



**A review of the
*Peace and Good Behaviour Act 1982***

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Volume 2

Queensland
Law Reform Commission

***A review of the *Peace and Good
Behaviour Act 1982****

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To: The Honourable Kerry Shine MP
Attorney-General and Minister for Justice and Minister Assisting the
Premier in Western Queensland

In accordance with section 15 of the *Law Reform Commission Act 1968* (Qld),
the Commission is pleased to present its Report on *A Review of the Peace and
Good Behaviour Act 1982*.

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Mr J K Bond SC
Member

Dr H A Douglas
Member

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Mr G W O'Grady
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Chapter 20

Miscellaneous issues

INTRODUCTION

20.1 This chapter considers a number of miscellaneous issues, some of which were raised in the Discussion Paper and others which have been raised as a consequence of recommendations made by the Commission throughout this Report. In particular, this chapter considers:

- joint respondents;
- children as respondents;
- the ability of the court to inform the Adult Guardian of matters of concern;
- the entitlement of persons to appear at a hearing;
- provisions concerning the issue of warrants and the application of the *Bail Act 1980* (Qld);
- notice of applications and orders to the Commissioner of Police and the maintenance of a searchable database of protection orders;
- the relationship of the Personal Protection Bill 2007 to the *Domestic and Family Violence Protection Act 1989* (Qld);
- the conferral of jurisdiction on the court under the Personal Protection Bill 2007;
- the ability of the court to award costs; and
- filing fees for applications.

JOINT RESPONDENTS

20.2 Earlier in this Report, the Commission noted that behaviour of the kind covered by the *Peace and Good Behaviour Act 1982* (Qld) may occur in situations involving many people. This situation might arise, for example, in a dispute between neighbouring families.²¹⁷⁴

20.3 The Commission has therefore recommended that the Personal Protection Bill 2007 should specify that an application may be made by one or

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See para 6.141 of this Report.

more applicants for one or more aggrieved persons.²¹⁷⁵ As such, if an application for the grant of a protection order is made in relation to more than one aggrieved person, the court may make one or more protection orders naming one, some or all of the aggrieved persons, as it considers appropriate in its discretion.

20.4 The Commission considers that, similarly, the Personal Protection Bill 2007 should permit an application for a protection order to be made in relation to more than one respondent. In those circumstances, the court may make one or more protection orders naming one, some or all of the respondents, as it considers appropriate in its discretion.

CHILDREN AS RESPONDENTS

20.5 The Commission has made various recommendations in this Report relating to the eligibility of a child, or another person on a child's behalf, to bring an application in relation to a personal protection order under the Personal Protection Bill 2007.²¹⁷⁶

20.6 This section of the chapter deals with the issue of children as respondents to protection orders.²¹⁷⁷ It also examines whether the availability of a protection order against a child should be subject to a minimum age requirement or a restriction on the duration of the order.

Children as respondents generally

20.7 The capacity of children is an important consideration in the naming of children as respondents. Children are not held criminally responsible for their actions until they have reached a certain age.²¹⁷⁸ This would apply in relation to the breach of an order made under the *Peace and Good Behaviour Act 1982* (Qld), or under the proposed Personal Protection Bill 2007.

20.8 The naming of a child as a respondent in legal proceedings also raises the issue of participation by the child in the proceedings. It is generally accepted that children are vulnerable participants in the legal process.²¹⁷⁹ In light of the special position of children in the legal process, evidential rules and

2175 See para 6.142 of this Report.

2176 See, for example, para 6.77, 6.106 of this Report. Also note that at para 3.36 of this Report, the Commission has recommended that it is not appropriate for the Personal Protection Bill 2007 to cover children in 'family relationships', as defined under the *Domestic and Family Violence Protection Act 1989* (Qld), so that the Commission's recommendations relating to children as protected persons or respondents apply in respect of children who are not in a family relationship with the other party.

2177 See para 1.42 of this Report in which it is noted that, for the purposes of this Report, a 'child' means an individual who is under 18 years, and includes a young person.

2178 See para 20.26–20.27 of this Report.

2179 See generally, Australian Law Reform Commission, *Seen and heard: priority for children in the legal process*, Report No 84 (1997).

modified processes have been developed for dealing with children who are participants in proceedings.²¹⁸⁰

20.9 Another issue is the potential for a child respondent who breaches a protection order to come into contact with the criminal justice system.²¹⁸¹ It has been widely recognised that involvement in the criminal justice system can have serious social and developmental consequences for children.²¹⁸²

The Peace and Good Behaviour Act 1982 (Qld)

20.10 The *Peace and Good Behaviour Act 1982* (Qld) is silent in relation to whether a peace and good behaviour order is available against a person under 18 years.

The Domestic and Family Violence Protection Act 1989 (Qld)

20.11 The *Domestic and Family Violence Protection Act 1989* (Qld) provides that a child, who is in a spousal relationship, intimate personal relationship or informal care relationship with the other named party, may be the aggrieved or the respondent in a domestic violence order.²¹⁸³ The Act, however, does not enable a child to be named as the aggrieved or the respondent if a 'family relationship' exists between the child and the other party named in the order.²¹⁸⁴ This means that a domestic violence order cannot be obtained against a child by a parent or another person in a family relationship with the child.²¹⁸⁵

2180 See, for example, the *Evidence Act 1977* (Qld) pt 2 div 4 (Evidence of special witnesses), pt 2 div 4A (Evidence of affected children). Note also the specialised jurisdiction of the Childrens Court in relation certain proceedings involving children including criminal proceedings against juvenile offenders and proceedings under the *Child Protection Act 1999* (Qld) for child protection orders and other matters: see *Juvenile Justice Act 1992* (Qld) ss 62, 64; *Child Protection Act 1999* (Qld) ss 39(1), 44, 54(1), 59, 67, 68.

2181 The *Peace and Good Behaviour Act 1982* (Qld) currently makes it an offence to breach a peace and good behaviour order. At para 14.53–14.54 of this Report, the Commission has recommended that the Personal Protection Bill 2007 include an offence provision, albeit in a modified form.

2182 See Australian Law Reform Commission, *Seen and heard: priority for children in the legal process*, Report No 84 (1997) [18.2].

2183 *Domestic and Family Violence Protection Act 1989* (Qld) ss 12, 12A, 12C, 12D(1), (2).

2184 *Domestic and Family Violence Protection Act 1989* (Qld) s 12D(1), (2). A 'family relationship' exists between two persons if one of them is the relative of the other: *Domestic and Family Violence Protection Act 1989* (Qld) s 12B(1). A 'relative', of a person, is someone who is ordinarily understood to be or to have been connected to the person by blood or marriage: *Domestic and Family Violence Protection Act 1989* (Qld) s 12B(2).

2185 See *Domestic and Family Violence Protection Act 1989* (Qld) s 12B. When the Domestic Violence Legislation Amendment Bill 2001 (Qld) was introduced into the Queensland Parliament, the Hon Judith Spence MP, Minister for Families and Minister for Aboriginal and Torres Strait Islander Policy and Minister for Disability Services, in the second reading of the Bill, stated that the Bill did not enable children to bring an application against their parent or guardian because that type of matter was considered to be a child protection issue and is dealt with under the *Child Protection Act 1999* (Qld): Queensland, *Parliamentary Debates*, Legislative Assembly, 1 November 2001, 3339.

The position in other jurisdictions

20.12 The ACT, New South Wales, the Northern Territory, Victoria and Western Australia enable the making of civil restraining orders against children. The civil restraining order legislation in these jurisdictions imposes special requirements in relation to child respondents.²¹⁸⁶

Submissions

20.13 Although it was not specifically raised in the Discussion Paper, three submissions addressed the issue of whether a child can be a respondent to a peace and good behaviour order.

20.14 The Chief Magistrate of Queensland considered it unclear as to whether the *Peace and Good Behaviour Act 1982* (Qld) is intended to apply to children and, if so, at what age. By way of example, the Chief Magistrate noted that one application for a peace and good behaviour order involved a number of children including a number under 16 years and one 12 year old child.²¹⁸⁷ In the view of the Chief Magistrate, the *Domestic and Family Violence Protection Act 1989* (Qld) could provide some guidance in the formulation of provisions relating to children under the *Peace and Good Behaviour Act 1982* (Qld).

20.15 A group of service providers for people experiencing domestic violence expressed mixed views in relation to the availability of peace and good behaviour orders against children.²¹⁸⁸ One member of the group considered that, in some situations, it may be appropriate for a child to be named as a respondent, for example, where a parent seeks protection for himself or herself and his or her other children from an extremely violent child who has been removed from the family home and is in foster care. However, another member of the group suggested that the effectiveness of a peace and good behaviour order made in relation to a particular child would depend upon that child's ability to comprehend the nature and consequences of the order.

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For example, in New South Wales, Victoria and Western Australia, the Childrens Court has jurisdiction to make a civil restraining order against a child: *Crimes Act 1900* (NSW) s 562ZZP(1)(b); *Crimes (Family Violence) Act 1987* (Vic) s 3A(1); *Restraining Orders Act 1997* (WA) ss 25(3)(a), 38(4)(a). Further, in the ACT, where a court is considering making a consent order in relation to a party with a legal disability (including a child) who is not separately represented by someone else, and it appears to the court that the person should be separately represented, the court must not make the consent order: *Domestic Violence and Protection Orders Act 2001* (ACT) s 30. In the Northern Territory, a defendant to a personal violence restraining order cannot be a child under 15 years old: *Justices Act* (NT) s 83(2), as amended by the *Domestic and Family Violence Act* (NT).

The *Crimes (Domestic and Personal Violence) Act 2007* (NSW), which was assented to on 7 December 2007 and will commence on a date to be proclaimed, repeals and replaces pt 15A of the *Crimes Act 1900* (NSW). Section 562ZZP is replicated in s 91 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW). In the Northern Territory, the *Domestic and Family Violence Act* (NT) repeals pt IV div 7 of the *Justices Act* (NT) introducing a new pt IVA. The *Domestic and Family Violence Act* (NT) was assented to on 12 December 2007 and will commence on a date to be proclaimed. Section 83 of the *Justices Act* (NT) is a new provision. In Victoria, an intervention order may be made under the *Crimes (Family Violence) Act 1987* (Vic) in relation to stalking behaviour even if there is no family relationship between the complainant and the person sought to be restrained: *Crimes Act 1958* (Vic) s 21A(5).

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The matter was settled by mediation: submission 12A.

2188

Submission 25.

20.16 The Queensland Department of Child Safety expressed concern about children as respondents under the *Peace and Good Behaviour Act 1982* (Qld), particularly given the potential involvement of the criminal justice system and even though the child's initial behaviour may have been 'quite minor in nature'.²¹⁸⁹

The department is concerned that any legislation which impacts on the rights of children and young people is informed by evidence of need and best practice rather than being based on anecdotal information. Any move to subject children and young people, who are among the most vulnerable members of society, to a legislative scheme which could bring them into contact with the criminal justice system should only be undertaken after thorough consideration of the full range of social policy implications.

20.17 The Department of Child Safety noted, for example, the risk that children would be pursued as respondents given 'the current trend of negatively stereotyping young people in the media'. It also noted that children, especially those in 'precarious financial and social situations' may have difficulty appearing in court at fixed times.²¹⁹⁰

20.18 The Department of Child Safety considered that further research is required to assess the scope of the issues to be addressed by including children as respondents under the *Peace and Good Behaviour Act 1982* (Qld). It also suggested that mediation and other 'youth at risk' services be investigated as alternatives to a court-based approach to dealing with conflicts involving children.²¹⁹¹

The Commission's view

20.19 The proposed Personal Protection Bill 2007 enables the court to make protection orders prohibiting individuals from engaging in particular conduct. It may be that, in a dispute of the kind covered by the Bill, the behaviour complained of has been committed by a child.

20.20 The Commission notes that the *Acts Interpretation Act 1954* (Qld) defines a 'child' to mean an individual who is under 18,²¹⁹² and considers that definition is appropriate and sufficient for the purposes of the Personal Protection Bill 2007. The Commission considers, however, that it is appropriate for the Personal Protection Bill 2007 to clarify that a child cannot be a respondent for a protection order unless that child has reached a minimum age. The minimum age of child respondents is considered in the following section of this chapter.

2189 Submission 29.

2190 Ibid.

2191 Ibid. The Commission notes that, in Chapter 10 of this Report, it has recommended the inclusion of provisions for referral of matters under the Personal Protection Bill 2007 to mediation, and for the use of preliminary conferences.

2192 *Acts Interpretation Act 1954* (Qld) s 36 (definition of 'child').

20.21 The Commission acknowledges that children are particularly vulnerable in the legal process, and, for that reason, has made various recommendations in this Report to safeguard the interests of children who participate in, or are affected by, proceedings under the Personal Protection Bill 2007.²¹⁹³

Minimum age of child respondents

20.22 The participation of children, particularly younger children, as respondents in protection order proceedings under the Personal Protection Bill 2007 raises the issue of whether the Personal Protection Bill 2007 should impose a minimum age requirement.

20.23 The participation of children in a legal process requires that children understand the process and its requirements and have the intellectual, emotional and psychological skills to negotiate the process. Age is one of a number of differentiating factors that determine legal capacity to participate in legal proceedings. However, as noted by Deane J in *Secretary, Department of Health and Community Services v JWB and SMB*:²¹⁹⁴

... the extent of the legal capacity of a young person to make decisions for herself or himself is not susceptible of precise abstract definition. Pending the attainment of full adulthood, legal capacity varies according to the gravity of the particular matter and the maturity and understanding of the particular young person.

20.24 The concept of a minimum age requirement also raises the issue of the criminal liability of a child respondent who breaches a protection order.

20.25 As mentioned earlier, a child respondent who breaches a protection order may come into contact with the criminal justice system by being prosecuted for that breach.²¹⁹⁵ The criminal liability of a child for breach depends upon the age of the child.

20.26 Children are not held criminally responsible for their actions until they have reached a certain age. In Queensland, a person under 10 years is not criminally responsible for any act or omission.²¹⁹⁶ This is an irrebuttable presumption and therefore no criminal proceedings, including proceedings for breach of an order under the *Peace and Good Behaviour Act 1982* (Qld), or the proposed Personal Protection Bill 2007, can be brought against a child under 10 years.

²¹⁹³ See para 20.34 (minimum age requirement for child respondents), 11.120 (application of the special witness provisions of the *Evidence Act 1977* (Qld)), 6.104–6.107 (applications made on behalf of children), and 12.79 (consent orders cannot be made if the aggrieved person or respondent is a child) of this Report.

²¹⁹⁴ (1992) 175 CLR 218, 293. See also the discussion in Australian Law Reform Commission, *Seen and heard: priority for children in the legal process*, Report No 84 (1997) [4.4]–[4.9].

²¹⁹⁵ See para 20.9 of this Report.

²¹⁹⁶ *Criminal Code* (Qld) s 29(1).

20.27 When a child has reached the age of 10 years but has not yet reached 14 years, there is a rebuttable presumption that the child is not criminally responsible for an act or omission unless at the time of doing the act or making the omission the child had the capacity to know that he or she ought not do the act or make the omission.²¹⁹⁷ Therefore, a child in this age group cannot be held criminally responsible for breaching a peace and good behaviour order, or a protection order, unless it is proved beyond reasonable doubt that the child had the capacity to know, when the breach was allegedly committed, that the act or omission was wrong.²¹⁹⁸

The Peace and Good Behaviour Act 1982 (Qld)

20.28 As noted earlier, the *Peace and Good Behaviour Act 1982* (Qld) is silent in relation to whether a peace and good behaviour order can be made against a person under 18 years.

The Domestic and Family Violence Protection Act 1989 (Qld)

20.29 The *Domestic and Family Violence Protection Act 1989* (Qld) does not specify a minimum age at which a child may be named as a respondent to a domestic violence order.

The position in other jurisdictions

20.30 The Northern Territory and Western Australia are the only jurisdictions to specify a minimum age in relation to a child respondent for a civil restraining order. Under recent amendments to the *Justices Act* (NT) in the Northern Territory, a personal violence restraining order cannot be made against a child under 15 years old.²¹⁹⁹ In Western Australia, a restraining order cannot be made against a child under 10 years.²²⁰⁰

Submissions

20.31 Three submissions addressed the issue of the age of a child respondent under the *Peace and Good Behaviour Act 1982* (Qld).

20.32 A Queensland magistrate suggested that an order ought not be made against a child unless he or she has reached the age of 17 years, or the age

²¹⁹⁷ *Criminal Code* (Qld) s 29(2). The presumption in s 29(2) is based on the common law principle of *doli incapax* which allows for a gradual transition to full criminal responsibility: see, for example, *R v M* (1977) 16 SASR 589, 590 (Bray CJ). The *Juvenile Justice Act 1992* (Qld) establishes a code for dealing with children who have, or are alleged to have, committed offences.

²¹⁹⁸ In order to rebut the presumption in s 29(2) of the *Criminal Code* (Qld), the Crown must prove beyond reasonable doubt that the accused had the capacity to know that he ought not to do the act which he did: *R v F; ex parte Attorney-General* [1999] 2 Qd R 157, 160 (Davies JA).

²¹⁹⁹ *Justices Act* (NT) s 83(2), as amended by the *Domestic and Family Violence Act* (NT). The current provisions of the *Justices Act* (NT) do not contain an equivalent provision. For the application of the legislation in the Northern Territory, see note 2186 of this Report.

²²⁰⁰ *Restraining Orders Act 1997* (WA) s 50.

from time to time that is the age at which a person is treated as an adult by the criminal justice system. In this magistrate's view, this approach would remove any doubt that any breach of the order involves the respondent/defendant being treated as an adult.²²⁰¹

20.33 The Youth Advocacy Centre Inc expressed concern in relation to the disparity in the recognition of a young person as a child or an adult in relation to proceedings under the *Peace and Good Behaviour Act 1982* (Qld) and criminal proceedings for breaching a peace and good behaviour order.²²⁰² This submission observed:²²⁰³

... there is a mismatch of the definition of a child across the jurisdictions that would deal with orders under the Act. For an applicant, a child is anyone who is under the age of 18. For a respondent who is in breach of the Act, a child is someone under the age of 17 under the *Juvenile Justice Act*. The quasi-criminal nature of the jurisdiction highlights the inconsistencies on how children and young people are dealt with under different areas of the legal system.

The Commission's view

20.34 The Commission considers that the Personal Protection Bill 2007 should provide that a respondent to a protection order must be at least 10 years of age. This is consistent with the Queensland criminal law under which a person under 10 years is not criminally responsible for any act or omission.

20.35 As mentioned earlier, a child respondent who has reached the age of 10 years but has not yet reached 14 years is not criminally responsible for breaching an order unless he or she is shown to have had the requisite capacity at the time of the breach.²²⁰⁴ This means that a breach of a protection order may be unenforceable in relation to some child respondents in this age group. Nonetheless, even in such cases there could be some benefit in making a protection order because it provides the child with some guidelines for avoiding anti-social behaviour.

20.36 Finally, the Commission is of the view that the difference in the age when a person is dealt with as a child in civil proceedings, including proceedings under the *Peace and Good Behaviour Act 1982* (Qld) or under the proposed Personal Protection Bill 2007, and the age when a person is dealt with as a child in criminal proceedings, is an issue which is outside the scope of this review.

2201 Submission 12B.

2202 Submission 11. Under the *Juvenile Justice Act 1992* (Qld) s 4 sch 4 (Dictionary, definition of 'child'), a person is defined as a child if he or she has not yet turned 17. This means that when a person turns 17, he or she is treated as an adult for the purposes of the criminal law. Section 6 of the *Juvenile Justice Act 1992* (Qld) contains provision for the age of 18 to be fixed by regulation but this provision has never been utilised. See also T Hutchinson, 'When is a child not a child?' (2006) 30(2) *Criminal Law Journal* 92.

2203 Submission 11.

2204 See para 20.27 of this Report.

Restriction on duration of orders made against children

The Peace and Good Behaviour Act 1982 (Qld)

20.37 There is no limitation on the duration for which a peace and good behaviour order can be made. Section 6 of the *Peace and Good Behaviour Act 1982* (Qld) currently specifies that a court may order a defendant to 'keep the peace and be of good behaviour for such time, specified in the order, as the Court thinks fit'.²²⁰⁵

20.38 In this Report, the Commission has recommended that the Personal Protection Bill 2007 provide that a protection order may continue for a period, fixed by the court and stated in the order, no longer than two years.²²⁰⁶ However, if the court is satisfied that there are special reasons for doing so, the court may order that a protection order continue for a period longer than two years.

The Domestic and Family Violence Protection Act 1989 (Qld)

20.39 There is no limitation under the *Domestic and Family Violence Protection Act 1989* (Qld) in relation to the duration for which a domestic violence order may be made against a child respondent.

The position in other jurisdictions

20.40 The civil restraining order legislation in Western Australia imposes limitations on the duration of an order made against a child. A restraining order against a child who is aged between 10 and 17 years has a maximum duration of six months unless the order is made on the child's conviction for a violent offence.²²⁰⁷ This six month limit was introduced in recognition that children 'have a vastly different concept of time to adults ... two years in the life of a child is a particularly long time, especially where the applicant is a parent of a child'.²²⁰⁸

20.41 The Victorian Law Reform Commission has recommended in its recent Report on family violence intervention orders that an order against a young person should not last for longer than 12 months unless there are exceptional circumstances.²²⁰⁹

2205 *Peace and Good Behaviour Act 1982* (Qld) s 6(3)(b).

2206 See para 13.30 of this Report.

2207 *Restraining Orders Act 1997* (WA) s 50A.

2208 Western Australian Department of Justice, *Report on a Review of Legislation Relating to Domestic Violence*, Final Report (June 2004) 26.

2209 Victorian Law Reform Commission, *Review of Family Violence Laws*, Report (2006) [8.122] rec 97. For the application of the *Crimes (Family Violence) Act 1987* (Vic), see note 2186 of this Report.

Submissions

20.42 In its Discussion Paper, the Commission sought submissions on whether the *Peace and Good Behaviour Act 1982* (Qld) should specify a different maximum period of duration for orders made against a child.²²¹⁰

20.43 Only two submissions specifically addressed this issue.²²¹¹ Both submissions were of the view that there should be no maximum period of time for the duration of an order where the respondent is a child.²²¹²

The Commission's view

20.44 In the Commission's view, the Personal Protection Bill 2007 should not specially limit the duration of protection orders made against a child. In light of the different ages and maturation rates of individual children and the potential range of circumstances in which disputes of the kind covered by the Personal Protection Bill 2007 may arise, the Commission considers it desirable not to restrict the court's flexibility when making an order in respect of a child respondent. This means there would be no difference between adult and child respondents in relation to the maximum period for which a protection order can be made.

COURT MAY INFORM ADULT GUARDIAN ABOUT MATTERS OF CONCERN

20.45 In Queensland, the Adult Guardian is the primary statutory authority responsible for protecting adults with impaired decision-making capacity from harm.

The Guardianship and Administration Act 2000 (Qld)

20.46 The Adult Guardian is an independent statutory official whose role is to protect the rights and interests of adults who have impaired capacity.²²¹³ The *Guardianship and Administration Act 2000* (Qld) provides that 'impaired capacity' for a person for a matter, means the person does not have capacity for the matter.²²¹⁴ 'Capacity' for a person for a matter, is defined in that Act to mean that the person is capable of understanding the nature and effect of decisions about the matter, freely and voluntarily making decisions about the matter, and communicating the decisions in some way.²²¹⁵

2210 Queensland Law Reform Commission, Discussion Paper, *A Review of the Peace and Good Behaviour Act 1982* (WP 59, March 2005) 107 (Questions 10-9, 10-10).

2211 Submissions 5, 15.

2212 Ibid.

2213 *Guardianship and Administration Act 2000* (Qld) ss 173, 174(1), 176.

2214 *Guardianship and Administration Act 2000* (Qld) s 3 sch 4 (definition of 'impaired capacity')

2215 *Guardianship and Administration Act 2000* (Qld) s 3 sch 4 (definition of 'capacity')

20.47 The Adult Guardian's functions include protecting adults with impaired capacity from neglect, exploitation or abuse.²²¹⁶ The Adult Guardian has a number of investigative and protective powers in relation to adults who have impaired capacity,²²¹⁷ including the power to investigate complaints or allegations of neglect, exploitation or abuse or of inappropriate or inadequate decision-making arrangements for an adult.²²¹⁸

20.48 There is no system of mandatory reporting to the Adult Guardian. However, the Adult Guardian accepts written referrals of complaints or concerns about abuse, exploitation or neglect.²²¹⁹ In exceptional circumstances, a referral may be made orally.²²²⁰

20.49 The Adult Guardian has discretion to investigate referrals. If the Adult Guardian is satisfied the allegations warrant it, an investigation will be conducted to determine what, if any, measures are needed for the adult's ongoing protection. An investigation may result, for example, in an application to the Guardianship and Administration Tribunal for the appointment of a guardian for the adult.²²²¹ The Adult Guardian also has power to suspend the operation of an attorney's powers²²²² and to seek a warrant for an adult's removal where there is an immediate risk of harm to the adult.²²²³

The Peace and Good Behaviour Act 1982 (Qld)

20.50 The *Peace and Good Behaviour Act 1982* (Qld) does not specifically provide for the notification by the court of relevant entities about the making of a peace and good behaviour order in relation to an adult with impaired decision-making capacity. However, as mentioned above, any person may refer a concern about neglect, exploitation or abuse of an adult with impaired capacity to the Adult Guardian.

2216 *Guardianship and Administration Act 2000* (Qld) s 174(2)(a).

2217 *Guardianship and Administration Act 2000* (Qld) ch 8 pt 2, 3.

2218 *Guardianship and Administration Act 2000* (Qld) s 180.

2219 Office of the Adult Guardian, *Annual Report 2005–2006* (2006) 19–20.

2220 *Ibid.*, 20.

2221 *Ibid.* In the year 2005–2006, the investigations team of the Office of the Adult Guardian made 45 applications to the Guardianship and Administration Tribunal for the appointment of a guardian and/or administrator: Office of the Adult Guardian, *Annual Report 2005–2006* (2006) 24. The Adult Guardian must also be satisfied there is sufficient information to suspect on reasonable grounds that the adult has impaired capacity for decision-making for the area at issue: Office of the Adult Guardian, *Annual Report 2005–2006* (2006) 20.

2222 *Guardianship and Administration Act 2000* (Qld) s 195. In the year 2005–2006, the authority of 14 attorneys was suspended: Office of the Adult Guardian, *Annual Report 2005–2006* (2006) 24.

2223 *Guardianship and Administration Act 2000* (Qld) s 197. Only one instance of removal was reported in the Adult Guardian's annual report for the year 2005–2006.

The *Domestic and Family Violence Protection Act 1989* (Qld)

20.51 Section 31 of the *Domestic and Family Violence Protection Act 1989* (Qld) provides for the court to notify the Adult Guardian about matters of concern involving adults with impaired decision-making capacity. That section provides:

31 Court may inform other entities about matters of concern

- (1) This section applies if—
- (a) a court makes a domestic violence order; and
 - (b) the court considers there was domestic violence or associated domestic violence involving an adult with impaired capacity; and
 - (c) the court considers that because of the circumstances involving, or the nature of, the domestic violence or associated domestic violence the adult guardian should be informed about the violence.
- (2) The court may inform the adult guardian, in writing, about the circumstances involving, or the nature of, the domestic violence or associated domestic violence.

The position in other jurisdictions

20.52 Many of the other Australian jurisdictions have statutory officers with similar roles and investigatory powers to Queensland's Adult Guardian.²²²⁴ There are no provisions in the civil restraining order legislation of those jurisdictions, however, about notification to those officers of matters of concern in proceedings involving an adult with impaired decision-making capacity.²²²⁵

The Commission's view

20.53 Earlier in this Report, the Commission has recommended provisions to enable a person to apply for an order on behalf of an adult who does not have capacity to make an application and participate in proceedings on his or her own.²²²⁶ There may also be circumstances in which a protection order is sought against an adult who may have impaired capacity.

²²²⁴ *Public Advocate Act 2005* (ACT) s 11(1)(c); *Guardianship and Administration Act 1993* (SA) s 28; *Guardianship and Administration Act 1995* (Tas) s 17; *Guardianship and Administration Act 1986* (Vic) s 16(1)(h); *Guardianship and Administration Act 1990* (WA) s 97(1)(c).

²²²⁵ Note, however, s 101(2)(e) of the *Domestic Violence and Protection Orders Act 2001* (ACT) which provides that the restriction on publication of a report of proceedings under the Act does not prevent information from being given to the Public Advocate in relation to the Public Advocate's functions.

²²²⁶ See para 6.69–6.75 of this Report.

20.54 Proceedings under the Personal Protection Bill 2007 involving an adult with impaired capacity may point to difficulties or inadequacies in the adult's care or support that put the adult at risk of continuing harm or abuse. The Commission considers it is appropriate that the court consider informing the Adult Guardian of such concerns so that the Adult Guardian may, if it is appropriate to do so, conduct an investigation.

20.55 However, not every proceeding involving an adult with impaired capacity will warrant such notification. In some situations, the Adult Guardian may already be involved as the adult's formally appointed guardian. In cases where the Adult Guardian is not involved, there may nevertheless be nothing in the circumstances to indicate the adult's interests are not being appropriately protected.

20.56 The Commission considers that the Personal Protection Bill 2007 should include a provision about informing the Adult Guardian in proceedings involving an adult with impaired capacity and that the court should retain discretion in determining whether and when to do so.

20.57 The Commission does not consider that section 31 of the *Domestic and Family Violence Protection Act 1989* (Qld) is an appropriate model for this provision. Section 31(1)(a) limits the provision's operation to cases in which a domestic violence order has actually been made. It may be appropriate, however, to inform the Adult Guardian even if no protection order is made or in proceedings subsequent to an order having been made. It is also unclear under section 31 in what circumstances the court will notify the Adult Guardian. Section 31(2) retains the court's discretion though it is difficult to see when, in practice, the court would decide not to inform the Adult Guardian if it considers, under section 31(1)(c), that the Adult Guardian should be informed.

20.58 The Commission is therefore of the view that the Personal Protection Bill 2007 should include a provision to the effect that if a court hearing an application to make, vary or set aside a protection order considers there has been personal violence or workplace violence involving an adult with impaired capacity, the court may inform the Adult Guardian of the circumstances of the application. The Personal Protection Bill 2007 should also include a provision to the effect that 'impaired capacity', for the Bill, has the meaning given in schedule 4 of the *Guardianship and Administration Act 2000* (Qld).²²²⁷

ENTITLEMENT TO APPEAR

20.59 Throughout this Report, the Commission has made recommendations about who may apply for a protection order or to vary or set aside a protection order, who may be protected by a protection order, and who may be given

2227

See para 20.46 of this Report.

notice of an application or order made under the proposed Personal Protection Bill 2007.

20.60 This raises the issue of who should be able to appear at a hearing in protection order proceedings under the Bill. This relates to the accessibility of the mechanism provided by the legislation for the personal protection of members of the community, which the Commission is required to consider under its terms of reference.²²²⁸

The position in Queensland

20.61 Neither the *Peace and Good Behaviour Act 1982* (Qld) nor the *Domestic and Family Violence Protection Act 1989* (Qld) includes an express provision about who may appear on a proceeding. The *Justices Act 1886* (Qld) provides, however, that in proceedings on a complaint, both the complainant and defendant may conduct his or her case and have witnesses examined or cross-examined by his or her lawyer.²²²⁹

20.62 This is in accord with the general rule that a party to an action or proceeding in a court may appear in the proceeding.²²³⁰ For example, the *Magistrates Courts Act 1921* (Qld) provides that, subject to the rules and orders of the court, a party to an action, a party's lawyer, or any person allowed by special leave of the court 'may appear to address a Magistrates Court and examine and cross-examine the witnesses'.²²³¹

20.63 In some court proceedings under other Queensland legislation, there is also provision for a non-party to the proceedings to make submissions during the proceedings. For example, section 113 of the *Child Protection Act 1999* (Qld) provides that the court may hear submissions from a member of the

2228 The Commission's terms of reference are set out in Appendix 1 of this Report.

2229 *Justices Act 1886* (Qld) s 72. This provision would apply to proceedings under the *Peace and Good Behaviour Act 1982* (Qld) and the *Domestic and Family Violence Protection Act 1989* (Qld). Section 8 of the *Peace and Good Behaviour Act 1982* (Qld) provides that the provisions of and proceedings and procedures under the *Justices Act 1886* (Qld) that apply in the case of a summary prosecution apply to proceedings under the *Peace and Good Behaviour Act 1982* (Qld), subject to any necessary or prescribed modifications. Section 38(2)(a), (b) of the *Domestic and Family Violence Protection Act 1989* (Qld) provides that for proceedings under that Act, the provisions of the *Justices Act 1886* (Qld) will apply unless the application of that Act is inconsistent with the *Domestic and Family Violence Protection Act 1989* (Qld).

2230 *Supreme Court Act 1995* (Qld) s 209(1); *District Court of Queensland Act 1967* (Qld) s 52(1); *Magistrates Courts Act 1921* (Qld) s 18(1). Also see, for example, *Children Services Tribunal Act 2000* (Qld) s 64 (Right of party to appear); *Guardianship and Administration Act 2000* (Qld) s 123 (Right of active party to appear).

2231 *Magistrates Courts Act 1921* (Qld) s 18(1). Note that a 'party' means a party to a dispute: *Magistrates Courts Act 1921* (Qld) s 3 (definition of 'party').

child's family or 'anyone else the court considers is able to inform it on any matter relevant to the proceeding'.²²³²

The position in other jurisdictions

20.64 The civil restraining order legislation in the ACT and Tasmania includes provisions about the standing of parties in proceedings under the legislation. In the ACT, a party may appear, personally or by a representative, and may address the court or registrar and examine or cross-examine witnesses.²²³³ In Tasmania, the applicant and respondent, or their representatives, may conduct their case and examine and cross-examine witnesses.²²³⁴

Submissions

20.65 The issue of who should have standing to appear at the hearing of an application, or in any subsequent proceedings, was not specifically canvassed in the Discussion Paper. However, two submissions to the Discussion Paper addressed the issue of standing.

20.66 Legal Aid Queensland considered that a person who is named by an applicant in proceedings under the *Peace and Good Behaviour Act 1982* (Qld) should have standing to appear on the application.²²³⁵ Legal Aid Queensland provided the following case note in relation to a young person, named by the applicant in proceedings under the Act as being in need of protection,

2232 *Child Protection Act 1999* (Qld) s 113 (Court may hear submissions from non-parties to proceeding). The issue of standing is also raised under the *Anti-Discrimination Act 1991* (Qld) in the context of eligibility to make an application to the Anti-Discrimination Commission: *Anti-Discrimination Act 1991* (Qld) s 134(4). Under that Act, the test for standing to make a complaint is the effect, or likely effect, of the conduct complained about on the affected person and whether it is in the interests of justice to accept the complaint. Also note, for example, the *Coroners Act 2003* (Qld) s 36 which specifies a number of people who may appear, examine witnesses and make submissions at an inquest, including, 'a person who the Coroners Court considers has a sufficient interest in the inquest'.

2233 *Domestic Violence and Protection Orders Regulation 2002* (ACT) s 53(1), (2).

2234 *Justices Act 1959* (Tas) s 106E(1A). Note also that the civil restraining order legislation in Western Australia limits the circumstances in which a respondent, who is unrepresented, may cross-examine a witness with whom the respondent has a family and domestic relationship or an imagined personal relationship: *Restraining Orders Act 1997* (WA) s 44C. Also note s 62 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) which provides that the applicant and defendant may conduct their case personally or by a lawyer or other representative. Pt 15A of the *Crimes Act 1900* (NSW) does not contain an equivalent provision. For the application of the legislation in New South Wales, see note 2186 of this Report.

2235 Submission 13. This submission noted art 12 of the *Convention on the Rights of the Child*, adopted by the United Nations GA Res 44/25 of 20 November 1989, which Australia has ratified, and which provides:

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

notwithstanding the young person's view that she neither required protection nor wished to be named on the order:²²³⁶

The [*Peace and Good Behaviour Act 1982* (Qld)] matter involved an application brought by the father of a 16 year old girl against the girl's boyfriend. The father strenuously disapproved of the boyfriend and forbade his daughter seeing him. The 16 year old left home to live with family friends. The father brought a P&GBO application against the boyfriend, and named his daughter as also being in fear of the boyfriend.

The application by the father had a significant impact on the rights of the 16 year old girl. At the first return date of the application, the issue of her standing to appear before the court and present her view was canvassed with the court. The court decided that she did not have standing to appear as she was not a party to proceedings.

20.67 A submission from the Queensland Working Women's Service Inc and Young Workers Advisory Service commented on the issue of standing for workplace protection order hearings. This submission considered that an employee sought to be protected by an order should have an opportunity to express his or her views about whether an order should be made.²²³⁷

The Commission's view

20.68 Given the range of people who may be involved or have an interest in proceedings on an application to make, vary or set aside a protection order, the Commission considers it desirable for the Personal Protection Bill 2007 to specify who is entitled to appear on a proceeding.

20.69 As a matter of fairness, the applicant and the other parties to the relevant protection order should be entitled to appear in any proceedings in relation to the order.²²³⁸ That is, the applicant, the aggrieved person, the respondent and any other person who is, or is sought to be, protected by the relevant protection order (a person who is named as a relative or associate of an aggrieved person for a personal protection order, or an employee of an aggrieved person for a workplace protection order) should be entitled to appear.

20.70 The Commission is also of the view that it is in the interests of the persons protected by the order, and of the respondent to the order, that the persons who may appear on a proceeding not be unduly limited. Persons other than those who are direct parties to the proceeding may wish to be heard. The Commission considers that hearing from other persons who have an interest in the proceeding may also assist the court.

2236 Submission 13.

2237 Submission 3.

2238 It has been suggested, for example, that the opportunity to participate in the decision-making process is a key element in a person's belief about the fairness of the decision-making procedure: TR Tyler, *Why People Obey the Law* (1990) 163.

20.71 The Commission considers, for example, that a non-party who was eligible to apply for a protection order on behalf of an aggrieved person but who did not make the application should be able to appear in a proceeding in relation to the application. For example, where the aggrieved person is a child or an adult with impaired capacity, it may be important for the court to hear from a person who has some responsibility for, or particular interest in, the aggrieved person's welfare or interests.

20.72 It may also be important for another person or entity to appear, such as the Adult Guardian, the Commissioner of Police, or the Department of Child Safety, to inform the court of particular matters. This may arise, for example, when there are other relevant proceedings or actions on foot. Additionally, there may be other persons or entities who have a representative interest in particular protection order proceedings. This might arise, for example, where a trade union organisation wishes to make submissions in proceedings for a workplace protection order.

20.73 In relation to such non-parties, the Commission considers it desirable to maintain the court's discretion in deciding who should appear. It may not be appropriate in every case for a particular non-party to appear. Such persons should, however, be entitled to seek the court's leave to appear in a proceeding.

20.74 The Commission is therefore of the view that the Personal Protection Bill 2007 should specify that each of the following persons may appear at the hearing of an application to make, vary or set aside a protection order:

- an applicant for the proceeding;
- if the application is an application to vary or set aside a protection order, a person who was an applicant for the making of the protection order;
- a respondent for the relevant proceeding;
- a person who is, or is sought to be, protected by the relevant protection order, including an aggrieved person, a person who is named as a relative or associate of an aggrieved person for a personal protection order, or an employee of an aggrieved person for a workplace protection order; and
- another person given leave by the court to appear.

20.75 Standing to appear on an appeal under the Personal Protection Bill 2007 is considered in Chapter 16 of this Report.

PROVISIONS CONCERNING WARRANTS

20.76 Earlier in this Report, the Commission has recommended that the Personal Protection Bill 2007 should include a power to issue a warrant for a respondent to be taken into custody by police and brought before the court. The Commission has proposed the power to issue a warrant should arise in relation to an application for the making of a protection order, an application to vary or set aside a protection order or an application to register a corresponding order.²²³⁹

20.77 In the context of civil restraining order legislation,²²⁴⁰ the general purpose of issuing a warrant to apprehend a person is to compel the person's attendance in court. In several Australian jurisdictions, a warrant can be obtained for the purpose of safeguarding the person seeking the protection of a restraining order or their property.²²⁴¹

20.78 In this section of the Chapter, the Commission considers the circumstances in which a court should be empowered under the Personal Protection Bill 2007 to order the issue of a warrant for the arrest of a person.

The *Peace and Good Behaviour Act 1982* (Qld)

20.79 Under the *Peace and Good Behaviour Act 1982* (Qld), a warrant may be issued by a justice who is satisfied of certain matters for the apprehension of a person as soon as the complaint against the person has been laid.²²⁴² In addition, where a person has failed to appear in answer to a summons for the hearing of a complaint, the court may issue a warrant to apprehend the person and bring him or her before the court.²²⁴³

The *Domestic and Family Violence Protection Act 1989* (Qld)

20.80 Under the *Domestic and Family Violence Protection Act 1989* (Qld), where a respondent has failed to appear when required to do so, the court may order the issue of a warrant for the respondent to be taken into custody and brought before the court.²²⁴⁴ The court's power to order the issue of a warrant arises in relation to an application for the making of a protection order, an application to vary or revoke a domestic violence order or where the court makes a domestic violence order on its own initiative.

2239 See para 11.22, 15.71, 17.38 of this Report.

2240 See para 1.44 of this Report.

2241 See para 20.82–20.85 of this Report.

2242 *Peace and Good Behaviour Act 1982* (Qld) s 4(2A)(b).

2243 *Peace and Good Behaviour Act 1982* (Qld) s 7(1)(a).

2244 *Domestic and Family Violence Protection Act 1989* (Qld) ss 49(2)(c), 51(6)(c), 53(3)(c).

20.81 Section 59(1) of the *Domestic and Family Violence Protection Act 1989* (Qld) specifies that the court shall not order the issue of a warrant ‘as a matter of course, but only where, in the circumstances of the case, the court believes it appropriate that the respondent or, as the case may be, offender, be heard’.

The position in other jurisdictions

20.82 In the ACT, New South Wales, Tasmania and Victoria, a warrant may be issued for the arrest of the person against whom a restraining order is sought in order to secure his or her appearance in court.²²⁴⁵

20.83 In New South Wales, an authorised officer must issue a warrant for the arrest of a defendant if it appears that the personal safety of the person for whose protection the order is sought will be put at risk unless the defendant is arrested for the purpose of being brought before the court.²²⁴⁶

20.84 In Tasmania, on an application for a restraint order, a justice may issue a warrant of apprehension for the person against whom the restraint order is sought if the justice considers there are circumstances of urgency and he or she considers there is sufficient cause to do so.²²⁴⁷

20.85 In Victoria, a registrar may issue a warrant to arrest a defendant in a complaint for an intervention order if the complaint alleges an actual or threatened assault against an aggrieved, or actual or threatened damage to the aggrieved’s property, and the registrar of the court is satisfied that the personal safety of the aggrieved would be seriously threatened or that damage would be likely to be caused to aggrieved’s property unless the defendant was arrested and brought into custody.²²⁴⁸

The Commission’s view

20.86 In the Commission’s view, the Personal Protection Bill 2007 should provide that the court may order the issue of a warrant on the failure of a respondent to appear on an application to make, vary or set aside a protection order or an application to register a corresponding order, to take the respondent into custody and be brought before the court, only if the court believes it is appropriate that the person be heard. This is consistent with section 59(1) of the *Domestic and Family Violence Protection Act 1989* (Qld).

2245 *Domestic Violence and Protection Orders Regulation 2002* (ACT) s 15(2)(b); *Crimes Act 1900* (NSW) s 562ZZI(1); *Crimes (Family Violence) Act 1987* (Vic) s 9. Section 562ZZI of the *Crimes Act 1900* (NSW) is replicated in s 88 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW). For the application of the legislation in New South Wales and Victoria, see note 2186 of this Report.

2246 *Crimes Act 1900* (NSW) s 562ZZI(3).

2247 *Justices Act 1959* (Tas) s 106C.

2248 *Crimes (Family Violence) Act 1987* (Vic) s 9(1)(b).

THE APPLICATION OF THE *BAIL ACT 1980* (QLD)

20.87 In Queensland, the *Bail Act 1980* (Qld) governs the power of a court to grant bail to a person held in custody on a charge of, or in connection with, an offence.²²⁴⁹ The Act prima facie confers upon any unconvicted person who is brought before a court the right to a grant of bail.²²⁵⁰ However, a court must refuse bail if satisfied there is an unacceptable risk of certain matters happening while the person is released on bail.²²⁵¹ The conditions for the release of a person on bail may include special conditions considered by a court as necessary to secure the appearance of the person in court and to prevent him or her committing an offence, endangering the safety and welfare of members of the public or interfering with a witness.²²⁵²

The *Peace and Good Behaviour Act 1982* (Qld)

20.88 Section 9 of the *Peace and Good Behaviour Act 1982* (Qld) provides that, where a person is apprehended under a warrant issued under the Act, the provisions of the *Bail Act 1980* (Qld) are applicable in respect of the person as though the person had been apprehended on a charge of an offence.

20.89 The application of the provisions of the *Bail Act 1980* (Qld) in respect of a person who has been apprehended under a warrant issued under the *Peace and Good Behaviour Act 1982* (Qld) ensures that the person is subject to bail conditions no more or less strict than those that would apply where a defendant is alleged to have committed an offence.

The *Domestic and Family Violence Protection Act 1989* (Qld)

20.90 Section 59(2) of the *Domestic and Family Violence Protection Act 1989* (Qld) provides that the *Bail Act 1980* (Qld) applies when a person is taken into custody under a warrant issued under the *Domestic and Family Violence Protection Act 1989* (Qld). Section 59(2) is expressed in almost identical terms to section 9 of the *Peace and Good Behaviour Act 1982* (Qld).²²⁵³

2249 See *Bail Act 1980* (Qld) s 8. The Act also empowers a police officer, who is the officer-in-charge of a police station or a police establishment or a watch-house manager, to grant bail to a person who has been arrested in connection with a charge of an offence and is being held in the officer's custody: *Bail Act 1980* (Qld) s 7.

2250 *Bail Act 1980* (Qld) s 9.

2251 *Bail Act 1980* (Qld) s 16(1). The main grounds for refusal to grant bail are satisfaction by the court that there is an unacceptable risk that, while released on bail, the defendant would fail to appear, or would commit an offence, endanger the victim of the offence with which the defendant is charged or some other person or interfere with witnesses. Another ground is that custody is desirable for the defendant's own protection.

2252 *Bail Act 1980* (Qld) s 11(2).

2253 Section 59(2) of the *Domestic and Family Violence Protection Act 1989* (Qld) provides that, where a person is taken into custody under a warrant issued under the *Domestic and Family Violence Protection Act 1989* (Qld), the provisions of the *Bail Act 1980* (Qld) are applicable in respect of the person as if the person had been apprehended on a charge of an offence.

The position in other jurisdictions

20.91 The civil restraining order legislation in a number of other Australian jurisdictions expressly applies the relevant bail legislation in respect of a person who has been arrested in relation to an application for a restraining order.²²⁵⁴

20.92 In New South Wales, the civil restraining order legislation provides that the provisions of the *Bail Act 1978* (NSW) apply to a defendant who is arrested under a warrant issued under the restraining order legislation or who first appears before the court in answer to a direction to appear, as if the defendant were an accused person charged with an offence.²²⁵⁵

20.93 In Tasmania, on the adjournment of a proceeding in respect of an application for a restraint order, a justice may admit the respondent to bail for a period no longer than 60 days.²²⁵⁶

20.94 In Victoria, the *Crimes (Family Violence) Act 1987* (Vic) makes provision for the application of the *Bail Act 1977* (Vic) in respect of a person who appears in answer to a summons, or who has been arrested under a warrant, issued in relation to a complaint for an intervention order.²²⁵⁷

The Commission's view

20.95 In the Commission's view it is appropriate that the Personal Protection Bill 2007 should specify, as the *Peace and Good Behaviour Act 1982* (Qld) presently does, that when a person is taken into custody under a warrant issued under the Bill, the *Bail Act 1980* (Qld) applies to the person as if the person were taken into custody on a charge of an offence. This will continue to ensure that the Queensland bail provisions apply to a person who is taken into custody under a warrant issued under the Personal Protection Bill 2007 pending the determination of the proceedings against him or her.

NOTIFICATION TO COMMISSIONER OF POLICE OF APPLICATIONS ETC

20.96 Throughout this Report, the Commission has made recommendations about the role of police under the proposed Personal Protection Bill 2007. In particular, the Commission has recommended that:

2254 *Crimes Act 1900* (NSW) s 562ZZL; *Crimes (Family Violence) Act 1987* (Vic) s 19. Section 562ZZL of the *Crimes Act 1900* (NSW) is replicated in s 83 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW). For the application of the legislation in New South Wales and Victoria, see note 2186 of this Report.

2255 *Crimes Act 1900* (NSW) s 562ZZL.

2256 *Justices Act 1959* (Tas) s 106F(1)(b), (3).

2257 *Crimes (Family Violence) Act 1987* (Vic) s 19.

- police be empowered, and in some circumstances required, to make applications;²²⁵⁸
- police be required in some circumstances to effect service of applications and orders;²²⁵⁹ and
- police be responsible for the enforcement of orders.²²⁶⁰

20.97 This raises the issue of notification to the Commissioner of Police of applications and orders made under the Personal Protection Bill 2007 in order to assist the police in performing their role under the Bill.

The *Peace and Good Behaviour Act 1982* (Qld)

20.98 At present, the *Peace and Good Behaviour Act 1982* (Qld) does not contain specific notice provisions in relation to the Commissioner of Police. Neither does the *Justices Act 1886* (Qld) contain any express provisions requiring notice of complaints, other process or orders to be given to police.

The *Domestic and Family Violence Protection Act 1989* (Qld)

20.99 The *Domestic and Family Violence Protection Act 1989* (Qld) contains express provisions requiring notice or copies of applications and orders made under the Act to be given to police.

20.100 Section 52 of the *Domestic and Family Violence Protection Act 1989* (Qld) provides generally for notice of applications and orders made under the Act to be given to the Commissioner of Police, by the clerk of the court. Section 52 provides:

52 Duty of clerk of court to give certain notices to commissioner

- (1) The clerk of the court in which any of the following applications are made, or orders are granted, must give notice of the application or order to the commissioner—
- (a) an application for a protection order;
 - (b) an application for a variation or revocation of such an order;
 - (c) an application for—
 - (i) registration of an interstate order; or
 - (ii) variation or revocation of a registered interstate order;

2258 See para 6.125–6.126 of this Report.

2259 See para 19.59–19.61 of this Report.

2260 See para 14.97 of this Report.

- (d) an order made because of an application mentioned in paragraph (a), (b) or (c), including a temporary order.
- (2) The clerk must give the notice before the end of 1 business day after the day the application is made or order is granted.

20.101 The *Domestic and Family Violence Protection Act 1989* (Qld) also contains service provisions requiring copies of particular applications and orders to be given to police, who may be required to effect service of documents.²²⁶¹ It also requires a copy of a notice of appeal against an order made under the Act to be given to the Commissioner of Police who may appear at the appeal.²²⁶²

Database

20.102 All domestic violence jobs that police attend must be entered onto a police database called the 'DV Index'. This database records details of all domestic violence incidents, incidents initially classified as a domestic violence incident whether or not they are confirmed as such, domestic violence orders made under the *Domestic and Family Violence Protection Act 1989* (Qld) by police and private applications and interstate orders registered in Queensland.²²⁶³

The position in other jurisdictions

20.103 The civil restraining order legislation in each of the other Australian jurisdictions includes provisions requiring notices or copies of documents to be given to police.

20.104 In the ACT, the registrar must give a copy of a protection order, other than an emergency order, to the chief police officer and to the registrar of firearms.²²⁶⁴ If a corresponding protection order is registered, a copy of the application for registration and of the order must also be given to the chief police officer.²²⁶⁵

20.105 In New South Wales, the Commissioner of Police must be given a copy of an apprehended violence order and any variation or revocation of an order.²²⁶⁶ The Commissioner of Police is also required to make a record of

²²⁶¹ *Domestic and Family Violence Protection Act 1989* (Qld) ss 43(1), 47(4), 51(4)(b), 58(2)(c).

²²⁶² *Domestic and Family Violence Protection Act 1989* (Qld) s 64(1)(c).

²²⁶³ Crime and Misconduct Commission, Queensland, *Policing domestic violence in Queensland: Meeting the challenges* (March 2005) 5.

²²⁶⁴ *Domestic Violence and Protection Orders Act 2001* (ACT) s 33(1)(c)(ii), (iii).

²²⁶⁵ *Domestic Violence and Protection Orders Act 2001* (ACT) s 86(2)(a).

²²⁶⁶ *Crimes Act 1900* (NSW) ss 562ZZA(6), 562ZZH(6). Sections 562ZZA, 562ZZH of the *Crimes Act 1900* (NSW) are replicated in s 77 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW). For the application of the legislation in New South Wales, see note 2186 of this Report.

orders and retain it for at least ten years after the order ceases to be in force.²²⁶⁷

20.106 Under the recently amended *Justices Act* (NT) in the Northern Territory, the Commissioner of Police is to be given a copy of any personal violence restraining order that is made.²²⁶⁸

20.107 Similarly, in South Australia, a copy of a restraining order and notice of any variation or revocation of an order must be forwarded to the Commissioner of Police.²²⁶⁹ A copy of any registered corresponding order and notice of a variation or cancellation of a registered corresponding order must also be given to the Commissioner of Police.²²⁷⁰

20.108 In Tasmania, a copy of a registered corresponding order must be given to the Commissioner of Police.²²⁷¹

20.109 In Victoria, a copy of an intervention order or of a variation of an order, must be given to the Chief Commissioner of Police and to the officer in charge of the police station nearest to the aggrieved's place of residence.²²⁷² A copy of an order that revokes any licence or permit in relation to the possession of weapons is also to be forwarded to the Chief Commissioner of Police²²⁷³ who must make such entries in the firearms register as are necessary to give effect to the order.²²⁷⁴ A copy of a registered corresponding order and notice of any variation, extension or revocation of a registered corresponding order must also be forwarded to the Chief Commissioner of Police.²²⁷⁵

20.110 In Western Australia, notice of the registration of a corresponding order or of a variation or cancellation of a registered corresponding order must be given to the Commissioner of Police, along with a copy of the order.²²⁷⁶ Notice must also be given to the Commissioner of Police of the cancellation of a misconduct restraining order.²²⁷⁷

2267 *Crimes Act 1900* (NSW) ss 562ZZA(7), 562ZZH(7).

2268 *Justices Act* (NT) s 90(b), as amended by the *Domestic and Family Violence Act* (NT). Section 90 of the *Justices Act* (NT) is a new provision. For the application of the legislation in the Northern Territory, see note 2186 of this Report.

2269 *Summary Procedure Act 1921* (SA) s 99G(1), (2).

2270 *Summary Procedure Act 1921* (SA) s 99H(5), (6).

2271 *Justices Act 1959* (Tas) s 106GB(4).

2272 *Crimes (Family Violence) Act 1987* (Vic) s 17(1)(d)(i), (v). For the application of the *Crimes (Family Violence) Act 1987* (Vic), see note 2186 of this Report.

2273 *Crimes (Family Violence) Act 1987* (Vic) s 17(1)(e).

2274 *Crimes (Family Violence) Act 1987* (Vic) s 17(1A).

2275 *Crimes (Family Violence) Act 1987* (Vic) ss 18AA(2)(b), (10)(b), 18AAB(2)(b), (4)(b).

2276 *Restraining Orders Act 1997* (WA) ss 76(1)(b)(iii), (c), 78(3), 79(b), 79C(3), 79E(4)(b), 79F(b).

2277 *Restraining Orders Act 1997* (WA) s 49(3)(c).

The Commission's view

20.111 Throughout this Report, the Commission has made recommendations about the role of police under the proposed Personal Protection Bill 2007, in particular, in relation to the enforcement of orders made under the Bill. The Commission considers that, given those recommendations, the Personal Protection Bill 2007 should include provisions requiring copies of applications and orders to be given to the Commissioner of Police to assist police in undertaking their role under the legislation.

20.112 The Commission considers that this should be dealt with in a single provision in the Personal Protection Bill 2007. The Commission therefore considers that the Bill should specify that the registrar of the court hearing the relevant proceeding must give a copy of the following documents to the Commissioner of Police within one business day after the day the application or order is made, or the notice is filed:

- an application for a protection order;
- an application to register a corresponding order;
- an application to vary or set aside a protection order, including a registered corresponding order;
- a protection order, including an interim protection order;
- an order varying or setting aside a protection order, including a registered corresponding order;
- an order registering a corresponding order;
- a notice of appeal against a decision or order made under the Bill.

20.113 This is similar to section 52 of the *Domestic and Family Violence Protection Act 1989* (Qld).

20.114 A provision to this effect would assist the police in their enforcement role and, to the extent required, in their service obligations under the proposed Bill. It would also ensure the Commissioner of Police has timely notice of proceedings in which he or she may wish to appear.

20.115 In addition, the Commission is of the view that a database of orders made under the Personal Protection Bill 2007 should be maintained for use by the police. The Commission considers this database should be modelled on, or added to, the existing index of orders under the *Domestic and Family Violence Protection Act 1989* (Qld) maintained by the police. The Commission acknowledges that this may have resource implications for the Queensland Police Service. Nonetheless, the Commission considers a database of this kind

would assist police in the performance of their functions under the proposed Bill, and in particular, the enforcement of protection orders.

RELATIONSHIP WITH THE *DOMESTIC AND FAMILY VIOLENCE PROTECTION ACT 1989 (QLD)*

20.116 In some circumstances, it may be appropriate for the court to treat an application for a domestic violence order as an application for a protection order under the Personal Protection Bill 2007. This might be the case, for example, where it becomes apparent that an applicant for a domestic violence order falls outside the scope of the *Domestic and Family Violence Protection Act 1989* (Qld). Similarly, it may be that an applicant for a protection order under the Personal Protection Bill 2007 falls within the ambit of the *Domestic and Family Violence Protection Act 1989* (Qld) because a domestic relationship exists between the parties.²²⁷⁸ In that case, it may be appropriate for the court to treat the application for a protection order as an application for a domestic violence order.

The position in other jurisdictions

20.117 In the ACT and New South Wales, the civil restraining order legislation protects people from domestic violence and other types of personal violence.

20.118 In the ACT, if a person applies for a personal violence order or a domestic violence order and the order may not be made because the conduct complained of is not conduct that the type of order applied for could restrain, the Magistrates Court may make another type of protection order.²²⁷⁹ The court may exercise this power if:

- the person honestly applied for the order; and
- had the application been properly made, the court could have made the other protection order.

20.119 In a similar vein, where a proceeding for a protection order was decided before it became apparent that that the order was not properly applied for, the order must be treated as if it were another kind protection order that could be made in relation to the conduct complained of.²²⁸⁰

2278 The Commission has recommended at para 3.7, 3.36 of this Report that the Personal Protection Bill 2007 should not apply if the respondent and the aggrieved person are in a 'domestic relationship' under the *Domestic and Family Violence Protection Act 1989* (Qld).

2279 *Domestic Violence and Protection Orders Act 2001* (ACT) s 22.

2280 *Domestic Violence and Protection Orders Act 2001* (ACT) s 23.

20.120 However, the court's power to treat a wrongly made order or application as if it were, or were made in relation to, another type of order does not extend to consent orders.²²⁸¹

20.121 In New South Wales, an application for an apprehended domestic violence order must be treated as an application for an apprehended personal violence order where the parties are not in a domestic relationship.²²⁸² Conversely, an application for an apprehended personal violence order is to be treated as an application for an apprehended domestic violence order if there is a domestic relationship between the parties.²²⁸³ In contrast to the ACT, there is no limit on the court's power to treat a wrongly made application as if it were made in relation to another kind of order.²²⁸⁴

20.122 In South Australia and Tasmania, separate pieces of legislation deal with the protection of people from domestic violence and other types of personal violence.

20.123 The South Australian civil restraining order legislation allows the court to deal with a complaint made for a restraining order that could have been made under the South Australian domestic violence legislation as if it had been made under that legislation.²²⁸⁵ The South Australian domestic violence legislation contains a reciprocal provision.²²⁸⁶ The Tasmanian family violence legislation provides that if a court cannot make a family violence order but is satisfied there are grounds to make an order under the restraining order legislation, it may make a restraining order.²²⁸⁷

2281 *Domestic Violence and Protection Orders Act 2001* (ACT) ss 22(3), 23(3). Note that s 29(2)(b) of the *Domestic Violence and Protection Orders Act 2001* (ACT) provides that a consent order may be made whether or not any ground for making the order has been made out.

2282 *Crimes Act 1900* (NSW) s 562F(2). This provision is replicated in s 15(2) of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW). Also note s 82 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) which provides that if, at any time, a court is unable to determine whether to make an apprehended personal violence order or an apprehended domestic violence order, the court may make whichever apprehended violence order it thinks fit. That section also provides that the court may, at any time, treat an order as having been made as whichever type of apprehended violence order it thinks fit if it is unable to determine whether the order was, or should have been, made as an apprehended personal violence order or an apprehended domestic violence order. For the application of the legislation in New South Wales, see note 2186 of this Report.

2283 *Crimes Act 1900* (NSW) s 562J(2). This provision is replicated in s 18(2) of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW).

2284 Note that s 562ZW of the *Crimes Act 1900* (NSW) empowers the court to make a consent order without being satisfied of the prerequisites to the making of those orders. This provision is replicated in s 78 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW).

2285 *Summary Procedure Act 1921* (SA) s 99L.

2286 *Domestic Violence Act 1994* (SA) s 19(2).

2287 *Family Violence Act 2004* (Tas) s 24.

Submissions

20.124 In its Discussion Paper, the Commission sought submissions on the following:²²⁸⁸

- Where the parties are not in a relationship covered by the *Domestic and Family Violence Protection Act 1989* (Qld), should an application for a domestic violence protection order be able to be treated as an application for a peace and good behaviour order?
- Where the parties are in a relationship covered by the *Domestic and Family Violence Protection Act 1989* (Qld), should an application for a peace and good behaviour order be able to be treated as an application for a domestic violence protection order?
- If yes to either of the previous questions or both, when should this occur and who should have the power to treat the application in that way?

The general view

20.125 The majority of the submissions received by the Commission regarding the relationship between the *Peace and Good Behaviour Act 1982* (Qld) and the *Domestic and Family Violence Protection Act 1989* (Qld) supported the reciprocal recognition of applications wrongly made under either of those Acts.²²⁸⁹ Most of these submissions considered the presiding magistrate should have power to treat an application in this way.²²⁹⁰

20.126 The Women's Legal Service suggested that a provision allowing a court to treat an application wrongly made under another Act may also have relevance to other Acts which provide for the protection of people or property.²²⁹¹

20.127 Caxton Legal Centre Inc considered that, if an application for a protection order is inadvertently initiated under the domestic violence legislation instead of the *Peace and Good Behaviour Act 1982* (Qld), it should be possible for the application to be heard as an application under the *Peace and Good Behaviour Act 1982* (Qld) either upon an oral application or at the direction of a magistrate without requiring the complainant to file a fresh application.²²⁹²

2288 Queensland Law Reform Commission, Discussion Paper, *A Review of the Peace and Good Behaviour Act 1982* (WP 59, March 2005) 108 (Questions 10-15-10-17).

2289 Submissions 5, 8, 14, 15, 19.

2290 Submissions 5, 8, 14, 15.

2291 Submission 8. This submission provided the following examples: *Guardianship and Administration Act 2000* (Qld) ss 194, 197; *Family Law Act 1975* (Cth) ss 68B, 114; *Child Protection Act 1999* (Qld) ch 2 pt 4.

2292 Submission 19.

In our experience, parties who actually take the time to prepare an application and attend to the necessary steps to get a matter listed for hearing are already quite distressed and the court should avoid requiring any further action which adds to the difficulties of the complainant. Such an option would unfortunately work against the interests of a defendant who would need to be apprised of the changed nature of the case against him/her and there would need to be some internal process for clarifying the nature of the application in order to ensure procedural fairness. The same arrangement could be made to cover clients who inadvertently apply for a *Peace and Good Behaviour Act* order when a domestic violence order would be more suitable, although it is already arguably possible for an order to be made in domestic violence situations under the *Peace and Good Behaviour Act*.

20.128 Legal Aid Queensland disagreed with the general view, in light of its submission that the *Peace and Good Behaviour Act 1982* (Qld) should be subsumed by an appropriate expansion to the *Domestic and Family Violence Protection Act 1989* (Qld).²²⁹³ A similar view was expressed in another submission.²²⁹⁴

The application form

20.129 The Citizens Advice Bureau and Gold Coast Legal Service suggested that it would help to facilitate the application process if a generic application form, in which the complainant could nominate the particular Act under which the application was being made, were used.²²⁹⁵ The Women's Legal Service expressed a similar view.²²⁹⁶

The Commission's view

20.130 There may be occasions when an application under the Personal Protection Bill 2007 or the *Domestic and Family Violence Protection Act 1989* (Qld) is wrongly made, for example, because of a lack of understanding of the relationships covered by the legislation. If the court were empowered to treat an application for a domestic violence order as if it were made in relation to a protection order under the Personal Protection Bill 2007, it would simplify the proceedings and avoid any inconvenience to the parties arising from the need to make a new application.

20.131 The Commission is therefore of the view that the Personal Protection Bill 2007 should provide that, if a court hearing an application for a protection order is satisfied the application should have been an application for a domestic violence order under the *Domestic and Family Violence Protection Act 1989* (Qld), the court may order that the proceeding be continued as if it were a

2293 Submission 13.

2294 Submission 27. Note, however, that several submissions specifically considered that the *Peace and Good Behaviour Act 1982* (Qld) and the *Domestic and Family Violence Protection Act 1989* (Qld) should remain separate: submissions 22, 25, 26.

2295 Submission 5.

2296 Submission 8.

proceeding on an application for a domestic violence order, and may make the other orders it considers appropriate in the circumstances. The Bill should also provide that if the court hears an application for a protection order as if it were an application for a domestic violence order, the *Domestic and Family Violence Protection Act 1989* (Qld) applies to the application, and the proceeding under the Personal Protection Bill 2007 is discontinued.

20.132 The Commission also considers that the *Domestic and Family Violence Protection Act 1989* (Qld) should be consequentially amended to insert a reciprocal provision, so that, where the parties fall within the scope of the *Domestic and Family Violence Protection Act 1989* (Qld), the court may deal with an application for a protection order under the Personal Protection Bill 2007 as if it had been made under the *Domestic and Family Violence Protection Act 1989* (Qld).

20.133 The Commission has also recommended in Chapter 12 of this Report, that the court may make a protection order in terms agreed to by the parties whether or not any grounds have been made out.²²⁹⁷ Given that the Commission has also recommended that the court's ability to make a protection order by consent should be limited to matters under the Personal Protection Bill 2007,²²⁹⁸ it is unnecessary to limit the court's power regarding the treatment of wrongly made applications from applying to protection orders by consent.

20.134 The Commission considers the use of similar forms in respect of applications made under the Personal Protection Bill 2007 and the *Domestic and Family Violence Protection Act 1989* (Qld) would also facilitate the process of treating an application which has been wrongly commenced under one of those Acts as an application commenced under the other Act. The Commission has recommended in Chapter 9 of this Report that the application form for a protection order should be modelled on the current application form for a protection order under the *Domestic and Family Violence Protection Act 1989* (Qld) ('Form DV1').²²⁹⁹

CONFERRAL OF JURISDICTION

20.135 Throughout this Report, the Commission has made various recommendations about the powers of magistrates and the Magistrates Court to make orders under the Personal Protection Bill 2007.

2297 See para 12.80 of this Report.

2298 See para 12.82 of this Report. This would include the requirement that the Personal Protection Bill 2007 does not apply to persons who fall outside the scope of the *Domestic and Family Violence Protection Act 1989* (Qld).

2299 See para 9.45 of this Report.

20.136 The Commission has also made recommendations about the power to make a protection order against a child²³⁰⁰ and the power of a court to make an order against a person who is found guilty of an offence that involves prohibited conduct.²³⁰¹

20.137 This raises the issue of the conferral of jurisdiction to hear and determine applications under the Personal Protection Bill 2007, including where there may be concurrent or other proceedings related to the respondent, and the application of the *Justices Act 1886* (Qld) to proceedings under the Bill.

The Peace and Good Behaviour Act 1982 (Qld)

20.138 At present, the *Peace and Good Behaviour Act 1982* (Qld) provides that the Magistrates Court shall hear and determine the matter of the complaint made under the Act.²³⁰² On the conviction of a person for breach of a peace and good behaviour order, the Magistrates Court may also make a further peace and good behaviour order.²³⁰³ The jurisdiction and powers of magistrates are dealt with generally under the *Justices Act 1886* (Qld).²³⁰⁴

20.139 Section 8 of the *Peace and Good Behaviour Act 1982* (Qld) provides that the provisions of and proceedings and procedures under the *Justices Act 1886* (Qld) that apply in the case of a summary prosecution apply to proceedings under the *Peace and Good Behaviour Act 1982* (Qld), subject to any necessary or prescribed modifications.

The Domestic and Family Violence Protection Act 1989 (Qld)

20.140 Section 38 of the *Domestic and Family Violence Protection Act 1989* (Qld) deals with the conferral of jurisdiction for proceedings under that Act. It confers jurisdiction on every Magistrates Court and magistrate, and on every other court before which a person pleads guilty to, or is found guilty of, an offence that involves domestic violence. This may include, for example, the Childrens Court.²³⁰⁵

20.141 Section 38 additionally provides for the application of the provisions of the *Justices Act 1886* (Qld) and the *Childrens Court Act 1992* (Qld) to proceedings under the *Domestic and Family Violence Protection Act 1989* (Qld). It also provides for the exercise of powers under tenancy and small

2300 See para 20.20, 20.34 of this Report.

2301 See para 12.109 of this Report.

2302 *Peace and Good Behaviour Act 1982* (Qld) s 6(1), (3).

2303 *Peace and Good Behaviour Act 1982* (Qld) s 11.

2304 *Magistrates Act 1991* (Qld) s 8; *Justices Act 1886* (Qld) ss 19, 22A.

2305 See *Domestic and Family Violence Protection Act 1989* (Qld) ss 16(3), 30.

claims legislation by the Magistrates Court in proceedings under the *Domestic and Family Violence Protection Act 1989* (Qld).

20.142 Section 38 provides:

38 Conferral of jurisdiction

- (1) Jurisdiction is conferred on—
 - (a) every Magistrates Court and magistrate to hear and determine all applications made to it or the magistrate under this Act; and
 - (b) every other court before which a person pleads guilty to, or is found guilty of, an offence that involves domestic violence.
- (2) To remove doubt, it is declared that—
 - (a) for proceedings under this Act before a Magistrates Court or magistrate—the provisions of the *Justices Act 1886* apply to the proceedings unless the application of that Act is inconsistent with this Act; and
 - (b) for proceedings under this Act in the Childrens Court constituted by a Childrens Court magistrate—
 - (i) the provisions of the *Justices Act 1886* apply to the proceedings unless the application of that Act is inconsistent with this Act or the *Childrens Court Act 1992*; and
 - (ii) the provisions of the *Childrens Court Act 1992* apply to the proceedings unless the application of that Act is inconsistent with this Act.
- (3) Subsection (4) applies if—
 - (a) an application for a protection order, or variation of a protection order, is made to a Magistrates Court; and
 - (b) an application is made under section 62A²³⁰⁶ by the aggrieved or respondent in relation to a tenancy application. [original note]
- (4) If the Magistrates Court considers it appropriate, it may exercise the powers and make orders that a small claims tribunal may exercise or make under—
 - (a) the *Small Claims Tribunals Act 1973* for a tenancy application; or
 - (b) the *Residential Tenancies Act 1994* for a tenancy application.

2306

Section 62A (Procedural provisions for tenancy application).

- (5) An order of the Magistrates Court about the tenancy application is taken to have been made under the *Small Claims Tribunals Act 1973* for the *Residential Tenancies Act 1994*.

20.143 The *Domestic and Family Violence Protection Act 1989* (Qld) also includes, in section 62A, procedural provisions that are to apply when the court deals with a tenancy application.

20.144 The *Domestic and Family Violence Protection Act 1989* (Qld) also expressly clarifies that an order may be made under that Act even if the person concerned has been charged with an offence arising out of the same conduct.²³⁰⁷ It also provides that an application or order made or on foot under the *Domestic and Family Violence Protection Act 1989* (Qld) does not affect proceedings in relation to an offence against the person arising out of the same conduct, and that a person may be punished for such an offence despite any order made against him or her under the domestic violence legislation.²³⁰⁸ Section 62(3) of that Act also makes provision to limit the admissibility, in a criminal proceeding arising out of the same conduct, of evidence about the existence or outcome of a domestic violence order proceeding.

The position in other jurisdictions

20.145 In NSW, jurisdiction in relation to apprehended personal violence orders is conferred on a Local Court, except where the defendant is under 18 years at the time of the application.²³⁰⁹ Where the defendant is under 18 years, jurisdiction is conferred on the Children's Court. Jurisdiction is also conferred on the District Court where an application has been dismissed by a Local Court or the Children's Court. The legislation in New South Wales also clarifies that a court may make an apprehended personal violence order even though proceedings have been commenced against the person for an offence arising out of the same conduct as that out of which the application for the order arose.²³¹⁰ A similar provision is made in the civil restraining order legislation in the ACT.²³¹¹

2307 *Domestic and Family Violence Protection Act 1989* (Qld) s 62(1).

2308 *Domestic and Family Violence Protection Act 1989* (Qld) s 62(4), (5).

2309 *Crimes Act 1900* (NSW) s 562ZZP(1). This provision is replicated in s 91(1) of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW). For the application of the legislation in New South Wales, see note 2186 of this Report.

2310 *Crimes Act 1900* (NSW) s 562ZZB. This provision is replicated in s 81 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW).

2311 *Domestic Violence and Protection Orders Act 2001* (ACT) s 102. Note also that s 103 of the *Domestic Violence and Protection Orders Act 2001* (ACT) provides that '[t]his Act does not affect the operation of the *Crimes Act 1900*, section 397(1) (which deals with the making of recognisances to keep the peace)'.

20.146 In the Northern Territory, jurisdiction to make personal violence restraining orders is conferred on the Court of Summary Jurisdiction.²³¹²

20.147 In Tasmania, jurisdiction to deal with restraining orders is conferred on any magistrate or any two or more justices.²³¹³

20.148 In Victoria, jurisdiction is conferred on the Magistrates Court in relation to intervention orders.²³¹⁴ The legislation in Victoria also provides for concurrent jurisdiction in relation to intervention orders involving a defendant under the age of 18 years of the Magistrates Court and the Children's Court.²³¹⁵ It also provides for the transfer of proceedings between the Magistrates Court and the Children's Court. The legislation also includes a provision to the effect that the court may make an order even though the person has been charged with an offence arising out of the same conduct as that out of which the complaint for the order arose.²³¹⁶ An order may be made at any time before or after proceedings for the offence have commenced.

20.149 In Western Australia, jurisdiction in relation to violence and misconduct restraining orders is conferred on magistrates.²³¹⁷ The Western Australian restraining order legislation also provides for the transfer of proceedings between the Magistrates Court and the Children's Court.²³¹⁸ In addition, the legislation specifies that 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.²³¹⁹ It also provides that the making of an order under that Act does not affect the civil or criminal liability of the respondent in respect of the same conduct.

The Commission's view

Conferral of jurisdiction

20.150 The *Peace and Good Behaviour Act 1982* (Qld) presently confers jurisdiction on the Magistrates Court. The Commission considers the Magistrates Court should have jurisdiction under the proposed Personal

2312 See *Justices Act* (NT) s 87(1), as amended by the *Domestic and Family Violence Act* (NT). Section 87 of the *Justices Act* (NT) is a new provision. For the application of the legislation in the Northern Territory, see note 2186 of this Report.

2313 *Justices Act 1959* (Tas) s 20(1).

2314 See *Crimes (Family Violence) Act 1987* (Vic) ss 3(1) (definition of 'Court'), 4(1). For the application of the *Crimes (Family Violence) Act 1987* (Vic), see note 2186 of this Report.

2315 *Crimes (Family Violence) Act 1987* (Vic) s 3A.

2316 *Crimes (Family Violence) Act 1987* (Vic) s 21D.

2317 See *Restraining Orders Act 1997* (WA) ss 3(1) (definition of 'court'), 11A, 34(1).

2318 *Restraining Orders Act 1997* (WA) s 52.

2319 *Restraining Orders Act 1997* (WA) s 63C.

Protection Bill 2007 and has made recommendations throughout this Report about the powers of the Magistrates Court in proceedings under the Bill.

20.151 The Commission has also made recommendations elsewhere in this Report about the power of a court to make an order against a person who is found guilty of an offence that involves prohibited conduct.²³²⁰ This may include, for example, the Childrens Court.²³²¹

20.152 Those recommendations, and the grounds the Commission has recommended for the making of an order, also contemplate that the behaviour complained of in an application for a protection order may also constitute criminal behaviour for which a person has been or may be charged. The purpose of the Personal Protection Bill 2007 is to provide an accessible means of protection against particular forms of violent conduct. Even though a person may be charged with, or convicted of, criminal behaviour, a person affected by the behaviour may remain in need of protection. Similarly, a protection order made against a person should not necessarily take the place of a penalty imposed on the person for a criminal offence.

20.153 Section 49A of the *Acts Interpretation Act 1954* (Qld) provides that a provision in an Act which expressly or impliedly authorises a proceeding to be instituted in a particular court or tribunal in relation to a matter 'is taken to confer jurisdiction in the matter on the court or tribunal'. The Commission therefore considers it unnecessary to include an express provision in the Bill dealing with the conferral of jurisdiction, similar to section 38(1) of the *Domestic and Family Violence Protection Act 1989* (Qld). Similarly, the Commission considers it unnecessary to include a specific provision in the Bill dealing with concurrent proceedings. The jurisdiction conferred on magistrates and courts under the Personal Protection Bill 2007, or under other legislation dealing with criminal offences, will not be limited by the conferral or exercise of jurisdiction under another Act.

20.154 The Commission also considers it unnecessary to make specific provision about the admissibility, in a criminal proceeding, of evidence about the existence or outcome of protection order proceedings under the Personal Protection Bill 2007. Admissibility of such evidence in a criminal proceeding will be adequately and appropriately governed by the requirement of relevance. The Commission does not, therefore, consider a provision similar to section 62(3) of the *Domestic and Family Violence Protection Act 1989* (Qld) should be included in the Personal Protection Bill 2007.

2320 See para 12.109 of this Report.

2321 The Commission has made recommendations elsewhere in this Report about the power to make a protection order against a child. See para 20.20, 20.34 of this Report.

Application of the Justices Act 1886 (Qld) and Childrens Court Act 1992 (Qld)

20.155 The Commission considers the Personal Protection Bill 2007 should expressly provide that, unless it is inconsistent with the Personal Protection Bill 2007, the *Justices Act 1886* (Qld) applies, with any necessary changes, to a proceeding under the Bill before a court.

20.156 The Commission considers this appropriate given that the Personal Protection Bill 2007 involves aspects of both civil and criminal law. The grounds for obtaining a protection order are satisfied on the balance of probabilities. However, the grounds may sometimes involve acts that constitute criminal offences, breach of a protection order is a criminal offence, and police are responsible for the enforcement of orders made under the Bill. The *Justices Act 1886* (Qld) applies in respect of proceedings for criminal offences and, except to the extent of any inconsistency, for proceedings under the *Domestic and Family Violence Protection Act 1989* (Qld). It also applies under the current *Peace and Good Behaviour Act 1982* (Qld). The application of the *Justices Act 1886* (Qld) under the Personal Protection Bill 2007 is consistent with this.

20.157 The Commission is also of the view that the Personal Protection Bill 2007 should provide that for a proceeding under the Bill before the Childrens Court, constituted by a Childrens Court magistrate:

- the *Childrens Court Act 1992* (Qld) applies, with any necessary changes, to the proceeding unless the application of that Act is inconsistent with the Personal Protection Bill 2007; and
- the *Justices Act 1886* (Qld) applies, with any necessary changes, to the proceeding unless the application of that Act is inconsistent with the Personal Protection Bill 2007 or the *Childrens Court Act 1992* (Qld).

20.158 The Commission considers those provisions should be generally similar to section 38(2) of the *Domestic and Family Violence Protection Act 1989* (Qld).

Jurisdiction to deal with tenancy applications

20.159 Finally, the Commission considers that the Personal Protection Bill 2007 should include provisions, similar to sections 38(3)–(5) and 62A of the *Domestic and Family Violence Protection Act 1989* (Qld), to provide that a court, on an application for a personal protection order, or an application made in relation to an existing personal protection order, has jurisdiction to deal with a tenancy application made under the *Residential Tenancies Act 1994* (Qld) and that the procedures under the *Small Claims Tribunals Act 1973* (Qld) apply to the hearing of a tenancy application by the court. Such provisions would empower the Magistrates Court, if it considers it appropriate, to exercise the powers and make the orders that a small claims tribunal can exercise or make under the *Small Claims Tribunals Act 1973* (Qld) or the *Residential Tenancies Act 1994* (Qld) for a tenancy application.

COSTS

20.160 Costs are a creature of statute. Most statutes and rules providing for costs create a discretion to order costs. In civil proceedings, the usual rule is that costs follow the event, that is, the unsuccessful party is ordered to pay the costs of the successful party.²³²²

20.161 However, the usual rule may be displaced by statute which may confine or restrain the discretion.²³²³ For example, some statutes provide that each party to litigation must bear his or her own costs, that a particular party is entitled to receive but is not required to bear costs, or that costs will not be awarded against an unsuccessful party except where the application was frivolous, vexatious, fraudulent or made without proper justification.²³²⁴

The *Peace and Good Behaviour Act 1982* (Qld)

20.162 There is no power to make an order for costs conferred expressly by the *Peace and Good Behaviour Act 1982* (Qld). The relevant source of power is to be found in the relevant costs provisions of the *Justices Act 1886* (Qld) which provide a power to award costs on making an order or dismissing a complaint.²³²⁵

The *Domestic and Family Violence Protection Act 1989* (Qld)

20.163 Section 61 of the *Domestic and Family Violence Protection Act 1989* (Qld) provides that costs may not be awarded on an application for a protection order, or a revocation or variation of a domestic violence order (including a variation of conditions imposed by the order) unless the court dismisses the application as malicious, deliberately false, frivolous or vexatious.²³²⁶

²³²² *Garnett v Bradley* (1878) 3 App Cas 944. The usual costs follow the event rule is reflected in the *Uniform Civil Procedure Rules 1999* (Qld) r 681(1).

²³²³ See *Halsbury's Laws of Australia* [325-9435] (Where successful party bears own costs).

²³²⁴ See, for example, *Integrated Planning Act 1997* (Qld) s 4.1.23.

²³²⁵ *Justices Act 1886* (Qld) ss 157, 158. Section 157 of the *Justices Act 1886* (Qld) provides, on conviction or order in relation to an offence dealt with summarily, a power to order the defendant to pay to the complainant such costs as seem just and reasonable. Section 158 of the *Justices Act 1886* (Qld) provides a power to order costs in circumstances where a complaint is dismissed. Section 8 of the *Peace and Good Behaviour Act 1982* (Qld) provides that the provisions of and proceedings and procedures under the *Justices Act 1886* (Qld) that apply in the case of a summary prosecution apply to proceedings under the *Peace and Good Behaviour Act 1982* (Qld), subject to any necessary or prescribed modifications. See *Besgrove v Larson* (2001) 22 Qld Lawyer Reps 82 (McGill DCJ).

²³²⁶ In 1988, the Queensland Domestic Violence Task Force proposed a package of legislative reforms for dealing with domestic violence in Queensland. As part of its reform package, the Task Force proposed that unless an application for an order is determined by a court to be frivolous or vexatious, costs should not be awarded in proceedings. The Task Force observed that the awarding of costs may have the effect of 'placing a family under even greater stress than already exists. The intention of the legislation is to protect family life': Queensland Domestic Violence Task Force, *Beyond these walls: Report of the Queensland Domestic Violence Task Force* (October 1988) 173.

The position in other jurisdictions

20.164 In New South Wales, South Australia, Tasmania and Western Australia, the civil restraining order legislation confers on the court a general discretion to award costs for, or against, a party in proceedings for an order.²³²⁷

20.165 However, in New South Wales, South Australia and Western Australia, the court is not permitted to award costs against an applicant for a civil restraining order, unless it is satisfied the application was frivolous or vexatious.²³²⁸

20.166 In New South Wales, Tasmania and Western Australia, the court is prohibited from awarding costs if the applicant is a police officer who has acted in good faith²³²⁹ and in the normal course of his duties.²³³⁰

20.167 In the ACT, unless the court otherwise orders, each party to a proceeding must bear the party's own costs. If neither party appears at the hearing and the court orders that the proceedings be dismissed, the court must not make an order about costs.²³³¹

20.168 Under the Victorian family violence legislation, each party to proceedings must bear his or her own costs of those proceedings unless the court decides exceptional circumstances warrant otherwise in a particular case. However, the court may award costs against an applicant if the court is satisfied the application was vexatious, frivolous or in bad faith.²³³² In contrast, the costs of proceedings under the *Magistrates' Court Act 1989* (Vic), including

The *Justices Act 1886* (Qld) includes costs provisions of general application in relation to offences dealt with summarily. Section 157 provides a power to order costs on conviction or order. Section 158 provides a power to order costs against a complainant on the dismissal of a complaint. Section 158A provides that, if the court dismisses a complaint made by a police officer, the court may make an order for costs in favour of a defendant only if it is satisfied that it is proper to make the order, having taken into account the relevant circumstances, including whether the proceeding was brought and continued in good faith. However, s 38(2) of the *Domestic and Family Violence Protection Act 1989* (Qld) provides that 'for proceedings under this Act before a Magistrates Court or magistrate – the provisions of the *Justices Act 1886* (Qld) apply to the proceedings unless the application of that Act is inconsistent with this Act'. Given that s 61 of the *Domestic and Family Violence Protection Act 1989* (Qld) deals with costs on an application made under that Act, the operation of s 38(2) would appear to exclude the application of ss 157–158A of the *Justices Act 1886* (Qld) in proceedings under the *Domestic and Family Violence Protection Act 1989* (Qld).

2327 *Crimes Act 1900* (NSW) s 562ZZM; *Summary Procedure Act 1921* (SA) s 189; *Justices Act 1959* (Tas) s 106H(1); *Restraining Orders Act 1997* (WA) s 69. Section 562ZZM of the *Crimes Act 1900* (NSW) is replicated in s 99 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW). For the application of the legislation in New South Wales, see note 2186 of this Report.

2328 *Crimes Act 1900* (NSW) s 562ZZM(2); *Summary Procedure Act 1921* (SA) s 189(2A); *Restraining Orders Act 1997* (WA) s 69(2).

2329 *Crimes Act 1900* (NSW) s 562ZZM(3).

2330 *Justices Act 1959* (Tas) s 106H(1); *Restraining Orders Act 1997* (WA) s 69(3).

2331 *Domestic Violence and Protection Orders Regulation 2002* (ACT) s 89.

2332 *Crimes (Family Violence) Act 1987* (Vic) s 21C. For the application of the *Crimes (Family Violence) Act 1987* (Vic), see note 2186 of this Report.

proceedings for a peace and good behaviour order, are in the discretion of the court.²³³³

Submissions

20.169 In its Discussion Paper, the Commission sought submissions in relation to whether, if a complaint under the *Peace and Good Behaviour Act 1982* (Qld) is dismissed, the court should be able to award costs against the complainant.²³³⁴

20.170 The Commission received a substantial number of submissions, including from a Queensland magistrate, the Queensland Police Service, Legal Aid Queensland and numerous community legal services, on this issue.²³³⁵ These submissions largely supported the inclusion in the Act of a provision similar to section 61 of the *Domestic and Family Violence Protection Act 1989* (Qld).²³³⁶

20.171 A number of submissions suggested that the potential liability for costs under the current *Peace and Good Behaviour Act 1982* (Qld) may deter some people who are legitimate victims of breaches of the peace from applying for an order.²³³⁷ The Queensland Police Service expressed a similar view.²³³⁸

20.172 Commerce Queensland also expressed the view that there should be no general right to obtain costs on an unsuccessful application because of the possibility that, notwithstanding the proper and genuine motivations of the applicant, an application may fail for want of satisfactory evidence.²³³⁹

20.173 Caxton Legal Centre Inc expressed concern about costs being automatically awarded in peace and good behaviour applications but considered that the court should retain a discretion to order costs in cases where one party has been wholly unsuccessful, or a party's deliberate disregard

2333 *Magistrates' Court Act 1989* (Vic) s 131(1). In exercising its discretion under s 131(1) in a proceeding, the court may take into account any unreasonable act or omission by, or on behalf of, a party to the proceeding that the court is satisfied resulted in prolonging the proceeding: *Magistrates' Court Act 1989* (Vic) s 131(2A). The court must not make an order awarding costs against a party in the exercise of its discretion under s 131(1) on account of any unreasonable act or omission by, or on behalf of, that party that the court is satisfied resulted in prolonging the proceeding without giving that party a reasonable opportunity to be heard: *Magistrates' Court Act 1989* (Vic) s 131(2B). Under s 126A of the *Magistrates' Court Act 1989* (Vic), the court may make an order binding a person to keep the peace or be of good behaviour.

2334 Queensland Law Reform Commission, Discussion Paper, *A Review of the Peace and Good Behaviour Act 1982* (WP 59, March 2005) 107 (Question 10-4).

2335 Submissions 5, 7, 8, 12B, 13, 14, 15, 19, 20, 23, 25, 26, 27. Also see information provided by the Acting Commissioner, Queensland Police Service, 6 September 2004.

2336 Submissions 5, 7, 8, 12B, 13, 14, 15, 20, 23, 26, 27.

2337 Submissions 5, 14, 25.

2338 Information provided by the Acting Commissioner, Queensland Police Service, 6 September 2004.

2339 Submission 23.

for court directions or his or her delay has caused unnecessary costs to be thrown away:²³⁴⁰

We are aware of at least one case where one party filed a complaint, only to be persuaded by the second party that the case should be withdrawn with each party bearing their own costs. The second party promptly filed an application against the original complainant and then sought a number of adjournments, causing significant legal costs to be incurred by the unfortunate original complainant. In that case, the Magistrate ordered costs against the second party at the final hearing.

The Commission's view

20.174 The Commission concurs with the view expressed by the Queensland Police Service and a number of other submissions that the potential liability for costs may deter some people who are legitimate victims of breaches of the peace from applying for an order. The possibility of becoming subject to an adverse costs order may also discourage the respondent named in an application from properly defending the application.

20.175 For these reasons, the Commission considers that generally the court should not be permitted to award costs on an application to make, vary or set aside a protection order or an application to register a corresponding order under the Personal Protection Bill 2007. To provide a safeguard against unmeritorious or ill-founded applications being made, the Commission considers this general prohibition on awarding costs should not apply if the court dismisses the application as malicious, false, frivolous or vexatious. The Commission is therefore of the view that the Personal Protection Bill 2007 should include a provision, similar to section 61 of the *Domestic and Family Violence Protection Act 1989* (Qld), to the effect that the court may not award costs on an application to make, vary or set aside a final or interim protection order or on an application to register a corresponding order unless the court dismisses the application as malicious, false, frivolous or vexatious.²³⁴¹

20.176 In Chapter 11 of this Report, the Commission also made recommendations about the inclusion of provisions in the Bill for summoning witnesses to attend a protection order hearing.²³⁴² It recommended that those provisions be generally consistent with sections 39 and 39AA of the *Domestic and Family Violence Protection Act 1989* (Qld). Section 39AA of that Act provides, in part, that if a court sets aside a summons, the court may make an order for costs for the benefit of the person on whom the summons was served. The Commission considers this costs provision is appropriate.

2340 Submission 19.

2341 At para 5.188 of this Report, the Commission recommended that the Personal Protection Bill 2007 should provide that nothing in the Bill prevents a court from summarily dismissing an application made under the Bill if it is satisfied the application is malicious, false, frivolous or vexatious.

2342 See para 11.53 of this Report.

20.177 The Commission has also made recommendations, in Chapter 16 of this Report, that a person may not appeal an order making, or refusing to make, an award of costs on the dismissal of an application as malicious, false, frivolous or vexatious, without the leave of the court that made the order or a District Court judge.²³⁴³

FILING FEES

20.178 The Commission's terms of reference require it to consider whether the costs of filing a complaint are a deterrent to seeking an order.²³⁴⁴

20.179 It is possible that the imposition of a fee for filing an application may deter some people from seeking the remedy of a protection order. In particular, people in situations of financial hardship may be unable to afford the cost of the filing fee.

The *Peace and Good Behaviour Act 1982 (Qld)*

20.180 The fee for filing a complaint under the *Peace and Good Behaviour Act 1982 (Qld)* is set by the *Justices Regulation 2004 (Qld)*.²³⁴⁵ The fee is currently \$66.²³⁴⁶

20.181 Section 266(1) of the *Justices Act 1886 (Qld)* provides that the Governor in Council may make regulations for the purposes of the Act. This power includes the making of regulations for the reduction, waiver or refund of fees.²³⁴⁷ Section 19A of the *Justices Regulation 2004 (Qld)* provides an exemption from the filing fee for a 'State-related complainant' such as person acting for the State.²³⁴⁸

2343 See para 16.62 of this Report.

2344 The terms of reference are set out in Appendix 1 to this Report.

2345 The *Justices Regulation 2004 (Qld)* is made under the *Justices Act 1886 (Qld)*: *Justices Act 1886 (Qld)* s 266(2)(a). Section 8 of the *Peace and Good Behaviour Act 1982 (Qld)* provides that the provisions of and proceedings and procedures under the *Justices Act 1886 (Qld)* that apply in the case of a summary prosecution apply to proceedings under the *Peace and Good Behaviour Act 1982 (Qld)*, subject to any necessary or prescribed modifications.

2346 *Justices Regulation 2004 (Qld)* s 19 sch 3 item 1. An additional fee of \$2.60 is also payable on the issue of a summons commencing the proceeding in a Magistrates Court: *Appeal Costs Fund Act 1973 (Qld)* s 10; *Appeal Costs Fund Regulation 1999 (Qld)* s 4, sch 1.

2347 *Justices Act 1886 (Qld)* s 266(3)(d).

2348 Note also, the *Uniform Civil Procedure Rules 1999 (Qld)* r 971(3) specifically provides that an individual may apply for an exemption from payment of filing fees.

The Domestic and Family Violence Protection Act 1989 (Qld)

20.182 There is no fee payable for filing an application under the *Domestic and Family Violence Protection Act 1989* (Qld) for a domestic violence order.²³⁴⁹

The payment of filing fees in other courts

20.183 The *Uniform Civil Procedure Rules 1999* (Qld), which apply to civil proceedings in the Magistrates Court of Queensland, the District Court of Queensland and the Supreme Court of Queensland, provide for a filing fee for documents filed in proceedings. The registrar of the relevant court may make an order exempting an individual from paying the relevant fee on the ground that, having regard to the individual's financial position, it is clearly in the interests of justice to make the order.²³⁵⁰ Rule 971 of the *Uniform Civil Procedure Rules 1999* (Qld) provides:

971 Filing fees

- (1) A document may be filed only if any prescribed fee for filing it is paid when the document is given to the registrar.
- (2) Also, if a document is sent by post and the registrar refuses to file it, a fee payable for dealing with the document is not refundable.
- (3) An individual may apply to the registrar for an order exempting the individual from payment of a relevant fee on the ground that, having regard to the individual's financial position, it is clearly in the interests of justice to make the order.
- (4) The registrar may, by order, exempt an individual from payment of a relevant fee if the registrar considers that, having regard to the individual's financial position, it is clearly in the interests of justice to make the order.
- (5) The registrar may decide the application summarily and without extensive investigation.
- (6) In having regard to the individual's financial position, the registrar must have regard to the following matters—
 - (a) if the individual receives an income-tested pension under the *Social Security Act 1991* (Cwlth), the type and amount of the pension;
 - (b) how much the individual is paying as rent for his or her accommodation;

2349

The *Justices Regulation 2004* (Qld) s 19 sch 3 item 1 sets out various fees, including filing fees, payable in relation to a proceeding under the *Justices Act 1886* (Qld) in a Magistrates Court. That Regulation does not specifically provide for a filing fee in relation to an application under the *Domestic and Family Violence Protection Act 1989* (Qld).

2350

Uniform Civil Procedure Rules 1999 (Qld) r 971(4); *Uniform Civil Procedure (Fees) Regulation 1999* (Qld) s 3.

- (c) whether a spouse or close relative may be willing to give the individual financial help;
 - (d) any other matter the registrar considers relevant.
- (7) The individual, if dissatisfied with a registrar's decision on the individual's application may apply to a judge for a review of the decision.
- (8) On an application for a review of the registrar's decision, the judge conducting the review may—
- (a) consider the application with or without a hearing; and
 - (b) consider anything the registrar considered under subrule (6); and
 - (c) make the order the judge considers appropriate.

...

20.184 There are filing fees payable for applications made in the Family Court or in the Federal Magistrates Court.²³⁵¹ However, a person is exempt from paying a filing fee in certain circumstances, for example, if the applicant has been granted legal aid for the proceedings or is the holder of a Federal Government concession card, a child or the recipient of certain Federal Government Commonwealth payments or benefits.²³⁵² A registrar or authorised officer may also waive a filing fee on the basis of financial hardship.²³⁵³

Submissions

20.185 In its Discussion Paper, the Commission sought submissions on whether the costs of filing a complaint are a deterrent to seeking an order and, if so, whether there should be a provision to waive the fee in appropriate circumstances.²³⁵⁴ The Commission also sought submissions on whether removing the filing fee would encourage people to make unmeritorious complaints.

20.186 Nearly all the submissions received by the Commission in relation to this issue considered that the cost of filing a complaint sometimes deters people from taking action under the Act.²³⁵⁵ Legal Aid Queensland observed in this

²³⁵¹ *Family Law Regulations 1984* (Cth) s 11; *Federal Magistrates Regulations 2000* (Cth) ss 4, 5, sch 1.

²³⁵² *Family Law Regulations 1984* (Cth) s 11(7)(c)(d); *Federal Magistrates Regulations 2000* (Cth) s 8.

²³⁵³ *Family Law Regulations 1984* (Cth) ss 11(7)(e), 16(3)(c); *Federal Magistrates Regulations 2000* (Cth) s 9.

²³⁵⁴ Queensland Law Reform Commission, Discussion Paper, *A Review of the Peace and Good Behaviour Act 1982* (WP 59, March 2005) 106–7 (Questions 10-1–10-3).

²³⁵⁵ Submissions 5, 6, 8, 12B, 13, 14, 15, 19, 20, 22, 25, 26, 28.

regard:²³⁵⁶

It is very often already vulnerable people in disadvantaged circumstances who are targeted by perpetrators of the type of conduct falling within the ambit of the Act.

20.187 In contrast, two community legal centres suggested that the main deterrents to obtaining an order were other factors such as the length of time it takes to obtain an order, fear of reprisal by the defendant, and lack of confidence in enforcement.²³⁵⁷

20.188 A substantial number of submissions suggested the deterrent effect of a filing fee might be overcome by the introduction of a process for the waiver of the filing fee in cases of financial hardship.²³⁵⁸ Some of these submissions suggested this waiver process might be modelled on the process that operates in respect of filing applications under the *Family Law Act 1975 (Cth)*.²³⁵⁹

20.189 Caxton Legal Centre Inc considered that making it possible for clients to obtain a waiver on the grounds of financial hardship would assist in ensuring access to justice for financially disadvantaged clients:²³⁶⁰

A waiver form such as the form used in the Family Court would be a relatively simple way of providing a waiver. In that court, clients either simply sign the relevant form and provide a copy of their social security card or set out another reasonable case showing their financial circumstances of hardship. This process may require some discretion at the registry, but in our submission would assist in the processing of applications, and would provide financially disadvantaged individuals access to proceedings.

20.190 Legal Aid Queensland proposed that consideration be given to removing the filing fee or that, if the filing fee were not removed, there should be provision for exemption or waiver of the filing fee in appropriate circumstances.²³⁶¹

20.191 Four submissions suggested the removal of the filing fee for applications under the *Peace and Good Behaviour Act 1982 (Qld)*.²³⁶² One of these submissions suggested the procedures involved in assessing eligibility or waiver of the filing fee might increase the complexity of the application process.²³⁶³ Another of these submissions considered that 'every person

2356 Information provided by Legal Aid Queensland, 8 September 2004.

2357 Submissions 15, 19.

2358 Submissions 5, 6, 8, 12B, 13, 14, 15, 19, 25.

2359 Submissions 5, 8, 15, 19.

2360 Submission 19.

2361 Submission 13.

2362 Submissions 20, 22, 27, 28.

2363 Submission 20.

should have access to the law in order to seek protection and there should be no cost attached to that access'.²³⁶⁴

20.192 A small number of submissions noted the possibility that the removal or waiver of the filing fee may encourage people to make unmeritorious complaints.²³⁶⁵ It was suggested that unmeritorious complaints might be dealt with variously by awarding costs against the applicant or declaring such an applicant vexatious. For example, Caxton Legal Centre Inc observed:²³⁶⁶

If there is some risk that unmeritorious complaints may be brought, it could be possible for a Magistrate to make an order declaring a person vexatious in relation to particular claims and limiting the prospect of constantly bringing unfounded applications – say upon a third application. This power should be exercised cautiously, however, as one of the difficulties we have observed is that a sinister perpetrator of behaviour which violates the Peace and Good Behaviour regime can be extremely skilful at disguising their behaviour and a victim can end up appearing somewhat neurotic simply due to stress and loss of sleep in difficult situations of ongoing and close conflict.

The Commission's view

20.193 The purpose of the proposed Personal Protection Bill 2007 is to provide for the safety and protection of persons who are affected by certain forms of violence. This purpose is to be mainly achieved by enabling a court to make a protection order. It is possible that the imposition of a filing fee may prevent some people, particularly those who are financially disadvantaged, from making an application for a protection order. The Commission considers that the accessibility of the mechanism provided under the Personal Protection Bill 2007 for the safety and protection of persons should not depend on an applicant's capacity to pay the costs of filing an application for a protection order. The Commission therefore considers that there should be no filing fee for applications made under the Personal Protection Bill 2007. This would ensure parity with the position under the *Domestic and Family Violence Protection Act 1989* (Qld) and would avoid the imposition of a fee which may discourage meritorious applications.²³⁶⁷ The absence of a filing fee may also help to streamline the application process, for both the applicant and the court.

RECOMMENDATIONS

20.194 The Commission makes the following recommendations:

2364 Submission 27.

2365 Submissions 14, 19, 27, 28.

2366 Submission 19.

2367 Note that the Commission has recommended that the Personal Protection Bill 2007 should include provisions to give the court powers to summarily dismiss an application and to order costs in relation to malicious, false, frivolous or vexatious applications: see para 5.188 and para 20.175 of this Report. This recommendation is intended to discourage unmeritorious applications.

Children as respondents

20-1 The Personal Protection Bill 2007 should provide that a respondent for a protection order made under the Personal Protection Bill 2007 must be at least 10 years of age.²³⁶⁸

See Personal Protection Bill 2007 cl 8(3).

Court may inform Adult Guardian about matters of concern

20-2 The Personal Protection Bill 2007 should include a provision to the effect that, if a court hearing an application to make, vary or set aside a protection order considers there has been personal violence or workplace violence (ie. prohibited conduct) involving an adult with impaired capacity, the court may inform the Adult Guardian of the circumstances of the application.²³⁶⁹ The Personal Protection Bill 2007 should also include a provision to the effect that ‘impaired capacity’, for the Bill, has the meaning given in schedule 4 of the *Guardianship and Administration Act 2000* (Qld).²³⁷⁰

See Personal Protection Bill 2007 cl 92.

Entitlement to appear

20-3 The Personal Protection Bill 2007 should specify that each of the following persons may appear at the hearing of an application to make, vary or set aside a protection order:²³⁷¹

- (a) an applicant for the proceeding;
- (b) if the application is an application to vary or set aside a protection order, a person who was an applicant for the making of the protection order;
- (c) a respondent for the proceeding;

2368 See para 20.34 of this Report.

2369 See para 20.58 of this Report.

2370 Ibid.

2371 See para 20.74 of this Report.

- (d) a person who is, or is sought to be, protected by the relevant protection order, including an aggrieved person, a person who is named as a relative or associate of an aggrieved person for a personal protection order, or an employee of an aggrieved person for a workplace order; and
- (e) another person given leave by the court to appear.

See Personal Protection Bill 2007 cl 90.

Provisions concerning warrants

20-4 The Personal Protection Bill 2007 should include a provision, to the effect of section 59(1) of the *Domestic and Family Violence Protection Act 1989* (Qld), that the court may order the issue of a warrant on the failure of a respondent to appear on an application only if, in the circumstances, the court believes it is appropriate that the respondent be heard.²³⁷²

See Personal Protection Bill 2007 cll 53(3), 67(3), 74(4).

The application of the Bail Act 1980 (Qld)

20-5 The Personal Protection Bill 2007 should specify that, when a person is taken into custody under a warrant issued under the Bill, the *Bail Act 1980* (Qld) applies to the person as if the person were taken into custody on a charge of an offence.²³⁷³

See Personal Protection Bill 2007 cl 95(3).

Notification to Commissioner of Police of applications etc

20-6 A provision should be included in the Personal Protection Bill 2007 to the effect that the registrar of the court must give a copy of the following documents to the Commissioner of Police within one business day after the day the application or order is made, or the notice is filed:²³⁷⁴

- (a) an application for a protection order;
- (b) an application to register a corresponding order;

²³⁷² See para 20.86 of this Report.

²³⁷³ See para 20.95 of this Report.

²³⁷⁴ See para 20.112 of this Report.

- (c) an application to vary or set aside a protection order, including a registered corresponding order;
- (d) a protection order, including an interim protection order;
- (e) an order varying or setting aside a protection order, including a registered corresponding order;
- (f) an order registering a corresponding order;
- (g) a notice of appeal against a decision or order made under the Bill.

See Personal Protection Bill 2007 cl 105.

20-7 A database of orders made under the Personal Protection Bill 2007 should be maintained for use by the police. This database should be modelled on, or added to, the existing index of orders made under the *Domestic and Family Violence Protection Act 1989* (Qld).²³⁷⁵

Relationship with the Domestic and Family Violence Protection Act 1989 (Qld)

20-8 The Personal Protection Bill 2007 should provide that, if a court hearing an application for a protection order is satisfied the application should have been an application for a domestic violence order under the *Domestic and Family Violence Protection Act 1989* (Qld), the court may order that the proceeding be continued as if it were a proceeding on an application for a domestic violence order, and may make other orders it considers appropriate in the circumstances. The Bill should also provide that if the court hears an application for a protection order as if it were an application for a domestic violence order, the *Domestic and Family Violence Protection Act 1989* (Qld) applies to the application, and the proceeding under the Personal Protection Bill 2007 is discontinued.²³⁷⁶

See Personal Protection Bill 2007 cl 56.

²³⁷⁵ See para 20.115 of this Report.

²³⁷⁶ See para 20.131 of this Report.

20-9 The *Domestic and Family Violence Protection Act 1989* (Qld) should be consequentially amended to insert a reciprocal provision, so that, where the parties fall within the scope of the *Domestic and Family Violence Protection Act 1989* (Qld), the court may deal with an application for a protection order under the Personal Protection Bill 2007 as if it had been made under the *Domestic and Family Violence Protection Act 1989* (Qld).²³⁷⁷

Conferral of jurisdiction

20-10 The Personal Protection Bill 2007 should expressly provide that, unless it is inconsistent with the Personal Protection Bill 2007, the *Justices Act 1886* (Qld) applies, with any necessary changes, to a proceeding under the Bill before a court.²³⁷⁸

See Personal Protection Bill 2007 cl 99(1).

20-11 The Personal Protection Bill 2007 should provide that for a proceeding under the Bill before the Childrens Court, constituted by a Childrens Court magistrate:

- (a) the *Childrens Court Act 1992* (Qld) applies, with any necessary changes, to the proceeding unless the application of that Act is inconsistent with the Personal Protection Bill 2007; and
- (b) the *Justices Act 1886* (Qld) applies, with any necessary changes, to the proceeding unless the application of that Act is inconsistent with the Personal Protection Bill 2007 or the *Childrens Court Act 1992* (Qld).²³⁷⁹

See Personal Protection Bill 2007 cl 99(2).

2377 See para 20.132 of this Report.

2378 See para 20.155 of this Report.

2379 See para 20.157 of this Report.

20-12 A provision should be included in the **Personal Protection Bill 2007**, similar to sections 38(3)–(5) and 62A of the *Domestic and Family Violence Protection Act 1989* (Qld), to provide that a court, on an application for a personal protection order, or an application made in relation to an existing personal protection order, has jurisdiction to deal with a tenancy application made under the *Residential Tenancies Act 1994* (Qld) and that the procedures under the *Small Claims Tribunals Act 1973* (Qld) apply to the hearing of a tenancy application by the court.²³⁸⁰

See Personal Protection Bill 2007 cl 96.

Costs

20-13 The **Personal Protection Bill 2007** should include a provision, similar to section 61 of the *Domestic and Family Violence Protection Act 1989* (Qld), to the effect that the court may not award costs on an application to make, vary or set aside a protection order or an application to register a corresponding order unless the court dismisses the application as malicious, false, frivolous or vexatious.²³⁸¹

See Personal Protection Bill 2007 cl 98.

Filing fees

20-14 There should be no filing fee for applications made under the **Personal Protection Bill 2007**.²³⁸²

2380 See para 20.159 of this Report.

2381 See para 20.175 of this Report.

2382 See para 20.193 of this Report.

Appendix 1

Terms of reference

A REVIEW OF THE *PEACE AND GOOD BEHAVIOUR ACT 1982*

1. I, ROD WELFORD, Attorney-General and Minister for Justice refer the *Peace and Good Behaviour Act 1982* (the Act) to the Queensland Law Reform Commission (the Commission) for review pursuant to section 10 of the *Law Reform Commission Act 1968*, including but not limited to:
 - whether the Act provides an appropriate, easily accessible and effective mechanism for protection of the community from breaches of the peace;
 - if the Commission considers the Act does not provide an appropriate, easily accessible and effective mechanism:
 - (a) what amendments should be made to make it appropriate, easily accessible and effective; or
 - (b) should a new mechanism be established.
2. In undertaking this reference I ask the Commission to have regard to:
 - the procedure in the Act for a complainant to seek a Peace and Good Behaviour order from the Magistrates Court which requires:
 - a complaint made to a justice of the peace about threatened conduct;
 - the justice of the peace issuing a summons for the defendant's appearance in court or a warrant of apprehension if the justice of the peace is satisfied that it is reasonable for the complainant to be in fear of the defendant; and
 - the Magistrate making an order on the appearance of the defendant in response to the summons or warrant;
 - the grounds for obtaining a summons, warrant and an order which require:
 - (a) the defendant to have threatened to assault or to do bodily injury to the complainant or to any person under the care of the complainant (which includes the defendant getting another person to threaten the complainant); or
 - (b) the defendant to have threatened to destroy or damage any property of the complainant (which includes the defendant getting another person to threaten the complainant); and
 - (c) the complainant to be in fear of the defendant;

- a proposed additional basis for obtaining a summons, warrant and order which would permit a complainant to apply for an order where the defendant's conduct causes the complainant apprehension or fear of personal violence or violence against property but the defendant's conduct falls short of an actual threat;
 - the protection provided against domestic violence by the *Domestic and Family Violence Protection Act 1989* and the expansion of that Act's jurisdiction in 2002 to cover many persons who might have otherwise sought an order under the Act;
 - issues that have been raised about the effectiveness of the Act in addressing the needs of the community in terms of protecting individuals against breaches of the peace. In particular that:
 - the ambit of conduct covered by the Act is not appropriate being either too wide or too restrictive;
 - the process to obtain an order is complex;
 - the filing fee prevents many people from seeking orders;
 - it is difficult to enforce orders which means that the orders are ineffectual.
3. In performing its functions under this reference, the Commission is asked to prepare, if relevant, draft legislation based on the Commission's recommendations.
4. The Commission is to report to the Attorney-General and Minister for Justice by 31 July 2005.²³⁸³

Dated the 7th day of July 2004.

Rod Welford MP
Attorney-General and Minister for Justice

2383

In his letter of 16 March 2005, the Attorney-General agreed to extend the deadline for the final report to 31 December 2005.

Appendix 2

List of submissions

The Commission received 32 submissions from organisations and individuals in response to the Discussion Paper.

Caxton Legal Centre Inc
Citizens Advice Bureau and Gold Coast Legal Service
Commerce Queensland
Department of Child Safety
Dispute Resolution Branch of the Department of Justice and Attorney-General
A group of service providers for people experiencing domestic violence²³⁸⁴
Gupta, Mr D
Herbert, Mr T
Irwin, His Honour Judge MP (Chief Magistrate of Queensland)
Legal Aid Queensland
Logan Youth Legal Service
Magistrate (Magistrates Court, Queensland)²³⁸⁵
North Queensland Domestic Violence Resource Centre
Queensland Advocacy Inc
Queensland Council of Unions
Queensland Police Service
Queensland Public Tenants Association Inc
Queensland Transport

Queensland Working Women's Service Inc & Young Workers Advisory Service
Registrars (Magistrates Court Branch of the Department of Justice and Attorney-General)²³⁸⁶
Slann, Ms S
South West Brisbane Community Legal Centre Inc
Tableland Tenancy Advice Service
Townsville Community Legal Service Inc
Walsh, Dr T
Women's Legal Service
Working Against Violence Support Service Inc
Youth Advocacy Centre Inc

The Commission also received submissions from five individuals who asked not to be identified.

2384 This submission was a collation of views from a mixed group representing a range of service providers for people experiencing domestic violence, consisting of domestic violence support workers, court assistance workers, legal service providers and a police officer.

2385 This submission, made by a Queensland magistrate, accompanied a submission received from His Honour Judge MP Irwin, Chief Magistrate of Queensland.

2386 This submission was a collation of views from a number of registrars of the Magistrates Courts of Queensland, provided to the Commission by the Magistrates Court Branch of the Department of Justice and Attorney-General.

Appendix 3

Table of provisions

The following table identifies, in relation to each substantive provision of the draft legislation in Appendix 2, the recommendation or recommendations in this Report to which that provision gives effect.

PERSONAL PROTECTION BILL 2007

Clause of Bill		Recommendation
1	Short title	
1		n/a
2	Commencement	
2		n/a
3	Definitions	
3		n/a
4	Purpose of Act	
4		n/a
5	Purposes of pt 2	
5		n/a
6	What is <i>prohibited conduct, personal violence and workplace violence</i>	
6(1)		Rec 5-2, 8-4
6(2)		Rec 5-2, 5-3
6(3)		Rec 8-4
6(4)		Rec 8-7
6(5)		Rec 5-6, 8-5
7	What is a <i>protection order, personal protection order and workplace protection order</i>	
7		See generally Rec 4-1, 5-1, 8-1, 8-3

8	Who is an aggrieved person and respondent	
	8(1)(a)	Rec 6-1
	8(1)(b)	Rec 8-8
	8(3)	Rec 20-1
9	Who is protected by a protection order	
	9	See generally Rec 4-3, 4-4, 8-20
10	Application for protection order	
	10	See generally Rec 6-1, 6-2, 8-9, 9-9, 12-30
11	Making of protection order	
	11	See generally Chapters 5, 7, 8 and 12
12	What can happen if respondent does not comply with protection order	
	12	See generally 14-6, 14-13
13	Some other matters provided for under this Act	
	13	See generally Rec 15-1, 16-1, 17-1
14	Who can apply for a personal protection order	
	14(1)(a)(i)	Rec 6-1
	14(1)(a)(ii)	Rec 6-2, 6-3
	14(1)(a)(iii)	Rec 6-2, 6-4
	14(1)(a)(iv)	Rec 6-2, 6-9
	14(1)(b)(i)	Rec 6-2, 6-5
	14(1)(b)(ii)	Rec 6-2, 6-6
	14(1)(c)	Rec 6-2, 6-7
	14(2)	Rec 6-2
	14(4)	Rec 6-10
15	Leave to apply for a personal protection order	
	15(1), (2)	Rec 6-9
	15(3), (4)	Rec 6-6

16	Who can apply for a workplace protection order	
	16(1), (2)	Rec 8-9
	16(4)	Rec 8-10
	16(5)	Rec 8-13
17	General requirements for application	
	17(1)(a)	Rec 9-1, 9-2
	17(1)(b)	Rec 9-5
	17(3)	Rec 9-3
	17(4)	Rec 9-4
18	Application by police officer by electronic communication – interim protection order	
	18(1)	Rec 9-10
	18(2)	Rec 9-9
	18(3)	Rec 9-13
19	Issue of summons by registrar	
	19	Rec 9-7
	19(3)(c)	Rec 9-15
20	Issue of summons by justice	
	20	Rec 9-7
21	Service of application on respondent	
	21	Rec 19-1
	21(2)	Rec 9-15
22	Police officer may issue and serve notice to appear on respondent	
	22(1)–(3)	Rec 9-14
	22(4)(a)	Rec 9-16
	22(4)(b)	Rec 9-17
	22(5)	Rec 9-18
23	Notice of application to be given to aggrieved person etc.	
	23	Rec 19-1

24	When a police officer must apply for personal protection order	
24		Rec 6-8
25	When is a person acting under another Act	
25		Rec 6-4
26	Meaning of <i>parent</i>	
26		Rec 6-5, 19-10
27	When court may make personal protection order	
27(1)		Rec 4-2, 5-1
27(2)		Rec 3-2
27(3)		Rec 5-4
28	Naming of relatives and associates in personal protection order	
28		Rec 4-4, 5-5
29	Standard condition of personal protection order	
29		Rec 7-2
30	Court may impose other conditions	
30(1)		Rec 7-3
30(2)		Rec 7-10
30(3)(a)–(i)		Rec 7-4
30(3)(j)		Rec 7-11
30(4)		Rec 7-5
30(5)		Rec 7-8
30(6)		Rec 7-12
31	Access condition	
31		Rec 7-9
32	Information about weapons to be included in personal protection order	
32		Rec 7-14

33	When court may make workplace protection order	
	33(1)	Rec 8-3
	33(2)	Rec 3-2
	33(3)	Rec 8-6
34	Standard condition of workplace protection order	
	34	Rec 8-15
35	Court may impose other conditions	
	35(1)	Rec 8-16
	35(2)	Rec 8-17
	35(3)(a)–(d)	Rec 8-18
	35(3)(e)	Rec 8-19
	35(4)	Rec 8-20
	35(5)	Rec 8-19
36	Information about weapons to be included in workplace protection order	
	36	Rec 8-19
37	Definition for div 3	
	37	n/a
38	Grounds for making interim protection order	
	38(1)(a), (b)(i), (2)(a)	Rec 12-5, 12-8
	38(1)(a), (b)(ii), (2)(b)	Rec 12-6, 12-8
39	When court may make interim protection order	
	39(1)	Rec 12-2
	39(2)	Rec 12-3
	39(3)	Rec 12-4
40	When magistrate may make interim protection order – application made by police officer by electronic communication	
	40	Rec 12-7
41	Evidence required for making interim protection order	
	41	Rec 12-9

42	Terms of interim protection order	
42		Rec 12-10
43	Details about hearing to be stated in interim protection order	
43		Rec 12-11
44	Interim protection order taken to be summons	
44		Rec 12-12
45	Duties of magistrate and police officer if interim protection order made under s 40	
45		Rec 9-13
46	Duties of magistrate on refusing to make interim protection order under s 40	
46		Rec 9-13
47	Sentencing court may make or vary protection order etc.	
47(1)–(4)		Rec 12-30
47(5)		Rec 12-31
47(6)		Rec 12-30
48	Court may make protection order with consent of parties	
48(1)		Rec 12-13
48(2)		Rec 12-15
48(3)		Rec 12-14
48(4)(a)		Rec 12-16
48(4)(b)		Rec 12-17
48(5)		Rec 12-18
48(6)		Rec 12-19
48(7), (8)		Rec 12-20

49	Authorised registrar may make protection order with consent of parties	
	49(1)	Rec 12-21
	49(2)	Rec 12-26
	49(3)	Rec 12-23
	49(4)	Rec 12-24
	49(5)	Rec 12-25
	49(6)	Rec 12-27
	49(7)	Rec 12-22
50	Appointment of authorised registrars	
	50	Rec 12-22
51	Application of div 6	
	51	n/a
52	Powers of court if respondent appears	
	52	Rec 11-1
53	Powers of court if respondent does not appear	
	53	Rec 11-1
	53(3)	Rec 20-4
54	Court to explain particular matters to aggrieved person and respondent	
	54(1)	Rec 11-2
	54(2)	Rec 11-3
	54(3)	Rec 11-4
	54(4)	Rec 11-5
	54(5)	Rec 11-6

55	Explanation before protection order is made	
	55(1), (2)	Rec 14-1
	55(3)	Rec 14-3
	55(4)	Rec 14-4
	55(5)	Rec 14-2
	55(6)	Rec 14-5
56	Procedure if application should have been made under Domestic and Family Violence Protection Act 1989	
	56	Rec 20-8
57	When protection order takes effect	
	57	Rec 13-1
58	Duration of protection orders, other than interim protection orders	
	58	Rec 13-2
59	Duration of interim protection orders	
	59(1)	Rec 13-3
	59(2), (3)	Rec 13-5
	59(4)	Rec 13-4
60	Effect of availability of workplace protection orders	
	60	Rec 8-2
61	Weapons Act to apply to respondents otherwise exempt	
	61	Rec 7-13, 8-19
62	Grounds for varying or setting aside protection order	
	62	Rec 15-4
63	Who can apply to vary or set aside protection order	
	63	Rec 15-7
64	Requirements for applications	
	64	Rec 15-8

65	Notice of application to be served	
65		Rec 19-2
66	When court may vary or set aside existing order	
66(1)		Rec 15-1, 15-3
66(2)		Rec 15-5
66(3)		Rec 15-2
67	Procedural provision for application to vary or set aside	
67		Rec 15-8
67(3)		Rec 20-4
68	Explanation required before varying existing order	
68		Rec 15-8
69	When variation or setting aside takes effect	
69		Rec 15-6
70	Application to register corresponding order	
70(1)		Rec 17-2
70(2)		Rec 17-3
70(3), (4)		Rec 17-2
71	When court may deal with registration application ex parte	
71		Rec 17-5
72	Notice of registration application to be served	
72		Rec 17-4
73	Entitlement to appear at hearing of registration application	
73		Rec 17-9
74	Procedural provision for registration application not dealt with ex parte	
74(1)–(3)		Rec 17-8
74(4)		Rec 20-4

75	When court may register corresponding order	
	75(1)	Rec 17-6
	75(2)	Rec 17-7
	75(3), (4)	Rec 17-10
76	Requirement to serve registered corresponding order	
	76	Rec 17-11
77	Effect of registration of corresponding order	
	77(1)(a)	Rec 17-12
	77(1)(b)	Rec 17-14
	77(2)	Rec 17-12
	77(3), (4)	Rec 17-12, 17-14
78	Period of registration	
	78	Rec 17-13
79	Definitions for pt 7	
	79	n/a
80	Court's power to make a non-publication order	
	80(1), (2)	Rec 18-1
	80(2)	Rec 18-2
	80(3)	Rec 18-4
	80(4)	Rec 18-3
81	Preliminary conferences	
	81(1)	Rec 10-15
	81(2)	Rec 10-16
82	Objects of preliminary conferences	
	82(1)	Rec 10-17
	82(2)	Rec 10-18
83	Admissibility of preliminary conference evidence	
	83	Rec 10-19

84 Referral to mediation	
84(1)	Rec 10-2–10-4, 10-12
84(2)(a)	Rec 10-11
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84(3)	Rec 10-3, 10-10
84(4)	Rec 10-2
85 Requirement to attend mediation session	
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89 Evidence	
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89(3)	Rec 11-11
90 Entitlement to appear	
90	Rec 20-3
91 Requirement to notify parent if application involves a child	
91(1), (2)	Rec 19-9
91(3)	Rec 19-11
91(4), (5)	Rec 19-12
91(6)	Rec 19-13
92 Court may inform adult guardian of concerns	
92	Rec 20-2

93	Issue of summons to attend	
93		Rec 11-8
94	Court may set aside summons	
94		Rec 11-8
95	Provision for issue of warrants	
95		Rec 11-1, 11-8, 15-8, 17-8
95(3)		Rec 20-5
96	Procedural provision for tenancy applications	
96		Rec 20-12
97	Summary dismissal of applications	
97		Rec 5-7
98	Limitation on awarding of costs	
98		Rec 20-13
99	Application of Justices Act 1886 etc.	
99(1)		Rec 20-10
99(2)		Rec 20-11
100	Definition for div 6	
100		n/a
101	Requirement for orders to be served	
101		Rec 19-3
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103	Service of documents on children	
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104	Service of documents by police officers	
104		Rec 19-5

105 Registrar to give information to commissioner	
105	Rec 20-6
106 Withdrawal of applications	
106	Rec 11-12
107 Definitions for pt 8	
107	n/a
108 Who may appeal to the District Court	
108(1)–(3)	Rec 16-1
108(4)	Rec 16-5
109 Who may appeal to the Court of Appeal	
109	Rec 16-1
110 When appeal must be started	
110	Rec 16-1
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111(1), (2)	Rec 16-1
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112	Rec 16-3
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113(1)	Rec 16-1, 16-4
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114 Decision on appeal	
114(1), (2)	Rec 16-1, 18-1
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115	Contravention of protection order	
	115(1)	Rec 14-6, 14-7, 14-10
	115(2)	Rec 14-8
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	116(1)	Rec 18-5
	116(2), (3)	Rec 18-6
117	Proceedings for offences	
	117(a)	Rec 14-13
	117(b)	Rec 14-12
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	118	n/a
119	Regulation-making power	
	119	n/a
120	Repeal	
	120	Rec 3-1
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Appendix 4
Personal Protection Bill 2007



Queensland

Personal Protection Bill 2007

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2007

A Bill

for

An Act to provide for courts to make orders prohibiting persons from engaging in particular conduct as a way of protecting others from the conduct of those persons, and for related purposes

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Personal Protection Act 2007*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Definitions

The dictionary in the schedule defines particular terms used in this Act.

4 Purpose of Act

- (1) The purpose of this Act is to provide for the safety and protection of persons, including the protection of property of persons, who are or may be affected by prohibited conduct engaged in by someone else.
- (2) The Act's purpose is mainly achieved by enabling a court to make a protection order prohibiting the person whose conduct is the subject of the order from engaging in particular conduct.

Part 2 How prohibited conduct is dealt with under this Act

5 Purposes of pt 2

- (1) The purposes of this part are to provide a guide to the content of other parts of this Act.
- (2) Also, this part states what is prohibited conduct and explains how it is dealt with under this Act by the making of protection orders.

6 What is *prohibited conduct, personal violence and workplace violence*

- (1) *Prohibited conduct* is either personal violence or workplace violence.
- (2) *Personal violence* is any of the following acts committed by a person against another person—
 - (a) wilful injury of the other person;
 - (b) wilful damage to the other person's property;
 - (c) harassment or intimidation of the other person;
Examples for paragraph (c)—
 - following the other person when he or she is out in public, either by car or on foot
 - repeatedly telephoning the other person without consent, whether during the day or at night
 - (d) a threat to commit an act mentioned in paragraph (a), (b) or (c).
- (3) *Workplace violence* is any of the following acts committed by a person in relation to a workplace—
 - (a) wilful injury of another person who is an employer for the workplace or an employee of an employer for the workplace, committed—

[s 7]

- (i) while the other person is engaged in an activity relating to the workplace; or
 - (ii) because the other person is an employer for the workplace or an employee of an employer for the workplace;
- (b) harassment or intimidation of another person who is an employer for the workplace or an employee of an employer for the workplace, committed—
- (i) while the other person is engaged in an activity relating to the workplace; or
 - (ii) because the other person is an employer for the workplace or an employee of an employer for the workplace;
- (c) wilful damage to property at the workplace;
- (d) a threat to commit an act mentioned in paragraph (a), (b) or (c).
- (4) However, an act done for an industrial dispute is not workplace violence.
- (5) A person who counsels or procures someone else to commit an act that, if done by the person, would be prohibited conduct is taken to have committed the act.

7 What is a *protection order*, *personal protection order* and *workplace protection order*

- (1) A *protection order* is either a personal protection order or a workplace protection order.

Note—

Under part 4, a protection order can not be made against a person if there is a domestic relationship under the *Domestic and Family Violence Protection Act 1989* between that person and an aggrieved person for the order.

- (2) A *personal protection order* is an order made against a person if the person—

- (a) has committed personal violence against another person; and
- (b) is likely to commit personal violence against the other person again.

Note—

Part 4, division 1 provides for the making of personal protection orders.

- (3) A ***workplace protection order*** is an order made against a person if the person—
 - (a) has committed workplace violence in relation to a workplace; and
 - (b) is likely to commit workplace violence in relation to the workplace again.

Note—

Part 4, division 2 provides for the making of workplace protection orders.

- (4) A protection order may be an interim protection order.

8 Who is an *aggrieved person* and *respondent*

- (1) A person is an ***aggrieved person***—
 - (a) for a personal protection order—if personal violence, that is the ground on which the order is or may be made, has been committed against the person; or
 - (b) for a workplace protection order—if the person is an employer for a workplace in relation to which workplace violence, that is the ground on which the order is or may be made, has been committed.
- (2) A person is a ***respondent*** for a protection order if the order is or may be made against the person.
- (3) A respondent for a protection order must be at least 10 years of age.
- (4) A reference in this section to a protection order includes a reference to a protection order that is or may be applied for under this Act.

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9 Who is protected by a protection order

- (1) A personal protection order protects—
 - (a) each aggrieved person for the order; and
 - (b) each person named in the order who is a relative or associate of the aggrieved person.
- (2) A workplace protection order protects—
 - (a) each aggrieved person for the order; and
 - (b) each employee of the aggrieved person.

10 Application for protection order

- (1) An application for a protection order may be made to a court by—
 - (a) an aggrieved person for the order; or
 - (b) someone else for an aggrieved person for the order.

Note—

See sections 14 (Who can apply for a personal protection order) and 16 (Who can apply for a workplace protection order).

- (2) In an emergency situation, a police officer can apply to a magistrate, by phone, fax, radio, e-mail, videoconferencing or another form of electronic communication, for an interim protection order under section 18.
- (3) Part 3 provides for applying for a protection order.
- (4) Also, if a person is found guilty by a court of an offence involving prohibited conduct, the court may make a protection order even though no application for the order has been made.
- (5) For subsection (4), the court may be the Childrens Court, a Magistrates Court, the District Court or the Supreme Court.

11 Making of protection order

Part 4 provides for making protection orders, including—

- (a) grounds that must be established for a court to make a protection order; and
- (b) conditions of a protection order with which a respondent for the order must comply; and
- (c) making interim protection orders.

12 What can happen if respondent does not comply with protection order

If a respondent for a protection order does not comply with the order, a police officer may charge the respondent with an offence against section 115.

13 Some other matters provided for under this Act

- (1) Part 5 provides for protection orders to be varied or set aside.
- (2) Part 6 provides for registering particular orders made outside Queensland that are similar to protection orders, with the effect that the orders can be enforced as if they were protection orders.
- (3) Part 8 provides for appeals against particular orders and decisions made under this Act.

Part 3 Applications for protection orders

Division 1 Who can apply for personal protection orders

14 Who can apply for a personal protection order

- (1) Any of the following persons may apply for a personal protection order—

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- (a) if an aggrieved person for the order is an adult—
 - (i) the aggrieved person; or
 - (ii) an authorised person for the aggrieved person; or
 - (iii) a person who, under section 25, is acting under another Act for the aggrieved person; or
 - (iv) another person who, under section 15, is given leave to apply for the order;
 - (b) if an aggrieved person for the order is a child—
 - (i) a parent of the child; or
 - (ii) the child, an authorised person for the child, or another person, if the child, authorised person or other person is, under section 15, given leave to apply for the order;
 - (c) in any case—a police officer.
- (2) If an application for a personal protection order is made by a person who is not an aggrieved person for the order, the application must be made for an aggrieved person.
- (3) A person mentioned in subsection (1) who applies for a personal protection order is an *applicant*.
- (4) An application for a personal protection order may be made—
- (a) by 1 applicant or by more than 1 applicant; and
 - (b) for 1 aggrieved person or for more than 1 aggrieved person.

15 Leave to apply for a personal protection order

- (1) A person who is not mentioned in section 14(1)(a)(i), (ii) or (iii), (b)(i) or (c) may apply to a court for leave to apply for a personal protection order against a stated person.
- (2) The court may give or refuse to give the person leave to apply to the court for the order.
- (3) Subsection (4) applies if—

- (a) an aggrieved person for the order is a child; and
 - (b) the person applying for leave is the child or an authorised person for the child.
- (4) The court may give leave to apply to the child, or the authorised person for the child, only if the court is satisfied the child has the capacity to understand the nature and effects of a personal protection order.

Division 2 Who can apply for workplace protection orders

16 Who can apply for a workplace protection order

- (1) Either of the following persons may apply for a workplace protection order—
 - (a) an aggrieved person for the order;
 - (b) a police officer.
- (2) An application for a workplace protection order made by a police officer must be made for an aggrieved person.
- (3) A person mentioned in subsection (1) who applies for a workplace protection order is an *applicant*.
- (4) An application for a workplace protection order may be made—
 - (a) by 1 applicant or by more than 1 applicant; and
 - (b) for 1 aggrieved person or for more than 1 aggrieved person.
- (5) To remove any doubt, it is declared that an application for a workplace protection order may be made whether or not an employee of an aggrieved person for the order agrees to the making of the application.

Division 3 How to apply for protection orders

17 General requirements for application

- (1) An application for a protection order must—
 - (a) be made to a court in the approved form; and
 - (b) state the grounds on which it is made.
- (2) The application may include a request for the registrar to arrange for the application to be heard by the court for the purpose of making an interim protection order.
- (3) Information contained in the application must be verified by statutory declaration.
- (4) Subsection (3) does not apply if the applicant is a police officer.
- (5) This section does not limit section 18.

18 Application by police officer by electronic communication—interim protection order

- (1) This section applies if a police officer reasonably believes—
 - (a) a person has engaged in prohibited conduct; and
 - (b) because of distance, time or other circumstances, it is not possible for a court to make an interim protection order quickly; and
 - (c) having regard to the nature of the prohibited conduct of the person, it is necessary and appropriate for an interim protection order to be made against the person immediately to ensure someone else's safety or prevent substantial damage to property.
- (2) The police officer may apply to a magistrate for an interim protection order by phone, fax, radio, e-mail, videoconferencing or another form of electronic communication.

- (3) If the police officer has not already applied to a court for a protection order, the police officer must, as soon as practicable after applying for the interim protection order—
- (a) prepare an application for a protection order; and
 - (b) file the application in the office of the registrar of the court where the application will be dealt with.

Note—

See part 4, division 3 for provisions about how the magistrate must deal with the application.

Division 4 Procedure on filing of application

19 Issue of summons by registrar

- (1) This section applies if an application for a protection order is made to a court.
- (2) The registrar of the court must issue a summons directing each respondent for the protection order applied for to appear before a stated court on a stated day and at a stated time and place to be heard on the application.
- (3) However, the registrar need not issue a summons for a respondent if—
 - (a) a justice has issued a summons under section 20 for the respondent; or
 - (b) the applicant asks the registrar to arrange for the application to be heard by the court for the purpose of making an interim protection order; or
 - (c) the applicant is a police officer who, under section 22, issues and serves a notice to appear on the respondent; or
 - (d) a magistrate has, under section 40, made an interim protection order against the respondent.
- (4) Despite subsection (3)(b), the registrar must issue the summons if the court refuses to make an interim protection

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order on the application and the applicant does not withdraw the application.

20 Issue of summons by justice

- (1) A justice may issue a summons directing a respondent for a protection order applied for to appear before a stated court on a stated day and at a stated time and place to be heard on the application.
- (2) However, a justice may issue a summons under subsection (1) only if the justice knows a court will be sitting at the time and place stated in the summons.
- (3) If a justice issues a summons under subsection (1), the applicant must, when filing the application for the protection order, also file 3 copies of the summons.

21 Service of application on respondent

- (1) The registrar of the court to which an application for a protection order is made must serve a copy of the application, and any summons issued under section 19 or 20, on each respondent for the protection order applied for.

Note—

If the respondent is a child, notice of the application must also be given to a parent of the child (see section 91).

- (2) This section does not apply if, under section 22, a copy of the application has been served on the respondent.

22 Police officer may issue and serve notice to appear on respondent

- (1) This section applies if a police officer has made, or is to make, an application for a protection order.
- (2) The police officer may issue, and serve on a respondent for the protection order, a notice (a *notice to appear*) in the form of a notice to appear under the *Police Powers and Responsibilities Act 2000*.

- (3) The police officer must also serve on the respondent a copy of the application for the protection order—
 - (a) together with the notice to appear; or
 - (b) as soon as practicable after the notice to appear is served.
- (4) A notice to appear—
 - (a) need not state an alleged offence as required under the *Police Powers and Responsibilities Act 2000*; and
 - (b) is taken to be a summons requiring the respondent to appear before the stated court at the stated time and place to be heard on the application.
- (5) A police officer must file a copy of the notice to appear as soon as practicable after serving the notice on the respondent.

23 Notice of application to be given to aggrieved person etc.

- (1) The registrar of the court to which an application for a protection order is made must serve on each aggrieved person for the order—
 - (a) a copy of the application; and
 - (b) notice of when and where the application is to be heard.

Note—

If the aggrieved person is a child, notice of the application must also be given to a parent of the child (see section 91).
- (2) Also, the registrar must serve the documents mentioned in subsection (1) on any other person whom the court directs is to be served.
- (3) Subsection (1) does not apply to an aggrieved person who is an applicant.

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Division 5 Requirement for police officers to apply for protection orders

24 When a police officer must apply for personal protection order

A police officer must apply for a personal protection order against a person if the police officer reasonably believes—

- (a) there is an unacceptable risk the person will—
 - (i) endanger the safety of an aggrieved person for the order, or a relative or associate of the aggrieved person; or
 - (ii) cause substantial damage to property of an aggrieved person for the order, or a relative or associate of the aggrieved person; and
- (b) no other person is willing and able to apply for the order.

Division 6 Provisions for understanding who may apply for a protection order

25 When is a person acting under another Act

A person is acting under another Act for an aggrieved person if—

- (a) the person is either of the following under the *Guardianship and Administration Act 2000* and acting within the person's powers under that Act—
 - (i) a guardian for a personal matter for the aggrieved person;
 - (ii) an administrator for a financial matter for the aggrieved person; or
- (b) the person is the adult guardian and the adult guardian considers the aggrieved person has impaired capacity

for making an application for a personal protection order; or

- (c) the person is the aggrieved person's attorney and acting within the attorney's powers under an enduring power of attorney under the *Powers of Attorney Act 1998*.

26 Meaning of *parent*

- (1) A person is a *parent* of a child if the person is any of the following—
 - (a) the child's mother;
 - (b) the child's father;
 - (c) a person exercising parental responsibility for the child.
- (2) However, a person standing in the place of a parent of a child on a temporary basis is not a parent of the child.
- (3) A parent of an Aboriginal child includes a person who, under Aboriginal tradition, is regarded as a parent of the child.
- (4) A parent of a Torres Strait Islander child includes a person who, under Island custom, is regarded as a parent of the child.
- (5) Despite subsections (1), (3) and (4), if—
 - (a) a person is granted guardianship of a child under the *Child Protection Act 1999*; or
 - (b) a person otherwise exercises parental responsibility for a child under a decision or order of a federal court or a court of a State;

a reference to a parent of the child is a reference only to a person mentioned in paragraph (a) or (b).

Part 4 Making and effect of protection orders

Division 1 Personal protection orders

27 When court may make personal protection order

- (1) A court may make a personal protection order against a person if the court is satisfied the person—
 - (a) has committed personal violence against another person; and
 - (b) is likely to commit personal violence against the other person again.

Example for paragraph (b)—

If the personal violence mentioned in paragraph (a) was a threat, the person is likely to carry out the threat.

- (2) However, the court may not make the personal protection order if there is a domestic relationship under the *Domestic and Family Violence Protection Act 1989* between the persons.

Note—

See section 56 for the procedure if the court is satisfied the application should have been made under the *Domestic and Family Violence Protection Act 1989*.

- (3) For deciding whether the person is likely to commit personal violence against the other person again, the court may have regard to past conduct of the person.

28 Naming of relatives and associates in personal protection order

A court may include in a personal protection order the name of a relative or associate of an aggrieved person for the order if the court is satisfied—

- (a) a respondent for the order has committed personal violence against the relative or associate; or
- (b) a respondent for the order is likely to commit personal violence against the relative or associate.

29 Standard condition of personal protection order

It is a condition of each personal protection order that a respondent for the order must not commit personal violence against the persons protected by the order.

30 Court may impose other conditions

- (1) A court making or varying a personal protection order may impose the conditions on the order the court considers necessary and appropriate in the circumstances.
- (2) In deciding whether to impose conditions under this section, the need to protect the persons protected by the order must be of paramount importance to the court.
- (3) The conditions the court may impose under this section include, but are not limited to, the following—
 - (a) conditions prohibiting stated behaviour of a respondent for the personal protection order in relation to a person protected by the order;
 - (b) conditions prohibiting a respondent from doing all or any of the following in relation to stated premises, even if the respondent has a legal or equitable interest in the premises—
 - (i) remaining at the premises;
 - (ii) entering or attempting to enter the premises;
 - (iii) approaching within a stated distance of the premises;
 - (c) conditions prohibiting a respondent from approaching, or attempting to approach, a person protected by the

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- order, including stating in the order a distance within which an approach is prohibited;
- (d) conditions prohibiting a respondent from contacting, or attempting to contact, a person protected by the order;
 - (e) conditions prohibiting a respondent from locating, or attempting to locate, a person protected by the order if the person's whereabouts are not known to the respondent;
 - (f) conditions prohibiting stated behaviour of a respondent against property of a person protected by the order;
 - (g) conditions on which a respondent may be on particular premises or at a particular place, or may approach or contact a person protected by the order;
 - (h) conditions allowing a respondent, despite another condition, to enter particular premises to—
 - (i) recover the respondent's property; or
 - (ii) return property of a person protected by the order;
 - (i) conditions prohibiting a respondent from causing someone else to engage in conduct prohibited under the order, including asking someone else to contact or locate a person protected by the order;
 - (j) conditions prohibiting a respondent from—
 - (i) holding a weapons licence; or
 - (ii) possessing a weapon; or
 - (iii) possessing a stated thing that could be used as a weapon.
- (4) A condition in a personal protection order that prohibits a respondent for the order from asking someone else to contact or locate a person protected by the order does not prohibit the respondent—
- (a) asking a lawyer acting for the respondent to contact the person; or

- (b) asking someone else to locate the person for a purpose authorised under an Act.
- (5) If the court imposes a condition prohibiting a respondent for the personal protection order from entering particular premises, the court must consider including in the order a condition of the kind mentioned in subsection (3)(h).
- (6) If the court decides to impose a condition of the kind mentioned in subsection (3)(j)(iii), the stated thing is taken to be a weapon and may be dealt with under this Act and the Weapons Act as a weapon for which there is no licence.

31 Access condition

- (1) This section applies if a court decides to impose, as a condition of a personal protection order, a condition allowing a respondent for the order to recover or return property.
- (2) The court may also impose the conditions the court considers appropriate to control the way the respondent recovers or returns the property.
- (3) This section does not limit section 30.

32 Information about weapons to be included in personal protection order

- (1) The purpose of this section is to ensure as much information as possible about a weapons licence or a weapon is available to a police officer exercising a power under an Act to obtain or seize the weapon.
- (2) In making a personal protection order, the court must state in the order as much information as possible about—
 - (a) a weapons licence held by a respondent for the order; or
 - (b) weapons possessed by a respondent for the order.
- (3) In this section—

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weapon includes a thing that a respondent for the personal protection order is prohibited from possessing under a condition of the kind mentioned in section 30(3)(j)(iii).

Division 2 Workplace protection orders

33 When court may make workplace protection order

- (1) A court may make a workplace protection order against a person if the court is satisfied the person—
 - (a) has committed workplace violence in relation to a workplace; and
 - (b) is likely to commit workplace violence in relation to the workplace again.
- (2) However, the court may not make the workplace protection order if there is a domestic relationship under the *Domestic and Family Violence Protection Act 1989* between the person and an aggrieved person for the order.

Note—

See section 56 for the procedure if the court is satisfied the application should have been made under the *Domestic and Family Violence Protection Act 1989*.

- (3) For deciding whether the person is likely to commit workplace violence in relation to the workplace again, the court may have regard to past conduct of the person.

34 Standard condition of workplace protection order

It is a condition of each workplace protection order that a respondent for the order must not commit workplace violence in relation to the workplace stated in the order.

35 Court may impose other conditions

- (1) A court making or varying a workplace protection order may impose the conditions on the order the court considers necessary and appropriate in the circumstances.
- (2) In deciding whether to impose conditions under this section, the need to protect the persons protected by the order must be of paramount importance to the court.
- (3) The conditions the court may impose under this section include, but are not limited to, the following—
 - (a) conditions prohibiting a respondent for the workplace protection order from entering, or approaching within a stated distance of, the workplace stated in the order;
 - (b) conditions prohibiting a respondent from approaching or contacting a person protected by the order;
 - (c) conditions on which a respondent may enter or approach the workplace or may approach or contact a person protected by the order;
 - (d) conditions prohibiting a respondent from causing someone else to engage in conduct prohibited under the order, including asking someone else to contact a person protected by the order;
 - (e) conditions prohibiting a respondent from—
 - (i) holding a weapons licence; or
 - (ii) possessing a weapon; or
 - (iii) possessing a stated thing that could be used as a weapon.
- (4) A condition in a workplace protection order that prohibits a respondent for the order from asking someone else to contact a person protected by the order does not prohibit the respondent—
 - (a) asking a lawyer acting for the respondent to contact the person; or

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- (b) asking someone else to contact the person for a purpose authorised under an Act.
- (5) If the court decides to impose a condition of the kind mentioned in subsection (3)(e)(iii), the stated thing is taken to be a weapon and may be dealt with under this Act and the Weapons Act as a weapon for which there is no licence.

36 Information about weapons to be included in workplace protection order

- (1) The purpose of this section is to ensure as much information as possible about a weapons licence or a weapon is available to a police officer exercising a power under an Act to obtain or seize the weapon.
- (2) In making a workplace protection order, the court must state in the order as much information as possible about—
 - (a) a weapons licence held by a respondent for the order; or
 - (b) weapons possessed by a respondent for the order.
- (3) In this section—

weapon includes a thing that a respondent for the workplace protection order is prohibited from possessing under a condition of the kind mentioned in section 35(3)(e)(iii).

Division 3 Interim protection orders

Subdivision 1 Preliminary

37 Definition for div 3

In this division—

related application means the application for a protection order that has been made, or is to be made, to a court in relation to which an interim protection order is made or sought.

38 Grounds for making interim protection order

- (1) The *grounds* for making an interim protection order are—
- (a) there is a prima facie case that a respondent for the order has engaged in prohibited conduct; and
 - (b) it is necessary and appropriate to make the order—
 - (i) for an interim personal protection order—to ensure the safety of a relevant person for the order or prevent substantial damage to property of a relevant person; or
 - (ii) for an interim workplace protection order—to ensure the safety of a relevant person for the order or prevent substantial damage to property at the workplace to which the order relates.
- (2) In this section—
- relevant person* means—
- (a) for an interim personal protection order—an aggrieved person, or a relative or associate of an aggrieved person, for the order; or
 - (b) for an interim workplace protection order—an aggrieved person, or an employee of an aggrieved person, for the order.

Subdivision 2 Power to make, and general provisions about, interim protection orders

39 When court may make interim protection order

- (1) A court may make an interim protection order at any time during a proceeding for the related application.
- (2) The interim protection order may be made whether or not a respondent for the order—
- (a) appears before the court when the order is made; or

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- (b) has been served with the related application.
- (3) However, the court may make the interim protection order only if satisfied there are grounds for making the order.

40 When magistrate may make interim protection order—application made by police officer by electronic communication

- (1) A magistrate may make an interim protection order if—
 - (a) a police officer applies, under section 18, to the magistrate for the order; and
 - (b) the magistrate is satisfied that, because of distance, time or other circumstances, it is not possible for a court to make an interim protection order on the related application quickly; and
 - (c) the magistrate is satisfied there are grounds for making the order.
- (2) The magistrate may presume section 18(3) is complied with.

41 Evidence required for making interim protection order

The evidence required for making an interim protection order is the evidence the court or magistrate considers adequate and appropriate having regard to—

- (a) the interim nature of the order; and
- (b) the nature of the proposed conditions of the order.

42 Terms of interim protection order

- (1) Sections 28 to 32 apply for an interim personal protection order.
- (2) Sections 34 to 36 apply for an interim workplace protection order.

- (3) For subsections (1) and (2), a reference in the sections to a court includes a reference to a magistrate making an interim protection order.

43 Details about hearing to be stated in interim protection order

An interim protection order must state when and where the court that is to hear the related application will hear the application.

44 Interim protection order taken to be summons

An interim protection order is taken to be a summons requiring a respondent for the order to appear before the stated court on the stated day and at the stated time and place to be heard on the application.

Subdivision 3 Special provisions if magistrate makes interim protection order

45 Duties of magistrate and police officer if interim protection order made under s 40

- (1) This section applies if a magistrate makes, under section 40, an interim protection order (the *original order*).
- (2) The magistrate must—
- (a) fill in and sign the original order; and
 - (b) record in the order the reasons the magistrate is satisfied there are grounds for making the order.
- (3) After the magistrate makes the original order—
- (a) if there is a reasonably practicable way of immediately giving a copy of the order to the applicant, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the order to the applicant; or
 - (b) otherwise—

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- (i) the magistrate must tell the applicant the terms of the original order, including when and where the relevant court will hear the related application; and
 - (ii) the applicant must fill in a form of order, including by writing on it—
 - (A) the magistrate's name; and
 - (B) the terms of the order, including when and where the relevant court will hear the related application.
- (4) The copy of the order mentioned in subsection (3)(a), or the form of order filled in under subsection (3)(b) (in either case the *duplicate order*), is a duplicate of, and as effective as, the original order.
- (5) As soon as practicable after the original order is made, the magistrate must—
 - (a) give the registrar of the relevant court—
 - (i) written particulars of the related application and the application for the interim protection order, as communicated to the magistrate by the applicant; and
 - (ii) the original order; and
 - (b) ensure a copy of the original order is given to the commissioner.
- (6) As soon as practicable after the original order is made, a police officer must—
 - (a) serve a copy of the duplicate order, with a copy of the related application, on each respondent and aggrieved person for the order; and
 - (b) if the police officer who applied for the interim protection order filled in a form of order under subsection (3)(b)—give the completed form of order to the registrar of the relevant court.
- (7) In this section—

relevant court means the court that is to hear the related application.

46 Duties of magistrate on refusing to make interim protection order under s 40

- (1) This section applies if a magistrate, under section 40, refuses to make an interim protection order.
- (2) The magistrate must—
 - (a) record in writing the reasons for refusing to make the interim protection order; and
 - (b) as soon as practicable after refusing to make the order, give the registrar of the court to which the related application is or will be made—
 - (i) written particulars of the related application and the application for the interim protection order, as communicated to the magistrate by the applicant; and
 - (ii) the reasons for the magistrate’s refusal to make the interim protection order.

Division 4 Making protection orders in criminal proceedings

47 Sentencing court may make or vary protection order etc.

- (1) This section applies if a person (an *offender*) is found guilty by a sentencing court of an offence involving prohibited conduct.
- (2) The sentencing court may, on its own initiative, make a protection order against the offender.
- (3) Subsection (4) applies if—
 - (a) the offence mentioned in subsection (1) involves personal violence and there is already a personal protection order (an *existing order*) in effect against the

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offender protecting the person against whom the personal violence was committed; or

- (b) the offence mentioned in subsection (1) involves workplace violence and there is already a workplace protection order (also an *existing order*) in effect against the offender in relation to the relevant workplace.
- (4) The sentencing court may vary the existing order in the way the sentencing court considers appropriate, including, for example, by varying the period for which the existing order is in force.
- (5) This section does not limit the orders the sentencing court may make under the *Penalties and Sentences Act 1992*, or any other Act, when sentencing the offender for the offence.
- (6) Divisions 1 and 2 apply for the making or varying of a protection order by the sentencing court as if references in the divisions to a court were references to the sentencing court.
- (7) In this section—
sentencing court means the Childrens Court, a Magistrates Court, the District Court or the Supreme Court.

Division 5 Making protection orders by consent

48 Court may make protection order with consent of parties

- (1) A court may make a protection order in a form agreed to by each applicant and respondent for the order (a *consent order*).
- (2) However, the court may not make a consent order if an aggrieved person or respondent for the order is—
 - (a) a child; or
 - (b) an adult with impaired capacity.
- (3) Also, the court may not make a consent order if—
 - (a) an applicant is not an aggrieved person; and

- (b) the applicant does not have the aggrieved person's express written approval to agree to the order.
- (4) The court may make a consent order—
 - (a) whether or not any ground of the application is established; and
 - (b) whether or not a respondent for the order makes an admission about conduct to which the application relates.
- (5) A consent order may only include matters that may be dealt with under this Act.
- (6) This section does not prevent a court conducting a hearing if the court considers it is in the interests of justice to do so.
- (7) Subsection (8) applies if the application for a protection order to which a consent order relates—
 - (a) was made by an applicant who is not a party to the consent order; or
 - (b) sought a protection order against a respondent who is not a party to the consent order.
- (8) The making of the consent order does not limit the court's power to make other protection orders on the application.

49 Authorised registrar may make protection order with consent of parties

- (1) An authorised registrar may make a protection order in a form agreed to by each applicant and respondent for the order (also a *consent order*).
- (2) Section 48(2) to (5), (7) and (8) applies, with any necessary changes, to the making of a consent order under this section.
- (3) Despite subsection (1), the authorised registrar must not make a consent order if—
 - (a) the court directs the authorised registrar to set the application for a protection order down for hearing before the court; or

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- (b) the authorised registrar considers that—
 - (i) the matter of the application should be heard before the court in the interests of justice; or
 - (ii) it would otherwise be more appropriate for the application to be considered by the court.
- (4) As soon as practicable after deciding, under subsection (3)(b), not to make a consent order, the authorised registrar must set the matter down for hearing before the court.
- (5) For making a consent order under this section, an authorised registrar has the powers of a court under this Act, other than the power to punish a person for contempt of the court.
- (6) A consent order made by an authorised registrar is taken to have been made by the court.
- (7) In this section—
authorised registrar means a person appointed under section 50 as an authorised registrar.

50 Appointment of authorised registrars

The chief magistrate may appoint a person who is a registrar of a court as an authorised registrar for section 49 if the chief magistrate is satisfied the person has had appropriate training and experience to be able to exercise the power to make consent orders.

Division 6 Special procedural provisions for applications for protection orders

51 Application of div 6

- (1) This division applies to a court for hearing and deciding an application for a protection order.

- (2) However, this division, other than section 55, does not apply to a court for making an interim protection order.
- (3) This division does not limit the application of part 7.¹

52 Powers of court if respondent appears

- (1) This section applies if a respondent for the protection order applied for appears before the court.
- (2) The respondent is taken to have been served with the application for the protection order.
- (3) The court may—
 - (a) hear and decide the application; or
 - (b) adjourn the application, whether or not it makes an interim protection order; or
 - (c) dismiss the application without a hearing.
- (4) The court may not dismiss the application under subsection (3)(c) unless—
 - (a) the applicant has not appeared and, if the applicant was a police officer, no other police officer or crown prosecutor requests an adjournment; and
 - (b) no other person with standing to apply for a protection order against the respondent appears.
- (5) The dismissal of the application does not prevent the applicant making a further application for a protection order against the respondent.
- (6) A reference in subsections (3) to (5) to the application is a reference to the application only to the extent it seeks a protection order against the respondent who has appeared before the court.
- (7) In this section—

Crown prosecutor includes—

¹ Part 7 (General procedural provisions)

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- (a) the Attorney-General; and
- (b) the director of public prosecutions; and
- (c) another person, other than a police officer, appearing for the State.

53 Powers of court if respondent does not appear

- (1) This section applies if—
 - (a) a respondent for the protection order applied for does not appear before the court; and
 - (b) the court is satisfied the respondent has been given a copy of the application for the order and 1 of the following—
 - (i) a summons issued, under section 19 or 20, for the respondent;
 - (ii) a notice to appear issued, under section 22, for the respondent;
 - (iii) an interim protection order made on the application.
- (2) The court may—
 - (a) hear and decide the application in the absence of the respondent; or
 - (b) adjourn the application, whether or not it makes an interim protection order; or
 - (c) order the issue of a warrant for the respondent to be taken into custody by a police officer and brought before the court.

Note—

See also section 95 (Provision for issue of warrants).

- (3) The court may make an order under subsection (2)(c) only if, in the circumstances, the court believes it is appropriate the respondent be heard.

- (4) A reference in subsection (2) to the application is a reference to the application only to the extent it seeks a protection order against the respondent who did not appear before the court.

54 Court to explain particular matters to aggrieved person and respondent

- (1) The court must explain to each respondent and aggrieved person for the protection order applied for, when the person first appears before the court—
- (a) the nature, purpose and legal implications of the proceeding; and
 - (b) the legal implications of the court making a protection order.
- (2) The court must also explain the matters mentioned in subsection (1) to the applicant if—
- (a) the applicant is not—
 - (i) an aggrieved person for the protection order applied for; or
 - (ii) a police officer; and
 - (b) the applicant is before the court; and
 - (c) the court considers it appropriate.
- (3) For subsections (1) and (2), the explanation must be given—
- (a) in English or a language in which the person is fluent; and
 - (b) in a way that ensures, as far as practicable, the person understands the explanation.

Example—

If the person can not hear the explanation, the explanation might be given by someone who can communicate with the person other than by speaking.

- (4) If a respondent or aggrieved person for the protection order applied for is first before the court when the court is about to

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make the order, the court may comply with subsection (1) and section 55 in relation to the person at the same time.

- (5) Failure to comply with this section does not invalidate or otherwise affect the protection order.

55 Explanation before protection order is made

- (1) The purpose of this section is to ensure the following matters are explained to each respondent and aggrieved person for the protection order applied for (the *relevant parties*)—
- (a) the purposes and terms of the order;
 - (b) the effect of any condition of the order about possession of a weapon;
 - (c) the consequences of contravening the order;
 - (d) that a relevant party may apply to the court for varying or setting aside the order;
 - (e) that the order may be registered in another State or New Zealand without further notice to a respondent.
- (2) If a relevant party is present when the protection order is being made and it is practicable for the court to do so, the court must explain the matters mentioned in subsection (1) to the relevant party when making the protection order.
- (3) For subsection (2), the explanation must be given—
- (a) in English or a language in which the relevant party is fluent; and
 - (b) in a way that ensures, as far as practicable, the relevant party understands the explanation.
- (4) If subsection (2) does not apply to a relevant party, the registrar must ensure a written statement explaining the matters mentioned in subsection (1) is given to the relevant party as soon as practicable.
- (5) If the applicant is not a relevant party or a police officer, and the court considers it appropriate, the court may give the

explanation to the applicant instead of the aggrieved person for whom the applicant made the application.

- (6) Failure to comply with this section does not invalidate or otherwise affect the protection order.

56 Procedure if application should have been made under Domestic and Family Violence Protection Act 1989

- (1) This section applies if a court hearing an application for a protection order is satisfied the application should have been an application for a domestic violence order under the *Domestic and Family Violence Protection Act 1989*.
- (2) The court—
- (a) may order that the proceeding be continued as if it were a proceeding for an application for a domestic violence order under the *Domestic and Family Violence Protection Act 1989*; and
- (b) may make other orders the court considers appropriate in the circumstances.
- (3) On the making of an order under subsection (2)(a)—
- (a) the *Domestic and Family Violence Protection Act 1989* applies to the application; and
- (b) the proceeding under this Act is discontinued.

Division 7 When protection orders have effect

57 When protection order takes effect

- (1) A protection order takes effect—
- (a) on the day it is made; or
- (b) if it is made while an existing order is in force—when the existing order ends.
- (2) In this section—

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existing order means a protection order—

- (a) made against a person who is a respondent for the protection order to which subsection (1) applies; and
- (b) protecting a person who is an aggrieved person for the protection order to which subsection (1) applies.

58 Duration of protection orders, other than interim protection orders

- (1) This section applies to a protection order that is not an interim protection order.
- (2) Unless the protection order is earlier set aside or the period for which it is in force is varied, the order is in force for the period fixed by the court and stated in the order.
- (3) The period must not be more than 2 years unless the court is satisfied there are special reasons for fixing a longer period.

59 Duration of interim protection orders

- (1) An interim protection order made by a court is in force until whichever of the following first happens—
 - (a) the court decides or summarily dismisses the related application;
 - (b) the related application is withdrawn with the court's leave;
 - (c) if the court fixes a period for which the order is to have effect and states the period in the order—the period ends;
 - (d) the order is set aside by a court.
- (2) Despite subsection (1)(a) and (c), if—
 - (a) an interim protection order (the *existing protection order*) is in force when a court makes a final protection order or a further interim protection order (each of which is a *new protection order*) on the related application; and

- (b) a respondent for the order is not before the court when the new protection order is made;

the existing protection order continues in force until the respondent is served with the new protection order.

- (3) However, subsection (2) does not apply to the extent the respondent contravenes a condition of the new protection order, if the contravention is an offence against section 115(1)(c).
- (4) An interim protection order made by a magistrate is in force until the date stated in the order under section 43 or, if any of the following happens earlier, when the first of the following happens—
- (a) the related application is withdrawn with a court's leave;
- (b) the order is set aside by a court.

- (5) In this section—

final protection order means a protection order other than an interim protection order.

related application means the application for a protection order in relation to which the interim protection order was made.

Division 8 Other provisions about effect of protection orders

60 Effect of availability of workplace protection orders

The availability of workplace protection orders does not create a new right or obligation in relation to employment relationships.

61 Weapons Act to apply to respondents otherwise exempt

- (1) This section applies to a person to whom the Weapons Act does not apply because the person—

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- (a) possesses or uses a weapon as part of performing duties as mentioned in the Weapons Act, section 2(1)(e); or
 - (b) possesses or uses a weapon as part of undergoing a training course as mentioned in the Weapons Act, section 2(1)(g); or
 - (c) is actually engaged in the manufacture, assembly or handling of a weapon for or on behalf of the Commonwealth or a State as mentioned in the Weapons Act, section 2(1)(h); or
 - (d) is engaged in scientific or experimental work with a weapon under an authority granted by the Minister as mentioned in the Weapons Act, section 2(1)(i); or
 - (e) is actually engaged in the warehousing or transport under consignment of merchandise for or on behalf of a licensed dealer, the armed forces of the Commonwealth or an authority of the Commonwealth or a State as mentioned in the Weapons Act, section 2(1)(l); or
 - (f) has been granted an exemption from provisions of the Weapons Act by the commissioner as mentioned in the Weapons Act, section 2(1)(m); or
 - (g) is an employee of a government service entity within the meaning of the Weapons Act, section 2(9), and the person's acquisition, possession or use of a weapon is part of performing functions as mentioned in the Weapons Act, section 2(2).
- (2) If the person is a respondent for a protection order including a weapons condition, the Weapons Act applies to the person for the duration of the order despite the Weapons Act, section 2.
- (3) However, if the respondent is not present in court when the court makes the protection order, the respondent can not be convicted of an offence under the Weapons Act, because of the operation of subsection (2), for an act or omission that happens before a copy of the protection order is served on the respondent.
- (4) In this section—

[s 63]

Note—

See section 77 (Effect of registration of corresponding order) for how this part applies to a registered corresponding order.

63 Who can apply to vary or set aside protection order

- (1) This section applies to a following person who believes there is a ground for varying or setting aside an existing order—
 - (a) a person protected by the existing order;
 - (b) a person who was an applicant for the existing order;
 - (c) a respondent for the existing order;
 - (d) another person given leave by the court to apply for an order varying or setting aside the existing order.
- (2) The person may apply to a court for an order varying or setting aside the existing order.

64 Requirements for applications

- (1) An application for an order varying or setting aside an existing order must—
 - (a) be in the approved form; and
 - (b) state the ground on which it is made.
- (2) Information contained in the application must be verified by statutory declaration.
- (3) Subsection (2) does not apply if the applicant is a police officer.

65 Notice of application to be served

- (1) The registrar of the court to which an application is made under section 64 must serve the documents mentioned in subsection (2) on the following persons, other than the person who made the application—
 - (a) each person who was an applicant for the existing order;

- (b) each aggrieved person for the existing order;
 - (c) each respondent for the existing order;
 - (d) another person whom the court directs is to be served with the application.
- (2) The documents to be served are—
- (a) a copy of the application; and
 - (b) notice of when and where the application will be heard.

Note—

If an aggrieved person or respondent for the existing order is a child, under section 91 notice of the application must also be given to a parent of the child.

66 When court may vary or set aside existing order

- (1) A court may vary or set aside an existing order only if the court is satisfied a ground for varying or setting aside the order has been established.
- (2) In deciding whether to vary or set aside the existing order, the court must have regard to—
 - (a) the safety of the persons protected by the order; and
 - (b) either—
 - (i) if the existing order is a personal protection order, the safety of property of the persons protected by the order; or
 - (ii) if the existing order is a workplace protection order, the safety of property at the workplace; and
 - (c) anything else the court considers relevant.
- (3) To remove any doubt, it is declared the court may vary the existing order by varying—
 - (a) the conditions of the order; or
 - (b) the period for which the order is in force.

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Note—

See section 30 or 35 (Court may impose other conditions) for the conditions the court may impose on a protection order.

67 Procedural provision for application to vary or set aside

- (1) If a person required, under section 65, to be served with an application appears before the court, the person is taken to have been served with the application.
- (2) If a person who is served, under section 65, with an application fails to appear before the court, the court may, on proof of service of the application—
 - (a) hear and decide the application in the person's absence; or
 - (b) adjourn the application; or
 - (c) if the person is a respondent for the existing order—order the issue of a warrant for the respondent to be taken into custody by a police officer and brought before the court.

Note—

See also section 95 (Provision for issue of warrants).

- (3) The court may make an order under subsection (2)(c) only if, in the circumstances, the court believes it is appropriate the respondent be heard.

68 Explanation required before varying existing order

- (1) This section applies if the court decides to vary an existing order.
- (2) The purpose of this section is to ensure the following matters are explained to each respondent and aggrieved person for the existing order (the *relevant parties*)—
 - (a) the purposes and terms of the existing order as varied by the court;

- (b) the effect of any condition of the existing order, as varied by the court, about possession of a weapon;
 - (c) the consequences of contravening the existing order as varied by the court;
 - (d) that the order may be registered in another State or New Zealand without further notice to a respondent.
- (3) If a relevant party is present when the court makes the order varying the existing order and it is practicable for the court to do so, the court must explain the matters mentioned in subsection (2) to the relevant party when making the order.
- (4) For subsection (3), the explanation must be given—
- (a) in English or a language in which the relevant party is fluent; and
 - (b) in a way that ensures, as far as practicable, the relevant party understands the explanation.
- (5) If subsection (3) does not apply to a relevant party, the registrar must ensure a written statement explaining the matters mentioned in subsection (2) is given to the relevant party.
- (6) Failure to comply with this section does not invalidate or otherwise affect an order made by the court varying the existing order.

69 When variation or setting aside takes effect

- (1) An order varying or setting aside an existing order takes effect on—
- (a) the day fixed by the court and stated in the order; or
 - (b) if no day is stated in the order—the day the order is made.
- (2) For subsection (1)(a), the day fixed by the court may be the day the existing order is made.

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Part 6 Registration of corresponding orders

70 Application to register corresponding order

- (1) A person may apply to a court, in the approved form, for registration of a corresponding order.
- (2) The application must be accompanied by the corresponding order or a certified copy of the order.
- (3) Information contained in the application must be verified by statutory declaration.
- (4) Subsection (3) does not apply if the person making the application is a police officer.
- (5) An application made under this section is a *registration application*.

71 When court may deal with registration application ex parte

The court to which a registration application is made may deal with the application ex parte if the court is satisfied it is necessary to do so to prevent the person against whom the order was made causing—

- (a) serious harm to the person protected by the corresponding order; or
- (b) substantial damage to property of the person protected by the corresponding order.

72 Notice of registration application to be served

- (1) Unless the court has decided to deal with a registration application under section 71, the registrar of the court to which the application is made must serve the documents mentioned in subsection (2) on—
 - (a) the person against whom the corresponding order was made; and

- (b) if a person protected by the corresponding order is not the person applying for registration of the order—a person protected by the corresponding order who is not applying for registration.

Note—

If the person against whom the corresponding order was made or a person protected by the order is a child, notice of the application must also be given to a parent of the child (see section 91).

- (2) The documents to be served are—
 - (a) a copy of the registration application; and
 - (b) notice of when and where the application will be heard.

73 Entitlement to appear at hearing of registration application

- (1) The following persons may appear at the hearing of a registration application—
 - (a) the person who made the application;
 - (b) the person against whom the corresponding order was made;
 - (c) the person protected by the corresponding order;
 - (d) another person given leave by the court to appear.
- (2) However, subsection (1)(b) does not apply if the court has decided to deal with the registration application under section 71.

74 Procedural provision for registration application not dealt with ex parte

- (1) This section applies if a registration application is required under section 72 to be served on the person against whom the corresponding order was made.
- (2) If the person appears before the court, the person is taken to have been served with the registration application.

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- (3) If the person fails to appear before the court, the court may, on proof of service of the registration application—
- (a) hear and decide the application in the person's absence; or
 - (b) adjourn the application; or
 - (c) order the issue of a warrant for the person to be taken into custody by a police officer and brought before the court.

Note—

See also section 95 (Provision for issue of warrants).

- (4) The court may make an order under subsection (3)(c) only if, in the circumstances, the court believes it is appropriate the person be heard.

75 When court may register corresponding order

- (1) After considering a registration application, the court may make an order registering the corresponding order if the court is satisfied the corresponding order is in force in the original jurisdiction.
- (2) The court may vary the corresponding order for its registration by modifying it to the extent the court considers necessary for the order to operate effectively in Queensland.
- (3) If the application has been dealt with under section 71, the court may give a direction that—
- (a) a copy of the registered corresponding order is not to be served on the person against whom the order was made; or
 - (b) information in the registered corresponding order about the person protected by the order must not be included in a copy of the order served on the person against whom the order was made.
- (4) The court may give a direction mentioned in subsection (3) only if the court is satisfied the direction is necessary to prevent—

- (a) serious harm to the person protected by the order; or
- (b) substantial damage to property of the person protected by the order.

76 Requirement to serve registered corresponding order

- (1) As soon as practicable after a court registers a corresponding order, the registrar of the court must serve a copy of the registered corresponding order on the following persons—
 - (a) the person against whom the order was made;
 - (b) the person protected by the order;
 - (c) another person whom the court directs is to be served with the registered corresponding order.
- (2) This section applies subject to a direction given by the court under section 75(3).

77 Effect of registration of corresponding order

- (1) A registered corresponding order—
 - (a) is enforceable in Queensland as if it were a protection order; and
 - (b) may be varied or set aside under part 5 in the same way as a protection order.
- (2) However, if the court gives a direction under section 75(3)(a), section 115(1) applies as if the person against whom the order was made had been served with a copy of the registered corresponding order.
- (3) For subsection (1)—
 - (a) a reference in part 5 or section 115 to a protection order includes a reference to a registered corresponding order; and
 - (b) a reference in part 5 or section 111(3)(a) to the applicant for a protection order is a reference to the person who applied for registration of the corresponding order; and

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- (c) a reference in part 5 or section 111(3)(a) to an aggrieved person for a protection order is a reference to the person protected by the registered corresponding order; and
 - (d) a reference in part 5 or section 111(3)(a) to a respondent for a protection order is a reference to the person against whom the registered corresponding order was made; and
 - (e) section 62 applies as if for section 62(f) there were substituted a ground that the registered corresponding order was registered under this part because of fraud.
- (4) To remove any doubt, it is declared that, for section 62 as it applies for a registered corresponding order, the registered corresponding order was made when the corresponding order was made in the original jurisdiction.

78 Period of registration

- (1) Unless a registered corresponding order is earlier set aside or the period for which it is in force is varied, the order is in force for the period fixed by the court and stated in the order.
- (2) The period must not be more than the period for which the corresponding order, as made in the original jurisdiction, is in force.

Part 7 General procedural provisions

Division 1 Preliminary

79 Definitions for pt 7

In this part—

applicant, for a proceeding for a protection order application, means a person who made the application.

protection order application means—

- (a) an application under part 3 for a protection order, other than an application made under section 18 by a police officer; or
- (b) an application under part 5 for an order varying or setting aside a protection order.

relevant protection order, for a protection order application, means the protection order or proposed protection order to which the application relates.

respondent, for a proceeding for a protection order application, means a respondent for the relevant protection order.

Division 2 Prohibition on publication

80 Court's power to make a non-publication order

- (1) This section applies to any proceeding under this Act, including a proceeding mentioned in section 47 to the extent it relates to the making or varying of a protection order.
- (2) If the court is satisfied it is necessary to avoid serious harm or injustice to a person, the court may make an order (a **non-publication order**) prohibiting the publication of any information about the proceeding.

Examples of information about the proceeding—

- evidence given in the proceeding
 - information identifying, or likely to identify, a person involved in the proceeding
- (3) The court may make a non-publication order on its own initiative or on the application of a person with standing to appear at a hearing for the proceeding.
 - (4) In deciding whether to make a non-publication order, the court must take as the basis of its consideration the principle that it is desirable that—
 - (a) hearings of proceedings before the court should be held in public; and

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- (b) evidence given before the court and the contents of documents filed with the court or received in evidence by the court should be made available to the public and to all the parties.

Division 3 Preliminary conferences

81 Preliminary conferences

- (1) A court hearing a proceeding for a protection order application may direct an applicant and respondent for the proceeding to attend a preliminary conference for the proceeding.
- (2) The court may conduct the preliminary conference or direct the registrar of the court to conduct the conference.

82 Objects of preliminary conferences

- (1) The objects of a preliminary conference for a proceeding for a protection order application are—
 - (a) finding out whether the proceeding may be settled by consent before it is heard by the court; and
 - (b) working out and limiting the issues to be decided in the proceeding.
- (2) Without limiting how the issues to be decided in the proceeding may be worked out and limited, the court or registrar conducting the preliminary conference must try to identify—
 - (a) facts agreed on; and
 - (b) issues not agreed on; and
 - (c) any unusual or urgent factors requiring special attention.

83 Admissibility of preliminary conference evidence

Evidence about anything done or said at a preliminary conference that is related to a question to be decided by the court in the proceeding is not admissible unless—

- (a) the applicant and respondent agree; or
- (b) the court is satisfied there are substantial reasons why, in the interests of justice, the evidence should be admitted.

Division 4 Mediation

84 Referral to mediation

- (1) If a court hearing a proceeding for a protection order application considers it appropriate, the court may refer any of the issues arising in the proceeding to mediation under the *Dispute Resolution Centres Act 1990*.
- (2) The court may refer the issues to mediation—
 - (a) at any time before the court decides the protection order application; and
 - (b) whether or not any of the parties identified under subsection (4) agree to the referral.
- (3) The issues are taken to be a dispute accepted for mediation by the director of the dispute resolution centre under the *Dispute Resolution Centres Act 1990*.
- (4) In referring the issues to mediation, the court must identify the parties to the application who must attend mediation sessions under section 85.

85 Requirement to attend mediation session

- (1) A person identified by the court under section 84(4) must attend at and participate in a mediation session conducted for the mediation.

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- (2) This section applies despite the *Dispute Resolution Centres Act 1990*, section 31(1).
- (3) In this section—
mediation session see the *Dispute Resolution Centres Act 1990*, section 2(1).

86 Report on mediation

- (1) Within 7 days after the mediation ends, the mediator must file with the registrar of the court a written report on the mediation.
- (2) The report must state—
 - (a) whether or not the mediation was held; and
 - (b) whether any issues referred to mediation were resolved; and
 - (c) whether any orders will be sought because of the mediation.
- (3) If an agreement is reached at the mediation, the mediator must file with the registrar of the court a copy of the agreement in a sealed envelope.

87 Steps after filing mediation agreement

- (1) A mediation agreement filed under section 86 is admissible in a proceeding under this Act relating to the relevant protection order.
- (2) Subsection (1) applies despite the *Dispute Resolution Centres Act 1990*, sections 31(3) and 36(4) to (6).

Division 5 General provisions for proceedings under this Act

88 Standard of proof

- (1) If a court must be satisfied of a matter, the court need only be satisfied of the matter on the balance of probabilities.
- (2) Subsection (1) does not apply in relation to a charge of an offence against this Act.

89 Evidence

- (1) A court is not bound by the rules of evidence but may inform itself in the way the court considers appropriate.
- (2) However, subsection (1)—
 - (a) does not limit the application of the *Evidence Act 1977*, section 21A;² and
 - (b) does not apply in relation to a charge of an offence against this Act.
- (3) The court may receive evidence orally, in writing or in another way.

90 Entitlement to appear

The following persons may appear at the hearing of a protection order application—

- (a) an applicant for the proceeding;
- (b) if the protection order application is an application for an order varying or setting aside a protection order—a person who was an applicant for the making of the protection order;
- (c) a respondent for the proceeding;

² *Evidence Act 1977*, section 21A (Evidence of special witnesses)

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- (d) a person who is, or is sought to be, protected by the relevant protection order;
- (e) another person given leave by the court to appear.

91 Requirement to notify parent if application involves a child

- (1) This section applies if—
 - (a) a protection order application, or an application for registration of a corresponding order that is not dealt with under section 71, is made; and
 - (b) any of the following is a child—
 - (i) for a protection order application—an aggrieved person or respondent for the relevant protection order;
 - (ii) for an application to register a corresponding order—the person protected by the order or against whom the order was made.
- (2) The registrar of the court to which the application is made must, unless subsection (3) applies, give a parent of the child—
 - (a) a copy of the application; and
 - (b) notice of when and where the application is to be heard.
- (3) Subsection (2) need not be complied with if—
 - (a) the court makes an order that the documents mentioned in subsection (2) are not required to be given to a parent of the child; or
 - (b) a parent of the child can not be found after reasonable inquiry.
- (4) In considering whether to make an order mentioned in subsection (3)(a), the court must have regard to the best interests of the child.
- (5) For deciding what is in the best interests of the child, the court must consider any expressed views of the child.

- (6) Failure to comply with this section does not invalidate or otherwise affect an order made by the court on the application mentioned in subsection (1)(a).

92 Court may inform adult guardian of concerns

- (1) This section applies if a court hearing a protection order application considers there has been prohibited conduct involving an adult with impaired capacity.
- (2) The court may inform the adult guardian of the circumstances of the application.

93 Issue of summons to attend

- (1) A justice may, by notice given to a person, summons the person to attend the hearing of a protection order application before a stated court and at a stated time and place—
- (a) to give evidence; and
- (b) to produce a stated record in the person's possession.
- (2) The person must not fail, without reasonable excuse—
- (a) to attend as required by the summons; or
- (b) to continue to attend as required by the court until excused from further attendance; or
- (c) to produce a record the person was required to produce under the summons.

Maximum penalty—10 penalty units.

- (3) Also, the person must not fail—
- (a) to be sworn or to make an affirmation; or
- (b) without reasonable excuse, to answer a question the person is required to answer by the court.

Maximum penalty—10 penalty units.

- (4) If the person fails to attend as required by the summons or the court, the court may order the issue of a warrant for the person

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to be taken into custody by a police officer and to be brought before the court.

Note—

See also section 95 (Provision for issue of warrants).

- (5) Subsection (4) does not limit any other powers of the court.

94 Court may set aside summons

- (1) On the application of the person named in a summons issued under section 93 or on its own initiative, a court may set aside the summons if the court is satisfied there are sufficient grounds for setting the summons aside, including—
- (a) want of relevance; or
 - (b) privilege; or
 - (c) oppressiveness.
- (2) If the court sets aside the summons, the court may make an order for costs for the benefit of the person named in the summons.
- (3) Subsection (2) applies despite section 98.

95 Provision for issue of warrants

- (1) This section applies if a court orders, under section 53(2)(c), 67(2)(c), 74(3)(c) or 93(4), that a warrant be issued for a person to be taken into custody by a police officer and brought before the court.
- (2) A justice may issue the warrant.
- (3) The *Bail Act 1980* applies to a person taken into custody under a warrant issued under this Act as if the person were taken into custody on a charge of an offence.

96 Procedural provision for tenancy applications

- (1) This section applies if—

- (a) a protection order application relates to a personal protection order; and
 - (b) the applicant may also make a tenancy application because of the personal violence to which the personal protection order relates.
- (2) The person may make the tenancy application to the court dealing with the protection order application instead of a small claims tribunal.
- (3) Also, the court dealing with the protection order application may, on the application of an aggrieved person or respondent for the protection order, order that a tenancy application made to a small claims tribunal be removed to the court if the court considers it appropriate to do so.
- (4) A person who applies under subsection (2) or (3) must give the lessor named in the tenancy application written notice of the application and any adjournment of the application.
- (5) If a tenancy application is made or removed to a court under subsection (2) or (3)—
 - (a) the court may, despite the *Small Claims Tribunals Act 1973*, section 17, hear and decide the tenancy application; and
 - (b) the procedures applying to the hearing of the tenancy application are the procedures under the *Small Claims Tribunals Act 1973*.
- (6) Subsection (5)(b) is subject to any directions given by the court, before or during the hearing of the tenancy application, about—
 - (a) the way the court may exercise the powers of a small claims tribunal for the tenancy application; or
 - (b) the service of documents for the tenancy application.
- (7) In this section—

small claims tribunal means a small claims tribunal under the *Small Claims Tribunals Act 1973*.

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tenancy application means an application under the *Residential Tenancies Act 1994*, section 150A, 189 or 190.³

97 Summary dismissal of applications

Nothing in this Act prevents a court from summarily dismissing a protection order application, or an application to register a corresponding order, if the court is satisfied the application is malicious, false, frivolous or vexatious.

98 Limitation on awarding of costs

A court may not award costs on a protection order application, or an application to register a corresponding order, unless the court dismisses the application as malicious, false, frivolous or vexatious.

99 Application of Justices Act 1886 etc.

- (1) The *Justices Act 1886* applies, with any necessary changes, to a proceeding under this Act before a court unless the application of that Act is inconsistent with this Act.
- (2) Also, for a proceeding under this Act before the Childrens Court constituted by a Childrens Court magistrate—
 - (a) the *Childrens Court Act 1992* applies, with any necessary changes, to the proceeding unless the application of that Act is inconsistent with this Act; and
 - (b) the *Justices Act 1886* applies, with any necessary changes, to the proceeding unless the application of that Act is inconsistent with this Act or the *Childrens Court Act 1992*.

³ *Residential Tenancies Act 1994*, section 150A (Injury or damage affecting occupants), 189 (Application by occupant for termination for damage or injury) or 190 (Application for interim order about damage or injury)

Division 6 Service of documents etc.

100 Definition for div 6

In this division—

relevant court, for a document required to be served under this Act, means the court hearing the proceeding to which the document relates.

101 Requirement for orders to be served

- (1) This section applies if a court makes—
 - (a) a protection order; or
 - (b) an order varying or setting aside a protection order.
- (2) The registrar of the court must serve a copy of the order on each of the following—
 - (a) each respondent for the protection order;
 - (b) each aggrieved person and, if the applicant is not an aggrieved person, the applicant for the protection order;
 - (c) another person whom the court directs is to be served with the order.

Example for paragraph (c)—

If a respondent for the protection order is a child, the court might direct that a parent of the child is to be served with the order.

102 How documents must be served

- (1) If this Act requires a document to be served on a person, the document may be—
 - (a) delivered to the person personally; or
 - (b) if it is not reasonably practicable to deliver the document to the person personally—left at or posted to—

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- (i) the person's home or work address last known to the person serving the document; or
 - (ii) if the person has an address for service—the person's address for service.
- (2) If it is not reasonably practicable for a document to be served under subsection (1), the relevant court, or the registrar of the relevant court, may make an order substituting another way of serving the document.
- (3) The relevant court or registrar may state in the order—
 - (a) the steps to be taken to bring the document to the attention of the person required to be served; and
 - (b) that the document is taken to have been served on the happening of a stated event or at the end of a stated time.

103 Service of documents on children

A person serving a document under this Act on a child must do so—

- (a) as discreetly as practicable; and
- (b) not at, or in the vicinity of, the child's place of employment or school, unless there is no other place where service may reasonably be effected.

104 Service of documents by police officers

- (1) If the relevant court, or the registrar of the relevant court, considers it appropriate to do so, the court or registrar may direct that a document required under this Act to be served on a person be served on the person by a police officer.
- (2) If the relevant court or registrar gives a direction under subsection (1)—
 - (a) the registrar must give the relevant document to the officer in charge of the nearest police station; and
 - (b) the officer in charge must arrange for the document to be served by a police officer.

105 Registrar to give information to commissioner

- (1) This section applies if—
 - (a) a following application is made—
 - (i) an application for a protection order;
 - (ii) an application to register a corresponding order;
 - (iii) an application for an order varying or setting aside a protection order, including a registered corresponding order; or
 - (b) a following order is made by a court—
 - (i) a protection order, including an interim protection order;
 - (ii) an order varying or setting aside a protection order, including a registered corresponding order;
 - (iii) an order registering a corresponding order; or
 - (c) a notice of appeal under section 111 is filed.
- (2) The registrar of the court hearing the relevant proceeding must give the commissioner a copy of the application, order or notice within 1 business day after the day the application or order is made, or the notice is filed.

Division 7 Other provisions

106 Withdrawal of applications

- (1) An applicant may withdraw a protection order application, or an application to register a corresponding order, only with the court's leave.
- (2) The court may grant leave for the application to be withdrawn if the court considers it appropriate to do so in the circumstances.

Part 8 Appeals

107 Definitions for pt 8

In this part—

appeal court means—

- (a) for an appeal against an order or decision mentioned in section 108(1) or (2)—the District Court; or
- (b) for an appeal against an order mentioned in section 109(1)—the Court of Appeal.

first instance court, for an order or decision made by a Magistrates Court, the Childrens Court, the District Court or the Supreme Court, means the court that made the order or decision.

108 Who may appeal to the District Court

- (1) This section applies to a person who is dissatisfied with an order of a court or the Childrens Court constituted by a Childrens Court magistrate—
 - (a) to refuse an application for—
 - (i) a protection order, other than an interim protection order; or
 - (ii) the registration of a corresponding order; or
 - (iii) varying or setting aside a protection order, including a registered corresponding order; or
 - (b) to make a protection order; or
 - (c) to vary or set aside a protection order or registered corresponding order; or
 - (d) to register a corresponding order; or
 - (e) to make or refuse to make an order awarding costs under section 98; or
 - (f) to make or refuse to make a non-publication order.

- (2) Also, this section applies to a person who is dissatisfied with a decision of a magistrate to make an interim protection order.
- (3) The person may appeal against the order or decision to the District Court.
- (4) However, a person may not appeal against an order making or refusing to make an award of costs under section 98 without the leave of—
 - (a) the court that made the order; or
 - (b) a District Court judge.

109 Who may appeal to the Court of Appeal

- (1) This section applies to a person who is dissatisfied with an order making or varying a protection order made by—
 - (a) the Childrens Court constituted by a Childrens Court judge; or
 - (b) the District Court; or
 - (c) the Supreme Court.
- (2) The person may appeal against the order to the Court of Appeal.

110 When appeal must be started

An appeal must be started within 28 days after—

- (a) the day the order or decision appealed against is made; or
- (b) if the order or decision appealed against was made in the absence of the person dissatisfied with it and that person is required under this Act to be served with the order or decision—the day a copy of the order or decision is served on the person.

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111 How appeal is started

- (1) An appeal is started by filing a notice of appeal with the registrar of the appeal court.
- (2) The notice of appeal must—
 - (a) state with particularity the grounds of appeal and the facts relied on; and
 - (b) be made in the approved form.
- (3) The registrar of the appeal court must serve a copy of the notice of appeal on each of the following—
 - (a) each person, other than the appellant, who was an aggrieved person, applicant or respondent for the protection order, or proposed protection order, to which the order or decision appealed against relates;
 - (b) if the order or decision appealed against was made on an application of which notice was given to a person under section 91—the person given notice of the application;
 - (c) for an appeal against an order mentioned in section 108(1) or 109(1)—the registrar of the first instance court;
 - (d) for an appeal against a decision mentioned in section 108(2)—the registrar of the court to which the related application was made;
 - (e) another person whom the court directs is to be served with the notice of appeal.
- (4) In this section—

related application, for a decision of a magistrate to make an interim protection order, means the application for a protection order made to a court in relation to which the interim protection order was made.

112 Who may appear and be heard on appeal

- (1) The following persons may appear and be heard on an appeal—

- (a) the commissioner;
 - (b) the appellant;
 - (c) any other person required under section 111(3) to be served with the notice of the appeal.
- (2) This section does not limit the persons who may appear and be heard on the appeal.

113 Nature of appeal

- (1) An appeal is by way of rehearing and does not stay the operation of the order or decision appealed against.
- (2) However, the operation of the order or decision appealed against may be stayed until the appeal is decided by—
- (a) if the order was an interim protection order made by a magistrate—a court; or
 - (b) otherwise—the first instance court.
- (3) The court mentioned in subsection (2) may not stay the operation of an order or decision under the subsection unless the court—
- (a) has regard to the need to ensure the safety of any persons protected by the order; and
 - (b) is satisfied it is safe to stay the operation of the order.
- (4) Subsection (2) does not limit any other power to stay the operation of the order or decision.

114 Decision on appeal

- (1) On an appeal, the appeal court may—
- (a) confirm the order or decision appealed against; or
 - (b) set aside or vary the order or decision appealed against, as the appeal court considers appropriate; or
 - (c) make the order or decision it considers should have been made.

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- (2) Also, the appeal court may make a non-publication order as if it were hearing a proceeding mentioned in section 80(1).
- (3) The appeal court may set aside or vary the order or decision appealed against under subsection (1)(b) with effect from the day the order or decision was originally made.
- (4) An order or decision made under subsection (1)(c) has effect from when it is made.
- (5) The appeal court may make orders about costs of the appeal as the court considers appropriate.
- (6) The decision of the appeal court on the appeal is final and conclusive.

Part 9 Offences

115 Contravention of protection order

- (1) A person must not contravene a protection order if—
 - (a) the person was present in court when the order was made; or
 - (b) the person was served with a copy of the order; or
 - (c) a police officer told the person about the existence of the order.

Maximum penalty—40 penalty units or 1 year's imprisonment.

- (2) However, a person does not commit an offence against subsection (1)(c) unless the court is satisfied the police officer told the person about the condition the person is alleged to have contravened.
- (3) Also, a person does not commit an offence against subsection (1) by doing an act, or making an omission, that was not an offence against the subsection when the act was done or the omission was made.

Example of when subsection (3) might apply—

A protection order is varied by a court under section 66 with effect from the day the protection order was originally made. An act done, or omission made, by a respondent before the protection order was varied can only be an offence against subsection (1) if the act or omission was an offence when it was done or made.

- (4) If a court finds a person guilty of an offence against subsection (1), the court may, in addition to any penalty the court may impose for the offence—
- (a) vary the protection order in the way the court considers appropriate; or
 - (b) make another protection order against the person.
- (5) In this section—
- court* includes the Childrens Court, District Court and Supreme Court.

116 Breach of non-publication order

- (1) A person must not contravene a non-publication order, unless the person has a reasonable excuse.
- Maximum penalty—40 penalty units or 1 year's imprisonment.
- (2) It is a reasonable excuse for a person to publish information in contravention of a non-publication order if the information is published—
- (a) in an official report of the proceeding or another proceeding in which the information is relevant; or
 - (b) to a member of a profession and the publication is relevant to the practice of the person's profession; or
 - (c) for use in a judicial proceeding.
- (3) Subsection (2) does not limit what may be a reasonable excuse under subsection (1).

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117 Proceedings for offences

A proceeding for an offence against this Act—

- (a) must be started by a police officer; and
- (b) must be taken in a summary way under the *Justices Act 1886*.

Part 10 Miscellaneous provisions

118 Approval of forms

The chief executive may approve forms for use under this Act.

119 Regulation-making power

The Governor in Council may make regulations under this Act.

Part 11 Repeal provision

120 Repeal

The Peace and Good Behaviour Act 1982, No. 67 is repealed.

Schedule Dictionary

section 3

adult guardian means the adult guardian under the *Guardianship and Administration Act 2000*.

aggrieved person see section 8(1).

appeal court, for part 8, see section 107.

applicant—

- (a) for part 7, see section 79; or
- (b) otherwise, see section 14(3) or 16(3).

approved form means a form approved by the chief executive under section 118.

associate, of an aggrieved person, means either of the following persons if it is reasonable to regard the person as an associate—

- (a) a person the aggrieved person regards as an associate;
- (b) a person who regards himself or herself as an associate of the aggrieved person.

Examples of persons who could be associates—

- a person who works at the same place as the aggrieved person
- a person who resides at the same place as the aggrieved person
- a person who belongs to the same church, club or other type of association as the aggrieved person

authorised person, for an aggrieved person, means—

- (a) an adult authorised in writing by the aggrieved person to appear for the aggrieved person; or
- (b) an adult whom a court is satisfied is authorised by the aggrieved person to appear for the aggrieved person even though the authority is not written.

Example for paragraph (b)—

Because a 19 year old man has a physical disability, the man can not sign an authority. He alleges his neighbour has threatened physical harm to him. The man orally authorises his grandfather to apply for a personal protection order against the neighbour. The court may be satisfied the grandfather is authorised to appear for the man after hearing evidence about the authorisation.

commissioner means the commissioner of the police service.

consent order see section 48(1) or 49(1).

corresponding order means an order made by a court of another State or New Zealand under a law prescribed under a regulation as a corresponding law.

court—

- (a) generally, means a Magistrates Court; and
- (b) for part 7, divisions 2, 5 and 6, includes the Childrens Court, District Court, Supreme Court and Court of Appeal.

employee means an individual engaged by an employer.

employer means someone who engages an individual—

- (a) under a contract of service; or
- (b) under a contract for services; or
- (c) under an apprenticeship; or
- (d) under a training contract under the *Vocational Education, Training and Employment Act 2000*; or
- (e) to work as a volunteer.

existing order, for part 5, see section 62.

first instance court, for part 8, see section 107.

found guilty, of an offence, means there is a finding of guilt, or the acceptance of a plea of guilty, by the Childrens Court, a Magistrates Court, the District Court or the Supreme Court, whether or not a conviction is recorded.

grounds, for part 4, division 3, see section 38.

impaired capacity see the *Guardianship and Administration Act 2000*, schedule 4.

industrial dispute, for section 6, see the *Industrial Relations Act 1999*, schedule 5.

interim personal protection order means a personal protection order made under part 4, division 3.

interim protection order means—

- (a) an interim personal protection order; or
- (b) an interim workplace protection order.

interim workplace protection order means a workplace protection order made under part 4, division 3.

non-publication order see section 80(2).

original jurisdiction, for a corresponding order, means the jurisdiction in which the order was made.

parent see section 26.

personal protection order see section 7(2).

personal violence see section 6(2).

person protected by—

- (a) for a personal protection order—means a person mentioned in section 9(1); or
- (b) for a workplace protection order—means a person mentioned in section 9(2).

possession, of a weapon or thing, includes each of the following—

- (a) having it in one's custody;
- (b) having it under one's control in any place, whether or not someone else has custody of it;
- (c) having an ability to obtain its custody at will;
- (d) having a claim to its custody if the claimant has committed it to the custody of someone else, even though the weapon or thing is temporarily not in the control of the person having the claim.

premises includes all or part of any of the following, whether a public place or private property—

- (a) an area of land, including a road within the meaning of the *Transport Operations (Road Use Management) Act 1995*;
- (b) a building or structure, whether movable or immovable, including a dwelling house;
- (c) a vehicle, vessel or aircraft;
- (d) a caravan or trailer.

prohibited conduct see section 6(1).

property, of a person, means property—

- (a) the person owns; or
- (b) the person does not own, but is—
 - (i) used and enjoyed by the person; or
 - (ii) available for the person's use or enjoyment; or
 - (iii) in the person's care or custody; or
 - (iv) at the premises at which the person is residing.

protection order see section 7(1).

protection order application, for part 7, see section 79.

reasonably believes means believes on grounds that are reasonable in the circumstances.

registered corresponding order means a corresponding order registered under part 6.

registrar—

- (a) of a court, means the registrar of the court; or
- (b) of the Childrens Court, means—
 - (i) the person who under the *Childrens Court Act 1992* holds the same position as the registrar of the Magistrates Court where the relevant matter is dealt with; or

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- (ii) the registrar of the District Court where the relevant matter is dealt with; or
 - (c) of the District Court, means a registrar, within the meaning of the *District Court of Queensland Act 1967*, of the court; or
 - (d) of the Supreme Court, means a registrar of the Supreme Court; or
 - (e) of the Court of Appeal, means a registrar of the Court of Appeal.

registration application, for part 6, see section 70(5).

related application, for part 4, division 3, see section 37.

relative of a person—

- (a) means the person's spouse, child, grandchild, great-grandchild, parent, grandparent, great-grandparent, brother, sister, uncle, aunt, cousin, niece, nephew, parent-in-law, daughter-in-law, son-in-law, sister-in-law or brother-in-law; and
- (b) for an Aboriginal person—includes a person who, under Aboriginal tradition, is regarded as a relative mentioned in paragraph (a); and
- (c) for a Torres Strait Islander person—includes a person who, under Island custom, is regarded as a relative mentioned in paragraph (a); and
- (d) for a person with a parent who is not a natural parent—includes anyone who would be a relative mentioned in paragraph (a) if the parent were a natural parent.

Example for paragraph (d)—

the daughter of a person's step-parent

relevant court, for part 7, division 6, see section 100.

relevant protection order, for part 7, see section 79.

respondent—

- (a) for part 7, see section 79; or

(b) otherwise, see section 8(2).

weapon means a weapon under the Weapons Act.

Weapons Act means the *Weapons Act 1990*.

weapons licence means a licence under the Weapons Act.

workplace means a place where work is performed for an employer by an employee of the employer.

workplace protection order see section 7(3).

workplace violence see section 6(3).

