

Family Violence Protection Amendment Act 2014

No. 77 of 2014

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Victoria

Family Violence Protection Amendment Act 2014[†]

No. 77 of 2014

[Assented to 21 October 2014]

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purposes

The main purposes of this Act are—

- (a) to amend the **Family Violence Protection Act 2008**—
 - (i) to provide for interim family violence intervention orders to become final orders without further hearing; and

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Part 1—Preliminary

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- (ii) to extend the operation of family violence safety notices; and
- (iii) in relation to the publication of proceedings; and
- (b) to amend the **Personal Safety Intervention Orders Act 2010** in relation to the publication of proceedings.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
 - (2) If a provision of this Act does not come into operation before 18 September 2015, it comes into operation on that day.
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**PART 2—AMENDMENT OF FAMILY VIOLENCE
PROTECTION ACT 2008**

3 Definitions

(1) In section 4 of the **Family Violence Protection Act 2008**, in the definition of *weapons exemption*, for "persons." **substitute** "persons;"

(2) In section 4 of the **Family Violence Protection Act 2008** **insert** the following definitions—
finalisation condition has the meaning given by section 56A;

working day, in relation to a court, means a day other than a Saturday, a Sunday or a day appointed as a public holiday under the **Public Holidays Act 1993**."

(3) In section 4 of the **Family Violence Protection Act 2008**, for the definition of *publish* **substitute**—

publish means disseminate or provide access to the public or a section of the public by any means, including by—

- (a) publication in a book, newspaper, magazine or other written publication; or
- (b) broadcast by radio or television; or
- (c) public exhibition; or
- (d) broadcast or electronic communication—

and *publication* must be construed accordingly;"

See:
Act No.
52/2008.
Reprint No. 2
as at
21 August
2013
and
amending
Act Nos
52/2013,
77/2013,
17/2014 and
37/2014.
LawToday:
www.
legislation.
vic.gov.au

4 Meaning of *family violence intervention order, final order and interim order*

In section 11(2) of the **Family Violence Protection Act 2008**, after "section 74 or 76" (wherever occurring) **insert** "or taken to have been made under section 78A".

5 Application for family violence safety notice

In section 24 of the **Family Violence Protection Act 2008**—

- (a) in paragraph (e)(iii) for "respondent; and" **substitute** "respondent.";
- (b) paragraph (f) is **repealed**.

6 Family violence safety notice taken to be application for family violence intervention order

For section 31(3) of the **Family Violence Protection Act 2008 substitute**—

- "(3) The first mention date for the application must be—
- (a) if the family violence safety notice includes an exclusion condition, as soon as practicable; and
 - (b) in any case, not later than 5 working days after the family violence safety notice or form of notice completed under section 27(3) is served."

7 Application may be made by electronic communication

For section 44(4) of the **Family Violence Protection Act 2008 substitute**—

- "(4) The application completed under subsection (3) must be filed by the police officer with the court—

- (a) if the application was made by telephone, fax or other electronic communication and an interim order including a finalisation condition was made, as soon as practicable; and
- (b) in any other case, before the first mention date for the application."

8 New sections 56A to 56C inserted

After section 56 of the **Family Violence Protection Act 2008** insert—

"56A Interim order may include condition about final order

- (1) Subject to section 56C, if the court makes an interim order, the court may include a condition (a *finalisation condition*) providing that the interim order becomes a final order, with the same conditions as the interim order, 28 days after being served on the respondent, if the court is satisfied that it would be appropriate in all of the circumstances to include the condition.
- (2) Without limiting subsection (1), in considering whether it is appropriate to include a finalisation condition, the court must have regard to the following—
 - (a) whether there is a history of family violence;
 - (b) the existence of recognised family violence risk factors;
 - (c) the existence of—
 - (i) other proceedings between the parties under this Act; or
 - (ii) other proceedings between the affected family member and any

other person or persons under this Act; or

- (iii) other legal proceedings that may affect the conditions or operation of the family violence intervention order;

Examples

- 1 Proceedings relating to a child protection order.
- 2 Family Law Act proceedings.
- 3 Criminal proceedings.

- (d) the views of the police officer or other person (if applicable) who made the application for the affected family member as to the inclusion of the finalisation condition;
- (i) whether the affected family member has obtained legal advice;
- (i) whether the giving or service of the interim order and the giving of the explanation of the interim order under section 57(1) will enable the particular affected family member and respondent to sufficiently understand the matters set out in section 57(1);
- (i) the existence of factors making it desirable that the particular respondent attend a hearing for the final order.
- (3) If the court includes a finalisation condition, the court must specify a period for which the final order is to be in force, having regard to the matters referred to in section 97(2) and (3).
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- (4) A finalisation condition does not take effect if the respondent cannot be served personally with the interim order.

56B When finalisation condition ceases to have effect

- (1) A finalisation condition ceases to have effect within the 28 day period after the interim order is served on the respondent on the first of the following occurring—
- (a) if the respondent files a notice to contest the application for the family violence intervention order, on the filing of the notice;
 - (b) if the applicant or the protected person seeks to withdraw the application for the family violence intervention order within that period, on the filing of a written notice of withdrawal or the making of an oral application to the court for the withdrawal, whichever is applicable;
 - (c) if an application is made to vary or revoke the interim order, on the making of the application;
 - (d) if the interim order is varied by the court on its own motion, at the time the order is varied.
- (2) If the finalisation condition ceases to have effect, the interim order continues in force until it ends in accordance with section 60.
- (3) As soon as practicable after the finalisation condition ceases to have effect, the court must—
- (a) ensure the application is listed as soon as practicable; and
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(b) give notice to the parties.

56C Certain interim orders not to include finalisation condition

- (1) The court must not include a finalisation condition in an interim order if—
- (a) the court reasonably suspects that the respondent is a child; or
 - (b) the court reasonably suspects that the respondent has a cognitive impairment; or
 - (c) the court reasonably suspects that the respondent—
 - (i) holds a firearms authority, or weapons approval or exemption; or
 - (ii) is in possession of a firearm or prohibited weapon; or
 - (d) the court is satisfied that there is a Family Law Act order in force in relation to a child of the affected family member or respondent and the interim order would be inconsistent with the Family Law Act order; or
- Note**
See sections 89 and 90.
- (e) the affected family member does not consent to inclusion of a finalisation condition.
- (2) If the court is a relevant court within the meaning of section 126, the court must not include a finalisation condition in an interim order if satisfied that, on making a final order, it may be required to make an order under section 129.
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- (3) The court must not include a finalisation condition in an interim order made under section 173."

9 Explanation of interim order

For section 57(1) of the **Family Violence Protection Act 2008 substitute**—

- "(1) If a court makes an interim order, the appropriate registrar of the court must give the respondent and the affected family member a written explanation of the order that explains the following matters—
- (a) the purpose, terms and effect of the interim order;
 - (b) the consequences and penalties that may follow if the respondent fails to comply with the terms of the interim order;
 - (c) for the respondent, that the interim order is a civil order of the court and the affected family member cannot give permission to contravene the interim order;
 - (d) how the order interacts with a Family Law Act order or an order under the **Children, Youth and Families Act 2005**;
 - (e) if the court has varied, suspended, revoked or revived a Family Law Act order because it is inconsistent with the interim order, the purpose, terms and effect of the variation or suspension;

- (f) any relevant family violence services offering legal, emotional or practical support that may be available to the affected family member or respondent;
 - (g) if the interim order does not include a finalisation condition—
 - (i) when the interim order expires and the means by which the interim order may be varied; and
 - (ii) the process for deciding the final order;
 - (h) if the interim order includes a finalisation condition—
 - (i) that the interim order will become a final order 28 days after it is served on the respondent; and
 - (ii) the circumstances in which the interim order will not become a final order; and
 - (iii) the consequences of the interim order becoming a final order, including the effect on any firearms authority or weapons approval held by the respondent or weapons exemption which applies to the respondent.
- (1A) A written explanation under subsection (1) in respect of an interim order that includes a finalisation condition may change the explanation required by subsection (1)(a) to (e) to accord with the effect of that condition."
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10 Interim order made on electronic application

For section 58(c) and (d) of the **Family Violence Protection Act 2008 substitute—**

- "(c) if the interim order does not include a finalisation condition—
- (i) the venue of the court for the first mention date for the application for the family violence intervention order; and
 - (ii) the date and time of the first mention date for the application for the family violence intervention order."

11 Hearing to be listed for decision about final order as soon as practicable

In section 59 of the **Family Violence Protection Act 2008**, after "interim order" **insert** "that does not include a finalisation condition".

12 Expiry of interim order

At the end of section 60 of the **Family Violence Protection Act 2008 insert—**

- "(2) This section does not apply to an interim order that includes a finalisation condition, unless that condition has ceased to have effect under section 56B."

13 New section 78A inserted

After section 78 of the **Family Violence Protection Act 2008 insert—**

"78A Final order taken to be made—interim order including finalisation condition

- (1) If an interim order becomes a final order by effect of a finalisation condition, for the purposes of this Act—
 - (a) the court is taken to have made a final order; and

- (b) the final order is taken to be made on the day after the day that is 28 days after the order was served on the respondent; and
 - (c) the interim order ends.
- (2) Section 96 does not apply to a final order taken to be made under subsection (1)."

14 Application made by respondent for variation or revocation of family violence intervention order

After section 109(2) of the **Family Violence Protection Act 2008** insert—

- "(3) Despite subsection (2), the court may grant leave under subsection (1) for the variation or revocation of a final order taken to have been made under section 78A if—
- (a) within 28 days of being served with the interim order, the respondent did not file a notice to contest the application or apply for a variation or revocation of the interim order; and
 - (b) the court is satisfied that there are exceptional circumstances that justify granting leave."

15 Rehearing of certain proceeding

For section 122(2) of the **Family Violence Protection Act 2008** substitute—

- "(2) If the court is satisfied, on the balance of probabilities, that the grounds referred to in subsection (1) have been established—
- (a) the court may rehear the matter; or
 - (b) if the final order is taken to have been made under section 78A, the court may hear the matter for decision about a final order."

16 Contravention of family violence intervention order

(1) After section 123(1)(a) of the **Family Violence Protection Act 2008** insert—

"(ab) in the case of an order that is taken to have been made under section 78A, has been served with a copy of the interim order including the finalisation condition; or".

(2) After section 123A(2)(a) of the **Family Violence Protection Act 2008** insert—

"(ab) in the case of an order that is taken to have been made under section 78A, has been served with a copy of the interim order including the finalisation condition; or".

17 Division 1 heading inserted in Part 8

Before section 166 of the **Family Violence Protection Act 2008** insert—

"Division 1—General restriction on publication".

18 Restriction on publication of proceedings in Magistrates' Court

In section 166(2)(a) of the **Family Violence Protection Act 2008** for "order; and" substitute—

"order—

unless the court orders under section 169 that the locality or particulars may be published; or".

19 New section 169 substituted

For section 169 of the **Family Violence Protection Act 2008** substitute—

"169 Court may allow publication of locality, particulars or picture

- (1) The court may make an order allowing the publication of a locality, particulars or picture only if—
 - (a) the court reasonably considers it is in the public interest to allow the publication of the locality, particulars or picture; and
 - (b) the court reasonably considers it is just to allow the publication in the circumstances.

Example

The court may consider it in the public interest and just to allow a protected person to publicise the person's case to raise awareness of family violence.

- (2) Before making an order under this section in relation to a child who is a party to or a witness in the proceeding, or who is a person who is the subject of the order, in respect of which publication is sought, the court must have regard to the views of any parent or guardian of the child."

20 New Division 2 inserted in Part 8

After section 169 of the **Family Violence Protection Act 2008** insert—

"Division 2—Exception for publication by or with consent of adult victim

169A Interpretation

- (1) In this Division—

adult victim means an adult who—

- (a) is a protected person under a family violence safety notice or a family violence intervention order; and
- (b) was a victim in relation to a relevant offence or an alleged relevant offence;

permitted content, in relation to a report relating to a family violence safety notice or family violence intervention order, means all or any of the following—

- (a) the fact that the family violence safety notice or family violence intervention order applies to a person who has been charged with or convicted or found guilty of a relevant offence;
 - (b) the fact that an adult victim is identified in the report as—
 - (i) a protected person in relation to the family violence safety notice or family violence intervention order; and
 - (ii) a victim of a relevant offence or an alleged relevant offence;
 - (c) the types of restrictions imposed by the conditions of the family violence safety notice or family violence intervention order;
 - (d) the details of and conduct constituting a relevant offence or alleged relevant offence;
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post-notice or order offence, in relation to a family violence safety notice or family violence intervention order, means—

- (a) a contravention of the family violence safety notice or family violence intervention order under section 37, 37A, 123, 123A or 125A; or
- (b) any other offence where the conduct constituting the offence would constitute a contravention of the family violence safety notice or family violence intervention order under section 37, 37A, 123, 123A or 125A;

pre-notice or order offence, in relation to a family violence safety notice or family violence intervention order, means an offence where the conduct that constituted the offence—

- (a) led to the making of the family violence safety notice or family violence intervention order; and
- (b) would have constituted a contravention of the family violence safety notice or family violence intervention order under section 37, 37A, 123, 123A or 125A if the notice or order had been in place at the time of the offence;

relevant offence means—

- (a) a pre-notice or order offence; or
 - (b) a post-notice or order offence.
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- (2) For the purposes of this Division a charge against a person for an offence is pending until the charge is finally dealt with in any of the following ways—
- (a) the charge is withdrawn or the person dies without the charge having been determined;
 - (b) the charge is dismissed by a court;
 - (c) the person is discharged by a court following a committal hearing;
 - (d) the person is acquitted or found guilty of the offence by a court.

169B Exception to restriction on publication by or with consent of adult victim

- (1) Section 166(2) does not apply to the publication in accordance with this section and in the prescribed circumstances of permitted content in a report relating to a family violence safety notice or family violence intervention order by—
- (a) an adult victim who is or was protected by the notice or order; or
 - (b) a person who has the consent in writing or recorded form of an adult victim protected by the notice or order to the publication.
- (2) An adult victim cannot consent to the identification of any other person protected by the family violence safety notice or family violence intervention order or as being involved in a proceeding relating to the notice or order.

- (3) An adult victim may withdraw the consent to the publication of a report at any time before publication of the report.
- (4) A person is not permitted to publish a report on the basis of the consent of an adult victim after the consent is withdrawn unless the person did not have a reasonable opportunity to prevent publication after the consent was withdrawn.
- (5) The prescribed circumstances in which a report can be published are as follows—
 - (a) a family violence safety notice or family violence intervention order is or was in place that—
 - (i) protects or protected the adult victim; and
 - (ii) applies or applied to a person who has been charged with or convicted or found guilty of a relevant offence; and
 - (b) in relation to the charge for a relevant offence, the charge was still pending at the time of publication; and
 - (c) in relation to a conviction or finding of guilt for a relevant offence, the conviction or finding had not been set aside or quashed at the time of publication.

169C Subsequent publication

Section 166(2) does not apply to the publication by a person of permitted content in a report relating to a family violence safety notice or family violence intervention order (the *subsequent report*) if—

- (a) the subsequent report is published after the publication in accordance with section 169B of a report relating to the family violence safety notice or family violence intervention order (the *original report*); and
- (b) if the original report was not published by an adult victim, the person who publishes the subsequent report reasonably believes at the time of publication of the subsequent report that the original report was published with the consent of the adult victim."

21 Service of family violence intervention orders

At the end of section 201 of the **Family Violence Protection Act 2008** insert—

- "(2) Despite subsection (1)(b) or (c), a copy of a final order that is taken to have been made under section 78A is not required to be served on the respondent or given to a person listed in subsection (1)(c)."

22 Rule making powers

- (1) After section 209(2)(f) of the **Family Violence Protection Act 2008** insert—

"(fa) forms, notices and written explanations;"

- (2) After section 210(2)(f) of the **Family Violence Protection Act 2008** insert—

"(fa) forms, notices and written explanations;"

23 New Division 9 of Part 14 inserted

After Division 8 of Part 14 of the **Family Violence Protection Act 2008** insert—

**"Division 9—Family Violence Protection
Amendment Act 2014**

**226 Transitional provisions—Family Violence
Protection Amendment Act 2014**

- (1) Sections 56A to 56C, as inserted by section 8 of the **Family Violence Protection Amendment Act 2014**, apply to an application for a family violence intervention order made on or after the commencement of section 8 of that Act.
 - (2) Section 31 as amended by section 6 of the **Family Violence Protection Amendment Act 2014** applies only to family violence safety notices issued on or after the commencement of section 6 of that Act."
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**PART 3—AMENDMENT OF PERSONAL SAFETY
INTERVENTION ORDERS ACT 2010**

24 Definitions

(1) In section 4 of the **Personal Safety Intervention Orders Act 2010** in the definition of *weapons exemption*, for "persons." substitute "persons;"

(2) In section 4 of the **Personal Safety Intervention Orders Act 2010**, insert the following definition—

"working day, in relation to a court, means a day on which the court is open for normal business."

(3) In section 4 of the **Personal Safety Intervention Orders Act 2010**, for the definition of *publish* substitute—

"publish, in Part 6, means disseminate or provide access to the public or a section of the public by any means, including by—

- (a) publication in a book, newspaper, magazine or other written publication; or
- (b) broadcast by radio or television; or
- (c) public exhibition; or
- (d) broadcast or electronic communication—

and *publication* must be construed accordingly;"

See:
Act No.
53/2010
and
amending
Act Nos
53/2010,
16/2011,
20/2011,
48/2011,
65/2011,
52/2013,
77/2013 and
37/2014.
LawToday:
www.
legislation.
vic.gov.au

25 Restriction on publication of proceedings in Magistrates' Court

- (1) In section 123(2)(a) of the **Personal Safety Intervention Orders Act 2010**, for "order; or" substitute—
"order—
unless the court orders under section 125A that the locality or particulars may be published; or".
- (2) In section 123(2)(b) of the **Personal Safety Intervention Orders Act 2010**, after "order" insert ", unless the court orders under section 125A that the picture may be published".

26 New section 125A inserted

After section 125 of the **Personal Safety Intervention Orders Act 2010** insert—

"125A Court may allow publication of locality, particulars or picture

- (1) The court may make an order allowing the publication of a locality, particulars or a picture only if—
 - (a) the court reasonably considers it is in the public interest to allow the publication of the locality, particulars or picture; and
 - (b) the court reasonably considers it is just to allow the publication in the circumstances.
 - (2) Before making an order under this section the court must have regard to the views of any parent or guardian of the child."
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27 Rule making powers

(1) After section 183(2)(f) of the **Personal Safety Intervention Orders Act 2010** insert—

"(fa) forms, notices and written explanations;"

(2) After section 184(2)(f) of the **Personal Safety Intervention Orders Act 2010** insert—

"(fa) forms, notices and written explanations;"

PART 4—REPEAL OF AMENDING ACT

28 Repeal of amending Act

This Act is **repealed** on 18 September 2016.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

ENDNOTES

† *Minister's second reading speech—*

Legislative Council: 20 August 2014

Legislative Assembly: 18 September 2014

The long title for the Bill for this Act was "A Bill for an Act to amend the **Family Violence Protection Act 2008** and the **Personal Safety Intervention Orders Act 2010** and for other purposes."