

Queensland



**DOMESTIC VIOLENCE
(FAMILY PROTECTION)
AMENDMENT BILL 1999**



DOMESTIC VIOLENCE (FAMILY PROTECTION) AMENDMENT BILL 1999

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MINOR OR CONSEQUENTIAL AMENDMENTS

1999

A BILL

FOR

An Act to amend the *Domestic Violence (Family Protection) Act 1989*

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The Parliament of Queensland enacts—

1

Short title

2

Clause **1.** This Act may be cited as the *Domestic Violence (Family Protection) Amendment Act 1999*.

3

4

Commencement

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Clause **2.** This Act commences on a day to be fixed by proclamation.

6

Act amended

7

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

8

Amendment of s 3 (Interpretation)

9

Clause **4.(1)** Section 3, heading—

10

omit, insert—

11

‘Definitions’.

12

(2) Section 3—

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insert—

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

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

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(a) the employer if the employer is an individual;

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(b) another partner in a partnership in which the respondent spouse is a partner;

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(c) an individual within the entity that employs the respondent spouse.

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“employment” , of a respondent spouse, includes—	1
(a) self-employment; and	2
(b) employment by a partnership in which the respondent spouse is one of the partners.	3 4
“licensed armourer” means a licensed armourer under the <i>Weapons Act 1990</i> .	5 6
“licensed dealer” means a licensed dealer under the <i>Weapons Act 1990</i> .	7
“otherwise surrender” , for a weapon, has the meaning given in section 24(7).	8 9
“ouster condition” means a condition of an order imposed under section 25 that prohibits a respondent spouse from remaining at, entering or attempting to enter, or approaching within a stated distance of, stated premises.	10 11 12 13
“small claims tribunal” means a small claims tribunal under the <i>Small Claims Tribunal Act 1973</i> .	14 15
“tenancy application” means—	16
(a) an application made under the <i>Residential Tenancies Act 1994</i> , section 150, 188 or 190, to a small claims tribunal; or ¹	17 18
(b) an application under section 62A(1).	19
“variation” , of a domestic violence order, includes an extension of the period for which the order has effect.	20 21
“whereabouts” , of a person, means a place or locality where the person lives, works, frequents or visits.’.	22 23
(3) Section 3, definition “approved form”, ‘Minister’— omit, insert—	24 25
‘chief executive’.	26
(4) Section 3, definition “child”, after ‘means’—	27

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

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<i>insert—</i>	1
‘an individual under 18 years who is’.	2
(5) Section 3, definition “child”, paragraph (b), ‘minor’—	3
<i>omit, insert—</i>	4
‘child’.	5
(6) Section 3, definition “ interstate order ”, ‘or a Territory’—	6
<i>omit, insert—</i>	7
‘, a Territory or New Zealand’.	8
(7) Section 3, definition “ interstate order ”, ‘or Territory’—	9
<i>omit, insert—</i>	10
‘, Territory or New Zealand’.	11

	Amendment of s 4 (Meaning of “court”)	12
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Clause	5.(1) Section 4, heading—	13
	<i>omit, insert—</i>	14
	‘References to court and when justices may exercise power’.	15
	(2) Section 4(2), ‘, subsection (3)’—	16
	<i>omit, insert—</i>	17
	‘subsections (3) and (6)’.	18
	(3) Section 4—	19
	<i>insert—</i>	20
	‘(5) Subsection (6) applies if an offender appears in relation to an offence involving domestic violence at a place at which a Magistrates Court is being held before 2 or more justices appointed under section 552C(3) of the Criminal Code for the place and pleads guilty to the offence. ²	21 22 23 24
	‘(6) The Magistrates Court, constituted by the justices exercising	25

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

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

Amendment of s 5 (Meaning of “possession”)

Clause 6. Section 5—

insert—

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

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

Clause 7. Section 12(1), ‘a man and a woman’—

omit, insert—

‘a male and a female’.

Insertion of new s 17A

Clause 8. After section 17—

insert—

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

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

Example of change of circumstances—

A temporary protection order is made because of an application by a police officer under section 54. The aggrieved spouse’s place of residence is stated in the order as

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

⁴ Section 51 (Application for revocation or variation)

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premises that the respondent spouse is prohibited, by the order, from approaching within a stated distance of. If the aggrieved spouse changes his or her place of residence, a variation of the temporary protection order may be sought under section 51.’.

Insertion of new s 23A

Clause **9.** After section 23—

insert—

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

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

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

- (a) consider the circumstances of the employment; and
- (b) consider the respondent spouse’s access to the weapon; and
- (c) consider the employment arrangements and whether there is an effective individual within the employing entity on whom to serve the domestic violence order to ensure the respondent spouse does not possess a weapon as part of the respondent spouse’s employment; and
- (d) if there is an effective individual within the employing entity on whom to serve the order—state in the domestic violence order that it is to be served on the individual.

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

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

‘(5) However, the effective individual must not disclose information

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about the order to anyone else, other than as permitted under subsection (4) or expressly permitted by a Magistrate under section 82.⁵

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

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

Clause **10.(1)** Section 24(1) and (2)—

omit, insert—

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

(a) the respondent spouse must—

(i) for a respondent spouse who brought the licence to court—immediately give the licence to a police officer; or

(ii) otherwise—immediately arrange with a police officer to give the licence to a police officer no later than 1 day after the day the court makes its order;

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

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

(a) give any weapons licence of the respondent spouse to a police officer as soon as practicable after the respondent spouse is given a copy of the order, but no later than 1 day after the day the spouse is given the copy; and

⁵ Section 82 (Restriction on publication of proceedings)

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

(2) Section 24(4)—

omit, insert—

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

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

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

- (a) alter the period under subsection (1) or (2) in which the respondent spouse must give weapons to a police officer;
- (b) specify that weapons are to be given to a police officer at a specified police station or establishment;
- (c) specify that weapons are to be given to a police officer and not otherwise surrendered.’.

(3) Section 24—

insert—

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

‘**(7)** In this section—

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- “approved receipt”** means a receipt in a form that is an approved form under the *Weapons Act 1990*, section 71(2)(b).⁶
- “otherwise surrender”**, for a weapon, means the respondent spouse deals with the weapon in the following way—
- (a) the respondent spouse consigns the weapon to a licensed dealer or licensed armourer—
 - (i) for sale; or
 - (ii) for storage for a period that does not end before the period of the domestic violence order;
 - (b) the respondent spouse obtains a copy of the approved receipt for the weapon’s consignment from the licensed dealer or licensed armourer and, if the weapon is consigned for storage, the receipt states the respondent spouse acknowledges the cost of the storage is the responsibility of the respondent spouse;
 - (c) the respondent spouse gives the copy of the receipt to a police officer—
 - (i) immediately; or
 - (ii) within the time allowed under this section for giving the weapon to a police officer or, if under subsection (4) the court alters the time, within the time stated in the court’s order altering the time.’.

Amendment of s 25 (Court may impose other conditions)

- Clause **11.(1)** Section 25(3)—
 omit, insert—

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

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

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

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- ‘(3) The conditions the court may impose on a respondent spouse include, for example—
- (a) prohibiting stated behaviour of the respondent spouse that would constitute an act of domestic violence against the aggrieved spouse or an act of associated domestic violence against an aggrieved person; and
 - (b) prohibiting the respondent spouse from doing all or any of the following in relation to stated premises even though the respondent spouse has a legal or equitable interest in the premises—
 - (i) remaining at the premises;
 - (ii) entering or attempting to enter the premises;
 - (iii) approaching within a stated distance of the premises; and
 - (c) prohibiting the respondent spouse from approaching, or attempting to approach, the aggrieved spouse or an aggrieved person, including stating in the order a distance within which an approach is prohibited; and
 - (d) prohibiting the respondent spouse from contacting, attempting to contact or asking someone else to contact the aggrieved spouse or an aggrieved person, including, for example, if the aggrieved spouse or aggrieved person has taken shelter at a refuge; and
 - (e) prohibiting the respondent spouse from locating, attempting to locate or asking someone else to locate the aggrieved spouse or an aggrieved person if the aggrieved spouse’s or aggrieved person’s whereabouts are not known to the respondent spouse; and
 - (f) prohibiting stated conduct of the respondent spouse towards a child of the aggrieved spouse, including prohibiting the respondent spouse’s presence at or in a place associated with the child.’.
- (2) Section 25(7)—
- omit, insert—*
- ‘(7) A condition in an order that prohibits a respondent spouse from asking someone else to contact or to locate an aggrieved spouse or an

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aggrieved person does not prohibit the respondent spouse asking—	1
(a) someone else who is a lawyer to contact the aggrieved spouse or aggrieved person; or	2 3
(b) someone else, including a lawyer, to locate the aggrieved spouse or aggrieved person for a purpose authorised by an Act.’.	4 5
Insertion of new s 25A	6
Clause 12. After section 25—	7
<i>insert—</i>	8
‘Orders under s 25 that include ouster condition	9
‘25A.(1) This section applies if a court makes an order under section 25 that includes an ouster condition.	10 11
‘(2) The premises that may be stated in an ouster condition of the order include—	12 13
(a) premises where the aggrieved spouse and respondent spouse live together or previously lived together; and	14 15
(b) premises where the aggrieved spouse or an aggrieved person resides, works or frequents.	16 17
‘(3) In imposing the ouster condition, the court must consider including in the order another condition allowing the respondent spouse—	18 19
(a) if the respondent spouse is no longer at the premises—to return to the premises to recover stated property; or	20 21
(b) if the respondent spouse is at the premises—to remain at the premises to remove stated property.	22 23
‘(4) For another condition under subsection (3), the court must state in the order—	24 25
(a) if the respondent spouse is present in court when the order is made—	26 27
(i) the time at which, without breaching the order, the respondent spouse may return to the premises and then must leave the premises; or	28 29 30

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

Example for paragraph (b)(i)—

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

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

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

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

Clause 13. Section 30(2)—

omit, insert—

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

- (a) must consider the order and whether, in the circumstances, the order needs to be varied, including, for example, by varying the

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date the order ends; and

- (b) may vary the order if the court considers the order needs to be varied.’.

Omission of ss 31 and 32

Clause 14. Sections 31 and 32—
omit.

Replacement of s 36 (Revocation of orders)

Clause 15. Section 36—
omit, insert—

‘Revocation of orders

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

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

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

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

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

⁷ Section 51 (Application for revocation or variation)

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

Amendment of s 38 (Conferral of jurisdiction)

Clause 16. Section 38—

insert—

‘(3) Subsection (4) applies if—

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

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

- (a) the *Small Claims Tribunal Act 1973* for a tenancy application; or
- (b) the *Residential Tenancies Act 1994* for a tenancy application.

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

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

Clause 17. Part 3, division 2, heading—

omit, insert—

⁸ Section 62A (Procedural provisions for tenancy applications)

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

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

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

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

‘Form of temporary protection orders

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

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

‘(3) A temporary protection order is a summons to the respondent spouse directing the respondent spouse to appear at the time and place at which the order is returnable.

‘Temporary protection order because of adjournment

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

(a) the hearing of an application for the protection order, whether the

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

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court is hearing the application under section 48 or 49; or ¹⁰	1
(b) the matter of making a protection order on its own initiative as mentioned in section 53(1)(b). ¹¹	2 3
‘Court may make temporary protection order without proof of service in certain circumstances	4 5
‘39D. A court may make a temporary protection order, or vary a domestic violence order, if—	6 7
(a) an application is made for a protection order or for a variation of a domestic violence order; and	8 9
(b) the court does not begin to hear, or has decided not to begin to hear, the application because the applicant has not satisfied the court that the respondent spouse has been given a document mentioned in section 49(1)(a), (b) or (c), whether or not the respondent spouse is present in court; and	10 11 12 13 14
(c) it appears to the court—	15
(i) the aggrieved spouse or an aggrieved person is in danger of personal injury; or	16 17
(ii) property of the aggrieved spouse or an aggrieved person is in danger of substantial damage.	18 19
‘Temporary protection order when cross application made	20
‘39E.(1) This section applies if—	21
(a) an application (the “original application”) for a domestic violence order has been made and is before the court; and	22 23
(b) the person named in the original application as the respondent spouse applies for a domestic violence order (the “cross application”) and the aggrieved spouse named in the original	24 25 26

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

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

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application is named in the cross application as the respondent spouse; and

- (c) the cross application is made orally, or is made in writing but not served on the aggrieved spouse named in the original application at least 1 business day before the day of the hearing of the original application.

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

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

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

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

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

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

‘(2) In subsection (1)—

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“variation proceedings” means proceedings—

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

‘Temporary protection order for application under s 54

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

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

‘Division 3—Registration of interstate orders’.

Insertion of new pt 3, div 4

Clause **18.** Part 3, after section 46—

insert—

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

‘Definitions for div 4

‘46A. In this division—

“family contact order” means—

- (a) a Division 11 contact order within the meaning of the *Family Law*

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

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- Act 1975 (Cwlth), part VII; or*
- (b) a Division 10 contact order within the meaning of the *Family Court Act 1997 (WA)*, section 174.¹³
- “relevant family contact order”** means a family contact order that relates to access—
- (a) between the aggrieved spouse and an aggrieved person; or
- (b) between the respondent spouse and either a child of the respondent spouse or a child of the aggrieved spouse.
- ‘Disclosure of existence of relevant family protection order**
- ‘46B.(1)** A person who applies to a court for a domestic violence order, or for the revocation or variation of a domestic violence order, and is aware of either of the following must inform the court about the order or application—
- (a) a relevant family contact order;
- (b) a pending application for a relevant family contact order.
- ‘(2)** However, the application is not invalid merely because the person does not inform the court about the order or application.
- ‘Court to consider relevant family contact order etc.**
- ‘46C.(1)** Before deciding about making, revoking or varying a domestic violence order, the court must—
- (a) consider whether contact between the aggrieved spouse, or between the respondent spouse, and any child of either of those persons is relevant to making, revoking or varying the order; and
- (b) have regard to any relevant family contact order, or pending

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

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application for a relevant family contact order, of which the court
has been informed.

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

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

Clause 19. Section 50—

omit, insert—

‘Court to ensure certain spouses understand domestic violence orders

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

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

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

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

‘(3) The process that a court adopts to ensure a respondent spouse
understands the matters mentioned in subsection (1), or an aggrieved
spouse understands the matters mentioned in subsection (2), may include

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using services of, or help from, other people to the extent the court considers appropriate.

Examples of services or help the court may consider appropriate—

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

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

Amendment of s 51 (Application for revocation or variation)

Clause 20. Section 51—

insert—

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

- (a) is made by an aggrieved spouse or authorised person; and
- (b) seeks a variation of the domestic violence order to extend the protection given to the spouse or person, to extend the period or scope of the order or to add a condition to the order.’.

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

Clause 21. Section 54(2) and (8)—

omit.

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

Clause	22. Section 57(1), after ‘protection order’—	2
	<i>insert—</i>	3
	‘made because of an application under section 54’.	4

Insertion of new pt 4, div 3 hdg

Clause	23. After section 57—	6
	<i>insert—</i>	7
	‘ Division 3—Other procedural provisions ’.	8

Amendment of s 58 (Service of court orders)

Clause	24. Section 58(2)(c)—	10
	<i>omit, insert—</i>	11
	‘(c) cause a copy of the order to be given to the commissioner; and	12
	(d) cause a copy of the order to be given to the employer of the	13
	respondent spouse if an order is made under section 23A(2). ¹⁴ ’.	14

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

Clause	25.(1) Section 60(1), ‘in any proceedings on an application’—	17
	<i>omit, insert—</i>	18
	‘in a proceeding for any application’.	19
	(2) Section 60(2), from ‘a’ to ‘an’—	20
	<i>omit, insert—</i>	21
	‘an authorised person has made an application under this Act to a court	22
	and the court decides the’.	23

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

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Insertion of new s 62A

Clause **26.** Part 4, after section 62—

insert—

‘Procedural provisions for tenancy application

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

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

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

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

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

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

- (a) an application under the *Residential Tenancies Act 1994*, section 150, 188 or 190 that, under subsection (1), is made to a

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

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

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	Magistrates Court dealing with a protection application, instead of a small claims tribunal;	1 2
	(b) an application under subsection (3) to a Magistrates Court to order a tenancy application to a small claims tribunal to be removed to the court.’.	3 4 5
	Insertion of new s 64A	6
Clause	27. After section 64—	7
	<i>insert—</i>	8
	‘Commissioner has right to appear and be heard on appeal	9
	‘64A. The commissioner has a right to appear and be heard before the District Court on an appeal to the court under this part.’.	10 11
	Amendment of s 69 (Presence at domestic violence incident)	12
Clause	28. Section 69(2)—	13
	<i>omit, insert—</i>	14
	‘(2) The respondent spouse taken into custody may be held in custody until the earliest of the following happens—	15 16
	(a) an application for a protection order in which the spouse is named as the respondent spouse is heard and decided under section 71(1);	17 18 19
	(b) a temporary protection order is made under section 39G; ¹⁷	20
	(c) an application for a protection order is completed, and arrangements are made with the watch-house manager, under section 71(3).	21 22 23
	‘(3) If the watch-house manager reasonably believes it is necessary for arrangements to be made to safeguard the aggrieved spouse but the respondent spouse may no longer be held under subsection (2)—	24 25 26
	(a) the respondent spouse may continue to be held in custody until	27

¹⁷ Section 39G (Temporary protection order for application under s 54)

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- the arrangements are completed; and 1
- (b) the watch-house manager must record the following in the 2
register kept under section 70— 3
- (i) the reasons for the belief; and 4
- (ii) the time at which the respondent spouse could no longer be 5
held under subsection (2); and 6
- (iii) the time at which arrangements to safeguard the aggrieved 7
spouse were completed; and 8
- (iv) the time at which the respondent spouse was released from 9
custody. 10

‘(4) A respondent spouse may not be held under subsection (2) or (3) for 11
more than 4 hours from when the respondent spouse is first taken into 12
custody under subsection (1).’. 13

**Amendment of s 70 (Duty of police officer who has taken a person 14
into custody under s 69) 15**

Clause 29. Section 70(1)— 16
omit, insert— 17

‘70.(1) If a person is taken into custody under section 69(1), the police 18
officer who took the person into custody must immediately take the person 19
to a watch-house. 20

‘(1A) As soon as possible after the person is taken to the watch-house, 21
the watch-house manager must enter the person’s particulars, as required 22
under a regulation, in the register kept by the watch-house manager for the 23
purpose. 24

‘(1B) The police officer who took the person to the watch-house is 25
responsible for confirming the particulars the watch-house manager has 26
entered in the register.’. 27

Amendment of s 73 (Entry on and search of premises) 28

Clause 30.(1) Section 73— 29

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insert—

‘(8) If a police officer (the “**first officer**”) can not comply with subsection (7), another police officer may act for the first officer and include the particulars in the register.

‘(9) However, if the other police officer includes the particulars in the register because the first officer can not do so—

(a) for operational reasons—the other officer must also enter in the register the reasons for the first officer’s inability and the first officer must confirm the entries as soon as is practicable; or

(b) for medical reasons—the other officer must also enter in the register the reasons for the first officer’s inability and, if possible, the first officer must confirm the entries as soon as practicable.’.

Amendment of s 75 (Entry of registers—availability for inspection)

Clause **31.(1)** Section 75(1), ‘a police officer’ to ‘or 73(7))’—

omit, insert—

‘there is a failure to enter the particulars required by section 70(1A), or section 73(7) or (9)’.

(2) Section 75(1)(a), ‘to comply with section 70(1)’—

omit, insert—

‘to enter particulars under section 70(1A)’.

(3) Section 75(1)(b), ‘to comply with section 73(7)’—

omit, insert—

‘to enter particulars under section 73(7) or (9)’.

(4) Section 75(2), ‘70(1)’—

omit, insert—

‘70(1A)’.

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Amendment of s 80 (Breach of order or conditions)

Clause	32.(1) Section 80(1) to (3)—	2
	<i>omit, insert—</i>	3
	‘80.(1) A respondent spouse must not contravene a protection order, temporary protection order or any other order made under this Act, including a condition imposed by the order, if—	4
	(a) the respondent spouse was present in court when the order was made; or	5
	(b) the respondent spouse was served with a copy of the order; or	6
	(c) a police officer told the respondent spouse about the existence of the order.	7
	Maximum penalty—40 penalty units or 1 year’s imprisonment.	8
	‘(2) However, a court may not find a respondent spouse contravened an order merely because a police officer told the respondent spouse about the existence of the order, unless the court is satisfied the police officer told the respondent spouse about the condition that it is alleged the respondent spouse contravened.	9
	‘(3) It is not a defence in proceedings for an offence involving an interstate order that a person did not know the interstate order—	10
	(a) could be registered in Queensland; or	11
	(b) was registered in Queensland.’.	12
	(2) Section 80(4), ‘person’—	13
	<i>omit, insert—</i>	14
	‘respondent spouse’.	15

Amendment of s 82 (Restriction on publication of proceedings)

Clause	33. Section 82(1), penalty—	25
	<i>omit, insert—</i>	26
	‘Maximum penalty—40 penalty units or 1 year’s imprisonment.’.	27

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Replacement of ss 87 and 88

Clause 34. Sections 87 and 88—

omit, insert—

‘Approved forms

‘87.(1) The chief executive may approve forms for this Act.

‘(2) The clerk of each court is to ensure approved forms are available when asked for by a person.’.

Insertion of new division heading

Clause 35. Part 8, before section 90—

insert—

‘Division 1—Transitional provisions for Domestic Violence (Family Protection) Amendment Act 1992’.

Insertion of new div 2

Clause 36. After section 95—

insert—

‘Division 2—Transitional provisions for Domestic Violence (Family Protection) Amendment Act 1999’.

‘Temporary protection orders to continue to have effect

‘96.(1) This section applies to a temporary protection order made under section 31 or 32 before the commencement of this section that is in force immediately before the commencement.

‘(2) Subject to subsection (3), the temporary protection order is taken to be made under part 3, division 2.¹⁸

¹⁸ Part 3, division 2 (Powers of court and magistrates to make temporary protection orders)

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

1
2

SCHEDULE	1
MINOR OR CONSEQUENTIAL AMENDMENTS	2
section 3	3
1. Section 8(b), from ‘corporate’	4
<i>omit, insert—</i>	5
‘under the <i>Weapons Act 1990</i> , section 10(3).’	6
2. Section 10(1), ‘assist’—	7
<i>omit insert—</i>	8
‘help’.	9
3. Section 13(3), ‘section 31’—	10
<i>omit, insert—</i>	11
‘part 3, division 2 ¹⁹ ’.	12
4. Section 16(4), from ‘State’—	13
<i>omit, insert—</i>	14
‘State, a Territory or New Zealand to protect himself or herself, the order	15
may be registrable in Queensland under part 3, division 3. ²⁰ ’.	16

¹⁹ Part 3, division 2 (Powers of court and magistrates to make temporary protection orders)

²⁰ Part 3, division 3 (Registration of interstate orders)

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Amendment

SCHEDULE (continued)

- | | |
|--|--------|
| 5. Section 23(5), from ‘corporate’— | 1 |
| <i>omit, insert—</i> | 2 |
| ‘under the <i>Weapons Act 1990</i> , section 10(3).’. | 3 |
|
6. Section 23(6), ‘section 1.5 of’— |
4 |
| <i>omit, insert—</i> | 5 |
| ‘section 2 of’. | 6 |
|
7. Section 23(6)(a), ‘1.5(1)(a) to (c) or (i)’— |
7 |
| <i>omit, insert—</i> | 8 |
| ‘2(1)(a) to (c) or (k)’. | 9 |
|
8. Section 23(6)(b), ‘1.5(1)(f), (h) or (j)’— |
10 |
| <i>omit, insert—</i> | 11 |
| ‘2(1)(h) or (l)’. | 12 |
|
9. Section 37, heading, ‘Commissioner of Police’— |
13 |
| <i>omit, insert—</i> | 14 |
| ‘ Commissioner ’. | 15 |
|
10. Section 37, ‘Commissioner of Police has’— |
16 |
| <i>omit, insert—</i> | 17 |
| ‘commissioner has’. | 18 |

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SCHEDULE (continued)

11. Section 43(1), ‘Commissioner of Police’—	1
<i>omit, insert—</i>	2
‘commissioner’.	3
 12. Section 44(2)—	 4
<i>omit.</i>	5
 13. Section 46, heading, ‘interstate spouse etc.’—	 6
<i>omit, insert—</i>	7
‘person against whom interstate order was made’.	8
 14. Section 46(5)—	 9
<i>omit.</i>	10
 15. Section 51(4)(b), ‘Commissioner of Police’—	 11
<i>omit, insert—</i>	12
‘commissioner’.	13
 16. Section 52, ‘Commissioner of Police’—	 14
<i>omit, insert—</i>	15
‘commissioner’.	16

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SCHEDULE (continued)

17. Section 53(1)(b), from ‘exercise’—	1
<i>omit, insert—</i>	2
‘make a temporary protection order under section 39C(b). ²¹ ’.	3
 18. Section 55(a)(v), ‘Commissioner of Police’—	 4
<i>omit, insert—</i>	5
‘commissioner’.	6
 19. Section 64(1)(c), ‘Commissioner of Police’—	 7
<i>omit, insert—</i>	8
‘commissioner’.	9
 20. Section 71(1), ‘promptly’—	 10
<i>omit, insert—</i>	11
‘prepare an application for a protection order in which the person is named as the respondent spouse and immediately’.	12 13
 21. Section 71(2)(a), from ‘promptly’ to ‘order’—	 14
<i>omit, insert—</i>	15
‘before a court under subsection (1)’.	16
 22. Section 71(3)(d) and (4), ‘keeper’—	 17
<i>omit, insert—</i>	18
‘manager’.	19

²¹ Section 39C (Temporary protection order because of adjournment)

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SCHEDULE (continued)

23. Section 74(2) and (3)(b), ‘promptly’—	1
<i>omit, insert—</i>	2
‘as soon as practicable’.	3
 24. Section 76(1), ‘seized under’—	 4
<i>omit.</i>	5
 25. Section 76(1)(a)—	 6
<i>omit, insert—</i>	7
‘(a) given to, or seized by, a police officer under this Act; or’.	8
 26. Section 76(1)(b), before ‘the Weapons Act 1990’—	 9
<i>insert—</i>	10
‘seized under’.	11
 27. Section 76(2), ‘Section 6.1 of the Weapons Act 1990’—	 12
<i>omit, insert—</i>	13
‘The Weapons Act 1990, section 154,’.	14
 28. Section 76(3) and (4)—	 15
<i>omit.</i>	16

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SCHEDULE (continued)

29. Section 90, ‘Part’—	1
<i>omit, insert—</i>	2
‘division’.	3