

Note

In order to give effect to the Cross-border Justice Act 2009, this law must be applied with the modifications mentioned in section 13 of the Cross-border Justice Act 2009 as if this law had been altered in that way.

For modifications of this law prescribed by regulation, see Part 3, Division 10A of the Cross-border Justice Regulations 2009.

NORTHERN TERRITORY OF AUSTRALIA

PERSONAL VIOLENCE RESTRAINING ORDERS ACT 2016

As in force at 2 March 2022

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 2 March 2022

PERSONAL VIOLENCE RESTRAINING ORDERS ACT 2016

**An Act to provide for the protection of persons from personal violence,
and for related purposes**

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Personal Violence Restraining Orders Act 2016*.

2 Commencement

- (1) Part 4, Division 5 commences on the day on which the Administrator's assent to this Act is declared.
- (2) The remaining provisions of this Act commence immediately after the commencement of the *Local Court (Repeals and Related Amendments) Act 2016*.

3 Definitions

In this Act:

child means a person under the age of 18 years.

Court means the Local Court.

defendant, for a personal violence restraining order, means the person against whom the order is in force.

economic abuse, see section 7.

interim personal violence restraining order, see section 19(1).

intimidation, see section 5(1).

personal violence offence, see section 4.

personal violence restraining order, see section 10.

protected person, for a personal violence restraining order, means the person for whose protection the order is in force.

registrar, see section 3 of the *Local Court Act 2015*.

stalking, see section 6.

Note for section 3

The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.

4 **Personal violence offence**

A **personal violence offence** is:

- (a) an offence against any of the following provisions of the Criminal Code:
 - (i) Part V, Division 2;
 - (ii) Part VI, Divisions 3 to 6A;
 - (iii) section 211 or 212;
 - (iv) another provision prescribed by regulation; and
- (b) any of the following conduct committed by a person against another person:
 - (i) conduct causing harm;
 - (ii) damaging property, including the injury to or death of an animal;
 - (iii) intimidation;
 - (iv) stalking;
 - (v) economic abuse;
 - (vi) attempting or threatening to commit conduct mentioned in subparagraphs (i) to (v).

5 **Intimidation**

- (1) **Intimidation** of a person is:
 - (a) harassment of the person; or

- (b) any conduct that causes a reasonable apprehension of:
 - (i) violence to the person; or
 - (ii) damage to the property of the person, including the injury to or death of an animal that is the person's property; or
 - (c) any conduct that has the effect of unreasonably controlling the person or causes the person mental harm.
- (2) For deciding whether a person's conduct amounts to intimidation, consideration may be given to a pattern of conduct in the person's behaviour.

Examples of harassment for subsection (1)(a)

- 1 *Regular and unwanted contacting of the person, including by mail, phone, text messages, fax, the internet or another form of electronic communication.*
- 2 *Giving or sending offensive material to the person.*

Example of conduct for subsection (1)(b)(i)

Sexually coercive behaviour.

6 **Stalking**

Stalking, a person, includes engaging in any of the following conduct on at least 2 separate occasions with the intention of causing harm to the person or causing the person to fear harm to the person:

- (a) intentionally following the person;
- (b) intentionally watching or loitering in the vicinity of, or intentionally approaching, the place where the person lives, works or regularly goes for a social or leisure activity.

7 **Economic abuse**

Economic abuse, of a person, includes any of the following conduct (or any combination of them):

- (a) coercing the person to relinquish control over assets or income;
- (b) unreasonably disposing of property (whether owned by the person or owned jointly with the person or someone else) without consent;

- (c) unreasonably preventing the person from taking part in decisions over household expenditure or the disposition of joint property;
- (d) withholding money reasonably necessary for the maintenance of the person or a child of the person.

Example of coercion for paragraph (a)

Using stand-over tactics to obtain the person's credit card.

8 Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 8

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

9 Object of, and achievement of, Act

- (1) The object of this Act is to ensure the safety and protection of persons who experience personal violence outside a domestic relationship as defined in the *Domestic and Family Violence Act 2007*.
- (2) The object of this Act is to be achieved by providing for:
 - (a) the making of personal violence restraining orders to protect persons from certain violence; and
 - (b) the enforcement of the orders.

Part 2 Applying for and making orders

10 Application for order

Any of the following persons may apply for an order (a **personal violence restraining order**) for the protection of a person against another person:

- (a) the person whose protection is sought under the order;
- (b) an adult acting for the person whose protection is sought under the order;
- (c) a police officer.

11 Parties to order

- (1) Only one person may be named as the protected person and only one person may be named as the defendant in a personal violence restraining order.
- (2) The defendant named in a personal violence restraining order cannot be a child under the age of 15 years.

12 How application is made

An application for a personal violence restraining order must be made to the Court in accordance with the rules of the Court.

13 Notice of hearing of application

As soon as practicable after the application is filed, a registrar must give written notice to the person whose protection is sought and defendant of the time and place for the hearing of the application.

14 Referral to mediation

- (1) Before hearing an application for a personal violence restraining order, the Court must refer the person whose protection is sought and defendant for mediation under the *Community Justice Centre Act 2005*.
- (2) However, the Court must not make a referral and must proceed to hear the application if it is satisfied that a referral is not appropriate in the circumstances, including, for example, because:
 - (a) there is a history of violence committed against the person by the defendant; and
 - (b) there has been a previous attempt at mediation between the person and defendant in relation to the application and the attempt was not successful.
- (3) A referral stays the proceedings until a report is given to the Court under subsection (6).
- (4) The referral is taken to be an application under section 13 of the *Community Justice Centre Act 2005* for the provision of mediation services for a dispute between the person and defendant.
- (5) The Director of the Community Justice Centre must accept the referral.
- (6) The Director must give the Court a written report on the outcome of the mediation or attempted mediation.

- (7) The Court may refer the matter back to the Director with directions about the mediation.
- (8) In deciding the application for the personal violence restraining order, the Court must take a report of the Director into account.

15 Deciding application

- (1) The Court may decide to make a personal violence restraining order if it is satisfied on the balance of probabilities a personal violence offence has been committed, or is likely to be committed, by the defendant against the person whose protection is sought.
- (2) Otherwise, the Court must dismiss the application.
- (3) The Court may decide the application even if the defendant does not appear at the hearing.

16 Matters to be considered by Court

- (1) In deciding whether to make a personal violence restraining order, the Court must consider the safety and protection of the person whose protection is sought and any affected child to be of paramount importance.
- (2) In addition, the Court must consider the following:
 - (a) the defendant's criminal record as defined in the *Criminal Records (Spent Convictions) Act 1992*;
 - (b) the defendant's previous conduct whether in relation to the person, affected child or someone else;
 - (c) other matters the Court considers relevant.
- (3) In this section:

affected child, in relation to an application for a personal violence restraining order, means a child whose wellbeing is affected or likely to be affected by a personal violence offence committed or likely to be committed by the defendant against the person.

17 Content of orders

- (1) A personal violence restraining order may provide for any of the following:
 - (a) an order imposing the restraints on the defendant stated in the order as the Court considers are necessary or desirable to prevent the commission of a personal violence offence against the protected person;
 - (b) the other orders the Court considers are just or desirable to make in the circumstances of the particular case.
- (2) In this section:

restraint includes prohibition.

18 Notice of order

- (1) As soon as practicable after a personal violence restraining order or an interim personal violence restraining order is made, the Court must give a copy of it to:
 - (a) the protected person and defendant; and
 - (b) the Commissioner of Police.
- (2) A copy of the personal violence restraining order or the interim personal violence restraining order is given to the defendant if:
 - (a) the defendant was before the Court, whether physically or by audiovisual link, when the order was made; or
 - (b) the order is served on the defendant in a way mentioned in section 25 of the *Interpretation Act 1978*; or
 - (c) the order is given to the defendant by means of electronic communication; or
 - (d) the order is given to the defendant in another way ordered by the Court.

Note for subsection (2)(c)

The Electronic Transactions (Northern Territory) Act 2000 provides for the requirements of transactions by means of electronic communication.

- (3) In this section:

audiovisual link means a facility (including closed-circuit television) that enables audio and visual communication between persons at different places.

electronic communication, see section 5 of the *Electronic Transactions (Northern Territory) Act 2000*.

19 Interim personal violence restraining order

- (1) At any time during proceedings for the hearing of an application for a personal violence restraining order, the Court may make an order (an **interim personal violence restraining order**) under this section.
- (2) The Court may make the interim personal violence restraining order:
 - (a) even if the defendant does not appear at the hearing; or
 - (b) if the defendant appears at the hearing:
 - (i) even though the defendant has not given evidence; or
 - (ii) even if the defendant objects to the order being made.
- (3) The interim personal violence restraining order is in force until the earlier of the following:
 - (a) it is revoked by the Court;
 - (b) if a personal violence restraining order is made for the same parties and the defendant is before the Court:
 - (i) on the making of the personal violence restraining order; or
 - (ii) on the later date ordered by the Court;
 - (c) if a personal violence restraining order is made for the same parties and the defendant is not before the Court:
 - (i) when the personal violence restraining order is given to the defendant; or
 - (ii) on the later date ordered by the Court.

Note for subsection (3)(c)

An interim personal violence restraining order is given to the defendant if it is given in any of the ways mentioned in section 18.

20 Prohibition on publication of personal details

A personal violence restraining order and an interim personal violence restraining order may include an order prohibiting the publication of personal details of a protected person or witness in

proceedings if the Court is satisfied the publication would expose the person to the risk of harm.

21 Defendant's identity or whereabouts unknown

- (1) This section applies if:
 - (a) the protected person, having made reasonable inquiries, is unable to ascertain the identity or whereabouts of the defendant for the purpose of making an application for a personal violence restraining order under Part 2; and
 - (b) another person may have information or a document or thing that will assist in ascertaining the identity or whereabouts of the defendant.
- (2) The Court may order the other person:
 - (a) to attend the Court to be examined as to the identity or whereabouts of the defendant; and
 - (b) to disclose the information or document or thing that relates to the identity or whereabouts of the defendant to the protected person.

Part 3 Miscellaneous matters

22 Variation or revocation of order

- (1) Any of the following persons may apply to the Court for an order varying (including extending the period the order is in force) or revoking a personal violence restraining order.
 - (a) the protected person;
 - (b) a police officer or adult acting for the protected person;
 - (c) the defendant;
 - (d) a person granted leave by the Court to make the application.
- (2) The defendant may apply for the order only with the leave of the Court.
- (3) The Court may grant leave to the defendant only if satisfied there has been a substantial change in the circumstances of the defendant or the protected person since the order was made or last varied.

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- (4) Part 2 applies (with the necessary changes) to the application as if it were an application under that Part.

23 Contravention of personal violence restraining order or interim personal violence restraining order

- (1) A person commits an offence if:
- (a) a personal violence restraining order or an interim personal violence restraining order is in force against the person; and
 - (b) the person engages in conduct that results in a contravention of the order.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

- (2) Subsection (1) does not apply unless:
- (a) the person has been given a copy of the order; or
 - (b) for a personal violence restraining order that has been varied:
 - (i) the person has been given a copy of the order as varied; or
 - (ii) the person's conduct also constitutes a contravention of the order last given to the person.

Note for subsection (2)

Under section 18, a copy of the personal violence restraining order or interim personal violence restraining order is given to the defendant if the defendant is before the Court when it is made. Otherwise a copy of the order is given to the defendant if it is given in any of the ways mentioned in that section.

- (3) An offence against subsection (1) is an offence of strict liability.

24 Publication of personal details

- (1) A person commits an offence if:
- (a) a personal violence restraining order or an interim personal violence restraining order prohibits the publication of a person's personal details; and
 - (b) the person engages in conduct that results in a contravention of the order.

Maximum penalty: 200 penalty units or imprisonment for 1 year.

- (2) An offence against subsection (1) is an offence of strict liability.

Part 4 Transitional matters for Justice Legislation Amendment (Electronic Documents) Act 2022

25 Order made but not given to defendant before commencement

- (1) Section 18, as in force immediately before the commencement, continues to apply in relation to a personal violence restraining order or an interim personal violence restraining order that was made before the commencement but had not been given to the defendant before the commencement.
- (2) In this section:

commencement means the commencement of Part 6 of the *Justice Legislation Amendment (Electronic Documents) Act 2022*.

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*****Personal Violence Restraining Orders Act 2016 (Act No. 10, 2016)***

Assent date	29 April 2016
Commenced	pt 4, div 5: 29 April 2016; rem: 1 May 2016 (s 2, s 2 <i>Local Court (Repeals and Related Amendments) Act 2016 (Act No. 9, 2016)</i> and Gaz S34, 29 April 2016)

Statute Law Revision Act 2017 (Act No. 4, 2017)

Assent date	10 March 2017
Commenced	12 April 2017 (<i>Gaz G15, 12 April 2017, p 3</i>)

Justice Legislation Amendment (Electronic Documents) Act 2022 (Act No. 2, 2022)

Assent date	1 March 2022
Commenced	2 March 2022 (s 2)

3**GENERAL AMENDMENTS**

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018 (Act No. 22 of 2018)* to: ss 1, 3, 9, 14 and 16.

4**LIST OF AMENDMENTS**

s 3	amd No. 4, 2017, s 34
s 8	amd No. 4, 2017, s 34
s 18	amd No. 2, 2022, s 35
s 19	amd No. 2, 2022, s 36
s 23 hdg	amd No. 4, 2017, s 34
s 23	amd No. 2, 2022, s 37
pt 4 hdg	exp No. 10, 2016, s 44 ins No. 2, 2022, s 38

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s 25	exp No. 10, 2016, s 44 ins No. 2, 2022, s 38
pt 4	
div 1 hdg	exp No. 10, 2016, s 44
s 26	exp No. 10, 2016, s 44
pt 4	
div 2 hdg	exp No. 10, 2016, s 44
ss 27 – 29	exp No. 10, 2016, s 44
pt 4	
div 3 hdg	exp No. 10, 2016, s 44
ss 30 – 32	exp No. 10, 2016, s 44
pt 4	
div 4 hdg	exp No. 10, 2016, s 44
ss 33 – 37	exp No. 10, 2016, s 44
pt 4	
div 5 hdg	exp No. 10, 2016, s 44
ss 38 – 43	exp No. 10, 2016, s 44