

NORTHERN TERRITORY OF AUSTRALIA

DOMESTIC AND FAMILY VIOLENCE ACT 2007

As in force at 1 July 2008

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 July 2008

FAMILY AND DOMESTIC VIOLENCE ACT 2007

An Act to provide for the protection of persons in a domestic relationship against violence, and for related purposes

PREAMBLE:

The Legislative Assembly enacts this Act because it recognises:

- (a) domestic violence is unacceptable behaviour that society does not condone; and
- (b) domestic violence has:
 - (i) negative and long-lasting consequences for victims and others exposed to it; and
 - (ii) negative consequences for the community, the workplace and the economy.

Chapter 1 Introduction

Part 1.1 Preliminary matters

1 Short title

This Act may be cited as the *Domestic and Family Violence Act 2007*.

2 Commencement

This Act commences on the date fixed by the Administrator by *Gazette* notice.

3 Objects of Act and their achievement

- (1) The objects of this Act are:
 - (a) to ensure the safety and protection of all persons, including children, who experience or are exposed to domestic violence; and
 - (b) to ensure people who commit domestic violence accept responsibility for their conduct; and
 - (c) to reduce and prevent domestic violence.
- (2) The objects are to be achieved by providing for the following:
 - (a) the making of domestic violence orders to protect people from domestic violence and to encourage the people committing it to change their behaviour;
 - (b) the registration of orders made in other jurisdictions;
 - (c) the enforcement of those orders.

Part 1.2 Interpretation

Division 1 Defined terms

4 Definitions

In this Act:

approved form means a form approved under section 126.

authorised police officer means:

- (a) a police officer of or above the rank of senior sergeant; or
- (b) the officer in charge for the time being of a police station.

carers relationship, see section 12.

child means an individual who is under 18 years old.

child protection officer means an officer of an Agency who has powers and functions for the protection of children under an Act.

clerk means a clerk of the Court.

Commissioner means the Commissioner of Police.

consent DVO, see section 38(1).

copy, for Chapter 5, see section 118.

corresponding law means a law of a State, another Territory or New Zealand prescribed by regulation.

Court means the Court of Summary Jurisdiction.

court DVO means:

- (a) a CSJ DVO; or
- (b) an interim DVO; or
- (c) a consent DVO; or
- (d) a DVO made by a court under Part 2.7; or
- (e) a DVO confirmed by the Court under Part 2.10.

CSJ DVO, see section 28(1).

defendant, for:

- (a) a DVO – see section 14; or
- (b) an external order – means the person against whom the order is made.

domestic relationship, see section 9.

domestic violence, see section 5.

domestic violence order or **DVO** means a court DVO or police DVO, and includes:

- (a) a DVO as varied under Part 2.7 or 2.8; and
- (b) a police DVO confirmed under Part 2.9.

economic abuse, see section 8.

exposed, for domestic violence, includes:

- (a) to see or hear the violence; and
- (b) to witness harm resulting from the violence.

external order means an order in the nature of a DVO made under a corresponding law.

family law order means an order made under Part VII of the *Family Law Act 1975* (Cth).

family relationship, see section 10(1).

harm, see section 1A of the Criminal Code.

interim DVO, see section 35(1).

intimate personal relationship, see section 11.

intimidation, see section 6.

issuing authority, means:

- (a) for a CSJ DVO:
 - (i) the Court; or
 - (ii) the clerk deciding the application for the DVO; or
- (b) for a police DVO – the authorised police officer considering making the DVO; or
- (c) for a court DVO made under Part 2.7 – the court considering making the DVO.

party, for a DVO, means:

- (a) the protected person or person acting for the protected person; or
- (b) the defendant.

personal details, of a person, includes:

- (a) the person's residential address or intended residential address; and
- (b) information that identifies, or is likely to identify, the person.

police DVO, see section 41(1).

premises access order, see section 22(1).

proceeding means:

- (a) the hearing of an application for:
 - (i) a DVO; or

- (ii) the confirmation, variation or revocation of a DVO; or
- (b) a proceeding for an offence against this Act.

protected person for:

- (a) a DVO – see section 13; or
- (b) an external order – means the person for whose protection the order is made.

publish includes broadcast.

registered, for an external order, means registered under Part 3.2.

rehabilitation program means:

- (a) a perpetrators' program as defined in section 78H(1) of the *Sentencing Act*; or
- (b) another program to facilitate a defendant's rehabilitation.

restrain includes prohibit.

satisfied, in relation to the making, confirmation, variation or revocation of a DVO, means satisfied on the balance of probabilities.

stalking, see section 7.

variation, of a DVO, includes the extension of the period the DVO is in force.

young person means an individual who is between 15 and 18 years old.

Division 2 Important concepts

Subdivision 1 Concepts relating to domestic violence

5 Domestic violence

Domestic violence is any of the following conduct committed by a person against someone with whom the person is in a domestic relationship:

- (a) conduct causing harm;

Example of harm for paragraph (a)

Sexual or other assault.

- (b) damaging property, including the injury or death of an animal;
- (c) intimidation;
- (d) stalking;
- (e) economic abuse;
- (f) attempting or threatening to commit conduct mentioned in paragraphs (a) to (e).

Note

Under Part 2.2, a DVO may be sought, and made, against a person if the person counsels or procures someone to commit the domestic violence, see section 17.

6 Intimidation

- (1) **Intimidation** of a person is:

- (a) harassment of the person; or

Examples of harassment for paragraph (a)

- 1 *Regular and unwanted contacting of the person, including by mail, phone, text messages, fax, the internet or another form of electronic communication.*
- 2 *Giving or sending offensive material to the person.*

- (b) any conduct that causes a reasonable apprehension of:

- (i) violence to the person; or
- (ii) damage to the property of the person, including the injury or death of an animal that is the person's property;
or

Example of conduct for paragraph (b)(i)

Sexually coercive behaviour.

- (c) any conduct that has the effect of unreasonably controlling the person or causes the person mental harm.

- (2) For deciding whether a person's conduct amounts to intimidation, consideration may be given to a pattern of conduct (especially domestic violence) in the person's behaviour.

7 Stalking

Stalking, a person, includes engaging in any of the following conduct on at least 2 separate occasions with the intention of causing harm to the person or causing the person to fear harm to the person:

- (a) intentionally following the person;
- (b) intentionally watching or loitering in the vicinity of, or intentionally approaching, the place where the person lives, works or regularly goes for a social or leisure activity.

8 Economic abuse

Economic abuse, of a person, includes any of the following conduct (or any combination of them):

- (a) coercing the person to relinquish control over assets or income;

Example of coercion for paragraph (a)

Using stand-over tactics to obtain the person's credit card.

- (b) unreasonably disposing of property (whether owned by the person or owned jointly with the person or someone else) without consent;
- (c) unreasonably preventing the person from taking part in decisions over household expenditure or the disposition of joint property;
- (d) withholding money reasonably necessary for the maintenance of the person or a child of the person.

Subdivision 2 Concepts relating to domestic relationships

9 Domestic relationship

A person is in a **domestic relationship** with another person if the person:

- (a) is or has been in a family relationship with the other person; or
- (b) has or had the custody or guardianship of, or right of access to, the other person; or
- (c) is or has been subject to the custody or guardianship of the other person or the other person has or has had a right of access to the person; or

- (d) ordinarily or regularly lives, or has lived, with:
 - (i) the other person; or
 - (ii) someone else who is in a family relationship with the other person; or
- (e) is or has been in a family relationship with a child of the other person; or
- (f) is or has been in an intimate personal relationship with the other person; or
- (g) is or has been in a carers relationship with the other person.

10 Family relationship

- (1) A person is in a **family relationship** with another person if the person:
 - (a) is the spouse or de facto partner of the other person; or
 - (b) is otherwise a relative of the other person.

Examples of relatives for paragraph (b)

Stepchild, parent, step-parent, grandparent, aunt, nephew, cousin, half-brother, mother-in-law or aunt-in-law.

- (2) A relative of a person includes someone who, according to Aboriginal tradition or contemporary social practice, is a relative of the person.

Note

*Section 19A of the Interpretation Act contains definitions of certain domestic relationships, including **spouse**, **de facto partner** and **stepchild**.*

11 Intimate personal relationship

- (1) An **intimate personal relationship** exists between 2 persons if the persons are engaged to be married to each other, including a betrothal under cultural or religious tradition.
- (2) In addition, an **intimate personal relationship** exists between 2 persons, whether or not the relationship involves a sexual relationship, if the persons date each other.
- (3) In deciding whether an intimate personal relationship exists under subsection (2), the following may be taken into account:
 - (a) the circumstances of the relationship, including, for example, the level of trust and commitment;

- (b) the length of time the relationship has existed;
 - (c) the frequency of contact between the persons;
 - (d) the level of intimacy between the persons.
- (4) An intimate personal relationship may exist whether the 2 persons are the same or the opposite sex.

12 Carers relationship

A **carers relationship** exists between 2 persons if 1 of them is dependent on the ongoing paid or unpaid care of the other.

Subdivision 3 Concepts relating to parties to domestic violence

13 Protected person

- (1) A **protected person** is a person for whose protection a DVO:
- (a) is sought; or
 - (b) is in force.
- (2) A protected person must be in a domestic relationship with the defendant.
- (3) More than 1 person may be named as a protected person in:
- (a) an application for a DVO; or
 - (b) a DVO.

Example of protected persons for subsection (3)

The spouse of the defendant and children exposed to the domestic violence committed by the defendant against the spouse.

14 Defendant

- (1) The **defendant** is the person against whom a DVO:
- (a) is sought; or
 - (b) is in force.
- (2) Only 1 person may be named as the defendant in:
- (a) an application for a DVO; or
 - (b) a DVO.

- (3) The defendant must be at least 15 years old.

Division 3 Criminal responsibility

15 Declared offences for Criminal Code

An offence against this Act is an offence to which Part IIAA of the Criminal Code applies.

Note

Part IIAA of the Criminal Code states the general principles of criminal responsibility (including burdens of proof and general defences) and defines terms used for offences.

Chapter 2 Domestic violence orders

Part 2.1 Preliminary matters

16 Objects of Chapter

The object of this Chapter are to provide for:

- (a) the making of domestic violence orders to protect people from domestic violence; and
- (b) the variation and revocation of domestic violence orders.

17 When person taken to have committed domestic violence

A person who counsels or procures someone else to commit conduct that, if committed by the person would be domestic violence, is taken to have also committed the conduct.

Part 2.2 Making of domestic violence orders

18 When DVO may be made

- (1) The issuing authority may make a DVO only if satisfied there are reasonable grounds for the protected person to fear the commission of domestic violence against the person by the defendant.

Note

Because of the objective nature of the test in subsection (1), the issuing authority may be satisfied on the balance of probabilities as to the reasonable grounds even if the protected person denies, or does not give evidence about, fearing the commission of domestic violence.

- (2) In addition, if the protected person is a child, the authority may make a DVO if satisfied there are reasonable grounds to fear the child will be exposed to domestic violence committed by or against a person with whom the child is in a domestic relationship.

19 Matters to be considered in making DVO

- (1) In deciding whether to make a DVO, the issuing authority must consider the safety and protection of the protected person to be of paramount importance.

- (2) In addition, the issuing authority must consider the following:
- (a) any family law orders in force in relation to the defendant, or any pending applications for family law orders in relation to the defendant, of which the issuing authority has been informed;
 - (b) the accommodation needs of the protected person;
 - (c) the defendant's criminal record as defined in the *Criminal Records (Spent Convictions) Act*;
 - (d) the defendant's previous conduct whether in relation to the protected person or someone else;
 - (e) other matters the authority considers relevant.

20 Presumption in favour of protected person with child remaining at home

- (1) This section applies if:
- (a) the defendant and protected person normally live in the same home with a child (whether or not the child is also a protected person); and
 - (b) in deciding the conditions of a DVO, the issuing authority imposes a restraint on the defendant having contact with the protected person or child.
- (2) The issuing authority must presume the protection of the protected person and child are best achieved by them living in the home.
- (3) To avoid doubt, this section does not prevent a DVO including a premises access order.

Example of order for subsection (3)

A premises access order providing for the defendant to visit the child at the home.

Part 2.3 Content of domestic violence orders

21 What DVO may provide

(1) A DVO may provide for any of the following:

- (a) an order imposing the restraints on the defendant stated in the DVO as the issuing authority considers are necessary or desirable to prevent the commission of domestic violence against the protected person;

Examples of DVOs for paragraph (a)

- 1 *An order restraining the defendant from contacting (directly or indirectly) the protected person.*
- 2 *An order restraining the defendant from approaching the protected person or premises stated in the DVO.*
- 3 *An order requiring the defendant to refrain from harassing, threatening, verbally abusing or assaulting the protected person.*

- (b) an order imposing the obligations on the defendant stated in the DVO as the issuing authority considers are necessary or desirable:

- (i) to ensure the defendant accepts responsibility for the violence committed against the protected person; and
- (ii) to encourage the defendant to change his or her behaviour;

- (c) other orders the issuing authority considers are just or desirable to make in the circumstances of the particular case.

Example of other orders for paragraph (c)

An order requiring the return of personal property to the defendant or protected person.

(2) Subsection (1) is not limited by the specific orders provided in this Part.

Note

Under sections 39 and 40 of the Firearms Act, a licence, permit or certificate of registration is automatically suspended or revoked on the making of a DVO.

22 Premises access order

(1) A DVO may include an order (a **premises access order**):

- (a) requiring the defendant to vacate stated premises occupied by a protected person; or

- (b) restraining the defendant from entering stated premises occupied by a protected person except on stated conditions.
- (2) Before making a premises access order, the issuing authority must consider the effect of making the order on the accommodation of the persons affected by it.
- (3) The order applies regardless of whether the defendant has a legal or equitable interest in the premises.

23 Order for replacement tenancy agreement

- (1) This section applies if:
 - (a) a court DVO includes a premises access order; and
 - (b) the defendant is a tenant of the premises occupied by a protected person.
- (2) The court may make the following orders in the DVO:
 - (a) an order terminating the tenancy agreement;
 - (b) an order creating a new tenancy agreement (the **replacement agreement**) for the benefit of the protected person and anyone else who was a party to the terminated agreement other than the defendant.
- (3) The orders may be made only if:
 - (a) the court is satisfied:
 - (i) the domestic relationship between the protected person and defendant has broken down permanently; and
 - (ii) there is no reasonable likelihood of them living in the premises free of domestic violence; and
 - (iii) the protected person will be able to comply with the replacement agreement; and
 - (iv) it is appropriate in the circumstances to make the order; and
 - (c) the landlord consents to the orders or, if the landlord refuses consent, the court is satisfied the refusal is unreasonable; and
 - (d) the protected person consents to the orders.
- (4) The landlord and anyone else having an interest in the premises are entitled to appear and be heard in relation to the matter.

- (5) The replacement agreement must have the same conditions as the terminated agreement other than the names of the tenants.
- (6) If the terminated agreement is for a fixed term, the date of expiry of the replacement agreement must be the same as that of the terminated agreement.
- (7) Part 12 of the *Residential Tenancies Act* applies to the terminated agreement as if the tenants had given up vacant possession of the premises.
- (8) In this section:

premises, see the *Residential Tenancies Act*.

tenancy agreement, see the *Residential Tenancies Act*.

24 Order for rehabilitation program

- (1) A court DVO may include an order requiring the defendant to take part in a rehabilitation program.
- (2) The order may be made only if:
 - (a) the court is satisfied:
 - (i) the defendant is a suitable person to take part in the program; and
 - (ii) there is a place available in the program for the defendant; and
 - (b) the defendant consents to the order.
- (3) The order may be made subject to the conditions the court considers appropriate.

25 Protected person's residential address not to be included in order

A protected person's residential address, or intended residential address, must not be stated in a DVO, unless the issuing authority is satisfied:

- (a) the defendant knows the address; or
- (b) it is necessary to state the address in order to achieve compliance with the DVO and by stating the address:
 - (i) the protected person's personal safety will not be seriously threatened; and

- (ii) damage is not likely to be caused to any of the protected person's property.

26 Prohibition on publication of personal details

A court DVO may include an order prohibiting the publication of personal details of a protected person or witness in a proceeding if satisfied publication would expose the person to the risk of harm.

Note

Under section 124 it is an offence to contravene the order.

27 Duration of DVO

A DVO (other than an interim DVO) is in force for the period stated in it.

Note

For the duration of an interim DVO, see section 35(3).

Part 2.4 Domestic violence orders made by Court of Summary Jurisdiction

Division 1 Application process

28 Who may apply for DVO

- (1) Any of the following persons may apply for a domestic violence order under this Part (a **CSJ DVO**):
 - (a) an adult or young person in a domestic relationship with the defendant;
 - (b) an adult acting for a person (whether an adult or child) in a domestic relationship with the defendant;
 - (c) a police officer.
- (2) An application may be made by, or for, only 1 person even though more than 1 protected person may be named in it.
- (3) A young person may apply for a DVO only with the leave of the Court.

- (4) The Court may grant leave only if satisfied:
- (a) the young person understands:
 - (i) the nature, purpose and legal effect of the application; and
 - (ii) the legal effect of the making of a DVO; and
 - (b) the young person has the capacity to make the application.

29 When application must be made for child

- (1) A police officer or child protection officer must apply for a CSJ DVO for the protection of a child if the officer reasonably believes:
- (a) domestic violence has been committed or is being committed, or is likely to be committed; and
 - (b) the child's wellbeing has or is likely to be adversely affected by the violence.
- (2) However, an application need not be made if the officer reasonably believes:
- (a) a DVO is already in force against the defendant for the child's protection; or
 - (b) a police DVO is to be made against the defendant for the child's protection; or
 - (c) an application for a CSJ DVO is to be made for the child's protection; or
 - (d) a DVO is not necessary for the child's protection because an order is in force for the child's protection under another Act.

30 How application is made

An application for a CSJ DVO must:

- (a) be made in the approved form; and
- (b) be filed in the Court.

31 Notice of hearing of application

As soon as practicable after the application is filed, a clerk must give written notice to the parties to the DVO of the time and place for the hearing of the application.

Division 2 Hearing process

32 Court may decide application in absence of defendant

- (1) The Court may decide an application for a CSJ DVO even if the defendant does not appear at the hearing of the application.
- (2) Subsection (1) applies regardless of whether notice to the defendant to appear at the hearing is given to the defendant before the hearing.

33 When clerk may decide application for order

- (1) A clerk may decide an application for a CSJ DVO only if:
 - (a) notice to the defendant to appear at the hearing of the application is not given to the defendant before the hearing; and
 - (b) the defendant does not appear at the hearing of the application.

Note

Under section 38, the clerk may make a consent DVO if the defendant appears at the hearing and consents to the making of the DVO.

- (2) In addition, the hearing of an application for a CSJ DVO by a clerk is subject to applicable rules and practice directions made by the Chief Magistrate under the *Justices Act*.

34 Referral of application to Court

- (1) This section applies if, on an application for a CSJ DVO:
 - (a) a clerk is not satisfied a DVO should be made against the defendant; or
 - (b) the defendant appears at the hearing of the application and does not consent to a DVO being made.
- (2) The clerk must refer the application to the Court for decision.
- (3) On the referral, the Court may:
 - (a) make the DVO sought; or
 - (b) direct a further affidavit be filed; or
 - (c) give directions about the application.
- (4) On the filing of the further affidavit, the clerk may make a DVO.

35 Interim DVO

- (1) At any time during the proceeding for the hearing of an application for a CSJ DVO, the Court may make a domestic violence order under this section (an ***interim DVO***).

Note

Part 2.2 provides for the matters to be considered in making a DVO and Part 2.3 provides for the content of a DVO.

- (2) The Court may make the interim DVO:
- (a) even if the defendant does not appear at the hearing; or
 - (b) if the defendant appears at the hearing:
 - (i) before hearing the defendant's evidence; or
 - (ii) even if the defendant objects to the order being made.
- (3) The interim DVO is in force until the earlier of the following:
- (a) it is revoked by the Court;
 - (b) if a CSJ DVO is made for the same parties and the defendant is before the Court:
 - (i) on the making of the CSJ DVO; or
 - (ii) on the later date ordered by the Court;
 - (c) if a CSJ DVO is made for the same parties and the defendant is not before the Court:
 - (i) when the CSJ DVO is given to the defendant; or
 - (ii) on the later date ordered by the Court.

Division 3 Miscellaneous matters

36 Notice of DVO

As soon as practicable after a CSJ DVO or interim DVO is made, a clerk must give a copy of it to:

- (a) the parties to the DVO; and
- (b) the Commissioner.

37 DVO taken to be summons to appear before Court

If:

- (a) notice to the defendant to appear at the hearing of the application is not given to the defendant before the hearing; and
- (b) a CSJ DVO is made in the absence of the defendant;

the copy of the DVO given to the defendant is taken to be a summons to the defendant to appear before the Court, at the time and place shown on it for its return, to show cause why the DVO should not be confirmed by the Court.

Note

Part 2.10 deals with the confirmation of DVOs.

Part 2.5 Domestic violence orders made with consent of parties

38 When consent DVO may be made

- (1) On an application made under Part 2.4, Division 1, for a DVO, the Court or a clerk may make a domestic violence order under this Part (a **consent DVO**) if the parties to the DVO consent to it being made.
- (2) The DVO may be made even if the defendant has not admitted or has expressly denied:
 - (a) an allegation made against him or her; or
 - (b) the grounds of the application.

39 When clerk must refer application to Court

- (1) If the clerk is not satisfied a DVO should be made, the clerk must refer the application to the Court for decision.
- (2) On the referral, the Court may:
 - (a) make the DVO sought; or
 - (b) direct a further affidavit be filed; or
 - (c) give directions about the application.

- (3) On the filing of the further affidavit, the clerk may make the DVO sought.

40 Notice of DVO

As soon as practicable after a consent DVO is made, a clerk must give a copy of it to:

- (a) the parties to the DVO; and
- (b) the Commissioner.

Part 2.6 Domestic violence orders made by authorised police officers

41 When authorised police officer may make DVO

- (1) An authorised police officer may make a domestic violence order under this Part (a ***police DVO***) if satisfied:
- (a) because of urgent circumstances, it is not practicable to obtain a CSJ DVO; and
 - (b) it is necessary to ensure a person's safety; and
 - (c) a CSJ DVO might reasonably have been made had it been practicable to apply for one.
- (2) The police DVO may be made even if the defendant has not been given an opportunity to answer any allegation made in relation to the making of the DVO.

Note

For provisions about the content of DVOs, see Part 2.3.

42 Matters to be recorded on DVO

- (1) The authorised police officer must record on the police DVO:
- (a) the reasons for making it; and
 - (b) the time and place for its return.
- (2) The time for the return of the DVO must be as soon as practicable after it is made.

43 What police officer must do after DVO is made

- (1) As soon as practicable after the police DVO is made, a police officer must:
 - (a) give a copy of it to the parties to the DVO; and
 - (b) send the original of it to the Court.
- (2) If giving a copy of the DVO to the defendant personally, the officer must explain to the defendant:
 - (a) the effect of the DVO, including any restrictions and obligations imposed by the DVO; and
 - (b) the consequences that may follow if the defendant contravenes the DVO; and
 - (c) the defendant has a right to apply for a review of the DVO under Part 2.9.
- (3) As far as it is reasonably practicable to do so, the explanation must be given in a language and in terms that are likely to be readily understood by the defendant.
- (4) A failure to comply with this section for a DVO does not affect its validity.

44 DVO taken to be summons to appear before Court

The copy of the police DVO given to the defendant is taken to be a summons to the defendant to appear before the Court, at the time and place shown on it for its return, to show cause why the DVO should not be confirmed by the Court.

Notes

- 1 *Part 2.10 deals with the confirmation of DVOs.*
- 2 *On confirmation of a police DVO, conduct that constitutes a contravention of the DVO may still be an offence even if the Court order made on the hearing is not given to the defendant before the defendant engages in the conduct, see section 120(2).*

Part 2.7 Domestic violence orders made by courts in criminal proceedings

45 Power of court if person guilty of related offence

- (1) A court before which a person pleads guilty to, or is found guilty of, an offence that involves domestic violence may make a domestic violence order under this Part against the person if it is satisfied a CSJ DVO could be made against the person.
- (2) The court may make the order on its own initiative or on application by the prosecutor.
- (3) If a DVO is already in force against the person, the court:
 - (a) must consider the DVO and whether, in the circumstances, the DVO needs to be varied, including, for example, by varying the date the DVO ends; and
 - (b) may vary the DVO if the court considers it needs to be varied.
- (4) This section applies whether or not the court makes another order in relation to the person.

46 Notice of DVO

As soon as practicable after a court DVO is made, the court must give a copy of it to:

- (a) the parties to the DVO; and
- (b) the Commissioner.

Part 2.8 Variation and revocation of domestic violence orders

Division 1 Variation and revocation by Court

Subdivision 1 Application of Division

47 DVOs to which Division applies

This Division applies to a court DVO other than an interim DVO.

Subdivision 2 Application for variation or revocation

48 Who may apply for variation or revocation

- (1) Any of the following persons may apply to the Court for an order varying or revoking a DVO:
 - (a) a protected person if the person is an adult or young person;
 - (b) a police officer or adult acting for a protected person;
 - (c) the defendant;
 - (d) a person granted leave by the Court to make the application.
- (2) An application may be made by, or for, only 1 person even though more than 1 protected person is named in the DVO.
- (3) The defendant may apply for the order only with the leave of the Court.
- (4) The Court may grant leave to the defendant only if satisfied there has been a substantial change in the relevant circumstances since the DVO was made or last varied.
- (5) Without limiting subsection (4), a substantial change in the relevant circumstances may arise if:
 - (a) there has been a change in circumstances relating to affected children including, for example, their care arrangements; or
 - (b) the defendant satisfactorily completes a rehabilitation program.

49 How application is made

The application must:

- (a) be made in the approved form; and
- (b) be filed in the Court.

50 Notice of hearing of application

As soon as practicable after the application is filed, a clerk must give written notice of the time and place for the hearing of the application to:

- (a) the parties to the DVO; and

- (b) for a court DVO that is a police DVO confirmed by the Court under Part 2.10 – the Commissioner.

Subdivision 3 Court hearings for variation and revocation

51 When Court may vary or revoke DVO

The Court may, by order, vary or revoke a DVO:

- (a) on an application made under Subdivision 2; or
- (b) on its own initiative.

52 Right of persons to be heard before decision is made

The Court may vary or revoke the DVO only if the following persons have had an opportunity to be heard on the matter:

- (a) persons who, in its opinion, have a direct interest in the outcome;
- (b) for an application relating to a court DVO that is a police DVO confirmed by the Court under Part 2.10 – the Commissioner.

53 What must be considered before making order

In deciding whether to make an order varying or revoking the DVO, the Court must consider the same matters required to be considered in deciding:

- (a) whether or not to make a DVO; and
- (b) the terms of a DVO.

Note

Part 2.2 provides for the matters to be considered in making a DVO and Part 2.3 provides for the content of a DVO.

54 Notice of order

As soon as practicable after the Court makes an order varying or revoking the DVO, a clerk must give a copy of the DVO as varied or written notice of the revocation to:

- (a) the parties to the DVO; and
- (b) the Commissioner.

Subdivision 4 Special provisions for variation ex parte

55 Application of Subdivision

This Subdivision applies if:

- (a) an application is made under Subdivision 2 for an order to vary a DVO; and
- (b) the Court or a clerk is satisfied it is not practicable to comply with section 52.

56 Deciding application

- (1) In deciding whether to make an order varying a DVO, the Court or clerk must consider the same matters required to be considered in deciding:
 - (a) whether or not to make a DVO; and
 - (b) the terms of a DVO.

Note

Part 2.2 provides for the matters to be considered in making a DVO and Part 2.3 provides for the content of a DVO.

- (2) The Court or clerk may decide the application even if:
 - (a) the defendant has not been given an opportunity to answer any allegation in it; and
 - (b) another person who has a direct interest in the outcome has not had an opportunity to be heard on the matter.

57 Referral of application to Court

- (1) This section applies if:
 - (a) the clerk is not satisfied an order should be made to vary the DVO; or
 - (b) the defendant appears at the hearing of the application and does not consent to an order being made.
- (2) The clerk must refer the application to the Court for decision.
- (3) On the referral, the Court may:
 - (a) make the order sought; or
 - (b) direct a further affidavit be filed; or

(c) give directions about the application.

- (4) On the filing of the further affidavit, the clerk may make an order varying the DVO.

58 Notice of decision

As soon as practicable after a decision is made on the application, a clerk must give a copy of the DVO as varied or, if the application is refused, written notice of the decision and the reasons for it, to:

- (a) the parties to the DVO; and
(b) the Commissioner.

59 Order taken to be summons to appear before Court

The copy of the order given to the defendant is taken to be a summons to the defendant to appear before the Court, at the time and place shown on it for its return, to show cause why the DVO should not be confirmed by the Court.

Note

Part 2.10 deals with the confirmation of DVOs.

Subdivision 5 Variation and revocation with consent of parties

60 Application of Subdivision

This Subdivision applies if:

- (a) an application is made under Subdivision 2 for an order to vary or revoke a DVO; and
(b) the parties to the DVO consent to the making of the order.

61 When order may be made

The Court or a clerk may make the order even if another person who has a direct interest in the outcome has not had an opportunity to be heard on the matter.

62 When clerk must refer application to Court

- (1) If the clerk is not satisfied an order should be made to vary or revoke the DVO, the clerk must refer the application to the Court for decision.

- (2) On the referral, the Court may:
 - (a) make the order sought; or
 - (b) direct a further affidavit be filed; or
 - (c) give directions about the application.
- (3) On the filing of the further affidavit, the clerk may make an order varying or revoking the DVO.

63 Notice of order

As soon as practicable after the Court makes an order varying or revoking the DVO, a clerk must give a copy of the DVO as varied or written notice of the revocation to:

- (a) the parties to the DVO; and
- (b) the Commissioner.

Division 2 Variation of domestic violence orders in urgent circumstances

64 DVOs to which Division applies

This Division applies to a court DVO other than an interim DVO.

65 When application may be made

- (1) If, because of urgent circumstances, it is not practicable to obtain an order varying a DVO under Division 1, a police officer may apply to a magistrate for an order varying the DVO.
- (2) However, the police officer may make the application only if satisfied there has been a substantial change in the relevant circumstances since the DVO was made or last varied.
- (3) Without limiting subsection (2), a substantial change in the relevant circumstances may arise if:
 - (a) there has been a change in circumstances relating to affected children including, for example, their care arrangements; or
 - (b) the defendant satisfactorily completes a rehabilitation program.

66 How application is made

- (1) The application may be made by phone, fax or another form of electronic communication.
- (2) The police officer must:
 - (a) before making the application, complete the approved form by stating the grounds on which the variation of the DVO is sought; and
 - (b) subsequently record on the form any additional information given to the magistrate orally.

67 Deciding application

- (1) In deciding whether to make an order varying or revoking a DVO, the magistrate must consider the same matters required to be considered in deciding:
 - (a) whether or not to make a DVO; and
 - (b) the terms of a DVO.

Note

Part 2.2 provides for the matters to be considered in making a DVO and Part 2.3 provides for the content of a DVO.

- (2) The magistrate may:
 - (a) refuse to make an order varying the DVO; or
 - (b) by order vary the DVO.
- (3) The magistrate may decide the application even if:
 - (a) the defendant has not been given an opportunity to answer any allegation in it; or
 - (b) another person who has a direct interest in the outcome has not had an opportunity to be heard on the matter.

68 What magistrate does if variation order is refused

If the magistrate refuses to make an order varying the DVO, the magistrate must:

- (a) record the reasons for the decision; and
- (b) inform the police officer of the reasons.

69 What magistrate does if variation order is made

- (1) This section applies if the magistrate makes an order varying the DVO.
- (2) The magistrate must record on the order:
 - (a) the reasons for making it; and
 - (b) the time and place for its return.
- (3) The time for the return of the order must be as soon as practicable after it is made.
- (4) The magistrate must inform the police officer of:
 - (a) the terms of the order; and
 - (b) the reasons for making it; and
 - (c) the time and place for its return.

70 What police officer do when variation order is made

- (1) The police officer must:
 - (a) complete a form of order as directed by the magistrate; and
 - (b) write on it:
 - (i) the magistrate's name; and
 - (ii) the date and time it is made.
- (2) As soon as practicable after completion of the form of order, a police officer must:
 - (a) give a copy of it to the parties to the DVO; and
 - (b) send the original of it to the Court.

71 Order taken to be summons to appear before Court

If the magistrate makes an order varying the DVO, the copy of the form of order given to the defendant is taken to be a summons to the defendant to appear before the Court, at the time and place shown on it for its return, to show cause why the DVO should not be confirmed by the Court.

Note

Part 2.10 deals with the confirmation of DVOs.

Part 2.9 Review of police domestic violence orders

72 Application for review

A party to a police DVO may apply to a magistrate for a review of the DVO.

73 How application is made

- (1) The application may be made by phone, fax or another form of electronic communication.
- (2) If a party wants to apply for a review of the DVO:
 - (a) the party must tell a police officer; and
 - (b) the police officer must facilitate the application.
- (3) To facilitate the application, the police officer must:
 - (a) contact a magistrate; and
 - (b) ensure the application complies with applicable rules and practice directions relating to making the application; and
 - (c) ensure the magistrate is given the information required for the application.

74 Deciding application

- (1) In reviewing the DVO, the magistrate must consider the same matters required to be considered in deciding:
 - (a) whether or not to make a DVO; and
 - (b) the terms of a DVO.

Note

Part 2.2 provides for the matters to be considered in making a DVO and Part 2.3 provides for the content of a DVO.

- (2) The magistrate may, by order:
 - (a) confirm the DVO (with or without variations); or
 - (b) revoke the DVO.
- (3) The magistrate must:
 - (a) record the reasons for the decision; and

- (b) inform the police officer of the reasons.

75 What police officer must do if DVO is revoked

If the magistrate makes an order revoking the DVO, a police officer must inform the parties to the DVO of:

- (a) the order; and
- (b) the reasons for it.

76 What police officer must do if DVO is confirmed without variations

If the magistrate makes an order confirming the DVO without variations, the police officer must inform the parties to the DVO of:

- (a) the order; and
- (b) the reasons for it.

77 What magistrate must do if DVO is confirmed with variations

If the magistrate makes an order confirming the DVO with variations, the magistrate must inform the police officer of:

- (a) the terms of the DVO as varied; and
- (b) the time and place for the return of the DVO as varied.

78 What police officers must do if DVO is confirmed with variations

- (1) If the magistrate makes an order confirming the DVO with variations, the police officer must:

- (a) complete a form of order as directed by the magistrate; and
- (b) write on it:
 - (i) the magistrate's name; and
 - (ii) the date and time it is made.

- (2) As soon as practicable after the form of order is completed, a police officer must:

- (a) give a copy of it to the parties to the DVO; and
- (b) send the original of it to the Court.

79 Order taken to be summons to appear before Court

If the magistrate makes an order confirming the DVO (with or without variations), the form of order given to the defendant is taken to be a summons to the defendant to appear before the Court, at the time and place shown on it for its return, to show cause why the DVO as varied should not be confirmed by the Court.

Note

Part 2.10 deals with the confirmation of DVOs.

Part 2.10 Confirmation of domestic violence orders

80 Application of Part

This Part applies if the defendant is summoned to appear before the Court to show cause why a DVO should not be confirmed.

Note

Sections 37, 44, 59, 71 and 79 provide for a summons to the defendant.

81 Appearing at hearing

- (1) Subject to applicable procedural directions, a protected person may appear at the hearing of the proceeding.
- (2) If the defendant has been summoned under section 44 or 71, the Commissioner is a party to the proceeding.

82 Decision at hearing

- (1) At the hearing, the Court may, by order:
 - (a) confirm the DVO (with or without variations); or
 - (b) revoke the DVO.
- (2) The Court must not confirm the DVO unless:
 - (a) it is satisfied the defendant has been given a copy of the DVO; and
 - (b) it has considered any evidence before it and submissions from the parties to the DVO.

83 Notice of order

As soon as practicable after the Court makes its order, a clerk must give to the parties to the DVO and the Commissioner:

- (a) if it confirms the DVO without variations or revokes it – written notice of the order; or
- (b) if it confirms the DVO with variations – a copy of the DVO as varied.

Part 2.11 Special police powers

84 Power to remove and detain

- (1) This section applies if a police officer reasonably believes:
 - (a) grounds exist for making a DVO against a person; and
 - (b) it is necessary to remove the person to prevent an imminent risk of harm to another person or damage to property, including the injury or death of an animal.
- (2) The police officer may do the following:
 - (a) enter premises on or in which the officer reasonably believes the person to be;
 - (b) take the person into custody;
 - (c) remove the person to the nearest police station or other place where the person can be conveniently detained until a DVO is made and given to the defendant.
- (3) However, the person must not be detained for more than 4 hours after being taken into custody.
- (4) When exercising powers under subsection (2), the police officer may use reasonable force or assistance.

85 Retrieval of defendant's personal property

- (1) This section applies if:
 - (a) a DVO includes a premises access order; and
 - (b) personal property of the defendant is located on the premises the subject of the order.

- (2) The defendant may, if accompanied by a police officer:
 - (a) enter the premises at any reasonable time; and
 - (b) retrieve the property.
- (3) The defendant is not in contravention of the DVO merely because of entry of the premises and retrieval of the property under subsection (2).
- (4) The police officer may use reasonable force or assistance for the entry of the premises and retrieval of the property.
- (5) In this section:

personal property includes clothes, tools of trade, personal documents and other items of personal effect.

Part 2.12 Miscellaneous matters

86 DVO may be made regardless of criminal proceeding

A DVO may be made even if a criminal proceeding has been started against the defendant in relation to the domestic violence to which the DVO relates.

87 DVO not to affect other liability

The making of a DVO does not affect the civil or criminal liability of the defendant in relation to the domestic violence to which the DVO relates.

88 Requirement to give documents to protected person

- (1) This section applies if, under this Part, a court, the clerk or a police officer is required to give a document or information to the protected person named in a DVO.
- (2) If there is more than 1 protected person, the document or information must be given to each of them.
- (3) However, the requirement applies only if the protected person is an adult or young person.

Example for section 88

Under section 36, a clerk is required to give a copy of a CSJ DVO to the parties to the DVO. Accordingly, the clerk must give a copy of the DVO to each of the protected persons named in the DVO or the person acting for them if they are adults or young persons.

89 Explanation of court DVO

- (1) This section applies if a protected person who is an adult or young person, or the defendant, is present when a court DVO is made, confirmed or varied.
- (2) The issuing authority must explain to the protected person or defendant:
 - (a) the effect of the DVO, including:
 - (i) any restrictions and obligations imposed by the DVO; and
 - (ii) the DVO may be registered and enforced, without notice to the defendant, in a State, another Territory or New Zealand under a corresponding law; and
 - (b) the consequences that may follow if the defendant contravenes the DVO; and
 - (c) the way the DVO may be varied or revoked.
- (3) As far as it is reasonably practicable to do so, the explanation must be given in a language or in terms that are likely to be readily understood by the person being given the explanation.
- (4) A failure to comply with this section for a DVO does not affect its validity.

90 Family law orders

- (1) The applicant for a DVO must inform the issuing authority of:
 - (a) any family law orders the person knows to be in force in relation to the defendant; and
 - (b) any applications for family law orders in relation to the defendant the person knows are pending.
- (2) If a police officer is considering making a police DVO:
 - (a) the officer must make reasonable inquiries about the existence or otherwise of:
 - (i) any family law orders in force in relation to the defendant; and
 - (ii) any pending applications for family law orders in relation to the defendant; and

- (b) a person must, if asked to do so by the officer, inform the officer of any such family law orders or applications.
- (3) A decision of an issuing authority is not invalid merely because of the failure of a person to give information under subsection (1) or (2)(b).

91 Costs

If the Court refuses an application to make a DVO or an order varying a DVO, it must not award costs against the applicant unless it is satisfied the application for the DVO or variation was unreasonable and in bad faith.

Chapter 3 External orders

Part 3.1 Preliminary matters

92 Objects of Chapter

The objects of this Chapter are to provide for:

- (a) the registration of external orders, and the variation of registered external orders, for their effective operation in the Territory; and
- (b) the revocation of registered external orders; and
- (c) the limited enforcement in the Territory of unregistered external orders.

Part 3.2 Registration of orders

93 Application for registration

- (1) Any of the following persons may apply to the Court for the registration of an external order:
 - (a) the protected person named in the order;
 - (b) a police officer or adult on behalf of the protected person.
- (2) The application must:
 - (a) be made in the approved form; and
 - (b) be accompanied by:
 - (i) a copy of the order; and
 - (ii) evidence the order has been given to the defendant.

94 Registration

- (1) On receipt of the application, a clerk must:
 - (a) register the external order; or
 - (b) refer the order to the Court for modification.

-
- (2) On the referral, the Court may make the modifications to the order the Court considers necessary or desirable for its effective operation in the Territory.
 - (3) The clerk must register the modified external order.

95 Notice of registration

- (1) On registering the order, the clerk must:
 - (a) give notice of registration of the order or modified order to:
 - (i) the protected person; and
 - (ii) the applicant if the application was not made by the protected person or a police officer; and
 - (iii) the registrar of the court that made the order; and
 - (b) give the Commissioner a copy of the registered order.
- (2) The clerk must not give notice of the registration of the order or a copy of the registered order to the defendant without the consent of the applicant.

96 Period of registration

The external order is registered for the period during which it is in force in the jurisdiction in which it was made.

97 Effect of registration

The registered external order is taken to be a court DVO that has been properly given to the defendant on the date it is registered.

Part 3.3 Variation and cancellation of registered external orders

98 Application for variation or cancellation of order

Any of the following persons may apply to the Court for the registration of the variation or cancellation of a registered external order:

- (a) the protected person named in the order;
- (b) a police officer or adult on behalf of the protected person;
- (c) the defendant.

99 How application is dealt with

- (1) Part 3.2 applies (with the necessary changes) in relation to the application as if it were an application under the Part.
- (2) Subsection (1) has effect subject to section 100.

100 Notice of registration

The clerk must give notice of the registration of the order to the defendant if the defendant made the application.

Part 3.4 Unregistered orders

101 Enforcement of unregistered external order

- (1) This Part applies if a police officer reasonably believes a person in the Territory is a defendant named in an unregistered external order in force in the jurisdiction in which it was made.
- (2) The police officer must, as soon as practicable:
 - (a) make a declaration in the approved form stating the belief and the grounds for the belief; and
 - (b) give the declaration to the Commissioner.

102 Duration of declaration

The declaration is in force for not more than 72 hours after it is made.

103 Effect of declaration

While the declaration is in force, the external order is taken to be a court DVO that has been properly given to the defendant on the date it is registered.

Chapter 4 Legal proceedings and evidentiary matters

Part 4.1 Evidence in proceedings for domestic violence orders

Division 1 Preliminary matters

104 Definitions

In this Division:

audiovisual link means a facility (including closed-circuit television) that enables audio and visual communication between persons at different places.

recorded statement means a statement recorded in an audio, visual, audio visual or other electronic format.

vulnerable witness means:

- (a) an adult who is the protected person named in a DVO; or
- (b) an adult witness who suffers from an intellectual disability; or
- (c) an adult witness who, in the Court's opinion, is under a special disability.

105 Application of Part

This Part applies only to a proceeding for the hearing of an application for:

- (a) a DVO; or
- (b) the confirmation, variation or revocation of a DVO.

Division 2 Closure of Court in certain cases

106 When Court to be closed

- (1) The Court must be closed to the public for the proceeding:
 - (a) at all times if the only protected person is a child; or
 - (b) while a vulnerable witness gives evidence.
- (2) However, the Court may order a proceeding, or part of it, be open to the public if it considers it is in the interests of justice to do so.

- (3) Even if the proceeding, or part of it, is open to the public, the Court may order a person (other than a party to the proceeding) to leave the courtroom where the proceeding is being conducted while a witness gives evidence.

Division 3 Evidence of children

107 How evidence of child given

- (1) The evidence of a child must be given by written or recorded statement.
- (2) When making the statement, the child is entitled to be accompanied by 1 of the following persons to provide emotional support:
 - (a) a relative;
 - (b) an adult friend;
 - (c) someone else whom:
 - (i) the child asks to accompany him or her; and
 - (ii) the Court considers is appropriate to provide the support.

108 Admission of child's evidence

- (1) A child's written statement may be admitted in evidence only if:
 - (a) it states the child's age; and
 - (b) it states that, before signing it:
 - (i) the child read it; or
 - (ii) someone else read it to the child and the reason why the child did not read it.
- (2) A child's recorded statement may be admitted in evidence only if a transcript of the statement complying with subsection (3) is produced to the defendant or defendant's lawyer.
- (3) The transcript must:
 - (a) state how, when and by whom the statement was recorded; and
 - (b) be certified as correct by the party seeking to have the statement admitted in evidence.

109 No cross-examination of child

A child who gives evidence by written or recorded statement need not appear at the hearing and cannot be cross-examined in relation to his or her evidence.

Division 4 Evidence of vulnerable witnesses

110 How evidence of vulnerable witness given

- (1) A vulnerable witness is entitled to give evidence at a place outside the courtroom using an audiovisual link.
- (2) If an audiovisual link is not available, or the witness chooses to give evidence in the courtroom, a screen, partition or one-way glass must be placed so that the witness's view of the defendant is obscured but not the view of the witness by the magistrate.

111 Vulnerable witness entitled to support

- (1) When giving evidence, a vulnerable witness is entitled to be accompanied by 1 of the following persons to provide emotional support:
 - (a) a relative;
 - (b) a friend;
 - (c) someone else whom:
 - (i) the witness asks to accompany him or her; and
 - (ii) the Court considers is appropriate to provide support.
- (2) The person must be placed so that the person can be seen by the magistrate.

112 Court's power relating to vulnerable witness giving evidence

- (1) The Court may make an order that the vulnerable witness is not entitled to give evidence in a particular way or be provided with support if satisfied:
 - (a) it is not in the interests of justice; or
 - (b) it is inappropriate because of the urgency of the proceeding.

- (2) In deciding whether or not it is in the interests of justice, the Court must have regard to the following:
 - (a) the need to minimise the harm that may be caused to the witness by giving evidence;
 - (b) whether the witness may be able to give evidence effectively.
- (3) The Court must state its reasons for making the order.
- (4) This section applies despite sections 110 and 111.

113 Evidence given outside courtroom

If evidence of a vulnerable witness is given outside the courtroom using an audiovisual link, the following provisions apply:

- (a) the place where the witness gives the evidence is taken to be in the courtroom;
- (b) the Court must decide who is to be present in the same room as the witness while the evidence is given;
- (c) the Court may give directions:
 - (i) to ensure necessary communication between persons in the courtroom and the witness; and
 - (ii) to ensure images of the defendant are not transmitted to the place where the witness is giving evidence; and
 - (iii) to ensure the witness's evidence can be heard in the courtroom and the magistrate can adequately observe the demeanour of the witness while giving evidence; and
 - (iv) to deal with any incidental matter.

Division 5 General matters

114 Cross-examination by unrepresented defendant

- (1) This section applies if the defendant is not represented by a legal practitioner.
- (2) The Court may make an order that the defendant may only put a question to a person (the **witness**) who is in a domestic relationship with the defendant in the way provided by subsection (3).

- (3) A question is put to the witness as follows:
 - (a) the defendant must state the question to the Court or another person authorised by the Court;
 - (b) the Court or authorised person must repeat the question accurately to the person.
- (4) The Court may make the order on its own initiative or on application by a party to the proceeding.
- (5) This section applies despite another law of the Territory.

Part 4.2 Hearing procedures

115 Procedural directions

- (1) The Court may give the procedural directions it considers necessary to ensure the fair and expeditious hearing of a proceeding for the hearing of an application under this Act.
- (2) Without limiting subsection (1), directions may be given about the right of a party to the proceeding, other than the defendant, to appear at the hearing.

Part 4.3 Other evidentiary matters

116 Hearsay evidence

In making, confirming, varying or revoking a DVO the Court or magistrate may admit and act on hearsay evidence.

117 Evidentiary value of endorsement on court file

- (1) In a legal proceeding, an endorsement on a court file relating to a DVO signed by a clerk stating the following is evidence of the matter stated:
 - (a) the defendant was before the court when the DVO was made;
 - (b) the court explained to the defendant the matters mentioned in section 89(2).
- (2) Subsection (1) does not limit the ways the matter may be proved.

Chapter 5 Enforcement

Part 5.1 Interpretation

118 Definition

In this Chapter:

copy, of a DVO, includes a copy of a form of order completed under Part 2.8, Division 2, or Part 2.9.

119 When DVO is given to defendant

A copy of a DVO is given to the defendant if:

- (a) for a court DVO – the defendant was before the court when it was made; or
- (b) it is served in a way mentioned in section 25 of the *Interpretation Act*; or
- (c) a police officer informs the defendant, orally or in writing, of its making and terms; or
- (d) it is given to the defendant in another way the Court or a magistrate orders.

Part 5.2 Offences

120 Contravention of DVO by defendant

- (1) A person commits an offence if:
 - (a) a DVO is in force against the person; and
 - (b) the person engages in conduct that results in a contravention of the DVO.
- (2) Subsection (1) does not apply unless:
 - (a) the person has been given a copy of the DVO; or
 - (b) for a DVO that has been varied under Part 2.7 or 2.8 or confirmed with variations under Part 2.9 or 2.10:
 - (i) the person has been given a copy of the DVO as varied or confirmed; or

- (ii) the person's conduct also constitutes a contravention of the DVO last given to the person.

- (3) An offence against subsection (1) is an offence of strict liability.

121 Penalty for contravention of DVO – adult

- (1) If an adult is found guilty of an offence against section 120(1), the person is liable to a penalty of 400 penalty units or imprisonment for 2 years.
- (2) The court must record a conviction and sentence the person to imprisonment for at least 7 days if the person has previously been found guilty of such an offence.
- (3) Subsection (2) does not apply if:
 - (a) the offence does not result in harm being caused to a protected person; and
 - (b) the court is satisfied it is not appropriate to record a conviction and sentence the person under the subsection in the particular circumstances of the offence.
- (4) In addition, subsection (2) does not apply to a police DVO that has not been confirmed by the Court under Part 2.10.
- (5) The court must not make an order for a person found guilty of a second or subsequent offence if the order would result in the release of the person from the requirement to actually serve the term of imprisonment imposed.
- (6) If the person is sentenced to serve a term of imprisonment for the offence while already serving another term of imprisonment for another offence, the court must direct the term of imprisonment to start from the end of the other term of imprisonment.
- (7) This section applies despite the *Sentencing Act*.

122 Penalty for contravention of DVO – young person

- (1) If a young person is found guilty of an offence against section 120(1), the person is liable to a penalty of 400 penalty units or detention or imprisonment for 2 years.
- (2) The court must record a conviction and order the person to serve a term of detention or imprisonment for at least 7 days if the person has previously been found guilty of such an offence.

- (3) Subsection (2) does not apply if:
- (a) the offence does not result in harm being caused to a protected person; and
 - (b) the court is satisfied it is not appropriate to record a conviction and sentence the person under the subsection in the particular circumstances of the offence, including, because of the person's age.
- (4) In addition, subsection (2) does not apply to a police DVO that has not been confirmed by the Court under Part 2.10.

123 Publication of names and identifying information about children

- (1) A person commits an offence if the person publishes the name of a child:
- (a) who is a protected person named in a DVO; or
 - (b) who appears, or is reasonably likely to appear, as a witness in a proceeding; or
 - (c) who is, or is reasonably likely to be, mentioned or otherwise involved in a proceeding.

Maximum penalty: 200 penalty units or imprisonment for 1 year.

- (2) Subsection (1) does not apply if:
- (a) the publication is made in an official report of the proceeding; or
 - (b) the Court consents to the publication of the child's name.
- (3) An offence against subsection (1) is an offence of strict liability.
- (4) In this section:

name, of a child, includes any information, picture or other material that:

- (a) identifies the child; or
- (b) is likely to lead to the child's identification.

proceeding means a proceeding for the hearing of an application for:

- (a) a DVO; or
- (b) the confirmation, variation or revocation of a DVO.

124 Publication of personal details

- (1) A person commits an offence if:
 - (a) a court DVO includes an order prohibiting publication of a person's personal details; and
 - (b) the person publishes the details.

Maximum penalty: 200 penalty units or imprisonment for
1 year.

- (2) An offence against subsection (1) is an offence of strict liability.

Chapter 6 Miscellaneous matters

125 Protection of health practitioner reporting domestic violence

- (1) This section applies if a health practitioner:
 - (a) in the course of the practitioner's health care practice, reasonably forms the belief that:
 - (i) domestic violence has been or is being committed; and
 - (ii) the violence has resulted in, or is likely to result in, harm being caused to a person; and
 - (b) reports (orally or in writing) the belief, and any of the following, to a police officer:
 - (i) any knowledge of the practitioner forming the grounds for the belief;
 - (ii) any factual circumstances on which the knowledge is based.
- (2) The practitioner is not civilly or criminally liable, or in breach of any professional code of conduct:
 - (a) for making the report; or
 - (b) for disclosing any information in the report.
- (3) In any legal proceeding, except with the court's leave:
 - (a) the report or evidence of its contents is not admissible; and
 - (b) a person cannot be compelled to give evidence, or to produce a record, about the report or the identity of the practitioner.
- (4) The leave may be granted only if:
 - (a) the report, evidence or record is of critical importance to the proceeding; and
 - (b) failure to grant the leave would prejudice the proper administration of justice.
- (5) In this section:

health practitioner, see the *Health Practitioners Act*.

126 Approved forms

- (1) The Chief Magistrate:
- (a) must approve forms for a provision of this Act if the provision requires a document to be made in the approved form; and
 - (b) may approve forms for another document required for this Act.

Examples of forms for subsection (1)

1 *Application form for a DVO.*

2 *Form for a DVO.*

- (2) If a form is approved for a document under subsection (1)(b), the document must be made in the approved form.
- (3) An approved form for a document must be consistent with any other requirements stated for the document in this Act.

127 Regulations

The Administrator may make regulations under this Act.

Chapter 7 Repeals and transitional matters

Part 7.1 Repeals

128 Acts repealed

The Acts specified in Schedule 1 are repealed.

Part 7.2 Transitional matters

129 Definitions

In this Part:

commencement date means the date on which Part 7.1 commences.

repealed Act means the *Domestic Violence Act* as in force immediately before the commencement date.

130 Restraining orders

- (1) This section applies to each of the following orders:
 - (a) a restraining order in force under the repealed Act immediately before the commencement date;
 - (b) a restraining order made under the repealed Act after the commencement date under section 132 or 134 (including an order varying a restraining order);
 - (c) an order confirming or varying a restraining order under the repealed Act after the commencement date under section 133.
- (2) The order is taken to be a DVO and, for an order mentioned in subsection (1)(a), ends when it would have ended under the repealed Act unless it is earlier revoked:
 - (a) under this Act; or
 - (b) for an order to which section 133 applies – under the repealed Act as applying to it under that section.

131 Registered external restraining orders

- (1) This section applies to each of the following orders:
 - (a) a registered external restraining order in force under the repealed Act immediately before the commencement date;
 - (b) an external restraining order registered under the repealed Act after the commencement date under section 132;
 - (c) an external restraining order registered under the repealed Act after the commencement date under section 134.
- (2) The order is taken to be a registered external order under this Act and, for an order mentioned in subsection (1)(a), is in force for the period it would have been in force under the repealed Act.

132 Pending applications for restraining orders

- (1) This section applies to each of the following applications under the repealed Act that had not been decided immediately before the commencement date:
 - (a) an application for a restraining order;
 - (b) an application for the variation or revocation of a restraining order;
 - (c) an application for the registration of an external restraining order;
 - (d) an application for the variation or revocation of an external restraining order.
- (2) Despite its repeal, the repealed Act applies to the application.

133 Confirmation hearings

- (1) This section applies if:
 - (a) under the repealed Act, a defendant was summoned to appear before the Court to show cause why a restraining order or variation of a restraining order should not be confirmed; and
 - (b) the proceeding had not been finally decided immediately before the commencement date.
- (2) Despite its repeal, the repealed Act applies to the proceeding.

134 Pending referrals to Court

- (1) This section applies if:
 - (a) under the repealed Act, the clerk had:
 - (i) referred an application for a restraining order, or the variation or revocation of a restraining order, to the Court; or
 - (ii) referred an application for the registration of an external restraining order to the Court; and
 - (b) the application had not been finally decided immediately before the commencement date.
- (2) Despite its repeal, the repealed Act applies to the application.

135 *Interpretation Act* not affected

This Part does not limit Part III of the *Interpretation Act*.

136 Transitional regulations

- (1) The regulations may make provision (a ***transitional regulation***) about a matter for which:
 - (a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of the repealed Act to this Act; and
 - (b) this Act does not make provision or sufficient provision.
- (2) A transitional regulation may have retrospective operation to a date not earlier than the date of assent to this Act.
- (3) However, to the extent a transitional regulation has retrospective operation, it does not operate to the disadvantage of a person (other than the Territory or a Territory authority) by decreasing the person's rights or imposing liabilities on the person.
- (4) This section expires 1 year after the commencement date.

Chapter 8 Consequential amendments of laws

Part 8.1 Firearms Act

137 Act amended

This Part amends the *Firearms Act*.

138 Amendment of section 3 (Interpretation)

- (1) Section 3(1), definitions interim restraining order and restraining order

omit

- (2) Section 3(1)

insert (in alphabetical order)

domestic violence order, see the *Domestic and Family Violence Act*.

final domestic violence order means:

- (a) a domestic violence order other than an interim order; or
- (b) a registered external order.

interim domestic violence order means:

- (a) a domestic violence order to which Part 2.10 of the *Domestic and Family Violence Act* applies that has not been confirmed under the Part; or
- (b) an interim order.

interim order, see the *Domestic and Family Violence Act*.

registered external order, see the *Domestic and Family Violence Act*.

139 Amendment of references to restraining order

Sections 10(3)(g), 20(3), definition **prescribed person**, paragraph (e), 33(1)(d), 40(1)(a), 58(5)(ba) and 99(1)(b)(ii)

omit (all references)

restraining order

substitute

final domestic violence order

140 Amendment of references to interim restraining order

Sections 39, heading, 39(1) and 58(5)(b)

omit (all references)

interim restraining order

substitute

interim domestic violence order

Part 8.2 Justices Act

141 Act amended

This Part amends the *Justices Act*.

142 Amendment of section 4 (Interpretation)

(1) Section 4, definition ***Defendant***

omit

(2) Section 4

insert (in alphabetical order)

defendant:

(a) for Part VIA – see section 80; or

(b) otherwise – means a person charged with an offence or
 against whom relief is sought.

personal violence offence, for Part IVA, see section 80.

personal violence restraining order, for Part IVA, see section 82.

protected person, for Part IVA, see section 80.

143 Amendment of section 27 (Service of summonses and notices under this Act)

Section 27

omit

or the *Domestic Violence Act*

144 Amendment of section 58 (Issue of warrant)

Section 58(2)(b)

omit

145 Repeal and substitution of Part IV, Division 7

Part IV, Division 7

repeal, substitute

Part IVA Personal violence restraining orders

Division 1 Preliminary matters

80 Definitions

In this Part:

defendant, for a personal violence restraining order, means the person against whom the order:

- (a) is sought; or
- (b) is in force.

personal violence offence means an offence against any of the following provisions of the Criminal Code:

- (a) Part V, Division 2;
- (b) Part VI, Divisions 3 to 6A;
- (c) section 211 or 212;
- (d) another provision prescribed by regulation.

personal violence restraining order, see section 82.

protected person, for a personal violence restraining order, means the person for whose protection the order:

- (a) is sought; or
- (b) is in force.

81 Object of and achievement of Part

- (1) The object of this Part is to ensure the safety and protection of persons who experience personal violence outside a domestic relationship as defined in the *Domestic and Family Violence Act*.
- (2) The object of this Part is to be achieved by providing for:
 - (a) the making of personal violence restraining orders to protect people from certain violence; and
 - (b) the enforcement of the orders.

Division 2 Applying for and making orders

82 Application for order

Any of the following persons may apply for an order under this Division (a **personal violence restraining order**) for the protection of a person against another person:

- (a) the person whose protection is sought under the order;
- (b) an adult acting for the person whose protection is sought under the order;
- (c) a police officer.

83 Parties to order

- (1) Only 1 person may be named as the protected person or defendant in a personal violence restraining order.
- (2) The defendant named in a personal violence restraining order cannot be a child under 15 years old.

84 How application is made

An application for a personal violence restraining order must:

- (a) be made in the form approved by the Chief Magistrate; and
- (b) be filed in the Court.

85 Notice of hearing of application

As soon as practicable after the application is filed, a clerk must give written notice to the protected person and defendant of the time and place for the hearing of the application.

86 Referral to mediation

- (1) Before hearing an application for a personal violence restraining order, the Court must refer the protected person and defendant for mediation under the *Community Justice Centre Act*.
- (2) However, the Court must not make a referral and must proceed to hear the application if it is satisfied it is in the interests of justice to do so, including, for example, because:
 - (a) there is a history of violence committed against the protected person by the defendant; and
 - (b) there has been a previous attempt at mediation in relation to the same matter and the attempt was not successful.
- (3) A referral stays the proceeding until a report is given to the Court under subsection (6).
- (4) The referral is taken to be an application under section 13 of that Act for the provision of mediation services for a dispute between the protected person and defendant.
- (5) The Director of the Community Justice Centre must accept the application.
- (6) The Director must give the Court a written report on the outcome of the mediation or attempted mediation.
- (7) The Court may refer the matter back to the Director with directions about the application.
- (8) In deciding the application, the Court must take a report of the Director into account.

87 Deciding application

- (1) The Court may make a personal violence restraining order if it is satisfied on the balance of probabilities a personal violence offence has been committed, or is likely to be committed, by the defendant against the protected person.
- (2) Otherwise, the Court must dismiss the application.

-
- (3) The Court may decide the application even if the defendant does not appear at the hearing.

88 Matters to be considered by Court

- (1) In deciding whether to make a personal violence restraining order, the Court must consider the safety and protection of the protected person and any affected child to be of paramount importance.
- (2) In addition, the Court must consider the following:
- (a) the defendant's criminal record as defined in the *Criminal Records (Spent Convictions) Act*;
 - (b) the defendant's previous conduct whether in relation to the protected person, affected child or someone else;
 - (c) other matters the Court considers relevant.
- (3) In this section:

affected child means a child whose wellbeing is affected or likely to be affected by a personal violence offence.

89 Content of orders

- (1) A personal violence restraining order may provide for any of the following:
- (a) an order imposing the restraints on the defendant stated in the order as the Court considers are necessary or desirable to prevent the commission of a personal violence offence against the protected person;
 - (b) the other orders the Court considers are just or desirable to make in the circumstances of the particular case.
- (2) In this section:

restraint includes prohibition.

90 Notice of order

As soon as practicable after a personal violence restraining order is made, the Court must give a copy of it to:

- (a) the protected person and defendant; and
- (b) the Commissioner of Police.

Division 3 Miscellaneous matters

91 Variation or revocation of order

- (1) Any of the following persons may apply to the Court for an order varying (including extending the period the order is in force) or revoking a personal violence restraining order.
 - (a) the protected person;
 - (b) a police officer or adult acting for the protected person;
 - (c) the defendant;
 - (d) a person granted leave by the Court to make the application.
- (2) The defendant may apply for the order only with the leave of the Court.
- (3) The Court may grant leave to the defendant only if satisfied there has been a substantial change in the relevant circumstances since the order was made or last varied.
- (4) Division 2 applies (with the necessary changes) to the application as if it were an application under that Division.

92 Contravention of order

- (1) A person commits an offence if:
 - (a) a personal violence restraining order is in force against the person; and
 - (b) the person engages in conduct that results in a contravention of the order.

Maximum penalty: 400 penalty units or imprisonment for
 2 years.

- (2) Subsection (1) does not apply unless:
 - (a) the person has been given a copy of the order; or
 - (b) for an order that has been varied:
 - (i) the person has been given a copy of the order as varied;
or
 - (ii) the person's conduct also constitutes a contravention of the order last given to the person.

- (3) An offence against subsection (1) is:
- (a) an offence of strict liability; and
 - (b) an offence to which Part IIAA of the Criminal Code applies.

Note for subsection (3)

Part IIAA of the Criminal Code states the general principles of criminal responsibility (including burdens of proof and general defences) and defines terms used for offences.

93 Transitional matter for sureties to keep peace

- (1) An order in force immediately before the commencement date continues in force until the earlier of the following:
 - (a) it is revoked;
 - (b) it would have ended had the repealed provisions not been repealed.
- (2) A complaint made for an order that had not been finally decided before the commencement date may be decided after the commencement date.
- (3) A summons, warrant or other document issued in relation to an order before the commencement date continues in force after the commencement date.
- (4) This section applies despite the repeal of the repealed provisions.
- (5) In this section:

commencement date means the date on which this Part commences.

order means an order under the repealed provisions.

repealed provisions means Part IV, Division 7, as in force immediately before the commencement date.

Part 8.3 Amendment of other laws

146 Laws amended

Schedule 2 amends the laws mentioned in it.

Part 8.4 Expiry of Chapter

147 Expiry

This Chapter expires on:

- (a) the day after the day on which Chapter 7 commences; or
- (b) if Part 8.2 commences after Chapter 7 commences – the day after the day on which that Part commences.

Schedule 1 Repealed Acts

section 128

<i>Domestic Violence Act 1992</i>	Act No. 67 of 1992
<i>Domestic Violence Amendment Act 1993</i>	Act No. 36 of 1993
<i>Domestic Violence Amendment Act 1994</i>	Act No. 60 of 1994
<i>Domestic Violence Amendment Act 1996</i>	Act No. 57 of 1996
<i>Domestic Violence Amendment Act 1998</i>	Act No. 90 of 1998
<i>Domestic Violence Amendment Act 1999</i>	Act No. 40 of 1999
<i>Domestic Violence Amendment (Police Orders) Act 2005</i>	Act No. 38 of 2005

Schedule 2 Consequential amendment of other laws

section 146

Provision	Amendment	
	omit	substitute
<i>Bail Act</i>		
section 8(1)(aa)	section 10 of the <i>Domestic Violence Act</i>	section 120 of the <i>Domestic and Family Violence Act</i>
<i>Child Protection (Offender Reporting and Registration) Act</i>		
section 89(1)	restraining order under the <i>Domestic Violence Act</i>	domestic violence order under the <i>Domestic and Family Violence Act</i>
	or restraining order (all references)	or domestic violence order
<i>Justices Regulations</i>		
regulation 6(3)	<i>Domestic Violence Act</i>	<i>Domestic and Family Violence Act</i>
<i>Police Administration Act</i>		
section 126(2A)(b)	<i>Domestic Violence Act</i>	<i>Domestic and Family Violence Act</i>
<i>Residential Tenancies Act</i>		
section 12(3)(a)	<i>Domestic Violence Act</i> with the tenant;	<i>Domestic and Family Violence Act</i> with the tenant; and

section 12(3)(b) and (c)	referred to in section 4 of the <i>Domestic Violence Act</i>	of domestic violence under that Act
<i>Sentencing Act</i>		
section 78H(1), definition <i>domestic relationship</i>	whole definition	<i>domestic relationship</i> , see the <i>Domestic and Family Violence Act</i> . <i>domestic violence order</i> , see the <i>Domestic and Family Violence Act</i> .
section 78H(1), definition <i>restraining order</i>	whole definition	
section 78K(1)(b)	whole paragraph	(b) an offence under section 120 of the <i>Domestic and Family Violence Act</i> ;
section 78N(1)(c)	restraining order	domestic violence order
<i>Victims of Crime Assistance Regulations</i>		
regulation 5(1)(a)(ii)	restraining order	domestic violence order
regulation 5(2), definitions <i>domestic relationship</i> and <i>restraining order</i>	whole definition	<i>domestic relationship</i> , see the <i>Domestic and Family Violence Act</i> . <i>domestic violence order</i> , see the <i>Domestic and Family Violence Act</i> .

***Victims of Crime
Rights and Services
Act***

section 19(2)(e)	restraining order is in force under the <i>Domestic Violence Act</i>	domestic violence order is in force under the <i>Domestic and Family Violence Act</i>
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ENDNOTES

1

KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = *Gazette*
hdg = heading
ins = inserted
lt = long title
nc = not commenced

od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2

LIST OF LEGISLATION

Domestic and Family Violence Act 2007 (Act No. 34, 2007)

Assent date	12 December 2007
Commenced	1 July 2008 (<i>Gaz</i> G25, 25 June 2008, p 4)