

# DOMESTIC VIOLENCE (FAMILY PROTECTION) ACT

No. 42 of 1989

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Queensland



ANNO TRICESIMO OCTAVO

ELIZABETHAE SECUNDAE REGINAE



No. 42 of 1989

**An Act to provide for protection to a person against violence  
committed or threatened by his or her spouse and for  
prevention of behaviour disruptive to family life**

[ASSENTED TO 5TH MAY, 1989]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

**1. Short title.** This Act may be cited as the *Domestic Violence (Family Protection) Act 1989*.

**2. Commencement.** (1) Section 1 and this section shall commence on the day this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided by subsection (1), the provisions of this Act shall commence on a day appointed by Proclamation.

**3. Interpretation.** (1) In this Act, except where a contrary intention appears—

“aggrieved person” means a spouse for whose benefit a protection order is in force or may properly be made under this Act;

“domestic violence” means any injury, damage, intimidation, harassment, or behaviour specified in section 4 (1), without regard to any likelihood referred to in that section;

“interim protection order” means an order directed to the prevention of domestic violence pending the determination of the matter of making a protection order;

“Minister” includes a Minister of the Crown for the time being performing the duties of the Minister;

“police force” means the Police Force of Queensland;

“premises” means—

(a) any land;

(b) any building or structure, movable or immovable;

(c) any vehicle, vessel or aircraft;

and

(d) any caravan, trailer or railway rolling stock,

and includes all parts thereof;

“prohibitions and restrictions” includes deprivation of a right, entitlement, authority or privilege of a respondent, and direction of a course of action to be taken by a respondent or in respect of a respondent's property;

“protection order” means an order directed to the prevention of domestic violence;

“respondent” means a person against whom a protection order is sought or is in force or against whom an interim protection order is in force;

“spouse” means—

- (a) either one of a male and a female who are or have been legally married to each other wherever each may be residing;
- (b) either one of a male and a female who, although not legally married to each other, are residing or have resided together as husband and wife on a bona fide domestic basis;

“variation” in relation to prohibitions and restrictions imposed by an order under this Act, includes alteration of, deletion from and addition to such prohibitions and restrictions.

(2) A spouse who counsels or procures another person to commit acts in relation to the other spouse, being acts such that their commission by a spouse would constitute domestic violence within the meaning of this Act, shall be taken, for the purposes of this Act and proceedings arising under this Act, to have committed those acts.

(3) A Magistrates Court constituted by two justices is not competent to exercise the jurisdiction of a Magistrates Court under this Act except—

- (a) to make a protection order or an interim protection order in a form agreed to by an aggrieved person and a respondent;
- (b) to make or extend an interim protection order where a Stipendiary Magistrate is not readily available to constitute a Magistrates Court for the purpose;
- (c) to adjourn proceedings taken with a view to the making of a protection order against a respondent or an offender.

## PART II—PROTECTION ORDERS

**4. Power of court to make order.** (1) On application therefor, a Magistrates Court may make a protection order against a respondent (being the “other spouse” referred to in this subsection) if the court is satisfied on the balance of probabilities that—

- (a) wilful injury to the person of one spouse has been committed by the other spouse and is likely to be committed again;
- (b) wilful injury to the person of one spouse has been threatened by the other spouse and the threat is likely to be carried out;
- (c) wilful damage to property used or enjoyed by one spouse or available for use or enjoyment by one spouse has been done by the other spouse and is likely to be done again;
- (d) wilful damage to property used or enjoyed by one spouse or available for use or enjoyment by one spouse has been threatened by the other spouse and the threat is likely to be carried out;
- (e) intimidation or serious harassment of one spouse by the other spouse has occurred and is likely to occur again;

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or

- (f) indecent behaviour towards one spouse by the other spouse, contrary to the wishes of the first-mentioned spouse has occurred and is likely to occur again.

(2) A protection order shall be taken to be made for the benefit of the person in respect of whom the court is satisfied anything specified in subsection (1) has been committed, done or threatened, or has occurred.

**5. Nature of orders.** (1) A protection order may impose such prohibitions and restrictions on the respondent as the Magistrates Court making the order considers to be necessary in the circumstances of the case or, having regard to the interests of the aggrieved person and the respondent, to be desirable.

(2) Without limiting the prohibitions and restrictions that such an order may impose, the order may—

- (a) require the respondent to be of good behaviour towards the aggrieved person and to desist from domestic violence;
- (b) prohibit specific behaviour of the respondent that would constitute domestic violence;
- (c) revoke any licence or exemption granted under the *Firearms and Offensive Weapons Act 1979-1988* (or any Act passed in substitution for that Act) had by the respondent to possess, carry, or use a firearm or other weapon;
- (d) direct the seizure, retention, forfeiture, or disposal of any firearm or other weapon in the possession or under the direct or indirect control of the respondent;
- (e) prohibit the respondent from possessing a firearm or other weapon;
- (f) prohibit or restrict the respondent's approaching or making contact with the aggrieved person, including setting a specific distance within which such an approach is prohibited or restricted;
- (g) prohibit or restrict the respondent's presence in premises or an area in which the aggrieved person resides, works or frequents.

(3) A provision of this section that authorizes the imposition of prohibitions and restrictions on a respondent so as to regulate conduct towards or presence in a place associated with an aggrieved person shall be construed to also authorize the imposition of prohibitions and restrictions on the respondent so as to regulate the respondent's conduct towards or presence in a place associated with such child or children as the Magistrates Court thinks fit in the care of the aggrieved person or of whom the aggrieved person has custody, either sole or joint with any other person (including the respondent).

(4) A licence or exemption revoked by order pursuant to subsection (2) (c) shall cease to be in force for the period for which the order is in force.

Where a licence is so revoked, the holder of the licence shall forthwith deliver the licence to the officer in charge of the Police Division in which the holder ordinarily resides.

(5) Subject to subsection (6), a prohibition or restriction referred to in subsection (2) (g) may be imposed notwithstanding that the respondent has a legal or an equitable interest in the premises in question.

(6) A Magistrates Court shall—

- (a) before making an order that prohibits or restricts the respondent's access to premises or an area in which the aggrieved person resides, have regard to the prescribed factors;
- (b) before making an order that regulates the respondent's conduct towards, or presence in a place associated with a child or children referred to in subsection (3), have regard to the prescribed factors specified in paragraphs (b) and (c) of the prescribed factors.

The prescribed factors are—

- (a) the accommodation needs of all persons affected by the proceedings;
- (b) the effect that compliance with the order might have on children of, or in the care of, the aggrieved person or the respondent;
- (c) existing orders relating to guardianship or custody of, or access to, children referred to in subparagraph (b) of this paragraph.

**6. Protection order of court's own motion.** A Magistrates Court before which a person has pleaded guilty or has been found guilty upon a charge of an offence that involves domestic violence may, whether or not it makes any other order in respect of the offender, of its own motion make a protection order against the offender, if the court is satisfied that a protection order could properly be made under section 4 against the offender as a respondent.

**7. Interim protection orders.** (1) If a Magistrates Court is satisfied that the case before it is one in which a protection order may properly be made under section 4 and that it is necessary, for the benefit of an aggrieved person, that a protection order be made then and there, but the order cannot be so made because of—

- absence of proof of due service;
- adjournment of the proceedings;
- or
- any other reason,

the court may make an interim protection order against the respondent or, as the case may be, offender in such terms as if the court were making a protection order against the respondent or offender: Provided that in the case of absence of proof of due service, an interim protection order shall not be made unless the court is satisfied that the aggrieved person is in imminent danger of personal injury or of substantial loss in relation to property.

(2) The court shall require the making of an interim protection order to be supported by such evidence as it thinks sufficient and appropriate.

(3) A Stipendiary Magistrate to whom application is made under section 17 may make an interim protection order against the respondent if—

- (a) he is satisfied that a protection order could properly be made by a Magistrates Court under section 4;
- (b) he is of opinion that, because of distance, time, or other circumstance of the case, it is not practicable for an application to a Magistrates Court for a protection order to be heard and determined expeditiously;
- and
- (c) he is satisfied that the aggrieved person is in imminent danger of personal injury or of substantial loss in relation to property.

(4) An interim protection order made under subsection (3) may be in such terms as if the Stipendiary Magistrate were then and there constituting a Magistrates Court and were making a protection order against the respondent.

**8. Protection order on consents.** With the consents of the aggrieved person and the respondent or, as the case may be, offender a protection order or an interim protection order may be made in a form agreed to by them.

**9. Commencement and duration of orders.** (1) A protection order or an interim protection order shall take effect and be in force—

- (a) on and from the day on which it is made;
- or
- (b) where it is made during the currency of an existing protection order made against the respondent for the benefit of the same aggrieved person, on and from a later day specified in the order as the date of its commencement, being a day not later than the day next following the expiry date of the existing order.

(2) A protection order shall continue in force for a period determined by the court and specified in the order, not exceeding in any case 12 months, unless it is sooner revoked.

(3) An interim protection order shall continue in force until and including the date on which the order is returnable before a Magistrates Court and thereafter, if the court extends the order.

If the court does not extend an interim protection order upon its return before a Magistrates Court the order shall cease to be of force or effect.

An interim protection order shall cease to be of force or effect if—

(a) any application for a protection order in connexion with which the interim protection order was made is determined by a Magistrates Court, or is not further pursued;

or

(b) the interim protection order is sooner revoked by a Magistrates Court.

**10. Revocation or variation of orders.** (1) On application therefor, a Magistrates Court may make an order that—

(a) revokes a protection order or an interim protection order;

or

(b) varies the prohibitions and restrictions imposed by a protection order or an interim protection order.

(2) An order made under subsection (1) shall take effect and be in force on and from the day on which it is made.

(3) When an order made under subsection (1) takes effect—

(a) if it is an order for revocation, the protection order or interim protection order to which it relates shall thereupon cease to be in force;

(b) if it is an order for variation, the protection order or interim protection order shall continue subject to the variation in its prohibitions or restrictions.

**11. Conferral of jurisdiction.** Jurisdiction is hereby conferred on every Magistrates Court and Stipendiary Magistrate to hear and determine all applications duly made to it or him pursuant to this Act.

### PART III—PROCEDURAL PROVISIONS

**12. Application for protection order.** (1) An application for a protection order may be made in or to the effect of the prescribed form to a Magistrates Court—

(a) by an aggrieved person;

(b) with the leave of the court, by a person authorized in writing by an aggrieved person;

or

(c) by the member of the police force who has carried out an investigation under section 30 (1) and has the reasonable beliefs referred to in section 30 (2).

**13. Summons on respondent.** (1) Upon an application made for a protection order, a clerk of the court or a justice authorized by him may issue his summons directed to the respondent named in the application directing the respondent to appear at the time and place specified in the summons with a view to the respondent's being heard upon the matter of the making of a protection order on the application.

(2) Unless the applicant arranges service of the summons and a copy of the application on the respondent by other means, the applicant shall cause two copies of the summons and of the application to be delivered to the officer in charge of the Police Division in which the respondent ordinarily resides or was last known to the applicant to ordinarily reside.

(3) Where the applicant is not the aggrieved person, the applicant shall cause a copy of the application, together with notification of the time and place at which the application is to be heard, to be given to the aggrieved person.

(4) It is the duty of a member of the police force to serve on the respondent the summons and a copy of the application delivered to the officer in charge of a Police Division pursuant to subsection (2).

(5) Where an interim protection order is made in connexion with an application for a protection order before the summons and copy of the application have been served on the respondent, then, notwithstanding the foregoing provisions of this section, while the interim protection order continues in force it shall not be necessary to serve the summons and copy of the application on the respondent pursuant to this section.

**14. Non-appearance of respondent.** Where a respondent fails to appear before the court that is to hear and determine the matter of an application for a protection order, the court, upon proof that the respondent has been duly served—

- (a) may proceed to hear and determine the matter of the application in the respondent's absence;
- (b) may adjourn the matter of the application;
- (c) may, subject to section 22 (1), order the issue of a warrant for the respondent's being taken into custody by a member of the police force and production to the court, and may exercise, for the meantime, the jurisdiction conferred by section 7.

Any justice may issue such warrant.

**15. Application for revocation or variation.** (1) An application for revocation of a protection order or an interim protection order or for variation of the prohibitions or restrictions imposed by a protection order or an interim protection order may be made in or to the effect of the prescribed form to a Magistrates Court—

- (a) by the aggrieved person;
- (b) by the respondent;
- (c) with leave of the court, by a person authorized in writing by an aggrieved person or respondent;

or

- (d) by a member of the police force, if he reasonably believes it to be for the benefit of the aggrieved person and that there is sufficient reason for his taking such action.

(2) Where an application under subsection (1) is made, the person who makes the application shall cause a copy of the application and a notification of the time and place at which the application is to be heard—

- (a) to be served on each person, being the aggrieved person or the respondent, other than the person who makes the application;  
and  
(b) to be given to the Commissioner of Police.

(3) If it appears to a Magistrates Court to which application is made under subsection (1) that it is not reasonably practicable to effect service on a particular person, the court may order that the copy of the application and the notification be served on that person by such means of substituted service as the court thinks fit.

(4) Where a person on whom is served a copy of the application and a notification required by subsection (2) to be served (including by way of substituted service ordered under subsection (3)) fails to appear at the time and place at which the application is to be heard, the court, upon proof of such service—

- (a) may hear and determine the matter of the application in the absence of that person;  
(b) may adjourn the matter of the application;  
(c) where that person is the respondent within the meaning of this Act, may, subject to section 22 (1), order the issue of a warrant for that respondent's being taken into custody by a member of the police force and production to the court.

Any justice may issue such warrant.

**16. Procedure on exercise of section 6 jurisdiction.** (1) Where a Magistrates Court considers exercising jurisdiction conferred by section 6—

- (a) the court may make the protection order before the offender is discharged by the court or otherwise leaves the court subject to the offender being given a sufficient opportunity to adduce such evidence and to formulate and present such submissions as the offender desires with respect to the making of a protection order;  
or  
(b) the court may adjourn the matter of making the protection order to a later fixed date, when the court may receive such further evidence as is necessary or desirable to assist the

court on that matter, and may exercise, for the meantime, the jurisdiction conferred by section 7.

(2) If a court adopts the course referred to in subsection (1), (b) and on such later date the offender fails to appear, the court then seised of the matter—

- (a) may determine the matter of making a protection order against the offender, in the offender's absence;
- (b) may further adjourn the matter;
- (c) may, subject to section 22 (1), order the issue of a warrant for the offender's being taken into custody by a member of the police force and production to the court.

Any justice may issue such warrant.

**17. Special facility for police application for interim protection orders.** (1) A member of the police force—

- (a) who is required by section 31 (5) to make application for an interim protection order upon a procedure under this section;

or

- (b) who, being one authorized by section 12 to make application for a protection order, is of opinion that—

- (i) because of distance, time, or other circumstance of the case, it is not practicable for any such application made or to be made to a Magistrates Court to be heard and determined expeditiously;

and

- (ii) the aggrieved person is in imminent danger of personal injury or of substantial loss in relation to property,

may, by means of telephone, facsimile, telex, radio or other similar facility, apply in accordance with this section for an interim protection order to any Stipendiary Magistrate.

(2) Before applying to a Stipendiary Magistrate under this section the member of the police force, if an application for a protection order has not already been made to a Magistrates Court, shall duly complete, in or to the effect of the prescribed form, a form of application for a protection order.

(3) Where action is taken under subsection (1), the particulars of the relevant application for a protection order shall be conveyed to the Stipendiary Magistrate.

(4) A Stipendiary Magistrate with whom contact is made by a person claiming to be a member of the police force applying for an interim protection order under and in accordance with this section is entitled to presume that the person is who and what he claims to be and that the provisions of this section have been complied with.

(5) The form of application for a protection order completed under subsection (2) shall be filed in the office of the clerk of the court at the

place where the interim protection order sought, when made, is to be returned or, where such interim protection order is not made, would be returned were it made, and thereupon it shall be taken that the application for a protection order is made to the Magistrates Court at that place.

**18. Duty of magistrate upon application under section 17.** A Stipendiary Magistrate to whom an application for an interim protection order is made under section 17 shall reduce the particulars of the application, as conveyed by the applicant, to writing in or to the effect of the prescribed form, and—

- (a) if he makes the interim protection order, shall—
  - (i) complete and sign the order;
  - (ii) record on the order the factors that cause him to be satisfied that a protection order could properly be made by a Magistrates Court under section 4;
  - (iii) inform the applicant, by telephone, facsimile, telex, radio, or other similar facility, of the terms of the order and the time and place at which it is to be returned before a Magistrates Court;
  - (iv) as soon as is practicable, cause the written particulars of the application as conveyed by the applicant and the order referred to in paragraph (i) to be given to the clerk of the court at the place where the order is to be returned;  
and
  - (v) cause a copy of the order referred to in paragraph (i) to be given to the Commissioner of Police;
- or
- (b) if he refuses the interim protection order, shall—
  - (i) reduce to writing the reasons for his refusal;  
and
  - (ii) as soon as is practicable, cause the written particulars of the application as conveyed by the applicant and the written reasons for his refusal to be given to the clerk of the court at the place where there is filed an application for a protection order against the respondent.

**19. Duty of police officer re section 17 order.** (1) A member of the police force who obtains an interim protection order under section 17 shall prepare three copies of the order, in or to the effect of the prescribed form, in the terms conveyed to him by the Stipendiary Magistrate who made the order and shall specify therein—

- (a) the name of the Stipendiary Magistrate who made the order;
- (b) the date and time the order was made;
- (c) the place and time at which the order is to be returned before a Magistrates Court;

and

(d) such other information as is prescribed.

(2) Of the copies prepared as required by subsection (1), one shall be served on the respondent together with a copy of the application in connexion with which the interim protection order was made (if such copy has not already been so served) and one shall be given to the aggrieved person, in either case, as soon as is practicable.

**20. Proceedings upon interim protection order.** (1) Every interim protection order shall be returnable before a Magistrates Court within 30 days following the day on which it is made or, as the case may be, on which it is extended and the time and place at which it is to be returned shall be specified in the order.

(2) At the time and place appointed for return of the order, or at any time and place to which the matter may be adjourned, the Magistrates Court may hear and determine the application on which the order was made or, in the case of a respondent who is an offender referred to in section 6, may determine the matter of making a protection order against the respondent.

(3) Every interim protection order constitutes a summons to the respondent directing the respondent to appear at the time and place at which the order is returnable with a view to the respondent's being heard upon the matter of the making of a protection order, and, if, at that time and place, the respondent fails to appear, the Magistrates Court, upon proof of due service of the order on the respondent—

- (a) may exercise the jurisdiction conferred by subsection (2) in the respondent's absence;
- (b) may adjourn the proceedings and may extend the interim protection order;
- (c) may, subject to section 22 (1), order the issue of a warrant for the respondent's being taken into custody by a member of the police force and production to the court.

Any justice may issue such warrant.

**21. Service of court orders.** (1) Where a Magistrates Court has made—

- (a) a protection order or an interim protection order;
- or
- (b) an order that revokes a protection order or an interim protection order or varies the prohibitions or restrictions imposed by a protection order or an interim protection order,

the clerk of the court shall, subject to subsection (2), cause—

a copy of the order and, in the case of an interim protection order, a copy of the application for a protection order in connexion with which the interim protection order was made (if such copy has not already been so served) to be served on the respondent;

a copy of the order to be given to the aggrieved person;

and

a copy of the order to be given to the Commissioner of Police.

(2) Where an order referred to in subsection (1) is made in the absence of the respondent or the aggrieved person or the clerk of the court has not caused a copy of the order to be served on the respondent or given to the aggrieved person before the respondent or, as the case may be, aggrieved person has departed the court precincts, the clerk shall—

(a) in the case where a copy is to be served on the respondent, cause two copies of the order and, in the case where a copy of the application is to be served on the respondent, two copies of the application to be given to the officer in charge of the Police Division in which the respondent was last known to the clerk to ordinarily reside;

or

(b) in the case where a copy is to be given to the aggrieved person, cause one copy of the order to be given to the officer in charge of the Police Division in which the aggrieved person was last known to the clerk to ordinarily reside.

(3) The officer in charge of a Police Division who receives a copy or copies of an order or an application from the clerk of the court pursuant to subsection (2) shall cause a copy of the order or, as the case requires, of the application to be served on the respondent or, as the case may be, given to the aggrieved person as soon as is practicable.

**22. Provisions concerning warrants.** (1) A court shall not order the issue of a warrant under section 14, 15 (4), 16 (2) or 20 (3) 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.

(2) Where a person is taken into custody under a warrant issued under this Act the provisions of the *Bail Act 1980-1988* are applicable in respect of the person as if the person had been apprehended on a charge of an offence.

**23. Representation of aggrieved persons.** In any proceedings upon an application made under this Act a member of the police force may appear and act in court on behalf of an aggrieved person.

**24. Costs upon applications.** A court shall not award costs upon an application for a protection order or for revocation of, or variation of, the prohibitions or restrictions imposed by, a protection order or an interim protection order except where it dismisses an application as malicious, deliberately false, frivolous or vexatious, when it may award costs against the applicant.

**25. Concurrent proceedings.** (1) Any application under this Act may be made, and a Magistrate's Court or Stipendiary Magistrate may, as

authorized by this Act, dispose of the application notwithstanding that the respondent concerned in the application has been charged with an offence arising out of conduct on which the application is based.

(2) Where—

- (a) a protection order or an interim protection order has been made against a respondent;
  - (b) a Magistrates Court has refused to make a protection order or an interim protection order, or a Stipendiary Magistrate has refused to make an interim protection order, against a respondent;
  - (c) a Magistrates Court has revoked or refused to revoke a protection order or an interim protection order against a respondent or has varied or refused to vary the prohibitions or restrictions imposed by a protection order or an interim protection order against a respondent;
- or
- (d) proceedings are current in which a protection order is sought against a respondent,

being, in any such case, a respondent charged with an offence referred to in subsection (1), reference to the making or refusal of the order, or a revocation or variation, or to the existence of such current proceedings, or to the fact that evidence of a particular nature or content was given in the proceedings in which the order, revocation or variation was made or refused, or has been given in such current proceedings, is inadmissible and shall not be made in the trial of the respondent for an offence arising out of conduct on which the application for such order, revocation, or variation, or relevant to such current proceedings, is based, and, if made therein, shall be disregarded.

#### PART IV—APPEALS

**26. Appeals.** (1) A person who is aggrieved by—

- (a) the refusal of an application for a protection order or for revocation of, or variation of the prohibitions or restrictions imposed by, a protection order or an interim protection order;
  - (b) the making of a protection order or an interim protection order;
- or
- (c) the revocation of, or variation of the prohibitions or restrictions imposed by, a protection order or an interim protection order,

may appeal to a District Court that exercises jurisdiction at or nearest to the place where the order or decision was made.

(2) Any such appeal shall be instituted within 28 days after the day on which the order or decision is made or, where the order was

made in the absence of the person who is thereby aggrieved, after the day on which a copy of the order is served on or given to that person.

**27. Institution of appeal.** (1) An appeal shall be instituted by—

- (a) lodging a notice of appeal in writing with the registrar of the District Court at the place where the appeal must be brought;
- (b) serving a copy of the notice of appeal on each person, being the aggrieved person or the respondent, other than the appellant and on the clerk of the court at the place at which is filed the application upon or in connexion with which the order or decision was made;  
and
- (c) giving a copy of the notice of appeal to the Commissioner of Police.

(2) A notice of appeal—

- (a) shall specify with particularity the grounds of appeal and the facts that are relied upon;  
and
- (b) if a form therefor is prescribed, shall be in or to the effect of the prescribed form.

(3) If it appears to a Judge of District Courts to whom application is made that it is not reasonably practicable to effect service on a particular person, the judge may order that service on that person be effected by such means of substituted service as he thinks fit.

**28. Nature of appeal.** (1) Unless a Judge of District Courts orders otherwise, an appeal shall be by way of re-hearing on the record, and shall be in accordance with rules of Court made in exercise of the power conferred by the *District Courts Act 1967-1988* or, in so far as those rules cannot be applied to such appeals, in accordance with directions given by a Judge of District Courts.

(2) An appeal against an order does not stay the operation of the order, but—

- (a) the court that made the order, where the order was made by a Magistrate's Court;  
or
- (b) a Magistrate's Court, where the order is an interim protection order made by a Stipendiary Magistrate,

may in its discretion stay the operation of the order or of any prohibition or restriction imposed thereby pending the outcome of the appeal.

**29. Decision on appeal.** (1) If a District Court allows an appeal—

- (a) it may discharge or vary any order to which the appeal relates, as it considers appropriate;
- (b) it may make such order or decision as it considers should have been made, and every such order or decision shall take effect on and from the day on which it is made.

The provisions of Parts III and VI apply in relation to an order or decision of a District Court as if it were an order or decision of a Magistrates Court.

(2) A Judge of District Courts may make such order as to costs of an appeal as he thinks proper.

(3) Jurisdiction is hereby conferred on every District Court to hear and determine an appeal duly instituted to the court.

(4) The decision of a District Court upon an appeal shall be final and conclusive.

#### PART V—POLICE FUNCTIONS AND DUTIES

**30. Police action re domestic violence.** (1) If a member of the police force reasonably suspects that a person is an aggrieved person it is the duty of that member to investigate or cause to be investigated the complaint, report, or circumstance on which his reasonable suspicion is based, until he has satisfied himself that his suspicion is unfounded.

(2) If, following such investigation, that member reasonably believes that the person is an aggrieved person and that there is sufficient reason for his taking such action, he may make application for a protection order against the spouse of the person, and take such further action as he is required or authorized by this Act to take.

**31. Police intervention.** (1) A member of the police force, being in execution of his duty on premises where domestic violence is occurring, or has occurred before his arrival on the premises, who reasonably suspects that an aggrieved person is in imminent danger of personal injury by that person's spouse may take the spouse into custody, using such reasonable force as is necessary, without further or other authority than this subsection.

(2) A person taken into custody under subsection (1) may be detained in such custody for a period of four hours or until an application for a protection order to which that person is respondent is heard and determined, or an interim protection order is made under this Act, whichever period is the less.

(3) It is the duty of a member of the police force who has taken a person into custody under subsection (1)—

(a) to convey the person forthwith to a watchhouse and cause the person's particulars to be entered, at the first reasonable opportunity, in a register in the prescribed form to be there kept for the purpose;

and

(b) to make application for a protection order against the person to a Magistrates Court, as soon as is practicable, and to bring the person before the court for the hearing and determination of the application if the person is still in that custody.

It is lawful for a member of the police force to search the person of a spouse taken to a watchhouse under this subsection and to take possession of anything found on the spouse, using such reasonable force as is necessary.

(4) Where it is not practicable to bring the person taken into custody under subsection (1) before a Magistrates Court upon an application for a protection order or to obtain an interim protection order under section 17 against the person before the expiry of the prescribed maximum period of detention, the person may, at any time before the expiry of that period, and shall, upon the expiry of that period, be released from that custody on such reasonable conditions as the watchhouse keeper thinks fit, being conditions specified in the form of release prescribed for the purpose of this subsection.

A copy of the conditions on which a person is so released from custody under subsection (1) shall be given to the person upon release.

(5) If—

(a) a person is released from custody on conditions under subsection (4);

and

(b) it is unlikely that the matter of making a protection order or an interim protection order against the person on or in connexion with the application made in relation to the person under subsection (3) (b) will be determined expeditiously, and in any case within seven days after the day on which the person is so released,

it is the duty of the member of the police force who took the person into custody under subsection (1) to make application for an interim protection order against the person upon a procedure under section 17.

(6) Conditions on which a person is released from custody under this section shall continue in force until—

(a) the matter of making a protection order against the person is determined by a Magistrates Court;

(b) an interim protection order is made against the person or is withheld by a Magistrates Court;

or

(c) an interim protection order is made against the person or is refused by a Stipendiary Magistrate upon a procedure under section 17,

whichever first occurs.

(7) While a person is held in custody under subsection (1) it is unlawful for a member of the police force to deal with the person in respect of any offence committed at a time before the person was taken into custody.

**32. Entry on and search of premises.** (1) If a member of the police force reasonably suspects that domestic violence is occurring, or has

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occurred before his arrival, on any premises, that member, without further or other authority than this subsection and using such reasonable force as is necessary, may enter into those premises and may remain in those premises for as long as he considers necessary—

- (a) to verify the grounds of his suspicion;
- (b) to ensure that, in his opinion, an imminent danger of domestic violence does not exist in those premises;  
and
- (c) to give or arrange for such assistance as is reasonable in the circumstances to any person in those premises.

(2) A member of the police force who enters premises under subsection (1), upon request made of him by a person who appears to him to be concerned in the purpose of his entry, shall supply to that person the member's name, rank, station and number (if any) in the police force.

(3) If, having entered into premises (whether under subsection (1) or otherwise), a member of the police force reasonably believes that domestic violence is occurring, or has occurred before his arrival, on the premises, that member, without further or other authority than this subsection and using such reasonable force as is necessary, may—

- (a) search the premises to establish whether any spouse present thereon is in imminent danger of domestic violence;
- (b) search the premises for, and any person therein whom he reasonably suspects to be in possession of, any firearm or other weapon and seize for retention by him any firearm or other weapon that he reasonably suspects has been used for committing such domestic violence or might be used for committing domestic violence.

(4) For the purposes of this section, an allegation that a firearm or other weapon has been used for committing domestic violence on premises lawfully entered by a member of the police force (whether under subsection (1) or otherwise) shall be taken to provide sufficient reason for any suspicion referred to in subsection (3) (b).

(5) A member of the police force who is about to search premises entered by him under this section shall inform the occupier of the premises (if he is present on the premises) that he is entitled to accompany the member throughout the search.

(6) A member of the police force who seizes for retention any firearm or other weapon shall, where practicable, inform the person from whose possession it is seized of the place to which the firearm or other weapon is to be taken.

(7) A member of the police force who has exercised an authority conferred by this section shall, at the first reasonable opportunity, record in a register in the prescribed form—

- (a) in the case of entry of premises—
  - (i) the identification of the premises;
  - (ii) the date and time of entry;
  - (iii) the grounds for the member's suspicion that domestic violence was occurring or had occurred on the premises;
- (b) in the case of a search—
  - (i) the identification of the person or premises searched;
  - (ii) the object of the search;
  - (iii) the description of any firearm or other weapon seized,
 and the member's name, rank, station and number (if any) in the police force, and shall sign his making of the record.

**33. Entry of registers; availability for inspection.** (1) If a member of the police force fails to enter in the appropriate register the particulars required by section 31 (3) or 32 (7), then—

- (a) in the case of a failure to comply with section 31 (3), the taking of the spouse referred to in section 31 (1) into custody, and the custody of that spouse, by the member and at the watchhouse is each thereby rendered unlawful;
- (b) in the case of a failure to comply with section 32 (7), the actions of the member purporting to act under authority conferred by section 32 and of all persons acting in aid of him are thereby rendered unlawful.

(2) A register kept for the purposes of section 31 (3) or 32 (7) shall be made available at all reasonable times to a person in respect of whose person, premises, or firearms or other weapons action has been taken under authority conferred by section 31 or, as the case may be, section 32, or to another authorized in writing by that person, to the extent that the register contains an entry or particulars relating to such person, premises, or firearms or other weapons.

A failure to make a register available as prescribed by this subsection shall be prima facie evidence that there is no entry in the register of particulars relating to that person, those premises, or those firearms or other weapons.

**34. Disposal of seized items.** (1) A firearm or other weapon seized for retention under section 32—

- (a) shall be dealt with in accordance with the terms of the prohibitions and restrictions applicable thereto imposed by a protection order or an interim protection order;  
or
- (b) if no such prohibitions and restrictions are applicable, shall be returned to the person from whom it was seized within 60 days following the date on which it was seized, unless—
  - (i) it is required as an exhibit in proceedings for an offence;  
or
  - (ii) the person from whom it was seized is prohibited by or under any law from owning or possessing a firearm or other weapon of the kind seized.

(2) Where a firearm or other weapon seized for retention under section 32 is not returned to the person from whom it was seized, whether pursuant to subsection (1) (b) or because it is not practicable to comply with subsection (1) (b), the firearm or other weapon may be dealt with in accordance with section 101 (1) of the *Firearms and Offensive Weapons Act 1979-1988* (or with a provision of any Act passed in substitution for that Act, which corresponds to that section) and, if the weapon is not a thing referred to in that section, it may be so dealt with as if it were such a thing.

(3) Subsection (1) shall not be construed to prejudice the operation of section 39 of the *Justices Act 1886-1988*.

**35. Arrest of certain offenders.** (1) A member of the police force who reasonably believes that a person is committing or has committed an offence defined in section 37, without further or other authority than this subsection, but subject to subsection (2), and using such reasonable force as is necessary—

- (a) may arrest the offender;
- (b) may enter into and search any premises for the purpose of making such arrest.

(2) An arrest is not authorized by subsection (1) unless—

- (a) the member of the police force has first cautioned the offender against committing the offence and the offender has failed to heed the caution;

or

- (b) the member of the police force reasonably suspects that a person is in imminent danger of personal injury by the offender.

(3) A person arrested under the authority conferred by subsection (1) shall be taken, as soon as is practicable, before justices to be dealt with according to law.

(4) Subsection (1) shall not be construed to prejudice the taking of proceedings against an offender by way of complaint and summons.

(5) A member of the police force acting under the authority of subsection (1) shall be taken to be acting in execution of his duty.

**36. Acting in aid of police powers.** Where this Act confers authority on a member of the police force it is to be taken that this Act thereby confers a like authority and to a like extent on every other member of the police force who at the material time is acting in aid of that member.

## PART VI—MISCELLANEOUS PROVISIONS

**37. Breach of order or conditions.** (1) A respondent who knowingly contravenes or fails to comply with the prohibitions and restrictions imposed by a protection order or an interim protection order commits an offence against this Act and is liable to a penalty not exceeding 40 penalty units or 12 months imprisonment or both.

(2) A person who knowingly contravenes or fails to comply with the conditions on which the person is released from custody under section 31 (4), other than that the person appears before a Magistrates Court at a specified time and place, commits an offence against this Act and is liable to a penalty not exceeding 40 penalty units or 12 months imprisonment or both.

**38. Restriction on publication of proceedings.** (1) A person who publishes in a newspaper or periodical publication or who, by radio broadcast or television or otherwise by any means, disseminates to the public or to a section of the public—

- (a) (otherwise than by the display of a notice in the premises of a court) a notification of proceedings under or for the purposes of this Act, identified by reference to the names of the parties to the proceedings, that are to be dealt with by the court;
- or
- (b) any account of proceedings under or for the purposes of this Act before a court or a Stipendiary Magistrate, or of any part of those proceedings, that identifies or is likely to identify—
  - (i) the aggrieved person, the respondent, or the applicant or appellant (in either case other than a member of the police force);
  - (ii) a witness in the proceedings (other than a member of the police force);
  - or
  - (iii) a child concerned in the proceedings,

commits an offence against this Act, unless the court before which the proceedings are, are to be, or were held, or the Stipendiary Magistrate before whom the proceedings are or were taken, expressly permits such publication.

Penalty: (a) where the offender is a corporation—160 penalty units;  
(b) where the offender is an individual—40 penalty units or 12 months imprisonment, or both.

- (2) The provisions of subsection (1) do not apply in relation to—
  - (a) the publishing of any publication bona fide intended primarily for use by members of any profession, being—
    - (i) a separate volume or part of a series of law reports;
    - or
    - (ii) any other publication of a technical character;
    - or
  - (b) the publication or other dissemination of an account of proceedings or of any part of proceedings—
    - (i) to a person who is a member of a profession, in connexion with the practice by that person of that profession or in

the course of any form of professional training in which that person is involved;

or

- (ii) to a person who is a student, in connexion with that person's studies.

(3) A person shall not be taken to have disseminated an account of any proceedings, or part of any proceedings, under or for the purposes of this Act to the public or a section of the public in respect of—

- (a) the communication by him to persons concerned in proceedings in a court or to a member of the police force, of any transcript of evidence, or other document for use in connexion with the proceedings;
- (b) the communication by him of any transcript of evidence or other document to—
  - (i) a body responsible for disciplining members of any profession;
  - or
  - (ii) persons concerned in disciplinary proceedings against a member of any profession, being proceedings before a body responsible for disciplining members of the profession.

(4) In this section (other than in subsection (3) (b) (ii)), the term "proceedings" includes an application made to a Stipendiary Magistrate under section 17.

**39. Prosecution of proceedings.** (1) A prosecution for an offence against this Act shall be taken in a summary manner under the *Justices Act 1886-1988*.

(2) A complaint for an offence against this Act shall be laid by a member of the police force, and, in the case of an offence defined in section 38, with the consent of the Minister first obtained.

**40. Evidentiary provision.** (1) In any proceeding with the view to giving effect to any provision of this Act a document purporting to be—

- (a) a copy of a protection order or an interim protection order;
- or
- (b) a copy of an order revoking a protection order or an interim protection order, or varying the prohibitions and restrictions imposed by a protection order or an interim protection order,

shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the making of the order and of the matters contained therein.

(2) In any proceeding with the view to—

- (a) making a protection order or an interim protection order;
- (b) revoking a protection order or an interim protection order;  
or
- (c) varying the prohibitions and restrictions imposed by a protection order or an interim protection order,

the court or Stipendiary Magistrate may inform itself or himself in such manner as it or he thinks fit and is not bound by the rules or practice as to evidence.

**41. Service etc. of documents.** (1) A summons, order or other document to be served for the purposes of this Act may be served in the manner prescribed by the *Justices Act 1886-1988* with respect to service of summonses under that Act, and if it is so served, the provisions of that Act as to proof of service shall apply to proof of service for the purposes of this Act.

(2) A document to be given to any person for the purposes of this Act shall be taken to have been duly given if—

- (a) it is given to the person personally or to a person authorized by the person to whom it is directed to accept delivery of documents on his behalf, either generally or in a particular case;
- (b) it is left at the place of residence or business of the person to whom it is directed last known to the person who gives it;
- (c) it is sent by post to the place of residence or business of the person to whom it is directed last known to the person who gives it.

(3) A document shall be deemed to have been received by the person to whom it is directed—

- (a) where it has been given in the manner referred to in subsection (2) (a), on the day it is so given;
- (b) where it has been given in the manner referred to in subsection (2) (b), on the day next following the day it is left at the place specified therein;
- (c) where it has been given in the manner referred to in subsection (2) (c), unless the contrary is proved, at the time it would be delivered in the ordinary course of post.

(4) A summons or warrant issued to cause a person to appear or to be brought before a Magistrates Court in connexion with proceedings under this Act may be served or executed on a Sunday as on any other day.

**42. Exclusion of right to compensation; liability at law.** (1) No entitlement to compensation arises on account of the seizure, retention, forfeiture, destruction, sale or other disposal of any thing under this

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Act except that in the case of sale the owner of the thing, if he establishes his claim, is entitled to the proceeds of sale after the expenses of sale have been met.

(2) A member of the police force shall incur no liability on account of any act done pursuant to this Act or any act done or omission made in good faith and without negligence for the purposes of this Act.

**43. Regulations.** The Governor in Council may make regulations not inconsistent with this Act with respect to—

- (a) forms to be used under this Act and the purposes for which the forms are to be used and the verification of such forms by means of oath, affirmation, or statutory declaration under and in accordance with the *Oaths Act 1867-1988*;
- (b) fees (if any) to be paid under this Act;
- (c) any matter or thing required or permitted by this Act to be prescribed;
- (d) all matters and things necessary or convenient to be prescribed for the proper administration of this Act or to achieve the objects and purposes of this Act.