



# NORTHERN TERRITORY OF AUSTRALIA

---

No. 7 of 1989

---

## AN ACT

to amend the *Justices Act*

[Assented to 28 March 1989]

**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 *Justices Amendment Act 1989*.

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 *Justices Act* is in this Act referred to as the Principal Act.

4. **NEW DIVISION**

Part IV of the Principal Act is amended by adding at the end the following:

"Division 8 - Orders to Keep the Peace

"100AA. **DEFINITION**

"In this Division 'spouse', in relation to a person, includes a spouse of the person according to Aboriginal tradition, a former spouse of the person and a person of the opposite sex who is living or has lived with the person as if he or she were the spouse of the person although not married to the person.

---

*Justices Amendment*

"100AB. ORDER TO KEEP PEACE

"(1) Where, on an application made in accordance with subsection (2), the Court is satisfied, on the balance of probabilities -

- (a) that the defendant -
  - (i) has caused personal injury to, or damage to property in the possession of, the spouse of the defendant; and
  - (ii) is, unless restrained, likely again to cause such personal injury or damage;
- (b) that the defendant -
  - (i) has threatened to cause personal injury to, or damage to property in the possession of, the spouse of the defendant; and
  - (ii) is, unless restrained, likely to carry out that threat; or
- (c) that -
  - (i) the defendant has behaved in a provocative or offensive manner towards the spouse of the defendant;
  - (ii) the behaviour is such as is likely to lead to a breach of the peace; and
  - (iii) the defendant is, unless restrained, likely again to behave in the same or a similar manner,

it may make 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.

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

- (a) a member of the Police Force; or
- (b) a spouse 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) may be made in the absence of the defendant whether or not the defendant was summoned to appear at the hearing of the application.

*Justices Amendment*

"(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 and the order is not effective after the conclusion of the hearing to which the defendant is summoned unless -

- (a) the defendant does not appear at that hearing in obedience to the summons; or
- (b) the Court, having considered the evidence, if any, of or adduced by the defendant, and any other evidence before it, confirms the order.

"(6) A summons to appear before the Court for the purposes of subsection (5) shall be deemed to have been served if it is served or its existence made known to the defendant in a manner referred to in section 100AF(2)(a), (c), (d) or (e).

"(7) As soon as practicable after the conclusion of the hearing to which the defendant is summoned under subsection (5), the Clerk shall cause a copy of the order recording the decision of the Court to be served on the defendant and shall also cause a copy to be sent to the Commissioner of Police and, where the applicant is not a member of the Police Force, also to the applicant.

"(8) Without limiting the generality of subsection (1), the Court 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 shall consider the effect of making or refusing to make the order -

- (a) on the accommodation of; and
- (b) on any children of or in the care of,

the persons affected by the proceedings.

"100AC. ORDERS IN SPECIAL CIRCUMSTANCES

"(1) A member of the Police Force may, by telephone, apply to a magistrate for an 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 making of the order is

*Justices Amendment*

sought and shall subsequently reduce to writing and include any additional information given to the magistrate as indicated in subsection (4).

"(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 an order under section 100AB(1), the magistrate may make an order under this section in the same terms as the Court may make an order under section 100AB(1) notwithstanding that the person against whom the order is made has not been given an opportunity to answer any allegation in the application, and the order has effect according to its tenor as if it were an order made under that section.

"(4) A magistrate shall not make an order under this section unless satisfied that he or she might reasonably have made the order under section 100AB(1) on the grounds indicated in the application part of the prescribed form referred to in subsection (2) had the magistrate been sitting as the Court or on such additional information as the magistrate obtains from the applicant.

"(5) A magistrate who makes an order under this section shall -

- (a) complete the application part of the prescribed form and reduce to writing and include any additional information referred to in subsection (4);
- (b) complete and sign the order on the prescribed form;
- (c) determine a time, being a time as soon as practicable after the making of the order, by which the order is to be returned;
- (d) record on the order 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, the reasons for making it and the time at and place at which it 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.

"(6) On being informed under subsection (5) of the making and terms of the order, the member of the Police Force shall complete the relevant order parts of the prescribed form as directed by the magistrate.

*Justices Amendment*

"(7) As soon as practicable after an order under this section is made, the member of the Police Force shall cause a copy of the order completed under subsection (6) to be served on the defendant and shall forward a copy to the Clerk for the Court file.

"(8) A form of order referred to in subsection (6) 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 should not be confirmed by the Court.

"(9) An order under this section is not effective after the conclusion of the hearing to which the defendant is summoned under subsection (8) unless -

- (a) the defendant does not appear at that hearing in obedience to the summons; or
- (b) the Court, having considered the evidence, if any, of or adduced by the defendant, and any other evidence before it, confirms the order.

"(10) As soon as practicable after the conclusion of the hearing to which the defendant is summoned under subsection (8), the Clerk shall cause a copy of the order recording the decision of the Court to be served on the defendant.

"100AD. POWER TO REMOVE AND DETAIN WHILE ORDER SOUGHT

"(1) Where a member of the Police Force intends to apply for an order under section 100AC against a person and believes on reasonable grounds that unless the person is removed the person's spouse, 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 take the person into custody and remove the person to the nearest police station or other place where an application under section 100AC 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 100AC 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.

Justices Amendment

"100AE. VARIATION OR REVOCATION OF ORDER

"(1) A party to a proceeding in which an order has been made under section 100AB(1) or 100AC(3) 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, an order made under section 100AB(1) or 100AC(3).

"(3) Where an order made under section 100AB(1) or 100AC(3) 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.

"100AF. BREACH OF ORDER

"(1) A person against whom an order under this Division 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: \$2,000 or imprisonment for 6 months.

"(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 -

- (a) it is served personally on the defendant;
- (b) in the case of an order under section 100AC(3) - 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 under the *Postal Service Act 1975* of the Commonwealth 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 the procedures under that Act for acknowledging receipt;
- (d) its existence and terms are made known orally or in writing to the defendant by a member of the Police Force; or

*Justices Amendment*

- (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 Commonwealth or Territory court or a court of a State or another Territory of the Commonwealth exercising Territory or Commonwealth jurisdiction.

"100AG. EVIDENCE

"In making, confirming, varying or revoking an order under this Division the Court or a magistrate may admit and act on hearsay evidence.

"100AH. ORDER NOT TO AFFECT OTHER LIABILITY

"An order may be made or varied under this Division notwithstanding that a criminal action has been commenced against the person against whom it is sought or made and the making or varying of an order under this Division does not, except as provided in this Division, 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.

"100AJ. 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 an order under section 100AB or section 100AC unless the Court is satisfied that the making of the application for the order was unreasonable and in bad faith.

"100AK. PROTECTION OF MEMBERS OF POLICE FORCE ACTING IN GOOD FAITH

"A member of the Police Force who makes an application under this Division or who represents another member of the Police Force at a hearing under this Division, and who acts in good faith and in the normal course of duty in so doing, is not liable in any civil action arising out of the conduct of the hearing."