Western Australia

Restraining Orders Act 1997

Compare between:

[31 Mar 2008, 02-g0-02] and [27 Apr 2008, 02-h0-01]

Western Australia

Restraining Orders Act 1997

An Act to provide for orders to restrain people from committing acts of family and domestic or personal violence by imposing restraints on their behaviour and activities, and for related purposes.

[Long title amended by No. 38 of 2004 s. 4.]

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Part 1 — Preliminary

1. Short title

This Act may be cited as the *Restraining Orders Act 1997* [1].

2. Commencement

This Act comes into operation on such day as is fixed by proclamation [1].

3. Interpretation

In this Act unless the contrary intention appears —

"act of abuse" means an act of family and domestic violence or an act of personal violence;

"act of family and domestic violence" has the meaning given by section 6;

"act of personal violence" has the meaning given by section 6;

"application" means an application made under this Act;

"authorised magistrate" means a magistrate authorised under section 17(1)(a);

"authorised person" means a police officer or a person who is, or who is in a class of persons that is, prescribed for the purposes of this definition;

"CEO (child welfare)" means the CEO within the meaning of the *Children and Community Services Act 2004*;

"child" means a person under 18 years of age;

"child welfare officer" means —

(a) the CEO as defined in section 3 of the *Children and Community Services Act 2004*; or

(b) a person who is an authorised officer for the purposes of section 37 of that Act;

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"Commissioner of Police" means the person holding or acting in the office of Commissioner of Police under the *Police Act 1892*;

"corresponding law", in relation to another State or Territory or a foreign country, means a law of that State, Territory or country that empowers a court of that State, Territory or country to make orders (however described) having an effect that is the same as or similar to the effect of restraining orders made under this Act;

"court" includes an authorised magistrate;

"exposed", in relation to an act of abuse, includes —

(a) to see or hear the act of abuse; or

(b) to witness physical injuries resulting from the act of abuse;

"family and domestic relationship" has the meaning given by section 4;

"family order" has the meaning given by section 5;

"final order" means a restraining order —

(a) made at a final order hearing;

(b) that becomes a final order under section 32;

(ba) made under section 40(3);

(bb) made under section 41(1) at a mention hearing with the consent of the respondent;

(c) made under section 49(1); or

(d) that is a final order under section 63(4a) or 63A(3);

"final order hearing" means a hearing fixed under section 33(1), 40(3), 41(4) or 43A(7)(b);

"firearm" has the same meaning as it has in the *Firearms Act 1973*;

"firearms licence" means —

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(a) a licence issued, permit granted or approval given, under the *Firearms Act 1973*, entitling a person to be in possession of a firearm; and

(b) a Firearms Act Extract of Licence issued under the *Firearms Act 1973*;

"fix a hearing" has the meaning given by section 9;

"foreign restraining order" means an order (however described) made by a court of a foreign country under a corresponding law of the country;

"imagined personal relationship" means a relationship where one person claims to have, or have had, an intimate personal relationship, or other personal relationship, with another person but that other person disagrees with that claim;

"interim order" means a telephone order or an order made under section 29(1)(a), 43A(7)(a) or 63(4b), the duration of which is more than 72 hours;

"mention hearing" means a hearing fixed under section 23(2), 26(3), 29(2) or 39;

"misconduct restraining order" means an order made under this Act imposing restraints of the kind referred to in section 36;

"person protected" means a person named in an order made under this Act as a person for whose benefit the order is made;

"person seeking to be protected" means —

(a) the person who has applied for a violence restraining order or a misconduct restraining order; or

(b) if an application for a violence restraining order or a misconduct restraining order has been made on behalf of another person, the person on behalf of whom the application is made;

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"person who is bound", in relation to an order made under this Act, means the person named in the order on whose lawful activities and behaviour restraints are imposed by the order;

"police order" means an order made by a police officer under Part 2 Division 3A;

"prepare and serve" has the meaning given by section 10;

"proceedings under this Act" means —

(a) the hearing of an application; or

(b) proceedings for an offence against this Act;

"property", in relation to a person, means property —

(a) owned by the person;

(b) in the care or custody of the person;

(c) used or enjoyed by the person, or available for the person's use or enjoyment; or

(d) at premises where the person lives or works;

"registered", in relation to a foreign restraining order, means registered under section 79C;

"registrar" means the registrar of the relevant court;

"respondent" means the person against whom a restraining order is sought;

"restraining order" means a violence restraining order or misconduct restraining order;

"satisfied" means satisfied on the balance of probabilities;

"specified" in relation to a restraining order, means specified in the order;

"telephone application" means an application under Division 2 of Part 2 for a violence restraining order;

"telephone order" means a violence restraining order made on a telephone application;

"violence restraining order" means an order made under this Act imposing restraints of the kind referred to in section 13;

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"wellbeing" has the same meaning as in the *Children and Community Services Act 2004*.

[Section 3 amended by No. 10 of 1998 s. 62(1); No. 11 of 1999 s. 4; No. 22 of 2000 s. 4; No. 34 of 2004 s. 251; No. 38 of 2004 s. 5, 18(2), 25(2) and (3) and 57(2)-(4); No. 59 of 2004 s. 124.]

4. Meaning of "family and domestic relationship"

(1) In this Act —

"family and domestic relationship" means a relationship between 2 persons —

(a) who are, or were, married to each other;

(b) who are, or were, in a de facto relationship with each other;

(c) who are, or were, related to each other;

(d) one of whom is a child who —

(i) ordinarily resides, or resided, with the other person; or

(ii) regularly resides or stays, or resided or stayed, with the other person;

(e) one of whom is, or was, a child of whom the other person is a guardian; or

(f) who have, or had, an intimate personal relationship, or other personal relationship, with each other.

(2) In subsection (1) —

"other personal relationship" means a personal relationship of a domestic nature in which the lives of the persons are, or were, interrelated and the actions of one person affects, or affected, the other person;

"related", in relation to a person, means a person who —

(a) is related to that person taking into consideration the cultural, social or religious backgrounds of the 2 persons; or

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(b) is related to the person's —

(i) spouse or former spouse; or

(ii) de facto partner or former de facto partner.

[Section 4 inserted by No. 38 of 2004 s. 6.]

5. Meaning of "family order"

(1) A reference in this Act to a **"family order"** is a reference to —

(a) a parenting order made under the *Family Law Act 1975* of the Commonwealth or the *Family Court Act 1997*, as is relevant to the case, that deals with —

(i) the person or persons with whom a child is to live; or

(ii) the time a child is to spend with another person or other persons; or

(iii) the communication a child is to have with another person or other persons;

[(b) deleted]

(c) any of the things set out in subsection (2) —

(i) to the extent that the thing deals with the person or persons with whom a child is to live; or

(ii) to the extent that the thing requires or authorises (expressly or impliedly) contact between a child and another person or other persons;

(d) a right or liability within the meaning of the *Family Court of Western Australia (Orders of Registrars) Act 1997* of the Commonwealth that —

(i) is in respect of a matter to which paragraph (a), (b) or (c) applies; and

(ii) is conferred, imposed or affected by section 5 of that Act.

Note: The effects of the transitional provisions of the *Family Law Reform Act 1995* of the Commonwealth apply to rights and liabilities referred to in the *Family*

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Court of Western Australia (Orders of Registrars) Act 1997 of the Commonwealth — s.4(5) of the latter Act.

(2) The things referred to in subsection (1)(c) are —

(a) a recovery order or any other order (however described) made; or

(b) an injunction granted; or

(c) an undertaking given to, and accepted by, a court; or

(d) a parenting plan, whether registered or not; or

(e) a bond entered into in accordance with an order,

under the *Family Law Act 1975* of the Commonwealth or the *Family Court Act 1997*, as is relevant to the case, or any thing treated, under either of those Acts or the *Family Law Reform Act 1995* of the Commonwealth, as an order or thing referred to in subsection (1).

Note: Under clause 5 of Schedule 2 to the *Family Court Act 1997* the effects of the transitional provisions in that clause apply to rights and liabilities referred to in the *Family Court (Orders of Registrars) Act 1997*.

[Section 5 inserted by No. 41 of 1997 s. 36; amended by No. 35 of 2006 s. 207.]

6. Meaning of "act of family and domestic violence" and "act of personal violence"

(1) In this Act —

"act of family and domestic violence" means one of the following acts that a person commits against another person with whom he or she is in a family and domestic relationship —

(a) assaulting or causing personal injury to the person;

(b) kidnapping or depriving the person of his or her liberty;

(c) damaging the person's property, including the injury or death of an animal that is the person's property;

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(d) behaving in an ongoing manner that is intimidating, offensive or emotionally abusive towards the person;

(e) causing the person or a third person to be pursued —

(i) with intent to intimidate the person; or

(ii) in a manner that could reasonably be expected to intimidate, and that does in fact intimidate, the person;

(f) threatening to commit any act described in paragraphs (a) to (c) against the person.

(2) In this Act —

"act of personal violence" means one of the following acts that a person commits against another person with whom he or she is not in a family and domestic relationship —

(a) assaulting or causing personal injury to the person;

(b) kidnapping or depriving the person of his or her liberty;

(c) causing the person or a third person to be pursued —

(i) with intent to intimidate the person; or

(ii) in a manner that could reasonably be expected to intimidate, and that does in fact intimidate, the person;

(d) threatening to commit any act described in paragraph (a) or (b) against the person;

(e) if the person who commits the act has an imagined personal relationship with the person against whom the act is committed, an act that would constitute an act of family and domestic violence if those persons were in a family and domestic relationship.

(3) For the purposes of this Act, a person who procures another person to commit an act of abuse, or part of such an act, is to be taken to have also committed the act himself or herself.

(4) In this section —

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"assaulting" includes —

(a) an assault within the meaning of *The Criminal Code*; and

(b) behaving in a manner described in paragraph (a), (b) or (c) of section 319(3) of *The Criminal Code*;

"intimidate" has the same meaning as in section 338D of *The Criminal Code*;

"kidnapping or depriving the person of his or her liberty" includes behaving in a manner described in section 332 of *The Criminal Code*;

"pursue" has the same meaning as in section 338D of *The Criminal Code*.

[Section 6 inserted by No. 38 of 2004 s. 7.]

7. Persons protected, and bound, by order to be natural persons

A person protected by an order under this Act, and a person bound by an order under this Act, must be natural persons.

[Section 7 inserted by No. 38 of 2004 s. 8.]

7A. Orders under this Act imposing restraints

An order imposing restraints may be made under this Act by —

(a) the Magistrates Court hearing an application under section 25, 38 or 45;

(b) the Children's Court hearing an application under section 25, 38 or 45;

(c) an authorised magistrate hearing a telephone application;

(d) a court acting under section 63 or 63A; or

(e) a police officer acting under Part 2 Division 3A.

[Section 7A inserted by No. 38 of 2004 s. 8; amended by No. 59 of 2004 s. 124.]

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Part 1A — Restraining orders generally

[Heading inserted by No. 38 of 2004 s. 9.]

8. Explanation about orders to be given

(1) Subject to this section, a court that makes a restraining order is to explain, as is appropriate, to —

(a) the person who is bound by the order; and

(b) the —

(i) person protected by the order; or

(ii) parent or guardian of that person, if the parent or guardian made the application for the order on behalf of that person,

who are in court when the order is made —

(c) the purpose, terms and effects of the order, including that the order may be registered and enforced in another Australian jurisdiction;

(d) the consequences that may follow if the person who is bound by the order contravenes the order;

(e) the consequences that may follow if the person protected by the order —

(i) encourages or invites the person who is bound by the order to contravene the order; or

(ii) by his or her actions causes the person who is bound by the order to breach the order;

(f) that the order must be varied or cancelled if the person who is bound by the order and the person protected by the order intend to have contact or reconcile with the other person;

(g) how the order may be varied, cancelled or extended;

(h) if the order is a violence restraining order, the effects of sections 14 and 62E relating to firearms; and

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(i) that counselling and support services may be of assistance, and where appropriate, the court is to refer the person to specific services.

(2) If a person to whom an explanation is to be given under subsection (1) does not readily understand English, or the court is not satisfied that the person understood the explanation, the court is, as far as practicable, to arrange for someone else to give the explanation to the person in a way that the person can understand.

(3) If —

(a) a person referred to in subsection (1)(a) or (b) is not present in court when the order is made; or

(b) it is not practicable for the court to give the explanation at the time the restraining order is made,

then the registrar is to cause a document containing the explanation to be —

(c) in the case of subsection (1)(a), served on the person; and

(d) in the case of subsection (1)(b), delivered to the person.

(4) An order is not invalid merely because a person who should have been given the explanation referred to in subsection (1) was not given the explanation.

[Section 8 inserted by No. 38 of 2004 s. 9; amended by No. 59 of 2004 s. 123.]

9. Fixing a hearing

(1) If a registrar is to fix a hearing and summons a person to the hearing, the registrar is to —

(a) fix a day, time and place for the hearing;

(b) prepare a summons in the prescribed form;

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(c) cause the summons to be served on the person; and

(d) notify all other parties of the hearing.

(2) If the registrar is to fix a hearing that is to be held in the absence of one party, the registrar is to —

(a) fix a day, time and place for the hearing; and

(b) notify the party who is to be present of the hearing.

[Section 9 amended by No. 59 of 2004 s. 123.]

10. Preparation and service of orders

(1) If a registrar is to prepare and serve a restraining order, the registrar is to prepare the order in the prescribed form and cause —

(a) the respondent's copy and the respondent's endorsement copy (if one is required to be served) of the order to be served on the person who is bound by the order;

(b) the applicant's copy of the order to be delivered to —

(i) the person seeking to be protected by the order; or

(ii) the parent or guardian of that person, if the parent or guardian made the application for the order on behalf of that person;

(c) the police copy of the order to be delivered to the Commissioner of Police; and

(d) the court copy of the order to be placed on the court's records.

(1a) If a restraining order is taken to have been served under section 55(3a), the respondent's copy and the respondent's endorsed copy is not required to be served under subsection (1)(a) but is to be delivered to the respondent.

(2) If an authorised person is to prepare and serve a telephone order the person is to prepare the order in the prescribed form in

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accordance with the instructions of the authorised magistrate who made the order and cause —

(a) the respondent's copy and the respondent's endorsement copy of the order to be served on the respondent;

(b) the applicant's copy of the order to be delivered to —

(i) the person seeking to be protected by the order; or

(ii) the parent or guardian of that person, where the parent or guardian made the application for the order on behalf of that person;

(c) the police copy of the order to be delivered to the Commissioner of Police; and

(d) the court copy of the order to be delivered to the Magistrates Court at the place where the authorised magistrate who made the order sits.

(3) The registrar of the Magistrates Court to which the court copy of the order is delivered under subsection (2)(d) is to cause the order to be delivered to the authorised magistrate who made it and a copy of it to be delivered —

(a) if the respondent is a child, to the Children's Court; or

(b) otherwise, to the Magistrates Court,

at the place nearest to where the respondent lives.

(3a) The registrar of the court to which an order is delivered under subsection (3) is to register it.

(4) If a police officer is to prepare and serve a police order the officer is to prepare the order in the prescribed form and cause —

(a) a copy of the order to be given to the person to be bound by it;

(b) a copy of the order to be given to the person for whose benefit the order is to be made; and

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(c) the police copy of the order to be delivered to the Commissioner of Police.

[Section 10 amended by No. 38 of 2004 s. 10, 18(3) and 38(4); No. 59 of 2004 s. 123 and 124.]

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Part 2 — Violence restraining order

Division 1 — Violence restraining order

11. Violence restraining order to specify names of person bound, and person protected, by the order

A violence restraining order is to specify —

(a) the name of the person for whose benefit the order is made; and

(b) the name of the person on whose lawful activities and behaviour restraints are imposed by the order.

[Section 11 inserted by No. 38 of 2004 s. 11.]

11A. When violence restraining orders may be made

A court may make a violence restraining order if it is satisfied that —

(a) the respondent has committed an act of abuse against a person seeking to be protected and the respondent is likely again to commit such an act against that person; or

(b) a person seeking to be protected, or a person who has applied for the order on behalf of that person, reasonably fears that the respondent will commit an act of abuse against the person seeking to be protected,

and that making a violence restraining order is appropriate in the circumstances.

[Section 11A inserted by No. 38 of 2004 s. 11.]

11B. Violence restraining order may be made for child in circumstances of family and domestic violence

A violence restraining order may be made for the benefit of a child if the court is satisfied that —

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(a) the child has been exposed to an act of family and domestic violence committed by or against a person with whom the child is in a family and domestic relationship and the child is likely again to be exposed to such an act; or

(b) the applicant, the child or a person with whom the child is in a family and domestic relationship reasonably fears that the child will be exposed to an act of family and domestic violence committed by or against a person with whom the child is in a family and domestic relationship,

and that making a violence restraining order is appropriate in the circumstances.

[Section 11B inserted by No. 38 of 2004 s. 11.]

12. Matters to be considered by court

(1) When considering whether to make a violence restraining order and the terms of the order a court is to have regard to —

(a) the need to ensure that the person seeking to be protected is protected from acts of abuse;

(b) the need to prevent behaviour that could reasonably be expected to cause fear that the person seeking to be protected will have committed against him or her an act of abuse;

(ba) the need to ensure that children are not exposed to acts of family and domestic violence;

(c) the wellbeing of children who are likely to be affected by the respondent's behaviour or the operation of the proposed order;

(d) the accommodation needs of the respondent and the person seeking to be protected;

(da) the past history of the respondent and the person seeking to be protected with respect to applications under this

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Act, whether in relation to the same act or persons as are before the court or not;

(e) hardship that may be caused to the respondent if the order is made;

(f) any family orders;

(g) other current legal proceedings involving the respondent or the person seeking to be protected;

(h) any criminal record of the respondent;

(i) any previous similar behaviour of the respondent whether in relation to the person seeking to be protected or otherwise; and

(j) other matters the court considers relevant.

(2) A court is to have regard to the matters set out in subsection (1)(a), (b), (ba) and (c) as being of primary importance.

(3) In having regard to the matters set out in subsection (1)(da), a past history of applications under this Act is not to be regarded in itself as sufficient to give rise to any presumption as to the merits of the application.

(4) The Commissioner of Police, is, where practicable, to provide to a court any information in the possession of the Police Force of Western Australia referred to in subsection (1)(h) or (i) that is relevant to a matter before the court.

[Section 12 amended by No. 38 of 2004 s. 12, 54, 55, 56 and 57(5).]

13. Restraints on respondent

(1) In making a violence restraining order a court may impose such restraints on the lawful activities and behaviour of the respondent as the court considers appropriate to prevent the respondent —

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(a) committing an act of abuse against the person seeking to be protected;

(aa) if the person seeking to be protected by the order is a child, exposing a child to an act of abuse committed by the respondent; or

(b) behaving in a manner that could reasonably be expected to cause fear that the respondent will commit such an act.

(2) Without limiting the restraints that may be imposed, a court may restrain the respondent from doing all or any of the following —

(a) being on or near premises where the person seeking to be protected lives or works;

(b) being on or near specified premises or in a specified locality or place;

(c) approaching within a specified distance of the person seeking to be protected;

(d) communicating, or attempting to communicate, (by whatever means) with the person seeking to be protected;

(e) preventing the person seeking to be protected from obtaining and using personal property reasonably needed by the person seeking to be protected, even if the respondent is the owner of, or has a right to be in possession of, the property;

(f) causing or allowing another person to engage in conduct of a type referred to in paragraphs (a) to (e).

(3) A restraint may be imposed on the respondent absolutely or on such terms as the court considers appropriate.

(4) A violence restraining order may restrain the respondent from entering or remaining in a place, or restrict the respondent's access to a place, even if the respondent has a legal or equitable right to be at the place.

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(5) If a violence restraining order imposes a restraint referred to in subsection (4) or for some other reason the court is satisfied that it is necessary to do so, the court is to ensure that the order makes provision for the person seeking to be protected or the respondent to recover personal, and other prescribed, property from a place specified in the order —

(a) in the manner set out by the court in the order; or

(b) in accordance with the procedures set out in the regulations.

[Section 13 amended by No. 38 of 2004 s. 13, 54 and 56.]

14. Firearms order

(1) Subject to subsection (5), every violence restraining order includes a restraint prohibiting the person who is bound by the order from —

(a) being in possession of a firearm or firearms licence; and

(b) obtaining a firearms licence.

(2) A person who is bound by a violence restraining order must give up possession, to the prescribed person and in the prescribed manner, of all firearms and firearms licences held by the person.

(3) A firearm or firearms licence given up under subsection (2) is to be dealt with in the prescribed manner.

(4) If a person who is bound by a violence restraining order —

(a) was lawfully in possession of a firearm or firearms licence before the order was made; and

(b) gives up possession of the firearm or firearms licence under subsection (2),

the person does not breach the order by reason only of being in possession of the firearm or firearms licence for the period necessary to comply with subsection (2).

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(5) When making a violence restraining order a court may permit the respondent to have possession of a firearm, and, if necessary, a firearms licence relating to it, on such conditions as the court thinks fit, if the court is satisfied that —

(a) the respondent cannot carry on the respondent's usual occupation unless the respondent is permitted to have possession of a firearm;

(b) the behaviour in relation to which the order was sought did not involve the use, or threatened use, of a firearm; and

(c) the safety of any person, or their perception of their safety, is not likely to be adversely affected by the respondent's possession of a firearm.

(6) If, under subsection (5), a court permits a respondent to have possession of a firearm, the court must make that possession subject to such conditions (in addition to any conditions imposed under that subsection) as the applicant or person seeking to be protected requests unless the court considers the requested conditions to be unreasonable.

(7) When making a violence restraining order a court may shorten the prescribed period within which the respondent must give up possession of firearms and firearms licences.

[Section 14 amended by No. 38 of 2004 s. 55.]

*[**15.** Repealed by No. 38 of 2004 s. 43(2).]*

16. Duration of a violence restraining order

(1) Subject to subsection (2), a violence restraining order comes into force when it is served on the person who is bound by the order, or if a later time is specified in the order, at that time.

(2) If a telephone order or an order made under section 29(1)(a) is specified to have a duration of 72 hours or less and is not served on the respondent within 24 hours of the order being made, the order lapses.

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(3) Subject to subsection (2) and section 24(3)(b), if a telephone order or an order made under section 29(1)(a) is specified to have a duration of 72 hours or less, the order remains in force for the period specified in it.

(4) Subject to section 24(3)(b), an interim order remains in force until one of the following occurs —

(a) a final order in respect of the matter comes into force;

(b) a final order hearing in respect of the matter is concluded without a final order being made;

(c) the interim order is cancelled or expires; or

(d) in the case of a telephone order, 3 months elapse from the time the order came into force.

(5) Subject to Part 5, a final violence restraining order remains in force for —

(a) in the case of an order made at a final order hearing —

(i) the period specified in the order; or

(ii) if no period is specified, 2 years,

from the date on which the final order came into force;

(b) in the case of a telephone order which became a final order under section 32 — 3 months from when the telephone order came into force or such shorter period as is specified in that order; and

(c) in the case of any other interim order which becomes a final order under section 32 —

(i) the period specified in it; or

(ii) if no period is specified, 2 years,

from the date on which the interim order came into force.

[Section 16 amended by No. 38 of 2004 s. 14.]

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Division 2 — Telephone applications

17. Authorised magistrates

(1) The Chief Magistrate of the Magistrates Court is to —

(a) authorise such magistrates as he or she thinks fit to hear telephone applications; and

(b) ensure that, as far as practicable, there is at least one such authorised magistrate available at all times.

[(2) repealed]

[Section 17 amended by No. 59 of 2004 s. 124.]

18. Who can apply

(1) An application for a violence restraining order may be made under this Division by —

(a) an authorised person on behalf of the person seeking to be protected; or

(b) the person seeking to be protected if he or she is introduced to the authorised magistrate by an authorised person.

(2) An application for a violence restraining order may also be made under this Division —

(a) if the person seeking to be protected is a child, by a parent or guardian of the child, or a child welfare officer, on behalf of the child; or

(b) if the person seeking to be protected is a person for whom a guardian has been appointed under the *Guardianship and Administration Act 1990,* by the guardian on behalf of the person,

if the parent, child welfare officer or guardian is introduced to the authorised magistrate by an authorised person.

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(3) An authorised person is not to make an application, or introduce a person to make an application, under subsection (1) or (2) unless the authorised person reasonably believes that the case meets the criteria set out in section 20(1)(a) or (b).

[Section 18 inserted by No. 22 of 2000 s. 6; amended by No. 38 of 2004 s. 18(4) and 55.]

19. How to make a telephone application

An application under this Division for a violence restraining order —

(a) is to be made to an authorised magistrate;

(b) may be made by telephone, fax, radio, video conference, electronic mail or another similar method, or any combination of such methods; and

(c) need not be in a particular form.

20. When a telephone application may be heard

(1) An authorised magistrate may hear a telephone application if the authorised magistrate is satisfied that —

(a) it would not be practical for an application for a violence restraining order to be made in person because of —

(i) the time when, or the location at which, the behaviour complained of occurred, is occurring or is likely to occur; or

(ii) the urgency with which the order is required;

or

(b) there is some other factor that justifies making a violence restraining order as a matter of urgency and without requiring the applicant to appear in person before a court.

(2) If an authorised magistrate is not satisfied of those matters, the authorised magistrate is to dismiss the application.

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(3) The dismissal of a telephone application under subsection (2), or the failure by a police officer to make a police order, does not prevent an application for a violence restraining order being made in person in relation to the same facts.

[Section 20 amended by No. 38 of 2004 s. 18(5).]

21. How hearing to be conducted

(1) The hearing of a telephone application may be conducted by telephone, fax, radio, video conference, electronic mail or another similar method, or any combination of such methods, as the authorised magistrate considers appropriate.

(2) Subject to subsection (3)(b), the hearing of a telephone application is to be conducted in the absence of the respondent.

(3) An authorised magistrate hearing a telephone application may communicate with —

(a) the applicant; and

(b) if the authorised magistrate considers it necessary to do so, and it will not unreasonably delay the hearing, the respondent and any other person.

(4) An authorised magistrate to whom a telephone application is made is to make a written record of —

(a) the name and address of the applicant, the respondent and, if the applicant is making the application on behalf of another person, the other person;

(b) whether the authorised magistrate is satisfied the criteria set out in section 20(1)(a) or (b) have been met and the reasons for that decision;

(c) if the authorised magistrate is satisfied those criteria have been met, the grounds for the application; and

(d) the terms of any order made under section 23(1), including the day and time the order was made.

[Section 21 amended by No. 38 of 2004 s. 18(6).]

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*[**22.** Repealed by No. 38 of 2004 s. 43(3).]*

23. Orders at telephone hearing

(1) An authorised magistrate hearing a telephone application is to —

(a) make a telephone order;

(b) dismiss the application; or

(c) adjourn the matter to a mention hearing.

(2) If the authorised magistrate adjourns the matter under subsection (1)(c) the registrar is to fix a hearing and summons the respondent to the hearing.

(3) If the duration of a telephone order is more than 72 hours the order is an interim order and Division 4 applies.

[Section 23 amended by No. 59 of 2004 s. 123.]

24. Telephone order to be prepared and served

(1) If an authorised magistrate makes a telephone order the authorised person who made the application or introduced the applicant is to prepare and serve the order.

(2) On receipt of the court copy of the order, the authorised magistrate is to check the order and, if it is correct, sign it and cause the signed copy to be kept on the court's records.

(3) If there is a discrepancy between the order made by the authorised magistrate and the written order prepared by the authorised person —

(a) as soon as practicable after becoming aware of the discrepancy the registrar is to prepare a new telephone order correcting the discrepancy and serve that order;

(b) the original order (as prepared by the authorised person) is cancelled with effect from the time when the order prepared under paragraph (a) is served; and

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(c) the telephone order served under paragraph (a) remains in force for the period for which the original order would have remained in force if it had not been cancelled.

(4) Section 16(2) does not apply to a telephone order served under subsection (3)(a).

[Section 24 amended by No. 59 of 2004 s. 123.]

Division 3 — Applications in person to a court

[Heading amended by No. 38 of 2004 s. 18(7).]

25. Application

(1) An application for a violence restraining order may be made in person by —

(a) the person seeking to be protected; or

(b) a police officer on behalf of that person.

(2) An application for a violence restraining order may also be made —

(a) if the person seeking to be protected is a child, by a parent or guardian of the child, or a child welfare officer, on behalf of the child; or

(b) if the person seeking to be protected is a person for whom a guardian has been appointed under the *Guardianship and Administration Act 1990*, by the guardian on behalf of the person.

(3) An application for a violence restraining order made in person is to be made in the prescribed form to —

(a) if the respondent is a child, the Children's Court; or

(b) otherwise, the Magistrates Court.

[Section 25 inserted by No. 22 of 2000 s. 7; amended by No. 38 of 2004 s. 55; No. 59 of 2004 s. 124.]

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26. Applicant to choose whether to have hearing in absence of respondent

(1) In an application under section 25 the applicant must indicate whether the applicant wishes to —

(a) have the first hearing of the application held in the absence of the respondent; or

(b) proceed directly to a defended hearing.

(2) If the applicant wishes to have the first hearing held in the absence of the respondent, the registrar is to fix a hearing for that purpose.

(3) If the applicant wishes to proceed directly to a defended hearing, the registrar is to fix a hearing and summons the respondent to the hearing.

[Section 26 amended by No. 59 of 2004 s. 123.]

27. Attendance at hearing in absence of respondent

(1) A hearing fixed under section 26(2) is to be held in the absence of the respondent.

(2) If an applicant does not attend a hearing fixed under section 26(2) and has not filed an affidavit under section 28, the court —

(a) if it is satisfied the applicant was notified of the hearing, is to dismiss the application; or

(b) otherwise, is to adjourn the hearing.

(3) If an applicant does not attend a hearing fixed under section 26(2) but, before the time fixed for the hearing, has filed an affidavit under section 28, the court is to hear the matter in the absence of the applicant.

(4) A hearing fixed under section 26(2) is to be heard in closed court and, at that hearing, the person seeking to be protected is entitled to have near to him or her a person, or more than one person, to provide support.

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(5) A person to provide support is to be approved by the court and is not to be a person who is a witness in, or a party to, the proceedings.

[Section 27 amended by No. 38 of 2004 s. 15.]

28. Affidavit evidence

(1) At a hearing fixed under section 26(2) the applicant may provide evidence by affidavit in support of the application and the court must accept such affidavit in support of the matters alleged in the application and may determine the application on that evidence.

(2) The court may accept a faxed copy of an affidavit if it considers it appropriate.

[Section 28 amended by No. 38 of 2004 s. 16.]

29. Order at hearing in absence of respondent

(1) Subject to section 27, at a hearing fixed under section 26(2) the court may —

(a) make a violence restraining order;

(b) dismiss the application;

(c) adjourn the matter to a mention hearing; or

(d) at the request of the applicant, discontinue the application.

(2) If the court adjourns the matter under subsection (1)(c) the registrar is to fix a hearing and summons the respondent to the hearing.

(3) If the duration of a violence restraining order made under subsection (1)(a) is more than 72 hours the order is an interim order and Division 4 applies.

[Section 29 amended by No. 38 of 2004 s. 17; No. 59 of 2004 s. 123.]

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30. Order to be prepared and served

The registrar is to prepare and serve an order made under section 29(1)(a).

[Section 30 amended by No. 59 of 2004 s. 123.]

Division 3A — Police officers may make police orders where family and domestic violence

[Heading inserted by No. 38 of 2004 s. 18(1).]

30A. When a police order may be made

(1) A police officer may make a police order in accordance with this Division if the officer reasonably believes that the case meets the criteria set out in section 20(1)(a) or (b) as if the order were to be a violence restraining order and —

(a) if the officer reasonably believes that —

(i) a person has committed an act of family and domestic violence and is likely again to commit such an act; or

(ii) a child has been exposed to an act of family and domestic violence committed by or against a person with whom the child is in a family and domestic relationship and the child is likely again to be exposed to such an act;

or

(b) if the officer reasonably fears, or reasonably believes that another person reasonably fears, that —

(i) a person will have committed against him or her an act of family and domestic violence; or

(ii) a child will be exposed to an act of family and domestic violence committed by or against a person with whom the child is in a family and domestic relationship,

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and that making a police order is necessary to ensure the safety of a person.

(2) A police officer may make a police order whether or not an application for an order has been made.

(3) A police officer must not make a police order if a telephone application has been dismissed under section 23(1)(b) in relation to the same facts.

[Section 30A inserted by No. 38 of 2004 s. 18(1).]

30B. Matters to be considered by police officer

In considering whether to make a police order, and the terms of a police order, a police officer is to have regard to —

(a) the need to ensure that a person is protected from acts of family and domestic violence;

(b) the need to prevent behaviour that could reasonably be expected to cause fear that a person will have committed against him or her an act of family and domestic violence;

(c) the need to ensure that children are not exposed to acts of family and domestic violence;

(d) the wellbeing of children likely to be affected by the behaviour of the persons involved or the operation of a proposed order;

(e) the accommodation needs of the persons involved;

(f) hardship that may be caused if the order is made;

(g) any similar behaviour by any person involved, whether in relation to the same person or otherwise; and

(h) any other matter the police officer considers relevant.

[Section 30B inserted by No. 38 of 2004 s. 18(1); amended by No. 38 of 2004 s. 57(5).]

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30C. Restraints that may be imposed

(1) In making a police order a police officer may impose such restraints on the lawful activities and behaviour of a person as the officer considers appropriate to prevent a person —

(a) committing an act of family and domestic violence; or

(b) behaving in a manner that could reasonably be expected to cause a person to fear that such an act will be committed.

(2) Without limiting the restraints that may be imposed, a police officer may restrain a person from doing all or any of the following —

(a) being on or near premises where a person lives or works;

(b) approaching within a specified distance of another person;

(c) causing or allowing another person to engage in conduct of a type referred to in paragraph (a) or (b).

(3) A restraint may be imposed on a person absolutely or on such terms as the police officer considers appropriate.

(4) A police order may restrain a person from entering or remaining in a place, or restrict a person's access to a place, even if the person has a legal or equitable right to be at the place.

(5) A police officer making a police order is to ensure that the order made is as least restrictive of the personal rights and liberties of the person to be bound by the order as possible while still ensuring that the person for whose benefit the order is made is protected from acts of abuse.

[Section 30C inserted by No. 38 of 2004 s. 18(1).]

30D. Children not to be restrained by police orders

A police order cannot impose restraints on a child.

[Section 30D inserted by No. 38 of 2004 s. 18(1).]

Extract from www.slp.wa.gov.au, see that website for further information

30E. Police order to be prepared, served and explained

(1) A police officer who makes an order under this Division is to prepare and serve the order.

(2) A police order is to specify —

(a) the name of the person for whose benefit the order is made; and

(b) the name of the person on whose lawful activities and behaviour restraints are imposed by the order.

(3) A police officer who makes a police order is to explain at the time the order is made, or served, to the person who is bound by the order, and the person for whose benefit the order is made —

(a) the purpose, duration, terms and effects of the order;

(b) the consequences that may follow if the person who is bound by the order contravenes the order;

(c) that counselling and support service may be of assistance, and where appropriate, the police officer is to refer the person to specific services.

(4) If a person to whom an explanation is to be given under subsection (3) does not readily understand English, or the police officer is not satisfied that the person understood the explanation, the officer is, as far as practicable, to arrange for someone else to give the explanation to the person in a way that the person can understand.

(5) A police order is not invalid merely because —

(a) the police officer did not give the explanation referred to in subsection (3) or arrange for someone else to give the explanation; or

(b) a person whom the police officer arranged to give the explanation did not give the explanation.

[Section 30E inserted by No. 38 of 2004 s. 18(1).]

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30F. Duration of police orders

(1) A police order is to be either a 24 hour police order or a 72 hour police order.

(2) A 24 hour police order —

(a) remains in force for 24 hours after it has been served on the person to be bound by it; and

(b) if it is not served on the person to be bound by it within 2 hours of the order being made, the order lapses.

(3) A 72 hour police order —

(a) remains in force for 72 hours (or such shorter time as is specified in the order which, in the opinion of the police officer, would be a sufficient time for an application to be made to a court under Division 3) after it has been served on the person to be bound by it; and

(b) lapses if it is not served on the person to be bound by it within 24 hours of the order being made.

(4) A police order is to specify the duration of the order.

[Section 30F inserted by No. 38 of 2004 s. 18(1).]

30G. Consent required for 72 hour police orders

A 72 hour police order cannot be made unless consent to the making of the order has been given —

(a) by the person who is to be protected by the order; or

(b) if the person who is to be protected by the order —

(i) is a child, by a parent or guardian of the child, or a child welfare officer; or

(ii) is a person for whom a guardian has been appointed under the *Guardianship and Administration Act 1990*, by the guardian.

[Section 30G inserted by No. 38 of 2004 s. 18(1).]

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30H. Order not to be renewed by police officer

The duration of a police order cannot be extended or renewed and another police order cannot be made in relation to the same facts.

[Section 30H inserted by No. 38 of 2004 s. 18(1).]

30I. Review of Division

(1) The Minister is to carry out a review of the operation and effectiveness of this Division as soon as is practicable after the expiration of 24 months from the commencement of section 18 of the *Acts Amendment (Family and Domestic Violence) Act 2004* and in the course of that review the Minister is to consider and have regard to —

(a) the effectiveness of this Division;

(b) the need for the retention of this Division; and

(c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Division.

(2) Without limiting subsection (1), in carrying out a review under that subsection, the Minister is to consult with and have regard to the views of the Commissioner of Police.

(3) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared, is to cause it to be laid before each House of Parliament.

[Section 30I inserted by No. 38 of 2004 s. 18(1).]

Division 4 — Procedure when interim order made

31. 21 days for respondent to object

Within 21 days of being served with an interim order a respondent must complete the respondent's endorsement copy of the order in accordance with the instructions on it, and return it to the registrar.

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[Section 31 amended by No. 59 of 2004 s. 123.]

32. If respondent does not object to final order being made

(1) If a respondent —

(a) returns the respondent's endorsement copy of an interim order in accordance with section 31; and

(b) indicates on it that the respondent does not object to the interim order becoming final,

the interim order becomes a final order with the same terms as the interim order.

(2) If a respondent does not return the respondent's endorsement copy of an interim order in accordance with section 31, the interim order becomes a final order with the same terms as the interim order.

(3) A final order under this section comes into force —

(a) in the case of an order under subsection (1), on the day on which the registrar receives the returned copy of the order; and

(b) in the case of an order under subsection (2), at the end of the 21 day period referred to in section 31.

(4) The registrar is to notify the respondent, the applicant and the Commissioner of Police when an order becomes a final order under this section.

[Section 32 amended by No. 59 of 2004 s. 123.]

33. If respondent objects to final order being made

(1) If a respondent —

(a) returns the respondent's endorsement copy of an interim order in accordance with section 31; and

(b) indicates on it that the respondent objects to the interim order becoming final,

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the registrar is to fix a hearing and notify all parties of the hearing.

(2) If the interim order includes a restraint on the respondent that prohibits or restricts the respondent from —

(a) being on premises where the respondent usually resides;

(b) having contact with the respondent's children;

(c) being on premises where the respondent usually works, or otherwise carrying on the respondent's usual occupation; or

(d) being in possession of a firearm that the respondent reasonably needs in order to carry on the respondent's usual occupation,

the registrar is to ensure that the date fixed under subsection (1) for the final order hearing is as soon as practicable after the respondent returns the respondent's endorsement copy of the interim order.

[Section 33 amended by No. 59 of 2004 s. 123.]

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Part 3 — Misconduct restraining order

34. Grounds for a misconduct restraining order

A court may make a misconduct restraining order if it is satisfied that —

(a) unless restrained, the respondent is likely to —

(i) behave in a manner that could reasonably be expected to be intimidating or offensive to the person seeking to be protected and that would, in fact, intimidate or offend the person seeking to be protected;

(ii) cause damage to property owned by, or in the possession of, the person seeking to be protected; or

(iii) behave in a manner that is, or is likely to lead to, a breach of the peace;

and

(b) granting a misconduct restraining order is appropriate in the circumstances.

[Section 34 amended by No. 38 of 2004 s. 54 and 56.]

35. Matters to be considered by court

(1) When considering whether to make a misconduct restraining order for reasons referred to in section 34(a)(i) or (ii) and the terms of the order a court is to have regard to —

(a) the need to ensure that —

(i) the person seeking to be protected is protected from intimidatory or offensive behaviour; and

(ii) property owned by, or in the possession of, the person seeking to be protected is protected from damage;

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(b) the wellbeing of children who are likely to be affected by the respondent's behaviour or the operation of the proposed order;

(c) the accommodation needs of the respondent and the person seeking to be protected;

(d) hardship that may be caused to the respondent if the order is made;

[(e) deleted]

(f) other current legal proceedings involving the respondent or the person seeking to be protected;

(g) any criminal record of the respondent;

(h) any previous similar behaviour of the respondent whether in relation to the person seeking to be protected or otherwise; and

(i) other matters the court considers relevant.

(2) When considering whether to make a misconduct restraining order for reasons referred to in section 34(a)(iii) and the terms of the order a court is to have regard to —

(a) the need to ensure that the public is protected from breaches of the peace;

(b) the wellbeing of children who are likely to be affected by the respondent's behaviour or the operation of the proposed order;

(c) the accommodation needs of the respondent;

(d) hardship that may be caused to the respondent if the order is made;

[(e) deleted]

(f) any criminal record of the respondent;

(g) other current legal proceedings involving the respondent; and

(h) other matters the court considers relevant.

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(3) A court is to have regard to the matters set out in subsection (1)(a) and (b) or (2)(a) and (b) as being of primary importance.

[Section 35 amended by No. 38 of 2004 s. 19, 54, 55, 56 and 57(5).]

35A. Misconduct restraining orders not for persons in a family and domestic relationship

A court is not to make a misconduct restraining order unless it is satisfied that the person seeking to be protected by the order and the person bound by the order are not in a family and domestic relationship with each other.

[Section 35A inserted by No. 38 of 2004 s. 20.]

36. Restraints on respondent

(1) In making a misconduct restraining order a court may impose such restraints on the lawful activities and behaviour of the respondent as the court considers appropriate to prevent the respondent —

(a) behaving in a manner that could reasonably be expected to be intimidating or offensive to the person seeking to be protected and that would, in fact, intimidate or offend the person seeking to be protected;

(b) causing damage to property owned by, or in the possession of, the person seeking to be protected; or

(c) behaving in a manner that is, or is likely to lead to, a breach of the peace.

(2) Without limiting the restraints that may be imposed for the purposes of subsection (1)(a) or (b), a court may restrain the respondent from doing all or any of the following —

(a) being on or near premises where the person seeking to be protected lives or works;

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(b) being on or near specified premises or in a specified locality or place;

(c) approaching within a specified distance of the person seeking to be protected;

(d) communicating, or attempting to communicate, (by whatever means) with the person seeking to be protected;

[(e) deleted]

(f) being in possession of a firearm or firearms licence, or applying for a firearms licence;

(g) causing or allowing another person to engage in conduct of a type referred to in paragraphs (a) to (f).

(3) Without limiting the restraints that may be imposed for the purposes of subsection (1)(c), a court may restrain the respondent from doing all or any of the following —

(a) being on or near specified premises or in a specified locality or place;

(b) engaging in behaviour of a specified kind, either at all or in a specified place, at a specified time or in a specified manner; or

(c) being in possession of a firearm or firearms licence, or applying for a firearms licence.

(4) A restraint may be imposed on the respondent absolutely or on such terms as the court considers appropriate.

(5) A misconduct restraining order may restrain the respondent from entering or remaining in a place, or restrict the respondent's access to a place, even if the respondent has a legal or equitable right to be at the place.

(6) If a misconduct restraining order restrains the respondent from being in possession of a firearm or firearms licence, or applying for a firearms licence, sections 14 and 62E apply as if the misconduct restraining order were a violence restraining order.

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[Section 36 amended by No. 38 of 2004 s. 21, 43(4), 54 and 56.]

37. Duration of a misconduct restraining order

(1) A misconduct restraining order comes into force when it is served on the respondent, or if a later time is specified in the order, at that time.

(2) Subject to Part 5, a misconduct restraining order remains in force for the period specified in the order or, if no period is specified, for one year from when it came into force.

38. Application

(1) An application for a misconduct restraining order may be made in person by —

(a) the person seeking to be protected; or

(b) a police officer on behalf of that person.

(2) An application for a misconduct restraining order may also be made —

(a) if the person seeking to be protected is a child, by a parent or guardian of the child, or a child welfare officer, on behalf of the child; or

(b) if the person seeking to be protected is a person for whom a guardian has been appointed under the *Guardianship and Administration Act 1990*, by the guardian on behalf of the person.

(3) If there is no particular person seeking to be protected an application for a misconduct restraining order may be made by a police officer on behalf of the public generally.

(4) An application for a misconduct restraining order is to be made in the prescribed form to —

(a) if the respondent is a child, the Children's Court; or

(b) otherwise, the Magistrates Court.

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[Section 38 inserted by No. 22 of 2000 s. 8; amended by No. 38 of 2004 s. 55; No. 59 of 2004 s. 124.]

39. Registrar to fix hearing and issue summons

If an applicant makes an application for a misconduct restraining order the registrar is to fix a hearing and summons the respondent to the hearing.

[Section 39 amended by No. 59 of 2004 s. 123.]

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Part 4 — Hearings and evidence

[Heading amended by No. 38 of 2004 s. 22.]

Division 1 — Mention hearings

40. Attendance at hearing

(1) If an applicant does not attend a mention hearing, the court —

(a) if it is satisfied the applicant was notified of the hearing, is to dismiss the application; or

(b) otherwise, is to adjourn the hearing.

(2) If a respondent does not attend a mention hearing and the applicant does attend, the court —

(a) if it is satisfied the respondent was served with the summons requiring the respondent to attend the hearing, is to hear the matter in the absence of the respondent; or

(b) otherwise, is to adjourn the hearing.

(3) When hearing a matter in the absence of the respondent, the court is to —

(a) make a restraining order;

(b) dismiss the application;

(c) direct the registrar to fix a hearing and summons the respondent to attend the hearing; or

(d) adjourn the mention hearing.

(4) The registrar is to prepare and serve an order made under subsection (3)(a).

[Section 40 amended by No. 10 of 1998 s. 62(2); No. 59 of 2004 s. 123.]

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41. Consent order or final order hearing to be fixed

(1) If, at a mention hearing, the respondent consents to a final order being made, the court may make the order by consent without being satisfied there are grounds for making the order.

(2) If a respondent consents to a final order being made, the consent does not constitute an admission by the respondent of all or any of the matters alleged in the application.

(3) The registrar is to prepare and serve a final order made by consent under subsection (1).

(4) Subject to section 40, at a mention hearing at which a consent order is not made, the court is to direct the registrar to fix a hearing and summons the respondent to attend the hearing.

[Section 41 amended by No. 59 of 2004 s. 123.]

Division 2 — Final order hearings

42. Attendance at final order hearing

(1) If an applicant does not attend a final order hearing, the court —

(a) if it is satisfied the applicant was notified of the hearing, is to dismiss the application; or

(b) otherwise, is to adjourn the hearing.

(2) If a respondent does not attend a final order hearing and the applicant does attend, the court —

(a) if it is satisfied that the respondent was —

(i) in the case of a hearing fixed under section 33, notified of the hearing; or

(ii) in the case of a hearing fixed under section 40(3)(c), 41(4) or 43A(7)(b), served with a summons requiring the respondent to attend the hearing,

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is, subject to subsection (3), to hear the matter in the absence of the respondent; or

(b) otherwise, is to adjourn the hearing.

(3) If —

(a) a respondent does not attend a final order hearing;

(b) the applicant does attend;

(c) the court is satisfied in accordance with subsection (2)(a); and

(d) an earlier restraining order is in force in respect of the matter,

the court is to make a final order in the same terms as the earlier order unless any new ground or matter is raised by the applicant at the final order hearing.

(4) At a final order hearing —

(a) attended by the applicant but not by the respondent; or

(b) attended by both the applicant and the respondent,

subject to the rules of evidence, a court is to receive as evidence any record of evidence given (including any affidavit filed) at a prior hearing in relation to the application, except that such record of evidence is not to be received as evidence unless the person who gave the evidence is available to be cross-examined on that evidence.

[Section 42 amended by No. 22 of 2000 s. 9; No. 38 of 2004 s. 23 and 25(4).]

43. Making a final order

(1) Subject to section 42, at a final order hearing a court may make a final order of the type, and with the terms, the court considers appropriate.

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(2) If, at a final order hearing, the respondent consents to a final order being made, the court may make the order by consent without being satisfied there are grounds for making the order.

(3) If a respondent consents to a final order being made, the consent does not constitute an admission by the respondent of all or any of the matters alleged in the application.

[Section 43 amended by No. 38 of 2004 s. 24.]

43A. Decision under s. 42 in default of appearance may be set aside

(1) In this section —

"respondent", in respect of a decision to dismiss an application in default of appearance of the applicant, means the person who was the respondent at the final order hearing at which the decision was dismissed.

(2) Where the court —

(a) has dismissed an application in default of appearance of the applicant under section 42(1)(a), that applicant may, within 21 days of becoming aware that the application was dismissed; or

(b) has made a restraining order under section 42 in default of appearance of the respondent, that respondent may within 21 days of the order being served on the respondent,

or such further period as the court may allow at a hearing fixed under subsection (3), apply to the court, in the prescribed form setting out the grounds of the application, to have that decision set aside.

(3) On receiving an application under subsection (2) the registrar is to fix a hearing, to be held in the absence of the other party to the proceedings, at which, subject to subsection (4), the court —

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(a) where the application was made out of time, is to grant leave for the person to continue the application out of time if satisfied that there was a reasonable excuse for not commencing the application within the time allowed; and

(b) after taking into account the grounds of the application, is to —

(i) adjourn the hearing of the matter to allow the other party to oppose the matter if satisfied that the person who made the application may have had a reasonable cause not to attend the hearing at which the application was dismissed, or the restraining order made; or

(ii) dismiss the application.

(4) If the applicant does not attend a hearing fixed under subsection (3), the court, if it is satisfied that the applicant was notified of the hearing, is to dismiss the application.

(5) If the court adjourns the matter under subsection (3)(b)(i) the registrar is to fix a hearing and summons the other party to the hearing.

(6) At a hearing fixed under subsection (5), where the other party is present, or if the other party is not present the court is satisfied the other party was served with the summons, the court is to hear the matter and —

(a) if satisfied that the applicant had reasonable cause not to attend the hearing at which the application was dismissed or the restraining order made, is to set aside the decision made under section 42; or

(b) is to dismiss the application.

(7) Where, under subsection (6)(a), the court sets aside a decision made under section 42 —

(a) if, immediately before the hearing at which the decision under section 42 was made, an earlier order was in force

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in respect of the matter, the court is to make an interim order in the same terms as the earlier order, unless any new ground or matter is raised at the hearing fixed under subsection (3) or (5); and

(b) the registrar is to fix a hearing as soon as is practicable and summons the respondent to the hearing.

(8) The registrar is to prepare and serve an interim order made under subsection (7)(a).

(9) At a hearing fixed under subsection (7)(b) the court is to re-hear the matter under section 42.

[Section 43A inserted by No. 38 of 2004 s. 25(1); amended by No. 59 of 2004 s. 123.]

44. Order to be prepared and served

The registrar is to prepare and serve a final order made at a final order hearing.

[Section 44 amended by No. 59 of 2004 s. 123.]

Division 3 — Evidence

[Heading inserted by No. 38 of 2004 s. 26.]

44A. Rules of evidence not to apply at ex parte hearing

(1) At a hearing fixed under section 26(2) —

(a) a court is not bound by the rules of evidence;

(b) a court may inform itself on any matter in such manner as it considers appropriate; and

(c) without limiting paragraph (b), evidence of a representation about a matter that is relevant to the application is admissible as evidence, despite the rule against hearsay.

(2) The court may give such weight as it thinks fit to evidence admitted under subsection (1)(c).

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(3) In this section —

"representation" includes an express or implied representation, whether oral or in writing, and a representation inferred from conduct.

[Section 44A inserted by No. 38 of 2004 s. 26.]

44B. Access to affidavit evidence

Subject to section 70, at the request of a party to an application, the registrar of the court where the application was made is to provide to the person a copy of any affidavit received in evidence in relation to the application.

[Section 44B inserted by No. 38 of 2004 s. 26; amended by No. 59 of 2004 s. 123.]

44C. Cross-examination of certain persons

(1) If in any proceedings under this Act a respondent, or a person who is bound by an order —

(a) is not represented; and

(b) wishes to cross-examine a person with whom the examiner is in a family and domestic relationship or an imagined personal relationship,

the court is to order that the examiner —

(c) is not entitled to do so directly; but

(d) may put any question to the person to be examined by stating the question to a judicial officer or a person approved by the court,

and that person is to repeat the question accurately to the person to be examined.

(2) Subsection (1) does not apply —

(a) if —

(i) the person to be examined requests that the order not be made; and

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(ii) the court considers it appropriate in all the circumstances for the order not to be made;

or

(b) if the court is of the opinion that it is not just or desirable for such an order to be made.

[Section 44C inserted by No. 38 of 2004 s. 26.]

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Part 5 — Variation or cancellation

45. Application

(1) An application to vary or cancel a restraining order may be made by —

(a) the person protected by the order;

(b) a police officer on behalf of the person protected by the order; or

(c) the person bound by the order.

(2) An application to vary or cancel a restraining order may also be made —

(a) if the person protected by the order is a child, by a parent or guardian of the child, or a child welfare officer, on behalf of the child; or

(b) if the person protected by the order is a person for whom a guardian has been appointed under the *Guardianship and Administration Act 1990*, by the guardian on behalf of the person.

(3) If the original application for a final order was made by a police officer on behalf of the public generally an application to vary or cancel the order may be made by a police officer on behalf of the public generally.

(4) An application to vary or cancel a restraining order is to be made in the prescribed form to the court that made the order.

(5) The form prescribed under subsection (4) is to contain a brief summary of the effect of subsection (6).

(6) If an application is made to vary —

(a) a restraining order that is a final order; or

(b) a misconduct restraining order,

which includes an application to vary the order by extending the duration of the order, then, despite anything else in this Act, the

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order is not to expire before the application is determined if the person bound by the order has been given a copy of the application.

[Section 45 inserted by No. 22 of 2000 s. 10(1); amended by No. 38 of 2004 s. 27.]

45A. Application by CEO (child welfare)

(1) Where the CEO (child welfare) intervenes in proceedings under section 50D by making an application to vary or cancel a violence restraining order, the registrar is to fix a hearing for that purpose and notify the CEO (child welfare) and the parties to the application for the violence restraining order of the hearing.

(2) If the CEO (child welfare) has specified on an application referred to in subsection (1) that the application needs to be heard as a matter of urgency then the time fixed for the hearing under subsection (1) is to be as soon as possible.

(3) Sections 54(1) and 56(2) do not apply in respect of an urgent hearing fixed under subsection (2).

[Section 45A inserted by No. 38 of 2004 s. 28; amended by No. 59 of 2004 s. 123.]

46. Leave hearing

(1) If a person who is bound by a restraining order makes an application under section 45(1)(c) the registrar is to fix a hearing at which the court will consider whether to grant leave for the person to continue the application.

(2) The hearing fixed under subsection (1) is to be held in the absence of the person for whose benefit the order was made.

(3) If the person who is bound by the order does not attend a hearing fixed under subsection (1) the court —

(a) if it is satisfied the person was notified of the hearing, is to dismiss the application; or

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(b) otherwise, is to adjourn the hearing.

(4) Subject to subsection (3), at a hearing fixed under subsection (1) the court —

(a) is to grant leave for the person to continue the application to vary or cancel the order if it is satisfied that —

(i) there is evidence to support a claim that a person protected by the order has persistently invited or encouraged the applicant to breach the order, or by his or her actions has persistently attempted to cause the applicant to breach the order;

(ii) there has been a substantial change in the relevant circumstances since the order was made; or

(iii) in respect of an application to vary an interim order, there is evidence to support a claim that the restraints imposed by the order are causing the applicant serious and unnecessary hardship and that it is appropriate that the application is heard as a matter of urgency;

or

(b) otherwise, is to dismiss the application.

[Section 46 amended by No. 22 of 2000 s. 10(2); No. 38 of 2004 s. 29; No. 59 of 2004 s. 123.]

47. Registrar to issue summons

(1) If an application is made under section 45(1)(a) or (b), (2) or (3) the registrar is to fix a hearing for that purpose and summons the person who is bound by the order to the hearing.

(2) If a person who is bound by a restraining order is granted leave under section 46(4)(a) to continue an application the registrar is to fix a hearing for that purpose and summons to the hearing —

(a) if the person protected by the order is a child —

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[(i) deleted]

(ii) a parent or guardian of the child on behalf of the child; or

(iii) a child welfare officer on behalf of the child,

as the registrar considers appropriate;

(b) if the person protected by the order is a person for whom a guardian has been appointed under the *Guardianship and Administration Act 1990*, the guardian on behalf of the person; or

(c) otherwise, the person protected by the order.

(3) If a registrar fixes a hearing under subsection (2) in relation to a misconduct restraining order made for the benefit of the public generally, the registrar is to notify the Commissioner of Police of the hearing and a police officer, nominated by the Commissioner, may attend at the hearing as if the officer were the applicant and had been summonsed under subsection (2).

[Section 47 amended by No. 22 of 2000 s. 10(3) and 11; No. 38 of 2004 s. 30; No. 59 of 2004 s. 123.]

48. Attendance at hearing

(1) If a person who made an application under section 45 does not attend a hearing fixed under section 47, the court —

(a) if it is satisfied the person was notified of the hearing, is to dismiss the application; or

(b) otherwise, is to adjourn the hearing.

(2) If —

(a) a person summonsed under section 47(1) or 47(2) does not attend; or

(b) where the Commissioner of Police was notified under section 47(3), no police officer nominated under that section attends,

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a hearing fixed under that section and the person who made the application does attend, the court —

(c) if it is satisfied the summonsed person was served with the summons, or that the Commissioner of Police was notified of the hearing, is to hear the matter in the absence of the summonsed person or a nominated police officer; or

(d) otherwise, is to adjourn the hearing.

(3) At a hearing referred to in subsection (2) —

(a) attended by the applicant but not by a person summonsed under section 47(1) or 47(2) or a police officer nominated under section 47(3); or

(b) attended by both the applicant and by a person summonsed under section 47(1) or 47(2) or a police officer nominated under section 47(3),

subject to the rules of evidence, a court is to receive as evidence any record of evidence given (including any affidavit filed) at a prior hearing in relation to the application, or the application for the original restraining order, except that such record of evidence is not to be received as evidence unless the person who gave the evidence is available to be cross-examined on that evidence.

[Section 48 amended by No. 22 of 2000 s. 10(4); No. 38 of 2004 s. 31.]

48A. Ex parte application to cancel order by person protected by order

(1) In an application to cancel a restraining order made under section 45(1)(a) the applicant may indicate that he or she wishes to have the application heard in the absence of the person who is bound by the order.

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(2) If the applicant wishes to have the application heard in the absence of the person who is bound by the order, the registrar is to fix a hearing for that purpose.

[Section 48A inserted by No. 38 of 2004 s. 32; amended by No. 59 of 2004 s. 123.]

49. Variation or cancellation

(1) Subject to section 48, at a hearing fixed under section 47 the court may —

(a) dismiss the application;

(b) make a new restraining order in addition to the original restraining order;

(c) cancel the original restraining order and make a new restraining order; or

(d) cancel the original restraining order.

(1a) At a hearing fixed under section 48A the court may cancel the original restraining order.

(2) The registrar is to prepare and serve an order made under subsection (1) or (1a).

(3) If the court cancels a restraining order the registrar —

(a) if the person protected by the order was not present at the hearing, is to notify that person;

(b) if the person who was bound by the order was not present at the hearing, is to notify that person;

(c) is to notify the Commissioner of Police; and

(d) if the court is aware that the cancelled order is registered in a court of another State or Territory under a law equivalent to Part 7, is to notify the relevant officer of that court.

(4) The cancellation of an order under subsection (1) has effect —

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(a) if another order is made when the original order is cancelled, at the time the new order comes into force; or

(b) otherwise, at the conclusion of the hearing at which the order was cancelled.

(5) The cancellation of an order under subsection (1a) has effect at the conclusion of the hearing at which the order is cancelled.

[Section 49 amended by No. 38 of 2004 s. 33; No. 59 of 2004 s. 123.]

49A. Correcting minor errors in restraining orders

(1) Where a restraining order contains —

(a) a clerical mistake;

(b) an error arising from an accidental slip or omission; or

(c) a material mistake in the description of any person, thing or matter referred to in the order,

the registrar may correct the order, or the court, on an application by, or on behalf of, the person protected, or the person who is bound, by the order, may make an order correcting the restraining order.

(2) Subsection (1) does not apply if the correction would adversely affect the interests of the person protected, or the person who is bound, by the order.

[Section 49A inserted by No. 38 of 2004 s. 34; amended by No. 59 of 2004 s. 123.]

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Part 6 — General

Division 1 — Children

[Heading inserted by No. 38 of 2004 s. 35.]

50. No restraining orders against children under 10

No restraining order is to be made against a child who is under 10 years of age.

50A. Restraining order against child not to exceed 6 months

A restraining order that is a final order made against a child is to have a duration of 6 months or less, unless the order is made under section 63A.

[Section 50A inserted by No. 38 of 2004 s. 36.]

50B. Child welfare laws not affected

(1) A court must not make a restraining order under this Act in relation to a child who is under the control or in the care (however described) of a person under a child welfare law unless —

(a) the order is made as a result of the intervention of the CEO (child welfare) under section 50D; or

(b) the order is made in proceedings that have been instigated or continued with the written consent of a person who, under the relevant child welfare law, has responsibility for the control or care (however described) of the child.

(2) Nothing in this Act, and no restraining order made under this Act, affects —

(a) the jurisdiction of a court or the power of an authority, under a child welfare law, to make an order, or to take any other action, by which a child is placed under

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control or in the care (however described) of a person under a child welfare law;

(b) any such order made or action taken; or

(c) the operation of a child welfare law in relation to a child.

(3) If it appears to a court that another court or an authority proposes to make an order, or to take any other action, of the kind referred to in subsection (2)(a) in relation to a child, the court may adjourn any proceedings before it that relate to the child.

(4) In this section —

"child welfare law" has the same meaning as in the *Family Court Act 1997*.

[Section 50B inserted by No. 38 of 2004 s. 36.]

50C. CEO (child welfare) to be notified before certain orders are made

(1) Before a court makes a violence restraining order where —

(a) the respondent is a child who has not attained the age of 16 years; and

(b) the person seeking to be protected by the order is —

(i) a parent or guardian of the child; or

(ii) a person responsible for the day to day care of the child, or with whom the child habitually resides,

the registrar is to notify the CEO (child welfare) that such an order may be made.

(2) If an order referred to in subsection (1) is made the CEO (child welfare) is to cause such inquiries to be made as the CEO (child welfare) considers necessary for the purpose of determining whether action should be taken to safeguard or promote the child's wellbeing.

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[Section 50C inserted by No. 38 of 2004 s. 36; amended by No. 59 of 2004 s. 123.]

50D. Intervention by CEO (child welfare)

(1) In any proceedings under this Act that affect, or may affect, the wellbeing of a child the court hearing the proceedings may request the CEO (child welfare) to intervene in the proceedings and the CEO (child welfare) may intervene in those proceedings on that request.

(2) The CEO (child welfare) may intervene in any proceedings under this Act —

(a) if they involve a child who, in the opinion of the CEO (child welfare), appears to be a child in need of care and protection within the meaning of the *Child Welfare Act 1947*; or

(b) if, in the opinion of the CEO (child welfare), the operation of a restraining order has affected, or may affect, the wellbeing of a child.

(3) If the CEO (child welfare) intervenes in proceedings the CEO (child welfare) is to be treated as a party to the proceedings with all the rights, duties and liabilities of a party.

[Section 50D inserted by No. 38 of 2004 s. 36; amended by No. 38 of 2004 s. 57(5).]

51. Responsible adult to attend

In a matter relating to a restraining order where the respondent or person who is bound by an order is a child, section 45 of the *Young Offenders Act 1994* applies as if the matter were a proceeding for an offence.

52. Transfer between courts

(1) If the Children's Court hears an application under this Act in the belief that the respondent or person who is bound by an order is a child when in fact the person is not a child —

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(a) as soon as it becomes aware the person is not a child, the Children's Court is to transfer the matter to the Magistrates Court;

(b) the Children's Court proceedings are not, for that reason, invalidated; and

(c) an order made by the Children's Court before it became aware the person was not a child, is as valid and has the same effect as if it had been made by the Magistrates Court to which the matter is transferred.

(2) If the Magistrates Court hears an application under this Act in the belief that the respondent or person who is bound by an order is not a child when in fact the person is a child —

(a) as soon as it becomes aware the person is a child, the Magistrates Court is to transfer the matter to the Children's Court;

(b) the Magistrates Court proceedings are not, for that reason, invalidated; and

(c) an order made by the Magistrates Court before it became aware the person was a child, is as valid and has the same effect as if it had been made by the Children's Court.

(3) If a court transfers a matter to another court under this section, the registrars of each court are to give effect to the transfer.

[Section 52 amended by No. 59 of 2004 s. 124.]

53. Telephone order made against a child

If an authorised magistrate hearing a telephone application against a child —

(a) makes a telephone order the duration of which is more than 72 hours; or

(b) adjourns the matter to a mention hearing,

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the authorised magistrate, at the same time, is to transfer the matter to the Children's Court.

53A. Children not to give oral evidence without leave of court, other than in Children's Court

(1) A child is not to give oral evidence in any proceedings under this Act unless —

(a) a court makes an order allowing the child to give oral evidence; or

(b) the evidence is given in the Children's Court.

(2) A court is not to make an order under subsection (1)(a) unless the court, having weighed the availability of other evidence and the interests of the child, is satisfied that exceptional circumstances exist which, in the interests of justice, justify the making of the order.

[Section 53A inserted by No. 38 of 2004 s. 37.]

53B. Evidence of children

(1) This section applies where —

(a) in accordance with section 53A, a child is giving oral evidence in any proceedings under this Act; and

(b) the necessary facilities and equipment are available.

(2) If this section applies, the child is to give evidence outside the courtroom but within the court precincts, and the evidence is to be transmitted to the courtroom by means of video link.

(3) Where arrangements are made under this section the child's evidence is to be visually recorded.

(4) In this section —

"video link" has the same meaning as in section 120 of the *Evidence Act 1906*.

[Section 53B inserted by No. 38 of 2004 s. 37.]

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53C. Child who gives evidence entitled to support

(1) A child giving oral evidence in any proceedings under this Act in accordance with section 53A is entitled to have near to him or her a person, or more than one person, to provide support.

(2) A person to provide support is to be approved by the court and is not to be a person who is a witness in, or a party to, the proceedings.

[Section 53C inserted by No. 38 of 2004 s. 37.]

53D. Cross-examination of child by unrepresented person

If, in any proceedings under this Act, a person who is not represented wishes to cross-examine a child who, in accordance with section 53A, has given oral evidence, the examiner —

(a) is not entitled to do so directly; but

(b) may put any question to the child by stating the question to a judicial officer or a person approved by the court,

and that person is to repeat the question accurately to the child.

[Section 53D inserted by No. 38 of 2004 s. 37.]

53E. Admissibility of evidence of representations made by children

(1) Evidence of a representation made by a child about a matter that is relevant to proceedings under this Act is admissible as evidence in those proceedings, despite the rule against hearsay.

(2) The court may give such weight as it thinks fit to evidence admitted under subsection (1).

(3) If a representation is to be admitted in evidence, evidence of the making and content of the affected child's statement is to be given by any person to whom the affected child made the statement.

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(4) In this section —

"representation" includes an express or implied representation, whether oral or in writing, and a representation inferred from conduct.

[Section 53E inserted by No. 38 of 2004 s. 37.]

53F. Summonsing of children

(1) Despite any other provision of this Act, a child is not to be summonsed to the hearing of an application unless —

(a) a court makes an order allowing the child to be summonsed; or

(b) the hearing is to be held in the Children's Court.

(2) A court is not to make an order under subsection (1)(a) unless the court is satisfied that exceptional circumstances exist which, in the interests of justice, justify summonsing the child.

[Section 53F inserted by No. 38 of 2004 s. 37.]

Division 2 — Service

54. Service of summons

(1) A summons relating to a restraining order is to be served —

(a) personally, at least 7 days before the hearing date; or

(b) by post in accordance with subsection (2), at least 14 days before the hearing date.

(2) A summons served by post is to be sent —

(a) by prepaid registered post;

(b) to the person to whom it is directed at the person's last known place of residence or business; and

(c) by the registrar, a police officer or a person authorised by the registrar.

[Section 54 amended by No. 59 of 2004 s. 123.]

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55. Service of restraining order

(1) A restraining order is to be served personally unless —

(a) the registrar has authorised oral service under subsection (2); or

(b) subsection (3) applies to the order.

(2) The registrar may authorise oral service of a restraining order if the registrar is satisfied reasonable efforts have been made to serve the order personally.

(3) The following orders may be served by post in accordance with subsection (4) —

(a) a final order under section 32;

(b) a final order that was preceded by an interim order that is still in force;

(c) an order made by consent under section 41 or 43; and

(d) an order made under section 63 or 63A.

(3a) A restraining order is taken to have been served if the person who is bound by the order is present in court when the order is made.

(4) A restraining order being served by post is to be sent —

(a) by ordinary prepaid post;

(b) to the person to whom it is directed at the person's last known place of residence or business; and

(c) by the registrar, a police officer or a person authorised by the registrar.

(5) If a person is serving a restraining order orally that person is to inform the person being served of —

(a) the fact that the restraining order has been made;

(b) the general nature of the restraints imposed by the order;

(c) the duration of the order; and

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(d) a place where a written copy of the order, and a document containing the explanation to be given under section 8(1), can be obtained.

(6) Oral service may be effected face to face or by telephone, radio, video conference or another similar method.

[Section 55 amended by No. 38 of 2004 s. 38(1)-(3); No. 59 of 2004 s. 123.]

56. Delivery or notification

(1) Notification of a matter is to be given in writing to the person to be notified —

(a) personally; or

(b) by sending it by ordinary prepaid post to the person at the person's last known place of residence or business.

(2) Notification of a hearing —

(a) if it is given personally, is to be given at least 7 days before the hearing date; or

(b) if it is given by post, is to be posted at least 14 days before the hearing date.

(3) A document delivered to a person may be —

(a) given to the person personally; or

(b) sent by ordinary prepaid post to the person at the person's last known place of residence or business.

57. Copy of document sufficient for service

It is sufficient to constitute personal or postal service of a document if the document given or posted to the person being served is a photocopy or a faxed copy of the document instead of the original.

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58. Proof of service

(1) If a person certifies in writing that on the day and at the time and place stated in the certificate the person —

(a) personally served on a person the requisite copy or copies of a summons or restraining order in accordance with this Division;

(b) orally served on a person a restraining order in accordance with this Division and that the person so served appeared to understand what was said; or

(c) posted to a person the requisite copy or copies of a restraining order or summons in accordance with this Division,

in the absence of evidence to the contrary, the certificate is sufficient proof of service of the summons or restraining order on the person stated to have been so served.

(2) If a person certifies in writing that on the day and at the time and place stated in the certificate the person —

(a) personally notified, or delivered a document to, a person; or

(b) posted to a person a notification or document in accordance with section 56,

in the absence of evidence to the contrary, the certificate is sufficient proof of the notification of, or delivery of the document to, the person referred to in the certificate.

59. Notification of service

As soon as practicable after a restraining order is served on the person who is bound by the order, the person who served the order is to complete the proof of service copy of the order and —

(a) cause it to be delivered to the registrar; and

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(b) cause a copy of it to be delivered to the applicant.

[Section 59 amended by No. 38 of 2004 s. 39; No. 59 of 2004 s. 123.]

60. Deliberate avoidance of service

(1) If a court is satisfied that a person is deliberately avoiding being served with a document under this Act, the court may authorise substituted service of the document.

(2) A document is served by substituted service if the person serving it takes such steps as the court directs to bring the document to the attention of the person being served.

Division 3 — Breach of restraining order or police order

[Heading amended by No. 38 of 2004 s. 40.]

61. Breach of a restraining order

(1) A person who is bound by a violence restraining order and who breaches that order commits an offence.

Penalty: $6 000 or imprisonment for 2 years, or both.

(2) A person who is bound by a misconduct restraining order and who breaches that order commits an offence.

Penalty: $1 000.

(2a) A person who is bound by a police order and who breaches that order commits an offence.

Penalty: $6 000 or imprisonment for 2 years, or both.

(3) Proceedings for a breach of a restraining order or a police order are to be brought —

(a) if the alleged offender is a child, in the Children's Court; or

(b) otherwise, in the Magistrates Court.

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(4) It is to be taken to be an aggravating factor for the purposes of section 7(1) of the *Sentencing Act 1995* if, in committing an offence under this section, a child with whom the offender is in a family and domestic relationship is exposed to an act of abuse.

(5) For the avoidance of doubt, subsection (4) does not affect the discretion of a court to decide whether or not any factor is an aggravating factor for the purposes of any offence.

[Section 61 amended by No. 22 of 2000 s. 12; No. 50 of 2003 s. 90(2); No. 38 of 2004 s. 41; No. 59 of 2004 s. 124.]

62. Defence

(1) It is a defence to a charge under section 61 for the person who is bound by the order to satisfy the court that in carrying out the act that constituted the offence, the person was —

(a) using a process of family dispute resolution, as defined in the *Family Court Act 1997*;

(b) instructing, or acting through, a legal practitioner or a person acting under section 48 of the *Aboriginal Affairs Planning Authority Act 1972*, or using conciliation, mediation or another form of consensual dispute resolution provided by a legal practitioner;

(c) acting in accordance with an action taken by a person or authority under a child welfare law, within the meaning of section 50B(4); or

(d) acting as the result of such an emergency that an ordinary person in similar circumstances would have acted in the same or a similar way.

(2) In subsection (1)(b) —

"legal practitioner" has the meaning given in the *Legal Practice Act 2003.*

[Section 62 inserted by No. 38 of 2004 s. 42; amended by No. 35 of 2006 s. 208.]

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Division 3A — Police functions

[Heading inserted by No. 38 of 2004 s. 43(1).]

62A. Investigation of suspected family and domestic violence

A police officer is to investigate whether an act of family and domestic violence is being, or has been committed, or whether an act of family and domestic violence is likely to be committed, if the police officer reasonably suspects that a person is committing, or has committed, an act of family and domestic violence which —

(a) is a criminal offence; or

(b) has put the safety of a person at risk.

[Section 62A inserted by No. 38 of 2004 s. 43(1).]

62B. Entry and search of premises if family and domestic violence suspected

(1) If a police officer reasonably suspects that a person is committing an act of family and domestic violence, or that such an act was committed before the officer's arrival, on any premises, the officer may without a warrant but with the approval of a senior officer under section 62D, enter those premises and may remain in those premises for as long as the officer considers necessary —

(a) to investigate whether or not an act of family and domestic violence has been committed;

(b) to ensure that, in the officer's opinion, there is no imminent danger of a person committing an act of family and domestic violence on the premises; and

(c) to give or arrange for such assistance as is reasonable in the circumstances.

(2) If, after entering premises (under subsection (1) or otherwise) a police officer reasonably suspects that an act of family and domestic violence is being committed, or was committed before

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the officer's arrival, on the premises the officer without further authority may —

(a) search the premises to establish whether any person on the premises —

(i) is in need of assistance; or

(ii) is in possession of a weapon;

(b) search —

(i) the premises for a weapon; and

(ii) any person on the premises whom the officer reasonably suspects is in possession of a weapon;

and

(c) seize any weapon found on the premises, or on a person, that the officer reasonably suspects —

(i) was used to commit an act of family and domestic violence; or

(ii) may be used to commit an act of family and domestic violence.

(3) A police officer may use such force, and such assistance, as is necessary and reasonable in the circumstances in order to perform a function under this section.

(4) A weapon seized under this section is to be delivered to the Commissioner of Police, and dealt with, in the prescribed manner.

(5) A police officer who seizes a weapon is, where practicable, to inform the person from whose possession it is seized of the place to which the weapon is to be taken.

(6) This section does not limit any other power a police officer may have under this Act, any other written law or at common law.

[Section 62B inserted by No. 38 of 2004 s. 43(1).]

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62C. Action to be taken by police officer after investigating suspected family and domestic violence

After an investigation referred to in section 62A, or after entering or searching premises under section 62B, a police officer is to make —

(a) an application for a restraining order under section 18(1)(a) or 25(1)(b);

(b) a police order; or

(c) a written record of the reasons why he or she did not take either of the actions set out in paragraph (a) or (b).

[Section 62C inserted by No. 38 of 2004 s. 43(1).]

62D. Approval of senior officer

(1) An application for the approval of a senior officer referred to in section 62B(1) must be made to another officer who is a senior officer and who is not involved in the proposed entry.

(2) An application to a senior officer may be made, and the approval may be given, orally in person or by remote communication.

(3) A police officer making the application for approval to a senior officer must —

(a) give the address, or describe the premises, to which it relates, and, if known, the person to whom it relates; and

(b) state the grounds on which the police officer suspects that —

(i) a person is on the premises; and

(ii) the person has committed, or is committing, an act of family and domestic violence against another person.

(4) On an application for the approval of a senior officer the senior officer may give approval for the entry of the premises without a warrant at any time.

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(5) A senior officer must not give approval for the entry unless satisfied that there are reasonable grounds for the police officer to suspect that a person is committing an act of family and domestic violence, or that such an act was committed before the officer's arrival, on the premises.

(6) As soon as practicable after giving approval a senior officer must make a record of —

(a) the date and time when it was given; and

(b) the reasons for giving it.

(7) The approval of a senior officer referred to in section 62B(1) has effect only for a period of 24 hours after it is given by the officer.

(8) In this section —

"remote communication" means any way of communicating at a distance including by telephone, fax, email and radio;

"senior officer" means a police officer who —

(a) is senior in rank to the officer making the application; and

(b) is of or above the rank of inspector.

[Section 62D inserted by No. 38 of 2004 s. 43(1).]

62E. Seizure of firearms

(1) If a person who is bound by a violence restraining order does not give up possession of a firearm or firearms licence in accordance with section 14(2), a police officer may, without a warrant, enter a place where —

(a) a firearm that is, or is reasonably suspected to be, in the possession of the person; or

(b) a firearms licence held by the person,

is reasonably suspected to be, and search for and seize the firearm or firearms licence.

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(2) A firearm or firearms licence seized under subsection (1) is to be delivered to the Commissioner of Police, and dealt with, in the prescribed manner.

[Section 62E inserted by No. 38 of 2004 s. 43(1).]

62F. Detention of respondent during telephone hearing or while police order is being made

If —

(a) a telephone application has been, or is about to be, made; or

(b) a police order is being made,

a police officer may, without a warrant and in order to facilitate service of any resulting order on the person against whom the order is being, or is to be, sought or made —

(c) require that person to remain in a place designated by the police officer while —

(i) the telephone application is made and heard; or

(ii) the police order is made;

and

(d) if the person does not, or the police officer reasonably believes the person will not, remain in the place, arrest and detain the person in custody for up to 2 hours.

[Section 62F inserted by No. 38 of 2004 s. 43(1).]

62G. Police officer may conduct hearing for applicant

A police officer is authorised, at any stage of a hearing of an application for a restraining order made by another person, to conduct proceedings on behalf of that person, if the person so requests.

[Section 62G inserted by No. 38 of 2004 s. 43(1).]

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Division 4 — General

63. Making restraining orders during other proceedings

(1) A court, including a judicial officer considering a case for bail, before which a person charged with an offence is appearing may make a restraining order against that person or any other person who gives evidence in relation to the charge.

(2) A court hearing proceedings under the *Family Court Act 1997* or the *Family Law Act 1975* of the Commonwealth may make a restraining order against a party to the proceedings or any other person who gives evidence in the proceedings.

(3) A court hearing protection proceedings under the *Children and Community Services Act 2004* may make a restraining order against a party to the proceedings or any other person who gives evidence in the proceedings.

(3a) A restraining order may be made under this section —

(a) on the initiative of the court;

(b) at the request of a party to the proceedings;

(c) if the person seeking to be protected is a child, at the request of —

(i) the child;

(ii) a parent or guardian of the child on behalf of the child; or

(iii) in a matter referred to in subsection (3), a child welfare officer on behalf of the child;

(d) if the person seeking to be protected is a person for whom a guardian has been appointed under the *Guardianship and Administration Act 1990*, at the request of the guardian on behalf of the person; or

(e) at the request of a person who gives evidence in the proceedings or in relation to the charge.

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(4) A court is not to make a restraining order under this section unless —

(a) the court is satisfied that there are grounds for making the order under section 11A, 11B or 34, as is appropriate to the case;

(b) the court has had regard to the matters set out in section 12 or 35, as is appropriate to the case; and

(c) the person is present when the order is made and has been given an opportunity to be heard on the matter.

(4a) Subject to subsection (4b) a restraining order made under this section is a final order.

(4b) If a court referred to in subsection (2) is considering making a restraining order and the person who would be bound by the order objects to it being made, the court may make an interim order.

(4c) Sections 33, 42, 43 and 44 apply to an interim order made under subsection (4b) as if the person bound by the order —

(a) were the respondent; and

(b) had returned the respondent's endorsement copy of the interim order —

(i) in accordance with section 31;

(ii) on the day after the interim order was made; and

(iii) indicating that the person objected to the order becoming final.

(5) If a restraining order has been, or is about to be, made under this section, the court may, in order to facilitate service of the restraining order, order the person against whom the order has been, or is about to be, made to remain in a place designated by the court for a period of not more than one hour until the order is served on that person.

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(6) A restraining order made under this section by a judicial officer is taken to have been made by the court of which that judicial officer is an officer.

(6a) A restraining order made under subsection (1) by a justice of the peace considering a case for bail is taken to have been made by —

(a) the Children's Court if the person charged is a child;

(b) the Magistrates Court in any other case.

(7) A restraining order made under this section is to be prepared and served —

(a) by the registrar in accordance with section 10(1); or

(b) if the registrar is not available at the time the order is made, by the person making that order in accordance with section 10(1) as if that person were the registrar.

[Section 63 amended by No. 22 of 2000 s. 13; No. 34 of 2004 s. 251; No. 38 of 2004 s. 44 and 55; No. 59 of 2004 s. 123 and 124.]

63A. Restraining order to be made if certain violent personal offences committed

(1) A court convicting a person for a violent personal offence, within the meaning of subsection (5), is —

(a) to make a violence restraining order against that person for the protection of a victim of the offence unless there is such an order in force already for the period of the life of the person who committed the offence; or

(b) where a violence restraining order is in force for the protection of a victim of the offence, to vary that order by extending the duration of the order.

(2) An order made, or varied, under subsection (1) is to specify that the order is to remain in force for the period of the life of the person who committed the offence.

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(3) A restraining order made under this section is a final order.

(4) A court must not make an order under this section if a victim of the offence for whose benefit the court proposes to make a violence restraining order objects to that order being made.

(5) In subsection (1) —

"violent personal offence" means an offence against section 283, 297, 325, 326, 327 or 328 of *The Criminal Code*.

[Section 63A inserted by No. 38 of 2004 s. 45.]

63B. Circumstances to be taken into account when sentencing for certain offences

(1) Where a person has committed a violent personal offence, within the meaning of subsection (3), and —

(a) is in a family and domestic relationship with a victim of the offence;

(b) a child was present when the offence was committed; or

(c) the conduct of the offender in committing the offence constituted a breach of a restraining order,

the court sentencing the offender is to determine the seriousness of the offence taking that circumstance into account.

(2) For the avoidance of doubt, subsection (1) does not affect the discretion of a court to decide whether or not a circumstance set out in that subsection is a circumstance to take into account in sentencing an offender for any other offence.

(3) In this section —

"violent personal offence" means —

(a) an offence mentioned in section 277 (other than infanticide); or

(b) an offence against section 283, 332, 333, 338A, 338B, 338C or 338E,

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of *The Criminal Code*.

[Section 63B inserted by No. 38 of 2004 s. 45.]

63C. Criminal and civil liability not affected by restraining orders

(1) A court may make or vary a restraining order even though the respondent has been charged with, or convicted of, an offence arising out of the same conduct as that out of which the application for the order arose.

(2) The making or varying of a restraining order does not, except as provided by this Act, affect the civil or criminal liability of a person bound by the order in respect of the same conduct as that out of which the application for the order arose.

[Section 63C inserted by No. 38 of 2004 s. 45.]

64. Appeals

(1) A person aggrieved by the decision of a court —

(a) under section 23(1)(b) or 29(1)(b) to dismiss an application; or

(b) in relation to a final order,

may appeal against that decision in accordance with this section.

(2) If the decision was made by the Magistrates Court, the appeal is to be made in accordance with Part 7 of the *Magistrates Court (Civil Proceedings) Act 2004* unless subsection (6a)(a) applies.

(3) If the decision was made by the Children's Court when constituted so as not to consist of or include a Judge, the appeal is to be made to the Supreme Court in accordance with section 41 of the *Children's Court of Western Australia Act 1988* as if the decision were a decision within the meaning of section 41(2) of that Act.

(4) If the decision was made by the Children's Court when constituted so as to consist of or include a Judge, the appeal is to be made to the Court of Appeal in accordance with section 43

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(other than subsections (2) and (3)) of the *Children's Court of Western Australia Act 1988* as if the decision were a decision within the meaning of section 43(3b) of that Act.

(5) If the decision was made by the District Court, the appeal is to be made to the Court of Appeal in accordance with section 79(1)(a) of the *District Court of Western Australia Act 1969*.

(6) If the decision was made by a Judge of the Supreme Court, the appeal is to be made to the Court of Appeal in accordance with section 58 of the *Supreme Court Act 1935*.

(6a) If the decision was made by a court hearing proceedings under the *Family Court Act 1997* or the *Family Law Act 1975* of the Commonwealth, the appeal is to be made —

(a) in the case of a decision of a court of summary jurisdiction, to the Family Court of Western Australia in accordance with section 211(2) of the *Family Court Act 1997*; and

(b) otherwise to the Court of Appeal of the Supreme Court in accordance with section 211(3) of the *Family Court Act 1997*.

(6b) If —

(a) the decision was made under section 63(1) to make a restraining order against a person charged with an offence;

(b) the person charged is convicted of that or another offence; and

(c) the person charged appeals against the conviction or the sentence imposed,

any appeal under subsection (1) by the person charged against the decision is to be made to the court that hears and determines the appeal against the conviction or sentence.

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[Section 64 amended by No. 22 of 2000 s. 14; No. 45 of 2004 s. 37; No. 59 of 2004 s. 124.]

65. Orders not to conflict with certain family orders

If a court does not have jurisdiction to adjust a family order the court is not to make a restraining order that conflicts with that family order.

66. Notification of family orders

(1) In this section —

"inform the court" means —

(a) in the case of an application for a restraining order made in person, state in the application; or

(b) in the case of a telephone application, inform the authorised magistrate at the hearing.

(2) An applicant must inform the court of any family order, or any pending application for such an order, of which the applicant is aware.

(3) If the applicant is aware of an existing family order, the applicant —

(a) in the case of an application made in person where the person seeking to be protected is a party to the family order, must provide a copy of that order to the court; or

(b) in any other case, must inform the court of the terms of the family order so far as the applicant is aware of them.

(4) If the applicant is aware of a pending application for a family order, the applicant, so far as the applicant is aware of the information, must inform the court of —

(a) the names of the parties to the application;

(b) the terms of the family order being sought; and

(c) whether the application is being opposed.

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(5) If an applicant is making an application on behalf of another person, the applicant must take reasonable steps to obtain from the person details of any family order, or pending application for such an order, of which the person is aware.

(6) A restraining order is not invalid merely because the applicant does not comply with this section.

[Section 66 amended by No. 38 of 2004 s. 55.]

67. Adjournments

(1) In addition to the specific provisions of this Act regarding adjournments, a court may also grant an adjournment —

(a) at a final order hearing, if the court is satisfied that an injustice would result if an adjournment were not granted; or

(b) at any other hearing, if the court is satisfied that there is good reason to do so,

when, and for the period of time, the court considers appropriate.

(2) If a court grants an adjournment under subsection (1), it is to make a written record of the reasons why the adjournment was granted.

(3) If an adjournment is granted, whether under subsection (1) or under another provision, the registrar is to notify each party who is permitted to attend the hearing who was not present when the adjournment was granted.

[Section 67 inserted by No. 38 of 2004 s. 46; amended by No. 59 of 2004 s. 123.]

68. Orders may be extended to apply to other people

(1) When making a restraining order a court may extend the order to operate for the benefit of a person named in the order in addition to the person protected by the order.

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(2) If an order is so extended the provisions of this Act apply to the named person as if that person were the person protected by the order.

69. Costs

(1) Subject to subsections (2) and (3) and the regulations, a court may make such orders as to costs as it considers appropriate.

(2) A court is not to order an applicant for a restraining order to pay costs to the respondent unless it considers the application was frivolous or vexatious.

(3) A court is not to order costs to be paid by an applicant if the applicant is a police officer who —

(a) makes an application under this Act for a restraining order, represents another officer at a hearing or acts under section 62G; and

(b) acts in good faith and in the normal course of duty in making the application, or appearing at the hearing.

[Section 69 amended by No. 38 of 2004 s. 47.]

70. Information on identity of certain person restricted

(1) Subject to subsection (3), any information in the custody of a court that would, or would be likely to, reveal or lead to the revelation of the whereabouts of —

(a) a party to proceedings under this Act; or

(b) any person who gives evidence in proceedings under this Act,

is not to be disclosed by the court or a clerk of the court —

(c) to a party to the proceedings; or

(d) in such a manner that the information will, or may, be revealed to a party to the proceedings.

(2) Subject to subsection (3), a person must not publish in a newspaper or periodical publication or by radio broadcast,

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television or other electronic means, or otherwise disseminate to the public or to a section of the public by any means any information that would, or would be likely to, reveal or lead to the revelation of the whereabouts of —

(a) a party to proceedings under this Act; or

(b) any person who gives evidence in proceedings under this Act.

Penalty: $6 000 or imprisonment for 18 months.

(3) This section does not apply if the court is satisfied —

(a) that the person to whom the information is to be, or may be, disclosed is already aware of the whereabouts of the person to whom the information applies; or

(b) that the person who would otherwise be protected by this section —

(i) understands the effect of this section; and

(ii) has agreed that this section is not to apply,

and specifies in the restraining order that this section does not apply.

(4) In this section —

"under this Act" includes proceedings in which the existence of a restraining order is a material fact in the proceedings.

[Section 70 inserted by No. 38 of 2004 s. 48.]

70A. Exchange of information

(1) In this section —

"interested party" means —

(a) the Commissioner of Police; or

(b) the chief executive officer of the Public Sector agency principally assisting the Minister in the administration of this Act; or

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(ba) the chief executive officer of the Public Sector agency principally assisting the Minister administering Part 8 of the *Sentence Administration Act 2003* in its administration; or

(c) the CEO (child welfare);

"prescribed information" means information of a description or class prescribed about a person protected by a violence restraining order, or a child affected by such an order.

(2) An interested party may provide to another interested party prescribed information if the parties agree that the provision of such information is necessary to ensure the safety of a person protected by a violence restraining order, or the wellbeing of a child affected by such an order.

(3) Any information provided under subsection (2) must be provided in confidence.

(4) If information is provided under subsection (2) in confidence and good faith —

(a) no civil or criminal liability is incurred in respect of the provision of the information;

(b) the provision of the information is not to be regarded as a breach of section 70 or of any duty of confidentiality or secrecy imposed by any written or other law; and

(c) the provision of the information is not to be regarded as a breach of professional ethics or standards or as unprofessional conduct.

(5) Information provided under subsection (2) must not be used by the party to whom the information is provided for any purpose other than that specified in subsection (2).

[Section 70A inserted by No. 38 of 2004 s. 48; amended by No. 65 of 2006 s. 68.]

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71. Notification when firearms order made

(1) In this section —

"firearms order" means —

(a) a violence restraining order; or

(b) a misconduct restraining order that prohibits a person from being in possession of a firearm;

"responsible person" means, in relation to a restrained person who uses or has access to a firearm in the course of that person's usual occupation, the person who holds a firearms licence (or the equivalent under a law of another State or Territory) for that firearm, or if there is no such person —

(a) if the restrained person is a police officer or a member of an armed force — the officer in command of that police force or armed force in the State or Territory where the restrained person is based;

(b) if the restrained person is otherwise employed or engaged by an employing authority, as defined in the *Public Sector Management Act 1994*, (or an equivalent body for the purposes of a corresponding law of another State, a Territory or the Commonwealth) — that employing authority (or equivalent body); or

(c) in any other case — the person by whom the restrained person is employed or engaged;

"restrained person" means the person bound by a firearms order.

(2) A person who personally or orally serves a firearms order must —

(a) ask the restrained person —

(i) whether the person uses or has access to any firearms in the course of the restrained person's usual occupation;

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(ii) if so, the name and business address of the responsible person;

(iii) whether the person and another person (**"the co-licensee"**) hold firearms licences in respect of the same firearm; and

(iv) if so, the name and address of the co-licensee;

(b) complete the relevant part of the police copy of the order in accordance with the response given by the restrained person to those questions; and

(c) tell the restrained person that the responsible person will be notified that the order has been made.

(3) A restrained person who fails to answer, or gives a false answer to, a question asked under subsection (2)(a) commits an offence.

Penalty: $2 000 or imprisonment for 9 months.

(4) On receipt of a police copy of an order that indicates that the restrained person uses or has access to a firearm in the course of the restrained person's usual occupation or holds a firearms licence in respect of a firearm for which a co-licensee also holds a firearms licence the Commissioner of Police is to promptly notify the responsible person or co-licensee, as the case requires —

(a) that a restraining order has been made against the restrained person;

(b) that the order prohibits the restrained person from being in possession of a firearm (or if the court acted under section 14(5), that the restrained person is prohibited from being in possession of a firearm other than on the conditions specified by the court under that section);

(c) of the duration of the order; and

(d) that it is an offence for the responsible person or co-licensee to allow the restrained person to use or have access to a firearm in contravention of the order.

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(5) When the Commissioner of Police receives the police copy of a firearms order that —

(a) has been served on the restrained person by post; and

(b) is a final order which was preceded by an interim order in relation to which the responsible person or co-licensee was notified under subsection (4),

the Commissioner of Police is to promptly notify the responsible person or co-licensee of the matters set out in subsection (4).

(6) A responsible person or co-licensee notified under subsection (4) or (5) who allows the restrained person to use or have access to a firearm, except as permitted under the firearms order, commits an offence.

Penalty: In the case of a responsible person — $4 000.
In the case of a co-licensee — $4 000 or imprisonment for 12 months.

[Section 71 amended by No. 50 of 2003 s. 90(3).]

72. Practice and procedure generally

(1) Unless otherwise prescribed by this Act, the practices and procedures to be followed in matters relating to restraining orders are, if the matter is being heard by —

(a) the Magistrates Court, the practices and procedures applying in that court under the *Magistrates Court (Civil Proceedings) Act 2004*; or

(b) the Children's Court, the practices and procedures applying in the non-criminal jurisdiction of that court under the *Children's Court of Western Australia Act 1988*.

[(2) repealed]

[Section 72 amended by No. 59 of 2004 s. 124.]

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73. Regulation making power

(1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or that are necessary or convenient to be prescribed to give effect to the purposes of this Act.

(2) Without limiting subsection (1), regulations may be made in relation to —

(a) practices and procedures to be followed;

(b) the manner in which firearms and firearms licences are to be —

(i) given up by a person who is bound by a restraining order; and

(ii) delivered to, and dealt with by, a prescribed person;

(c) facilitating the effective operation of restraining orders which prohibit or restrict a person from being in possession of a firearm;

(d) forms to be used;

(e) fees to be paid; and

(f) orders as to costs.

(3) The forms prescribed for a restraining order and a telephone order are to contain a brief summary of the effect of section 44B.

[Section 73 amended by No. 38 of 2004 s. 49.]

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Part 7 — Interstate restraining orders

74. Interpretation

In this Part —

"interstate order" means a restraint order made by a court of another State or Territory under a corresponding law of that State or Territory;

"registered order" means an interstate order registered under this Part;

"registrar" means the registrar to whom an application for registration of an interstate order is made or another registrar of the same court.

[Section 74 amended by No. 38 of 2004 s. 50; No. 59 of 2004 s. 124.]

75. Application for registration of interstate order

(1) An application for registration of an interstate order may be made by —

(a) the person named in the order for whose benefit the order is made;

(b) a police officer on behalf of that person.

(1a) An application for registration of an interstate order may also be made —

(a) if the person named in the order for whose benefit the order is made is a child, by a parent or guardian of the child, or a child welfare officer, on behalf of the child; or

(b) if the person named in the order for whose benefit the order is made is a person for whom a guardian has been appointed under the *Guardianship and Administration Act 1990* (or a similar Act of the State or Territory in which the interstate order was made), by the guardian on behalf of the person.

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(2) An application for registration is to be made in the prescribed manner to a registrar of the Magistrates Court.

(3) An application for registration need not be served on the person who is bound by the order.

[Section 75 amended by No. 22 of 2000 s. 15; No. 38 of 2004 s. 51; No. 59 of 2004 s. 124.]

76. Registration

(1) If a person makes an application for registration of an interstate order the registrar is to —

(a) register the interstate order;

(b) notify —

(i) the court in which the interstate order was made;

(ii) the person who applied for registration; and

(iii) the Commissioner of Police,

of the registration; and

(c) cause a copy of the interstate order to be delivered to the Commissioner of Police.

(2) Notice of the registration is not to be given to the person who is bound by the order unless the person who applied for registration has requested in writing that such notice be given.

[Section 76 amended by No. 59 of 2004 s. 123.]

77. Effect of registration

(1) A registered order operates in this State as if it were a violence restraining order which is a final order —

(a) with the terms (including as to its duration) set out in the order or applying to it under the law under which it was made; and

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(b) served in accordance with this Act on the day on which it was registered,

and the provisions of this Act apply to it as if it were such an order.

(1a) Without limiting subsection (1), for the purposes of applying Part 5 to an interstate order —

(a) a reference to varying a final order is to be read as a reference to making an order varying the operation in this State of the interstate order; and

(b) a reference to cancelling a final order is to be read as a reference to making an order cancelling the registration of the interstate order.

(2) In proceedings for a breach, committed in this State, of a registered order no proof is required of —

(a) the making of the interstate order or of a variation of it that operates in this State under section 78; or

(b) the service of such an order or variation on the person who is bound by the order.

[Section 77 amended by No. 11 of 1999 s. 5.]

78. Variation or cancellation in another State or Territory

(1) If —

(a) a registered order is varied by a court in the State or Territory in which it was made; and

(b) notice of the variation is given to the registrar by an officer of that court,

the variation operates in this State as if the interstate order, as varied, had been registered under section 76 on the day on which the registrar received the notice.

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(2) If —

(a) a registered order is cancelled by a court in the State or Territory in which it was made; and

(b) notice of the cancellation is given to the registrar by an officer of that court,

the registration in this State of the order is cancelled from the day on which the registrar received the notice.

(3) If the registrar receives notice of the variation or cancellation of a registered order, the registrar is to notify the person who applied for registration of the order and the Commissioner of Police.

[Section 78 amended by No. 59 of 2004 s. 123.]

79. Variation or cancellation in this State

If an order is made under Part 5 varying the operation in this State, or cancelling the registration, of an interstate order, the registrar of the court that made the order of variation or cancellation must —

(a) notify the applicant for registration of the original order, unless the registrar knows that the applicant is already aware of the variation or cancellation;

(b) notify the Commissioner of Police and give the Commissioner a copy of the order of variation or cancellation; and

(c) alter the registration accordingly.

[Section 79 inserted by No. 11 of 1999 s. 6; amended by No. 59 of 2004 s. 123.]

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Part 7A — Foreign restraining orders

[Heading inserted by No. 11 of 1999 s. 7.]

79A. Recognition of foreign restraining orders

A foreign restraining order that is in force under a corresponding law of New Zealand or a prescribed country may be registered and enforced under this Part.

[Section 79A inserted by No. 11 of 1999 s. 7.]

79B. Applying for registration of foreign restraining orders

(1) An application for registration of a foreign restraining order may be made by —

(a) the person named in the order for whose benefit the order is made; or

(b) a police officer on behalf of that person.

(1a) An application for registration of a foreign restraining order may also be made —

(a) if the person named in the order for whose benefit the order is made is a child, by a parent or guardian of the child, or a child welfare officer, on behalf of the child; or

(b) if the person named in the order for whose benefit the order is made is under the guardianship of a guardian (however described) appointed under the law of the foreign country, by the guardian on behalf of the person.

(2) The application is to be made to the Magistrates Court in the form prescribed for the purposes of section 75(2).

(3) An application need not be served on the person who is bound by the order.

[Section 79B inserted by No. 11 of 1999 s. 7; amended by No. 22 of 2000 s. 16; No. 38 of 2004 s. 52; No. 59 of 2004 s. 124.]

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79C. Registration of foreign restraining orders

(1) When a person applies for registration of a foreign restraining order, the registrar of the court is to register the order.

(2) The registrar must give notice of the registration —

(a) to the applicant; and

(b) where practicable, to the court that made the order.

(3) The registrar must also give notice of the registration of the order, and a copy of the order, to the Commissioner of Police.

(4) The registrar is not to give notice of the registration to the person who is bound by the order unless the applicant has made a written request for notice to be given to the person.

[Section 79C inserted by No. 11 of 1999 s. 7; amended by No. 59 of 2004 s. 123.]

79D. Effect of registration

(1) A registered foreign restraining order operates in this State, and this Act applies to it, as if it were a violence restraining order that is a final order and that was served in accordance with this Act on the day on which it was registered.

(2) Without limiting subsection (1), for the purposes of applying Part 5 to a registered foreign restraining order —

(a) a reference to varying a final order is to be read as a reference to making an order varying the operation in this State of the registered foreign restraining order; and

(b) a reference to cancelling a final order is to be read as a reference to making an order cancelling the registration of the foreign restraining order.

(3) The order operates as a final order even though an appeal against it may be pending, or it may still be subject to appeal, in the courts of the foreign country.

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(4) In proceedings for a breach of the order, proof is not required —

(a) that the order was made by the foreign court; or

(b) that the order was served on the person who is bound by it.

(5) It is a defence to a charge of breaching the order for the person who is bound by the order to satisfy the court that —

(a) the order had been varied under the corresponding law of the foreign country so that the behaviour that is alleged to constitute the breach did not amount to a breach of the order as in force in the foreign country at the material time; or

(b) the order had been cancelled under the corresponding law of the foreign country and was not in force in that country at the material time.

[Section 79D inserted by No. 11 of 1999 s. 7.]

79E. Variation or cancellation in a foreign country

(1) If the registrar of the court that registered a foreign restraining order has reasonable grounds for believing that an order varying the restraining order is in force under the corresponding law of the foreign country, the registrar is to register the variation.

(2) The variation takes effect on the day on which it is registered.

(3) If a registered foreign restraining order is cancelled by a court of the foreign country, the registration of the order is cancelled on the day on which the court of registration becomes aware of the cancellation.

(4) If a variation of a registered foreign restraining order is registered, or the order is cancelled, the registrar of the court of registration must —

(a) notify the applicant for registration of the original order, unless the registrar knows that the applicant is already aware of the variation or cancellation; and

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(b) notify the Commissioner of Police and give the Commissioner a copy of the order of variation or cancellation if one is available.

[Section 79E inserted by No. 11 of 1999 s. 7; amended by No. 59 of 2004 s. 123.]

79F. Variation or cancellation in this State

If an order is made under Part 5 varying the operation in this State, or cancelling the registration, of a registered foreign restraining order, the registrar of the court that made the order of variation or cancellation must —

(a) notify the applicant for registration of the original order, unless the registrar knows that the applicant is already aware of the variation or cancellation;

(b) notify the Commissioner of Police and give the Commissioner a copy of the order of variation or cancellation; and

(c) alter the registration accordingly.

[Section 79F inserted by No. 11 of 1999 s. 7; amended by No. 59 of 2004 s. 123.]

[Part 8 (s. 80-84) repealed by No. 38 of 2004 s. 53.]

[Part 9 (s. 85-90) omitted under Reprints Act 1984 s. 7(4)(e) [2]*.]*

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Notes

[1] This is a compilation of the *Restraining Orders Act 1997* and includes the amendments made by the other written laws referred to in the following table [1a]. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
Restraining Orders Act 1997	19 of 1997	28 Aug 1997	15 Sep 1997 (see s. 2 and *Gazette* 12 Sep 1997 p. 5149)
Family Court (Orders of Registrars) Act 1997 s. 12	21 of 1997	7 Sep 1997	15 Sep 1997 (see s. 2(2) and *Gazette* 12 Sep 1997 p. 5149)
Acts Amendment and Repeal (Family Court) Act 1997 s. 36	41 of 1997	9 Dec 1997	26 Sep 1998 (see s. 2 and *Gazette* 25 Sep 1998 p. 5295)
Statutes (Repeals and Minor Amendments) Act (No. 2) 1998 s. 62	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
Restraining Orders Amendment Act 1999	11 of 1999	13 May 1999	13 May 1999 (see s. 2)
Restraining Orders Amendment Act 2000	22 of 2000	30 Jun 2000	30 Jun 2000 (see s. 2)
Reprint of the *Restraining Orders Act 1997* as at 6 Oct 2000 (includes amendments listed above)			
Sentencing Legislation Amendment and Repeal Act 2003 s. 90	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and *Gazette* 14 May 2004 p. 1445)
Children and Community Services Act 2004 s. 251	34 of 2004	20 Oct 2004	1 Mar 2006 (see s. 2 and *Gazette* 14 Feb 2006 p. 695)
Acts Amendment (Family and Domestic Violence) Act 2004 Pt. 2 (s. 3-57)	38 of 2004	9 Nov 2004	s. 3-56: 1 Dec 2004 (see s. 2 and *Gazette* 26 Nov 2004 p. 5309); s. 57: 22 Mar 2006 (see s. 2 and *Gazette* 21 Mar 2006 p. 1077)
Acts Amendment (Court of Appeal) Act 2004 s. 37	45 of 2004	9 Nov 2004	1 Feb 2005 (see s. 2 and *Gazette* 14 Jan 2005 p. 163)

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Short title	Number and year	Assent	Commencement
Courts Legislation Amendment and Repeal Act 2004 Pt. 17 [3]	59 of 2004 (as amended by No. 2 of 2008 s. 77(3) and (4))	23 Nov 2004	Pt. 17 (other than the amendments in s. 123 to s. 67(2) and in s. 124 to s. 4(a) [3]): 1 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7128)
Reprint 2: The *Restraining Orders Act 1997* as at 5 May 2006 (includes amendments listed above)			
Family Legislation Amendment Act 2006 Pt. 6 Div. 3	35 of 2006	4 Jul 2006	15 Jul 2006 (see s. 2 and *Gazette* 14 Jul 2006 p. 2559)
Prisons and Sentencing Legislation Amendment Act 2006 Pt. 10	65 of 2006	8 Dec 2006	4 Apr 2007 (see s. 2 and *Gazette* 3 Apr 2007 p. 1491)

[1a] On the date as at which this ~~reprint~~compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in ~~compiling the reprint.~~this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
~~*Courts Legislation Amendment and Repeal Act 2004* s. 123 and 124~~ [3]	~~59 of 2004 (as amended by No. 2 of 2008 s. 77(3) and (4))~~	~~23 Nov 2004~~	~~s. 123 the amendment to s. 67(2) and s. 124 the amendment to s. 4(a) to be proclaimed (see s. 2)~~
~~*Criminal Law and Evidence Amendment Act 2008* s. 77(3) and (4)~~ [4]	~~2 of 2008~~	~~12 Mar 2008~~	~~To be proclaimed (see s. 2)~~
Acts Amendment (Justice) Act 2008 Pt. 19 [54]	5 of 2008	31 Mar 2008	To be proclaimed (see s. 2(d))

[2] Part 9 contained transitional provisions relating to orders to keep the peace in force under the *Justices Act 1902* when this Act came into operation.

[3] ~~On the date as at which this reprint was prepared, the~~The *Courts Legislation Amendment and Repeal Act 2004* s. 123 (the amendment to s. 67(2)) and s. 124 (the amendment to s. ~~4(a)) had not come into operation. They have not been, and will~~

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not be, proclaimed as the provisions to be amended4(a)) were repealed by the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004*. They read as follows:

"

Part 17 — *Restraining Orders Act 1997* amended

123. References to "clerk" changed

The Act is amended in each provision listed in the Table to this section by deleting "clerk" wherever it appears and in each place inserting instead —

" registrar ".

Table

s. 67(2)

124. Other amendments

The Act is amended as set out in the Table to this section.

Table

s. 4(a)	In each provision delete "a court of petty sessions" or "the court of petty sessions" in each place it occurs and in each place insert instead — " the Magistrates Court ".

".

4 On the date as at which this compilation was prepared, the *Criminal Law and Evidence Amendment Act 2008* s. 77(3) and (4) had not come into operation. They read as follows:).

"

77. *Courts Legislation Amendment and Repeal Act 2004* amended

(1) The amendments in this section are to the *Courts Legislation Amendment and Repeal Act 2004*.

(3) Section 123 is amended in the Table to the section by deleting "s. 67(2)".

(4) Section 124 is amended in the Table to the section by deleting "s. 4(a)".

".

54 On the date as at which this compilation was prepared, the *Acts Amendment (Justice) Act 2008* Pt. 19 had not come into operation. It reads as follows:

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“

Part 19 — *Restraining Orders Act 1997* amended

89. The Act amended in this Part

The amendments in this Part are to the *Restraining Orders Act 1997*.

90. Section 3 amended

Section 3 is amended in the definition of “final order” by deleting paragraph (c) and “or” after it and inserting instead —

“

(c) made under section 49(1)(b) to vary a final order, being a replacement or additional final order made under that section; or

”.

91. Section 6 amended

(1) Section 6(1)(e) is amended by inserting before “causing” —

“ pursuing the person or a third person, or ”.

(2) Section 6(2)(c) is amended by inserting before “causing” —

“ pursuing the person or a third person, or ”.

92. Section 10 amended

Section 10(4)(a) is deleted and the following paragraph is inserted instead —

“

(a) the person to be bound by the order to be personally served with it; and

”.

93. Section 27 amended

Section 27(4) is repealed and the following subsections are inserted instead —

“

(4) A hearing fixed under section 26(2) is to be in closed court.

(4a) Despite subsection (4) —

(a) the person seeking to be protected is entitled to have one or more persons near him or her to provide support; and

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(b) the court may permit any person who is not a party to the proceedings to be in the court.

”.

94. Section 30E amended

(1) Section 30E(2)(a) is amended by inserting after “person” —

“ or persons ”.

(2) Section 30E(3) is amended as follows:

(a) by deleting “A police officer who makes a police order is to explain at the time the order is made, or served,” and inserting instead —

“

At the time a police order is made or served, a police officer is to explain

”;

(b) by inserting after paragraphs (a) and (b) —

“ and ”.

(3) Section 30E(5)(a) is amended by deleting “the police” and inserting instead —

“ a police ”.

95. Section 42 amended

(1) Section 42(4) is amended as follows:

(a) by deleting “subject to the rules of evidence, a court is to receive” and inserting instead —

“ a court is to admit ”;

(b) by deleting “, except that such record of evidence is not to be received as evidence unless the person who gave the evidence is available to be cross-examined on that evidence.” and inserting instead —

“ that is relevant to the application. ”.

(2) After section 42(4) the following subsection is inserted —

“

(5) A court is not to admit as evidence a record of evidence referred to in subsection (4) unless —

(a) the person who gave the evidence is available to be cross-examined on that evidence; or

(b) the laws of evidence allow the record to be admitted; or

(c) each party at the hearing consents.

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”.

96. Section 43 amended

After section 43(1) the following subsection is inserted —

“

(1a) Without limiting subsection (1), at a final order hearing, a court —

(a) may, subject to Part 2, make a final violence restraining order even if the application was for a misconduct restraining order;

(b) may, subject to Part 3, make a final misconduct restraining order —

(i) even if the application was for a violence restraining order; and

(ii) even if an interim order is in force.

”.

97. Section 48 amended

(1) Section 48(3) is amended as follows:

(a) by deleting “subject to the rules of evidence, a court is to receive” and inserting instead —

“ a court is to admit ”;

(b) by deleting “except that such record of evidence is not to be received as evidence unless the person who gave the evidence is available to be cross-examined on that evidence.” and inserting instead —

“ that is relevant to the application. ”.

(2) After section 48(3) the following subsection is inserted —

“

(4) A court is not to admit as evidence a record of evidence referred to in subsection (3) unless —

(a) the person who gave the evidence is available to be cross-examined on that evidence; or

(b) the laws of evidence allow the record to be admitted; or

(c) each party at the hearing consents.

”.

98. Section 49 amended

(1) Section 49(1) is repealed and the following subsection is inserted instead —

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“

(1) Subject to section 48, at a hearing fixed under section 47 of an application made under section 45 the court may —

(a) dismiss the application; or

(b) if it decides to vary an interim order or a final order —

(i) cancel the original order and make a replacement order that contains the variations; or

(ii) make an additional interim order or final order, to be read with the original order, that states the variations;

or

(c) if it decides to cancel an interim order or a final order, cancel the order.

”.

(2) After section 49(1a) the following subsection is inserted —

“

(1b) If a court varies an interim order by cancelling it and making a new one, any objection that the respondent made to the cancelled order applies to the new order and the new order is to be dealt with accordingly.

”.

99. Section 53E amended

Section 53E(3) is repealed and the following subsection is inserted instead —

“

(3) If a representation made by a child is to be admitted in evidence, evidence of the making and content of the representation is to be given by a person who was present when the child made it.

”.

100. Section 59 replaced

Section 59 is repealed and the following section is inserted instead —

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“

59. Service of restraining order, certain people to be notified of

(1) As soon as practicable after a restraining order is served on the person who is bound by the order, the person who served the order is to —

(a) complete the proof of service copy of the order; and

(b) cause it to be delivered to the registrar.

(2) As soon as practicable after the registrar receives the proof of service copy of a restraining order, the registrar is to notify the applicant that the order has been served.

”.

101. Section 62B amended

(1) Section 62B(1) is amended by deleting “but with the approval of a senior officer under section 62D,”.

(2) After section 62B(1) the following subsections are inserted —

“

(1a) A police officer must not enter premises under subsection (1) unless the officer has a senior officer’s approval given under section 62D or —

(a) the officer believes on reasonable grounds that he or she should exercise the powers under subsection (1) urgently; and

(b) the officer cannot use remote communication to apply for a senior officer’s approval under section 62D.

(1b) A police officer who enters premises without a senior officer’s approval given under section 62D must report why the entry was made and what happened at the premises to a senior officer as soon as practicable after the entry.

”.

102. Section 62E amended

After section 62E(1) the following subsection is inserted —

“

(1a) In order to exercise a power under subsection (1), a police officer may use any force against any person or thing that it is reasonably necessary to use in the circumstances.

”.

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103. Section 62F amended

(1) Section 62F is amended by inserting before "If —" the subsection designation "(1)".

(2) At the end of section 62F the following subsection is inserted —

"

(2) If a police officer suspects on reasonable grounds that a restraining order has been made but not served on the person who is bound by it, the officer may, without a warrant and in order to facilitate service of the order on the person —

(a) require the person to remain in a place designated by the officer while the officer gets the order; and

(b) if the person does not, or the officer reasonably believes the person will not, remain in the place, arrest and detain the person in custody for up to 2 hours.

".

104. Section 63 amended

After section 63(3a) the following subsection is inserted —

"

(3b) A court may make a restraining order under this section against a person and for the protection of another person even if a restraining order in similar terms in respect of those persons is in force, but if it does, the court must specify that the order comes into force immediately the earlier order expires.

".

105. Section 70 amended

Section 70(1) is amended by deleting "clerk" and inserting instead —

" registrar ".

".

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