

**THIS IS THE VERSION OF THE MODEL  
PROVISIONS APPROVED BY COAG ON  
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## **Domestic Violence Orders (National Recognition) Model Provisions**

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## Part 1 Preliminary

### Jurisdictional note.

These Model Provisions reflect the following agreed policy principles:

- (a) a domestic violence order (or DVO) made anywhere in Australia or New Zealand DVO registered anywhere in Australia is nationally recognised and enforceable,
- (b) a DVO that is nationally recognised can be amended in any jurisdiction, but only by a court,
- (c) if a DVO made in one jurisdiction is in force, a new order can (if necessary) be made in another jurisdiction, but only by a court,
- (d) the latest order in time prevails.

All DVOs made in participating jurisdictions are to be recognised under the Model Provisions. Any DVO that is recognised can be varied or revoked in any participating jurisdiction. In addition, a recognised DVO is treated the same as a local DVO for the purposes of any law in the enacting jurisdiction that provides for the consequences of the making of a local DVO. For instance, if the making of a local DVO is grounds for suspension or cancellation of a firearms licence, the making of a recognised DVO in another participating jurisdiction is also grounds for suspension or cancellation of a firearms licence. However, a recognised DVO is enforceable against the defendant in a participating jurisdiction only if the defendant has been properly notified of the DVO under the law of the jurisdiction in which the DVO was made. This means that the defendant can be prosecuted in a participating jurisdiction for a failure to comply with the DVO.

### 1 Name of Model Provisions

These Model Provisions are the *Domestic Violence Orders (National Recognition) Model Provisions*.

### 2 Object of Model Provisions

These Model Provisions establish, in conjunction with the corresponding laws, a national recognition scheme for DVOs (or domestic violence orders).

### 3 Definitions

- (1) In these Model Provisions:

**corresponding law** means a law of another jurisdiction that contains provisions that substantially correspond with these Model Provisions.

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

**domestic violence concern**—see section 7.

**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
- (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,
- (b) an emergency order under the *Domestic Violence and Protection Orders Act 2008* of the Australian Capital Territory,

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(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 5.

**interstate law enforcement agency** means:

(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 4.

**local law enforcement agency** means:

(a) the Police Force of this jurisdiction, or

(b) any other agency of this jurisdiction responsible for the enforcement of DVOs in this jurisdiction.

**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 DVO.

**participating jurisdiction** means the following jurisdictions:

(a) this jurisdiction,

(b) a jurisdiction in which a corresponding law is enacted.

**properly notified**—see section 15.

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

**recognised DVO**—see sections 9 and 37.

**recognised variation**—see section 10.

**registered foreign order**—see section 6.

**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 these Model Provisions do not form part of these Model Provisions.

**Jurisdictional note.**

Option for the definition of “corresponding law” is to permit the regulations to list the corresponding laws or to permit the list to be added to or modified by regulations.

**Jurisdictional note.**

Jurisdictions can use defined terms that are consistent with the local legislation. For example:

(a) the “aggrieved” instead of the “protected person”, and

(b) the “respondent” instead of the “defendant”.

**Jurisdictional note.**

At the outset, the only foreign orders that are to be recognised under the scheme are New Zealand DVOs. However, a New Zealand DVO is referred to in these provisions as a “foreign order” to permit

the national recognition scheme to be easily extended in the future to other foreign DVOs that are registered in participating jurisdictions (if that is thought to be appropriate). Currently, WA permits registration of DVOs made in Canada, Ireland and the UK.

#### 4 Local DVO

- (1) A **local DVO** means [*definition to be inserted by each jurisdiction*].
- (2) A registered foreign order is not a local DVO.

**Jurisdictional note.**

The expression "local DVO" should cover DVOs made by courts or police in the enacting jurisdiction. Both final and interim DVOs, and both court issued and police issued DVOs, should be covered.

Subclause (2) of the definition is required because most State and Territory legislation provides that a foreign order, on registration, has the same effect as a local DVO. Under the national recognition scheme, registered foreign orders are treated differently from local DVOs.

#### 5 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 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 order (FVO), interim FVO or police family violence order (PFVO) under the *Family Violence Act 2004* of Tasmania,
  - (g) a family violence intervention order or a family violence safety notice under the *Family Violence Protection Act 2008* of Victoria,
  - (h) 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.
- (2) A registered foreign order is not an interstate DVO.

**Jurisdictional note.**

The above list is a list of DVOs in all jurisdictions. Each jurisdiction should check the list for currency at the time of enactment and revise the list to omit the reference to orders made in the enacting jurisdiction (as orders made in the enacting jurisdiction are local DVOs). Note that both final and interim DVOs, and both court issued and police issued DVOs, should be treated as interstate DVOs (and recognised) under the scheme. To give greater flexibility and ensure that the scheme continues to apply if the name of an Act is changed, or other particulars are changed, jurisdictions can choose to prescribe the list in regulations or permit the list to be modified by regulations

**Jurisdictional note.**

The intention is that the national recognition scheme be limited to orders made in connection with domestic violence, and not extend to all personal protection orders. For those jurisdictions that do not distinguish between orders made in connection with domestic violence and orders made in connection with violence generally, the above has been limited to any order that addresses a domestic violence concern. In those jurisdictions it will be necessary to require an issuing authority that makes a DVO to decide whether DVO addresses a domestic violence concern and, if so, to

declare the order to be an order that addresses a domestic violence concern (to make it easier for the relevant orders to be identified and recognised under the scheme).

## 6 Registered foreign order

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 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.

### **Jurisdictional note.**

Each participating jurisdiction should repeal the registration scheme for orders made in other States or Territories. The national recognition scheme will make registration redundant. For example, Part 7 of the WA Act and the provisions relating to corresponding interstate orders in the Victorian Act should be repealed if those States become participating jurisdictions. Registration schemes that allow foreign orders (including New Zealand orders) to be registered should be retained.

### **Jurisdictional note.**

In most States and Territories, the only foreign orders that can be registered are orders made in New Zealand. However, WA legislation extends recognition to orders made in Canada, Ireland and the UK. The policy is that, at the outset, only New Zealand orders that are registered in a participating jurisdiction will be nationally recognised. However, the draft permits this position to be changed in future if thought appropriate. This would be achieved by changing the definition of "foreign order".

### **Jurisdictional note.**

The above list of legislation has been included in the Model Provisions for guidance purposes. Each jurisdiction should check the list for currency at the time of enactment. To give greater flexibility and ensure that the scheme continues to apply if the name of an Act is changed, or other particulars are changed, jurisdictions may choose to include the list in the regulations, rather than in the principal Act, or to permit the list to be modified by regulations.

## 7 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).
- (3) A general violence order is taken, for the purpose of these Model Provisions, 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.

**Jurisdictional note.**

This clause must be enacted (in its entirety) in all jurisdictions because under the scheme all jurisdictions recognise general violence orders only if they address a domestic violence concern.

**Jurisdictional note.**

A regulation-making power can be added to this clause to modify the definition of domestic violence concern to respond to changes in SA or WA legislation.

## **8 Special provisions for foreign orders**

- (1) For the purpose of these Model Provisions, 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 these Model Provisions, if its registration as a registered foreign order is varied or revoked.
- (3) A power conferred by these Model Provisions to vary or revoke a registered foreign order is a power to vary or revoke registration of the order as a registered foreign order.

## Part 2 National recognition of DVOs

### Division 1 General principles

#### 9 Recognition of DVOs

- (1) Each of the following DVOs is a *recognised DVO* in this jurisdiction:
  - (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 these Model Provisions, for the period for which it remains in force in the jurisdiction in which it is made.

#### 10 Variations to DVO

- (1) A variation to a recognised DVO that is done in this or another jurisdiction is a *recognised variation* in this jurisdiction in the circumstances provided for by this section.
- (2) A variation to a local DVO is a recognised variation in this jurisdiction if the variation is done:
  - (a) in this jurisdiction by a court or any other person authorised to do so under this Act, 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 this jurisdiction 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 these Model Provisions 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.

#### **Jurisdictional note.**

The reference to "this Act" in subclause (2) (a) is based on the assumption that the Model Provisions will be incorporated into the principal Act of the enacting jurisdiction that deals with DVOs. If the Model Provisions are enacted as a standalone Act, the reference to "this Act" should be replaced with a reference to the principal DVO Act of the enacting jurisdiction (because that Act, and not the Model Provisions, confers power to vary a local DVO).

#### **Jurisdictional note.**

The Model Provisions refer to a variation that is "done" in a particular jurisdiction (rather than "made" in a particular jurisdiction) in order to avoid a textual ambiguity. If the provisions were to refer to a variation to a DVO that is "made" in a particular jurisdiction it would be unclear whether the provisions were intending to refer to the jurisdiction in which the variation was made or to the jurisdiction in which the DVO was made.

#### 11 Revocation of recognised DVO

- (1) A DVO ceases to be a recognised DVO if the DVO is revoked in this or another jurisdiction and that revocation is recognised in this jurisdiction.



- (2) A revocation of a local DVO is recognised in this jurisdiction if the revocation is done:
  - (a) in this jurisdiction by a court or any other person authorised to do so under this Act, 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 this jurisdiction 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 these Model Provisions or a corresponding law.
- (4) The DVO ceases to be a recognised DVO from the time it is revoked.

**Jurisdictional note.**

The reference to "this Act" in subclause (2) (a) is based on the assumption that the Model Provisions will be incorporated into the principal Act of the enacting jurisdiction that deals with DVOs. If the Model Provisions are enacted as a standalone Act, the reference to "this Act" should be replaced with a reference to the principal DVO Act of the enacting jurisdiction (because that Act, and not the Model Provisions, confers power to revoke a local DVO).

## 12 Recognised DVO prevails over earlier comparable DVOs

- (1) A recognised DVO that is enforceable against a defendant in this jurisdiction (a *new DVO*) supersedes:
  - (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.

**Jurisdictional note.**

This provision extends to interim DVOs and final DVOs.

A final court made local DVO will supersede (and cancel) any comparable interim local DVO. Jurisdictions should check whether it is necessary to make any adjustments to their local legislation to give effect to this principle.

**Jurisdictional note.**

This provision does not purport to revoke a DVO made in another jurisdiction that is superseded because it is doubtful whether it is within the competence of the Legislature of an enacting jurisdiction to purport to revoke DVOs made in other jurisdictions. Instead, a non-local DVO will simply cease to be a recognised DVO in the enacting jurisdiction if it is superseded (subclause (3)). Subclause (4),

when enacted by all participating jurisdictions, will ensure that any DVO that is superseded will also be revoked.

**Jurisdictional note.**

The purpose of subclauses (5) and (6) is to ensure that a DVO is not superseded (or cancelled) to the extent that it relates to a protected person who is not protected by a new DVO. For instance if an order is made for the protection of a mother and child, and the child later seeks a new order (or an order is sought on behalf of the child), the new order made to protect the child will not automatically cancel the earlier order to the extent that it protects the child's mother. However, the court making a new order can revoke an earlier order under Part 3 if it so chooses, in which case it will cease to be recognised under clause 11.

### 13 Making of new orders

- (1) Nothing in these Model Provisions 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.

**Jurisdictional note.**

Subclause (2) to be enacted only in those jurisdictions that authorise police officers to make DVOs. The purpose of the provision is to ensure that the making of a police DVO does not result in there being more than one recognised DVO in force in relation to the same parties at the same time. A police DVO does not supersede an existing court made DVO. The placement of the provision is a matter for those jurisdictions.

## Division 2 Enforcement of recognised DVOs

### 14 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 this jurisdiction.
- (2) A recognised DVO that is a local DVO becomes enforceable against the defendant in this jurisdiction when the defendant is properly notified of the making of the DVO under the law of this jurisdiction.
- (3) A recognised DVO that is a non-local DVO (other than a foreign order) becomes enforceable against a defendant in this jurisdiction when the defendant is properly notified of the making of 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 this jurisdiction from the time it becomes a recognised DVO.
- (5) A recognised variation to a recognised DVO becomes enforceable against the defendant in this jurisdiction when the defendant is properly notified of the variation under the law of the jurisdiction in which the variation is done.

### 15 Properly notified—meaning

- (1) The making of a local DVO is *properly notified* under the law of this jurisdiction if:
  - (a) the defendant is served with a copy of the DVO, or
  - (b) the DVO is made by a court and the defendant is present in court when the DVO is made.

- (2) The making of an interstate DVO is *properly notified* under the law of the jurisdiction in 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 this jurisdiction is *properly notified* under the law of this jurisdiction if:
  - (a) the defendant is served with a copy of the variation, or
  - (b) the variation is done by a court and the defendant is present in court when the DVO is varied.
- (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.

**Jurisdictional note.**

The wording of subclauses (1) and (3) can be tailored to the notice or service requirements of the local jurisdiction (eg served "personally" or "by post"/given a copy of the order). Also, if oral notification is permitted by the law of the enacting jurisdiction, it can be permitted in this clause. Subclause (1) (b) and (3) (b) can be deleted in those jurisdictions where presence in court does not constitute proper notification of an order.

An alternative to subclause (1) and (3) is to cross refer to the specific notice requirements that apply to the making or variation of local DVOs (and the variation of locally registered foreign orders) in the enacting jurisdiction. Note that, as enforcement of a recognised DVO hinges on proper notification of a DVO, it is important that the clause makes it clear exactly what that means.

## 16 Contravention of enforceable recognised DVO

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

**Jurisdictional note.**

The above clause is intended to ensure that a contravention of an interstate DVO can be prosecuted in the enacting jurisdiction as if it were a contravention of a local DVO. Accordingly, there is no need to create a separate offence in each jurisdiction for a contravention of an interstate DVO.

**Jurisdictional note.**

The above clause is intended to override the requirement (specified in most jurisdictions) that the defendant must have been served with the DVO/been present in court or have had the DVO explained to him or her in order for offence of contravening a local DVO to be successfully prosecuted. It should be sufficient that the DVO (or variation) was properly notified under the law of the jurisdiction in which it was made.

**Jurisdictional note.**

Section 20 of the Crimes (Sentencing Procedure) Act 1999 (NSW) would prevent a defendant from being liable for a penalty under the law of NSW for a contravention of a DVO if the defendant has already been penalised for that contravention in another State. Each enacting jurisdiction should ensure that a similar provision exists in their jurisdiction. This provision can be alluded to by way of a note if that is thought to be appropriate.

**Jurisdictional note.**

The provisions of the local legislation that provide for the enforcement of New Zealand orders that are registered in the enacting jurisdiction (eg section 97 (1) and (2) of the NSW Act) should be repealed as this Part will extend to locally registered New Zealand orders. This ensures that a New Zealand order registered locally is treated in the same way (for enforcement purposes) as a New Zealand order that is registered in another jurisdiction.

**Jurisdictional note.**

Subclause (4) is intended to reflect the requirements of Part 1A of the NSW Crimes Act or similar requirements in the enacting jurisdiction. The wording may need to be modified to suit the law of the enacting jurisdiction.

## 17 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.

**Jurisdictional note.**

The above clause is required only in jurisdictions (such as Tasmania) where the maximum penalty for the offence of contravening a local DVO increases when there has been a previous contravention of a local DVO.

## Division 3 Enforcement of non-local DVOs

### 18 Non-local DVO to be treated as local DVO

- (1) A recognised DVO that is a non-local DVO has the same effect in this jurisdiction 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 this jurisdiction as if it were a prohibition, restriction or condition of a local DVO.

**Jurisdictional note.**

The purpose of the above clause and other clauses in this Division is to make it clear that a non-local DVO is treated as if it were a local DVO, and to avoid the need to amend local legislation to give effect to the non-local DVO. For instance, if the local legislation requires a person who applies for a licence to declare whether or not he or she is subject to a local DVO that legislation will also apply to a person who is subject to an interstate DVO (without the need to amend that legislation). All restrictions imposed by the non-local DVO will be recognised and enforceable in the enacting jurisdiction. If an expression used in a restriction has a particular meaning under the interstate law, it will have the same meaning in the enacting jurisdiction.

### 19 Licences, permits and other authorisations

- (1) A law of this jurisdiction (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.

**Jurisdictional note.**

This provision is primarily intended to cover firearms licence restrictions and any other restrictions that apply when a local DVO is made. However, if a jurisdiction has other restrictions that apply to the issue of authorisations to persons subject to a local DVO (eg restrictions on working in the security industry, working with children), those restrictions should also apply.

## 20 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 revoke any 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:

**local firearms licence** means a licence, permit or other authorisation under the [name of local firearms Act].

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

**Jurisdictional note.**

The expressions "firearm" and "local firearms licence" can be modified to match the expressions used in the local legislation.

**Jurisdictional note.**

The reference to the Commissioner of Police should be adjusted if necessary to suit the enacting jurisdiction.

**Jurisdictional note.**

The policy is that the making of an interstate DVO should have the same effect, as far as practicable, under the law of the local jurisdiction as the making of a local DVO. Accordingly, if the making of a local DVO is grounds for cancelling, suspending or refusing a firearms licence under the local law, the making of an interstate DVO should also be grounds for cancelling, suspending or refusing a firearms licence under the local law. This is dealt with by clause 18.

In addition, if the recognised DVO (as opposed to the law under which it is made) expressly disqualifies the person who is subject to the DVO from holding a firearms or weapons licence in the issuing jurisdiction (including in New Zealand for New Zealand DVOs), the order should also be treated as disqualifying the person from holding a local firearms licence or weapons licence in the enacting jurisdiction. This is dealt with by clauses 19 and 20.

A provision of a recognised DVO that prohibits a person from possessing firearms (as opposed to holding a licence) will be enforceable against the person in accordance with the general principles of national recognition in clause 17.

## 21 Recognition of disqualification to hold weapons licence

- (1) If a non-local DVO that is a recognised DVO disqualifies a person from holding a non-local weapons licence or type of non-local weapons licence, the person is also disqualified from holding a local weapons licence or local weapons licence of the same type (as the case requires).

- (2) [The Commissioner of Police] must revoke any local weapons licence held by a person, or refuse to issue a local weapons licence to a person, if the person is so disqualified from holding the weapons licence by a recognised DVO.
- (3) A recognised DVO disqualifies a person from holding a non-local weapons licence or type of non-local weapons licence if the DVO expressly:
  - (a) disqualifies the person from holding a non-local weapons licence or type of non-local weapons licence, or
  - (b) revokes or requires the person to surrender a non-local weapons licence or type of non-local weapons licence held by the person.
- (4) In this section:

*local weapons licence* means a licence, permit or other authorisation under the [name of local prohibited weapons Act].

*non-local weapons licence* means a licence, permit or other authorisation to possess a prohibited weapon (within the meaning of the [name of local prohibited weapons Act]) issued under the law of another jurisdiction or country.

**Jurisdictional note.**

This clause to be enacted only in those jurisdictions that have a licence regime for prohibited weapons other than firearms.

**Jurisdictional note.**

The expressions "prohibited weapon" and "local weapons licence" can be modified to match the expressions used in the local legislation.

**Jurisdictional note.**

The reference to the Commissioner of Police should be adjusted if necessary to suit the enacting jurisdiction

## 22 Orders for costs

- (1) A non-local DVO, to the extent that it requires the payment of money, cannot be enforced in this jurisdiction.
- (2) The recognition of a DVO made in another jurisdiction does not confer power on a court or tribunal of this jurisdiction 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 this jurisdiction relating to the variation or revocation of a recognised DVO.

## Part 3 Variation and revocation of recognised non-local DVOs

### **Jurisdictional note.**

Jurisdictions that have enacted provisions that prevent the publication of information about DVO proceedings (such as section 45 of the Crimes (Domestic and Personal Violence) Act 2007 of NSW) should ensure that those provision extend to proceedings for the variation or revocation of a recognised non-local DVO, or a declaration that a DVO is a recognised DVO, that are taken under the Model Provisions.

### **23 Definition**

In this Part:

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

### **Jurisdictional note.**

The definition of "court" can be modified to suit the enacting jurisdiction (for example, by simply naming the court that has the power to make local DVOs). It is not intended that the powers conferred by this Part be capable of being exercised by Registrars or by non-judicial persons such as police officers.

### **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 this jurisdiction.
- (4) This Part does not apply to the variation or revocation of a foreign order that is registered as a registered foreign order in this jurisdiction.
- (5) To avoid doubt, if a court varies a recognised DVO that was made in another jurisdiction, the other jurisdiction continues to be treated, for the purpose of these Model Provisions, as the jurisdiction in which the DVO was made.

### **Jurisdictional note.**

Jurisdictions can (in addition) choose to limit a court's power to vary or revoke orders made in other jurisdiction to final orders only.

### **Jurisdictional note.**

The Part does not apply to locally registered foreign orders because jurisdictions already have power to vary or revoke registration of foreign orders under existing legislation (eg section 98 of the NSW Act). A note referring to those provisions could be included in the relevant legislation by way of explanation for this exception. The Part would extend, however, to variation of foreign orders that are registered in another participating jurisdiction.

### **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):
  - (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,
  - (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 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**

### **Jurisdictional note.**

This Part is optional and is included for guidance purposes only. It is for each jurisdiction to decide, in the light of local privacy legislation, whether these clauses are required or whether any other specific privacy exemptions are necessary. Jurisdictions should also consider whether it is necessary to specifically authorise the release of information to any national co-ordinating body for the scheme (such as CrimTrac).

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

An issuing authority of this jurisdiction 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 these Model Provisions.

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

- (1) An issuing authority of this jurisdiction 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 this jurisdiction 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 this or another jurisdiction, or from an interstate law enforcement agency, and 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

### **Jurisdictional note.**

An enacting jurisdiction can include a provision, if it is considered appropriate and necessary, to the effect that police officers are not personally liable for good faith acts or omissions that were based on information provided by or on behalf of issuing authorities or law enforcement agencies of other jurisdictions (or a failure to provide information). It is also understood that some jurisdictions are considering exempting the State (as well as individual officers) from liability for actions under the scheme. This raises high level policy considerations and is a matter for those jurisdictions.

### **31 Declaration that order addresses domestic violence concern**

- (1) Whenever a court or person makes [an intervention order/a violence restraining order/police order], the court or person must decide whether the order addresses a domestic violence concern.
- (2) If the order does address a domestic violence concern, the court or person must declare the order to be an order that addresses a domestic violence concern.
- (3) The declaration must be included in the order.

### **Jurisdictional note.**

The above clause to be enacted in SA and WA only. The purpose of the provision is to ensure that, going forward, all orders subject to the national recognition scheme are identified (without the necessity for the applicant to seek a declaration). The above clause is provided for guidance only- the placement and wording of the clause is a matter for those jurisdictions. For example, it may be better placed in the provisions that empower issuing authorities to make orders.

### **32 Certificate evidence—notification**

- (1) An authorised officer of this jurisdiction 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 this jurisdiction,
  - (b) that a variation to a DVO that was done in this jurisdiction has been properly notified under the law of this jurisdiction.
- (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 whose signature it purports to be is in fact an authorised officer.
- (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 this jurisdiction means:

  - (a) a registrar of a court of this jurisdiction, or
  - (b) a police officer of this jurisdiction of or above the rank of inspector.

**Jurisdictional note.**

The above clause is optional and is intended for guidance purposes only. It is for each jurisdiction to decide, in light of their own policies and legislation on the admission of evidence, what type of evidence of proper notification can be given under the scheme and admitted locally as prima facie evidence. The list of persons entitled to exercise the powers of an authorised officer under this clause is also a matter for each jurisdiction.

**Jurisdictional note.**

Section 8 of the Electronic Transactions Act 2000 (NSW) provides that a requirement or permission to give information in writing (including to issue a certificate) can be met by use of an electronic communication (if reasonable and the person receiving the information consents). Section 9 of that Act provides that in such a case the signature of a person may be provided by electronic means. Each enacting jurisdiction should ensure that similar provisions in their own jurisdiction permit certificates to be given and signed by electronic means.

## Part 6 Transitional provisions

### **Jurisdictional note.**

These transitional provisions permit a staged implementation of the national recognition scheme. The national recognition scheme can be applied to all DVOs made on or after a particular date or to all DVOs made in the enacting jurisdiction (regardless of date).

### **Jurisdictional note.**

Further transitional provisions should be included by each jurisdiction in relation to the repeal of the registration scheme for interstate orders. Those provisions should deem an interstate DVO that has been registered in an enacting jurisdiction to continue to be enforceable as a local DVO in that jurisdiction. This is because those DVOs are not automatically recognised under the national recognition scheme. However, an application for recognition of the DVO could be made to any participating jurisdiction under Division 4.

## Division 1 Preliminary

### 33 Definition

In this Part, the *commencement date* means the date on which the law enacting these Model Provisions commences in this jurisdiction.

### 34 Enforcement of DVOs under other provisions

- (1) These Model Provisions do not affect the enforceability in this jurisdiction, otherwise than under these Model Provisions, of any local DVO made before the commencement date, subject to subsection (3).
- (2) These Model Provisions do not affect the enforceability in this jurisdiction, otherwise than under these Model Provisions, of any interstate DVO or foreign order registered in this jurisdiction, before the commencement date, under [*reference to local relevant registration provisions to be inserted in each jurisdiction*], subject to subsection (3).
- (3) However, a DVO made in this jurisdiction before the commencement date can be superseded under section 12, on or after the commencement date, by a recognised DVO that is made later.

## Division 2 DVOs to which scheme applies

### 35 DVOs made in this jurisdiction

- (1) **Option 1:** Part 2 applies to any local DVO or foreign DVO:
  - (a) that was made in this jurisdiction before the commencement date and is in force on or after the commencement date, or
  - (b) that is made in this jurisdiction on or after the commencement date.
- (2) **Option 2:** Part 2 applies to any local DVO or foreign DVO that is made in this jurisdiction on or after the commencement date.
- (3) **Option 3:** Part 2 applies to any local DVO or foreign DVO that is made in this jurisdiction on or after [*date to be inserted*].

### **Jurisdictional note.**

Jurisdictions can choose their own implementation date from the options above. The significance of the option chosen is that all DVOs covered by the option chosen will automatically be recognised under the scheme in other participating jurisdictions (see clause 36). Accordingly, jurisdictions should choose a date from which they are able to provide the necessary information (for enforcement purposes) about local DVOs to other jurisdictions. An enacting jurisdiction should not modify the wording of the option that is chosen unless certain it will fit in with the wording of clause 36 as enacted by other participating jurisdictions.

## **36 DVOs made in other jurisdictions**

- (1) Part 2 applies to any DVOs made in another participating jurisdiction that are recognised DVOs in that jurisdiction under the corresponding law for that jurisdiction.
- (2) To avoid doubt, section 9 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.
- (3) Sections 10 and 11 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 this jurisdiction, under these Model Provisions, until the commencement date (even if the making of the DVO, or variation, was properly notified before that date).

### **Jurisdictional note.**

Subclause (1) recognises the option chosen by each other participating jurisdiction in clause 35.

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

### **37 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 registrar of a court of this jurisdiction to be a recognised DVO in this jurisdiction under Division 4,
  - (b) any DVO that is declared by a registrar of a court of another participating jurisdiction to be recognised DVO in that jurisdiction under a corresponding law.
- (2) A recognised DVO referred to in subsection (1) becomes enforceable against the defendant in this jurisdiction, under these Model Provisions, when the declaration is made (despite section 13).

### **38 DVOs declared to be recognised in other jurisdictions before commencement date**

- (1) To avoid doubt, section 37 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 10 and 11 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 this jurisdiction, under these Model Provisions, until the commencement date.

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

### **39 Definition**

In this Division:

*registrar* means a registrar of a court of this jurisdiction that has power to make a local DVO.

**Jurisdictional note.**

The definition registrar can be modified to suit the local legislation (for example, by simply naming the court concerned). It is not intended that this function be exercised by non-judicial persons.

**40 Power to declare DVO to be recognised**

- (1) A registrar may, by order, declare any DVO made in any jurisdiction to be a recognised DVO in this jurisdiction.
- (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 this jurisdiction.
- (3) The jurisdiction in which the DVO was made does not have to be a participating jurisdiction.
- (4) A registrar must make a declaration under this section if an application for the declaration is made in accordance with this Division, unless the registrar decides to refuse to make the declaration in the interests of justice.
- (5) Without limiting subsection (4), the registrar may refuse to make the declaration if the registrar 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 37, the DVO becomes enforceable against the defendant when the declaration is made. Notice of the declaration is not to be served on the defendant unless the person making the application consents to service.
- (6) However, a registrar cannot declare a general violence order to be a recognised DVO in this jurisdiction unless the general violence order was made in this jurisdiction.
- (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 8, 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.

**Jurisdictional note.**

The Division is intended to permit both DVOs made in participating jurisdictions and DVOs made in non-participating jurisdictions to be recognised.

**Jurisdictional note.**

Alternative wording for subclause (5) for all jurisdictions except WA and SA: "However, a registrar cannot declare a general violence order to be a recognised DVO in this jurisdiction."

**41 Application for order**

- (1) An application for a declaration that a DVO is a recognised DVO in this jurisdiction 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.
- (2) The application must:
  - (a) be made in a form approved by the registrar, and
  - (b) be accompanied by any information or evidence the registrar requires.

**Note.** It is only necessary to make an application in one participating jurisdiction. Under section 37, once a declaration is made in any participating jurisdiction the DVO will be treated as a recognised DVO in all participating jurisdictions.

**Jurisdictional note.**

Jurisdictions can modify the application requirements in this clause.

## **42 Declarations relating to general violence orders**

- (1) An application for a declaration that a general violence order is a recognised DVO may be made as if the order were a DVO.
- (2) Before making the declaration, the registrar must decide whether the order addresses a domestic violence concern (and, accordingly, is a DVO).
- (3) The registrar is not to make the declaration unless the registrar decides that the order addresses a domestic violence concern.

### **Jurisdictional note.**

The above clause should be enacted in SA and WA only.

## **43 Functions of registrar may be exercised by court**

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