

Queensland



**DOMESTIC VIOLENCE
LEGISLATION AMENDMENT
ACT 2002**

Act No. 6 of 2002

Queensland



DOMESTIC VIOLENCE LEGISLATION AMENDMENT ACT 2002

TABLE OF PROVISIONS

Section		Page
PART 1—PRELIMINARY		
1	Short title	6
2	Commencement	6
PART 2—AMENDMENT OF DOMESTIC VIOLENCE (FAMILY PROTECTION) ACT 1989		
3	Act amended in pt 2 and sch 1	6
4	Amendment of title	6
5	Amendment of s 1 (Short title)	6
6	Replacement of s 3 (Definitions)	7
3	Definitions	7
3A	Main purpose of Act	7
7	Omission of s 8 (Meaning of “weapons licence”)	7
8	Replacement of pt 2 hdg (Understanding domestic violence (Family Protection) under this Act)	7
PART 2—EXPLANATION OF HOW DOMESTIC VIOLENCE IS DEALT WITH UNDER THIS ACT’.		
9	Replacement of ss 10 and 11	8
10	Purpose of this part	8
11	What is domestic violence	8
11A	Relationships that are domestic relationships for this Act	9
10	Amendment of s 12 (Who is a “spouse”?)	9
11	Insertion of new ss 12A–12F	10
12A	What is an intimate personal relationship	10
12B	Meaning of “family relationship” and “relative”	11

Domestic Violence Legislation Amendment Act 2002

12C	What is an informal care relationship	12
12D	Children as applicants and respondents generally	13
12E	Child who is a party but is not represented	14
12F	Who is an aggrieved and who is a respondent	15
12	Amendment of s 14 (Who can apply for a protection order?)	15
13	Insertion of new s 14A	16
	14A Court to explain order to aggrieved or respondent before the court	16
14	Amendment of s 15 (Who can a domestic violence order protect?)	17
15	Amendment of s 17 (What are the conditions of a domestic violence order?)	18
16	Replacement of ss 18 and 19	18
	18 What can happen if a respondent does not comply with an order	18
17	Amendment of s 20 (Power of court to make orders to protect spouse against domestic violence)	18
18	Amendment of s 21 (Power of court to make orders to protect relatives or associates of aggrieved spouse against violence etc.)	19
19	Replacement of ss 23, 23A and 24	19
	23 Weapons Act to apply to respondents otherwise exempt	20
	24 Matters relating to weapons	21
20	Amendment of s 26 (Special condition for thing that has been used as a weapon)	22
21	Omission of ss 27 and 28	22
22	Amendment of s 29 (Domestic violence orders must include information about weapons)	22
23	Insertion of new s 31	23
	31 Court may inform other entities about matters of concern	23
24	Replacement of s 34 (Start of domestic violence orders and their duration)	23
	34 Start of domestic violence orders	23
	34A Duration of protection orders	23
	34B Duration of temporary protection orders	24
25	Insertion of new s 39AA	25
	39AA Court may set aside a summons	25
26	Insertion of new s 39H	25
	39H Court may make temporary protection order relating to respondent being released from custody on conditions under s 71	25

Domestic Violence Legislation Amendment Act 2002

27	Amendment of s 50 (Court to ensure certain spouses understand domestic violence orders)	26
28	Amendment of s 54 (Applications by telephone, facsimile etc.)	27
29	Amendment of s 72 (Duty of police officers to apply for protection order in certain circumstances)	27
30	Omission of s 74 (Police actions after protection order is made)	28
31	Omission of s 75A (When police officer to give receipt for weapons licence or weapon)	28
31A	Amendment of s 80 (Breach of order or conditions)	28
32	Amendment of s 81 (Courts to be closed)	29
33	Insertion of new s 81A	29
	81A Child not to be witness or swear affidavit	29
34	Amendment of s 87 (Approved forms)	30
35	Amendment of s 89 (Regulations)	30
36	Insertion of new pt 8, div 3 and schedule	30
	<i>Division 3—Transitional provisions for Domestic Violence Legislation Amendment Act 2002</i>	
97	Definitions for div 3	30
98	New Act to the extent it relates to intimate personal, family or informal care relationships does not apply to domestic violence etc. committed only before the commencement	31
99	Revocations and suspensions of weapons licence before commencement and retention of weapons for earning a livelihood	31
100	References to terms in old Act to be read as references in new Act	32
	SCHEDULE	
	DICTIONARY	
	PART 3—AMENDMENT OF POLICE POWERS AND RESPONSIBILITIES ACT 2000	
37	Act amended in pt 3	35
38	Amendment of s 28 (Prescribed circumstances for searching persons without warrant)	35
39	Amendment of s 30 (Prescribed circumstances for searching vehicle without warrant)	35
40	Amendment of s 198 (Arrest without warrant)	36
41	Insertion of new s 372A	36
	372A Police actions after domestic violence order is made	36

Domestic Violence Legislation Amendment Act 2002

42	Amendment of sch 1 (Acts not affected by this Act)	37
43	Amendment of sch 4 (Dictionary).....	37
PART 4—AMENDMENT OF WEAPONS ACT 1990		
44	Act amended in pt 4.	38
45	Amendment of s 2 (Application of Act)	38
46	Amendment of s 5 (Definitions)	38
47	Insertion of new s 27A	39
	27A Suspension of licence and related matters after temporary protection order is made	40
48	Amendment of s 28 (Suspension of licence).....	41
49	Insertion of new s 28A	41
	28A Revocation or suspension of licence and related matters after protection order is made	41
50	Amendment of s 29 (Revocation of licence).....	42
51	Insertion of new ss 29A and 29B	42
	29A Action by court if respondent has access to weapons through employment	42
	29B Arrangements for surrender of suspended or revoked licences and weapons	43
52	Insertion of new s 34AA	45
	34AA Effect of an appeal against a domestic violence order.....	46
PART 5—CONSEQUENTIAL AMENDMENTS OF OTHER ACTS		
53	Consequential amendments of other Acts in sch 2	46
SCHEDULE 1		
AMENDMENTS OF DOMESTIC VIOLENCE (FAMILY PROTECTION) ACT 1989		
SCHEDULE 2		
CONSEQUENTIAL AMENDMENTS OF ACTS		
	CHILD PROTECTION ACT 1999	63
	CRIMINAL OFFENCE VICTIMS ACT 1995	63
	DISPUTE RESOLUTION CENTRES ACT 1990	64
	EXPLOSIVES ACT 1999	64
	PENALTIES AND SENTENCES ACT 1992	64
	RESIDENTIAL TENANCIES ACT 1994	65

Queensland



Domestic Violence Legislation Amendment Act 2002

Act No. 6 of 2002

**An Act to amend the *Domestic Violence (Family Protection) Act 1989*,
the *Police Powers and Responsibilities Act 2000*, the *Weapons Act 1990*
and other Acts**

[Assented to 13 March 2002]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Domestic Violence Legislation Amendment Act 2002*.

2 Commencement

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

PART 2—AMENDMENT OF DOMESTIC VIOLENCE (FAMILY PROTECTION) ACT 1989

3 Act amended in pt 2 and sch 1

This part and schedule 1 amend the *Domestic Violence (Family Protection) Act 1989*.

4 Amendment of title

Title, from ‘his or her spouse’—

omit, insert—

‘someone else if a spousal, intimate personal, family or informal care relationship exists between the persons’.

5 Amendment of s 1 (Short title)

Section 1, ‘*Violence (Family Protection)*’—

omit, insert—

‘*and Family Violence Protection*’.

6 Replacement of s 3 (Definitions)

Section 3—

omit, insert—

‘3 Definitions

‘The dictionary in the schedule defines particular words used in this Act.

‘3A Main purpose of Act

‘(1) The main purpose of this Act is to provide for the safety and protection of a person in the case of domestic violence committed by someone else if any of the following domestic relationships exist between the 2 persons—

- (a) a spousal relationship;
- (b) an intimate personal relationship;
- (c) a family relationship;
- (d) an informal care relationship.

‘(2) The way in which the main purpose of this Act is to be achieved is by allowing a court to make a domestic violence order to provide protection for the person against further domestic violence.’.

7 Omission of s 8 (Meaning of “weapons licence”)

Section 8—

omit.

8 Replacement of pt 2 hdg (Understanding domestic violence (Family Protection) under this Act)

Part 2, heading—

omit, insert—

‘PART 2—EXPLANATION OF HOW DOMESTIC VIOLENCE IS DEALT WITH UNDER THIS ACT’.

9 Replacement of ss 10 and 11

Sections 10 and 11—

omit, insert—

‘10 Purpose of this part

‘(1) This part explains how domestic violence is dealt with under this Act, including setting out some of the ideas and expressions that are important for an understanding of this Act.

‘(2) In particular, this part states what is domestic violence and the relationships that are protected by this Act.

‘11 What is domestic violence

‘(1) “**Domestic violence**” is any of the following acts that a person commits against another person if a domestic relationship exists between the 2 persons—

- (a) wilful injury;
- (b) wilful damage to the other person’s property;

Example of paragraph (b)—

Wilfully injuring a defacto’s pet.

- (c) intimidation or harassment of the other person;

Examples of paragraph (c)—

1. Following an estranged spouse when the spouse is out in public, either by car or on foot.
2. Positioning oneself outside a relative’s residence or place of work.
3. Repeatedly telephoning an ex-boyfriend at home or work without consent (whether during the day or night).
4. Regularly threatening an aged parent with the withdrawal of informal care if the parent does not sign over the parent’s fortnightly pension cheque.

- (d) indecent behaviour to the other person without consent;
- (e) a threat to commit an act mentioned in paragraphs (a) to (d).

‘(2) The person committing the domestic violence need not personally commit the act or threaten to commit it.’¹

‘11A Relationships that are domestic relationships for this Act

‘(1) Each of the following is a domestic relationship for this Act—

- (a) a spousal relationship;
- (b) an intimate personal relationship;
- (c) a family relationship;
- (d) an informal care relationship.

‘(2) Although a domestic relationship exists only between 2 persons, 1 aggrieved, or an authorised person for 1 aggrieved, may make an application for a protection order naming 1 respondent or more than 1 respondent.’

10 Amendment of s 12 (Who is a “spouse”?)

(1) Section 12, heading—

omit, insert—

‘12 What is a spousal relationship and who is a spouse’.

(2) Section 12(2) and (3)—

omit.

(3) Section 12(1), (1A) and (1B)—

renumber as section 12(2), (3) and (4).

(4) Section 12—

insert—

‘(1) A **“spousal relationship”** exists between spouses.’.

(5) Section 12(3), as renumbered, ‘subsection (1)(c)’—

omit, insert—

¹ See section 20(2)—

(2) A person who counsels or procures someone else to commit an act that, if done by the person, would be an act of domestic violence is taken to have committed the act.

‘subsection (2)(c)’.

(6) Section 12(4), as renumbered, ‘subsection (1A)’—

omit, insert—

‘subsection (3)’.

11 Insertion of new ss 12A–12F

After section 12—

insert—

‘12A What is an intimate personal relationship

‘(1) An “**intimate personal relationship**” exists between 2 persons if the persons are or were engaged to be married to each other, including a betrothal under cultural or religious tradition.

‘(2) Also, an “**intimate personal relationship**” exists between 2 persons, whether or not the relationship involves or involved a relationship of a sexual nature, if—

- (a) the persons date or dated each other; and
- (b) their lives are or were enmeshed to the extent that the actions of 1 of them affect or affected the actions or life of the other.

‘(3) In deciding whether an intimate personal relationship exists under subsection (2), a court may have regard to the following—

- (a) the circumstances of the relationship, including, for example, trust and commitment;
- (b) the length of time for which the relationship has existed or did exist;
- (c) the frequency of contact between the persons;
- (d) the level of intimacy between the persons.

‘(4) An intimate personal relationship may exist whether the 2 persons are the same or the opposite sex.

‘(5) The lives of 2 persons are not enmeshed merely because the persons date or dated each other on a number of occasions.

‘12B Meaning of “family relationship” and “relative”

‘(1) A **“family relationship”** exists between 2 persons if 1 of them is the relative of the other.

‘(2) 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.

Example of subsection (2)—

A person’s spouse, child (including an individual 18 years or over), stepchild, parent, step-parent, sibling, grandparent, aunt, nephew, cousin, half-brother, mother-in-law or aunt-in-law is the person’s relative.

‘(3) For deciding if someone is related by marriage, any 2 persons who are or were spouses of each other are considered to be or to have been married to each other.

‘(4) A **“relative”** of a person (the **“relevant person”**) is also either of the following persons if it is or was reasonable to regard the person as a relative especially considering that for some people the concept of a relative may be wider than is ordinarily understood—

- (a) a person whom the relevant person regards or regarded as a relative;
- (b) a person who regards or regarded himself or herself as a relative of the relevant person.

Examples of people who may have a wider concept of a relative—

1. Aboriginal people.
2. Torres Strait Islanders.
3. Members of certain communities with non-English speaking backgrounds.
4. People with particular religious beliefs.

‘(5) In deciding if a person is a relative of someone else—

- (a) a subsection of this section must not be used to limit another subsection of this section; and
- (b) each subsection is to have effect even though, as a result, a person may be considered to be a relative who would not ordinarily be understood to be a relative.

‘12C What is an informal care relationship

‘(1) An “informal care relationship” exists between 2 persons if a person is or was dependent on another person (a **“carer”**) who helps the person in an activity of daily living (**“personal care activity”**).

Examples of personal care activities a carer may perform—

1. Dressing or other personal grooming of the person.
2. Preparing the person’s meals or helping the person with eating meals.
3. Shopping for the person’s groceries.
4. Telephoning a specialist to make a medical appointment for the person.

‘(2) The personal care activity must be required, or have been required, because of a disability, illness or impairment relating to the person.

‘(3) A relationship in which the personal care activity is or was provided under an arrangement the person entered into with someone other than the carer is not an informal care relationship, whether or not a fee is or was paid for the care.

Example for subsection (3)—

The relationship between a person and a nurse who visits the person each day to help with bathing and physiotherapy is not an informal care relationship if the nurse visits under an arrangement between the person and a community based in-home care entity.

‘(4) If the person entered into an arrangement with the carer and a fee is or was paid, or is to be paid, to or at the discretion of the carer under the arrangement for the personal care activity, the relationship existing between the persons is not an informal care relationship unless it is alleged that the circumstances relating to the arrangement or fee include an act mentioned in section 11(1)(a) to (e).²

Example for subsection (4)—

The relationship that exists between a person and the person’s carer is an informal care relationship if the carer demanded the proceeds of the person’s pension or superannuation cheque and threatened to injure the person unless the proceeds were paid.

‘(5) However, an informal care relationship can not exist between a child and a parent of the child.

‘(6) In this section—

“fee” does not include—

2 Section 11 (What is domestic violence)

- (a) a pension or allowance in the carer's own name from the Commonwealth Government for providing care to a person; or
- (b) an amount of money paid to a carer for goods purchased for the person that does not exceed the purchase price of the goods.

Example of paragraph (b)—

A friend of a person who has had a stroke may call on the person at the person's home every second day and bring fresh milk and bread and be given the price of the items.

“parent”, of a child, see *Child Protection Act 1999*, section 11.³

‘12D Children as applicants and respondents generally

‘(1) Subject to this section, a person who is a child may be named as the aggrieved or the respondent in a domestic violence order.

‘(2) However, the child may be named as the aggrieved or the respondent only if a spousal relationship, intimate personal relationship or informal care relationship exists between the child and the other party named in the domestic violence order.

‘(3) Subsection (2) does not limit the interstate orders that may be registered under part 3, division 3.⁴

‘(4) If the child is under 16 years, a person responsible for giving a document to the child—

- (a) must also give a copy of the document to a parent of the child; and

3 *Child Protection Act 1999—*

Who is a “parent”

11.(1) A “parent” of a child is the child’s mother, father or someone else (other than the chief executive) having or 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) A reference in this Act to the parents of a child or to 1 of the parents of a child is, if the child has only 1 parent, a reference to the parent.

4 Part 3, division 3 (Registration of interstate orders)

- (b) must not give the document to the child at or in the vicinity of the child's school, unless there is no other place where service may be reasonably effected.

'(5) If the child is at least 16 years, a person responsible for giving a document to the child—

- (a) must not give a copy of the document to a parent of the child unless the court orders it to be given to the parent; and
- (b) must give the document to the child as discreetly as practicable.

'(6) To the extent that subsection (3) or (4) is inconsistent with section 85,⁵ that subsection prevails.

'(7) In this section—

“other party”, in a domestic violence order, means—

- (a) in relation to an aggrieved—the respondent or any 1 of the respondents named in the domestic violence order; or
- (b) in relation to a respondent—the aggrieved named in the domestic violence order.

“parent”, of a child, see the *Child Protection Act 1999*, section 11.

'12E Child who is a party but is not represented

'(1) This section applies to a child who—

- (a) is named in an application for a protection order as the aggrieved; and
- (b) appears before a court and is not represented by a lawyer or helped by a police officer or authorised person.

'(2) Also, this section applies to a child who—

- (a) is named in an application for a protection order as the respondent; and
- (b) appears before a court and is not represented by a lawyer.

'(3) The court may adjourn the hearing of the application unless it is satisfied the child—

5 Section 85 (Service etc. of documents)

- (a) has had reasonable opportunity to obtain representation by a lawyer; and
- (b) has decided not to be represented by a lawyer.

‘12F Who is an aggrieved and who is a respondent

‘(1) An **“aggrieved”** means the person for whose benefit a domestic violence order is in force or may be made under this Act.

‘(2) Only 1 person may be named as the aggrieved in an application for a protection order or in the domestic violence order.

‘(3) A **“respondent”** means a person against whom a domestic violence order is in force, is sought or may be sought, under this Act.

‘(4) More than 1 person may be named as the respondent in an application for a protection order or in the domestic violence order.’.

12 Amendment of s 14 (Who can apply for a protection order?)

(1) Section 14(1)(a), ‘spouse’—

omit.

(2) Section 14(1)—

insert—

‘(d) a person acting under another Act for the aggrieved as mentioned in subsection (4).’.

(3) Section 14(2)—

omit, insert—

‘(2) An **“authorised person”** means—

- (a) an adult authorised in writing by an aggrieved to appear on behalf of the aggrieved;⁶ or

⁶ See section 60(2)—

(2) If an authorised person has made an application under this Act to a court and the court decides the authorised person is not able to assist it, the application is taken to have been made by the aggrieved.

- (b) an adult whom the court believes is authorised by an aggrieved to appear on behalf of the aggrieved even though the authority is not in writing.

Example of paragraph (b)—

A 19 year old man has a physical disability that results in him not being able to sign an authority. He alleges his uncle has threatened physical harm to him. The man orally authorises his grandfather to apply for a protection order against the uncle. The court may believe the grandfather is authorised to appear on behalf of the man after hearing evidence about the authorisation.’.

(4) Section 14—

insert—

‘**(4)** A person is acting under another Act for the aggrieved—

- (a) if the person is a guardian for a personal matter of the aggrieved, or an administrator for a financial matter of the aggrieved, under the *Guardianship and Administration Act 2000*; or
- (b) if the person is the adult guardian and considers the aggrieved does not have capacity to make an application for a protection order; or
- (c) if the person is appointed as the aggrieved’s attorney under an enduring power of attorney under the *Powers of Attorney Act 1998* and the person makes the application under the enduring power of attorney.

‘**(5)** If a person may make an application for a protection order, the person may make other applications or bring other proceedings under this Act in relation to a domestic violence order made because of the application.’.

13 Insertion of new s 14A

After section 14—

insert—

‘14A Court to explain order to aggrieved or respondent before the court

‘**(1)** When an aggrieved or respondent is first personally before a court, the court must satisfy itself that the aggrieved or respondent understands—

- (a) the nature, purpose and legal implications of the application; and

- (b) the legal implications of the court making a domestic violence order because of the application.

‘(2) If a person’s first presence before a court is at the time the court is about to make a domestic violence order, the court may comply with subsection (1) and section 50,⁷ at the same time.

‘(3) Failure to comply with this section does not affect the validity of the domestic violence order.’.

14 Amendment of s 15 (Who can a domestic violence order protect?)

(1) Section 15(1), ‘spouse’—

omit.

(2) Section 15(3), ‘an “aggrieved”’—

omit, insert—

‘a “**named**”’.

(3) Section 15(4), ‘aggrieved’—

omit, insert—

‘named’.

(4) Section 15(5) and (6)—

omit, insert—

‘(5) An “**associate**” means either of the following persons if it is reasonable to regard the person as an associate—

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

Examples of persons who could be associates—

1. A person who works at the same place as the aggrieved.
2. A person who resides at the same place as the aggrieved.
3. A person who belongs to the same church, club or other type of association as the aggrieved.’.

⁷ Section 50 (Court to ensure respondents and aggrieveds understand domestic violence orders)

15 Amendment of s 17 (What are the conditions of a domestic violence order?)

(1) Section 17(a), ‘spouse’—

omit.

(2) Section 17(b) and (c)—

omit, insert—

‘(b) the respondent must comply with any other conditions imposed by the court and stated in the order.’.

16 Replacement of ss 18 and 19

Sections 18 and 19—

omit, insert—

‘18 What can happen if a respondent does not comply with an order

‘(1) If a respondent does not comply with a domestic violence order, including a registered interstate order, a police officer can charge the respondent with an offence.

‘(2) An aggrieved, named person or anyone else can complain to a police officer that the respondent is not complying with the order.’.

17 Amendment of s 20 (Power of court to make orders to protect spouse against domestic violence)

(1) Section 20, heading, ‘orders to protect spouse’—

omit, insert—

‘order to protect person with a domestic relationship’.

(2) Section 20(1), ‘a respondent spouse’—

omit, insert—

‘a person for the benefit of someone else (the “other person”)’.

(3) Section 20(1)(a)—

omit, insert—

‘(a) the person has committed an act of domestic violence against the other person and a domestic relationship exists between the 2 persons; and’.

(4) Section 20(1)(b), ‘respondent spouse’—

omit, insert—

‘person’.

(5) Section 20(2)—

omit, insert—

‘(2) A person who counsels or procures someone else to commit an act that, if done by the person, would be an act of domestic violence is taken to have committed the act.

‘(3) If an application for a protection order names more than 1 respondent, the court may make a domestic violence order or domestic violence orders naming 1, some or all of the respondents, as the court reasonably considers appropriate.’.

18 Amendment of s 21 (Power of court to make orders to protect relatives or associates of aggrieved spouse against violence etc.)

(1) Section 21, heading, ‘spouse’—

omit.

(2) Section 21(1), ‘spouse’—

omit.

(3) Section 21(2)—

omit, insert—

‘(2) A person who counsels or procures someone else to commit an act that, if done by the person, would be an act of associated domestic violence is taken to have committed the act.’.

19 Replacement of ss 23, 23A and 24

Sections 23, 23A and 24—

omit, insert—

‘23 Weapons Act to apply to respondents otherwise exempt

‘(1) This section applies to a person to whom, under the Weapons Act, section 2,⁸ that Act does not apply when the person—

- (a) possesses or uses a weapon as part of the person performing duties as mentioned in the Weapons Act, section 2(1)(e); or
- (b) possesses or uses a weapon as part of the person 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 State, or another State or a Territory, 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 or an authority of a State as mentioned in the Weapons Act, section 2(1)(l); or
- (f) is a person to whom the commissioner of the police service granted an exemption from provisions of the Weapons Act 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(8), 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 named as the respondent in a domestic violence order, the Weapons Act applies to the person for the duration of the order despite the Weapons Act, section 2.

‘(3) Despite subsection (2), if the respondent is not present in court when the court makes the domestic violence 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 happened before a copy of the domestic violence order is served on the respondent.

8 Weapons Act, section 2 (Application of Act)

‘24 Matters relating to weapons

‘(1) Before making a domestic violence order, the court must ask about—

- (a) weapons licences or weapons in the respondent’s possession; and
- (b) whether the respondent may access weapons as part of the respondent’s employment; and
- (c) whether the respondent may be a person to whom the Weapons Act does not apply; and
- (d) both of the following if the respondent may access a weapon as part of the respondent’s employment or because the Weapons Act does not apply to the respondent—
 - (i) the respondent’s employer, including the employer’s name and address;
 - (ii) the employment arrangements relating to the weapon that the respondent may access as part of the respondent’s employment.

‘(2) After asking about matters under subsection (1), the court may include 1 or more of the following in the domestic violence order to the extent the court considers reasonable—

- (a) information about any weapons licences or weapons in the respondent’s possession;
- (b) a statement that when the order is served on the person the Weapons Act applies to the person under section 23 of this Act, despite the Weapons Act, section 2;
- (c) information about weapons that the respondent had access to as part of the respondent’s employment or because the Weapons Act, before the order was made, did not apply to the respondent.

‘(3) In this section—

“**employment**”, of a respondent, includes employment by a partnership in which the respondent is a partner.’.

20 Amendment of s 26 (Special condition for thing that has been used as a weapon)

(1) Section 26(1)—

omit, insert—

‘(1) This section applies if a court is satisfied that a respondent—

- (a) has used, or threatened to use, a thing in committing an act of domestic violence against the aggrieved, or an act of associated domestic violence against a named person; and
- (b) is likely to use the thing again or carry out the threat.

Examples of things—

1. An animal including a pet.
2. An antique firearm, crossbow or spear gun.
3. A cricket or baseball bat.’.

(2) Section 26 (2), ‘spouse’—

omit.

21 Omission of ss 27 and 28

Sections 27 and 28—

omit.

22 Amendment of s 29 (Domestic violence orders must include information about weapons)

(1) Section 29(1), from ‘under this Act’—

omit, insert—

‘under an Act to obtain or seize a weapon.’.

(2) Section 29(2), ‘spouse’—

omit.

(3) Section 29—

insert—

‘(3) In this section—

“**weapon**” includes a thing that a respondent is prohibited from possessing under section 26(2).’.

23 Insertion of new s 31

After section 30—

insert—

‘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.’.

24 Replacement of s 34 (Start of domestic violence orders and their duration)

Section 34—

omit, insert—

‘34 Start of domestic violence orders

‘A domestic violence order takes effect—

- (a) on the day it is made; or
- (b) if it is made while an existing domestic violence order against the respondent for the benefit of the same aggrieved is in force—at the end of the existing order.

‘34A Duration of protection orders

‘(1) Subject to subsection (2), a court may order that a protection order continues for a period no longer than 2 years.

‘(2) If the court is satisfied that there are special reasons for doing so, the court may order that a protection order continues for a period longer than 2 years.

‘(3) A protection order continues in force for the period ordered by the court and stated in the order unless it is revoked at an earlier time or the period of the order is varied.

‘34B Duration of temporary protection orders

‘(1) A temporary protection order continues in force until the first of the following happens—

- (a) the order is returnable before a court unless the court extends the order;
- (b) the order is revoked by the court.

‘(2) Subsection (3) applies if—

- (a) a temporary protection order is made and has not been revoked by a court; and
- (b) a court makes a relevant protection order relating to the temporary protection order on the day the temporary protection order is returnable before the court.

‘(3) If the respondent is not before the court when the court makes the relevant protection order, despite subsection (1)(a), the court may order that the temporary protection order continues in force until the respondent is served with the relevant protection order.

‘(4) The temporary protection order continued in force under subsection (3) is binding on the respondent even though it is not served on the respondent.

‘(5) To remove doubt, it is declared that a court may find the respondent contravened—

- (a) the temporary protection order continued in force under subsection (3); and
- (b) the relevant protection order relating to the temporary protection order to the extent the respondent contravened a condition of the protection order about which a police officer told the respondent.

‘(6) In this section—

“**relevant protection order**”, relating to a temporary protection order, means the protection order made by a court on an application for a protection order, being the application that allowed a court to make the temporary protection order.’.

25 Insertion of new s 39AA

Part 3, division 1, after section 39—

insert—

‘39AA Court may set aside a summons

‘(1) A court may set aside a summons issued under section 39 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) The court may act on the application of the person served with the summons or on its own initiative.

‘(3) If a court sets aside a summons under subsection (1), the court may make an order for costs for the benefit of the person on whom the summons was served.’.

26 Insertion of new s 39H

Part 3, division 2—

insert—

‘39H Court may make temporary protection order relating to respondent being released from custody on conditions under s 71

‘A court may make a temporary protection order if—

- (a) a person is released from custody on conditions as mentioned in section 71(4);⁹ and

9 Section 71 (Police officer must apply for protection order etc.)

- (b) the police officer who must, under section 72(2)(b), make an application for a protection order against the person asks the court for a temporary protection order.’

27 Amendment of s 50 (Court to ensure certain spouses understand domestic violence orders)

(1) Section 50, heading, ‘certain spouses’—

omit, insert—

‘respondents and aggrieveds’.

(2) Section 50(1)(a), from ‘the order’—

omit, insert—

‘—

- (i) the order may be enforceable in other States, Territories and New Zealand without further notice to the respondent; and
- (ii) if the respondent has a weapons licence, or is a body’s representative as mentioned in the Weapons Act, section 10(3),¹⁰ the licence or endorsement as the body’s representative is dealt with by the Weapons Act, section 27A or 28A;¹¹.

(3) Section 50, ‘respondent spouse’—

omit, insert—

‘respondent’.

(4) Section 50(2) and (3), ‘aggrieved spouse’—

omit, insert—

‘aggrieved’.

(5) Section 50(3), examples 1, 2 and 4, ‘to the spouse’—

omit, insert—

‘to an aggrieved or respondent’.

¹⁰ Weapons Act, section 10 (Limitations on issue of licence)

¹¹ Weapons Act, section 27A (Suspension of licence and related matters after temporary protection order is made) or 28A (Revocation or suspension of licence and related matters after protection order is made)

(6) Section 50(3), example 3, from ‘for respondent spouses’—
omit, insert—

‘for aggrieveds or respondents, including non-English speakers, may be given to an aggrieved or respondent.’.

28 Amendment of s 54 (Applications by telephone, facsimile etc.)

Section 54(1)—

omit, insert—

(1) A police officer may, by way of telephone, facsimile, telex, radio or other similar facility, apply under this section for a temporary protection order to a magistrate if—

- (a) the police officer may, under section 67(2),¹² make an application for a protection order, and believes that because of distance, time or other circumstances, it is not practicable for an application made to a court, or to be made to court, to be heard and determined quickly; or
- (b) the police officer may, under section 71(2),¹³ make an application under this section; or
- (c) the police officer must, under section 72(2),¹⁴ make an application under this section.’.

29 Amendment of s 72 (Duty of police officers to apply for protection order in certain circumstances)

(1) Section 72(1)(a), ‘under section 71’—

omit, insert—

‘as mentioned in section 71(4)’.

(2) Section 72(1)(b), ‘made in relation to the person under section 71’—

omit, insert—

12 Section 67 (Police action relating to domestic violence)

13 Section 71 (Police officer must apply for protection order etc.)

14 Section 72 (Duty of police officers to apply for protection order in certain circumstances)

‘completed in relation to the person under section 71(3)’.

(3) Section 72(2)—

omit, insert—

‘(2) The police officer who took the person into custody—

- (a) if the police officer is satisfied it is necessary to apply for a temporary protection order by way of telephone, facsimile, telex, radio or other similar facility—must make an application under section 54¹⁵ against the person; or
- (b) otherwise—must make the application for the protection order and ask the court for a temporary protection order under section 39H.¹⁶.

30 Omission of s 74 (Police actions after protection order is made)

Section 74—

omit.

31 Omission of s 75A (When police officer to give receipt for weapons licence or weapon)

Section 75A—

omit.

31A Amendment of s 80 (Breach of order or conditions)

Section 80(1), penalty—

omit, insert—

‘Maximum penalty—

- (a) if—
 - (i) the respondent has previously been convicted on at least 2 different occasions of an offence against this subsection; and

15 Section 54 (Applications by telephone, facsimile etc.)

16 Section 39H (Court may make temporary protection order relating to respondent being released from custody on conditions under s 71)

- (ii) at least 2 of those offences were committed not earlier than 3 years before the present offence was committed;
2 years imprisonment; or
- (b) otherwise—40 penalty units or 1 year's imprisonment.'.

32 Amendment of s 81 (Courts to be closed)

Section 81(2) and (3)—

omit, insert—

'(2) However, the court may open the proceedings or part of the proceedings to the public or specific persons.

'(3) An aggrieved is entitled to have an adult with the aggrieved throughout the proceedings to provide support and other help.'.

33 Insertion of new s 81A

After section 81—

insert—

'81A Child not to be witness or swear affidavit

'(1) This section applies to a child, other than a child who is the aggrieved or respondent in the relevant proceedings under this Act.

'(2) Subject to an order of a court, a person must not—

- (a) call a child as a witness in the proceedings; or
- (b) ask a child to remain in a court during the proceedings; or
- (c) ask a child to swear an affidavit for the proceedings.

'(3) If a court orders a child may be called as a witness, the court must consider whether the child's evidence should be given by way of video or other electronic means and may make an order accordingly.

'(4) A sworn affidavit of a child is not admissible in the proceedings unless the court ordered the child may be asked to swear the affidavit before the affidavit was sworn.'.

34 Amendment of s 87 (Approved forms)

Section 87—

insert—

‘(3) The approved form of a temporary protection order must include information, in a general way, about section 34B.¹⁷’.

35 Amendment of s 89 (Regulations)

(1) Section 89, heading—

omit, insert—

‘89 Regulation-making power’.

(2) Section 89(2)(b)—

omit.

(3) Section 89(2)(c) to (e)—

renumber as section 89(2)(b) to (d).

36 Insertion of new pt 8, div 3 and schedule

After section 96—

insert—

‘Division 3—Transitional provisions for Domestic Violence Legislation Amendment Act 2002

‘97 Definitions for div 3

‘In this division—

“commencement” means the commencement of this section.

“new Act” means this Act as in force immediately after the commencement.

“old Act” means this Act as in force before the commencement.

17 Section 34B (Duration of temporary protection orders)

‘98 New Act to the extent it relates to intimate personal, family or informal care relationships does not apply to domestic violence etc. committed only before the commencement

‘(1) This section applies to an application for a protection order that states the respondent committed domestic violence or associated domestic violence before the commencement.

‘(2) A court may only make a domestic violence order against the respondent if the court is satisfied—

- (a) the respondent was, at the time of the violence, a person who is or was a spouse of the aggrieved named in the application; or
- (b) the respondent committed domestic violence or associated domestic violence after the commencement.

‘99 Revocations and suspensions of weapons licence before commencement and retention of weapons for earning a livelihood

‘(1) If, before the commencement, a respondent’s weapons licence is revoked or suspended or a respondent’s name is removed from a weapons licence, under section 23 of the old Act—

- (a) the revocation, suspension or removal continues to have effect as if the *Domestic Violence Legislation Amendment Act 2002* had not been passed; and
- (b) the old Act continues to apply to the revocation, suspension or removal.

‘(2) If, before the commencement, the Weapons Act applies to a respondent because of an order under section 23(6) of the old Act—

- (a) the Weapons Act continues to apply to a respondent as if the *Domestic Violence Legislation Amendment Act 2002* had not been passed; and
- (b) the old Act continues to apply to the order.

‘(3) If, before the commencement, the court made an order, or purportedly made an order, under section 28(2) of the old Act (an **“order”**) and allowed a respondent’s licence under the Weapons Act to continue—

- (a) the order is taken to have been validly made; and
- (b) for an order that has not ended before the commencement—

- (i) the order continues to have effect as if the *Domestic Violence Legislation Amendment Act 2002* had not been passed; and
- (ii) the old Act continues to apply to the order, including, for example, the provisions of the old Act about the duration of the order.

‘(4) To the extent necessary for subsections (1), (2) and (3) to have effect, the Weapons Act did not and does not apply to the respondent.

‘(5) However when the order ends, the limitation on the application of the Weapons Act under subsection (4) relating to the respondent ends.

‘100 References to terms in old Act to be read as references in new Act

‘(1) A reference to an aggrieved spouse, aggrieved person or respondent spouse in a domestic violence order in force under this Act immediately before the commencement is to be read as an aggrieved, named person or respondent, under the new Act.

‘(2) A reference to an aggrieved spouse, aggrieved person or a respondent in an application for a protection order that may still be dealt with by a court after the commencement is to be dealt with as if the reference were to an aggrieved, a named person or a respondent.

‘SCHEDULE

‘DICTIONARY

section 3

“adult guardian” means the adult guardian appointed under the *Guardianship and Administration Act 2000*, section 199.

“aggrieved” see section 12F(1).

“approved form” means a form approved by the chief executive under section 87.

“associate” see section 15(5).

“associated domestic violence” means an act mentioned in section 21(1).

“authorised person” see section 14(2).

“child” means an individual under 18 years.

“child”, of an aggrieved, means a child who is—

- (a) a biological, adopted, step or foster child of the aggrieved; or
- (b) in the care or custody of the aggrieved.

“child”, of a respondent, means a child who is—

- (a) a biological, adopted, step or foster child of the respondent; or
- (b) in the care or custody of the respondent.

“Childrens Court” means the Childrens Court under the *Childrens Court Act 1992*.

“Childrens Court magistrate” means a Childrens Court magistrate under the *Childrens Court Act 1992*.

“clerk”, of a court, means—

- (a) if the court is a Magistrates Court—the clerk of the court; or
- (b) if the court is the Childrens Court—the person who, under the *Childrens Court Act 1992*, holds the same position as the clerk of the Magistrates Court, or registrar of the District Court, at which the relevant matter is dealt with; or
- (c) if the court is the District Court—a registrar, within the meaning of the *District Court Act 1967*, of the court; or
- (d) if the court is the Supreme Court—a registrar of the Supreme Court.

“commissioner” means the commissioner of the police service.

“court” see section 4(1).

“damage”, to property, includes destruction or loss of the property.

“domestic violence” see section 11(1).

“domestic violence order” see section 13(2).

“family relationship” see section 12B(1).

“informal care relationship” see section 12C.

“interstate order” means an order made by a court of another State, a Territory or New Zealand under a prescribed law of the other State, Territory or New Zealand.

“intimate personal relationship” see section 12A.

“justice” means a justice of the peace, but does not include a justice of the peace (commissioner for declarations) under the *Justices of the Peace and Commissioners for Declarations Act 1991*.

“Magistrates Court” see section 4(2).

“named person” see section 15(3).

“ouster condition” means a condition of an order imposed under section 25 that prohibits a respondent from remaining at, entering or attempting to enter, or approaching within a stated distance of, stated premises.

“possession” see section 5.

“premises” see section 6.

“property” see section 7.

“protection order” means an order made under section 20(1).

“registered interstate order” means an interstate order that is registered under section 42.

“relative” see section 12B(2) to (5).

“respondent” see section 12F(3).

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

“spousal relationship” see section 12(1).

“spouse” see section 12(2) to (4).

“temporary protection order” see section 13(3).

“tenancy application” means—

- (a) an application made under the *Residential Tenancies Act 1994*, section 150, 188 or 190,¹⁸ to a small claims tribunal; or

18 *Residential Tenancies Act 1994*, section 150 (Injury to spouse), 188 (Application by tenant’s spouse for termination for damage or injury) or 190 (Application for interim order about damage or injury)

(b) an application under section 62A(1).

“**variation**”, of a domestic violence order, includes an extension of the period for which the order has effect.

“**watch-house manager**” means a watch-house manager under the *Police Powers and Responsibilities Act 2000*, schedule 4.

“**weapon**” means a weapon under the Weapons Act.

“**Weapons Act**” means the *Weapons Act 1990*.

“**weapons licence**” means a licence under the Weapons Act.

“**whereabouts**”, of a person, means a place or locality where the person lives, works, frequents or visits.’.

PART 3—AMENDMENT OF POLICE POWERS AND RESPONSIBILITIES ACT 2000

37 Act amended in pt 3

This part amends the *Police Powers and Responsibilities Act 2000*.

38 Amendment of s 28 (Prescribed circumstances for searching persons without warrant)

Section 28(a)(i), after ‘possess’—

insert—

‘, or another thing that the person is prohibited from possessing under a domestic violence order or an interstate domestic violence order’.

39 Amendment of s 30 (Prescribed circumstances for searching vehicle without warrant)

Section 30(a), after ‘possess’—

insert—

‘, or another thing that the person is prohibited from possessing under a domestic violence order or an interstate domestic violence order’.

40 Amendment of s 198 (Arrest without warrant)

Section 198(1)(j), ‘*Domestic Violence (Family Protection) Act 1989*’—
omit, insert—
‘Domestic and Family Violence Protection Act 1989’.

41 Insertion of new s 372A

After section 372—

insert—

‘372A Police actions after domestic violence order is made

‘(1) This section applies if, under the *Weapons Act 1990*, section 29B,¹⁹ the person named as the respondent in a domestic violence order (the “**respondent**”) is to give a weapon the respondent possesses to a police officer.

‘(2) If the respondent was not in court when the court made the domestic violence order, the police officer to whom the clerk of the court has given the order must ensure the order is given to the respondent as soon as practicable.

‘(3) At the time the police officer gives the order to the respondent, the police officer must—

- (a) if the order is given to the respondent at the respondent’s place of residence—take all steps necessary to ensure the respondent’s weapons licence and weapon are seized immediately; or
- (b) in any other case—make arrangements to ensure the respondent’s weapons licence and weapon are surrendered to the police officer as soon as practicable.

‘(4) To seize a weapon as mentioned in subsection (3)(a), the police officer may enter and search the respondent’s place of residence if the officer has reasonable grounds for suspecting the weapon is at the place.

Examples of how the police officer may have reasonable grounds for suspecting that a weapon is at a place of residence—

1. In making the domestic violence order, the court includes information about a weapons licence or weapon in the respondent’s possession.

¹⁹ *Weapons Act 1990*, section 29B (Arrangements for surrender of suspended or revoked licences and weapons)

2. The police officer has received apparently reliable information that the respondent possesses a weapon.

‘(5) A police officer must exercise the powers under this section in a way that—

- (a) is consistent with the need to ensure the protection of a person who is an aggrieved, or a named person, as stated in the domestic violence order; and
- (b) tries to minimise disruption to the respondent.’.

42 Amendment of sch 1 (Acts not affected by this Act)

Schedule 1, ‘*Domestic Violence (Family Protection) Act 1989*’—

omit, insert—

‘*Domestic and Family Violence Protection Act 1989*’.

43 Amendment of sch 4 (Dictionary)

(1) Schedule 4—

insert—

“**domestic violence order**” see *Domestic and Family Violence Protection Act 1989*, section 13(2).

“**interstate domestic violence order**” means an interstate order under the *Domestic and Family Violence Protection Act 1989*, whether or not the interstate order is registered under that Act.’

(2) Schedule 4, definitions “**associated domestic violence**” and “**domestic violence**”, ‘*Domestic Violence (Family Protection) Act 1989*’—

omit, insert—

‘*Domestic and Family Violence Protection Act 1989*’.

PART 4—AMENDMENT OF WEAPONS ACT 1990

44 Act amended in pt 4

This part amends the *Weapons Act 1990*.

45 Amendment of s 2 (Application of Act)

(1) Section 2(8)—

renumber as section 2(9).

(2) Section 2—

insert—

‘(8) The operation of this section is subject to the *Domestic and Family Violence Protection Act 1989*, section 23(2)²⁰.’.

46 Amendment of s 5 (Definitions)

(1) Section 5, definitions “**domestic violence order**”, “**interstate domestic violence order**” and “**temporary protection order**”—

omit.

(2) Section 5—

insert—

20 *Domestic and Family Violence Protection Act 1989*, section 23(2)—

(2) If the person is named as the respondent in a domestic violence order, the Weapons Act applies to the person for the duration of the order despite the Weapons Act, section 2.

‘ **“domestic violence order”** means a domestic violence order under the *Domestic and Family Violence Protection Act 1989*,²¹ and includes an interstate domestic violence order.

“interstate domestic violence order” means an interstate order under the *Domestic and Family Violence Protection Act 1989*,²² whether or not the interstate order is registered under that Act.

“protection order” means a protection order under the *Domestic and Family Violence Protection Act 1989*, and includes an interstate domestic violence order corresponding to a protection order.

“representative”, of a body, for sections 27A and 28A, means the representative of a licensee that is a body, whether incorporated or unincorporated, who is endorsed —

- (a) on the licensee’s licence as the licensee’s representative; or
- (b) on a permit to acquire issued to the licensee as the licensee’s representative.

“respondent” means a person named in a domestic violence order as the respondent.

“temporary protection order” means a temporary protection order under the *Domestic and Family Violence Protection Act 1989*, and includes an interstate domestic violence order corresponding to a temporary protection order.’.

47 Insertion of new s 27A

After section 27—

insert—

21 *Domestic and Family Violence Protection Act 1989*, section 13(2)—

(2) A **“domestic violence order”** means—

- (a) a protection order; or
- (b) a temporary protection order.

22 *Domestic and Family Violence Protection Act 1989*, the schedule—

“interstate order” means an order made by a court of another State, a Territory or New Zealand under a prescribed law of the other State, Territory or New Zealand.

‘27A Suspension of licence and related matters after temporary protection order is made

‘(1) If a person is a licensee and is named as the respondent in a temporary protection order, the licence is suspended while the temporary protection order is in force.

‘(2) If a person is a body’s representative and is named as the respondent in a temporary protection order—

- (a) any authority the respondent has to possess a weapon because the respondent is the body’s representative is ineffective while the temporary protection order is in force; and
- (b) the body’s licence is suspended 7 days after the licensee is given the temporary protection order unless, in that period, another individual is endorsed on the licence as the body’s representative in substitution for the respondent.

‘(3) Subsections (1) and (2)(a) take effect—

- (a) if the respondent is present in court when the temporary protection order is made—from the time of the order; and
- (b) otherwise—when the respondent is given the temporary protection order.

‘(4) A suspension under subsection (2)(b) ends on the earlier of the following—

- (a) when another individual is endorsed on the licence as the body’s representative in substitution for the respondent;
- (b) the temporary protection order is no longer in force.

‘(5) Subsections (1) and (2)(a) stop having effect when the temporary protection order is no longer in force.

‘(6) If the licensee of a licence suspended under subsection (1) or (2)(b) holds a permit to acquire, the permit is also suspended while the licence is suspended.

‘(7) Despite a suspension under this section, an authorised officer may suspend the licence under section 28.’

48 Amendment of s 28 (Suspension of licence)

Section 28, heading—

omit, insert—

‘28 Suspension of licence by giving suspension notice’.**49 Insertion of new s 28A**

After section 28—

insert—

‘28A Revocation or suspension of licence and related matters after protection order is made

‘(1) If a person is a licensee and is named as the respondent in a protection order, the licence is revoked.

‘(2) If a person is a body’s representative and is named as the respondent in a protection order—

- (a) any authority the respondent has to possess a weapon because the respondent is the body’s representative is ineffective; and
- (b) the body’s licence is suspended 7 days after the day the licensee is given the protection order unless, in that period, another individual is endorsed on the licence as the body’s representative in substitution for the respondent.

‘(3) Subsections (1) and (2)(a) take effect—

- (a) if the respondent is present in court when the protection order is made—on the making of the order; or
- (b) otherwise—when the respondent is given the protection order.

‘(4) A suspension under subsection (2)(b) ends on the earlier of the following—

- (a) when another individual is endorsed on the licence as the body’s representative in substitution for the respondent;
- (b) the protection order is no longer in force.

‘(5) If the licensee of a licence revoked under subsection (1) or suspended under subsection (2)(b) holds a permit to acquire, the permit is revoked or suspended while the licence is revoked or suspended.

‘(6) Despite a suspension under subsection (2)(b), an authorised officer may suspend the licence under section 28.’.

50 Amendment of s 29 (Revocation of licence)

Section 29, heading—

omit, insert—

‘29 Revocation of licence by giving revocation notice’.

51 Insertion of new ss 29A and 29B

After section 29—

insert—

‘29A Action by court if respondent has access to weapons through employment

‘(1) This section applies if—

- (a) a person is the respondent in a domestic violence order; and
- (b) under section 27A or 28A, the respondent’s licence is suspended or revoked, or the respondent is a representative of a body and the authority to possess a weapon as the body’s representative is ineffective; and
- (c) an authorised officer reasonably considers the respondent has access to a weapon as part of the respondent’s employment.

‘(2) The authorised officer must—

- (a) consider the circumstances of the employment; and
- (b) consider the respondent’s access to the weapon; and
- (c) consider the employment arrangements and whether there is an effective individual within the employing entity to whom to give a copy of the domestic violence order to ensure the respondent does not possess a weapon as part of the respondent’s employment; and
- (d) if the authorised officer considers there is an effective individual within the employing entity—give a copy of the domestic violence order to the effective individual.

‘(3) The effective individual may disclose information about the order to another person within the employing entity to the extent necessary to ensure the respondent does not possess a weapon as part of the respondent’s employment.

‘(4) However, the effective individual must not disclose information about the order to anyone else, other than as permitted under subsection (3) or expressly permitted by a court or magistrate under the *Domestic and Family Violence Protection Act 1989*, section 82.²³

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

‘(5) In this section—

“**effective individual within the employing entity**”, relating to a respondent, means any 1 of the following who is in a position to ensure the respondent does not possess weapons as part of the respondent’s employment—

- (a) the employer if the employer is an individual;
- (b) another partner in a partnership in which the respondent is a partner;
- (c) an individual within the entity that employs the respondent.

“**employment**”, of a respondent, includes employment by a partnership in which the respondent is a partner.

‘29B Arrangements for surrender of suspended or revoked licences and weapons

‘(1) This section applies to a person whose licence is suspended under section 27A or revoked under section 28A, because a court makes a domestic violence order naming the person as the respondent.

‘(2) If the respondent is present in court when the court makes the domestic violence order and the respondent has a weapons licence or a weapon, the following applies to the respondent—

- (a) the respondent must—
 - (i) for a respondent who brought the licence to court—immediately give the licence to a police officer; or

²³ *Domestic and Family Violence Protection Act 1989*, section 82 (Restriction on publication of proceedings)

- (ii) for a respondent who did not bring the licence to court—immediately arrange with a police officer to give the licence to a police officer no later than 1 day after the day the court makes its order;
- (b) the respondent must immediately arrange with a police officer to give to a police officer any weapon the respondent possesses, or to otherwise surrender the weapon, as soon as practicable, but no later than 1 day after the day the court makes its order.

Maximum penalty—10 penalty units.

‘(3) Subject to subsection (4), if a respondent is not present in court when the court makes the domestic violence order, as soon as practicable after the respondent is given a copy of the order, but no later than 1 day after the day the respondent is given the copy, the respondent must—

- (a) give any weapons licence of the respondent to a police officer; and
- (b) give any weapon the respondent possesses to a police officer or otherwise surrender the weapon.

Maximum penalty—10 penalty units.

‘(4) If a police officer personally serves the order on the respondent at the respondent’s place of residence, the respondent must immediately give the weapons licence and any weapon in the respondent’s possession to the police officer unless the respondent has a reasonable excuse for not doing so.

Maximum penalty—10 penalty units.

‘(5) Also, a respondent must immediately give the weapons licence or any weapon in the respondent’s possession to a police officer (the “**surrender officer**”) if—

- (a) a police officer made arrangements under subsection (2) with the respondent about the weapons licence or any weapon in the respondent’s possession; and
- (b) the surrender officer believes the respondent has not complied with the arrangements; and
- (c) the surrender officer asks the respondent to give the officer the weapons licence or any weapon in the respondent’s possession.

Maximum penalty—10 penalty units.

‘(6) If a weapon is given to a police officer under this section and, within 3 months of the weapon being given to the police officer, the respondent wants to otherwise surrender it, the respondent may make arrangements with a police officer for a licensed dealer or licensed armourer, in company with the respondent, to collect the weapon.

‘(7) The *Police Powers and Responsibilities Act 2000* also provides for the role of police officers, and for offences by respondents, after a domestic violence order is made.

‘(8) In this section—

“**approved receipt**” means a receipt in a form that is an approved form under section 71(2)(b).²⁴

“**otherwise surrender**”, for a weapon, means the respondent deals with the weapon in the following way—

- (a) the respondent consigns the weapon to a licensed dealer or licensed armourer—
 - (i) for sale; or
 - (ii) for storage for a period that does not end before the period of the domestic violence order;
- (b) the respondent obtains a copy of the approved receipt for the weapon’s consignment from the licensed dealer or licensed armourer and, if the weapon is consigned for storage, the receipt states the respondent acknowledges the cost of the storage is the responsibility of the respondent;
- (c) the respondent gives the copy of the receipt to a police officer—
 - (i) immediately; or
 - (ii) within the time allowed under this section for giving the weapon to a police officer.’.

52 Insertion of new s 34AA

Part 2, after section 34—

insert—

24 Section 71 (Licensed dealers and armourers to keep register)

‘34AA Effect of an appeal against a domestic violence order

‘(1) This section applies if a domestic violence order is made naming a person as the respondent and—

- (a) the person appeals against the order to the District Court under the *Domestic and Family Violence Protection Act 1989*, section 63(1) and the court, under the *Domestic and Family Violence Protection Act 1989*, section 66 discharges the domestic violence order; or
- (b) the person appeals against the order to the Court of Appeal under the *Domestic and Family Violence Protection Act 1989*, section 63(2) and the court discharges the domestic violence order.

‘(2) For this Act, the domestic violence order is taken not to have been made.’.

**PART 5—CONSEQUENTIAL AMENDMENTS OF
OTHER ACTS****53 Consequential amendments of other Acts in sch 2**

Schedule 2 amends the Acts mentioned in it.

SCHEDULE 1**AMENDMENTS OF DOMESTIC VIOLENCE (FAMILY PROTECTION) ACT 1989**

section 3

1 Section 4(3) and (6), ‘spouse’—*omit.***2 Section 5(2), ‘spouse’—***omit.***3 Section 5(2), from ‘to a’—***omit, insert—*‘under the Weapons Act, section 29B.²⁵’.**4 Section 7, from ‘(whether’ to ‘another person)’—***omit.***5 Sections 13(1), from ‘against’—***omit, insert—*

‘for the benefit of an aggrieved.’.

6 Sections 13(3), from ‘) for’—*omit, insert—*

25 Weapons Act, section 29B (Arrangements for surrender of suspended or revoked licences and weapons)

SCHEDULE 1 (continued)

‘or section 54) for a short period until a court decides whether to make a protection order for the benefit of an aggrieved.’.

7 Section 16(3), after ‘Magistrates Court,’—

insert—

‘the Childrens Court,’.

8 Section 17A, example, ‘aggrieved spouse’s’—

omit, insert—

‘aggrieved’s’.

9 Section 17A, example, ‘spouse’—

omit.

10 Section 22, ‘respondent spouse’—

omit, insert—

‘respondent’.

11 Section 22(a), ‘aggrieved spouse and not to’—

omit, insert—

‘aggrieved and not’.

12 Section 22(b), ‘any aggrieved person named in the order and not to’—

omit, insert—

‘a named person in the order and not’.

13 Section 25(1), ‘or 23’—

omit.

SCHEDULE 1 (continued)

- 14 Section 25(2), (3), (4), (5), (6) and (7), ‘spouse’—**
omit.
- 15 Section 25(2)(b), ‘aggrieved person’—**
omit, insert—
‘named person’.
- 16 Section 25(3)(a), (c) and (d), ‘an aggrieved person’—**
omit, insert—
‘a named person’.
- 17 Section 25(3)(d), ‘or aggrieved person’—**
omit, insert—
‘or named person’.
- 18 Section 25(3)(e), from ‘an aggrieved person’ to ‘whereabouts’—**
omit, insert—
‘a named person if the aggrieved’s or named person’s whereabouts’.
- 19 Section 25(3)(f), ‘respondent spouse’s’—**
omit, insert—
‘respondent’s’.
- 20 Section 25(5)(a), ‘aggrieved persons’—**
omit, insert—
‘named persons’.

SCHEDULE 1 (continued)

- 21 Section 25(7), ‘an aggrieved person’—**
omit, insert—
‘a named person’.
- 22 Section 25(7)(a) and (b) ‘or aggrieved person’—**
omit, insert—
‘or named person’.
- 23 Section 25A(2)(a), ‘spouse’—**
omit.
- 24 Section 25A(2)(b), ‘spouse or an aggrieved person’—**
omit, insert—
‘or a named person’.
- 25 Section 25A(3), (4) and (5)(b), ‘respondent spouse’—**
omit, insert—
‘respondent’.
- 26 Section 25A(4)(b)(i) and (ii), ‘on the spouse’—**
omit, insert—
‘on the respondent’.
- 27 Section 30, heading ‘spouse’—**
omit, insert—
‘person’.

SCHEDULE 1 (continued)

28 Section 30(1), ‘spouse’—

omit.

29 Section 33(1), ‘spouse’—

omit.

30 Section 33(3), from ‘section 60’—

omit, insert—

‘section 60.²⁶’.

31 Section 36(2), (3) and (4), ‘spouse’—

omit.

32 Section 36(2)(b), ‘relationship’—

omit, insert—

‘contact’.

33 Section 36(3) and (4), ‘an aggrieved person’—

omit, insert—

‘a named person’.

34 Section 38(2)—

omit, insert—

‘(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

26 Section 60 (Police officer or authorised person may represent aggrieved)

SCHEDULE 1 (continued)

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.’.

35 Section s 38(3)(b), ‘spouse’—

omit.

36 Section 38(4)(a) and (5), ‘Tribunal’—

omit, insert—

‘Tribunals’.

37 Section 39A(1), ‘spouse’—

omit.

38 Section 39B(1), ‘the respondent spouse’—

omit, insert—

‘a respondent’.

39 Section 39B(3), ‘spouse’—

omit.

40 Section 39D(b), ‘spouse’—

omit.

SCHEDULE 1 (continued)

- 41 Section 39D(c)(i) and (ii), ‘spouse or an aggrieved person’—**
omit, insert—
‘or a named person’.
- 42 Sections 39E and 39F, ‘spouse’—**
omit.
- 43 Section 39F(1)(b), ‘an aggrieved person’—**
omit, insert—
‘a named person’.
- 44 Section 39F(2), ‘subsection (1)’—**
omit, insert—
‘this section’.
- 45 Sections 39G(1), ‘spouse’—**
omit.
- 46 Sections 43(2), ‘spouse’—**
omit.
- 47 Section 46A, definition “relevant family contact order”,
paragraph (a), ‘spouse and an aggrieved person’—**
omit, insert—
‘and a named person’.
- 48 Section 46A, definition “relevant family contact order”,
paragraph (b), ‘spouse’—**
omit.

SCHEDULE 1 (continued)

- 49 Sections 46C(1)(a), ‘spouse’—**
omit.
- 50 Sections 47, 48 and 49, ‘spouse’—**
omit.
- 51 Section 51(2), (4) and (6)(c), ‘spouse’—**
omit.
- 52 Section 51(4A), ‘respondent spouse’—**
omit, insert—
‘respondent’.
- 53 Section 51(4A)(a), ‘spouse or authorised person’—**
omit, insert—
‘or named person’.
- 54 Section 51(4A)(b), ‘spouse or person’—**
omit, insert—
‘aggrieved or named person’.
- 55 Section 51(6), at the end of paragraphs (a) and (b)—**
insert—
‘or’.
- 56 Section 51(6)(c), from ‘that spouse’s’—**
omit, insert—

SCHEDULE 1 (continued)

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

57 Section 53, heading, ‘respondent spouse’—

omit, insert—

‘person’.

58 Section 55(a), at the end of paragraphs (i), (ii) and (iii)—

insert—

‘and’.

59 Section 55(b)(ii), ‘spouse’—

omit.

60 Section 56, heading ‘re’—

omit, insert—

‘for’.

61 Section 56(2), ‘spouse’—

omit.

62 Section 58, ‘spouse’—

omit.

63 Section 58(2)(b), ‘aggrieved person’—

omit, insert—

‘named person’.

SCHEDULE 1 (continued)

64 Section 58(2)(d)—

omit.

65 Section 58(4), ‘pursuant to subsection (3) shall’—

omit, insert—

‘under subsection (3) must’.

66 Sections 59(1) and 60, ‘spouse’—

omit.

67 Section 62(1), ‘the respondent spouse’—

omit, insert—

‘a person’.

68 Section 62(2), ‘a respondent spouse’—

omit, insert—

‘the person’.

69 Section 62(2)(c)—

omit.

70 Section 62—

insert—

‘(2A) Also, subsection (3) applies if the person is charged with an offence mentioned in subsection (1) and the court has done either of the following relating to a domestic violence order naming the person as the respondent—

- (a) revoked, or refused to revoke, the domestic violence order;

SCHEDULE 1 (continued)

- (b) varied, or refused to vary, the domestic violence order, including the conditions imposed by the order.’.

71 Section 62(3), ‘the respondent spouse’—

omit, insert—

‘the person’.

72 Section 62(4), ‘a respondent spouse’—

omit, insert—

‘the person’.

73 Section 62(4), ‘the spouse’—

omit, insert—

‘the person’.

74 Section 62(5), ‘The respondent spouse’—

omit, insert—

‘The person’.

75 Sections 62A(2) and (3), ‘spouse’—

omit.

76 Section 63(1), before ‘or a decision of a magistrate’—

insert—

‘or the Childrens Court constituted by a Childrens Court magistrate,’.

SCHEDULE 1 (continued)

77 Section 63(2), after ‘a decision of’—*insert—*

‘the Childrens Court constituted by a District Court judge’.

78 Section 64(1), ‘shall’—*omit, insert—*

‘under section 63(1) must’.

79 Section 64(1)(b), ‘spouse’—*omit.***80 Section 64(3), ‘judge of the District Court’—***omit, insert—*

‘District Court judge’.

81 Section 65(1), from ‘Unless’ to ‘District Court Act 1967’—*omit, insert—*

‘An appeal under section 63(1) is by way of rehearing on the record and under the rules of court applying to the District Court’.

82 Section 65(1), ‘judge of District Courts’—*omit, insert—*

‘District Court judge’.

83 Section 66(1), at the end of paragraph (a)—*insert—*

‘or’.

SCHEDULE 1 (continued)

84 Section 66(3), ‘judge of the District Court’—*omit, insert—*

‘District Court judge’.

85 Section 67, heading, ‘re’—*omit, insert—*

‘relating to’.

86 Section 67(1) and (2)(a), ‘spouse’—*omit.***87 Section 67(2)(c)—***omit, insert—*

‘(c) apply for a protection order to protect the aggrieved; and’.

88 Section 69(1), ‘the respondent spouse’—*omit, insert—*

‘a respondent’.

89 Section 69(1), ‘the spouse’—*omit, insert—*

‘the respondent’.

90 Section 69(2), ‘The respondent spouse’—*omit, insert—*

‘The respondent’.

SCHEDULE 1 (continued)

- 91 Section 69(2)(a), from ‘in which’ to ‘the respondent spouse’—**
omit, insert—
‘naming the respondent’.
- 92 Section 69(3), ‘aggrieved spouse’—**
omit, insert—
‘aggrieved’.
- 93 Section 69(3) and (4), ‘respondent spouse’—**
omit, insert—
‘respondent’.
- 94 Section 71(1), ‘spouse’—**
omit.
- 95 Section 71(2), ‘apply for a protection order’—**
omit, insert—
‘make an application’.
- 96 Section 71(3)(a), ‘upon an application for a protection order’—**
omit, insert—
‘under subsection (1)’.
- 97 Section 71(3)(b), from ‘obtain a temporary protection order’—**
omit, insert—
‘make an application under section 54 against the person before the person is released;’.

SCHEDULE 1 (continued)

98 Section 71(3)(c)—*omit, insert—*

‘(c) complete the application prepared under subsection (1); and’.

99 Section 71(5), ‘under this section’—*omit, insert—*

‘as mentioned in subsection (4)’.

100 Section 75(1), ‘spouse’—*omit, insert—*

‘person’.

101 Section 75(2), from ‘A register’ to ‘section 70(1A) shall’—*omit, insert—*

‘The register must’.

102 Section 75(3), from ‘a register’ to ‘prima facie evidence—*omit, insert—*

‘the register available as required under subsection (2) is evidence’.

103 Section 75—*insert—*

‘(4) In this section—

“**register**” means the register mentioned in section 70(2).’.**104 Section 78, ‘member’—***omit, insert—*

‘officer’.

SCHEDULE 1 (continued)

105 Section 80, ‘spouse’—

omit.

106 Section 82(1)(b)(i), from ‘aggrieved spouse’ to ‘respondent spouse’—

omit, insert—

‘aggrieved, a named person, the respondent’.

107 Section 82(3), at the end of paragraph (a)—

insert—

‘or’.

108 Section 84(3), ‘spouse’—

omit.

109 Section 85(2), at the end of paragraphs (a) and (b)—

insert—

‘or’.

110 Section 85(3), at the end of paragraphs (a) and (b)—

insert—

‘or’.

111 Section 85(4)—

omit.

112 Section 85(5)—

renumber as section 85(4).

SCHEDULE 2**CONSEQUENTIAL AMENDMENTS OF ACTS**

section 53

CHILD PROTECTION ACT 1999**1 Section 95(7)(b), ‘Domestic Violence (Family Protection) Act 1989’—***omit, insert—**‘Domestic and Family Violence Protection Act 1989’.***2 Section 95(7)(b), ‘spouse’—***omit.***3 Schedule 3, definition “domestic violence history”, ‘Domestic Violence (Family Protection) Act 1989’—***omit, insert—**‘Domestic and Family Violence Protection Act 1989’.***CRIMINAL OFFENCE VICTIMS ACT 1995****1 Schedule 3, definition “domestic violence”, ‘Domestic Violence (Family Protection) Act 1989’—***omit, insert—**‘Domestic and Family Violence Protection Act 1989’.*

SCHEDULE 2 (continued)

DISPUTE RESOLUTION CENTRES ACT 1990**1 Section 35(3), ‘Domestic Violence (Family Protection) Act 1989’—**

omit, insert—

‘Domestic and Family Violence Protection Act 1989’.

EXPLOSIVES ACT 1999**1 Schedule 2, definition “domestic violence order”, ‘Domestic Violence (Family Protection) Act 1989’—**

omit, insert—

‘Domestic and Family Violence Protection Act 1989’.

PENALTIES AND SENTENCES ACT 1992**1 Section 43B(3), ‘Domestic Violence (Family Protection) Act 1989’—**

omit, insert—

‘Domestic and Family Violence Protection Act 1989’.

SCHEDULE 2 (continued)

RESIDENTIAL TENANCIES ACT 1994**1 Schedule 3, definitions “domestic violence”, “domestic violence order” and “protection order”, ‘Domestic Violence (Family Protection) Act 1989’—**

omit, insert—

‘Domestic and Family Violence Protection Act 1989’.

2 Schedule 3, definition “spouse”—

omit, insert—

‘**“spouse”** see *Domestic and Family Violence Protection Act 1989*, section 12(2).²⁷’.

© State of Queensland 2002

²⁷ *Domestic Violence (Family Protection) Act 1989*, section 12(2)—

(2) A **“spouse”** means—

- (a) either 1 of a male or female who are or have been married to each other;
or
- (b) either 1 of the biological parents of a child, whether or not they are or have been married or are residing or have resided together; or
- (c) either 1 of 2 persons, whether of the same or the opposite sex, who are residing or have resided together as a couple.