

# NORTHERN TERRITORY OF AUSTRALIA

## DOMESTIC AND FAMILY VIOLENCE AMENDMENT ACT 2010

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### Act No. 47 of 2010

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# NORTHERN TERRITORY OF AUSTRALIA

Act No. 47 of 2010

An Act to amend the *Domestic and Family Violence Act*

[Assented to 13 December 2010]  
[Second reading 20 October 2010]

The Legislative Assembly of the Northern Territory enacts as follows:

## 1 Short title

This Act may be cited as the *Domestic and Family Violence Amendment Act 2010*.

## 2 Act amended

This Act amends the *Domestic and Family Violence Act*.

## 3 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

## 4 Section 4 amended

(1) Section 4, definitions *domestic violence order* or *DVO* and *proceeding*

*omit*

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(2) Section 4

*insert (in alphabetical order)*

**domestic violence order** means a court DVO or police DVO, and includes:

- (a) a DVO as varied under Part 2.7 or 2.8; and
- (b) a police DVO as varied under Part 2.8, Division 2, or confirmed under Part 2.9.

**DVO** is an acronym for domestic violence order.

**interim variation order**, see section 52A.

**proceeding** means:

- (a) the hearing of an application for:
  - (i) a DVO; or
  - (ii) the variation or revocation of a DVO; or
- (b) a proceeding for the confirmation of a DVO; or
- (c) a proceeding for an offence against this Act.

**5 Section 22 amended**

Section 22(1)(a) and (b)

*omit, insert*

- (a) requiring the defendant to vacate stated premises where the defendant and protected person live together or previously lived together; or
- (b) restraining the defendant from entering such premises except on stated conditions.

**6 Section 23 amended**

(1) Section 23(1)

*omit, insert*

- (1) This section applies if:
  - (a) the defendant and protected person live together or previously lived together in premises; and

- 
- (b) the defendant or protected person is a tenant of the premises or both of them are tenants of the premises (regardless of whether anyone else is a tenant of the premises); and
- (c) either:
- (i) a court DVO includes a premises access order for the premises; or
  - (ii) the protected person no longer wishes to live in the premises.
- (2) Section 23(2)(b)
- omit, insert*
- (b) an order creating a new tenancy agreement (the ***replacement agreement***):
- (i) for the benefit of the protected person and anyone else who was a party to the terminated agreement other than the defendant; or
  - (ii) with the agreement of the protected person, for the benefit of the defendant and anyone else who was a party to the terminated agreement.
- (3) Section 23(3)(a)(iii), after "protected person"
- insert*
- or defendant (as appropriate)

## **7 Section 35A inserted**

Before section 36, in Part 2.4, Division 3

*insert*

### **35A Court may refuse to hear application or order stay of proceeding**

- (1) This section applies if the Court is satisfied an application for a DVO is frivolous, vexatious or an abuse of the process of the Court.
- (2) The Court may, at any time after the application is filed (regardless of whether notice about the hearing of the application is given to the parties to the DVO), decide:
  - (a) to refuse to hear the application; or

- 
- (b) if a hearing for the application has started – to order a stay of the proceeding.
- (3) The Court must immediately give the parties notice of the decision.

## **8 Section 36 amended**

Section 36, at the end

*insert*

*Note for section 36*

*Under section 119, a copy of a DVO is given to the defendant if the defendant is before the Court when it is made. Otherwise a copy of a DVO is given to the defendant if it is given in any of the ways mentioned in that section.*

## **9 Section 40 amended**

Section 40, at the end

*insert*

*Note for section 40*

*Under section 119, a copy of a DVO is given to the defendant if the defendant is before the Court or clerk when it is made. Otherwise a copy of a DVO is given to the defendant if it is given in any of the ways mentioned in that section.*

## **10 Section 41 amended**

Section 41(1)

*omit, insert*

- (1) An authorised police officer may make a domestic violence order under this Part (a ***police DVO***) if satisfied:
- (a) it is necessary to ensure a person's safety:
- (i) because of urgent circumstances; or
  - (ii) because it is not otherwise practicable in the circumstances to obtain a CSJ DVO; and
- (b) a CSJ DVO might reasonably have been made had it been practicable to apply for one.

---

**11 Section 46 amended**

(1) Section 46

*omit*

a court DVO

*insert*

the DVO

(2) Section 46, at the end

*insert*

*Note for section 46*

*Under section 119, a copy of a DVO is given to the defendant if the defendant is before the court when it is made. Otherwise a copy of a DVO is given to the defendant if it is given in any of the ways mentioned in that section.*

**12 Section 52A inserted**

After section 52

*insert*

**52A Interim variation order**

The Court may, during the hearing of an application for an order to vary or revoke a DVO, make an order (an *interim variation order*) to vary the DVO until the application is finally decided.

**13 Section 53 amended**

Section 53, after "whether to make an"

*insert*

interim variation order or

**14 Section 54 amended**

(1) Section 54, after "Court makes an"

*insert*

interim variation order or

- 
- (2) Section 54, at the end

*insert*

*Note for section 54*

*Under section 119, a copy of a DVO is given to the defendant if the defendant is before the Court when it is made. Otherwise a copy of a DVO is given to the defendant if it is given in any of the ways mentioned in that section.*

## **15 Section 58 amended**

Section 58, at the end

*insert*

*Note for section 58*

*Under section 119, a copy of a DVO is given to the defendant if the defendant is before the Court or clerk when it is made. Otherwise a copy of a DVO is given to the defendant if it is given in any of the ways mentioned in the section.*

## **16 Section 63 amended**

- (1) Section 63, after "the Court"

*insert*

or clerk

- (2) Section 63, at the end

*insert*

*Note for section 63*

*Under section 119, a copy of a DVO is given to the defendant if the defendant is before the Court or clerk when it is made. Otherwise a copy of a DVO is given to the defendant if it is given in any of the ways mentioned in that section.*

## **17 Section 64 replaced**

Section 64

*repeal, insert*

## **64 DVOs to which Division applies**

This Division applies to the following DVOs:

- (a) a court DVO other than an interim DVO;
- (b) a police DVO.

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**18 Section 65 amended**

(1) Section 65(1), after "varying a"

*insert*

court

(2) After section 65(1)

*insert*

(1A) In addition, a police officer may apply to a magistrate for an order varying a police DVO if, because of urgent circumstances, the terms of the DVO should be varied before the hearing of the proceeding for the confirmation of the DVO.

**19 Section 67 amended**

Section 67(2)(b)

*omit, insert*

(b) by order vary the DVO; or

(c) for a police DVO – revoke the DVO.

**20 Section 68 amended**

Section 68, heading

*omit*

**does**

*insert*

**must do**

**21 Section 69 amended**

Section 69, heading

*omit*

**does**

*insert*

**must do**



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**22 Section 70 amended**

- (1) Section 70, heading

*omit*

**do**

*insert*

**must do**

- (2) Section 70(2), at the end

*insert*

*Note for subsection (2)(a)*

*A DVO is given to the defendant if it is given in any of the ways mentioned in section 119.*

**23 Section 78 amended**

- (1) Section 78, heading

*omit*

**officers**

*insert*

**officer**

- (2) Section 78(2), at the end

*insert*

*Note for subsection (2)(a)*

*A DVO is given to the defendant if it is given in any of the ways mentioned in section 119.*

**24 Section 83 amended**

Section 83, at the end

*insert*

*Note for section 83*

*Under section 119, a copy of a DVO is given to the defendant if the defendant is before the Court when it is made. Otherwise a copy of a DVO is given to the defendant if it is given in any of the ways mentioned in that section.*

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**25 Section 84 replaced**

Section 84

*repeal, insert*

**84 Power to remove and detain**

- (1) This section applies if:
- (a) a police officer reasonably believes:
    - (i) grounds exist for making a DVO against a person; and
    - (ii) it is necessary to remove the person to prevent an imminent risk of harm to another person or damage to property, including the injury or death of an animal; or
  - (b) a DVO has been made against a person and a police officer reasonably believes it is necessary to detain the person to give the person a copy of the DVO; or
  - (c) a DVO has been made against a person and a police officer reasonably believes it is necessary to detain the person until an application for the variation of the DVO can be made and decided under Part 2.8, Division 2.
- (2) The police officer may, using reasonable force or assistance, do the following:
- (a) enter premises on or in which the officer reasonably believes the person to be;
  - (b) take the person into custody;
  - (c) remove the person to the nearest police station or other place where the person can be conveniently detained to facilitate:
    - (i) if subsection (1)(a) applies – the making of a DVO and, if made, the giving of a copy of the DVO to the defendant; or
    - (ii) if subsection (1)(b) applies – the giving of a copy of the DVO to the defendant; or
    - (iii) if subsection (1)(c) applies – the making of an application for a variation of the DVO and, if varied, the giving of a copy of the varied DVO to the defendant.
- (3) Subject to subsection (4), the person must not be detained for more than 4 hours after being taken into custody.

- 
- (4) The person may be detained for a longer time if a police officer is satisfied it is necessary to do so to enable a police officer to properly give a copy of the DVO to the person because of the person's apparent intoxication.
- (5) However, the person may be detained for more than 6 hours after being taken into custody only if a police officer:
- (a) is satisfied the person is still intoxicated; and
  - (b) informs a senior police officer of the need to continue to detain the person; and
  - (c) records the following information about the person's continued detention in the custody log (however described):
    - (i) the time and way the officer informed the senior police officer;
    - (ii) the details of the information given to the senior police officer; and
  - (d) arranges for a health practitioner (the *examining health practitioner*) to examine the person as soon as practicable.
- (6) The senior police officer must ensure the person is released from custody:
- (a) into the care of a health practitioner if, on examination, the examining health practitioner is satisfied the person's condition requires medical treatment; or
  - (b) on the earlier of the following:
    - (i) the person ceases to be intoxicated;
    - (ii) 10 hours after being taken into custody.
- (7) In this section:
- health practitioner* means:
- (a) a medical practitioner; or
  - (b) a person registered under the Health Practitioner Regulation National Law to practise in the nursing and midwifery profession as a nurse (other than as a student); or
  - (c) a person who has a right of practice under the *Health Practitioners Act* in the category of health care practice of Aboriginal health work.

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*intoxication* means intoxication because of the influence of alcohol, a drug or another substance or any combination of them.

*senior police officer* means a police officer of or above the rank of superintendent.

**26 Section 105 replaced**

Section 105

*repeal, insert*

**105 Application of Part**

This Part applies only to the following proceedings:

- (a) a proceeding for the hearing of an application for:
  - (i) a DVO; or
  - (ii) the variation or revocation of a DVO;
- (b) a proceeding for the confirmation of a DVO.

**27 Section 119 amended**

Section 119(a)

*omit*

the court

*insert*

the issuing authority

**28 Section 121 amended**

Section 121(6) and (7)

*omit, insert*

- (6) Subsection (7) applies if, when the person is sentenced under this section to serve a term of imprisonment for the offence, the person:
  - (a) is serving a term of imprisonment for another offence; or
  - (b) has been sentenced to serve a term of imprisonment for another offence.

- 
- (7) Despite section 50 of the *Sentencing Act*, the court must not direct the term of imprisonment to be served concurrently with the other term of imprisonment mentioned in subsection (6)(a) or (b).

**29 Section 123 amended**

Section 123(4), definition *proceeding*

*omit, insert*

*proceeding* means:

- (a) a proceeding for the hearing of an application for:
  - (i) a DVO; or
  - (ii) the variation or revocation of a DVO; or
- (b) a proceeding for the confirmation of a DVO.