

# DOMESTIC VIOLENCE ORDERS (NATIONAL RECOGNITION) BILL 2017

## EXPLANATORY MEMORANDUM

### Introduction

In December 2015, the Council of Australian Governments (COAG) agreed to the establishment of a national cross-recognition scheme for restraining orders that relate to family violence. This is known as the National Domestic Violence Order Scheme (NDVOS).

Establishment of the NDVOS is subject to States and Territories introducing enabling legislation. The Domestic Violence Orders (National Recognition) Bill 2017 (the Bill) is Western Australia's response to this requirement.

The Bill is based on a Model Law Framework that was developed by a national working group. The Model Law Framework reflects key policy parameters approved by COAG, while affording jurisdictions flexibility to achieve consistency with local legislation and to meet local operational requirements.

In summary, the Bill, in conjunction with the corresponding laws in other jurisdictions, defines the scope of the NDVOS; sets out the legal meaning and consequences of cross-jurisdictional recognition; and removes barriers to the operationalisation of the scheme in areas such as information sharing.

A clause by clause explanation of the Bill is provided below.

## Part 1 – Preliminary

<p><b>1. Short Title</b></p>	<p>Clause 1 provides that the title of the proposed Act is the <i>Domestic Violence Orders (National Recognition) Act 2017</i>.</p>
<p><b>2. Commencement</b></p>	<p>Clause 2 provides that sections 1 and 2 (Short title and Commencement) will come into operation on the day on which the Act receives Royal Assent, with the remainder of the Act to come into force on a day fixed by proclamation. It also states that different days may be fixed for different provisions. This approach preserves flexibility in the event that the scheduled commencement of the national scheme is adjusted for operational reasons.</p>
<p><b>3. Object of Act</b></p>	<p>Clause 3 states that the Act establishes, in conjunction with corresponding laws in other jurisdictions, a national recognition scheme for domestic violence orders.</p>
<p><b>4. Terms used</b></p>	<p>Clause 4 defines a number of terms that are used in the Act.</p> <p>The term ‘<b>corresponding law</b>’ – used throughout this explanatory memorandum – is defined to mean a law of another jurisdiction that contains provisions that substantially correspond to this Act (ie, that give effect to the NDVOS); and is prescribed by the regulations to be a corresponding law.</p> <p>The term ‘<b>DVO</b>’ is defined to include a ‘local DVO’, an ‘interstate DVO’ and a ‘foreign order.’ Each of these terms is defined elsewhere in Part 1. These are the orders that, subject to this Act and the corresponding laws, are within scope of the NDVOS.</p> <p>The expression ‘<b>former RO Act</b>’ is defined to refer to the <i>Restraining Orders Act 1997 (WA)</i> (RO Act) as in force prior to 1 July 2017. On that date, amendments came into force that, among other things, created a new class of order, the family violence restraining order (FVRO). Prior to the creation of FVROs, general violence restraining orders (VROs) were used in cases of family violence. As explained below, this change is relevant to the question of which WA orders may be recognised under the NDVOS.</p> <p>The term ‘<b>issuing authority</b>’ is defined to mean a court or person with power to make, vary or cancel a DVO. This includes Western Australia police officers, who may issue police orders under the <i>Restraining Orders Act 1997 (RO Act)</i>.</p> <p>The definition of ‘<b>vary</b>’ is intended to include a variation under section 49(1)(b)(ii) of the RO Act. This is achieved, in particular, through the reference to adding conditions to an order. The definition of vary does</p>

	not include an action under 49(1)(b)(i) of that Act, which is more accurately characterised as a cancellation.
<p><b>5. Local DVO</b></p>	<p>Clause 5 defines 'local DVO'. This term is used to denote the WA orders that may, pursuant to Parts 2 and 6, be 'recognised' under the NDVOS.</p> <p>The definition includes the following:</p> <ul style="list-style-type: none"> <li>• A family violence restraining order made under the RO Act s.3(1);</li> <li>• A police order as defined in the RO Act 1997 s.3(1); and</li> <li>• A VRO made under the 'former RO Act' that addresses a 'domestic violence concern'.</li> </ul> <p>FVROs and police orders are orders available under the RO Act that relate to family violence by definition and are therefore relevant to the NDVOS.</p> <p>The reference to 'A violence restraining order made under the former RO Act that addresses a domestic violence concern' reflects the fact that prior to the introduction of FVROs on 1 July 2017, VROs were used in cases of family violence. If a VRO made prior to that date addresses a family violence concern, it is akin to an FVRO and should therefore be eligible for inclusion in the NDVOS (again, subject to the recognition provisions contained in Part 2 and Part 6).</p> <p>As already noted, the expression 'former RO Act' is defined in clause 4 to refer to the RO Act as in force before 1 July 2017. The expression 'domestic violence concern' is defined in clause 9 and is used to differentiate VROs that relate to family violence (and are therefore relevant to the NDVOS) from VROs that relate to other personal violence (and are therefore outside the scope of the NDVOS).</p>
<p><b>6. Interstate DVO</b></p>	<p>Clause 6 defines the term 'interstate DVO'. This term is used to denote those orders made in other States and Territories that may be recognised under the NDVOS.</p> <p>To meet the definition, an order must:</p> <ul style="list-style-type: none"> <li>• Be prescribed in regulations;</li> <li>• Substantially correspond to a local DVO; and</li> <li>• Be made under the law of another jurisdiction that contains provisions that substantially correspond to the <i>Restraining Orders Act 1997</i> Part 1B</li> </ul> <p>The use of regulations will provide for flexibility in the event that</p>

	another jurisdiction amends its restraining orders legislation.
<b>7. Registered foreign order</b>	<p>Clause 7 defines the term ‘registered foreign order’. Clause 4 defines ‘foreign order’ to mean a New Zealand order or another foreign order prescribed in regulations.</p> <p>Clause 7 provides that, for the purposes of the Act, a foreign order is registered if it is registered under Part 7A of the RO Act, or is registered under a law of another jurisdiction (ie. another State and Territory) that contains provisions that substantially correspond to the RO Act Part 1B.</p>
<b>8. General violence order</b>	<p>Current legislation in South Australia does not formally distinguish between orders relating to domestic violence and orders relating to personal violence between unrelated persons (such as violence between neighbours). This was also true of the RO Act prior to the creation of FVROs on 1 July 2017.</p> <p>For the purposes of the Bill, these non-specific orders are referred to as ‘general violence orders’.</p> <p>Pursuant to clauses 9 and 42, a general violence order may be declared to be a recognised order if it addresses a ‘domestic violence concern’.</p>
<b>9. Domestic violence concern</b>	<p>Clause 8 defines ‘domestic violence concern’.</p> <p>Current legislation in South Australia does not formally distinguish between orders relating to family violence and orders relating to personal violence between unrelated persons (such as neighbours). This was also true of the RO Act prior to the creation of FVROs on 1 July 2017.</p> <p>However, such a distinction is needed for the NDVOS: orders that relate to domestic violence may be recognised under the national scheme, while orders relating to other personal violence may not.</p> <p>The definition and use of ‘domestic violence concern’ overcomes the lack of formal separation by providing criteria for deciding whether an order relates to domestic violence.</p> <p>Subclause 9(1) is concerned with whether a WA VRO made prior to 1 July addresses a domestic violence concern. The test draws on the language that was used in the RO Act prior to 1 July (such as ‘an act of family and domestic violence’).</p> <p>Subclause 9(2) sets out the equivalent test for an intervention order made under South Australian legislation.</p> <p>Subclause 9(3) provides that a ‘general violence order’ is taken to be</p>

	<p>an order that addresses a ‘domestic violence concern’ if it is declared to be so by the issuing authority that makes the order; or a court of the jurisdiction in which the order was made declares the order to be a recognised DVO in that jurisdiction.</p> <p>Subclause 9(4) permits regulations to be made under this section.</p>
<b>10. Special provisions for foreign orders</b>	<p>Clause 10 clarifies the status of registered foreign orders under the Act. It provides that, for the purposes of the Act:</p> <ul style="list-style-type: none"> <li>• A registered foreign order is taken to be made in the jurisdiction in which it is registered, when it is registered.</li> <li>• A registered foreign order is varied or cancelled if its registration is varied or cancelled.</li> </ul> <p>A power to vary or cancel a registered foreign order is a power to vary or cancel registration of the order as a registered foreign order.</p>

## Part 2 – National Recognition of DVOs

Part 2 is concerned with the recognition and enforceability of DVOs – the crux of the national scheme. This Part needs to be read in conjunction with the transitional provisions contained in Part 6, and the transitional provisions contained in other jurisdictions’ enabling legislation.

Division 1	General Principles
<b>11. Recognition of DVOs</b>	<p>Clause 11 helps to define the ambit of the NDVOS by identifying those orders that are ‘recognised’ under the scheme. Pursuant to subclause 11(1), these are:</p> <ul style="list-style-type: none"> <li>• A <b>local DVO</b> (as defined in clause 5)</li> <li>• An <b>interstate DVO</b> made in a participating jurisdiction (‘interstate DVO’ is defined in clause 6)</li> <li>• A <b>foreign order</b> that is a registered foreign order in a participating jurisdiction (‘foreign order’ and ‘registered foreign order’ are defined in clauses 4 and 7 respectively).</li> </ul> <p>Subclause 11(2) provides that a DVO is a recognised DVO from when it is made.</p> <p>Subclause 11(3) provides that, subject to this Act, a DVO is a recognised DVO for the period that it remains in force in the jurisdiction in which it is made.</p> <p>Clause 11 needs to be read in conjunction with the transitional provisions in Part 6, which limit the application of Part 2.</p> <p>In addition, it should be noted that ‘recognition’ does not automatically</p>

	<p>make an order enforceable; clause 16 provides that a recognised order only becomes enforceable once the defendant has been 'properly notified' under the law of the issuing jurisdiction.</p>
<p><b>12. Variations to DVO</b></p>	<p>A key principle of the NDVOS is that a recognised DVO can be varied in any participating jurisdiction and that such variations have effect in all participating jurisdictions – irrespective of where the order originated or where the variation was done.</p> <p>Clause 12 sets out the circumstances in which a variation to a recognised DVO will be recognised in WA. The recognition of variations in other jurisdictions is a matter for each jurisdiction's corresponding law.</p> <p>Subclause 12(1) states the effect of the clause.</p> <p>Subclause 12(2) deals with the recognition in WA of variations to recognised <b>local DVOs</b>. The position is that a variation to a local DVO will be recognised in WA if the variation is done under the RO Act; or in another participating jurisdiction by a court under the corresponding law of that jurisdiction.</p> <p>Subclause 12(3) deals with the recognition in WA of variations to <b>non-local DVOs</b> (ie. an interstate DVO or foreign order). The position is that a variation will be recognised in WA if it is done in the issuing jurisdiction in accordance with that jurisdiction's local law, or under the corresponding law of another participating jurisdiction (including WA; Part 3 empowers WA courts to vary recognised non-local DVOs).</p>
<p><b>13. Cancellation of recognised DVO</b></p>	<p>Clause 13 largely mirrors clause 12 but applies to cancellations instead of variations. Like clause 12, it is concerned with recognition <b>in WA</b>; the question of whether the cancellation of an order is recognised in another jurisdiction is a matter for that jurisdiction's corresponding law.</p> <p>Subclause 13(1) states that a DVO ceases to be a recognised DVO if it is cancelled in WA or another jurisdiction, and that cancellation is recognised in WA.</p> <p>Subclause 13(2) deals with the cancellation of <b>local DVOs</b>. The position is that the cancellation will be recognised in WA if it is done locally in accordance with the RO Act; or under the corresponding law of another participating jurisdiction.</p> <p>Subclause 13(3) deals with the cancellation of <b>non-local orders</b>. The position is that the cancellation will be recognised in WA if it is done in the issuing jurisdiction in accordance with the jurisdiction's local law, or under the corresponding law of another participating</p>

	<p>jurisdiction (including WA; Part 3 empowers WA courts to cancel recognised non-local DVOs).</p>
<p><b>14. Recognised DVO prevails over earlier comparable DVOs</b></p>	<p>Clause 14 addresses the situation where there are two or more comparable orders relating to the same parties. The general position is that the latest order in time prevails.</p> <p>More specifically, subclause 14(1) states that a recognised DVO that is enforceable in WA supersedes a comparable earlier DVO (whether or not the earlier DVO is a recognised DVO).</p> <p>Subclause 14(2) provides that the earlier DVO is superseded from the time the 'new' DVO becomes enforceable (as opposed to when it is made). This avoids the potential for a 'gap' in protection between the making and service (and therefore enforceability) of a new DVO. The rules for determining when a DVO becomes enforceable are set out in Part 2 Division 2.</p> <p>Subclauses 14(3) and (4) provide that a superseded order is no longer a recognised DVO and, in the case of a local DVO, is cancelled. (The Bill does not purport to cancel a DVO made in another jurisdiction, as this may be beyond the competency of the WA legislature. Rather, the cancellation of a superseded non-local order will be provided for in the corresponding law of the issuing jurisdiction.)</p> <p>Subclauses 14(5) and (6) clarify that a DVO is not superseded to the extent that it applies to a person who is not a protected person under the new DVO. An example would be where the earlier DVO has been extended to protect a child of the applicant, but the later DVO has not. In these circumstances, the child will continue to be protected by the earlier DVO while the adult will be protected by the newer DVO.</p> <p>Subclause 14(7) creates an exception to the general position that the latest order in time prevails. It provides that a DVO made by a police officer (ie. in WA, a police order) does not supersede a comparable DVO made by a court. This provision reflects the principle that it would be inappropriate for a police officer to be empowered overturn a decision of a court. Instead of superseding (and therefore cancelling) a comparable earlier court order, the later police order will operate in parallel with the court order, with each order being enforceable for the period it is in force (subject to the enforcement provisions of the Act).</p>
<p><b>15. Making of new orders</b></p>	<p>Clause 15 provides that nothing in this Act 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 person. The definition of 'issuing authority' contained in clause 4</p>

	<p>encompasses both courts and police officers who may make DVOs. This ensures and preserves victim safety considerations; if the protection provided by an existing DVO is inadequate or otherwise inappropriate, a victim may apply to a court or a police officer may issue a new order that better addresses current circumstances.</p>
<b>Division 2</b>	<b>Enforcement of recognised DVOs</b>
<b>16. Recognised DVOs and variations enforceable against defendant</b>	<p>Clause 16 is concerned with the enforceability in WA of recognised orders and variations. The enforceability of recognised orders and variations in other jurisdictions is provided for under the corresponding laws in those jurisdictions.</p> <p>Subclause 16(1) sets out the general position that a recognised DVO, or a recognised variation to a recognised DVO, is enforceable in WA.</p> <p>Subclauses 16 (2) – (5) set out when different types of orders and variations become enforceable. The general principle is that a recognised DVO or variation becomes enforceable when the defendant is ‘properly notified’ under the laws of the jurisdiction in which the order or variation was made. The meaning of ‘properly notified’ is the subject of clause 17.</p> <p>This approach – linking enforceability to ‘proper notification’ in the issuing jurisdiction – avoids any requirement for the person bound to be separately notified of the same decision in multiple jurisdictions.</p> <p>More specifically, clause 16(2) provides that a recognised <b>local DVO</b> becomes enforceable in WA when the respondent is properly notified under WA law (as explained in clause 17, this means that the order is served on the person bound in accordance with the RO Act). This is consistent with the existing position under WA law.</p> <p>Clause 16(3) provides that a recognised <b>non-local DVO</b> (other than a foreign order) becomes enforceable in WA when the defendant is ‘properly notified’ under the law of the issuing jurisdiction.</p> <p>The notification requirement does not apply in relation to a <b>registered foreign order</b>: clause 16(4) provides that such an order becomes enforceable from the time that it becomes a recognised order. This is consistent with the existing position under the RO Act, under which, for safety reasons, the defendant does not receive notification when the order is registered.</p> <p>Clause 16(5) provides that a <b>recognised variation</b> becomes enforceable in WA when the defendant is properly notified under the law of the issuing jurisdiction (whether WA or another participating jurisdiction).</p>

<p><b>17. Properly notified</b></p>	<p>Clause 17 sets out the meaning of ‘proper notification’ for the purposes of clause 16. The overall effect of this provision is that the NDVOS will ‘pick-up’ notification requirements of the issuing jurisdiction’s local law.</p> <p>Subclause 17(1) provides that the making of a <b>local DVO</b> is ‘properly notified’ if it is served on the person bound in accordance with the RO Act.</p> <p>Subclause 17(2) provides that the making of an <b>interstate DVO</b> is ‘properly notified’ in the circumstances set out in the issuing jurisdiction’s corresponding law.</p> <p>Subclause 17(3) provides that a <b>variation done locally</b> is ‘properly notified’ if it is served on the defendant in accordance with the RO Act.</p> <p>Subclause 17(4) provides that a <b>variation done in another jurisdiction</b> is ‘properly notified’ in the circumstances set out in the issuing jurisdiction’s corresponding law.</p>
<p><b>18. Contravention of enforceable recognised DVO</b></p>	<p>Clause 18 provides that:</p> <ul style="list-style-type: none"> <li>• non-local DVOs;</li> <li>• variations to non-local DVOs; and</li> <li>• variations done in other jurisdictions</li> </ul> <p>that are recognised and enforceable in WA under this Part are to be treated as orders made, or variations done, under the RO Act for the purposes of enforcement in WA.</p> <p>This means, for example, that a person who breaches a recognised and enforceable non-local DVO in WA is liable to be prosecuted for an offence under section 61 of the RO Act, and that those proceedings will be managed in the same manner, and subject to the same legislation, as proceedings relating to a breach of a local order.</p> <p>This is qualified by subsection (4), which has the effect of preserving the operation of section 12 of the <i>Criminal Code (WA)</i>. Under that provision, a person commits an offence under WA law only if at least one of the acts, omissions, events, circumstances or states of affairs that make up those elements occurs in WA. The preservation of this provision is intended to ensure that the NDVOS cannot be used to initiate prosecutions in WA in circumstances where the alleged offence is not connected to this jurisdiction.</p>

DIVISION 3	Enforcement of non-local DVOs
<p><b>19. Non-local DVO to be treated as local DVO</b></p>	<p>Clause 19 is concerned with the status of recognised non-local orders in WA.</p> <p>Subclause 19(1) provides that a recognised non-local DVO has the same effect in WA as a local DVO. The intent of this provision is to ensure that a reference in WA law to a ‘restraining order’ is taken to apply to a non-local DVO that is recognised under the national scheme.</p> <p>This ‘deeming’ clause eliminates the need for consequential amendments to other WA enactments, including but not limited to the <i>Criminal Code</i>, the <i>Bail Act 1982</i>, and the <i>Community Protection (Offender Reporting) Act 2004</i>, that refer to restraining orders. This intent is explicitly stated in the national Model Law Framework on which the Bill is based.</p> <p>Subclause 19(2) provides that a prohibition, restriction or condition imposed by a non-local DVO has the same meaning in WA as it would have would have in the issuing jurisdiction, but may be enforced in WA as if it were a prohibition, restriction or condition of a local DVO. This is not intended to limit the operation of subclause (1).</p>
<p><b>20. Licenses, permits and other authorisations.</b></p>	<p>Clause 20 is concerned with the relationship between recognised non-local DVOs and WA laws dealing with licenses, permits or other authorisations. The clause further reinforces the principle that a recognised non-local DVO is to have the same effect in WA as a local order.</p> <p>Subclause 20(1) defines ‘authorisation’ to include a licence or permit; and ‘grant’ to include issue.</p> <p>Subclause 20(2) provides that a WA law that restricts the grant of an authorisation, or that authorises or requires an authorisation to be suspended or cancelled, if a person is or has been subject to a local DVO, is to apply to a person who is subject to a non-local DVO that is recognised under the NDVOS.</p> <p>Subclause 20(3) provides that for the purposes of the relevant local law, a final non-local DVO is to be treated as a final local DVO, and an interim non-local interim order is to be treated as a local interim order.</p>
<p><b>21. Recognition of disqualification to hold firearms licence</b></p>	<p>Clause 21 is concerned with the recognition and application in WA of a term of a non-local order that disqualifies a person from holding a non-local firearms license. The clause further reinforces the principle that a recognised non-local DVO is to have the same effect in WA as</p>

	<p>a local order.</p> <p>Subclause 21(1) defines various terms for the purposes of this clause.</p> <p>Subclause 21(2) provides that where a recognised non-local DVO disqualifies a person from holding a non-local firearms license, the person is disqualified from holding an equivalent WA license.</p> <p>Subclause 21(3) imposes a positive obligation on the WA Commissioner of Police to give effect to the position under subclause (2) by cancelling any local firearms license, or refusing to issue a local firearms license, where the person is so disqualified from holding the firearms license by a recognised DVO.</p> <p>Subclause 21(4) sets out the circumstances in which a recognised DVO disqualifies a person from holding a non-local firearms license for the purposes of this clause, namely where the DVO expressly:</p> <ul style="list-style-type: none"> <li>- Disqualifies the person from holding the license or type of license; or</li> <li>- Cancels or requires the person to surrender the license or type of license.</li> </ul>
<b>22. Order for costs</b>	<p>Clause 22 deals with orders for costs.</p> <p>Subclause 22(1) provides that a non-local DVO, to the extent that it requires the payment of money, cannot be enforced in this jurisdiction. This is an exception to the general principle that a recognised non-local DVO is to operate in WA as a local DVO.</p> <p>Subclause 22(2) provides that a WA court cannot make an order for costs that relates to proceedings relating to the DVO in another jurisdiction.</p> <p>Subclause 22(3) confirms that this clause does not affect the capacity of a WA court or tribunal to award costs in respect of any proceedings in this jurisdiction relating to the variation or cancellation of a recognised DVO.</p>

### **PART 3 – Variation and revocation of recognised non-local DVOs.**

<b>23. Term used: court</b>	Clause 23 provides that in this Part, 'court' means a court of this jurisdiction that has power to make local DVOs.
<b>24. Power of court to vary or cancel recognised non-</b>	<p>Subclause 24(1) provides that a court (as defined under clause 23) may vary or cancel a non-local order in accordance with this Part.</p> <p>Subclause 24(2) qualifies subclause (1) by providing that a court</p>

<p><b>local DVOs</b></p>	<p>cannot vary or cancel a non-local DVO if it is a kind of DVO that cannot be varied or cancelled by a court in the jurisdiction in which the DVO was made. This ensures that WA courts are not afforded powers in relation to non-local orders that exceed those of courts in the issuing jurisdiction.</p> <p>Subclause 24(3) states that a variation or cancellation done under this Part is not limited in its operation to this jurisdiction. This is complementary to provisions of the corresponding laws providing for the recognition and enforceability of variations and cancellations made by WA courts (that is, provisions equivalent to Part 2 of the Bill).</p> <p>Subclause 24(4) states that this Part does not apply to the variation or cancellation of a foreign order that is registered in this jurisdiction. This means that the variation or cancellation of such orders by WA courts will continue to be subject to the RO Act (Part 7A).</p> <p>Subclause 24(5) confirms that a decision of a WA court to vary or cancel an order does not lead to the order being deemed to be a WA order; it continues to be an order of the jurisdiction in which it originated.</p>
<p><b>25. Application for variation or revocation of recognised non-local DVO</b></p>	<p>Clause 25 provides for an application to vary or cancel a recognised non-local order to be made and managed as if the order were a local order.</p> <p>More specifically:</p> <p>Subclause 25(1) provides that an application for the variation or cancellation of a recognised non-local DVO may be made to a court as if it were an application for variation or cancellation of a local DVO. This is intended to minimise complexity by providing for reliance on existing application processes.</p> <p>Subclause 25(2) reinforces the link between applications under this Part and the processes and rules that relate to local DVOs. It does so by specifying that an application to vary a recognised non-local DVO:</p> <ul style="list-style-type: none"> <li>- may be made to a court that would have the power to hear the application if the DVO were a local DVO;</li> <li>- is to be made in accordance with any requirements that would apply if the DVO were a local DVO;</li> <li>- and may be dealt with (subject to this Part) as if it were a local DVO.</li> </ul>
<p><b>26. Decision about hearing of</b></p>	<p>The right to have a court hear an application to vary or cancel a recognised non-local DVO is subject to the discretion of the court. Clause 26 establishes this discretion and sets out a number of factors</p>

<p><b>application</b></p>	<p>that the court may have regard to when exercising it. These considerations are intended to guard against ‘forum shopping’ and preserve procedural fairness for respondents (for example, where a respondent is unable to attend a hearing held interstate).</p> <p>More specifically:</p> <p>Subclause 26(1) provides the meaning of ‘respondent’ for the purposes of clause 26.</p> <p>Subclause 26(2) gives a court hearing an application under this Part discretion as to whether to hear the application.</p> <p>In exercising this discretion, the court may have regard to the matters set out in subclause 26(3). These are:</p> <ul style="list-style-type: none"> <li>a) the jurisdiction in which the person bound and the protected person or persons under the DVO generally reside or are employed (this is included on the basis that the lack of sufficient connection to WA may be reason for a court to decline to hear an application);</li> <li>b) any difficulty the respondent to the proceedings may have in attending the proceedings (this recognises that hearing a matter in a jurisdiction other than the jurisdiction in which the respondent resides may adversely affect the person’s capacity to participate in the proceedings);</li> <li>c) whether there is sufficient information available to the court in relation to the DVO and the basis on which it was made (this recognises that a court with limited information about the circumstances of the case should exercise restraint when considering whether to vary or cancel a non-local order;</li> <li>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 (this recognises that it may not be appropriate for a WA court to consider varying or cancelling an order that is the subject of ongoing breach proceedings in another jurisdiction);</li> <li>e) the practicality of the applicant (if not the person bound by the DVO) applying for and obtaining a local DVO against the person with similar prohibitions or restrictions;</li> <li>f) the impact of the application on children; and</li> </ul>
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	<p>g) any other matters the court considers to be relevant.</p> <p>Subclause 26(4) provides that a court may decline to hear the application if satisfied that there has been no material change in the relevant circumstance since the order was made and that the application is in the nature of an appeal against the order.</p> <p>This is designed to prevent a party from attempting to apply for variation or cancellation in another jurisdiction as a means of circumventing an unfavourable court ruling. This does not limit the court's ability to decline to hear an application for other reasons.</p> <p>Subclause 26(5) states that for the purpose of exercising its functions under this Part, a court can have regard to information provided by a court of another jurisdiction. This is supported by the information sharing provisions contained in Part 4.</p> <p>Subclause 26(6) prevents a court from hearing an application to vary or cancel an order where the applicant would not have been able to make such an application under the law of the issuing jurisdiction. This ensures that the power of a court to vary or cancel a recognised non-local DVO does not exceed the power that a court in the issuing jurisdiction would possess.</p>
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#### **PART 4 – Exchange of Information**

The effective operation of the NDVOS hinges on the ability of courts and law enforcement agencies to obtain information about orders and variations made in other jurisdictions. The provisions of Part 4 will help to facilitate this by enabling WA authorities to share, obtain and use information that is relevant to the NDVOS. It should be noted that the term 'issuing authority', as defined in clause 4, includes WA Police officers as well as courts.

<b>27. Issuing authorities may obtain DVO information</b>	<p>Clause 27 provides that a WA issuing authority (ie. a court or police officer) may obtain information about a DVO from interstate issuing authorities and law enforcement agencies. Information obtained may then be used for the purpose of exercising functions under this Act. The corresponding laws complement this clause by providing for the release of information to WA issuing authorities.</p>
<b>28. Issuing authorities must provide DVO information</b>	<p>Clause 28 is concerned with the release of information by WA issuing authorities.</p> <p>Subclause 28(1) provides that a WA issuing authority that makes, varies or cancels a DVO must provide to a court of another participating jurisdiction any information about the DVO that the court reasonably requests for the purpose of exercising its functions under a corresponding law.</p>

	Subclause 28(2) sets out the same position in relation to the provision of information to interstate law enforcement agencies.
<b>29. Law enforcement agencies may obtain DVO information</b>	<p>Clause 29 provides that WA Police may obtain information about a DVO from an issuing authority or an interstate law enforcement agency, and use that information for the purpose of exercising its law enforcement functions.</p> <p>The corresponding laws complement this clause by providing for the provision of information to WA police.</p>
<b>30. Information to be provided to law enforcement agencies</b>	Clause 30 provides that WA Police 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.
<b>31. DVO information obtained from, or provided to, prescribed persons or bodies</b>	Clause 31 provides for WA issuing authorities and police to exchange relevant information with a person or body prescribed in regulations. In practice, this provision will be used to enable information sharing with the Australian Criminal Intelligence Commission, the Commonwealth agency that is responsible for developing and managing the information sharing system that will support the national scheme. Subclause (2) makes clear that this information exchange must be for the purposes of exercising functions under this Act.

## PART 5 — Miscellaneous

<b>32. Certificate of evidence — notification</b>	<p>This clause creates a mechanism (in the form of a certificate issued by an ‘authorised officer’) for the production of evidence that the person bound by a DVO has been ‘properly notified’ of the making or variation of the order.</p> <p>This confirmation is important because notification is a prerequisite for enforcement (clause 16 provides that a recognised order or variation becomes enforceable against the person bound when that person is ‘properly notified’).</p> <p>More specifically:</p> <p>Subclause 32(1) defines the term ‘authorised officer’ for the purposes of this section.</p> <p>An ‘authorised officer’ of <u>another jurisdiction</u> means a person (whether or not designated as an authorised officer) who is authorised under the law of another jurisdiction to issue a certificate</p>
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	<p>certifying that the making or variation of a DVO has been properly notified under the law of that jurisdiction.</p> <p>An ‘authorised officer’ of <u>this jurisdiction</u> means:</p> <ul style="list-style-type: none"> <li>• A registrar of a WA court;</li> <li>• A WA Police officer of or above the rank of Sergeant; or</li> <li>• A person — <ul style="list-style-type: none"> <li>(i) employed or engaged in the department of the Public Service principally assisting the Minister in the administration of the <i>Police Act 1892</i>; and</li> <li>(ii) approved by the Commissioner of Police for the purposes of this definition.</li> </ul> </li> </ul> <p>Subclause 32(2) provides that an ‘authorised officer’ of this jurisdiction may issue a certificate certifying that the making of a local DVO, or a variation to a recognised order done locally, has been ‘properly notified’.</p> <p>Subclause 32(3) provides that a certificate issued under subclause (1) is admissible in evidence in any proceedings and is evidence of the matters certified.</p> <p>Subclause 32(4) is concerned with certificates issued in other jurisdictions. It provides that a certificate in writing purporting to be signed by an authorised officer of another jurisdiction and certifying that the making or variation of an order has been properly notified is admissible in evidence and is evidence of the matters certified.</p> <p>Subclause 32(5) provides that, 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. This is intended to avoid disputes regarding the authenticity of a certificate.</p>
<p><b>33. Regulations</b></p>	<p>Clause 33 provides for the Governor to make regulations prescribing matters required or permitted by this Act to be prescribed; or necessary or convenient to be prescribed for giving effect to the purposes of this Act.</p>

## PART 6 – Transitional provisions

	<b>Division 1 – Preliminary</b>
<b>34. Term used: commencement day</b>	Clause 34 provides that in this Part ‘commencement day’ means the day on which this Part comes into operation.
<b>35. Enforcement of DVOs under other provisions</b>	<p>Clause 35 preserves the enforceability of local DVOs made, or interstate or foreign orders registered, under the RO Act before the commencement of this legislation. This is intended to ensure that the commencement of this legislation does not render existing legal protections unenforceable.</p> <p>This is qualified by subclause 35(3), which reiterates that an order made or registered prior to the commencement day may be superseded, and therefore cancelled, by the making of a comparable order that is recognised under the NDVOS. This reinforces the position established in clause 14 – that a recognised, enforceable DVO supersedes and revokes a comparable earlier local DVO, irrespective of whether the earlier DVO is a recognised DVO.</p>
	<b>Division 2 – DVOs to which scheme applies</b>
<b>36. DVOs made in this jurisdiction</b>	<p>Clause 36 addresses the question of which WA DVOs are subject to Part 2 (which deals with the recognition and enforceability of DVOs under the NDVOS).</p> <p>The position is that Part 2 applies to any DVO made, or foreign order registered, in this jurisdiction on or after the commencement day.</p> <p>This means that only ‘new’ WA DVOs – those made on or after the commencement day – will be automatically recognised under the NDVOS.</p> <p>Older DVOs (those made prior to the commencement day) will not be automatically recognised, but may be declared to be recognised on application under Division 3 of this Part.</p>
<b>37. DVOs made in other jurisdictions</b>	<p>Clause 37 is concerned with the application of Part 2 to DVOs made in other jurisdictions.</p> <p>Subclause 37(1) provides that Part 2 applies to a DVO made in another jurisdiction that is a recognised DVO in that jurisdiction under that jurisdiction’s corresponding law. This ensures that each jurisdiction is able to determine which of its orders is recognised under the NDVOS.</p> <p>Subclause 37(2) seeks to avoid doubt by clarifying that a non-local DVO that is recognised in the jurisdiction in which it was made is</p>

	<p>recognised in WA irrespective of when the order was made. This means, for example, that if another jurisdiction provides for automatic recognition of 'older' DVOs (ie those made pre-commencement), those older orders will be recognised and enforceable in WA despite this Bill not providing the same recognition for 'old' WA orders.</p> <p>Subclause 37(3) provides for the recognition of variations and cancellations of non-local DVOs that occur prior to the commencement day. This ensures that the NDVOS recognises the most current version of the DVO (in the case of variation); or does not revive a cancelled order (in the case of a cancellation).</p> <p>Subclause 37(4) provides and confirms that a non-local DVO (and any variation thereof) does not become <u>enforceable</u> in WA until the commencement day.</p>
	<p><b>Division 3 – Extension of scheme to older DVOs</b></p>
<p><b>38. DVOs declared to be recognised DVOs</b></p>	<p>Division 2 of this Part provides that only those local DVOs made on or after the commencement day are automatically recognised and enforceable under the NDVOS. Division 3 creates a mechanism for bringing older DVOs within the scheme.</p> <p>Subclause 38(1) provides that an order that is declared by a court in WA or another participating jurisdiction to be a recognised DVO is taken to be a recognised DVO. The power to make such declarations is set out in Division 4 of this Part.</p> <p>Subclause 38(2) provides that a DVO declared to be a recognised DVO becomes enforceable in WA, under this Act, when the declaration is made (despite clause 16, which provides that recognised DVOs become enforceable when the person bound is 'properly notified'). Relevantly, clause 40 provides that a court may refuse to make a declaration if it is not satisfied that proper notification has occurred.</p>
<p><b>39. DVOs declared to be recognised in other jurisdictions before commencement day</b></p>	<p>Clause 39 deals with declarations made in other jurisdictions prior to the commencement day.</p> <p>Subclause 39(1) provides for the recognition of such declarations in WA.</p> <p>If a DVO that is the subject of such a declaration (that is, a declaration in another jurisdiction prior to the commencement day) is subsequently varied or cancelled prior to the commencement day, the variation or cancellation is recognised by virtue of subclause 39(2). This ensures that Part 2 applies to the most current version of the DVO (in the case of variation); or does not revive a cancelled order</p>

	<p>(in the case of a cancellation).</p> <p>Subclause 39(3) confirms that a DVO that is declared to be a recognised DVO prior to the commencement day (and any variation to such a DVO) does not become enforceable in WA until the commencement day.</p>
	<p><b>Division 4 – Power to declare DVO to be recognised</b></p>
<p><b>40. Power to declare DVO to be recognised</b></p>	<p>Subclause 40(1) provides that a court may, by order, declare a DVO made in any jurisdiction to be a recognised DVO in this jurisdiction.</p> <p>Subclause 40(2) provides that a declaration may be made in relation to a DVO that is in force in the issuing jurisdiction, and that is not already a recognised DVO in WA.</p> <p>Subclause 40(3) provides that a declaration may be made under this clause even if the issuing jurisdiction is not a ‘participating jurisdiction’ (a jurisdiction in which a corresponding law is enacted).</p> <p>Subclause 40(4) provides that a court must make a declaration on application (if done in accordance with this Division) unless the court decides to refuse to make the declaration in the interests of justice.</p> <p>Without limiting the court’s discretion to refuse an application for other reasons, the court may refuse an application if it is not satisfied that the person has been properly notified of the making of the order in accordance with the law of the issuing jurisdiction: subclause 40(5)</p> <p>Subclause 40(6) stipulates that a court may only declare a general violence order to be a recognised DVO if the order was made in WA. ‘General violence order’ is defined in clause 8 to mean a violence restraining order made under the RO Act prior to 1 July; or a South Australian intervention order.</p> <p>These orders are treated differently because they are not specific to family violence; they are also used in categories of personal violence (such as between neighbours) that are outside the scope of the NDVOS. Accordingly, before declaring a general violence order to be recognised under the national scheme, the court must first satisfy itself that the order addresses a ‘domestic violence concern’ (this requirement is set out in clause 42).</p> <p>The prohibition on WA courts making declarations in relation to SA general violence orders reflects the reality that a WA court may not possess sufficient information to determine whether such an order relates to a domestic violence concern (and is therefore within the scope of the NDVOS).</p> <p>Subclause 40(7): Notice of a declaration is not to be served on the</p>

	<p>person bound by the DVO unless the person who makes the application consents to service. This is for important safety reasons: to ensure that the declaration process does not inadvertently result in the person bound being given information about the location of the protected person.</p>
<p><b>41. Application for order</b></p>	<p>Clause 41 sets out the requirements for an application for a declaration that a DVO is a recognised DVO. These are as follows:</p> <ul style="list-style-type: none"> <li>• An application may be made by a person who would be able to apply to vary a recognised DVO: subclause 41(1). Pursuant to clause 25, this means a person who would be able to apply to vary a local DVO under the RO Act.</li> <li>• The application must be made in a form approved by the court; and be accompanied by any information or evidence the court requires: subclause 41(2).</li> </ul> <p>Subclause 41(3) provides that notice of the application is not to be served on the person bound by the DVO. This is for important safety reasons: to ensure that the person bound is not inadvertently notified of the applicant's location.</p> <p>Consistent with the underlying safety objective, subclause 41(4) provides that the application must be determined in the absence of the person bound by the DVO.</p>
<p><b>42. Declarations relating to general violence orders</b></p>	<p>Clause 42 concerns declarations for general violence orders (those classes of WA and SA order that are not specific to domestic violence and therefore may or may not be relevant to the national scheme):</p> <ul style="list-style-type: none"> <li>• An application for a declaration that a general violence order is a recognised DVO may be made as if the order were a DVO: subclause 42(1).</li> <li>• Before making the declaration, the court must decide whether the order addresses a domestic violence concern (and, accordingly, is a DVO): subclause 42(2). 'Domestic violence concern' is defined in clause 9).</li> <li>• The court is not to make the declaration unless the court decides that the order addresses a domestic violence concern. This is because the scope of the national scheme is limited to orders that pertain to domestic violence.</li> <li>• As for clause 41, notice of the application is not to be served on the person bound by the order: subclause 41(3).</li> <li>• As for clause 41, the application must be determined in the absence of the person bound by the order: subclause 41(4).</li> </ul>

**Part 7 — Restraining Orders Act 1997 amended**

<b>43. Act amended</b>	Clause 43 provides that this Part amends the RO Act.
<b>44. Section 3 amended</b>	Clause 44 inserts reference to the <i>Domestic Violence (National Recognition) Act 2017</i> – the present legislation – into the RO Act definition of ‘application’. This will ensure that an application to vary or cancel an order under this legislation is subject to the same processes and rules as an application initiated under the RO Act.
<b>45. Section 8 amended</b>	Clause 45 amends section 8 of the RO Act, which sets out the matters that must be explained to persons who are restrained or protected by an order under that Act. The amendment requires that the explanation of an FVRO include reference to the effect of the national scheme (as established under the present legislation).
<b>46. Sections 74A and 74B inserted</b>	<p>Clause 46 inserts two new sections – 74A and 74B – into Part 7 of the RO Act, which deals with the registration of interstate orders.</p> <p>New section 74A(1) prevents the registration of an interstate order that is an interstate DVO as defined in the present legislation. This is because the inter-jurisdictional recognition of such orders will, upon the commencement of the present legislation, be a matter for the national scheme. Section 74A(2) seeks to avoid doubt by expressly confirming that subsection (1) applies irrespective of when the interstate order was made (if the order is made prior to the commencement of the national scheme and is not automatically recognised, it can be brought within the national scheme via the declaration process set out in Part 6)</p> <p>New section 74B concerns interstate orders registered prior to the commencement of the present legislation: subclause 74(1). The position established is that the registration is not affected unless and until the order becomes a recognised DVO in WA. Where such an order becomes recognised, the registration under the RO Act ceases and the present legislation applies.</p>