

NORTHERN TERRITORY OF AUSTRALIA
DOMESTIC VIOLENCE AMENDMENT BILL 1996

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NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

to amend the *Domestic Violence Act*

BE 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 1996*.

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. NEW SECTIONS

The Principal Act is amended by inserting after section 8 the following:

"8A. VARIATION OF ORDERS BY TELEPHONE

"(1) A member of the Police Force may, by telephone, apply to a magistrate for a variation of a restraining order under this section.

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"(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 variation of the order is sought and shall subsequently reduce to writing and include any additional information given to the magistrate orally.

"(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 a variation of an order under section 8(2), the magistrate may vary an order under this section, notwithstanding that -

- (a) the person against whom the order is made has not been given an opportunity to answer any allegation in the application; or
- (b) a person who has a direct interest in the outcome has not had an opportunity to be heard on the matter.

"(4) A magistrate who varies an order under this section shall -

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

"(5) On being informed under subsection (4) of the terms of the order as varied, the member of the Police Force shall complete the relevant order parts of the prescribed form as directed by the magistrate.

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"(6) As soon as practicable after an order is varied under this section, the member of the Police Force shall cause a copy of the order as varied completed under subsection (5) to be served on the defendant and shall forward a copy to the Clerk for the Court file.

"(7) A form of variation of an order referred to in subsection (5) 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 as varied should not be confirmed by the Court.

"(8) 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.

"(9) A variation of an order under this section is not effective after the conclusion of the hearing to which the defendant is summoned under subsection (7) 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 as varied.

"(10) As soon as practicable after the conclusion of the hearing to which the defendant is summoned under subsection (7), the Clerk shall cause a copy of the order as varied recording the decision of the Court to be served on the defendant.

"8B. VARIATION OF ORDER EX PARTE IN SPECIAL CIRCUMSTANCES

"(1) A party to a proceeding in which a restraining order has been made may apply to the Court or the Clerk for a variation of the restraining order.

"(2) Where, in the opinion of the Court or the Clerk, it is not practicable for the applicant, in the circumstances of the case, to obtain from the Court a variation of an order under section 8(2), the Court or the Clerk may vary a restraining order under this section.

"(3) An order may be varied under subsection (2) notwithstanding that -

- (a) the person against whom the order is made has not been given an opportunity to answer any allegation in the application; or

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- (b) other persons who, in the opinion of the Court or the Clerk, have a direct interest in the outcome have not had an opportunity to be heard on the matter.

"(4) If -

- (a) the Clerk is not satisfied that an order should be varied under subsection (2); or
- (b) the defendant, not having been summoned, appears at the hearing and does not consent to a variation of the order under section 9,

the Clerk shall refer the application to the Court for decision.

"(5) Where the Clerk refers an application to the Court under subsection (4), the Court may -

- (a) vary the order;
- (b) direct that a further affidavit be filed; or
- (c) give directions as to the application.

"(6) Where under subsection (5) the Court directs that a further affidavit be filed, the Clerk may, on the filing of the affidavit, make the variation sought.

"(7) Where a restraining order is varied under this section, the Clerk shall, as soon as practicable, cause a copy of the order as varied to be served on the defendant and shall forward a copy of the variation of the order to -

- (a) the Commissioner of Police; and
- (b) where the application for the variation of a restraining order was not made by a member of the Police Force, the applicant.

"(8) A form of order referred to in subsection (7) 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 variation of the order should not be confirmed by the Court.

"(9) A person on whose behalf an application is made under this section 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.

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"(10) The person on whose behalf an application is 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.

"(11) A variation of 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 as varied.

"(12) 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 as varied recording the decision of the Court to be served on the defendant."

5. BREACH OF ORDER

Section 10 of the Principal Act is amended -

- (a) by omitting from subsection (1) all words after "regulatory offence." and substituting the following:

"Penalty: For a first offence - \$2,000 or imprisonment for 6 months.";

- (b) by inserting after subsection (1) the following:

"(1A) Notwithstanding the *Sentencing Act*, where a person is found guilty of a second or subsequent offence against subsection (1), the Court shall sentence the person to imprisonment for not less than 7 days but not more than 6 months and shall not make any other order if its effect would be to release the offender from the requirement to actually serve the term of imprisonment.";

- (c) by omitting from subsection (2)(b) "section 6(3)" and substituting "section 6(3) or 8A(2)"; and

- (d) by inserting after subsection (3) the following:

"(4) Without prejudice to any other mode of proof, an endorsement on the Court file signed by the Court or the Clerk by whom a restraining order in relation to a person was made or varied, specifying that -

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- (a) the person specified in the endorsement was before the Court or the Clerk at the time the order was made or varied; and
- (b) that the Court or the Clerk explained to the person the matters referred to in subsection (2)(aa),

is prima facie proof of the matters specified."

6. POWER TO SUMMON WITNESSES, REQUIRE PRODUCTION OF DOCUMENTS, &c.

Section 20AA(1) of the Principal Act is amended -

- (a) by inserting after "appears to the Court" the words "or the Clerk"; and
- (b) by inserting after "this Act, the Court" the words "or the Clerk".

7. NEW SECTIONS

The Principal Act is amended by inserting after section 20AC the following:

"20AD. CROSS-EXAMINATION BY UNREPRESENTED DEFENDANT

"Notwithstanding any other law in force in the Territory, the Court may, of its own motion or on application by a party to a proceeding under this Act, where the Court is of the opinion that it is just or desirable to do so, order that in the examination of witnesses, a person against whom a restraining order is sought, or against whom a restraining order is in force, who is not represented by a legal practitioner -

- (a) is not entitled to cross-examine directly a person who is in a domestic relationship with him or her; and
- (b) shall put any question to the person who is in a domestic relationship with him or her by stating the question to the Court or another person authorised by the Court, and the Court or the authorised person is to repeat the question accurately to the person.

"20AE. UNATTESTED DECLARATION OF SERVICE

"(1) Without prejudice to any other mode of proof, the service on a person of an order for the purposes of this Act may be proved by an unattested declaration of service in the prescribed form.

"(2) The Court may require the person making the declaration for the purposes of subsection (1) to be called as a witness, or may require further evidence of the facts.

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"(3) A document purporting to be a declaration under this section shall, subject to subsection (2), be received in evidence in any court or legal proceeding as sufficient proof of the service of the order to which it relates, without proof of the signature or of the official character of the person or persons taking or signing it.

"(4) If any declaration made under this section is untrue in any material particular, the person wilfully making the false declaration is guilty of wilful and corrupt perjury, and is punishable accordingly.

"20AF. CERTAIN FAMILY LAW ORDERS TO BE CONSIDERED

"(1) A person applying for a restraining order or to vary or revoke a restraining order shall inform the Court, magistrate or Clerk to whom the application is made of any Division 11 contact orders, within the meaning of Part 7 of the *Family Law Act 1975* of the Commonwealth, that the person knows to be in force in relation to the defendant to the application.

"(2) An action of the Court, magistrate or Clerk is not invalid merely because of the failure of a person to provide information in accordance with subsection (1)."

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