

Purpose

Under the National Domestic Violence Order Scheme, protection orders made in any Australian jurisdiction on or after 25 November 2017 are automatically recognised and enforceable nationally.

Protection orders made before 25 November 2017 (except Victorian protection orders and New Zealand protection orders registered in Victoria, which are recognised retrospectively) are not automatically recognised and enforceable in other jurisdictions. All jurisdictions have legislation to enable protection orders made before 25 November 2017 to become nationally recognised by being ‘declared’ as a protection order recognised under the scheme. The protected person may apply to any local court in Australia for such a declaration.

All Australian states and territories have a statutory regime [FLC 2015] that provides for the making of civil protection orders to protect victims and other protected people [Jeffries et al 2013] from further domestic and family violence, and to promote the accountability of perpetrators for their actions (see table below). Protection orders are available in a range of situations, including emergencies; and they can supplement criminal justice interventions or provide a remedy where the criminal law does not apply, for example in the event of the future likelihood of domestic and family violence [Wilcox 2010].

A person may be subject to a protection order in a number of ways, depending on the legislation applicable in the particular jurisdiction: a victim may apply to the court for an order; the police may apply to the court for an order on the victim’s behalf; and in some jurisdictions the police may issue an order in their own right without court approval [ALRC/NSWLRC 2010]. Section 3.1 of this bench book sets out examples of behaviour or threatened behaviour that may be understood as domestic and family violence, and section 4 sets out a range of factors that may be relevant in making protection orders in a particular case. These include factors affecting risk and the vulnerabilities of the parties to the proceedings. The paramount consideration should be the safety and protection of the victim and other protected people. As a protection order is a civil order, the court must apply the civil standard of proof in considering the evidence, although the more serious the allegation the more cogent the evidence should be.

A protection order will have implications for the perpetrator and, depending on the circumstances and the jurisdiction, it may affect contact time and arrangements to see their children, family law proceedings, access to or licensing of firearms and/or explosives, and employment (eg where it involves children or the use of a firearm and/or explosives).

Jurisdiction	Relevant legislation	Commonly-issued orders
Australian Capital Territory	<i>Family Violence Act 2016 (ACT)</i>	family violence order

New South Wales	<i>Crimes (Domestic and Personal Violence) Act 2007 (NSW)</i>	apprehended domestic violence order
Northern Territory	<i>Domestic and Family Violence Act 2007 (NT)</i>	domestic violence order
Queensland	<i>Domestic and Family Violence Protection Act 2012 (Qld)</i>	domestic violence order
South Australia	<i>Intervention Orders (Prevention of Abuse) Act 2009 (SA)</i>	intervention order
Tasmania	<i>Family Violence Act 2004 (Tas)</i>	family violence order
Victoria	<i>Family Violence Protection Act 2008 (Vic)</i>	family violence intervention order
Western Australia	<i>Restraining Orders Act 1997 (WA)</i>	family violence restraining order