

TASMANIA

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**DOMESTIC VIOLENCE ORDERS (NATIONAL  
RECOGNITION) BILL 2016**

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# **DOMESTIC VIOLENCE ORDERS (NATIONAL RECOGNITION) BILL 2016**

*(Brought in by the Premier, the Honourable William Edward  
Felix Hodgman)*

## **A BILL FOR**

**An Act to give effect to the Tasmanian component of a  
national recognition scheme for domestic violence orders**

Be it enacted by Her Excellency the Governor of Tasmania, by  
and with the advice and consent of the Legislative Council and  
House of Assembly, in Parliament assembled, as follows:

## **PART 1 – PRELIMINARY**

### **1. Short title**

This Act may be cited as the *Domestic Violence  
Orders (National Recognition) Act 2016*.

### **2. Commencement**

This Act commences on a day to be proclaimed.

### **3. Object of Act**

This Act establishes, in conjunction with the  
corresponding laws, a national recognition  
scheme for DVOs or domestic violence orders.

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#### 4. Interpretation

(1) In this Act –

***corresponding law*** means a law of another jurisdiction that –

- (a) contains provisions that substantially correspond with this Act; or
- (b) is declared by the regulations to be a corresponding law for the purposes of this Act;

***defendant*** means the person against whom a DVO is made;

***domestic violence concern*** – see section 8;

***DVO*** (or domestic violence order) means a local DVO, an interstate DVO or a foreign order;

***final DVO*** means a DVO that is not an interim DVO;

***foreign order*** means a New Zealand DVO;

***general violence order*** means –

- (a) an intervention order under the *Intervention Orders (Prevention of Abuse) Act 2009* of South Australia; or

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- (b) a violence restraining order under the *Restraining Orders Act 1997* of Western Australia, other than –
  - (i) a violence restraining order made under section 11B of that Act; or
  - (ii) a police order under that Act;

***interim DVO*** means a DVO that is of an interim or provisional nature and, to avoid doubt, includes the following:

- (a) any DVO made by a police officer (other than a police family violence order (PFVO) under the *Family Violence Act 2004*);
- (b) an emergency order under the *Domestic Violence and Protection Orders Act 2008* of the Australian Capital Territory;
- (c) a temporary protection order under the *Domestic and Family Violence Protection Act 2012* of Queensland;
- (d) any DVO declared by the regulations to be an interim DVO;

***interstate DVO*** – see section 6;

***interstate law enforcement agency*** means –

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- (a) the Police Force of another jurisdiction; or
- (b) any other agency of another jurisdiction responsible for the enforcement of DVOs in that jurisdiction;

***issuing authority*** means a court or person with power to make, vary or revoke a DVO under the law of a participating jurisdiction;

***issuing jurisdiction*** for a DVO means the jurisdiction in which the DVO is made;

***jurisdiction*** means a State or Territory;

***local DVO*** – see section 5;

***local law enforcement agency*** means –

- (a) the Police Service of Tasmania; or
- (b) any other agency responsible for the enforcement of DVOs in Tasmania;

***make*** includes issue;

***New Zealand DVO*** means an order made under the *Domestic Violence Act 1995* of New Zealand or under an Act repealed by that Act;

***non-local DVO*** means an interstate DVO or a foreign order;

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***participating jurisdiction*** means the following jurisdictions:

- (a) Tasmania;
- (b) a jurisdiction in which a corresponding law is enacted;

***properly notified*** – see section 16;

***protected person*** means a person for whose protection or benefit a DVO is made;

***recognised DVO*** – see sections 10 and 39;

***recognised variation*** – see section 11;

***registered foreign order*** – see section 7;

***revoke*** includes cancel;

***vary*** a DVO includes the following:

- (a) amend or modify the DVO;
- (b) add further conditions, prohibitions or restrictions to the DVO or vary or delete conditions, prohibitions or restrictions;
- (c) extend or reduce the period in which the DVO remains in force.

- (2) Notes included in this Act do not form part of this Act.

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**5. Local DVO**

(1) A *local DVO* means –

- (a) a family violence order (FVO) under the *Family Violence Act 2004*; or
- (b) an interim FVO under the *Family Violence Act 2004*; or
- (c) a police family violence order (PFVO) under the *Family Violence Act 2004*.

(2) A registered foreign order is not a local DVO.

**6. Interstate DVO**

(1) Each of the following orders is an *interstate DVO*:

- (a) a domestic violence order under the *Domestic Violence and Protection Orders Act 2008* of the Australian Capital Territory;
- (b) an apprehended domestic violence order or an interim apprehended domestic violence order under the *Crimes (Domestic and Personal Violence) Act 2007* of New South Wales;
- (c) a domestic violence order under the *Domestic and Family Violence Act* of the Northern Territory;
- (d) a domestic violence order or police protection notice under the *Domestic and*

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*Family Violence Protection Act 2012* of Queensland;

- (e) an intervention order under the *Intervention Orders (Prevention of Abuse) Act 2009* of South Australia that addresses a domestic violence concern;
  - (f) a family violence intervention order or a family violence safety notice under the *Family Violence Protection Act 2008* of Victoria;
  - (g) the following orders under the *Restraining Orders Act 1997* of Western Australia:
    - (i) a violence restraining order that addresses a domestic violence concern;
    - (ii) any violence restraining order made under section 11B of that Act;
    - (iii) a police order;
  - (h) any order, notice or other thing declared by the regulations to be an interstate DVO.
- (2) The regulations may amend the list of interstate DVOs specified in subsection (1), by omitting an order from that list or adding a new order to that list.

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- (3) A registered foreign order is not an interstate DVO.

**7. Registered foreign order**

- (1) A ***registered foreign order*** means a foreign order that is –
- (a) a registered order under Part 12 of the *Domestic Violence and Protection Orders Act 2008* of the Australian Capital Territory; or
  - (b) a registered external protection order under Part 13 of the *Crimes (Domestic and Personal Violence) Act 2007* of New South Wales; or
  - (c) a registered external order under the *Domestic and Family Violence Act* of the Northern Territory; or
  - (d) a registered interstate order under the *Domestic and Family Violence Protection Act 2012* of Queensland; or
  - (e) a foreign intervention order registered under Part 4 of the *Intervention Orders (Prevention of Abuse) Act 2009* of South Australia; or
  - (f) an external family violence order registered under section 27 of the *Family Violence Act 2004* of Tasmania; or
  - (g) a corresponding New Zealand order registered under Part 10 of the *Family*

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*Violence Protection Act 2008* of Victoria;  
or

- (h) a foreign restraining order registered under Part 7A of the *Restraining Orders Act 1997* of Western Australia; or
  - (i) any order declared by the regulations to be a registered foreign order.
- (2) The regulations may amend the list of registered foreign orders specified in subsection (1), by omitting a foreign order from that list or adding a new foreign order to that list.

**8. Domestic violence concerns – SA and WA orders**

- (1) An intervention order under the *Intervention Orders (Prevention of Abuse) Act 2009* of South Australia addresses a domestic violence concern if the order is made because it is reasonable to suspect that the defendant will, without intervention, commit an act of domestic abuse (within the meaning of that Act).
- (2) A violence restraining order under the *Restraining Orders Act 1997* of Western Australia addresses a domestic violence concern if the order is made because the defendant has committed, or because it is feared the defendant will commit, an act of family and domestic violence (within the meaning of section 6 of that Act).

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- (3) A general violence order is taken, for the purpose of this Act, to be an order that addresses a domestic violence concern if –
  - (a) it is declared to be an order that addresses a domestic violence concern by the issuing authority that makes the order; or
  - (b) a registrar of a court of the jurisdiction in which the order was made makes an order declaring the DVO to be a recognised DVO in that jurisdiction.
- (4) The regulations may prescribe circumstances in which an order made in a participating jurisdiction is taken, for the purposes of this Act, to be an order that addresses a domestic violence concern.

**9. Special provisions for foreign orders**

- (1) For the purpose of this Act, a registered foreign order –
  - (a) is taken to be made in the jurisdiction in which it is registered as a registered foreign order; and
  - (b) is taken to be made when it becomes a registered foreign order in that jurisdiction.
- (2) A registered foreign order is varied or revoked, for the purpose of this Act, if its registration as a registered foreign order is varied or revoked.

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- (3) A power conferred by this Act to vary or revoke a registered foreign order is a power to vary or revoke registration of the order as a registered foreign order.

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**PART 2 – NATIONAL RECOGNITION OF DVOS**

*Division 1 – General principles*

**10. Recognition of DVOs**

- (1) Each of the following DVOs is a ***recognised DVO*** in Tasmania:
  - (a) a local DVO;
  - (b) an interstate DVO made in a participating jurisdiction;
  - (c) a foreign order that is a registered foreign order in any participating jurisdiction.

*Note* Recognition can also extend to DVOs made in jurisdictions that are not, or are not yet, participating jurisdictions. See Part 6.

- (2) A DVO becomes a recognised DVO when it is made.

*Note* A foreign order is taken to be made when it is registered as a registered foreign order.

- (3) A DVO is a recognised DVO, subject to this Act, for the period for which it remains in force in the jurisdiction in which it is made.

**11. Variations to DVO**

- (1) A variation to a recognised DVO that is done in Tasmania or another jurisdiction is a ***recognised***

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**variation** in Tasmania in the circumstances provided for by this section.

- (2) A variation to a local DVO is a recognised variation in Tasmania if the variation is done –
  - (a) in Tasmania by a court or any other person authorised to do so under the *Family Violence Act 2004*; or
  - (b) in another participating jurisdiction by a court under a corresponding law.
- (3) A variation to an interstate DVO or foreign order is a recognised variation in Tasmania if the variation is done –
  - (a) in the issuing jurisdiction by a court or any other person authorised to do so under the law of the issuing jurisdiction; or
  - (b) in any participating jurisdiction by a court under this Act or a corresponding law.

*Note* The issuing jurisdiction for a foreign order is the jurisdiction in which the order is registered.

- (4) A variation is recognised from the time that it is made.

## **12. Revocation of recognised DVO**

- (1) A DVO ceases to be a recognised DVO if the DVO is revoked in Tasmania or another

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jurisdiction and that revocation is recognised in Tasmania.

- (2) A revocation of a local DVO is recognised in Tasmania if the revocation is done –
  - (a) in Tasmania by a court or any other person authorised to do so under the *Family Violence Act 2004*; or
  - (b) in another participating jurisdiction by a court under a corresponding law.
- (3) A revocation of an interstate DVO or foreign order is recognised in Tasmania if the revocation is done –
  - (a) in the issuing jurisdiction by a court or any other person authorised to do so under the law of the issuing jurisdiction; or
  - (b) in any participating jurisdiction by a court under this Act or a corresponding law.
- (4) The DVO ceases to be a recognised DVO from the time it is revoked.

**13. Recognised DVO prevails over earlier comparable DVOs**

- (1) A recognised DVO that is enforceable against a defendant in Tasmania (*a new DVO*) supersedes –

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- (a) any comparable recognised DVO made earlier than the new DVO; and
  - (b) any comparable local DVO made earlier than the new DVO (whether or not the local DVO is a recognised DVO).
- (2) The earlier comparable DVO is superseded from the time the recognised DVO becomes enforceable against the defendant.
- (3) A recognised DVO that is superseded ceases to be a recognised DVO.
- (4) A local DVO that is superseded is revoked.
- (5) A DVO is not superseded to the extent that it relates to a protected person who is not a protected person under the new DVO.
- (6) Accordingly, a DVO continues to be a recognised DVO, and to have effect, to the extent that it relates to a person who is not a protected person under the new DVO.
- (7) A DVO made by a police officer does not supersede a comparable DVO made by a court (of any jurisdiction).
- (8) A DVO is *comparable* with another DVO if –
  - (a) the DVOs are made against the same defendant; and
  - (b) the DVOs are made for the protection of one or more of the same protected persons.

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**14. Making of new orders**

- (1) Nothing in this Act prevents a person from applying for, or an issuing authority from making, a local DVO even though there is a recognised DVO in force that applies to the same defendant.
- (2) However, a police officer is not to make a local DVO if the police officer is aware that there is already a recognised DVO that is enforceable against the defendant which –
  - (a) applies to the same defendant and protected person; and
  - (b) was made by a court of any jurisdiction.

***Division 2 – Enforcement of recognised DVOs***

**15. Recognised DVOs and variations are enforceable against defendant**

- (1) A recognised DVO, or a recognised variation to a recognised DVO, is enforceable against the defendant in Tasmania.
- (2) A recognised DVO that is a local DVO becomes enforceable against the defendant in Tasmania when the defendant is properly notified of the making of the DVO under the law of Tasmania.
- (3) A recognised DVO that is a non-local DVO (other than a foreign order) becomes enforceable against a defendant in Tasmania when the defendant is properly notified of the making of

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the DVO under the law of the jurisdiction in which the DVO was made.

- (4) A recognised DVO that is a foreign order becomes enforceable against a defendant in Tasmania from the time it becomes a recognised DVO.
- (5) A recognised variation to a recognised DVO becomes enforceable against the defendant in Tasmania when the defendant is properly notified of the variation under the law of the jurisdiction in which the variation is done.

**16. Properly notified – meaning**

- (1) The making of a local DVO is *properly notified* under the law of Tasmania –
  - (a) if the defendant is present before the court when the local DVO is made – on the making of the local DVO; or
  - (b) if the defendant is not present before the court when the local DVO is made – when the defendant is served personally with the local DVO or a copy of it; or
  - (c) in the case of a local DVO that is made by a police officer – when the local DVO is served on the person to whom it is issued and a copy sent to the Chief Clerk of Petty Sessions.
- (2) The making of an interstate DVO is *properly notified* under the law of the jurisdiction in

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which it is made in the circumstances provided for by the corresponding law of that jurisdiction.

- (3) A variation to a recognised DVO that is done in Tasmania is *properly notified* under the law of Tasmania –
  - (a) if the defendant is present before the court when the variation to the recognised DVO is done – on the making of the variation to the recognised DVO; or
  - (b) if the defendant is not present before the court when the variation to the recognised DVO is done – when the defendant is served personally with the variation to the recognised DVO or a copy of it.
- (4) A variation to a recognised DVO that is done in another jurisdiction is *properly notified* under the law of that jurisdiction in the circumstances provided for by the corresponding law of that jurisdiction.

**17. Contravention of enforceable recognised DVO**

- (1) A non-local DVO that is a recognised DVO and which is enforceable against a defendant in Tasmania may be enforced in Tasmania –
  - (a) as if it were a local DVO; and

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- (b) as if the defendant had been properly notified of the making of the DVO under the law of Tasmania.
- (2) A recognised variation to a non-local DVO that is a recognised DVO and which is enforceable in Tasmania may be enforced in Tasmania as if it were a variation to a local DVO.
- (3) A recognised variation to a recognised DVO made in another jurisdiction that is enforceable against the defendant in Tasmania may be enforced as if the defendant had been properly notified of the variation under the law of Tasmania.
- (4) This section does not affect any law of Tasmania that requires a geographical nexus to exist between Tasmania and an offence for a person to be guilty of an offence under the law of Tasmania.

**18. Penalty for contravention**

For the purpose of working out the maximum penalty for an offence of contravening a recognised DVO, any previous contravention of a recognised DVO that constituted an offence is to be treated in the same way as a previous offence of contravening a local DVO.

***Division 3 – Enforcement of non-local DVOs***

**19. Non-local DVO to be treated as local DVO**

- (1) A recognised DVO that is a non-local DVO has the same effect in Tasmania as a local DVO.
- (2) A prohibition, restriction or condition imposed by a non-local DVO has the same meaning as it would have in the jurisdiction in which the DVO was made, but may be enforced in Tasmania as if it were a prohibition, restriction or condition of a local DVO.

**20. Licences, permits and other authorisations**

- (1) A law of Tasmania (a *relevant law*) that restricts the grant of an authorisation, or that authorises or requires an authorisation to be suspended or revoked, if a person is or has been subject to a local DVO extends to a person who is or has been subject to any non-local DVO that is a recognised DVO (as if the non-local DVO were a local DVO).
- (2) For the purposes of a relevant law –
  - (a) a non-local DVO that is a final DVO is to be treated in the same way as a local DVO that is a final DVO; and
  - (b) a non-local DVO that is an interim DVO is to be treated in the same way as a local DVO that is an interim DVO.
- (3) In this section –

***authorisation*** includes a licence or permit;

***grant*** includes issue.

**21. Recognition of disqualification to hold firearms licence**

- (1) If a non-local DVO that is a recognised DVO disqualifies a person from holding a non-local firearms licence, or type of non-local firearms licence, the person is also disqualified from holding a local firearms licence or local firearms licence of the same type (as the case requires).
- (2) The Commissioner of Police must cancel or suspend a local firearms licence held by a person, or refuse to issue a local firearms licence to a person, if the person is so disqualified from holding the firearms licence by a recognised DVO.
- (3) A recognised DVO disqualifies a person from holding a non-local firearms licence or type of non-local firearms licence if the DVO expressly –
  - (a) disqualifies the person from holding a non-local firearms licence or type of non-local firearms licence; or
  - (b) revokes or requires the person to surrender, a non-local firearms licence or type of non-local firearms licence held by the person.
- (4) In this section –

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***local firearms licence*** means a licence, permit or other authorisation under the *Firearms Act 1996*;

***non-local firearms licence*** means a licence, permit or other authorisation to possess a firearm (within the meaning of the *Firearms Act 1996*) issued under the law of another jurisdiction or country.

**22. Orders for costs**

- (1) A non-local DVO, to the extent that it requires the payment of money, cannot be enforced in Tasmania.
- (2) The recognition of a DVO made in another jurisdiction does not confer power on a court or tribunal of Tasmania to award costs in respect of any proceedings relating to the DVO that occurred in another jurisdiction.
- (3) This section does not prevent a court or tribunal awarding costs in respect of any proceedings in Tasmania relating to the variation or revocation of a recognised DVO.

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**PART 3 – VARIATION AND REVOCATION OF  
RECOGNISED NON-LOCAL DVOs**

**23. Definition**

In this Part –

*court* means a court of Tasmania that has power to make local DVOs.

**24. Power of court to vary or revoke recognised non-local DVOs**

- (1) A court may vary or revoke a recognised DVO that is a non-local DVO in accordance with this Part as if the DVO were a local DVO.
- (2) A court cannot vary or revoke a non-local DVO if it is a kind of DVO that cannot be varied or revoked by a court in the jurisdiction in which the DVO was made.
- (3) A variation to or revocation of a recognised DVO that is done under this Part is not limited in its operation to Tasmania.
- (4) This Part does not apply to the variation or revocation of a foreign order that is registered as a registered foreign order in Tasmania.

*Note* Locally registered foreign orders can be varied, extended or revoked in accordance with Part 4 of the *Family Violence Act 2004*.

- (5) To avoid doubt, if a court varies a recognised DVO that was made in another jurisdiction, the

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other jurisdiction continues to be treated, for the purpose of this Act, as the jurisdiction in which the DVO was made.

**25. Application for variation or revocation of recognised non-local DVO**

- (1) An application for the variation or revocation of a recognised DVO that is a non-local DVO may be made to a court as if it were an application for variation or revocation of a local DVO by any person who would be able to make the application if the DVO were a local DVO.
- (2) An application –
  - (a) is to be made to a court that would have power to hear the application if the DVO were a local DVO; and
  - (b) is to be made in accordance with any requirements that would apply if the DVO were a local DVO; and
  - (c) may be dealt with (subject to this Part) as if the DVO were a local DVO.

**26. Decision about hearing of application**

- (1) A court that deals with an application for variation or revocation of a non-local DVO may decide to hear the application or decline to hear the application.
- (2) In making that decision, the court may consider the following matters (to the extent relevant):

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- (a) the jurisdiction in which the defendant and the protected person or persons under the DVO generally reside or are employed;
  - (b) any difficulty the respondent to the proceedings may have in attending the proceedings;
  - (c) whether there is sufficient information available to the court in relation to the DVO and the basis on which it was made;
  - (d) whether any proceedings are being taken in respect of an alleged contravention of the DVO and the jurisdiction in which those proceedings are being taken;
  - (e) the practicality of the applicant (if not the defendant under the DVO) applying for and obtaining a local DVO against the defendant with similar prohibitions or restrictions;
  - (f) the impact of the application on children who are protected persons under the DVO;
  - (g) any other matters the court considers relevant.
- (3) Without limiting the court's power to decline to hear an application, the court may decline to hear the application if the court is satisfied that there has been no material change in the circumstances on which the making of the order

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was based and that the application is in the nature of an appeal against the order.

- (4) For the purpose of exercising its functions under this Part, a court may have regard to any information that the court considers relevant about the making or variation of a DVO that is provided by an issuing authority of any other jurisdiction.

*Note* Part 4 enables the court to obtain information about DVOs from other jurisdictions.

- (5) A court must refuse to hear an application for variation or revocation made by the defendant during any period in which, under the law of the issuing jurisdiction for the DVO, the defendant is not entitled to apply for the variation or revocation of the DVO in the issuing jurisdiction.
- (6) In this section, the ***respondent*** to an application for variation or revocation of a DVO means –
- (a) in the case of an application made by the defendant under the recognised DVO, the protected person or persons under the recognised DVO; and
  - (b) in any other case, the defendant under the recognised DVO.

## **PART 4 – EXCHANGE OF INFORMATION**

### **27. Issuing authorities may obtain DVO information**

An issuing authority of Tasmania may obtain information about a DVO from an issuing authority of another jurisdiction, or from a local or interstate law enforcement agency, and use that information for the purpose of exercising its functions under this Act.

### **28. Issuing authorities must provide DVO information**

- (1) An issuing authority of Tasmania that makes, varies or revokes a DVO must provide to a court of any other participating jurisdiction any information about the DVO that the court reasonably requests for the purpose of exercising its functions under a corresponding law.
- (2) An issuing authority of Tasmania that makes, varies or revokes a DVO must provide to a local or interstate law enforcement agency any information about the DVO that the law enforcement agency reasonably requests for the purpose of exercising its law enforcement functions.

### **29. Law enforcement agencies may obtain DVO information**

A local law enforcement agency may obtain information about a DVO from an issuing authority of Tasmania or another jurisdiction, or from an interstate law enforcement agency, and

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use that information for the purpose of exercising its law enforcement functions.

**30. Information to be provided to law enforcement agencies**

A local law enforcement agency must provide to an interstate law enforcement agency any information it holds about a DVO that the interstate law enforcement agency reasonably requests for the purpose of exercising its law enforcement functions.

**PART 5 – MISCELLANEOUS**

**31. Certificate evidence – notification**

- (1) An authorised officer of Tasmania may issue a certificate in writing certifying any of the following matters:
  - (a) that the making of a local DVO has been properly notified under the law of Tasmania;
  - (b) that a variation to a DVO that was done in Tasmania has been properly notified under the law of Tasmania.
- (2) The certificate is admissible in evidence in any proceedings and is evidence of the matters certified.
- (3) A certificate in writing purporting to be signed by an authorised officer of another jurisdiction and certifying any of the following matters is admissible in evidence in any proceedings and is evidence of the matters certified:
  - (a) that the making of a DVO in that jurisdiction has been properly notified under the law of that jurisdiction;
  - (b) that a variation to a DVO that was done in that jurisdiction has been properly notified under the law of that jurisdiction.
- (4) In any document, the words “authorised officer” after a signature are evidence that the person

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whose signature it purports to be is in fact an authorised officer of Tasmania or an authorised officer of another jurisdiction.

(5) In this section –

***authorised officer of another jurisdiction*** means a person (whether or not designated as an authorised officer) who is authorised under the law of another jurisdiction to issue a certificate certifying that the making or variation of a DVO has been properly notified under the law of that jurisdiction;

***authorised officer of Tasmania*** means –

- (a) a registrar of a court of Tasmania;  
or
- (b) the person holding office as the Chief Clerk of Petty Sessions under section 16 of the *Justices Act 1959*; or
- (c) a police officer of Tasmania of or above the rank of inspector.

*Note* The meaning of authorised officer in this section is different from the meaning of that term in the rest of this Act.

## **32. Regulations**

- (1) The Governor may make regulations for the purposes of this Act.

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- (2) Regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (3) The regulations may –
  - (a) provide for savings or transitional matters necessary or expedient for bringing this Act into operation; and
  - (b) provide for any of those savings or transitional matters to take effect when this section commences or on a later day specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made.

**33. Administration of Act**

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

**34. Consequential Amendments**

The legislation specified in Schedule 1 is amended as specified in that Schedule.

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**PART 6 – TRANSITIONAL PROVISIONS**

*Division 1 – Preliminary*

**35. Definition**

In this Part –

*Chief Magistrate* means the person appointed as Chief Magistrate under section 5 of the *Magistrates Court Act 1987*;

*clerk of petty sessions* means a State Service officer, or State Service employee, appointed as a clerk of petty sessions under section 16A of the *Justices Act 1959*;

*the commencement date* means the date on which this Act commences.

**36. Enforcement of DVOs under other provisions**

- (1) This Act does not affect the enforceability in Tasmania, otherwise than under this Act, of any local DVO made before the commencement date, subject to subsection (3).
- (2) This Act does not affect the enforceability in Tasmania, otherwise than under this Act, of any interstate DVO or foreign order registered in Tasmania, before the commencement date, under Part 4 of the *Family Violence Act 2004*, subject to subsection (3).

- (3) However, a DVO made in Tasmania before the commencement date can be superseded under section 13, on or after the commencement date, by a recognised DVO that is made on or after the commencement date.

*Division 2 – DVOs to which scheme applies*

**37. DVOs made in this jurisdiction**

Part 2 applies to any local DVO or foreign DVO that is made in Tasmania on or after the commencement date.

**38. DVOs made in other jurisdictions**

- (1) Part 2 applies to any DVO made in another participating jurisdiction that is a recognised DVO in that jurisdiction under the corresponding law for that jurisdiction.
- (2) To avoid doubt, section 10 extends to the following DVOs:
- (a) any interstate DVO that was made in another participating jurisdiction before the commencement date that is a recognised DVO in that jurisdiction;
  - (b) any foreign order that became a registered foreign order in another participating jurisdiction before the commencement date that is a recognised DVO in that jurisdiction.

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- (3) Sections 11 and 12 extend to any variation or revocation of a DVO referred to in subsection (2), that was done in a participating jurisdiction before the commencement date, as if the DVO were a recognised DVO.
- (4) However, a non-local DVO, and any variation to a non-local DVO, does not become enforceable against the defendant in Tasmania, under this Act, until the commencement date (even if the making of the DVO, or variation, was properly notified before that date).

***Division 3 – Extension of scheme to older DVOs***

**39. DVOs declared to be recognised DVOs**

- (1) Each of the following DVOs is also taken to be a ***recognised DVO***:
  - (a) any DVO that is declared by a clerk of petty sessions to be a recognised DVO in Tasmania under Division 4;
  - (b) any DVO that is declared by a registrar of a court of another participating jurisdiction to be a recognised DVO in that jurisdiction under a corresponding law.
- (2) A recognised DVO referred to in subsection (1) becomes enforceable against the defendant in Tasmania, under this Act, when the declaration is made (despite section 14).

**40. DVOs declared to be recognised in other jurisdictions before commencement date**

- (1) To avoid doubt, section 39 extends to a DVO declared by a registrar of a court of another participating jurisdiction to be a recognised DVO before the commencement date.
- (2) Sections 11 and 12 extend to any variation or revocation of a DVO referred to in subsection (1), that was done in a participating jurisdiction before the commencement date, as if the DVO were a recognised DVO.
- (3) However, the DVO, and any variation to the DVO, does not become enforceable against the defendant in Tasmania, under this Act, until the commencement date.

***Division 4 – Power to declare DVO to be recognised***

**41. Power to declare DVO to be recognised**

- (1) A clerk of petty sessions may, by order, declare any DVO made in any jurisdiction to be a recognised DVO in Tasmania.
- (2) A declaration may be made in relation to any DVO made in any jurisdiction that is in force in the issuing jurisdiction and is not a recognised DVO in Tasmania.
- (3) The jurisdiction in which the DVO was made does not have to be a participating jurisdiction.
- (4) A clerk of petty sessions must make a declaration under this section if an application

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for the declaration is made in accordance with this Division, unless the clerk of petty sessions decides to refuse to make the declaration in the interests of justice.

- (5) Without limiting subsection (4), the clerk of petty sessions may refuse to make the declaration if the clerk of petty sessions is not satisfied that the defendant has been properly notified of the making of the DVO under the law of the jurisdiction in which the DVO was made.

*Note* Under section 39, the DVO becomes enforceable against the defendant when the declaration is made. Subsection (7) of this section specifies that notice of the declaration is not to be served on the defendant unless the person making the application consents to service.

- (6) However, a clerk of petty sessions cannot declare a general violence order to be a recognised DVO in Tasmania.

- (7) Notice of a declaration is not to be served on the defendant unless the person who makes the application consents to service.

*Note* Under section 9, a foreign order is taken to be made in any jurisdiction in which it is registered as a registered foreign order. Accordingly, this section extends to registered foreign orders.

## **42. Application for order**

- (1) An application for a declaration that a DVO is a recognised DVO in Tasmania may be made by any person who would be able to make an application for variation of the DVO if the DVO were a recognised DVO.

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- (2) The application must –
- (a) be made in a form approved by the Chief Magistrate; and
  - (b) be accompanied by any information or evidence the Chief Magistrate requires.

*Note* It is only necessary to make an application in one participating jurisdiction. Under section 39, once a declaration is made in any participating jurisdiction the DVO will be treated as a recognised DVO in all participating jurisdictions.

**43. Functions of clerk of petty sessions may be exercised by court**

A court with power to make a local DVO may exercise any of the functions of the clerk of petty sessions under this Division.

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**SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS**

Section 34

***Bail Act 1994***

1. Section 5(3A) is amended by inserting after paragraph (ba) the following paragraph:
  - (bb) a condition of a recognised DVO, within the meaning of the *Domestic Violence Orders (National Recognition) Act 2016*;

***Family Violence Act 2004***

1. Section 4 is amended by omitting “another State or Territory of the Commonwealth or” from the definition of *external family violence order*.
2. Section 11 is amended by inserting after subsection (5) the following subsection:
  - (6) A police officer may detain a person for a period reasonably required to enable the police officer to determine the status of a *non-local DVO*, as defined in the *Domestic Violence Orders (National Recognition) Act 2016*.
3. Section 14(1) is amended by omitting “A police officer” and substituting “Subject to section 14(2) of the *Domestic Violence Orders (National Recognition) Act 2016*, a police officer”.

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4. Section 32(1) is amended by inserting “or under the *Domestic Violence Orders (National Recognition) Act 2016*” after “Act”.

***Firearms Act 1996***

1. Section 51 is amended as follows:
  - (a) by inserting in subsection (1) “or a recognised DVO, within the meaning of the *Domestic Violence Orders (National Recognition) Act 2016*” after “violence order”;
  - (b) by inserting in subsection (7)(b) “or recognised DVO, within the meaning of the *Domestic Violence Orders (National Recognition) Act 2016*” after “police family violence order”.
2. Section 53 is amended as follows:
  - (a) by inserting in subsection (1) “, recognised DVO, within the meaning of the *Domestic Violence Orders (National Recognition) Act 2016*,” after “interim family violence order”;
  - (b) by inserting in subsection (2)(a) “, recognised DVO, within the meaning of the *Domestic Violence Orders (National Recognition) Act 2016*,” after “restraint order”.

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***Justices Act 1959***

1. Section 34(2) is amended as follows:
  - (a) by omitting from paragraph (b) “violence.” and substituting “violence; and”;
  - (b) by inserting the following paragraph after paragraph (b):
    - (c) must take into account whether a recognised DVO, within the meaning of the *Domestic Violence Orders (National Recognition) Act 2016*, is in force under that Act in respect of that person.
  
2. Section 144(4) is amended by inserting after paragraph (cg) the following paragraph:
  - (ch) the practice and procedure relating to matters arising under the *Domestic Violence Orders (National Recognition) Act 2016*;

***Police Offences Act 1935***

1. Section 15D(6) is amended by inserting after paragraph (f) the following paragraph:
  - (fa) whether a recognised DVO, within the meaning of the *Domestic Violence Orders (National Recognition) Act 2016*,

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is in force under that Act in respect of the person;

2. Section 15E(6) is amended by inserting after paragraph (e) the following paragraph:

(ea) whether a recognised DVO, within the meaning of the *Domestic Violence Orders (National Recognition) Act 2016*, is in force under that Act in respect of the person;

***Residential Tenancy Act 1997***

1. Section 57(2B) is amended as follows:

(a) by omitting from paragraph (a)(ii) “Act; and” and substituting “Act; or”;

(b) by inserting the following subparagraph after subparagraph (ii) in paragraph (a):

(iii) a recognised DVO, within the meaning of the *Domestic Violence Orders (National Recognition) Act 2016*, is in force under that Act; and

(c) by omitting from paragraph (b) “or PFVO” and substituting “, PFVO or recognised DVO”.

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***Sentencing Act 1997***

1. Section 27G(2) is amended by inserting after paragraph (b) the following paragraph:
  - (ba) the offender must comply with any recognised DVO, within the meaning of the *Domestic Violence Orders (National Recognition) Act 2016* in force under that Act;