

Serial 145
Sentencing Amendment (Victim Protection Orders) Bill 2011
Mr Elferink

A Bill for an Act to amend the *Sentencing Act*

NORTHERN TERRITORY OF AUSTRALIA

SENTENCING AMENDMENT (VICTIM PROTECTION ORDERS) ACT 2011

Act No. [] of 2011

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2011

An Act to amend the *Sentencing Act*

[Assented to [] 2011]
[Second reading [] 2011]

The Legislative Assembly of the Northern Territory enacts as follows:

1 Short title

This Act may be cited as the *Sentencing Amendment (Victim Protection Orders) Act 2011*.

2 Act amended

This Act amends the *Sentencing Act*.

3 Section 3 amended

Section 3(1)

insert (in alphabetical order)

victim protection order means a victim protection order mentioned in section 97K(1).

4 New Part 5, Division 1B inserted

After section 97H

insert

Division 1B Victim protection orders

97J Application of Division

This Division applies if a court sentences an offender for an offence (*relevant offence*) against section 125E, 127, 128, 130, 131, 131A, 132, 134(2) or (3), 165, 186B, 186C, 192, 192B, 194, 195, 201, 202, 202B or 202D of the Criminal Code.

97K Court may make victim protection order

- (1) The court may, on application by a victim against whom a relevant offence was perpetrated, make a victim protection order when sentencing the offender.
- (2) The court may do so if it considers the order should be made to ensure the victim is protected from any harm, fear or distress that might arise from any future contact or encounter between the offender and victim, having regard to:
 - (a) the circumstances relating to the commission of the relevant offence; and
 - (b) the circumstances of the offender and victim; and
 - (c) any report prepared for the purposes of sentencing the offender; and
 - (d) any other matters the court considers relevant.
- (3) The order must specify the following:
 - (a) the offender must not make contact with, or knowingly place himself or herself anywhere in close proximity to, the victim;
 - (b) if the offender and victim happen to be in close proximity with each other in a public place – the offender must comply with any reasonable request made by or on behalf of the victim to absent himself or herself from that proximity;
 - (c) when the order is to take effect (*the commencement*) and that it has effect for 20 years, or another period specified in the order, from the commencement.
- (4) In addition, the court may specify in the order conditions and any other matters relating to the operation of the order.

Example for subsection (4)

The court may, for the order, specify what might reasonably constitute close proximity between the offender and victim in particular circumstances.

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- (5) The order:
- (a) is in addition to, and not instead of, any other penalty for the offence; but
 - (b) must not be made if the court makes one or more orders under this Act in relation to the offence without recording a conviction for the offence.
- (6) This section does not limit the court's power to make another order or direction in relation to the offence under this or another Act.
- (7) Without limiting subsection (6), this section does not affect the court's power to impose a condition under section 13(1)(c) or 40(2).
- (8) For this section, **close proximity** is a reasonably close distance between the offender and victim that, having regard to all the circumstances, might reasonably give rise to:
- (a) any physical contact between the offender and victim; or
 - (b) any harm, fear or distress on the part of the victim.
- (9) In this section:
- contact** includes:
- (a) any form of physical contact; and
 - (b) any form of oral communication, whether face-to-face or by other means (for example, telephone or any electronic means); and
 - (c) any form of written communication.

97L Explanation of order

- (1) The court must ensure all reasonable steps are taken to explain to the offender (in language the offender can readily understand):
- (a) the offender's obligations under the victim protection order; and
 - (b) the consequences of contravening the order.
- (2) The order is not invalidated by a failure to comply with subsection (1).

97M Contravention of order

- (1) The offender is guilty of an offence if the offender contravenes the victim protection order.

Maximum penalty: 100 penalty units or imprisonment for
6 months.

- (2) It is a defence for an offence against subsection (1) if the defendant establishes a reasonable excuse.

97N Variation or revocation of order

- (1) The offender or victim for whom the victim protection order is made may apply for a variation or revocation of the order.

- (2) The application must be made to the court that made the order.

- (3) The application must be accompanied by a copy of the order and each previous variation made to the order.

- (4) The application may be made only by leave of the court.

- (5) The leave may be granted only if the court is satisfied it should grant the leave in the interest of justice, having regard to changes in the circumstances of the offender or victim (or both) since the order was made or last varied.

- (6) The court may refuse to consider granting the leave if it is satisfied the application is frivolous or vexatious.

- (7) If the leave is granted:

- (a) the court must give notice of the application to each of the following (a *party*):

- (i) the prosecution for the relevant offence;
 - (ii) if the application is made by the offender – the victim;
 - (iii) if the application is made by the victim – the offender;
- and

- (b) a party is entitled to be heard in relation to the application.

- (8) The court must deal with the application by:

- (a) varying or revoking the order as the court considers appropriate in the circumstances; or

- (b) dismissing the application.

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- (9) To avoid doubt, the power to vary a victim protection order includes a power to vary the period for which the order has effect (see section 97K(3)(c)).

97P Certain information not to be published or broadcast

- (1) A person is guilty of an offence if the person publishes or broadcasts, or otherwise discloses to someone:
- (a) the fact that a named person is the offender for whom a victim protection order was made (whether or not the order is still in force); or
 - (b) any information calculated to identify the offender.

Maximum penalty: 200 penalty units.

- (2) Subsection (1) does not apply in relation to:
- (a) the publication or broadcasting of a report that is authorised by a court; or
 - (b) the disclosure of information to any of the following persons:
 - (i) the victim or offender for whom the order was made;
 - (ii) a person acting on behalf of the victim for the purposes of making a request mentioned in section 97K(3)(b);
 - (iii) a person who is otherwise involved in making or complying with such a request;
 - (iv) a person involved in administering the order or other penalty imposed on the offender;
 - (v) a person involved in proceedings for an alleged contravention of the order;
 - (vi) a person to whom the information is required to be disclosed under a law in force in the Territory;
 - (vii) a police officer;
 - (viii) a person authorised by a court to receive the information.