

Serial 147
Personal Violence Restraining Orders Bill 2015
Mr Elferink

A Bill for an Act to provide for the protection of persons from personal
violence, and for related purposes

NORTHERN TERRITORY OF AUSTRALIA

PERSONAL VIOLENCE RESTRAINING ORDERS ACT 2015

Act No. [] of 2015

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2015

An Act to provide for the protection of persons from personal violence, and for related purposes

[Assented to [] 2015]
[Second reading [] 2015]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Personal Violence Restraining Orders Act 2015*.

2 Commencement

This Act commences immediately after the commencement of the *Local Court (Repeals and Related Amendments) Act 2015*.

3 Definitions

In this Act:

child means a person under the age of 18 years.

Court means the Local Court.

defendant, for a personal violence restraining order, means the person against whom the order is in force.

personal violence offence means an offence against any of the following provisions of the Criminal Code:

- (a) Part V, Division 2;
- (b) Part VI, Divisions 3 to 6A;
- (c) section 211 or 212;
- (d) another provision prescribed by regulation.

personal violence restraining order, see section 6.

protected person, for a personal violence restraining order, means the person for whose protection the order is in force.

registrar, see section 3 of the *Local Court Act*.

Note for section 3

The Interpretation Act contains definitions and other provisions that may be relevant to this Act.

4 Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 4

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

5 Object of, and achievement of, Act

- (1) The object of this Act is to ensure the safety and protection of persons who experience personal violence outside a domestic relationship as defined in the *Domestic and Family Violence Act*.
- (2) The object of this Act is to be achieved by providing for:
 - (a) the making of personal violence restraining orders to protect persons from certain violence; and
 - (b) the enforcement of the orders.

Part 2 Applying for and making orders

6 Application for order

Any of the following persons may apply for an order under this Part (a ***personal violence restraining order***) for the protection of a person against another person:

- (a) the person whose protection is sought under the order;
- (b) an adult acting for the person whose protection is sought under the order;
- (c) a police officer.

7 Parties to order

- (1) Only one person may be named as the protected person and only one person may be named as the defendant in a personal violence restraining order.
- (2) The defendant named in a personal violence restraining order cannot be a child under the age of 15 years.

8 How application is made

An application for a personal violence restraining order must be made to the Court in accordance with the rules of the Court.

9 Notice of hearing of application

As soon as practicable after the application is filed, a registrar must give written notice to the person whose protection is sought and defendant of the time and place for the hearing of the application.

10 Referral to mediation

- (1) Before hearing an application for a personal violence restraining order, the Court must refer the person whose protection is sought and defendant for mediation under the *Community Justice Centre Act*.
- (2) However, the Court must not make a referral and must proceed to hear the application if it is satisfied it is in the interests of justice to do so, including, for example, because:
 - (a) there is a history of violence committed against the person by the defendant; and

- (b) there has been a previous attempt at mediation between the person and defendant in relation to the application and the attempt was not successful.
- (3) A referral stays the proceedings until a report is given to the Court under subsection (6).
- (4) The referral is taken to be an application under section 13 of the *Community Justice Centre Act* for the provision of mediation services for a dispute between the person and defendant.
- (5) The Director of the Community Justice Centre must accept the referral.
- (6) The Director must give the Court a written report on the outcome of the mediation or attempted mediation.
- (7) The Court may refer the matter back to the Director with directions about the mediation.
- (8) In deciding the application for the personal violence restraining order, the Court must take a report of the Director into account.

11 Deciding application

- (1) The Court may decide to make a personal violence restraining order if it is satisfied on the balance of probabilities a personal violence offence has been committed, or is likely to be committed, by the defendant against the person whose protection is sought.
- (2) Otherwise, the Court must dismiss the application.
- (3) The Court may decide the application even if the defendant does not appear at the hearing.

12 Matters to be considered by Court

- (1) In deciding whether to make a personal violence restraining order, the Court must consider the safety and protection of the person whose protection is sought and any affected child to be of paramount importance.
- (2) In addition, the Court must consider the following:
 - (a) the defendant's criminal record as defined in the *Criminal Records (Spent Convictions) Act*,
 - (b) the defendant's previous conduct whether in relation to the person, affected child or someone else;

(c) other matters the Court considers relevant.

(3) In this section:

affected child, in relation to an application for a personal violence restraining order, means a child whose wellbeing is affected or likely to be affected by a personal violence offence committed or likely to be committed by the defendant against the person.

13 Content of orders

(1) A personal violence restraining order may provide for any of the following:

- (a) an order imposing the restraints on the defendant stated in the order as the Court considers are necessary or desirable to prevent the commission of a personal violence offence against the protected person;
- (b) the other orders the Court considers are just or desirable to make in the circumstances of the particular case.

(2) In this section:

restraint includes prohibition.

14 Notice of order

As soon as practicable after a personal violence restraining order is made, the Court must give a copy of it to:

- (a) the protected person and defendant; and
- (b) the Commissioner of Police.

Part 3 Miscellaneous matters

15 Variation or revocation of order

(1) Any of the following persons may apply to the Court for an order varying (including extending the period the order is in force) or revoking a personal violence restraining order.

- (a) the protected person;
- (b) a police officer or adult acting for the protected person;
- (c) the defendant;
- (d) a person granted leave by the Court to make the application.

- (2) The defendant may apply for the order only with the leave of the Court.
- (3) The Court may grant leave to the defendant only if satisfied there has been a substantial change in the circumstances of the defendant or the protected person since the order was made or last varied.
- (4) Part 2 applies (with the necessary changes) to the application as if it were an application under that Part.

16 Contravention of order

- (1) A person commits an offence if:
 - (a) a personal violence restraining order is in force against the person; and
 - (b) the person engages in conduct that results in a contravention of the order.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

- (2) Subsection (1) does not apply unless:
 - (a) the person has been given a copy of the order; or
 - (b) for an order that has been varied:
 - (i) the person has been given a copy of the order as varied; or
 - (ii) the person's conduct also constitutes a contravention of the order last given to the person.
- (3) An offence against subsection (1) is an offence of strict liability.

Part 4 Consequential amendments

Division 1 Cross-border Justice Act

17 Act amended

This Division amends the *Cross-border Justice Act*.

18 Section 7 amended

- (1) Section 7, definition ***restraining order***, paragraph (a)(ii)
omit
as defined in section 4 of the *Local Court (Criminal Procedure)*
insert
under the *Personal Violence Restraining Orders*
- (2) Section 7, definition ***restraining orders laws***, paragraph (a)(ii)
omit
Local Court (Criminal Procedure)
insert
Personal Violence Restraining Orders

Division 2 Cross-border Justice Regulations

19 Regulations amended

This Division amends the *Cross-border Justice Regulations*.

20 Regulation 25 repealed

Regulation 25
repeal

21 Part 3, Division 10A inserted

After regulation 36
insert

Division 10A Personal Violence Restraining Orders Act

37 Act modified

This Division prescribes modifications to the *Personal Violence Restraining Orders Act*.

38 New section 14A

After section 14

insert

14A Notice of order made in cross-border proceeding

- (1) This section applies in relation to a personal violence restraining order made by a prescribed court of the Territory if:
- (a) the order is made or varied in a cross-border proceeding for the purposes of which the defendant has a connection with a cross-border region; and
 - (b) the protected person indicates at the time the order is made or varied that the person wants the order as made or varied to be registered under the restraining orders laws of another participating jurisdiction; and
 - (c) the region is partly in the other jurisdiction.
- (2) A registrar must give a copy of the order as made or varied to:
- (a) if the other jurisdiction is South Australia – the Principal Registrar of the Magistrates Court of South Australia; or
 - (b) if the other jurisdiction is Western Australia – the registrar of the Magistrates Court of Western Australia.

Division 3 Firearms Act

22 Act amended

This Division amends the *Firearms Act*.

23 Section 3 amended

Section 3(1), definition ***personal violence restraining order***, paragraph (a)

omit

made under Part IVA, Division 2 of the *Local Court (Criminal Procedure)*

insert

under the *Personal Violence Restraining Orders*

Division 4 Local Court (Criminal Procedure) Act

24 Act amended

This Division amends the *Local Court (Criminal Procedure) Act*.

25 Section 4 amended

(1) Section 4, definition ***defendant***, paragraph (a)

omit

(2) Section 4, definition ***personal violence offence***, ***personal violence restraining order*** and ***protected person***

omit

26 Part IVA repealed

Part IVA

repeal

27 Part VIII, Division 5 inserted

After section 209

insert

Division 5 Transitional matters for Personal Violence Restraining Orders Act 2015

210 Definitions

In this Division:

amendment Act means the *Personal Violence Restraining Orders Act 2015*.

commencement mean the commencement of the amendment Act.

existing order means a personal violence restraining order made under the repealed provisions and in force immediately before the commencement.

repealed provisions means Part IVA of this Act as in force immediately before its repeal by section 18 of the amendment Act.

211 Continuation of existing orders

On the commencement, an existing order becomes a personal violence restraining order under the amendment Act.

212 Continuation of existing proceedings

- (1) On the commencement, proceedings before the Court of Summary Jurisdiction under the repealed provisions become proceedings under the amendment Act.
- (2) Those proceedings continue uninterrupted and are not affected by the enactment of the amendment Act in place of the repealed provisions.

Note for section 212

Section 86 of the Local Court Act 2015 also applies in relation to the proceedings. That section provides that proceedings before the Court of Summary Jurisdiction continue as proceedings before the Local Court.

213 Continuation of existing documents

A summons, warrant or other document relating to an order made under the repealed provisions that, immediately before the commencement, had ongoing effect, continues with the same force and effect after the commencement.

Division 5 Weapons Control Act

28 Act amended

This Division amends the *Weapons Control Act*.

29 Section 15 amended

Section 15(4), definition ***personal violence restraining order***, paragraph (a)

omit

made under Part IVA, Division 2 of the *Local Court (Criminal Procedure)*

insert

under the *Personal Violence Restraining Orders*

Division 6 Expiry of Part

30 Expiry of Part

This Part expires on the day after it commences.