



# **Domestic and Family Violence Protection Act 2012**

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Queensland

# Domestic and Family Violence Protection Act 2012

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
<b>Division 1</b>	<b>Introduction</b>	
1	Short title . . . . .	14
2	Commencement . . . . .	14
<b>Division 2</b>	<b>Main objects</b>	
3	Main objects . . . . .	14
4	Principles for administering Act . . . . .	15
<b>Division 3</b>	<b>Interpretation</b>	
5	Dictionary . . . . .	16
6	Meaning of court . . . . .	16
<b>Part 2</b>	<b>Operation of Act</b>	
<b>Division 1</b>	<b>Preliminary</b>	
7	Purpose of this part . . . . .	17
<b>Division 2</b>	<b>Domestic violence</b>	
8	Meaning of domestic violence . . . . .	17
9	Meaning of associated domestic violence . . . . .	19
10	Meaning of exposed to domestic violence . . . . .	19
11	Meaning of emotional or psychological abuse . . . . .	20
12	Meaning of economic abuse . . . . .	20
<b>Division 3</b>	<b>Relevant relationships</b>	
13	Meaning of relevant relationship . . . . .	22
14	Meaning of intimate personal relationship . . . . .	22
15	Meaning of spousal relationship . . . . .	22
16	Meaning of parent . . . . .	23
17	Meaning of engagement relationship . . . . .	23
18	Meaning of couple relationship . . . . .	24

Contents

---

19	Meaning of family relationship and relative . . . . .	25
20	Meaning of informal care relationship . . . . .	26
<b>Division 4</b>	<b>Overview</b>	
21	Who is an aggrieved and who is a respondent . . . . .	27
22	Child as aggrieved or respondent . . . . .	28
23	What orders can a court make to prevent domestic violence . . .	28
24	Who can a domestic violence order protect . . . . .	29
25	Who can apply for a protection order . . . . .	30
26	When can a court make a protection order . . . . .	31
27	When can a court make a temporary protection order . . . . .	31
28	What are the conditions of a domestic violence order . . . . .	31
29	What happens if circumstances change after a domestic violence order is made . . . . .	32
30	What can happen if a respondent does not comply with a domestic violence order . . . . .	32
31	What is the effect of an order made in another State or New Zealand	33
<b>Part 3</b>	<b>Domestic violence orders</b>	
<b>Division 1</b>	<b>Protection orders</b>	
32	Application for protection order . . . . .	33
33	Fixing of date, time and place for hearing . . . . .	34
34	Service of application . . . . .	34
35	Copy of application must be given to aggrieved . . . . .	35
36	Applicant may ask clerk of court for hearing before respondent is served	35
37	When court may make protection order . . . . .	35
38	Hearing of application—appearance of respondent . . . . .	36
39	Hearing of application—non-appearance of respondent . . . . .	37
40	Hearing of application—before respondent is served . . . . .	37
<b>Division 1A</b>	<b>Cross applications</b>	
41	Definitions for division . . . . .	38
41A	Application of particular provisions . . . . .	38
41B	Parties must disclose cross applications . . . . .	39
41C	Hearing of applications—cross applications before same court .	40
41D	Hearing of applications—cross applications before different courts	41
41E	Hearing of applications—unreasonable notice of cross application	41
41F	Hearing of application—existing protection order . . . . .	43
<b>Division 1B</b>	<b>Domestic violence orders in criminal and child protection</b>	

	<b>proceedings</b>	
42	When court on its own initiative can make or vary order against offender	44
43	When Childrens Court can make or vary order against parent of a child	46
<b>Division 2</b>	<b>Temporary protection orders</b>	
44	When court may make temporary protection order . . . . .	48
45	Matters court must be satisfied of . . . . .	49
46	Standard of evidence . . . . .	49
47	Temporary protection order when respondent has not been served	50
48	Temporary protection order in relation to application for variation	50
49	Temporary protection order in relation to particular adjourned applications . . . . .	52
50	Form of temporary protection order . . . . .	52
<b>Division 3</b>	<b>Consent orders</b>	
51	Court may make domestic violence order by consent . . . . .	52
<b>Division 4</b>	<b>Naming persons in domestic violence orders</b>	
52	Naming relative or associate of aggrieved . . . . .	54
53	Naming child . . . . .	54
54	When court must consider naming child . . . . .	54
55	Power of court to obtain information about child . . . . .	55
<b>Division 5</b>	<b>Conditions of domestic violence orders</b>	
56	Domestic violence order must include standard conditions . . . .	56
57	Court may impose other conditions . . . . .	57
58	Conditions relating to behaviour of respondent . . . . .	57
59	Conditions relating to recovery of personal property . . . . .	58
60	Contact by lawyer not prohibited . . . . .	59
61	Contact by victim advocate not prohibited . . . . .	59
62	Condition limiting contact between parent and child . . . . .	60
63	Ouster condition . . . . .	61
64	Ouster condition relating to aggrieved's usual place of residence	61
65	Return condition . . . . .	63
66	Supervision by police officer of ouster condition or return condition	64
67	Condition for protection of unborn child . . . . .	64
<b>Division 6</b>	<b>Intervention orders</b>	
68	Definition for div 6 . . . . .	65
69	Court may make intervention order . . . . .	65

Contents

---

70	Intervention order to be explained . . . . .	66
71	Respondent to agree to making or amending of intervention order . . . . .	66
72	Assessment of suitability of respondent . . . . .	67
73	Contravention of intervention order . . . . .	68
74	Notice of completion . . . . .	68
75	Approval of providers and intervention programs . . . . .	69
<b>Division 7</b>	<b>Relationship between domestic violence orders and family law orders</b>	
77	Applicant must disclose family law order . . . . .	70
78	Court must consider family law order . . . . .	70
<b>Division 8</b>	<b>Weapons</b>	
79	Definition for div 8 . . . . .	71
80	Court must consider matters relating to weapons . . . . .	72
81	Condition relating to thing used as a weapon . . . . .	73
82	Domestic violence order must include information about weapons . . . . .	74
83	No exemption under Weapons Act . . . . .	74
<b>Division 9</b>	<b>Explanation of domestic violence orders</b>	
84	Court to ensure respondent and aggrieved understand domestic violence order . . . . .	75
85	Domestic violence order to include written explanation . . . . .	78
<b>Division 10</b>	<b>Variation of domestic violence orders</b>	
86	Application for variation . . . . .	78
87	Fixing of date, time and place for hearing . . . . .	79
88	Service of application . . . . .	80
89	Copy of application must be given to aggrieved . . . . .	81
90	Particular applicants may ask clerk of court for hearing before respondent is served . . . . .	81
91	When court can vary domestic violence order . . . . .	81
92	Considerations of court when variation may adversely affect aggrieved or named person . . . . .	82
93	Hearing of application—appearance of respondent . . . . .	83
94	Hearing of application—non-appearance of respondent . . . . .	84
95	Police commissioner to be given copy of application for variation . . . . .	85
<b>Division 11</b>	<b>Duration of domestic violence orders</b>	
96	Start of domestic violence order . . . . .	85
97	End of protection order . . . . .	85
98	End of temporary protection order . . . . .	86

99	When variation of domestic violence order takes effect . . . . .	87
<b>Part 4</b>	<b>Police functions and powers</b>	
<b>Division 1</b>	<b>Investigatory function</b>	
100	Police officer must investigate domestic violence . . . . .	87
<b>Division 2</b>	<b>Power to issue police protection notice</b>	
101	Police officer may issue police protection notice . . . . .	89
101A	When police officer must issue police protection notice . . . . .	90
101B	Naming persons in police protection notice . . . . .	90
102	Approval of supervising police officer required . . . . .	90
103	Cross-notice not permitted . . . . .	92
104	Contact details and address for service . . . . .	92
105	Form of police protection notice . . . . .	93
106	Standard conditions . . . . .	95
106A	Other conditions . . . . .	96
107	Cool-down condition . . . . .	97
107A	No-contact condition . . . . .	98
107B	Ouster condition . . . . .	99
107C	Return condition . . . . .	99
107D	Relationship between police protection notice and family law order	100
108	Police officer must consider accommodation needs . . . . .	100
109	Service of notice on respondent . . . . .	102
109A	Giving copy of notice to aggrieved . . . . .	102
110	Explanation . . . . .	102
111	Filing . . . . .	104
112	Police protection notice taken to be application for protection order	106
113	Duration . . . . .	106
114	Existing domestic violence order . . . . .	107
<b>Division 3</b>	<b>Power to take person into custody</b>	
115	Definition for div 3 . . . . .	108
116	Police officer may take person into custody . . . . .	108
117	Person must be taken to holding cell or watch-house . . . . .	108
118	Police officer must apply for protection order . . . . .	109
119	Detention period limited . . . . .	109
120	Person not to be questioned about offence . . . . .	111
121	Police officer may apply for extension of detention period . . . . .	111
122	When detention period may be extended . . . . .	113

Contents

---

123	Extended detention period limited to 8 hours . . . . .	114
124	Release of person from custody . . . . .	114
125	When police officer must release person on conditions . . . . .	115
126	Particular safeguards for detention of child . . . . .	117
127	When person may be taken to place for treatment . . . . .	118
128	When intoxicated person may be taken to place of safety . . . . .	118
<b>Division 4</b>	<b>Power to apply for urgent temporary protection order</b>	
129	When police officer may apply for temporary protection order . . . . .	120
130	Making of application . . . . .	121
131	When magistrate may make temporary protection order . . . . .	121
132	Form of temporary protection order . . . . .	123
133	Service . . . . .	123
<b>Division 5</b>	<b>Power to direct person to remain, or move to and remain, at place</b>	
134	Application of division . . . . .	124
134A	Power to give direction . . . . .	125
134B	Limits on direction . . . . .	127
134C	Offence warning . . . . .	128
134D	Person not to be questioned about offence . . . . .	128
134E	Responsibilities of police officer in relation to direction . . . . .	128
134F	Offence to contravene direction . . . . .	129
<b>Division 6</b>	<b>Acting in aid of police powers</b>	
135	Acting in aid of police powers . . . . .	129
<b>Part 5</b>	<b>Court proceedings</b>	
<b>Division 1</b>	<b>Jurisdiction</b>	
136	Conferral of jurisdiction . . . . .	130
137	Constitution of Magistrates Court . . . . .	130
138	Concurrent criminal proceeding . . . . .	131
139	Tenancy application may be made in Magistrates Court . . . . .	132
140	Tenancy application may be removed to Magistrates Court . . . . .	132
141	Procedures applicable to tenancy applications before Magistrates Court 132	
<b>Division 2</b>	<b>Practice and procedure</b>	
142	Procedure for proceeding under this Act . . . . .	134
143	Application of usual laws where necessary . . . . .	134
144	Directions . . . . .	135
145	Evidence . . . . .	135



146	Right of appearance and representation . . . . .	135
147	Representation of aggrieved . . . . .	135
148	Child can not be compelled to give evidence . . . . .	136
149	Child must be allowed to obtain legal representation . . . . .	137
150	Protected witnesses . . . . .	137
151	Restriction on cross-examination in person . . . . .	138
152	Special witnesses . . . . .	139
153	Electronic documents . . . . .	140
<b>Division 3</b>	<b>Other powers of court</b>	
154	Court may issue subpoena . . . . .	140
155	Power of court if failure to cooperate under subpoena . . . . .	141
156	Provisions concerning warrants . . . . .	141
157	Costs . . . . .	141
<b>Division 4</b>	<b>Confidentiality</b>	
158	Court to be closed . . . . .	142
159	Prohibition on publication of certain information for proceeding . . . . .	142
160	Prohibition on obtaining copies of documents for proceeding . . . . .	143
161	Research . . . . .	145
162	Notification of police commissioner . . . . .	145
163	Notification of public guardian . . . . .	146
<b>Division 5</b>	<b>Appeals</b>	
164	Who may appeal . . . . .	146
165	How to start appeal . . . . .	147
166	Effect of appeal on decision . . . . .	147
167	Police commissioner has right of appearance . . . . .	148
168	Hearing procedures . . . . .	148
169	Powers of appellate court . . . . .	148
<b>Part 5A</b>	<b>Information sharing</b>	
<b>Division 1</b>	<b>Preliminary</b>	
169A	Purpose of part . . . . .	149
169B	Principles for sharing information . . . . .	149
169C	Definitions for part . . . . .	150
<b>Division 2</b>	<b>Information sharing</b>	
169D	Sharing information for assessing domestic violence threat . . . . .	151
169E	Sharing information for responding to serious domestic violence threat . . . . .	152

Contents

---

169F	Police officer may refer person to specialist DFV service provider	152
169G	Permitted uses of shared information . . . . .	153
169H	Who may give or receive information on behalf of entity . . . . .	154
169I	Facts or opinion may be shared . . . . .	154
169J	Limits on information that may be shared . . . . .	154
<b>Division 3</b>	<b>Confidentiality of shared information</b>	
169K	Confidentiality of information obtained under this part . . . . .	155
169L	Police use of confidential information . . . . .	157
<b>Division 4</b>	<b>Guidelines for sharing and dealing with information</b>	
169M	Chief executive must make guidelines . . . . .	157
<b>Division 5</b>	<b>Protection from liability for giving information</b>	
169N	Protection from liability for giving information . . . . .	158
169O	Interaction with other laws . . . . .	159
<b>Part 6</b>	<b>National recognition of domestic violence orders</b>	
<b>Division 1</b>	<b>Preliminary</b>	
170	Object of part . . . . .	160
171	Definitions for part . . . . .	160
172	Meaning of local order . . . . .	162
173	Meaning of interstate order . . . . .	162
174	Meaning of registered foreign order . . . . .	162
175	Meaning of properly notified . . . . .	162
176	Special provisions for registered foreign orders . . . . .	164
<b>Division 2</b>	<b>National recognition of DVOs</b>	
<b>Subdivision 1</b>	<b>General principles</b>	
176A	Interstate and foreign DVOs are recognised interstate orders . .	164
176B	Recognised interstate order prevails over earlier comparable DVOs	165
176C	Making of new orders . . . . .	166
<b>Subdivision 2</b>	<b>Enforcement of recognised interstate orders</b>	
176D	Recognised interstate order may be enforced . . . . .	166
176E	Penalty for contravention . . . . .	167
176F	Licences, permits and other authorisations . . . . .	167
176G	Orders for costs . . . . .	168
<b>Division 3</b>	<b>Variation and revocation of recognised interstate orders</b>	
176H	Power of court to vary recognised interstate orders . . . . .	169
176I	Application for variation of recognised interstate order . . . . .	169
176J	Decision about hearing of application . . . . .	170

176K	When recognised interstate order is taken to be revoked . . . . .	171
<b>Division 4</b>	<b>Registration, and variation and revocation of registration, of New Zealand orders</b>	
176L	Application to register New Zealand order in Queensland . . . . .	172
176M	Clerk of court to obtain copies of order and proof of service . . . . .	172
176N	Registration of New Zealand order . . . . .	172
176O	Duty of clerk of court after order is registered . . . . .	173
176P	Variation or revocation of registered New Zealand order . . . . .	173
176Q	Applicant need not notify respondent to New Zealand order . . . . .	174
<b>Division 5</b>	<b>Exchange of information</b>	
176R	Obtaining information about interstate orders . . . . .	175
176S	Clerk of court must provide DVO information . . . . .	175
176T	Information to be provided to law enforcement agencies . . . . .	176
<b>Division 6</b>	<b>Miscellaneous</b>	
176U	Certificate evidence—notification . . . . .	176
<b>Part 7</b>	<b>Offences</b>	
177	Contravention of domestic violence order . . . . .	177
178	Contravention of police protection notice . . . . .	178
179	Contravention of release conditions . . . . .	179
180	Aggrieved or named person not guilty of offence . . . . .	179
181	Prosecution of offences . . . . .	179
182	When proceeding for offence to be heard summarily may be started 180	
<b>Part 8</b>	<b>General</b>	
<b>Division 1</b>	<b>Service</b>	
183	Service allowed on all days . . . . .	181
184	Service of order on respondent . . . . .	181
185	Court to give domestic violence order to other persons . . . . .	183
186	Court to give intervention order to aggrieved . . . . .	183
187	Court to give notice of adjournment to absent respondent . . . . .	184
188	Giving of document to child . . . . .	185
<b>Division 2</b>	<b>Miscellaneous provisions</b>	
189	Evidentiary provision . . . . .	187
190	Protection from liability . . . . .	188
191	Approved forms . . . . .	188
192	Review of Act . . . . .	188

Contents

---

193	Regulation-making power . . . . .	189
<b>Part 9</b>	<b>Repeal provision</b>	
194	Repeal . . . . .	189
<b>Part 10</b>	<b>Transitional provisions</b>	
<b>Division 1</b>	<b>Transitional provisions for Act No. 5 of 2012</b>	
195	Definitions for division . . . . .	189
196	Domestic violence order to continue to have effect . . . . .	190
197	Application for protection order . . . . .	190
198	Domestic violence committed before commencement . . . . .	191
199	Offences committed before commencement . . . . .	191
200	Child protection proceedings started before commencement . . . . .	191
201	Adjournment of matter of making protection order by court on its own initiative . . . . .	191
202	Summons to attend . . . . .	191
203	Application to register interstate order . . . . .	192
204	Registered interstate order to continue to have effect . . . . .	192
205	Application for variation of domestic violence order . . . . .	192
206	Application for revocation of domestic violence order . . . . .	192
207	Application by police for temporary protection order . . . . .	193
208	Service and other things done in relation to continued applications . . . . .	193
209	Appeal . . . . .	193
210	Person taken into custody . . . . .	193
211	Restriction on publication of proceedings . . . . .	194
212	Restriction on obtaining copies of documents . . . . .	194
213	Information provided to adult guardian . . . . .	194
214	References to repealed Act . . . . .	194
<b>Division 2</b>	<b>Transitional provision for Domestic and Family Violence Protection and Another Act Amendment Act 2015</b>	
215	Application to make or vary domestic violence order . . . . .	194
<b>Division 3</b>	<b>Transitional provisions for Domestic and Family Violence Protection and Other Legislation Amendment Act 2016</b>	
<b>Subdivision 1</b>	<b>Preliminary</b>	
216	Definitions for division . . . . .	195
<b>Subdivision 2</b>	<b>Transitional provisions for amendment Act, part 2, division 2</b>	
217	Application to make or vary domestic violence order . . . . .	195
218	Obligation for domestic violence order to include written explanation . . . . .	196

		Contents
219	Duration of existing protection orders .....	196
220	Existing voluntary intervention orders .....	197
221	Police protection notices .....	197
222	Release conditions .....	197
<b>Subdivision 3</b>	<b>Transitional provisions for national recognition of domestic violence orders scheme</b>	
223	Local orders .....	198
224	Interstate orders .....	198
225	Court may declare DVO to be recognised interstate order .....	199
226	Application for declaration .....	200
<b>Subdivision 4</b>	<b>Transitional provisions for previous part 6</b>	
227	Existing registered interstate orders .....	201
228	Application to register New Zealand order as interstate order ..	202
<b>Schedule</b>	<b>Dictionary .....</b>	<b>203</b>



# **Domestic and Family Violence Protection Act 2012**

**An Act to provide for protection of a person against violence committed or threatened by someone else if a relevant relationship exists between the persons**

## **Preamble**

In enacting this Act, the Parliament of Queensland recognises the following—

- 1 Australia is a party to the following instruments—
  - Universal Declaration of Human Rights
  - United Nations Declaration on the Elimination of Violence Against Women
  - United Nations Convention on the Rights of the Child
  - United Nations Principles for Older Persons.
- 2 Living free from violence is a human right and fundamental social value.
- 3 Domestic violence is a violation of human rights that is not acceptable in any community or culture and traditional or cultural practices can not be relied upon to minimise or excuse domestic violence.
- 4 Domestic violence is often an overt or subtle expression of a power imbalance, resulting in one person living in fear of another, and usually involves an ongoing pattern of abuse over a period of time.
- 5 Domestic violence can have serious impacts on people who experience it, including physical, emotional and psychological harm, and can result in death.

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- 6 Perpetrators of domestic violence are solely responsible for their use of violence and its impacts on other people.
- 7 Domestic violence is most often perpetrated by men against women with whom they are in an intimate partner relationship and their children; however, anyone can be a victim or perpetrator of domestic violence.
- 8 Domestic violence is a leading cause of homelessness for women and children.
- 9 Children who are exposed to domestic violence can experience serious physical, psychological and emotional harm.
- 10 Behaviour that constitutes domestic violence can also constitute a criminal offence.

## **Part 1 Preliminary**

### **Division 1 Introduction**

#### **1 Short title**

This Act may be cited as the *Domestic and Family Violence Protection Act 2012*.

#### **2 Commencement**

This Act commences on 17 September 2012.

### **Division 2 Main objects**

#### **3 Main objects**

- (1) The main objects of this Act are—



- 
- (a) to maximise the safety, protection and wellbeing of people who fear or experience domestic violence, and to minimise disruption to their lives; and
  - (b) to prevent or reduce domestic violence and the exposure of children to domestic violence; and
  - (c) to ensure that people who commit domestic violence are held accountable for their actions.
- (2) The objects are to be achieved mainly by—
- (a) allowing a court to make a domestic violence order to provide protection against further domestic violence; and
  - (b) giving police particular powers to respond to domestic violence, including the power to issue a police protection notice; and
  - (c) imposing consequences for contravening a domestic violence order or police protection notice, in particular, liability for the commission of an offence.

#### **4 Principles for administering Act**

- (1) This Act is to be administered under the principle that the safety, protection and wellbeing of people who fear or experience domestic violence, including children, are paramount.
- (2) Subject to subsection (1), this Act is also to be administered under the following principles—
  - (a) people who fear or experience domestic violence, including children, should be treated with respect and disruption to their lives should be minimised;
  - (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;
  - (c) perpetrators of domestic violence should be held accountable for their use of violence and its impact on

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other people and, if possible, provided with an opportunity to change;

- (d) if people have characteristics that may make them particularly vulnerable to domestic violence, any response to the domestic violence should take account of those characteristics;

*Examples of people who may be particularly vulnerable to domestic violence—*

- women
  - children
  - Aboriginal people and Torres Strait Islanders
  - people from a culturally or linguistically diverse background
  - people with a disability
  - people who are lesbian, gay, bisexual, transgender or intersex
  - elderly people
- (e) in circumstances in which there are conflicting allegations of domestic violence or indications that both persons in a relationship are committing acts of violence, including for their self-protection, the person who is most in need of protection should be identified;
- (f) a civil response under this Act should operate in conjunction with, not instead of, the criminal law.

## **Division 3                      Interpretation**

### **5                      Dictionary**

The dictionary in the schedule defines particular words used in this Act.

### **6                      Meaning of *court***

*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—the magistrate; or
- (c) if a court convicts a person of a domestic violence offence—the court that convicts the person; or
- (d) if the Childrens Court is hearing a child protection proceeding—the Childrens Court.

## Part 2                      Operation of Act

### Division 1                  Preliminary

#### 7                      Purpose of this part

- (1) This part explains how domestic violence is dealt with under this Act, including setting out some of the ideas that are important for an understanding of this Act.
- (2) In particular, this part defines particular words used in this Act, including, for example, what is domestic violence and the relationships that are protected by this Act.

### Division 2                  Domestic violence

#### 8                      Meaning of *domestic violence*

- (1) *Domestic violence* means behaviour by a person (the *first person*) towards another person (the *second person*) with whom the first person is in a relevant relationship that—
  - (a) is physically or sexually abusive; or
  - (b) is emotionally or psychologically abusive; or
  - (c) is economically abusive; or

- (d) is threatening; or
  - (e) is coercive; or
  - (f) in any other way controls or dominates the second person and causes the second person to fear for the second person's safety or wellbeing or that of someone else.
- (2) Without limiting subsection (1), domestic violence includes the following behaviour—
- (a) causing personal injury to a person or threatening to do so;
  - (b) coercing a person to engage in sexual activity or attempting to do so;
  - (c) damaging a person's property or threatening to do so;
  - (d) depriving a person of the person's liberty or threatening to do so;
  - (e) threatening a person with the death or injury of the person, a child of the person, or someone else;
  - (f) threatening to commit suicide or self-harm so as to torment, intimidate or frighten the person to whom the behaviour is directed;
  - (g) causing or threatening to cause the death of, or injury to, an animal, whether or not the animal belongs to the person to whom the behaviour is directed, so as to control, dominate or coerce the person;
  - (h) unauthorised surveillance of a person;
  - (i) unlawfully stalking a person.
- (3) A person who counsels or procures someone else to engage in behaviour that, if engaged in by the person, would be domestic violence is taken to have committed domestic violence.
- (4) To remove any doubt, it is declared that, for behaviour mentioned in subsection (2) that may constitute a criminal offence, a court may make an order under this Act on the basis

that the behaviour is domestic violence even if the behaviour is not proved beyond a reasonable doubt.

(5) In this section—

***coerce***, a person, means compel or force a person to do, or refrain from doing, something.

***unauthorised surveillance***, of a person, means the unreasonable monitoring or tracking of the person's movements, activities or interpersonal associations without the person's consent, including, for example, by using technology.

*Examples of surveillance by using technology—*

- reading a person's SMS messages
- monitoring a person's email account or internet browser history
- monitoring a person's account with a social networking internet site
- using a GPS device to track a person's movements
- checking the recorded history in a person's GPS device

***unlawful stalking*** see the Criminal Code, section 359B.

## 9 Meaning of ***associated domestic violence***

***Associated domestic violence*** means behaviour mentioned in section 8(1) by a respondent towards—

- (a) a child of an aggrieved; or
- (b) a child who usually lives with an aggrieved; or
- (c) a relative of an aggrieved; or
- (d) an associate of an aggrieved.

## 10 Meaning of ***exposed to domestic violence***

A child is ***exposed*** to domestic violence if the child sees or hears domestic violence or otherwise experiences the effects of domestic violence.

*Examples of being exposed to domestic violence—*

- overhearing threats of physical abuse
- overhearing repeated derogatory taunts, including racial taunts
- experiencing financial stress arising from economic abuse
- seeing or hearing an assault
- comforting or providing assistance to a person who has been physically abused
- observing bruising or other injuries of a person who has been physically abused
- cleaning up a site after property has been damaged
- being present at a domestic violence incident that is attended by police officers

## 11 Meaning of *emotional or psychological abuse*

*Emotional or psychological abuse* means behaviour by a person towards another person that torments, intimidates, harasses or is offensive to the other person.

*Examples—*

- following a person when the person is out in public, including by vehicle or on foot
- remaining outside a person's residence or place of work
- repeatedly contacting a person by telephone, SMS message, email or social networking site without the person's consent
- repeated derogatory taunts, including racial taunts
- threatening to disclose a person's sexual orientation to the person's friends or family without the person's consent
- threatening to withhold a person's medication
- preventing a person from making or keeping connections with the person's family, friends or culture, including cultural or spiritual ceremonies or practices, or preventing the person from expressing the person's cultural identity

## 12 Meaning of *economic abuse*

*Economic abuse* means behaviour by a person (the *first person*) that is coercive, deceptive or unreasonably controls

another person (the *second person*), without the second person's consent—

- (a) in a way that denies the second person the economic or financial autonomy the second person would have had but for that behaviour; or
- (b) by withholding or threatening to withhold the financial support necessary for meeting the reasonable living expenses of the second person or a child, if the second person or the child is entirely or predominantly dependent on the first person for financial support to meet those living expenses.

*Examples—*

- coercing a person to relinquish control over assets and income
- removing or keeping a person's property without the person's consent, or threatening to do so
- disposing of property owned by a person, or owned jointly with a person, against the person's wishes and without lawful excuse
- without lawful excuse, preventing a person from having access to joint financial assets for the purposes of meeting normal household expenses
- preventing a person from seeking or keeping employment
- coercing a person to claim social security payments
- coercing a person to sign a power of attorney that would enable the person's finances to be managed by another person
- coercing a person to sign a contract for the purchase of goods or services
- coercing a person to sign a contract for the provision of finance, a loan or credit
- coercing a person to sign a contract of guarantee
- coercing a person to sign any legal document for the establishment or operation of a business

## **Division 3                      Relevant relationships**

### **13            Meaning of *relevant relationship***

A *relevant relationship* is—

- (a) an intimate personal relationship; or
- (b) a family relationship; or
- (c) an informal care relationship.

### **14            Meaning of *intimate personal relationship***

An *intimate personal relationship* is—

- (a) a spousal relationship; or
- (b) an engagement relationship; or
- (c) a couple relationship.

### **15            Meaning of *spousal relationship***

- (1) A *spousal relationship* exists between spouses.

*Note*—

A reference to a spouse includes a de facto partner. For definitions of *spouse* and *de facto partner*, see the *Acts Interpretation Act 1954*, schedule 1 and section 32DA.

- (2) A *spouse*, of a person, includes—
- (a) a former spouse of the person; and
  - (b) a parent, or former parent, of a child of the person.
- (3) For subsection (2)(b), it is irrelevant whether there is or was any relationship between the parents of the child.
- (4) In this section—
- former parent* includes—
- (a) a birth parent who stops being a parent of a child under the *Surrogacy Act 2010*, section 39(2)(b); and



- (b) a birth parent who stops being a parent of a child under a cultural recognition order made under the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020*.

## 16 Meaning of *parent*

- (1) A *parent*, of a child, means—
  - (a) the child’s mother or father; and
  - (b) anyone else, other than the chief executive (child protection), having or exercising parental responsibility for the child.
- (2) However, a parent of a child does not include—
  - (a) a person standing in the place of a parent of the child on a temporary basis; or
  - (b) an approved foster carer for the child; or
  - (c) an approved kinship carer for the child.
- (3) A parent of an Aboriginal child includes a person who, under Aboriginal tradition, is regarded as a parent of the child.
- (4) A parent of a Torres Strait Islander child includes a person who, under Island custom, is regarded as a parent of the child.
- (5) In this section—
  - approved foster carer* see the *Child Protection Act 1999*, schedule 3.
  - approved kinship carer* see the *Child Protection Act 1999*, schedule 3.

## 17 Meaning of *engagement relationship*

An *engagement relationship* exists between 2 persons if the persons are or were engaged to be married to each other, including a betrothal under cultural or religious tradition.

## **18 Meaning of *couple relationship***

- (1) A *couple relationship* exists between 2 persons if the persons have or had a relationship as a couple.
- (2) In deciding whether a couple relationship exists, a court may have regard to the following—
  - (a) the circumstances of the relationship between the persons, including, for example—
    - (i) the degree of trust between the persons; and
    - (ii) the level of each person's dependence on, and commitment to, the other person;
  - (b) the length of time for which the relationship has existed or did exist;
  - (c) the frequency of contact between the persons;
  - (d) the degree of intimacy between the persons.
- (3) Without limiting subsection (2), the court may consider the following factors in deciding whether a couple relationship exists—
  - (a) whether the trust, dependence or commitment is or was of the same level;
  - (b) whether 1 of the persons is or was financially dependent on the other;
  - (c) whether the persons jointly own or owned any property;
  - (d) whether the persons have or had joint bank accounts;
  - (e) whether the relationship involves or involved a relationship of a sexual nature;
  - (f) whether the relationship is or was exclusive.
- (4) A couple relationship may exist even if the court makes a negative finding in relation to any or all of the factors mentioned in subsection (3).
- (5) A couple relationship may exist between 2 persons whether the persons are of the same or a different gender.

- (6) A couple relationship does not exist merely because 2 persons date or dated each other on a number of occasions.

## 19 Meaning of *family relationship* and *relative*

- (1) A *family relationship* exists between 2 persons if 1 of them is or was the relative of the other.
- (2) A *relative* of a person is someone who is ordinarily understood to be or to have been connected to the person by blood or marriage.

### *Examples of an individual's relatives—*

an individual's spouse, child (including a child 18 years or more), stepchild, parent, step-parent, sibling, grandparent, aunt, nephew, cousin, half-brother, mother-in-law or aunt-in-law

### *Examples of an individual's former relatives—*

- the person who would be the individual's mother-in-law if the individual was still in a spousal relationship with the person's son or daughter
  - the person who would be the step-parent of the individual if the spousal relationship between the person and the person's former spouse, the individual's parent, had not ended
  - the individual's step-siblings when the parent they do not have in common has died
- (3) For deciding if someone is connected by marriage, any 2 persons who are or were spouses of each other are considered to be or to have been married to each other.
- (4) A *relative* of a person (the *first person*) is also either of the following persons if it is or was reasonable to regard the person as a relative especially considering that for some people the concept of a relative may be wider than is ordinarily understood—
- (a) a person whom the first person regards or regarded as a relative;
- (b) a person who regards or regarded himself or herself as a relative of the first person.

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

- Aboriginal people
  - Torres Strait Islanders
  - members of certain communities with non-English speaking backgrounds
  - people with particular religious beliefs
- (5) In deciding if a person is a relative of someone else—
- (a) a subsection of this section must not be used to limit another subsection of this section; and
  - (b) each subsection is to have effect even though, as a result, a person may be considered to be a relative who would not ordinarily be understood to be a relative.

## **20 Meaning of *informal care relationship***

- (1) An *informal care relationship* exists between 2 persons if 1 of them is or was dependent on the other person (the *carer*) for help in an activity of daily living.

*Examples of help in an activity of daily living—*

- dressing or other personal grooming of a person
  - preparing a person's meals or helping a person with eating meals
  - shopping for a person's groceries
  - telephoning a specialist to make a medical appointment for a person
- (2) An informal care relationship does not exist between a child and a parent of a child.
- (3) An informal care relationship does not exist between 2 persons if 1 person helps the other person in an activity of daily living under a commercial arrangement.

*Example for subsection (3)—*

The relationship between a person and a nurse who visits the person each day to help with bathing and physiotherapy is not an informal care relationship because the nurse visits the person under a commercial arrangement made between the person and the nurse's employer.

- (4) For subsection (3)—

- (a) a commercial arrangement may exist even if a person does not pay a fee for the help provided under the arrangement; and

*Example for paragraph (a)—*

The provision of help by a voluntary organisation for which a person does not pay a fee may still be under a commercial arrangement.

- (b) an arrangement is not a commercial arrangement because 1 person receives a pension or allowance, or reimbursement for the purchase price of goods, for the help provided under the arrangement; and
- (c) an arrangement is not a commercial arrangement if 1 person pays a fee for the help provided under the arrangement because of domestic violence committed by the other person.

## Division 4                      Overview

### 21            **Who is an *aggrieved* and who is a *respondent***

- (1) An *aggrieved* means the person for whose benefit a domestic violence order, or a police protection notice, is in force or may be made under this Act.
- (2) Only 1 person may be named as the aggrieved in an application for a domestic violence order, or in a domestic violence order or police protection notice.
- (3) A *respondent* means a person against whom a domestic violence order, or a police protection notice, is in force or may be made under this Act.
- (4) More than 1 person may be named as the respondent in an application for a domestic violence order, or in a domestic violence order.
- (5) Only 1 person may be named as the respondent in a police protection notice.

## 22 Child as aggrieved or respondent

- (1) A person who is a child can be named as the aggrieved or the respondent in an application for a domestic violence order, or in a domestic violence order or police protection notice.
- (2) However, a child can only be named as the aggrieved or the respondent if an intimate personal relationship or an informal care relationship exists between the child and the other party named in the application, order or notice.
- (3) Subsection (2) does not limit—
  - (a) the interstate orders that are recognised interstate orders under part 6; or
  - (b) the New Zealand orders that may be registered under part 6, division 4.
- (4) In this section—

*other party*, named in an application, order or notice, means—

  - (a) in relation to an aggrieved—the respondent or any 1 of the respondents named in the application, order or notice; or
  - (b) in relation to a respondent—the aggrieved named in the application, order or notice.

## 23 What orders can a court make to prevent domestic violence

- (1) A court can make a domestic violence order against a respondent for the benefit of an aggrieved.
- (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 in the period before a court decides whether to make a protection order for the benefit of an aggrieved.

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- (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 an application for a domestic violence order; or
  - (b) does not appear in court.

## 24 Who can a domestic violence order protect

- (1) As well as the aggrieved, the following persons can be protected by a domestic violence order—
- (a) a child of the aggrieved;
  - (b) a child who usually lives with the aggrieved;
  - (c) a relative of the aggrieved;
  - (d) an associate of the aggrieved.
- (2) A ***child who usually lives with the aggrieved*** means a child who spends time at the residence of the aggrieved on a regular or on-going basis.
- (3) An ***associate*** of the aggrieved means either of the following persons if it is reasonable to regard the person as an associate—
- (a) a person whom the aggrieved regards as an associate;
  - (b) a person who regards himself or herself as an associate of the aggrieved.

*Examples of persons who could be associates of the aggrieved—*

- a person who is the current spouse or partner of the aggrieved
  - a person who works at the same place as the aggrieved
  - a person who lives at the same place as the aggrieved
  - a person who provides support or assistance to the aggrieved, including, for example, a friend or neighbour
- (4) A person mentioned in subsection (1) is protected by being specifically named in the domestic violence order under section 52 or 53.

[s 25]

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- (5) The person may be specifically named in the domestic violence order when it is made or at a later time if it is varied.
- (6) The specifically named person is called a *named person*.

## 25 Who can apply for a protection order

- (1) An application for a protection order can be made only by—
  - (a) an aggrieved; or
  - (b) an authorised person for an aggrieved; or
  - (c) a police officer under section 100(2)(a); or
  - (d) a person acting under another Act for the aggrieved.

*Examples of persons acting under another Act—*

- a guardian for a personal matter of the aggrieved under the *Guardianship and Administration Act 2000*
- an attorney for a personal matter of the aggrieved under an enduring power of attorney under the *Powers of Attorney Act 1998*

- (2) An *authorised person* for an aggrieved means—
  - (a) an adult authorised in writing by the aggrieved to appear on behalf of the aggrieved; or
  - (b) an adult whom the court believes is authorised by the aggrieved to appear on behalf of the aggrieved even though the authority is not in writing.

*Example for paragraph (b)—*

A 19-year-old man has a physical disability that results in him not being able to sign an authority. He alleges his uncle has threatened physical harm to him. The man orally authorises his grandfather to apply for a protection order against the uncle. The court may believe the grandfather is authorised to appear on behalf of the man after hearing evidence about the authorisation.

- (3) A person who may make an application for a protection order under subsection (1) may make other applications or bring other proceedings under this Act in relation to a domestic violence order made because of the application for the protection order.



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**26 When can a court make a protection order**

A court can make a protection order if—

- (a) an application for a protection order is made to the court by any of the persons mentioned in section 25(1); or
- (b) the court convicts a person of a domestic violence offence; or
- (c) the court is the Childrens Court hearing a child protection proceeding.

**27 When can a court make a temporary protection order**

A court can make a temporary protection order if—

- (a) the court adjourns a proceeding mentioned in section 44(a), (b) or (c); or
- (b) the applicant for a protection order has asked the clerk of the court under section 36 for the application to be heard by the court before the respondent is served; or
- (c) the applicant for the variation of a protection order has asked the clerk of the court under section 90 for the application to be heard by the court before the respondent is served; or
- (d) a police officer applies for a temporary protection order under part 4, division 4.

**28 What are the conditions of a domestic violence order**

If a court makes a domestic violence order—

- (a) the respondent must be of good behaviour and must not commit domestic violence or associated domestic violence; and
- (b) if a child of the aggrieved, or a child who usually lives with the aggrieved, is a named person in the order, the respondent must not expose the child to domestic violence; and

- (c) the respondent must comply with any other conditions imposed by the court and stated in the order.

*Note—*

See part 3, division 5 for provisions about the other conditions a court can impose on the respondent.

## **29 What happens if circumstances change after a domestic violence order is made**

If circumstances change after a domestic violence order is made, a person can apply under section 86 for a variation of the order.

*Examples of changes of circumstances—*

- 1 A protection order is made that includes only the standard conditions. The respondent commits further, and more serious, domestic violence against the aggrieved. In addition to charging the respondent with an offence, a police officer may apply for a variation of the protection order to include additional conditions in the order to give greater protection to the aggrieved.
- 2 A temporary protection order is made because of an application under section 129 by a police officer. The aggrieved's place of residence is stated in the order as premises that the respondent is prohibited from approaching. If the aggrieved's place of residence changes, a variation of the temporary protection order may be sought under section 86.

## **30 What can happen if a respondent does not comply with a domestic violence order**

- (1) If a respondent does not comply with a domestic violence order, including a recognised interstate order, a police officer can charge the respondent with an offence.
- (2) An aggrieved, named person or anyone else can complain to a police officer that the respondent is not complying with the order.

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**31 What is the effect of an order made in another State or New Zealand**

- (1) If a person has obtained an interstate order in another State, the interstate order is a recognised interstate order under part 6 and enforceable under this Act.
- (2) If a person has obtained a New Zealand order, the New Zealand order—
  - (a) may be registrable in Queensland under part 6 or in another State under a corresponding law; and
  - (b) if registered in Queensland or another State, is a recognised interstate order under part 6 and enforceable under this Act.

**Part 3 Domestic violence orders**

**Division 1 Protection orders**

**32 Application for protection order**

- (1) An application for a protection order may be made to a Magistrates Court by—
  - (a) an aggrieved; or
  - (b) an authorised person for an aggrieved; or
  - (c) a police officer under section 100(2)(a); or
  - (d) a person acting under another Act for an aggrieved.
- (2) The application must—
  - (a) be in the approved form; and
  - (b) state the grounds on which it is made; and
  - (c) state the nature of the order sought; and
  - (d) if the applicant is not a police officer—be verified by the applicant by a statutory declaration; and

- (e) be filed in the court.

### **33 Fixing of date, time and place for hearing**

- (1) If the applicant for the protection order is a police officer, as soon as practicable after the application is prepared, the police officer must prepare a copy of the application that states the date, time and place for the hearing of the application.
- (2) If the applicant for the protection order is not a police officer, as soon as practicable after the application is filed in the court, the clerk of the court must—
  - (a) write on a copy of the application the date, time and place for the hearing of the application; and
  - (b) give the copy of the application to—
    - (i) the applicant; and
    - (ii) the officer in charge of the police station nearest the place where the respondent lives or was last known to live.

### **34 Service of application**

- (1) A police officer must personally serve the copy of the application prepared under section 33(1) or (2)(a) on the respondent.
- (2) The copy of the application must state that, if the respondent does not appear in court—
  - (a) a domestic violence order may be made in the respondent's absence; or
  - (b) the court may issue a warrant for the respondent to be taken into custody by a police officer if the court believes that it is necessary for the respondent to be heard.
- (3) To remove any doubt, it is declared that, if an application for a protection order is made by a police officer, the application

may be served on the respondent before the application is filed in the court.

*Note—*

Section 153 provides that a police officer may file a document in a proceeding under this Act by electronic or computer-based means.

### **35 Copy of application must be given to aggrieved**

- (1) If the applicant for a protection order is not the aggrieved, the applicant must give a copy of the application to the aggrieved.
- (2) Failure to comply with subsection (1) does not invalidate or otherwise affect an application for a protection order.

### **36 Applicant may ask clerk of court for hearing before respondent is served**

- (1) The applicant for a protection order may ask the clerk of the court to arrange for the application to be heard by the court before the application is served on the respondent, for the purpose of the court making a temporary protection order under division 2.
- (2) This section applies despite section 34.

### **37 When court may make protection order**

- (1) A court may make a protection order against a person (the *respondent*) for the benefit of another person (the *aggrieved*) if the court is satisfied that—
  - (a) a relevant relationship exists between the aggrieved and the respondent; and
  - (b) the respondent has committed domestic violence against the aggrieved; and

*Note—*

See the examples of the type of behaviour that constitutes domestic violence in sections 8, 11 and 12, which define the terms *domestic violence*, *emotional or psychological abuse* and *economic abuse*.

[s 38]

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- (c) the protection order is necessary or desirable to protect the aggrieved from domestic violence.
- (2) In deciding whether a protection order is necessary or desirable to protect the aggrieved from domestic violence—
  - (a) the court must consider—
    - (i) the principles mentioned in section 4; and
    - (ii) if an intervention order has previously been made against the respondent and the respondent has failed to comply with the order—the respondent’s failure to comply with the order; and
  - (b) if an intervention order has previously been made against the respondent and the respondent has complied with the order—the court may consider the respondent’s compliance with the order.
- (3) However, the court must not refuse to make a protection order merely because the respondent has complied with an intervention order previously made against the respondent.
- (4) If an application for a protection order names more than 1 respondent, the court may make a domestic violence order or domestic violence orders naming 1, some or all of the respondents, as the court considers appropriate.

### **38 Hearing of application—appearance of respondent**

- (1) This section applies if a respondent appears before the court that is to hear and decide an application for a protection order.
- (2) The court may—
  - (a) hear and decide the application; or
  - (b) adjourn the application, whether or not it makes a temporary protection order under division 2; or
  - (c) subject to subsection (3), dismiss the application without deciding it.
- (3) The court may dismiss an application without deciding it only if—

- (a) the applicant has not appeared; and
  - (b) if the applicant is a police officer—no other police officer or service legal officer has requested an adjournment; and
  - (c) no other person eligible to apply for the protection order has appeared.
- (4) The dismissal of an application does not affect the right of the applicant to make a further application against the respondent.

### **39 Hearing of application—non-appearance of respondent**

- (1) This section applies if a respondent fails to appear before the court that is to hear and decide an application for a protection order and the court is satisfied that the respondent has been served with a copy of the application.

*Note—*

If a respondent has been served with a police protection notice, because of section 112, the respondent is taken to have been served with a copy of an application for a protection order.

- (2) The court may—
- (a) hear and decide the application in the absence of the respondent; or
  - (b) adjourn the application, whether or not it makes a temporary protection order under division 2; or
  - (c) subject to section 156(1), order the issue of a warrant for the respondent to be taken into custody by a police officer and brought before the court.

### **40 Hearing of application—before respondent is served**

- (1) This section applies if a court hears an application for a protection order before the application is served on the respondent.
- (2) The court may adjourn the application, whether or not it makes a temporary protection order under division 2.

## 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
- (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.

[s 41C]

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- (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.
- (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.

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**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.

**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.

[s 41E]

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- (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

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- (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
  - (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

[s 42]

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- (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**

### **42            When court on its own initiative can make or vary order against offender**

- (1) This section applies if a court convicts a person (the *offender*) of a domestic violence offence.
- (2) The court may, on its own initiative, make a protection order against the offender if the court is satisfied that, under section 37, a protection order could be made against the offender.
- (3) If a domestic violence order is already in force against the offender, 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, on its own initiative, vary the order.
- (4) However, the court may not make a protection order under subsection (2) or vary a domestic violence order under

subsection (3) unless the following persons have been given a reasonable opportunity to present evidence and to prepare and make submissions about the making or variation of the order—

- (a) the offender;
  - (b) the prosecuting authority for the offence;
  - (c) if reasonably practicable, the person who is or would be named as the aggrieved in the order.
- (5) A court exercising jurisdiction under this section—
- (a) may make the protection order, or vary the domestic violence order, before the offender is discharged by the court or otherwise leaves the court; or
  - (b) may adjourn the matter of making the protection order, or varying the domestic violence order, to a later fixed time and day and may, in the meantime, make a temporary protection order under division 2.
- (6) If the court adjourns the matter under subsection (5)(b), the court—
- (a) must inform the offender that if the offender does not appear in court at the later time and day to which the matter has been adjourned—
    - (i) a protection order may be made, or a domestic violence order varied, in the offender's absence; and
    - (ii) the court may issue a warrant for the respondent to be taken into custody by a police officer if the court believes that it is necessary for the respondent to be heard; and
  - (b) may issue any direction that it considers necessary.
- (7) If the offender fails to appear at the later time and day to which the matter is adjourned, the court may—
- (a) make a protection order against the offender, or vary a domestic violence order against the offender, in the offender's absence; or

[s 43]

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- (b) adjourn the matter further and may, in the meantime, make a temporary protection order under division 2; or
  - (c) subject to section 156(1), order the issue of a warrant for the offender to be taken into custody by a police officer and brought before the court.
- (8) Despite section 158, a proceeding to make or vary a protection order under this section must be held by the court in open court, other than when the court orders the court be closed.
- (9) This section does not limit the power of the court to make any other order against the offender.
- (10) To remove any doubt, it is declared that section 145 applies to a proceeding to make or vary a protection order under this section.

#### **43 When Childrens Court can make or vary order against parent of a child**

- (1) This section applies if the Childrens Court is hearing a child protection proceeding.
- (2) The court may make a protection order against a parent of a child for whom an order is sought in the child protection proceeding (the *parent*) if—
- (a) the court is satisfied that, under section 37, a protection order could be made against the parent; and
  - (b) the person who would be named as the aggrieved in the protection order is also a parent of a child for whom an order is sought in the child protection proceeding.
- (3) If a domestic violence order is already in force against a parent of a child for whom an order is sought in the child protection proceeding (also the *parent*), the court must consider the order and whether, in the circumstances, the order needs to be varied, including, for example—
- (a) by varying the date the order ends; or



- (b) to ensure the terms of the order are consistent with an order proposed to be made in the child protection proceeding.
- (4) The court may make a protection order under subsection (2) or vary a domestic violence order under subsection (3) on its own initiative or on the application of a party to the child protection proceeding.
- (5) However, the court may not make a protection order under subsection (2) or vary a domestic violence order under subsection (3) unless each party to the child protection proceeding has been given a reasonable opportunity to present evidence and to prepare and make submissions about the making or variation of the order.
- (6) A court exercising jurisdiction under this section—
  - (a) may make the protection order, or vary the domestic violence order, during the hearing of the child protection proceeding; or
  - (b) may adjourn the matter of making the protection order, or varying the domestic violence order, to a later fixed time and day and may, in the meantime, make a temporary protection order under division 2.
- (7) If the court adjourns the matter under subsection (6)(b), the court—
  - (a) must inform the parent that if the parent does not appear in court at the later time and day to which the matter has been adjourned—
    - (i) a protection order may be made, or a domestic violence order varied, in the parent’s absence; and
    - (ii) the court may issue a warrant for the parent to be taken into custody by a police officer if the court believes that it is necessary for the parent to be heard; and
  - (b) may issue any direction that it considers necessary.
- (8) If the parent fails to appear at the later time and day to which the matter is adjourned, the court may—

[s 44]

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- (a) make a protection order against the parent, or vary a domestic violence order against the parent, in the parent's absence; or
  - (b) adjourn the matter further and may, in the meantime, make a temporary protection order under division 2; or
  - (c) subject to section 156(1), order the issue of a warrant for the parent to be taken into custody by a police officer and brought before the court.
- (9) This section does not limit the power of the court to make any order under the *Child Protection Act 1999*.
- (10) In this section—
- party*, to a child protection proceeding, means—
- (a) a child for whom an order is sought in the proceeding; or
  - (b) a separate legal representative, if any, for a child mentioned in paragraph (a); or
  - (c) an applicant or respondent in the proceeding.
- separate legal representative* means a lawyer appointed under the *Child Protection Act 1999*, section 110.

## Division 2                      Temporary protection orders

### 44            When court may make temporary protection order

- (1) A court may make a temporary protection order if—
- (a) the court adjourns the hearing of an application for a protection order; or
  - (b) the court adjourns the hearing of an application for a variation of a domestic violence order; or
  - (c) the court adjourns a proceeding mentioned in section 42 or 43; or

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- (d) the applicant for a protection order has asked the clerk of the court under section 36 for the application to be heard by the court before the respondent is served; or
  - (e) the applicant for the variation of a protection order has asked the clerk of the court under section 90 for the application to be heard by the court before the respondent is served; or
  - (f) an application for a temporary protection order is made to the court by a police officer under part 4, division 4.
- (2) For subsection (1)(a), if the application is a police protection notice taken to be an application for a protection order under section 112, it does not matter whether or not the nature of the protection order sought and the grounds on which the order is sought—
- (a) are stated in the police protection notice; or
  - (b) are stated in a statement mentioned in section 111(3) that has been filed under that section; or
  - (c) have otherwise been made known to the court.

#### **45 Matters court must be satisfied of**

- (1) A court may make a temporary protection order against a respondent only if the court is satisfied that—
- (a) a relevant relationship exists between the aggrieved and the respondent; and
  - (b) the respondent has committed domestic violence against the aggrieved.
- (2) Subsection (1) does not apply if the court makes a temporary protection order under section 44(b).

#### **46 Standard of evidence**

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

**47 Temporary protection order when respondent has not been served**

- (1) This section applies if—
  - (a) a respondent has not been served with a copy of an application for a protection order or an application for a variation of a domestic violence order; and
  - (b) the respondent is not present in court.
- (2) The court may make a temporary protection order against the respondent only if the court is satisfied that the making of a temporary protection order despite the respondent having not been served with the application is necessary or desirable to protect the aggrieved, or another person named in the application, from domestic violence.
- (3) To remove any doubt, it is declared that this section applies in addition to section 45.

**48 Temporary protection order in relation to application for variation**

- (1) This section applies if the court adjourns the hearing of an application for a variation of a domestic violence order (the *first domestic violence order*).
- (2) The court may make a temporary protection order against a respondent only if the court is satisfied that the temporary protection order is necessary or desirable to protect 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.

- (3) If the court makes a temporary protection order under subsection (2), the first domestic violence order is suspended.
- (4) The suspension starts when the respondent is served with a copy of the temporary protection order or when the temporary protection order otherwise becomes enforceable under section 177.
- (5) The suspension ends, and the first domestic violence order is revived—
  - (a) when the court varies the first domestic violence order and the varied order takes effect under section 99; or
  - (b) when the court refuses to vary the first domestic violence order and the respondent is told about the refusal; or
  - (c) when the application for variation of the first domestic violence order is withdrawn and the respondent is told about the withdrawal.
- (6) For subsection (5)(b) or (c), the respondent may be told about the refusal or withdrawal—
  - (a) if the respondent is present in court when the refusal or withdrawal happens—by the court; or
  - (b) otherwise—by a police officer.
- (7) For subsection (6)(b), the respondent may be told by a police officer about the refusal or withdrawal in any way, including, for example, by telephone, email, SMS message, a social networking site or other electronic means.
- (8) When the first domestic violence order is revived—
  - (a) it is enforceable against the respondent as if it had never been suspended; and
  - (b) despite anything in section 98, the temporary protection order made under subsection (2) ends.

#### **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.

#### **50 Form of temporary protection order**

A court may make a temporary protection order against a respondent in the same terms as a protection order.

### **Division 3 Consent orders**

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

- (1) If the parties to a proceeding for a domestic violence order, or a variation of a domestic violence order, consent to the making of the order, or do not oppose the making of the order, the court may make the order—
  - (a) if the court is satisfied that a relevant relationship exists between the aggrieved and the respondent; and
  - (b) without being satisfied as to any matter mentioned in—

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- (i) for a proceeding for a protection order—section 37(1)(b) or (c); or
    - (ii) for a proceeding for a temporary protection order—section 45(1)(b); and
  - (c) whether or not the respondent admits to any or all of the particulars of the application.
- (2) However, if the respondent is a child the court may make the order only if the court is satisfied as to the matters mentioned in—
    - (a) for a proceeding for a protection order—section 37; or
    - (b) for a proceeding for a temporary protection order—section 45.
  - (3) Also, subject to subsection (4), if a police officer, or authorised person for the aggrieved, is acting on behalf of the aggrieved in the proceeding, the court may make the order only if the court is satisfied that the aggrieved consents to the making of the order.
  - (4) The consent of the aggrieved is not required under subsection (3) if—
    - (a) a police officer is acting on behalf of the aggrieved in the proceeding; and
    - (b) the aggrieved is not present in court and can not, after all reasonable enquiries, be contacted to give the consent; and
    - (c) the police officer reasonably believes that the order promotes the safety, protection and wellbeing of the aggrieved, any named person, and any child affected by the order.
  - (5) Before making or varying a domestic violence order under this section, the court may conduct a hearing in relation to the particulars of the application if, in the court's opinion, it is in the interests of justice to do so.
  - (6) The court may refuse to make or vary a domestic violence order under this section if the court believes the making or

[s 52]

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variation of the order may pose a risk to the safety of an aggrieved, any named person, or any child affected by the order.

- (7) To remove any doubt, it is declared that sections 54, 56 and 84 continue to apply in relation to a proceeding under this section.

## **Division 4                      Naming persons in domestic violence orders**

### **52            Naming relative or associate of aggrieved**

- (1) The court may name, in a domestic violence order, a relative or associate of the aggrieved if the court is satisfied that naming the relative or associate in the order is necessary or desirable to protect the relative or associate from associated domestic violence.
- (2) In this section—  
*relative*, of an aggrieved, does not include a child mentioned in section 53.

### **53            Naming child**

The court may name, in a domestic violence order, a child of the aggrieved, or a child who usually lives with the aggrieved, if the court is satisfied that naming the child in the order is necessary or desirable to protect the child from—

- (a) associated domestic violence; or  
(b) being exposed to domestic violence committed by the respondent.

### **54            When court must consider naming child**

- (1) This section applies—  
(a) if a court is—



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- (i) hearing an application for a domestic violence order; or
  - (ii) hearing an application for a variation of a domestic violence order; or
  - (iii) deciding whether to make a domestic violence order under section 42 or 43; and
- (b) the application mentioned in paragraph (a)(i) or (ii), or any other information before the court, discloses the existence of a child of the aggrieved, or a child who usually lives with the aggrieved.
- (2) The court must consider whether the child should be named under section 53 in the domestic violence order.
- (3) To remove any doubt, it is declared that this section applies whether or not the application mentioned in paragraph (a)(i) or (ii) seeks to name the child in the order.

## **55 Power of court to obtain information about child**

- (1) This section applies if—
- (a) there is an application for a protection order, or a variation of a domestic violence order, that seeks to name a child in the order or the court is considering naming a child in a protection order; and
  - (b) the respondent contests the naming of the child in the order or the imposition of any conditions concerning the child; and
  - (c) the court considers that the chief executive (child protection) may have information relating to the child, the aggrieved or the respondent that may help the court in deciding whether to name the child in the order or impose a condition relating to the child under division 5.
- (2) The court may ask the chief executive (child protection) to provide information about the child, the aggrieved or the respondent that the chief executive reasonably considers may help the court in deciding whether to name the child in the

order or impose a condition relating to the child under division 5.

- (3) The chief executive (child protection) must comply with the request as quickly as possible.
- (4) However, the chief executive is required only to provide information in the possession of the chief executive (child protection) or to which the chief executive (child protection) has access.
- (5) If the chief executive (child protection) provides information under this section in a proceeding, the court must—
  - (a) give each party to the proceeding a copy of the information and a reasonable opportunity to prepare and make submissions about the information; and
  - (b) give a copy of any domestic violence order, or varied order, made in the proceeding to the chief executive (child protection).
- (6) The court need not comply with subsection (5)(a) to the extent that giving a copy of the information to a party to the proceeding would place the aggrieved, or a child, at increased risk of domestic violence.
- (7) This section does not limit section 154.

## **Division 5                      Conditions of domestic violence orders**

### **56            Domestic violence order must include standard conditions**

- (1) A court making a domestic violence order must impose a condition that the respondent—
  - (a) must be of good behaviour towards the aggrieved and not commit domestic violence against the aggrieved; and
  - (b) if the order includes a named person who is an adult—

- (i) must be of good behaviour towards the named person; and
- (ii) must not commit associated domestic violence against the named person; and
- (c) if the order includes a named person who is a child—
  - (i) must be of good behaviour towards the child; and
  - (ii) must not commit associated domestic violence against the child; and
  - (iii) must not expose the child to domestic violence.
- (2) If the court does not exercise its power to impose conditions under subsection (1), the court is taken to have done so.

## **57 Court may impose other conditions**

- (1) A court making or varying a domestic violence order must consider whether imposing any other condition is necessary or desirable to protect—
  - (a) the aggrieved from domestic violence; or
  - (b) a named person from associated domestic violence; or
  - (c) a named person who is a child from being exposed to domestic violence.
- (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.
- (3) The principle of paramount importance to the court must be the principle that the safety, protection and wellbeing of people who fear or experience domestic violence, including children, are paramount.

## **58 Conditions relating to behaviour of respondent**

Without limiting section 57, the court may impose a condition on the respondent that—

[s 59]

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- (a) prohibits stated behaviour of the respondent that would constitute domestic violence against the aggrieved or associated domestic violence against a named person; or
- (b) prohibits stated behaviour of the respondent that is likely to lead to domestic violence against the aggrieved or associated domestic violence against a named person; or
- (c) prohibits the respondent from approaching, or attempting to approach, the aggrieved or a named person, including stating in the order a distance within which an approach is prohibited; or
- (d) prohibits the respondent from contacting, attempting to contact or asking someone else to contact the aggrieved or a named person, including, for example, if the aggrieved or named person has taken shelter at a refuge; or
- (e) prohibits the respondent from locating, attempting to locate or asking someone else to locate the aggrieved or a named person if the aggrieved's or named person's whereabouts are not known to the respondent; or
- (f) prohibits stated behaviour of the respondent towards a child of the aggrieved, or a child who usually lives with the aggrieved, including prohibiting the respondent's presence at or in a place associated with the child.

## **59 Conditions relating to recovery of personal property**

- (1) Without limiting section 57, in relation to personal property of the aggrieved, the court may impose a condition on the respondent that requires the respondent—
  - (a) to return stated personal property to the aggrieved; or
  - (b) to allow the aggrieved access to stated personal property; or
  - (c) to allow the aggrieved to recover stated personal property; or

- (d) to allow the aggrieved to enter stated premises to facilitate action mentioned in paragraph (b) or (c); or
  - (e) to do any act necessary or desirable to facilitate action mentioned in paragraph (a), (b), (c) or (d).
- (2) If the court imposes a condition mentioned in subsection (1), the court must consider—
- (a) the extent to which a matter relating to the condition must be supervised by a police officer; and
  - (b) the need to impose a condition that the respondent must not, during a stated period, approach within a stated distance of stated premises to facilitate action mentioned in subsection (1)(a), (b), (c) or (d).

## **60 Contact by lawyer not prohibited**

- (1) A condition mentioned in section 58(d) or (e) that prohibits a respondent from asking someone else to contact or to locate an aggrieved or named person does not prohibit the respondent from asking—
- (a) a lawyer to contact the aggrieved or named person; or
  - (b) another person, including a lawyer, to contact or locate the aggrieved or named person for a purpose authorised under an Act.
- (2) In this section—

*lawyer* means a lawyer who is representing the respondent in relation to a proceeding.

## **61 Contact by victim advocate not prohibited**

- (1) A condition mentioned in section 58(d) or (e) that prohibits a respondent from asking someone else to contact or to locate an aggrieved or named person does not prohibit a victim advocate from contacting or locating the aggrieved or named person if—
- (a) either of the following applies—

[s 62]

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- (i) the purpose of the victim advocate in contacting or locating the aggrieved or named person is to seek the consent of the aggrieved or named person to the provision of advocacy or support to the aggrieved or named person;
  - (ii) the aggrieved or named person has consented to being contacted or located by a victim advocate; and
  - (b) the victim advocate is not knowingly in direct contact with the respondent; and
  - (c) the respondent is participating in an approved intervention program provided by an approved provider.
- (2) In this section—

*victim advocate* means a person engaged by an approved provider to provide advocacy for, and support of, an aggrieved or named person.

## **62 Condition limiting contact between parent and child**

- (1) This section applies if—
- (a) the aggrieved, or an applicant on behalf of the aggrieved, has asked the court for a condition to be imposed on the respondent that would prevent or limit contact between the respondent and a child of the respondent; or
  - (b) the court, on its own initiative, is considering imposing a condition of a type mentioned in paragraph (a).
- (2) If the court imposes the condition, the condition must limit contact between the respondent and the child only to the extent necessary for the child's safety, protection and wellbeing.

*Note—*

In considering whether to impose the condition, under section 57(3), the principle of paramount importance to the court must be the principle that the safety, protection and wellbeing of people who fear or experience domestic violence, including children, are paramount.

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## 63 Ouster condition

- (1) Without limiting section 57, the court may impose a condition (an *ouster condition*) on the respondent that prohibits the respondent from doing all or any of the following in relation to stated premises—
  - (a) remaining at the premises;
  - (b) entering or attempting to enter the premises;
  - (c) approaching within a stated distance of the premises.

### *Notes—*

If an ouster condition is imposed on a respondent who is a tenant, the aggrieved may be able to apply under the *Residential Tenancies and Rooming Accommodation Act 2008*, section 245 for an order to be recognised as the tenant instead of the respondent, or under the *Residential Tenancies and Rooming Accommodation Act 2008*, section 321 for an order terminating the tenancy.

Sections 139 and 140 allow particular applications made under the *Residential Tenancies and Rooming Accommodation Act 2008* to be made to a Magistrates Court, or removed to a Magistrates Court, if an application for a protection order or a variation of a domestic violence order has been made to the court.

- (2) To remove any doubt, it is declared that the premises that may be stated in the ouster condition include—
  - (a) premises in which the respondent has a legal or equitable interest; and
  - (b) premises where the aggrieved and respondent live together or previously lived together; and
  - (c) premises where the aggrieved or a named person lives, works or frequents.

## 64 Ouster condition relating to aggrieved's usual place of residence

- (1) In deciding whether to impose an ouster condition on the respondent in relation to the aggrieved's usual place of residence, the court must consider, in addition to the matters mentioned in section 57, the following—

[s 64]

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- (a) whether the aggrieved and any child living with the aggrieved can continue to live safely in the residence if the ouster condition is not made;
- (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;
- (c) the desirability of preventing or minimising disruption to the aggrieved and any child living with the aggrieved, including by minimising disruption to their living arrangements and allowing them to continue, or return, to live in the residence;
- (d) the importance of the aggrieved and any child living with the aggrieved being able to maintain social connections and support that may be disrupted or lost if they can not live in the residence;
- (e) the need to ensure continuity and stability in the care of any child living with the aggrieved;
- (f) the need to allow childcare arrangements, education, training and employment of the aggrieved and any child living with the aggrieved to continue without interruption;
- (g) the particular accommodation needs of the aggrieved and any child who may be affected by the ouster condition;
- (h) the particular accommodation needs of the respondent.

*Examples of particular accommodation needs for paragraphs (g) and (h)—*

- accommodation needs that relate to a disability or impairment
  - accommodation needs that relate to the number, or age, of the children who require accommodation
- (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.



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- (3) The court must give reasons for imposing, or not imposing, the condition.

## 65 Return condition

- (1) If the court imposes an ouster condition on a respondent, the court must consider imposing another condition (a *return condition*) allowing the respondent—
- (a) if the respondent is no longer at the premises stated in the ouster condition—to return to the premises to recover stated personal property; or
  - (b) if the respondent is at the premises stated in the ouster condition—to remain at the premises to remove stated personal property.
- (2) However, a return condition may not allow a respondent to recover or remove personal property that is required to meet the daily needs of any person who continues to live in the premises stated in the ouster condition.

*Examples of personal property required to meet daily needs—*

household furniture, kitchen appliances

- (3) If the court imposes a return condition, and does not order that the matters relating to the condition be supervised by a police officer, the court must state in the domestic violence order—
- (a) if the respondent is present in court when the order is made—
    - (i) the time at which, without contravening the order, the respondent may return to the premises and then must leave the premises; or
    - (ii) for how long the respondent may, without contravening the order, continue to remain at the premises; or
  - (b) if the respondent is not present in court when the order is made—
    - (i) the time at which, without contravening the order, the respondent may return to the premises and

must leave the premises based on the time of service of the order on the respondent; or

- (ii) for how long the respondent may, without contravening the order, remain at the premises based on the time of service of the order on the respondent.

*Example of condition for paragraph (b)(i)—*

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

- (4) In deciding the time mentioned in subsection (3)(a)(i) or (b)(i), the court must have regard to any expressed wishes of the aggrieved.

## **66 Supervision by police officer of ouster condition or return condition**

Before imposing an ouster condition or return condition, the court must consider—

- (a) the extent to which a matter relating to the condition must be supervised by a police officer; and
- (b) if a police officer must supervise a matter, the need to impose a condition that the respondent must not approach within a stated distance of stated premises.

## **67 Condition for protection of unborn child**

- (1) This section applies if an aggrieved is pregnant when a domestic violence order for the benefit of the aggrieved is made.
- (2) The court may impose a condition that—
  - (a) takes effect when the child is born; and

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- (b) requires the respondent to be of good behaviour towards the child, not commit associated domestic violence against the child, and not expose the child to domestic violence.
  - (3) The court may impose the condition if the court is satisfied that the aggrieved is pregnant and the order is necessary or desirable to protect the child from associated domestic violence, or being exposed to domestic violence, once the child is born.
  - (4) To remove any doubt, it is declared that the court may impose the condition whether or not the respondent is the father of the child.

## Division 6 Intervention orders

### 68 Definition for div 6

In this division—

*counselling* means counselling of a kind that may, in the court's opinion, be beneficial in helping a respondent to overcome harmful behaviour related to domestic violence.

### 69 Court may make intervention order

- (1) If a court makes or varies a domestic violence order, the court may make an order (an *intervention order*), with the agreement of the respondent mentioned in section 71(b) and (c), that requires the respondent to attend either or both of the following—
  - (a) an approved intervention program provided by an approved provider;
  - (b) counselling provided by an approved provider.
- (2) However, the court may make an intervention order only if the court is satisfied that an approved provider is available to provide the approved intervention program or the counselling

[s 70]

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at a location reasonably convenient to the respondent, having regard to where the respondent lives or works.

- (3) The intervention order must require the respondent to—
- (a) report to a stated approved provider at a stated place, and within a stated time, to allow the approved provider to assess the respondent's suitability to participate in an approved intervention program or counselling; and
  - (b) if the approved provider gives a notice under section 72(3) confirming the respondent's suitability—attend an approved intervention program or counselling provided by an approved provider; and
  - (c) comply with every reasonable direction given to the respondent by an approved provider.

## **70 Intervention order to be explained**

Before making an intervention order, the court must explain, or cause to be explained, to the respondent—

- (a) the purpose and effect of the order; and
- (b) what may follow if the respondent contravenes the requirements of the order; and

*Note—*

Under sections 37(2)(a)(ii) and 91(3)(a), a contravention of an intervention order is relevant to the making of a protection order and the variation of a domestic violence order.

- (c) that the order may be varied or revoked on application of the respondent or a police officer.

## **71 Respondent to agree to making or amending of intervention order**

The court may make or amend an intervention order only if the respondent—

- (a) is present in court; and
- (b) agrees to the order being made or amended; and

- (c) agrees to comply with the order as made or amended.

## **72 Assessment of suitability of respondent**

- (1) If a court makes an intervention order, the clerk of the court must give a copy of the order to the stated approved provider mentioned in section 69(3)(a).
- (2) The approved provider must assess the respondent's suitability to participate in an approved intervention program or counselling taking into consideration the following—
  - (a) the respondent's character, personal history and language skills;
  - (b) any disabilities, psychiatric or psychological conditions, or alcohol or drug problems, of the respondent;
  - (c) the effect of the matters mentioned in paragraph (a) or (b) on the respondent's ability to participate in group counselling;
  - (d) any other relevant matters.
- (3) If the approved provider considers that the respondent is suitable to participate in an approved intervention program or counselling, the approved provider must give the court a notice in the approved form stating—
  - (a) that the respondent is suitable to participate in the program or counselling; and
  - (b) the date when the respondent will start attending the program or counselling; and
  - (c) the name of the approved provider who will provide the program or counselling; and
  - (d) the estimated period of time within which the respondent is likely to complete the program or counselling.
- (4) If the approved provider considers that the respondent is not suitable to participate in an approved intervention program or counselling, the approved provider must give the court, and

the police commissioner, a notice in the approved form stating that the respondent is not suitable to participate in an approved intervention program or counselling.

### **73 Contravention of intervention order**

- (1) If an approved provider becomes aware that a respondent has contravened an intervention order, the approved provider must give the court, and the police commissioner, a notice in the approved form stating—
  - (a) that the respondent has contravened the intervention order; and
  - (b) the nature of the contravention; and
  - (c) the date of the contravention.
- (2) The approved provider must give the notice within 14 days after the approved provider becomes aware of the contravention.
- (3) However, subsection (1) does not apply if the approved provider is satisfied that—
  - (a) the contravention is minor; and
  - (b) the respondent has taken steps to remedy the contravention or has otherwise substantially complied with the intervention order.

### **74 Notice of completion**

- (1) If a respondent completes an approved intervention program or counselling, the approved provider must give the respondent, the court and the police commissioner a notice in the approved form stating—
  - (a) that the respondent has completed the program or counselling; and
  - (b) the date on which the respondent completed the program or counselling.

- (2) The approved provider must give the notice within 14 days after the respondent completes the program or counselling.

## **75 Approval of providers and intervention programs**

- (1) The chief executive may approve an entity as an approved provider if the chief executive is satisfied that the entity has appropriate experience and qualifications to provide an approved intervention program or counselling.
- (2) The chief executive may approve a program as an approved intervention program if the chief executive is satisfied that—
- (a) the program aims to—
    - (i) increase participants' accountability for domestic violence; and
    - (ii) help participants to change their behaviour; and
    - (iii) increase the safety, protection and wellbeing of persons against whom domestic violence has been committed; and
  - (b) the program satisfies any other criteria prescribed under a regulation.
- (3) An approval mentioned in subsection (1) or (2) must be in writing.
- (4) The chief executive must—
- (a) prepare, and keep up to date, a list of approved providers and approved intervention programs; and
  - (b) give a copy of the list to the Chief Magistrate.

## **Division 7                      Relationship between domestic violence orders and family law orders**

### **77            Applicant must disclose family law order**

- (1) This section applies to a person who—
  - (a) applies to a court for a domestic violence order or a variation of a domestic violence order; and
  - (b) is aware of a family law order.
- (2) The person must—
  - (a) inform the court about the family law order; and
  - (b) if the person has a copy of the order, give a copy of the order to the court.
- (3) Failure to comply with subsection (2) does not invalidate or otherwise affect an application for a domestic violence order or an application for a variation of a domestic violence order.

### **78            Court must consider family law order**

- (1) Before deciding whether to make or vary a domestic violence order, the court must—
  - (a) have regard to any family law order of which the court has been informed; and
  - (b) if the family law order allows contact between a respondent and a child that may be restricted under the proposed domestic violence order or variation—consider whether to exercise its power, under the *Family Law Act 1975* (Cwlth), section 68R or the *Family Court Act 1997* (WA), section 176, to revive, vary, discharge or suspend the family law order.
- (2) However, the court must not diminish the standard of protection given by a domestic violence order for the purpose of facilitating consistency with a family law order.



- (3) If the court is considering whether to exercise its power as mentioned in subsection (1)(b), the court must give the parties to the proceeding a reasonable opportunity to present evidence and to prepare and make submissions about the exercise of the power.
- (4) However, subsection (3) does not apply if the court is deciding whether to make a temporary protection order under section 47.
- (5) Failure to comply with subsection (1) does not invalidate or otherwise affect a domestic violence order or a variation of a domestic violence order.

## Division 8                      Weapons

*Note—*

See the Weapons Act, sections 27A, 28A, 29A, 29B and 34AA which provide for the impact on a person's weapons licence, including the suspension or revocation of the licence, if the person is named as the respondent in a domestic violence order, police protection notice or release conditions.

### 79            Definition for div 8

In this division—

*possess*, a weapon or thing, includes—

- (a) have custody of it; and
- (b) commit it to someone else's custody but have control of it or a claim to its custody; and
- (c) if someone else otherwise has custody of it—
  - (i) be able to obtain its custody at will; or
  - (ii) have control of it.

## **80 Court must consider matters relating to weapons**

- (1) This section applies if—
  - (a) the respondent is present in court; or
  - (b) a police officer is the applicant for a domestic violence order, or otherwise appears in the proceeding before the court.
- (2) Before making a domestic violence order, the court must ask about—
  - (a) whether the respondent has a weapons licence; and
  - (b) whether the respondent possesses a weapon; and
  - (c) whether the respondent has access to a weapon as part of the respondent's employment; and
  - (d) whether the respondent has access to a weapon because the respondent is a person mentioned in the Weapons Act, section 2; and
  - (e) if paragraph (c) or (d) apply—
    - (i) the respondent's employer, including the employer's name and address; and
    - (ii) the employment or other arrangements relating to the respondent having access to a weapon.
- (3) After asking about the matters mentioned in subsection (2), the court may include 1 or more of the following in the domestic violence order to the extent the court considers reasonable—
  - (a) information about any weapons licence of the respondent;
  - (b) information about any weapon the respondent possesses;
  - (c) information about any weapon to which the respondent has access because of the respondent's employment;

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- (d) information about any weapon to which the respondent has access because the respondent is a person mentioned in the Weapons Act, section 2;
- (e) a statement that when the domestic violence order is served on the respondent the Weapons Act applies to the respondent under section 83, despite the Weapons Act, section 2.
- (4) Subsection (3) does not limit section 84 or 85.
- (5) In this section—
- employment*, of a respondent, includes employment by a partnership in which the respondent is a partner.

## **81 Condition relating to thing used as a weapon**

- (1) This section applies if a court is satisfied that a respondent—
- (a) has used, or threatened to use, a thing in committing domestic violence against the aggrieved, or associated domestic violence against a named person; and
- (b) is likely to use the thing again or carry out the threat.
- Examples of things—*
- an animal including a pet
  - an antique firearm, crossbow or spear gun
  - a cricket or baseball bat
- (2) The court may, as a condition of the domestic violence order, prohibit the respondent 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 as a weapon for which the respondent does not have a licence.
- (4) This section does not limit section 57 or 63.

## **82 Domestic violence order 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 police officer exercises a power under an Act to obtain or seize a weapon.
- (2) In making a domestic violence order, the court must state as much information as it can about the weapons that the respondent possesses.
- (3) In this section—

*weapon* includes a thing that a respondent is prohibited from possessing under section 81(2).

## **83 No exemption under Weapons Act**

- (1) This section applies to each of the following—
  - (a) a person who is a police officer, special constable or trainee member of the Queensland police service, or any other member of the Queensland police service authorised by the police commissioner, as mentioned in the Weapons Act, section 2(1)(e);
  - (b) a person who is undergoing an approved training course, as mentioned in the Weapons Act, section 2(1)(g);
  - (c) a person who is actually engaged in the manufacture, assembly or handling of any weapon for or on behalf of the Government of the Commonwealth or any State or Territory, as mentioned in the Weapons Act, section 2(1)(h);
  - (d) a person who is engaged in scientific or experimental work with any weapon under an authority, as mentioned in the Weapons Act, section 2(1)(i);
  - (e) a person who is actually engaged in the warehousing or transport under consignment of merchandise, as mentioned in the Weapons Act, section 2(1)(l);

- (f) a person to whom the police commissioner has granted an exemption from provisions of the Weapons Act, as mentioned in the Weapons Act, section 2(1)(m);
  - (g) a person who is an employee of a government service entity within the meaning of the Weapons Act, section 2(9), as mentioned in the Weapons Act, section 2(2).
- (2) If the person is named as the respondent in a domestic violence order, police protection notice or release conditions, the Weapons Act applies to the person for the duration of the order, notice or conditions despite the Weapons Act, section 2.
- (3) However, the respondent can not be convicted of an offence against the Weapons Act, because of the operation of subsection (2), unless the act or omission that constitutes the offence happens after the domestic violence order, police protection notice or release conditions are served on the respondent.
- (4) Subsection (3) does not apply if—
- (a) the respondent is present in court when the court makes the domestic violence order; or
  - (b) the respondent is present when a police officer issues the police protection notice and explains the notice.

## **Division 9                      Explanation of domestic violence orders**

### **84                      Court to ensure respondent and aggrieved understand domestic violence order**

- (1) If a court is hearing an application for a domestic violence order, and the aggrieved or the respondent is personally before the court for the first time in relation to the application, the court must ensure that the aggrieved or respondent understands the nature, purpose and legal implications of the proceeding and of any order or ruling made by the court.

- (2) If a court is about to make a domestic violence order, and the respondent is before the court, the court must ensure the respondent understands—
- (a) the purpose, terms and effect of the proposed order, including, for example, that—
    - (i) the order may be enforceable in other States and New Zealand without further notice to the respondent; and
    - (ii) if the respondent has a weapons licence, or is a body's representative as mentioned in the Weapons Act, section 10(3), the licence or endorsement as the body's representative is dealt with by the Weapons Act, section 27A or 28A; and
    - (iii) under the Weapons Act, section 10B, a person against whom a protection order is made can not apply for a weapons licence for a period of 5 years from the date of the order; and
    - (iv) under section 83(2), a person against whom a domestic violence order is made is not exempt from the Weapons Act, despite the Weapons Act, section 2; and
    - (v) the consequences of a domestic violence order, as set out in subparagraphs (ii) to (iv), can only be avoided if the respondent successfully appeals the domestic violence order; and
  - (b) the type of behaviour that constitutes domestic violence; and
- Note—*
- See the examples of the type of behaviour that constitutes domestic violence in sections 8, 11 and 12, which define the terms *domestic violence*, *emotional or psychological abuse* and *economic abuse*.
- (c) what may follow if the respondent contravenes the proposed order; and
  - (d) that the respondent may apply for a variation of the order.

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- (3) If a court is about to make a domestic violence order, and the aggrieved is before the court, the court must ensure the aggrieved understands—
- (a) the purpose, terms and effect of the proposed order, including, for example, that the order may be enforceable in other States and New Zealand; and
  - (b) the type of behaviour that constitutes domestic violence; and
- Note—*
- See the examples of the type of behaviour that constitutes domestic violence in sections 8, 11 and 12, which define the terms *domestic violence*, *emotional or psychological abuse* and *economic abuse*.
- (c) what the aggrieved may do, and what may follow, if the respondent contravenes the proposed order; and
  - (d) that the aggrieved may apply for a variation of the order.
- (4) The process that the court adopts to comply with this section 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 an aggrieved or respondent.
  - 2 A professional interpreter or the telephone interpreter service (but not a relative or friend of the aggrieved or respondent) may be used to explain the order to an aggrieved or respondent.
  - 3 Explanatory notes prepared for aggrieveds or respondents, including non-English speakers, may be given to an aggrieved or respondent.
  - 4 The court may arrange with a local government indigenous regional council under the *Local Government Act 2009*, community justice group or group of elders for someone to explain the order to an aggrieved or respondent.
  - 5 The court may arrange with a non-government service provider for a disability case worker to explain the order to an aggrieved or respondent who has a disability.
- (5) Failure to comply with this section does not invalidate or otherwise affect a domestic violence order.

## **85 Domestic violence order to include written explanation**

- (1) If a court makes a domestic violence order, the copy of the order served on the respondent, or given to the aggrieved, must include a written explanation of the order.
- (2) The written explanation included in the copy served on the respondent must contain the information mentioned in section 84(2).
- (3) The written explanation included in the copy given to the aggrieved must contain the information mentioned in section 84(3).
- (4) A reference in subsection (1) or (2) to a copy of a domestic violence order served on the respondent includes a copy of a domestic violence order given to the respondent, or the respondent's appointee, or sent to the respondent under section 184(4).

## **Division 10 Variation of domestic violence orders**

### **86 Application for variation**

- (1) An application for a variation of a domestic violence order may be made to a court by—
  - (a) the aggrieved; or
  - (b) the respondent; or
  - (c) a named person; or
  - (d) an authorised person for the aggrieved; or
  - (e) a person acting under another Act for a person mentioned in paragraph (a), (b) or (c); or
  - (f) a police officer.
- (2) The application must—
  - (a) be in the approved form; and



- (b) state the grounds on which it is made; and
  - (c) state the nature of the variation sought; and
  - (d) if the applicant is not a police officer—be verified by the applicant by a statutory declaration; and
  - (e) be filed in the court.
- (3) The variation sought may relate to any aspect of the domestic violence order including, for example, the following—
- (a) a condition of the order;
  - (b) the duration of the order;
  - (c) the persons named in the order.
- (4) However, a variation sought by a named person, or a person mentioned in subsection (1)(e) acting for a named person, may relate only to—
- (a) the naming of the person in the order; or
  - (b) a condition of the order relating to the named person.
- (5) An application for a variation of a domestic violence order may be made only while the domestic violence order is still in force.

## **87 Fixing of date, time and place for hearing**

- (1) If the applicant for the variation of the domestic violence order is a police officer, as soon as practicable after the application is prepared, the police officer must prepare a copy of the application that states the date, time and place for the hearing of the application.
- (2) If the applicant for the variation of the domestic violence order is a person other than a police officer, as soon as practicable after the application is filed in the court, the clerk of the court must—
- (a) write on a copy of the application the date, time and place for the hearing of the application; and
  - (b) give the copy of the application to—

- (i) the applicant for the variation; and
- (ii) the officer in charge of the police station nearest the place where the respondent lives or was last known to live.

## **88 Service of application**

- (1) If the applicant for the variation of the domestic violence order is a person other than the respondent, a police officer must personally serve the copy of the application prepared under section 87(1) or (2)(a) on the respondent.
- (2) The copy of the application must state that, if the respondent does not appear in court—
  - (a) the court may hear and decide the application in the respondent's absence; or
  - (b) the court may issue a warrant for the respondent to be taken into custody by a police officer if the court believes that it is necessary for the respondent to be heard.
- (3) If the applicant for the variation is the respondent, a police officer must personally serve the copy of the application prepared under section 87(1) or (2)(a) on—
  - (a) the aggrieved; and
  - (b) any named person who is affected by the application for the variation.
- (4) To remove any doubt, it is declared that, if an application for a variation of a domestic violence order is made by a police officer, the application may be served on the respondent before the application is filed in the court.

*Note—*

Section 153 provides that a police officer may file a document in a proceeding under this Act by electronic or computer-based means.

**89 Copy of application must be given to aggrieved**

- (1) If the applicant for the variation is a person other than the aggrieved or the respondent, the applicant must give a copy of the application to—
  - (a) the aggrieved; and
  - (b) any named person who is affected by the application for the variation; and
  - (c) if an authorised person for the aggrieved applied for the domestic violence order—the authorised person.
- (2) Failure to comply with subsection (1) does not invalidate or otherwise affect an application for a variation of a domestic violence order.

**90 Particular applicants may ask clerk of court for hearing before respondent is served**

- (1) This section applies if the applicant for a variation of a domestic violence order is a person other than the respondent.
- (2) The applicant may ask the clerk of the court to arrange for the application to be heard by the court, before the application is served on the respondent, for the purpose of the court making a temporary protection order under division 2.
- (3) This section applies despite section 88.

**91 When court can vary domestic violence order**

- (1) A court may vary a domestic violence order—
  - (a) on an application to vary it; or
  - (b) on its own initiative under section 42 or 43.
- (2) Before it varies a domestic violence order, the court 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.
- (3) Also, before the court varies a domestic violence order—
  - (a) if an intervention order has previously been made against the respondent and the respondent has failed to comply with the order—the court must consider the respondent’s failure to comply with the order; or
  - (b) if an intervention order has previously been made against the respondent and the respondent has complied with the order—the court may consider the respondent’s compliance with the order.
- (4) However, the court must not decide to vary a domestic violence order merely because the respondent has complied with an intervention order previously made against the respondent.
- (5) If the court varies a domestic violence order, the court must make a copy of the domestic violence order that states—
  - (a) the details of the domestic violence order after the variation; and
  - (b) the conditions of the domestic violence order after the variation.
- (6) The copy of the domestic violence order prepared by the court under subsection (5) is called the *varied order*.

## **92 Considerations of court when variation may adversely affect aggrieved or named person**

- (1) This section applies if the court considers that a variation proposed to be made to a domestic violence order may adversely affect the safety, protection or wellbeing of the aggrieved or any named person.

*Examples of variations that may adversely affect the safety, protection or wellbeing of a person—*

- a variation to reduce the duration of an order
- a variation to remove a condition of an order

- a variation to remove a named person from an order
- (2) In considering whether to make the variation, the court must have regard to—
- (a) any expressed wishes of the aggrieved or named person; and
  - (b) any current contact between the aggrieved or named person and the respondent; and
  - (c) whether any pressure has been applied, or threat has been made, to the aggrieved or named person by the respondent or someone else for the respondent; and
  - (d) the principle that the safety, protection and wellbeing of people who fear or experience domestic violence, including children, are paramount; and
  - (e) any other relevant matter.
- (3) The court may vary the order only if the court considers—
- (a) the safety, protection or wellbeing of the aggrieved or the named person would not be adversely affected by the variation; and
  - (b) if the variation is to reduce the duration of the order—there are reasons for doing so.

### **93 Hearing of application—appearance of respondent**

- (1) This section applies if a respondent appears before the court that is to hear and decide an application for a variation of a domestic violence order.
- (2) The court may—
- (a) hear and decide the application; or
  - (b) adjourn the application, whether or not it makes a temporary protection order under division 2; or
  - (c) subject to subsection (3), dismiss the application without deciding it.

[s 94]

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- (3) The court may dismiss the application without deciding it only if—
  - (a) the applicant for the variation is a person other than the respondent; and
  - (b) the applicant has not appeared; and
  - (c) if the applicant is a police officer—no other police officer or service legal officer has requested an adjournment; and
  - (d) no other person eligible to apply for the variation has appeared.
- (4) The dismissal of an application does not affect the right of the applicant to make a further application against the respondent.

#### **94 Hearing of application—non-appearance of respondent**

- (1) This section applies if a respondent fails to appear before the court that is to hear and decide an application for a variation of a domestic violence order and the court is satisfied that the respondent has been served with a copy of the application.
- (2) The court may—
  - (a) hear and decide the application in the absence of the respondent; or
  - (b) adjourn the application, whether or not it makes a temporary protection order under division 2; or
  - (c) subject to section 156(1), order the issue of a warrant for the respondent to be taken into custody by a police officer and brought before the court; or
  - (d) if the applicant is the respondent—dismiss the application without deciding it.

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**95 Police commissioner to be given copy of application for variation**

A court must not vary a domestic violence order unless it is satisfied that the police commissioner has been given a copy of the application for the variation.

*Note—*

Under section 146(2), a police officer or service legal officer may appear in any proceeding under this Act.

**Division 11 Duration of domestic violence orders**

**96 Start of domestic violence order**

A domestic violence order takes effect—

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

**97 End of protection order**

- (1) A protection order continues in force until—
  - (a) the day stated by the court in the protection order; or
  - (b) if no day is stated, the day that is 5 years after the day the protection order is made.
- (2) The court may order that a protection order continues in force—
  - (a) for any period the court considers is necessary or desirable to protect the aggrieved from domestic violence or a named person from associated domestic violence; but

- (b) for a period of less than 5 years only if the court is satisfied there are reasons for doing so.
- (3) In deciding the period for which a protection order is to continue in force, the principle of paramount importance to the court must be the principle that the safety, protection and wellbeing of people who fear or experience domestic violence, including children, are paramount.
- (4) If the court orders that a protection order continues in force for a period of less than 5 years, the court must give reasons for making the order.

## **98 End of temporary protection order**

A temporary protection order continues in force until—

- (a) if, upon an application for a protection order related to the temporary protection order, the court makes a protection order and the respondent is in court when the protection order is made—when the protection order is made; or
- (b) if, upon an application for a protection order related to the temporary protection order, the court makes a protection order and the respondent is not in court when the protection order is made, the earliest of the following—
  - (i) when the respondent is served with a copy of the protection order;
  - (ii) when the protection order otherwise becomes enforceable under section 177;
  - (iii) when the protection order ends; or
- (c) if, upon an application for a protection order related to the temporary protection order, the court refuses to make a protection order—when the court refuses to make the protection order; or



- (d) if an application for a protection order related to the temporary protection order is withdrawn—when the application is withdrawn; or
- (e) otherwise—when any protection order related to the temporary protection order ends.

## **99 When variation of domestic violence order takes effect**

- (1) If a court varies a domestic violence order, the varied order takes effect—
  - (a) if the respondent is present in court when the court varies the order—when the court varies the order; or
  - (b) if the respondent is not present in court when the court varies the order, on the earliest of the following—
    - (i) when the respondent is served with a copy of the varied order;
    - (ii) when the varied order otherwise becomes enforceable under section 177.
- (2) Also, if a court varies a domestic violence order, the domestic violence order remains in force until the varied order takes effect under subsection (1).

# **Part 4 Police functions and powers**

## **Division 1 Investigatory function**

### **100 Police officer must investigate domestic violence**

- (1) If a police officer reasonably suspects that domestic violence has been committed, the police officer must investigate or cause to be investigated the complaint, report or circumstance on which the officer's reasonable suspicion is based.

[s 100]

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- (2) If, after the investigation, the police officer reasonably believes domestic violence has been committed, the police officer must consider whether it is necessary or desirable—
  - (a) to take any action under subsection (3) to protect a person from further domestic violence; and
  - (b) for the person to be protected immediately from further domestic violence and, if so, what is the most effective action to take to immediately protect the person.
- (3) The police officer may do any of the following—
  - (a) apply to a court for a protection order under part 3, division 1;
  - (b) apply to a court for a variation of a domestic violence order under part 3, division 10;
  - (c) issue a police protection notice under division 2;  
*Note—*  
Under section 112, a police protection notice is taken to be an application for a protection order.
  - (d) take the respondent into custody under division 3;  
*Note—*  
Under section 118, if a police officer takes a respondent into custody, the police officer must apply for a protection order against the respondent.
  - (e) apply to a magistrate for a temporary protection order under division 4;
  - (f) take any other action appropriate in the circumstances.  
*Example of other action—*  
taking a respondent to another place, including, for example, a hospital, to receive treatment necessary for the respondent's welfare
- (4) If, after the investigation, the police officer decides not to take any action, the police officer must make a written record of the police officer's reasons for not taking any action.
- (5) The police commissioner must keep the written record in hard copy or electronic form.

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- (6) This section does not limit the responsibility of the police officer to investigate whether a criminal offence has been committed.

## **Division 2                    Power to issue police protection notice**

### **101    Police officer may issue police protection notice**

- (1) A police officer may issue a notice (a *police protection notice*) against a person (the *respondent*) if the police officer—
- (a) reasonably believes the respondent has committed domestic violence; and
  - (b) if the respondent is not present at the same location as the police officer—has made a reasonable attempt to locate and talk to the respondent, including by telephone, to afford the respondent natural justice in relation to the issuing of a police protection notice; and
  - (c) reasonably believes that no domestic violence order or recognised interstate order has been made or police protection notice issued that—
    - (i) names the respondent as a respondent and another person involved in the domestic violence mentioned in paragraph (a) as the aggrieved; or
    - (ii) names the respondent as the aggrieved and another person involved in the domestic violence mentioned in paragraph (a) as a respondent; and
  - (d) reasonably believes a police protection notice is necessary or desirable to protect the aggrieved from domestic violence; and
  - (e) reasonably believes the respondent should not be taken into custody under division 3.
- (2) This section is subject to sections 102 and 103.

### **101A When police officer must issue police protection notice**

- (1) If a person has been taken into custody under division 3, the releasing police officer must issue a notice (also a *police protection notice*) against the person (also the *respondent*) if—
  - (a) it is not reasonably practicable, as mentioned in section 118(2), to bring the respondent before the court for the hearing of an application for a protection order while the respondent is still in lawful custody; and
  - (b) a temporary protection order has not been made under division 4 against the respondent; and
  - (c) section 125 does not apply.
- (2) This section is subject to sections 102 and 103.

### **101B Naming persons in police protection notice**

- (1) This section applies if a police officer issuing a police protection notice reasonably believes—
  - (a) naming a child of the aggrieved, or a child who usually lives with the aggrieved, in the notice is necessary or desirable to protect the child from—
    - (i) associated domestic violence; or
    - (ii) being exposed to domestic violence committed by the respondent; or
  - (b) naming another relative, or an associate, of the aggrieved in the notice is necessary or desirable to protect the relative or associate from associated domestic violence.
- (2) The police officer may name the child, relative or associate (each a *named person*) in the police protection notice.

### **102 Approval of supervising police officer required**

- (1) Before issuing a police protection notice, the police officer must obtain the approval of a supervising police officer.

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- (2) However, if the police officer proposes to issue a police protection notice under section 101A, the supervising police officer—
- (a) may give or refuse approval for—
    - (i) a person to be named in the notice; or
    - (ii) a condition to be imposed under section 106A; but
  - (b) may not otherwise refuse to give the approval to issue the notice.
- (3) The supervising police officer must be a police officer—
- (a) who the police commissioner has authorised to approve the issue of police protection notices; and
  - (b) who is not involved in investigating—
    - (i) for a notice being issued under section 101—the domestic violence mentioned in section 101(1)(a); or
    - (ii) for a notice being issued under section 101A—the domestic violence for which the respondent was taken into custody.

*Note—*

Section 106A(2)(d) also requires the supervising police officer to be of at least a particular rank if the police protection notice includes a condition under section 106A.

- (4) The approval of the supervising police officer may be sought and given verbally, including, for example, in person, or by telephone, radio, internet or other similar facility.
- (5) The police officer must make a written record of—
- (a) the supervising police officer's decision to give or refuse the approval; and
  - (b) the date and time of the decision; and
  - (c) the supervising police officer's name, rank, registered number, if any, and station.

[s 103]

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- (6) If the supervising police officer decides to refuse the approval, the police officer must not seek approval from another police officer.
- (7) The police commissioner must keep the written record mentioned in subsection (5) in hard copy or electronic form.

### **103 Cross-notice not permitted**

- (1) This section applies if a police officer issues a police protection notice (the *first notice*) that names a person (the *first person*) as a respondent and another person (the *second person*) as an aggrieved.
- (2) Until the first notice stops having effect, a police officer can not issue a police protection notice that names the first person as an aggrieved and the second person as a respondent.

*Note—*

See section 113(3) for when a police protection notice stops having effect.

### **104 Contact details and address for service**

- (1) Subsection (2) applies in relation to a police protection notice—
  - (a) if the respondent is present when a police officer issues the notice—when the police officer issues the notice; or
  - (b) if a police officer talks to the respondent in relation to the issuing of the notice in the circumstances mentioned in section 101(1)(b)—when the police officer talks to the respondent; or
  - (c) otherwise—when a police officer personally serves the notice on the respondent.
- (2) The police officer must ask the respondent to provide—
  - (a) the respondent's contact details; and
  - (b) an address for service of documents.
- (3) Without limiting subsection (2)(b), the address may be—

- (a) the address of accommodation arranged under section 108; or
  - (b) the address of a friend or family member of the respondent.
- (4) If the respondent provides an address under subsection (2)(b) other than an address where the respondent lives or works and another person living at the address advises the court that the person does not consent to the use of the address for the service of documents under this Act, the address is not a valid address for service of the documents.
- (5) The respondent is not obliged to comply with a request under subsection (2).
- (6) This section does not limit the *Police Powers and Responsibilities Act 2000*, section 40.

*Note—*

Under the *Police Powers and Responsibilities Act 2000*, section 40, a police officer may require a person to state the person's correct name and address in particular circumstances.

## **105 Form of police protection notice**

- (1) A police protection notice issued by a police officer must—
- (a) be in the form approved by the police commissioner; and
  - (b) state the police officer's name, rank, registered number, if any, and station; and
  - (c) state the name, contact details, if any, and address for service, if any, of the respondent; and
  - (d) state the name of the aggrieved and any named person; and
  - (e) state the type of relevant relationship that the police officer reasonably believes exists between the respondent and the aggrieved; and

[s 105]

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- (f) state that the police officer is satisfied the grounds for issuing a police protection notice under section 101 or 101A have been met; and
- (g) state the standard conditions mentioned in section 106; and
- (h) state any condition imposed under section 106A, including, for a cool-down condition, the date and time when the condition ends; and
- (i) advise the respondent that, under section 112, the notice is taken to be an application for a protection order made by a police officer; and
- (j) state the date and time for the hearing of the application for the protection order at the local Magistrates Court for the respondent; and
- (k) state that, if the respondent fails to appear before the court, the local Magistrates Court for the respondent may—
  - (i) make a domestic violence order against the respondent in the respondent's absence; or
  - (ii) adjourn the matter and may, in the meantime, make a temporary protection order under part 3, division 2; or
  - (iii) order the issue of a warrant for the respondent to be taken into custody by a police officer and brought before the court; and
- (l) if the date mentioned in paragraph (j) is more than 28 days after the day the notice is issued, advise the respondent that—
  - (i) the matter of the application for the protection order will be mentioned in another Magistrates Court within 28 days after the day the police protection notice is issued; and
  - (ii) the other Magistrates Court will notify the respondent of the date, time and place of the mention; and



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- (iii) the respondent may participate in the mention by attending the other Magistrates Court in person or by audio visual link or audio link; and
  - (iv) the other Magistrates Court may, under part 3, division 2, make a temporary protection order at the mention whether or not the respondent participates in the mention; and
  - (m) be signed by the police officer.
- (2) For subsection (1)(j), the date must be—
- (a) if the local Magistrates Court for the respondent sits at least once a week—within 5 business days after the notice is issued; or
  - (b) otherwise—the next sitting date of the local Magistrates Court for the respondent.
- (3) A police protection notice may also state—
- (a) the nature of the protection order sought by the application for a protection order mentioned in subsection (1)(i); and
  - (b) the grounds on which the order is sought.

## **106 Standard conditions**

A police protection notice must include a condition that the respondent—

- (a) must be of good behaviour towards the aggrieved and must not commit domestic violence against the aggrieved; and
- (b) if the notice includes a named person who is an adult—
  - (i) must be of good behaviour towards the named person; and
  - (ii) must not commit associated domestic violence against the named person; and
- (c) if the notice includes a named person who is a child—

[s 106A]

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- (i) must be of good behaviour towards the child; and
- (ii) must not commit associated domestic violence against the child; and
- (iii) must not expose the child to domestic violence.

### **106A Other conditions**

- (1) A police protection notice may include any or all of the following conditions—
  - (a) a cool-down condition;
  - (b) a no-contact condition;
  - (c) an ouster condition;
  - (d) if the notice includes an ouster condition—a return condition.
- (2) The police officer issuing the police protection notice may impose a condition mentioned in subsection (1) if—
  - (a) the police officer reasonably believes the condition is necessary or desirable to—
    - (i) protect the aggrieved from domestic violence; or
    - (ii) protect a named person from associated domestic violence; or
    - (iii) protect a named person who is a child from being exposed to domestic violence committed by the respondent; and
  - (b) for an ouster condition in relation to the aggrieved's usual place of residence—the police officer has considered the matters mentioned in section 64(1)(a) to (h) and (2); and
  - (c) for an ouster condition—the police officer has considered imposing a return condition; and
  - (d) the supervising police officer who approves, under section 102, the issuing of the notice including the condition is—

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- (i) for a cool-down condition—of at least the rank of sergeant; or
  - (ii) for an ouster condition or no-contact condition—of at least the rank of senior sergeant.
- (3) To remove any doubt, it is declared that the premises that may be stated in a cool-down condition or ouster condition include—
- (a) premises in which the respondent has a legal or equitable interest; and
  - (b) premises where the aggrieved and respondent live together or have previously lived together; and
  - (c) premises where the aggrieved or a named person lives, works or frequents.

## 107 Cool-down condition

- (1) A *cool-down condition* is a condition that prohibits the respondent from doing any or all of the following—
- (a) entering, attempting to enter, or remaining at, stated premises, or approaching within a stated distance of stated premises;
  - (b) approaching, or attempting to approach, within a stated distance of the aggrieved or a named person;
  - (c) contacting, attempting to contact, or asking someone else to contact, the aggrieved or a named person.
- (2) A cool-down condition ends on the date and time stated in the notice.
- (3) The date and time stated in the notice must be—
- (a) no more than 24 hours after the notice is issued; and
  - (b) reasonable, having regard to the circumstances of the respondent, the aggrieved and any other person.

*Example of an unreasonable date and time—*

If a cool-down condition prohibits a respondent from approaching stated premises, it would be unreasonable for the

condition to end at 3a.m., when the respondent's return to the premises may disrupt other household members.

### **107A No-contact condition**

- (1) A *no-contact condition* is a condition that prohibits the respondent from doing any or all of the following—
  - (a) approaching, or attempting to approach, within a stated distance of the aggrieved or a named person;
  - (b) contacting, attempting to contact, or asking someone else to contact, the aggrieved or a named person;
  - (c) locating, attempting to locate, or asking someone else to locate, the aggrieved or a named person if the aggrieved's or named person's whereabouts are not known to the respondent.
- (2) However, a no-contact condition does not prohibit the respondent from asking—
  - (a) a lawyer to contact the aggrieved or a named person; or
  - (b) another person, including a lawyer, to contact or locate the aggrieved or a named person for a purpose authorised under an Act.
- (3) Also, a no-contact condition does not prohibit a victim advocate from contacting or locating the aggrieved or a named person in the circumstances mentioned in section 61(1)(a) to (c).
- (4) In this section—

*lawyer* means a lawyer who is representing the respondent in relation to a proceeding.

*victim advocate* means a person engaged by an approved provider to provide advocacy for, and support of, an aggrieved or named person.

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## 107B Ouster condition

An *ouster condition* is a condition that prohibits the respondent from doing any or all of the following in relation to stated premises—

- (a) entering, attempting to enter, or remaining at, the premises;
- (b) approaching within a stated distance of the premises.

## 107C Return condition

- (1) A *return condition* is a condition—
  - (a) included in a police protection notice that also includes an ouster condition; and
  - (b) that allows the respondent, under the supervision of a police officer—
    - (i) if the respondent is no longer at the premises stated in the ouster condition—to return to the premises to recover stated personal property; or
    - (ii) if the respondent is at the premises stated in the ouster condition—to remain at the premises to remove stated personal property.
- (2) However, a return condition may not allow the respondent to recover or remove personal property required to meet the daily needs of any person who continues to live in the premises stated in the ouster condition.

*Examples of personal property required to meet daily needs—*

household furniture, kitchen appliances

- (3) A return condition may state either of the following, based on the time of service of the police protection notice on the respondent—
  - (a) the time at which, without contravening the police protection notice, the respondent may return to the premises and must leave the premises;

[s 107D]

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- (b) for how long the respondent may, without contravening the police protection notice, remain at the premises.

### **107D Relationship between police protection notice and family law order**

- (1) If a police officer issuing a police protection notice is considering imposing a condition that would prevent or limit contact between the respondent and a child of the respondent, the police officer must ask the respondent and the aggrieved—
  - (a) whether a family law order that allows contact between the respondent and the child is in effect; and
  - (b) if the answer to the question in paragraph (a) is yes—to provide details of the terms of the order that allow contact between the respondent and the child.
- (2) If the police officer knows, or reasonably believes, the condition being considered is inconsistent with a family law order, the police officer—
  - (a) must not impose the condition; and
  - (b) must consider whether, in the circumstances, it is necessary or desirable to apply to a magistrate, under division 4, for a temporary protection order that prevents or limits contact between the respondent and a child in a way that is inconsistent with the family law order.
- (3) If a condition included in a police protection notice is inconsistent with a family law order—
  - (a) the condition is of no effect to the extent of the inconsistency; and
  - (b) the inconsistency does not invalidate or otherwise affect the police protection notice.

### **108 Police officer must consider accommodation needs**

- (1) This section applies if—

- (a) a police protection notice includes a cool-down condition or ouster condition; and
  - (b) a police officer serves the notice on the respondent or tells the respondent about the notice as mentioned in section 113(1)(b).
- (2) The police officer must—
- (a) consider the accommodation needs of the respondent; and
  - (b) take any reasonable steps necessary to ensure the respondent has access to temporary accommodation.
- Examples of reasonable steps—*
- making, or arranging, telephone enquiries to identify temporary accommodation
  - transporting the respondent a short distance to suitable temporary accommodation, for example, a motel or the residence of a family member or friend
- (3) If the police officer reasonably believes the respondent is a child, the police officer must—
- (a) arrange temporary accommodation for the respondent; and
  - (b) transport, or arrange for the transport of, the respondent to the accommodation.
- (4) To remove any doubt, it is declared that—
- (a) the requirement under subsection (2)(b) does not include an obligation for the police officer or the Queensland police service to transport, or arrange for the transport of, the respondent to the accommodation; and
  - (b) the requirement under subsection (2)(b) or (3) does not include an obligation for the police officer or the Queensland police service to provide accommodation to the respondent free of charge.

## **109 Service of notice on respondent**

- (1) A police officer must personally serve a police protection notice on the respondent.
- (2) However, a police protection notice can not be served on a respondent after an event mentioned in section 113(3)(a), (b), (c) or (d) has happened.
- (3) To remove any doubt, it is declared that this section applies even if the police protection notice has taken effect under section 113(1)(b).

## **109A Giving copy of notice to aggrieved**

- (1) A police officer must give a copy of a police protection notice to the aggrieved and each named person.
- (2) A police officer is not required to comply with subsection (1) if the police officer reasonably believes—
  - (a) the named person is a child; and
  - (b) a copy of the police protection notice has already been given to a parent of the child because the parent is an aggrieved or named person.
- (3) Failure to comply with subsection (1) does not invalidate or otherwise affect the notice.

## **110 Explanation**

- (1) This section applies if a police officer—
  - (a) serves a police protection notice on a respondent; or
  - (b) tells a respondent about a police protection notice as mentioned in section 113(1)(b); or
  - (c) gives a copy of a police protection notice to an aggrieved; or
  - (d) gives a copy of a police protection notice to a parent of a child, as required under section 188.
- (2) The police officer must—



- (a) explain to the person—
    - (i) the police protection notice; and
    - (ii) the grounds on which the police officer who issued the notice reasonably believed that domestic violence has been committed; and
    - (iii) the reasons the police officer who issued the notice imposed the conditions of the notice; and
  - (b) take reasonable steps to ensure the person understands the nature and consequences of the notice.
- (3) Without limiting subsection (2), the police officer must explain—
- (a) the purpose and effect of the notice, including, for example, that—
    - (i) the notice may be enforceable in other States and New Zealand without further notice to the respondent; and
    - (ii) if the respondent has a weapons licence, or is a body's representative as mentioned in the Weapons Act, section 10(3), the licence or endorsement as the body's representative is dealt with by the Weapons Act, section 27A or 28A; and
    - (iii) under section 83(2), a person against whom a police protection notice is issued is not exempt from the Weapons Act, despite the Weapons Act, section 2; and
  - (b) the duration of the notice; and
  - (c) the conditions of the notice, including the behaviour the respondent is prohibited from engaging in under the conditions; and
  - (d) the type of behaviour that constitutes domestic violence; and

*Note—*

See the examples of the type of behaviour that constitutes domestic violence in sections 8, 11 and 12, which define the

[s 111]

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terms *domestic violence, emotional or psychological abuse* and *economic abuse*.

- (e) the consequences of the respondent contravening the notice; and
  - (f) that the aggrieved cannot consent to the respondent contravening the notice; and
  - (g) that the notice is taken to be an application for a protection order made by a police officer; and
  - (h) that the hearing of the application for the protection order will be heard at the local Magistrates Court for the respondent at the date and time stated in the notice; and
  - (i) the right of the respondent or aggrieved to obtain legal advice before attending court; and
  - (j) any other matter prescribed under a regulation.
- (4) Failure to comply with this section does not invalidate or otherwise affect a police protection notice.

## 111 Filing

- (1) If a police officer issues a police protection notice, a copy of the notice must be filed in the local Magistrates Court for the respondent.
- (2) Subsection (3) applies if the police protection notice does not state—
  - (a) the nature of the protection order sought by the application for a protection order; and
  - (b) the grounds on which the order is sought.
- (3) A statement about the matters mentioned in subsection (2)(a) and (b) must be filed in the local Magistrates Court for the respondent before the earlier of the following—
  - (a) the date and time stated in the police protection notice for the hearing of the application for the protection order;

- (b) the day that is 14 days after the day the notice was issued.

*Note—*

Section 153 provides that a police officer may file a document in a proceeding under this Act by electronic or computer-based means.

- (4) The statement must be—
  - (a) made and signed by the police officer who issued the police protection notice; and
  - (b) served on the respondent—
    - (i) if the police protection notice has been personally served on the respondent and an address for service for the respondent is known—in any way; or
    - (ii) otherwise—personally by a police officer.
- (5) Subsection (3) does not limit—
  - (a) the way in which the court may be informed, or inform itself, about the matters mentioned in subsection (2)(a) and (b); or
  - (b) the documents or evidence a party may file or give in the proceeding.
- (6) If the local Magistrates Court for the respondent will not be sitting within 28 days after the day the notice is issued, the clerk of the local Magistrates Court for the respondent must make arrangements with the clerk of another Magistrates Court that will be sitting within 28 days after the day the notice is issued for—
  - (a) the matter of the application for the protection order to be listed for mention in the other Magistrates Court at the earliest opportunity; and
  - (b) the respondent, and the police officer or service legal officer responsible for the matter, to be notified of the date, time and place of the mention.
- (7) The reference in subsection (2)(a) to the application for a protection order is a reference to the application for a

protection order the police protection notice is taken to be under section 112.

- (8) To remove any doubt, it is declared that subsection (1) applies whether or not the police protection notice has been served on the respondent.

## **112 Police protection notice taken to be application for protection order**

- (1) A police protection notice is taken to be an application for a protection order made by a police officer.
- (2) This section does not apply if—
- (a) the police protection notice was issued against the respondent under section 101A when the respondent was released from custody; and
  - (b) a police officer prepared an application for a protection order against the respondent while the respondent was in custody as required under section 118.

## **113 Duration**

- (1) A police protection notice takes effect when—
- (a) the notice is personally served on the respondent; or
  - (b) a police officer tells the respondent about the existence of the notice and the conditions of the notice.
- (2) For subsection (1)(b), the respondent may be told by a police officer about the existence of the police protection notice in any way, including, for example, by telephone, email, SMS message, a social networking site or other electronic means.
- (3) A police protection notice continues in force until—
- (a) if, on an application for a temporary protection order made under section 129(2), a magistrate decides to make a temporary protection order—the temporary protection order is served on the respondent or otherwise becomes enforceable under section 177; or

- (b) if, upon the hearing of the application for a protection order, the court decides to make a domestic violence order—the domestic violence order is served on the respondent or otherwise becomes enforceable under section 177; or
  - (c) if the court adjourns the application for a protection order and does not make a domestic violence order—the proceeding is adjourned; or
  - (d) if the court dismisses the application for a protection order—the application is dismissed.
- (4) In this section, a reference to the application for a protection order is a reference to—
- (a) the application for a protection order a police protection notice is taken to be under section 112; or
  - (b) if a police protection notice was issued against the respondent under section 101A when the respondent was released from custody—the application for a protection order against the respondent prepared while the respondent was in custody as required under section 118.

## **114 Existing domestic violence order**

- (1) This section applies if—
- (a) a police officer issues a police protection notice; and
  - (b) there is an existing domestic violence order in place between the respondent and aggrieved.
- (2) To remove any doubt, it is declared that—
- (a) the respondent must comply with the police protection notice and the domestic violence order; and
  - (b) if it is not possible to comply with both, the domestic violence order prevails.

## **Division 3                      Power to take person into custody**

### **115      Definition for div 3**

In this division—

*detention period* see section 119(3).

### **116      Police officer may take person into custody**

A police officer may take a person into custody if, while conducting an investigation under section 100, the police officer reasonably suspects that the person has committed domestic violence and—

- (a) another person is in danger of personal injury by the person; or
- (b) property is in danger of being damaged by the person.

*Note—*

The *Police Powers and Responsibilities Act 2000*, section 615 provides that it is lawful for a police officer exercising or attempting to exercise a power under an Act to use reasonably necessary force to exercise the power.

### **117      Person must be taken to holding cell or watch-house**

A person taken into custody under section 116 must, as soon as reasonably practicable—

- (a) be taken by a police officer to a holding cell at a police station or police establishment and delivered into the custody of the most senior officer on duty at the station or establishment; or
- (b) be taken by a police officer to a watch-house and delivered into the custody of the watch-house manager.

*Note—*

See section 126 for safeguards that apply if a person taken into custody under section 116 is a child.

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## **118 Police officer must apply for protection order**

- (1) A police officer must, as soon as reasonably practicable after a person is taken into custody under section 116, prepare an application for a protection order in which the person is named as the respondent.
- (2) If it is reasonably practicable to bring the person before a court for the hearing of the application for the protection order while the person is still in lawful custody, a police officer must arrange for the person to be brought before the court for the hearing of the application.
- (3) If it is not reasonably practicable for the person to be brought before the court for the hearing of the application for the protection order while the person is still in lawful custody, the application for the protection order must state the date and time that the respondent is required to attend the local Magistrates Court for the respondent for the hearing of the application for the protection order.
- (4) For subsection (3), the date must be—
  - (a) if the local Magistrates Court for the respondent sits at least once a week—within 5 business days after the person is taken into custody under section 116; or
  - (b) otherwise—the next sitting date of the local Magistrates Court for the respondent.

*Note—*

See section 129(2) for when a police officer must apply for a temporary protection order.

## **119 Detention period limited**

- (1) The person may be held in custody until the later of the following—
  - (a) if it is reasonably practicable to bring the person before a court for the hearing of the application for the protection order while the person is still in lawful custody—

- (i) if the court decides to make a domestic violence order—when the domestic violence order is made and a police officer is able to comply with section 124(1)(b); or
    - (ii) if the court adjourns the application for the protection order and does not make a domestic violence order—when the proceeding is adjourned; or
    - (iii) if the court dismisses the application for the protection order—when the application is dismissed;
  - (b) if it is not reasonably practicable to bring the person before a court for the hearing of the application for the protection order while the person is still in lawful custody—when the application for the protection order is prepared and a police officer is able to comply with section 124(1)(d) or (e);
  - (c) if a police officer obtains a temporary protection order under division 4 while the person is still in lawful custody—when the temporary protection order is made and a police officer is able to comply with section 124(1)(c).
- (2) In addition, if an order is made under subsection (1)(a)(i) or (c), or an application is prepared under subsection (1)(b), the person may be held in custody until the later of the following—
- (a) if a police officer reasonably believes it is necessary to make arrangements for the safety of the aggrieved or a child—when arrangements are made for the safety of the aggrieved or the child;
  - (b) if a police officer reasonably believes the person is intoxicated to an extent that the person is incapable of understanding the nature and effect of a document that must be given to the person under section 124—when the police officer reasonably believes the person is capable of understanding the nature and effect of the document;



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- (c) if a police officer reasonably believes the person's behaviour is so aggressive or threatening that it presents a continuing danger of personal injury or property damage—when the police officer reasonably believes the person's behaviour no longer presents a continuing danger of personal injury or property damage.
- (3) However, the person must not be held in custody for more than the following period (the *detention period*)—
- (a) if the person is being held in custody under subsection (2)(b)—8 hours from when the person is first taken into custody under section 116;
  - (b) otherwise—4 hours from when the person is first taken into custody under section 116.

## **120 Person not to be questioned about offence**

A police officer must not question a person held in custody under this division about the person's involvement in the commission of an offence or suspected offence.

## **121 Police officer may apply for extension of detention period**

- (1) If section 119(3)(b) applies to a person held in custody under this division, a police officer may apply for an order extending the detention period for the person.
- (2) The application must be made—
  - (a) to a magistrate; and
  - (b) before the detention period for the person ends.
- (3) The application must be made in a way that gives the person or the person's lawyer a reasonable opportunity to prepare and make submissions about the application.

*Example—*

If the application is faxed to a magistrate, the person may speak to the magistrate by telephone.

- (4) Before the application is made, the police officer must—

- (a) tell the person or the person's lawyer of the application; and
  - (b) give the person a copy of the application; and
  - (c) ask the person or the person's lawyer if he or she—
    - (i) agrees to the application or wants to oppose it; and
    - (ii) wants to make submissions or say anything to the magistrate hearing the application.
- (5) The application must state the following—
- (a) the police officer's name, rank, registered number, if any, and station;
  - (b) the following information about the person—
    - (i) the person's name, age and address;
    - (ii) whether the person is a child;
    - (iii) whether the person is an Aboriginal person or Torres Strait Islander;
    - (iv) whether the person is a person with impaired capacity;
    - (v) if the person is a child—whether a parent of the child has been advised of the child's detention;
  - (c) why further detention of the person is necessary.
- (6) The police officer must tell the magistrate—
- (a) whether or not the person or the person's lawyer wants to make submissions or say anything to the magistrate; and
  - (b) whether there is any factor, including, for example, the intoxication of the person, that may affect the person's ability to communicate with the magistrate.
- (7) The application may be made by phone, fax, radio, email or another similar facility if—
- (a) the application is made outside of normal business hours; or

- (b) the police officer considers it necessary because of other special circumstances, including, for example, the police officer's remote location.
- (8) An application made in a way mentioned in subsection (7) is taken to be made only when it is brought to the attention of the magistrate.

*Example—*

If a police officer faxes an application to a magistrate, the application is made only when the magistrate reads the fax or the police officer speaks to the magistrate by telephone to tell the magistrate the fax has been sent.

- (9) The magistrate must make a record in writing of the application.
- (10) The person, or the person's lawyer, may make submissions to the magistrate about the application, but not submissions that unduly delay the consideration of the application.
- (11) To remove any doubt, it is declared that the application may be made at the same time as any other application under this Act, including, for example, an application for a temporary protection order.

## **122 When detention period may be extended**

- (1) A magistrate may extend the detention period for a person if satisfied—
  - (a) the nature and seriousness of the alleged domestic violence require the extension; and
  - (b) further detention of the person is necessary—
    - (i) to make arrangements for the safety of the aggrieved or a child as mentioned in section 119(2)(a); or
    - (ii) to allow a police officer to form a reasonable belief under section 119(2)(c) that the person's behaviour no longer presents a continuing danger of personal injury or property damage; and

- (c) the person, or the person's lawyer, has been given a reasonable opportunity to prepare and make submissions about the application.
- (2) An order extending the detention period may authorise the further detention of the person for a reasonable period, of not more than 4 hours, stated in the order.

### **123 Extended detention period limited to 8 hours**

If an application for the extension of a detention period is made before the detention period ends, the detention of the person ends at the earlier of the following—

- (a) when the magistrate refuses the application for the extension of the detention period;
- (b) the time stated in an order extending the detention period;
- (c) 8 hours from when the person is first taken into custody under section 116.

### **124 Release of person from custody**

- (1) When a person taken into custody under section 116 is released from custody, a police officer must—
- (a) in relation to the application for the protection order prepared under section 118(1)—serve a copy of the application on the person in compliance with section 34; and
  - (b) if a domestic violence order is made by a court under part 3, division 1 or 2—serve a copy of the order on the person in compliance with section 184; and
  - (c) if a temporary protection order is made by a magistrate under section 131—serve a copy of the order on the person in compliance with section 133(1)(a); and
  - (d) if a police protection notice is issued under section 101A—personally serve the notice on the person

and explain the notice to the person in compliance with sections 109 and 110; and

- (e) if release conditions are imposed under section 125—personally serve a copy of the release conditions on the person.
- (2) However, subsection (1) and sections 101A, 118 and 125 do not apply if—
- (a) the person is named as a respondent in a domestic violence order made, or police protection notice issued, before the person was taken into custody; and
  - (b) the person named as the aggrieved in the order or notice is also another person involved in the domestic violence for which the person was taken into custody.

## **125 When police officer must release person on conditions**

- (1) This section applies if—
- (a) it is not reasonably practicable, as mentioned in section 118(2), to bring a person before the court for the hearing of the application for a protection order; and
  - (b) a police officer has not obtained a temporary protection order under division 4 naming the person as a respondent; and
  - (c) the releasing police officer reasonably believes a domestic violence order has been made, or a police protection notice has been issued, that names the person as the aggrieved and another person involved in the domestic violence for which the person was taken into custody as a respondent.
- (2) The releasing police officer must release the person (the *respondent*) from custody on the conditions (the *release conditions*) that the releasing police officer considers are necessary or desirable to—
- (a) protect the aggrieved from domestic violence; or

- (b) protect a named person from associated domestic violence; or
  - (c) protect a named person who is a child from being exposed to domestic violence committed by the respondent.
- (3) Without limiting subsection (2), release conditions—
  - (a) must include the standard conditions for a police protection notice stated in section 106; and
  - (b) may include any or all of the following—
    - (i) a no-contact condition;
    - (ii) an ouster condition;
    - (iii) if the release conditions include an ouster condition—a return condition;
    - (iv) another condition the releasing police officer considers is necessary or desirable in the circumstances.
- (4) Sections 101B, 102, 106, 106A (other than to the extent that section refers to cool-down conditions) and 107D apply for releasing the respondent on release conditions as though a reference in the section to a police protection notice issued under section 101A was a reference to release conditions imposed under this section.
- (5) The release conditions continue in force until—
  - (a) if, on an application for a temporary protection order made under section 129(2), a magistrate decides to make a temporary protection order—the temporary protection order is served on the respondent or otherwise becomes enforceable under section 177; or
  - (b) if, upon the hearing of the application for the protection order, the court decides to make a domestic violence order—the domestic violence order is served on the respondent or otherwise becomes enforceable under section 177; or

- (c) if the court adjourns the application for the protection order and does not make a domestic violence order—the proceeding is adjourned; or
- (d) if the court dismisses the application for the protection order—the application is dismissed.

## **126 Particular safeguards for detention of child**

- (1) This section applies—
  - (a) if a person taken into custody under section 116 is a child; and
  - (b) despite any other provision of this Act.
- (2) The child must be taken into custody only as a last resort and for the least time that is justified in the circumstances.
- (3) The child must be held in custody only in a way that allows the child to be held separately from any adults being held in custody at the same place.
- (4) A police officer must notify the following persons that the child has been taken into custody—
  - (a) a parent of the child, unless a parent can not be found after making all reasonable enquiries;
  - (b) if the chief executive (child safety) has custody or guardianship of the child under the *Child Protection Act 1999*, that chief executive or a person, nominated by that chief executive for the purpose, who holds an office in the department for which that chief executive has responsibility.
- (5) This section does not apply in relation to a child if a police officer believes on reasonable grounds that the child is an adult.
- (6) In deciding whether the police officer had the reasonable grounds mentioned in subsection (5), a court may have regard to the child's apparent age and the circumstances of the child's detention.

(7) In this section—

*chief executive (child safety)* means the chief executive of the department in which the *Child Protection Act 1999* is administered.

*parent*, of a child, includes someone who is apparently a parent of the child.

## **127 When person may be taken to place for treatment**

(1) A police officer may take a person who is in custody under this division, during the detention period or any extension of the detention period obtained under section 122, to another place at which the respondent may receive treatment necessary for the respondent's welfare.

*Examples of another place—*

hospital, medical practice

(2) However, if a police officer reasonably believes that treatment necessary for the respondent's welfare will not be completed within the detention period or any extension of the detention period obtained under section 122—

(a) the police officer must take the person to a place where the respondent can receive the necessary treatment and release the person from custody at that place; and

(b) sections 101A, 118, 124 and 125 do not apply.

(3) Subsection (2) does not affect the power of a police officer to take any other action under this Act.

## **128 When intoxicated person may be taken to place of safety**

(1) This section applies if—

(a) a person is taken into custody under section 116; and

(b) at any time during the detention period, or any extension of the detention period obtained under section 122, a police officer reasonably believes—

(i) the person is intoxicated; and



- (ii) it is more appropriate for the person to be taken to a place of safety at which the person can receive the care necessary to enable the person to recover safely from the effects of intoxication.
- (2) The police officer must take the person to a place of safety and release the person from custody at that place.
- (3) Subsection (2) does not apply if the police officer is satisfied—
  - (a) a person at the place of safety is unable to provide care for the person; or
  - (b) the person’s behaviour may pose a risk of harm, including, but not limited to, domestic violence or associated domestic violence, to other persons at the place of safety.
- (4) Before the police officer releases the person, the police officer must ensure the person apparently in possession or in charge of the place of safety gives a police officer a signed undertaking in the approved form to provide care for the person.
- (5) A person taken to a place of safety can not be compelled to stay there.
- (6) If the place of safety is not the person’s home, the person apparently in possession or in charge of the place of safety may lawfully provide care for the person until the person voluntarily leaves the place.
- (7) If a person is, under this section, released from custody at a place of safety, sections 101A, 118, 124 and 125 do not apply.
- (8) This section does not affect the power of a police officer to take any other action under this Act.
- (9) In this section—

*place of safety* means a place, other than a holding cell at a police station or police establishment or a watch-house, that a police officer considers is a place at which a person can receive the care necessary to enable the person to recover safely from the effects of being intoxicated.

*Examples of a place of safety—*

- a place other than a hospital that provides care for persons who are drunk
- a vehicle used to transport persons to a place of safety and under the control of someone other than a police officer
- the person's home, or the home of a relative or friend, if there is no likelihood of domestic violence or associated domestic violence happening at the place or the person is not subject to a domestic violence order preventing the person from entering or remaining at the place

## **Division 4                      Power to apply for urgent temporary protection order**

### **129      When police officer may apply for temporary protection order**

- (1) A police officer may apply for a temporary protection order against a person if—
  - (a) an application for a protection order against the person has been prepared; and
  - (b) the police officer reasonably believes that the application for the protection order will not be decided sufficiently quickly by a court to protect the aggrieved from domestic violence; and

*Examples of why an application may not be decided sufficiently quickly—*

- the remoteness of a court
  - the limited availability of a court
  - the whereabouts of the respondent is unknown
- (c) the police officer reasonably believes that a temporary protection order is necessary or desirable to protect the aggrieved from domestic violence.
- (2) A police officer must apply for a temporary protection order against a person taken into custody under division 3 if—

- (a) an application for a protection order against the person has been prepared as required under section 118(1); and
- (b) it is not reasonably practicable, as mentioned in section 118(2), to bring the person before the court for the hearing of the application while the respondent is still in lawful custody; and
- (c) the date for the hearing of the application for the protection order, as stated on the copy of the application prepared under section 118(1), is more than 5 business days after the day the person is to be released.

### **130 Making of application**

- (1) An application for a temporary protection order must be made to a magistrate.
- (2) The application may be made by way of telephone, fax, radio, email or other similar facility.
- (3) The police officer making the application must inform the magistrate of the particulars of the application for the protection order mentioned in section 129(1)(a) or (2)(a).
- (4) The magistrate is entitled to presume that—
  - (a) the person making the application for the temporary protection order is a police officer; and
  - (b) an application for a protection order has been prepared, as required under section 129(1)(a) or (2)(a).
- (5) The magistrate must make a record in writing of the application.

### **131 When magistrate may make temporary protection order**

- (1) A magistrate to whom an application for a temporary protection order is made may make the order only if the magistrate is satisfied that—
  - (a) the order may be made under part 3, division 2; and

- (b) for an application mentioned in section 129(1)—the application for the protection order will not be decided sufficiently quickly by a court to protect the aggrieved from domestic violence; and
  - (c) for an application mentioned in section 129(2)—the date for the hearing of the application for the protection order is more than 5 business days after the day the person is released.
- (2) If the magistrate makes the temporary protection order, the magistrate must—
  - (a) make a record in writing of the terms of the order and the grounds that caused the magistrate to be satisfied of the matters mentioned in subsection (1); and
  - (b) inform the applicant, by way of telephone, fax, radio, email or other similar facility, of the terms of the order; and
  - (c) as soon as practicable, give the written record of the application and the terms of the order to the clerk of the Magistrates Court that will hear the application for the protection order that relates to the temporary protection order.
- (3) If the magistrate refuses to make the temporary protection order, the magistrate must—
  - (a) make a record in writing of the reasons for the refusal; and
  - (b) inform the applicant, by way of telephone, fax, radio, email or other similar facility, of the refusal; and
  - (c) as soon as is practicable, give the written record of the application and the written reasons for the refusal to the clerk of the Magistrates Court that will hear the application for the protection order.

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## **132 Form of temporary protection order**

- (1) A police officer who obtains a temporary protection order under section 131 must—
  - (a) prepare a copy of the order in the approved form; and
  - (b) file the copy in the court.

*Note—*

Section 153 provides that a police officer may file a document in a proceeding under this Act by electronic or computer-based means.

- (2) The copy must state the following—
  - (a) the name of the magistrate who made the order;
  - (b) the date and time the order was made;
  - (c) the date, time and place at which the matter is to come before a court for a hearing of the application for the protection order.
- (3) The date mentioned in subsection (2)(c) must be—
  - (a) within 28 days after the day the temporary protection order is made; or
  - (b) if no suitable hearing day is available within 28 days after the day the temporary protection order is made—the first suitable hearing day available.
- (4) The clerk of the court in which the copy of the order is filed must give the copy to the magistrate who made the order.
- (5) The magistrate must review the copy of the order and, if satisfied that the copy is accurate, sign the order.

## **133 Service**

- (1) A police officer must—
  - (a) personally serve the copy of the temporary protection order prepared under section 132(1)(a) on the respondent, together with a copy of the application for the protection order; and

[s 134]

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*Note—*

See section 34 (Service of application) for the obligation to serve on the respondent a copy of the application for the protection order.

- (b) give a copy of the order to the aggrieved, together with a copy of the application for the protection order.

*Note—*

See section 35 (Copy of application must be given to aggrieved) for the obligation to give to the aggrieved the copy of the application for the protection order.

- (2) However, a police officer need not serve on the respondent, or give to the aggrieved, a copy of the application for the protection order if the police officer reasonably believes that a copy of the application has already been served or given.

## **Division 5                      Power to direct person to remain, or move to and remain, at place**

### **134      Application of division**

This division applies if—

- (a) a police officer reasonably suspects a person is named as a respondent in—
  - (i) an application for a protection order that has not been served on the person; or
  - (ii) a domestic violence order that has not been served on the person; or
  - (iii) a police protection notice that has been issued but not served on the person; or
- (b) a police officer intends to issue a police protection notice against a person.

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### **134A Power to give direction**

- (1) The police officer may give the person a direction under subsection (2), (4) or (6)(b) to enable the police officer to—
  - (a) if the police officer has a copy of the application—serve the person with the application; or
  - (b) if the police officer has a copy of the order—serve the person with the order; or
  - (c) if the police officer does not have a copy of the order—arrange for the person to be told about the existence of the order and the conditions imposed by the order; or
  - (d) if the police officer has a copy of the issued police protection notice—serve the person with the notice and explain the notice to the person; or
  - (e) if the police officer does not have a copy of the issued police protection notice—arrange for the person to be told about the existence of the notice and the conditions imposed by the notice; or
  - (f) if the police officer intends to issue a police protection notice to the person—issue the notice against the person, serve the person with the notice and explain the notice to the person.
- (2) The police officer may direct the person to remain at an appropriate place in the person’s current location.
- (3) Subsection (4) applies if, in the police officer’s opinion, it is contrary to the interests of the person or another person for the person to remain at the person’s current location while the police officer does a thing mentioned in subsection (1).
- (4) The police officer may direct the person to move to another stated location and remain at an appropriate place at the other location.

*Examples of locations a police officer may direct a person to move to—*

- a police station or police beat
- a courthouse

[s 134A]

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- the premises of a community organisation that provides support services to respondents
- (5) Subsection (6) applies if the police officer gives a direction under subsection (4) and the person is to be transported by a police officer to the other location.
- (6) Before the person is transported to the other location, the police officer may—
- (a) search the person for anything in the person’s possession that may be used to cause harm to the person or another person; and
- Note—*
- See the *Police Powers and Responsibilities Act 2000*, chapter 20, part 3 for safeguards that apply to a search under this paragraph.
- (b) if, during the search, the police officer finds a thing mentioned in paragraph (a)—direct the person to leave the thing at the person’s current location before being transported to the other location; and
  - (c) if, during the search, the police officer finds a thing the officer reasonably suspects is evidence of the commission of an offence—seize the thing.
- (7) A thing seized under subsection (6)(c) is, for the *Police Powers and Responsibilities Act 2000*, section 622, taken to have been seized under that Act.
- Note—*
- See also the *Police Powers and Responsibilities Act 2000*, chapter 21, part 3.
- (8) In giving a direction under subsection (2), (4) or (6)(b), the police officer must tell the person the following—
- (a) why the person is being given the direction;
  - (b) if the direction includes a direction to move to another location—
    - (i) where the other location is; and



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- (ii) how the person is to move to the other location, including that a police officer will remain in the presence of the person; and
  - (iii) that the person may be searched before moving to the other location; and
  - (iv) that the person may be directed to leave, at the person's current location, anything found in the search that may be used to cause harm to the person or another person; and
  - (v) that anything found in the search may be seized if the officer reasonably suspects the thing may be evidence of the commission of an offence;
- (c) the place, at the person's current location or the other location, where the person is to remain;
  - (d) how long the person may be required to remain at the place;
  - (e) that the person is not under arrest or in custody while complying with the direction.
- (9) The police officer giving the direction must also make reasonable efforts to tell the aggrieved the matters mentioned in subsection (8).
- (10) Failure to comply with subsection (9) does not invalidate or otherwise affect the direction.

### **134B Limits on direction**

- (1) The time for which the person may be directed to remain at the appropriate place is—
  - (a) 1 hour; or
  - (b) a longer time, not more than 2 hours, that is reasonably necessary having regard to the particular circumstances.
- (2) The location to which the person may be directed to move must be within a reasonable distance of the person's current location, having regard to the particular circumstances.

### **134C Offence warning**

- (1) The police officer giving the direction must warn the person—
  - (a) it is an offence not to comply with the direction unless the person has a reasonable excuse; and
  - (b) the person may be arrested for the offence.
- (2) The police officer must give the person a reasonable opportunity to comply with the direction.
- (3) If the person fails to comply with the direction, a police officer must, if practicable—
  - (a) repeat the warning mentioned in subsection (1); and
  - (b) give the person a further reasonable opportunity to comply with the direction.

### **134D Person not to be questioned about offence**

A police officer must not question the person about the person's involvement in the commission of an offence or suspected offence while the person, under the direction—

- (a) moves to another location; or
- (b) remains at a place.

### **134E Responsibilities of police officer in relation to direction**

- (1) The police officer giving the direction must do a thing mentioned in section 134A(1)(a) to (f) without unreasonable delay after giving the direction.
- (2) Without limiting section 134A(1)(c) or (e), the police officer may arrange for the person to be told about the existence of the order or police protection notice, and the conditions imposed by the order or notice, by—
  - (a) arranging for a copy of the order or notice to be sent electronically to the police officer so the police officer can read the conditions of the order or notice to the person; or

- (b) arranging for another police officer to read the conditions of the order or notice to the person over a radio, telephone or other communication device.
- (3) A police officer must remain in the presence of the person while the person, under the direction—
  - (a) moves to another location; or
  - (b) remains at a place.

### **134F Offence to contravene direction**

- (1) The person must comply with the direction unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

- (2) A person does not commit an offence against subsection (1) if—
  - (a) the person is not proved to be named as a respondent in an application for a protection order, or a domestic violence order or police protection notice, that has not been served on the person; or
  - (b) the warning mentioned in section 134C(1) is not proved to have been given to the person.

## **Division 6 Acting in aid of police powers**

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

If this Act confers authority on a police officer, the authority is taken to be conferred to the same extent on every other police officer who at the material time is acting in aid of that officer.

## **Part 5**                      **Court proceedings**

### **Division 1**                **Jurisdiction**

#### **136**    **Conferral of jurisdiction**

- (1) A court has jurisdiction—
  - (a) to hear and decide any application made to the court under this Act; and
  - (b) to perform any other function or exercise any other power conferred on the court under this Act.
- (2) Despite any other law or rule of court, a Magistrates Court in any district may hear and decide a proceeding that has been started in a Magistrates Court in any other district.

#### **137**    **Constitution of Magistrates Court**

- (1) A Magistrates Court exercising jurisdiction under this Act must be constituted by a magistrate.
- (2) However, a Magistrates Court constituted by 2 or more justices may deal with the following applications—
  - (a) an application to make or vary a temporary protection order if a magistrate is not readily available to constitute a Magistrates Court;
  - (b) an application to adjourn a proceeding taken with a view to the making of a domestic violence order against a respondent.
- (3) Subsection (2) has effect despite the *Justices of the Peace and Commissioners for Declarations Act 1991*, section 29(3) or (4).
- (4) Subsection (5) applies if an offender appears in relation to a domestic violence offence 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.

- (5) Despite subsection (1), 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.

### **138 Concurrent criminal proceeding**

- (1) An application under this Act may be made, and a court may deal with the application, even if a person concerned in the application has been charged with an offence arising out of conduct on which the application is based.
- (2) However, if a person is charged with an offence arising out of conduct on which an application under this Act is based, a reference to any of the following is admissible in the trial of the person for the offence only with the leave of the court—
  - (a) the existence of the application;
  - (b) the existence of any proceeding relating to the application;
  - (c) the making of, or refusal to make, any order relating to the application;
  - (d) the making of, or refusal to make, any variation of any order relating to the application;
  - (e) the fact that evidence of a particular nature or content was given in any proceeding relating to the application.
- (3) To remove 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 person does not affect—
  - (a) any proceeding for an offence against the person arising out of the same conduct; or
  - (b) any civil liability of the person.

- (4) The person may be punished for the offence mentioned in subsection (3)(a) despite any order made against the person under this Act.

### **139 Tenancy application may be made in Magistrates Court**

- (1) This section applies if a person makes an application for a protection order, or a variation of a domestic violence order, to a Magistrates Court.
- (2) The person may make an application to the Magistrates Court, instead of to QCAT, for an order under the *Residential Tenancies and Rooming Accommodation Act 2008*, sections 245, 321 or 323.

### **140 Tenancy application may be removed to Magistrates Court**

- (1) This section applies if—
  - (a) an application for a protection order, or a variation of a domestic violence order, is made to a Magistrates Court; and
  - (b) the aggrieved or respondent makes an application (a ***tenancy application***) to QCAT for an order under the *Residential Tenancies and Rooming Accommodation Act 2008*, sections 245, 321 or 323.
- (2) The Magistrates Court may, on application of either the aggrieved or respondent and if the court considers it appropriate, order that the tenancy application be removed to the Magistrates Court.

### **141 Procedures applicable to tenancy applications before Magistrates Court**

- (1) The Magistrates Court has jurisdiction—
  - (a) to hear and decide an application mentioned in section 139(2) or 140(2); and

- (b) to perform any other function or exercise any other power conferred on QCAT, for a tenancy application, under the QCAT Act or the *Residential Tenancies and Rooming Accommodation Act 2008*.
- (2) If a tenancy application is dealt with by a Magistrates Court under this section, the procedures applicable to the application are the procedures under the QCAT Act.
- (3) However, a Magistrates Court hearing a tenancy application under this section must not be open to the public unless the court orders otherwise.
- (4) Subsection (2) is subject to the Magistrates 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 QCAT for a tenancy application or the service of documents for the tenancy application.
- (5) An aggrieved or respondent who makes a tenancy application must give written notice to the lessor of—
- (a) the tenancy application; and
  - (b) any application to remove the tenancy application to the Magistrates Court; and
  - (c) any adjournment of an application mentioned in paragraph (a) or (b).
- (6) An order of the Magistrates Court about the tenancy application is taken to have been made under the QCAT Act for the *Residential Tenancies and Rooming Accommodation Act 2008*.
- (7) In this section—
- tenancy application*** means an application for an order under the *Residential Tenancies and Rooming Accommodation Act 2008*, sections 245, 321 or 323.

## **Division 2                      Practice and procedure**

### **142      Procedure for proceeding under this Act**

- (1) The *Domestic and Family Violence Protection Rules* made under the *Magistrates Courts Act 1921*, section 57C apply for—
  - (a) a proceeding in a court under this Act; or
  - (b) the registry of a court in relation to a proceeding under this Act.
- (2) The *Uniform Civil Procedure Rules 1999* apply to an appeal under this Act.
- (3) To remove any doubt, it is declared that the *Childrens Court Rules 1997* and the *Uniform Civil Procedure Rules 1999* do not apply to a proceeding in a court under this Act.

### **143      Application of usual laws where necessary**

To remove any doubt, it is declared that—

- (a) for a proceeding under this Act before a Magistrates Court or magistrate—the provisions of the *Justices Act 1886* apply to the proceeding unless the application of that Act is inconsistent with this Act; and
- (b) for a proceeding under this Act in the Childrens Court—
  - (i) the provisions of the *Justices Act 1886* apply to the proceeding unless the application of that Act is inconsistent with this Act or the *Childrens Court Act 1992*; and
  - (ii) the provisions of the *Childrens Court Act 1992* apply to the proceeding unless the application of that Act is inconsistent with this Act.



## **144 Directions**

- (1) This section applies to the extent that any matter relating to procedure is not provided for by the rules applying under section 142 or the provisions applying under section 143.
- (2) The court may issue directions in relation to a particular proceeding before the court.

## **145 Evidence**

- (1) In a proceeding under this Act, a court—
  - (a) is not bound by the rules of evidence, or any practices or procedures applying to courts of record; and
  - (b) may inform itself in any way it considers appropriate.
- (2) Despite subsection (1), the *Evidence Act 1977*, part 2, division 2A applies to a proceeding under this Act.
- (3) If the court is to be satisfied of a matter, the court need only be satisfied of the matter on the balance of probabilities.
- (4) To remove any doubt, it is declared that the court need not have the personal evidence of the aggrieved before making a domestic violence order.

## **146 Right of appearance and representation**

- (1) A party to a proceeding under this Act may appear in person or be represented by a lawyer.
- (2) A police officer or service legal officer may appear in any proceeding under this Act.
- (3) In this section—

*party* includes an aggrieved.

## **147 Representation of aggrieved**

- (1) A police officer, service legal officer or authorised person for the aggrieved may appear and act on behalf of an aggrieved in a proceeding for any application under this Act.

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

#### **148 Child can not be compelled to give evidence**

- (1) This section applies to a child, other than a child who is an aggrieved or respondent, in a proceeding under this Act.
- (2) The child may only be called to give evidence with the leave of the court.
- (3) The court may grant leave only if the child—
  - (a) is at least 12 years; and
  - (b) is represented by a lawyer; and
  - (c) agrees to give evidence.
- (4) In deciding whether to grant leave, the court must have regard to—
  - (a) the desirability of protecting children from unnecessary exposure to the court system; and
  - (b) the harm that could occur to the child and to family relationships if the child gives evidence.
- (5) Without limiting subsection (2), (3) or (4), a person may only do the following with the leave of the court—
  - (a) call the child as a witness in the proceeding;
  - (b) ask the child to remain in court during the proceeding;
  - (c) ask the child to swear an affidavit for the proceeding;
  - (d) ask the child to produce a stated document or other thing in the proceeding.
- (6) If the child gives evidence, the child may be cross-examined only with the leave of the court.

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## 149 Child must be allowed to obtain legal representation

- (1) This section applies to—
  - (a) a child who—
    - (i) is named in an application for a protection order as the aggrieved; and
    - (ii) appears before a court and is not represented by a lawyer, police officer, service legal officer or authorised person for the aggrieved; and
  - (b) a child who—
    - (i) is named in an application for a protection order as the respondent; and
    - (ii) appears before a court and is not represented by a lawyer; and
  - (c) a child who—
    - (i) is involved in proceedings mentioned in section 42 or 43; and
    - (ii) appears before a court and is not represented by a lawyer.
- (2) The court may adjourn the hearing of the application if the court considers that the child has not had a reasonable opportunity to obtain representation by a lawyer.

## 150 Protected witnesses

- (1) This section applies when any of the following persons (each a *protected witness*) is to give, or is giving, evidence in a proceeding under this Act—
  - (a) the aggrieved;
  - (b) a child;
  - (c) a relative or associate of the aggrieved who is named in the application that relates to the proceeding.
- (2) The court must consider whether to make any of the following orders—

[s 151]

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- (a) that the protected witness give evidence outside the courtroom and the evidence be transmitted to the courtroom by means of an audio visual link;
  - (b) that the protected witness give evidence outside the courtroom and an audio visual record of the evidence be made and replayed in the courtroom;
  - (c) while the protected witness is giving evidence, that a screen, one-way glass or other thing be placed so the protected witness can not see the respondent;
  - (d) while the protected witness is giving evidence, that the respondent be held in a room apart from the courtroom and the evidence be transmitted to that room by means of an audio visual link;
  - (e) that the protected witness be accompanied by a person approved by the court for the purpose of providing emotional support;
  - (f) if the protected witness has a physical or mental disability—that the protected witness gives evidence in a particular way specified by the court that will, in the court’s opinion, minimise the protected witness’s distress;
  - (g) any other alternative arrangement the court considers appropriate.
- (3) However, if the protected witness is a child, the court must make at least 1 of the orders mentioned in subsection (2)(a), (b), (c) or (d).
- (4) Any place outside the courtroom where a protected witness is permitted to give evidence under this section is taken to be part of the courtroom while the witness is there for the purpose of giving evidence.

## **151 Restriction on cross-examination in person**

- (1) This section applies if—

- (a) a protected witness gives evidence in a proceeding under this Act; and
  - (b) a respondent in the proceeding wishes to cross-examine the protected witness; and
  - (c) the respondent is not represented by a lawyer.
- (2) The court, on its own initiative or on the application of a party to the proceeding, may order that the respondent may not cross-examine the protected witness in person if the court is satisfied that the cross-examination is likely to cause the protected witness to—
- (a) suffer emotional harm or distress; or
  - (b) be so intimidated as to be disadvantaged as a witness.
- (3) However, if the protected witness is a child, the court must make an order that the respondent may not cross-examine the protected witness in person.
- (4) If the court makes an order under this section, the court must—
- (a) inform the respondent that the respondent may not cross-examine the protected witness in person; and
  - (b) require the respondent to advise the court by a stated date or time whether the respondent—
    - (i) has arranged for a lawyer to act for the respondent; or
    - (ii) has arranged for a lawyer to act for the respondent for cross-examination of the protected witness; or
    - (iii) has decided not to cross-examine the protected witness.

## 152 Special witnesses

This division does not affect the *Evidence Act 1977*, section 21A.

*Note—*

The *Evidence Act 1977*, section 21A allows a court to make orders or directions that apply when a special witness is giving evidence.

### **153 Electronic documents**

- (1) A court may make a domestic violence order, and a magistrate may make a temporary protection order, under this Act by electronic or computer-based means.
- (2) A police officer may file a document to start a proceeding, or in a proceeding, under this Act by electronic or computer-based means.
- (3) The clerk of a court may give to a police officer a copy of an application or order under this Act by electronic or computer-based means.
- (4) A copy of an application or order under this Act that is required to be given to, or served on, any person may be a paper copy of a document that is produced from an electronic form of the document.

## **Division 3 Other powers of court**

### **154 Court may issue subpoena**

- (1) A court hearing an application under this Act may issue a subpoena requiring the attendance of a person before the court.

*Note—*

See, however, section 145(1A) of this Act and the *Evidence Act 1977*, part 2, division 2A.

- (2) The court may require the person either to take an oath or make an affirmation.
- (3) In this section—  
*subpoena* means—
  - (a) a subpoena for production; or

- (b) a subpoena to give evidence; or
- (c) a subpoena for production and to give evidence.

### **155 Power of court if failure to cooperate under subpoena**

- (1) This section applies if a person subpoenaed under section 154 attends before a court and without reasonable excuse—
  - (a) refuses to be sworn or to affirm; or
  - (b) refuses to answer a question put to the person; or
  - (c) fails to give an answer to the court's satisfaction.
- (2) The court may treat the person's refusal or failure as a contempt of court.

### **156 Provisions concerning warrants**

- (1) A court must not order the issue of a warrant under this Act as a matter of course, but only where, in the circumstances of the case, the court believes it appropriate that the respondent or, as the case may be, offender, be heard.
- (2) If a person is taken into custody under a warrant issued under this Act, the provisions of the *Bail Act 1980* apply to the person as if the person had been apprehended on a charge of an offence.

### **157 Costs**

- (1) Each party to a proceeding for an application under this Act must bear the party's own costs for the proceeding.
- (2) However, the court may award costs against a party who makes an application that the court hears and decides to dismiss on the grounds that the application is malicious, deliberately false, frivolous or vexatious.
- (3) In this section—  
*party* includes an aggrieved.

## **Division 4                      Confidentiality**

### **158      Court 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 or part of the proceeding to the public or specific persons.

*Examples of when a court may open a proceeding—*

- 1 The court is hearing another proceeding that concerns the same events upon which the domestic violence proceeding is based and the other proceeding is required to be held in open court.
  - 2 The court considers that it is in the public interest to hear the proceeding in open court because the aggrieved and respondent are well-known to the public and a closed court may result in an inaccurate representation of the proceeding.
- (3) Also, an aggrieved is entitled to have an adult with the aggrieved throughout the proceeding to provide support and other help.

### **159      Prohibition on publication of certain information for proceeding**

- (1) A person must not publish—
  - (a) information given in evidence in a proceeding under this Act in a court; or
  - (b) information that identifies, or is likely to lead to the identification of, a person as—
    - (i) a party to a proceeding under this Act; or
    - (ii) a witness in a proceeding under this Act (other than a police officer); or
    - (iii) a child concerned in a proceeding under this Act.

Maximum penalty—

- (a) for an individual—100 penalty units or 2 years imprisonment; or



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- (b) for a corporation—1,000 penalty units.
- (2) However, subsection (1) does not apply—
- (a) if the court expressly authorises the information to be published; or
  - (b) if each person to whom the information relates consents to the information being published; or
  - (c) to the display of a notice in the premises of a court; or
  - (d) to the publication of information for the purpose of a recognised series of law reports or an official website for the publication of judgments, if the information does not identify, and is not likely to lead to the identification of, a person mentioned in subsection (1)(b); or
  - (e) to the publication of information for approved research, if the information does not identify, and is not likely to lead to the identification of, a person mentioned in subsection (1)(b); or
  - (f) if the publication is expressly permitted or required under this or another Act; or
  - (g) if the publication is permitted under a regulation.
- (3) In this section—

*information* includes a photograph, picture, videotape and any other visual representation.

*publish* means publish to the public by television, radio, the internet, newspaper, periodical, notice, circular or other form of communication.

## **160 Prohibition on obtaining copies of documents of proceeding**

- (1) A person is not entitled to a copy of—
- (a) any part of the record of a proceeding under this Act; or
  - (b) any document used or tendered in a proceeding under this Act.

- (2) However, subsection (1) does not apply to—
- (a) a party to the proceeding; or
  - (b) a person named in an order made in the proceeding; or
  - (c) a person expressly authorised by the court to obtain a copy of the record or document; or
  - (d) a person expressly authorised by the chief executive (magistrates court) to obtain a copy of the record or document; or
  - (e) a person authorised by the chief executive (magistrates court) under section 161; or
  - (f) an Australian court, if the copy of the record or document is relevant to a proceeding before that court; or
  - (g) a police officer, if—
    - (i) the court considers an offence may have been committed, an investigation into whether the offence has been committed is warranted, and the copy of the record is relevant to the investigation; or
    - (ii) the copy of the record is otherwise relevant to the investigation or prosecution of an offence, or another proceeding related to an offence; or
  - (h) the director under the *Director of Public Prosecutions Act 1984* or a police prosecutor, if the copy of the record is relevant to the prosecution of an offence or another proceeding related to an offence.

- (3) In this section—

***Australian court*** means a court of the Commonwealth or a State or Territory.

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## 161 Research

- (1) The chief executive (magistrates court) may authorise a qualified person to use a document mentioned in section 160 for approved research.
- (2) If a qualified person is authorised to use a document under subsection (1), the document must be used for the research in a way that could not reasonably be expected to result in the identification of any of the individuals to whom it relates.
- (3) In this section—

*qualified person*, in relation to particular research, means a person who the chief executive (magistrates court) is satisfied has appropriate qualifications or experience to carry out the research.

## 162 Notification of police 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 police commissioner—
  - (a) an application for a protection order;
  - (b) an application for a variation of a domestic violence order;
  - (c) an application for—
    - (i) variation of a recognised interstate order; or
    - (ii) registration of a New Zealand order; or
    - (iii) variation of a New Zealand order as it is registered in Queensland or the period for which the order has effect in Queensland; or
    - (iv) revocation of the registration of a New Zealand order;
  - (d) an order made because of an application mentioned in paragraph (a), (b) or (c), including a temporary protection order;
  - (e) an order made on the court's initiative under section 42;

- (f) an order made by the Childrens Court under section 43.
- (2) The clerk must give the notice within 1 business day after the day the application is made or order is granted.

### **163 Notification of public guardian**

- (1) This section applies if—
  - (a) a court makes a domestic violence order; and
  - (b) the court considers there was domestic violence or associated domestic violence involving an adult with impaired capacity; and
  - (c) the court considers that because of the circumstances involving, or the nature of, the domestic violence or associated domestic violence, the public guardian should be informed about the violence.
- (2) The court may inform the public guardian, in writing, about the circumstances involving, or the nature of, the domestic violence or associated domestic violence.

## **Division 5 Appeals**

### **164 Who may appeal**

A person who is aggrieved by any of the following decisions of a court may appeal against the decision—

- (a) a decision to make a domestic violence order;
- (b) a decision to vary, or refuse to vary, a domestic violence order;
- (c) a decision to refuse to make a protection order;
- (d) if the person sought a temporary protection order in a proceeding under this Act—a decision to refuse to make the order.

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## **165 How to start appeal**

- (1) The appeal is started by filing a notice of appeal with the registrar of the appellate court.
- (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) Despite subsection (2), the registrar may ask the police commissioner to serve a copy of the notice on the persons mentioned in subsection (2)(a)(i).
- (4) The notice of appeal must be filed within 28 days after—
  - (a) the day on which the decision is made; or
  - (b) if the decision was made in the absence of the appellant, the earlier of the following—
    - (i) the day on which a copy of the decision is served on the appellant;
    - (ii) the day on which a police officer tells the appellant about the existence of the decision.
- (5) The appellate court may at any time extend the period for filing the notice of appeal.
- (6) The notice of appeal must state fully the grounds of the appeal and the facts relied on.

## **166 Effect of appeal on decision**

- (1) The start of an appeal against a decision of the court does not affect the operation of the decision or prevent the taking of action to implement the decision.

- (2) However, the court or the appellate court may make an order staying the operation of the decision being appealed against until the appeal is finally decided.
- (3) The court or the appellate court may act under subsection (2) on the application of the appellant or on its own initiative.

### **167 Police commissioner has right of appearance**

The police commissioner has a right to appear and be heard before the appellate court on an appeal under this division.

### **168 Hearing procedures**

- (1) An appeal must be decided on the evidence and proceedings before the court that made the decision being appealed.
- (2) However, the appellate court may order that the appeal be heard afresh, in whole or part.

### **169 Powers of appellate court**

- (1) In deciding an appeal, the appellate court may—
  - (a) confirm the decision appealed against; or
  - (b) vary the decision appealed against; or
  - (c) set aside the decision and substitute another decision; or
  - (d) set aside the decision appealed against and remit the matter to the court that made the decision.
- (2) The decision of the appellate court upon an appeal shall be final and conclusive.

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## **Part 5A Information sharing**

### **Division 1 Preliminary**

#### **169A Purpose of part**

The purpose of this part is to enable particular entities to share information, while protecting the confidentiality of the information, to—

- (a) assess whether there is a serious threat to the life, health or safety of people because of domestic violence; and
- (b) respond to serious threats to the life, health or safety of people because of domestic violence; and
- (c) refer people who fear or experience domestic violence, or who commit domestic violence, to specialist DFV service providers.

#### **169B Principles for sharing information**

The principles underlying this part are—

- (a) whenever safe, possible and practical, a person's consent should be obtained before—
  - (i) providing, or planning to provide, a service to the person; or
  - (ii) disclosing personal information about the person to someone else; and
- (b) because the safety, protection and wellbeing of people who fear or experience domestic violence are paramount, their safety and protection take precedence over the principle mentioned in paragraph (a); and
- (c) before disclosing information about a person to someone else, an entity should consider whether disclosing the information is likely to adversely affect the safety of the person or another person.

## 169C Definitions for part

(1) In this part—

*information* includes a document.

*prescribed entity* means each of the following—

- (a) the chief executive of a department that is mainly responsible for any of the following matters—
  - (i) adult corrective services;
  - (ii) child protection services;
  - (iii) community services;
  - (iv) court services;
  - (v) disability services;
  - (vi) education;
  - (vii) housing services;
  - (viii) public health services;
  - (ix) youth justice services;
- (b) the chief executive of another department that provides services to persons who fear or experience domestic violence or who commit domestic violence;
- (c) the commissioner under the *Ambulance Service Act 1991*;
- (d) the police commissioner;
- (e) the chief executive officer of Mater Misericordiae Ltd (ACN 096 708 922);
- (f) a health service chief executive under the *Hospital and Health Boards Act 2011*;
- (g) the principal of a school that is accredited, or provisionally accredited, under the *Education (Accreditation of Non-State Schools) Act 2001*;
- (h) another entity prescribed by regulation.



***specialist DFV service provider*** means a non-government entity funded by the State or Commonwealth to provide services to persons who fear or experience domestic violence or who commit domestic violence.

***support service provider*** means a non-government entity, other than a specialist DFV service provider, that provides assistance or support services to persons who may include persons who fear or experience domestic violence or who commit domestic violence.

*Examples of assistance or support services—*

- counselling
- disability services
- health services
- housing and homelessness services
- legal services
- sexual assault services

- (2) In this part, a reference to domestic violence includes a reference to associated domestic violence.

## Division 2                      Information sharing

### 169D    Sharing information for assessing domestic violence threat

- (1) A prescribed entity or specialist DFV service provider (each the ***holder***) may give information to another prescribed entity or specialist DFV service provider if the holder reasonably believes—
- (a) a person fears or is experiencing domestic violence; and
  - (b) the information may help the entity receiving the information to assess whether there is a serious threat to the person's life, health or safety because of the domestic violence.

[s 169E]

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- (2) Also, a support service provider (the *holder*) may give information to a prescribed entity or specialist DFV service provider if the holder reasonably believes—
- (a) a person fears or is experiencing domestic violence; and
  - (b) the information may help the entity receiving the information to assess whether there is a serious threat to the person’s life, health or safety because of the domestic violence.

### **169E Sharing information for responding to serious domestic violence threat**

A prescribed entity, specialist DFV service provider or support service provider (each the *holder*) may give information to another prescribed entity, specialist DFV service provider or support service provider if the holder reasonably believes—

- (a) a person fears or is experiencing domestic violence; and
- (b) the information may help the entity receiving the information to lessen or prevent a serious threat to the person’s life, health or safety because of the domestic violence.

### **169F Police officer may refer person to specialist DFV service provider**

- (1) A police officer may give referral information about a person to a specialist DFV service provider if the police officer reasonably believes—
- (a) the person fears or is experiencing domestic violence and there is a threat to the person’s life, health or safety because of the domestic violence; or
  - (b) the person has committed domestic violence against another person.
- (2) The following information about a person is *referral information*—

- (a) the person's name;
- (b) the person's contact details, including, for example, the person's telephone number or email address;
- (c) details of the basis for the reasonable belief;
- (d) any other information that is, in the police officer's opinion, reasonably necessary to assist the entity receiving the information to offer to provide a service to the person.

*Example for paragraph (d)—*

whether the person is the primary carer of children

## **169G Permitted uses of shared information**

- (1) A prescribed entity or specialist DFV service provider may use information given to it under this division to the extent necessary to do the following—
  - (a) assess whether there is a serious threat to a person's life, health or safety because of domestic violence;
  - (b) lessen or prevent a serious threat to a person's life, health or safety because of domestic violence, including by—
    - (i) contacting, or attempting to contact, the person or another person involved in the domestic violence;  
or
    - (ii) offering to provide assistance or a service to the person or another person involved in the domestic violence.
- (2) A support service provider may use information given to it under this division to the extent necessary to lessen or prevent a serious threat to a person's life, health or safety because of domestic violence, including by—
  - (a) contacting, or attempting to contact, the person or another person involved in the domestic violence; or

[s 169H]

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- (b) offering to provide assistance or a service to the person or another person involved in the domestic violence.

### **169H Who may give or receive information on behalf of entity**

- (1) This section applies if an entity, including a prescribed entity, specialist DFV service provider or support service provider, may give, receive or use information under this division.
- (2) A person mentioned in subsection (3) may give, receive or use the information for the entity if—
  - (a) the person's duties for the entity include—
    - (i) assessing threats to life, health or safety because of domestic violence; or
    - (ii) taking action to lessen or prevent threats to life, health or safety because of domestic violence, including by providing assistance or a service to a person involved in the domestic violence; or
  - (b) the person is otherwise authorised by the entity to give, receive or use the information.
- (3) For subsection (2), the persons are the following—
  - (a) a person employed or engaged by the entity;
  - (b) if the entity is the police commissioner—a police officer or a staff member of the police service under the *Police Service Administration Act 1990*.

### **169I Facts or opinion may be shared**

Information that may be given to an entity under this division may be comprised of facts or opinion.

### **169J Limits on information that may be shared**

Despite sections 169D, 169E and 169F, information may not be given to an entity under this division if—

- (a) the information is about a person's criminal history to the extent it relates to a conviction, other than a conviction for a domestic violence offence, and—
  - (i) the rehabilitation period for the conviction under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
  - (ii) the conviction is not revived as prescribed by section 11 of that Act; or
- (b) the information must not be disclosed under the *Child Protection Act 1999*, section 186; or
- (c) the information is confidential information within the meaning of the *Director of Public Prosecutions Act 1984*, section 24A known by a person and acquired in the circumstances mentioned in section 24A(1) and (2) of that Act; or
- (d) the information is—
  - (i) sensitive evidence within the meaning of the Criminal Code, section 590AF; or
  - (ii) a recording within the meaning of the *Evidence Act 1977*, section 21AY; or
  - (iii) a section 93A criminal statement or a section 93A transcript within the meaning of the *Evidence Act 1977*, section 93AA; or
- (e) giving the information would be contrary to an order of a court or tribunal.

## **Division 3                      Confidentiality of shared information**

### **169K Confidentiality of information obtained under this part**

- (1) This section applies to a person (the *receiver*) who—

[s 169K]

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- (a) is or has been a person employed or engaged by a prescribed entity, specialist DFV service provider or support service provider; and
  - (b) in that capacity was given, or given access to, information under this part about another person.
- (2) This section also applies to a person (also the *receiver*) who is given, or is given access to, information about another person by a person mentioned in subsection (1)(a).
- (3) The receiver must not use the information, or disclose or give access to the information to anyone else.

Maximum penalty—100 penalty units or 2 years imprisonment.

- (4) However, the receiver may use the information, or disclose or give access to the information to someone else, if the use, disclosure or giving of access—
- (a) is permitted under this part; or
  - (b) if the entity that employs or engages the receiver is required to comply, under the *Information Privacy Act 2009*, with the information privacy principles—complies with the information privacy principles; or
  - (c) is otherwise required or permitted by law.
- (5) Subsection (4)(b) applies despite the operation of the *Information Privacy Act 2009*, section 7(2).

- (6) In this section—

***information privacy principles*** means—

- (a) the information privacy principles set out in the *Information Privacy Act 2009*, schedule 3; or
- (b) the national privacy principles set out in the *Information Privacy Act 2009*, schedule 4.

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## **169L Police use of confidential information**

- (1) This section applies if a police officer receives information from a prescribed entity, specialist DFV service provider or support service provider under section 169D or 169E.
- (2) The police officer, and any other police officer to whom the information is disclosed under this section, may use the information to the extent necessary to perform the officer's functions as a police officer.
- (3) A police officer must not use the information under this section for an investigation or for a proceeding for an offence unless—
  - (a) the police officer, or another police officer, has consulted with the entity that gave the information about the proposed use; and
  - (b) in consultation with the entity, the police officer has considered whether the proposed use of the information for the investigation or proceeding would be in the best interests of a person experiencing domestic violence.
- (4) Subsection (3) does not apply to the extent that the police officer needs to use the information immediately in the performance of the officer's functions as a police officer.
- (5) In this section—

*use*, in relation to information, includes disclose, or give access to, the information to someone else.

## **Division 4 Guidelines for sharing and dealing with information**

### **169M Chief executive must make guidelines**

- (1) The chief executive must make guidelines, consistent with this Act and the *Information Privacy Act 2009*, for sharing and dealing with information under this part.
- (2) The purposes of the guidelines are to ensure—

[s 169N]

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- (a) information is shared under this part for proper purposes; and
  - (b) to the greatest extent possible, the privacy of individuals is respected when sharing information under this part, having regard to the paramount principle stated in section 4(1); and
  - (c) information shared under this part is properly used, stored, retained and disposed of.
- (3) In preparing the guidelines, the chief executive must consult with the privacy commissioner under the *Information Privacy Act 2009*.
  - (4) The chief executive must publish the guidelines on the department's website.

## **Division 5                      Protection from liability for giving information**

### **169N    Protection from liability for giving information**

- (1) This section applies if a person, acting honestly, gives information in compliance with this part.
- (2) Subject to section 169O, the person is not liable, civilly, criminally or under an administrative process, for giving the information.
- (3) Also, merely because the person gives the information, the person can not be held to have—
  - (a) breached any code of professional etiquette or ethics; or
  - (b) departed from accepted standards of professional conduct.
- (4) Without limiting subsections (2) and (3)—
  - (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and



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- (b) if the person would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice, the person—
- (i) does not contravene the Act, oath or rule of law or practice by giving the information; and
  - (ii) is not liable to disciplinary action for giving the information.

### **169O Interaction with other laws**

- (1) This part does not limit a power or obligation under another Act or law to give information.
- (2) Also, disclosure of information under this part does not waive, or otherwise affect, a privilege a person may claim in relation to the information under another Act or law.
- (3) Subject to subsection (4), this part applies to information despite any other law that would otherwise prohibit or restrict the giving of the information.

*Examples of other laws—*

- *Child Protection Act 1999*, section 188
  - *Education (General Provisions) Act 2006*, section 426
  - *Hospital and Health Boards Act 2011*, section 142(1)
  - *Police Service Administration Act 1990*, section 10.1
  - *Youth Justice Act 1992*, section 288
- (4) This part applies subject to the following provisions—
    - (a) the *Child Protection Act 1999*, section 186;
    - (b) the Criminal Code, section 590AX;
    - (c) the *Director of Public Prosecutions Act 1984*, section 24A;
    - (d) the *Evidence Act 1977*, sections 21AZB, 21AZC and 93AA.

## Part 6                      National recognition of domestic violence orders

*Note—*

To ensure the greatest possible harmonisation for national recognition of domestic violence orders, this part closely follows corresponding legislation enacted in other Australian jurisdictions. Accordingly, this part is not entirely consistent with Queensland's current drafting style.

### Division 1                      Preliminary

#### 170      Object of part

This part establishes, in conjunction with the corresponding laws, a national recognition scheme for DVOs (or domestic violence orders).

#### 171      Definitions for part

In this part—

*corresponding law* means a law of another State that contains provisions that substantially correspond with this part.

*DVO* means a local order, an interstate order or a New Zealand order.

*final order* means a DVO that is not an interim order.

*interim order*—

- (a) means a DVO of an interim or provisional nature; and
- (b) includes the following—
  - (i) a temporary protection order;
  - (ii) a police protection notice;
  - (iii) release conditions;
  - (iv) another DVO made by a police officer;

- (v) another DVO declared by regulation to be an interim order.

***interstate law enforcement agency*** means—

- (a) the police force of another State; or  
(b) another agency of another State responsible for the enforcement of DVOs in that State.

***interstate order*** see section 173.

***issuing authority*** means—

- (a) generally—a court or person with power to make, vary or revoke a DVO under the law of a participating jurisdiction; or  
(b) for a DVO—the court that, or person who, made the DVO.

***local order*** see section 172.

***make*** includes issue.

***New Zealand order*** means an order made under the *Domestic Violence Act 1995* (NZ) or under an Act repealed by that Act.

***participating jurisdiction*** means the following jurisdictions—

- (a) Queensland;  
(b) another State in which a corresponding law is enacted.

***properly notified*** see section 175.

***protected person*** means—

- (a) in relation to a local order—the aggrieved and each named person; or  
(b) otherwise—a person for whose protection or benefit a DVO is made.

***recognised interstate order*** see section 176A(1).

***registered foreign order*** see section 174.

***registered New Zealand order*** means a New Zealand order registered under division 4.

*respondent* means the person against whom a DVO is made.

*revoke* includes cancel.

*variation application* see section 176I(1).

## 172 Meaning of *local order*

A *local order* means a domestic violence order, police protection notice or release conditions.

*Note—*

A registered New Zealand order is not a local order even though, under section 176 (1)(a), it is taken to have been made in Queensland.

## 173 Meaning of *interstate order*

An *interstate order* is an order made by a court or a police officer of another State that is declared by regulation to be an interstate order.

*Note—*

A registered foreign order is not an interstate order even though, under section 176 (1)(a), it is taken to have been made in the State in which it is registered as a registered foreign order.

## 174 Meaning of *registered foreign order*

A *registered foreign order* means a New Zealand order that is—

- (a) a registered New Zealand order; or
- (b) declared by regulation to be a registered foreign order.

## 175 Meaning of *properly notified*

(1) The making of a local order is *properly notified* under this Act if—

- (a) for a local order that is a domestic violence order—the respondent is served with a copy of the order under section 133(1)(a) or 184 or otherwise becomes

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enforceable against the respondent under section 177(1); or

*Note—*

A domestic violence order becomes enforceable against a respondent under section 177(1) when it is made (if the respondent is present in court), when it is served on the respondent or when a police officer tells the respondent about the existence of the order and its conditions.

- (b) for a local order that is a police protection notice—the respondent is served with the notice under section 109 or the notice otherwise takes effect under section 113(1); or

*Note—*

A police protection notice takes effect under section 113(1) when it is served on the respondent or when a police officer tells the respondent about the existence of the notice and its conditions.

- (c) for a local order that is release conditions—the conditions are served on the respondent under section 124(1)(e).

*Note—*

See section 188 for additional requirements that apply if a document is required to be served on a child.

- (2) The making of an interstate order is ***properly notified*** under the law of the State in which it is made in the circumstances provided for by the corresponding law of that State.
- (3) A variation to a recognised interstate order that is done in Queensland is ***properly notified*** under this Act if—
- (a) the respondent is served with a copy of the variation under section 184; or

*Notes—*

- 1 Under section 91(5), a court that varies a local order must make a copy of the order that states the details and conditions of the order after the variation. This is referred to in the Act as the *varied order*.
- 2 Section 184 sets out the requirements for service of a varied order on the respondent.

- (b) the variation otherwise takes effect under section 99.
- (4) A variation to a recognised interstate order or local order that is done in another State is *properly notified* under the law of that State in the circumstances provided for by the corresponding law of that State.
- (5) Despite subsections (1) and (2), a registered foreign order is *properly notified*—
  - (a) under this Act when it is registered under division 4; or
  - (b) under the law of another State when it is registered in that State.

## **176 Special provisions for registered foreign orders**

- (1) For the purpose of this part, a registered foreign order—
  - (a) is taken to be made in the State in which it is registered as a registered foreign order; and
  - (b) is taken to be made when it becomes a registered foreign order in that State.
- (2) A registered foreign order is varied or revoked, for the purpose of this part, if its registration as a registered foreign order is varied or revoked.

## **Division 2 National recognition of DVOs**

### **Subdivision 1 General principles**

#### **176A Interstate and foreign DVOs are *recognised interstate orders***

- (1) Each of the following is a *recognised interstate order*—
  - (a) an interstate order made in a participating jurisdiction;
  - (b) a registered foreign order registered in a participating jurisdiction.

*Note—*

The corresponding laws of other participating jurisdictions treat domestic violence orders made, and police protection notices and release conditions issued, in Queensland as *recognised interstate orders* for the purposes of those laws. See also section 223.

- (2) An interstate order or registered foreign order—
  - (a) becomes a recognised interstate order when it is made in a participating State; and
  - (b) subject to this part, remains a recognised interstate order while it remains in force in the State in which it was made.

**176B Recognised interstate order prevails over earlier comparable DVOs**

- (1) A recognised interstate order (a *new order*) prevails over either of the following made before the new order (each an *earlier comparable DVO*)—
  - (a) a comparable recognised interstate order; or
  - (b) a comparable local order.
- (2) When the new order becomes enforceable against the respondent—
  - (a) the earlier comparable DVO stops being a recognised interstate order; or
  - (b) the earlier comparable local order stops having effect.
- (3) A local order that stops having effect under subsection (2) is taken to have ended under section 97.
- (4) However, an earlier comparable DVO continues to be a recognised interstate order or local order, and to have effect, to the extent it relates to a person who is not a protected person under the new order.
- (5) A DVO made by a police officer does not prevail over a comparable DVO made by a court of any State.
- (6) A DVO is *comparable* with another DVO if—

[s 176C]

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- (a) the DVOs are made against the same respondent; and
- (b) the DVOs are made for the protection of 1 or more of the same protected persons.

### **176C Making of new orders**

Nothing in this part stops a person applying for, or a court making, a domestic violence order even though a recognised interstate order applies to the same respondent.

## **Subdivision 2 Enforcement of recognised interstate orders**

### **176D Recognised interstate order may be enforced**

- (1) A recognised interstate order that has been properly notified under the law of the State in which it was made—
  - (a) has the same effect as a local order; and
  - (b) may be enforced against a respondent as if it were a local order that had been properly notified under this Act.
- (2) A recognised interstate order mentioned in subsection (1) includes a recognised interstate order as varied by a variation—
  - (a) done in a participating jurisdiction by a court under this part or a corresponding law; and
  - (b) of which the respondent has been properly notified under the law of the State in which the variation was done.
- (3) A variation to a local order done in another jurisdiction may be enforced against a respondent as if the respondent had been properly notified of the variation under this Act if—
  - (a) the variation was done by a court under a corresponding law; and



- (b) the respondent was properly notified of the variation under the law of the State in which the variation was done.
- (4) A prohibition, restriction or condition imposed by a recognised interstate order—
  - (a) has the same meaning as it would have in the State in which the order was made; and
  - (b) may be enforced as if it were a prohibition, restriction or condition of a local order.

### **176E Penalty for contravention**

- (1) This section applies for the purpose of working out the maximum penalty for an offence of contravening a recognised interstate order.
- (2) A previous contravention of a recognised interstate order that constituted an offence is to be treated as a previous offence of contravening a local order.

### **176F Licences, permits and other authorisations**

- (1) This section applies if a law of Queensland (a *relevant law*) restricts the grant of an authorisation, or authorises or requires an authorisation to be suspended or revoked, if a person is or has been named as a respondent in a local order.
- (2) The relevant law applies to a person who is or has been named as a respondent in a recognised interstate order as if it were a local order.
- (3) For the purposes of a relevant law—
  - (a) a recognised interstate order that is a final order is to be treated in the same way as a local order that is a final order; and
  - (b) a recognised interstate order that is an interim order is to be treated in the same way as a local order that is an interim order.

- (4) This section applies subject to the Weapons Act.

*Notes—*

- 1 See the Weapons Act, sections 27A, 28A, 29A, 29B and 34AA which provide for the impact on a person's weapons licence, including the suspension or revocation of the licence, if the person is named as the respondent in a DVO, whether or not the DVO is a recognised interstate order.
- 2 See also the Weapons Act, sections 10B and 10C for how a DVO naming a person as a respondent affects whether the person is a fit and proper person to hold a weapon's licence or to be a licensed dealer's associate, whether or not the DVO is a recognised interstate order.

- (5) In this section—

*authorisation* includes a licence or permit.

*grant* includes issue.

### **176G Orders for costs**

- (1) A recognised interstate order, to the extent it requires the payment of money, can not be enforced.
- (2) The recognition of a DVO made in another State does not confer power on a court in Queensland to award costs in respect of any proceedings relating to the DVO that occurred in another State.
- (3) This section does not prevent a court awarding costs in respect of proceedings in Queensland relating to the variation of a recognised interstate order.

## **Division 3**

### **Variation and revocation of recognised interstate orders**

*Note—*

A local order is revoked under this Act by varying the order to state an earlier date on which the order ends. See section 176K for when a recognised interstate order is taken to have been revoked under this part.

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## 176H Power of court to vary recognised interstate orders

- (1) A court may vary a recognised interstate order under this division as if the order were a local order.
- (2) A court can not vary a recognised interstate order if it is a kind of order that can not be varied by a court in the State in which the order was made.
- (3) A variation to a recognised interstate order under this division is not limited in its operation to Queensland.
- (4) This division does not apply to the variation of a New Zealand order that is registered in Queensland under division 4.

*Note—*

Section 176P provides for the variation of a New Zealand order that is registered in Queensland under division 4.

- (5) If a court varies a recognised interstate order under this division, the State in which the order was made continues to be, for the purpose of this part, the State in which the order was made.

## 176I Application for variation of recognised interstate order

- (1) An application (a *variation application*) to vary a recognised interstate order may be made to a court—
  - (a) as if it were an application under section 86 for a variation of a local order; and
  - (b) by a person who would be able to make the application under that section if the recognised interstate order were a local order.
- (2) An application—
  - (a) must be made to a court that would have power to hear the application if the recognised interstate order were a local order; and
  - (b) must comply with any requirements that would apply if the recognised interstate order were a local order; and

- (c) may be dealt with (subject to this division) as if the recognised interstate order were a local order.

### **176J Decision about hearing of application**

- (1) A court may decide to hear or refuse to hear the variation application.
- (2) In deciding whether to hear the variation application the court may consider the following matters—
  - (a) the State in which the respondent and each protected person under the recognised interstate order usually live or work;
  - (b) any difficulty a party to the proceedings, other than the applicant, may have in attending the proceedings;
  - (c) whether there is sufficient information available to the court in relation to the recognised interstate order and the basis on which it was made;
  - (d) whether proceedings are being taken for an alleged contravention of the recognised interstate order and the State in which those proceedings are being taken;
  - (e) the practicality of the applicant (if not the respondent under the recognised interstate order) applying for and obtaining a local order against the respondent under the order with similar prohibitions or restrictions;
  - (f) the impact of the application on children;
  - (g) any other matters the court considers relevant.
- (3) Without limiting the court's power to refuse to hear a variation application, the court may refuse to hear the application if the court is satisfied—
  - (a) the circumstances in which the recognised interstate order was made have not materially changed; and
  - (b) the application is in the nature of an appeal against the recognised interstate order.

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- (4) For the purpose of exercising its functions under this division, a court may consider any information the court considers relevant about the making or variation of a recognised interstate order that is provided by an issuing authority of any other State.

*Note—*

Division 5 enables the court to obtain information about DVOs from other States.

- (5) A court must refuse to hear a variation application made by the respondent to the recognised interstate order during any period in which, under the law of the State in which the order was made, the respondent is not entitled to apply to vary or revoke the order of that State.

- (6) In this section—

*party*, to a proceeding for a variation application, means each of the following—

- (a) a protected person under the recognised interstate order; and
- (b) the respondent under the recognised interstate order.

### **176K When recognised interstate order is taken to be revoked**

- (1) This section applies if a court varies a recognised interstate order under this part to—
- (a) if a recognised interstate order does not state a date on which it ends—state a date on which the order ends; or
  - (b) otherwise—state an earlier date on which the order ends.
- (2) The court is taken to have revoked the recognised interstate order under this part from the stated date.

## **Division 4                      Registration, and variation and revocation of registration, of New Zealand orders**

### **176L    Application to register New Zealand order in Queensland**

- (1) A person may apply to the clerk of a Magistrates Court for the registration of a New Zealand order.
- (2) The application must be in the approved form.

### **176M    Clerk of court to obtain copies of order and proof of service**

- (1) The clerk of the court must be satisfied—
  - (a) the New Zealand 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 respondent under the *Domestic Violence Act 1995* (NZ).
- (2) The clerk of the court must try to obtain the copy and proof quickly, for example, by fax, email or other electronic means.

### **176N    Registration of New Zealand order**

- (1) If the clerk of the court is satisfied about the matters mentioned in section 176M(1), the clerk must register the New Zealand order.
- (2) However, the clerk of the court may refer the New Zealand order to the court for adaptation or modification if—
  - (a) the clerk believes it necessary to do so; or
  - (b) the applicant asks the clerk of the court to do so.
- (3) The court may adapt or modify the New Zealand order for the purposes of its registration in a way that the court considers necessary or desirable for its effective operation in Queensland.

- (4) The clerk of the court must register the New Zealand order as adapted or modified.
- (5) A registered New Zealand order is registered for the period during which the order, as originally made, is in force.
- (6) A regulation may prescribe the way that the clerk of the court is to register a New Zealand order.

### **176O Duty of clerk of court after order is registered**

- (1) The clerk of the court must, within 2 business days after the registration of a New Zealand order, give the applicant and the police commissioner a certificate of the registration with a copy of the registered New Zealand order attached.
- (2) Notice of the registration of a New Zealand order is not to be given to the person against whom the order was made unless the aggrieved consents.
- (3) The consent must be given in writing.
- (4) The clerk of the court must not ask the applicant for any fee, or reimbursement for any expenses incurred, under this division.

### **176P Variation or revocation of registered New Zealand order**

- (1) An application may be made to a court for—
  - (a) a variation of the New Zealand order as it is registered in Queensland; or
  - (b) a variation of the period during which a registered New Zealand order has effect in its operation in Queensland; or
  - (c) the revocation of the registration of a New Zealand 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 New Zealand order;

[s 176Q]

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- (b) a protected person under the New Zealand order;
  - (c) the respondent under the New Zealand order;
  - (d) an authorised person for an aggrieved;
  - (e) a police officer.
- (3) The court may decide 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 revoking the registration.

**176Q Applicant need not notify respondent to New Zealand order**

- (1) An applicant under this division need not give notice of an application for registration of a New Zealand order, or an application for a variation of a registered New Zealand order, to the respondent.
- (2) When an application for which notice has not been given comes before a court, the court—
  - (a) may hear and decide the application in the absence of the respondent; and
  - (b) must not refuse to hear and decide the application merely because the respondent has not been given notice of the application.
- (3) A registered New Zealand order that is adapted or modified under section 176N(3) is enforceable in Queensland without notice of the adaptation or modification being given to the respondent.
- (4) This section does not prevent an applicant giving notice of the application, or an order made because of the application, to the respondent.



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## **Division 5                      Exchange of information**

### **176R   Obtaining information about interstate orders**

- (1) The following may obtain information about a DVO from an issuing authority of another State or from an interstate law enforcement agency—
  - (a) the court;
  - (b) the clerk of the court;
  - (c) the police commissioner;
  - (d) the director under the *Director of Public Prosecutions Act 1984*;
  - (e) a police prosecutor.
- (2) The court or clerk of the court may use information mentioned in subsection (1) for the purpose of exercising the court's or the clerk's functions under this part.
- (3) The police commissioner, director of public prosecutions or a police prosecutor may use information mentioned in subsection (1) for a law enforcement purpose, including for the prosecution of an offence.

### **176S   Clerk of court must provide DVO information**

- (1) The clerk of the court must provide a court of another participating jurisdiction information about a DVO that the court reasonably requests for the purpose of exercising its functions under a corresponding law.
- (2) If a court makes or varies a DVO, the clerk of the court must provide an interstate law enforcement agency with information about the DVO that the law enforcement agency reasonably requests for the purpose of exercising its law enforcement functions.

### **176T Information to be provided to law enforcement agencies**

The police commissioner must provide an interstate law enforcement agency information the police commissioner holds about a DVO that the interstate law enforcement agency reasonably requests for the purpose of exercising its law enforcement functions.

## **Division 6 Miscellaneous**

### **176U Certificate evidence—notification**

- (1) A certificate signed by the police commissioner or the clerk of the court and stating the following is evidence of what it says—
  - (a) the making of a local order has been properly notified under this Act;
  - (b) a variation to a DVO that was done in Queensland has been properly notified under this Act.
- (2) A certificate signed by an authorised officer of another State and stating the following matters is evidence of what it says—
  - (a) the making of a DVO in that State has been properly notified under the law of that State;
  - (b) a variation to a DVO that was done in that State has been properly notified under the law of that State.
- (3) In a document, the words “authorised officer” after a signature are evidence that the person whose signature it purports to be is an authorised officer.
- (4) If, in a criminal proceeding, the prosecuting authority intends to rely on a certificate under subsection (1) or (2), it must, at least 20 business days before the hearing day, give a copy of the certificate to the defendant or the defendant’s lawyer.
- (5) If the defendant intends to challenge a matter stated in the certificate, the defendant must, at least 15 business days

before the hearing day, give the prosecuting authority notice, in the approved form, of the matter to be challenged.

(6) If the defendant acts under subsection (5), the certificate stops being evidence of the matter to be challenged.

(7) In this section—

*authorised officer*, of another State, means a person (whether or not designated as an authorised officer) who is authorised under the law of that State to issue a certificate certifying a matter mentioned in subsection (2)(a) or (b).

## Part 7 Offences

### 177 Contravention of domestic violence order

(1) This section applies if a respondent against whom a domestic violence order has been made—

(a) was present in court when the order was made; or

(b) has been served with a copy of the order; or

(c) has been told by a police officer about the existence of the order.

(2) The respondent must not contravene the order.

Maximum penalty—

(a) if, within 5 years before the commission of an offence against this subsection, the respondent has been previously convicted of a domestic violence offence—240 penalty units or 5 years imprisonment; or

(b) otherwise—120 penalty units or 3 years imprisonment.

(3) For subsection (1)(c), the respondent may be told by a police officer about the existence of an order in any way, including, for example, by telephone, email, SMS message, a social networking site or other electronic means.

(4) However, a court may not find a respondent contravened an order merely because a police officer told the respondent

[s 178]

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about the existence of the order, unless the court is satisfied the police officer told the respondent about the condition that it is alleged the respondent contravened.

- (5) The prosecution bears the onus of proving, beyond a reasonable doubt, that the respondent has been told by a police officer about the existence of an order, or a condition of an order.
- (6) It is not a defence in proceedings for an offence involving a recognised interstate order that a person did not know—
  - (a) it is an offence to contravene the recognised interstate order in Queensland; or
  - (b) the recognised interstate order could be varied in Queensland; or
  - (c) if the recognised interstate order is a registered New Zealand order—that the New Zealand order could be registered or varied in Queensland.

## **178 Contravention of police protection notice**

- (1) This section applies to a respondent in relation to whom a police protection notice is in force.

*Note—*

See section 113(1) for when a police protection notice takes effect.

- (2) The respondent must not contravene the police protection notice.

Maximum penalty—120 penalty units or 3 years imprisonment.

- (3) A court hearing proceedings for the prosecution of an offence against subsection (2) must consider whether the police protection notice was issued in substantial compliance with part 4, division 2.
- (4) If the police protection notice took effect under section 113(1)(b), the prosecution bears the onus of proving, beyond a reasonable doubt, that the respondent has been told by a police officer about the existence of a police protection

notice or about a condition of the notice the respondent is alleged to have contravened.

### **179 Contravention of release conditions**

- (1) This section applies if a respondent is released from custody on release conditions under section 125.
- (2) The respondent must not contravene the release conditions.  
Maximum penalty—120 penalty units or 3 years imprisonment.

### **180 Aggrieved or named person not guilty of offence**

For the purposes of the Criminal Code, section 7, an aggrieved or other person named in a domestic violence order, police protection notice or release conditions, does not aid, abet, counsel or procure the commission of an offence against section 177, 178 or 179, and is not punishable as a principal offender, because the person encourages, permits or authorises conduct by the respondent that contravenes the domestic violence order, police protection notice or release conditions.

### **181 Prosecution of offences**

- (1) This section applies to offences against this Act.
- (2) An offence that has a maximum penalty of more than 3 years imprisonment is an indictable offence.
- (3) A proceeding for an offence that is not an indictable offence is by way of summary proceedings under the *Justices Act 1886*.
- (4) Subject to subsection (6), a proceeding on a charge for an indictable offence must be heard and decided summarily.
- (5) The maximum term of imprisonment that may be imposed on a summary conviction of an indictable offence is 3 years imprisonment.

- (6) A Magistrates Court must abstain from dealing summarily with a charge for an indictable offence—
  - (a) if satisfied, at any stage, and after hearing any submissions by the prosecution and defence, that because of the nature or seriousness of the offence or any other relevant consideration the defendant, if convicted, may not be adequately punished on summary conviction; or
  - (b) if satisfied, on an application made by the defence, that because of exceptional circumstances the charge should not be heard and decided summarily.
- (7) If the court abstains from jurisdiction—
  - (a) the court must stop treating the proceeding as a proceeding to hear and decide the charge summarily; and
  - (b) the proceeding for the charge must be conducted as a committal proceeding; and
  - (c) the defendant's plea at the start of the hearing must be disregarded; and
  - (d) the evidence already heard by the court must be taken to be evidence in the committal proceeding.
- (8) The *Justices Act 1886*, section 104 must be complied with for the committal proceeding.

## **182 When proceeding for offence to be heard summarily may be started**

A proceeding for an offence against this Act that is to be heard in a summary way under the *Justices Act 1886* must be started within—

- (a) 1 year after the offence is committed; or
- (b) 1 year after the commission of the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

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## **Part 8                      General**

### **Division 1                Service**

#### **183      Service allowed on all days**

A police officer may serve a document authorised or required to be served under this Act on any day of the week, including Good Friday and Christmas Day.

#### **184      Service of order on respondent**

- (1) This section applies if a court—
  - (a) makes a domestic violence order; or
  - (b) varies a domestic violence order; or
  - (c) makes an intervention order.
- (2) A police officer must personally serve the order, or the varied order, on the respondent.
- (3) The clerk of the court must, as soon as reasonably practicable after the order is made or varied, give a copy of the order, or varied order, to the officer in charge of the police station nearest the place where the respondent lives or was last known to live.
- (4) Subsections (2) and (3) do not apply if the respondent is present in court when the order is made or varied and the clerk of the court—
  - (a) gives a copy of the order, or varied order, to the respondent, or the respondent's appointee, at the court; or
  - (b) sends a copy of the order, or varied order, to the respondent's last known address.
- (5) Also, subsection (2) does not apply—
  - (a) if—

[s 184]

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- (i) a police officer has told the respondent, as mentioned in section 177(1)(c), about the existence of a domestic violence order made or varied by the court; and
  - (ii) the order, or the varied order, has been served on the respondent other than by being personally served on the respondent; or
- (b) the order is a temporary protection order that—
  - (i) names the same aggrieved and named persons as a police protection notice that is, or release conditions that are, in force against the respondent; and
  - (ii) imposes the same conditions as the notice or conditions.
- (6) A temporary protection order mentioned in subsection (5)(b) is taken to have been served on the respondent when it was made.
- (7) For subsection (5)(b), in deciding whether a temporary protection order imposes the same conditions as a police protection notice, a cool-down condition included in the notice is not to be taken into account.
- (8) Failure to comply with this section does not invalidate or otherwise affect a domestic violence order or an intervention order.
- (9) This section is subject to section 188.
- (10) In this section—

***appointee***, of a respondent, means a person authorised in writing by the respondent to receive a copy of a domestic violence order or any other document authorised or required to be given to the respondent under this Act.

*Note—*

See also section 85 for the requirement for a copy of a domestic violence order served on, or given or sent to, the respondent under this section to include a written explanation of the order.



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## **185 Court to give domestic violence order to other persons**

- (1) If a court makes or varies a domestic violence order, the clerk of the court must, as soon as reasonably practicable after the order is made or varied, give a copy of the order, or varied order, to—
  - (a) the aggrieved; and
  - (b) an applicant who is not an aggrieved or a police officer; and
  - (c) each named person; and
  - (d) the police commissioner.
- (2) If a person mentioned in subsection (1)(a), (b) or (c) is present in court when the order is made or varied, the clerk of the court may give the person a copy of the order, or varied order, before the person leaves the court.
- (3) However, the clerk of the court is not required to comply with subsection (1)(a), (b) or (c) if the clerk of the court can not locate the person, or identify an address for the place of residence or business of the person, after making all reasonable enquiries.
- (4) Also, the clerk of the court is not required to comply with subsection (1)(c) if the clerk of the court reasonably believes that—
  - (a) the named person is a child; and
  - (b) a copy of the order has already been given to a parent of the child because the parent is an aggrieved or named person.
- (5) Failure to comply with this section does not invalidate or otherwise affect a domestic violence order.
- (6) This section is subject to section 188.

## **186 Court to give intervention order to aggrieved**

- (1) This section applies if a court makes an intervention order.

[s 187]

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- (2) The court must give a copy of the intervention order to the aggrieved.
- (3) If the aggrieved is present in court when the order is made, the clerk of the court may give the aggrieved a copy of the order before the person leaves the court.
- (4) The clerk of the court is not required to comply with subsection (2) if the clerk of the court can not locate the aggrieved, or identify an address for the place of residence or business of the aggrieved, after making all reasonable enquiries.
- (5) Failure to comply with this section does not invalidate or otherwise affect an intervention order.
- (6) This section is subject to section 188.

### **187 Court to give notice of adjournment to absent respondent**

- (1) This section applies if—
  - (a) a court adjourns—
    - (i) the hearing of an application for the making or variation of a domestic violence order; or
    - (ii) a proceeding mentioned in section 42 or 43; and
  - (b) the respondent is not present in court when the adjournment is made.
- (2) If the respondent has been served with a copy of the application for the making or variation of the domestic violence order mentioned in subsection (1)(a)(i), or subsection (1)(a)(ii) applies, the clerk of the court must give a written notice to the respondent stating—
  - (a) the date, time and place to which the hearing of the application is adjourned; and
  - (b) that if the respondent does not appear in court on the later day to which the matter has been adjourned, a domestic violence order may be made in the respondent's absence, or the court may issue a warrant

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for the respondent to be taken into custody by a police officer.

- (3) If the respondent has not been served with a copy of the application for the making or variation of the domestic violence order mentioned in subsection (1)(a)(i), the clerk of the court must—
  - (a) write on a copy of the application the date, time and place to which the hearing of the application is adjourned; and
  - (b) give the copy of the application to the officer in charge of the police station nearest the place where the respondent lives or was last known to live.
- (4) A police officer must personally serve the copy of the application mentioned in subsection (3)(b) on the respondent.
- (5) The clerk of the court is not required to comply with subsection (2) if the clerk of the court can not locate the respondent, or identify an address for the place of residence or business of the respondent, after making all reasonable enquiries.
- (6) Failure to comply with this section does not invalidate or otherwise affect a domestic violence order.
- (7) This section is subject to section 188.

## **188 Giving of document to child**

- (1) This section applies if this Act authorises or requires a document to be given to, or served on, a child.
- (2) A person responsible for giving the document to, or serving the document on, the child—
  - (a) must also give a copy of the document to a parent of the child; and
  - (b) must not give the document to, or serve the document on, the child at or in the vicinity of the child's school, unless there is no other place where the giving of the

document to, or service of the document on, the child may be reasonably effected.

- (3) A court may dispense with the requirement to give a copy of a document to a parent of the child if the court is satisfied that—
- (a) the person responsible for giving the document can not locate a parent of the child after making all reasonable enquiries; or
  - (b) there are other special circumstances for giving the dispensation.

*Examples of other special circumstances—*

- the child is estranged from the child's parents
  - there would be an unacceptable risk of harm to the child if the parent was given a copy of the document
- (4) For the purpose of subsection (1), the age of a person is to be ascertained on the day that the document is to be given to the person.
- (5) This section does not apply in relation to a child if the person responsible for giving the document to, or serving the document on, the child believes on reasonable grounds that the child is an adult.
- (6) Failure to comply with this section does not invalidate or otherwise affect a domestic violence order, a police protection notice or release conditions.
- (7) In this section—

*parent*, of a child, includes the chief executive (child protection) if the chief executive (child protection) has custody or guardianship of the child under the *Child Protection Act 1999*.

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## Division 2                      Miscellaneous provisions

### 189      Evidentiary provision

- (1) This section applies to any proceeding with the view to giving effect to any provision of this Act.
- (2) A document purporting to be a copy of any of the following orders is evidence of the making of the order and the matters contained in the order—
  - (a) a protection order;
  - (b) a temporary protection order;
  - (c) a varied order;
  - (d) an intervention order.
- (3) A certificate signed by the police commissioner and stating any of the following is evidence of what it states—
  - (a) on a stated day and at a stated time a stated police officer issued a stated police protection notice;
  - (b) on a stated day and at a stated time a stated police officer was a supervising police officer under section 102;
  - (c) on a stated day and at a stated time a stated supervising police officer approved the issuing of a stated police protection notice;
  - (d) on a stated day and at a stated time a stated police officer was a releasing police officer under section 101A or 125;
  - (e) on a stated day and at a stated time a stated releasing police officer released a stated person from custody on stated release conditions.
- (4) If, in a criminal proceeding, the prosecuting authority intends to rely on a certificate under subsection (3), it must, at least 20 business days before the hearing day, give a copy of the certificate to the defendant or the defendant's lawyer.

- (5) If the defendant intends to challenge a matter stated in the certificate, the defendant must, at least 15 business days before the hearing day, give the prosecuting authority notice, in the approved form, of the matter to be challenged.
- (6) If the defendant acts under subsection (5), the certificate stops being evidence of the matter to be challenged.
- (7) In this section—  
*hearing day* means the day the hearing of the criminal proceeding starts.

## **190 Protection from liability**

- (1) A member of the Queensland police service does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to a member of the Queensland police service, the liability attaches instead to the State.

## **191 Approved forms**

- (1) A form may be approved for use under this Act.
- (2) The form may be approved by—
  - (a) if the form is to be used for an application to the court or another purpose relating to the court—the chief executive (magistrates court); or
  - (b) otherwise—the chief executive.

## **192 Review of Act**

- (1) The Minister must ensure the operation of this Act is reviewed as soon as practicable after the day that is 5 years after the relevant day.
- (2) The review must include a review of—

- (a) the main objects of the Act as mentioned in section 3; and
  - (b) whether the provisions of the Act are meeting the main objects; and
  - (c) whether the provisions of the Act remain appropriate.
- (3) The Minister must, as soon as practicable after the review is finished, table in the Legislative Assembly a report on the outcome of the review.
- (4) In this section—

*relevant day* means the day the *Domestic and Family Violence Protection and Other Legislation Amendment Act 2016*, section 48 commenced.

### **193 Regulation-making power**

The Governor in Council may make regulations under this Act.

## **Part 9 Repeal provision**

### **194 Repeal**

The Domestic and Family Violence Protection Act 1989, No. 42 is repealed.

## **Part 10 Transitional provisions**

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

### **195 Definitions for division**

In this division—

*commencement* means the commencement of the provision in which the term appears.

*repealed Act* means the *Domestic and Family Violence Protection Act 1989*.

## **196 Domestic violence order to continue to have effect**

- (1) This section applies to a domestic violence order made or varied under the repealed Act that was in force immediately before the commencement.
- (2) The domestic violence order is taken to have been made or varied under this Act.
- (3) A condition of the domestic violence order is taken to be a condition imposed under part 3, division 5 of this Act.
- (4) If an adult was named in the domestic violence order under section 21 of the repealed Act, the adult is taken to be a person named in the order under section 52 of this Act.
- (5) If a child was named in the domestic violence order under section 21 of the repealed Act, the child is taken to be a person named in the order under section 53 of this Act.
- (6) Section 177 of this Act applies in relation to the domestic violence order even though a thing mentioned in section 177(1)(a) to (c) happened before the commencement of that section.
- (7) A reference in section 177(2) of this Act to an offence under part 7 includes an offence under section 80 of the repealed Act.

## **197 Application for protection order**

- (1) This section applies to an application for a protection order under the repealed Act if, on the commencement, the application had not been finally dealt with.
- (2) The application is taken to have been made under section 32 of this Act.



**198 Domestic violence committed before commencement**

A court may make an order under a provision of this Act in relation to domestic violence committed before the commencement of the provision.

**199 Offences committed before commencement**

A reference in section 42 to an offence involving domestic violence includes an offence committed before the commencement of that section.

**200 Child protection proceedings started before commencement**

A reference in section 43 to a child protection proceeding includes a proceeding started before the commencement of that section.

**201 Adjourment of matter of making protection order by court on its own initiative**

- (1) This section applies if, under section 53(1)(b) of the repealed Act, a court adjourned the matter of making a protection order to a day after the commencement.
- (2) The matter is taken to have been adjourned under section 42(5)(b) of this Act.

**202 Summons to attend**

- (1) This section applies to a summons issued to a person under section 39 of the repealed Act if the summons is still in force immediately before the commencement.
- (2) The summons is taken to be a subpoena under section 154 of this Act.

### **203 Application to register interstate order**

- (1) This section applies to an application to register an interstate order under section 40 of the repealed Act if, on the commencement, the application had not been finally dealt with.
- (2) The application is taken to be an application for the registration of the order under section 170 of this Act.

### **204 Registered interstate order to continue to have effect**

- (1) This section applies to an interstate order registered under section 42 of the repealed Act or varied under section 45 of the repealed Act, if the interstate order is in force immediately before the commencement.
- (2) The interstate order is taken to have been registered under section 172 of this Act or varied under section 175 of this Act.

### **205 Application for variation of domestic violence order**

- (1) This section applies to an application for the variation of a domestic violence order under section 51 of the repealed Act, if, on the commencement, the application had not been finally dealt with.
- (2) The application is taken to be an application under section 86 of this Act.

### **206 Application for revocation of domestic violence order**

- (1) This section applies to an application for the revocation of a domestic violence order under section 51 of the repealed Act if, on the commencement, the application had not been finally dealt with.
- (2) The application is taken to be an application, under section 86 of this Act, for a variation of the order by stating an earlier date on which the order ends.

## **207 Application by police for temporary protection order**

- (1) This section applies to an application for a temporary protection order under section 54 of the repealed Act if, on the commencement, the application had not been finally dealt with.
- (2) The application is taken to be an application for a temporary protection order under section 129 of this Act.

## **208 Service and other things done in relation to continued applications**

- (1) This section applies to an application under the repealed Act that, under this division, is taken to be an application made under this Act.
- (2) The service of a copy of the application, or another thing done in relation to the application, before the commencement is taken to have been done under this Act.

## **209 Appeal**

- (1) This section applies to an appeal against an order or a decision under section 63 of the repealed Act if, on the commencement, the appeal had not been finally dealt with.
- (2) The appeal is taken to be an appeal under section 165 of this Act.

## **210 Person taken into custody**

- (1) This section applies to a person taken into custody before the commencement under section 69 of the repealed Act.
- (2) If, at the commencement, the person is still in custody, the person is taken to have been taken into custody under part 4, division 3 of this Act.
- (3) If, at the commencement, the person is on release on conditions under section 71(3)(b) of the repealed Act, the person is taken to have been released on conditions under section 125 of this Act.

**211 Restriction on publication of proceedings**

A reference in section 159 to a proceeding under this Act includes a proceeding under the repealed Act.

**212 Restriction on obtaining copies of documents**

A reference in section 160 to a proceeding under this Act includes a proceeding under the repealed Act.

**213 Information provided to adult guardian**

- (1) This section applies if the court provided information to the adult guardian under section 31 of the repealed Act.
- (2) The court is taken to have provided the information under section 163 of this Act.

**214 References to repealed Act**

If the context permits, a reference in another Act or document to the repealed Act may be taken to be a reference to this Act.

**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.

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**Division 3**                      **Transitional provisions for  
Domestic and Family Violence  
Protection and Other Legislation  
Amendment Act 2016**

**Subdivision 1**            **Preliminary**

**216**    **Definitions for division**

(1) In this division—

*amended Act* means this Act as amended by the amendment Act.

*amended part 6* means part 6 as amended by the amendment Act.

*amendment Act* means the *Domestic and Family Violence Protection and Other Legislation Amendment Act 2016*.

(2) Terms used in subdivision 3 have the same meaning they have in part 6.

**Subdivision 2**            **Transitional provisions for  
amendment Act, part 2, division 2**

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

(1) The amended Act applies to a proceeding for an application to make or vary a domestic violence order whether the proceeding was started before or after the commencement.

(2) Without limiting subsection (1), if an intervention order has previously been made against the respondent, the respondent's compliance with the order must not be the only reason the court decides—

(a) for an application to make a protection order—to refuse to make a protection order; or

- (b) for an application to vary a domestic violence order—to vary a protection order.

## **218 Obligation for domestic violence order to include written explanation**

- (1) This section applies in relation to a domestic violence order made before the commencement.
- (2) Section 85, as in force immediately before the commencement, continues to apply in relation to the domestic violence order.
- (3) Without limiting subsection (2)—
  - (a) the information a written explanation of the domestic violence order is required to include is the information mentioned in section 84(2) or (3) as in force immediately before the commencement; and
  - (b) section 85, as amended by the amendment Act, does not apply to a copy of the domestic violence order given to the respondent, or the respondent's appointee, or sent to the respondent under section 184(4).

## **219 Duration of existing protection orders**

- (1) This section applies to a protection order made before the commencement if the protection order—
  - (a) was in force immediately before the commencement; and
  - (b) did not state a day on which it ends.
- (2) Section 97, as in force immediately before the commencement, continues to apply to the protection order unless the protection order is varied to change its duration.
- (3) Section 97, as amended by the amendment Act, applies in relation to an application to vary the duration of the protection order.

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## **220 Existing voluntary intervention orders**

- (1) A voluntary intervention order in force immediately before the commencement is taken to be an intervention order under the amended Act.
- (2) A reference in this Act to an intervention order includes a reference to a voluntary intervention order made before the commencement.

## **221 Police protection notices**

A police officer may issue a police protection notice against a person under the amended Act—

- (a) whether the person's behaviour that the police officer reasonably believes is domestic violence occurred before or after the commencement; and
- (b) whether the person was taken into custody under part 4, division 3 before or after the commencement.

## **222 Release conditions**

A releasing police officer may release a person from custody on release conditions under section 125, as amended by the amendment Act, whether the person was taken into custody under part 4, division 3 before or after the commencement.

## **Subdivision 3 Transitional provisions for national recognition of domestic violence orders scheme**

*Note—*

To ensure the greatest possible harmonisation for national recognition of domestic violence orders, this subdivision closely follows corresponding legislation enacted in other Australian jurisdictions. Accordingly, this subdivision is not entirely consistent with Queensland's current drafting style.

## **223 Local orders**

- (1) Amended part 6 applies to each of the following—
  - (a) a domestic violence order, police protection notice or release conditions made after the commencement;
  - (b) a domestic violence order, police protection notice or release conditions made before the commencement that are declared, under section 225, to be a recognised interstate order for the purposes of the corresponding laws of other participating jurisdictions;
  - (c) a domestic violence order, police protection notice or release conditions that are declared to be a recognised interstate order under the corresponding law of another participating jurisdiction, whether the order, notice, conditions or declaration was made before or after the commencement.
- (2) A domestic violence order, police protection notice or release conditions mentioned in subsection (1)(a) are taken to be, for the purposes of the corresponding law of another State, a recognised interstate order under amended part 6.

*Note—*

Under the national domestic violence order scheme, participating jurisdictions agreed to recognise and enforce the DVOs made in another participating jurisdiction that are recognised interstate orders under the corresponding law of that other jurisdiction.

## **224 Interstate orders**

- (1) Amended part 6 applies to an interstate order—
  - (a) that is a recognised interstate order under the corresponding law of the State in which the order was made; or
  - (b) declared to be a recognised interstate order under section 225 or the corresponding law of another participating jurisdiction.
- (2) For subsection (1), it does not matter—



- (a) whether the interstate order was made before or after the commencement; or
- (b) if the interstate order is a registered foreign order registered in that jurisdiction—whether the order was registered before or after the commencement; or
- (c) if the interstate order has been varied or revoked in the State in which it was made or in another participating jurisdiction—whether the variation or revocation was done before or after the commencement; or
- (d) if the interstate order was declared to be a recognised interstate order under the corresponding law of another participating jurisdiction—whether the declaration was made before or after the commencement.

*Note—*

While amended part 6 may apply for an interstate order even if the interstate order was made before the commencement, a person will not commit an offence in Queensland for contravening the order unless the person's act or omission that contravenes the order occurs after the commencement. See the *Acts Interpretation Act 1954*, section 20C.

## **225 Court may declare DVO to be recognised interstate order**

- (1) A court may declare a domestic violence order, police protection notice or release conditions to be a recognised interstate order to which amended part 6 applies for the purposes of the corresponding laws of other participating jurisdictions.
- (2) Also, a court may declare an interstate order to be a recognised interstate order to which amended part 6 applies if, in the State in which it was made, the order—
  - (a) is in force; and
  - (b) is not a recognised interstate order.
- (3) The jurisdiction in which the DVO was made does not have to be a participating jurisdiction.

[s 226]

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- (4) If an application for a declaration under subsection (1) or (2) is made under section 226, the court must make the declaration unless it is not in the interests of justice to do so.
- (5) Without limiting subsection (4), the court may refuse to make the declaration if the court is not satisfied the respondent has been properly notified of the making of the interstate order under the law of the State in which the order was made.
- (6) However, the court may not declare a general violence order to be a recognised interstate order to which amended part 6 applies.
- (7) Notice of a declaration made under this section is to be given to the respondent only if the person who applied for the declaration consents.
- (8) In this section—  
*general violence order* means an order made under the corresponding law of another State that is declared by regulation to be a general violence order.  
*interstate order*, of a jurisdiction, includes a registered foreign order registered in the jurisdiction.

## **226 Application for declaration**

- (1) A person may apply for a declaration under section 225 for a DVO if the person would be able to apply to vary the DVO—
  - (a) if the DVO is a domestic violence order—under section 86; or
  - (b) if the DVO is an interstate order—under section 176I if the DVO were a recognised interstate order.
- (2) The application must be in the approved form.

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## Subdivision 4      **Transitional provisions for previous part 6**

### **227 Existing registered interstate orders**

- (1) This section applies to an interstate order (a *registered interstate order*) that, immediately before the commencement—
  - (a) was in force in the State in which it was made; and
  - (b) was registered under previous part 6.
- (2) The registered interstate order—
  - (a) continues to have the same effect as a protection order; and
  - (b) may continue to be enforced against a person as if it were a protection order that had been personally served on the person as a respondent.
- (3) Subsection (2) applies for the period during which the registered interstate order, as originally made, is in force in the State in which it was made.
- (4) Amended part 6, division 4 applies to a registered interstate order as though a reference in that division to a registered New Zealand order is a reference to a registered interstate order.
- (5) Without limiting subsection (4), an application may be made and decided under section 176P for—
  - (a) a variation of the interstate order as it is registered 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 revocation of the registration of an interstate order.
- (6) This section applies subject to section 176B.
- (7) In this section—

[s 228]

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*interstate order* means an order made by a court of another State under a law of the other State that was, immediately before the commencement, prescribed by regulation for previous part 6.

*previous part 6* means part 6 as in force from time to time before the commencement.

*State* includes New Zealand.

## **228 Application to register New Zealand order as interstate order**

- (1) This section applies to an application to register a New Zealand order as an interstate order under previous section 170 if, immediately before the commencement, the application had not been finally dealt with.
- (2) The application is taken to be an application to register the order under section 176L.

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# Schedule Dictionary

## section 5

**aggrieved** see section 21(1).

**appellate court** means—

- (a) for a decision made by the Magistrates Court, or the Childrens Court constituted by a Childrens Court magistrate or a magistrate—the District Court; or
- (b) for a decision made by the District Court, the Supreme Court, or the Childrens Court constituted by a District Court judge—the Court of Appeal.

**approved form** means a form approved under section 191.

**approved intervention program** means a program approved by the chief executive under section 75(2).

**approved provider** means an entity approved by the chief executive under section 75(1).

**approved research** means research approved by—

- (a) a human research ethics committee under the *Public Health Act 2005*; or
- (b) an ethics committee established by a university and concerned, wholly or partly, with research involving humans; or
- (c) an ethics committee established by the National Health and Medical Research Council.

**associate**, of an aggrieved, see section 24(3).

**associated domestic violence** see section 9.

**audio link** see the *Evidence Act 1977*, section 39C.

**audio visual link** see the *Evidence Act 1977*, schedule 3.

**authorised person**, for an aggrieved, see section 25(2).

**caravan** includes a trailer.

**chief executive (child protection)** means the chief executive of the department in which the *Child Protection Act 1999* is administered.

**chief executive (magistrates court)** means the chief executive of the department in which the *Magistrates Courts Act 1921* is administered.

**child**—

- (a) of an aggrieved, means a child who is—
  - (i) a biological, adopted, or step child of the aggrieved; or
  - (ii) in the care or custody of the aggrieved; or
- (b) of a respondent, means a child who is—
  - (i) a biological, adopted, or step child of the respondent; or
  - (ii) in the care or custody of the respondent.

**child protection proceeding** means a proceeding under the *Child Protection Act 1999*.

**Childrens Court** means the Childrens Court under the *Childrens Court Act 1992*.

**Childrens Court magistrate** means a Childrens Court magistrate under the *Childrens Court Act 1992*.

**child who usually lives with the aggrieved** see section 24(2).

**clerk**, of a court, means—

- (a) if the court is a Magistrates Court—a clerk of the Magistrates Court; or
- (b) if the court is the Childrens Court—the person who, under the *Childrens Court Act 1992*, holds the same position as a clerk of the Magistrates Court, or clerk of the District Court, at which the relevant matter is dealt with; or
- (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*.

**commencement**, for part 10, division 1, see section 195.

**consent** means consent freely and voluntarily given by a person with capacity to give the consent.

**contact details**, for a person, means any or all of the following—

- (a) the person’s telephone number;
- (b) the person’s email address;
- (c) the address of the person’s place of residence;
- (d) the address of the person’s place of work.

**cool-down condition** see section 107(1).

**corresponding law**, for part 6, see section 171.

**counselling**, for part 3, division 6, see section 68.

**couple relationship** see section 18.

**court** see section 6.

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

**damage**, to property, includes destruction or loss of the property.

**detention period**, for part 4, division 3, see section 119(3).

**district** means a district appointed under the *Justices Act 1886* for the purposes of a Magistrates Court.

**domestic violence** see section 8.

**domestic violence offence** means—

- (a) a domestic violence offence within the meaning of the Criminal Code, section 1; or
- (b) an offence under part 7.

**domestic violence order** see section 23(2).

**DVO**, for part 6, see section 171.

*economic abuse* see section 12.

*emotional or psychological abuse* see section 11.

*engagement relationship* see section 17.

*exposed*, to domestic violence, see section 10.

*family law order* means either of the following that relates to a child of a respondent or an aggrieved—

- (a) an order, injunction, undertaking, plan or recognisance mentioned in the *Family Law Act 1975* (Cwlth), section 68R;
- (b) an order, injunction, undertaking, plan or bond mentioned in the *Family Court Act 1997* (WA), section 176.

*family relationship* see section 19(1).

*final order*, for part 6, see section 171.

*GPS* means global positioning system.

*informal care relationship* see section 20.

*information*, for part 5A, see section 169C.

*interim order*, for part 6, see section 171.

*interstate law enforcement agency*, for part 6, see section 171.

*interstate order* see section 173.

*intervention order* see section 69(1).

*intimate personal relationship* see section 14.

*intoxicated* means intoxicated by drugs or alcohol or by any other means.

*issuing authority*, for part 6, see section 171.

*justice* means a justice of the peace, but does not include a justice of the peace (commissioner for declarations) under the *Justices of the Peace and Commissioners for Declarations Act 1991*.

*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.

**local order**, for part 6, see section 172.

**make**, for part 6, see section 171.

**most senior officer on duty**, at a police station or police establishment, means the officer present at the station or establishment—

- (a) who is most senior by rank; or
- (b) if there is no officer who is most senior by rank—who is most senior by length of continuous service as an officer.

**named person**—

- (a) in relation to a domestic violence order, see section 24(6); or
- (b) in relation to a police protection notice, see section 101B (2).

**New Zealand order** see section 171.

**no-contact condition** see section 107A(1).

**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).

**ouster condition**—

- (a) in relation to a domestic violence order, see section 63; or
- (b) in relation to a police protection notice, see section 107B.

**parent**, of a child, see section 16.

**participating jurisdiction**, for part 6, see section 171.

**police commissioner** means the commissioner of the Queensland police service.

**police establishment** means a police establishment under the *Police Service Administration Act 1990*.

**police prosecutor** means a police officer or service legal officer whose duties include acting or appearing for the prosecution in a proceeding.

**police protection notice** see sections 101(1) and 101A(1).

**possess**, for part 3, division 8, see section 79.

**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*);
- (b) a building or structure (whether movable or immovable), including a dwelling house;
- (c) a vehicle, vessel or aircraft;
- (d) a caravan or its site, or both the caravan and site.

**prescribed entity**, for part 5A, see section 169C.

**properly notified**, for part 6, see section 175.

**property**, of a person, means—

- (a) property that the person owns; or
- (b) property that 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 living.

**prosecuting authority** means the entity responsible for prosecuting the criminal proceeding.

**protected person**, for part 6, see section 171.

**protected witness** see section 150(1).

**protection order** means an order made under section 37.

**public guardian** means the public guardian under the *Public Guardian Act 2014*.

**recognised interstate order** see section 176A(1).

**registered foreign order**, for part 6, see section 174.

**registered New Zealand order**, for part 6, see section 171.

**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*.

**relative**, of a person, see section 19(2) to (5).

**release conditions** see section 125(2).

**releasing police officer**, in relation to a person in custody, means—

- (a) if the person is in custody at a police station or police establishment—the most senior officer on duty at the station or establishment; or
- (b) if the person is in custody at a watch-house—
  - (i) the watch-house manager; or
  - (ii) another police officer whose duties include performing functions at the watch-house in relation to persons in custody.

**relevant relationship** see section 13.

**repealed Act**, for part 10, division 1, see section 195.

**respondent** means—

- (a) for part 6, see section 171; and
- (b) otherwise—see section 21(3).

**return condition**—

- (a) in relation to a domestic violence order, see section 65; or
- (b) in relation to a police protection notice, see section 107C(1).

**revoke**, for part 6, see section 171.

**send** includes send by post, fax, e-mail or other electronic means.

**service legal officer** see the *Police Service Administration Act 1990*, section 10.24(3).

**SMS message** means a text message sent using the mobile phone service known as the short messaging service.

**specialist DFV service provider**, for part 5A, see section 169C.

**spousal relationship** see section 15.

**spouse** see section 15(2) and (3).

**support service provider**, for part 5A, see section 169C.

**temporary protection order** see section 23(3).

**variation**, of a domestic violence order or recognised interstate order, includes—

- (a) a variation of a condition of the order; and
- (b) a variation of the duration of the order; and
- (c) a variation of the persons named in the order.

**variation application**—

- (a) for part 3, division 1A, see section 41A(3)(b); and
- (b) for part 6, see section 176I(1).

**varied order** see section 91(6).

**watch-house manager** means a watch-house manager under the *Police Powers and Responsibilities Act 2000*, schedule 6.

**weapon** means a weapon under the Weapons Act.

**Weapons Act** means the *Weapons Act 1990*.

**weapons licence** means a licence under the Weapons Act.

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