

## CLAUSE NOTES

### *Domestic Violence Orders (National Recognition) Bill 2016*

#### Part I – Preliminary

- Clause 1: Short title**  
Specifies the name of the proposed Act.
- Clause 2: Commencement**  
The Act commences on a day to be proclaimed.
- Clause 3: Object of Act**  
Provides that the Act, in conjunction with the corresponding laws of another jurisdiction, establishes a national recognition scheme for domestic violence orders.
- Clause 4: Interpretation**  
Defines certain words and terms for the purposes of the Act and in particular, defines key terms and words such as: “corresponding law”, “DVO” (domestic violence order), “general violence order”, “interim DVO”, “New Zealand DVO”, “non-local DVO”, “protected person” and “vary”.
- Clause 5: Local DVO**  
Provides that a “local DVO” is a family violence order, interim FVO or a police family violence order made under the *Family Violence Act 2004*.
- Clause 6: Interstate DVO**  
Provides that an “interstate DVO” is a domestic or family violence order or an order that addresses a domestic violence concern issued according to the legislation of other jurisdictions. The list of interstate DVOs may be amended by regulations.
- Clause 7: Registered foreign order**  
Provides that a “registered foreign order” means an order that is made by a court of New Zealand to prevent family violence which has been registered as an external family violence order under the *Family Violence Act 2004*, or a New Zealand DVO that is registered according to the legislation of other jurisdictions. The list of foreign orders may be amended by regulations.
- Clause 8: Domestic violence concerns – SA and WA orders**  
Specifies when an intervention order made in South Australia (SA) or a violence restraining order made in Western Australia (WA) is considered an order that addresses a domestic violence concern.  
Only orders that address domestic violence will be recognised and enforced under the national recognition scheme. As South Australia and Western Australia do not have a specific category of domestic violence orders, a general violence order can be declared to be an order that addresses a domestic

violence concern by the issuing authority that makes the order or a registrar of a court.

**Clause 9: Special provisions for foreign orders**

Provides that a registered foreign order (that is a New Zealand DVO) is taken to be made in the state or territory in which it is registered and is taken to be made when it is so registered. If the registration of a foreign order is varied or revoked under the national scheme then the registered foreign order is varied or revoked.

**Part 2 – National Recognition of DVOs**

**Clause 10: Recognition of DVOs**

Provides that a “recognised DVO” means a local DVO made in Tasmania (such as a FVO, interim FVO or PFVO), an interstate DVO made in a “participating jurisdiction” (in Tasmania or another jurisdiction that has enacted provisions that substantially correspond with this Act (a “corresponding law”)), or a foreign order (a New Zealand DVO) that is a registered foreign order in any participating jurisdiction.

**Clause 11: Variations to DVO**

Provides for the circumstances in which a variation to a “recognised DVO” is recognised in Tasmania. A variation to a recognised DVO is a “recognised variation” in Tasmania.

If a local DVO is varied, the variation is recognised if it is done in accordance with the *Family Violence Act 2004* or it is done by a court in another participating jurisdiction under a corresponding law.

If an interstate DVO or foreign order is varied, the variation is recognised if it is done by a court or any other person authorised to do so in the issuing jurisdiction under the law of that jurisdiction, or it is done in a participating jurisdiction by a court under a corresponding law.

**Clause 12: Revocation of recognised DVO**

Provides for the circumstances in which the revocation of a “recognised DVO” is recognised in Tasmania. A recognised DVO ceases to be recognised under the national scheme from the time it is revoked.

If a local DVO is revoked, the revocation is recognised in Tasmania if it is done in accordance with the *Family Violence Act 2004* or it is done by a court in another participating jurisdiction under a corresponding law.

If an interstate DVO or foreign order is revoked, the revocation is recognised in Tasmania if it is done by a court in the issuing jurisdiction or any other person authorised to do so under the law of that jurisdiction, or it is done in a participating jurisdiction by a court under a corresponding law.

**Clause 13: Recognised DVO prevails over earlier comparable DVOs**

Provides that a recognised DVO (local DVO, interstate DVO or foreign order) that is newer than an earlier comparable recognised DVO supersedes the earlier recognised DVO. A DVO is “comparable” if it is made against the same defendant and it is made for the protection of one or more of the same protected persons.

The new recognised DVO supersedes the earlier comparable DVO once the new DVO becomes enforceable against the respondent (when properly notified).

Sub clause (5) provides that if a new DVO does not cover the same person(s) as on the earlier comparable DVO, then that earlier DVO still exists and is recognised for the person(s) on it and the new DVO provides protection for the other.

A police issued DVO does not supersede a comparable DVO made by a court of any jurisdiction.

**Clause 14: Making of new orders**

Specifies that this Act does not prevent the making of a local DVO (FVO, interim FVO or PFVO) even if there is a recognised DVO in force that relates to the same defendant. However, a PFVO cannot be made against the defendant under the *Family Violence Act 2004* if a police officer is aware that a recognised DVO is in force against the defendant and that recognised DVO applies to the same protected person and was made by a court. A PFVO does not supersede a valid court made order. This is to ensure that the making of a PFVO does not result in there being more than one recognised DVO in force in relation to the same parties at the same time.

**Clause 15: Recognised DVOs and variations are enforceable against defendant**

Makes clear that a recognised DVO and a recognised variation to a recognised DVO are enforceable in Tasmania. Once a defendant is properly notified of the making of the local DVO under the law of Tasmania or the making of a non-local DVO under the law of the jurisdiction in which the DVO was made, the DVO is enforceable against the defendant. With foreign orders, these types of orders are enforceable under the national scheme from the time it becomes a recognised DVO in TAS or another jurisdiction. A foreign order is enforceable against a defendant in Tasmania once it becomes a recognised DVO.

A recognised variation to a recognised DVO is only enforceable in Tasmania once the defendant is properly notified of the variation in accordance with the law of the jurisdiction where the variation was done.

**Clause 16: Properly notified – meaning**

Specifies for the purposes of the national recognition scheme the circumstances in which a defendant is taken to be properly notified about the making of a local DVO, an interstate DVO, or about the variation of a recognised DVO.

In Tasmania, a defendant is properly notified of a local DVO if the defendant is present before the court when the local DVO is made or when a defendant is served personally with the local DVO or a copy of it. A defendant is properly notified of the making of an interstate DVO in accordance with the corresponding law of the jurisdiction in which the DVO is made. In the case of a PFVO, proper notification occurs when the order is served on the person to whom it is issued and a copy sent to the Chief Clerk of Petty Sessions.

A defendant is to be properly notified about a variation to a recognised DVO.

**Clause 17: Contravention of enforceable recognised DVO**

Makes clear that a “non-local DVO” (being an interstate DVO or a foreign DVO) that is a recognised DVO and enforceable in Tasmania may be enforced

as if it were a local DVO and as if the defendant had been properly notified in Tasmania about the making of the DVO.

Sets out the circumstances in which recognised variations to non-local DVOs and recognised DVOs may be enforced in Tasmania.

**Clause 18: Penalty for contravention**

In Tasmania, the maximum penalty for the offence of contravening a local DVO increases when there has been a previous contravention of a local DVO. This clause provides that the penalty for contravening a recognised DVO escalates with further contraventions of a recognised DVO in Tasmania.

**Clause 19: Non-local DVO to be treated as local DVO**

Provides that a recognised DVO that is a non-local DVO (that is, an interstate DVO or a foreign order) has the same effect in Tasmania as a local DVO made here under the *Family Violence Act 2004*.

This clause provides that a prohibition, restriction or condition imposed by a non-local DVO will be recognised and enforceable in Tasmania or a participating jurisdiction which has enacted a corresponding law.

**Clause 20: Licences, permits and other authorisations**

Specifies that if a law of Tasmania restricts a person's ability to hold a licence (such as a firearms licence) because the person is subject to a local DVO (which requires a licence to be suspended or revoked) this extends in the same way to a person who is, or has been subject to, a recognised non-local DVO.

**Clause 21: Recognition of disqualification to hold firearms licence**

Provides that if a person is disqualified from holding a licence for a firearm in another jurisdiction because of a recognised non-local DVO, the person is also disqualified from holding a licence for a firearm under the *Firearms Act 1996*.

This clause makes clear that the Commissioner of Police must cancel or suspend a Tasmanian firearms licence or refuse to issue a Tasmanian firearms licence to a person if a recognised DVO disqualifies that person from holding a licence.

**Clause 22: Orders for costs**

A non-local DVO (an interstate DVO or foreign order) as far as it requires the payment of money cannot be enforced in Tasmania. The recognition of a DVO from another jurisdiction in Tasmania does not permit a Tasmanian court or tribunal to award costs in respect of proceedings occurring in another jurisdiction.

**Part 3 – Variation and Revocation of Recognised Non-local DVOs**

**Clause 23: Definition**

Defines 'court' for the purposes of Part 3 to mean a Tasmanian court that has the power to make a FVO, interim FVO and PFVO (local DVOs) under the *Family Violence Act 2004*.

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

Specifies when a court can vary or revoke a recognised non-local DVO (an interstate DVO or foreign order).

Part 3 does not apply to a foreign order (a New Zealand DVO) registered in Tasmania as these orders can be varied, extended or revoked under Part 4 of the *Family Violence Act 2004*.

**Clause 25: Application for variation or revocation of recognised non-local DVO**  
Provides for the circumstances in which an application to vary or revoke a recognised non-local DVO may be made to a court and sets out the application requirements.

**Clause 26: Decision about hearing of application**  
Specifies that a court has discretion whether to hear or not hear an application to vary or revoke a non-local DVO. Subclause 2 provides a number of matters that may be considered in determining whether to hear an application to vary or revoke a non-local DVO.  
A court must refuse to hear an application made by a defendant during any period in which the defendant is not entitled to apply for a variation or revocation of the DVO if the law of the issuing jurisdiction provides that the defendant is not entitled to apply for a variation or revocation.

#### Part 4 – Exchange of Information

**Clause 27: Issuing authorities may obtain DVO information**  
Provides that a Tasmanian “issuing authority” (being a court or person with power to make, vary or revoke a DVO) may obtain and use information about a DVO from another jurisdiction’s issuing authority or from a Tasmanian or interstate law enforcement agency.

**Clause 28: Issuing authorities must provide DVO information**  
Specifies that a Tasmanian “issuing authority” (being a court, or person with power to make, vary or revoke a DVO) that makes, varies or revokes a DVO must, on request, provide information about a DVO to a court of any participating jurisdiction for the purposes of a corresponding law or to Tasmanian or interstate law enforcement agency for the purpose of its law enforcement functions.

**Clause 29: Law enforcement agencies may obtain DVO information**  
Provides that a Tasmanian law enforcement agency (being the Police Service of Tasmania) may obtain information about a DVO from an issuing authority of Tasmania or another jurisdiction, or interstate law enforcement agency and use the information for the purpose of exercising its law enforcement functions.

**Clause 30: Information to be provided to law enforcement agencies**  
Makes clear that a Tasmanian law enforcement agency (being the Police Service of Tasmania) is to provide, on request, information about a DVO to an interstate law enforcement agency for the purpose of exercising its law enforcement functions.

## Part 5 – Miscellaneous

### Clause 31: Certificate evidence – notification

Provides for a certificate to be issued stating that the making of, or the variation to, a DVO has been properly notified in Tasmania or another jurisdiction. The certificate is admissible in evidence in proceedings.

### Clause 32: Regulations

Standard regulation making provision.

### Clause 33: Administration of Act

This clause assigns the administration of the Act to the Minister for Justice and nominates the Department of Justice as the responsible agency until such time as provision is made by an order under the *Administrative Arrangements Act 1990*.

### Clause 34: Consequential Amendments

*Bail Act 1994*

1. Adds recognised DVO to the list of conditions controlling the conduct of a person admitted to bail.

*Family Violence Act 2004*

1. Removes reference to another State or Territory of the Commonwealth from the definition of 'external family violence order' as under the national recognition scheme it is no longer necessary to register interstate DVOs in Tasmania.
2. Provides for a police officer to detain a person for a reasonable period to verify the status of a recognised non-local DVO.
3. Provides that a police officer is not to make a local DVO (PFVO) where a court made recognised DVO is already in force for the same respondent and protected person and is enforceable against the respondent.
4. Provides for a court to restrict the publication of any material relating to proceedings before the court under the *Domestic Violence Orders (National Recognition) Act 2016* that is forbidden or which may disclose the identity of an affected child.

*Firearms Act 1996*

1. Adds recognised DVO to the list of orders that, when made, automatically cancel a person's ability to hold a licence to possess or use a firearm. Provides that the Commissioner may consider the order made by the court in issuing a recognised DVO when determining whether to reinstate a licence or return any firearms or both reinstate a licence and return any firearms.
2. Adds recognised DVO to the list of orders that, when made, empower the Commissioner to suspend a person's licence by serving on the holder of the licence a notice. Provides that the suspension of the licence has effect, unless sooner revoked by the Commissioner, for the duration of a recognised DVO or as determined by a court.

*Justices Act 1959*

1. When considering whether to bail a person taken into custody for a family violence offence or to facilitate the making of an application for a family violence order, in determining whether there is reasonable ground for believing that to do so would not be in the interests of justice the police officer making the decision must also take into account if a recognised DVO is in force in respect of that person.
2. Gives the Magistrates Rule Committee the ability to make provisions as to the practice and procedure relating to matters arising under the *Domestic Violence Orders (National Recognition) Act 2016*.

*Police Offences Act 1935*

1. In deciding whether a person is a fit and proper person to be granted an application to use, carry or have possession of a crossbow, the Commissioner is to take into account if a recognised DVO is in force.
2. In deciding whether a person is a fit and proper person for a permit to manufacture, distribute, supply, sell or possess body armour the Commissioner is to take into account if a recognised DVO is in force.

*Residential Tenancy Act 1997*

1. Provides that if a recognised DVO is in force that a tenant may, without the authority of an order of the Court or the consent of the owner of the residential premises, add, alter or remove any lock or other security device.

*Sentencing Act 1997*

1. Provides that where a court makes a drug treatment order and if the offence in respect of which the drug treatment order is made is a family violence offence, the court must attach to that order any conditions of a recognised DVO.

**Part 6 – Transitional Provision**

**Clause 35: Definition**

Inserts definitions of “Chief Magistrate”, “clerk of petty sessions” and “commencement date” for the purposes of Part 6.

**Clause 36: Enforcement of DVOs under other provisions**

Provides that this Act does not affect the enforceability in Tasmania of any local DVO (FVO, interim FVO or PFVO) made before the commencement date or of any interstate DVO or foreign order (a New Zealand DVO) registered in Tasmania under Part 4 of the *Family Violence Act 2004* before the commencement date except as otherwise provided for under this Act.

**Clause 37: DVOs made in this jurisdiction**

Part 2 (National Recognition of DVOs) of this Act will apply to any local DVOs or foreign DVOs made in Tasmania on or after the date on which this Act commences.

- Clause 38: DVOs made in other jurisdictions**  
Part 2 (National Recognition of DVOs) of this Act will apply to any DVO made in other participating jurisdictions that is a recognised DVO under a corresponding law of that jurisdiction. A non-local DVO, including any variation, is not enforceable in Tasmania under this Act until the date on which this Act commences.
- Clause 39: DVOs declared to be recognised DVOs**  
Specifies that a "recognised DVO" includes any DVO that has been declared by a clerk of petty sessions in Tasmania or a registrar of a court of in a participating jurisdiction to be a recognised DVO. A DVO that is declared to be a recognised DVO in Tasmania under this Act is enforceable once the declaration has been made.
- Clause 40: DVOs declared to be recognised in other jurisdictions before commencement date**  
Provides that a DVO declared to be recognised in another participating jurisdiction is still recognised even if the relevant declaration was made before the commencement date. A DVO declared to be recognised, including any variation, is not enforceable in Tasmania under this Act until the date on which this Act commences.
- Clause 41: Power to declare DVO to be recognised**  
Provides that a clerk of petty sessions may declare any DVO made in any jurisdiction to be a recognised DVO in Tasmania. A DVO can be declared to be recognised in Tasmania even if the DVO was made in a jurisdiction that is not a participating jurisdiction. Notice of a declaration is not to be served on the defendant unless the person who made the application for the declaration consents to service.
- Clause 42: Application for order**  
Specifies that an application for seeking a DVO to become 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 and must be made using a form approved by the Chief Magistrate and include any information or evidence required by the Chief Magistrate.
- Clause 43: Functions of clerk of petty sessions may be exercised by court**  
Provides that a court that can make a local DVO (FVO or interim FVO) may exercise the functions of the clerk of petty sessions under Part 6.