

NORTHERN TERRITORY OF AUSTRALIA

JUSTICE LEGISLATION AMENDMENT (DOMESTIC AND FAMILY  
VIOLENCE) ACT 2020

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Act No. 18 of 2020

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# NORTHERN TERRITORY OF AUSTRALIA

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Act No. 18 of 2020

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An Act to amend the *Bail Act 1982*, the Criminal Code, the *Domestic and Family Violence Act 2007* and the *Sentencing Act 1995*

[Assented to 1 July 2020]  
[Introduced 28 November 2019]

The Legislative Assembly of the Northern Territory enacts as follows:

## Part 1 Preliminary matters

### 1 Short title

This Act may be cited as the *Justice Legislation Amendment (Domestic and Family Violence) Act 2020*.

### 2 Commencement

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

## Part 2 Amendment of Bail Act 1982

### 3 Act amended

This Part amends the *Bail Act 1982*.

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**4 Section 7A amended (Presumption against bail for certain offences)**

Section 7A(2A)

*omit, insert*

- (2A) Despite subsection (1), subsection (2) does not apply to a person who is assessed to be suitable to participate in:
- (a) a program of rehabilitation prescribed by the Regulations; or
  - (b) a program declared by the Minister under section 85A(1) of the *Domestic and Family Violence Act 2007* to be a rehabilitation program.

**Part 3 Amendment of Criminal Code****5 Act amended**

This Part amends the Criminal Code.

**6 Section 186AA inserted**

After section 186 in Part VI, Division 4

*insert*

**186AA Choking, strangling or suffocating in a domestic relationship**

- (1) A person commits an offence if:
- (a) the person is in a domestic relationship with another person; and
  - (b) the person intentionally chokes, strangles or suffocates the other person; and
  - (c) the other person does not consent to the choking, strangling or suffocating and the person is reckless in relation to that circumstance.

Maximum penalty: Imprisonment for 5 years.

- (2) Strict liability applies to subsection (1)(a).
- (3) To avoid doubt, an offence against this section constitutes domestic violence under section 5 of the *Domestic and Family Violence Act 2007*.

(4) In this section:

**chokes, strangles or suffocates**, a person, includes the following:

- (a) applies pressure, to any extent, to the person's neck;
- (b) obstructs, to any extent, any part of the person's:
  - (i) respiratory system; or
  - (ii) accessory systems of respiration;
- (c) interferes, to any extent, with the operation of the person's:
  - (i) respiratory system; or
  - (ii) accessory systems of respiration;
- (d) impedes, to any extent, the person's respiration.

**domestic relationship**, see section 9 of the *Domestic and Family Violence Act 2007*.

## **7 Schedule 1 amended (Provisions of Code to which Part IIAA applies)**

Schedule 1

*insert (in numerical order)*

Section 186AA (Choking, strangling or suffocating in a domestic relationship)

## **Part 4 Amendment of Domestic and Family Violence Act 2007**

### **8 Act amended**

This Part amends the *Domestic and Family Violence Act 2007*.

### **9 Section 4 amended (Definitions)**

(1) Section 4, definition **rehabilitation program**

*omit*

## (2) Section 4

*insert*

**perpetrators' program**, see section 78H(1) of the *Sentencing Act 1995*.

**program facilitator** means a person who:

- (a) provides a rehabilitation program or a perpetrators' program;  
or
- (b) provides assessments, support or case management associated with a rehabilitation program or a perpetrators' program.

**rehabilitation program**, means a program declared by the Minister under section 85A(1) to be a rehabilitation program.

**10 Section 23 amended (Order for replacement tenancy agreement)**

## (1) Section 23, heading

*omit*

**for replacement**

*insert*

**regarding**

## (2) Section 23(2) and (3)

*omit, insert*

## (2) The Court may, in the DVO, make:

- (a) an order terminating the tenancy agreement; or
- (b) an order terminating the tenancy agreement and creating a new tenancy agreement (the **replacement agreement**) for the benefit of:
  - (i) the protected person and anyone else who was a party to the terminated agreement other than the defendant; or
  - (ii) the defendant and anyone else who was a party to the terminated agreement.

- (3) An order must not be made unless:
- (a) the Court is satisfied there is no reasonable likelihood of the defendant and the protected person living in the premises free of domestic violence; and
  - (b) the landlord consents to the order or, if the landlord refuses consent, the Court is satisfied the refusal is unreasonable; and
  - (c) the protected person consents to the order; and
  - (d) in the case of a replacement agreement – the protected person or defendant, as the case may be, would be able to comply with the replacement agreement; and
  - (e) the Court considers it appropriate in the circumstances to make the order.

#### **11 Section 24 amended (Order for rehabilitation program)**

- (1) Section 24(1)

*omit, insert*

- (1) The Court may include in a DVO an order requiring the defendant to take part in a rehabilitation program when making or varying the DVO.
- (1A) In deciding whether to include an order under subsection (1), the safety and protection of the protected person must be the paramount consideration.
- (1B) If the Court includes an order under subsection (1) in a DVO, the Court may also include an order requiring the defendant to take part in any other program the Court considers appropriate.

*Example for subsection (1B)*

*An alcohol rehabilitation program.*

- (2) Section 24(2)(a) and (3)

*omit*

court

*insert*

Court

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**12 Section 48 amended (Who may apply for variation or revocation)**

Section 48(5)(b), after "program"

*insert*

or a perpetrators' program

**13 Section 65 amended (When application may be made)**

Section 65(3)(b), after "program"

*insert*

or a perpetrators' program

**14 Part 2.11A inserted**

After section 85

*insert*

**Part 2.11A Rehabilitation programs****85A Declaration of rehabilitation program**

- (1) The Minister may, by *Gazette* notice, declare a program to be a rehabilitation program for this Act if the primary objective of the program is to change the behaviour of a person who commits domestic violence to:
- (a) reduce and prevent the person committing domestic violence; and
  - (b) increase the safety and protection of persons with whom the person is or may be in a domestic relationship; and
  - (c) ensure the person accepts responsibility for the person's behaviour.
- (2) The notice must specify the requirements of the program.

*Examples for subsection (2)*

- 1 *That the defendant attend 16 weekly group sessions during a 5 month period.*
- 2 *That the defendant attend individual meetings with the program facilitator on request.*
- 3 *That the defendant agree to independent checks on the safety of the protected person while the defendant is participating in the program.*



**85B Satisfactory completion of rehabilitation program**

- (1) A defendant who is ordered to attend a rehabilitation program is considered to have satisfactorily completed the program if:
  - (a) the defendant did not breach a DVO in force; and
  - (b) the defendant did not commit any further domestic violence; and
  - (c) the defendant did not commit an offence specified in Schedule 2 or 3 to the *Sentencing Act 1995* after the order was made; and
  - (d) the Court receives a completion notice under section 85D(3)(a).
- (2) Despite subsection (1), the Court has discretion to find that a defendant did satisfactorily complete a rehabilitation program if the Court is of the opinion that to find that the defendant did not satisfactorily complete the program would be unjust in the circumstances.
- (3) The Court may make a finding under subsection (2) despite receiving one or more non-compliance notices regarding the defendant under section 85D(3)(b).
- (4) The Court must state its reasons for any finding made under subsection (2).

**85C Failure to comply with rehabilitation program**

If a defendant who is ordered to attend a rehabilitation program fails to comply with a requirement of the program, the failure does not constitute a contravention of the DVO under section 120.

**85D Notification obligations of program facilitator**

- (1) A program facilitator must notify both the police and the Court if the facilitator:
  - (a) becomes aware of a defendant committing domestic violence while the defendant is subject to an order to attend a rehabilitation program; or
  - (b) becomes aware of a defendant engaging in conduct that contravenes a DVO while the defendant is subject to an order to attend a rehabilitation program; or

- (c) believes on reasonable grounds that a defendant who is subject to an order to attend a rehabilitation program may present an unacceptable risk to the safety or welfare of the protected person or any other person.
- (2) The notice must be in writing and include the particulars of the defendant's conduct of which the program facilitator is aware.
- (3) A program facilitator must provide the following to the Court:
  - (a) if a defendant satisfactorily completes the requirements of a rehabilitation program – a completion notice;
  - (b) if a defendant fails to comply with a requirement of a rehabilitation program – a non-compliance notice;
  - (c) if requested by the Court – a participation notice summarising the defendant's participation in a rehabilitation program.

#### **85E Bringing defendant before Court for review**

- (1) The Court may require a defendant who is ordered to attend a rehabilitation program to appear before it from time to time for a review of the defendant's progress in the program.
- (2) The Court may request the program facilitator to provide a participation notice under section 85D(3)(c) for a defendant prior to a review under subsection (1).
- (3) If the Court receives a non-compliance notice from a program facilitator under section 85D(3)(b), the Court must require the defendant to appear before it for a review of the defendant's progress in a rehabilitation program.

#### **85F Additional power to bring defendant before Court**

- (1) The Court may issue a summons or warrant under subsection (2) if:
  - (a) the Court is satisfied that the defendant significantly failed to comply with the requirements of a rehabilitation program; or
  - (b) the defendant fails to attend a review under section 85E; or
  - (c) the Court believes that the defendant may present a risk to the safety of the protected person or any other person.
- (2) The Court may:
  - (a) issue a summons for the defendant to appear before the Court; or

- (b) if satisfied the defendant may not appear – issue a warrant for the arrest of the defendant.
- (3) The summons or warrant may be issued on the Court's initiative or on application.

### **85G Revocation of order for rehabilitation program**

The Court may revoke an order under section 24(1) requiring a defendant to attend a rehabilitation program if satisfied on the balance of probabilities that:

- (a) the defendant is unlikely or unable to make any further progress under the order; or
- (b) there is an unacceptable risk to the safety or welfare of the protected person or any other person.

## **Part 5 Amendment of Sentencing Act 1995**

### **15 Act amended**

This Part amends the *Sentencing Act 1995*.

### **16 Section 78CA amended (Offence levels)**

- (1) Section 78CA(1)(b), after "186,"  
*insert*  
186AA,
- (2) Section 78CA(3)  
*omit, insert*
- (3) Each of the following is a **level 3 offence**:
  - (a) an offence against section 186AA of the Criminal Code if the offence is not a level 5 offence;
  - (b) an offence against section 188 of the Criminal Code if the offence:
    - (i) is committed in circumstances mentioned in section 188(2), other than paragraph (k); and
    - (ii) is not a level 5 offence.

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**17 Section 78DI amended (Exceptional circumstance exemption)**

(1) After section 78DI(3)

*insert*

(3A) When sentencing an offender in relation to an offence consisting of domestic violence, a court may consider the circumstances of the case to be exceptional if:

- (a) the Court ordered the offender to take part in a rehabilitation program under section 24(1) of the *Domestic and Family Violence Act 2007* in relation to the offence; and
- (b) the offender satisfactorily completes the rehabilitation program in accordance with section 85B of the *Domestic and Family Violence Act 2007*; and
- (c) the Court is satisfied that the offender has taken responsibility for the offender's conduct and has made a genuine effort to change the offender's behaviour.

(2) After section 78DI(4)

*insert*

(5) In this section:

***domestic violence***, see section 4 of the *Domestic and Family Violence Act 2007*.

## **Part 6 Repeal of Act**

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**18 Repeal of Act**

This Act is repealed on the day after it commences.