

Serial 320
Domestic Violence Amendment Bill 2001
Mr Burke

**A BILL
for
AN ACT**

to amend the *Domestic Violence Act*

NORTHERN TERRITORY OF AUSTRALIA
DOMESTIC VIOLENCE AMENDMENT ACT 2001

No. of 2001

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NORTHERN TERRITORY OF AUSTRALIA

No. of 2001

AN ACT

to amend the *Domestic Violence Act*

[Assented to 2001]

[Second reading 2001]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Domestic Violence Amendment Act 2001*.

2. Commencement

This Act comes into operation on the date 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 –

- (a) by inserting after the definition of "perpetrators program order" in subsection (1) the following:

" 'police interim restraining order' means an order under Part 2A;";
- (b) by omitting "person." from the definition of "spouse" in subsection (1) and substituting "person;"; and

- (c) by adding at the end of subsection (1) the following:

" 'telephone' includes any telecommunication device."

5. New section

The Principal Act is amended by inserting before section 4 in Part 2 the following:

"3A. Power to make interim order and adjourn hearing

"(1) Under this Part, the power of the Court or the Clerk to make an order includes the power to make an interim order if the Court or Clerk thinks fit whether or not the defendant –

- (a) has been summoned to appear before the Court or the Clerk;
- (b) has appeared at the hearing; or
- (c) has consented to the order sought.

"(2) The Court or the Clerk may adjourn any hearing under this Part for the period and on the terms the Court or the Clerk thinks fit whether or not the defendant has been summoned to the hearing or is present at the hearing."

6. Restraining order by Court or Clerk

Section 4 of the Principal Act is amended –

- (a) by omitting from subsection (1)(b)(ii) "threat;" and substituting "threat; or";
- (b) by omitting subsection (1)(c) and substituting the following:

"(c) that the defendant –

- (i) has behaved towards a person in a domestic relationship with the defendant in a manner that has resulted in the person being in reasonable fear of violence or harassment; and
- (ii) is, unless restrained, likely again to behave in the same or a similar manner,"; and

- (c) by omitting subsection (8) and substituting the following:

"(8) When making an order under this section the Court or the Clerk may, subject to subsection (9), make an order or refuse to make an order –

- (a) restraining the defendant from entering premises;

- (b) limiting the defendant's access to premises; or
- (c) for the removal of a defendant from premises,

whether or not the defendant has a legal or equitable interest in the premises.

"(9) Before making or refusing to make an order referred to in subsection (8), the Court or the Clerk must consider the effect of the order or refusal on –

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

the persons affected by the proceeding."

7. Variation or revocation of order

Section 8 of the Principal Act is amended by omitting subsection (1) and substituting the following:

"(1) A party to a proceeding in which a restraining order has been made may apply to the Court for a variation or revocation of the order only if there has been a material or substantial change in the circumstances of the parties since the order was made."

8. Costs not to be awarded except in certain circumstances

Section 15 of the Principal Act is amended –

- (a) by omitting "Costs" and substituting "(1) Costs"; and
- (b) by adding at the end the following:

"(2) Costs may be awarded against an applicant for a variation or revocation of a restraining order under section 8 if the Court is satisfied that the making of the application was unreasonable and in bad faith."

9. New Part

The Principal Act is amended by inserting after Part 2 the following:

"PART 2A – POLICE INTERIM RESTRAINING ORDERS

"16A. Definition

"In this Part – 'member' means a member of the Police Force holding the rank of Senior Sergeant or a higher rank or for the time being in charge of a police station.

"16B. When member may make police interim restraining order

"If a member is satisfied, on reasonable grounds –

- (a) that –
 - (i) a person has assaulted or caused personal injury to another person in a domestic relationship with him or her or damaged property in the possession of that other person; and
 - (ii) the person is, unless restrained, likely again to assault or cause personal injury to that other person or damage that other person's property;
- (b) that –
 - (i) a person has threatened to assault or cause personal injury to another person in a domestic relationship with him or her or threatened to damage property in the possession of that other person; and
 - (ii) the person is, unless restrained, likely again to make such a threat or to carry out such a threat; or
- (c) that –
 - (i) a person has behaved towards another person in a domestic relationship with him or her in a manner that has resulted in that other person being in reasonable fear of violence or harassment; and
 - (ii) the person is, unless restrained, likely again to behave in the same or a similar manner,

the member may make a police interim restraining order under section 16C.

"16C. Police interim restraining order

"(1) For the purposes of section 16B, a member may make a police interim restraining order to impose on the defendant named in the order, for a period not exceeding 48 hours, the restraints that are necessary or desirable to prevent the defendant from acting in the apprehended manner.

"(2) A police interim restraining order is to be in the prescribed form and may include one or more of the following orders:

- (a) the defendant must not assault or cause personal injury, or threaten to assault or cause personal injury, to the person specified in the order;

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- (b) the defendant must not damage, or threaten to damage, property in the possession of the person specified in the order;
- (c) the defendant must not behave towards the person specified in the order in a manner likely to result in the person being in reasonable fear of violence or harassment from the defendant;
- (d) the defendant must not approach the person specified in the order;
- (e) the defendant must not directly or indirectly contact the person specified in the order.

"(3) When making a police interim restraining order the member may, subject to subsection (4), make an order –

- (a) restraining the defendant from entering premises;
- (b) limiting the defendant's access to premises; or
- (c) for the removal of a defendant from premises,

whether or not the defendant has a legal or equitable interest in the premises.

"(4) Before making an order referred to in subsection (3), the member must consider the effect of the order on –

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

the persons who will be affected by the order.

"(5) A police interim restraining order –

- (a) is to state the time (being not later than 48 hours after it is made) and place at which the order is to be returned if no order is made under section 6 before that time;
- (b) if applicable – is to include a statement that the member intends to apply for an order under section 6; and
- (c) if no order is made under section 6 before the time referred to in paragraph (a) – is to be taken to be a summons to the defendant requiring the defendant to appear before the Court, at the time and place at which it is to be returned, for the matter to be dealt with in accordance with section 16E.

"(6) A police interim restraining order remains in force –

- (a) until the time it is to be returned; or

- (b) if a magistrate makes an order under section 6 in respect of the matter before the time the police interim restraining order is to be returned – until that order is made.

"(7) A police interim restraining order may be made in the absence of the defendant.

"16D. Service and proof of service of police interim restraining order

"(1) As soon as practicable after making a police interim restraining order, the member must –

- (a) cause a copy of the order to be served on the defendant; and
- (b) forward a copy of the order to the Clerk and the person on whose behalf the order was made.

"(2) Service of a police interim restraining order is effected if –

- (a) it is served personally on the defendant; or
- (b) the member who made the order –
 - (i) has advised the defendant by telephone of the terms of the order; or
 - (ii) has made the existence and terms of the order known orally or in writing to the defendant.

"(3) As soon as practicable after a person serves a police interim restraining order, he or she must swear an affidavit of service in the prescribed form and forward the affidavit to the Clerk.

"16E. Hearing in respect of police interim restraining order

"(1) The hearing of a proceeding in respect of a police interim restraining order to which section 16C(6)(a) applies is to be conducted as if the proceeding had been commenced on an application made under section 4 by the member who made the order.

"(2) The person on whose behalf a police interim restraining order is made may appear before the Court at the hearing of the proceeding in respect of the order, whether or not the member who made the order appears before the Court.

"16F. Breach of police interim restraining order

"(1) Subject to subsections (3) and (4), a defendant against whom a police interim restraining order is in force who has been served with a copy of the order and contravenes or fails to comply with the order is guilty of a regulatory offence.

Penalty: For a first offence – \$2 000 or imprisonment for 6 months.

"(2) Despite the *Sentencing Act*, if a defendant is found guilty of a second or subsequent offence against subsection (1), the Court –

- (a) must sentence the defendant to imprisonment for not less than 7 days but not more than 6 months; and
- (b) must not make any other order in respect of the defendant if its effect would be to release the defendant from the requirement to actually serve the term of imprisonment imposed under paragraph (a).

"(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 an emergency and that an ordinary person similarly circumstanced would have acted in the same or a similar way;
- (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 court of the Commonwealth or the Territory or of a State or another Territory of the Commonwealth exercising Territory or Commonwealth jurisdiction; or
- (c) the defendant had a reasonable excuse for contravening or failing to comply with the police interim restraining order.

"(4) The Court must not find a defendant guilty of an offence under this section unless the Court is satisfied on the balance of probabilities that there were reasonable grounds to justify the making of the police interim restraining order.

"16G. Protection of member acting in good faith

"A member who makes a police interim restraining order in good faith and in the normal course of duty is not liable in a civil action arising as a result of the making of that order."

10. Repeal and substitution

Section 20AD of the Principal Act is repealed and the following substituted:

"20AD. Cross-examination by unrepresented defendant

"(1) Unless the Court makes an order under subsection (2), a person against whom a restraining order is sought, or is in force, who is not represented by a legal practitioner –

- (a) is not entitled to cross-examine directly a person with whom he or she is in a domestic relationship; and
- (b) may put questions to the person with whom he or she is in a domestic relationship by stating the question to the Court, or a person authorised by the Court, and the Court or the authorised person must repeat the question accurately to the person.

"(2) The Court may, of its own motion or on application by a party to a proceeding, if the Court considers it is just or desirable to do so, order that a person against whom a restraining order is sought, or is in force, who is not represented by a legal practitioner may cross-examine directly a person with whom he or she is in a domestic relationship."

11. Repeal and substitution

Section 20AE of the Principal Act is repealed and the following substituted:

"20AE. Affidavit of service

"(1) Proof of service of an application, order, interim restraining order, police interim restraining order, summons or notice under this Act is to be by an affidavit of service in the form prescribed by the Regulations.

"(2) The Court may require the person who swore an affidavit of service to be called as a witness or may require further evidence of the facts relating to the service."

12. New section

The Principal Act is amended by adding at the end the following:

"20AG. Police must keep records etc.

"(1) The Commissioner of Police must keep a record of the action taken

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in respect of each request for the attendance of a member of the Police Force at an incident where violence or harassment is threatened or occurring in respect of persons in a domestic relationship.

"(2) A record referred to in subsection (1) may be in writing or electronic form and is to include the following particulars:

- (a) the names and addresses of the parties to the incident (if known);
- (b) the time, date and circumstances of the incident;
- (c) the action (if any) taken by the member;
- (d) if the member did not apply for a restraining order or make a police interim restraining order – the reasons why no application or police interim restraining order was made.

"(3) The Commissioner of Police must keep a record (in writing or electronic form) of each police interim restraining order made, including any particulars prescribed by regulation.

"(4) The Chief Executive Officer of the Agency having responsibility for the administration of Part VII of the *Police Administration Act* must include in the annual report on the operations of the Agency the information required by the Minister in respect of police interim restraining orders."

13. Further amendments

The Principal Act is amended as set out in the Schedule.

SCHEDULE

Section 13

| Provision | Amendment | |
|-----------------|-------------------------------|--------------------------------|
| | omit | substitute |
| Section 6(1) | "telephone" | "telephone or in person" |
| Section 6(5)(e) | ", by telephone," | "(by telephone if applicable)" |
| Section 7(1) | "section 6" (first occurring) | "section 4 or 6" |

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| | | |
|----------------|---|---|
| | "where an application under section 6 can conveniently be made" | "while an application under section 4 or 6 is made" |
| Section 7(2) | "section 6" | "section 4 or 6" |
| Section 10(1B) | "(1A)(a)" | "(1A)" |
