

NORTHERN TERRITORY OF AUSTRALIA

DOMESTIC VIOLENCE BILL 1992

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## NORTHERN TERRITORY OF AUSTRALIA

# A BILL for AN ACT

to provide for the making of restraining orders in relation to domestic violence and the registration and enforcement of such orders made in other jurisdictions, and for related purposes

**B**e 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:

### PART 1 - PRELIMINARY

#### 1. SHORT TITLE

This Act may be cited as the *Domestic Violence Act 1992*.

#### 2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

#### 3. DEFINITIONS

(1) In this Act, unless the contrary intention appears -

"Clerk" means the Registrar of the Local Court under the *Local Court Act*;

"Court" means the Court of Summary Jurisdiction;

"interstate restraining order" means an order made under a law of a State or another Territory of the Commonwealth declared by the Administrator by notice in the *Gazette* to be a law corresponding to section 4;

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"registered interstate restraining order" means an interstate restraining order registered under Part 3;

"restraining order" means an order made under section 4(1) or 6(3) and includes a registered interstate restraining order;

"spouse", in relation to a person, includes a spouse of the person according to Aboriginal tradition, a former spouse of the person and a person of the opposite sex who is living or has lived with the person as if he or she were the spouse of the person although not married to the person.

### PART 2 - RESTRAINING ORDERS

#### 4. RESTRAINING ORDER

(1) Where, on an application made in accordance with subsection (2), the Court is satisfied, on the balance of probabilities -

(a) that the defendant -

(i) has caused personal injury to, or damage to property in the possession of, the spouse of the defendant; and

(ii) is, unless restrained, likely again to cause such personal injury or damage;

(b) that the defendant -

(i) has threatened to cause personal injury to, or damage to property in the possession of, the spouse of the defendant; and

(ii) is, unless restrained, likely to carry out that threat; or

(c) that -

(i) the defendant has behaved in a provocative or offensive manner towards the spouse of the defendant;

(ii) the behaviour is such as is likely to lead to a breach of the peace; and

(iii) the defendant is, unless restrained, likely again to behave in the same or a similar manner,

it may make an order imposing such restraints on the defendant, and for such period as is specified in the order, as are necessary or desirable to prevent the defendant from acting in the apprehended manner.

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by - (2) An application under this section may be made

(a) a member of the Police Force; or

(b) a spouse against whom, or against whose property, the violence or behaviour the subject of the application was or is likely to be directed.

(3) An order under subsection (1) may be made in the absence of the defendant, whether or not the defendant was summoned to appear at the hearing of the application.

(4) As soon as practicable after an order under subsection (1) is made, the Clerk shall cause a copy of the order to be served on the defendant and shall forward a copy of the order to the Commissioner of Police and, where the applicant is not a member of the Police Force, the applicant.

(5) Where an order under subsection (1) is made in the absence of the defendant and the defendant was not summoned to appear at the hearing of the application, the defendant shall be summoned to appear before the Court to show cause why the order should not be confirmed and the order has no effect after the conclusion of the hearing to which the defendant is summoned 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.

(6) A summons to appear before the Court for the purposes of subsection (5) shall be deemed to have been served if it is served on, or its existence is made known to the defendant, in a manner referred to in section 9(2)(a), (c), (d) or (e).

(7) As soon as practicable after the conclusion of the hearing to which the defendant is summoned under subsection (5), the Clerk shall cause a copy of the order recording the decision of the Court to be served on the defendant and shall also cause a copy to be sent to the Commissioner of Police and, where the applicant is not a member of the Police Force, also to the applicant.

(8) Without limiting the generality of subsection (1), the Court may make an order under that subsection, or refuse to make an order, restraining the defendant from entering premises, or limiting the defendant's access to

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premises, whether or not the defendant has a legal or equitable interest in the premises, but before making or refusing to make such an order it shall consider the effect of making or refusing to make the order on -

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

the persons affected by the proceedings.

5. CONSENT ORDERS

(1) Notwithstanding section 4(1)(a), (b) and (c), but subject to this section, the Court or the Clerk (and for that purpose the Clerk has the necessary jurisdiction) may, with the consent of the defendant and the defendant's spouse, make an order under that section.

(2) If the Clerk is not satisfied that an order referred to in subsection (1) should be made, he or she shall refer the application to the Court for decision.

(3) Where the Clerk refers an application to the Court under subsection (2), the Court may -

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

(4) Where under subsection (3)(b) the Court directs that a further affidavit be filed, the Clerk may, on the filing of the affidavit, make the order sought.

(5) Neither the Court nor the Clerk shall make an order in pursuance of this section unless the Court or the Clerk, as the case may be, has explained or caused to be explained to the defendant -

- (a) the purpose and effect of the proposed order;
- (b) the consequences that may follow if the defendant fails to comply with the proposed order; and
- (c) the means by which the proposed order may be varied or revoked.

6. ORDERS IN SPECIAL CIRCUMSTANCES

(1) A member of the Police Force may, by telephone, apply to a magistrate for an 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 making of the order is sought and shall subsequently reduce to writing and include any additional information given to the magistrate as indicated in subsection (4).

(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 an order under section 4(1), the magistrate may make an order under this section in the same terms as the Court may make an order under section 4(1) notwithstanding that the person against whom the order is made has not been given an opportunity to answer any allegation in the application, and the order has effect according to its tenor as if it were an order made under that section.

(4) A magistrate shall not make an order under this section unless satisfied that he or she might reasonably have made the order under section 4(1) on the grounds indicated in the application part of the prescribed form referred to in subsection (2) had the magistrate been sitting as the Court, or on such additional information as the magistrate obtains from the applicant.

(5) A magistrate who makes an order under this section shall -

- (a) complete the application part of the prescribed form and reduce to writing and include any additional information referred to in subsection (4);
- (b) complete and sign the order on the prescribed form;
- (c) determine a time, being a time as soon as practicable after the making of the order, by which the order is to be returned;
- (d) record on the order 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, the reasons for making it and the time at and place at which it 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.

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

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

(8) A form of order referred to in subsection (6) 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 should not be confirmed by the Court.

(9) 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.

(10) 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 recording the decision of the Court to be served on the defendant.

### 7. POWER TO REMOVE AND DETAIN WHILE ORDER SOUGHT

(1) Where a member of the Police Force intends to apply for an order under section 6 against a person and believes on reasonable grounds that unless the person is removed the person's spouse, for whose protection the order is to be sought, will be in imminent danger of suffering personal injury at the hands of the person or an aggravation of personal injuries already sustained, the member may enter any premises on or in which the member believes the person to be, take the person into custody and remove the person to the nearest police station or other place where an application under section 4 can conveniently be made.

(2) A member of the Police Force who under subsection (1) removes a person to a police station or other place may detain the person at that police station or place for as long as is reasonably necessary for an application under section 5 in relation to the person to be made and an order given or refused but, in any case, for not more than 4 hours after the person was first taken into custody.

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(3) A member of the Police Force may apply such force as is reasonably necessary in the exercise of the member's powers under subsection (1) and has the same power and protection in relation to the exercise of those powers as the member would have had the member been arresting the person for an offence.

8. VARIATION OR REVOCATION OF ORDER

(1) A party to a proceeding in which a restraining order has been made may, at any time, apply to the Court for a variation or revocation of the order.

(2) The Court may, on receiving an application under subsection (1) or of its own motion, after all parties and other persons who, in the opinion of the Court, have a direct interest in the outcome have had an opportunity to be heard on the matter, vary or revoke, or refuse to vary or revoke, a restraining order.

(3) Where a restraining order is varied or revoked under this section, the Clerk shall, as soon as practicable, cause a copy of the order as so varied or notice of the revocation, as the case may be, to be served on the defendant and shall also notify the Commissioner of Police and, where the applicant in relation to the original order was not a member of the Police Force, the applicant, of the variation or revocation.

9. BREACH OF ORDER

(1) A person against whom a restraining order is in force who has been served with a copy of the order or the order as varied and who contravenes or fails to comply with the order is, subject to subsection (3), guilty of a regulatory offence.

Penalty: \$2,000 or imprisonment for 6 months.

(2) For the purposes of subsection (1), a copy of an order or order as varied is or shall be deemed to have been served on a defendant to whom the order relates where -

- (a) it is served personally on the defendant;
- (b) in the case of an order under section 5(3) - the magistrate making the order advises the defendant by telephone of the terms of the order;



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- (c) it is properly addressed and posted by AR Security Post under the *Postal Service Act 1975* of the Commonwealth to the defendant at the defendant's last known or most usual postal address or place of abode and the defendant has acknowledged receipt of the mail containing the order in accordance with the procedures under that Act for acknowledging receipt;
  - (d) its existence and terms are made known orally or in writing to the defendant by a member of the Police Force; or
  - (e) it is served in such other manner as the Court or a magistrate orders.
- (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 such an emergency that an ordinary person similarly circumstanced would have acted in the same or a similar way; or
  - (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.

### 10. EVIDENCE

In making, confirming, varying or revoking a restraining order the Court or a magistrate may admit and act on hearsay evidence.

### 11. ORDER NOT TO AFFECT OTHER LIABILITY

A restraining order may be made or varied under this Act notwithstanding that a criminal proceeding has been commenced against the person against whom it is sought or made and the making or varying of an order under this Act does not, except as provided in this Act, affect the civil or criminal liability of a person against whom it is made in respect of the apprehended action of the person to which the order relates.

### 12. COSTS NOT TO BE AWARDED EXCEPT IN CERTAIN CIRCUMSTANCES

Costs shall not be awarded against an applicant in respect of the refusal of the Court to make or confirm a restraining order unless the Court is satisfied that the

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making of the application for the order was unreasonable and in bad faith.

13. PROTECTION OF MEMBERS OF POLICE FORCE ACTING IN GOOD FAITH

A member of the Police Force who makes an application under this Act or who represents another member of the Police Force at a hearing under this Act, and who acts in good faith and in the normal course of duty in so doing, is not liable in any civil action arising out of the conduct of the hearing.

PART 3 - RECOGNITION OF INTERSTATE RESTRAINING ORDERS

14. APPLICATION FOR REGISTRATION OF INTERSTATE RESTRAINING ORDER

(1) A person may apply to the Clerk for the registration of an interstate restraining order.

(2) An application under subsection (1) shall -

(a) be made in a form approved by the Clerk;

(b) be accompanied by a copy of the interstate restraining order; and

(c) be accompanied by such evidence of effective service of the interstate restraining order on the person against whom it was made as the Clerk considers appropriate.

15. REGISTRATION OF INTERSTATE RESTRAINING ORDER

(1) On receipt of an application under section 14, the Clerk shall -

(a) register the interstate restraining order to which the application relates; or

(b) refer the interstate restraining order to the Court for adaptation and modification.

(2) On the referral of an interstate restraining order under section (1)(b), the Court may make such adaptations and modifications to the order as the Court considers necessary or desirable for its effective operation in the Territory.

(3) The Clerk shall register an interstate restraining order which has been adapted and modified under subsection (2).

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(4) On registering an interstate restraining order, the Clerk shall -

- (a) provide the Commissioner of Police with a copy of the registered interstate restraining order; and
- (b) notify the Registrar of the court which made the interstate restraining order that the order, or the order as adapted and modified, has been so registered.

(5) Notice of the registration of an interstate restraining order shall not be served on the person against whom the order was made except where the person who applied for the registration has consented to that service.

(6) A registered interstate restraining order is registered for the period during which the order, or the order as adapted and modified, is in force.

16. EFFECT OF REGISTRATION OF INTERSTATE RESTRAINING ORDER

An interstate restraining order which has been registered under section 15 -

- (a) has the same effect as a restraining order made under Part 2; and
- (b) may be enforced against a person as if it were a restraining order which had been made under Part 2 and as if a copy of the record of the order had been served on the person in accordance with section 9.

17. VARIATION, &c., OF REGISTERED INTERSTATE RESTRAINING ORDER

- (1) In this section, "prescribed person" means -
  - (a) a person who applied for the registration of an interstate restraining order;
  - (b) a person for whose benefit a registered interstate restraining order has been made;
  - (c) a person against whom a registered interstate restraining order has been made; or
  - (d) a person whom the Court has granted leave to make an application under this section.

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(2) A prescribed person may apply to the Court for one or more of the following:

- (a) the variation of a registered interstate restraining order as it applies in the Territory;
- (b) the variation of the period during which a registered interstate restraining order has effect in its operation in the Territory;
- (c) the cancellation of the registration of a registered interstate restraining order.

(3) On receipt of an application under subsection (2), the Court may do one or more of the acts specified in that subsection.

(4) An application by a person referred to in subsection (1)(a), (b) or (d) may be heard and determined in the absence of a person against whom the registered interstate restraining order has been made.

(5) A registered interstate restraining order varied under subsection (2)(a) or (b) is registered for the period during which the order, as varied, has effect in its operation in the Territory.

(6) On the variation or cancellation under this section of an interstate restraining order the Registrar shall notify the Commissioner of Police, and the Registrar of the court that made the interstate order, of that fact.

PART 4 - TRANSITIONAL

18. TRANSITIONAL

(1) Where immediately before the commencement of this Act -

- (a) there was in force an order under Division 8 of Part IV of the *Justices Act*; or
- (b) an application had been made or a matter was in process under that Division and not disposed of before that commencement,

the order shall continue in force, or the application or matter shall be dealt with or shall proceed, as if it were made or commenced under this Act.

(2) Part 3 extends to an interstate restraining order made before the commencement of this Part.