

2016

LEGISLATIVE ASSEMBLY OF THE  
NORTHERN TERRITORY

ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

**DOMESTIC AND FAMILY VIOLENCE (RECOGNITION OF DOMESTIC VIOLENCE  
ORDERS) (NATIONAL UNIFORM LAW) AMENDMENT BILL 2016**

**SERIAL NO. 3**

**EXPLANATORY STATEMENT**

**GENERAL OUTLINE**

The Domestic and Family Violence (Recognition of Domestic Violence Orders) (National Uniform Law) Amendment) Bill 2016 (the Bill) provides for the Northern Territory to participate in a national scheme under which domestic violence orders made in a participating Australian state or territory will be automatically recognised and enforceable in the Northern Territory without having to be registered in the Northern Territory.

To date, legislation under this scheme has been introduced and/or enacted in New South Wales (*Crimes (Domestic and Personal Violence) Amendment (National Domestic Violence Orders) Act 2016*), Victoria (*National Domestic Violence Order Scheme Act 2016*), Australian Capital Territory (*Family Violence Act 2016*), South Australia (*Intervention Orders (Prevention of Abuse) (Recognition of National Domestic Violence Orders) Amendment Bill 2016*), Tasmania (*Domestic Violence Orders) National Recognition) Act 2016*) and Queensland (*Domestic and Family Violence Protection and Other Legislation Amendment Bill 2016*).

The Bill is based on a model law developed under the auspices of the Law, Crime and Community Safety Council and approved in December 2015 by the Council of Australian Governments.

The Bill provides for the amendment of the *Domestic and Family Violence Act* and the inclusion of a new Chapter 3A.

Chapter 3A provides for:

- the automatic recognition in the Northern Territory of domestic violence orders made in

participating states and territories;

- the automatic recognition in the Territory of foreign domestic violence orders that have been registered in a participating jurisdiction;
- variations and revocations in the Northern Territory and in other participating jurisdictions of recognised domestic violence orders (whether made in the Northern Territory or elsewhere);
- as a general rule, the most recent domestic violence order to prevail over earlier comparable domestic violence orders;
- limitations on the extent to which a police domestic violence order can exist at the same time as a court domestic violence order;
- the enforcement in the Northern Territory of recognised domestic violence orders made in participating states and territories;
- limitations in the *Firearms Act* and *Weapons Act* regarding persons against whom domestic violence orders have been made to also apply to persons against whom recognised interstate domestic violence orders have been made;
- the exchange of information between law enforcement agencies and courts regarding domestic violence events;
- protection against liability of police and courts officers acting in good faith if enforcement action is taken without obtaining current information about a domestic violence order;
- transitional provisions concerning the extent to which domestic violence orders made in the Northern Territory or elsewhere prior to the commencement of the legislation are automatically recognised; and
- a registrar of the Local Court to have the power to declare a domestic violence order made in a non-participating jurisdiction to be recognised.

The Bill also provides for:

- the replacement of the words “interim order” with “interim court order”;
- the repeal of Part 3.4 (which deals with unregistered non-local domestic violence orders);
- the making of regulations that can provide for the automatic recognition of other domestic violence orders;
- the making of regulations that provide for the enforcement in the Northern Territory of domestic violence orders that are not recognised domestic violence orders;
- the repeal of regulation 3 of the Domestic and Family Violence Regulations, which concerns

the corresponding laws in the states and territories conferring the power to make domestic violence orders; and

- the amendment of the *Firearms Act* so that terminology is consistent with terminology relating to domestic violence orders in the *Domestic and Family Violence Act*, following the enactment of this Bill and its commencement.

## **NOTES ON CLAUSES**

### **Part 1 Preliminary Matters**

#### **1. Short title**

This is the formal clause, which provides for the citation of the Bill.

The Bill when passed may be cited as the *Domestic and Family Violence (Recognition of Domestic Violence Orders) (National Uniform Law) Amendment Act 2016*.

#### **2. Commencement**

Clause 2 provides for the commencement of the Act to be by notice published in the Gazette by the Administrator.

### **Part 2 Amendment of Domestic and Family Violence Act**

#### **3. Act amended**

This clause provides for this Part to make amendments to the *Domestic and Family Violence Act*.

#### **4. Section 4 amended**

Clause 4(1) omits the definitions of “*corresponding law*”, “*domestic violence order*”, “*external order*”, “*interim DVO*”, “*interim variation order*” and “*variation*”.

Clause 4(2) inserts the following new definitions:

“**Corresponding law**” – defined in section 102 for the purposes of Chapter 3A. It determines which jurisdictions are part of the national scheme.

“**Domestic violence concern**” – defined in section 103C. It is relevant in the determination of which South Australian and Western Australia violence orders are recognised.

“**Domestic violence order**” – a definition for, respectively, local orders and for Chapter 3A (recognised orders).

“**External order**” – identifies NZ orders and orders of non-participating Australian jurisdictions.

“**Final DVO**” – defined for the purposes of Chapter 3A.

“**Foreign order**” – means a NZ order.

**“General violence order”** – defined in section 102. It is relevant in the determination of which South Australian and Western Australia violence orders are recognised.

**“Interim court DVO”** – defined in section 35(1) and replaces the current definition of “interim order”.

**“Interim court variation order”** – defined in section 52A and replaces the current definition of “interim variation order”.

**“Interim DVO”** – defined for the purposes of Chapter 3A.

**“Interstate DVO”** – defined in section 103A for the purpose of Chapter 3A.

**“Interstate law enforcement agency”** – defined in section 102 for the purpose of Chapter 3A.

**“Issuing jurisdiction”** – defined in section 102 for the purpose of Chapter 3A.

**“Jurisdiction”** – defined in section 102 for the purpose of Chapter 3A.

**“Local DVO”** – defined in section 103 for the purpose of Chapter 3A.

**“Local law enforcement agency”** – defined in section 102 for the purpose of Chapter 3A.

**“Make”** – defined so as to also include the issuing and confirming of orders.

**“New Zealand DVO”** – defined in section 102 for the purposes of Chapter 3.

**“Non-local DVO”** – defined in section 102 for the purpose of Chapter 3A.

**“Participating jurisdiction”** – defined in section 102 for the purpose of Chapter 3A.

**“Properly notified”** – defined in section 103L for the purpose of Chapter 3A.

**“Recognised DVO”** – explained in sections 103E and 103ZH for the purpose of Chapter 3A.

**“Recognised variation”** – explained in section 103F for the purpose of Chapter 3A.

**“Registered foreign order”** – defined in section 103B for the purpose of Chapter 3A.

**“Revoke”** – defined to include the cancelling of orders.

**“Vary”** – defined so as to include amending or modifying a DVO (including by adding, varying or deleting conditions or by extending or reducing the period of operation of the DVO).

Clause 4(3) amends the definition of “court DVO” so that the reference to “interim DVO” reads “interim court order”. This is consequential to the repeal of the definition of “court order” and its replacement with “interim court order”.

Clause 4(4) amends the definition of “defendant” by including a reference to “interstate DVO”.

Clauses 4(5) and 4(6) amend the definition of “issuing authority” by adding “or” at the end and inserting a new paragraph (d) which provides a definition of “issuing authority” for the purposes of Chapter 3A.

Clause 4(7) amends the definition of “protected person” by including a reference to an interstate “DVO.”

## **5. Section 13 amended**

This clause amends section 13 (“protected person definition”) by adding a note about the operation of new section 102 which provides a definition of “protected person” for the purposes of Chapter 3A.

**6. Section 27 amended**

This clause amends section 27 so the references to “interim DVO” are changed so as to read as references to “interim court orders”. This is consequential to the repeal of the definition of “court order” and its replacement with “interim court order”.

**7. Section 35 amended**

This clause amends section 35 so the references to “interim DVO” are changed so as to read as references to “interim court orders”. This is consequential to the repeal of the definition of “court order” and its replacement with “interim court order”.

This clause also provides a note for section 35(3). This sets out that a Local Court DVO can be superseded by an interstate DVO in accordance with new section 103H.

**8. Section 36 amended**

This clause amends section 36 so the reference to “interim DVO” is changed so as to read as a reference to “interim court order”. This is consequential to the repeal of the definition of “court order” and its replacement with “interim court order”.

**9. Section 47 amended**

This clause amends section 47 so the reference to “interim DVO” is changed so as to read as a reference to “interim court order”. This is consequential to the repeal of the definition of “court order” and its replacement with “interim court order”.

**10. Section 52A amended**

This clause amends section 52A so the reference to “interim DVO” is changed so as to read as a reference to “interim court order”. This is consequential to the repeal of the definition of “court order” and its replacement with “interim court order”.

**11. Section 53 amended**

This clause amends section 53 so the reference to “interim DVO” is changed so as to read as a reference to “interim court order”. This is consequential to the repeal of the definition of “court order” and its replacement with “interim court order”.

**12. Section 54 amended**

This clause amends section 54 so the reference to “interim DVO” is changed so as to read as a reference to “interim court order”. This is consequential to the repeal of the definition of “court order” and its replacement with “interim court order”.

**13. Section 64 amended**

This clause amends section 64 so the reference to “interim DVO” is changed so as to read as a reference to “interim court order”. This is consequential to the repeal of the definition of “court order” and its replacement with “interim court order”.

**14. Section 89 amended**

This clause sets out that an issuing authority making a court DVO must explain to the protected person or defendant, if they are present in court when the order is made, that the DVO can be enforced without further notice in any state or territory that is a participating jurisdiction.

**15. Section 92 amended**

This clause provides for the repeal of section 92(c). This deals with the enforcement in the NT of “unregistered orders”. The provisions relevant to the operation of this provision are being repealed.

**16. Section 97 amended**

This clause provides for a new section 97(2). Currently, section 97 provides that registered external orders (i.e. from New Zealand) are deemed to have the same status as a court DVO. The new section 97(2) provides that this principle does not apply to a variation or revocation if the external order is recognised under Chapter 3A. That is, it has already been registered in one of the other participating jurisdictions.

**17. Part 3.4 replaced**

This clause repeals Part 3.4 (“Unregistered orders”) and replaces it with new Chapter 3A (“National Recognition of Domestic Violence Orders”).

## **Chapter 3A National Recognition of Domestic Violence Orders**

### **Part 3A.1 Preliminary matters**

#### **101 Objects of Chapter (Model clause 2) (NSW s.98R).**

This new section sets out that the object of Chapter 3A is to establish a national scheme for the recognition of domestic violence orders, in conjunction with the laws of the Australian states and the Australian Capital Territory.

#### **102 Definitions (Model clause 3) (NSW s.98S).**

This section sets out the definitions necessary for the operation of Chapter 3A. It provides for the following definitions:

**“Corresponding law”** – means an interstate law that substantially corresponds with the provisions of this Bill.

**“Domestic violence concern”** – the meaning of this term is explained in the summary of section 103C.

**“Domestic violence order”** – means a local DVO, an interstate DVO or a foreign order.

**“Final DVO”** – means a DVO that is not an interim order (relevant only to section 103P (which deals with firearms licences)).

**“Foreign order”** – currently to be limited to New Zealand DVOs, which are the only foreign DVOs covered by Northern Territory legislation.

**“General violence order”** – explained in the summary of section 103C.

**“Interim DVO”** – in the Northern Territory context means a police DVO.

**“Interstate DVO”** – explained in the summary of section 103A.

**“Interstate law enforcement agency”** is defined so as include the police force of other jurisdictions, other agencies responsible for enforcement of domestic violence orders and any other agency approved by the Minister with responsibility for managing information for law enforcement (for example, the Australian Criminal Intelligence Commission).

**“Issuing authority”** – means a court or person with the power to make, vary or revoke a DVO under the law of a participating jurisdiction. In the Northern Territory context this includes courts, registrars and police.

**“Issuing jurisdiction”** – means the state or territory in which a DVO is made.

**“Jurisdiction”** – is defined so as to mean a State or Territory.



**“Local DVO”** – the meaning of this term is explained in the summary of section 103.

**“Local law enforcement agency”** – is defined to mean the Northern Territory Police or any other agency in the Northern Territory responsible for the enforcement of domestic violence orders in the Northern Territory.

**“New Zealand DVO”** – is defined to include orders made under the *Domestic Violence Act 1995* (NZ) or under any replacement of that Act.

**“Non-local DVO”** – means an interstate DVO or a foreign DVO.

**“Participating jurisdiction”** – is defined to include the Northern Territory and any jurisdiction in which a corresponding law has been enacted.

**“Properly notified”** – refers to the concept of “service” and is explained in the summary for section 103L. The Northern Territory definition differs from some of the other jurisdictions in so far as properly notified includes being present in a court when an order is made.

**“Protected person”** – this is the person who has the benefit of a DVO.

**“Recognised DVO”** – the meaning of this term is explained in the summary of section 103E and 103ZH.

**“Recognised variation”** – the meaning of this term is explained in the summary of section 103F.

**“Registered foreign order”** - the meaning of this term is explained in the summary of section 103B.

### **103 Local DVO (Model clause 4) (NSW s.98T).**

This section provides that a local DVO is a court DVO or a police DVO made under the *Domestic and Family Violence Act*.

### **103A Interstate DVO (Model clause 5) (NSW s.98U).**

This section lists the state and territory Acts whose orders are proposed to be recognised under the recognition legislation. Other Acts are able to be prescribed in regulations to ensure flexibility.

South Australian and Western Australian legislation does not differentiate between domestic violence and personal violence orders. In those jurisdictions, orders can be made for a wider range of matters than that covered by the domestic violence legislation of the other states and territories. In the Northern Territory, the *Personal Violence Restraining Orders Act 2016* regulates orders relating to personal violence, as distinct from domestic violence.

The intention of this legislation is that it only applies to domestic violence orders. In the case of South Australia and Western Australian, this means an order that addresses a “*domestic violence concern*”. It is understood that Western Australia and South Australia will amend their Acts so that they impose obligations on South Australian and Western Australian courts to indicate whether a violence order addresses a “*domestic violence concern*”. Section 103C(4) provides that regulations can be made that deal with the other circumstances in which a South Australian or Western Australian order is recognised. Section 103ZK (which gives court registrars the power to make declarations regarding interstate DVOs) does not apply to South Australian and Western Australian orders.

The term “domestic violence concern” is defined in section 103C.

### **103B Registered foreign order (Model clause 6) (NSW s.98V).**

This section defines what is a “registered foreign order”. It does this by reference to those provisions of state and territory Acts that provide for the registration of domestic violence orders made outside of Australia. Currently the only registered foreign orders are orders emanating in New Zealand.

### **103C Domestic violence concerns – SA and WA orders (Model clause 7) (NSW s.98w).**

An order made under the South Australian *Intervention Orders (Prevention of Abuse) Act 2009* or under the Western Australian *Restraining Orders Act 1997* will only be recognised if the order is one that addresses a “domestic violence concern” as defined in this section. Such an order will do this if the “issuing authority” (i.e. the court or police responsible for the making of the order) makes a declaration to that effect. Regulations can be made that spell out other circumstances in which these kinds of orders can be made (section 103C(4)). Section 103ZK (which gives court registrars the power to make declarations regarding interstate DVOs) does not apply to South Australian and Western Australian orders.

### **103D Special provisions for foreign orders (Model clause 8) (NSW s.98V).**

This section provides that a registered foreign order is taken to be made in the jurisdiction in

which it is registered and is taken to have been made when it is registered. If the registration of the order is varied or revoked, the order is also taken to be varied or revoked.

## **Part 3A.2 National recognition of DVOs**

### **Division 1 – General principles**

#### **103E Recognition of DVOs (Model clause 9) (NSW s.98Y).**

This section sets out what will be a “recognised DVO” in the Northern Territory. The following DVOs will be recognised:

- An order made under the *Domestic and Family Violence Act*;
- An “interstate order” made in a “participating jurisdiction”;
- A “foreign order” registered in any participating jurisdiction.

Additionally sections 103ZF and 103ZG provide that the following pre-commencement DVOs are recognised DVOs:

- Interstate orders made in a participating state after the implementation date in that state (but before the implementation date in the Northern Territory);
- Foreign orders registered in a participating state after the implementation date in that state (but before the implementation date in the Northern Territory).
- NT DVOs made before commencement (if regulations provide for that to occur).

Section 103E(2) provides that an Australian DVO becomes a recognised DVO when it is made in its originating jurisdiction, and section 103E(3) provides that a DVO is a recognised DVO for the period that it is in force.

### **103F Variations to DVO (Model clause 20) (NSW s.98Z).**

This section sets out the circumstances in which a variation to a “recognised DVO” becomes a “recognised variation” for the purposes of the Act.

A variation to a local DVO is recognised if:

- The variation is made by a court or any person authorised to do so under the *Domestic and Family Violence Act*. Under that Act the registrar of the court has the right, in limited circumstances, to vary an order.
- The variation is made in another participating jurisdiction by a court in that jurisdiction.

This means that in the circumstances set out in the *Domestic and Family Violence Act* the registrar may vary a local DVO, but that variations can only be made outside of the Northern Territory by a court. That is, it cannot be made by police or a clerk/registrar even if police have the power to do so in respect of local DVOs.

A variation to an interstate DVO or a foreign order is recognised if:

- The variation is made by a court or any person authorised to do so under the legislation of the jurisdiction in which the order was originally made;
- The variation is made in another participating jurisdiction by a court in any such jurisdiction.

### **103G Revocation of recognised DVO (Model clause 11) (NSW s.98ZA).**

Section 103G(1) provides that a DVO ceases to be a recognised DVO in the Northern Territory if it is revoked in a manner recognised by this law.

Section 103G(2) provides that a revocation of a local DVO is recognised if it is done:

- in the Northern Territory, in accordance with the *Domestic and Family Violence Act*;
- outside of the Northern Territory, by a court in another participating jurisdiction.

Section 103G(3) provides that a revocation of an interstate DVO or a foreign order is recognised if the revocation is done:

- in the other jurisdiction in accordance with the law of that jurisdiction;
- by a court in another participating jurisdiction.

Subsection (4) provides that a DVO ceases to be a recognised DVO at the time when it is revoked.

### **103H Recognised DVO prevails over earlier comparable DVOS (Model clause 12) (NSW**

**s.98ZB).**

Section 103H(1) provides that a “recognised DVO” supersedes any earlier comparable recognised DVO or comparable local DVO (i.e. DVOs such as those existing prior to the implementation date which might not be recognised DVOs). A DVO is “comparable” if it has the same defendant as the other DVO and it protects one or more persons also protected by the other DVO (103H(8)).

The superseding occurs from the time when the later recognised DVO becomes enforceable against the defendant.

Subject to sections 103H(5) and 103H(6) a superseded DVO ceases to be a recognised DVO in the Northern Territory.

Sections 103H(5) and 103H(6) provide that a DVO is not superseded to the extent that it relates to a person not covered under the new DVO. For example, if a DVO relates to a parent and three children but there is a new DVO that relates to the parent and 2 children the original DVO remains in force for the remaining child. This is a default clause given that it would be open to the court to revoke the earlier order or replace it with 2 new orders if there was some reason for differentiating between the various persons affected by the order.

Section 103H(7) provides that a police DVO does not supersede a comparable DVO made by a court of any jurisdiction.

**103J Making of new orders (Model clause 13) (NSW s.98ZC) (Victoria, s.40 of the Family Violence Protection Act 2008).**

This section provides that Chapter 3A does not prevent the making of a local DVO even if a recognised DVO is in force that applies to the same defendant. However, an order made by a police officer in the Northern Territory only operates in the Northern Territory until it is dealt with by the court under section 82. In the circumstance where a police order is made when there is already a recognised DVO, the police order only becomes a recognised DVO (for national purposes) if it is confirmed by the Local Court and it is properly notified to the defendant. For this period, it operates to the extent that it does not diminish the protections afforded to the protected person under the recognised order, and any additional protections will be enforceable in the Territory.

**Division 2 Enforcement of recognised DVOs**

**103K Recognised DVOs and variations are enforceable against defendant (Model clause 14) (NSW s.98ZD).**

This section provides that a recognised DVO is enforceable in the Northern Territory.

In order for a DVO to be enforceable the defendant must be “properly notified”. A defendant is

properly notified if:

- For a local DVO (i.e. made in the Northern Territory) the notification is made in accordance with the *Domestic and Family Violence Act* (see section 103L(1));
- For a non-local DVO if the defendant is notified in accordance with the law of the jurisdiction under which the order was made (see section 103L(2));
- For a foreign order, from the time it becomes a recognised DVO).

### **103L Meaning of *properly notified* (Model clause 15) (NSW s.98ZE).**

For the purposes of section 103K, this section spells out what is meant by “properly notified”.

For the making of a local DVO a person is properly notified if served with a copy of the DVO or if he or she is present in court when the order is made.

For the making of an interstate DVO a person is properly notified if the notification occurs in accordance with the circumstances set out in the law of that jurisdiction. In places outside of the Northern Territory, this model provision will operate so that other jurisdictions will recognise that for interstate DVOs that are varied in the Northern Territory the defendant will be properly notified if he or she is present when the court makes the order or when given a copy of the variation.

For the variation of a recognised DVO in another jurisdiction a person is properly notified if the notification occurs in accordance with the circumstances set out in the law of that jurisdiction.

### **103M Contravention of enforceable recognised DVO (Model clause 16) (NSW s.98ZF).**

This section provides that:

- a non-local DVO that is a recognised DVO can be enforced as if it is a local DVO of which the defendant has been properly notified;
- a recognised variation of a non-local DVO that is a recognised DVO can be enforced in the Northern Territory as if it were a variation to a local DVO;

Section 103M(4) provides that subsections (1)-(3) do not affect any laws of the Northern Territory that require a geographical nexus to exist with the Northern Territory in order for a person to be guilty of an offence in the Northern Territory. The relevant Northern Territory provisions are sections 15 and 43BY-43CD of the Criminal Code.

## **Division 3 Enforcement of non-local DVOs**

### **103N Non-local DVO to be treated as local DVO (Model clause 18) (NSW s.98ZG).**

This section provides that a prohibition, restriction or condition associated with a recognised DVO that is a non-local DVO has the same effect as a prohibition, restriction or condition of a local DVO.

This principle applies notwithstanding that a particular prohibition, condition or restriction may not have been able to have been imposed in the jurisdiction in which the DVO is being enforced.

**103P Licences, permits and other authorisations (Model clause 19) (NSW s.98ZH).**

This section sets out that any licensing requirement or prohibition in legislation such as the *Firearms Act* applies to recognised non-local DVOs as if they are local DVOs.

The Northern Territory licences affected include licences under the *Firearms Act*, the *Weapons Control Act* and the *Dangerous Goods Regulations*.

**103Q Recognition of disqualification to hold firearms licence (Model clause 20) (NSW s.98ZZI)**

If a person is disqualified in another participating jurisdiction from holding a firearms licence because he or she is the subject of a non-local DVO then that person is also disqualified from holding a firearms licence in the Northern Territory.

The Commissioner of Police must revoke a licence held under the *Firearms Act* if the person with the licence is disqualified from holding a licence in any participating jurisdiction because he or she is subject to a recognised DVO.

A recognised DVO only disqualifies a person from holding an interstate firearms licence if it expressly states that the person is disqualified, or if it revokes or requires surrender of any current licence.

**103R Recognition of disqualification to hold weapons licence (Model clause 21) (NSW s.98ZJ).**

If a person is disqualified in another participating jurisdiction from holding a weapons licence because he or she is the subject of a non-local DVO then that person is also disqualified from holding a weapons licence in the Northern Territory.

The Commissioner of Police must revoke a licence held under the *Weapons Control Act* if the person with the licence is disqualified from holding a licence in any participating jurisdiction because he or she is subject to a recognised DVO.

A recognised DVO only disqualifies a person from holding an interstate weapons licence if it expressly states that the person is disqualified or if it revokes or requires surrender of any current licence.

**103S Orders for costs (Model clause 22) (NSW s.98ZK).**

This section sets out the matters relating to a non-local DVO that cannot be enforced in the Northern Territory. These are:

- compensation orders;

- interstate costs orders.

The section also spells out that courts and tribunals can award costs for proceedings that take place in the Northern Territory.

### **Part 3A.3 – Variation and revocation of recognised non-local DVOs**

#### **103T Definition (Model clause 23) (NSW s.98ZL).**

This clause defines the word “court” for the purposes of Part 3A.3. The purpose of the definition is to ensure that only a court, rather than an official of a court, such as a registrar, can exercise powers to vary or revoke non-local DVOs.

#### **103U Power of court to vary or revoke recognised non-local DVOs (Model clause 24) (NSW s.98ZM).**

This section provides that a court may vary or revoke a recognised DVO that is a non-local DVO under Part 3A.3 as if the DVO were a local DVO.

Section 103U(2) prevents a Northern Territory Court from varying a non-local DVO if it is a kind of DVO that cannot be varied in the jurisdiction in which it was made. For example, under South Australian law some DVOs cannot be varied during their first year of operation.

Section 103U (4) states that Part 3A.3 does not apply to a variation or revocation of a foreign order that is registered as a foreign order in the Northern Territory. The effect of this section is that Part 3.3 of the *Domestic and Family Violence Act* will continue to apply.

Section 103U (5) spells out that a non-local DVO that is varied in the Northern Territory continues to be treated for the purposes of the recognition provisions as a DVO made by the jurisdiction that originally made it.

#### **103V Application for variation or revocation of recognised non-local DVO (Model clause 25) (NSW s.98ZN)**

This section provides that an application for variation or revocation of recognised DVOs that are non-local DVOs are to be dealt with by a court in the same way as the court would deal with them under Northern Territory legislation.

#### **103W Decision about hearing of application (Model clause 26) (NSW s.98ZO).**

This section sets out the factors that a court must consider in deciding whether or not to hear an application for variation or revocation under Part 3A.3. These factors include the following:

- the usual place of residence or employment of persons affected by the application;
- the difficulty for a respondent in attending;
- the sufficiency of information that is available to the court;
- whether any contravention proceedings are taking place;



- the practicality of the applicant (if a protected person) applying for and obtaining a local DVO;
- the impact on children.

Section 103W(3) spells out that one of the factors in declining to deal with an application under Part 3A.3 is that there has been no material change in circumstances since the original decision was made.

Section 103W(4) provides that the court may have regard to information provided by an issuing authority of any other jurisdiction.

Section 103W(5) sets out an exception to the general rule by providing that a court must refuse to deal with an application for a variation or revocation if, under the law of the jurisdiction in which the order was originally made, the defendant is not entitled to apply for a variation or revocation.

#### **Part 3A.4      Exchange of information**

##### **103X      Issuing authorities may obtain DVO information (Model clause 27) (NSW s.98ZP).**

This section provides that an issuing authority of the Northern Territory may obtain and use information provided by an issuing authority or law enforcement agency of another jurisdiction.

##### **103Y      Issuing authorities must provide DVO information (Model clause 28) (NSW s.98ZQ).**

This section provides that an issuing authority of the Northern Territory that makes, varies or revokes a DVO must provide to a court or law enforcement agency of any jurisdiction information about the DVO that the other court or law enforcement agency reasonably requests for the purpose of exercising its functions under a corresponding law.

##### **103Z      Law enforcement agencies may obtain DVO information (Model clause 29) (NSW s.98ZR).**

This section provides that local law enforcement bodies can obtain and use information from local or interstate issuing authorities and use that information for the purpose of exercising its law enforcement functions.

##### **103ZA      Information to be provided to law enforcement agencies (Model clause 30) (NSW s.98ZS).**

This section provides that local law enforcement agencies must provide to interstate law enforcement bodies any information about a DVO that is reasonably requested for the exercise of law enforcement functions.

## **Part 3A.5     Miscellaneous**

### **103ZB     Certificate evidence - notification (Model clause 32) (NSW s.98ZT).**

This section provides for the issuing of certificates by authorised officers concerning proper notification (i.e. service) about the making or variation of DVOs.

Such certificates are admissible as evidence of the matters that have been certified.

The section also defines the term “authorised officer” as being:

- a registrar of the Local Court or a Northern Territory police officer of or above the rank of sergeant; or
- a person in a participating jurisdiction who is authorised under the law of that jurisdiction to issue certificates.

### **103ZC     Protection from liability**

This section seeks to make it clear that law enforcement agencies, courts and courts officials are not liable for acts or omissions relating to the failure to obtain current information about a DVO if acting in good faith. The intention is to ensure that agencies act on information regarding DVOs for the purposes of protecting the interests of victims, rather than being concerned about the civil consequences arising from an illegal arrest if the information on which action is taken or not taken turns out not to be current.

## **Part 3A.6     Transitional provisions**

### **Division 1     Preliminary**

#### **103ZD     Definition (Model clause 33) (NSW s.98ZU).**

This section defines “commencement date” for the purposes of the transitional provisions contained in Part 3A.6. The date is the date of commencement of the substantive provisions.

#### **103ZE     Enforcement of DVOs under other provisions (Model clause 34) (NSW s.98ZV).**

This section provides that the provisions of Part 3A.6 do not affect the enforceability of local DVOs, interstate DVOS or foreign orders made before the commencement date.

However, DVOs made prior to commencement can be superseded by a recognised DVO made after commencement.

### **Division 2     DVOs to which scheme applies**

#### **103ZF     DVOs made in the Territory (Model clause 35 (option 2)) (NSW s.98ZW).**

This section provides that Part 3A.2 applies to all domestic violence orders or foreign DVOs made in the Northern Territory after the commencement date defined in section 103ZD. It also

permits regulations to be made providing for an earlier date.

### **103ZG DVOs made in other jurisdictions (Model clause 36) (NSW s.98ZX).**

This section provides that Part 3A.2 applies to all domestic violence orders in another participating jurisdictions that are recognised DVOs in that jurisdiction. This clause states that section 103E (dealing with recognition of interstate DVOs) applies to:

- interstate DVOs made before the local implementation date but on or after the interstate implementation date;
- Foreign orders that became a registered foreign order before the local implementation date but after the interstate implementation date.

Under section 103ZG(4) a non-local DVO does not become enforceable in the Territory until the commencement dated defined in section 103ZD.

## **Division 3 Extension of schemes to older DVOs**

### **103ZH DVOs declared to be recognised DVOs (Model clause 37) (NSW s.98ZY).**

This clause provides for the declaration by the registrar of a court, in the Northern Territory or in another participating jurisdiction, that specified orders made before the commencement date are recognised DVOs. A DVO under this section becomes enforceable when the declaration is made.

### **103ZI DVOs declared to be recognised in other jurisdictions before commencement date (Model clause 38) (NSW s.98ZZ).**

This sections spells out that declarations ordered under section 103ZJ (see below) are to be recognised even if made in another participating jurisdiction before the commencement date as defined in section 103ZD. Similarly, this applies to variations and revocations made in another participating jurisdiction before the commencement date as defined in section 103ZD.

However, declarations, variations and revocations referred to in section 103ZI(1) and (2) are not enforceable in the Northern Territory until the commencement date as defined in section 103ZD.

## **Division 4 Power to declare DVOs to be recognised.**

### **103ZJ Definition (Model clause 39) (NSW s.98ZZA).**

This section provides a definition of “registrar” for the purposes of Division 4. The definition is such that a registrar is a registrar of a court that has the power to make a local DVO.

### **103ZK Power to declare DVO to be recognised (Model clause 40) (NSW s.98ZZB).**

This section provides registrars with the power to recognise any DVO by declaration. This section would operate for states and territories that are not participating states or territories. Such declarations can occur after an application is made in accordance with section 103ZL.

A registrar may refuse to make a declaration if they do not believe it would be “in the interests of justice,” which may include that they are not satisfied that the defendant has been properly notified under the law of the state or territory in which the original DVO was made.

**103ZL Application for order (Model clause 41) (NSW s.98ZZC).**

This section sets out the process for making an application to a registrar for a declaration that a DVO is a recognised DVO. A person can make the application if they are a person who could make an application for a variation of the DVO if the DVO were a recognised DVO. These persons are listed in section 48 of the *Domestic and Family Violence Act*.

**103ZM Functions of registrar may be exercised by court (Model clause 43) (NSW s.98ZZD).**

This section provides that the functions and powers of the registrar under Division 4 can be exercised by a court that has the power to make a local DVO.

**18. Section 124 amended**

This clause amends section 124 (publication of personal details) by replacing “court DVO” with “recognised DVO”. This means that it is an offence to publish a person's personal details if an interstate order prevents that occurring.

**19. Chapter 7.4 inserted**

This clause provides for Chapter 7.4 (transitional matters)

**Chapter 7.4 Transitional matters for Domestic and Family Violence (Recognition of Domestic Violence Orders) (National Uniform Law) Amendment Act 2016**

**137 Definitions**

New section 137 contains definitions of “commencement date” and “amending Act” and “pre-commencement Act”.

**138 Interim court DVO**

This section provides that an interim DVO as in force under section 35 prior to the commencement date is taken to be an “interim court DVO”. This reflects the change in terminology.

**139 Interim court variation order**

This section provides that an interim variation order as in force under section 52A prior to the commencement date is taken to be an “interim court variation order”. This reflects a change in terminology.

## **140 Registered interstate DVOs**

Section 140(1) provides that the commencement of the amending Act does not affect the status of an external order registered under section 94 before the commencement date.

Section 140(2) provides that a declaration of an unregistered external order under section 101 (before the repeal of section 101) does not affect the status of such a declaration. These declarations only last for 72 hours.

Section 140(4) provides that an order mentioned in section 139(1) or (2) ceases to be covered by Chapter 3 if the order becomes a recognised DVO for the purposes of Chapter 3A.

## **141 Enforcement of non-recognised interstate DVOs**

Section 141 provides for the making of regulations providing for enforcement in the Northern Territory of interstate domestic violence orders despite the fact that they might not be recognised orders.

## **Part 3 Amendment of Domestic and Family Violence Regulations and related amendments**

### **20. Regulations amended**

This clause provides that this Part amends the *Domestic and Family Violence Regulations*.

### **21. Regulation 3 repealed**

This regulation provides for the repeal of regulation 3, which is a list of corresponding laws for the purposes of the current definition of “corresponding law” and its use in respect of external orders.

Regulation 3 is no longer necessary given that sections 3 and 102 of the Act will now provide that a “corresponding law” is a law that substantially correspond with the provisions of Chapter 3A or which is prescribed. The assumption is that the generic identification of corresponding laws will be sufficient for the operation of Chapter 3A.

## **Part 4 Consequential and related amendments.**

### **Division 1 Firearms Act**

#### **22. Act amended**

This Division amends the *Firearms Act*.

#### **23. Section 3 amended**

Subclause (1) amends section 3(1) by omitting the definition of “interim order”. This definition is no longer necessary.

Subclause (2) inserts a new definition of “interim court DVO”. This ensures that the terminology used in the *Firearms Act* is consistent with that in the *Domestic and Family Violence Act*.

Subclause (3) amends the definition of “final domestic violence order” so that the reference in it to “interim DVO” will read “interim court DVO”. This ensures consistency with the *Domestic and Family Violence Act*.

Subclause (4) amends the definition of “interim domestic violence order” so that the reference in it to “interim DVO” will read “interim court DVO”. This ensures consistency with the *Domestic and Family Violence Act*.

## **Part 5      Expiry of Act**

### **24.    Expiry of Act**

This clause provides that the Act expires the day after it commences.