

NORTHERN TERRITORY OF AUSTRALIA

DOMESTIC VIOLENCE ACT

As in force at 22 February 2006

Table of provisions

Part 1

Preliminary

1	Short title	1
2	Commencement	1
3	Definitions	1

Part 2

Restraining orders

4	Restraining order	3
5	Consent orders	6
6	Restraining order made by magistrate	7
6A	Restraining order made by police officer	8
6B	Review of order made by police officer	9
7	Power to remove and detain while order sought	10
8	Variation or revocation of order	11
8A	Variation of orders by telephone	11
8B	Variation of order ex parte in special circumstances	13
8C	Confirmation of order	14
9	Consent to variation or revocation of order	15
10	Breach of order	15
11	Enforcement of unregistered external restraining order	17
12	Evidence	18
12A	Court to explain enforcement of restraining order outside Territory	18
13	Court may order court to be closed	18
14	Order not to affect other liability	18
15	Costs not to be awarded except in certain circumstances	18

Part 3

Recognition of external restraining orders

17	Application for registration of external restraining order	19
18	Registration of external restraining order	19
19	Effect of registration of external restraining order	20
19A	Court not to vary registered New Zealand restraining order	20
19B	Variation of New Zealand restraining order of no effect in Territory	20
19C	Cancellation of registration of New Zealand restraining order	21
20	Variation, etc., of registered interstate restraining order	22

Part 3A Miscellaneous

20A	Regulations.....	23
20AA	Power to summon witnesses, require production of documents, &c.....	23
20AB	Chief Magistrate may make rules, &c.	23
20AC	Procedural directions.....	23
20AD	Cross-examination by unrepresented defendant.....	24
20AE	Unattested declaration of service	24
20AF	Family law orders	25

Part 4 Transitional

21	Transitional	25
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ENDNOTES

NORTHERN TERRITORY OF AUSTRALIA

As in force at 22 February 2006

DOMESTIC VIOLENCE ACT

An Act to provide for the making of restraining orders in relation to domestic violence and the registration and enforcement of such orders made in other jurisdictions, and for related purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Domestic Violence Act*.

2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3 Definitions

(1) In this Act, unless the contrary intention appears:

Clerk means the Registrar of the Local Court under the *Local Court Act*.

Court means the Court of Summary Jurisdiction.

external restraining order includes an interstate restraining order and a New Zealand restraining order.

interstate restraining order means an order made under a law of a State or another Territory of the Commonwealth declared by the Administrator by notice in the *Gazette* to be a law corresponding to section 4.

New Zealand restraining order means an order made under section 14 of the *Domestic Violence Act 1995* of New Zealand.

perpetrators' program order means an order under section 78K(1) of the *Sentencing Act*.

registered interstate restraining order means an interstate restraining order registered under Part 3.

registered New Zealand restraining order means a New Zealand restraining order registered under Part 3.

restraining order means:

- (a) an order made under section 4(1), 6(3) or 6A(3); or
- (b) an order referred to in paragraph (a) that is varied under Part 2,

and includes a registered interstate restraining order and registered New Zealand restraining order.

- (2) For the purposes of this Act, a person is in a domestic relationship with another person if he or she:

- (a) is or has been a relative of the other person, namely:
 - (i) a spouse or de facto partner or a former spouse or de facto partner;
 - (ii) a father, mother, grandfather, grandmother, stepfather, stepmother, father-in-law or mother-in-law;
 - (iii) a son, daughter, grandson, granddaughter, stepson, stepdaughter, son-in-law or daughter-in-law;
 - (iv) a brother, sister, half-brother, half-sister, brother-in-law or sister-in-law;
 - (v) an uncle, aunt, uncle-in-law or aunt-in-law;
 - (vi) a nephew or niece;
 - (vii) a cousin;
 - (viii) a relative according to Aboriginal tradition or contemporary social practice;
 - (ix) a great-uncle, great-aunt, great-nephew, great-niece, great-grandfather, great-grandmother, great-grandson or great-granddaughter; or
 - (x) a great-great-uncle, great-great-aunt, great-great-nephew, great-great-niece, great-great-grandfather, great-great-grandmother, great-great-granddaughter or great-great-grandson,

of the other person;

- (b) has or had the custody or guardianship of, or right of access to, the other person, or is or has been subject to the custody or guardianship of the other person or that other person has or has had a right of access to the person;
- (c) ordinarily or regularly resides or has resided with the other person, or with another relative, as specified in paragraph (a), of the other person;
- (d) is or has been a relative, as specified in paragraph (a), of a child of the other person; or
- (e) has or has had a personal relationship with the other person.

Part 2 Restraining orders

4 Restraining order

- (1) Where, on an application made in accordance with subsection (2), the Court or the Clerk is satisfied, on the balance of probabilities:
 - (a) that the defendant:
 - (i) has assaulted or caused personal injury to a person in a domestic relationship with the defendant or damaged property in the possession of that person; and
 - (ii) is, unless restrained, likely again to assault or cause personal injury to the person or damage the person's property;
 - (b) that the defendant:
 - (i) has threatened to assault or cause personal injury to a person in a domestic relationship with the defendant or threatened to damage property in the possession of the person; and
 - (ii) is, unless restrained, likely again to make such a threat or to carry out such a threat;
 - (c) that:
 - (i) the defendant has behaved in a provocative or offensive manner towards a person in a domestic relationship with the defendant;

- (ii) the behaviour is such as is likely to lead to a breach of the peace including, but not limited to, behaviour that may cause another person to reasonably fear violence or harassment against himself or herself or another; and
- (iii) the defendant is, unless restrained, likely again to behave in the same or a similar manner,

the Court or, subject to subsection (3) and any rule or practice direction under section 20AB, the Clerk, may make an order in accordance with subsection (1A).

(1A) For the purposes of subsection (1), the Court or the Clerk may make:

- (a) an order imposing such restraints on the defendant, and for such period as is specified in the order, as are necessary or desirable to prevent the defendant from acting in the apprehended manner; and/or
- (b) such other orders as are, in the opinion of the Court or the Clerk, just or desirable to make in the circumstances of the particular case, including, but not limited to, orders requiring the return of personal property to the defendant or the applicant, or the person on whose behalf the application was made.

(2) An application under this section may be made by:

- (a) a member of the Police Force; or
- (b) a person in a domestic relationship with the defendant:
 - (i) against whom, or against whose property; or
 - (ii) acting on behalf of another person in a domestic relationship with the defendant against whom, or against whose property,

the violence or behaviour the subject of the application was or is likely to be directed.

(3) An order under subsection (1):

- (a) may be made by the Court in the absence of the defendant, whether or not the defendant was summoned to appear at the hearing of the application; and

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- (b) may be made by the Clerk only where the defendant was not summoned to appear at, and has not appeared at, the hearing of the application (and for that purpose the Clerk has the necessary jurisdiction).
 - (3A) If:
 - (a) the Clerk is not satisfied that an order referred to in subsection (1) should be made; or
 - (b) the defendant, not having been summoned, appears at the hearing and does not consent to an order under section 5,the Clerk shall refer the application to the Court for decision.
 - (3B) Where the Clerk refers an application to the Court under subsection (3A), the Court may:
 - (a) make the order sought;
 - (b) direct that a further affidavit be filed; or
 - (c) give directions as to the application.
 - (3C) Where under subsection (3B) the Court directs that a further affidavit be filed, the Clerk may, on the filing of the affidavit, make the order sought.
 - (4) As soon as practicable after an order under subsection (1) is made, the Clerk shall cause a copy of the order to be served on the defendant and shall forward a copy of the order to the Commissioner of Police and, where the applicant is not a member of the Police Force, the applicant.
 - (5) Where an order under subsection (1) is made in the absence of the defendant and the defendant was not summoned to appear at the hearing of the application, the defendant shall be summoned to appear before the Court to show cause why the order should not be confirmed by the Court.
 - (8) Without limiting the generality of subsection (1), the Court or the Clerk may make an order under that subsection, or refuse to make an order, restraining the defendant from entering premises, or limiting the defendant's access to premises, whether or not the defendant has a legal or equitable interest in the premises, but before making or refusing to make such an order it or he or she shall consider the effect of making or refusing to make the order on:
 - (a) the accommodation of; and

- (b) any children of or in the care of,
- the persons affected by the proceedings.

5 Consent orders

- (1) Notwithstanding section 4(1)(a), (b) and (c) and (3), but subject to this section, the Court or the Clerk (and for that purpose the Clerk has the necessary jurisdiction) may, with the consent of the defendant and the person making an application, or on whose behalf an application was made, under section 4 or 6, make an order under that section.

- (1A) An order referred to in subsection (1) may be made by the Court or the Clerk notwithstanding that the defendant has not admitted, or has expressly denied:

- (a) an allegation made against him or her; or
- (b) the grounds of the application.

- (2) If the Clerk is not satisfied that an order referred to in subsection (1) should be made, he or she shall refer the application to the Court for decision.

- (3) Where the Clerk refers an application to the Court under subsection (2), the Court may:

- (a) make the order sought;
- (b) direct that a further affidavit be filed; or
- (c) give directions as to the application.

- (4) Where under subsection (3)(b) the Court directs that a further affidavit be filed, the Clerk may, on the filing of the affidavit, make the order sought.

- (5) Neither the Court nor the Clerk shall make an order in pursuance of this section unless the Court or the Clerk, as the case may be, has explained or caused to be explained to the defendant:

- (a) the purpose and effect of the proposed order;
- (b) the consequences that may follow if the defendant fails to comply with the proposed order; and
- (c) the means by which the proposed order may be varied or revoked.

6 Restraining order made by magistrate

- (1) If it is not practicable in particular circumstances to obtain from the Court or Clerk an order under section 4(1), a police officer may apply to a magistrate for an order under this section.
- (2) The application may be made by telephone, facsimile or other form of electronic communication.
- (3) Subject to subsections (5) and (6), the magistrate may make an order under this section in the same terms as an order the Court may make under section 4(1).
- (4) The order may be made even though the defendant has not been given an opportunity to answer any allegation in the application.
- (5) The magistrate may make the order only if satisfied:
 - (a) it is not practicable in the circumstances to obtain an order under section 4(1); and
 - (b) had the magistrate been sitting as the Court – the magistrate might reasonably have made an order under section 4(1).
- (6) In addition, before making or refusing to make an order of the type referred to in section 4(8), the magistrate must consider the effect of making or refusing to make the order on:
 - (a) the accommodation of the persons affected by the order; and
 - (b) any children of or in the care of the persons affected by the order.
- (7) The order has effect as if it were an order made under section 4(1).
- (8) The magistrate must record on the order the reasons for making it and the time and place for its return.
- (9) For subsection (8), the time for the return of the order must be as soon as practicable after its making.
- (10) The magistrate must inform the police officer of the terms of the order, the reasons for making it and the time and place for its return.
- (11) The police officer must:
 - (a) complete a form of order as directed by the magistrate and write on it the magistrate's name and the date and time it is made; and

- (b) as soon as practicable after the form of order is completed:
 - (i) serve a copy of it on the defendant; and
 - (ii) send the original of it to the Clerk.
- (12) The form of order served is taken to be a summons to the defendant to appear before the Court, at the time and place shown on it for its return, to show cause why the order should not be confirmed by the Court.

6A Restraining order made by police officer

- (1) An authorised police officer may make an order under this section if satisfied:
 - (a) it is not practicable in the circumstances to obtain an order under section 4(1); and
 - (b) it is necessary to ensure the immediate safety of the person for whose protection the order is to be made; and
 - (c) the Court might reasonably have made an order under section 4(1).
- (2) In addition, before making or refusing to make an order of the type referred to in section 4(8), the police officer must consider the effect of making or refusing to make the order on:
 - (a) the accommodation of the persons affected by the order; and
 - (b) any children of or in the care of the persons affected by the order.
- (3) The police officer may make the order in the same terms as an order the Court may make under section 4(1).
- (4) The order may be made even though the defendant has not been given an opportunity to answer any allegation made in relation to the making of the order.
- (5) The order has effect as if it were an order made under section 4(1).
- (6) The police officer must record on the order the reasons for making it and the time and place for its return.
- (7) For subsection (6), the time for the return of the order must be as soon as practicable after its making.

- (8) As soon as practicable after the order is made, a police officer must:
 - (a) serve a copy of it on the defendant; and
 - (b) inform the defendant of the defendant's right to apply for a variation or revocation of the order under section 6B; and
 - (c) send the original of the order to the Clerk.
- (9) The order served is taken to be a summons to the defendant to appear before the Court, at the time and place shown on the order for its return, to show cause why the order should not be confirmed by the Court.
- (10) In this section:

authorised police officer means:

- (a) a police officer of or above the rank of Senior Sergeant; or
- (b) the officer in charge for the time being of a police station.

6B Review of order made by police officer

- (1) This section applies to an order made under section 6A(3).
- (2) The defendant may apply for a variation or revocation of the order.
- (3) If the defendant wants to apply for a variation or revocation of the order under subsection (2):
 - (a) the defendant must inform a police officer; and
 - (b) the police officer must facilitate the application.
- (4) Without limiting subsection (3)(b), the police officer must:
 - (a) contact a magistrate; and
 - (b) ensure the application complies with any rules or practice directions made or issued by the Chief Magistrate under section 20AB relating to the time and manner for making the application; and
 - (c) ensure the magistrate is given the information required for the application.
- (5) The application may be made by telephone, facsimile or other form of electronic communication.

- (6) The magistrate may decide to vary or revoke or refuse to vary or revoke the order.
- (7) The magistrate must record the reasons for the decision and inform the police officer of the reasons.
- (8) If the magistrate varies the order, the magistrate must also inform the police officer of the terms of the order as varied and the time and place for the return of the order as varied.
- (9) If the magistrate varies or revokes the order, the police officer must:
 - (a) complete a form of order as directed by the magistrate and write on it the magistrate's name and the date and time it is made; and
 - (b) as soon as practicable after the form of order is completed:
 - (i) serve a copy of it on the parties; and
 - (ii) send the original of it to the Clerk.
- (10) If the magistrate varies the order, the form of order served is taken to be a summons to the defendant to appear before the Court, at the time and place shown on it for its return, to show cause why the order as varied should not be confirmed by the Court.
- (11) If the magistrate refuses to vary or revoke the order, the police officer must inform the defendant of the decision and the reasons for it.

7 Power to remove and detain while order sought

- (1) Where a member of the Police Force intends to apply for an order under section 6 or make an order under section 6A against a person and believes on reasonable grounds that unless the person is removed a person in a domestic relationship with the person, for whose protection the order is to be sought, will be in imminent danger of suffering personal injury at the hands of the person or an aggravation of personal injuries already sustained, the member may enter any premises on or in which the member believes the person to be, take the person into custody and remove the person to the nearest police station or other place where an application under section 6 or an order under section 6A can conveniently be made.
- (2) A member of the Police Force who under subsection (1) removes a person to a police station or other place may detain the person at that police station or place for as long as is reasonably necessary for an application under section 6 in relation to the person to be

made and an order given or refused but, in any case, for not more than 4 hours after the person was first taken into custody.

- (3) A member of the Police Force may apply such force as is reasonably necessary in the exercise of the member's powers under subsection (1) and has the same power and protection in relation to the exercise of those powers as the member would have had the member been arresting the person for an offence.

8 Variation or revocation of order

- (1) A party to a proceeding in which a restraining order has been made may, at any time, apply to the Court for a variation or revocation of the order.
- (2) The Court may, on receiving an application under subsection (1) or of its own motion, after all parties and other persons who, in the opinion of the Court, have a direct interest in the outcome have had an opportunity to be heard on the matter, vary or revoke, or refuse to vary or revoke, a restraining order.
- (3) Where a restraining order is varied or revoked under this section, the Clerk shall, as soon as practicable, cause a copy of the order as so varied or notice of the revocation, as the case may be, to be served on the defendant and shall also notify the Commissioner of Police and, where the applicant in relation to the original order was not a member of the Police Force, the applicant, of the variation or revocation.
- (4) The person on whose behalf an application is made under section 4 or 6(1) or on whose behalf an order is made under section 6A(3) is, in addition to the member of the Police Force or the person who made the application, a party to a proceeding in respect of the application.

8A Variation of orders by telephone

- (1) A member of the Police Force may, by telephone, apply to a magistrate for a variation of a restraining order under this section.
- (2) Before applying to a magistrate for an order under this section, the member of the Police Force shall complete the application part of the prescribed form by indicating the grounds on which the variation of the order is sought and shall subsequently reduce to writing and include any additional information given to the magistrate orally.
- (3) Where, in the opinion of the magistrate to whom an application under subsection (1) is made, it is not practicable for the member of the Police Force, in the circumstances of the case, to obtain from the Court a variation of an order under section 8(2), the magistrate

may vary an order under this section, notwithstanding that:

- (a) the person against whom the order is made has not been given an opportunity to answer any allegation in the application; or
 - (b) a person who has a direct interest in the outcome has not had an opportunity to be heard on the matter.
- (4) A magistrate who varies an order under this section shall:
- (a) complete the application part of the prescribed form and reduce to writing and include any additional information provided by the applicant;
 - (b) complete and sign the order as varied on the prescribed form;
 - (c) determine a time, being a time as soon as practicable after varying the order, by which the order as varied is to be returned;
 - (d) record on the order as varied the reasons for making it and the time and place at which it is to be returned;
 - (e) inform the member of the Police Force, by telephone, of the terms of the order as varied, the reasons for making it and the time at and place at which the order as varied is to be returned; and
 - (f) as soon as practicable, cause the completed and signed prescribed form to be forwarded to the Clerk for the Court file.
- (5) On being informed under subsection (4) of the terms of the order as varied, the member of the Police Force shall complete the relevant order parts of the prescribed form as directed by the magistrate.
- (6) As soon as practicable after an order is varied under this section, the member of the Police Force shall cause a copy of the order as varied completed under subsection (5) to be served on the defendant and shall forward a copy to the Clerk for the Court file.
- (7) A form of variation of an order referred to in subsection (5) shall be deemed to be a summons to the defendant requiring the defendant to appear before the Court at the time and place shown on the form for its return, to show cause why the order as varied should not be confirmed by the Court.

8B Variation of order ex parte in special circumstances

- (1) A party to a proceeding in which a restraining order has been made may apply to the Court or the Clerk for a variation of the restraining order.
- (2) Where, in the opinion of the Court or the Clerk, it is not practicable for the applicant, in the circumstances of the case, to obtain from the Court a variation of an order under section 8(2), the Court or the Clerk may vary a restraining order under this section.
- (3) An order may be varied under subsection (2) notwithstanding that:
 - (a) the person against whom the order is made has not been given an opportunity to answer any allegation in the application; or
 - (b) other persons who, in the opinion of the Court or the Clerk, have a direct interest in the outcome have not had an opportunity to be heard on the matter.
- (4) If:
 - (a) the Clerk is not satisfied that an order should be varied under subsection (2); or
 - (b) the defendant, not having been summoned, appears at the hearing and does not consent to a variation of the order under section 9,the Clerk shall refer the application to the Court for decision.
- (5) Where the Clerk refers an application to the Court under subsection (4), the Court may:
 - (a) vary the order;
 - (b) direct that a further affidavit be filed; or
 - (c) give directions as to the application.
- (6) Where under subsection (5) the Court directs that a further affidavit be filed, the Clerk may, on the filing of the affidavit, make the variation sought.

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- (7) Where a restraining order is varied under this section, the Clerk shall, as soon as practicable, cause a copy of the order as varied to be served on the defendant and shall forward a copy of the variation of the order to:
- (a) the Commissioner of Police; and
 - (b) where the application for the variation of a restraining order was not made by a member of the Police Force, the applicant.
- (8) A form of order referred to in subsection (7) shall be deemed to be a summons to the defendant requiring the defendant to appear before the Court at the time and place shown on the form for its return, to show cause why the variation of the order should not be confirmed by the Court.
- (9) A person on whose behalf an application is made under this section is, in addition to the member of the Police Force or the person who made the application, a party to a proceeding in respect of the application.

8C Confirmation of order

- (1) This section applies if a defendant is summoned under section 4(5), 6(12), 6A(9), 6B(10), 8A(7) or 8B(8) to appear before the Court to show cause why a restraining order or variation of a restraining order should not be confirmed.
- (2) Subject to section 20AC, the person on whose behalf the order is made may appear at the hearing.
- (3) If the defendant has been summoned under section 6(12) or 6A(9), a police officer or representative of the Police Force must appear at the hearing.
- (4) At the hearing, the Court may confirm, vary or revoke the order.
- (5) However, the Court must not confirm the order unless:
- (a) it is satisfied the defendant has been served with a copy of the order in accordance with section 10(2); and
 - (b) it has considered any evidence before it and submissions from the parties.
- (6) As soon as practicable after the Court makes its decision, the Clerk must serve a copy of the order recording the decision on the defendant.

9 Consent to variation or revocation of order

- (1) Notwithstanding section 8(2), but subject to this section, the Court or the Clerk (and for that purpose the Clerk has the necessary jurisdiction) may, with the consent of the defendant and the person making an application, or on whose behalf an application was made, on application by a party to a proceeding, vary or revoke a restraining order made under section 4(1)(a), (b) or (c).
- (2) If the Clerk is not satisfied that an order referred to in subsection (1) should be varied or revoked, he or she shall refer the application to the Court for decision.
- (3) Where the Clerk refers an application to the Court under subsection (2), the Court may:
 - (a) make the order sought; or
 - (b) give directions as to the application.
- (4) The Court or the Clerk shall not make an order for variation in pursuance of this section unless the Court or the Clerk has explained or caused to be explained to the defendant:
 - (a) the purpose and effect of the variation; and
 - (b) the consequences that may follow if the defendant fails to comply with the proposed variation.

10 Breach of order

- (1) A person against whom a restraining order is in force who has been served with a copy of the order or the order as varied and who contravenes or fails to comply with the order is, subject to subsection (3), guilty of a regulatory offence.

Penalty: For a first offence – \$2,000 or imprisonment for 6 months.

- (1A) Despite the *Sentencing Act*, where a person is found guilty of a second or subsequent offence against subsection (1), the Court must sentence the person to imprisonment for not less than 7 days but not more than 6 months.
- (1AB) However, subsection (1A) does not apply to an order made under section 6A unless the order has been confirmed by the Court under section 8C

- (1B) Despite the *Sentencing Act*, the Court must not make any other order in respect of a person referred to in subsection (1A) if its effect would be to release the person from the requirement to actually serve the term of imprisonment imposed under that subsection.
- (1C) For the purposes of subsection (1), a person is to be taken to have contravened or failed to comply with a restraining order if the person breaches a perpetrators' program order in force at any time while the restraining order is in force.
- (2) For the purposes of subsection (1), a copy of an order or order as varied is or shall be deemed to have been served on a defendant to whom the order relates where:
- (aa) the defendant was before the Court at the time the order, or the variation of the order, was made and the Court has explained to the defendant the purpose and effect of the order and the consequences that may follow if the defendant fails to comply with it;
 - (a) it is served personally on the defendant;
 - (b) in the case of an order under section 6(3) or 8A(2) – the magistrate making the order advises the defendant by telephone of the terms of the order;
 - (c) it is properly addressed and posted by AR Security Post to the defendant at the defendant's last known or most usual postal address or place of abode and the defendant has acknowledged receipt of the mail containing the order in accordance with postal procedures;
 - (d) its existence and terms are made known orally or in writing to the defendant by a member of the Police Force; or
 - (e) it is served in such other manner as the Court or a magistrate orders.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves, on the balance of probabilities, that:
- (a) the contravention or failure was as the result of such an emergency that an ordinary person similarly circumstanced would have acted in the same or a similar way; or
 - (b) the act complained of was reasonable and no more than was necessary to enable the defendant to exercise a right or perform a duty specifically given to or imposed on the

defendant by a court of the Commonwealth or the Territory or of a State or another Territory of the Commonwealth exercising Territory or Commonwealth jurisdiction.

- (4) Without prejudice to any other mode of proof, an endorsement on the Court file signed by the Court or the Clerk by whom a restraining order in relation to a person was made or varied, specifying that:
- (a) the person specified in the endorsement was before the Court or the Clerk at the time the order was made or varied; and
 - (b) that the Court or the Clerk explained to the person the matters referred to in subsection (2)(aa),

is prima facie proof of the matters specified.

11 Enforcement of unregistered external restraining order

- (1) This section applies if a member of the Police Force forms the opinion, on reasonable grounds, that a person in the Territory is a person against whom an external restraining order (not registered under section 18) is in force:
- (a) in the case of an interstate restraining order – in the State or Territory in which the order was made; or
 - (b) in the case of a New Zealand restraining order – in New Zealand.
- (2) A member of the Police Force who forms the opinion referred to in subsection (1) must, as soon as practicable:
- (a) make a declaration of the opinion in accordance with the prescribed form; and
 - (b) forward the declaration to the Commissioner of Police.
- (3) Not later than 72 hours after a member of the Police Force makes a declaration under subsection (2), the member may exercise his or her powers in relation to the person against whom the external restraining order is in force as if the external restraining order were a restraining order made under Part 2.
- (4) In relation to the exercise of powers under subsection (3), section 10(1) has effect for all purposes as if the external restraining order were a restraining order referred to in section 10(1).

12 Evidence

In making, confirming, varying or revoking a restraining order the Court or a magistrate may admit and act on hearsay evidence.

12A Court to explain enforcement of restraining order outside Territory

If the Court or Clerk makes or varies a restraining order:

- (a) in the presence of the defendant; or
- (b) in the absence of the defendant but in the presence of the defendant's legal representative,

the Court or Clerk must explain to the defendant or legal representative (as applicable) that the restraining order may be registered and enforced, without notice to the defendant, in a State or another Territory of the Commonwealth or in New Zealand if there is a law in force in the relevant jurisdiction to provide for the registration and enforcement of restraining orders made under this Act.

13 Court may order court to be closed

The Court may, if it thinks fit, order that all or any persons (except the parties) shall go and remain outside and beyond the hearing of the Court.

14 Order not to affect other liability

A restraining order may be made or varied under this Act notwithstanding that a criminal proceeding has been commenced against the person against whom it is sought or made and the making or varying of an order under this Act does not, except as provided in this Act, affect the civil or criminal liability of a person against whom it is made in respect of the apprehended action of the person to which the order relates.

15 Costs not to be awarded except in certain circumstances

Costs shall not be awarded against an applicant in respect of the refusal of the Court to make or confirm a restraining order unless the Court is satisfied that the making of the application for the order was unreasonable and in bad faith.

Part 3 Recognition of external restraining orders

17 Application for registration of external restraining order

- (1) A person may apply to the Clerk for the registration of an external restraining order.
- (2) An application under subsection (1) shall:
 - (a) be made in a form approved by the Clerk;
 - (b) be accompanied by a copy of the external restraining order; and
 - (c) be accompanied by such evidence of effective service of the external restraining order on the person against whom it was made as the Clerk considers appropriate.

18 Registration of external restraining order

- (1) On receipt of an application under section 17, the Clerk shall:
 - (a) register the external restraining order to which the application relates; or
 - (b) refer the external restraining order to the Court for adaptation and modification.
- (2) On the referral of an external restraining order under section (1)(b), the Court may make such adaptations and modifications to the order as the Court considers necessary or desirable for its effective operation in the Territory.
- (3) The Clerk shall register an external restraining order which has been adapted and modified under subsection (2).
- (4) On registering an external restraining order, the Clerk shall:
 - (a) provide the Commissioner of Police with a copy of the registered interstate restraining order; and
 - (b) notify the Registrar of the court which made the external restraining order that the order, or the order as adapted and modified, has been so registered.
- (5) Notice of the registration of an external restraining order shall not be served on the person against whom the order was made except where the person who applied for the registration has consented to that service.

- (6) A registered external restraining order is registered for the period during which the order, or the order as adapted and modified, is in force.

19 Effect of registration of external restraining order

An external restraining order which has been registered under section 18:

- (a) has the same effect as a restraining order made under Part 2; and
- (b) may be enforced against a person as if it were a restraining order which had been made under Part 2 and as if a copy of the record of the order had been served on the person in accordance with section 10.

19A Court not to vary registered New Zealand restraining order

The Court must not vary:

- (a) a registered New Zealand restraining order as it applies in the Territory; or
- (b) the period during which a registered New Zealand restraining order has effect in its operation in the Territory.

19B Variation of New Zealand restraining order of no effect in Territory

- (1) In this section:

original order means a New Zealand restraining order that is registered under section 18.

subsequent order means, in relation to an original order, the original order as varied by a court in New Zealand after the original order has been registered under section 18.

- (2) A subsequent order has no effect in the Territory unless it is registered under section 18 following an application made under section 17.
- (3) The registration of a subsequent order has the effect of revoking the original order.
- (4) An original order remains in force until:
 - (a) the expiry of the period during which it has effect in its operation in the Territory;

- (b) it is revoked by virtue of subsection (3); or
- (c) the cancellation of the registration of the original order under section 19C(1)(a) or (c).

19C Cancellation of registration of New Zealand restraining order

- (1) The Court must cancel the registration of a registered New Zealand restraining order if the Court is satisfied that:
 - (a) the New Zealand restraining order has ceased to have effect in New Zealand;
 - (b) the registered New Zealand restraining order has been revoked by virtue of section 19B(3); or
 - (c) a restraining order (other than an interim restraining order) has been made under section 4(1) or 6(3) in relation to:
 - (i) the person for whose benefit the registered New Zealand restraining order was made; and
 - (ii) the person against whom the registered New Zealand restraining order was made.
- (2) The Court may cancel the registration of a registered New Zealand restraining order on receipt of an application for its cancellation made by any of the following persons:
 - (a) a person who applied for the registration of the New Zealand restraining order;
 - (b) a person for whose benefit the registered New Zealand restraining order was made;
 - (c) a person against whom the registered New Zealand restraining order was made;
 - (d) a person granted leave by the Court to make the application.
- (3) An application by a person referred to in subsection 2(a), (b) or (d) may be heard and determined in the absence of the person against whom the registered New Zealand restraining order was made.
- (4) On the cancellation under this section of the registration of a registered New Zealand restraining order, the Clerk must give notice of the cancellation to the Commissioner of Police and the Registrar of the court that made the New Zealand restraining order.

20 Variation, etc., of registered interstate restraining order

- (1) In this section, ***prescribed person*** means:
- (a) a person who applied for the registration of an interstate restraining order;
 - (b) a person for whose benefit a registered interstate restraining order has been made;
 - (c) a person against whom a registered interstate restraining order has been made; or
 - (d) a person whom the Court has granted leave to make an application under this section.

(1A) If:

- (a) an interstate restraining order is registered under section 18; and
- (b) a court in the State or Territory in which the interstate restraining order was made varies or revokes the interstate restraining order,

the variation or revocation has no effect in the Territory.

- (2) A prescribed person may apply to the Court for one or more of the following:
- (a) the variation of a registered interstate restraining order as it applies in the Territory;
 - (b) the variation of the period during which a registered interstate restraining order has effect in its operation in the Territory;
 - (c) the cancellation of the registration of a registered interstate restraining order.
- (3) On receipt of an application under subsection (2), the Court may do one or more of the acts specified in that subsection.
- (4) An application by a person referred to in subsection (1)(a), (b) or (d) may be heard and determined in the absence of a person against whom the registered interstate restraining order has been made.
- (5) A registered interstate restraining order varied under subsection (2)(a) or (b) is registered for the period during which the order, as varied, has effect in its operation in the Territory.

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- (6) On the variation of a registered interstate restraining order or the cancellation of the registration of an interstate restraining order under this section, the Clerk must give notice of the variation or cancellation to the Commissioner of Police and the Registrar of the court that made the interstate restraining order.

Part 3A Miscellaneous

20A Regulations

The Administrator may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

20AA Power to summon witnesses, require production of documents, &c.

- (1) If it appears to the Court or the Clerk that a person is capable of furnishing information, giving evidence or producing documents that is or are relevant to an application under this Act, the Court or the Clerk may order a summons to be issued requiring that person to appear before the Court at a time and place specified in the summons and/or to appear and produce any such document in that person's possession or under his or her control.
- (2) A person who, without reasonable excuse, fails to comply with a summons under subsection (1) is guilty of an offence.

Penalty: \$2,000.

20AB Chief Magistrate may make rules, &c.

The Chief Magistrate may make rules and issue practice directions for the purposes of this Act, including, but not limited to, directions relating to the exercise by the Clerk of his or her jurisdiction under this Act.

20AC Procedural directions

- (1) The Court may give such procedural directions as it thinks necessary to ensure the fair and expeditious determination of an application including, but not limited to:
 - (a) directions in respect of the right of a party to an application, other than the defendant, to appear; and

(b) directions in accordance with subsection (2).

- (2) Notwithstanding that a person would not, except for this section, have legal standing to bring an action in his or her own right, the Court may give such directions as are necessary to enable a person seeking to make an application under this Act to do so.

20AD Cross-examination by unrepresented defendant

Notwithstanding any other law in force in the Territory, the Court may, of its own motion or on application by a party to a proceeding under this Act, where the Court is of the opinion that it is just or desirable to do so, order that in the examination of witnesses, a person against whom a restraining order is sought, or against whom a restraining order is in force, who is not represented by a legal practitioner:

- (a) is not entitled to cross-examine directly a person who is in a domestic relationship with him or her; and
- (b) shall put any question to the person who is in a domestic relationship with him or her by stating the question to the Court or another person authorised by the Court, and the Court or the authorised person is to repeat the question accurately to the person.

20AE Unattested declaration of service

- (1) Without prejudice to any other mode of proof, the service on a person of an order for the purposes of this Act may be proved by an unattested declaration of service in the prescribed form.
- (2) The Court may require the person making the declaration for the purposes of subsection (1) to be called as a witness, or may require further evidence of the facts.
- (3) A document purporting to be a declaration under this section shall, subject to subsection (2), be received in evidence in any court or legal proceeding as sufficient proof of the service of the order to which it relates, without proof of the signature or of the official character of the person or persons taking or signing it.
- (4) If any declaration made under this section is untrue in any material particular, the person wilfully making the false declaration is guilty of wilful and corrupt perjury, and is punishable accordingly.

20AF Family law orders

- (1) A person applying for a restraining order or to vary or revoke a restraining order must inform the Court, magistrate or Clerk to whom the application is made of any family law orders that the person knows to be in force in relation to the defendant.
- (2) Subsections (3) and (4) apply if a police officer intends to:
 - (a) apply to a magistrate for a restraining order or to vary or revoke a restraining order; or
 - (b) make a restraining order under section 6A(3).
- (3) The police officer must make reasonable inquiries regarding the existence or otherwise of any family law orders in force in relation to the defendant.
- (4) When requested to do so, a person must inform the police officer of any family law orders that the person knows to be in force in relation to the defendant.
- (5) An action of the Court, magistrate, Clerk or police officer is not invalid merely because of the failure of a person to provide information in accordance with subsection (1) or (4).
- (6) In this section:

family law order means a contact order within the meaning of Part VII, Division 11 of the *Family Law Act* (Cth).

Part 4 Transitional**21 Transitional**

- (1) Where immediately before the commencement of this Act:
 - (a) there was in force an order under Division 8 of Part IV of the *Justices Act*; or
 - (b) an application had been made or a matter was in process under that Division and not disposed of before that commencement,

the order shall continue in force, or the application or matter shall be dealt with or shall proceed, as if it were made or commenced under this Act.

- (2) Part 3 extends to an interstate restraining order made before the commencement of this Act.

ENDNOTES

1**KEY**

Key to abbreviations

amd = amended
 app = appendix
 bl = by-law
 ch = Chapter
 cl = clause
 div = Division
 exp = expires/expired
 f = forms
 Gaz = Gazette
 hdg = heading
 ins = inserted
 lt = long title
 nc = not commenced

od = order
 om = omitted
 pt = Part
 r = regulation/rule
 rem = remainder
 renum = renumbered
 rep = repealed
 s = section
 sch = Schedule
 sdiv = Subdivision
 SL = Subordinate Legislation
 sub = substituted

2**LIST OF LEGISLATION*****Domestic Violence Act 1992 (Act No. 67, 1992)***

Assent date 14 December 1992
 Commenced 1 January 1994 (*Gaz* G51, 22 December 1993, p 3)

Domestic Violence Amendment Act 1993 (Act No. 36, 1993)

Assent date 14 September 1993
 Commenced 14 September 1993

Domestic Violence Amendment Act 1994 (Act No. 60, 1994)

Assent date 24 October 1994
 Commenced 1 May 1995 (*Gaz* S17, 28 April 1995)

Domestic Violence Amendment Act 1996 (Act No. 57, 1996)

Assent date 10 December 1996
 Commenced 1 January 1997 (*Gaz* S39, 19 December 1996)

Domestic Violence Amendment Act 1998 (Act No. 90, 1998)

Assent date 11 December 1998
 Commenced 13 January 1999 (s 2, s 2 *Sentencing Amendment Act (No. 2) 1998* (Act No. 91, 1998) and *Gaz* G1, 13 January 1999, p 6)

Domestic Violence Amendment Act 1999 (Act No. 40, 1999)

Assent date 31 August 1999
 Commenced 13 October 1999 (*Gaz* G40, 13 October 1999, p 2)

Statute Law Revision Act 2001 (Act No. 3, 2001)

Assent date 22 March 2001
 Commenced 22 March 2001

Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003 (Act No. 1, 2004)

Assent date 7 January 2004
 Commenced 17 March 2004 (*Gaz* G11, 17 March 2004, p 8)

***Police Administration Amendment (Powers and Liability) Act 2005*(Act No. 11, 2005)**

Assent date 17 March 2005
Commenced 20 April 2005 (*Gaz* G16, 20 April 2005, p 5)

***Domestic Violence Amendment (Police Orders) Act 2005*(Act No. 38, 2005)**

Assent date 22 November 2005
Commenced 22 February 2006 (*Gaz* G8, 22 February 2006, p 5)

3 SAVINGS AND TRANSITIONAL PROVISIONS

s 12 *Domestic Violence Amendment Act 1999* (Act No. 40, 1999)

4 LIST OF AMENDMENTS

s 3	amd No. 60, 1994, s 4; No. 90, 1998, s 3; No. 40, 1999, s 4; No. 1, 2004, s 62; No. 38, 2005, s 4
s 4	amd No. 36, 1993, s. 3; No. 60, 1994, s 5; No. 38, 2005, s 5
s 5	amd No. 60, 1994, ss 6 and 11
s 6	amd No. 60, 1994, s 7 sub No. 38, 2005, s 6
ss 6A – 6B	ins No. 38, 2005, s 6
s 7	amd No. 36, 1993, s 3; No. 60, 1994, s 11; No. 40, 1999, s 11; No. 38, 2005, s 7
s 8	amd No. 60, 1994, s 8; No. 38, 2005, s 8
s 8A	ins No. 57, 1996, s 4 amd No. 38, 2005, s 9
s 8B	ins No. 57, 1996, s 4 amd No. 38, 2005, s 10
s 8C	ins No. 38, 2005, s 11
s 9	amd No. 60, 1994, s 11
s 10	amd No. 36, 1993, s 3; No. 60, 1994, s 9; No. 57, 1996, s 5; No. 90, 1998, s 4; No. 3, 2001, s 8; No. 38, 2005, s 12
s 11	sub No. 40, 1999, s 5
s 12A	ins No. 40, 1999, s 6
s 16	rep No. 11, 2005, s 19
pt 3 hdg	amd No. 40, 1999, s 11
ss 17 – 19	amd No. 40, 1999, s 11
ss 19A – 19C	ins No. 40, 1999, s 7
s 20	amd No. 40, 1999, s 8
pt 3A hdg	ins No. 40, 1999, s 10
s 20A	ins No. 36, 1993, s 2
pt 3A hdg	ins No. 60, 1994, s 10 om No. 40, 1999, s 9
s 20AA	ins No. 60, 1994, s 10 amd No. 57, 1996, s 6
ss 20AB – 20AC	ins No. 60, 1994, s 10
ss 20AD – 20AE	ins No. 57, 1996, s 7
s 20AF	ins No. 57, 1996, s 7 sub No. 38, 2005, s 13