

Version No. 014
Family Violence Protection Act 2008

No. 52 of 2008

Version incorporating amendments as at
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Preamble

In enacting this Act, the Parliament recognises the following principles—

- (a) that non-violence is a fundamental social value that must be promoted;
- (b) that family violence is a fundamental violation of human rights and is unacceptable in any form;
- (c) that family violence is not acceptable in any community or culture;
- (d) that, in responding to family violence and promoting the safety of persons who have experienced family violence, the justice system should treat the views of victims of family violence with respect.

In enacting this Act, the Parliament also recognises the following features of family violence—

- (a) that while anyone can be a victim or perpetrator of family violence, family violence is predominantly committed by men against women, children and other vulnerable persons;
- (b) that children who are exposed to the effects of family violence are particularly vulnerable and exposure to family violence may have a serious impact on children's current and future physical, psychological and emotional wellbeing;

-
- (c) that family violence—
 - (i) affects the entire community; and
 - (ii) occurs in all areas of society, regardless of location, socioeconomic and health status, age, culture, gender, sexual identity, ability, ethnicity or religion;
 - (d) that family violence extends beyond physical and sexual violence and may involve emotional or psychological abuse and economic abuse;
 - (e) that family violence may involve overt or subtle exploitation of power imbalances and may consist of isolated incidents or patterns of abuse over a period of time.

The Parliament of Victoria therefore enacts:

PART 1—PRELIMINARY

1 Purpose

The purpose of this Act is to—

- (a) maximise safety for children and adults who have experienced family violence; and
- (b) prevent and reduce family violence to the greatest extent possible; and
- (c) promote the accountability of perpetrators of family violence for their actions.

2 How purpose is to be achieved

This Act aims to achieve its purpose by—

- (a) providing an effective and accessible system of family violence intervention orders and family violence safety notices; and
- (b) creating offences for contraventions of family violence intervention orders and family violence safety notices.

3 Commencement

- (1) Sections 1 and 224 and this section come into operation on the day after the day on which this Act receives the Royal Assent.

* * * * *

S. 3(1A)
inserted by
No. 51/2009
s. 5,
repealed by
No. 83/2012
s. 3.

- (2) Subject to subsection (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in subsection (2) does not come into operation before 1 October 2009, it comes into operation on that day.
-

PART 2—INTERPRETATION

4 Definitions

In this Act—

Aboriginal and Torres Strait Islander tradition
means—

- (a) the body of traditions, observances, customs and beliefs of Aboriginal and Torres Strait Islander people generally or of a particular community or group of Aboriginal or Torres Strait Islander people; and
- (b) any such traditions, observances, customs or beliefs relating to particular persons, areas, objects or relationships;

adult means a person who is 18 years of age or over;

affected family member means the following persons—

- (a) a person the subject of an application for a family violence intervention order to protect the person or the person's property;
- (b) a person for whom a police officer intends to make an application referred to in section 13(a) to ensure the safety of the person or to preserve any property of the person;
- (c) a person who is seeking leave, or for whom leave is being sought, from the court to make an application for a family violence intervention order as referred to in section 45(d)(ii) or (iii) or (e)(ii);

-
- (d) an additional applicant under section 76;

appropriate registrar, for a court, means the registrar for that court or at the proper venue of the court;

assault has the same meaning as in section 31 of the **Crimes Act 1958**;

associate means—

- (a) in relation to a respondent, a person who is so closely connected with the respondent that the respondent can influence the actions of the person, whether directly or indirectly; and
- (b) in relation to an affected family member or a protected person, a person who provides the affected family member or protected person with assistance or support;

authorisation form means a form completed under section 27(2)(a);

child means a person who is under the age of 18 years;

child protection order means an order for which the Children's Court has jurisdiction under section 515(1) of the **Children, Youth and Families Act 2005** to hear and determine an application;

Note

Under section 515(1)(o) of the **Children, Youth and Families Act 2005**, the Children's Court's jurisdiction includes hearing and determining applications for certain proceedings transferred to the Court under interstate laws.

S. 4 def. of
*cognitive
impairment*
amended by
No. 53/2010
s. 197(a).

cognitive impairment has the same meaning as in section 3 of the **Evidence (Miscellaneous Provisions) Act 1958**;

contested application means an application the subject of a contested hearing;

contested hearing, in relation to an application under this Act, means a hearing by a court in which a party to the proceeding is contesting the final determination of the application;

corresponding interstate law means a law of another State or a Territory relating to the protection of persons from family or domestic violence that—

- (a) substantially corresponds to this Act; or
- (b) is prescribed for the purposes of this definition;

corresponding interstate order means an order that—

- (a) is made under a corresponding interstate law; and
- (b) substantially corresponds to a final order;

corresponding New Zealand law means a law of New Zealand relating to the protection of persons from family or domestic violence that—

- (a) substantially corresponds to this Act; or
- (b) is prescribed for the purposes of this definition;

corresponding New Zealand order means an order that—

- (a) is made under a corresponding New Zealand law; and
- (b) substantially corresponds to a final order;

counselling order means an order under section 129 or 130;

court means—

- (a) the Magistrates' Court; or
- (b) if the application is being dealt with in the Children's Court, that court;

domestic partner has the meaning set out in section 9;

Deputy Chief Magistrate means the Deputy Chief Magistrate of the Magistrates' Court;

economic abuse has the meaning set out in section 6;

emotional or psychological abuse has the meaning set out in section 7;

exclusion condition has the meaning given by section 82;

Family Law Act means the Family Law Act 1975 of the Commonwealth;

Family Law Act order means an order, injunction, undertaking, plan or recognisance referred to in section 68R of the Family Law Act;

family member has the meaning set out in section 8;

family violence has the meaning set out in section 5;

Family Violence Court Division means the Family Violence Court Division of the Magistrates' Court established under section 4H(1) of the **Magistrates' Court Act 1989**;

family violence intervention order has the meaning set out in section 11;

family violence safety notice means a family violence safety notice issued under section 26 for which—

- (a) a form is completed under section 27(1); or
- (b) a safety notice form is completed;

final order has the meaning set out in section 11;

firearms authority means a licence, permit or other authority under the **Firearms Act 1996** to possess, carry or use firearms;

first mention date, in relation to an application for a family violence intervention order, means the first date on which the proceeding for the application is listed before the court;

guardian, in relation to a person, means (except in the definition of ***parent***) a guardian under the **Guardianship and Administration Act 1986** who has power, whether specifically or generally—

- (a) to make decisions, take action, consent or do things for the person under this Act; or
- (b) to decide where or with whom the person is to live or with whom the person is to have contact;

interim order has the meaning set out in section 11;

mention date, in relation to an application under this Act, means—

- (a) the first mention date; or
- (b) another date on which the proceeding is listed before the court other than for a contested hearing;

parent, of a child, includes—

- (a) a person who has responsibility for the long-term welfare of the child and has, in relation to the child, all the parental powers, rights and duties that are vested by law or custom in the guardian of a child; and
- (b) a person with whom the child normally or regularly resides;

party, to a proceeding under this Act, includes—

- (a) the affected family member or protected person for the proceeding, whether or not the person is the applicant for the proceeding; and
- (b) if the affected family member or protected person is not the applicant for the proceeding, the applicant; and
- (c) the respondent for the proceeding or the respondent who is the subject of an order made in the proceeding;

personal safety intervention order means a personal safety intervention order within the meaning of section 4 of the **Personal Safety Intervention Orders Act 2010**;

S. 4 def. of
*personal
safety
intervention
order*
inserted by
No. 53/2010
s. 210.

police officer means a member of the police force;

possession, in relation to a firearm, has the same meaning as it has in the **Firearms Act 1996**;

proper venue—

- (a) in relation to a proceeding in the Magistrates' Court, has the meaning given by section 3(1) of the **Magistrates' Court Act 1989**; and
- (b) in relation to a proceeding in the Children's Court, has the meaning given by section 3(1) of the **Children, Youth and Families Act 2005**;

property, in relation to a family member, includes—

- (a) property of the family member; and
- (b) property that is situated in premises in which the family member lives or works whether or not it is the family member's property; and
- (c) property that is being used by the family member whether or not it is the family member's property;

protected person means a person who is protected by a family violence intervention order or a family violence safety notice;

publish means—

- (a) publish in any newspaper; or
- (b) publish by means of television, radio or the internet;

S. 4 def. of *property* substituted by No. 53/2010 s. 197(b).

registrar means—

- (a) in relation to the Magistrates' Court, the principal registrar of the Court, a registrar of the Court or a deputy registrar of the Court; or
- (b) in relation to the Children's Court, the principal registrar of the Court, a registrar of the Court or a deputy registrar of the Court; or
- (c) in relation to the County Court, a registrar of the Court or a deputy registrar of the Court; or
- (d) in relation to the Supreme Court, the prothonotary of the Court or a deputy prothonotary of the Court;

relative has the meaning set out in section 10;

relevant decision, for Subdivision 1 of Division 9 of Part 4, has the meaning set out in section 114;

respondent means the following persons—

- (a) a person against whom—
 - (i) an application for a family violence intervention order has been made; or
 - (ii) a family violence intervention order has been made; or
 - (iii) a family violence safety notice has been issued;
- (b) an additional respondent under section 76;

safety means safety from family violence;

safety notice form means a form completed under section 27(3);

Secretary means the Secretary to the Department of Justice;

spouse, of a person, means a person to whom the person is married;

weapon means an article that is—

- (a) a prohibited weapon under the **Control of Weapons Act 1990**; or
- (b) a controlled weapon under paragraph (b) of the definition of **controlled weapon** in section 3(1) of the **Control of Weapons Act 1990**;

weapons approval means an approval under section 8C of the **Control of Weapons Act 1990**;

weapons exemption means an exemption granted under section 8B of the **Control of Weapons Act 1990** in respect of a person or a class of persons.

5 Meaning of *family violence*

- (1) For the purposes of this Act, **family violence** is—
 - (a) behaviour by a person towards a family member of that person if that behaviour—
 - (i) is physically or sexually abusive; or
 - (ii) is emotionally or psychologically abusive; or
 - (iii) is economically abusive; or
 - (iv) is threatening; or
 - (v) is coercive; or
 - (vi) in any other way controls or dominates the family member and causes that family member to feel fear for the

safety or wellbeing of that family member or another person; or

- (b) behaviour by a person that causes a child to hear or witness, or otherwise be exposed to the effects of, behaviour referred to in paragraph (a).

Examples

The following behaviour may constitute a child hearing, witnessing or otherwise being exposed to the effects of behaviour referred to in paragraph (a)—

- overhearing threats of physical abuse by one family member towards another family member;
- seeing or hearing an assault of a family member by another family member;
- comforting or providing assistance to a family member who has been physically abused by another family member;
- cleaning up a site after a family member has intentionally damaged another family member's property;
- being present when police officers attend an incident involving physical abuse of a family member by another family member.

- (2) Without limiting subsection (1), ***family violence*** includes the following behaviour—

- (a) assaulting or causing personal injury to a family member or threatening to do so;
- (b) sexually assaulting a family member or engaging in another form of sexually coercive behaviour or threatening to engage in such behaviour;
- (c) intentionally damaging a family member's property, or threatening to do so;

-
- (d) unlawfully depriving a family member of the family member's liberty, or threatening to do so;
- (e) causing or threatening to cause the death of, or injury to, an animal, whether or not the animal belongs to the family member to whom the behaviour is directed so as to control, dominate or coerce the family member.
- (3) To remove doubt, it is declared that behaviour may constitute family violence even if the behaviour would not constitute a criminal offence.

6 Meaning of *economic abuse*

For the purposes of this Act, *economic abuse* is behaviour by a person (the *first person*) that is coercive, deceptive or unreasonably controls another person (the *second person*), without the second person's consent—

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

Examples—

- coercing a person to relinquish control over assets and income;
- removing or keeping a family member's property without permission, or threatening to do so;

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

7 Meaning of *emotional or psychological abuse*

For the purposes of this Act, *emotional or psychological abuse* means behaviour by a person towards another person that torments, intimidates, harasses or is offensive to the other person.

Examples—

- repeated derogatory taunts, including racial taunts;
- threatening to disclose a person's sexual orientation to the person's friends or family against the person's wishes;
- threatening to withhold a person's medication;
- preventing a person from making or keeping connections with the person's family, friends or culture, including cultural or spiritual ceremonies or practices, or preventing the person from expressing the person's cultural identity;
- threatening to commit suicide or self-harm with the intention of tormenting or intimidating a family member, or threatening the death or injury of another person.

8 Meaning of *family member*

- (1) For the purposes of this Act, a *family member*, in relation to a person (a *relevant person*), means—
- (a) a person who is, or has been, the relevant person's spouse or domestic partner; or
 - (b) a person who has, or has had, an intimate personal relationship with the relevant person; or
 - (c) a person who is, or has been, a relative of the relevant person; or
 - (d) a child who normally or regularly resides with the relevant person or has previously resided with the relevant person on a normal or regular basis; or
 - (e) a child of a person who has, or has had, an intimate personal relationship with the relevant person.
- (2) For the purposes of subsections (1)(b) and (1)(e), a relationship may be an intimate personal relationship whether or not it is sexual in nature.
- (3) For the purposes of this Act, a *family member* of a person (the *relevant person*) also includes any other person whom the relevant person regards or regarded as being like a family member if it is or was reasonable to regard the other person as being like a family member having regard to the circumstances of the relationship, including the following—
- (a) the nature of the social and emotional ties between the relevant person and the other person;
 - (b) whether the relevant person and the other person live together or relate together in a home environment;

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- (c) the reputation of the relationship as being like family in the relevant person's and the other person's community;
 - (d) the cultural recognition of the relationship as being like family in the relevant person's or other person's community;
 - (e) the duration of the relationship between the relevant person and the other person and the frequency of contact;
 - (f) any financial dependence or interdependence between the relevant person or other person;
 - (g) any other form of dependence or interdependence between the relevant person and the other person;
 - (h) the provision of any responsibility or care, whether paid or unpaid, between the relevant person and the other person;
 - (i) the provision of sustenance or support between the relevant person and the other person.

Example

A relationship between a person with a disability and the person's carer may over time have come to approximate the type of relationship that would exist between family members.

- (4) For the purposes of subsection (3), in deciding whether a person is a family member of a relevant person the relationship between the persons must be considered in its entirety.

9 Meaning of *domestic partner*

- (1) For the purposes of this Act, *domestic partner* of a person means—
 - (a) a person who is in a registered relationship within the meaning of the **Relationships Act 2008** with the person; or

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- (b) an adult to whom the person is not married but with whom the person is in a relationship as a couple where one or each of the persons provides personal or financial commitment and support of a domestic nature for the support of the other person.
- (2) For the purposes of subsection (1)(b), the following is irrelevant—
- (a) the genders of the persons;
- (b) whether or not the persons are living under the same roof.
- (3) Also, for the purposes of subsection (1)(b), a person is not the domestic partner of another person—
- (a) if the person provides domestic support and personal care to the person—
- (i) for fee or reward; or
- (ii) on behalf of another person or an organisation, including a government or non-government agency, a body corporate or a charitable or benevolent organisation; or
- (b) merely because they are co-tenants.
- (4) In deciding whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case.

10 Meaning of *relative*

- (1) For the purposes of this Act, a *relative* of a person—
- (a) means any of the following, whether of the whole blood or half-blood or by marriage, and whether or not the relationship depends on adoption of the person—
 - (i) the person's father, mother, grandfather or grandmother;
 - (ii) the person's son, daughter, grandson or granddaughter;
 - (iii) the person's brother or sister;
 - (iv) the person's uncle or aunt;
 - (v) the person's nephew or niece;
 - (vi) the person's cousin; and
 - (b) for an Aboriginal or Torres Strait Islander person—includes a person who, under Aboriginal or Torres Strait Islander tradition or contemporary social practice, is the person's relative.
- (2) For domestic partners, a *relative* includes a person who would be a relative if the domestic partners were married to each other.

11 Meaning of *family violence intervention order, final order and interim order*

- (1) For the purposes of this Act, a *family violence intervention order* means—
- (a) a final order referred to in subsection (2); or
 - (b) an interim order referred to in subsection (3).

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- (2) For the purposes of this Act, a *final order* is an order made under section 74 or 76 and includes—
- (a) an order made under section 74 or 76 as varied under section 100, 119(2)(c) or 173(2); and
 - (b) an order made under section 74 or 76 as extended under section 106 or 107; and
 - (c) an order made under section 74 or 76 and confirmed on appeal to the County Court or Supreme Court.
- (3) For the purposes of this Act, an *interim order* is an order—
- (a) made under section 53, including an order made under section 53 as varied under section 100; and
 - (b) made under section 101 that varies a family violence intervention order.
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PART 3—POLICE PROTECTION BEFORE COURT

Division 1—Holding powers

12 Definitions

In this Division—

directed person means a person who is given a direction under section 14;

police gaol has the meaning given in the **Corrections Act 1986**.

13 Criteria for exercise of powers

A police officer may exercise a power under this Division in relation to a person only if—

- (a) the police officer intends to make an application for one of the following against the person—
 - (i) a family violence intervention order;
 - (ii) an order varying a family violence intervention order;
 - (iii) a family violence safety notice; and
- (b) the officer has reasonable grounds for suspecting the person is an adult; and
- (c) the officer believes on reasonable grounds that exercise of the power is necessary to ensure the safety of a family member of the person or to preserve any property of the family member.

14 Direction power

- (1) The police officer may direct the person, orally or in writing—
 - (a) to remain at the place where the person is when the direction is given; or
 - (b) to go to, and remain at, a place stated by the officer; or
 - (c) to remain in the company of—
 - (i) the officer; or
 - (ii) another police officer stated in the direction; or
 - (iii) another person (the *accompanying person*) stated by the officer.
- (2) A direction referred to in subsection (1)(c)(iii) may be given only with the accompanying person's consent.
- (3) A direction given under this section must be reasonable in the circumstances.
- (4) The directing officer must, at the time of giving the direction, inform the directed person, orally or in writing—
 - (a) that the directed person may be apprehended and detained if the person refuses or fails to comply with the direction; and
 - (b) that, if the directed person is apprehended and detained, it is an offence to escape or attempt to escape.

15 Detention power

- (1) If a directed person refuses or fails to comply with a direction under section 14, a police officer may, using the force that is reasonably necessary, apprehend and detain the directed person.

- (2) The directed person may be detained at a police station or other place, but may be detained in a police gaol only if the officer considers it necessary to do so for the protection of any person or property, or to prevent the person from escaping from detention.

Note

Section 49E of the **Summary Offences Act 1966** makes it an offence to escape or attempt to escape from a place where a person is being lawfully detained.

- (3) Nothing in section 479C of the **Crimes Act 1958** applies to a person who escapes or attempts to escape from detention under this Division.

16 Search of person and seizure of objects

S. 16
(Heading)
amended by
No. 18/2010
s. 17(1).

- (1) This section applies if a police officer gives a person a direction, or apprehends and detains a person, under this Division.
- (2) A police officer may search the person and any vehicle, package or thing in the person's possession if the officer suspects, on reasonable grounds, that the person has in the person's possession any object that may cause injury or damage or may be used to escape.
- (2A) If the police officer finds any object that may cause injury or damage or may be used to escape, the police officer may—
- (a) if the object is a firearm, weapon or ammunition, issue a direction under section 158; or
- (b) in the case of any other object, seize the object.
- (2B) An object seized under subsection (2A)(b) must be returned to the person when the direction ends or, if the person is detained, the authorisation for detention ends, unless the object is required as

S. 16(2A)
inserted by
No. 18/2010
s. 17(2).

S. 16(2B)
inserted by
No. 18/2010
s. 17(2).

evidence in further proceedings under this Act or another Act.

- (3) To remove doubt, for the purposes of subsection (2) a suspicion that searching the person or any vehicle, package or thing in the person's possession would provide evidence that an offence has been or is being committed is not by itself sufficient grounds for conducting the search.

17 Procedural requirements for person directed to a police station, or person apprehended and detained

- (1) This section applies if—
 - (a) a person is directed under section 14 to remain at, or go to and remain at, a police station; or
 - (b) a directed person is apprehended and detained under section 15.
- (2) A police officer must—
 - (a) inform the person that the person—
 - (i) may communicate or attempt to communicate with a friend or relative (other than the affected family member) to inform the friend or relative of the person's whereabouts; and
 - (ii) may communicate or attempt to communicate with a legal practitioner; and
 - (b) give the person a notice containing the prescribed information about the person's rights and responsibilities under this Division.

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- (3) A police officer must comply with subsection (2)—
- (a) for a person referred to in subsection (1)(a)—as soon as practicable after—
 - (i) the direction is given, if the person is at a police station when the direction is given; or
 - (ii) the person arrives at the police station, in any other case; and
 - (b) for a person referred to in subsection (1)(b)—as soon as practicable after the person is apprehended and detained.
- (4) If the person wishes to communicate with a friend, relative or legal practitioner, a police officer must—
- (a) afford the person reasonable facilities as soon as practicable to enable the person to do so; and
 - (b) allow the person's legal practitioner or a clerk of the legal practitioner to communicate with the person in circumstances in which, as far as practicable, the communication will not be overheard.
- (5) Nothing in subsection (4) permits the person to communicate with the affected family member.
- (6) If the person does not have sufficient knowledge of the English language to enable the person to understand why the person is subject to a direction or detention, a police officer must arrange for the person to have access to a competent interpreter.
- (7) Despite subsection (2) or (4), a police officer is not required to inform a person that the person may communicate or attempt to communicate with a friend or relative, or to afford a person facilities to enable the person to do so, if the
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officer believes on reasonable grounds that the communication would be likely to jeopardise the safety of the affected family member or any property of the affected family member.

S. 17(7A)
inserted by
No. 65/2011
s. 93.

- (7A) If the person is subject to a residence restriction or exclusion condition or curfew condition attached to a community correction order under the **Sentencing Act 1991** a police officer must notify the Secretary as soon as practicable that the person has been directed or apprehended and detained under this Act.

S. 17(7B)
inserted by
No. 65/2011
s. 93.

- (7B) In subsection (7A)—
residence restriction or exclusion condition has the same meaning as in the **Sentencing Act 1991**;
curfew condition has the same meaning as in the **Sentencing Act 1991**.

S. 17(8)
inserted by
No. 30/2010
s. 81,
repealed by
No. 48/2011
s. 27(1).

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18 Duration of holding powers

- (1) The maximum period for which a direction under this Division remains in force or a directed person may be detained under this Division is—
- (a) 6 hours after the direction is given; or
 - (b) if an extension is granted under section 19— that period as extended.
- (2) Despite subsection (1), a direction under this Division ends and, if a directed person is detained under this Division, authorisation for the detention ends—

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- (a) if a family violence intervention order is made or a family violence safety notice is issued in respect of the directed person—at the time the order or notice is served on the directed person; or
 - (b) if a warrant is issued under section 50 to arrest the directed person—at the time the directed person is arrested under the warrant; or
 - (c) if a police officer decides not to make an application, or withdraws an application, for a family violence intervention order or family violence safety notice against the directed person—at the time of the decision or withdrawal.
- (3) If, despite a family violence intervention order or a family violence safety notice being served on a directed person, a police officer believes on reasonable grounds that it is necessary for the direction (and, if applicable, detention) to continue to enable further measures to be taken for the protection of the affected family member, the direction continues in force and detention (if applicable) is authorised until those measures have been taken or the period referred to in subsection (1) expires, whichever occurs first.

Note

Section 13 also requires the police officer to believe on reasonable grounds that the continued direction or detention is necessary to ensure the safety of the affected family member of the directed person or to preserve any property of the affected family member.

- (4) Subject to subsection (5), the direction ends if an application for—
- (a) a family violence intervention order is refused in respect of the directed person; or

- (b) a family violence safety notice is refused in respect of the directed person; or
 - (c) a warrant under section 50 to arrest a directed person is refused.
- (5) If a family violence safety notice or a warrant under section 50 to arrest a directed person is refused but the application for the family violence intervention order has not been withdrawn and the court has not yet determined whether an interim order is necessary or the application for the family violence order has not yet been made but is intended to be made by a police officer, the direction continues in force and detention (if applicable) is authorised until the direction ends under subsection (1), (2), (3) or (4)(a) (as the case may be).

Note

Section 13 also requires the officer to believe on reasonable grounds that the continued direction or detention is necessary to ensure the safety of the affected family member or to preserve any property of the affected family member.

19 Extension of periods

- (1) If a police officer considers it is necessary for a direction or the detention of a directed person under this Division to exceed 6 hours, the officer may apply to the court for an order extending the maximum period of the direction and, if applicable, detention.
- (2) An application for an extension order must—
 - (a) be made within 6 hours after the direction was given to the directed person; and
 - (b) include any prescribed particulars.
- (3) If the court is satisfied that there are exceptional circumstances, the court may make an order extending the maximum period of the direction

and, if applicable, detention for a further period specified in the order.

- (4) The further period specified under subsection (3) must be a period expiring on or before the expiry of 10 hours after the direction was given to the directed person.
- (5) If an order is made under this section, a police officer must serve a copy of the order on the directed person.
- (6) This section does not apply if the direction is in relation to an application for a family violence safety notice.

20 Telephone or fax application for extension order

- (1) A police officer may apply for an order under section 19 by telephone, fax or other electronic communication if—
 - (a) the application is made—
 - (i) before 9 a.m. or after 5 p.m. on a weekday; or
 - (ii) on a Saturday, Sunday or public holiday; or
 - (b) the officer reasonably believes that it is impracticable to make the application in person.
- (2) Before applying by telephone, fax or other electronic communication, the officer must complete an application setting out—
 - (a) the grounds on which the order is sought; and
 - (b) any other prescribed particulars.
- (3) On an application made by telephone, fax or other electronic communication, the court is not bound by the rules of evidence.

S. 20(3A)
inserted by
No. 69/2009
s. 54(Sch. Pt 1
item 22.1).

- (3A) Despite anything to the contrary in subsection (3), Part 3.10 of the **Evidence Act 2008** applies in respect of an application made by telephone, fax or other electronic communication.
- (4) If the court makes an order under section 19 on an application made by telephone, fax or other electronic communication, the court must inform the officer of the terms of the order, the period of operation of the order and the venue of the court for the first mention date for the application for the family violence intervention order.
- (5) If an order under section 19 is made on an application made by telephone, the officer who made the application must—
- (a) complete a form of order in the terms indicated by the court under subsection (4) and must write on it the name of the magistrate who constituted the court that made the order and the date on which and the time at which it was made; and
 - (b) ensure that the form of order completed by the officer is received at the venue of the court nominated in the order before the hearing of the application for the family violence intervention order.

21 Police to notify directed person when direction ceases

When a direction under this Division ends, a police officer must—

- (a) immediately notify, orally or in writing, the directed person that the direction has ended; and
- (b) if the directed person is detained under this Division, immediately release the directed person from detention; and

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- (c) take reasonable steps to notify, orally or in writing, the protected person or affected family member that the direction has ended.

22 No questioning during holding period

- (1) While a direction is in force under this Division a police officer must not interview or question the directed person in relation to any offence or alleged offence.
- (2) Subsection (1) applies whether or not the directed person is in detention under this Division.

23 Court may hear directed person or affected family member

- (1) The court may, if practicable, hear a directed person or an affected family member on the hearing of an application for a family violence intervention order against the directed person or an application for an extension order under section 19, including an application made in accordance with section 20.
- (2) Subsection (1) applies whether or not the directed person is in detention under this Division.

Division 2—Family violence safety notices

24 Application for family violence safety notice

A police officer who responds in person to an incident involving family violence may apply to another police officer, who is of the rank of Sergeant or a higher rank, for a family violence safety notice if—

- (a) the police officer has reasonable grounds for suspecting the respondent is an adult; and
- (b) the police officer has no reasonable grounds for suspecting the respondent has a cognitive impairment; and

S. 24(da)
inserted by
No. 30/2010
s. 82,
repealed by
No. 48/2011
s. 27(2), new
s. 24(da)
inserted by
No. 65/2011
s. 94.

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- (c) the police officer has no reasonable grounds for suspecting there is a Family Law Act order or child protection order in force that may be inconsistent with the proposed terms of the family violence safety notice, after making reasonable enquiries of the respondent, the affected family member and any other adults at the scene of the incident; and
- (d) the police officer believes on reasonable grounds there is no family violence intervention order in place between the affected family member and respondent; and
- (da) the police officer has no reasonable grounds for suspecting there is a community correction order under the **Sentencing Act 1991** in force that may be inconsistent with the proposed terms of the family violence safety notice; and
- (e) the police officer believes on reasonable grounds that, until an application for a family violence intervention order can be decided by the court, a family violence safety notice is necessary—
- (i) to ensure the safety of the affected family member; or
 - (ii) to preserve any property of the affected family member; or
 - (iii) to protect a child who has been subjected to family violence committed by the respondent; and

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- (f) the police officer makes the application—
- (i) before 9 a.m. or after 5 p.m. on a weekday; or
 - (ii) on a Saturday, Sunday or public holiday.

25 How an application may be made

An application for a family violence safety notice may be made—

- (a) in person; or
- (b) by fax or telephone or other electronic communication.

26 Decision about family violence safety notice

- (1) A police officer of the rank of Sergeant or a higher rank who receives an application for a family violence safety notice may issue a family violence safety notice if—
- (a) the police officer believes on reasonable grounds there is no family violence intervention order in place between the affected family member and respondent; and
 - (b) the police officer believes on reasonable grounds that issuing the notice is necessary—
 - (i) to ensure the safety of the affected family member; or
 - (ii) to preserve any property of the affected family member; or
 - (iii) to protect a child who has been subjected to family violence committed by the respondent.

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- (2) Before making a decision under subsection (1), the police officer making the decision—
- (a) must hear the police officer responding to the incident; and
 - (b) must be satisfied that the grounds on which the police officer responding to the incident formed an opinion about the matters referred to in section 24(a), (b), (c) and (d) are reasonable; and
 - (c) may, if practicable, hear the respondent or the affected family member.

27 Form of family violence safety notice

- (1) If a police officer issues a family violence safety notice under section 26 on an application made in person, the police officer must—
- (a) include in the notice matters referred to in section 32; and
 - (b) make the notice on oath or by affidavit or certify the notice.
- (2) If a police officer issues a family violence safety notice on an application made by telephone, fax or other electronic communication, the police officer must—
- (a) complete a form (an *authorisation form*) that contains the following information—
 - (i) the names of the respondent and protected person;
 - (ii) the name, rank and station of the police officer who made the application;
 - (iii) a brief statement of the reasons for issuing the family violence safety notice;

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- (iv) the conditions of the family violence safety notice; and
 - (b) certify the authorisation form; and
 - (c) inform the officer who made the application of the terms of the authorisation form referred to in paragraph (a)(iii) and (iv).
- (3) If a family violence safety notice is issued on an application made by telephone, fax or other electronic communication, the police officer who made the application must—
- (a) complete a form (a *safety notice form*) that includes the information referred to in section 32; and
 - (b) certify the safety notice form.

28 Procedure if safety notice form completed

- (1) This section applies if a family violence safety notice is issued on an application made by telephone, fax or other electronic communication and a safety notice form is completed.
- (2) As soon as practicable after the issue of the family violence safety notice a police officer of the rank of Sergeant or a higher rank must—
 - (a) check the authorisation form and safety notice form to ensure the forms are consistent; and
 - (b) if there are any material discrepancies between the forms, correct the safety notice form to ensure it accurately reflects the conditions included in the authorisation form and sufficiently identifies the respondent and protected person; and

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- (c) certify the safety notice form as being consistent with the authorisation form, as corrected under paragraph (b) if necessary.

Note

See section 34 which provides for the service of the corrected notice and the filing of the corrected notice with the Magistrates' Court.

- (3) For the purposes of subsection (2), there is a material discrepancy between an authorisation form and a safety notice form if—
- (a) the safety notice form omits a condition included in the authorisation form; or
 - (b) the safety notice form includes an additional condition to the conditions included in the authorisation form; or
 - (c) the safety notice form changes the scope of a condition in the authorisation form so that it requires the respondent to do something or refrain from doing something that is not set out in the authorisation form; or
 - (d) the respondent named in the safety notice form is not the respondent named in the authorisation form; or
 - (e) the protected person named in the safety notice form is not the protected person named in the authorisation form.
- (4) Also, for the purposes of subsection (2)(b), if there is a material discrepancy between the safety notice form and the authorisation form, the safety notice form is invalid to the extent of the material discrepancy until a corrected safety notice form is served on the respondent under section 34.

29 Conditions of family violence safety notice

- (1) A family violence safety notice may include any condition the court may include under section 81(2)(a) to (f) in a family violence intervention order.
- (2) Before including in a family violence safety notice a condition prohibiting the respondent from being anywhere within a specified distance from a particular place, the police officer issuing the notice must make reasonable enquiries to ensure this will be practical in the particular circumstances.

30 Duration of family violence safety notice

- (1) A family violence safety notice—
 - (a) starts when the notice or a safety notice form is served on the respondent; and
 - (b) ends when the earlier of the following occurs—
 - (i) the court adjourns the application for the family violence intervention order or refuses to make a family violence intervention order on the first mention date for the application for the family violence intervention order;
 - (ii) if the court makes a family violence intervention order on the first mention date—the order is served on the respondent.
- (2) To avoid doubt, it is declared that if a safety notice form is subsequently corrected and served on the respondent under section 34(b)—
 - (a) the family violence safety notice is taken to have started when a safety notice form referred to in subsection (1)(a) was served on the respondent; and

S. 30(1)(b)(i)
amended by
No. 16/2011
s. 3.

s. 31

- (b) the time by which the first mention date must be held, as referred to in section 31(3)(a), must be measured from the service of that form.

31 Family violence safety notice taken to be application for family violence intervention order

- (1) A family violence safety notice is taken to be—
- (a) an application by the police officer who applied for it for a family violence intervention order for the protected person against the respondent; and
 - (b) a summons for the respondent to attend at the first mention date for the application stated in the notice.

S. 31(1)(b) amended by No. 68/2009 s. 97(Sch. item 57.1).

S. 31(1A) inserted by No. 16/2011 s. 4.

- (1A) A family violence safety notice that has ended under section 30(1)(b) continues to be taken to be an application for a family violence intervention order until the court finally determines the application or the application is withdrawn.
- (2) A family violence safety notice must be returned to the court at the first mention date stated in the notice.
- (3) The first mention date for the application must be—

S. 31(3)(a) amended by No. 83/2012 s. 4.

S. 31(3)(b) amended by No. 83/2012 s. 4.

- (a) within 120 hours after the family violence safety notice or form of notice completed under section 27(3) is served; or
- (b) if it is not possible for the first mention date to be within 120 hours because a public holiday means the first date on which the court will sit is more than 120 hours after the service of the notice, the first working day after the public holiday.

32 Information to be included in family violence safety notice

The following information must be included in a family violence safety notice—

- (a) the names of the respondent and the protected person;
- (b) the time and date the notice was issued;
- (c) the time, date and location for the first mention date for an application for a family violence intervention order relating to the incident;
- (d) that the notice is a summons for the respondent to attend at the court on the first mention date;
- (e) the period for which the notice applies;
- (f) a brief statement of the reasons for issuing the notice, including information addressing the grounds for issuing the notice referred to in section 26;
- (g) the conditions of the notice;
- (h) an address nominated by the respondent for service of documents, if provided;
- (i) the name, rank and station of the police officer issuing the notice;
- (j) the name, rank and station of the police officer who applied for the notice;
- (k) any other matters prescribed.

S. 32(d)
amended by
No. 68/2009
s. 97(Sch.
item 57.2).

33 Address for service

- (1) If a police officer issues a family violence safety notice, that police officer, or the police officer who applied for the notice, must—

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- (a) ask the respondent to provide an address for the service of documents; and
 - (b) advise the respondent that if a police officer is unable to locate the respondent to serve the respondent with a document under this Act the police officer may, under section 207, seek information about the respondent from public sector organisations.
- (2) Without limiting subsection (1), the address may be—
- (a) the address of accommodation arranged under section 36; or
 - (b) the address of a friend or family member of the respondent.
- (3) The respondent is not obliged to comply with the request to provide an address.
- (4) If the respondent provides an address under subsection (1) other than the address where the respondent lives or works and another person living at the address advises the court that the person does not consent to the use of the address for the service of documents under this Act, the address is not a valid address for the service of the documents.

34 Service of family violence safety notice

As soon as practicable after a family violence safety notice is issued, a police officer must—

- (a) serve a copy of the family violence safety notice on the respondent and the protected person; and
- (b) if the family violence safety notice is a safety notice form that has been subsequently corrected under section 28, serve a copy of the corrected safety notice form on the respondent and the protected person; and

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- (c) file with the Magistrates' Court—
- (i) if the family violence safety notice was issued on an application made under section 25(a), a copy of the form completed under section 27(1); or
 - (ii) if the family violence safety notice was issued on an application made under section 25(b), a copy of the safety notice form certified under section 28(2)(c).

35 Explanation of family violence safety notice

- (1) A police officer who serves a family violence safety notice on a respondent or a protected person must—
 - (a) explain the notice to the respondent or protected person; and
 - (b) take reasonable steps to ensure the respondent or protected person understands the nature and consequences of the notice.
- (2) Without limiting subsection (1), the police officer who serves a notice on a respondent or gives a copy of the notice to the protected person must explain—
 - (a) the purpose of the notice; and
 - (b) the duration of the notice; and
 - (c) the conditions of the notice; and
 - (d) the consequences of the respondent contravening the notice; and
 - (e) that the protected person cannot consent to the respondent contravening the notice; and

- (f) that the notice is a summons to attend court on the first mention date specified in the notice and the consequences for failing to attend court at that time on that date; and
 - (g) the right of the respondent or protected person to obtain legal advice before the first mention date; and
 - (h) any other matter prescribed under the regulations.
- (3) If the police officer determines that the respondent or protected person is unable to sufficiently understand the English language, the officer must comply with the officer's obligations under this section via a competent interpreter.
- (4) Failure by a police officer to comply with this section does not invalidate a family violence safety notice.

36 Accommodation

- (1) If a police officer serves a family violence safety notice on a respondent that includes an exclusion condition, the officer must—
- (a) consider the accommodation needs of the respondent and any dependent children of the respondent; and
 - (b) take any reasonable steps necessary to ensure the respondent and any dependent children of the respondent have access to temporary accommodation.
- (2) If a police officer serves a family violence safety notice on a respondent and the notice does not include an exclusion condition, the police officer must—
- (a) consider the accommodation needs of the protected person and any dependent children of the protected person; and

-
- (b) take any reasonable steps necessary to ensure the protected person and any dependent children have access to temporary accommodation.
 - (3) To avoid any doubt, the requirement under subsection (1)(b) or (2)(b) does not include an obligation for the police officer to provide free accommodation for the respondent, the protected person or the dependent children of either the respondent or protected person.

37 Contravention of family violence safety notice

- (1) This section applies if a person—
 - (a) has been served with a family violence safety notice; and
 - (b) has had an explanation of the notice given to the person in accordance with section 35.
- (2) The person must not contravene the notice.
Penalty: Level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.
- (3) In a proceeding for an offence against subsection (2) constituted by contravening a family violence safety notice, it is a defence to the charge for the accused person to prove that—
 - (a) the accused person was the respondent under the family violence safety notice; and
 - (b) a family violence intervention order in relation to the same protected person and respondent was also in force at the time the offence was alleged to have been committed; and
 - (c) the accused person's conduct was not in contravention of the family violence intervention order.

38 Arrest for contravention of family violence safety notice

If a police officer believes on reasonable grounds that a person has committed an offence against section 37, the officer may, without warrant, arrest and detain the person.

39 Family violence intervention order prevails over family violence safety notice

- (1) This section applies if—
 - (a) a police officer issues a family violence safety notice; and
 - (b) there is an existing family violence intervention order in place between the affected family member and respondent.
- (2) To the extent of any inconsistency between the family violence safety notice and the family violence intervention order, the family violence intervention order prevails.

40 Reports

- (1) The Chief Commissioner of Police and the Chief Magistrate of the Magistrates' Court must each give to the Attorney-General a report about the operation of this Division for the period ending 12 months after it commences.
- (2) The reports must be given to the Attorney-General within 3 months after the end of the 12 month period.
- (3) The Chief Commissioner's report must include—
 - (a) statistics on the number of family violence safety notices issued during the 12 month period; and
 - (b) how many prosecutions for contraventions of the notices have occurred during the 12 month period; and

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- (c) whether the notices issued during the 12 month period were issued with or without the use of holding powers.
- (4) The Chief Magistrate's report must include—
- (a) statistics about the outcome of applications for family violence intervention orders arising out of family violence safety notices during the 12 month period; and
- (b) statistics about the penalties imposed for contraventions of family violence safety notices during the 12 month period.

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S. 41
amended by
No. 7/2010
s. 10,
repealed by
No. 16/2011
s. 5.

PART 4—FAMILY VIOLENCE INTERVENTION ORDERS

Division 1—Application for family violence intervention order

42 Where application for family violence intervention order may be made

An application for a family violence intervention order must be made at the proper venue of the Magistrates' Court or Children's Court.

43 How application is to be made

- (1) An application for a family violence intervention order must—
 - (a) include the information prescribed by rules made under this Act; and
 - (b) if the applicant is a police officer, be made on oath or by affidavit or certified in accordance with subsection (2); or
 - (c) if the applicant is not a police officer, be made on oath or by affidavit.
- (2) For the purposes of subsection (1)(b), an application certified by a police officer must—
 - (a) be signed by the police officer; and
 - (b) include the police officer's name, rank and station.

44 Application may be made by electronic communication after hours or in remote areas

- (1) This section applies if—
 - (a) a police officer intends to make an application for a family violence intervention order; and
 - (b) the police officer is seeking an interim order until the final order may be determined; and

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- (c) either—
- (i) the application is made before 9 a.m. or after 5 p.m. on a weekday, or is made on a Saturday, Sunday or a public holiday; or
 - (ii) the distance from the nearest venue of the court where the court is sitting is so great that it is impracticable to make the application in person.
- (2) The application may be made by telephone, fax or other electronic communication.
- (3) Before applying by telephone, fax or other electronic communication, the police officer must complete an application, that is made on oath or by affidavit or is certified, that sets out—
- (a) the grounds on which the family violence intervention order is sought; and
 - (b) the reason an interim order is sought until the final order may be decided.
- (4) The application completed under subsection (3) must be filed by the police officer with the court before the first mention date for the application.

45 Who may apply for family violence intervention order

An application for a family violence intervention order may be made by—

- (a) a police officer; or

Note

However, see section 75 which provides that a final order can be made without the consent of the affected family member but only with limited conditions.

- (b) an affected family member; or

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- (c) if the affected family member is an adult, any other person with the written consent of the affected family member; or
 - (d) if the affected family member is a child—
 - (i) a parent of the child; or
 - (ii) any other person with the written consent of a parent of the child or with the leave of the court; or
 - (iii) the affected family member with the leave of the court if the affected family member is of or above the age of 14 years; or
 - (e) if the affected family member has a guardian—
 - (i) the guardian; or
 - (ii) any other person, with the leave of the court.

Note

See also section 76(4) which provides that an associate of an affected family member or a protected person may apply for a family violence intervention order.

46 Application for leave

- (1) If an application for leave is made under section 45(d)(ii) or (e)(ii), the court must grant leave if it is satisfied that it is in the best interests of the affected family member to do so.
- (2) If an application for leave is made under section 45(d)(iii), the court must not grant leave unless it is satisfied the child understands the nature and consequences of a family violence intervention order.

47 Application for protection of child may be included in application for protection of child's parent

- (1) An application for a family violence intervention order for an affected family member who is a child may be included in an application for the protection of the child's parent if the applications arise out of the same or similar circumstances.
- (2) An application referred to in subsection (1) may, on the application of the applicant or the respondent, be heard separately if the court thinks fit having regard to any advantages of the matters being heard together.

48 Service of application

As soon as practicable after an application for a family violence intervention order is made, the appropriate registrar for the court must serve the application on—

- (a) the respondent; and
- (b) if the applicant for the order is not the affected family member—
 - (i) the affected family member; or
 - (ii) if the affected family member is a child and the application was made with the consent of the child's parent, that parent;
 - (iii) if the affected family member is a child and the application was made with the leave of the court, a parent of the child (other than the respondent) with whom the child normally or regularly lives;

- (iv) if the affected family member has a guardian—the guardian.

Note to s. 48
inserted by
No. 53/2010
s. 198.

Note

See section 205(1), which provides that a person may serve a document by causing it to be served.

49 Registrar may issue summons on application for family violence intervention order

If an application for a family violence intervention order has been made to the court, the appropriate registrar for the court may issue a summons requiring the respondent to attend at the court for the hearing of the application.

50 Magistrate or registrar may issue warrant on certain applications for family violence intervention orders

- (1) A magistrate or an appropriate registrar for the court may issue a warrant for the arrest of an adult respondent, as if the application for a family violence intervention order alleged the commission of an offence, if the magistrate or registrar believes on reasonable grounds it is necessary—
- (a) to ensure the safety of the affected family member; or
 - (b) to preserve any property of the affected family member; or
 - (c) to protect a child who has been subjected to family violence committed by the respondent; or
 - (d) to ensure the respondent attends court at a mention date for the application.

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- (2) If a warrant has been issued to arrest a respondent, a police officer may arrest the respondent although the execution copy of the warrant is not in the police officer's possession at the time of the arrest.
 - (3) In determining whether it is necessary to issue a warrant under subsection (1), the magistrate or registrar is not to take into account whether or not the respondent is or has been the subject of a direction, or detained, under Division 1 of Part 3.

51 Application on oath, by affidavit or certified if warrant to issue

If the applicant for a family violence intervention order seeks a warrant to issue in the first instance for the arrest of the respondent—

- (a) the application for the warrant must be in writing and be made on oath or by affidavit or be certified; and
- (b) the application for the family violence intervention order and the warrant must be in the same document and contain the prescribed particulars.

52 Bail on appearance on arrest

- (1) The **Bail Act 1977** applies to and in respect of a respondent to an application for a family violence intervention order arrested under a warrant as if the respondent were an accused person charged with an offence to whom section 4 of the **Bail Act 1977** applies.
- (2) For the purposes of subsection (1), the appropriate person must—
 - (a) advise the affected family member of the outcome of the application for bail; and

S. 52(2)(b)(i)
amended by
No. 70/2010
s. 38.

(b) if bail is granted—

- (i) advise the affected family member of any conditions imposed on the respondent that are intended to protect the affected family member; and
- (ii) give the affected family member a copy of the undertaking of bail.

S. 52(3)
substituted by
No. 53/2010
s. 199.

(3) In subsection (2)—

appropriate person means—

- (a) if the application for bail is considered by a court (other than a bail justice), the appropriate registrar of the court; and
- (b) if the application for bail is considered by a bail justice or a police officer, the police officer.

Division 2—Interim orders

53 Court may make interim order

(1) The court may make an interim order if—

- (a) a person has applied to the court for a family violence intervention order and the court is satisfied, on the balance of probabilities, that an interim order is necessary pending a final decision about the application—
 - (i) to ensure the safety of the affected family member; or
 - (ii) to preserve any property of the affected family member; or
 - (iii) to protect a child (whether or not the child is an affected family member) who has been subjected to family violence committed by the respondent; or

S. 53(1)(a)(iii)
amended by
No. 18/2010
s. 18(1).

- (b) a person has applied to the court for a family violence intervention order and the parties to the proceeding have consented to, or do not oppose, the making of an interim order for the application; or
- (c) a family violence safety notice has been issued for an affected family member and the court is satisfied, on the balance of probabilities, there are no circumstances that would justify discontinuing the protection of the person until a final decision about the application.

Note

See Division 5 which provides for the inclusion of conditions in a family violence intervention order, including an interim order. See also Division 5 which provides for the inclusion of conditions suspending a firearms authority, weapons approval or weapons exemption in the case of an interim order and cancelling a firearms authority, weapons approval or weapons exemption in the case of a final order.

Note to s. 53(1) amended by No. 53/2010 s. 200(1).

- (1A) Before making an interim order under subsection (1), the court must consider whether there are any children who have been subjected to family violence committed by the respondent.
- (1B) If the court decides to make an order to protect a child under subsection (1)(a)(iii), the court may—
 - (a) if the child's need for protection is substantially the same as that of the affected family member—include the child as a protected person in making the order under subsection (1); or
 - (b) otherwise—make a separate interim order under subsection (1) for the child as a protected person.

S. 53(1A) inserted by No. 18/2010 s. 18(2).

S. 53(1B) inserted by No. 18/2010 s. 18(2).

s. 53A

S. 53(1C)
inserted by
No. 18/2010
s. 18(2).

- (1C) The court may make an order under subsection (1)(b)—
- (a) without being satisfied as to any matter referred to in subsection (1)(a) or (1)(c); and
 - (b) whether or not the respondent admits to any or all of the particulars of the application.
- (2) In deciding whether to make an interim order the court is not to take into account whether or not the respondent is or has been the subject of a direction, or detained, under Division 1 of Part 3.

S. 53(3)
inserted by
No. 53/2010
s. 200(2).

- (3) The court may make an interim order whether or not—
- (a) some or all of the alleged family violence occurred outside Victoria, so long as the affected family member was in Victoria at the time at which that alleged family violence occurred;
 - (b) the affected family member was outside Victoria at the time at which some or all of the family violence alleged in the application for the family violence intervention order occurred, so long as that alleged family violence occurred in Victoria.

S. 53A
inserted by
No. 53/2010
s. 211.

53A Interim family violence intervention order where existing personal safety intervention order

- (1) The court must not make an interim order if there is an existing personal safety intervention order for which—
- (a) the affected family member is a protected person and the respondent is a respondent; or
 - (b) the respondent is a protected person and the affected family member is a respondent.

- (2) Despite subsection (1), the court may make an interim order if there is an existing interim personal safety intervention order for which the affected family member is a respondent and the respondent is a protected person.

Example

B is an affected family member for an application for a family violence intervention order against A. However, A is already a protected person under an interim personal safety intervention order, and B is a respondent for that order. The court could still make an interim order to protect B from A.

- (3) In this section, *interim personal safety intervention order* means an interim order within the meaning of the **Personal Safety Intervention Orders Act 2010**.

54 Interim order may be made in absence of respondent etc.

An interim order may be made—

- (a) whether or not the respondent has been served with a copy of the application for a family violence intervention order; and
- (b) whether or not the respondent is present when the interim order is made.

55 Evidentiary requirements for making interim orders

- (1) The court must not make an interim order, other than an order referred to in section 53(1)(b), unless—
- (a) the application is supported by oral evidence or an affidavit; or
- (b) the application is made under section 44 by telephone, fax or other electronic communication and the court waives the requirement under paragraph (a); or

S. 55
(Heading)
substituted by
No. 18/2010
s. 19(1).

S. 55(1)(b)
amended by
No. 18/2010
s. 19(2)(a).

S. 55(1)(c)
inserted by
No. 18/2010
s. 19(2)(b).

S. 55(2)
amended by
No. 18/2010
s. 19(3).

S. 55(3)
inserted by
No. 18/2010
s. 19(4).

- (c) the application is made by the issue of a family violence safety notice that was certified in accordance with section 153(1).
- (2) Nothing in subsection (1)(a) or (3) obliges the affected family member to give evidence before the interim order is made.
- (3) If the application is made by issue of a family violence safety notice that was certified in accordance with section 153(1), the court, if deciding under section 65(3) whether to refuse to admit or limit the use to be made of the family violence safety notice, must first consider whether it is reasonably practicable to obtain oral evidence or affidavit evidence.

56 Interim order may apply to more than one affected family member

An interim order may be made for more than one affected family member if—

- (a) the court is satisfied under section 53(1)(a) in relation to each of the affected family members; or
- (b) all the parties to the proceeding have given consent, or are not opposed to the making of the order, in accordance with section 53(1)(b); or
- (c) a family violence safety notice has been issued for each of the affected family members and the court is satisfied under section 53(1)(c) in relation to each of the family members.

57 Explanation of interim order

- (1) If a court makes an interim order, the appropriate registrar of the court must give the respondent and the affected family member a written explanation of the order, in the prescribed form, that explains the following matters—
- (a) the purpose, terms and effect of the interim order;
 - (b) the consequences and penalties that may follow if the respondent fails to comply with the terms of the interim order;
 - (c) when the interim order expires and the means by which the interim order may be varied;
 - (d) for the respondent, that the interim order is a civil order of the court and the affected family member cannot give permission to contravene the interim order;
 - (e) the process for deciding the final order;
 - (f) how the order interacts with a Family Law Act order or an order under the **Children, Youth and Families Act 2005**;
 - (g) if the court has varied, suspended, revoked or revived a Family Law Act order because it is inconsistent with the interim order, the purpose, terms and effect of the variation or suspension;
 - (h) any relevant family violence services offering legal, emotional or practical support that may be available to the affected family member or respondent.

S. 57(1)(c)
substituted by
No. 18/2010
s. 20(1).

- (2) A written explanation under subsection (1) must be—
- (a) if the protected person or respondent is before the court, given to the protected person or respondent and accompanied by a clear oral explanation of the matters contained in it; and
 - (b) if the protected person or respondent is not before the court, served on the protected person or respondent and accompanied by any additional information the court considers necessary to explain the interim order.

S. 57(2A)
inserted by
No. 18/2010
s. 20(2).

- (2A) Despite subsection (2)(a), the appropriate registrar is not required to give the protected person or respondent an oral explanation if the registrar is satisfied that, on making the order, the magistrate gave the protected person or respondent a clear oral explanation of the matters set out in subsection (1).
- (3) A failure by the appropriate registrar to explain an interim order in accordance with this section does not affect the validity of the interim order.

58 Interim order made on electronic application

If the court makes an order under section 53 on an application made by telephone, fax or other electronic communication, the court must inform the police officer of—

- (a) the terms of the order; and
- (b) the period of operation of the order; and
- (c) the venue of the court for the first mention date for the application for the family violence intervention order; and

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- (d) the date and time of the first mention date for the application for the family violence intervention order.

Note

See section 5(2) of the **Magistrates' Court Act 1989** which provides that the Magistrates' Court may sit and act at any time and place.

59 Hearing to be listed for decision about final order as soon as practicable

If the court makes an interim order, the court must ensure the hearing is listed for a decision about the final order as soon as practicable.

60 Expiry of interim order

An interim order ends—

- (a) if the court makes a final order and the final order includes an order that the interim order continues until the final order is served on the respondent, when the final order is served on the respondent; or
- (b) if the court makes a final order and the final order does not include an order about the interim order continuing as referred to in paragraph (a), at the time the final order is made; or
- (c) if the court refuses to make a final order in relation to the application, at the time of the court's refusal; or
- (d) if the interim order is revoked by the court, at the time of the revocation; or

- (e) if the application for the family violence intervention order is withdrawn, at the time of the withdrawal.

Notes

- 1 See section 100 which provides for the variation of family violence intervention orders, including interim orders.
- 2 If, in making the interim order, the court also revives, varies or suspends an order, injunction or arrangement under section 68R of the Family Law Act 1975 of the Commonwealth, that revival, variation or suspension ceases to have effect under section 68T of that Act when the interim order ends or 21 days after the interim order is made, whichever is earlier.

Division 3—Proceedings for family violence intervention orders

61 Mention date

- (1) The court must not proceed to hear a contested application for a final order on a mention date unless the court is satisfied that—
 - (a) all the parties to the proceeding have had an opportunity to seek legal advice and legal representation; and
 - (b) all the parties to the proceeding consent to the hearing of the contested application on the mention date; and
 - (c) it is fair and just to all the parties to hear the application on the mention date.
- (2) Subsection (1) does not prevent the court making a final order on a mention date if—
 - (a) all the parties to the proceeding have consented to, or are not opposed to the making of, the order in accordance with section 78; or

-
- (b) the court is satisfied the respondent has been served with a copy of the application for a family violence intervention order and has not attended court on the mention date.

62 Legal representation of a child who is not applicant or respondent

- (1) If the affected family member in the proceeding is a child and is not the applicant, the child may have legal representation in the proceeding only if the court, on its own initiative—
- (a) considers it appropriate in all the circumstances of the case; and
 - (b) gives leave for the child to be represented.
- (2) In deciding whether to grant leave under subsection (1), the court must have regard to the following—
- (a) the desirability of protecting children from unnecessary exposure to the court system;
 - (b) the harm that could occur to the child and to family relationships if the child is directly represented in the proceeding.

63 Hearing may relate to more than one application

- (1) Any number of applications for family violence intervention orders may be heard together if the court thinks fit.
- (2) The decision under subsection (1) to hear a number of applications for family violence intervention orders together may be made—
- (a) on the application of the applicants or the respondents; or
 - (b) on the court's own initiative if the court considers it in the interests of justice to do so.

64 Affected family member to be heard separately if application made by guardian

- (1) This section applies if—
- (a) an application for a family violence intervention order is made under section 45(e) by the guardian of an affected family member; and
 - (b) the affected family member objects to the application.

Note

In relation to resolving an issue between the guardian and the affected family member, see sections 30 and 61 of the **Guardianship and Administration Act 1986**. Section 30 provides that the guardian may seek advice from the Victorian Civil and Administrative Tribunal and section 61 provides for the reassessment of a guardianship order by the Tribunal.

- (2) At the hearing for the final order, the views of the affected family member must be heard separately from the views of the applicant.
- (3) Without limiting subsection (2), the views of the affected family member may be heard through an independent legal representative acting on behalf of the person.

65 Evidence

- (1) Subject to this Act, in a proceeding for a family violence intervention order the court may inform itself in any way it thinks fit, despite any rules of evidence to the contrary.

Note

This section does not apply to a proceeding for an offence under this Act.

(2) The following provisions apply to a proceeding for a family violence intervention order—

S. 65(2) substituted by No. 69/2009 s. 54(Sch. Pt 1 item 22.2).

(a) sections 13, 30, 31 and 41 and Part 3.10 of the **Evidence Act 2008**;

S. 65(2)(a) amended by No. 53/2010 s. 201(1).

(b) Division 2A of Part II of the **Evidence (Miscellaneous Provisions) Act 1958**.

Note

Section 13 of the **Evidence Act 2008** provides for circumstances in which a person lacks capacity to give evidence. Section 30 of the **Evidence Act 2008** provides for a witness to give evidence through an interpreter. Section 31 of the **Evidence Act 2008** provides for the giving of evidence by a witness who is deaf or mute. Section 41 of the **Evidence Act 2008** provides for the court's powers to disallow improper questions. Part 3.10 of the **Evidence Act 2008** provides for the application of privileges. Division 2A of Part II of the **Evidence (Miscellaneous Provisions) Act 1958** provides for confidential communications in relation to proceedings with respect to sexual offences.

Note to s. 65(2) amended by No. 53/2010 s. 201(2).

(3) The court may refuse to admit, or may limit the use to be made of, evidence if the court is satisfied—

(a) it is just and equitable to do so; or

(b) the probative value of the evidence is substantially outweighed by the danger that the evidence may be unfairly prejudicial to a party or misleading or confusing.

66 Evidence may be given by affidavit or sworn statement

(1) The court may admit in a proceeding under this Act evidence given by a person by affidavit or sworn statement.

s. 67

S. 66(2)
amended by
No. 53/2010
s. 201(3).

- (2) Subsection (1) applies despite any rules of evidence to the contrary or anything to the contrary in this Act or any other Act (other than the **Charter of Human Rights and Responsibilities**).
- (3) A party to the proceeding may, with the leave of the court, require a person giving evidence by affidavit or by sworn statement to attend the hearing of the proceeding to be called as a witness and to be cross-examined.

67 Evidence given by children

- (1) A child, other than a child who is an applicant for a family violence intervention order or a respondent, must not give evidence for the purposes of a proceeding under this Act unless the court grants leave for the child to do so.
- (2) In deciding whether to grant leave under subsection (1) the court must have regard to the following—
 - (a) the desirability of protecting children from unnecessary exposure to the court system; and
 - (b) the harm that could occur to the child and to family relationships if the child gives evidence.
- (3) This section applies despite anything to the contrary in the **Evidence Act 2008**.

S. 67(3)
inserted by
No. 69/2009
s. 54(Sch. Pt 1
item 22.3).

S. 67A
inserted by
No. 53/2010
s. 202.

67A Court may issue warrant to arrest for witness who fails to appear

Section 194 of the **Evidence Act 2008** applies to a proceeding for a family violence intervention order as if the reference in that section to a civil or criminal proceeding were a reference to a

proceeding for a family violence intervention order.

Note

Section 194 of the **Evidence Act 2008** provides that the court may issue a warrant to arrest a witness who fails to appear at a hearing when called or to arrest a witness who is avoiding service of a subpoena or summons or who has been served with a subpoena or summons but is unlikely to comply with it.

68 Court may close proceeding to public

- (1) If the court considers it necessary to do so to prevent an affected family member or protected person or a witness in a proceeding under this Act from being caused undue distress or embarrassment, the court may—
 - (a) order that the whole or part of the proceeding be heard in closed court; or
 - (b) order that only persons or classes of persons specified in the order may be present during the whole or any part of the proceeding.
- (2) If the court makes an order under subsection (1), the appropriate registrar for the court must post a copy of the order on a door of, or in another conspicuous place at, the place at which the court is being held.
- (3) A person must not contravene an order made and posted under this section.

Penalty: 1000 penalty units or imprisonment for 3 months.

69 Alternative arrangements for proceeding

- (1) The court may direct that any of the following alternative arrangements be made for a proceeding in respect of a family violence intervention order—

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- (a) permitting the proceeding to be conducted from a place other than the courtroom by means of closed circuit television or other facilities that enable communication between that place and the courtroom;
 - (b) using screens to remove the respondent from a party's or witness's direct line of vision;
 - (c) permitting a person to be beside a party or witness while the party or witness is giving evidence for the purpose of providing emotional support to the party or witness;
 - (d) requiring legal practitioners to be seated during the proceeding;
 - (e) any other alternative arrangements the court considers appropriate.
- (2) If the witness is an adult, the court may make a direction under subsection (1) on its own initiative or on the application of a party to the proceeding.
 - (3) If the witness is a child, the court must make a direction under subsection (1) unless it considers it is not appropriate to do so having regard to—
 - (a) the wishes expressed by the witness; and
 - (b) the age and maturity of the witness; and
 - (c) the facilities available for the conduct of the proceeding; and
 - (d) any other matters the court considers relevant.
 - (4) Any place outside the courtroom where a witness is permitted to give evidence under this section is taken to be part of the courtroom while the witness is there for the purpose of giving evidence.
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- (5) The court may, at any time in the course of the proceeding, vary or revoke a direction made under subsection (1) on its own initiative or on the application of a party to the proceeding.

70 Special rules for cross-examination of protected witnesses

- (1) The following persons are *protected witnesses* for the purposes of a proceeding under this Act—
- (a) the affected family member or the protected person;
 - (b) a child;
 - (c) any family member of a party to the proceeding;
 - (d) any person declared under subsection (2) to be a protected witness for the proceeding.
- (2) The court may at any time declare a person to be a protected witness if the court is satisfied the person—
- (a) has a cognitive impairment; or
 - (b) otherwise needs the protection of the court.
- (3) A protected witness must not be personally cross-examined by the respondent unless—
- (a) the protected witness is an adult; and
 - (b) the protected witness consents to being cross-examined by the respondent or, if the protected witness has a guardian, the protected witness' guardian has consented to the cross-examination; and
 - (c) if the protected witness has a cognitive impairment, the court is satisfied the protected witness understands the nature and consequences of giving consent and would be competent to give evidence; and

- (d) the court decides that it would not have a harmful impact on the protected witness for the protected witness to be cross-examined by the respondent.
- (4) If a respondent who is prohibited from cross-examining a protected witness under subsection (3) is not legally represented, the court must—
 - (a) inform the respondent that the respondent is not permitted personally to cross-examine a protected witness; and
 - (b) ask the respondent whether the respondent has sought to obtain legal representation for the cross-examination of a protected witness; and
 - (c) if satisfied the respondent has not had a reasonable opportunity to obtain legal representation, grant an adjournment on its own initiative or if requested by the respondent.

71 Representation of respondent

- (1) If the respondent does not obtain legal representation for the cross-examination of a protected witness after being given a reasonable opportunity to do so, the court must order Victoria Legal Aid to offer the respondent legal representation for that purpose.
- (2) Despite anything in the **Legal Aid Act 1978**, Victoria Legal Aid must offer to provide legal representation in accordance with subsection (1).

Note

See section 8 of the **Legal Aid Act 1978** which provides that legal aid may be provided by Victoria Legal Aid by making available its own officers or by arranging for the services of private legal practitioners.

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- (3) However, Victoria Legal Aid may apply all or any of the conditions under section 27 of the **Legal Aid Act 1978** to the representation of the respondent as if the respondent had been granted legal assistance under that Act.
 - (4) If the respondent refuses the legal representation offered under subsection (1), or otherwise refuses to co-operate, the court must warn the respondent that if the respondent is not represented and not permitted to cross-examine the protected person about events relevant to the application the subject of the proceeding, neither the respondent nor the respondent's witnesses may give evidence about those events.

72 Representation of applicant

- (1) This section applies if—
 - (a) a respondent is prohibited from cross-examining a protected witness under section 70; and
 - (b) the respondent is legally represented; and
 - (c) the protected witness—
 - (i) is the applicant; and
 - (ii) is not a police officer; and
 - (iii) is not legally represented.
- (2) The court must order Victoria Legal Aid to provide legal representation for the protected witness for purpose of cross-examination by the respondent's legal representative unless the protected witness objects to the provision of the legal representation.
- (3) Despite anything in the **Legal Aid Act 1978**, Victoria Legal Aid must provide legal representation in accordance with subsection (2).

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- (4) However, Victoria Legal Aid may apply all or any of the conditions under section 27 of the **Legal Aid Act 1978** to the representation of the protected witness as if the protected witness had been granted legal assistance under that Act.

73 Expert evidence about family violence

- (1) The court may admit evidence from an expert witness about the dynamics and characteristics of family violence.
- (2) Without limiting subsection (1), the evidence given by an expert witness may include evidence of—
- (a) the general nature and dynamics of relationships affected by family violence, including the possible consequences of separation from the person committing the family violence; and
 - (b) the psychological effect of violence on persons who are or have been in a relationship or part of a family affected by family violence; and
 - (c) social, cultural or economic factors that impact on persons who are or have been in a relationship affected by family violence.
- (3) In this section—
- expert witness* means a witness with relevant qualifications, training or expertise in family violence.

**Division 3A—Assessment reports in proceedings in the
Children's Court**

Pt 4 Div. 3A
(Heading and
ss 73A–73H)
inserted by
No. 18/2010
s. 21.

**73A Children's Court may order assessment of
respondent or affected family member**

S. 73A
inserted by
No. 18/2010
s. 21.

- (1) In a proceeding for a family violence intervention order or the variation or revocation of a family violence intervention order the Children's Court may order the Secretary to provide an assessment report in respect of a respondent or an affected family member or protected person.
- (2) The Children's Court must not make an order under subsection (1) unless the person in respect of whom the report will be prepared—
 - (a) if that person is a child, has legal representation; and
 - (b) in any case, consents to the making of the order.

**73B Notification of requirement to submit assessment
report**

S. 73B
inserted by
No. 18/2010
s. 21.

If the Children's Court orders the Secretary to submit an assessment report, the registrar at the venue of the Court at which the order is made must, within one working day after the making of the order—

- (a) orally notify him or her of the making of the order; and
- (b) forward a copy of the order to him or her.

73C Warning to be given to persons being interviewed

S. 73C
inserted by
No. 18/2010
s. 21.

The author of an assessment report must at the beginning of any interview being conducted by him or her in the course of preparing the report

s. 73D

inform the person being interviewed that any information that he or she gives may be included in the report.

S. 73D
inserted by
No. 18/2010
s. 21.

73D Disputed report

- (1) If any matter in an assessment report is disputed by the person who is the subject of the report, the Children's Court must not take the disputed matter into consideration when deciding whether to make a family violence intervention order unless satisfied that the matter is true on the balance of probabilities.
- (2) If—
 - (a) an assessment report, or any part of it, is disputed by the person who is the subject of the report; and
 - (b) the author of the report does not attend the hearing of the proceeding despite having been required to attend under section 73G(1)—

the Children's Court must not take the report or the part in dispute into consideration when determining the proceeding unless the person consents to the report or the part in dispute being admitted into evidence.

S. 73E
inserted by
No. 18/2010
s. 21.

73E Content of assessment report

An assessment report must include—

- (a) the matters that the Children's Court considers relevant to the proceeding, including any psychological or psychiatric assessment of the person who is the subject of the report; and
- (b) any other matter that the Children's Court directs to be included.

73F Secretary to forward report to Children's Court

- (1) If the Children's Court orders the Secretary to submit an assessment report to the court, he or she must do so within 21 days and not less than 3 working days before the hearing.
- (2) If the Secretary is of the opinion that information contained in the report will be or may be prejudicial to the physical or mental health of the person who is the subject of the report, the Secretary may forward a statement to the Children's Court to that effect with the report.

S. 73F
inserted by
No. 18/2010
s. 21.

73G Attendance at court of author of assessment report

- (1) The author of an assessment report ordered under section 73A may be required to attend to give evidence at the hearing of the proceeding by a notice given in accordance with subsection (2) by—
 - (a) the person in respect of whom the report has been prepared; or
 - (b) with the leave of the court, a party to the proceeding; or
 - (c) the Children's Court.
- (2) A notice under subsection (1) must be—
 - (a) in writing; and
 - (b) filed with the appropriate registrar at the proper venue of the court as soon as possible and, if practicable, not later than 2 working days before the hearing.
- (3) On the filing of a notice under subsection (1), the registrar must immediately notify the author of the report that his or her attendance is required on the return date.

S. 73G
inserted by
No. 18/2010
s. 21.

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- (4) A person is guilty of contempt of court if, being the author of a report who has been required to attend the Children's Court under subsection (1), he or she fails, without sufficient excuse, to attend as required.
- (5) The author of a report who has been required under subsection (1) by the person or a party to attend at the hearing of a proceeding—
- (a) must, if required by the person or party (as the case requires), be called as a witness; and
 - (b) if called as a witness, may be cross-examined on the contents of the report by the person or a party, whether or not that person required the author of the report to attend.

S. 73H
inserted by
No. 18/2010
s. 21.

73H Confidentiality of assessment reports

- (1) The Children's Court may impose conditions on access to an assessment report, including conditions about who can access the report or part of the report.
- (2) Subject to any contrary direction by the court, a person who prepares or receives or otherwise is given or has access to an assessment report, or any part of such a report, must not, without the consent of the person who is the subject of the report, disclose any information contained in that report or part report (as the case requires) to any person who is not entitled to receive or have access to that report or that part (as the case requires).
- Penalty: 10 penalty units.
- (3) A reference in this section to a report includes a reference to a copy of a report.

Division 4—Making final orders

74 Power of court to make final order

- (1) The court may make a final order if the court is satisfied, on the balance of probabilities, that the respondent has committed family violence against the affected family member and is likely to continue to do so or do so again.
- (2) A final order may be made for more than one affected family member if—
 - (a) the court is satisfied of the matters set out in subsection (1) in relation to each of the affected family members; or
 - (b) consent has been given, or the making of the order has not been opposed, in accordance with section 78 by—
 - (i) all the parties to the proceeding; and
 - (ii) if the application for the final order was brought with the consent of an affected family member's parent or guardian, that parent or guardian.

S. 74(1)
amended by
No. 53/2010
s. 203(1).

Note

See section 77 which provides that the court may, on its own initiative, also make a final order for the protection of children who are family members of the affected family member or respondent.

- (3) The court may make a final order whether or not—
 - (a) some or all of the family violence constituting grounds for making the order occurred outside Victoria, so long as the affected family member was in Victoria at the time at which the family violence occurred;

S. 74(3)
inserted by
No. 53/2010
s. 203(2).

s. 74A

- (b) the affected family member was outside Victoria at the time at which some or all of the family violence constituting grounds for making the order occurred, so long as that family violence occurred in Victoria.

S. 74A
inserted by
No. 53/2010
s. 212.

74A No final order if existing personal safety intervention order

The court must not make a final order under section 74, 76, 77 or 78 if there is an existing personal safety intervention order for which—

- (a) the affected person is a protected person and the respondent is a respondent; or
- (b) the respondent is a protected person and the affected person is a respondent.

Example

B is a protected person under a personal safety intervention order; C is a respondent for that order. The court cannot make a final order to protect C from B or to protect B from C.

S. 75
(Heading)
amended by
No. 16/2011
s. 6(1).

**75 Power to make final order if affected family member has not consented to application or order—
police applicants**

- (1) If the applicant for a final order is a police officer, the court may make the order under section 74 even if the affected family member has not consented to the making of the application.
- (2) However, if the affected family member does not consent to the making of the final order, the final order may include only conditions referred to in section 81(2)(a), (f), (g) or (h).
- (3) Subsection (2) does not apply if—
 - (a) the affected family member is a child and—
 - (i) no adult affected family member is included in the application; or

S. 75(2)
amended by
No. 16/2011
s. 6(2).

S. 75(3)(a)
substituted by
No. 16/2011
s. 6(3).

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- (ii) the adult affected family member included in the application consents to the making of the order; or
 - (b) the affected family member has a guardian and the guardian has consented to the application; or
 - (c) the affected family member is cognitively impaired.

76 Associated final orders

- (1) The court may also make a final order against a person (an *additional respondent*) if—
 - (a) a final order has been made against a respondent; and
 - (b) the court is satisfied, on the balance of probabilities, that—
 - (i) the additional respondent is an associate of the respondent; and
 - (ii) the additional respondent has subjected the protected person to behaviour that would be family violence if the additional respondent and the protected person were family members, and is likely to do so again.
- (2) The court may also make a final order to protect a person (an *additional applicant*) if—
 - (a) a final order has been made to protect a protected person; and
 - (b) the court is satisfied on the balance of probabilities that—
 - (i) the additional applicant is an associate of the protected person; and

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- (ii) the respondent has subjected the additional applicant to behaviour that would be family violence if the respondent and the additional applicant were family members, and is likely to do so again.
- (3) To avoid doubt, it is declared that—
- (a) an application for an associated final order may be heard with the application for the original final order; and
 - (b) this Act applies to an associated final order and an application for the order as if they were the original final order and the application for the original final order respectively; and
 - (c) the associated final order is not affected if the original final order is varied, extended, revoked or otherwise ends.
- (4) An associated final order may be made on the application of—
- (a) an associate of the protected person for the original final order; or
 - (b) a person who, under section 45, would be entitled to make an application for a family violence intervention order for the associate if the associate were an affected family member.
- (5) In this section—
- associated final order*** means a final order made under this section;
- original final order*** means a final order referred to in subsection (1)(a) or (2)(a).

77 Protection of children on court's own initiative

- (1) Before making a final order under section 74 or 76, the court must consider whether there are any children who are family members of the affected family member or the respondent who have been subjected to family violence committed by the respondent.
- (2) If the court is satisfied, on the balance of probabilities, that a child who is a family member of the affected family member or the respondent has been subjected to family violence committed by the respondent and is likely again to be subjected to family violence committed by the respondent, the court may, on its own initiative—
 - (a) if the child's need for protection is substantially the same as that of the affected family member—include the child as a protected person in making the order under section 74 or 76; or
 - (b) otherwise—make a separate final order under section 74 or 76 for the child as a protected person.

78 Consent orders

- (1) If the parties to a proceeding for a final order, or the variation, extension or revocation of a final order, consent to the making of the order or do not oppose the making of the order, the court may make the order—
 - (a) without being satisfied as to any matter referred to in—
 - (i) section 74 or 76; or
 - (ii) in the case of a proceeding for a variation, revocation or extension of a final order, section 100 or 106; and

S. 78(1)
substituted by
No. 18/2010
s. 22(1).

Family Violence Protection Act 2008
No. 52 of 2008
Part 4—Family Violence Intervention Orders

s. 78

S. 78(2)
substituted by
No. 18/2010
s. 22(1).

(b) whether or not the respondent admits to any or all of the particulars of the application.

(2) However, if the respondent is a child the court may—

(a) make a final order to which the parties consent or have not opposed only if the court is satisfied as to all relevant matters referred to in section 74 or 76; or

(b) in the case of a proceeding for a variation, revocation or extension of a final order, make an order varying, revoking or extending the final order to which the parties consent or have not opposed only if the court is satisfied as to all relevant matters referred to in section 100 or 106.

S. 78(3)
amended by
No. 18/2010
s. 22(2).

(3) If the application for the family violence intervention order or for the variation, revocation or extension of the family violence intervention order was made with the consent of an affected family member's parent or guardian, that parent or guardian is taken to be a party for the purposes of consenting to or not opposing the making of the order.

S. 78(4)
amended by
No. 18/2010
s. 22(3).

(4) Before making a final order or varying, revoking or extending a final order under subsection (1), the court may conduct a hearing in relation to the particulars of the application if, in the court's opinion, it is in the interests of justice to do so.

S. 78(5)
amended by
Nos 18/2010
s. 22(4),
53/2010 s. 204.

(5) A court may refuse to make a final order, or an order varying, revoking or extending a final order, to which the parties to the proceeding have consented if the court believes the order may pose a risk to the safety of one of the parties or a child of the affected family member or respondent.

- (6) Section 77 continues to apply in relation to any children of the affected family member or the respondent, whether or not the court decides to make a final order under subsection (1).
- (7) Sections 102, 103, 104 and 105 continue to apply in relation to any children of the affected family member or the respondent, whether or not the court decides to make an order varying, revoking or extending a final order under subsection (1).

S. 78(7)
inserted by
No. 18/2010
s. 22(5).

Division 5—Conditions of family violence intervention orders

79 Definition

In this Division—

residence, in relation to a protected person, means a place of residence that is shared, has been shared or is proposed to be shared by the person and the respondent for the application for a family violence intervention order.

80 Safety of affected person and children paramount in deciding conditions

In deciding the conditions to be included in a family violence intervention order, the court must give paramount consideration to the safety of—

- (a) the affected family member for the application for the family violence intervention order; and
- (b) any children who have been subjected to the family violence to which the application relates.

81 Conditions to be included in family violence intervention order

- (1) The court may include in a family violence intervention order any conditions that appear to the court necessary or desirable in the circumstances.
- (2) Without limiting subsection (1), a family violence intervention order may include conditions—
 - (a) prohibiting the respondent from committing family violence against the protected person; and
 - (b) excluding the respondent from the protected person's residence in accordance with section 82 or 83; and
 - (c) relating to the use of personal property in accordance with section 86; and
 - (d) prohibiting the respondent from approaching, telephoning or otherwise contacting the protected person, unless in the company of a police officer or a specified person; and

Examples

- 1 Emailing the protected person.
 - 2 Sending text messages to the protected person.
- (e) prohibiting the respondent from being anywhere within a specified distance of the protected person or a specified place, including the place where the protected person lives; and
 - (f) prohibiting the respondent from causing another person to engage in conduct prohibited by the order; and

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- (g) revoking or suspending a weapons approval held by the respondent or a weapons exemption applying to the respondent as provided by section 95; and
 - (h) cancelling or suspending the respondent's firearms authority as provided by section 95.

82 Exclusion of respondent from residence

- (1) If the court decides to make a family violence intervention order, the court must consider whether to include a condition (an *exclusion condition*) excluding the respondent from the protected person's residence.
- (2) In making a decision about whether to include an exclusion condition in the family violence intervention order, the court must have regard to all the circumstances of the case, including the following—
 - (a) the desirability of minimising disruption to the protected person and any child living with the protected person and the importance of maintaining social networks and support which may be lost if the protected person and the child were required to leave the residence or were unable to return to or move into the residence;
 - (b) the desirability of continuity and stability in the care of any child living with the protected person;
 - (c) the desirability of allowing any childcare arrangements, education, training or employment of the protected person or any child living with the protected person to continue without interruption or disturbance.
- (3) Subsection (1) applies regardless of any legal or equitable rights the parties have in the residence.

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- (4) If the court decides that an exclusion condition is appropriate in a family violence intervention order against an adult respondent and the protected person does not oppose the inclusion of the condition, the order must include the condition.

Note

See Division 1 of Part 6 of the **Residential Tenancies Act 1997** which provides that the protected person may, if a final family violence intervention order includes an exclusion condition excluding the respondent from a residence, apply under that Act for an existing tenancy agreement to be terminated and a new tenancy agreement to be entered into with the landlord.

83 Exclusion of child respondent from residence

- (1) This section applies if the court decides to make a family violence intervention order against a respondent who is a child.
- (2) In addition to the matters to which the court must have regard under section 82 in deciding whether to include an exclusion condition in the family violence intervention order, the court must consider the following—
- (a) the desirability of the child being supported to gain access to appropriate educational services and health services;
 - (b) the desirability of allowing the education, training or employment of the child to continue without interruption.
- (3) Despite section 80, the court may include an exclusion condition in the order only if it is satisfied that if the child is excluded from the residence the child will have appropriate alternative accommodation and appropriate care and supervision.

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- (4) If the child is an Aboriginal or Torres Strait Islander child, for the purposes of deciding under subsection (3) whether the child will have appropriate alternative accommodation and appropriate care and supervision, the court must have regard to the following—
- (a) as a priority, an Aboriginal or Torres Strait Islander child should live within the child's Aboriginal or Torres Strait Islander extended family or relatives or, if that is not possible, other extended family or relatives;
 - (b) the need for the child to keep the child's culture and identity through contact with the child's community.
- (5) If the court includes an exclusion condition in the family violence intervention order, the court must notify the Secretary to the Department of Human Services that the order has been made.

S. 83(5)
amended by
No. 18/2010
s. 36.

84 Court may ask Secretary for report for purposes of section 83

- (1) For the purposes of considering a matter referred to in section 83(2), (3) or (4), the court may ask the Secretary to the Department of Human Services to give the court a report about the options available for the appropriate accommodation, care and supervision of the child if the exclusion condition were included in the family violence intervention order.
- (2) If the Secretary receives a request under subsection (1)—
- (a) the Secretary must give the report to the court in the period ordered by the court or, if no period is ordered, within the prescribed time; and

- (b) for a request relating to a child under the age of 17 years, section 30 of the **Children, Youth and Families Act 2005** applies in relation to the request for the report as if the request were a report received under section 28 of that Act.

85 Excluded person to provide new address

- (1) If the court includes an exclusion condition in a family violence intervention order, the court must—
- (a) ask the respondent to provide an address for the service of documents; and
 - (b) advise the respondent that if a police officer is unable to locate the respondent to serve the respondent with a document under this Act the police officer may, under section 207, seek information about the respondent from public sector organisations.
- (2) Without limiting subsection (1)(a), the address may be an email address.

Note

See the **Electronic Transactions (Victoria) Act 2000** which provides that written information that is required or permitted to be given to a person (other than the delivery of information or a document required to be effected only by personal service) may, with the person's consent, be given by means of an electronic communication. See also section 506(4) of the **Residential Tenancies Act 1997** which provides for the service by email of documents under that Act.

- (3) The respondent is not obliged to comply with the request to provide an address.

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- (4) If the respondent provides an address under subsection (1) other than the address where the respondent lives or works and another person living at the address advises the court that the person does not consent to the use of the address for the service of documents under this Act, the address is not a valid address for the service of the documents.

86 Conditions about personal property

If the court decides to make a family violence intervention order, the court may include in the order the following conditions—

- (a) a condition directing the respondent to return—
- (i) the protected person's personal property or property belonging to a family member of the protected person; or
 - (ii) personal property belonging to the protected person and the respondent that will enable the protected person's everyday life to continue with as little disruption as practicable in the circumstances;
- (b) if the family violence intervention order includes an exclusion condition, a condition that—
- (i) requires the furniture or appliances in the residence that enable the normal running of the home to remain in the residence; and
 - (ii) allows the respondent to return to the residence, in the company of a police officer or another specified person, to obtain any of the respondent's personal property that is not required under the order to remain in the residence or to

return property in accordance with paragraph (a).

Example

A specified person may be a family friend who is trusted by the protected person and respondent.

87 Relationship with orders made by Family Court and other courts

- (1) The power under section 86 to include a condition relating to personal property in a family violence intervention order is subject to any order to the contrary made by the Family Court, or another court or a Tribunal with relevant jurisdiction to adjudicate in property disputes.
- (2) To the extent of any inconsistency between a condition relating to personal property in a family violence intervention order and an order made by the Family Court, another relevant court or a relevant Tribunal the order of the Family Court, other relevant court or relevant Tribunal prevails.

88 No effect on ownership rights

The inclusion under section 86 of a condition relating to personal property in a family violence intervention order does not affect any rights the protected person or respondent may have in relation to the ownership of the property.

89 Court to enquire as to whether any other relevant orders for child

If the court decides to make a family violence intervention order and the protected person or respondent is the parent of a child, the court must enquire as to whether there are any of the following orders in force in relation to the child—

- (a) a Family Law Act order;

S. 88
amended by
No. 55/2009
s. 10.

- (b) a child protection order.

Note

If there is a child protection order in force in relation to the child, see sections 173 and 174.

90 Variation of relevant Family Law Act order

- (1) This section applies if—
- (a) after making enquiries under section 89, the court is satisfied there is a Family Law Act order in force in relation to the child; and
 - (b) the family violence intervention order and the Family Law Act order will be inconsistent.
- (2) The court must, to the extent of its powers under section 68R of the Family Law Act, revive, vary, discharge or suspend the Family Law Act order to the extent that it is inconsistent with the family violence intervention order.

91 Decision about contact with child

- (1) If the court decides to make a family violence intervention order and the protected person or the respondent is the parent of a child, the court must decide whether or not it will or may jeopardise the safety of the protected person or child for the child to live with, spend time with or communicate with the respondent.
- (2) For the purposes of making a decision under subsection (1), a previous lack of violence by the respondent towards the child is not on its own sufficient reason to decide that the child's safety will not be jeopardised by living with, spending time with or communicating with the respondent.

S. 91(1)
amended by
No. 18/2010
s. 23.

92 Conditions about arrangements for contact with child if not Family Law Act order

- (1) If, after making enquiries under section 89 the court is satisfied there is not a Family Law Act order in force in relation to the child and the court decides under section 91 that the protected person's or child's safety will not be jeopardised by the child living with, spending time with or communicating with the respondent, the court must include in the family violence intervention order the following conditions—
- (a) a condition that any of the following arrangements agreed to by the protected person and respondent must be in writing, or in another form stated in the condition, and comply with any other prescribed requirements—
 - (i) arrangements for the child to live with, spend time with or communicate with the respondent;
 - (ii) arrangements for how the handover of the child for the purposes of living with, spending time with or communicating with the respondent is to occur so that the risk of violence being committed by the respondent against the protected person is minimised; and
 - (b) a condition about how arrangements referred to in paragraph (a) are to be negotiated to maximise the safety of the protected person.

- (2) For the purposes of subsection (1)(a), the court may include a condition that arrangements to live with, spend time with or communicate with the respondent may be agreed other than in writing only if there are exceptional circumstances.

Example

Exceptional circumstances may include that one of the parties cannot read or write.

- (3) Without limiting subsection (1)(b), the condition may provide that the arrangements are to be negotiated in writing or conducted through a third party.

Note

If the protected person and respondent are unable to agree on the child's living arrangements, or with whom and how the child is to spend time or communicate, orders may be sought under the Family Law Act.

- (4) Despite subsection (1), the court does not have to include the conditions specified in that subsection if the protected person, the respondent and any child of the protected person or the respondent live together.

S. 92(4)
inserted by
No. 18/2010
s. 24.

93 Condition prohibiting contact with child

If the court decides under section 91 that it may jeopardise the protected person's or child's safety for the child to live with, spend time with or communicate with the respondent, the court must include a condition in the family violence intervention order prohibiting the respondent from living with, spending time with or communicating with the child.

94 Court to enquire about firearms and weapons

If the court intends to make a family violence intervention order, the court must enquire as to whether the respondent—

- (a) holds a firearms authority; or

- (b) is a person in respect of whom a weapons exemption applies; or
- (c) holds a weapons approval.

95 Suspension or cancellation of firearms authority etc.

If the court makes a family violence intervention order, the court may—

- (a) if the family violence intervention order is an interim order, include a condition in the order suspending the respondent's firearms authority or weapons approval or suspending the application of the weapons exemption to the respondent; or
- (b) if the family violence intervention order is a final order, include a condition in the order cancelling the respondent's firearms authority or revoking the respondent's weapons approval or revoking the application of the weapons exemption to the respondent.

Division 6—Explanation of final order

96 Explanation of final order

- (1) If the court makes a final order and the respondent or protected person (or both) are before the court, the court must explain to the respondent and the protected person (or whichever of them is before the court)—
 - (a) the purpose, terms and effect of the final order, including the effect of the order on any firearms authority or weapons approval held by the respondent or weapons exemption which applies to the respondent; and

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- (b) if the family violence intervention order prohibits the respondent living with, spending time with or communicating with the child, that prohibition; and
 - (c) if the family violence intervention order includes a condition requiring arrangements between the protected person and respondent relating to a child living with, spending time with or communicating with the respondent to be in writing, that condition; and
 - (d) the consequences and penalties that may follow if the respondent fails to comply with the terms of the final order; and
 - (e) for the respondent, that the final order is a civil order of the court and the protected person cannot give permission to contravene the final order.
- (2) An explanation under subsection (1) must be a clear oral explanation.
 - (3) Also, the court must give the protected person and the respondent a written notice containing—
 - (a) the information referred to in subsection (1); and
 - (b) the prescribed information.
 - (4) A failure by the court to explain a final order or give a written notice in accordance with this section does not affect the validity of the order.

Division 7—Duration of final order

97 Court may specify period for which order in force

- (1) The court may specify in a final order the period for which the order is in force.
- (2) In making a decision as to the period for which the final order is to be in force, the court must take into account—
 - (a) that the safety of the protected person is paramount; and
 - (b) any assessment by the applicant of the level and duration of the risk from the respondent; and
 - (c) if the applicant is not the protected person, the protected person's views, including the protected person's assessment of the level and duration of the risk from the respondent.
- (3) The court may also take into account any matters raised by the respondent that are relevant to the duration of the order.

98 Period for which order remains in force if respondent a child

If the respondent is a child, the period specified in the final order for which the order is to remain in force must not be more than 12 months unless there are exceptional circumstances.

99 Duration of order

A final order remains in force—

- (a) if a period is specified in the order, for the specified period unless it is sooner revoked by the court or set aside on appeal; or
- (b) if no period is specified in the order, until it is revoked by the court or set aside on appeal.

Division 8—Variation, revocation and extension of family violence intervention orders

Subdivision 1—Variation and revocation of family violence intervention orders

100 Power of court to vary or revoke family violence intervention order

- (1) The court may order the variation or revocation of a family violence intervention order on—
- (a) an application under this Division; or
 - (b) its own initiative if the order was made by a court relying on section 53(1)(a)(iii) in relation to a child who was not an affected family member or section 77(2).

S. 100(1)(b)
amended by
No. 18/2010
s. 25.

Note

See also section 173 which provides that the Children's Court may vary or revoke a family violence intervention order if it is hearing a child protection order.

- (2) In deciding whether to make an order under subsection (1), the court must have regard to all the circumstances of the case and, in particular, the following—
- (a) the applicant's reasons for seeking the variation or revocation;
 - (b) the safety of the protected person;
 - (c) the protected person's views about the variation or revocation;
 - (d) whether or not the protected person is legally represented;
 - (e) if the protected person has a guardian, the guardian's views.

- (3) If the court decides not to grant an application for the revocation of a family violence intervention order, the court may instead order the variation of the family violence intervention order in the way the court considers appropriate.

101 Court may make interim order on application for variation of family violence intervention order

- (1) If a person makes an application for a variation of a family violence intervention order under this Division, the Court may make an interim order varying the family violence intervention order.
- (2) For the purposes of subsection (1), Division 2 applies (with any necessary changes) to the making of an interim order varying a family violence intervention order as if it were the making of an interim order under that Division.

Note

Division 1 applies to applications for variations, revocations or extensions of family violence intervention orders. See the definition of *family violence intervention order* in section 11.

- (3) Section 110(2) does not apply to the making of an interim order under subsection (1).

102 Additional protection in varying or revoking orders

- (1) Before varying or revoking a family violence intervention order, the court must decide whether—
- (a) there has been any change in the need to protect another person protected by the order from being subjected to family violence by the respondent for the family violence intervention order; and

Note to
s. 101(2)
inserted by
No. 18/2010
s. 26.

- (b) there are any other persons who, since the order was made, have become family members of the respondent for the family violence intervention order or protected person; and
- (c) there are any Family Law Act orders in existence in relation to—
 - (i) where and with whom a child who is a person referred to in paragraph (a) or (b) lives; or
 - (ii) the respondent for the order spending time with or communicating with the child.

Note

If there is a Family Law Act order in existence, section 68R of the Family Law Act may allow the court to revive, vary, discharge or suspend that order.

- (2) The court may refuse to vary or revoke the family violence intervention order, or may vary the order in a way that differs from the variation sought in the application, if the court is satisfied, on the balance of probabilities, that it is necessary to do so to ensure the safety of another person protected by the order.

103 Continuing protection of protected person who is a child

If a person referred to in section 102(1)(a) is a child and has a continuing need for protection from family violence being committed by the respondent and that need is not substantially the same as that of the other protected person for whom the variation or revocation is being sought, the court may, on its own initiative—

- (a) make a new family violence intervention order under section 74 for the child as a protected person; and

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- (b) vary the order to which the application under section 100 relates as the court considers necessary.

Note

Certain children must not give evidence in, or be present during, a proceeding under this Act without the court's leave.
See section 150.

104 Protection for children who have become family members since order made

If the court is satisfied, on the balance of probabilities that a child referred to in section 102(1)(b) has been subjected to family violence by the respondent and is likely again to be subjected to family violence, the court may, on its own initiative—

- (a) if the child's need for protection is substantially the same as that of the other protected person—
- (i) vary the order to which the application under section 100 relates to include the child as a protected person; and
 - (ii) make any other variations to the order that the court considers appropriate; or
- (b) otherwise, make a separate family violence intervention order under section 74 for the child as a protected person.

105 Further application for variation etc. of order in respect of child

- (1) This section applies if—
- (a) the court makes or varies an order relying on section 103 or 104; and

- (b) there is a subsequent application under section 100 to vary or revoke the order or the court considers it appropriate to vary or revoke the order on its own initiative.
- (2) For the purposes of that application, a reference in section 100 to an order made relying on section 53(1)(a)(iii) or 77(2) is taken to include a reference to an order made or varied relying on section 103 or 104.

S. 105(2)
amended by
No. 18/2010
s. 27.

Subdivision 2—Extension of final order

106 Power of court to extend final order

- (1) The court may order the extension of a final order on—
 - (a) an application under this Division; or
 - (b) its own initiative if the order was made by a court on its own initiative.
- (2) The court may order the extension of a final order if the court is satisfied, on the balance of probabilities, that if the order is not extended the respondent is likely to commit family violence against the protected person.
- (3) Subsection (2) applies whether or not the respondent has—
 - (a) committed family violence against the protected person while the final order was in force; or
 - (b) complied with the order while it has been in force.

107 Interim extension order

- (1) If a person applies for an extension of a final order before the expiry of the order and the respondent has not yet been served with notice of the application, the court may, if it considers

S. 107
substituted by
No. 18/2010
s. 28.

necessary, make an interim order in the absence of the respondent extending the final order (an *interim extension order*).

- (2) An interim extension order expires 28 days after it is made, unless the respondent is earlier served with the notice of the application and a copy of the interim extension order.
- (3) The court may make more than one interim extension order if it has not been possible to serve the respondent with notice of the application and a copy of the interim extension order.
- (4) If, within 28 days of making the interim extension order, the respondent is served with notice of the application and a copy of the interim extension order, the interim extension order remains in force until—
 - (a) if the court extends the final order and the final order includes an order that the interim extension order continues until the final order is served on the respondent, when the final order is served on the respondent; or
 - (b) if the court extends the final order and the final order does not include an order about the interim extension order continuing as referred to in paragraph (a), at the time the final order is made; or
 - (c) if the court refuses to extend the final order in relation to the application, at the time of the court's refusal; or
 - (d) if the interim extension order is revoked by the court, at the time of the revocation; or
 - (e) if the application for the extension of the final order is withdrawn, at the time of the withdrawal.

Subdivision 3—Application to vary, revoke or extend family violence intervention order

108 Who may apply to vary, revoke or extend family violence intervention order

(1) An application to vary, revoke or extend a family violence intervention order may be made to the court by—

(a) a party to the proceeding in which the order was made; or

Note

See the definition of *party* in section 4 which provides that the protected person is a party to the proceeding, whether or not the person is the applicant for the proceeding.

(b) if the protected person is a child—

(i) a parent of the child, other than the respondent for the order; or

(ii) any other person with the written consent of a parent of the child, other than the respondent for the order; or

(c) if the protected person is a child who is 14 years of age or more, the protected person with the leave of the court; or

(d) if a police officer was not a party to the proceeding in which the family violence intervention order was made, a police officer; or

(e) if the protected person has a guardian and the guardian was not a party to the proceeding in which the family violence intervention order was made, the guardian.

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- (2) For the purposes of subsection (1)(a), if a party to the proceeding in which the family violence intervention order was made was a police officer or an officer of another organisation—
- (a) the application may be made by any other police officer or officer of the organisation; and
 - (b) that police officer or officer is taken to be a party to the original proceeding.

109 Application made by respondent for variation or revocation of family violence intervention order

- (1) For the purposes of section 108(1)(a), the respondent for a family violence intervention order may apply for the variation or revocation of the order only if the court has given leave for the respondent to make the application.
- (2) The court may grant leave under subsection (1) only if the court is satisfied that—
- (a) there has been a change in circumstances since the family violence intervention order was made; and
 - (b) the change may justify a variation or revocation of the order.

110 Application made by police officer

- (1) If the applicant for the variation or extension of a family violence intervention order is a police officer, the application may be made without the consent of the protected person.

(2) However, if the protected person does not consent to the variation or extension of the family violence intervention order—

S. 110(2)
amended by
No. 16/2011
s. 7(1).

- (a) the family violence intervention order may be varied only to include conditions referred to in section 81(2)(a), (f), (g) or (h); and
- (b) the family violence intervention order may be extended if the order is only subject to conditions referred to in paragraph (a); and
- (c) conditions must not be removed from the family violence intervention order.

(3) Subsection (2) does not apply if—

- (a) the protected person is a child and—
 - (i) no adult is protected by the family violence intervention order; or
 - (ii) the adult protected by the family violence intervention order consents to the variation or extension of the order; or
- (b) the protected person has a guardian and the guardian has consented to the application; or
- (c) the protected person is cognitively impaired.

S. 110(3)(a)
substituted by
No. 16/2011
s. 7(2).

(4) To avoid doubt, it is declared that a police officer is not obliged, if asked by the protected person, to make an application for the variation or revocation of a family violence intervention order or the extension of a final order.

111 Consent required if applicant is not protected person, guardian, respondent or police officer

If the applicant for the variation, revocation or extension of a family violence intervention order is not the protected person, the protected person's guardian, the respondent for the order or a police

officer, the application may only be made with the written consent of—

- (a) the protected person; or
- (b) if the protected person is a child, a parent of the child other than the respondent; or
- (c) if the protected person has a guardian, the guardian.

112 Protected person's views to be heard separately in certain circumstances

- (1) This section applies if—
 - (a) an application for the variation, revocation or extension of a final order is made by a protected person's guardian or with the guardian's consent; and
 - (b) the protected person objects to the application.
- (2) The protected person's views must be heard separately from the views of the guardian or other person making the application.
- (3) Without limiting subsection (2), the protected person's views may be heard through an independent legal representative acting on behalf of the protected person.

Note

In relation to resolving an issue between the guardian and the affected family member, see sections 30 and 61 of the **Guardianship and Administration Act 1986**. Section 30 provides that the guardian may seek advice from the Victorian Civil and Administrative Tribunal and section 61 provides for the reassessment of a guardianship order by the Tribunal.

**Subdivision 4—Service of applications for variations,
revocations or extensions of orders**

113 Persons on whom application must be served

The appropriate registrar for the court must serve a copy of an application made under this Division on the following persons, other than the applicant—

- (a) each party to the proceeding under which the family violence intervention order was made;

Note

See the definition of *party* which includes the protected person, whether or not the person is the applicant.

- (b) if the protected person is a child, a parent of the child other than the respondent;
- (c) if the protected person has a guardian, the guardian.

Division 9—Appeals and rehearings

Subdivision 1—Appeals to County Court and Supreme Court

114 Who may appeal

- (1) A party to a proceeding under this Act may appeal against an order of the court in the proceeding or a refusal of the court to make an order (a *relevant decision*).
- (2) Despite subsection (1)—
 - (a) an appeal against the making of a counselling order may be made only by the respondent for the order; and
 - (b) an appeal against an order referred to in section 118 may be made only with the consent of the relevant person under that section; and

- (c) a person declared to be a vexatious litigant by an order under Part 11 may not appeal under this Subdivision against the making of the order; and

Note

See section 195 which provides for the right of a person declared under Part 11 to be a vexatious litigant to appeal against the order making the declaration.

- (d) a person declared to be a vexatious litigant may appeal against a relevant decision (other than a decision referred to in paragraph (c)) only if granted leave under section 196.

115 Court to which appeal must be made

The appeal must be made to—

- (a) the County Court; or
(b) if the court that made the relevant decision was the Children's Court constituted by the President of the Court, the Trial Division of the Supreme Court.

116 Notice of appeal

- (1) A person makes an appeal under this Subdivision by filing notice of the appeal with the court that made the relevant decision.
- (2) The notice must—
- (a) include the prescribed particulars; and
(b) be signed by the appellant; and
(c) be filed within 30 days after the day the relevant decision was made.

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- (3) The appropriate registrar for the court must serve notice of the appeal on—
- (a) the other parties to the proceeding in which the relevant decision was made; and
 - (b) if the appeal relates to a family violence intervention order for a protected person who is a child and the application for the order was made with the consent of a parent, that parent; and
 - (c) if the appeal relates to a family violence intervention order for a protected person who is a child and the order was made without the child's consent, a parent of the child (other than the respondent) with whom the child normally or regularly resides; and
 - (d) if the appeal relates to a family violence intervention order for a protected person who has a guardian, the guardian.
- (4) The appropriate registrar for the court must also file notice of the appeal—
- (a) with the County Court if the appeal is to that Court; and
 - (b) with the Supreme Court if the appeal is to that Court.

117 Stay of relevant decision

- (1) An appeal made to the County Court or the Supreme Court under this Subdivision does not stay the operation of the relevant decision, other than the operation of a counselling order stayed under section 131.
- (2) However, the court that made the relevant decision may, on the application of a party to the proceeding, stay the operation of the relevant decision or any part of the relevant decision pending the determination of the appeal.

- (3) In staying the operation of the relevant decision or any part of the relevant decision, the court may impose bail conditions on the appellant, as if the appellant were an accused person being released from custody on bail, if the court considers it necessary—
- (a) for the protection of a protected person; or
 - (b) to require a party to the proceeding to attend court for the appeal.

S. 118
amended by
No. 53/2010
s. 205 (ILA
s. 39B(1)).

118 Appeals not to commence if certain persons object

- (1) If the relevant decision relates to a family violence intervention order and the application for the order was made by a person other than the protected person, the County Court or the Supreme Court must not start or continue the hearing of the appeal if—
- (a) the appeal is made by the applicant for the family violence intervention order; and
 - (b) any of the following persons objects to the appeal—
 - (i) the protected person;
 - (ii) for an application made in relation to a protected person who is a child and with the consent of a parent, the parent;
 - (iii) for an application made in relation to a protected person who has a guardian, the guardian.
- (2) Nothing in this section prevents an appeal on the basis of a jurisdictional error.

S. 118(2)
inserted by
No. 53/2010
s. 205.

119 Conduct of appeal

- (1) The appeal is by way of a rehearing by the County Court or the Supreme Court.

Note

See section 115 which provides that the appeal is to the County Court unless the relevant decision was made by the Children's Court constituted by the President of the Court, in which case the appeal is to the Trial Division of the Supreme Court.

- (2) On the appeal, the County Court or Supreme Court may—
 - (a) confirm the relevant decision; or
 - (b) set aside the relevant decision; or
 - (c) vary the relevant decision and make any other order the Magistrates' Court or Children's Court could have made and exercise any other powers that the Magistrates' Court or Children's Court may have exercised; or
 - (d) make a determination under section 136(2) of the **Personal Safety Intervention Orders Act 2010** and make any order the Magistrates' Court or Children's Court could have made and exercise any other powers that the Magistrates' Court or Children's Court may have exercised under Division 2 of Part 8 of that Act.

S. 119(2)(c) amended by No. 53/2010 s. 213(1).

S. 119(2)(d) inserted by No. 53/2010 s. 213(2).

120 No further appeal

- (1) There is no appeal against the decision of the County Court or the Supreme Court under section 119.
- (2) Nothing in this section prevents an appeal from the County Court or the Supreme Court on the basis of a jurisdictional error.

S. 120 amended by No. 53/2010 s. 206 (ILA s. 39B(1)).

S. 120(2) inserted by No. 53/2010 s. 206.

121 Application of certain Acts to appeals

The provisions of this Act, the **Magistrates' Court Act 1989** or the **Children, Youth and Families Act 2005** (as the case requires) so far as applicable and with any modifications and adaptations as are necessary extend and apply to appeals under this Division.

Subdivision 2—Rehearings

122 Rehearing of certain proceeding

S. 122(1)
substituted by
No. 18/2010
s. 29.

- (1) A relevant person may, in accordance with the rules, apply to the court for a rehearing of the proceeding only if—
 - (a) the application for the order—
 - (i) was not personally served on the respondent; and
 - (ii) was not brought to the respondent's attention under an order for substituted service; or
 - (b) there are exceptional circumstances and a rehearing is fair and just in all the circumstances of the case.
- (2) If the court is satisfied, on the balance of probabilities, that the grounds referred to in subsection (1) have been established, the court may rehear the matter.
- (3) An application under this section does not operate as a stay of the final order or order declaring a person to be a vexatious litigant.
- (4) If an applicant under this section fails to attend at the time fixed for the hearing of the application and the application is struck out, the applicant may reapply only with the leave of the court.

S. 122(4)
amended by
No. 68/2009
s. 97(Sch.
item 57.3).

(5) In this section—

relevant person means—

- (a) the respondent for a final order; or
- (b) a person declared to be a vexatious litigant under Part 11.

Division 10—Contravention of family violence intervention order

123 Offence for contravention of family violence intervention order

- (1) This section applies if a person against whom a family violence intervention order has been made—
 - (a) has been served with a copy of the order; or
 - (b) has had an explanation of the order given to the person in accordance with section 57 or 96.
- (2) The person must not contravene the order.
Penalty: Level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.
- (3) In a proceeding for an offence against subsection (2) constituted by contravening a family violence intervention order, it is a defence to the charge for the accused to prove that—
 - (a) the accused was the respondent under the family violence intervention order; and
 - (b) a family violence safety notice in relation to the same protected person and respondent was also in force at the time the offence was alleged to have been committed; and

- (c) the accused's conduct was not in contravention of the family violence safety notice.

124 Arrest for contravention of family violence intervention order

If a police officer believes on reasonable grounds that a person has committed an offence against section 123, the officer may, without warrant, arrest and detain the person.

125 Protected person not guilty of an offence under section 52 of Magistrates' Court Act 1989

For the purposes of section 52 of the **Magistrates' Court Act 1989**, a protected person does not aid, abet, counsel or procure the commission of an offence against this Act, and is not punishable as a principal offender, because the protected person encourages, permits or authorises conduct by the respondent that contravenes the family violence intervention order or family violence safety notice.

Examples

- 1 The protected person invites or allows the respondent to have access to the residence or another place in contravention of the family violence intervention order or family violence safety notice.
- 2 The protected person allows the respondent to spend time with the protected person or a child of the respondent or protected person in contravention of the order or notice.

Note

If the protected person is dissatisfied with the terms of the family violence intervention order, the protected person or a police officer may apply under Division 8 to have the order varied or revoked.

PART 5—COUNSELLING ORDERS

Division 1—Preliminary

126 Definitions

In this Part—

legal practitioner means an Australian legal practitioner within the meaning of the **Legal Profession Act 2004**;

relevant court means—

- (a) the Family Violence Court Division; or
- (b) the Magistrates' Court sitting at a venue of the Court specified by the Minister by notice published in the Government Gazette.

S. 126
substituted by
No. 83/2012
s. 13.

127 Object of Part

The object of this Part is—

- (a) to provide for a relevant court to make orders to assess the eligibility of certain respondents for counselling; and
- (b) if appropriate, to require a respondent to attend counselling for the purpose of—
 - (i) increasing the respondent's accountability for the violence the respondent has used against a family member; and
 - (ii) encouraging the respondent to change the respondent's behaviour.

S. 127(a)
amended by
No. 83/2012
s. 14.

128 Application of Part

This Part only applies to a respondent for whom a relevant court makes a final order if—

- (a) the respondent is an adult; and

S. 128
amended by
No. 83/2012
s. 15.

- (b) the respondent's place of residence when the family violence the subject of the order was committed is within a postcode area specified, in relation to the venue of the court at which the final order is made, by the Minister by notice published in the Government Gazette for the purposes of this Part.

Division 2—Orders to assess eligibility for and to attend counselling

129 Order to assess eligibility for counselling

S. 129(1)
amended by
No. 83/2012
s. 16(1).

- (1) If a relevant court makes a final order in respect of a respondent, it must make an order requiring—

S. 129(1)(a)
amended by
No. 83/2012
s. 16(2).

- (a) a specified person who is approved by the Secretary under section 133 to give a report to the relevant court, by a date specified in the order, on whether the respondent is eligible to attend counselling approved by the Secretary under section 133 to address the violence the subject of the order; and
- (b) the respondent to attend an interview with the specified person for the purposes of preparing the report.

S. 129(2)
amended by
No. 83/2012
s. 16(1).

- (2) However, a relevant court is not required to make the order if—

S. 129(2)(b)
amended by
No. 83/2012
s. 16(2).

- (a) there is already in force an order under this section or section 130 in respect of the respondent; or
- (b) the relevant court is satisfied that—
- (i) there is no counselling approved by the Secretary under section 133 that it is reasonably practicable for the respondent to attend; or

-
- (ii) in all the circumstances of the case, it is not appropriate to make the order.
- (3) The report must assess the respondent as eligible to attend counselling unless the specified person considers that the respondent does not have the ability or capacity to participate in counselling because of one or more of the following—
- (a) the respondent's character, personal history or language skills;
 - (b) any disabilities of the respondent;
 - (c) any severe psychiatric or psychological conditions of the respondent;
 - (d) any alcohol or other drug problems of the respondent;
 - (e) any other matters the specified person considers relevant.
- (4) Any order under subsection (1) must specify the time and place at which the interview is to be conducted but a relevant court may vary that time and place by the appropriate registrar for the court giving reasonable written notice to the respondent.
- (5) A respondent who, without reasonable excuse, contravenes an order under this section by failing to attend the interview is guilty of an offence and is liable to a penalty not exceeding 10 penalty units.
- (6) The respondent is taken to have contravened the order by failing to attend the interview if the respondent fails to attend at the time and place specified in the order or of which the respondent is given notice in accordance with subsection (4).

S. 129(4)
amended by
No. 83/2012
s. 16(1).

130 Order to attend counselling

S. 130(1)
amended by
No. 83/2012
s. 17.

(1) If a relevant court is given a report under section 129 and is satisfied that the respondent is eligible to attend counselling approved by the Secretary under section 133, it must make an order requiring the respondent to attend the counselling, to be provided by a person or body specified in the order.

S. 130(2)
amended by
No. 83/2012
s. 17.

(2) However, a relevant court is not required to make the order if—

(a) there is already in force an order under this section in respect of the respondent; or

(b) the court is satisfied that—

(i) there is no counselling approved by the Secretary under section 133 that it is reasonably practicable for the respondent to attend; or

(ii) in all the circumstances of the case, it is not appropriate to make the order for any other reason.

(3) An order under subsection (1) must—

S. 130(3)(a)
amended by
No. 83/2012
s. 17.

(a) specify the time and place at which the initial counselling session is to be conducted but a relevant court may vary that time and place by the appropriate registrar for the court giving reasonable written notice to the respondent; and

(b) require the person or body who is to provide the counselling to give reasonable written notice to the respondent of the time and place at which each subsequent counselling session is to be conducted.

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- (4) A respondent who, without reasonable excuse, contravenes an order under this section by failing to attend counselling is guilty of an offence and liable to a penalty not exceeding 10 penalty units.
 - (5) The respondent is taken to have contravened the order by failing to attend counselling if the respondent does not attend a counselling session at the time and place specified in the order or of which the respondent is given notice in accordance with subsection (3).
 - (6) A respondent who contravenes an order under this section is only liable to be prosecuted once for an offence against subsection (4), regardless of how many counselling sessions the respondent fails to attend.

131 Effect of appeal against final order

- (1) If an appeal is lodged under Division 9 of Part 4 against a decision to make a final order in respect of a respondent—
 - (a) the operation of a counselling order in respect of the respondent is stayed for any period during which the operation of the whole of the final order is stayed; and
 - (b) a counselling order in respect of the respondent ceases to be in force if the effect of the appeal is that the final order ceases to be in force—

unless the court hearing the appeal makes an order to the contrary.

- (2) A counselling order in respect of a respondent does not otherwise cease to be in force merely because the final order in respect of the respondent ceases to be in force.

Division 3—Procedures relating to counselling orders

132 Notice of hearings

S. 132(1)
amended by
No. 83/2012
s. 18(1).

(1) Before a relevant court makes a counselling order, or varies or revokes a counselling order, the appropriate registrar for the court must serve notice of the hearing on the respondent.

S. 132(2)
amended by
No. 83/2012
s. 18(2).

(2) A relevant court may make the order in the respondent's absence if the respondent fails to attend the hearing.

S. 132(3)
amended by
No. 83/2012
s. 18(1)(3).

(3) Despite subsection (1), if the respondent is before a relevant court when it makes a final order in respect of the respondent, the court may make an order under section 129, without giving any notice to the respondent, immediately after it makes the intervention order.

(4) Subsection (1) does not apply to a variation under section 129(4) or 130(3).

133 Approval of persons and of counselling

(1) The Secretary may approve, in writing, persons who the Secretary considers have appropriate experience and qualifications to conduct interviews and prepare reports for the purposes of orders under section 129.

(2) The Secretary may approve, in writing, counselling that the Secretary considers appropriate to address family violence to be provided by particular persons or bodies for the purposes of orders under section 130.

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- (3) The Secretary must make available to a relevant court if asked—
- (a) a list of the persons approved under subsection (1) and their contact details; and
 - (b) a list of the counselling approved under subsection (2) and the contact details of the particular persons or bodies to provide the counselling.

S. 133(3)
amended by
No. 83/2012
s. 19.

134 Person giving report may be required to attend hearing

- (1) If a person gives a report to a relevant court in accordance with an order under section 129, the court or the respondent may require the person to attend to give evidence at the hearing of the proceeding to which the report relates by filing a written notice with the appropriate registrar for the court as soon as possible and, if practicable, not later than 2 working days before the hearing.
- (2) On the filing of a notice, the appropriate registrar for the court must immediately notify the person concerned that the person's attendance is required on the date stated in the notice.
- (3) A person who, under this section has been required by the respondent to attend the hearing of a proceeding must, if required by the respondent, be called as a witness and may be cross-examined by the respondent on the contents of the report.

S. 134(1)
amended by
No. 83/2012
s. 20.

135 Disputed report

- (1) If the respondent disputes any matter in a report given to a relevant court in accordance with an order under section 129, the court must not take the disputed matter into consideration when determining the proceeding unless it is satisfied, on the balance of probabilities, that the matter is true.

S. 135(1)
amended by
No. 83/2012
s. 21(1).

s. 136

S. 135(2)
amended by
No. 83/2012
s. 21(2)(b).

(2) If—

S. 135(2)(a)
amended by
No. 83/2012
s. 21(2)(a).

(a) the respondent disputes all or part of a report given to a relevant court in accordance with an order under section 129; and

S. 135(2)(b)
amended by
No. 83/2012
s. 21(2)(b).

(b) the person who gave the report to the court does not attend the hearing of the proceeding despite having been required to attend under section 134—

the court must not take into consideration the report or the part of the report in dispute when determining the proceeding unless the respondent consents to the report or the part of the report in dispute being admitted into evidence.

S. 136
amended by
No. 83/2012
s. 22.

136 Explanation of counselling orders

If a relevant court proposes to make an order under section 129 or 130 and the respondent is before the court, it must explain to the respondent before making the order—

(a) the purpose, terms and effect of the proposed order; and

(b) the consequences that may follow if the respondent fails to comply with the terms of the proposed order; and

(c) the means by which the proposed order may be varied or revoked.

137 Variation or revocation of counselling orders

- (1) A relevant court may make an order varying or revoking an order under section 129 or 130 if—
- (a) for an order under section 129 or 130—
 - (i) there is no longer any counselling approved by the Secretary under section 133 that is reasonably practicable for the respondent to attend; or
 - (ii) in all the circumstances of the case, the order is no longer appropriate for any other reason; or
 - (b) for an order under section 130 only, there has been a change in the circumstances in which the order was made that significantly impacts on the respondent's ability or capacity to participate in counselling.
- (2) A relevant court may make the order on its own initiative or on the application of—
- (a) the respondent; or
 - (b) for an order under section 129, the person specified in the order who is to conduct the interview and give the report to the court; or
 - (c) for an order under section 130, the person or body specified in the order who is to provide counselling to the respondent.
- (3) The appropriate registrar for the relevant court must serve a copy of an application under subsection (2) on—
- (a) for an application by the respondent, a person or body referred to in subsection (2)(b) or (c), as the case may be; or

S. 137(1)
amended by
No. 83/2012
s. 23(1).

S. 137(2)
amended by
No. 83/2012
s. 23(1).

S. 137(2)(b)
amended by
No. 83/2012
s. 23(2).

S. 137(3)
amended by
No. 83/2012
s. 23(3).

- (b) for an application by a person or body referred to in subsection (2)(b) or (c), the respondent.

138 Service of counselling orders, eligibility report etc.

S. 138(1)
amended by
No. 83/2012
s. 24(1).

- (1) If a relevant court makes an order under section 129, 130 or 137, the appropriate registrar for the court must—

S. 138(1)(a)
amended by
No. 83/2012
s. 24(2).

- (a) arrange for the order to be drawn up and filed in the court; and

- (b) serve the order on the respondent as soon as practicable, and not later than 10 days, after it is made; and

- (c) give a copy of the order to—

S. 138(1)(c)(i)
amended by
No. 83/2012
s. 24(2).

- (i) for an order under section 129 or an order under section 137 varying or revoking such an order, the person specified in the order under section 129 who is to conduct the interview and give the report to the court; or

- (ii) for an order under section 130 or an order under section 137 varying or revoking such an order, the person or body specified in the order under section 130 who is to provide counselling to the respondent.

S. 138(2)
amended by
No. 83/2012
s. 24(1).

- (2) As soon as practicable, and not later than 10 days after a relevant court receives—

- (a) a report in respect of a respondent in accordance with an order under section 129; or

(b) a certificate under section 139 in respect of a respondent—

the appropriate registrar for the court must serve a copy of the report or certificate on the respondent.

Division 4—Other matters

139 Certificate of respondent's non attendance

- (1) This section applies if a respondent fails to attend—
 - (a) an interview with a person in accordance with an order under section 129; or
 - (b) counselling to be provided by a person or body in accordance with an order under section 130.
- (2) The person or body may give a relevant court a certificate, in the prescribed form, setting out the details of the respondent's failure to attend.
- (3) In the absence of evidence to the contrary, the certificate is proof of the facts contained in it.

S. 139(2)
amended by
No. 83/2012
s. 25.

140 Confidentiality of eligibility interview and report

- (1) A person who conducts an interview or prepares a report in accordance with an order under section 129 must not disclose any information obtained during the course of conducting the interview or preparing the report to any person who is not entitled to receive or have access to the report.

Penalty: 10 penalty units.

- (2) A person who receives or otherwise has access to all or part of a report, or a copy of a report, prepared in accordance with an order under section 129 must not disclose any information contained in the report to any person who is not entitled to receive or have access to the report.

Penalty: 10 penalty units.

- (3) Subsections (1) and (2) do not apply to the following disclosures—
- (a) a disclosure by, or authorised in writing by, the respondent who is the subject of the report;
 - (b) a disclosure to a legal practitioner in connection with the giving of legal advice or the provision of representation in a proceeding under this Act;
 - (c) a disclosure that is authorised by a relevant court as necessary for the purposes of this Part or of a proceeding for or with respect to a contravention of an order under this Part (including any offence constituted by such a contravention);
 - (d) a disclosure that is required, authorised or permitted (whether expressly or impliedly) by or under a law or by a court;
 - (e) a disclosure authorised by or under Health Privacy Principle 2.2(a), 2.2(b), 2.2(f), 2.2(g), 2.2(h), 2.2(k), 2.2(l) or 2.5 set out in Schedule 1 to the **Health Records Act 2001**;
 - (f) a disclosure that does not identify the respondent or from which the respondent's identity cannot reasonably be ascertained.

S. 140(3)(c)
amended by
No. 82/2012
s. 26.

141 Confidentiality of counselling

- (1) A person or body who provides counselling in accordance with an order under section 130 must not disclose any information obtained during the course of providing the counselling to any person who is not entitled to the information.

Penalty: 10 penalty units.

- (2) Subsection (1) does not apply to the following disclosures—
- (a) a disclosure by, or authorised in writing by, the respondent to whom the counselling is provided;
 - (b) a disclosure to a legal practitioner in connection with the giving of legal advice or the provision of representation in a proceeding under this Act;
 - (c) a disclosure that is authorised by a relevant court as necessary for the purposes of this Part or of a proceeding for or with respect to a contravention of an order under this Part (including any offence constituted by such a contravention);
 - (d) a disclosure that is required, authorised or permitted (whether expressly or impliedly) by or under a law or by a court;
 - (e) a disclosure authorised by or under Health Privacy Principle 2.2(a), 2.2(b), 2.2(f), 2.2(g), 2.2(h), 2.2(k), 2.2(l) or 2.5 set out in Schedule 1 to the **Health Records Act 2001**;
 - (f) a disclosure that does not identify the respondent or from which the respondent's identity cannot reasonably be ascertained.

S. 141(2)(c)
amended by
No. 83/2012
s. 27.

S. 142
amended by
No. 83/2012
s. 28.

142 Limited use of information by court

Unless a relevant court or another court makes an order to the contrary, information that the relevant court obtains—

- (a) from a report given to it in accordance with an order under section 129; or
- (b) in respect of a respondent's participation in counselling in accordance with an order under section 130—

may be used only for the purposes of this Part or of a proceeding for or with respect to a contravention of an order under this Part (including any offence constituted by such a contravention).

143 Authorisation to collect health information

To avoid doubt, for the purposes of the **Health Records Act 2001**, a person or body who—

- (a) conducts an interview or prepares a report in respect of a respondent in accordance with an order under section 129; or
- (b) provides counselling to a respondent in accordance with an order under section 130—

is authorised to collect such health information (within the meaning of that Act) about the respondent as is necessary for the purposes of conducting the interview, preparing the report or providing the counselling.

144 Delegation

The Secretary may, by instrument, delegate to any person employed under Part 3 of the **Public Administration Act 2004** any power of the Secretary under this Division except this power of delegation.

PART 6—JURISDICTION OF COURTS AND PROCEEDINGS

Division 1—Jurisdiction of courts

145 Definitions

In this Division—

Children's Court includes the Neighbourhood Justice Division of that Court;

Magistrates' Court includes the Family Violence Court Division and the Neighbourhood Justice Division of that Court.

146 Jurisdiction of courts if affected family member, protected person or respondent a child

- (1) If the affected family member, the protected person or the respondent is a child at the time the application is made, the Family Division of the Children's Court and the Magistrates' Court each have jurisdiction under this Act with respect to the application.
- (2) However, if the respondent is a child the application should, if practicable, be dealt with by the Children's Court.

147 Jurisdiction of Children's Court to deal with related applications

- (1) This section applies if—
 - (a) the Children's Court has jurisdiction to deal with an application under this Act because either the affected family member, the protected person or the respondent is a child at the time the application is made; and
 - (b) the application has been made or transferred to the Children's Court; and
 - (c) an affected family member, protected person or the respondent for a related application or a related order is an adult.

(2) The Children's Court also has jurisdiction under this Act in relation to the related application or related order.

(3) In this section—

related application means an application for an order on the grounds of the same or similar circumstances, and includes an application to vary, revoke or extend an order;

related order means an order made on the grounds of the same or similar circumstances.

148 Transfer of applications

(1) If an application is made under this Act to the Magistrates' Court and the Magistrates' Court considers that, in all the circumstances of the case, the matter should be dealt with by the Children's Court, the Magistrates' Court may discontinue the proceeding and order that it be transferred to the Children's Court.

(2) If an application is made under this Act to the Children's Court and the Children's Court considers that, in all the circumstances of the case, the matter should be dealt with by the Magistrates' Court, the Children's Court may discontinue the proceeding and order that it be transferred to the Magistrates' Court.

149 Jurisdiction to revoke, vary or extend orders

(1) A court has jurisdiction to revoke, vary or extend a family violence intervention order or a counselling order made by it or any other court.

(2) Without limiting subsection (1), the Magistrates' Court or Children's Court may, on an application made under this Act, revoke, vary or extend a family violence intervention order confirmed or varied by the County Court or Supreme Court on appeal under Division 9 of Part 4.

- (3) However, the Magistrates' Court or Children's Court may revoke or vary a family violence intervention order referred to in subsection (2) only if the Court is satisfied there are new facts or circumstances relevant to the order.

Division 2—Provisions about proceedings under this Act

150 Restriction on presence of children

- (1) A child must not be present during a proceeding under this Act if the child is—
- (a) the affected family member or protected person for the proceeding; or
 - (b) a family member of the respondent or the affected family member or protected person in the proceeding; or
 - (c) in relation to a proceeding for an offence against this Act, the victim in relation to the alleged offence or the child of the alleged victim.
- (2) Subsection (1) does not apply if—
- (a) the child is the respondent or accused for the proceeding; or
 - (b) the court makes an order allowing the child to be present.
- (3) Before making an order under subsection (2)(b), the court must consider—
- (a) the desirability of protecting children from unnecessary exposure to the court system; and
 - (b) the harm that could occur to the child and family relationships if the child is present while the court is conducting the proceeding.

S. 150(2)(a)
amended by
No. 68/2009
s. 97(Sch.
item 57.4).

151 Adjournment to seek legal advice

- (1) A court hearing a proceeding under this Act may, on its own initiative or on the application of a party to the proceeding, adjourn the hearing of the proceeding to give a party a reasonable opportunity to obtain legal advice.
- (2) The court may resume the proceeding if it is satisfied that the party has had a reasonable opportunity to obtain legal advice, whether or not that advice has been obtained.

152 Applicant who is police officer may be represented by another police officer

If a police officer is, in the police officer's professional capacity, a party to a proceeding under this Act, the police officer may be represented by—

- (a) another police officer; or
- (b) another person nominated by the Chief Commissioner of Police.

Note

See section 123 of the **Police Regulation Act 1958** which provides for immunity for police officers in certain circumstances in relation to acts done or omitted to be done in the course of the officer's duty.

153 Certification

- (1) If under this Act a person is required or permitted to certify a document—
 - (a) the person must certify that the information contained in the document is true and correct to the best of the person's knowledge; and
 - (b) the document must include a statement that the person understands that making the certification knowing the document to be false in any particular constitutes an offence punishable by 120 penalty units.

- (2) A person must not certify a document under this Act if the person knows it to be false in any particular.

Penalty: 120 penalty units.

154 Costs

- (1) Each party to a proceeding for a family violence intervention order under this Act must bear the party's own costs of the proceeding.
- (2) For a proceeding for an order under Part 11 to declare a person to be a vexatious litigant—
- (a) if the person is declared to be a vexatious litigant, that person must bear the cost of the proceeding, other than the Attorney-General's costs if the Attorney-General is a party to the proceeding; and
 - (b) if the person is not declared to be a vexatious litigant, each party must bear the party's own costs.
- (3) Despite subsections (1) and (2)—
- (a) the court may make an order about costs if the court decides that exceptional circumstances warrant otherwise in a particular case; or
 - (b) if the court is satisfied in a particular case that the making of any application under this Act was vexatious, frivolous or in bad faith, the court may award costs against the applicant.
- (4) For the purposes of subsection (3), the mere fact that an application is made and then withdrawn is not exceptional and does not amount in itself to a vexatious or frivolous application or an application made in bad faith.

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- (5) If the court decides there are grounds to award costs against a person but the person is not present in court, the court may—
- (a) adjourn the proceeding; and
 - (b) give the parties to the proceeding notice that an order for costs will be made on the next mention date unless the party against whom the costs will be awarded contests the making of the order on the mention date.

155 Concurrent criminal proceedings

- (1) The court may make a family violence intervention order or counselling order in relation to a person even though the person has been charged with an offence arising out of the same conduct referred to in the application.
- (2) The family violence intervention order may be made at any time before or after the commencement of proceedings for the offence.

156 Family violence intervention order against carer

If a court makes a family violence intervention order against a carer to protect the carer's client, the appropriate registrar for the court must cause a copy of the order to be served on the employer or organisation for whom the carer provides the care to the client.

PART 7—ENFORCEMENT POWERS

157 Entry and search of premises

- (1) A police officer may, without warrant, enter and search any premises where the officer on reasonable grounds believes a person to be if—
 - (a) the officer reasonably believes that the person has assaulted or threatened to assault a family member; or
 - (b) the officer reasonably believes the person is on the premises in contravention of a family violence intervention order or family violence safety notice; or
 - (c) the officer reasonably believes the person is refusing or failing, or has refused or failed, to comply with a direction to which the person is subject under Division 1 of Part 3; or
 - (d) the officer has the express or implied consent of an occupier of the premises to do so.
- (2) In order to enter premises under subsection (1), a police officer may, if it is necessary to do so, use reasonable force.
- (3) This section does not limit any other power that a police officer may have to enter premises under this or any other Act or at common law.

158 Surrender of firearms and weapons

- (1) This section applies if—
 - (a) a family violence safety notice has been issued or a family violence intervention order made against a person or a police officer is satisfied, on the balance of probabilities, there are grounds for issuing a notice or making an order against a person; and

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- (b) the police officer is aware the person has a firearm, a firearms authority, ammunition or a weapon in the person's possession.
- (2) The police officer may—
- (a) direct the person to immediately surrender the firearm, firearms authority, ammunition or weapon to the police officer; or
- (b) by written notice served on the person, direct the person to surrender the firearm, firearms authority, ammunition or weapon to a police officer at a specified place within a specified time or, if no time is specified, within 48 hours after the direction is given to the person.
- (3) A direction under subsection (2) must include the prescribed particulars.
- (4) A person given a direction under subsection (2) must not, without lawful excuse, fail to comply with the direction.

Penalty: In the case of a failure to comply with a direction to surrender a firearm, 60 penalty units;

In the case of a failure to comply with a direction to surrender a firearms authority, ammunition or a weapon, 30 penalty units.

159 Power of police officer to search premises for firearms etc. without warrant

- (1) This section applies if—
- (a) a family violence safety notice has been issued or a family violence intervention order made against a person or a police officer is satisfied, on the balance of probabilities, there are grounds for issuing a

- notice or making an order, against a person;
and
- (b) the police officer is aware, or has reasonable grounds to suspect, the person is in possession of a firearm, a firearms authority, ammunition or a weapon.
- (2) The police officer may, without warrant, enter and search—
- (a) any premises at which the person resides or has resided; or
 - (b) the premises at which the person committed or allegedly committed family violence; or
 - (c) a vehicle registered in the person's name.
- (3) To enter premises or a vehicle under subsection (2), a police officer may, if it is necessary to do so, use reasonable force.

160 Warrants to search premises and vehicles

S. 160(1)
amended by
No. 18/2010
s. 30.

- (1) A police officer may apply to a magistrate for the issue of a search warrant in relation to particular premises (including any vehicle on or in those premises) or a particular vehicle located in a public place if—
- (a) the police officer intends to apply for a family violence safety notice or family violence intervention order against a person or a notice has been issued or an order made against a person; and
 - (b) the police officer believes on reasonable grounds—
 - (i) the person is committing or is about to commit an offence against this Act; or
 - (ii) the person is in possession of a firearm, a firearms authority, ammunition or a weapon at premises or in a vehicle,

other than premises at which the person resides or has resided or at which the person committed or allegedly committed family violence or a vehicle registered in the person's name.

- (2) If the magistrate is satisfied by the evidence on oath, whether oral or by affidavit, that there are reasonable grounds for suspecting that an offence against this Act is being or is about to be committed or the person is in possession of a firearm, firearms authority, ammunition or a weapon, the magistrate may issue a search warrant authorising the police officer named in the warrant and any assistants the police officer considers necessary—
- (a) to enter the premises or vehicle named or described in the warrant; and
 - (b) to search for and seize—
 - (i) any evidence of the offence named or described in the warrant; or
 - (ii) any firearms, firearms authority, ammunition or weapon as specified in the warrant.
- (3) In addition to any other requirement, a search warrant issued under this section must state—
- (a) if the grounds for seeking the warrant are the grounds referred to in subsection (1)(b)(i), the offence suspected; and
 - (b) if the grounds for seeking the warrant are the grounds referred to in subsection (1)(b)(ii), the reason it is necessary to search for the firearm, firearms authority, ammunition or a weapon in the person's possession; and
 - (c) the premises or vehicle to be searched; and

- (d) a description of the evidence or firearm, firearms authority, ammunition or a weapon to be searched for; and
 - (e) any conditions to which the warrant is subject; and
 - (f) whether entry is authorised to be at any time or during stated hours; and
 - (g) a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect.
- (4) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and in the prescribed form under that Act.
- (5) The rules to be observed with respect to search warrants set out by or under the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

161 Announcement before entry

S. 161(1)
substituted by
No. 18/2010
s. 31(1).

- (1) Before executing a search warrant, the police officer named in the warrant or person assisting must—
- (a) announce that he or she is authorised by warrant to enter the premises or the vehicle located in a public place, as the case requires; and
 - (b) give any person at the premises or on or in the vehicle an opportunity to allow entry to the premises or the vehicle.

S. 161(2)
amended by
No. 18/2010
s. 31(2).

- (2) The police officer or a person assisting the police officer need not comply with subsection (1) if the police officer or assistant believes, on reasonable grounds, that immediate entry to the premises or vehicle is required to ensure—

- (a) the safety of any person; or
- (b) that the effective execution of the search warrant is not frustrated.
- (3) To enter premises or a vehicle under the search warrant, a police officer may, if it is necessary to do so, use reasonable force.
- (4) To avoid doubt, the authority given by subsection (3) is in addition to any authority given by section 78(1)(b) of the **Magistrates' Court Act 1989**.

S. 161(3)
amended by
No. 18/2010
s. 31(3).

S. 161(4)
inserted by
No. 18/2010
s. 31(4).

162 Copy of the warrant to be given to occupier

S. 162
amended by
No. 18/2010
s. 32 (LA
s. 39B(1)).

- (1) If the occupier or another person who apparently represents the occupier is present at the premises when a search warrant is being executed, the police officer must—
 - (a) identify himself or herself to the person as a police officer; and
 - (b) give that person a copy of the execution copy of the warrant.
- (2) If there is a person in charge of the vehicle located in a public place when a search warrant is being executed, the police officer must—
 - (a) identify himself or herself to the person as a police officer; and
 - (b) give that person a copy of the execution copy of the warrant.

S. 162(2)
inserted by
No. 18/2010
s. 32.

163 Seizure of firearms etc.

If a person fails to comply with a direction given to the person under section 158(2), or a police officer searches premises under section 159(2), the police officer—

- (a) must seize any firearm or firearms authority the officer is aware is in the person's possession; and

- (b) may seize ammunition or a weapon the officer is aware is in the person's possession.

S. 164
(Heading)
amended by
No. 55/2009
s. 11(1).

164 Effect of surrender or seizure of firearm, weapon or other article if final order made against person

S. 164(1)
amended by
No. 55/2009
s. 11(2).

- (1) If a person's firearm, firearms authority or ammunition is surrendered under section 158 or seized under section 160 or 163 and a final order has been or is made against the person, the firearm, firearms authority or ammunition must be—
- (a) returned to the person if—
- (i) the person is declared, under the **Firearms Act 1996**, not to be a prohibited person; and
 - (ii) the firearms, firearms authority or ammunition is not required as evidence in further proceedings under this Act or another Act or is not subject to forfeiture after a proceeding for an offence under this Act or another Act; or
- (b) if paragraph (a) does not apply and the period during which, under section 47A(2) of the **Firearms Act 1996**, the person may make an application under section 189 of that Act has ended or the application has been refused, forfeited to the Crown or disposed of in accordance with directions in the order or, if there are no such directions, forfeited to the Crown or disposed of under the **Firearms Act 1996**.
- (2) If a person's weapon is surrendered under section 158 or seized under section 160 or 163 and a final order has been or is made against the person, the weapon must be—

S. 164(2)
amended by
No. 55/2009
s. 11(2).

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- (a) returned to the owner if—
- (i) the person is declared, under the **Firearms Act 1996**, not to be a prohibited person; and
 - (ii) the weapon is not required as evidence in further proceedings under this Act or another Act or is not subject to forfeiture after a proceeding for an offence under this Act or another Act; or
- (b) if paragraph (a) does not apply and the person has not made an application under section 189 of the **Firearms Act 1996** within 3 months after the making of the final order or the person has made an application and it has been refused, forfeited to the Crown or disposed of in accordance with directions in the order.
- (3) If an article other than one referred to in subsection (1) or (2) is seized from a person under section 160 or 163 and a final order has been or is made against the person, the article must be returned to the person unless—
- (a) the article is required as evidence in further proceedings under this Act or another Act; or
 - (b) the article is subject to forfeiture after a proceeding for an offence under this Act or another Act.
- (4) If a firearm, weapon or other article is disposed of by sale under this section in accordance with directions in an order, the proceeds of the sale must be paid to the owner of the firearm, weapon or other article.

S. 164(3)(b)
amended by
No. 55/2009
s. 11(3).

s. 165

S. 165
(Heading)
amended by
No. 55/2009
s. 12(1).

165 Effect of surrender or seizure of firearm, weapon or other article if no final order etc.

(1) This section applies if—

S. 165(1)(a)
amended by
No. 55/2009
s. 12(2).

(a) a person's firearm, weapon or other article is surrendered under section 158 or seized under section 160 or 163; and

S. 165(1)(b)
substituted by
No. 55/2009
s. 12(3).

(b) either—

(i) a final order is not made against the person; or

(ii) an application for a family violence intervention order or a family violence safety notice against the person is not made within a reasonable time; and

S. 165(1)(c)
inserted by
No. 55/2009
s. 12(3).

(c) the firearm, weapon or other article is not otherwise required as evidence in further proceedings under this Act or another Act; and

S. 165(1)(d)
inserted by
No. 55/2009
s. 12(3).

(d) the firearm, weapon or other article is not subject to forfeiture after a proceeding for an offence under this Act or another Act.

S. 165(2)
amended by
No. 55/2009
s. 12(4).

(2) The firearm, weapon or article surrendered or seized must be—

(a) if the firearm, weapon or other article is required to be forfeited or disposed of under the **Firearms Act 1996, Control of Weapons Act 1990** or another Act—
forfeited or disposed of in accordance with that Act; or

(b) otherwise—returned to the person.

Family Violence Protection Act 2008
No. 52 of 2008
Part 7—Enforcement Powers

s. 165

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- (3) If a firearm, weapon or other article is disposed of by sale under this section in accordance with directions in an order, the proceeds of the sale must be paid to the owner of the firearm, weapon or other article.
-

**PART 8—RESTRICTION ON PUBLICATION OF
PROCEEDINGS**

**166 Restriction on publication of proceeding in
Magistrates' Court**

- (1) This section applies to—
- (a) a proceeding under this Act, other than in the Children's Court; or
 - (b) an order made under this Act, other than by the Children's Court.

Note

For a proceeding in the Children's Court, see section 534 of the **Children, Youth and Families Act 2005** which provides restrictions on the publication of proceedings in that Court.

- (2) A person must not publish, or cause to be published, a report of the proceeding or about the order that contains—
- (a) if a party to or a witness in the proceeding, or a person the subject of the order, is a child—
 - (i) the locality or any particulars likely to lead to the identification of the particular venue of the court; or
 - (ii) any particulars likely to lead to the identification of the child or any other person involved in the proceeding, either as a party to the proceeding or as a witness in the proceeding, or the subject of the order; and
 - (b) if paragraph (a) does not apply—any particulars likely to lead to the identification of any person involved in the proceeding or the subject of the order, unless the court orders under section 169 that the particulars may be published; or

- (c) a picture of or including a person concerned in a proceeding for a family violence intervention order, unless the court orders under section 169 that the picture may be published.

Penalty: In the case of a natural person,
100 penalty units or 2 years
imprisonment or both;

In the case of a body corporate—
500 penalty units;

167 Exception to restriction on publication

To remove any doubt, it is declared that section 166 does not apply to—

- (a) a person publishing, or causing the publication of, a report about the proceeding or the order if the publication does not identify the locality of a court or particulars likely to identify a venue of a court, or particulars of a person; or
- (b) the publication under section 198 by the Attorney-General of a copy of any order made under section 193 or 197.

168 Identifying particulars

For the purposes of sections 166 and 167, the particulars likely to lead to the identification of a person include, but are not limited to, the following—

- (a) the person's name, title, pseudonym or alias;
- (b) the address of any premises at which the person lives or works, or the locality in which the premises are situated;
- (c) the address of a school attended by the person or the locality in which the school is situated;

- (d) the physical description or the style of dress of the person;
- (e) any employment or occupation engaged in, profession practised or calling pursued by, the person or any official or honorary position held by the person;
- (f) the relationship of the person to identified relatives of the person or the association of the person with identified friends or identified business, official or professional acquaintances of the person;
- (g) the recreational interests or the political, philosophical or religious beliefs or interests of the person;
- (h) any real or personal property in which the person has an interest or with which the person is associated.

169 Court may allow publication of particulars or picture

The court may make an order allowing the publication of particulars or a picture only if—

- (a) the court reasonably considers it is in the public interest to allow the publication of the particulars or picture; and
- (b) the court reasonably considers it is just to allow the publication in the circumstances; and
- (c) for a picture, the picture is not of and does not include a child and will not be likely to lead to the identification of a child.

Example

The court may consider it in the public interest and just to allow a protected person to publicise the person's case to raise awareness of family violence.

PART 9—RELATIONSHIP WITH OTHER ACTS

170 Application of Magistrates' Court Act 1989 and rules

Part 5 (other than sections 100(1)(d) and 109) of the **Magistrates' Court Act 1989** and any rules made under that Act in relation to civil proceedings (other than rules made for the purposes of section 109 of that Act) do not apply to proceedings under this Act.

171 Relationship with Firearms Act 1996 and Control of Weapons Act 1990

To remove doubt, it is declared that if the court decides to include in a family violence intervention order a condition under section 95(a) or (b)—

- (a) no appeal lies against the decision under the **Firearms Act 1996** or the **Control of Weapons Act 1990**; and
- (b) the respondent may not apply under section 189 of the **Firearms Act 1996** for a declaration that the person is deemed not to be a prohibited person for that Act.

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S. 171A
inserted by
No. 18/2010
s. 33,
repealed by
No. 53/2010
s. 214.

172 Application of principles under Children, Youth and Families Act 2005 to decisions under this Act

To remove any doubt, it is declared that the Children's Court is not required to have regard to the principles set out in Part 1.2 of Chapter 1 of the **Children, Youth and Families Act 2005** in making any decision or taking any action in the

course of exercising the jurisdiction given to the Court under this Act.

173 Family violence intervention orders prevail over child protection orders

- (1) A family violence intervention order applies despite any child protection order.
- (2) However, if the Children's Court is hearing an application for a child protection order in relation to a child and the child is a protected person or respondent under a family violence intervention order, the Court may, on its own initiative, revoke or vary the family violence intervention order to the extent the order would be inconsistent with the order the Court proposes to make under the **Children, Youth and Families Act 2005**.
- (3) For the purposes of subsection (2), if the Court proposes to revoke or vary the family violence intervention order—
 - (a) the appropriate registrar for the Court must give notice of its intention to revoke or vary the order to all the parties to the proceeding in which the order was made; and
 - (b) the Court must not revoke or vary the order until all the parties have had an opportunity to be heard by the Court; and
 - (c) the Court may make an interim order varying the family violence intervention order until all the parties have been given an opportunity to be heard.

S. 173(2)
amended by
No. 18/2010
s. 34.

174 Notice to be given to Secretary to Department of Human Services

If the court makes a family violence intervention order that is or may be inconsistent with a child protection order, the appropriate registrar for the court must give written notice of the making of

the order and its terms to the Secretary to the Department of Human Services.

175 Bail conditions prevail over child protection order

If a respondent to an application for a family violence intervention order is arrested under a warrant under section 50 and subsequently granted bail subject to conditions, to the extent of any inconsistency between the bail conditions and a child protection order, the bail conditions prevail.

175A Relationship with certain orders under the Sentencing Act 1991

S. 175A
inserted by
No. 65/2011
s. 95.

- (1) If a court makes a family violence intervention order in respect of a respondent that is inconsistent with a residence restriction or exclusion condition or a curfew condition attached to a community correction order to which the respondent is subject at the time the family violence intervention order is made, the family violence intervention order prevails to the extent of any inconsistency.
- (2) In this section *community correction order*, *curfew condition* and *residence restriction or exclusion condition* have the same meaning as in the **Sentencing Act 1991**.

176 Relationship with Family Court orders

A family violence intervention order operates subject to any declaration made under section 68Q of the Family Law Act by a court having jurisdiction under Part VII of that Act.

Note

Section 68Q of the Family Law Act provides that a court exercising jurisdiction under that Act may make a declaration that an order or injunction under that Act is inconsistent with a family violence intervention order. To the extent of the inconsistency, the family violence intervention order is invalid. See also section 68R

Family Violence Protection Act 2008
No. 52 of 2008
Part 9—Relationship with Other Acts

s. 176

of the Family Law Act which provides that a court exercising jurisdiction under this Act may revive, vary, discharge or suspend certain Family Law Act orders.

S. 176A
inserted by
No. 30/2010
s. 83,
renumbered
as 176AA by
No. 29/2011
s. 3(Sch. 1
item 37.1),
repealed by
No. 48/2011
s. 27(3).

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**PART 9A—RELATIONSHIP WITH PERSONAL SAFETY
INTERVENTION ORDERS ACT 2010**

Division 1—General

Pt 9A
(Headings
and ss 176A–
176O)
inserted by
No. 53/2010
s. 215.

176A Definitions

In this Part—

affected person means an affected person within the meaning of the **Personal Safety Intervention Orders Act 2010**;

final personal safety intervention order means a final order within the meaning of the **Personal Safety Intervention Orders Act 2010**;

interim personal safety intervention order means an interim order within the meaning of the **Personal Safety Intervention Orders Act 2010**.

S. 176A
inserted by
No. 53/2010
s. 215.

176B Concurrent applications may be heard together

- (1) Any number of applications for family violence intervention orders may be heard together with any number of applications under the **Personal Safety Intervention Orders Act 2010** for personal safety intervention orders if the court considers that—
 - (a) the applications are sufficiently related; and
 - (b) it is appropriate for the applications to be heard together.
- (2) The decision under subsection (1) to hear applications for family violence intervention orders and personal safety intervention orders together may be made—

S. 176B
inserted by
No. 53/2010
s. 215.

s. 176C

- (a) on the application of the applicants or the respondents; or
- (b) on the court's own initiative if the court considers it in the interests of justice to do so.

S. 176C
inserted by
No. 53/2010
s. 215.

176C Family violence intervention order to prevail

A family violence intervention order prevails to the extent of any inconsistency with a personal safety intervention order.

Division 2—Certain applications under Personal Safety Intervention Orders Act 2010 to be heard under this Act where parties are family members

Note

Division 2 of Part 8 of the **Personal Safety Intervention Orders Act 2010** provides for applications for family violence intervention orders to be heard under that Act as applications for personal safety intervention orders where the court determines that the parties are not family members.

S. 176D
inserted by
No. 53/2010
s. 215.

176D Application of Division

This Division does not apply to the following—

- (a) an application for the variation, revocation or extension of a final personal safety intervention order;
- (b) an application for the variation or extension of a registered corresponding interstate order within the meaning of the **Personal Safety Intervention Orders Act 2010**, or for the revocation of the registration of that order.

S. 176E
inserted by
No. 53/2010
s. 215.

176E Court may determine parties to application for personal safety intervention order are family members

- (1) This section applies to—
 - (a) a hearing of an application for a personal safety intervention order;

- (b) a hearing of an application for a variation or revocation of an interim personal safety intervention order;
 - (c) a mention date in relation to any of the proceedings referred to in paragraph (a) or (b).
- (2) If the court is satisfied that the affected person and the respondent are family members, the court may either—
- (a) strike out the application for the personal safety intervention order; or
 - (b) make a determination to continue to hear the application as an application for a family violence intervention order.
- (3) If the parties consent to the making of a determination under subsection (2), the court may make the determination without being satisfied that the affected person and the respondent are family members.
- (4) The court may make more than one determination under subsection (2) during the proceeding.

176F No further determination if determination made by County Court or Supreme Court

The Magistrates' Court or Children's Court must not make a determination under section 176E(2)(b) in relation to an application if the County Court or Supreme Court has made a determination in relation to that application under section 176E(2)(b) of this Act or section 136(2)(b) of the **Personal Safety Intervention Orders Act 2010**.

S. 176F
inserted by
No. 53/2010
s. 215.

s. 176G

S. 176G
inserted by
No. 53/2010
s. 215.

**176G Effect of determination under section 176E(2)(b)—
general**

- (1) On and from making a determination under section 176E(2)(b), the application for the personal safety intervention order is taken, to the extent possible, to be an application for a family violence intervention order and, subject to this Part—
 - (a) this Act applies as if—
 - (i) a reference in the application to an affected person were a reference to an affected family member; and
 - (ii) a reference in the application to prohibited behaviour or stalking were a reference to family violence; and
 - (b) the court may make any orders that it may make in respect of an application for a family violence intervention order under this Act; and
 - (c) anything that has been done under the **Personal Safety Intervention Orders Act 2010** in relation to the application or the proceeding for the application is, to the extent possible, taken to have been done under this Act.
- (2) Without limiting subsection (1)(c)—
 - (a) a summons issued under section 20 of the **Personal Safety Intervention Orders Act 2010** is taken to be a summons issued under section 49 of this Act; and
 - (b) a warrant to arrest issued under section 21 or 50 of the **Personal Safety Intervention Orders Act 2010** is taken to be a warrant issued under section 50 or 67A of this Act; and

- (c) if the respondent has been granted bail, the bail conditions continue to apply; and
 - (d) a direction given under section 115 of the **Personal Safety Intervention Orders Act 2010** is taken to be a direction given under section 158 of this Act.
- (3) Despite subsection (1)(c), on making a determination under section 176E(2)(b)—
- (a) any order made under section 107 of the **Personal Safety Intervention Orders Act 2010** ceases to apply;
 - (b) Division 8 of Part I of the **Evidence (Miscellaneous Provisions) Act 1958** continues to apply to the proceeding.

Note

Division 8 of Part I of the **Evidence (Miscellaneous Provisions) Act 1958** provides for confidentiality of mediation conferences conducted under that Division.

176H Search warrants issued under Personal Safety Intervention Orders Act 2010

S. 176H
inserted by
No. 53/2010
s. 215.

- (1) This section applies if—
- (a) the court makes a determination under section 176E(2)(b); and
 - (b) before making the determination, a search warrant was issued under section 117 of the **Personal Safety Intervention Orders Act 2010**.
- (2) If a person's firearm, firearms authority, ammunition, weapon or other article was seized or is seized pursuant to the warrant, on and from making the determination the seizure—

s. 176I

- (a) continues as if the firearm, firearms authority, ammunition, weapon or other article had been seized under section 160; and
- (b) ends in accordance with section 164 or 165.
- (3) Section 122 of the **Personal Safety Intervention Orders Act 2010** does not apply to a firearm, firearms authority, ammunition, weapon or other article seized pursuant to the warrant.

S. 176I
inserted by
No. 53/2010
s. 215.

176I Firearms etc seized or surrendered under Personal Safety Intervention Orders Act 2010

- (1) This section applies if—
 - (a) the court makes a determination under section 176E(2)(b); and
 - (b) before making the determination—
 - (i) a person surrendered firearm, a firearms authority, ammunition or a weapon under section 117 of the **Personal Safety Intervention Orders Act 2010**; or
 - (ii) police seized a person's firearm, firearms authority, ammunition or weapon under section 120 of the **Personal Safety Intervention Orders Act 2010**.
- (2) On and from making the determination, the surrender or seizure—
 - (a) continues as if the firearm, firearms authority, ammunition or weapon had been surrendered under section 158 or seized under section 163; and
 - (b) ends in accordance with section 164 or 165.

- (3) Section 122 of the **Personal Safety Intervention Orders Act 2010** does not apply to a firearm, firearms authority, ammunition or weapon seized or surrendered.

176J Existing interim personal safety intervention order must be revoked

S. 176J
inserted by
No. 53/2010
s. 215.

- (1) This section applies if—
- (a) the court has made a determination under section 176E(2)(b); and
 - (b) an interim personal safety intervention order has been made in the proceedings.
- (2) The court—
- (a) must revoke the interim personal safety intervention order; and
 - (b) may make an interim family violence intervention order if there are grounds for making the order under section 53.

176K Determination made on application to vary existing interim personal safety intervention order

S. 176K
inserted by
No. 53/2010
s. 215.

If the court has made a determination under section 176E(2)(b) at a hearing or a mention date for an application for a variation of an interim personal safety intervention order, the court—

- (a) must revoke the interim personal safety intervention order; and
- (b) may make an interim family violence intervention order if there are grounds for making the order under section 53, having regard to the application for variation of the interim personal safety intervention order.

s. 176L

S. 176L
inserted by
No. 53/2010
s. 215.

176L Determination made on application to revoke existing interim personal safety intervention order

If the court has made a determination under section 176E(2)(b) at a hearing or a mention date for an application to revoke an interim personal safety intervention order, the court—

- (a) must revoke the interim personal safety intervention order; and
- (b) may make an interim family violence intervention order if there are grounds for making the order under section 53, having regard to the application for revocation of the interim personal safety intervention order.

S. 176M
inserted by
No. 53/2010
s. 215.

176M Determination made when hearing application for final personal safety intervention order

- (1) This section applies if, during a hearing of an application for a final personal safety intervention order, the court makes a determination under section 176E(2)(b).
- (2) On making the determination, the court—
 - (a) if there is an existing interim personal safety intervention order—
 - (i) must revoke the interim personal safety intervention order; and
 - (ii) may make an interim family violence intervention order if there are grounds for making the order under section 53; and
 - (b) do either of the following, as the interests of justice require—
 - (i) adjourn the proceeding; or
 - (ii) continue to hear the matter.

176N Revocation of interim personal safety intervention order under this Division

S. 176N
inserted by
No. 53/2010
s. 215.

The revocation of an interim personal safety intervention order under section 176J, 176K, 176L or 176M—

- (a) has effect as a revocation of an interim personal safety intervention order under the **Personal Safety Intervention Orders Act 2010**; and
- (b) takes effect at the time of the revocation.

Note

See section 43(d) of the **Personal Safety Intervention Orders Act 2010**, which provides that an interim personal safety intervention order ends when it is revoked by the court.

176O Explanation of determination

S. 176O
inserted by
No. 53/2010
s. 215.

- (1) If the court makes a determination under section 176E(2)(b), the court must explain to the respondent and affected family member—
 - (a) the effect of the determination; and
 - (b) if there is an interim order in force, the effect of the determination on the interim order.
- (2) A failure by the court to explain a determination in accordance with this section does not affect the validity of the order.

PART 10—INTERSTATE AND NEW ZEALAND ORDERS

Division 1—Interstate orders

177 Registration of corresponding interstate orders

An appropriate registrar for a court may register a corresponding interstate order in the court.

178 Notice to be given of registration of corresponding interstate orders

- (1) As soon as practicable after registering a corresponding interstate order, the appropriate registrar must—
 - (a) give notice of the registration of the order to—
 - (i) the court that made the order; and
 - (ii) the person for whose protection the order was made; and
 - (b) give a copy of the order to the Chief Commissioner of Police and the Secretary to the Department of Human Services.
- (2) In addition, the appropriate registrar may list the matter before the court for decision as to whether or not a copy of the registered corresponding interstate order must be served on the respondent for the interstate order at the respondent's last known address.
- (3) If the registrar lists a matter before the court under subsection (2) the court must make an order as to whether or not a copy of the registered corresponding interstate order must be served on the respondent.
- (4) However, the court may make an order under subsection (3) only if, after hearing from the person for whose protection the corresponding interstate order was made, the court is satisfied

that revealing that the person is in Victoria would not jeopardise the safety of the person or any children of the person.

- (5) If the court makes an order under subsection (3) the appropriate registrar must arrange for the registered corresponding interstate order to be served on the respondent.

179 Registered corresponding interstate orders may be enforced as final orders

A registered corresponding interstate order may be enforced against a person as if it were a final order and as if a copy of the order had been served on that person in accordance with this Act.

180 Variation, extension or revocation of corresponding interstate order by interstate court

The variation, extension or revocation of a corresponding interstate order by a court of the State or Territory in which it was made after the order is registered under this Division has no effect in Victoria.

181 Variation, extension or revocation of corresponding interstate order by Victorian Court

- (1) The court, on the application of a relevant person, may—
- (a) vary a registered corresponding interstate order as it applies in Victoria; or
 - (b) extend the period during which a registered corresponding interstate order has effect in Victoria; or
 - (c) revoke the registration of a registered corresponding interstate order.

(2) In this section—

relevant person, in relation to a registered corresponding interstate order, means—

- (a) a person for whose protection the order has been made; or
- (b) a person against whom the order has been made; or
- (c) a police officer; or
- (d) a person who has been granted leave by the court to make an application in respect of the order.

182 Notice of proposed variation, extension or revocation of corresponding interstate order

- (1) A registered corresponding interstate order is not to be varied or extended, or the registration of the order revoked, under this Division on the application of a person, other than the person against whom it was made, unless notice of the application has been served on the person against whom it was made.
- (2) A registered corresponding interstate order is not to be varied, or the registration of the order revoked, on the application of the person against whom it was made unless notice of the application has been served on the person for whose protection the order was made.

183 Notice to be given of variation, extension or revocation of corresponding interstate order

If the court varies or extends a registered corresponding interstate order, or revokes the registration of the order, the appropriate registrar must give notice of the variation, extension or revocation to—

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- (a) the court that made the order; and
 - (b) the Chief Commissioner of Police and the Secretary to the Department of Human Services.

Division 2—Corresponding New Zealand Orders

184 Registration of corresponding New Zealand orders

The appropriate registrar may register a corresponding New Zealand order in the court.

185 Notice to be given of registration of corresponding New Zealand orders

- (1) As soon as practicable after registering a corresponding New Zealand order, the appropriate registrar must—
 - (a) give notice of the registration of the order to—
 - (i) the court that made the order; and
 - (ii) the person for whose protection the order was made; and
 - (b) give a copy of the order to the Chief Commissioner of Police and the Secretary to the Department of Human Services.
- (2) In addition, the appropriate registrar may list the matter before the court for decision as to whether or not a copy of the registered corresponding New Zealand order must be served on the respondent for the New Zealand order at the respondent's last known address.
- (3) If the registrar lists a matter before the court under subsection (2) the court must make an order as to whether or not a copy of the registered corresponding New Zealand order must be served on the respondent.

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- (4) However, the court may make an order under subsection (3) only if, after hearing from the person for whose protection the registered corresponding New Zealand order was made, the court is satisfied that revealing that the person is in Victoria would not jeopardise the safety of the person or any children of the person.
- (5) If the court makes an order under subsection (3) the court must arrange for the registered corresponding New Zealand order to be served on the respondent.

186 Effect of registration of corresponding New Zealand orders

- (1) A corresponding New Zealand order—
- (a) has the same effect in Victoria as it has for the time being in New Zealand; and
 - (b) may be enforced against a person as if it were a final order under this Act.
- (2) A contravention of the New Zealand order in Victoria is taken, for the purposes of imposing a penalty, to be a contravention of a final order.

187 Variation, revocation or extension of corresponding New Zealand order

If a corresponding New Zealand order registered under this Division is varied, revoked or extended by a court in New Zealand—

- (a) the registration is varied, revoked or extended accordingly; and
 - (b) the appropriate registrar must give the Chief Commissioner of Police notice of the variation, revocation or extension.
-

PART 11—VEXATIOUS LITIGANTS

188 Constitution of court

The court, when exercising a power under this Part, must be constituted by—

- (a) for the Magistrates' Court, the Chief Magistrate or a Deputy Chief Magistrate; or
- (b) for the Children's Court, the President of the Court.

189 Who may apply for order that person is a vexatious litigant

- (1) Any of the following persons may apply to the court for an order declaring a person to be a vexatious litigant—
 - (a) the Attorney-General;
 - (b) a person against whom applications have been made under this Act;
 - (c) a person against whom complaints or applications have been made under the **Crimes (Family Violence) Act 1987** for, or in relation to, an intervention order, other than a stalking intervention order;
 - (d) a person referred to in paragraph (b) or (c) against whom—
 - (i) applications have also been made under the **Personal Safety Intervention Orders Act 2010** or the **Stalking Intervention Orders Act 2008** (as in force immediately before its repeal); or
 - (ii) complaints or applications have also been made for, or in relation to, a stalking intervention order under the **Crimes (Family Violence) Act 1987** (as in force immediately before its repeal).

S. 189(1)
substituted by
No. 53/2010
s. 216(1).

- (2) However, a person other than the Attorney-General may apply for an order under subsection (1) only with the leave of a magistrate of the court.
- (3) A magistrate may grant leave under subsection (2) for an application if the magistrate is satisfied there is evidence that—
 - (a) there is merit in the application; and
 - (b) the making of the application would not be an abuse of process.
- (4) In this section, *stalking intervention order* means an intervention order of a kind referred to in section 21A(5) of the **Crimes Act 1958** (as in force immediately before its repeal).

S. 189(4)
inserted by
No. 53/2010
s. 216(3).

190 Attorney-General may request documents from courts

- (1) For the purposes of deciding whether to make an application under section 189(1) for an order declaring a person to be a vexatious litigant, the Attorney-General may ask a court for a copy of documents held by the court in relation to a proceeding brought by the person under this Act, the **Crimes (Family Violence) Act 1987**, the **Personal Safety Intervention Orders Act 2010** or the **Stalking Intervention Orders Act 2008**.
- (2) The court may give to the Attorney-General a copy of documents requested under subsection (1).

S. 190(1)
amended by
No. 53/2010
s. 217.

191 Notice of application by Attorney-General to be served on protected person

If the Attorney-General applies under section 189(1) for an order declaring a person to be a vexatious litigant, the appropriate registrar for the court must serve a copy of the application on the person who would be protected by the order.

192 Notice of application to be served on person proposed to be declared vexatious litigant

A copy of an application for an order declaring a person to be a vexatious litigant must be served by the appropriate registrar for the court on the person who it is proposed will be declared a vexatious litigant.

193 Order declaring person to be vexatious litigant

- (1) The court may, after hearing or giving the person an opportunity to be heard, make an order declaring the person to be a vexatious litigant if it is satisfied the person has habitually, persistently and without any reasonable ground instituted proceedings against the same person under any one or more of the following Acts—

S. 193(1)
substituted by
No. 53/2010
s. 218(1).

- (a) this Act;
- (b) the **Personal Safety Intervention Orders Act 2010**;
- (c) the **Stalking Intervention Orders Act 2008**
(as in force immediately before its repeal);
- (d) the **Crimes (Family Violence) Act 1987**
(as in force immediately before its repeal).

Example

The person has persistently and without any reasonable grounds done any of the following—

- made applications for family violence intervention orders against the same family member;
- made applications for family violence intervention orders and personal safety intervention orders against the same person;
- applied for the variation of a family violence intervention order made against a family member;
- applied for the revocation of a family violence intervention order made against the person;

Family Violence Protection Act 2008
No. 52 of 2008
Part 11—Vexatious Litigants

s. 194

S. 193(2)
amended by
No. 53/2010
s. 218(2).

- appealed against the making of a family violence intervention order, or the conditions of the order, made against the person.

- (2) An order under subsection (1) must provide that the vexatious litigant must not without leave of the court make an application for a family violence intervention order or a personal safety intervention order, or the variation, revocation or extension of a family violence intervention order or a personal safety intervention order, in relation to a person stated in the order or the person's children.
- (3) The appropriate registrar for the court must serve a copy of an order made under subsection (1) on—
 - (a) the vexatious litigant; and
 - (b) the person protected by the order.

S. 193(3)(b)
amended by
No. 55/2009
s. 13(a).

S. 193(3)(c)
repealed by
No. 55/2009
s. 13(b).

* * * * *

- (4) The order must include or be accompanied by a statement of the court's reasons for the decision.

194 Leave to make an application under this Act

- (1) For the purposes of deciding an application by a vexatious litigant for leave to make an application for a family violence intervention order, or the variation, revocation or extension of a family violence intervention order, the court may be constituted by any magistrate.
- (2) The application must be decided by the court as soon as practicable.

- (3) In this section, *vexatious litigant* means a person declared to be a vexatious litigant under this Part or under Part 10 of the **Personal Safety Intervention Orders Act 2010**.

S. 194(3)
inserted by
No. 53/2010
s. 219.

195 Appeal against order declaring person to be vexatious litigant

- (1) A person who is declared to be a vexatious litigant by an order made under this Part may appeal against the order to—
- (a) the County Court, with the leave of that Court; or
 - (b) if the court that made the relevant decision was the Children's Court constituted by the President of the Court, the Trial Division of the Supreme Court with the leave of that Court.
- (2) The appropriate registrar for the Court must serve notice of the application for leave on—
- (a) the person protected by the order; and
 - (b) if the Attorney-General made the application under section 189(1)(a) for the order declaring the person to be a vexatious litigant, the Attorney-General.
- (3) The Court must allow the person protected by the order to be heard on the application if that person wishes.
- (4) The Court may grant leave under subsection (1) if the Court is satisfied there is evidence that—
- (a) the appeal has merit; and
 - (b) is not an abuse of process.
- (5) If leave is granted under this section, the appropriate registrar for the Court must serve notice of the hearing date for the appeal on—

- (a) the vexatious litigant; and
- (b) the person protected by the order; and
- (c) if the Attorney-General made the application under section 189(1)(a) for the order declaring the person to be a vexatious litigant, the Attorney-General.

196 Application for leave to appeal under Division 9 of Part 4 by vexatious litigant

- (1) A person who has been declared a vexatious litigant under this Part may appeal under Division 9 of Part 4 to the County Court or the Supreme Court against a decision referred to in section 114(2)(d) only if that Court grants leave for the appeal.

Note

Section 114 provides for appeals in relation to family violence intervention orders. For the right of a person to appeal against an order declaring the person to be a vexatious litigant see section 195.

- (2) If an application for leave to appeal is made to the County Court or the Supreme Court, the appropriate registrar for the court that made the order declaring the person to be a vexatious litigant must—
 - (a) file in the County Court or the Supreme Court (as the case may be) a statement of the court's reasons for declaring the person to be a vexatious litigant; and
 - (b) serve a copy of the statement and a copy of the application on—
 - (i) the Attorney-General; and
 - (ii) the protected person in relation to the decision the subject of the appeal; and

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- (iii) if the protected person is not the person protected by the order declaring a person to be a vexatious litigant, the person protected by that order.
- (3) The protected person is entitled to be heard by the County Court or the Supreme Court on the application even if the protected person was not a party to the proceeding in which the order declaring the person to be a vexatious litigant was made.
- (4) In deciding whether to grant leave for an appeal under subsection (1), the County Court or Supreme Court must have regard to all the circumstances of the case, including the statement of reasons filed by the appropriate registrar for the court that made the order declaring the person to be a vexatious litigant.

197 Court may vary, set aside or revoke

- (1) The court, as constituted under section 188, may at any time vary, set aside or revoke an order made under section 193 if it considers it proper to do so.
- (2) However, a vexatious litigant may apply to vary, set aside or revoke an order made under section 193 only with the leave of a magistrate of the court.
- (3) A magistrate may grant leave under subsection (2) if the magistrate is satisfied there is evidence that—
- (a) there is merit in the application; and
 - (b) the application is not an abuse of the process of the court.

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- (4) The appropriate registrar for the court must serve a copy of the application for leave on—
- (a) the person protected by the order declaring the person to be a vexatious litigant; and
 - (b) if the Attorney-General made the application under section 189(1)(a) for the order declaring the person to be a vexatious litigant, the Attorney-General.
- (5) If leave is granted under subsection (2), the appropriate registrar for the court must serve notice of the hearing date for the application to vary, set aside or revoke the order on—
- (a) the person protected by the order; and
 - (b) if the Attorney-General made the application under section 189(1)(a) for the order declaring the person to be a vexatious litigant, the Attorney-General.

S. 197A
inserted by
No. 55/2009
s. 14.

197A Notice of order to be given to Attorney-General

- (1) If the court makes an order under section 193 or 197, the appropriate registrar must give a copy of the order to the Attorney-General.
- (2) The order must include or be accompanied by a statement of the court's reasons for the decision

198 Attorney-General to publish copy of order in Government Gazette

- (1) The Attorney-General must cause a copy of any order made under section 193 or 197 to be published in the Government Gazette.
- (2) However, the copy of the order published in the Government Gazette must have removed from it the name of the person against whom the vexatious litigant must not make an application.

199 Notice of order to be served on courts

If the court makes an order under section 193, a copy of the notice must be filed in—

- (a) the County Court and Supreme Court; and
- (b) if the order is made by the Magistrates' Court, the Children's Court; and
- (c) if the order is made by the Children's Court, the Magistrates' Court.

200 Annual reports

- (1) The Magistrates' Court and Children's Court must each give to the Attorney-General a report about the number of orders made in each calendar year under this Part declaring persons to be vexatious litigants.
- (2) A report under subsection (1) must be given to the Attorney-General as soon as practicable after the end of the calendar year to which it relates.

S. 200
substituted by
No. 53/2010
s. 207.

PART 12—SERVICE OF DOCUMENTS

201 Service of family violence intervention orders

If the court makes, varies, extends or revokes a family violence intervention order, the appropriate registrar for the court must—

- (a) arrange for the order to be drawn up and filed in the court; and
- (b) serve a copy of the order on the respondent; and
- (c) give a copy of the order to the following persons—
 - (i) the Chief Commissioner of Police;
 - (ii) each party to the proceeding;
 - (iii) if the protected person is a child and the application was made with the consent of the child's parent, that parent;
 - (iv) if the protected person is a child and the order was made by the court relying on section 53(1)(a)(iii), 77(2), 103(b) or 104(a)(i), a parent of the child (other than the respondent) with whom the child normally or regularly lives;
 - (v) if the protected person has a guardian, the guardian;
 - (vi) the officer in charge of the police station closest to the place of residence of the protected person.

S. 201(c)(iv)
amended by
Nos 18/2010
s. 35, 29/2011
s. 3(Sch. 1
item 37.2).

202 Manner of service

- (1) This section applies if, under this Act, a document must be served on a person.
- (2) The document must be served on the person (other than the Attorney-General) by giving a true copy of the document to the person personally.

S. 202(2)
amended by
No. 53/2010
s. 208(1).

- (2A) The document must be served on the Attorney-General by giving a true copy of the document to the Victorian Government Solicitor.
- (3) Subject to subsection (4), if it appears to the court that it is not reasonably practicable to serve a copy of a document on a person personally, the court may—
- (a) order that a copy of the document be served by any other means it considers appropriate; or
 - (b) make an order for substituted service.
- (4) An order under subsection (3) may not be made with respect to the service of a family violence safety notice.

S. 202(2A)
inserted by
No. 53/2010
s. 208(2).

203 Proof of service

- (1) As soon as practicable after a person serves a document under this Act, the person must file with the court a certificate of service—
- (a) that has been made on oath or by affidavit or is certified; and
 - (b) that states service has taken place; and
 - (c) that specifies details of the service.
- (2) For the purposes of subsection (1)(a), the certificate of service may certify that service has taken place only if that service was by a police officer or the appropriate registrar of a court.
- (3) The certificate of service must—
- (a) include the prescribed information; and
 - (b) be accompanied by the prescribed documents.
- (4) A certificate of service is admissible in evidence and, in the absence of evidence to the contrary, is proof of the matters stated in it.

204 Inability to serve document

- (1) If a person is required under this Act to serve a document and it has not been possible to serve the document, the person must file with the court a certificate about why it has not been possible to serve the document.
- (2) The certificate must—
 - (a) include the prescribed information; and
 - (b) be accompanied by the prescribed documents.
- (3) A certificate under this section is admissible in evidence and, in the absence of evidence to the contrary, is proof of the matters stated in it.

205 Person may cause document to be served

- (1) If, under this Act, a person is required or permitted to serve a document, the person may serve the document by causing it to be served by another person.
- (2) If, under this Act, a person is required or permitted to give a document to another person, the person may give the document by causing it to be given by another person.

206 Certificate of service

If, under this Act, a police officer or appropriate registrar of a court is required or permitted to certify that a document has been served on a person, the police officer or appropriate registrar must complete a certificate of service that—

- (a) if the certificate is completed by a police officer, includes the police officer's name, rank and station; and

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- (b) if the certificate is completed by an appropriate registrar, includes the appropriate registrar's name and the location of the court; and
 - (c) includes a statement about the manner of service; and
 - (d) includes a statement of the date, time and place of service; and
 - (e) is certified by the police officer or appropriate registrar.

207 Disclosure of information by organisations

- (1) This section applies if—
 - (a) a police officer applies to an organisation in the prescribed way for information held by the organisation about a respondent; and
 - (b) the purpose of the application is to assist a police officer to locate the respondent to enable a police officer to serve the respondent with a document under this Act.
- (2) If the organisation has the information requested in the application, the organisation must give the police officer the information.
- (3) Information provided by an organisation under subsection (2) to a police officer—
 - (a) must relate only to the respondent, or an associate of the respondent for whom an order has been made or is being sought under this Act; and
 - (b) must not be used by a police officer for any purpose other than locating the respondent for the purpose of serving the respondent with a document under this Act; and

(c) must not be given by a police officer to—

- (i) the protected person; or
- (ii) any other organisation or person, other than another police officer or the court.

(4) In this section—

organisation has the meaning given by the
Information Privacy Act 2000.

PART 13—MISCELLANEOUS

Division 1—Jurisdiction of Supreme Court

208 Supreme Court—limitation of jurisdiction

It is the intention of sections 118 and 120 to alter or vary section 85 of the **Constitution Act 1975**.

Division 2—Rule-making power

209 Rules of court and practice directions for Magistrates' Court

- (1) The Chief Magistrate together with 2 or more Deputy Chief Magistrates may jointly make rules of court for or with respect to proceedings in the Magistrates' Court in relation to applications and orders made under this Act.
- (2) Without limiting subsection (1), rules may be made for or with respect to the following matters—
 - (a) the proper venue for proceedings under this Act, including the transfer of proceedings between court venues;
 - (b) the right of parties to appear personally or to be represented by a legal practitioner;
 - (c) the amendment of applications;
 - (d) the striking out or dismissal by the court of matters;
 - (e) the adjournment of proceedings by the court and the power to stay orders;
 - (f) processes for filing family violence safety notices in the court;
 - (g) access to records and documents held by the court;

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- (h) extracts from records and documents held by the court and certification of those extracts.
- (3) A power conferred by this Act to make rules may be exercised in accordance with section 16(1D) and 16(1E) of the **Magistrates' Court Act 1989** as if the rules had been made under section 16 of that Act.
- (4) To remove any doubt, it is declared that the power of the Chief Magistrate to issue practice directions, statements or notes for the court under section 16A of the **Magistrates' Court Act 1989** in relation to civil proceedings or any class of civil proceedings includes power to issue practice directions, statements or notes for the court in relation to proceedings, or any class of proceedings, with respect to applications or orders made under this Act.
- (5) A practice direction, statement or note issued with respect to proceedings, or any class of proceedings, with respect to applications under this Act is taken to have been issued under section 16A(1) of the **Magistrates' Court Act 1989**.

210 Rules of court and practice directions for Children's Court

- (1) The President of the Children's Court together with 2 or more magistrates of the court may jointly make rules for or with respect to proceedings in the court in relation to applications and orders made under this Act.
- (2) Without limiting subsection (1), rules may be made for or with respect to the following matters—
- (a) the proper venue for proceedings under this Act, including the transfer of proceedings between court venues;

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- (b) the right of parties to appear personally or to be represented by a legal practitioner;
 - (c) the amendment of applications;
 - (d) the striking out or dismissal by the court of matters;
 - (e) the adjournment of proceedings by the court and the power to stay orders;
 - (f) processes for filing family violence safety notices in the court;
 - (g) access to records and documents held by the court;
 - (h) extracts from records and documents held by the court and certification of those extracts.
- (3) Rules made under subsection (1) may adopt or apply rules made for the Magistrates' Court under section 209.
- (4) To remove any doubt, it is declared that the power of the President of the Children's Court to issue practice directions, statements or notes for the court under section 592 of the **Children, Youth and Families Act 2005** in relation to proceedings in the Family Division or the Criminal Division, or any class of proceedings in the Family Division or Criminal Division, includes power to issue practice directions, statements or notes for the court in relation to proceedings, or any class of proceedings, with respect to applications or orders made under this Act.
- (5) A practice direction, statement or note issued with respect to proceedings, or any class of proceedings, with respect to applications or orders under this Act is taken to have been issued under section 592(1) of the **Children, Youth and Families Act 2005**.
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Division 3—Regulations

211 Regulation making power

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
 - (2) Without limiting subsection (1), the regulations may prescribe—
 - (a) the content of forms to be used for the purposes of this Act; and
 - (b) matters relevant to applications made under this Act; and
 - (c) the content of orders, applications, notices and certificates made under this Act.
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PART 14—REPEAL, TRANSITIONAL AND VALIDATION PROVISIONS

Division 1—Repeal

212 Repeal of Crimes (Family Violence) Act 1987

The **Crimes (Family Violence) Act 1987** is repealed.

Division 2—Transitional provisions

213 Definitions

In this Division—

commencement day means the day this section commences;

interim intervention order means an interim intervention order made under the repealed Act on grounds referred to in section 8 of that Act;

intervention order means—

- (a) an intervention order made under the repealed Act on grounds referred to in section 4 or 4A of that Act; or
- (b) an intervention order referred to in paragraph (a) that was subsequently varied or extended under section 16 or 16A of that Act;

new Act means the **Family Violence Protection Act 2008**;

repealed Act means the **Crimes (Family Violence) Act 1987**.

214 References to repealed Act

On and from the commencement day, a reference in an Act (other than the new Act) or a document to the repealed Act is taken, if the context permits, to be a reference to the new Act.

215 Intervention orders

- (1) On and from the commencement day, an intervention order made under the repealed Act (including an intervention order made in proceedings referred to in section 219) is taken to be a final order made under the new Act.
- (2) Without limiting subsection (1), the intervention order—
 - (a) continues subject to any condition included in the order as if the condition had been included in the order under the new Act; and
 - (b) the order may be revoked, varied or extended under the new Act as if it had been made under that Act.

216 Interim intervention orders

On and from the commencement day, an interim intervention order made under the repealed Act (including an interim intervention order made in proceedings referred to in section 219) is taken to be an interim order made under the new Act.

217 Counselling orders

On and from the commencement day, a counselling order made under the repealed Act (including a counselling order made in proceedings referred to in section 219) is taken to be a counselling order made under the new Act.

218 Applications

- (1) This section applies if, immediately before the commencement day, a complaint for an intervention order or an application for the variation, revocation or extension of an intervention order or an interim intervention order had been made under the repealed Act but a proceeding in relation to the complaint or application had not yet started.
- (2) On and from the commencement day, the complaint or application may be dealt with under the new Act as an application for a family violence intervention order or the variation, revocation or extension of an order as if it were an application made under that Act.
- (3) Section 7A(2) of the repealed Act continues to apply to a police officer in relation to a complaint or application made by that police officer under the repealed Act, or in relation to the police officer representing another police officer at a hearing in accordance with section 7A(1) of that Act, as if section 7A of the repealed Act had not been repealed.

219 Proceedings

- (1) This section applies if, immediately before the commencement day—
 - (a) proceedings for an intervention order or interim intervention order, or the variation, revocation or extension of an order, had started but had not yet been finalised; or
 - (b) an appeal under section 20 or 21 of the repealed Act had been started but had not yet been finalised; or

- (c) proceedings for an offence against section 22 of the repealed Act had started but had not yet been finalised.
- (2) The proceeding may continue under the repealed Act as if that Act had not been repealed.

220 Interim intervention order

- (1) This section applies if, immediately before the commencement day—
 - (a) an interim intervention order had been made in relation to a complaint for an intervention order; but
 - (b) proceedings for the final hearing of the complaint had not yet started.
- (2) The proceedings for the final hearing of the complaint may proceed under the new Act as if it were an application under that Act and the interim intervention order were an interim order made under that Act.

221 Acts committed before commencement day relevant

- (1) This section applies if—
 - (a) after the commencement day, a person (the *first person*) applies for a family violence intervention order against another person (the *second person*); and
 - (b) before the commencement day, the first person and second person were not considered family members under the repealed Act.
- (2) Family violence committed before the commencement day may be taken into account by the court in deciding whether to make a family violence intervention order for the first person against the second person.

222 Protection for protected person applies to acts committed before commencement day

(1) This section applies if—

- (a) an aggrieved family member aided, abetted, counselled or procured the commission of an offence against the repealed Act because the aggrieved family member encouraged, permitted or authorised conduct by the accused that breached an intervention order under the repealed Act; and
- (b) immediately before the commencement day the person had not been charged under section 52 of the **Magistrates' Court Act 1989** with the offence or, if the person had been charged under that section, the charge had not been dealt with.

S. 222(1)(a)
amended by
No. 68/2009
s. 97(Sch.
item 57.5).

(2) On and from the commencement day—

- (a) section 125 of the new Act applies to the person; and
- (b) the person cannot be charged with an offence under section 52 of the **Magistrates' Court Act 1989** for the aiding, abetting, counselling or procuring or, if the person has already been charged, the charge must be withdrawn.

223 Interstate and New Zealand orders

- (1) An interstate summary protection order registered in the court immediately before the commencement day is taken, on and from the commencement day, to be a corresponding interstate order registered under the new Act.

- (2) A New Zealand protection order registered in the court immediately before the commencement day is taken, on and from the commencement day, to be a corresponding New Zealand order registered under the new Act.

Division 3—Validation provision

224 Validation of certain interstate orders

- (1) This section applies to an order made under a law of another State or a Territory and registered under section 18AA of the **Crimes (Family Violence) Act 1987** before the commencement of this section.
- (2) An order referred to in subsection (1)—
- (a) is taken to be an interstate summary protection order within the meaning of section 3(1) of the **Crimes (Family Violence) Act 1987**, whether or not the State or Territory law under which the order was made had been declared by Order of the Governor in Council; and
 - (b) to the extent that it is taken to be an interstate summary protection order, is taken to have been validly registered under section 18AA of the **Crimes (Family Violence) Act 1987**.

Division 4—Statute Law Amendment (Evidence Consequential Provisions) Act 2009

224A Transitional provision—Statute Law Amendment (Evidence Consequential Provisions) Act 2009

- (1) Section 20(3A) applies to an application for an interim order made under section 20 on or after the commencement of the **Statute Law**

Pt 14 Div. 4
(Heading and
s. 224A)
inserted by
No. 69/2009
s. 54(Sch. Pt 1
item 22.4).

S. 224A
inserted by
No. 69/2009
s. 54(Sch. Pt 1
item 22.4).

Amendment (Evidence Consequential Provisions) Act 2009.

- (2) Sections 65 and 67, as amended by the **Statute Law Amendment (Evidence Consequential Provisions) Act 2009**, do not apply to a hearing in a proceeding that commenced before the day that Act commenced and that—
- (a) continued on or after that day; or
 - (b) was adjourned until that day or a day after that day.

Division 5—Justice Legislation Amendment (Victims of Crime Assistance and Other Matters) Act 2010

Pt 14 Div. 5
(Heading and
s. 224B)
inserted by
No. 18/2010
s. 37.

224B Transitional provision—Justice Legislation Amendment (Victims of Crime Assistance and Other Matters) Act 2010

S. 224B
inserted by
No. 18/2010
s. 37.

- (1) Despite the commencement of section 28 of the **Justice Legislation Amendment (Victims of Crime Assistance and Other Matters) Act 2010**, section 107, as in force before that commencement, continues to apply to an interim order made under section 107 before that commencement.
- (2) Despite the commencement of section 29 of the **Justice Legislation Amendment (Victims of Crime Assistance and Other Matters) Act 2010**, section 122, as in force immediately before that commencement, continues to apply in respect of an application for a rehearing that was made but not determined before that commencement.

s. 224C

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- (3) Section 171A does not apply to a hearing in a proceeding that commenced before the day section 33 of the **Justice Legislation Amendment (Victims of Crime Assistance and Other Matters) Act 2010** commenced and that—
- (a) continued on or after that day; or
 - (b) was adjourned until that day or a day after that day.

Pt 14 Div. 6
(Heading and
s. 224C)
inserted by
No. 53/2010
s. 209.

Division 6—Personal Safety Intervention Orders Act 2010

S. 224C
inserted by
No. 53/2010
s. 209.

224C Transitional provisions—Personal Safety Intervention Orders Act 2010

- (1) Section 53(3), inserted by section 200 of the **Personal Safety Intervention Orders Act 2010**, applies on and from that commencement to all applications for family violence intervention orders.
- (2) Section 65, as amended by section 201 of the **Personal Safety Intervention Orders Act 2010**, applies to a hearing in relation to an application that was made on or after the commencement of that section 201.
- (3) Section 74, as amended by section 203 of the **Personal Safety Intervention Orders Act 2010**, applies in relation to an application for a final order that was made on or after the commencement of that section 203.

- (4) Section 74(3), as inserted by section 203 of the **Personal Safety Intervention Orders Act 2010**, applies on and from that commencement to all applications for family violence intervention orders.
- (5) The first report under section 200 given after the commencement of section 207 of the **Personal Safety Intervention Orders Act 2010** by each of the Magistrates' Court and the Children's Court must also include the number of orders made under Part 11 in the period commencing on 8 December and finishing on 31 December in the year before that to which the report relates.
- (6) The amendments made by Division 2 of Part 14 of the **Personal Safety Intervention Orders Act 2010** only apply to applications for family violence intervention orders made on or after the commencement of that Division.
- (7) If, before the commencement of Division 2 of Part 14 of the **Personal Safety Intervention Orders Act 2010**, an application was made under section 189 for an order declaring a person to be a vexatious litigant, Part 11, as in force immediately before that commencement, continues to apply to the determination of the application.
- (8) If—
- (a) before the commencement of Division 2 of Part 14 of the **Personal Safety Intervention Orders Act 2010**; or
- (b) after the hearing of an application referred to in subsection (5)—
- the court made or makes an order under section 193 declaring a person to be a vexatious litigant, on and from the commencement day or on and from making the order (as the case requires), the order is taken to provide that the person must

S. 224C(6)
inserted by
No. 53/2010
s. 220.

S. 224C(7)
inserted by
No. 53/2010
s. 220.

S. 224C(8)
inserted by
No. 53/2010
s. 220.

not make an application for a personal safety intervention order, or the variation, revocation or extension of a personal safety intervention order, in relation to the person stated in the vexatious litigant order or the person's children.

Pt 14 Div. 7
(Heading and
s. 224D)
inserted by
No. 83/2012
s. 29.

Division 7—Justice Legislation (Family Violence and Other Matters) Act 2012

S. 224D
inserted by
No. 83/2012
s. 29.

224D Transitional provisions—Justice Legislation (Family Violence and Other Matters) Act 2012

- (1) Part 5 as amended by Part 2 of the **Justice Legislation (Family Violence and Other Matters) Act 2012** applies to an application for a family violence intervention order made to a venue of the Magistrates' Court after the date on which the notice specifying that venue of the Court for the purposes of the definition of *relevant court* in section 126 is published in the Government Gazette.
- (2) Section 31(3) as amended by section 4 of the **Justice Legislation (Family Violence and Other Matters) Act 2012** applies to a family violence safety notice issued on or after the commencement of section 4 of that Act.
- (3) Section 37A as inserted by section 6 of the **Justice Legislation (Family Violence and Other Matters) Act 2012** applies to a contravention of a family violence safety notice that occurs on or after the commencement of section 6 of that Act, irrespective of when the family violence safety notice was issued.
- (4) Section 123A as inserted by section 9 of the **Justice Legislation (Family Violence and Other Matters) Act 2012** applies to a contravention of a

family violence intervention order that occurs on or after the commencement of section 9 of that Act, irrespective of when the family violence intervention order was made.

- (5) Section 125A as inserted by section 11 of the **Justice Legislation (Family Violence and Other Matters) Act 2012** applies to contraventions of a family violence safety notice or a family violence intervention order that occur on or after the commencement of section 11 of that Act, irrespective of when the family violence safety notice or family violence intervention order was made.

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Pt 15
(Headings
and
ss 225–232)
repealed by
No. 83/2012
s. 30.

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Pt 16
(Headings
and ss 233–
272)
repealed by
No. 52/2008
s. 272.

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 26 June 2008

Legislative Council: 21 August 2008

The long title for the Bill for this Act was "A Bill for an Act to make provision for a system of family violence intervention orders and other matters relating to the prevention of family violence, to repeal the **Crimes (Family Violence) Act 1987** and for other purposes."

Constitution Act 1975:

Section 85(5) statement:

Legislative Assembly: 26 June 2008

Legislative Council: 21 August 2008

Absolute majorities:

Legislative Assembly: 21 August 2008

Legislative Council: 12 September 2008

The **Family Violence Protection Act 2008** was assented to on 23 September 2008 and came into operation as follows:

Sections 1, 2 and 224 on 24 September 2008: section 3(1); sections 3–223, 233–272 on 8 December 2008: Special Gazette (No. 339) 4 December 2008 page 1; Part 15 (sections 225–232) on 31 December 2013: section 3(1A).

2. Table of Amendments

This Version incorporates amendments made to the **Family Violence Protection Act 2008** by Acts and subordinate instruments.

Family Violence Protection Act 2008, No. 52/2008

Assent Date: 23.9.08
Commencement Date: S. 272 on 8.12.09: s. 272
Current State: This information relates only to the provision/s amending the **Family Violence Protection Act 2008**

Courts Legislation Amendment (Sunset Provisions) Act 2009, No. 51/2009

Assent Date: 8.9.09
Commencement Date: S. 5 on 9.9.09: s. 2
Current State: This information relates only to the provision/s amending the **Family Violence Protection Act 2008**

Justice Legislation Further Amendment Act 2009, No. 55/2009

Assent Date: 22.9.09
Commencement Date: Ss 10–14 on 31.5.10: s. 2(4)
Current State: This information relates only to the provision/s amending the **Family Violence Protection Act 2008**

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 57) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Family Violence Protection Act 2008**

Statute Law Amendment (Evidence Consequential Provisions) Act 2009, No. 69/2009

Assent Date: 24.11.09
Commencement Date: S. 54(Sch. Pt 1 item 22) on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Family Violence Protection Act 2008**

Crimes Legislation Amendment Act 2010, No. 7/2010

Assent Date: 16.3.10
Commencement Date: S. 10 on 17.3.10: s. 2
Current State: This information relates only to the provision/s amending the **Family Violence Protection Act 2008**

Justice Legislation Amendment (Victims of Crime Assistance and Other Matters) Act 2010, No. 18/2010

Assent Date: 18.5.10
Commencement Date: Ss 17–37 on 1.7.10: Government Gazette 1.7.10 p. 1359
Current State: This information relates only to the provision/s amending the **Family Violence Protection Act 2008**

Family Violence Protection Act 2008
No. 52 of 2008

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Justice Legislation Amendment Act 2010, No. 30/2010

Assent Date: 8.6.10
Commencement Date: Ss 81–83 on 1.1.11: Government Gazette 28.10.10
p. 2583
Current State: This information relates only to the provision/s
amending the **Family Violence Protection Act 2008**

Personal Safety Intervention Orders Act 2010, No. 53/2010

Assent Date: 7.9.10
Commencement Date: Ss 197–209 on 1.12.10: Government Gazette 14.10.10
p. 2405; ss 210–220 on 5.9.11: Special Gazette
(No. 271) 23.8.11 p. 1
Current State: This information relates only to the provision/s
amending the **Family Violence Protection Act 2008**

Bail Amendment Act 2010, No. 70/2010

Assent Date: 19.10.10
Commencement Date: S. 38 on 1.1.11: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Family Violence Protection Act 2008**

Family Violence Protection Amendment (Safety Notices) Act 2011, No. 16/2011

Assent Date: 31.5.11
Commencement Date: Ss 3–7 on 5.9.11: Special Gazette (No. 271) 23.8.11
p. 1
Current State: This information relates only to the provision/s
amending the **Family Violence Protection Act 2008**

Statute Law Revision Act 2011, No. 29/2011

Assent Date: 21.6.11
Commencement Date: S. 3(Sch. 1 item 37) on 22.6.11: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Family Violence Protection Act 2008**

**Sentencing Legislation Amendment (Abolition of Home Detention) Act 2011,
No. 48/2011**

Assent Date: 22.9.11
Commencement Date: S. 27 on 16.1.12: Special Gazette (No. 423) 21.12.11
p. 4
Current State: This information relates only to the provision/s
amending the **Family Violence Protection Act 2008**

Sentencing Amendment (Community Correction Reform) Act 2011, No. 65/2011

Assent Date: 22.11.11
Commencement Date: Ss 93–95 on 16.1.12: Special Gazette (No. 423)
21.12.11 p. 3
Current State: This information relates only to the provision/s
amending the **Family Violence Protection Act 2008**

Family Violence Protection Act 2008
No. 52 of 2008

Endnotes

**Justice Legislation Amendment (Family Violence and Other Matters) Act 2012,
No. 83/2012**

Assent Date: 18.12.12
Commencement Date: Ss 3, 4, 13–30 on 4.2.13: Special Gazette (No. 27)
29.1.13 p. 1
Current State: This information relates only to the provision/s
amending the **Family Violence Protection Act 2008**

Endnotes

3. Explanatory Details

No entries at date of publication.