—
 - (i) record images; or
 - (ii) record images and sounds.

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