

NORTHERN TERRITORY OF AUSTRALIA  
DOMESTIC VIOLENCE AMENDMENT ACT 1994

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**No. 60 of 1994**

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# NORTHERN TERRITORY OF AUSTRALIA

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No. 60 of 1994

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## AN ACT

to amend the *Domestic Violence Act*

[Assented to 24 October 1994]

**B**E it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Domestic Violence Amendment Act 1994*.

2. COMMENCEMENT

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

3. PRINCIPAL ACT

The *Domestic Violence Act* is in this Act referred to as the Principal Act.

4. INTERPRETATION

Section 3 of the Principal Act is amended by adding at the end the following:

"(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;

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- (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 relationship with the other person, who is a member of the opposite sex."

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5. RESTRAINING ORDERS

Section 4 of the Principal Act is amended

(a) by omitting from subsection (1) "the Court is satisfied" and substituting "the Court or the Clerk is satisfied";

(b) by omitting subsection (1)(a)(i) and (ii) and substituting the following:

"(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;"

(c) by omitting subsection (1)(b)(i) and (ii) and substituting the following:

"(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;"

(d) by omitting from subsection (1)(c)(i) "the spouse of" and substituting "a person in a domestic relationship with";

(e) by omitting from subsection (1)(c)(ii) "breach of the peace" and substituting "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";

(f) by omitting from subsection (1) all words after paragraph (c)(iii) and substituting "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).";

(g) by inserting after subsection (1) the following:

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

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- (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."; and
- (h) by omitting subsection (2)(b) and substituting the following:
  - "(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.";
- (j) by omitting subsection (3) and substituting the following:
  - "(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
    - (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.

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"(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."; and

- (k) by inserting in subsection (8) -
  - (i) after "the Court" the words "or the Clerk"; and
  - (ii) after "it" the words "or he or she".

6. CONSENT ORDERS

Section 5 of the Principal Act is amended -

- (a) by omitting from subsection (1) "(b) and (c)" and substituting "(b) and (c) and (3)"; and
- (b) by inserting after subsection (1) the following:

"(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."

7. ORDERS IN SPECIAL CIRCUMSTANCES

Section 6 of the Principal Act is amended -

- (a) by omitting from subsection (3) "the Court" (first occurring) and substituting "the Court or the Clerk"; and
- (b) by inserting after subsection (8) the following:

"(8A) The person on whose behalf an application was made under subsection (1) may, subject to a direction, if any, made under section 20AC, on his or her behalf appear before the Court for the purposes of this section, whether or not the member of the Police Force who made the application appears before the Court."

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8. VARIATION OR REVOCATION OF ORDER

Section 8 of the Principal Act is amended by adding at the end the following:

"(4) The person on whose behalf an application is made under section 4 or 6(1) 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."

9. BREACH OF ORDER

Section 10(2) of the Principal Act is amended -

(a) by inserting before paragraph (a) the following:

"(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;" and

(b) by omitting paragraph (c) and substituting the following:

"(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;"

10. NEW PART

The Principal Act is amended by inserting after Part 3 the following:

"PART 3A - MISCELLANEOUS

"20AA. POWER TO SUMMON WITNESSES, REQUIRE PRODUCTION OF DOCUMENTS, &c.

"(1) If it appears to the Court 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 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.



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"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."

11. FURTHER AMENDMENTS

The Principal Act is further amended as specified in the Schedule.

SCHEDULE

Section 11

Provision	Amendment	
	omit	substitute
Section 5(1)	"the defendant's spouse"	"the person making an application, or on whose behalf an application was made, under section 4 or 6"
Section 7(1)	"the person's spouse"	"a person in a domestic relationship with the person"

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Section 9(1)

"the defendant's  
spouse"

"the person making an  
application, or on  
whose behalf an  
application was made".

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