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Domestic and Family Violence Protection (Combating Coercive Control) and Other
 Legislation Amendment Bill 2022

Part 4 Amendment of Domestic and Family Violence Protection Act 2012

[s 29]

- (2) New section 359F(11) applies regardless of whether any of the acts constituting the domestic violence offence mentioned in new section 359F(11) were done before or after the commencement. 1
 2
 3
 4
 5
- (3) This section applies despite section 11(2) and the *Acts Interpretation Act 1954*, section 20C(3). 6
 7
- (4) In this section— 8
new, in relation to section 359F or a subsection of section 359F, means section 359F or a subsection of section 359F as amended by the *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2022*. 9
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Part 4 **Amendment of Domestic and Family Violence Protection Act 2012** 15
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Clause 29 **Act amended** 18
 This part amends the *Domestic and Family Violence Protection Act 2012*. 19
 20

Clause 30 **Amendment of s 4 (Principles for administering Act)** 21
 (1) Section 4(2)(d), examples, third, fourth and fifth dot points— 22
omit, insert— 23

- Aboriginal peoples and Torres Strait Islander peoples 24
 25
- people from a culturally or linguistically diverse background 26
 27
- people with disability 28

 (2) Section 4(2)(e), from 'self-protection'— 29

<i>omit, insert—</i>	1
self-protection—	2
(i) the person who is most in need of protection in the relationship should be identified; and	3 4
(ii) only 1 domestic violence order protecting that person should be in force unless, in exceptional circumstances, there is clear evidence that each of the persons in the relationship is in need of protection from the other;	5 6 7 8 9 10
Clause 31 Amendment of s 8 (Meaning of <i>domestic violence</i>)	11
(1) Section 8(1), after ‘behaviour’—	12
<i>insert—</i>	13
, or a pattern of behaviour,	14
(2) Section 8—	15
<i>insert—</i>	16
(1A) Behaviour, or a pattern of behaviour, mentioned in subsection (1)—	17 18
(a) may occur over a period of time; and	19
(b) may be more than 1 act, or a series of acts, that when considered cumulatively is abusive, threatening, coercive or causes fear in a way mentioned in that subsection; and	20 21 22 23
(c) is to be considered in the context of the relationship between the first person and the second person as a whole.	24 25 26
(3) Section 8(2), after ‘subsection (1)’—	27
<i>insert—</i>	28
or (2)	29
(4) Section 8(2)(i), after ‘stalking’—	30

	<i>insert—</i>	1
	, intimidating, harassing or abusing	2
(5)	Section 8(4), ‘subsection (2)’—	3
	<i>omit, insert—</i>	4
	subsection (3)	5
(6)	Section 8(5), definition <i>unlawful stalking</i> —	6
	<i>omit, insert—</i>	7
	<i>unlawful stalking, intimidation, harassment or abuse</i> see the Criminal Code, sections 359B and 359D.	8 9 10
(7)	Section 8(1A) to (5)—	11
	<i>renumber</i> as section 8(2) to (6).	12
Clause 32	Amendment of s 11 (Meaning of <i>emotional or psychological abuse</i>)	13 14
	Section 11, after ‘behaviour’—	15
	<i>insert—</i>	16
	, or a pattern of behaviour,	17
Clause 33	Amendment of s 12 (Meaning of <i>economic abuse</i>)	18
	Section 12, after ‘means behaviour’—	19
	<i>insert—</i>	20
	, or a pattern of behaviour,	21
Clause 34	Insertion of new s 22A	22
	After section 22—	23
	<i>insert—</i>	24

**22A Who is the *person most in need of protection*
in a relevant relationship**

- | | |
|--|----|
| | 1 |
| | 2 |
| (1) A person (the <i>first person</i>), who is in a relevant | 3 |
| relationship with another person (the <i>second</i> | 4 |
| <i>person</i>), is the <i>person most in need of protection</i> | 5 |
| in the relationship if, when the behaviour of each | 6 |
| of the persons is considered in the context of their | 7 |
| relationship as a whole— | 8 |
| (a) the behaviour of the second person towards | 9 |
| the first person is, more likely than not— | 10 |
| (i) abusive, threatening or coercive; or | 11 |
| (ii) controlling or dominating of the first | 12 |
| person and causing the first person to | 13 |
| fear for the safety or wellbeing of the | 14 |
| first person, a child of the first person, | 15 |
| another person or an animal (including | 16 |
| a pet); or | 17 |
| (b) the first person's behaviour towards the | 18 |
| second person is, more likely than not— | 19 |
| (i) for the first person's self-protection or | 20 |
| the protection of a child of the first | 21 |
| person, another person or an animal | 22 |
| (including a pet); or | 23 |
| (ii) in retaliation to the second person's | 24 |
| behaviour towards the first person, a | 25 |
| child of the first person, another person | 26 |
| or an animal (including a pet); or | 27 |
| (iii) attributable to the cumulative effect of | 28 |
| the second person's domestic violence | 29 |
| towards the first person. | 30 |
| (2) In deciding which person in a relevant | 31 |
| relationship is the person most in need of | 32 |
| protection, a court must consider— | 33 |

(a) the history of the relevant relationship, and of domestic violence, between the persons; and	1 2 3
(b) the nature and severity of the harm caused to each person by the behaviour of the other person; and	4 5 6
(c) the level of fear experienced by each person because of the behaviour of the other person; and	7 8 9
(d) which person has the capacity—	10
(i) to seriously harm the other person; or	11
(ii) to control or dominate the other person and cause the other person to fear for the safety or wellbeing of the first person, a child of the first person, another person or an animal (including a pet); and	12 13 14 15 16 17
(e) whether the persons have characteristics that may make them particularly vulnerable to domestic violence.	18 19 20
<i>Examples of people who may be particularly vulnerable to domestic violence—</i>	21 22
• women	23
• children	24
• Aboriginal peoples and Torres Strait Islander peoples	25 26
• people from a culturally or linguistically diverse background	27 28
• people with disability	29
• people who are lesbian, gay, bisexual, transgender or intersex	30 31
• elderly people	32
Clause 35 Insertion of new s 36A	33
After section 36—	34

<i>insert—</i>	1
36A Court must be given respondent’s criminal history and domestic violence history	2 3
(1) This section applies if—	4
(a) a police officer makes an application for a protection order; or	5 6
(b) the clerk of the court gives an application for a protection order to the officer in charge of a police station under section 33(2)(b); or	7 8 9
(c) a copy of a police protection notice issued by a police officer is filed in the court to be heard as an application for a protection order.	10 11 12 13
(2) The police commissioner must ensure a copy of the respondent’s criminal history and domestic violence history—	14 15 16
(a) is filed in the court—	17
(i) with an application or police protection notice mentioned in subsection (1)(a) or (c); or	18 19 20
(ii) before the date and time stated in the application for the first hearing of the application; or	21 22 23
(b) is given to the court when the application is first heard.	24 25
(3) If the respondent does not have a criminal history or domestic violence history, the police commissioner must ensure the court is informed of that fact.	26 27 28 29
Clause 36 Amendment of s 37 (When court may make protection order)	30 31
(1) Section 37(2)(a)—	32

<i>insert—</i>	1
(iii) the respondent’s criminal history and domestic violence history filed in or given to the court under section 36A; and	2 3 4
(2) Section 37—	5
<i>insert—</i>	6
(5) This section applies subject to section 41G.	7
Clause 37	
Amendment of s 41C (Hearing of applications—cross applications before same court)	8 9
(1) Section 41C(2)(a) and (b)—	10
<i>omit, insert—</i>	11
(a) hear the applications together; and	12
(b) in hearing the applications, consider—	13
(i) the principle mentioned in section 4(2)(e); and	14 15
(ii) whether it is necessary to make arrangements for the safety, protection or wellbeing of the person most in need of protection in the relevant relationship that exists between the persons who are the aggrieveds and respondents to the applications.	16 17 18 19 20 21 22
<i>Note—</i>	23
See, for example, sections 150 and 151 for the power of the court to make orders in relation to a person giving evidence or being cross-examined as a protected witness.	24 25 26 27
(2) Section 41C(3)—	28
<i>omit.</i>	29
(3) Section 41C(4)—	30
<i>renumber</i> as section 41C(3).	31

Clause 38	Amendment of s 41D (Hearing of applications—cross applications before different courts)	1
		2
	(1) Section 41D(3) and (4)—	3
	<i>omit, insert—</i>	4
	(3) If the court hears the applications, the court must consider—	5
		6
	(a) the principle mentioned in section 4(2)(e);	7
	and	8
	(b) whether it is necessary to make	9
	arrangements for the safety, protection or	10
	wellbeing of the person most in need of	11
	protection in the relevant relationship that	12
	exists between the persons who are the	13
	aggrieveds and respondents to the	14
	applications.	15
	<i>Note—</i>	16
	See, for example, sections 150 and 151 for the	17
	power of the court to make orders in relation to a	18
	person giving evidence or being cross-examined	19
	as a protected witness.	20
	(2) Section 41D(5)—	21
	<i>renumber</i> as section 41D(4).	22
Clause 39	Insertion of new s 41G	23
	After section 41F—	24
	<i>insert—</i>	25
	41G Deciding cross applications	26
	(1) This section applies to a court hearing the	27
	following applications together under section	28
	41C, 41D or 41E—	29
	(a) the original application and cross	30
	application;	31

-
- (b) the variation application and cross application. 1
2
- (2) The court must decide— 3
- (a) which of the parties to the relevant relationship is the person most in need of protection in the relationship; and 4
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6
- (b) the application that makes, or varies, the protection order that is necessary or desirable to protect the person most in need of protection from domestic violence; and 7
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9
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- (c) if the other application is an application for a protection order—to dismiss the other application; and 11
12
13
- (d) if the other application is an application for the variation of a protection order—to vary the order by reducing its duration so that the order ends. 14
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- (3) Despite subsection (2), the court may make, or vary, a protection order under both applications if the court is satisfied that, in exceptional circumstances— 18
19
20
21
- (a) there is clear evidence that each of the parties to the relevant relationship is in need of protection from the other party; and 22
23
24
- (b) it is not possible to decide whether 1 party's need for protection is greater than the other party's need for protection. 25
26
27
- (4) The relevant relationship mentioned in subsection (2) and (3) is the relevant relationship that exists between the persons who are the aggrieved and the respondent to— 28
29
30
31
- (a) the original application and the cross application mentioned in section 41A(1); or 32
33

	(b) the first protection order and second protection order mentioned in section 41A(2); or	1 2 3
	(c) the original protection order and the cross application mentioned in section 41A(3).	4 5
Clause 40	Amendment of s 42 (When court on its own initiative can make or vary order against offender)	6 7
	(1) Section 42—	8
	<i>insert—</i>	9
	(2A) Despite section 37(2)(a)(iii), in deciding whether to make a protection order under subsection (2), the court is not required to, but may, consider the offender’s criminal history and domestic violence history.	10 11 12 13 14
	(2) Section 42(4), ‘subsection (3)’—	15
	<i>omit, insert—</i>	16
	subsection (4)	17
	(3) Section 42(6), ‘subsection (5)(b)’—	18
	<i>omit, insert—</i>	19
	subsection (6)(b)	20
	(4) Section 42(2A) to (10)—	21
	<i>renumber</i> as section 42(3) to (11).	22
Clause 41	Amendment of s 43 (When Childrens Court can make or vary order against parent of a child)	23 24
	(1) Section 43—	25
	<i>insert—</i>	26
	(5A) Despite section 37(2)(a)(iii), in deciding whether to make a protection order under subsection (2) or vary a domestic violence order under subsection	27 28 29