

**Authorised Version No. 056**  
**Family Violence Protection Act 2008**

**No. 52 of 2008**

Authorised Version incorporating amendments as at  
3 May 2021

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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
- (ab) providing for the sharing of information that is relevant to assessing and managing a risk of family violence; and

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No. 52 of 2008  
Part 1—Preliminary

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(b) creating offences for contraventions of family violence intervention orders and family violence safety notices; and

S. 2(b)  
amended by  
No. 23/2017  
s. 15(a).

(c) providing a framework for achieving consistency in family violence risk assessment and family violence risk management.

S. 2(c)  
inserted by  
No. 23/2017  
s. 15(b).

### 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;

S. 4 def. of  
*acting in  
concert order*  
inserted by  
No. 42/2014  
s. 114.

*acting in concert order* means an order made  
under section 36 of the **Vexatious  
Proceedings Act 2014**;

S. 4 def. of  
*Administrative Office  
Head*  
inserted by  
No. 23/2017  
s. 4(a).

*Administrative Office Head* has the same  
meaning as in section 4(1) of the **Public  
Administration Act 2004**;

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

S. 4 def. of  
*affected  
family  
member*  
amended by  
No. 53/2016  
ss 41(d), 82.

*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(1)(a) or 13A(1)(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;

S. 4 def. of *corresponding DVO recognition law* inserted by No. 53/2016 s. 41(a).

***corresponding DVO recognition law*** means a corresponding law within the meaning of the **National Domestic Violence Order Scheme Act 2016**;

S. 4 def. of *corresponding interstate law* repealed by No. 53/2016 s. 41(f).

\* \* \* \*

S. 4 def. of *corresponding interstate order* repealed by No. 53/2016 s. 41(f).

\* \* \* \*

***corresponding New Zealand law*** means the Domestic Violence Act 1995 of New Zealand or an Act repealed by that Act;

S. 4 def. of *corresponding New Zealand law* substituted by No. 53/2016 s. 41(b).

***corresponding New Zealand order*** means—

S. 4 def. of *corresponding New Zealand order* substituted by No. 53/2016 s. 41(c).

- (a) an order made under a corresponding New Zealand law that substantially corresponds to an interim order or a final order; or
- (b) a notice issued or an order made under a corresponding New Zealand law that substantially corresponds to a family violence safety notice;

***counselling order*** means an order under section 129 or 130;

***court*** means—

S. 4 def. of *court* amended by No. 33/2018 s. 14(2).

- (a) the Magistrates' Court; or
- (b) if the application is being dealt with in the Children's Court, that court; or
- (c) in relation to an interim order made under Division 2A of Part 4, the court hearing the criminal proceeding in which the order is made;

***declaration of truth*** means a declaration that complies with section 43(4) made by an applicant in an application under section 43(1)(c) instead of on oath or by affirmation or by affidavit;

S. 4 def. of *declaration of truth* inserted by No. 33/2018 s. 14(1).

***domestic partner*** has the meaning set out in section 9;

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

S. 4 def. of  
*extended  
litigation  
restraint order*  
inserted by  
No. 42/2014  
s. 114.

*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;

*extended litigation restraint order* means an order  
made under section 19 of the **Vexatious  
Proceedings Act 2014**;

*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;

S. 4 def. of  
*Family  
Violence  
Court Division*  
repealed by  
No. 33/2018  
s. 47(a).

\* \* \* \* \*

*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;



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*final order* has the meaning set out in section 11;

\* \* \* \* \*

S. 4 def. of  
*finalisation  
condition*  
inserted by  
No. 77/2014  
s. 3(2),  
repealed by  
No. 19/2017  
s. 62.

*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;

*foreign order* means a foreign order within the meaning of the **National Domestic Violence Order Scheme Act 2016**;

S. 4 def. of  
*foreign order*  
inserted by  
No. 53/2016  
s. 41(a).

*guardian*, in relation to a person, means (except in the definition of *parent*) a guardian under the **Guardianship and Administration Act 2019** or an attorney who has power for personal matters under an enduring power of attorney under the **Powers of Attorney Act 2014** who has power, whether specifically or generally—

S. 4 def. of  
*guardian*  
amended by  
Nos 57/2014  
s. 152, 13/2019  
s. 221(Sch. 1  
item 15.1).

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

S. 4 def. of  
*information sharing entity*  
inserted by  
No. 23/2017  
s. 6.

*information sharing entity* has the meaning set out in section 144D;

S. 4 def. of  
*interstate DVO*  
inserted by  
No. 53/2016  
s. 41(a).

*interim order* has the meaning set out in section 11;

*interstate DVO* means an interstate DVO within the meaning of the **National Domestic Violence Order Scheme Act 2016**;

S. 4 def. of  
*litigation restraint order proceeding*  
inserted by  
No. 42/2014  
s. 114.

*litigation restraint order proceeding* means a proceeding under the **Vexatious Proceedings Act 2014** in relation to any of the following orders, if the order relates to an application or a proceeding under this Act—

- (a) an extended litigation restraint order;
- (b) an acting in concert order;
- (c) an appeal restriction order within the meaning of that Act;
- (d) an order varying or revoking an extended litigation restraint order;
- (e) a variation or revocation application prevention order within the meaning of that Act;

S. 4 def. of  
*mention date*  
amended by  
No. 19/2017  
s. 31.

*mention date*, in relation to an application or appeal 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 or the hearing of an appeal;

*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;

*participating jurisdiction*, in relation to an interstate DVO or registered foreign order, means a jurisdiction in which a corresponding DVO recognition law has been enacted;

S. 4 def. of *participating jurisdiction* inserted by No. 53/2016 s. 41(a).

*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* has the same meaning as in the **Victoria Police Act 2013**;

S. 4 def. of *police officer* amended by No. 37/2014 s. 10(Sch. item 61.1).

*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**;

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

*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;

S. 4 def. of  
*protected person*  
amended by  
No. 53/2016  
s. 41(e).

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

S. 4 def. of  
*public entity*  
inserted by  
No. 23/2017  
s. 4(a).

*public entity* has the same meaning as in section 4(1) of the **Public Administration Act 2004**;

S. 4 def. of  
*public service body*  
inserted by  
No. 23/2017  
s. 4(a).

*public service body* has the same meaning as in section 4(1) of the **Public Administration Act 2004**;

***publish*** means disseminate or provide access to the public or a section of the public by any means, including by—

S. 4 def. of  
***publish***  
substituted by  
No. 77/2014  
s. 3(3).

- (a) publication in a book, newspaper, magazine or other written publication; or
- (b) broadcast by radio or television; or
- (c) public exhibition; or
- (d) broadcast or electronic communication—

and ***publication*** must be construed accordingly;

***recognised DVO*** means—

S. 4 def. of  
***recognised DVO***  
inserted by  
No. 53/2016  
s. 41(a).

- (a) an interstate DVO made in a participating jurisdiction; or
- (b) an interstate DVO or a foreign order taken to be a recognised DVO under section 36(1) of the **National Domestic Violence Order Scheme Act 2016**; or
- (c) a foreign order that is a registered foreign order in any participating jurisdiction, and includes a corresponding New Zealand order registered under Part 10;

***registered foreign order*** means a registered foreign order within the meaning of the **National Domestic Violence Order Scheme Act 2016**;

S. 4 def. of  
***registered foreign order***  
inserted by  
No. 53/2016  
s. 41(a).

**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;
- (c) in relation to a recognised DVO, a person against whom the recognised DVO has been made;

S. 4 def. of  
*respondent*  
amended by  
No. 53/2016  
s. 41(f).

*safety* means safety from family violence;

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

*Secretary* means (other than in Part 11) the Secretary to the Department of Justice and Regulation;

S. 4 def. of *Secretary* amended by Nos 19/2017 s. 41, 23/2017 s. 4(b).

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

S. 4 def. of *Specialist Family Violence Court Division* inserted by No. 33/2018 s. 39(1).

*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;

S. 4 def. of *weapons exemption* amended by No. 77/2014 s. 3(1).

*working day*, in relation to a court, means a day other than a Saturday, a Sunday or a day appointed as a public holiday under the **Public Holidays Act 1993**.

S. 4 def. of *working day* inserted by No. 77/2014 s. 3(2).

## 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 to  
s. 5(1)(b)  
amended by  
No. 33/2018  
s. 15.

### Examples

- 1 The following behaviour may constitute family violence under paragraph (a)—
  - using coercion, threats, physical abuse or emotional or psychological abuse to cause or attempt to cause a person to enter into a marriage;
  - using coercion, threats, physical abuse or emotional or psychological abuse to demand or receive dowry, either before or after a marriage.
- 2 The following behaviour may constitute a child hearing, witnessing or otherwise being exposed to the effects of behaviour referred to in paragraph (a)—



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- 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;
- 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;
  - (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
  - (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).
- (2) For the purposes of this Act, a *final order* is an order made under section 74, 76, 77, 77A or 77B and includes—
- (a) an order made under section 74, 76, 77, 77A or 77B as varied under section 100, 119(2)(c) or 173(2); and
  - (b) an order made under section 74, 76, 77, 77A or 77B as extended under section 106 or 107; and
  - (c) an order made under section 74, 76, 77, 77A or 77B and confirmed on appeal to the County Court or Supreme Court.

S. 11(2)  
amended by  
No. 19/2017  
s. 4(1).

S. 11(2)(a)  
amended by  
No. 19/2017  
s. 4(1).

S. 11(2)(b)  
amended by  
No. 19/2017  
s. 4(1).

S. 11(2)(c)  
amended by  
No. 19/2017  
s. 4(1).

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(3) For the purposes of this Act, an *interim order* is an order—

S. 11(3)(a)  
amended by  
No. 19/2017  
s. 4(2).

(a) made under section 53, 53AA or 53AB, including an order made under section 53, 53AA or 53AB as varied under section 100; and

S. 11(3)(ab)  
inserted by  
No. 33/2018  
s. 16.

(ab) made under section 60B or 60C, including an order made under section 60B or 60C as varied under section 100; and

(b) made under section 101 that varies a family violence intervention order.



## 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

S. 13  
substituted by  
No. 53/2016  
s. 83.

- (1) Subject to subsection (2), a police officer may exercise a power under this Division in relation to a person if the police officer—
  - (a) 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; or
  - (b) reasonably believes that a family violence intervention order has been made or family violence safety notice has been issued against the person but not served, and the police officer intends to serve a copy of the order or notice on the person.
- (2) The police officer must not exercise the power unless—
  - (a) the officer has reasonable grounds for suspecting that the person is an adult; and
  - (b) 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.

S. 13A  
inserted by  
No. 53/2016  
s. 42.

### **13A Criteria for exercise of powers—recognised DVOs**

- (1) Subject to subsection (2), a police officer may exercise a power under this Division in relation to a person if the police officer—
  - (a) intends to make an application against the person for an order varying a recognised DVO; or
  - (b) reasonably believes that the person is a respondent to a recognised DVO and the police officer—
    - (i) intends to obtain a copy of the recognised DVO; and
    - (ii) if the recognised DVO has not been served, serve a copy on the person.
- (2) The police officer must not exercise the power unless—
  - (a) the officer has reasonable grounds for suspecting that the person is an adult; and
  - (b) 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.

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

**16 Search of person and seizure of objects**

- (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.

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

- (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.

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

- (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 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 or protected person) 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.
- (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

S. 17(2)(a)(i)  
amended by  
No. 53/2016  
s. 84.

- (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 or protected person.
- (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 officer believes on reasonable grounds that the communication would be likely to jeopardise the safety of the affected family member or protected person or any property of the affected family member or of the protected person.

S. 17(5)  
amended by  
No. 53/2016  
s. 84.

S. 17(7)  
amended by  
Nos 53/2016  
s. 84, 5/2018  
s. 40.

(7A) If the person is subject to a residence restriction or exclusion condition, a place or area exclusion condition or a 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(7A)  
inserted by  
No. 65/2011  
s. 93,  
amended by  
No. 48/2018  
s. 58(1).

(7B) In subsection (7A), *curfew condition, place or area exclusion condition* and *residence restriction or exclusion condition* have the same meaning as in the **Sentencing Act 1991**.

S. 17(7B)  
inserted by  
No. 65/2011  
s. 93,  
substituted by  
No. 48/2018  
s. 58(2).

\* \* \* \* \*

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

## 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), in the case of a direction given for the reason in section 13(1)(a) or section 13A(1)(a), the direction ends and, if a directed person is detained under this Division, authorisation for the detention ends—

S. 18(2)  
amended by  
No. 53/2016  
ss 43(1)(a),  
85(1).

- (a) if a family violence intervention order is made or a recognised DVO is varied or a family violence safety notice is issued in respect of the directed person—at the time

S. 18(2)(a)  
amended by  
No. 53/2016  
s. 43(1)(b).

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

S. 18(2)(c)  
amended by  
No. 53/2016  
s. 43(1)(c).

(c) if a police officer decides not to make an application, or withdraws an application, for a family violence intervention order or a variation of a recognised DVO or family violence safety notice against the directed person—at the time of the decision or withdrawal.

S. 18(2A)  
inserted by  
No. 53/2016  
s. 85(2).

(2A) Despite subsection (1), in the case of a direction given for the reason in section 13(1)(b), the direction ends and, if a directed person is detained under this Division, authorisation for the detention ends—

(a) if the family violence safety notice or family violence intervention order is served on the directed person—at the time the order or notice is served on the directed person; or

(b) if a police officer becomes aware that a family violence safety notice or family violence intervention order has not been made against the directed person.

S. 18(2B)  
inserted by  
No. 53/2016  
s. 43(2).

(2B) Despite subsection (1), in the case of a direction given for the reason in section 13A(1)(b), the direction ends and, if a directed person is detained under this Division, authorisation for the detention ends—

(a) if a police officer obtains a copy of the recognised DVO and that DVO has not been served—at the time the copy of the DVO is served on the directed person; or



- (b) if a police officer obtains a copy of the recognised DVO and that DVO has been served—at the time the copy of the recognised DVO is obtained; or
  - (c) in any case, if a police officer becomes aware that the directed person is not a respondent to a recognised DVO.
- (3) If, despite a family violence intervention order or a family violence safety notice or recognised DVO being served on a directed person, or a copy of the recognised DVO being obtained, 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 or protected person, 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.

**S. 18(3)  
amended by  
No. 53/2016  
ss 43(3), 85(3).**

**Note**

Sections 13 and 13A also require the police officer to believe on reasonable grounds that the continued direction or detention is necessary to ensure the safety of, or preserve any property of, the affected family member or protected person.

**Note to  
s. 18(3)  
substituted by  
No. 53/2016  
s. 85(4),  
amended by  
No. 53/2016  
s. 43(4).**

- (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 to  
s. 18(5)  
substituted by  
No. 53/2016  
s. 85(5),  
amended by  
No. 53/2016  
s. 43(5).**

**Note**

Sections 13 and 13A also require the police officer to believe on reasonable grounds that the continued direction or detention is necessary to ensure the safety of, or preserve any property of, the affected family member or protected person.

## **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).

S. 20(4)  
amended by  
No. 53/2016  
s. 86(1).

S. 20(5)(b)  
substituted by  
No. 53/2016  
s. 86(2).

- (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, if applicable, 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—
    - (i) before the hearing of the application for the family violence intervention order; or
    - (ii) otherwise, as soon as practicable.

## **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
- (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 or protected person**

S. 23  
(Heading)  
amended by  
No. 53/2016  
s. 87(1).

- (1) The court may, if practicable, hear a directed person or an affected family member or protected person 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.

S. 23(1)  
amended by  
No. 53/2016  
s. 87(2).

## **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
- (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

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.

- (iii) to protect a child who has been subjected to family violence committed by the respondent.

S. 24(e)(iii)  
amended by  
No. 77/2014  
s. 5(a).

\* \* \* \* \*

S. 24(f)  
repealed by  
No. 77/2014  
s. 5(b).

## **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.

- (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.

S. 26A  
inserted by  
No. 53/2016  
s. 44.

**26A Issue of family violence safety notice if recognised DVO in place**

- (1) A police officer may issue a family violence safety notice for the protection of a person against a respondent whether or not there is a recognised DVO in relation to the same respondent and protected person.
- (2) If a police officer believes there may be a recognised DVO made by a court of any jurisdiction in relation to the same respondent and protected person, the police officer must before the first mention date, make reasonable enquiries to determine whether there is a recognised DVO in relation to the same respondent and protected person.

**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 affirmation or by affidavit or certify the notice.

S. 27(1)(b)  
amended by  
No. 6/2018  
s. 68(Sch. 2  
item 52.1).

- (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;
    - (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
  - (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

S. 30(1)(b)  
amended by  
No. 53/2016  
s. 45(1).

(b) subject to subsection (1A), ends when the earlier of the following occurs—

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

(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.

S. 30(1A)  
inserted by  
No. 53/2016  
s. 45(2).

(1A) If, at the time the family violence safety notice was issued, there was a recognised DVO made by a court of any jurisdiction in relation to the same respondent and protected person, the family violence safety notice ends when the earlier of the following occurs—

(a) on the first mention date, if the application for the family violence intervention order is withdrawn on the first mention date;

(b) if the court varies or extends the recognised DVO on the first mention date— when 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

- (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).

- (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.

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

- (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)  
amended by  
No. 83/2012  
s. 4,  
substituted by  
No. 77/2014  
s. 6.

- (a) as soon as practicable if—

- (i) the family violence safety notice includes an exclusion condition that excludes the respondent from the respondent's primary place of residence; and

S. 31(3)(a)  
substituted by  
No. 19/2017  
s. 32(a).

S. 31(3)(b)  
amended by  
No. 19/2017  
s. 32(b).

- (ii) the police officer who applied for the family violence safety notice believes that the respondent may not have access to temporary accommodation; and
- (b) in any case, not later than 14 days after the family violence safety notice or form of notice completed under section 27(3) is served.

### **32 Information to be included in family violence safety notice**

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

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

- (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.

### **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—
  - (a) ask the respondent to provide an address for the service of documents; and
  - (b) advise the respondent that a police officer may, under section 207, seek information about the respondent from public sector organisations—
    - (i) to enable a police officer to locate the respondent and serve the respondent with a document under this Act; or
    - (ii) to enable the respondent to be served with a document under an order for alternative service.
- (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; or
  - (c) an email address.

S. 33(1)(b)  
substituted by  
No. 19/2017  
s. 25(1).

S. 33(2)(b)  
amended by  
No. 19/2017  
s. 25(2)(a).

S. 33(2)(c)  
inserted by  
No. 19/2017  
s. 25(2)(b).

#### **Notes**

- 1 The family violence safety notice must be served on the respondent personally. See section 202(2).

Notes to  
s. 33(2)  
inserted by  
No. 19/2017  
s. 25(2)(b).

- 2 Other documents may be served by email if the court makes an order for alternative service. See section 202A.
- (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
- (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
  - (da) that the notice may be enforced against the respondent in another State or a Territory under the **National Domestic Violence Order Scheme Act 2016** and corresponding DVO recognition laws; 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

S. 35(2)(da)  
inserted by  
No. 53/2016  
s. 46.

- (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.

- (2A) It is immaterial that some or all of the course of conduct constituting an offence against subsection (2) occurred outside Victoria, so long as the protected person was in Victoria at the time at which that conduct occurred.

**S. 37(2A)  
inserted by  
No. 83/2012  
s. 5.**

- (2B) It is immaterial that the protected person was outside Victoria at the time at which some or all of the course of conduct constituting an offence against subsection (2) occurred, so long as that conduct occurred in Victoria.

**S. 37(2B)  
inserted by  
No. 83/2012  
s. 5.**

- (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

S. 37(4)  
inserted by  
No. 53/2016  
s. 47.

- (c) the accused person's conduct was not in contravention of the family violence intervention order.
- (4) In a proceeding for an offence against subsection (2), it is not a defence to the charge that—
  - (a) the accused person was the respondent under the family violence safety notice; and
  - (b) a recognised DVO in relation to the same protected person and respondent—
    - (i) was made before the family violence safety notice was issued; and
    - (ii) was in force at the time the offence was alleged to have been committed; and
  - (c) the accused person's conduct was not a contravention of the recognised DVO.

S. 37A  
inserted by  
No. 83/2012  
s. 6.

**37A Contravention of notice intending to cause harm or fear for safety**

- (1) In this section—

*mental harm* includes—

  - (a) psychological harm; and
  - (b) suicidal thoughts.
- (2) A person who—
  - (a) has been served with a family violence safety notice; and
  - (b) has had an explanation of the notice given to him or her in accordance with section 35—

must not contravene the notice intending to cause, or knowing that his or her conduct will probably cause—

  - (c) physical or mental harm to the protected person, including self-harm; or

- (d) apprehension or fear in the protected person for his or her own safety or that of any other person.

Penalty: Level 6 imprisonment (5 years maximum) or a level 6 fine (600 penalty units maximum) or both.

- (3) It is immaterial that some or all of the course of conduct constituting an offence against subsection (2) occurred outside Victoria, so long as the protected person was in Victoria at the time at which that conduct occurred.
- (4) It is immaterial that the protected person was outside Victoria at the time at which some or all of the course of conduct constituting an offence against subsection (2) occurred, so long as that conduct occurred in Victoria.
- (5) In a proceeding for an offence against subsection (2), 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.
- (6) In a proceeding for an offence against subsection (2), it is not a defence to the charge that—
  - (a) the accused person was the respondent under the family violence safety notice; and

S. 37A(6)  
inserted by  
No. 53/2016  
s. 48.

- (b) a recognised DVO in relation to the same protected person and respondent—
  - (i) was made before the family violence safety notice was issued; and
  - (ii) was 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 recognised DVO.

**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.

**Note to s. 38**  
inserted by  
No. 83/2012  
s. 7.

**Note**

Section 459(1) of the **Crimes Act 1958** provides for apprehension without warrant of a person reasonably believed to have committed an indictable offence.

**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 Family violence safety notice prevails over existing recognised DVO**

- (1) This section applies if—
- (a) a police officer issues a family violence safety notice in relation to a respondent and protected person; and
  - (b) at the time the family violence safety notice is issued, there is a recognised DVO made by a court in relation to the same respondent and protected person.
- (2) Subject to subsection (3), the respondent must comply with both the family violence safety notice and the recognised DVO as it operates in Victoria.
- (3) If it is not possible for the respondent to comply with the family violence safety notice and the recognised DVO as it operates in Victoria at the same time, the respondent must comply with the family violence safety notice.

\* \* \* \* \*

S. 40  
repealed by  
No. 77/2013  
s. 24,  
new s. 40  
inserted by  
No. 53/2016  
s. 49.

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 affirmation 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 affirmation or by affidavit or by declaration of truth.

S. 43(1)(b)  
amended by  
No. 6/2018  
s. 68(Sch. 2  
item 52.1).

S. 43(1)(c)  
amended by  
Nos 6/2018  
s. 68(Sch. 2  
item 52.1),  
33/2018  
s. 17(1).

(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.

S. 43(3)  
inserted by  
No. 33/2018  
s. 17(2).

(3) Unless the rules of court otherwise provide, the application may be made by telephone, fax or other electronic communication.



(4) A declaration of truth—

- (a) must include the applicant's full name and date of birth; and
- (b) must include an acknowledgment that the content of the application is true and correct to the best of the applicant's knowledge and belief; and
- (c) must include an acknowledgment that the applicant knows that making a declaration of truth that the applicant knows to be false is an offence with a penalty of 600 penalty units or 5 years imprisonment or both; and
- (d) must otherwise comply with any requirements of the rules of court (if any); and
- (e) is not required to be witnessed by, or executed before, any other person.

**S. 43(4)**  
inserted by  
No. 33/2018  
s. 17(2).

\* \* \* \* \*

**S. 44**  
amended by  
No. 6/2018  
s. 68(Sch. 2  
item 52.1),  
repealed by  
No. 33/2018  
s. 18.

#### **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

- (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.
- (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 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 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. 51  
(Heading)  
amended by  
No. 6/2018  
s. 68(Sch. 2  
item 52.2).

S. 51(a)  
amended by  
No. 6/2018  
s. 68(Sch. 2  
item 52.3).

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**

S. 52A  
inserted by  
No. 19/2017  
s. 5.

### **52A Court to consider any children before deciding on interim order**

Before deciding whether to make an interim order under section 53, the court must consider whether there are any children who have been subjected to family violence committed by the respondent.

### **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 an affected family member who is a child 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),  
substituted by  
No. 19/2017  
s. 6(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).

\* \* \* \* \*

S. 53(1A)(1B)  
inserted by  
No. 18/2010  
s. 18(2),  
repealed by  
No. 19/2017  
s. 6(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

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

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

- (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.
- (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.
- (4) The court may make an interim order at any time after the making of an application for a family violence intervention order and before the final decision about the application is made, and may do so whether or not the court has previously made or refused to make an interim order.

S. 53(4)  
inserted by  
No. 33/2018  
s. 108.

S. 53AA  
inserted by  
No. 19/2017  
s. 7.

**53AA Court must make interim order for a child if court makes interim order for affected family member**

- (1) This section applies if—
  - (a) the court makes an interim order under section 53(1) in relation to an affected family member; and
  - (b) the court is satisfied, on the balance of probabilities, that a child has been subjected to family violence committed by



the respondent (whether or not that child is also an affected family member).

- (2) If the court makes the interim order under section 53(1)(a) or (c), subject to subsection (4), the court must—
  - (a) if the child's need for protection is substantially the same as that of the affected family member, include the child in the interim order as a protected person; or
  - (b) otherwise, make a separate interim order for the child as a protected person.
- (3) If the court makes the interim order by consent under section 53(1)(b), and that order does not include the child, subject to subsection (4), the court must make a separate interim order for the child as a protected person.
- (4) The court is not required to include the child in the interim order or to make a separate interim order to protect the child if the court is satisfied that it is not necessary to do so to protect the child or ensure the safety of the child pending a final decision about the application.

**53AB Interim protection of child on court's own initiative—interim order not made for affected family member**

- (1) If the court does not make an interim order under section 53(1) in relation to an affected family member, the court may, on its own initiative, make an interim order for a child as a protected person if satisfied, on the balance of probabilities, that—
  - (a) the child has been subjected to family violence committed by the respondent; and

**S. 53AB**  
inserted by  
**No. 19/2017**  
**s. 7,**  
amended by  
**No. 33/2018**  
**s. 19 (ILA**  
**s. 39B(1)).**

S. 53AB(2)  
inserted by  
No. 33/2018  
s. 19.

- (b) an interim order is necessary to protect the child pending a final decision about the application.
- (2) An interim order under subsection (1) is an order in the proceeding under section 53 and, for the purposes of any proceeding for any final order under section 74 or 76—
- (a) the applicant for the final order is—
    - (i) the affected family member who made the initial application referred to in section 53(1); or
    - (ii) if the affected family member did not make the application referred to in section 53(1), the person who made that application on behalf of the affected family member; or
    - (iii) if neither subparagraph (i) or (ii) apply, in accordance with subsection (3), the Chief Commissioner of Police; and
  - (b) the child is a party to the proceeding; and
  - (c) the respondent to the initial application referred to in section 53(1) is a party to the proceeding; and
  - (d) any application for the final order may be dealt with in accordance with this Act in the same way as any other application; and
  - (e) the application for the final order in respect of the child is not affected by the initial application referred to in section 53(1) being struck out or withdrawn.
- (3) In making an interim order referred to in this section, the court may appoint the Chief Commissioner of Police to be the applicant for any final order in respect of the child if satisfied that—

- (a) the Chief Commissioner of Police is not a person referred to in subsection (2)(a)(ii); and
  - (b) the appointment is necessary in all the circumstances, having regard to the child's safety.
- (4) If the court makes an appointment under subsection (3), the court must ensure that the Chief Commissioner of Police is given—
- (a) a copy of the interim order which makes that appointment; and
  - (b) a copy of the application referred to in section 53(1).

**Note**

See also section 152.

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

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

- (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.

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

**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 court waives the requirement under paragraph (a); or
  - (c) the application is made by the issue of a family violence safety notice that was certified in accordance with section 153(1).

S. 55(1)(b)  
amended by  
Nos 18/2010  
s. 19(2)(a),  
33/2018  
s. 20(1).

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

S. 55(1A)  
inserted by  
No. 33/2018  
s. 20(2).

- (1A) The court may waive the requirement that the application be supported by oral evidence or an affidavit if—

- (a) the applicant is a police officer and the application is made by electronic communication—
    - (i) provided that the court has considered whether it is practicable to obtain oral evidence or an affidavit before making the interim order; or
    - (ii) the application is made before 9 a.m. or after 5 p.m. on a weekday or on a Saturday, Sunday or a public holiday and the application was certified in accordance with section 43(2); or
  - (b) the applicant is not a police officer and the application is made by a declaration of truth, provided that the court has considered whether it is practicable to obtain oral evidence or an affidavit before making the interim order.
- (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.

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

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

## **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

S. 57(1AA)  
inserted by  
No. 19/2017  
s. 17(1).

- (1AA) This section applies if the court makes an interim order against a respondent who is an adult.

S. 57(1)  
amended by  
No. 19/2017  
s. 17(2).

- (1) If the court makes an interim order, and the respondent or protected person (or both) are before the court, the court must explain to the respondent and protected person (or whichever of them is before the court) 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;

S. 57(1)(ba)  
inserted by  
No. 53/2016  
s. 50.

- (ba) that the interim order may be enforced against the respondent in another State or a Territory under the **National Domestic Violence Order Scheme Act 2016** and corresponding DVO recognition laws; and

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

- (c) when the interim order expires and the means by which the interim order may be varied;

S. 57(1)(d)  
amended by  
No. 19/2017  
s. 17(3).

- (d) for the respondent, that the interim order is a civil order of the court and the protected person 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 protected person or respondent.
- (2) An explanation under subsection (1) must be a clear oral explanation.
- (2A) A written notice including the matters referred to in subsection (1), in the form prescribed by the rules, must—
- (a) be given to the protected person and respondent (or whichever of them is before the court) with a copy of the interim order; or
  - (b) otherwise, be given to the protected person or be served on the respondent, with the copy of the interim order.
- (2B) The written notice may include any additional information the court considers necessary to explain the interim order.
- (3) A failure by the court to explain an interim order in accordance with this section does not affect the validity of the interim order.

S. 57(1)(h)  
amended by  
No. 19/2017  
s. 17(3).

S. 57(2)  
substituted by  
No. 19/2017  
s. 17(4).

S. 57(2A)  
inserted by  
No. 18/2010  
s. 20(2),  
substituted by  
No. 19/2017  
s. 17(4).

S. 57(2B)  
inserted by  
No. 19/2017  
s. 17(4).

S. 57(3)  
amended by  
No. 19/2017  
s. 17(5).

S. 57A  
inserted by  
No. 19/2017  
s. 18.

### **57A Explanation of interim order—child respondents**

- (1) This section applies if the court makes an interim order against a respondent who is a child.
- (2) If the court makes an interim order, and the respondent or protected person (or both) are before the court, the court must explain to the respondent and protected person (or whichever of them is before the court) 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) that the interim order may be enforced against the respondent in another State or a Territory under the **National Domestic Violence Order Scheme Act 2016** and corresponding DVO recognition laws;
  - (d) when the interim order expires and the means by which the interim order may be varied;
  - (e) for the respondent, that the interim order is a civil order of the court and the protected person cannot give permission to contravene the interim order;
  - (f) the process for deciding the final order;
  - (g) how the order interacts with a Family Law Act order or an order under the **Children, Youth and Families Act 2005**;
  - (h) 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;



- (i) any relevant family violence services offering legal, emotional or practical support that may be available to the protected person or respondent.
- (3) An explanation under subsection (2) must be a clear oral explanation.
- (4) A written notice including the matters referred to in subsection (2), in the form prescribed by the rules, must—
  - (a) be served on the respondent with the copy of the interim order; and
  - (b) be given to the protected person with the copy of the interim order.
- (5) The written notice may include any additional information the court considers necessary to explain the interim order.
- (6) A failure by the court 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 by police**

If the court makes an order under section 53 on an application made by a police officer 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

**S. 58**  
(Heading)  
amended by  
No. 33/2018  
s. 21(1).

**S. 58**  
amended by  
No. 33/2018  
s. 21(2).

- (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 2A—Interim orders made on court's own motion in bail proceeding or in criminal proceeding**

Pt 4 Div. 2A  
(Heading and  
ss 60A–60L)  
inserted by  
No. 33/2018  
s. 22.

**60A Definitions for this Division**

S. 60A  
inserted by  
No. 33/2018  
s. 22.

In this Division—

*application or appeal relating to bail* means any of the following under the **Bail Act 1977**—

- (a) an application for bail;
- (b) an application to vary conditions of bail;
- (c) an application to extend bail;
- (d) an application to revoke bail;
- (e) an appeal under section 18A;
- (f) an appeal under section 18AG.

S. 60B  
inserted by  
No. 33/2018  
s. 22.

**60B Court hearing application or appeal relating to bail may make own motion interim order**

- (1) Subject to subsection (3), a court hearing an application or appeal relating to bail may make an interim order against an accused to protect a family member of the accused if the court is satisfied, on the balance of probabilities, that the interim order is necessary to ensure the safety of the family member pending a decision about a final order.
- (2) A court may make an interim order under this section on its own motion.
- (3) The court must not make an interim order to protect a family member of the accused if—
  - (a) there is an existing family violence intervention order that protects that family member of the accused from the accused; or
  - (b) an application for a family violence intervention order that protects that family member of the accused from the accused has been made but not finally determined.

S. 60C  
inserted by  
No. 33/2018  
s. 22.

**60C Court may make interim order on its own motion in a criminal proceeding**

- (1) Subject to subsection (4), a court hearing a criminal proceeding may make an interim order against an accused to protect a family member of the accused if the court is satisfied, on the balance of probabilities, that the interim order is necessary to ensure the safety of the family member pending a decision about a final order.
- (2) A court may make an interim order under this section on its own motion.

- (3) The court may make an interim order under subsection (1)—
  - (a) at any stage of the criminal proceeding, including during any committal hearing, any trial, any sentencing hearing or any appeal; and
  - (b) whether or not the person accused is found guilty of the offence; and
  - (c) whether or not the charge is withdrawn or the prosecution of the offence is discontinued.
- (4) The court must not make an interim order to protect a family member of the accused if—
  - (a) there is an existing family violence intervention order that protects that family member of the accused from the accused; or
  - (b) an application for a family violence intervention order that protects that family member of the accused from the accused has been made but not finally determined.

**60D Prosecutor not party to proceeding for interim order**

**S. 60D**  
inserted by  
No. 33/2018  
s. 22.

- (1) The prosecutor in any criminal proceeding in which an interim order is made or proposed to be made under this Division is not a party to the proceeding, and has no standing or status in the proceeding, only for the purposes of the making of the interim order.
- (2) Nothing in subsection (1) affects the status, function or standing of a prosecutor in relation to the criminal proceeding other than the making of the interim order.

S. 60E  
inserted by  
No. 33/2018  
s. 22.

**60E Material before the court for making interim orders under this Division**

- (1) Nothing in Division 3 or 3A applies to the making of an interim order under section 60B or 60C.
- (2) An interim order under section 60B or 60C must be made on the material before the court in the hearing of the application or appeal relating to bail, or the criminal proceeding.

S. 60F  
inserted by  
No. 33/2018  
s. 22.

**60F Interim order to protect child if interim order made under section 60B or 60C**

- (1) This section applies if—
  - (a) the court makes an interim order under section 60B or 60C in relation to a family member of the accused; and
  - (b) the court is satisfied, on the balance of probabilities, that a child has been subjected to family violence committed by the accused.
- (2) Subject to subsection (3), the court must—
  - (a) if the child's need for protection is substantially the same as that of the family member to be protected by the interim order, include the child in the interim order as a protected person; or
  - (b) in any other case, make a separate interim order for the child as a protected person.
- (3) The court is not required to include the child in the interim order or to make a separate interim order to protect the child if the court is satisfied that it is not necessary to do so to protect the child or ensure the safety of the child pending a decision about a final order.

**60G Oral explanation of interim order**

**S. 60G**  
inserted by  
**No. 33/2018**  
**s. 22.**

- (1) If the court makes an interim order under this Division and the accused or the protected person or both are before the court, the court must give the accused and the protected person (as the case requires) a clear oral explanation of the matters referred to in section 57(1).
- (2) If the court makes an interim order under this Division against an accused who is a child and the accused or protected person or both are before the court, the court must give the accused and the protected person (as the case requires) a clear oral explanation of the matters referred to in section 57A(2).
- (3) A failure by the court to give an oral explanation in accordance with this section does not affect the validity of the interim order.

**60H Documents to be given to adult accused who is before the court**

**S. 60H**  
inserted by  
**No. 33/2018**  
**s. 22.**

If the court makes an interim order under this Division and the accused is before the court and is an adult, the court must give the accused—

- (a) a copy of the interim order; and

**Note**

See section 201 regarding provision of the interim order.

- (b) a brief written statement of the reasons for making the interim order; and
- (c) a written notice of the matters referred to in section 57(1) in the form prescribed by the rules of the court making the interim order.

S. 60I  
inserted by  
No. 33/2018  
s. 22.

### **60I Service of interim order and other documents**

- (1) The appropriate registrar for the court must arrange for the accused who is not before the court or who is a child to be served with—
  - (a) a copy of the interim order; and
  - (b) a brief written statement of the reasons for making the interim order; and
  - (c) a written notice of the matters referred to in section 57(1) or 57A(2), as the case requires, in the form prescribed by the rules of the court making the interim order.
- (2) The appropriate registrar for the court must arrange for the protected person to be served with—
  - (a) a copy of the interim order; and
  - (b) a brief written statement of the reasons for making the interim order; and
  - (c) a written notice of the matters referred to in section 57(1) or 57A(2), as the case requires, in the form prescribed by the rules of the court making the interim order.

#### **Note**

See section 201 regarding provision of the interim order.

S. 60J  
inserted by  
No. 33/2018  
s. 22.

### **60J Interim order taken to be application for a family violence intervention order and treated as application under this Act**

If an interim order is made under section 60B or 60C, for the purposes of this Act—

- (a) the interim order is taken to be—
  - (i) an application for a family violence intervention order; and



- (ii) a summons for the accused to attend the relevant court at the first mention date stated in the order for the application for a family violence intervention order; and
- (b) the Chief Commissioner of Police is taken to be the applicant in relation to the application; and
- (c) any interim order made under section 60F(2)(b) is taken to form part of the application referred to in paragraph (a); and
- (d) an application for a family violence intervention order referred to in paragraph (a) may be withdrawn or otherwise dealt with as an application in accordance with this Act.

**60K Interim orders made by Supreme or County Court to be transferred to Magistrates' or Children's Court for final determination**

S. 60K  
inserted by  
No. 33/2018  
s. 22.

- (1) If an interim order is made by the Supreme Court or the County Court under section 60B or 60C, the proceeding for the final order is transferred to the Magistrates' Court or Children's Court (as the case requires) for determination.
- (2) On an application under Division 8, the Magistrates' Court or Children's Court (as the case requires) may revoke or vary the interim order as if the order had been made by that court.

**60L Mention date and hearing for proceeding for final order**

S. 60L  
inserted by  
No. 33/2018  
s. 22.

If an interim order is made by a court under this Division, the Magistrates' Court or Children's Court (whichever is hearing the proceeding for the final order) must ensure that—

- (a) the proceeding for the final order is listed for mention—
  - (i) if the accused was before the court when the interim order was made, within 14 days of the making of the order; or
  - (ii) otherwise, within 14 days of the interim order being served on the accused; and
- (b) the hearing to determine the final order is listed as soon as practicable.

### **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 to s. 64(1)**  
substituted by  
No. 13/2019  
s. 221(Sch. 1  
item 15.2).

### **Note**

In relation to resolving an issue between the guardian appointed under the **Guardianship and Administration Act 2019** and the affected family member, see sections 44 and 159 of that Act. Section 44 provides that the guardian may seek advice from VCAT and section 159 provides for the reassessment of a guardianship order by VCAT.

- (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.

S. 66  
(Heading)  
amended by  
No. 6/2018  
s. 68(Sch. 2  
item 52.4).

## **66 Evidence may be given by affidavit or sworn or affirmed statement**

S. 66(1)  
amended by  
No. 6/2018  
s. 68(Sch. 2  
item 52.5).

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

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**).

S. 66(3)  
amended by  
No. 6/2018  
s. 68(Sch. 2  
item 52.5).

- (3) A party to the proceeding may, with the leave of the court, require a person giving evidence by affidavit or by sworn or affirmed statement to attend the hearing of the proceeding to be called as a witness and to be cross-examined.

## **67 Evidence given by children**

S. 67(1)  
amended by  
No. 42/2014  
s. 115.

- (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 or a litigation restraint order proceeding 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).

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

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

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 or a litigation restraint order proceeding 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 court must cause a copy of the order to be posted on a door of, or in another conspicuous place at, the place at which the court is being held.

S. 68(1)  
amended by  
No. 42/2014  
s. 116.

S. 68(2)  
amended by  
No. 52/2013  
s. 62.

- (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**

S. 69(1)  
amended by  
No. 42/2014  
s. 117.

- (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 or a litigation restraint order proceeding—
- (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.
- (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 or a litigation restraint order proceeding—
- (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

S. 70(1)  
amended by  
No. 42/2014  
s. 118.

- (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.

- (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).
- (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.

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

### **73C Warning to be given to persons being interviewed**

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 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**

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

- (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.

**73G Attendance at court of author of assessment report**

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

- (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 in 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 arrange for the author of the report to be notified that his or her attendance is required on the return date.

S. 73G(2)(b)  
amended by  
No. 52/2013  
s. 63(1).

S. 73G(3)  
amended by  
No. 52/2013  
s. 63(2).

- (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**

#### **73I Court to consider any children before making final order**

**S. 73I  
inserted by  
No. 19/2017  
s. 8.**

- (1) Before deciding whether to make a final order under section 74, the court must consider whether there are any children who have been subjected to family violence committed by the respondent.
- (2) Before deciding whether to make a final order under section 76, the court must consider whether there are any children who have been subjected to behaviour that would be family violence if the child and the respondent or additional respondent were family members.

#### **74 Power of court to make final order**

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

- (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.

Family Violence Protection Act 2008  
No. 52 of 2008  
Part 4—Family violence intervention orders

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Note to  
s. 74(2)  
substituted as  
Notes by  
No. 19/2017  
s. 9.

**Notes**

- 1 If the court makes a final order in relation to an affected family member, the court must make a final order to protect a child who has been subjected to family violence—see section 77.
- 2 If the court does not make a final order in relation to an affected family member, the court may, on its own initiative, make a final order to protect a child who is not an affected family member—see section 77B(1).

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

- (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;
  - (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.

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

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

- (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
    - (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.

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

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

**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
    - (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 Court must make final order for a child if court makes final order for affected family member**

**S. 77  
substituted by  
No. 19/2017  
s. 10.**

- (1) This section applies if—
- (a) the court makes a final order under section 74 in relation to an affected family member; and
  - (b) the court is satisfied, on the balance of probabilities, that a child has been subjected to family violence committed by the respondent (whether or not that child is also an affected family member).
- (2) Unless the court makes the final order under section 74 by consent, subject to subsection (4), the court must—
- (a) if the child's need for protection is substantially the same as that of the affected family member, include the child in the final order as a protected person; or
  - (b) otherwise, make a separate final order for the child as a protected person.

- (3) If the court makes the final order by consent under section 74, and that order does not include the child, subject to subsection (4), the court must make a separate final order for the child as a protected person.
- (4) The court is not required under this section to include the child in the final order or to make a separate final order to protect the child if the court is satisfied that it is not necessary to do so to protect the child from family violence committed by the respondent.

**S. 77A**  
inserted by  
No. 19/2017  
s. 10.

**77A Court must make final order for a child if court makes associated final order for affected family member or additional applicant**

- (1) This section applies if—
  - (a) the court makes a final order under section 76 in relation to an affected family member or an additional applicant; and
  - (b) the court is satisfied, on the balance of probabilities, that a child (whether or not the child is also an affected family member or an additional applicant) has been subjected to behaviour that would be family violence if the child and the respondent or additional respondent were family members.
- (2) Unless the court makes the final order under section 76 by consent, subject to subsection (4), the court must—
  - (a) if the child's need for protection is substantially the same as that of the affected family member or additional applicant, include the child in the final order as a protected person; or
  - (b) otherwise, make a separate final order for the child as a protected person.

- (3) If the court makes the final order by consent under section 76, and that order does not include the child, subject to subsection (4), the court must make a separate final order for the child as a protected person.
- (4) The court is not required under this section to include the child in the final order or to make a separate final order to protect the child if the court is satisfied that it is not necessary to do so to protect the child from behaviour that would be family violence committed by the respondent or additional respondent, as the case requires.

**77B Protection of a child on court's own initiative—final order not made for affected family member or additional applicant**

**S. 77B  
inserted by  
No. 19/2017  
s. 10.**

- (1) If the court does not make a final order under section 74 in relation to an affected family member, the court may, on its own initiative, make a final order for a child of an affected family member or respondent as a protected person if satisfied, on the balance of probabilities, that the respondent has committed family violence against the child and is likely to continue to do so or do so again.
- (2) If the court does not make a final order under section 76 in relation to an affected family member or an additional applicant, the court may, on its own initiative—
  - (a) make a final order for a child of an affected family member as a protected person if satisfied, on the balance of probabilities, that the additional respondent has subjected the child to behaviour that would be family violence if the child and the additional respondent were family members, and is likely to continue to do so or do so again;  
or

S. 77B(3)  
inserted by  
No. 33/2018  
s. 23.

- (b) make a final order for a child of an additional applicant as a protected person if satisfied, on the balance of probabilities, that the respondent has subjected the child to behaviour that would be family violence if the child and the respondent were family members, and is likely to continue to do so or do so again.
- (3) A final order under subsection (1) or (2) is an order in the proceeding under section 74 or 76, as the case requires, and for that purpose—
  - (a) in the case of a final order referred to in subsection (1) or (2)(a), the applicant for the final order is—
    - (i) the affected family member who made the initial application referred to in section 53(1), 74 or 76, as the case requires; or
    - (ii) if the affected family member did not make the initial application referred to in section 53(1), 74 or 76, the person who made that application on behalf of the affected family member; or
    - (iii) if an appointment has been made under section 53AB(3), the Chief Commissioner of Police; and
  - (b) in the case of a final order referred to in subsection (2)(b), the applicant for the final order is the additional applicant under section 76(2); and
  - (c) the child is a party to the proceeding; and
  - (d) the respondent to the initial application referred to in section 53(1), 74 or 76, as the case requires, is a party to the proceeding.



## **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
  - (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.
- (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(1)  
substituted by  
No. 18/2010  
s. 22(1).**

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

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

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.

S. 78(6)  
repealed by  
No. 19/2017  
s. 11.

\* \* \* \* \*

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

- (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).

## **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
- (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.
- (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 the **Residential Tenancies Act 1997**, which provides that a protected person may apply under that Act for an existing residential rental agreement to be terminated and a new agreement entered into.

**Note to s. 82  
substituted by  
No. 45/2018  
s. 371.**

**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.

- (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 a police officer may, under section 207, seek information about the respondent from public sector organisations—
- (i) to enable a police officer to locate the respondent and serve the respondent with a document under this Act; or
- (ii) to enable the respondent to be served with a document under an order for alternative service.
- (2) Without limiting subsection (1)(a), the address may be an email address.

##### **Note**

Documents may be served by email if the court makes an order for alternative service. Documents must otherwise be served on the respondent personally. See section 202A.

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

**S. 85(1)(b)  
substituted by  
No. 19/2017  
s. 26(1).**

**Note to  
s. 85(2)  
substituted by  
No. 19/2017  
s. 26(2).**

- (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.

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

**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;

- (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**

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

- (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.

**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**

- (1AA) This section applies if the court makes a final order against a respondent who is an adult.

**S. 96(1AA)**  
inserted by  
No. 19/2017  
s. 19(1).

- (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
- (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
- (da) that the final order may be enforced against the respondent in another State or a Territory under the **National Domestic Violence Order Scheme Act 2016** and corresponding DVO recognition laws; 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; and
- (f) how the final order interacts with a Family Law Act order or an order under the **Children, Youth and Families Act 2005**; and

S. 96(1)(da)  
inserted by  
No. 53/2016  
s. 51.

S. 96(1)(e)  
amended by  
No. 19/2017  
s. 19(2)(a).

S. 96(1)(f)  
inserted by  
No. 19/2017  
s. 19(2)(b)

- (g) if the court has varied, suspended, revoked or revived a Family Law Act order because it is inconsistent with the final order, the purpose, terms and effect of the variation or suspension.
- (2) An explanation under subsection (1) must be a clear oral explanation.
- (3) A written notice including the matters referred to in subsection (1), in the form prescribed by the rules, must—
- (a) be given to the protected person and respondent (or whichever of them is before the court) with a copy of the final order; or
- (b) otherwise, be given to the protected person or be served on the respondent, with the copy of the final order.
- (3A) The written notice may include any additional information the court considers necessary to explain the final order.
- (4) A failure by the court to explain a final order in accordance with this section does not affect the validity of the final order.
- 96A Explanation of final order—child respondents**
- (1) This section applies if the court makes a final order against a respondent who is a child.
- (2) 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)—

S. 96(1)(g)  
inserted by  
No. 19/2017  
s. 19(2)(b).

S. 96(3)  
substituted by  
No. 19/2017  
s. 19(3).

S. 96(3A)  
inserted by  
No. 19/2017  
s. 19(3),  
amended by  
No. 33/2018  
s. 30(1).

S. 96(4)  
substituted by  
No. 19/2017  
s. 19(4).

S. 96A  
inserted by  
No. 19/2017  
s. 20.

- (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
- (b) if the family violence intervention order prohibits the respondent living with, spending time with or communicating with a 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) that the final order may be enforced against the respondent in another State or a Territory under the **National Domestic Violence Order Scheme Act 2016** and corresponding DVO recognition laws; and
- (f) 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; and
- (g) how the final order interacts with a Family Law Act order or an order under the **Children, Youth and Families Act 2005**; and
- (h) if the court has varied, suspended, revoked or revived a Family Law Act order because it is inconsistent with the final order, the purpose,



terms and effect of the variation or suspension.

- (3) An explanation under subsection (2) must be a clear oral explanation.
- (4) A written notice including the matters referred to in subsection (2), in the form prescribed by the rules, must—
  - (a) be served on the respondent with the copy of the final order; and
  - (b) be given to the protected person with the copy of the final order.
- (5) The written notice may include any additional information the court considers necessary to explain the final order.
- (6) A failure by the court to explain a final order in accordance with this section does not affect the validity of the final 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**

**Note**

This Part applies in relation to a recognised DVO, as if that DVO were a family violence intervention order. See Part 4 of the **National Domestic Violence Order Scheme Act 2016**.

Note to  
Pt 4 Div. 8  
inserted by  
No. 53/2016  
s. 52.

**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) in the case of an interim order made under section 53AB or a final order made under section 77B, its own initiative.

S. 100(1)(b)  
amended by  
No. 18/2010  
s. 25,  
substituted by  
No. 19/2017  
s. 12.

**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.

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

- (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
  - (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
- (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.

S. 104  
amended by  
No. 19/2017  
s. 13.

#### **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 must—

- (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 53AB or 77B is taken to include a reference to an order made or varied relying on section 103 or 104.

S. 105(2)  
amended by  
Nos 18/2010  
s. 27, 19/2017  
s. 14.

## **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 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.

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

- (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.
- (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**

S. 109(2)  
amended by  
No. 33/2018  
s. 109(1)(a).

(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) Except as provided by subsection (2A), 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

S. 109(2)(b)  
amended by  
No. 33/2018  
s. 109(1)(b).

(b) the change may justify a variation or revocation of the order; and

S. 109(2)(c)  
inserted by  
No. 33/2018  
s. 109(1)(c).

(c) in the case of an interim order, it is in the interests of justice that the application be determined immediately, rather than waiting for the hearing of the application for the final order.

S. 109(2A)  
inserted by  
No. 33/2018  
s. 109(2).

(2A) In the case of an interim order made when the respondent was not present—

(a) the court may grant leave under subsection (1) if the court is satisfied that it is in the interests of justice to do so, having regard to the reasons the respondent was not present when the order was made; and

(b) if the court grants leave, it may, instead of varying or revoking the order, set aside the order if the court is satisfied that there are exceptional circumstances that justify setting aside the order.

- |   |  |
|---|--|
| (2B) Subsection (2A) applies only if the respondent seeks leave within 21 days after the day on which a copy of the order was served on the respondent. | S. 109(2B)<br>inserted by<br>No. 33/2018<br>s. 109(2). |
| (2C) The court may extend the time referred to in subsection (2B) if the court is satisfied that there are exceptional circumstances.                   | S. 109(2C)<br>inserted by<br>No. 33/2018<br>s. 109(2). |
| (3) This section does not apply to an application by the respondent to vary or revoke a recognised DVO.   | S. 109(3)<br>inserted by<br>No. 53/2016<br>s. 53.      |

#### **110 Application made by police officer**

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|---|---|
| (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)<br>amended by<br>No. 16/2011<br>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—  | S. 110(3)(a)<br>substituted by<br>No. 16/2011<br>s. 7(2). |
| (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.
- (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 appointed under the **Guardianship and Administration Act 2019** and the affected family member, see sections 44 and 159 of that Act. Section 44 provides that the guardian may seek advice from VCAT and section 159 provides for the reassessment of a guardianship order by VCAT.

**Note to s. 112  
substituted by  
No. 13/2019  
s. 221(Sch. 1  
item 15.2).**

## **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) there is no appeal against an interim order or a refusal to make an interim order.

S. 114(2)(b)  
amended by  
Nos 42/2014  
s. 119(a),  
33/2018  
s. 110(a).

S. 114(2)(c)  
repealed by  
No. 42/2014  
s. 119(b), new  
s. 114(2)(c)  
inserted by  
No. 33/2018  
s. 110(b).

S. 114(2)(d)  
repealed by  
No. 42/2014  
s. 119(b).

\* \* \* \*

#### 115 Court to which appeal must be made

The appeal must be made to—

- (a) the County Court; or
- (b) the Trial Division of the Supreme Court, if the court that made the relevant decision was—

S. 115(b)  
substituted by  
No. 3/2016  
s. 85.

- (i) the Magistrates' Court constituted by the Chief Magistrate who is a dual commission holder; or
- (ii) the Children's Court constituted by the President of the Court or the Chief Magistrate who is a dual commission holder.

#### **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.
- (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.
- S. 116(4)  
amended by  
No. 52/2013  
s. 64(a).
- (4) The appropriate registrar for the court must also cause the notice of appeal to be transmitted—
- S. 116(4)(a)  
amended by  
No. 52/2013  
s. 64(b).
- (a) to the County Court if the appeal is to that Court; and
- S. 116(4)(b)  
amended by  
No. 52/2013  
s. 64(b).
- (b) to 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.



**118 Appeals not to commence if certain persons object**

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

- (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.

**118A Appellant's failure to appear**

S. 118A  
inserted by  
No. 19/2017  
s. 33.

- (1) If an appellant fails to appear at a mention date or at the time listed for the hearing of the appeal, the County Court or the Supreme Court, as the case requires, may—
  - (a) strike out the appeal; or
  - (b) adjourn the proceeding on any terms that it considers appropriate.

- (2) If the County Court or the Supreme Court strikes out an appeal under subsection (1)(a)—
  - (a) the registrar of the County Court or the Prothonotary of the Supreme Court must serve a copy of the order striking out the appeal on any person on whom the notice of appeal was required to be served under section 116(3); and
  - (b) if the whole or part of the relevant decision was stayed under section 117(2)—
    - (i) the relevant decision or part of the relevant decision is reinstated; and
    - (ii) any undertaking of bail given by the appellant under section 117(3) is discharged; and
    - (iii) any counselling order stayed under section 131 is reinstated.
- (3) The County Court or the Supreme Court, at any time, may set aside an order striking out an appeal because of the failure of the appellant to appear, if the appellant satisfies the court that the failure to appear was not due to fault or neglect on the part of the appellant.
- (4) An application under subsection (3) to set aside an order may be made within a reasonable time after the appellant becoming aware of the order striking out the appeal, by filing notice of the application with the registrar of the County Court or the Prothonotary of the Supreme Court.
- (5) The registrar of the County Court or the Prothonotary of the Supreme Court must serve a copy of the notice of the application under subsection (3) on any person on whom the notice of appeal was required to be served under section 116(3).

- (6) If the court grants an application under subsection (3), the court must order the reinstatement of the appeal.

**118B Effect of order reinstating appeal—stay and bail conditions**

S. 118B  
inserted by  
No. 19/2017  
s. 33.

- (1) If the County Court or the Supreme Court orders the reinstatement of an appeal under section 118A(6) and the operation of the relevant decision or part of the relevant decision had been stayed under section 117(2), the court, on the application of a party to the proceeding, may re-impose the stay of that decision or part of that decision.
- (2) If the County Court or the Supreme Court orders the reinstatement of an appeal under section 118A(6), the court may impose bail conditions on the appellant, as if the appellant were an accused person being released from custody on bail—
- (a) if re-imposing a stay of the relevant decision or part of the relevant decision, if the court considers it necessary for the protection of a protected person; or
- (b) in any case, if the court considers it necessary to require a party to the proceeding to attend court for the appeal.

**119 Conduct of appeal**

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

Note to  
s. 119(1)  
amended by  
No. 3/2016  
s. 86.

**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 or the Chief Magistrate who is a dual commission holder, or the Magistrates' Court constituted by the Chief Magistrate

who is a dual commission holder, 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).

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

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

## 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.

## 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**

- (1) The respondent for a final order 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 alternative service or 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.
- (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(1)  
substituted by  
No. 18/2010  
s. 29,  
amended by  
No. 42/2014  
s. 120(1).

S. 122(1)(a)(ii)  
amended by  
No. 19/2017  
s. 27.

S. 122(3)  
amended by  
No. 42/2014  
s. 120(2).

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

\* \* \* \* \*

S. 122(5)  
repealed by  
No. 42/2014  
s. 120(3).

## **Division 10—Contravention of family violence intervention order**

### **123 Contravention of family violence intervention order**

S. 123  
(Heading)  
substituted by  
No. 83/2012  
s. 8(1).

- (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(1), 60G(1) or 96(1).

S. 123(1)(b)  
amended by  
Nos 19/2017  
s. 21, 33/2018  
s. 24.

- (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.

S. 123(2A)  
inserted by  
No. 83/2012  
s. 8(2).

- (2A) It is immaterial that some or all of the course of conduct constituting an offence against subsection (2) occurred outside Victoria, so long as the protected person was in Victoria at the time at which that conduct occurred.

S. 123(2B)  
inserted by  
No. 83/2012  
s. 8(2).

- (2B) It is immaterial that the protected person was outside Victoria at the time at which some or all of the course of conduct constituting an offence against subsection (2) occurred, so long as that conduct occurred in Victoria.
- (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.
- (4) In a proceeding for an offence against subsection (2) constituted by contravening a recognised DVO, it is a defence to the charge for the accused to prove that—
  - (a) the accused was the respondent under the recognised DVO; and
  - (b) a family violence safety notice in relation to the same protected person and respondent—
    - (i) was issued after the recognised DVO was made; and
    - (ii) was in force at the time the offence was alleged to have been committed; and
  - (c) the accused's conduct complied with the family violence safety notice; and
  - (d) the accused could not have complied with the recognised DVO at the same time.

S. 123(4)  
inserted by  
No. 53/2016  
s. 54.

**123A Contravention of order intending to cause harm or fear for safety**

S. 123A  
inserted by  
No. 83/2012  
s. 9.

- (1) In this section—
  - mental harm* includes—
    - (a) psychological harm; and
    - (b) suicidal thoughts.
- (2) A person against whom a family violence intervention order has been made and who—
  - (a) has been served with a copy of the order; or

S. 123A(2)(b)  
amended by  
Nos 19/2017  
s. 22, 33/2018  
s. 25.

- (b) has had an explanation of the order given to him or her in accordance with section 57(1), 60G(1) or 96(1)—

must not contravene the order intending to cause, or knowing that his or her conduct will probably cause—

- (c) physical or mental harm to the protected person, including self-harm; or
- (d) apprehension or fear in the protected person for his or her own safety or that of any other person.

Penalty: Level 6 imprisonment (5 years maximum) or a level 6 fine (600 penalty units maximum) or both.

- (3) It is immaterial that some or all of the course of conduct constituting an offence against subsection (2) occurred outside Victoria, so long as the protected person was in Victoria at the time at which that conduct occurred.
- (4) It is immaterial that the protected person was outside Victoria at the time at which some or all of the course of conduct constituting an offence against subsection (2) occurred, so long as that conduct occurred in Victoria.
- (5) In a proceeding for an offence against subsection (2), 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.
- (6) In a proceeding for an offence against subsection (2) constituted by contravening a recognised DVO, it is a defence to the charge for the accused to prove that—
  - (a) the accused was the respondent under the recognised DVO; and
  - (b) a family violence safety notice in relation to the same protected person and respondent—
    - (i) was issued after the recognised DVO was made; and
    - (ii) was in force at the time the offence was alleged to have been committed; and
  - (c) the accused's conduct complied with the family violence safety notice; and
  - (d) the accused could not have complied with the recognised DVO at the same time.

S. 123A(6)  
inserted by  
No. 53/2016  
s. 55.

## **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.

### **Note**

Section 459(1) of the **Crimes Act 1958** provides for apprehension without warrant of a person reasonably believed to have committed an indictable offence.

Note to s. 124  
inserted by  
No. 83/2012  
s. 10.

S. 125  
(Heading)  
substituted by  
No. 83/2012  
s. 12(1).  
S. 125  
amended by  
Nos 83/2012  
s. 12(2),  
63/2014  
s. 7(13),  
20/2015  
s. 56(Sch. 1  
item 5).

## **125 Protected person not guilty as abettor**

For the purposes of Subdivision (1) of Division 1 of Part II of the **Crimes Act 1958**, a protected person is not involved in 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.

Pt 4 Div. 11  
(Heading and  
s. 125A)  
inserted by  
No. 83/2012  
s. 11.

## **Division 11—Persistent contravention of notices and orders**

S. 125A  
inserted by  
No. 83/2012  
s. 11.

### **125A Persistent contravention of notices and orders**

- (1) A person must not persistently contravene a family violence safety notice or a family violence intervention order.

Penalty: Level 6 imprisonment (5 years maximum) or a level 6 fine (600 penalty units maximum) or both.

- (2) To prove an offence against subsection (1) it is necessary to prove that—
- (a) the accused engaged in conduct that would constitute an offence against section 37 or 123; and
  - (b) on at least 2 other occasions within a period of 28 days immediately preceding the conduct referred to in paragraph (a), the accused engaged in conduct that would constitute an offence against section 37 or 123 in relation to—
    - (i) the same protected person; or
    - (ii) the same family violence safety notice or family violence intervention order (whether an interim order or a final order), whether or not in relation to the same protected person; or
    - (iii) a family violence safety notice and a family violence intervention order (whether an interim order or a final order) made on the family violence safety notice as an application, whether or not in relation to the same protected person; and
  - (c) on each of the occasions referred to in paragraphs (a) and (b) the accused knew or ought to have known that the conduct constituted a contravention of the family violence safety notice or family violence intervention order (as the case requires).
- (3) In a proceeding for an offence against subsection (1), a defence available under section 37(3) or 123(3) is a defence to an allegation that the accused engaged in conduct that would constitute an offence against section 37 or 123 (as the case requires).

- (4) If on the trial of a person charged with an offence against subsection (1) the jury are not satisfied that he or she is guilty of the offence charged but are satisfied that the accused engaged in conduct during that period which constitutes an offence against section 37 or 123, the jury must acquit the accused of the offence charged but may find him or her guilty of that other offence and he or she is liable to punishment accordingly.
- (5) A person who is convicted or acquitted of an offence against subsection (1) shall not in respect of the circumstances concerned or the relevant period of 28 days subsequently be prosecuted for an offence against section 37, 37A, 123 or 123A.

Pt 4 Div. 12  
(Heading and  
s. 125B)  
inserted by  
No. 53/2016  
s. 56.

## **Division 12—Double jeopardy—recognised DVOs**

S. 125B  
inserted by  
No. 53/2016  
s. 56.

### **125B No double jeopardy—recognised DVOs**

An accused person is not liable to be punished for an offence of contravening a family violence intervention order or a family violence safety notice if—

- (a) the accused person is a respondent to a family violence safety notice, a family violence intervention order or a recognised DVO; and
- (b) the conduct constituting the offence is both an offence against section 37, 37A, 123 or 123A and an offence against the law of another State or a Territory; and
- (c) the accused person has been punished for that conduct in the other State or the Territory.

## Part 5—Counselling orders

### Division 1—Preliminary

#### 126 Definitions

In this Part—

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

*approved counselling* means counselling  
approved under section 133;

S. 126 def. of  
*approved  
counselling*  
inserted by  
No. 19/2017  
s. 34.

*Chief Executive Officer* means the Chief  
Executive Officer of Court Services  
Victoria appointed under section 22 of  
the **Court Services Victoria Act 2014**;

S. 126 def. of  
*Chief  
Executive  
Officer*  
inserted by  
No. 19/2017  
s. 34.

*legal practitioner* means an Australian legal  
practitioner;

S. 126 def. of  
*legal  
practitioner*  
amended by  
No. 17/2014  
s. 160(Sch. 2  
item 41).

*relevant court* means—

\* \* \* \* \*

S. 126 def. of  
*relevant court*  
amended by  
No. 33/2018  
ss 26, 39(2),  
47(b).

- (ab) the Specialist 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; or
- (c) the Children's Court sitting at a venue  
of the Court specified by the Minister  
by notice published in the Government  
Gazette.

## **127 Object of Part**

The object of this Part is—

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

- (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. 128  
amended by  
No. 83/2012  
s. 15,  
substituted by  
No. 33/2018  
s. 27.

## **128 Part applies only to adults**

This Part applies only to a respondent who is an adult.

## **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),  
substituted by  
No. 19/2017  
s. 35(1)(a).

- (a) a counselling assessor to give a report to the relevant court, by a date specified in the order, on whether the respondent is eligible to attend approved counselling to address the violence the subject of the order; and

S. 129(1)(b)  
amended by  
No. 19/2017  
s. 35(1)(b).

- (b) the respondent to attend an interview with the counselling assessor for the purposes of preparing the report.

Family Violence Protection Act 2008  
No. 52 of 2008  
Part 5—Counselling orders

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- |   |   |
|---|---|
| (2) However, a relevant court is not required to make the order if—   | S. 129(2)<br>amended by<br>No. 83/2012<br>s. 16(1).       |
| (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—   | S. 129(2)(b)<br>amended by<br>No. 83/2012<br>s. 16(2).    |
| (i) there is no approved counselling that it is reasonably practicable for the respondent to attend; or   | S. 129(2)(b)(i)<br>amended by<br>No. 19/2017<br>s. 35(2). |
| (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 counselling assessor considers that the respondent does not have the ability or capacity to participate in counselling because of one or more of the following—        | S. 129(3)<br>amended by<br>No. 19/2017<br>s. 35(3).       |
| (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 counselling assessor considers relevant.  | S. 129(3)(e)<br>amended by<br>No. 19/2017<br>s. 35(3).    |
| (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. | S. 129(4)<br>amended by<br>No. 83/2012<br>s. 16(1).       |

(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(7)  
amended by  
No. 19/2017  
s. 35(4).

(7) In this section—

*counselling assessor* means a person employed by Court Services Victoria to prepare reports for the purposes of this section.

### 130 Order to attend counselling

S. 130(1)  
amended by  
Nos 83/2012  
s. 17, 19/2017  
s. 36.

(1) If a relevant court is given a report under section 129 and is satisfied that the respondent is eligible to attend approved counselling, 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—

S. 130(2)(b)(i)  
amended by  
No. 19/2017  
s. 36.

(i) there is no approved counselling 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—
- (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.
- (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.

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

### **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).

S. 133  
amended by  
No. 83/2012  
s. 19,  
substituted by  
No. 19/2017  
s. 37.

#### **133 Approval of counselling**

- (1) The Chief Executive Officer may approve, in writing, counselling that the Chief Executive Officer considers appropriate to address family violence to be provided by particular persons

or bodies for the purposes of orders under section 130.

- (2) The Chief Executive Officer must make available to a relevant court—
  - (a) a list of approved counselling; and
  - (b) the contact details of the particular persons who or bodies which provide the counselling.

#### **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 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 arrange for the person concerned to be notified 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  
Nos 83/2012  
s. 20, 52/2013  
s. 65(1).

S. 134(2)  
amended by  
No. 52/2013  
s. 65(2).

#### **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,

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

on the balance of probabilities, that the matter is true.

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**

- |   |  |
|---|--|
| <p>(1) A relevant court may make an order varying or revoking an order under section 129 or 130 if—</p> <p style="margin-left: 40px;">(a) for an order under section 129 or 130—</p> <p style="margin-left: 80px;">(i) there is no longer any approved counselling that is reasonably practicable for the respondent to attend; or</p> <p style="margin-left: 80px;">(ii) in all the circumstances of the case, the order is no longer appropriate for any other reason; or</p> <p style="margin-left: 40px;">(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.</p> | <p>S. 137(1)<br/>amended by<br/>No. 83/2012<br/>s. 23(1).</p> <p>S. 137(1)(a)(i)<br/>amended by<br/>No. 19/2017<br/>s. 38.</p> |
| <p>(2) A relevant court may make the order on its own initiative or on the application of—</p> <p style="margin-left: 40px;">(a) the respondent; or</p> <p style="margin-left: 40px;">(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</p> <p style="margin-left: 40px;">(c) for an order under section 130, the person or body specified in the order who is to provide counselling to the respondent.</p>   | <p>S. 137(2)<br/>amended by<br/>No. 83/2012<br/>s. 23(1).</p> <p>S. 137(2)(b)<br/>amended by<br/>No. 83/2012<br/>s. 23(2).</p> |
| <p>(3) The appropriate registrar for the relevant court must serve a copy of an application under subsection (2) on—</p> <p style="margin-left: 40px;">(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</p> <p style="margin-left: 40px;">(b) for an application by a person or body referred to in subsection (2)(b) or (c), the respondent.</p>   | <p>S. 137(3)<br/>amended by<br/>No. 83/2012<br/>s. 23(3).</p>  |

### **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.

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

- (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.

#### **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.

#### **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—

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

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.

S. 144  
substituted by  
No. 19/2017  
s. 39.

#### **144 Delegation**

The Chief Executive Officer, by instrument, may delegate to another member of the staff of Court Services Victoria any power of the Chief Executive Officer under this Part other than this power of delegation.

## Part 5A—Information sharing

### Division 1—Preliminary

#### 144A Definitions

In this Part—

*Central Information Point* has the meaning set out in section 144O;

*CIP data custodian* has the meaning set out in section 144F;

*CIP purpose* has the meaning set out in section 144OA;

*CIP request* has the meaning set out in section 144OC;

*CIP requester* means an information sharing entity or a class of information sharing entity declared under section 144G;

*confidential information* means—

- (a) health information; or
- (b) personal information, including sensitive information; or
- (c) unique identifiers; or
- (d) identifiers;

*consent* means express or implied consent;

*excluded information* has the meaning set out in section 144C;

*family violence assessment purpose* means the purpose of establishing or assessing the risk of—

- (a) a person committing family violence;
- or

Pt 5A  
(Headings  
and ss 144A–  
144SA)  
inserted by  
No. 23/2017  
s. 7.

S. 144A  
inserted by  
No. 23/2017  
s. 7.

- (b) a person being subjected to family violence;

***family violence protection purpose*** means the purpose of managing a risk of—

- (a) a person committing family violence and includes the ongoing assessment of the risk of the person committing family violence; or
- (b) a person being subjected to family violence and includes the ongoing assessment of the risk of the person being subjected to family violence;

***handling***, in relation to confidential information, has the meaning set out in section 3 of the **Privacy and Data Protection Act 2014** in relation to personal information;

***health information*** has the meaning set out in section 3(1) of the **Health Records Act 2001**;

***identifier*** has the meaning set out in section 3(1) of the **Health Records Act 2001**;

***information sharing entity*** has the meaning set out in section 144D;

***linked person*** means any person whose confidential information is relevant to a family violence assessment purpose or family violence protection purpose other than a person who—

- (a) is a primary person; or
- (b) is a person of concern; or
- (c) is alleged to pose a risk of family violence;

***person of concern*** has the meaning set out in section 144B;

*personal information* has the meaning set out in section 3 of the **Privacy and Data Protection Act 2014**;

*primary person* has the meaning set out in section 144E;

*protection entity* means an information sharing entity that is prescribed to be a protection entity for the purposes of section 144D(2)(b);

*risk assessment entity* means an information sharing entity that is prescribed to be a risk assessment entity for the purposes of section 144D(2)(a);

*sensitive information* has the meaning set out in Schedule 1 to the **Privacy and Data Protection Act 2014**;

*unique identifier* has the meaning set out in Schedule 1 to the **Privacy and Data Protection Act 2014**.

#### **144B Meaning of person of concern**

- (1) In this Part, a person is a *person of concern* if an information sharing entity reasonably believes that there is a risk that the person may commit family violence.
- (2) Without limiting subsection (1), a respondent may be a person of concern.

S. 144B  
inserted by  
No. 23/2017  
s. 7.

#### **144C Meaning of excluded information**

In this Part, confidential information is *excluded information* if it is of a kind prescribed or the collection, use or disclosure of that information could be reasonably expected to—

- (a) endanger a person's life or result in physical injury; or

S. 144C  
inserted by  
No. 23/2017  
s. 7,  
amended by  
No. 11/2018  
s. 46.

- (b) prejudice the investigation of a breach or possible breach of the law or prejudice the enforcement or proper administration of the law in a particular instance; or
- (c) prejudice a coronial inquest or inquiry; or
- (d) prejudice the fair trial of a person or the impartial adjudication of a particular case; or
- (e) disclose the contents of a document, or a communication, that is of such a nature that the contents of the document, or the communication, would be privileged from production in legal proceedings on the ground of legal professional privilege or client legal privilege; or
- (f) disclose, or enable a person to ascertain, the identity of a confidential source of information in relation to the enforcement or administration of the law; or
- (g) contravene a court order or a provision made by or under this Act or any other Act that—
  - (i) prohibits or restricts, or authorises a court or tribunal to prohibit or restrict, the publication or other disclosure of information for or in connection with any proceeding; or
  - (ii) requires or authorises a court or tribunal to close any proceeding to the public; or
- (h) be contrary to the public interest.

S. 144D  
inserted by  
No. 23/2017  
s. 7.

**144D Meaning of *information sharing entity***

- (1) In this Part, *information sharing entity* means a person or body prescribed, or a class of person or body prescribed, to be an information sharing entity for the purposes of this Part.

- (2) An information sharing entity may be prescribed to belong to any of the following categories—
  - (a) risk assessment entity;
  - (b) protection entity;
  - (c) any other category of entity specified in the regulations.
- (3) An information sharing entity referred to in subsection (2) must only share confidential information to the extent permitted by this Part or the regulations for the category of information sharing entity to which the information sharing entity belongs.
- (4) For the avoidance of doubt, if a provision of this Part or the regulations does not specify that it applies to a category of information sharing entity, then the provision applies to all information sharing entities.

**144E Meaning of *primary person***

S. 144E  
inserted by  
No. 23/2017  
s. 7.

- (1) In this Part, a person is a *primary person* if an information sharing entity reasonably believes that there is a risk that the person may be subjected to family violence.
- (2) Without limiting subsection (1), any of the following persons may be a primary person—
  - (a) an affected family member;
  - (b) a child;
  - (c) a protected person.

**144F Meaning of *CIP data custodian***

S. 144F  
inserted by  
No. 23/2017  
s. 7.

In this Part, *CIP data custodian* means an information sharing entity prescribed, or a class of information sharing entity prescribed, to be a CIP data custodian for the purposes of this Act.

S. 144G  
inserted by  
No. 23/2017  
s. 7.

#### **144G Meaning of *CIP requester***

- (1) The Minister may declare, in writing, an information sharing entity, or a class of information sharing entity, to be a ***CIP requester*** for the purposes of this Act.
- (2) A declaration under subsection (1) is not a legislative instrument within the meaning of the **Subordinate Legislation Act 1994**.

S. 144H  
inserted by  
No. 23/2017  
s. 7.

#### **144H Objects of Part**

The objects of this Part are—

- (a) to provide for the sharing of confidential information between specified persons and bodies for the purposes of establishing, assessing and managing risks of family violence; and
- (b) to promote the coordination of services by those persons and bodies to further the purposes of the Act; and
- (c) to enable certain information sharing entities to obtain consolidated and updated information from a central information point for the purposes of establishing, assessing and managing risks of family violence.

S. 144I  
inserted by  
No. 23/2017  
s. 7.

#### **144I Application of this Part to Courts**

If any of the following persons or bodies are prescribed to be information sharing entities, nothing in this Part applies to the collection, use or disclosure of confidential information by those persons or bodies in relation to, or for the purposes of, their judicial or quasi-judicial functions—

- (a) a court or tribunal;



- (b) the holder of a judicial or quasi-judicial office or other office pertaining to a court or tribunal in their capacity as the holder of that office;
- (c) a registry or other office of a court or tribunal;
- (d) the staff of such a registry or other office in their capacity as members of that staff.

#### **144J Principles**

**S. 144J**  
inserted by  
No. 23/2017  
s. 7.

- (1) The principles set out in this section should be used for guidance in relation to the collection, use or disclosure of confidential information that is authorised or required to be collected, used or disclosed under this Part.
- (2) Information sharing entities should—
  - (a) work collaboratively to coordinate services in a manner that respects the functions and expertise of each information sharing entity; and
  - (b) give precedence to the right to be safe from family violence over the right to privacy; and
  - (c) only collect, use or disclose a person's confidential information to the extent that the collection, use or disclosure of the information is necessary—
    - (i) to assess or manage risk to the safety of a person from family violence; and
    - (ii) to hold perpetrators of family violence accountable for their actions; and
  - (d) collect, use or disclose the confidential information of a person who identifies as Aboriginal or Torres Strait Islander in a manner that—

- (i) promotes the right to self-determination and is culturally sensitive; and
    - (ii) considers the person's familial and community connections; and
  - (e) have regard to and be respectful of a person's cultural, sexual and gender identity and religious faith.
- (3) In addition to the principles set out in subsection (2), when collecting, using and disclosing confidential information relating to a child to assess any risk to the safety of the child from family violence or to protect the child from family violence, information sharing entities should—
- (a) promote the agency of the child and other family members at risk of family violence by ensuring their wishes are taken into account having regard to the appropriateness of doing so and the child's age and maturity; and
  - (b) if the collection, use and disclosure of that information includes the confidential information of other family members at risk of family violence, take all reasonable steps to ensure the information is collected, used and disclosed in a way that—
    - (i) plans for the safety of those family members at risk of being subjected to family violence; and
    - (ii) recognises the desirability of preserving and promoting positive relationships between those family members and the child.

- (4) The Parliament does not intend these principles—
- (a) to create in any person any legal right or give rise to any civil cause of action; or
  - (b) to affect in any way the interpretation of any Act or law in force in Victoria.

## **Division 2—Information sharing for family violence assessment purpose**

### **144K Application of Division to confidential information of certain persons**

S. 144K  
inserted by  
No. 23/2017  
s. 7.

This Division applies to the confidential information of any of the following persons—

- (a) a primary person;
- (b) a person of concern;
- (c) a person who is alleged to pose a risk of family violence;
- (d) a linked person.

### **144KA Voluntary disclosure for family violence assessment purpose**

S. 144KA  
inserted by  
No. 23/2017  
s. 7.

An information sharing entity may disclose confidential information to a risk assessment entity for a family violence assessment purpose if the confidential information—

- (a) is not excluded information; and
- (b) is permitted to be disclosed under Division 5.

### **144KB Request for information sharing for family violence assessment purpose**

S. 144KB  
inserted by  
No. 23/2017  
s. 7.

- (1) A risk assessment entity (a *requesting entity*) may request an information sharing entity (a *responding entity*) to disclose confidential information to the requesting entity for a family violence assessment purpose.

- (2) In making a request under this section, a requesting entity may provide the responding entity with any confidential information that may assist the responding entity to—
  - (a) identify the confidential information held by the responding entity that is relevant to the request; and
  - (b) determine whether to disclose the confidential information.
- (3) A responding entity that does not comply with a request made under this section must provide, in writing, the requesting entity with the reason for the failure to comply with the request.

S. 144KC  
inserted by  
No. 23/2017  
s. 7.

**144KC Obligation to disclose for family violence assessment purpose**

- (1) Subject to subsection (2), an information sharing entity must disclose confidential information to a risk assessment entity that has requested the information for a family violence assessment purpose if the confidential information—
  - (a) is not excluded information; and
  - (b) is permitted to be disclosed under Division 5.
- (2) This section does not apply to any person or body specified in section 144I that has been prescribed to be an information sharing entity.

S. 144KD  
inserted by  
No. 23/2017  
s. 7.

**144KD Collection and use of confidential information for family violence assessment purpose**

A risk assessment entity may collect or use any confidential information disclosed to the risk assessment entity under this Division for a family violence assessment purpose.

### **Division 3—Information sharing for family violence protection purpose**

#### **144L Application of Division to confidential information of certain persons**

S. 144L  
inserted by  
No. 23/2017  
s. 7.

This Division applies to the confidential information of any of the following persons—

- (a) a primary person;
- (b) a person of concern;
- (c) a linked person.

#### **144LA Voluntary disclosure for family violence protection purpose**

S. 144LA  
inserted by  
No. 23/2017  
s. 7.

An information sharing entity may disclose confidential information to another information sharing entity for a family violence protection purpose if the confidential information—

- (a) is not excluded information; and
- (b) is permitted to be disclosed under Division 5.

#### **144LB Request for information sharing for family violence protection purpose**

S. 144LB  
inserted by  
No. 23/2017  
s. 7.

- (1) An information sharing entity (a *requesting entity*) may request another information sharing entity (a *responding entity*) to disclose confidential information to the requesting entity for a family violence protection purpose.
- (2) In making a request under this section, a requesting entity may provide the responding entity with any confidential information that may assist the responding entity to—
  - (a) identify the confidential information held by the information sharing entity that is relevant to the request; and
  - (b) determine whether to disclose the confidential information.

- (3) A responding entity that does not comply with a request made under this section must provide, in writing, the requesting entity with the reason for the failure to comply with the request.

S. 144LC  
inserted by  
No. 23/2017  
s. 7.

**144LC Obligation to disclose for family violence protection purpose**

- (1) Subject to subsection (2), an information sharing entity (a *responding entity*) must disclose confidential information to another information sharing entity (a *requesting entity*) that has requested the information for a family violence protection purpose if—
- (a) the responding entity reasonably believes that the disclosure of the relevant information to the requesting entity is necessary for a family violence protection purpose; and
  - (b) the confidential information is not excluded information; and
  - (c) the confidential information is permitted to be disclosed under Division 5.
- (2) This section does not apply to any person or body specified in section 144I that has been prescribed to be an information sharing entity.

S. 144LD  
inserted by  
No. 23/2017  
s. 7.

**144LD Collection and use of confidential information for family violence protection purpose**

An information sharing entity may collect or use any confidential information disclosed to the information sharing entity under this Division for a family violence protection purpose.

### **Division 4—Information sharing with primary persons**

#### **144M Voluntary disclosure to primary person**

S. 144M  
inserted by  
No. 23/2017  
s. 7.

- (1) An information sharing entity may disclose confidential information about a person of concern to a primary person for a family violence protection purpose if the confidential information is not excluded information.
- (2) An information sharing entity may disclose confidential information about a person of concern to any of the following persons if the primary person is a child and the confidential information is not excluded information—
  - (a) the child;
  - (b) a person who is a parent of the child, other than a person who is a person of concern in relation to the child.

#### **144MA Primary person not to disclose confidential information other than for reasons of safety**

S. 144MA  
inserted by  
No. 23/2017  
s. 7.

A person who has been given confidential information under section 144M must not use or disclose that information except for the purposes of managing the primary person's risk of being subjected to family violence.

### **Division 5—Consent**

#### **144N Consent of person of concern and certain other persons not required**

S. 144N  
inserted by  
No. 23/2017  
s. 7.

- (1) For the purposes of this Part, an information sharing entity may collect, use and disclose confidential information about a relevant person without the consent of the relevant person.

(2) In this section—

***relevant person*** means—

- (a) a person of concern; or
- (b) a person who is alleged to pose a risk of family violence.

S. 144NA  
inserted by  
No. 23/2017  
s. 7.

**144NA Consent of primary person who is an adult**

For the purposes of this Part, an information sharing entity must not collect, use or disclose confidential information about a primary person who is an adult unless—

- (a) the primary person consents to the collection, use or disclosure of the confidential information by the information sharing entity; or
- (b) the information sharing entity reasonably believes that the collection, use or disclosure of the confidential information is necessary to lessen or prevent a serious threat to an individual's life, health, safety or welfare.

**Note**

See section 144Q.

S. 144NB  
inserted by  
No. 23/2017  
s. 7.

**144NB Consent of linked person**

For the purposes of this Part, an information sharing entity must not collect, use or disclose confidential information about a linked person unless—

- (a) the linked person consents to the collection, use or disclosure of the confidential information by the information sharing entity; or



- (b) the information sharing entity reasonably believes that the collection, use or disclosure of the confidential information is necessary to lessen or prevent a serious threat to an individual's life, health, safety or welfare.

**Note**

See section 144Q.

**144NC Consent not required if primary person is a child**

**S. 144NC  
inserted by  
No. 23/2017  
s. 7.**

- (1) For the purposes of this Part, an information sharing entity may collect, use and disclose confidential information about a primary person who is a child without the consent of any person if—
  - (a) the collection, use or disclosure is for a family violence protection purpose relating to a primary person who is child; or
  - (b) the collection, use or disclosure is for, or made to a risk assessment entity for, a family violence assessment purpose relating to a primary person who is a child.

**Note**

An information sharing entity must comply with guidelines issued under section 144P(1) relating to child consent to the collection, use or disclosure of confidential information about the child.

- (2) Despite sections 144NA and 144NB, an information sharing entity may collect, use and disclose confidential information about a primary person who is an adult or a linked person (a *related person*) without the consent of that related person if that information relates to confidential information—
  - (a) about a primary person who is a child; and
  - (b) that is collected, used and disclosed for a purpose specified in subsection (1).

S. 144ND  
inserted by  
No. 23/2017  
s. 7.

## 144ND Capacity to consent

- (1) If an information sharing entity requires the consent of a primary person or a linked person before disclosing confidential information under this Part, and that person is incapable of giving consent to the disclosure, the information sharing entity may obtain consent from that person's authorised representative unless the authorised representative is—
  - (a) a person of concern; or
  - (b) alleged to pose a risk of family violence.
- (2) For the purposes of subsection (1), a primary person or a linked person is incapable of giving consent if the person is incapable (despite the provision of reasonable assistance by another person) by reason of age, injury, disease, illness, disability, physical impairment or mental disorder of—
  - (a) understanding the general nature and effect of giving the consent; or
  - (b) communicating the consent or refusal of consent.
- (3) In this section—

S. 144ND(3)  
def. of  
*authorised  
representative*  
amended by  
Nos 23/2017  
s. 37, 13/2019  
s. 221(Sch. 1  
item 15.3).

*authorised representative*, in relation to a primary person or a linked person means a person who is—

- (a) the primary person's or linked person's guardian; or
- (b) a medical treatment decision maker for the individual within the meaning of the **Medical Treatment Planning and Decisions Act 2016**; or

- (ba) a support person for the individual within the meaning of the **Medical Treatment Planning and Decisions Act 2016**; or
- (c) an administrator appointed for the primary person or linked person in an administration order made under the **Guardianship and Administration Act 2019**; or
- (d) otherwise empowered under law to perform any functions or duties or exercise powers as an agent of or in the best interests of the primary person or linked person;

*disability* has the same meaning as in the **Disability Act 2006**.

## **Division 6—The Central Information Point**

### **144O Central Information Point**

- (1) The Central Information Point is—
  - (a) the Secretary of the Department responsible to the Minister administering this Part; or
  - (b) if an Administrative Office Head is prescribed by the regulations—the Administrative Office Head.
- (2) The Central Information Point is not, in that capacity, an information sharing entity, even if the person who is the Central Information Point is an information sharing entity in another capacity.

S. 144O  
inserted by  
No. 23/2017  
s. 7.

### **144OA CIP purpose**

Each of the following is a purpose of the Central Information Point (a ***CIP purpose***)—

- (a) to receive and respond to CIP requests;

S. 144OA  
inserted by  
No. 23/2017  
s. 7.

- (b) to provide CIP requesters and CIP data custodians with new or updated information about people in relation to whom CIP requests have at any time been made;
- (c) to do anything necessary for the above purposes.

S. 144OB  
inserted by  
No. 23/2017  
s. 7.

**144OB Central Information Point may handle confidential information for CIP purpose**

The Central Information Point may do any or all of the following for a CIP purpose—

- (a) request and collect confidential information from a CIP requester or a CIP data custodian;
- (b) disclose confidential information to a CIP requester or a CIP data custodian;
- (c) use confidential information collected from a CIP requester or a CIP data custodian.

S. 144OC  
inserted by  
No. 23/2017  
s. 7.

**144OC CIP requests**

- (1) A CIP requester may request the Central Information Point to disclose confidential information to it—
  - (a) if the CIP requester is a risk assessment entity—for a family violence assessment purpose; or
  - (b) in any case—for a family violence protection purpose.
- (2) A request under subsection (1) is a *CIP request*.

S. 144OD  
inserted by  
No. 23/2017  
s. 7.

**144OD CIP requester may disclose information to Central Information Point**

- (1) A CIP requester may, in making a CIP request, disclose confidential information to the Central Information Point.

- (2) The purpose of the disclosure must be to assist one or more CIP data custodians to—
  - (a) identify the confidential information held by the CIP data custodians that is relevant to the request; and
  - (b) determine whether to disclose the confidential information to the Central Information Point under section 144OE.

**144OE CIP data custodian may disclose confidential information to Central Information Point**

S. 144OE  
inserted by  
No. 23/2017  
s. 7.

- (1) A CIP data custodian may disclose confidential information to the Central Information Point if—
  - (a) the Central Information Point has requested the information from the CIP data custodian for the purposes of dealing with a CIP request; and
  - (b) the CIP data custodian could have disclosed the information to the CIP requester concerned in response to a request under Division 2 or 3.
- (2) Subsection (1) does not require a CIP data custodian to disclose confidential information.

**144OF CIP data custodian may disclose information to other CIP data custodians**

S. 144OF  
inserted by  
No. 23/2017  
s. 7.

A CIP data custodian may disclose confidential information to another CIP data custodian if—

- (a) the Central Information Point has requested confidential information from any CIP data custodian for the purposes of a CIP request; and
- (b) the disclosure relates to that CIP request; and

- (c) the CIP data custodian could have disclosed the information to the other CIP data custodian in response to a request under Division 2 or 3.

S. 144OG  
inserted by  
No. 23/2017  
s. 7.

**144OG CIP data custodians and CIP requesters may disclose information to Central Information Point on own initiative**

A CIP data custodian or a CIP requester may, on its own initiative, disclose confidential information to the Central Information Point if—

- (a) the purpose of the disclosure is to provide the Central Information Point with updated information relevant to a previous CIP request; and
- (b) the CIP data custodian could have disclosed the information to another CIP data custodian or a CIP requester in response to a request under Division 2 or 3.

S. 144OH  
inserted by  
No. 23/2017  
s. 7.

**144OH References in certain provisions to CIP data custodians and CIP requesters**

A reference in section 144OE(1)(b), 144OF(c) or 144OG(b) to a CIP data custodian or a CIP requester is a reference to the CIP data custodian or CIP requester in its capacity as an information sharing entity.

S. 144OI  
inserted by  
No. 23/2017  
s. 7.

**144OI Delegation**

The Central Information Point may delegate to a person any power of the Central Information Point under this Act, except this power of delegation.

## **Division 7—Guidelines, protected disclosures and recording requirements**

### **144P Guidelines**

**S. 144P  
inserted by  
No. 23/2017  
s. 7.**

- (1) The Minister must issue guidelines in relation to the operation of this Part including the specification of requirements to be complied with by an information sharing entity in order to demonstrate the capacity of that information sharing entity to handle confidential information responsibly and appropriately in accordance with this Part.
- (2) Without limiting subsection (1), guidelines issued must address child consent to the collection, use or disclosure of confidential information about the child in accordance with this Part.
- (3) Before issuing guidelines under subsection (1), the Minister must publish, on an appropriate Internet site—
  - (a) a draft of the proposed guidelines; and
  - (b) a statement that submissions may be made to the Minister on or before a specified date, being at least 28 days after the day on which the draft guidelines are published.
- (4) As soon as practicable after finalising draft guidelines, the Minister must publish the guidelines on an appropriate Internet site.
- (5) Subject to subsection (6), an information sharing entity must comply with any guidelines issued under this section when handling confidential information in accordance with this Part.
- (6) Subsection (5) does not apply to any person or body specified in section 144I that has been prescribed to be an information sharing entity.

- (7) Guidelines issued under subsection (1) are not legislative instruments within the meaning of the **Subordinate Legislation Act 1994**.
- (8) The Minister may review guidelines issued under subsection (1) at any time, and may issue amended guidelines as the Minister considers necessary.
- (9) If the Minister considers that an amendment to the guidelines is significant or substantial, the requirements of subsection (3) must be met before the amended guidelines may be issued.

S. 144PA  
inserted by  
No. 23/2017  
s. 7.

#### **144PA Disclosures made in good faith protected**

A disclosure made by an individual under this Part in good faith and with reasonable care—

- (a) does not for any purpose constitute unprofessional conduct or a breach of professional ethics on the part of the individual by whom it was made; and
- (b) does not make the individual by whom it was made subject to any liability in respect of it; and
- (c) without limiting paragraphs (a) and (b), does not constitute a contravention by the individual of any other Act.

S. 144PB  
inserted by  
No. 23/2017  
s. 7.

#### **144PB Information sharing entity and Central Information Point recording requirements**

An information sharing entity, and the Central Information Point, must record the prescribed information in respect of the information sharing entity's, or the Central Information Point's, collection, use and disclosure of confidential information in accordance with this Part and the regulations.



## **Division 8—Relationship of this Part with other Acts**

### **144Q Part does not affect handling of information permitted by other Acts**

S. 144Q  
inserted by  
No. 23/2017  
s. 7.

This Part does not affect the collection, use or disclosure of confidential information by an information sharing entity or the Central Information Point that would otherwise be permitted by or under the **Privacy and Data Protection Act 2014**, the **Health Records Act 2001** or this Act or any other Act.

### **144QA Access to confidential information under privacy laws restricted where risk to safety from family violence**

S. 144QA  
inserted by  
No. 23/2017  
s. 7.

- (1) An information sharing entity may refuse to give an individual access to that individual's confidential information under a relevant privacy law if—
  - (a) the individual is a person of concern or a person who is alleged to pose a risk of committing family violence; and
  - (b) the information sharing entity believes on reasonable grounds that giving the individual access to the information would increase the risk to a primary person's safety from family violence.
- (2) In this section—

*relevant privacy law* means—

  - (a) the **Health Records Act 2001**; or
  - (b) the **Privacy and Data Protection Act 2014**; or
  - (c) the Privacy Act 1988 of the Commonwealth; or

- (d) the Privacy Act 1988 of the Commonwealth applied as a law of Victoria by another Act.

S. 144QB  
inserted by  
No. 23/2017  
s. 7.

**144QB Application of Privacy and Data Protection Act 2014 to certain information sharing entities**

- (1) This section applies to an information sharing entity that is not—
- (a) an organisation within the meaning of the **Privacy and Data Protection Act 2014**; or
  - (b) subject to the Privacy Act 1988 of the Commonwealth, or that Act as applied as a law of Victoria by any other law.
- (2) The **Privacy and Data Protection Act 2014** applies to the handling of personal information or unique identifiers by the information sharing entity under this Part as if the entity were an organisation within the meaning of that Act.

S. 144QC  
(Heading)  
amended by  
No. 5/2018  
s. 39(1).

**144QC Information sharing entity or Central Information Point authorised to share confidential information despite specified provisions**

An information sharing entity or the Central Information Point is authorised to collect, use or disclose confidential information in accordance with this Part and the regulations despite anything to the contrary in a provision of an Act—

- (a) specified in Schedule 1; or
- (b) prescribed for the purposes of this section.

S. 144QD  
inserted by  
No. 23/2017  
s. 7.

**144QD Disclosure of confidential information is not breach of Judicial Proceedings Reports Act 1958**

Sections 3 and 4 of the **Judicial Proceedings Reports Act 1958** do not prevent a disclosure of confidential information that is made by an information sharing entity for the purposes of this Part.

**144QE Exemption from Freedom of Information Act 1982  
for Central Information Point**

S. 144QE  
inserted by  
No. 23/2017  
s. 7.

- (1) The **Freedom of Information Act 1982** does not apply to a document that is in the possession of the Central Information Point, to the extent to which the document discloses confidential information about a primary person, a person of concern, a person alleged to pose a risk of family violence or a linked person.
- (2) In this section, *document* has the same meaning as it has in the **Freedom of Information Act 1982**.

**Division 9—Offences**

**144R Unauthorised use and disclosure of confidential  
information**

S. 144R  
inserted by  
No. 23/2017  
s. 7.

- (1) A person who uses or discloses confidential information in accordance with this Part must not use that information or disclose that information to another person except in accordance with this Part.  
  
Penalty: In the case of a natural person,  
60 penalty units;  
  
In the case of a body corporate,  
300 penalty units.
- (2) It is a defence to a charge under subsection (1) for the person charged to prove that the use or disclosure of the confidential information was done in good faith and with reasonable care.
- (3) Subsection (1) does not apply to the following uses and disclosures of confidential information—
  - (a) a use or disclosure made with the consent of the person to whom the information relates;
  - (b) a use or disclosure made with the consent of a person (other than a person of concern or a person alleged to pose a risk of family

- violence) who is a parent of the person who is a child to whom the information relates;
- (c) a disclosure made to a court or tribunal in the course of legal proceedings;
  - (d) a use or disclosure made pursuant to an order of a court or tribunal;
  - (e) a use or disclosure made to the extent reasonably required to enable the investigation or the enforcement of a law of this State or of any other State or of a Territory or of the Commonwealth;
  - (f) a disclosure made to an Australian legal practitioner for the purposes of obtaining legal advice or representation;
  - (g) a use or disclosure made as required or authorised by or under this Act or any other Act.
- (4) Subsection (1) does not apply to the use or disclosure of confidential information by a primary person who is given the confidential information under section 144M.
- (5) A person does not commit an offence against this section only for the reason that the person uses or discloses confidential information in a way that does not comply with guidelines issued under section 144P(1).

**Note**

Despite non-compliance not being an offence—

- (a) this does not preclude non-compliance being taken into account in dealing with a complaint made under the **Privacy and Data Protection Act 2014**, the **Health Records Act 2001** or the Privacy Act 1988 of the Commonwealth; and
- (b) non-compliance may lead to a person or body ceasing to be prescribed as an information sharing entity.

**144RA Intentional or reckless unauthorised use and disclosure of confidential information**

S. 144RA  
inserted by  
No. 23/2017  
s. 7.

- (1) A person authorised to use or disclose confidential information in accordance with this Part must not use or disclose that information in a manner that is unauthorised under this Part and that the person—
- (a) knows is unauthorised under this Part; or
  - (b) is reckless as to whether the use or disclosure of the information is unauthorised under this Part.

Penalty: In the case of a natural person,  
600 penalty units or imprisonment  
for 5 years or both;

In the case of a body corporate,  
3000 penalty units.

- (2) Subsection (1) does not apply to the following uses and disclosures of confidential information—
- (a) a use or disclosure made with the consent of the person to whom the information relates;
  - (b) a use or disclosure made with the consent of a person (other than a person of concern or a person alleged to pose a risk of family violence) who is a parent of the person who is a child to whom the information relates;
  - (c) a disclosure made to a court or tribunal in the course of legal proceedings;
  - (d) a use or disclosure made pursuant to an order of a court or tribunal;
  - (e) a use or disclosure made to the extent reasonably required to enable the investigation or the enforcement of a law of this State or of any other State or of a Territory or of the Commonwealth;

- (f) a disclosure made to an Australian legal practitioner for the purposes of obtaining legal advice or representation;
  - (g) a use or disclosure made as required or authorised by or under this Act or any other Act.
- (3) Subsection (1) does not apply to the use or disclosure of confidential information by a primary person who is given the confidential information under section 144M.
- (4) A person does not commit an offence against this section only for the reason that the person uses or discloses confidential information in a way that does not comply with guidelines issued under section 144P(1).

**Note**

Despite non-compliance not being an offence—

- (a) this does not preclude non-compliance being taken into account in dealing with a complaint made under the **Privacy and Data Protection Act 2014**, the **Health Records Act 2001** or the Privacy Act 1988 of the Commonwealth; and
- (b) non-compliance may lead to a person or body ceasing to be prescribed as an information sharing entity.

## **Division 10—Review**

S. 144S  
inserted by  
No. 23/2017  
s. 7.

### **144S Review of operation of Part after 2 years of operation**

- (1) The Minister must cause an independent review to be conducted of the first 2 years of operation of this Part.
- (2) The Minister must cause a copy of the review to be laid before each House of the Parliament within 6 months after the end of the 2 year period.
- (3) The review must include consideration of any adverse effects of this Part.

- (4) The review may include any recommendations on any matter addressed in the review.

**144SA Review of operation of Part after 5 years of operation**

**S. 144SA**  
inserted by  
**No. 23/2017**  
**s. 7.**

- (1) The Minister must cause an independent review to be conducted of the 3rd to 5th years of operation of this Part.
- (2) The Minister must cause a copy of the review to be laid before each House of the Parliament within 6 months of the end of the 5th year of operation of this Part.
- (3) The review must include consideration of any adverse effects of this Part.
- (4) The review may include any recommendations on any matter addressed in the review.

Pt 5B  
(Headings  
and  
ss 144SB–  
144SG)  
inserted by  
No. 11/2018  
s. 41.

## **Part 5B—Information sharing relating to Support and Safety Hubs**

### **Division 1—Preliminary**

S. 144SB  
inserted by  
No. 11/2018  
s. 41.

#### **144SB Definition**

In this Part—

*authorised Hub entity* means the following—

- (a) a person or body declared under section 144SC to be an authorised Hub entity;
- (b) the Department of Health and Human Services;
- (c) Family Safety Victoria;

and includes an officer, employee or contracted service provider of such an entity;

*child* means—

- (a) a person who is under the age of 18 years; and
- (b) an unborn child that is the subject of a report made under section 29 or a referral made under section 32, of the **Children Youth and Families Act 2005**;

*confidential information* means the following—

- (a) health information;
- (b) personal information, including sensitive information;
- (c) unique identifiers;
- (d) identifiers;

*consent* means express or implied consent;



***Family Safety Victoria*** means the Administrative Office established under the **Public Administration Act 2004** known as Family Safety Victoria;

***health information*** has the meaning set out in section 3(1) of the **Health Records Act 2001**;

***Hub service*** means the following—

- (a) a service that is provided by the State of Victoria in relation to, or for the purposes of, a body known as a Support and Safety Hub or an equivalent body; or
- (b) a service that is provided by a person or body under a contract or agreement (however described) entered into between the person or body and the State of Victoria and that is described in the contract or agreement as one of the following—
  - (i) a Support and Safety Hub service or an equivalent service;
  - (ii) a service provided in relation to, or for the purposes of, a Support and Safety Hub or an equivalent body;

***identifier*** has the meaning set out in section 3(1) of the **Health Records Act 2001**;

***person of concern*** has the meaning given in Part 5A;

***personal information*** has the meaning set out in section 3 of the **Privacy and Data Protection Act 2014**;

***primary person*** has the meaning given in Part 5A;

***secrecy provision*** means a provision of an Act that restricts or prohibits the disclosure of information (whether that restriction or prohibition is absolute or subject to qualifications or exceptions);

***sensitive information*** has the meaning set out in Schedule 1 to the **Privacy and Data Protection Act 2014**;

***unique identifier*** has the meaning set out in Schedule 1 to the **Privacy and Data Protection Act 2014**.

S. 144SC  
inserted by  
No. 11/2018  
s. 41.

#### **144SC Meaning of *authorised Hub entity***

- (1) The Minister may declare, in writing, a person or body or a class of person or body to be an ***authorised Hub entity*** for the purposes of this Act.
- (2) The Minister must not declare that a person or body, or a class of person or body is an ***authorised Hub entity*** for the purposes of this Act unless the Minister is satisfied that the person or body—
  - (a) provides Hub services; or
  - (b) analyses, develops, monitors or oversees Hub services, or matters or things relating to Hub services.
- (3) A declaration under subsection (1) is not a legislative instrument within the meaning of the **Subordinate Legislation Act 1994**.

### **Division 2—Object of Part**

S. 144SD  
inserted by  
No. 11/2018  
s. 41.

#### **144SD Object of Part**

The object of this Part is to provide for the lawful collection, use and disclosure of confidential information by specified persons and bodies for the purposes of facilitating the provision of Hub

services, in a way that gives precedence to safety and wellbeing over privacy.

### **Division 3—Information sharing**

#### **144SE Authorised Hub entity may collect, use and disclose confidential information for a purpose connected with provision of Hub services**

S. 144SE  
inserted by  
No. 11/2018  
s. 41.

- (1) An authorised Hub entity may do one or more of the following for a purpose relating to the provision, analysis, development, monitoring or oversight of one or more Hub services—
  - (a) collect confidential information;
  - (b) use confidential information;
  - (c) disclose confidential information to another authorised Hub entity.
- (2) Subsection (1) has effect despite anything to the contrary in—
  - (a) section 36(5) or 193 of the **Children Youth and Families Act 2005**;
  - (b) a prescribed secrecy provision.
- (3) An authorised Hub entity may collect, use and disclose confidential information under subsection (1) without the consent of the person to whom the information relates.

#### **144SF Part does not affect handling of information permitted by other Acts**

S. 144SF  
inserted by  
No. 11/2018  
s. 41.

This Part does not affect the collection, use or disclosure of confidential information by an authorised Hub entity that would otherwise be permitted by or under the **Privacy and Data Protection Act 2014**, the **Health Records Act 2001** or this Act or any other Act.

S. 144SG  
inserted by  
No. 11/2018  
s. 41.

**144SG Access to confidential information under privacy laws restricted where risks to safety**

- (1) An authorised Hub entity may refuse to give an individual access to that individual's confidential information under a relevant privacy law if the authorised Hub entity believes on reasonable grounds that—
  - (a) giving the individual access to the information would increase a risk to the safety of a child or a group of children; or
  - (b) the information is the confidential information of a person of concern or a person who is alleged to pose a risk of committing family violence, and giving the individual access to the information would increase the risk to a primary person's safety from family violence.
- (2) In this section—

*relevant privacy law* means—

  - (a) the **Health Records Act 2001**; or
  - (b) the **Privacy and Data Protection Act 2014**; or
  - (c) the Privacy Act 1988 of the Commonwealth; or
  - (d) the Privacy Act 1988 of the Commonwealth applied as a law of Victoria by another Act.

## **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 Specialist Family Violence Court Division and the Neighbourhood Justice Division of that Court.

S. 145 def. of  
*Magistrates' Court*  
amended by  
No. 33/2018  
ss 39(3), 47(c).

#### **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.

S. 147A  
inserted by  
No. 52/2013  
s. 66.

**147A Jurisdiction of Children's Court to deal with applications related to child protection proceedings**

- (1) This section applies if—
  - (a) an application under this Act is related to a child protection proceeding in the Children's Court; and
  - (b) each affected family member or protected person and each respondent for the application is an adult.
- (2) The Children's Court also has jurisdiction under this Act in relation to the application.
- (3) For the purposes of subsection (1), an application is related to a child protection proceeding if—
  - (a) the child who is the subject of the child protection proceeding is the child of, or is under the care and supervision of, the affected family member or protected person, or the respondent for the application; and

(b) the application under this Act raises issues relating to the safety of the child that are the same as, or similar to, the issues forming the basis for the child protection proceeding.

(4) In this section—

***child protection proceeding*** means a proceeding relating to a child protection order.

#### **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**

**S. 150(1)**  
amended by  
No. 42/2014  
s. 121.

- (1) A child must not be present during a proceeding under this Act or during a litigation restraint order proceeding 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.

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

- (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.



### **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 Part 4 of the **Victoria Police Act 2013**, which provides immunity for police officers in certain circumstances in relation to acts done or omitted to be done in the course of the police officer's duty.

**Note to s. 152**  
substituted by  
**No. 37/2014**  
**s. 10(Sch.**  
**item 61.2).**

### **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

**S. 153(1)(b)**  
amended by  
**No. 33/2018**  
**s. 28(1).**

punishable by 600 penalty units or 5 years imprisonment or both.

S. 153(2)  
amended by  
No. 33/2018  
s. 28(2).

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

Penalty: 600 penalty units or 5 years imprisonment or both.

S. 153A  
inserted by  
No. 33/2018  
s. 29.

### **153A Offence to make false declaration of truth**

A person must not knowingly make a false statement in a declaration of truth.

Penalty: 600 penalty units or 5 years imprisonment or both.

## **154 Costs**

S. 154(1)  
amended by  
No. 53/2016  
s. 57.

- (1) Each party to a proceeding for a family violence intervention order under this Act or a proceeding for the variation, extension or revocation of a recognised DVO must bear the party's own costs of the proceeding.

S. 154(2)  
substituted by  
No. 42/2014  
s. 122.

- (2) In a litigation restraint order proceeding—
- (a) if a person is made subject to an extended litigation restraint order or an acting in concert order, that person must bear the costs of the proceeding, other than the Attorney-General's costs if the Attorney-General is a party to the proceeding; and
  - (b) if a person is not made subject to an extended litigation restraint order or an acting in concert order, 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.
- (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

S. 156A  
inserted by  
No. 77/2013  
s. 25,  
repealed by  
No. 53/2016  
s. 58.

\* \* \* \* \*

### 157 Entry and search of premises

S. 157(1)(b)  
amended by  
No. 53/2016  
s. 59.

- (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, recognised DVO 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 has been made against a person or a police officer is satisfied, on the balance of probabilities, that there are grounds for issuing a notice or making an order against a person; and
- (b) the police officer is aware the person has a firearm, a firearms authority, ammunition or a weapon in the person's possession.

**S. 158(1)**  
amended by  
No. 77/2013,  
s. 26(1),  
substituted by  
No. 53/2016  
s. 60.

(1A) This section applies in relation to a recognised DVO or an interstate DVO if—

**S. 158(1A)**  
inserted by  
No. 53/2016  
s. 60.

(a) one of the following applies—

- (i) a person is a respondent to a recognised DVO; or
- (ii) a police officer intends to serve or has served on a person an application for a recognised DVO made against the person; or
- (iii) a police officer intends to serve or has served on a person an interstate DVO made against the person or an application for an interstate DVO made against the person; and

(b) the police officer is aware the person has a firearm, a firearms authority, ammunition or a weapon in the person's possession.

(2) Subject to section 159A, the police officer may—

- (a) direct the person to immediately surrender the firearm, firearms authority, ammunition or weapon to the police officer; or

**S. 158(2)**  
amended by  
No. 77/2013  
s. 26(2).

- (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**

S. 159(1)  
amended by  
No. 77/2013  
s. 27(1),  
substituted by  
No. 53/2016  
s. 61.

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

(1A) This section applies in relation to a recognised DVO or an interstate DVO if—

**S. 159(1A)**  
inserted by  
No. 53/2016  
s. 61.

(a) one of the following applies—

- (i) a person is a respondent to a recognised DVO; or
- (ii) a police officer intends to serve or has served on a person an application for a recognised DVO made against the person; or
- (iii) a police officer intends to serve or has served on a person an interstate DVO made against the person or an application for an interstate DVO made against the 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) Subject to section 159A, the police officer may, without warrant, enter and search—

**S. 159(2)**  
amended by  
No. 77/2013  
s. 27(2).

- (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.

S. 159A  
(Heading)  
amended by  
No. 53/2016  
s. 62(1).

S. 159A  
inserted by  
No. 77/2013  
s. 28,  
amended by  
No. 53/2016  
s. 62(2).

### **159A Applications for DVOs—additional requirements for direction or search without warrant**

If a police officer intends to serve or has served an application for a recognised DVO or an interstate DVO on a person, the police officer must not give a direction under section 158(2) or enter and search premises or a vehicle under section 159(2) unless—

- (a) the police officer is satisfied, on the balance of probabilities, that the person has committed family violence against a person sought to be protected by the order and is likely to continue to do so or do so again; or
- (b) the police officer believes on reasonable grounds that the direction is, or entry and search are, necessary to ensure the safety of a person sought to be protected by the order pending final determination of the application.

### **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—

S. 160(1)(a)  
substituted by  
No. 53/2016  
s. 63(1).

- (a) either—
  - (i) 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; or
  - (ii) a person is a respondent to a recognised DVO; 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.

(1A) 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—

**S. 160(1A)  
inserted by  
No. 77/2013  
s. 29(1).**

(a) either—

**S. 160(1A)(a)  
substituted by  
No. 53/2016  
s. 63(2).**

- (i) a police officer intends to serve or has served on a person an application for a recognised DVO made against the person; or
- (ii) a police officer intends to serve or has served on a person an interstate DVO made against a person or an application for an interstate DVO made against the person; and

(b) the police officer believes on reasonable grounds that 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.

**S. 160(2)**  
amended by  
No. 6/2018  
s. 68(Sch. 2  
item 52.6).

- (2) If the magistrate is satisfied by the evidence on oath or by affirmation 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.

**S. 160(3)(b)**  
amended by  
No. 77/2013  
s. 29(2).

- (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) or (1A), 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**

- (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.
- (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.

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

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

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

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

- (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. 162  
amended by  
No. 18/2010  
s. 32 (ILA  
s. 39B(1)).

## **162 Copy of the warrant to be given to occupier**

- (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.

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

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

- (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, a final recognised DVO or a final interstate DVO has been or is made against the person, the firearm, firearms authority or ammunition must be—

S. 164(1)  
amended by  
Nos 55/2009  
s. 11(2),  
77/2013  
s. 30(1),  
53/2016  
s. 64(1).

- (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**.

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S. 164(2)  
amended by  
Nos 55/2009  
s. 11(2),  
77/2013  
s. 30(2)(a),  
53/2016  
s. 64(1).

(2) If a person's weapon is surrendered under section 158 or seized under section 160 or 163 and a final order, a final recognised DVO or a final interstate DVO has been or is made against the person, the weapon must be—

(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

S. 164(2)(b)  
amended by  
Nos 77/2013  
s. 30(2)(b),  
33/2018  
s. 30(2).

(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, a final recognised DVO or a final interstate DVO 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.

S. 164(3)  
amended by  
Nos 77/2013  
s. 30(3),  
53/2016  
s. 64(1).

(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, a final recognised DVO or a final interstate DVO 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.

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

- (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.

- (5) In this section and in section 165—

*final interstate DVO* means an interstate DVO that is a final order within the meaning of the **National Domestic Violence Order Scheme Act 2016**;

*final recognised DVO* means a recognised DVO that is a final order within the meaning of the **National Domestic Violence Order Scheme Act 2016**.

S. 164(5)  
inserted by  
No. 53/2016  
s. 64(2).

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

- (1) This section applies if—

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

- (b) one of the following occurs—

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

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

S. 165(1)(b)  
substituted by  
No. 55/2009  
s. 12(3),  
amended by  
No. 77/2013  
s. 31(a).

- (i) a final order, final recognised DVO or a final interstate DVO is not made against the person; or

S. 165(1)(b)(i)  
amended by  
Nos 77/2013  
s. 31(b),  
53/2016  
s. 65(a).

- (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; or

S. 165(1)(b)(ii)  
amended by  
No. 77/2013  
s. 31(c).

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

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S. 165(1)(b)(iii)  
inserted by  
No. 77/2013  
s. 31(d),  
substituted by  
No. 53/2016  
s. 65(b).

(iii) in the case of an interstate DVO or a recognised DVO made by a police officer, that DVO expires or is revoked and no application for an interstate DVO or recognised DVO has been made against the person; 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.

(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

### Division 1—General restriction on publication

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

Pt 8 Div. 1  
(Heading)  
inserted by  
No. 77/2014  
s. 17.

(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; or
- (c) a litigation restraint order proceeding in the Magistrates' Court; or
- (d) an order made by the Magistrates' Court under the **Vexatious Proceedings Act 2014** that relates to an application or a proceeding under this Act;
- (e) a proceeding for a variation, extension or revocation of a recognised DVO, other than in the Children's Court, and the recognised DVO to which that proceeding relates; or
- (f) a declaration made by the Magistrates' Court under Part 7 of the **National Domestic Violence Order Scheme Act 2016**, and the recognised DVO to which that declaration relates.

S. 166(1)(b)  
amended by  
No. 42/2014  
s. 123(a).

S. 166(1)(c)  
inserted by  
No. 42/2014  
s. 123(b).

S. 166(1)(d)  
inserted by  
No. 42/2014  
s. 123(b),  
amended by  
No. 53/2016  
s. 66(1)(a).

S. 166(1)(e)  
inserted by  
No. 53/2016  
s. 66(1)(b).

S. 166(1)(f)  
inserted by  
No. 53/2016  
s. 66(1)(b).

**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.

S. 166(2)  
amended by  
No. 29/2020  
s. 13(1).

- (2) A person must not publish, or cause to be published, a report of the proceeding or about the order that contains—

S. 166(2)(a)  
amended by  
No. 77/2014  
s. 18.

- (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

S. 166(2)(a)(ii)  
amended by  
No. 77/2014  
s. 18.

- (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—

unless the court orders under section 169 that the locality or particulars may be published; or

- (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

S. 166(2)(c)  
amended by  
Nos 53/2016  
s. 66(2),  
33/2018  
s. 30(3).

- (c) a picture of or including a person concerned in a proceeding for a family violence intervention order or a variation, extension or revocation of a recognised DVO, 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**

- (1) 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 85 of the **Vexatious Proceedings Act 2014** by the Attorney-General of a copy of an order that relates to an application or a proceeding under this Act.
- (2) Section 166(2) does not prevent a disclosure that is made by an information sharing entity for the purposes of Part 5A.

S. 167  
amended by  
No. 23/2017  
s. 12 (ILA  
s. 39B(1)).

S. 167(1)(b)  
substituted by  
No. 42/2014  
s. 124.

S. 167(2)  
inserted by  
No. 23/2017  
s. 12.

### **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.

S. 169  
substituted by  
No. 77/2014  
s. 19.

**169 Court may allow publication of locality, particulars or picture**

- (1) The court may make an order allowing the publication of a locality, particulars or picture only if—
  - (a) the court reasonably considers it is in the public interest to allow the publication of the locality, particulars or picture; and
  - (b) the court reasonably considers it is just to allow the publication in the circumstances.

**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.

- (2) Before making an order under this section in relation to a child who is a party to or a witness in the proceeding, or who is a person who is the subject of the order, in respect of which publication is sought, the court must have regard to the views of any parent or guardian of the child.

## **Division 2—Exception for publication by or with consent of adult victim**

Pt 8 Div. 2  
(Heading and  
ss 169A–  
169C)  
inserted by  
No. 77/2014  
s. 20.

### **169A Interpretation**

S. 169A  
inserted by  
No. 77/2014  
s. 20.

- (1) In this Division—

*adult victim* means an adult who—

S. 169A(1)  
def. of *adult  
victim*  
amended by  
No. 53/2016  
s. 67(a).

- (a) is a protected person under a family violence safety notice or a family violence intervention order or a recognised DVO; and
- (b) was a victim in relation to a relevant offence or an alleged relevant offence;

*permitted content*, in relation to a report relating to a family violence safety notice or family violence intervention order or recognised DVO, means all or any of the following—

S. 169A(1)  
def. of  
*permitted  
content*  
amended by  
No. 53/2016  
s. 67(b).

- (a) the fact that the family violence safety notice or family violence intervention order or recognised DVO applies to a person who has been charged with or convicted or found guilty of a relevant offence;

- (b) the fact that an adult victim is identified in the report as—
  - (i) a protected person in relation to the family violence safety notice or family violence intervention order or recognised DVO; and
  - (ii) a victim of a relevant offence or an alleged relevant offence;
- (c) the types of restrictions imposed by the conditions of the family violence safety notice or family violence intervention order or recognised DVO;
- (d) the details of and conduct constituting a relevant offence or alleged relevant offence;

S. 169A(1)  
def. of *post-notice or order offence*  
substituted by  
No. 53/2016  
s. 67(c).

***post-notice or order offence*** means—

- (a) in relation to a family violence safety notice or family violence intervention order—
  - (i) a contravention of the family violence safety notice or family violence intervention order under section 37, 37A, 123, 123A or 125A; or
  - (ii) any other offence where the conduct constituting the offence would constitute a contravention of the family violence safety notice or family violence intervention order under section 37, 37A, 123, 123A or 125A;

- (b) in relation to a recognised DVO, means a contravention of the recognised DVO enforced as if it were a contravention of a family violence safety notice or family violence intervention order under section 37, 37A, 123, 123A or 125A;

***pre-notice or order offence***, in relation to a family violence safety notice or family violence intervention order, means an offence where the conduct that constituted the offence—

- (a) led to the making of the family violence safety notice or family violence intervention order; and
- (b) would have constituted a contravention of the family violence safety notice or family violence intervention order under section 37, 37A, 123, 123A or 125A if the notice or order had been in place at the time of the offence;

***relevant offence*** means—

- (a) a pre-notice or order offence; or
  - (b) a post-notice or order offence.
- (2) For the purposes of this Division a charge against a person for an offence is pending until the charge is finally dealt with in any of the following ways—
- (a) the charge is withdrawn or the person dies without the charge having been determined;
  - (b) the charge is dismissed by a court;
  - (c) the person is discharged by a court following a committal hearing;
  - (d) the person is acquitted or found guilty of the offence by a court.

S. 169B  
inserted by  
No. 77/2014  
s. 20.

**169B Exception to restriction on publication by or with consent of adult victim**

S. 169B(1)  
amended by  
No. 53/2016  
s. 68.

(1) Section 166(2) does not apply to the publication in accordance with this section and in the prescribed circumstances of permitted content in a report relating to a family violence safety notice or family violence intervention order or recognised DVO by—

- (a) an adult victim who is or was protected by the notice or order; or
- (b) a person who has the consent in writing or recorded form of an adult victim protected by the notice or order to the publication.

S. 169B(2)  
amended by  
No. 53/2016  
s. 68.

(2) An adult victim cannot consent to the identification of any other person protected by the family violence safety notice or family violence intervention order or recognised DVO or as being involved in a proceeding relating to the notice or order.

(3) An adult victim may withdraw the consent to the publication of a report at any time before publication of the report.

(4) A person is not permitted to publish a report on the basis of the consent of an adult victim after the consent is withdrawn unless the person did not have a reasonable opportunity to prevent publication after the consent was withdrawn.

(5) The prescribed circumstances in which a report can be published are as follows—

S. 169B(5)(a)  
amended by  
No. 53/2016  
s. 68.

- (a) a family violence safety notice or family violence intervention order or recognised DVO is or was in place that—
  - (i) protects or protected the adult victim; and



- (ii) applies or applied to a person who has been charged with or convicted or found guilty of a relevant offence; and
- (b) in relation to the charge for a relevant offence, the charge was still pending at the time of publication; and
- (c) in relation to a conviction or finding of guilt for a relevant offence, the conviction or finding had not been set aside or quashed at the time of publication.

#### **169C Subsequent publication**

Section 166(2) does not apply to the publication by a person of permitted content in a report relating to a family violence safety notice or family violence intervention order or recognised DVO (the *subsequent report*) if—

- (a) the subsequent report is published after the publication in accordance with section 169B of a report relating to the family violence safety notice or family violence intervention order or recognised DVO (the *original report*); and
- (b) if the original report was not published by an adult victim, the person who publishes the subsequent report reasonably believes at the time of publication of the subsequent report that the original report was published with the consent of the adult victim.

S. 169C  
inserted by  
No. 77/2014  
s. 20,  
amended by  
No. 53/2016  
s. 69.

S. 169C(a)  
amended by  
No. 53/2016  
s. 69.

Pt 8 Div. 3  
(Heading and  
ss 169D,  
169E)  
inserted by  
No. 53/2016  
s. 70.

### **Division 3—Issuing jurisdiction restrictions on publication about recognised DVOs**

S. 169D  
inserted by  
No. 53/2016  
s. 70.

#### **169D Meaning of *issuing jurisdiction***

In this Division—

*issuing jurisdiction* has the same meaning as in the **National Domestic Violence Order Scheme Act 2016**.

S. 169E  
inserted by  
No. 53/2016  
s. 70.

#### **169E Recognised DVOs—issuing jurisdiction restrictions not affected**

This Part applies in relation to a recognised DVO, a proceeding for a variation, extension or revocation of a recognised DVO or a declaration made by the Magistrates' Court under the **National Domestic Violence Order Scheme Act 2016** subject to—

- (a) any law that applies to publication about the DVO in the issuing jurisdiction; and
- (b) any order relating to publication of the DVO made by a court of the issuing jurisdiction.

## Part 9—Relationship with other Acts

### 170 Application of Magistrates' Court Act 1989 and rules

S. 170  
amended by  
No. 52/2013  
s. 67 (ILA  
s. 39B(1)).

- (1) 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 or a proceeding for a variation, extension or revocation of a recognised DVO.
- (2) Despite subsection (1), for the purposes of enforcement of an order for costs made under section 154—
  - (a) Division 5 of Part 5 of the **Magistrates' Court Act 1989** and any rules made for the purposes of that Division apply in respect of the order; and
  - (b) any rules made under that Act relating to, or necessary for, proceedings for enforcement of a costs order apply for the purposes of proceedings for enforcement of the order under that Division.

S. 170(1)  
amended by  
No. 53/2016  
s. 71.

S. 170(2)  
inserted by  
No. 52/2013  
s. 67.

### 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.

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**

S. 173(1)  
substituted by  
No. 53/2016  
s. 72(1).

- (1) Each of the following orders applies despite any child protection order—
- (a) a family violence intervention order;
  - (b) a recognised DVO made by a court of any jurisdiction;
  - (c) a variation or extension of a recognised DVO by a court of any jurisdiction.

S. 173(2)  
amended by  
Nos 18/2010  
s. 34, 53/2016  
s. 72(2).

- (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 or recognised DVO, the Court may, on its own initiative, revoke or vary the family violence intervention order or recognised DVO 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 or recognised DVO—

S. 173(3)  
amended by  
No. 53/2016  
s. 72(3).

- (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 or recognised DVO until all the parties have been given an opportunity to be heard.

S. 173(3)(c)  
amended by  
No. 53/2016  
s. 72(3).

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

S. 174  
amended by  
No. 53/2016  
s. 73.

If the court makes a family violence intervention order or varies a recognised DVO 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.

S. 175AA  
inserted by  
No. 26/2017  
s. 17.

**175AA Relationship between bail conditions and family violence safety notice**

- (1) This section applies if—
  - (a) a person is on bail subject to conditions; and
  - (b) the person is subject to a family violence safety notice; and
  - (c) there is an inconsistency between a bail condition and the family violence safety notice; and
  - (d) the inconsistency makes it impossible for the person to comply with both the bail condition and the family violence safety notice.
- (2) The family violence safety notice prevails to the extent of the inconsistency referred to in subsection (1)(c) and (d).

S. 175AB  
inserted by  
No. 26/2017  
s. 17.

**175AB Relationship between bail conditions and family violence intervention order**

- (1) This section applies if—
  - (a) a person is on bail subject to conditions; and
  - (b) the person is subject to a family violence intervention order; and
  - (c) there is an inconsistency between a bail condition and the family violence intervention order; and
  - (d) the inconsistency makes it impossible for the person to comply with both the bail condition and the family violence intervention order.
- (2) The family violence intervention order prevails to the extent of the inconsistency referred to in subsection (1)(c) and (d).

**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, a place or area 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.

S. 175A(1)  
amended by  
No. 48/2018  
s. 59(a).

- (1A) If a court of any jurisdiction makes a recognised DVO, or varies or extends a recognised DVO, in a way that is inconsistent with a residence restriction or an exclusion condition, a place or area exclusion condition or a curfew condition attached to a community correction order to which the respondent is subject at the time the recognised DVO is made, varied or extended, the recognised DVO prevails to the extent of any inconsistency.

S. 175A(1A)  
inserted by  
No. 53/2016  
s. 74,  
amended by  
No. 48/2018  
s. 59(a).

- (2) In this section *community correction order*, *curfew condition*, *place or area exclusion condition* and *residence restriction or exclusion condition* have the same meaning as in the **Sentencing Act 1991**.

S. 175A(2)  
amended by  
No. 48/2018  
s. 59(b).

**175AC Relationship between bail conditions and recognised DVO**

S. 175AC  
inserted by  
No. 26/2017  
s. 18.

- (1) This section applies if—
- (a) a person is on bail subject to conditions; and
  - (b) the person is subject to a recognised DVO;  
and

- (c) there is an inconsistency between a bail condition and the recognised DVO; and
  - (d) the inconsistency makes it impossible for the person to comply with both the bail condition and the recognised DVO.
- (2) The recognised DVO prevails to the extent of the inconsistency referred to in subsection (1)(c) and (d).

**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 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).

\* \* \* \*



## 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

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

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**.

#### 176B Concurrent applications may be heard together

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

- (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.

S. 176B(1A)  
inserted by  
No. 53/2016  
s. 75(1).

(1A) Any number of applications for the variation, revocation or extension of recognised DVOs 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.

S. 176B(2)  
amended by  
No. 53/2016  
s. 75(2).

(2) The decision under this section to hear applications 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.

S. 176C  
(Heading)  
amended by  
No. 53/2016  
s. 76(1).

### **176C Family violence intervention order, recognised DVO to prevail**

S. 176C  
inserted by  
No. 53/2010  
s. 215,  
amended by  
No. 53/2016  
s. 76(2) (ILA  
s. 39B(1)).

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

S. 176C(2)  
inserted by  
No. 53/2016  
s. 76(2).

(2) A recognised DVO made by a court of any jurisdiction prevails to the extent of any inconsistency with a personal safety intervention order.

S. 176C(3)  
inserted by  
No. 53/2016  
s. 76(2).

(3) A variation or an extension of a recognised DVO by a court of any jurisdiction 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.

**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. 176D  
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).

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

- (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.

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

**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. 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.

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

**176H Search warrants issued 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, 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—
- (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.

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

S. 176I  
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—
    - (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.

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

**176K Determination made on application to vary 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 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  
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.



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

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

- (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.

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

### **176O Explanation of determination**

- (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—Corresponding New Zealand orders**

Pt 10  
(Headings  
and ss 177–  
187)  
substituted as  
Pt 10  
(Heading  
and ss 177–  
182) by  
No. 53/2016  
s. 77.

### **177 Registration of corresponding New Zealand orders**

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

#### **Note**

A corresponding New Zealand order registered under this section is enforceable against the respondent in Victoria—see sections 7, 10 and 15 of the **National Domestic Violence Order Scheme Act 2016**.

S. 177  
substituted by  
No. 53/2016  
s. 77.

### **178 Notice to be given of registration of corresponding New Zealand orders**

S. 178  
substituted by  
No. 53/2016  
s. 77.

- (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 Health and 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.
- (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.

S. 179  
substituted by  
No. 53/2016  
s. 77.

**179 Variation, extension or revocation by New Zealand Court has no effect**

If a registered corresponding New Zealand order is varied, extended or revoked by a court of New Zealand or a person or authority as authorised by a law of New Zealand, that variation, extension or revocation has no effect in Victoria.

S. 180  
substituted by  
No. 53/2016  
s. 77.

**180 Variation, extension or revocation of registered corresponding New Zealand order by Victorian Court**

- (1) The court, on the application of a relevant person, may—
  - (a) vary the registration of a registered corresponding New Zealand order as it applies in Victoria; or

- (b) extend the period during which a registered corresponding New Zealand order has effect in Victoria; or
- (c) revoke the registration of a registered corresponding New Zealand order.

(2) In this section—

*relevant person*, in relation to a registered corresponding New Zealand order, means—

- (a) a person for whose protection the order has been made; or
- (b) the respondent; 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.

**181 Notice of proposed variation, extension or revocation of registered corresponding New Zealand order**

S. 181  
substituted by  
No. 53/2016  
s. 77.

- (1) The registration of a registered corresponding New Zealand order is not to be varied, extended or revoked under this Part on the application of a person other than the respondent, unless notice of the application has been served on the respondent.
- (2) The registration of a registered corresponding New Zealand order is not to be varied or revoked on the application of the respondent unless notice of the application has been served on the person for whose protection the order was made.

S. 182  
substituted by  
No. 53/2016  
s. 77.

**182 Notice to be given of variation, extension or  
revocation of registered corresponding New  
Zealand order**

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

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

## Part 11—Family Violence Risk Assessment and Risk Management Framework

Pt 11  
(Heading and  
ss 188–200)  
amended by  
Nos 55/2009  
ss 13, 14,  
53/2010  
ss 207, 216–  
219, 52/2013  
s. 68,  
repealed by  
No. 42/2014  
s. 125,  
new Pt 11  
(Heading and  
new ss 188–  
196)  
inserted by  
No. 23/2017  
s. 16.

### 188 Definitions

New s. 188  
inserted by  
No. 23/2017  
s. 16.

In this Part—

***approved framework*** means the Family Violence Risk Assessment and Risk Management Framework approved by the Minister under section 189 as amended from time to time;

***framework organisation*** means a body prescribed to be a framework organisation for the purposes of this Part;

***Secretary*** means the Department Head of the Minister's department;

***section 191 agency*** means an agency—

- (a) that a public service body or public entity enters into or renews a State contract or other contract or agreement with in accordance with section 191; and
- (b) that provides services under that contract or agreement that are relevant to family violence risk assessment or family violence risk management;

*State contract* has the same meaning as it has  
in section 3 of the **Privacy and Data  
Protection Act 2014**.

New s. 189  
inserted by  
No. 23/2017  
s. 16.

### **189 Minister may approve framework**

- (1) The Minister may at any time approve a framework for family violence risk assessment and family violence risk management.
- (2) The framework is to be known as the Family Violence Risk Assessment and Risk Management Framework.
- (3) The Minister may at any time approve an amendment to an approved framework.
- (4) A framework approved under this section is a legislative instrument within the meaning of the **Subordinate Legislation Act 1994**.
- (5) The Minister may, by instrument, delegate to the Secretary any power of the Minister under this section except this power of delegation.

New s. 190  
inserted by  
No. 23/2017  
s. 16.

### **190 Obligation to align with approved framework**

A framework organisation that provides services relevant to family violence risk assessment and family violence risk management must ensure that its relevant policies, procedures, practice guidance and tools align with the Framework.

New s. 191  
inserted by  
No. 23/2017  
s. 16.

### **191 Compliance with approved framework to form condition of contract or agreement**

A public service body or public entity must not enter into or renew a State contract or other contract or agreement with an agency for the provision of services relevant to family violence risk assessment or family violence risk management unless a term of the State contract or other contract or agreement requires the agency to align their relevant policies, procedures, practice guidance and tools with the approved framework.



**192 Ministers to prepare annual report on approved framework**

New s. 192  
inserted by  
No. 23/2017  
s. 16.

- (1) A Minister who has responsibility for a framework organisation or a section 191 agency must, in respect of each financial year, prepare an annual report of the prescribed matters relating to the implementation and operation of the approved framework by the framework organisations and section 191 agencies for which the Minister has responsibility.
- (2) A Minister referred to in subsection (1) must provide a copy of the report to the Minister administering this Part within 3 months after the end of the financial year to which the report relates.

**193 Consolidated annual report to be tabled in Parliament**

New s. 193  
inserted by  
No. 23/2017  
s. 16.

- (1) The Minister must prepare a consolidated annual report of the prescribed matters relating to the implementation of the approved framework by framework organisations and section 191 agencies.
- (2) The Minister must cause a copy of the consolidated annual report to be laid before each House of the Parliament within 6 sitting days after 1 January in the financial year immediately following the financial year to which the report relates.

**194 Minister must review approved framework**

New s. 194  
inserted by  
No. 23/2017  
s. 16.

- (1) The Minister must cause a review of the operation of the approved framework to be conducted within 5 years after the commencement of this Part.
- (2) The Minister must cause a further review of the operation of the approved framework to be conducted periodically every 5 years after the

date on which a review is completed under subsection (1).

- (3) A review conducted under this section must—
- (a) assess whether the approved framework reflects the current evidence of best practices of family violence risk assessment and family violence risk management; and
  - (b) recommend the changes required (if any) to ensure the approved framework is consistent with those best practices.

New s. 195  
inserted by  
No. 23/2017  
s. 16.

### **195 Review of operation of Part**

- (1) The Minister must cause a review of the operation of this Part to be conducted within 5 years after the commencement of this Part.
- (2) A review conducted under this section must—
- (a) assess the extent to which this Part is achieving the objective of providing a framework for achieving consistency in family violence risk assessment and family violence risk management; and
  - (b) recommend the changes required (if any) to improve the effectiveness of this Part in achieving that objective.

New s. 196  
inserted by  
No. 23/2017  
s. 16.

### **196 Rights and liabilities**

The Parliament does not intend by this Part to create in any person any legal right or give rise to any civil cause of action.

## Part 12—Service of documents

### 201 Service of orders

If the court makes, varies, extends or revokes a family violence intervention order, or varies, extends or revokes a recognised DVO, 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, unless the respondent has been given an explanation of the order under section 57(1), 60G(1) or 96(1); and
- (c) give a copy of the order to the following persons—
  - (i) the Chief Commissioner of Police;
  - (ii) each party to the proceeding;
  - (ia) if the respondent is not required to be served with the order under paragraph (b), the respondent;
  - (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 a court under section 53AA, 77 or 77A, or on its own initiative or own motion, 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;

S. 201  
(Heading)  
substituted by  
No. 53/2016  
s. 78(1).

S. 201  
amended by  
No. 53/2016  
s. 78(2).

S. 201(b)  
substituted by  
No. 19/2017  
s. 23(a),  
amended by  
No. 33/2018  
s. 31(1).

S. 201(c)(ia)  
inserted by  
No. 19/2017  
s. 23(b).

S. 201(c)(iv)  
amended by  
Nos 18/2010  
s. 35, 29/2011  
s. 3(Sch. 1  
item 37.2),  
substituted by  
No. 19/2017  
s. 15,  
amended by  
No. 33/2018  
s. 31(2).

S. 201(c)(vi)  
amended by  
No. 33/2018  
s. 31(3).

S. 201(d)  
inserted by  
No. 33/2018  
s. 31(4).

S. 202  
amended by  
No. 53/2010  
s. 208,  
substituted by  
No. 19/2017  
s. 28.

(vi) the officer in charge of the police station closest to the place of residence of the protected person;

(d) in the case of an interim order made under Division 2A of Part 4, serve a copy of the interim order on the protected person.

## **202 Manner of service**

- (1) Subject to subsection (2), if a document is required under this Act to be served on a person, the document must be served on the person—
  - (a) by giving a true copy of the document to the person personally; or
  - (b) if a court makes an order for alternative service under section 202A(1), in accordance with that order.
- (2) Each of the following documents must be served on a person personally—
  - (a) a family violence safety notice;
  - (b) any document that is required under this Act to be served on a person who is a child.

S. 202A  
inserted by  
No. 19/2017  
s. 28.

## **202A Court may order alternative service**

- (1) A court may order that a document be served on a person other than personally by any means specified in the order, if satisfied that—
  - (a) service other than personal service—
    - (i) is likely to bring the document to the attention of the person to be served; and
    - (ii) will not pose an unacceptable risk to the safety of the affected family member, protected person or any other person; and
  - (b) it is appropriate in all the circumstances to make the order.

- (2) The court may make an order for alternative service on the application of a party to the proceeding or on its own initiative.
- (3) If the court makes an order for alternative service, the court may order that the document be taken to have been served—
  - (a) on the happening of any specified event; or
  - (b) on the expiry of any specified time.

**202B Presumption as to effective service by post, electronic communication**

S. 202B  
inserted by  
No. 19/2017  
s. 28.

- (1) Subject to any order under section 202A(3), in the absence of evidence to the contrary, a document is taken to have been served under an order for alternative service—
  - (a) if the document is required to be served by prepaid post to an address, at the time at which the document would have been delivered in the ordinary course of post; or
  - (b) if the document is required to be served by registered post to an address, at the time at which the document would have been ordinarily delivered by registered post.
- (2) Subsection (1) applies despite anything to the contrary in section 49 of the **Interpretation of Legislation Act 1984**.
- (3) If an order for alternative service requires that a document be served by electronic communication—
  - (a) the **Electronic Transactions (Victoria) Act 2000** extends and applies to service of the document, whether or not the person to be served consented to information being given by means of an electronic communication, and as if the person had

consented to service by electronic communication; and

- (b) subject to any order under section 202A(3), in the absence of evidence to the contrary, the document is taken to have been served at the time of receipt referred to in section 13A of that Act.

**Note**

The **Electronic Transactions (Victoria) Act 2000** provides that written information may be given to a person by means of electronic communication, with that person's consent. Sections 13A and 13B of that Act provide for time and place of receipt.

S. 202C  
inserted by  
No. 19/2017  
s. 28.

**202C Substituted service**

- (1) If for any reason it is not possible to serve a document in the manner required by section 202, a court may make an order for substituted service so that, instead of service in accordance with section 202, such steps be taken as the court specifies for the purpose of bringing the document to the notice of the person to be served.
- (2) An order under subsection (1) may not be made with respect to the service of a family violence safety notice.

**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 by affidavit or is certified; and
- (b) that states service has taken place; and
- (c) that specifies details of the service.

S. 203(1)(a)  
amended by  
No. 6/2018  
s. 68(Sch. 2  
item 52.7).

- (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, the sheriff 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.

S. 203(2)  
amended by  
No. 29/2020  
s. 10.

#### **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.

S. 205A  
inserted by  
No. 29/2020  
s. 11.

#### **205A Service by the sheriff**

- (1) An application for a family violence intervention order that is required by this Act to be served by the appropriate registrar for the court may be served by the sheriff.
- (2) Subject to subsection (3), the sheriff may enter premises where the sheriff reasonably believes the respondent to be for the purpose of serving the respondent with an application referred to in subsection (1).
- (3) The sheriff must not use any force to enter premises for the purpose of serving an application referred to in subsection (1).
- (4) If the sheriff believes on reasonable grounds that a person may be the respondent named or described in the application to be served, the sheriff may request the person to state their name and ordinary place of residence or business.
- (5) If service of an application is effected by the sheriff, the sheriff must file a certificate of service in accordance with sections 203 and 206.
- (6) If the sheriff is unable to serve an application, the sheriff must file a certificate under section 204.
- (7) In this section—

***premises*** has the same meaning as in the **Sheriff Act 2009**.



## **206 Certificate of service**

If, under this Act, a police officer, the sheriff or an appropriate registrar of a court is required or permitted to certify that a document has been served on a person, the police officer, the sheriff or the 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
- (ab) if the certificate is completed by the sheriff, includes the person's name and rank; and
- (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, the sheriff or the appropriate registrar.

S. 206  
amended by  
No. 29/2020  
s. 12(a)(b).

S. 206(ab)  
inserted by  
No. 29/2020  
s. 12(c).

S. 206(e)  
substituted by  
No. 29/2020  
s. 12(d).

## **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

**S. 207(1)(b)**  
substituted by  
No. 19/2017  
s. 29(1).

(b) the purpose of the application is to assist a police officer—

(i) to locate the respondent to enable a police officer to personally serve the respondent with a document under this Act; or

(ii) to enable the respondent to be served with a document under an order for alternative service.

(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

**S. 207(3)(b)**  
substituted by  
No. 19/2017  
s. 29(2).

(b) must not be used by a police officer for any purpose other than 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.

**S. 207(3A)**  
inserted by  
No. 23/2017  
s. 13.

(3A) Despite subsection (3)(b) and (c), information provided by an organisation under subsection (2) may be used or disclosed in accordance with Part 5A.

(4) In this section—

*organisation* has the meaning given by the  
**Privacy and Data Protection Act 2014.**

S. 207(4)  
def. of  
*organisation*  
amended by  
No. 60/2014  
s. 140(Sch. 3  
item 17).

Family Violence Protection Act 2008  
No. 52 of 2008

Pt 12A  
(Headings  
and ss 207A–  
207C)  
inserted by  
No. 11/2020  
s. 36,  
amended by  
No. 27/2020  
s. 32,  
repealed by  
No. 52/2008  
s. 207C (as  
amended by  
No. 27/2020  
s. 32).

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## **Part 13—Miscellaneous**

### **Division 1—Jurisdiction of Supreme Court**

#### **208 Supreme Court—limitation of jurisdiction**

- (1) It is the intention of sections 118 and 120 to alter or vary section 85 of the **Constitution Act 1975**.

S. 208  
amended by  
No. 33/2018  
s. 111 (ILA  
s. 39B(1)).

- (2) It is the intention of section 114 to alter or vary section 85 of the **Constitution Act 1975**.

S. 208(2)  
inserted by  
No. 33/2018  
s. 111.

### **Division 1A—Offences by bodies corporate**

Pt 13 Div. 1A  
(Heading and  
ss 208A,  
208B)  
inserted by  
No. 23/2017  
s. 8.

#### **208A Imputing conduct to bodies corporate**

For the purposes of this Act and the regulations, any conduct engaged in or on behalf of a body corporate by an employee, agent or officer (within the meaning given by section 9 of the Corporations Act) of the body corporate acting within the actual or apparent scope of employment or apparent authority of the employee, agent or officer, is conduct also engaged in by the body corporate.

S. 208A  
inserted by  
No. 23/2017  
s. 8.

#### **208B Criminal liability of officers of bodies corporate—accessorial liability**

- (1) If a body corporate commits an offence against a provision specified in subsection (2), an officer of the body corporate also commits an offence against the provision if the officer—
- (a) authorised or permitted the commission of the offence by the body corporate; or

S. 208B  
inserted by  
No. 23/2017  
s. 8.

- (b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the body corporate.
- (2) For the purposes of subsection (1), the following provisions are specified—
  - (a) section 144R;
  - (b) section 144RA.
- (3) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.
- (4) An officer of a body corporate may commit an offence against a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.
- (5) In this section—
  - body corporate* has the same meaning as corporation has in section 57A of the Corporations Act;
  - officer*, in relation to a body corporate, means—
    - (a) a person who is an officer (as defined by section 9 of the Corporations Act) of the body corporate; or
    - (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.

- (6) This section does not affect the operation of section 323 or 324 of the **Crimes Act 1958**.

## **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 or the **National Domestic Violence Order Scheme Act 2016**.
- (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;
  - (ca) processes and procedures for making and filing applications for family violence intervention orders, including, but not limited to—
    - (i) making and filing applications by electronic communication; and
    - (ii) providing for different requirements, procedures or processes in relation to applications made during court hours, after hours or in remote areas and applications where the applicant or respondent is an adult or a child;
  - (d) the striking out or dismissal by the court of matters;

S. 209(1)  
amended by  
No. 53/2016  
s. 79(1).

S. 209(2)(ca)  
inserted by  
No. 33/2018  
s. 32(1).

S. 209(2)(fa)  
inserted by  
No. 77/2014  
s. 22(1).

- (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;
- (fa) forms, notices and written explanations;

S. 209(2)(h)  
amended by  
No. 53/2016  
s. 79(2)(a).

- (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;

S. 209(2)(i)  
inserted by  
No. 53/2016  
s. 79(2)(b).

- (i) any other matter or thing required or permitted by or under the **National Domestic Violence Order Scheme Act 2016** to be dealt with by rules of court or otherwise necessary or required for the purposes of that Act.
- (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, including, but not limited to, making and filing applications for family violence intervention orders by

S. 209(4)  
amended by  
Nos 53/2016  
s. 79(3),  
33/2018  
s. 32(2).



electronic communication or the **National Domestic Violence Order Scheme Act 2016**.

- (5) A practice direction, statement or note issued with respect to proceedings, or any class of proceedings, with respect to applications under this Act or the **National Domestic Violence Order Scheme Act 2016** is taken to have been issued under section 16A(1) of the **Magistrates' Court Act 1989**.

S. 209(5)  
amended by  
Nos 53/2016  
s. 79(3),  
33/2018  
s. 32(3).

## **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 or the **National Domestic Violence Order Scheme Act 2016**.
- (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;
  - (ca) processes and procedures for making and filing applications for family violence intervention orders, including, but not limited to—
    - (i) making and filing applications by electronic communication; and
    - (ii) providing for different requirements, procedures or processes in relation to applications made during court hours,

S. 210(1)  
amended by  
No. 53/2016  
s. 80(1).

S. 210(2)(ca)  
inserted by  
No. 33/2018  
s. 33(1).

after hours or in remote areas and  
applications where the applicant or  
respondent is an adult or a child;

- (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;

S. 210(2)(fa)  
inserted by  
No. 77/2014  
s. 22(2).

- (fa) forms, notices and written explanations;

- (g) access to records and documents held by the court;

S. 210(2)(h)  
amended by  
No. 53/2016  
s. 80(2)(a).

- (h) extracts from records and documents held by the court and certification of those extracts;

S. 210(2)(i)  
inserted by  
No. 53/2016  
s. 80(2)(b).

- (i) any other matter or thing required or permitted by or under the **National Domestic Violence Order Scheme Act 2016** to be dealt with by rules of court or otherwise necessary or required for the purposes of that Act.

- (3) Rules made under subsection (1) may adopt or apply rules made for the Magistrates' Court under section 209.

S. 210(4)  
amended by  
Nos 53/2016  
s. 80(3),  
33/2018  
s. 33(2).

- (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, including, but not limited to, making and filing applications for family violence intervention orders by electronic communication or the **National Domestic Violence Order Scheme Act 2016**.

- (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 or the **National Domestic Violence Order Scheme Act 2016** is taken to have been issued under section 592(1) of the **Children, Youth and Families Act 2005**.

S. 210(5)  
amended by  
No. 53/2016  
s. 80(3).

### **Division 3—Regulations**

#### **210A Information sharing 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 Part 5A.
- (2) Without limiting subsection (1), the Governor in Council may make regulations for or with respect to—
- (a) prescribing a person to be an information sharing entity; and
  - (b) prescribing a body to be an information sharing entity; and
  - (c) prescribing an information sharing entity as belonging to any of the following categories—
    - (i) a risk assessment entity;
    - (ii) a protection entity; and

S. 210A  
inserted by  
No. 23/2017  
s. 10.

- |  |   |
|--|---|
|  | (d) prescribing an information sharing entity as belonging to any category specified in the Regulations; and  |
| S. 210A(2)(e) substituted by No. 11/2018 s. 47(1). | (e) prohibiting or regulating the type of information that may be used, disclosed or handled by an information sharing entity or a specified category of information sharing entity; and  |
| S. 210A(2)(f) substituted by No. 11/2018 s. 47(1). | (f) prohibiting or regulating the type of information that may be requested or collected by an information sharing entity or a specified category of information sharing entity; and  |
| S. 210A(2)(fa) inserted by No. 11/2018 s. 47(1).   | (fa) prescribing the purposes for which an information sharing entity or a specified category of information sharing entity may use or disclose confidential information; and   |
| S. 210A(2)(fb) inserted by No. 11/2018 s. 47(1).   | (fb) enabling an information sharing entity that is a public sector body Head within the meaning of the <b>Public Administration Act 2004</b> — <ul style="list-style-type: none"><li>(i) to delegate its powers, duties and functions under Part 5A or the regulations; and</li><li>(ii) to sub-delegate any powers, duties and functions under Part 5A or the regulations that have been delegated to the information sharing entity; and</li></ul> |
| S. 210A(2)(fc) inserted by No. 11/2018 s. 47(1).   | (fc) prescribing the persons and bodies to which powers, duties and functions may be delegated or sub-delegated by an information sharing entity that is a public sector body Head within the meaning of the <b>Public Administration Act 2004</b> ; and  |

- (g) subject to subsection (5), prescribing specified persons employed or engaged by, or parts of, an information sharing entity or specified category of information sharing entity to perform specified functions or exercise specified powers on behalf of an information sharing entity including by specifying any of the following to perform specified functions under Part 5A—
- (i) the business unit, branch or area (however described) of an information sharing entity;
  - (ii) the business unit, branch or area (however described) of an information sharing entity operating at a specified geographical location;
  - (iii) the person's qualifications or experience;
  - (iv) the person's position description, classification or functions; and
- (h) prohibiting or regulating the disclosure of confidential information between information sharing entities or categories of information sharing entities; and
- (ha) confer a discretionary authority on a specified person or body or a specified class of persons or bodies; and
- (hb) prescribing information to be excluded information; and
- (i) prescribing a person to be the Central Information Point; and
  - (j) prescribing an information sharing entity to be a CIP data custodian; and

**S. 210A(2)(g)**  
amended by  
No. 11/2018  
s. 47(2)(3).

**S. 210A(2)(h)**  
substituted by  
No. 11/2018  
s. 47(5).

**S. 210A(2)(ha)**  
inserted by  
No. 11/2018  
s. 47(5).

**S. 210A(2)(hb)**  
inserted by  
No. 11/2018  
s. 47(5).

S. 210A(2)(k)  
amended by  
No. 11/2018  
s. 47(4).

- (k) prescribing the recording requirements to be observed by an information sharing entity or specified category of information sharing entity or the Central Information Point generally for the purposes of section 144PB; and
  - (l) prescribing the information to be recorded by an information sharing entity or the Central Information Point for the purposes of section 144PB; and
  - (m) prescribing provisions of Acts for the purposes of section 144QC.
- (3) Regulations made for the purposes of subsection (2)(a) may prescribe a person or class of person who is engaged in a role that requires the handling of confidential information, including any of the following persons—
- (a) a nurse;
  - (b) a police officer;
  - (c) a registered medical practitioner;
  - (d) a psychologist within the meaning of the Health Practitioner National Law;
  - (e) a teacher.
- (4) Regulations made for the purposes of subsection (2)(b) may prescribe a body or class of body that has a function that requires the handling of confidential information, including any of the following bodies—
- (a) a community service organisation funded by the State government to provide services to individuals affected by family violence;

**Example**

Community service organisations that provide services to individuals affected by family violence include child and family services, drug and alcohol services, homelessness services, out of home care services, mental health services and sexual assault services.

- (b) a public entity;
  - (c) a public service body;
  - (d) a health service provider within the meaning of section 3(1) of the **Health Records Act 2001**;
  - (e) an education and care service or children's service;
  - (f) a school (whether a Government school or a non-Government school).
- (5) Regulations made for the purposes of subsection (2)(a), (b), (c) or (g) may prescribe a person or body specified in section 144I if the prescription of that person or body is in respect of a function other than a judicial or quasi-judicial function involving the handling of confidential information performed by that person or body.

**S. 210A(5)**  
amended by  
**No. 11/2018**  
s. 47(6).

**210B Framework 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 Part 11 of this Act.
- (2) Without limiting subsection (1), the Governor in Council may make regulations for or with respect to—

**S. 210B**  
inserted by  
**No. 23/2017**  
s. 17.

- (a) prescribing a body or class of body to be a framework organisation; and
- (b) prescribing matters to be reported on in an annual report.

S. 211  
(Heading)  
amended by  
No. 23/2017  
s. 9.

## **211 General 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.
- (3) The regulations—
  - (a) may be of general or limited application; and
  - (b) may differ according to differences in time, place or circumstances; and
  - (c) may confer a discretionary authority or impose a duty on a specified person or body or a specified class of persons or bodies; and
  - (d) may leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by a specified person.

S. 211(3)  
inserted by  
No. 23/2017  
s. 11,  
substituted by  
No. 11/2018  
s. 47(7).



## **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**.

Pt 14 Div. 4  
(Heading and  
s. 224A)  
inserted by  
No. 69/2009  
s. 54(Sch. Pt 1  
item 22.4).

### **Division 4—Statute Law Amendment (Evidence Consequential Provisions) Act 2009**

S. 224A  
inserted by  
No. 69/2009  
s. 54(Sch. Pt 1  
item 22.4).

#### **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**

**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.

- (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.

S. 224C(6)  
inserted by  
No. 53/2010  
s. 220.

(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.

S. 224C(7)  
inserted by  
No. 53/2010  
s. 220.

(8) If—

(a) before the commencement of Division 2 of Part 14 of the **Personal Safety Intervention Orders Act 2010**; or

S. 224C(8)  
inserted by  
No. 53/2010  
s. 220.

(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 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.

### **Division 8—Children, Youth and Families Amendment Act 2013**

Pt 14 Div. 8  
(Heading and  
s. 225)  
inserted by  
No. 52/2013  
s. 69.

#### **225 Transitional provision—Children, Youth and Families Amendment Act 2013**

New s. 225  
inserted by  
No. 52/2013  
s. 69.

Section 147A as inserted by section 66 of the **Children, Youth and Families Amendment Act 2013** applies to an application under this Act made on or after the commencement of section 66 of that Act.

### **Division 9—Family Violence Protection Amendment Act 2014**

Pt 14 Div. 9  
(Heading and  
s. 226)  
inserted by  
No. 77/2014  
s. 23.

#### **226 Transitional provisions—Family Violence Protection Amendment Act 2014**

New s. 226  
inserted by  
No. 77/2014  
s. 23.

\* \* \* \* \*

S. 226(1)  
repealed by  
No. 19/2017  
s. 63.

- (2) Section 31 as amended by section 6 of the **Family Violence Protection Amendment Act 2014** applies only to family violence safety notices issued on or after the commencement of section 6 of that Act.

Pt 14 Div. 10  
(Heading and  
new s. 227)  
inserted by  
No. 53/2016  
s. 81.

## **Division 10—National Domestic Violence Order Scheme Act 2016**

New s. 227  
inserted by  
No. 53/2016  
s. 81.

### **227 Transitional provisions—National Domestic Violence Order Scheme Act 2016**

- (1) This section applies to a corresponding interstate order that, immediately before the commencement of section 77 of the **National Domestic Violence Order Scheme Act 2016**, was registered under Division 1 of Part 10.
- (2) Despite the repeal of Division 1 of Part 10, this Act continues to apply in relation to the corresponding interstate order unless or until the earlier of the following occurs—
  - (a) the corresponding interstate order becomes a recognised DVO in the jurisdiction in which the interstate order was made;
  - (b) the corresponding interstate order is—
    - (i) declared to be a recognised DVO under section 39 of the **National Domestic Violence Order Scheme Act 2016**; or
    - (ii) declared by a registrar of a court of another participating jurisdiction to be a recognised DVO under a corresponding DVO recognition law.
- (3) The corresponding interstate order is not a local DVO for the purposes of the **National Domestic Violence Order Scheme Act 2016**.

- (4) On and after the corresponding interstate order becoming a recognised DVO or being declared to be a recognised DVO, the **National Domestic Violence Order Scheme Act 2016** applies in relation to the corresponding interstate order as if it were a non-local DVO that is a recognised DVO.

## **Division 11—Family Violence Protection Amendment Act 2017**

Pt 14 Div. 11  
(Heading and  
ss 228–230A)  
inserted by  
No. 19/2017  
s. 40.

### **228 Definitions**

In this Division—

*amending Act* means the **Family Violence Protection Amendment Act 2017**.

New s. 228  
inserted by  
No. 19/2017  
s. 40.

### **228A Family violence intervention orders for protection of children**

S. 228A  
inserted by  
No. 19/2017  
s. 16.

- (1) This Act as amended by Division 1 of Part 2 of the amending Act applies to a proceeding for a family violence intervention order that—
- (a) commences on or after the commencement of that Division; or
  - (b) had been commenced but not determined before the commencement of that Division.
- (2) If, before the commencement of Division 1 of Part 2 of the amending Act, an interim order was made under section 53(1)(a)(iii) in relation to a child who was not an affected family member, on and after that commencement, the interim order is taken to have been made under section 53AB.
- (3) If, before the commencement of Division 1 of Part 2 of the amending Act, a final order was made under section 77(2) in relation to a child

who was not an affected family member, on and after that commencement, the final order is taken to have been made under section 77B.

New s. 229  
inserted by  
No. 19/2017  
s. 40.

## **229 Appeals**

Sections 118A and 118B apply to an appeal filed on or after the commencement of section 33 of the amending Act.

S. 229A  
inserted by  
No. 19/2017  
s. 24.

## **229A Explanations of orders**

- (1) This Act as amended by Division 2 of Part 2 of the amending Act applies to a proceeding for a family violence intervention order that—
  - (a) commences on or after the commencement of that Division; or
  - (b) had been commenced but not determined before the commencement of that Division.
- (2) Section 123 as in force immediately before the commencement of Division 2 of Part 2 of the amending Act continues to apply to a contravention of a family violence intervention order that was made before that commencement.
- (3) Section 123A as in force immediately before the commencement of Division 2 of Part 2 of the amending Act continues to apply to a contravention of a family violence intervention order that was made before that commencement.

New s. 230  
inserted by  
No. 19/2017  
s. 40.

## **230 Approval of counselling**

On and after the commencement of section 37 of the amending Act, any counselling that, immediately before that commencement, was approved by the Secretary under section 133(2), is taken to be approved counselling within the meaning of section 126 as if it had been approved by the Chief Executive Officer.

**230A Review of amendments to first mention date for family violence safety notices**

S. 230A  
inserted by  
No. 19/2017  
s. 40.

- (1) The Minister must cause an independent review to be conducted into the operation of section 31(3) as amended by section 32 of the amending Act for the period commencing on the day on which section 32 of the amending Act comes into operation and ending on the day that is 2 years later.
- (2) The Minister must cause a copy of the review to be laid before each House of the Parliament within 6 months after the end of the 2 year period.
- (3) The review must give particular consideration to any unintended or adverse effects of the amendments made to section 31(3) by section 32 of the amending Act, including any increased risk to affected family members.

**231 Alternative service**

New s. 231  
inserted by  
No. 19/2017  
s. 30.

The amendments made to this Act by Division 3 of Part 2 of the amending Act apply in relation to a proceeding for a family violence intervention order commenced, or an appeal filed, on or after the commencement of that Division.

**Division 12—Justice Legislation  
Amendment (Family Violence Protection  
and Other Matters) Act 2018**

Pt 14 Div. 12  
(Heading and  
new s. 232)  
inserted by  
No. 33/2018  
s. 34.

**232 Transitional provisions—Justice Legislation  
Amendment (Family Violence Protection and  
Other Matters) Act 2018**

New s. 232  
inserted by  
No. 33/2018  
s. 34.

The amendments made to sections 209 and 210 by the **Justice Legislation Amendment (Family Violence Protection and Other Matters) Act 2018** do not affect the validity or operation

of any rules of court made under those sections as in force immediately before those amendments.

Pt 14 Div. 12  
(Heading and  
s. 232)  
inserted by  
No. 48/2018  
s. 60,  
renumbered  
as Pt 14  
Div. 13  
(Heading and  
new s. 233) by  
No. 29/2020  
s. 13(2).

### **Division 13—Justice Legislation Miscellaneous Amendment Act 2018**

New s. 232  
inserted by  
No. 48/2018  
s. 60,  
renumbered  
as new s. 233  
by  
No. 29/2020  
s. 13(2)(b).

#### **233 Transitional provision—Justice Legislation Miscellaneous Amendment Act 2018**

This Act as amended by section 59 of the **Justice Legislation Miscellaneous Amendment Act 2018** applies to a family violence intervention order or a recognised DVO that has effect on or after the commencement of section 59 of that Act, irrespective of when the order was made.

Pt 14 Div. 14  
(Heading and  
new s. 234)  
inserted by  
No. 29/2020  
s. 14.

### **Division 14—Police and Emergency Legislation Amendment Act 2020**

New s. 234  
inserted by  
No. 29/2020  
s. 14.

#### **234 Transitional provision—Police and Emergency Legislation Amendment Act 2020**

Section 205A as inserted by section 11 of the **Police and Emergency Legislation Amendment Act 2020** applies to an application for a family violence intervention order made on or after the commencement of section 11 of that Act.



Family Violence Protection Act 2008  
No. 52 of 2008  
Part 14—Repeal, transitional and validation provisions

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*	*	*	*	*	<b>Pt 15 (Headings and ss 225–232) repealed by No. 83/2012 s. 30.</b>
*	*	*	*	*	<b>Pt 16 (Headings and ss 233– 272) repealed by No. 52/2008 s. 272.</b>

Sch. 1  
inserted by  
No. 23/2017  
s. 14,  
amended by  
Nos 5/2018  
s. 41, 19/2019  
s. 259.

## Schedule 1—Specified provisions

Section 144QC

- 1 Sections 36(5), 205(2)(b), 206(2), 207(2),  
210(2)(b) and 211(2) of the **Children, Youth  
and Families Act 2005**
  - 2 Section 55 of the **Commission for Children  
and Young People Act 2012**
  - 3 Section 140 of the **Confiscation Act 1997**
  - 4 Sections 36 and 132ZC of the **Disability Act 2006**
  - 5 Sections 5.3A.10 and 5.3A.14 of the **Education  
and Training Reform Act 2006**
  - 6 Section 181 of the **Firearms Act 1996**
  - 7 Section 23(2) and (3) of the **Human Services  
(Complex Needs) Act 2009**
  - 8 Section 178 of the **Fines Reform Act 2014**
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## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative 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, 3 and 224 on 24 September 2008: section 3(1); sections 2, 4–223, 233–272 on 8 December 2008: Special Gazette (No. 339) 4 December 2008 page 1; Part 15 (sections 225–232) never proclaimed, repealed by No. 83/2012 section 30.

### INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

#### **Style changes**

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

#### **References to ILA s. 39B**

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

### **Interpretation**

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

Family Violence Protection Act 2008  
No. 52 of 2008  
Endnotes

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## 2 Table of Amendments

This publication incorporates amendments made to the **Family Violence Protection Act 2008** by Acts and subordinate instruments.

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### **Family Violence Protection Act 2008, No. 52/2008**

*Assent Date:* 23.9.08  
*Commencement Date:* S. 272 on 8.12.09: s. 272; s. 207C inserted on 25.4.20 by No. 11/2020 s. 36: s. 2 (as amended by No. 27/2020 s. 32)  
*Note:* S. 207C repealed Pt 12A (ss 207A–207C) on 26.4.21  
*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**

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**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**

**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**

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**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**

**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; ss 5–12 on 17.4.13: Special Gazette (No. 141) 16.4.13 p. 2  
*Current State:* This information relates only to the provision/s amending the **Family Violence Protection Act 2008**

**Children, Youth and Families Amendment Act 2013, No. 52/2013**

*Assent Date:* 24.9.13  
*Commencement Date:* Ss 62–69 on 1.12.13: Special Gazette (No. 419) 26.11.13 p. 1  
*Current State:* This information relates only to the provision/s amending the **Family Violence Protection Act 2008**

**Justice Legislation Amendment (Miscellaneous) Act 2013, No. 77/2013**

*Assent Date:* 17.12.13  
*Commencement Date:* S. 24 on 18.12.13: s. 2(1); ss 25–31 on 3.3.14: Special Gazette (No. 17) 28.1.14 p. 1  
*Current State:* This information relates only to the provision/s amending the **Family Violence Protection Act 2008**

**Legal Profession Uniform Law Application Act 2014, No. 17/2014**

*Assent Date:* 25.3.14  
*Commencement Date:* S. 160(Sch. 2 item 41) on 1.7.15: Special Gazette (No. 151) 16.6.15 p. 1  
*Current State:* This information relates only to the provision/s amending the **Family Violence Protection Act 2008**

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**Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014**

*Assent Date:* 3.6.14  
*Commencement Date:* S. 10(Sch. item 61) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2  
*Current State:* This information relates only to the provision/s amending the **Family Violence Protection Act 2008**

**Vexatious Proceedings Act 2014, No. 42/2014**

*Assent Date:* 17.6.14  
*Commencement Date:* Ss 114–125 on 31.10.14: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Family Violence Protection Act 2008**

**Powers of Attorney Act 2014, No. 57/2014**

*Assent Date:* 26.8.14  
*Commencement Date:* S. 152 on 1.9.15: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Family Violence Protection Act 2008**

**Privacy and Data Protection Act 2014, No. 60/2014**

*Assent Date:* 2.9.14  
*Commencement Date:* S. 140(Sch. 3 item 17) on 17.9.14: Special Gazette (No. 317) 16.9.14 p. 1  
*Current State:* This information relates only to the provision/s amending the **Family Violence Protection Act 2008**

**Crimes Amendment (Abolition of Defensive Homicide) Act 2014, No. 63/2014**

*Assent Date:* 9.9.14  
*Commencement Date:* S. 7(13) on 1.11.14: Special Gazette (No. 350) 7.10.14 p. 1  
*Current State:* This information relates only to the provision/s amending the **Family Violence Protection Act 2008**

**Family Violence Protection Amendment Act 2014, No. 77/2014**

*Assent Date:* 21.10.14  
*Commencement Date:* Ss 3, 5, 6, 17–20, 22, 23 on 2.11.14: Special Gazette (No. 400) 29.10.14 p. 2  
*Current State:* This information relates only to the provision/s amending the **Family Violence Protection Act 2008**

**Justice Legislation Amendment Act 2015, No. 20/2015**

*Assent Date:* 16.6.15  
*Commencement Date:* S. 56(Sch. 1 item 5) on 17.6.15: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Family Violence Protection Act 2008**



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**Justice Legislation Further Amendment Act 2016, No. 3/2016**

*Assent Date:* 16.2.16  
*Commencement Date:* Ss 85, 86 on 1.5.16: Special Gazette (No. 114) 26.4.16 p. 1  
*Current State:* This information relates only to the provision/s amending the **Family Violence Protection Act 2008**

**National Domestic Violence Order Scheme Act 2016, No. 53/2016**

*Assent Date:* 18.10.16  
*Commencement Date:* Ss 82–87 on 5.4.17: Special Gazette (No. 111) 4.4.17 p. 1; ss 41–81 on 25.11.17: Special Gazette (No. 388) 15.11.17 p. 1  
*Current State:* This information relates only to the provision/s amending the **Family Violence Protection Act 2008**

**Family Violence Protection Amendment Act 2017, No. 19/2017**

*Assent Date:* 16.5.17  
*Commencement Date:* Ss 41, 62, 63 on 17.5.17: s. 2(1); ss 4–31, 33–40 on 29.3.18: Special Gazette (No. 136) 27.3.18 p. 2; s. 32 on 1.9.18: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Family Violence Protection Act 2008**

**Family Violence Protection Amendment (Information Sharing) Act 2017, No. 23/2017**

*Assent Date:* 14.6.17  
*Commencement Date:* Ss 4–17 on 26.2.18: Special Gazette (No. 40) 6.2.18 p. 1; s. 37 on 12.3.18: s. 2(7)  
*Current State:* This information relates only to the provision/s amending the **Family Violence Protection Act 2008**

**Bail Amendment (Stage One) Act 2017, No. 26/2017**

*Assent Date:* 27.6.17  
*Commencement Date:* Ss 17, 18 on 21.5.18: Special Gazette (No. 218) 15.5.18 p. 1  
*Current State:* This information relates only to the provision/s amending the **Family Violence Protection Act 2008**

**Justice Legislation Amendment (Victims) Act 2018, No. 5/2018**

*Assent Date:* 27.2.18  
*Commencement Date:* Ss 39–41 on 5.4.18: Special Gazette (No. 136) 27.3.18 p. 2  
*Current State:* This information relates only to the provision/s amending the **Family Violence Protection Act 2008**

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**Oaths and Affirmations Act 2018, No. 6/2018**

*Assent Date:* 27.2.18  
*Commencement Date:* S. 68(Sch. 2 item 52) on 1.3.19: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Family Violence Protection Act 2008**

**Children Legislation Amendment (Information Sharing) Act 2018, No. 11/2018**

*Assent Date:* 10.4.18  
*Commencement Date:* Ss 41, 46, 47 on 11.4.18: Special Gazette (No. 164) 10.4.18 p. 1  
*Current State:* This information relates only to the provision/s amending the **Family Violence Protection Act 2008**

**Justice Legislation Amendment (Family Violence Protection and Other Matters) Act 2018, No. 33/2018**

*Assent Date:* 14.8.18  
*Commencement Date:* S. 30 on 15.8.18: s. 2(1); ss 15, 19, 23, 32–34, 39 on 29.3.19: Special Gazette (No. 114) 26.3.19 p. 1; ss 14(1), 17, 18, 20, 21, 28, 29, 108–111 on 31.7.19: Special Gazette (No. 306) 30.7.19 p. 1; ss 14(2), 16, 22, 24, 25, 27, 31 on 10.12.19: Special Gazette (No. 514) 10.12.19 p. 1; ss 26, 47 on 1.9.20: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Family Violence Protection Act 2008**

**Residential Tenancies Amendment Act 2018, No. 45/2018** (as amended by Nos 11/2020, 25/2020)

*Assent Date:* 18.9.18  
*Commencement Date:* S. 371 on 29.3.21: Special Gazette (No. 42) 27.1.21 p. 1  
*Current State:* This information relates only to the provision/s amending the **Family Violence Protection Act 2008**

**Justice Legislation Miscellaneous Amendment Act 2018, No. 48/2018**

*Assent Date:* 25.9.18  
*Commencement Date:* Ss 58–60 on 28.10.18: Special Gazette (No. 480) 16.10.18 p. 1  
*Current State:* This information relates only to the provision/s amending the **Family Violence Protection Act 2008**

**Guardianship and Administration Act 2019, No. 13/2019**

*Assent Date:* 4.6.19  
*Commencement Date:* S. 221(Sch. 1 item 15) on 1.3.20: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Family Violence Protection Act 2008**

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**Disability (National Disability Insurance Scheme Transition) Amendment Act 2019, No. 19/2019**

*Assent Date:* 25.6.19  
*Commencement Date:* S. 259 on 26.6.19: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Family Violence Protection Act 2008**

**COVID-19 Omnibus (Emergency Measures) Act 2020, No. 11/2020**

*Assent Date:* 24.4.20  
*Commencement Date:* S. 36 on 25.4.20: s. 2  
*Current State:* This information relates only to the provision/s amending the **Family Violence Protection Act 2008**

**COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Act 2020, No. 27/2020**

*Assent Date:* 20.10.20  
*Commencement Date:* S. 32 on 21.10.20: s. 2  
*Current State:* This information relates only to the provision/s amending the **Family Violence Protection Act 2008**

**Police and Emergency Legislation Amendment Act 2020, No. 29/2020**

*Assent Date:* 27.10.20  
*Commencement Date:* Ss 10–14 on 3.5.21: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Family Violence Protection Act 2008**

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### **3 Amendments Not in Operation**

This version does not contain amendments that are not yet in operation.

#### **4 Explanatory details**

No entries at date of publication.