



Queensland

Domestic and Family Violence Protection Bill 2011

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2011

A Bill

for

An Act for the protection of persons against domestic violence

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[s]

Preamble—

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

- 1 Australia is a party to the United Nations Declaration on the Elimination of Violence Against Women and the United Nations Convention on the Rights of the Child.
- 2 Living free from violence is a fundamental social value that must be promoted.
- 3 Domestic violence is a violation of human rights that is not acceptable in any community or culture and cultural or traditional practices can not be relied upon to minimise or excuse domestic violence.
- 4 Domestic violence may involve overt or subtle manifestations of power imbalance, often resulting in one person living in fear of another and usually involving an ongoing pattern of abuse over a period of time.
- 5 Domestic violence can have serious impacts on people who experience it, including physical harm, psychological harm and death.
- 6 The serious impacts of domestic violence can affect the ability of people to protect themselves from domestic violence.
- 7 While anyone can be a victim or perpetrator of domestic violence, it is most often committed by men against women and children.
- 8 Domestic violence is the 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 A civil response to domestic violence should operate in conjunction with, and not instead of, the criminal law.

The Parliament of Queensland therefore enacts—

Part 1 Preliminary

Division 1 Introduction

1 Short title

This Act may be cited as the *Domestic and Family Violence Protection Act 2011*.

2 Commencement

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

Division 2 Main objects

3 Main objects [3A]

- (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 made 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

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- (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, namely, liability for the commission of an offence.

4 Principles for administering Act

- (1) The 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 minimised;
 - (b) perpetrators of domestic violence should be made accountable for committing domestic violence and, if possible, provided with the opportunity to change;
 - (c) 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 have characteristics that may make them particularly vulnerable to domestic violence—

- women
- 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
- people who are in a same-sex relationship

- elderly people
- (d) in circumstances in which there are conflicting accounts 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;
- (e) the civil sanctions under this Act should operate in conjunction with, not instead of, the criminal law.

Division 3 Interpretation

5 Dictionary [3]

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

6 Meaning of *court* [4]

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 an offender is found guilty of an offence involving domestic violence—the court before which the offender is found guilty; or
- (d) if the Childrens Court is hearing child protection proceedings—the Childrens Court.

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Part 2 Operation of Act

Division 1 Preliminary

7 Purpose of this part [10]

- (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* [11]

- (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 her or his 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 threatening 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) 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;
 - (f) unreasonable surveillance of a person;
 - (g) unlawfully stalking a person.
- (3) A person who counsels or procures someone else to commit an act that, if done by the person, would be domestic violence is taken to have committed domestic violence.

- (4) In this section—

unreasonable 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, through technological means.

Examples of surveillance through technological means—

- reading a person's SMS messages
- monitoring a person's account with a social networking site
- GPS tracking
- checking the recorded history in a GPS device

unlawful stalking see the Criminal Code, section 359B.

9 **Meaning of *associated domestic violence* [21(1)]**

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

- (a) an associate of an aggrieved; or
- (b) a relative of an aggrieved; or

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- (c) a child of an aggrieved; or
- (d) a child who usually resides with an aggrieved.

10 Meaning of *exposed to domestic violence*

A child is *exposed* to domestic violence if—

- (a) the child sees or hears domestic violence; or
- (b) the child 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 an incident involving physical abuse 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, social networking site or other means without the person's consent (whether during the day or night)
- 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
 - threatening to commit suicide or self-harm to torment, intimidate or frighten a person, or threatening the death or injury of someone else

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

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- 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* [11A, 12A]

- (1) A *relevant relationship* is—
- (a) an intimate personal relationship; or
 - (b) a relationship between relatives; or
 - (c) an informal care relationship.
- (2) Although a relevant relationship exists only between 2 persons, an aggrieved, or an authorised person for an aggrieved, may make an application for a protection order naming 1 respondent or more than 1 respondent.

14 Meaning of *intimate personal relationship*

An *intimate personal relationship* is—

- (a) a spousal relationship; or
- (b) an engaged couple relationship; or
- (c) a serious dating relationship.

15 Meaning of *spousal relationship* [12]

- (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*, sections 36 and 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.

Example of a former parent of a child—

a birth parent who stops being a parent of a child under the *Surrogacy Act 2010*, section 39(2)(b)

- (3) For subsection (2)(b), it is irrelevant whether there is or was any relationship between the parents of the child.

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 person standing in the place of a parent of a child on a temporary basis is not a parent of 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.

17 **Meaning of *engaged couple relationship***

An ***engaged couple 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.

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18 Meaning of *serious dating relationship*

- (1) A *serious dating relationship* exists between 2 persons if the persons have or had a relationship as a couple that involves or involved any level of mutual dependence or commitment.
- (2) In deciding whether a serious dating relationship exists under subsection (1), a court may have regard to the following—
 - (a) the circumstances of the relationship, 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) The court may also have regard to each of the following factors but none of the factors is conclusive—
 - (a) whether the relationship involves or involved a relationship of a sexual nature;
 - (b) whether the dependence or commitment is or was of the same level;
 - (c) whether 1 of the persons is or was financially dependent on the other;
 - (d) whether the persons jointly own or owned any property;
 - (e) whether the persons have or had joint bank accounts.
- (4) A serious dating relationship may exist between 2 persons whether the persons are of the same or a different gender.
- (5) A serious dating relationship does not exist under subsection (1) merely because 2 persons date or dated each other on a number of occasions.

19 Meaning of *relationship between relatives and relative* [12B]

- (1) A ***relationship between relatives*** 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 related 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

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- 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* [12C]

- (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* [12F]

- (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 or police protection notice.

22 Child as aggrieved or respondent [12D(1) to (3)]

- (1) A person who is a child may 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.

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- (2) However, a child may 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 the interstate orders that may be registered under part 6.
- (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 [13]

- (1) A court can make a domestic violence order 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.
- (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 [15]

- (1) As well as the aggrieved, the following persons may be protected by a domestic violence order—
 - (a) a child of the aggrieved;
 - (b) a child who usually resides with the aggrieved;
 - (c) a relative of the aggrieved;
 - (d) an associate of the aggrieved.
- (2) A *child who usually resides 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 resides 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 51.
 - (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 [14]

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

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- (a) an aggrieved; or
 - (b) an authorised person for an aggrieved; or
 - (c) a police officer under section 95(2)(a); or
 - (d) a person acting under another Act for the aggrieved.
- (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) For subsection (1)(d), a person is acting under another Act for the aggrieved—
- (a) if the person is a guardian for a personal matter of the aggrieved, or an administrator for a financial matter of the aggrieved, under the *Guardianship and Administration Act 2000*; or
 - (b) if the person is the adult guardian and considers the aggrieved does not have capacity to make an application for a protection order; or
 - (c) if the person is appointed as the aggrieved’s attorney under an enduring power of attorney under the *Powers of Attorney Act 1998* and the person makes the application under the enduring power of attorney.
- (4) 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.

26 When can a court make a protection order [16]

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 an offence involving domestic violence; or
- (c) the court is the Childrens Court hearing child protection proceedings.

27 When can a court make a temporary protection order [16]

A court can make a temporary protection order if—

- (a) the court adjourns any of the proceedings mentioned in section 43(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) a police officer applies for a temporary protection order under part 4, division 4.

28 What are the conditions of a domestic violence order [17]

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 resides with the aggrieved, is named 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.

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Notes—

- See section 55 (Domestic violence order must include standard conditions)
- See section 56 (Court may impose other conditions)

29 What happens if circumstances change after a domestic violence order is made [17A]

If circumstances change after a domestic violence order is made, a person may apply under section 81 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 122 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 81.

30 What can happen if a respondent does not comply with a domestic violence order [18]

- (1) If a respondent does not comply with a domestic violence order, including a registered 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.

31 What is the effect of an interstate order [16]

If a person has obtained an interstate order, the interstate order may be registrable in Queensland under part 6.

Part 3 Domestic violence orders

Division 1 Protection orders

32 Application for protection order

- (1) A person mentioned in section 25(1) may apply to a Magistrates Court for a protection order.
- (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) prepare a copy of the application that states 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 police officer in charge of the police division in which the respondent ordinarily resides or was last known to reside.

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34 Service of application [47]

- (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.

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) A failure to comply with subsection (1) is an irregularity and does not render a proceeding, a document, step taken or order made in a proceeding, a nullity.

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 can make protection order [20]

- (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) the respondent has committed domestic violence against the aggrieved; and
 - (b) a relevant relationship exists between the respondent and the aggrieved; and
 - (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, the court must consider the principles mentioned in section 4.
- (3) In deciding whether a protection order is necessary or desirable to protect the aggrieved from domestic violence, the court may consider whether an intervention order has previously been made against the respondent and whether the respondent complied with the order.
- (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 [48]

- (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.
- (3) However, the court may not decide to dismiss the application unless—
 - (a) the applicant has not appeared; and

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- (b) if the applicant is a police officer—no other police officer or prosecuting authority 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 [49]

- (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 107, 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 144(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.

41 When court on its own initiative can make or vary order against offender [30, 53]

- (1) This section applies if a court convicts a person (the *offender*) of an offence involving domestic violence.
- (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 present 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) If reasonably practicable, the prosecuting authority for the offence must tell the aggrieved about the aggrieved's right under subsection (4).
- (6) 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.

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- (7) If the court adjourns the matter under subsection (6)(b), the court—
 - (a) must inform the offender that if the offender does not appear in court on the later day to which the matter has been adjourned, a protection order may be made, or a domestic violence order varied, in the offender’s absence; and
 - (b) may issue any direction that it considers necessary.
- (8) 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
 - (b) adjourn the matter further and may, in the meantime, make a temporary protection order under division 2; or
 - (c) order, subject to section 144(1), the issue of a warrant for the offender to be taken into custody by a police officer and brought before the court.
- (9) Any justice may issue a warrant for the purpose of subsection (8)(c).
- (10) Despite section 146, 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.
- (11) This section does not limit the power of the court to make any other order against the offender.

42 When Childrens Court can make or vary order against party to child protection proceedings

- (1) This section applies if the Childrens Court is hearing child protection proceedings.
- (2) The court may make a protection order against a party to the child protection proceedings (the *party*) if—
 - (a) the court is satisfied that, under section 37, a protection order could be made against the party; and

-
- (b) the person who would be named as the aggrieved in the protection order is also a party to the child protection proceedings.
 - (3) If a domestic violence order is already in force against a party to the child protection proceedings (also the *party*), 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 proceedings.
 - (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 any party to the child protection proceedings.
 - (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 proceedings has been given a reasonable opportunity to present evidence and to prepare and present 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 proceedings; 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 party that if the party does not appear in court on the later day to which the matter has been adjourned, a protection order may be made, or a

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- domestic violence order varied, in the party's absence;
and
- (b) may issue any direction that it considers necessary.
- (8) If the party 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 party, or vary a domestic violence order against the party, in the party's absence; or
 - (b) adjourn the matter further and may, in the meantime, make a temporary protection order under division 2; or
 - (c) order, subject to section 144(1), the issue of a warrant for the party to be taken into custody by a police officer and brought before the court.
- (9) Any justice may issue a warrant for the purpose of subsection (8)(c).
- (10) This section does not limit the power of the court to make any order under the *Child Protection Act 1999*.

Division 2 Temporary protection orders

43 When court can make temporary protection order [39C]

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 proceedings mentioned in section 41 or 42; or
- (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) an application for a temporary protection order is made to the court by a police officer under part 4, division 4.

44 Domestic violence necessary [39A(1)]

- (1) A court may make a temporary protection order against a respondent only if the court is satisfied that domestic violence has been committed by the respondent against the aggrieved.
- (2) Subsection (1) does not apply if the court makes a temporary protection order under section 43(b).

45 Standard of evidence [39A(2)]

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.

46 Temporary protection order when respondent has not been served [39D]

- (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 temporary protection order is necessary or desirable to protect the aggrieved, or another person named in the application for the protection order, from domestic violence, pending the respondent being served with an application for the protection order.
- (3) This section does not limit section 44.

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47 Temporary protection order in relation to application for variation [39F]

- (1) This section applies if the court adjourns the hearing of an application for a variation of a 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 the aggrieved, or another person named in the domestic violence order, from domestic violence, pending a decision on the application for the variation.
- (3) If the application is for a variation of a temporary protection order (the *original order*), the court may cancel the original order and make a new temporary protection order.

48 Temporary protection order in relation to cross application [39E]

- (1) This section applies if—
 - (a) an application (the *original application*) for a domestic violence order has been made and is before a court; and
 - (b) a person named in the original application as a respondent applies for a domestic violence order (the *cross application*) and the aggrieved named in the original application is named in the cross application as a respondent; and
 - (c) the cross application is not served on the aggrieved named in the original application at least 1 business day before the day of the hearing of the original application.
- (2) The court must adjourn the hearing of the cross application and set a date by which the cross application is to be served on the aggrieved named in the original application, unless that aggrieved 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 named in the original application does not consent as mentioned in subsection (2); and
 - (b) the court is satisfied that the temporary protection order is necessary or desirable to protect the aggrieved, or another person named in the cross application, pending a decision on the cross application.
- (4) This section applies in addition to section 44.

49 Form of temporary protection order [39B]

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

Division 3 Consent orders

50 Court may make domestic violence order by consent [33]

- (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) without being satisfied as to any matter mentioned in—
 - (i) section 37 or 42; or
 - (ii) for a proceeding for a variation of a domestic violence order—section 86; and
 - (b) 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) section 37 or 42; and
 - (b) for a proceeding for a variation of a domestic violence order—section 86.

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- (3) Before making or varying a domestic violence order under subsection (1) or (2), 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.
- (4) The court may refuse to make or vary the domestic violence order if the court believes the making or variation of the order may pose a risk to the safety of an aggrieved, any named person, or any child affected by the order.
- (5) To remove any doubt, it is declared that sections 53 and 138 continue to apply in relation to proceedings under this section.

Division 4 Naming persons in domestic violence orders

51 Naming relative or associate of aggrieved [21]

- (1) The court may name a relative or associate of an aggrieved in a domestic violence order 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 52.

52 Naming child

The court may name a child of the aggrieved, or a child who usually resides with the aggrieved, in a domestic violence order 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.

53 When court must consider naming child

- (1) This section applies—
 - (a) if a court is—
 - (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 41 or 42; 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 resides with the aggrieved.
- (2) The court must consider whether the child should be named 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.

54 Power of court to obtain information about child

- (1) This section applies if—
 - (a) there is an application for a domestic violence 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 domestic violence 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 assist the court in deciding whether to name the child in the order or impose a condition under division 5.

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- (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 the child should be named in the order or a condition imposed under division 5.
- (3) The chief executive (child protection) must comply with the request.
- (4) However, subsection (3) applies only to 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 proceedings, the court must—
 - (a) give each party to the proceedings a copy of the information and an opportunity to make submissions about the information; and
 - (b) give a copy of any domestic violence order made in the proceedings 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 proceedings would place the aggrieved, or a child, at increased risk of domestic violence.
- (7) This section does not limit section 142.

Division 5 Conditions of domestic violence orders

55 Domestic violence order must include standard conditions [22]

- (1) A court making a domestic violence order must impose a condition that the respondent—
 - (a) 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) be of good behaviour towards the named person; and
 - (ii) not commit associated domestic violence against the named person; and
- (c) if the order includes a named person who is a child—
- (i) be of good behaviour towards the child; and
 - (ii) not commit associated domestic violence against the child; and
 - (iii) 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.

56 Court may impose other conditions [25]

- (1) A court making or varying a domestic violence order may also impose any other condition that the court considers—
- (a) necessary in the circumstances; and
 - (b) desirable in the interests of the aggrieved, any named person or the respondent.
- (2) 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.
- (3) Without limiting subsection (1) or (2), the court may impose a condition on the respondent that—
- (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 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
 - (c) prohibits the respondent from contacting, attempting to contact or asking someone else to contact the aggrieved

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- or a named person, including, for example, if the aggrieved or named person has taken shelter at a refuge; or
- (d) 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
 - (e) prohibits stated conduct of the respondent towards a child of the aggrieved, or a child who usually resides with the aggrieved, including prohibiting the respondent's presence at or in a place associated with the child.
- (4) Without limiting subsection (1) or (2), in relation to property of the aggrieved, the court may impose a condition on the respondent that requires the respondent—
- (a) to return the property to the aggrieved; or
 - (b) to allow the aggrieved access to the property; or
 - (c) to allow the aggrieved to recover the property; or
 - (d) to do any act necessary or desirable to facilitate action mentioned in paragraph (a), (b) or (c).

57 Condition does not prohibit contact by particular persons [25(7)]

- (1) A condition mentioned in section 56(3)(c) or (d) 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) A condition mentioned in section 56(3)(c) or (d) 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) the aggrieved or named person consents to being contacted or located by the 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 delivered by an approved provider.
- (3) 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.

58 Condition limiting contact between parent and child

- (1) This section applies if 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.
- (2) The court must consider—
 - (a) the principle that it is generally in a child's best interest to be able to maintain a relationship with, and to have ongoing contact with, the child's parents; and
 - (b) the need to protect the child from associated domestic violence or being exposed to domestic violence.
- (3) If there is conflict between the principle mentioned in subsection (2)(a) and the need mentioned in subsection (2)(b), the court must give greater weight to the need mentioned in subsection (2)(b).
- (4) 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.

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59 Ouster condition [25A]

- (1) Without limiting section 56, 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 Act 2008*, section 245, for an order to be recognised as the tenant instead of the respondent, or under the *Residential Tenancies and Rooming Act 2008*, section 321 for an order terminating the tenancy.
 - See sections 131 (Tenancy application may be made in Magistrates Court) and 132 (Tenancy application may be removed to Magistrates Court).
- (2) 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 resides, works or frequents.
- (3) If the aggrieved, or an applicant on behalf of the aggrieved, has asked the court for an ouster condition to be imposed on the respondent in relation to the aggrieved’s usual place of residence—
- (a) the court must consider the following—
 - (i) 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;

-
- (ii) 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 return to live in the residence;
 - (iii) the importance of the aggrieved and any child living with the aggrieved being able to maintain social connections and support that may be lost if they can not live in the residence;
 - (iv) the need to ensure continuity and stability in the care of any child living with the aggrieved;
 - (v) the need to allow childcare arrangements, education, training and employment of the aggrieved and any child living with the aggrieved to continue without interruption;
 - (vi) the accommodation needs of the aggrieved and any child who may be affected by the ouster condition;
 - (vii) the accommodation needs of the respondent; and
- (b) if the court does not impose the ouster condition, the court must give reasons for not imposing the condition.

60 Return condition [25A]

- (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 property; or
 - (b) if the respondent is at the premises stated in the ouster condition—to remain at the premises to remove stated property.
- (2) If the court imposes a return condition, the court must state in the domestic violence order—

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- (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 this order, return to the premises at noon on the day after the day this 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.

61 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.

62 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
 - (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

63 Definition for div 6

In this section—

approved 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.

64 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*) that requires the respondent to attend either of the following provided by an approved provider—
 - (a) an approved intervention program;

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- (b) approved counselling.
- (2) However, the court may make an intervention order only if the court is satisfied that an approved intervention program or approved counselling is available 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 approved counselling; and
 - (b) if the approved provider gives a report under section 67(3) confirming the respondent's suitability—attend an approved intervention program or approved counselling delivered by an approved provider; and
 - (c) comply with every reasonable direction of the approved provider mentioned in paragraph (a) or (b).

65 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
- (c) that the order may be varied or revoked on application of the respondent or a police officer.

66 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

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- (b) agrees to the order being made or amended; and
 - (c) agrees to comply with the order as made or amended.

67 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 64(3)(a).
- (2) The approved provider must assess the respondent's suitability to participate in an approved intervention program or approved counselling taking into consideration the following—
 - (a) the respondent's character, personal history and language skills;
 - (b) any disabilities, severe psychiatric or psychological conditions, or alcohol or drug problems of the respondent;
 - (c) any other relevant matters.
- (3) If the approved provider considers that the respondent is suitable to participate in an approved intervention program or approved 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 approved counselling, the approved provider must give the court, and the police commissioner, a notice in the approved

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form stating that the respondent is not suitable to participate in a program or counselling.

68 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 7 days after the approved provider becomes aware of the contravention.

69 Notice of completion

- (1) If a respondent completes an approved intervention program or approved counselling, the approved provider must give the respondent, the court that made the intervention order, 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.

70 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 approved counselling.

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- (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) assist participants to change their behaviour; and
 - (iii) increase the safety 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

71 Definition for div 7 [46A]

In this division—

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 recognisance mentioned in the *Family Court Act 1997* (WA), section 176.

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72 Court must consider family law order [46C]

- (1) Before deciding whether to make or vary a domestic violence order, the court must—
 - (a) have regard to any family law order, or pending application for a family law order, of which the court has been informed; and
 - (b) if the proposed domestic violence order or variation is inconsistent with a family law order—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 present submissions about the exercise of the power.
- (4) Failure to comply with subsection (1) does not invalidate or otherwise affect a domestic violence order or a variation of a domestic violence order.

73 Applicant must disclose family law order [46B]

- (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, or a pending application for a family law order.
- (2) The person must inform the court about the family law order or pending application.

- (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.

Division 8 Weapons

Note—

See the following provisions of the Weapons Act—

- section 28A (Revocation or suspension of licence and related matters after protection order is made)
- section 29A (Action by court if respondent has access to weapons through employment)
- section 29B (Arrangements for surrender of suspended or revoked licences and weapons)
- section 34AA (Effect of an appeal against a domestic violence order)

74 Definition for div 8 [5]

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.

75 Court must consider matters relating to weapons [24]

- (1) This section applies only if—
- (a) the respondent is present in court; or

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- (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 (1), 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;
 - (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 78, despite the Weapons Act, section 2.

(4) Subsection (3) does not limit section 79 or 80.

(5) In this section—

employment, of a respondent, includes employment by a partnership in which the respondent is a partner.

76 Condition relating to thing used as a weapon [26]

(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 56 or 59.

77 Domestic violence order must include information about weapons [29]

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

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- (2) In making a domestic violence order, the court must specify 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 76(2).

78 No exemption under Weapons Act [23]

- (1) This section applies to each of the following—
 - (a) a person who is a police officer 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 a training course approved by the police commissioner, 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(8), as mentioned in the Weapons Act, section 2(2).

- (2) If the person is named as the respondent in a domestic violence order, the Weapons Act applies to the person for the duration of the order despite the Weapons Act, section 2.
- (3) However, if the respondent is not present in court when the court makes the domestic violence order, 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 is served on the respondent.

Division 9 Explanation of domestic violence orders

79 Court to ensure respondents and aggrieveds understand domestic violence orders [50]

- (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—
 - (a) the nature, purpose and legal implications of the application; and
 - (b) the legal implications of the court making a domestic violence order because of the application.
- (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

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- 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 78(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) what may follow if the respondent contravenes the proposed order; and
 - (c) that the respondent may apply for a variation of the order.
- (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) what the aggrieved may do, and what may follow, if the respondent contravenes the proposed order; and
 - (c) 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.

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- 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 affect the validity of a domestic violence order.

80 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 79(2).
- (3) The written explanation included in the copy given to the aggrieved must contain the information mentioned in section 79(3).

Division 10 Variation of domestic violence orders

81 Application for variation [51(1), 35(2)]

- (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

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- (c) a named person; or
 - (d) an authorised person for the aggrieved; or
 - (e) a police officer.
- (2) A variation sought by a person mentioned in subsection (1)(a), (b), (d) or (e) may relate to any aspect of the domestic violence order including, for example—
- (a) a condition of the order;
 - (b) the duration of the order;
 - (c) persons named in the order.
- (3) A variation sought by a person mentioned in subsection (1)(c) 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.
- (4) 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.
- (5) The application may be made only while the domestic violence order is still in force.

82 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.

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- (2) If the applicant for the variation of the domestic violence 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) prepare a copy of the application that states 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 police officer in charge of the police division in which the respondent ordinarily resides or was last known to reside.

83 Service of application

- (1) If the applicant for the variation of the domestic violence order is a person mentioned in section 81(a), (c), (d) or (e), a police officer must personally serve the copy of the application prepared under section 82(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 absence of the respondent; 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 person mentioned in section 81(1)(b), a police officer must personally serve the copy of the application prepared under section 82(1) or (2)(a) on—
- (a) the aggrieved; and
 - (b) any named person who is affected by the application for the variation.

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84 Copy of application must be given to aggrieved

- (1) If the applicant for the variation is not 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) A failure to comply with subsection (1) is an irregularity and does not render a proceeding, a document, step taken or order made in a proceeding, a nullity.

85 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 not 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.
- (2) This section applies despite section 83.

86 When court can vary domestic violence order [35]

- (1) A court may vary a domestic violence order—
 - (a) on an application to vary it; or
 - (b) on its own initiative under section 41 or 42.
- (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

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- (b) the findings of the court that made the domestic violence order; and
 - (c) whether an intervention order has previously been made against the respondent and whether the respondent complied with the order.
- (3) 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.
- (4) The copy of the domestic violence order prepared by the court under subsection (3) is called the *varied order*.

87 Considerations of court when variation may reduce protection [36]

- (1) This section applies if the court considers that a variation proposed to be made to a domestic violence order may reduce the protection of the aggrieved or any named person.
- Examples of variations that may reduce the protection 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; and
 - (b) any current contact between the aggrieved and respondent; and
 - (c) whether any pressure has been applied, or threat has been made, to the aggrieved by the respondent or someone else for the respondent; and
 - (d) any expressed wishes of any named person affected by the application for the variation; and

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- (e) whether any pressure has been applied, or threat has been made, to any named person by the respondent or someone else for the respondent; and
 - (f) any other relevant matter.
- (3) The court may only vary the order if the court considers the safety of the aggrieved or any named person would not be compromised by the variation.

88 Hearing of application—appearance of respondent [48]

- (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 part 3, division 2.
- (3) However, if the applicant for the variation is not the respondent, the court may not decide to dismiss the application unless—
 - (a) the applicant has not appeared; and
 - (b) if the applicant is a police officer—no other police officer or prosecuting authority has requested an adjournment; and
 - (c) 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.

89 Hearing of application—non-appearance of respondent [49]

- (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 part 3, division 2; or
 - (c) subject to section 144(1), order the issue of a warrant for the respondent to be taken into custody by a police officer and brought before the court.
- (3) Any justice may issue a warrant for the purposes of subsection (2)(c).

90 Police commissioner to be given copy of application for variation [37]

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.

Division 11 Duration of domestic violence orders

91 Start of domestic violence order [34]

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.

92 End of protection order [34A]

- (1) A protection order continues in force until the earliest of the following—

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- (a) the day stated by the court in the protection order;
 - (b) the day that is 2 years after the day the protection order is made.
- (2) However, if the court is satisfied that there are special reasons for doing so, the court may order that a protection order continues in force for a period of more than 2 years.

93 End of temporary protection order [34B]

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 163;
 - (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.

94 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 163.
- (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

95 Police officer must investigate domestic violence [67]

- (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.
- (2) If, after the investigation, the police officer reasonably believes domestic violence has been committed, the police officer may do any of the following—
 - (a) apply to a court for a protection order under part 3, division 1;

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(b) apply to a court for a variation of a protection order under part 3, division 10;

(c) issue a police protection notice under division 2;

Note—

under section 107, 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 113, 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

(3) 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.

(4) The police commissioner must keep the written record in hard copy or electronic form.

(5) This section does not limit the responsibility of the police officer to—

(a) investigate whether a criminal offence has been committed; or

(b) take any other action that is appropriate in the circumstances.

Division 2 Power to issue police protection notice

96 Police officer may issue police protection notice

A police officer may issue a notice (a *police protection notice*) against a person (the *respondent*) if the police officer—

- (a) is present at the same location as the respondent; and
- (b) reasonably believes the respondent has committed domestic violence; and
- (c) reasonably believes that no domestic violence 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 (b) as the aggrieved; or
 - (ii) names the respondent as an aggrieved and another person involved in the domestic violence mentioned in paragraph (b) as the respondent; and
- (d) reasonably believes that 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; and
- (f) has obtained approval under section 97 to issue the notice.

97 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.
- (2) 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

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- (b) who is not involved in investigating the domestic violence mentioned in section 96.
- (3) The approval of the supervising police officer may be sought and given verbally, including, for example, in person, or by telephone, fax, radio, email or other similar facility.
- (4) 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 name, rank, registered number, if any, and station of the supervising police officer.
- (5) If the supervising police officer decides to refuse the approval, the police officer must not seek approval from another police officer.
- (6) The police commissioner must keep the written record of the supervising police officer’s decision in hard copy or electronic form.

98 Cross-notice not permitted

If a police officer issues a police protection notice that names a person as a respondent (the *first police protection notice*), a police officer can not issue a police protection notice that names the person as an aggrieved while the first police protection notice is still in force.

99 Contact details and address for service

- (1) If a police officer issues a police protection notice, the police officer must ask the respondent to provide—
 - (a) the respondent’s contact details; and
 - (b) an address for service of documents.
- (2) Without limiting subsection (1)(b), the address may be—

-
- (a) the address of accommodation arranged under section 103; or
 - (b) the address of a friend or family member of the respondent.
- (3) If the respondent provides an address under subsection (1)(b) other than the 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.
- (4) The respondent is not obliged to comply with a request under subsection (1).
- (5) This section does not limit the *Police Powers and Responsibilities Act 2000*, section 40.

Editor's note—

Police Powers and Responsibilities Act 2000, section 40 (Person may be required to state name and address)

100 Form of 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 name, contact details, if any, and address for service, if any, of the respondent; and
 - (c) state the name of the aggrieved; and
 - (d) state the grounds on which the police officer reasonably suspects that domestic violence has been committed; and
 - (e) state the standard condition mentioned in section 101; and
 - (f) state any cool-down condition imposed under section 102 including the date and time when the condition ends; and

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- (g) advise the respondent that, under section 107, the notice is taken to be an application for a protection order made by a police officer; and
- (h) state the date and time for the hearing of the application for the protection order at the local Magistrates Court for the respondent; and
- (i) state that the local Magistrates Court for the respondent may—
 - (a) make a domestic violence order against the respondent in the respondent's absence; or
 - (b) adjourn the matter and may, in the meantime, make a temporary protection order under part 3, division 2; or
 - (c) order, subject to section 144(1), the issue of a warrant for the respondent to be taken into custody by a police officer and brought before the court; and
- (j) if the date mentioned in paragraph (h) 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 advise the respondent at the respondent's address for service of the place, date and time of the mention; and
 - (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
- (j) be signed by the police officer.

-
- (2) For subsection (1)(h), the date must be—
- (i) if the local Magistrates Court for the respondent sits at least once a week—within 5 business days after the notice is issued; or
 - (ii) otherwise—the next sitting date of the local Magistrates Court for the respondent.

101 Standard condition

A police protection notice must include a condition that the respondent be of good behaviour towards the aggrieved and not commit domestic violence against the aggrieved.

102 Cool-down condition

- (1) A police protection notice may include a condition (a *cool-down 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;
 - (c) contacting, attempting to contact, or asking someone else to contact, the aggrieved.
- (2) The police officer issuing the protection notice may impose a cool-down condition if the police officer reasonably believes that the condition is necessary or desirable to protect the aggrieved from domestic violence.
- (3) A cool-down condition starts when the police protection notice is served on the respondent and ends on the date and time stated in the notice.
- (4) The date and time stated in the notice must be—
- (a) no more than 24 hours after the notice is issued; and

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- (b) reasonable, having regard to the circumstances of the respondent 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.

- (5) To remove any doubt, it is declared that the stated premises mentioned in subsection (1)(a) may be premises—
- (a) where the respondent and aggrieved live together; or
- (b) where the aggrieved is residing; or
- (c) in which the respondent has a legal or equitable interest.

103 Police officer must consider accommodation needs

- (1) If a police officer serves a police protection notice on a respondent that includes a cool-down condition, 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 inquiries 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
- (2) To remove any doubt, it is declared that the requirement under subsection (1)(b) does not include an obligation for the police officer or the Queensland police service to provide free accommodation for the respondent.

104 Service of police protection notice

- (1) A police officer issuing a police protection notice must—

- (a) personally serve the notice on the respondent; and
 - (b) give a copy of the notice to the aggrieved.
- (2) The notice takes effect from when the notice is served on the respondent.

105 Explanation of police protection notice

- (1) A police officer who serves a police protection notice on a respondent, or gives a police protection notice to an aggrieved, must—
- (a) explain the notice to the respondent or aggrieved; and
 - (b) take reasonable steps to ensure the respondent or aggrieved understands the nature and consequences of the notice.
- (2) Without limiting subsection (1), the police officer must explain—
- (a) the purpose of the notice; and
 - (b) the duration of the notice; and
 - (c) the conditions of the notice; and
 - (d) the consequences of the respondent contravening the notice; and
 - (e) that the aggrieved cannot consent to the respondent contravening the notice; and
 - (f) that the notice is taken to be an application for a protection order made by a police officer; and
 - (g) 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
 - (h) the right of the respondent or aggrieved to obtain legal advice before attending court; and
 - (i) any other matter prescribed under a regulation.
- (3) Failure to comply with this section does not invalidate a police protection notice.

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106 Filing of police protection notice

- (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) If the date stated under section 100(1)(h) in the police protection notice is more than 28 days after the day the notice is issued, the police officer must also file a copy of the notice in another Magistrates Court that will be sitting within 28 days after the notice is issued.
- (3) The clerk of the other Magistrates Court must—
 - (a) list the matter of the application for the protection order to be mentioned at the earliest opportunity; and
 - (b) notify the respondent, and the prosecuting authority responsible for the matter, of the date, time and place of the mention.

107 Police protection notice taken to be application for protection order

A police protection notice is taken to be an application for a protection order made by a police officer.

Note—

See part 3, division 1 (Protection orders)

108 Duration of police protection notice

- (1) A police protection notice continues in force until—
 - (a) if, upon the hearing of the application for the protection order, the court decides to make a domestic violence order—when the domestic violence order is served on the respondent or otherwise becomes enforceable under section 163;
 - (b) if the court adjourns the application for the protection order and does not make a domestic violence order—when the proceeding is adjourned;

- (c) if the court dismisses the application for the protection order—when the application is dismissed.
- (2) If a court makes a temporary protection order in the same terms as a police protection notice, the temporary protection order is taken to have been served on the respondent when the temporary protection order is made.

109 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 the extent that the domestic violence order provides the aggrieved with a greater level of protection than the police protection notice, the domestic violence order prevails.

Division 3 Power to take person into custody

110 Definition for div 3

In this section—

detention period see section 114(3).

111 Police officer may take respondent into custody [69]

A police officer may take a person into custody if the police officer reasonably suspects that—

- (a) the person has committed domestic violence; and
- (b) there is an imminent risk of the person injuring someone else or damaging someone else's property.

[s 112]

112 Respondent must be taken to holding cell or watch-house [70]

A person taken into custody under section 111 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.

113 Police officer must apply for protection order [71, 54(6) and (7)]

- (1) A police officer must, as soon as reasonably practicable after a person is taken into custody under section 111, 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 111; or
 - (b) otherwise—the next sitting date of the local Magistrates Court for the respondent.

Note—

See section 122(2) for when a police officer must apply for a temporary protection order.

114 Detention period limited to four hours [69(2), (4)]

- (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 the releasing police officer is able to comply with section 118(b);
 - (ii) if the court adjourns the application for the protection order and does not make a domestic violence order—when the proceeding is adjourned;
 - (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 the releasing police officer is able to comply with section 118(a);
 - (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 the releasing police officer is able to comply with section 118(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

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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 respondent is incapable of understanding the nature and effect of a document that must be given to the person under section 118—when the police officer reasonably believes the person is capable of understanding the nature and effect of the document;
 - (c) if a police officer reasonably believes the person’s behaviour is so aggressive or threatening that it would present a continuing risk of personal injury or property damage—when the police officer reasonably believes the person’s behaviour no longer presents a continuing risk of personal injury or property damage.
- (3) However, the person must not be held in custody for more than 4 hours (the *detention period*) from when the person is first taken into custody under section 111.

115 Respondent 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.

116 Police officer may apply for extension of detention period

- (1) A police officer may apply for an order extending the detention period for a person held in custody under this division.
- (2) The application must be made—
 - (a) to a magistrate; and

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- (b) before the detention period for the person ends.
- (3) The application must be made in a way that allows the person or the person's lawyer to make submissions about the application.
- Example for subsection (3)—*
- 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 and station;
 - (b) the following information about the person—
 - (i) the person's name, age and address;
 - (ii) whether the person is an Aborigine, a Torres Strait Islander, a child, or a person with impaired capacity;
 - (iii) 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 whether or not the person or the person's lawyer wants to make submissions or say anything to the magistrate.
- (7) The application may be made by phone, fax, radio, email or another similar facility if—

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- (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) The magistrate must make a record in writing of the application.
 - (9) 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.
 - (10) If the application is made before the detention period ends, the detention of the person does not end, unless the magistrate refuses to extend the detention period.
 - (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.

117 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 114(2)(a); or
 - (ii) to allow a police officer to form a reasonable belief under section 114(2)(b) that the person is capable of understanding the nature and effect of a document mentioned in that section; or
 - (iii) to allow a police officer to form a reasonable belief under section 114(2)(c) that the person's behaviour

no longer presents a continuing risk of personal injury or property damage; and

- (c) the person, or the person's lawyer, has been given the opportunity to 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.

118 Release of person from custody

When a person taken into custody under section 111 is released from custody, the releasing police officer must—

- (a) in relation to the application for the protection order prepared under section 113(1)—serve a copy of the application on the person in compliance with section 34; and
- (b) if a domestic 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 169; and
- (c) if a temporary protection order is made by a magistrate under section 124—serve a copy of the order on the person in compliance with section 169; and
- (d) if release conditions are imposed under section 119—give the person a copy of the release conditions.

119 When police officer must release person on conditions [72]

- (1) This section applies if it is not reasonably practicable, as mentioned in section 113(3), to bring a person before the court for the hearing of the application for the protection order.
- (2) The releasing police officer must release the person from custody on the conditions (the *release conditions*) that the releasing police officer considers appropriate.

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- (3) The release conditions must include the following conditions—
 - (a) the person must not possess a weapon;
 - (b) the person must be of good behaviour towards the aggrieved;
 - (c) the person must not commit domestic violence against the aggrieved;
 - (d) if the release conditions name a child of the aggrieved, or a child who usually resides with the aggrieved—
 - (i) the person must be of good behaviour towards the child; and
 - (ii) the person must not commit domestic violence against the child; and
 - (iii) the person must not expose the child to domestic violence;
 - (e) if the release conditions name a relative or associate of the aggrieved—
 - (i) the person must be of good behaviour towards the named relative or associate; and
 - (ii) the person must not commit associated domestic violence against the named relative or associate.
- (4) The release conditions may name any child or relative or associate of the aggrieved who is named in the application for the protection order prepared under section 113(1).
- (5) The release conditions continue in force until—
 - (a) if, upon the hearing of the application for the protection order, the court decides to make a domestic violence order—when the domestic violence order is served on the respondent or otherwise becomes enforceable under section 163; or
 - (b) if the court adjourns the application for the protection order and does not make a domestic violence order—when the proceeding is adjourned; or

- (c) if the court dismisses the application for the protection order—when the application is dismissed.
- (6) If a court makes a temporary protection order in the same terms as the release conditions, the temporary protection order is taken to have been served on the respondent when the temporary protection order is made.

120 Particular safeguards for detention of child

- (1) This section applies if a person taken into custody under section 111 is a child.
- (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 only be held in custody in a facility suitable for children.
- (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 reasonable inquiry;
 - (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, 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.

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

121 When respondent 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 116, to another place at which the respondent may receive treatment necessary for the respondent's welfare.

Examples of another place—

a hospital, a 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 116—
- (a) the police officer must release the person from custody and take the person to a place where the respondent can receive the necessary treatment; and
- (b) sections 113, 118 and 119 do not apply.
- (3) Subsection (2) does not affect the power of a police officer to take any other action under this Act.

Division 4 Power to apply for temporary protection order

122 When police officer may apply for temporary protection order [54, 72]

- (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) Also, a police officer must apply for a temporary protection order against a person if—
- (a) the person has been released on conditions under section 119; and
 - (b) the date for the hearing of the application for the protection order, as stated on the copy of the application prepared under section 113(1), is more than 5 business days after the day the person is released.

123 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 prepared under section 113(1).
- (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) the provisions of this section have been complied with.
- (5) The magistrate must make a record in writing of the application.

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**124 When magistrate can make temporary protection order
[39G, 55]**

- (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 122(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 122(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) complete and sign the order; and
 - (b) record on the order the grounds that caused the magistrate to be satisfied of the matters mentioned in subsection (1); and
 - (c) inform the applicant, by way of telephone, fax, radio, email or other similar facility, of the terms of the order; and
 - (d) as soon as practicable, give the written record of the application and 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.

125 Form of temporary protection order [56, 57]

- (1) A police officer who obtains a temporary protection order under section 124 must prepare a copy of the order in the approved form.
- (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.

126 Service of temporary protection order

- (1) A police officer must—
 - (a) personally serve a copy of a temporary protection order made under section 124 on the respondent, together with the application for the protection order; and
 - (b) give a copy of the order to the aggrieved, together with 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 the application has already been served or given.

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Division 5 Other police powers

127 Power to direct person to remain at place

- (1) This section applies if—
 - (a) a police officer reasonably suspects that 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
 - (b) a police officer intends to serve on a person a police protection notice.
- (2) The police officer may direct the person to remain at a place for the time reasonably necessary to—
 - (a) serve the person with the application or notice; or
 - (b) serve the person with the order and tell the person about the conditions imposed by 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.
- (3) The police officer must warn the person it is an offence not to comply with the direction unless the person has a reasonable excuse.
- (4) The police officer must do a thing mentioned in subsection (2)(a), (b) or (c) without delay.
- (5) Without limiting subsection (2)(c), the police officer may arrange for the person to be told about the existence of the order and the conditions imposed by the order by—
 - (a) arranging for a copy of the order to be sent electronically to the police officer so the police officer can read the conditions of the order to the person; or

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- (b) arranging for another police officer to read the conditions of the order to the person over a radio, telephone or other communication device.
 - (6) A person must not contravene a direction given by a police officer under subsection (2) unless the person has a reasonable excuse.
Maximum penalty—40 penalty units.
 - (7) A person does not commit an offence against subsection (6) if—
 - (a) the person is not proved to be named as a respondent in an application for a domestic violence order, or a domestic violence order, that has not been served on the person; or
 - (b) the warning mentioned in subsection (3) has not been given to the person.

128 Acting in aid of police powers [78]

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

129 Conferral of jurisdiction [38]

A court has jurisdiction—

- (a) to hear and determine any application made to the court under this Act;

[s 130]

- (b) to perform any other function or exercise any other power conferred on the court under this Act.

130 Constitution of Magistrates Court [4]

- (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 proceedings 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(4).

Note—

Under the *Justices of the Peace and Commissioners for Declarations Act 1991*, section 29(4), the exercise of powers of justices of the peace (magistrates court) constituting a court are limited unless expressly provided in the Act conferring powers on the justices.

- (4) Subsection (5) 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.
- (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.

131 Concurrent criminal proceedings [62]

- (1) An application under this Act may be made, and a court may deal with the application, notwithstanding that 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 proceedings 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 proceedings relating to the application.
- (3) Subsection (2) does not limit the *Evidence Act 1977*, section 18.
- (4) 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.
- (5) The person may be punished for the offence mentioned in subsection (4)(a) despite any order made against him or her under this Act.

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132 Tenancy application may be made in Magistrates Court [62A]

- (1) This section applies if a person makes an application for a protection order, or a variation of a protection order, to the 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.

133 Tenancy application may be removed to Magistrates Court [62A]

- (1) This section applies if—
 - (a) an application for a protection order, or a variation of a protection 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.

134 Procedures applicable to tenancy applications before Magistrates Court [62A]

- (1) The Magistrates Court has jurisdiction—
 - (a) to hear and determine an application mentioned in section 131(2) or 132(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*.

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- (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.
 - (4) Subsection (3) 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 the tenancy application or the application mentioned in paragraph (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 for an application for an order under the *Residential Tenancies and Rooming Accommodation Act 2008*, sections 245, 321 or 323.

Division 2 Practice and procedure

135 Application of usual laws where necessary [38]

To remove any doubt, it is declared that—

- (a) for proceedings under this Act before a Magistrates Court or magistrate—the provisions of the *Justices Act*

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1886 apply to the proceedings unless the application of that Act is inconsistent with this Act; and

- (b) for proceedings under this Act in the Childrens Court constituted by a Childrens Court magistrate—
 - (i) the provisions of the *Justices Act 1886* apply to the proceedings 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 proceedings unless the application of that Act is inconsistent with this Act.

136 Evidence [8, 82(3) and (4)]

- (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) If the court is to be satisfied of a matter, the court need only be satisfied of the matter on the balance of probabilities.
- (3) 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.

137 Right of appearance and representation

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

138 Representation of aggrieved [60]

- (1) A police 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, but must not agree to an order under section 50 without the specific approval of the aggrieved.
- (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 assist it, the application is taken to have been made by the aggrieved.

139 Child can not be compelled to give evidence [81A]

- (1) This section applies to a child, other than a child who is an aggrieved or respondent, in proceedings 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 proceedings;
 - (b) ask the child to remain in court during the proceedings;
 - (c) ask the child to swear an affidavit for the proceedings;

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- (d) ask the child to produce a stated document or other thing in the proceedings.
- (6) If the child gives evidence, the child may be cross-examined only with the leave of the court.

140 Child must be allowed to obtain legal representation [12E]

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

141 Special witnesses

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

Editor's note—

Evidence Act 1977, section 21A (Evidence of special witnesses)

Division 3 Other powers of court

142 Court may issue subpoena [39]

- (1) A court hearing an application under this Act may issue a subpoena requiring the attendance of a person before the court.
- (2) The *Uniform Civil Procedure Rules 1999*, other than rules 417, 418 and 420, apply in relation to the subpoena.

Note—

See the *Uniform Civil Procedure Rules 1999*, chapter 11 (Evidence), part 4 (Subpoenas) and rules 417 (Order for cost of complying with subpoena), 418 (Cost of complying with subpoena if not a party) and 420 (Production by non-party).

- (3) The court may require the person either to take an oath or make an affirmation.
- (4) 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.

143 Power of court if failure to cooperate under subpoena

- (1) This section applies if a person subpoenaed under section 142 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.

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144 Provisions concerning warrants [59]

- (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.
- (3) In this section—
court includes a justice.

145 Costs [61]

- (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 the court considers malicious, deliberately false, frivolous or vexatious.
- (3) In this section—
party includes an aggrieved.

Division 4 Confidentiality

146 Courts to be closed [81(1) and (2)]

- (1) A court hearing an application under this Act is not to be open to the public.
- (2) However, the court may open the proceedings or part of the proceedings to the public or specific persons.
- (3) Also, an aggrieved is entitled to have an adult with the aggrieved throughout the proceedings to provide support and other help.

147 Prohibition of publication of certain information for proceedings [82]

- (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
 - (b) for a corporation—1000 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, if the information does not identify, and is not likely to lead to the identification of, a person mentioned in subsection (1)(a); or
 - (e) to the publication of information for genuine research purposes, if the information does not identify, and is not likely to lead to the identification of, a person mentioned in subsection (1)(a); or
 - (f) if the publication is expressly permitted or required under this or another Act.

- (3) In this section—

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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.

148 Notification of police commissioner [52]

- (1) The clerk of the court in which any of the following applications are made, or orders are granted, must give notice of the application or order to the police commissioner—
 - (a) an application for a protection order;
 - (b) an application for a variation of a protection order;
 - (c) an application for—
 - (i) registration of an interstate order; or
 - (ii) variation or cancellation of a registered interstate 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 41;
 - (f) an order made by the Childrens Court under section 42.
- (2) The clerk must give the notice within 1 business day after the day the application is made or order is granted.

149 Notification of adult guardian [31]

- (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 adult guardian should be informed about the violence.
- (2) The court may inform the adult guardian, in writing, about the circumstances involving, or the nature of, the domestic violence or associated domestic violence.

Division 5 Appeals

150 Who may appeal [63]

A person who is aggrieved by a decision or order made by a court in a proceeding under this Act may appeal against an order of the court in the proceeding or a refusal of the court to make an order.

151 How to start appeal [64]

- (1) The appeal is started by filing a notice of appeal with the clerk of the appellate court.
- (2) The appellant must serve a copy of the notice on—
 - (a) the other persons entitled to appeal against the decision; and
 - (b) the police commissioner.
- (3) Despite subsection (2), the clerk of the court may ask the police commissioner to serve a copy of the notice on the persons mentioned in paragraph (a).
- (4) The notice of appeal must be filed within 28 days after—
 - (a) the day on which the order or decision is made; or
 - (b) if the order was made in the absence of the appellant, the earlier of the following—
 - (i) the day on which a copy of the order is served on the appellant;

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(ii) the day on which a police officer tells the appellant about the existence of the order.

- (5) The 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.

152 Effect of appeal on decision [65]

- (1) The start of an appeal against an order of the court does not affect the operation of the order or prevent the taking of action to implement the order.
- (2) However, the court may make an order staying the operation of the order being appealed against until the appeal is finally decided.
- (3) The court may act under subsection (2) on the application of the appellant or on its own initiative.

153 Police commissioner has right of appearance [64A]

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

154 Hearing procedures [65]

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

155 Powers of appellate court [66]

- (1) In deciding an appeal, the appellate court may—
 - (a) confirm the decision or order appealed against; or
 - (b) vary the decision or order appealed against; or

- (c) set aside the decision or order and substitute another decision or order; or
 - (d) set aside the decision or order appealed against and remit the matter to the court that made the decision or order.
- (2) The decision of the appellate court upon an appeal shall be final and conclusive.

Part 6 Registration of interstate orders

156 Application to register interstate order in Queensland [40]

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

157 Clerk of court to obtain copies of order and proof of service [41]

- (1) The clerk of the court must be satisfied that—
 - (a) the interstate order is in force by obtaining a certified copy of it; and
 - (b) the order was served, or was taken to be served, on the person against whom it was made.
- (2) The clerk of the court must try to obtain the copy and proof quickly, for example, by using a fax machine or other means of electronic communication.

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158 Registration of interstate order [42]

- (1) This section applies if the clerk of the court is satisfied about the matters mentioned in section 157(1).
- (2) The clerk of the court must register the interstate order.
- (3) However, the clerk of the court may refer the interstate order to the Magistrates 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.
- (4) The court may vary the interstate order for the purposes of its registration by adapting or modifying it in a way that the court considers necessary or desirable for its effective operation in the State.
- (5) The clerk of the court must register the interstate order as varied.
- (6) A registered interstate order is registered for the period during which the order, as originally made, is in force.
- (7) A regulation may prescribe the way that the clerk of the court is to register an interstate order.

159 Duty of clerk of court after order is registered [43]

- (1) No later than 2 business days after the registration of an interstate order, the clerk of the court must give the applicant and the police commissioner a certificate of the registration with a copy of the registered interstate order attached.
- (2) Notice of the registration of an interstate order is not to be given to the person against whom the order was made unless the aggrieved has consented to the notice.
- (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.

160 Effect of registration of interstate order [44]

A registered interstate order—

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

161 Variation or cancellation of registered interstate order [45]

- (1) An application may be made to a court for—
 - (a) a variation of a registered interstate order as it applies in Queensland; or
 - (b) a variation of the period during which a registered interstate order has effect in its operation in Queensland; or
 - (c) the cancellation of the registration of an interstate order.
- (2) Any of the following persons may apply to a court for an order under subsection (1)—
 - (a) the person who applied for the registration of the interstate order;
 - (b) a person for whose benefit the interstate order has been made;
 - (c) a person against whom the interstate order has been made;
 - (d) an authorised person for an aggrieved;
 - (e) a police officer.
- (3) The court may determine the application—
 - (a) by varying it as it applies in Queensland; or
 - (b) by varying the period during which it has effect in its operation in Queensland; or
 - (c) by cancelling the registration.

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162 Applicant need not notify person against whom interstate order was made [46]

- (1) An applicant under this division need not give notice of an application for registration of an interstate order, or an application for a variation of a registered interstate order, to the person against whom the order was originally made.
- (2) When an application for which notice has not been given comes before a court, the court—
 - (a) may hear and determine the application in the absence of the person against whom the interstate order was originally made; and
 - (b) must not refuse to hear and determine the application merely because the person against whom the interstate order was originally made has not been given notice of the application.
- (3) A registered interstate order that is adapted or modified under section 158(4), or varied under section 161, is enforceable in Queensland without notice of the adaptation, modification or variation being given to the person against whom the interstate order was originally made.
- (4) This section does not prevent an applicant giving notice of the application, or an order made because of the application, to the person against whom the interstate order was originally made.

Part 7 Offences

163 Contravention of domestic violence order [80]

- (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 conviction for an offence under this subsection the respondent has been previously convicted of an offence under this part—120 penalty units or 3 years imprisonment;
 - (b) otherwise—60 penalty units or 2 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 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 an interstate order that a person did not know the interstate order—
 - (a) could be registered or varied in Queensland; or
 - (b) was registered or varied in Queensland.

164 Contravention of police protection notice

- (1) This section applies if a respondent in relation to whom a police protection notice has been issued has been served with a copy of the notice.
- (2) The respondent must not contravene the notice.

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Maximum penalty—60 penalty units or 2 years imprisonment.

- (3) A court hearing proceedings for the prosecution of an offence against subsection (2) must consider whether the police protection notice was properly issued under part 4, division 2.

165 Contravention of release conditions

- (1) This section applies if a respondent is released from custody on release conditions under section 119.
- (2) The respondent must not contravene the release conditions.

Maximum penalty—60 penalty units or 2 years imprisonment.

166 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 or police protection notice does not aid, abet, counsel or procure the commission of an offence against section 163, 164 or 165, 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.

167 Prosecution of offences [83]

- (1) A proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886*.
- (2) A complaint for an offence against this Act must be laid by a police officer.

168 When proceedings for offences may start

A proceeding for an offence against this Act must be started within—

- (a) 1 year after the offence is committed;

- (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.

Part 8 General

Division 1 Service

Note—

- See the Uniform Civil Procedure Rules 1999, chapter 4 (Service)

169 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.

170 Service of orders on respondent [58]

Note—

See also section 80 (Domestic violence order to include written explanation)

- (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 2 copies of the order, or varied order, to the officer in charge of the police division in

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which the respondent was last known to the clerk of the court to ordinarily reside.

- (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 address for service.
- (5) Failure to comply with this section does not invalidate a domestic violence order or an intervention order.
- (6) This section is subject to section 174.
- (7) 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.

171 Court to give domestic violence orders to other persons

- (1) If a court makes a domestic violence order, the clerk of the court must, as soon as reasonably practicable after the order is made, give a copy of the order to—
 - (a) the aggrieved; and
 - (b) an applicant who is not an aggrieved or a police officer; and
 - (c) a person named in the order; and
 - (d) the police commissioner.
- (2) If a court varies a domestic violence order, the clerk of the court must, as soon as reasonably practicable after the order is varied, give a copy of the varied order to—
 - (a) the aggrieved; and

- (b) an applicant who is not an aggrieved or a police officer;
and
 - (c) a person named in the order; and
 - (d) the police commissioner.
- (3) If a person mentioned in subsection (1)(a), (b) or (c) or (2)(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.
- (4) However, the clerk of the court is not required to comply with subsection (2)(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.
- (5) Failure to comply with this section does not invalidate a domestic violence order.
- (6) This section is subject to section 174.

172 Court to give intervention order to aggrieved

- (1) This section applies if a court makes an intervention order.
- (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) However, 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 an intervention domestic violence order.
- (6) This section is subject to section 174.

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173 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) proceedings mentioned in section 41 or 42; and
 - (b) the respondent is not present in court when the adjournment is made.
- (2) If the respondent has been served with 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 for the respondent to be taken into custody by a police officer.
- (3) If the respondent has not been served with 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) prepare another copy of the application that states the date, time and place to which the hearing of the application is adjourned; and
 - (b) give a copy of the application to the officer in charge of the police division in which the respondent was last known to the clerk of the court to ordinarily reside.
- (4) A police officer must personally serve the copy of the application mentioned in subsection (3)(b) on the respondent.

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- (5) However, the clerk of the court is not required to comply with subsection (2)(a) or (b) 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 a domestic violence order.
 - (7) This section is subject to section 174.

174 Giving of documents to children [12D(4) to (7)]

- (1) This section applies if this Act authorises or requires a document to be given to a child.
- (2) If the child is under 16 years, a person responsible for giving the document to 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 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 the child may be reasonably effected.
- (3) However, the court may dispense with the requirement to give a copy of the 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) If the child is at least 16 years, a person responsible for giving a document to the child—

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- (a) must not give a copy of the document to a parent of the child unless the court orders it to be given to the parent; and
 - (b) must give the document to the child as discreetly as practicable.
- (5) For the purpose of subsection (2) and (4), the age of the child is to be ascertained on the day that the document is given to the child.
- (6) Failure to comply with this section does not invalidate a domestic violence order.
- (7) In this section—
give, a document to a child, includes serve a document on a child.

Division 2 Miscellaneous provisions

175 Evidentiary provision [84(1)]

- (1) In any proceeding with the view to giving effect to any provision of this Act a document purporting to be—
- (a) a copy of a protection order or a temporary protection order; or
 - (b) a copy of an order revoking a protection order or a temporary protection order, or varying the prohibitions and restrictions imposed by a protection order or a temporary protection order;
- shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the making of the order and of the matters contained therein.

176 Protection from liability [86]

- (1) A police officer does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

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- (2) If subsection (1) prevents a civil liability attaching to a police officer, the liability attaches instead to the State.

177 Approved forms [87]

The chief executive may approve forms for use under this Act.

178 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 commencement of this section.
- (2) The review must include a review of—
- (a) the main objects of the Act as mentioned in section 3;
 - (b) whether the provisions of the Act are meeting the main objects;
 - (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.

179 Regulation-making power [88]

The Governor in Council may make regulations under this Act.

Part 9 Repeal provision

180 Repeal

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

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Part 10 Amendments

Division 1 Amendment of Police Powers and Responsibilities Act 2000

181 Act amended

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

182 Amendment of sch 6 (Dictionary)

- (1) Schedule 6, definition *domestic violence*, *domestic violence order*—

omit, insert—

'domestic violence see the *Domestic and Family Violence Protection Act 2011*, section 8.

domestic violence order see the meaning of *domestic violence order* under the *Domestic and Family Violence Protection Act 2011*.'

- (2) Schedule 6, definition *enforcement act*—

insert—

'(1a) the detention of a person under the *Domestic and Family Violence Protection Act 2011*, part 4, division 3;'

- (3) Schedule 6, definition *interstate domestic violence order*, '*Domestic and Family Violence Protection Act 1989*'—

omit, insert—

'Domestic and Family Violence Protection Act 2011'.

Division 2 **Amendment of Police Powers and
Responsibilities Regulation 2000**

183 **Regulation amended**

This division amends the *Police Powers and Responsibilities Regulation 2000*.

184 **Amendment of sch 10 (Responsibilities code)**

Schedule 10, part 7—

insert—

‘57A **Detentions under Domestic and Family Violence
Protection Act 2011 [DFVPA 1989, s 70]**

‘The following information about an enforcement act consisting of the detention of a person under the *Domestic and Family Violence Protection Act 2011*, part 4, division 3 must be included in the register of enforcement acts—

- (a) the name and address of the person;
- (b) when the person was detained;
- (c) the name, rank, registered number, if any, and station of the police officer who took the person into custody;
- (d) the grounds the police officer has for suspecting the matters mentioned in the *Domestic and Family Violence Protection Act 2011*, section [69];
- (e) if the *Domestic and Family Violence Protection Act 2011*, section 113(2)(a), (b) or (c) applies—the grounds for the police officer’s reasonable belief as mentioned in that subsection;
- (f) if an application is made under the *Domestic and Family Violence Protection Act 2011*, section 115—the grounds on which the application was made, when the application was made, and the results of the application;
- (g) each place to which the person is taken to or held for the detention, and when;

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- (h) any apparent injury the person received during the detention;
- (i) if the *Domestic and Family Violence Protection Act 2011*, section 113(2)(a) applies—the date and time at which arrangements to safeguard the aggrieved were completed;
- (j) if the *Domestic and Family Violence Protection Act 2011*, section 113(2)(b) or (c) applies—the date and time at which the police officer ceased to hold the reasonable belief mentioned in that subsection;
- (k) when the person was released from custody.’.

Schedule Dictionary

section 5

adult guardian means the adult guardian appointed under the *Guardianship and Administration Act 2000*, section 199.

aggrieved see section 21(1).

appellate court means—

- (a) for a decision made by the Magistrates Court, or 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 Childrens Court constituted by a District Court judge—the Court of Appeal.

approved counselling, for part 3, division 6, see section 63.

approved form means a form approved 178.

approved intervention program means a program approved by the chief executive under section 70(2).

approved provider means a provider approved by the chief executive under section 70(1).

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.

child means an individual under 18 years.

child, of an aggrieved, means a child who is—

- (a) a biological, adopted, step or foster child of the aggrieved; or
- (b) in the care or custody of the aggrieved.

child, of a respondent, means a child who is—

- (a) a biological, adopted, step or foster child of the respondent; or
- (b) in the care or custody of the respondent.

child protection proceedings means proceedings 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 resides with the aggrieved see section 24(2).

clerk, of a court, means—

- (a) if the court is a Magistrates Court—a clerk of the 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 clerk, within the meaning of the *District Court of Queensland Act 1967*, of the court; or
- (d) if the court is the Supreme Court—a clerk of the Supreme Court.

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.

court see section 6.

damage, to property, includes destruction or loss of the property.

detention period see section 114(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 order see section 23(2).

economic abuse see section 12.

emotional or psychological abuse see section 11.

engaged couple relationship see section 17.

exposed, to domestic violence, see section 10.

family law order, for part 3, division 7, see section 71.

GPS means global positioning system.

holding cell means a cell at a police station.

informal care relationship see section 20.

interstate order means an order made by a court of another State, a Territory or New Zealand under a law of the other State, Territory or New Zealand that is prescribed under a regulation.

intervention order see section 64(1).

intimate personal relationship see section 14.

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, for a respondent named in a police protection notice, means a Magistrates Court within the district where the police protection notice was issued against the respondent.

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 see section 24(6).

offence involving domestic violence includes an offence against section 163, 164 and 165.

ouster condition see section 59.

parent, of a child, see section 16.

police commissioner means the commissioner of the Queensland police service.

police establishment means a police establishment under the *Police Service Administration Act 1990*.

police protection notice see section 96.

possess, for part 3, division 8, see section 74.

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.

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 residing.

protection order means an order made under section 37.

registered interstate order means an interstate order that is registered under section 158.

relationship between relatives see section 19(1).

relative, of a person, see section 19(2) to (5).

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.

respondent see section 21(3).

return condition see section 60.

send includes send by post, fax, e-mail or other electronic means.

serious dating relationship see section 18.

SMS message means a text message sent using the mobile phone service known as the short messaging service.

spousal relationship see section 15.

spouse see section 15(2) and (3).

temporary protection order see section 23(3).

United Nations Convention on the Rights of the Child means the United Nations Convention on the Rights of the Child

adopted by the United Nations General Assembly on 20 November 1989 and ratified by Australia on 17 December 1990.

United Nations Declaration on the Elimination of Violence Against Women means the United Nations Declaration on the Elimination of Violence Against Women adopted by the United Nations General Assembly on 20 December 1993.

variation, of a domestic violence order, includes—

- (a) a variation of the period for which the order has effect; and
- (b) a variation of the conditions of the order.

varied order see section 86(4).

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.