

2015

LEGISLATIVE ASSEMBLY OF THE

NORTHERN TERRITORY

ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

Personal Violence Restraining Orders Bill 2015

SERIAL NO. 147

EXPLANATORY STATEMENT

GENERAL OUTLINE

The main purpose of the Personal Violence Restraining Orders Bill 2015 is to enact a standalone ‘Personal Violence Restraining Orders Bill’ as a result of the enactment earlier this year of the *Local Court Act 2015* and consequential amendments including the *Local Court (Criminal Procedure) Act*.

The *Local Court Act 2015* provides for the establishment of a new Local Court that has jurisdiction over both criminal and civil matters (and the consequent abolition of the Court of Summary Jurisdiction) and for ancillary reforms relating to consistency of proceedings within the Local Court, the Supreme Court, the Youth Justice Court and the Work Health Court.

The majority of provisions, with respect to the *Justices Act*, will be incorporated into *Local Court (Criminal Procedure) Act*.

NOTES ON CLAUSES

Part 1 **Preliminary matters**

Clause 1. **Short Title**

This is a formal clause which provides for the citation of the Bill. The Bill when passed, may be cited as the *Personal Violence Restraining Orders Act 2015*.

Clause 2. Commencement

This is a formal clause which provides when the Act will commence. The Act will commence immediately after the time of the commencement of the *Local Court (Repeals and Related Amendments) Act 2015*. This is as a result of the Local Court reforms and amendments to the *Justices Act* as part of that reform package.

Clause 3. Definitions

This clause defines various words and expressions used in the Act.

Clause 4. Application of the Criminal Code

This is a standard clause that provides that Part IIAA of the Criminal Code applies to an offence against this Act. Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defenses, and deals with burden of proof. Part IIAA also defines, or elaborates on, certain concepts commonly used in the creation of offences.

Clause 5. Object of and achievement of Act

This clause sets out the objects of the Act which is the safety and protection of persons who experience personal violence outside a domestic relationship.

The clause also sets out that the main means of achieving the object which is the making of personal violence restraining orders and the enforcement of the orders.

Part 2 Applying for and making orders

Clause 6. Application for order

This clause sets out who may apply for a personal violence restraining order against another person: the person seeking protection, an adult on behalf of a person seeking protection or a police officer.

Clause 7. Parties to order

This clause provides that only one person may be named as the protected person or the defendant in a personal violence restraining order and that a defendant must be 15 years old and above.

Clause 8. How application is made

This clause provides that an application for a personal violence restraining order must be made in accordance with the rules of the Court.

Clause 9. Notice of hearing of application

A registrar of of the Court must give notice of the time and place of the hearing as soon as is practicable after the application is made.

Clause 10. Referral to mediation

This clause provides that, before hearing an application for a personal violence restraining order, the court must refer the parties to the Community Justice Centre for mediation. The court may proceed to hear the matter if it is satisfied it is in the interests of justice because there is a history of violence committed against the protected person and there has been a previous unsuccessful attempt at mediation. The Director of the Community Justice Centre must give the court a written report on the outcome of the mediation. The court has the discretion to refer the matter back to the Community Justice Centre or take it into account in deciding the application.

Clause 11. Deciding application

This clause provides that the test for making a personal violence restraining order is, if the court is satisfied, on the balance of probabilities, that a personal violence offence has been committed, or is likely to be committed, by the defendant against the protected person and it has caused or is likely to cause harm. The court has the power to dismiss the application if this test is not met.

Clause 12. Matters to be considered by Court

This clause sets out that the paramount consideration of the court when making a personal violence restraining order is the safety and interests of the protected person and any affected children. Consideration must also be given to the defendant's criminal records, defendant's previous conduct and other matters consider relevant by the court.

Clause 13. Content of orders

This clause sets out what may be the subject of a personal violence restraining order. Such orders may impose restraints on the defendant and any other orders the court considers necessary in the circumstances.

Clause 14. Notice of order

This clause provides that the court must give a copy of the personal violence restraining order to

the parties and the Commissioner of Police.

Part 3 Miscellaneous Matters

Clause 15. Variation or revocation of order

This clause sets out the persons who may seek a personal violence restraining order. These people include adults, young persons aged between 15-18, a police officer or adult acting for the protected person, the defendant and a person granted leave by the court to make the application.

A defendant must demonstrate a substantial change in circumstances for a court to grant leave to the application.

Clause 16. Contravention of order

This provides for the offence of a contravention of a personal violence restraining order and that the offence is one of strict liability. The maximum penalty for the contravention of a personal violence restraining order is 400 penalty units or imprisonment for two years. This is consistent with the approach taken for a breach of a domestic and family violence order.

Part 4 Consequential amendments

Division 1 Cross-border Justice Act

Clause 17. Act amended

This division amends the *Cross-border Justice Act* definitions to ensure cross-referencing is correct.

Clause 18. Section 7 amended

Section 7 is amended with the definition of ‘restraining order’, by omitting ‘as defined in section 4 of the *Local Court (Criminal Procedure) Act*’ and inserting ‘under the *Personal Violence Restraining Orders Act*’.

The definition ‘restraining orders laws’ is amended by omitting ‘*Local Court (Criminal Procedure) Act*’ and inserting ‘Personal Violence Restraining Orders’.

Division 2 Cross-border Justice Regulations

Clause 19. Regulations amended

This division amends the Cross-border Justice Regulations.

Clause 20. Regulation 25 repealed

This clause omits and replaces regulation 25 which makes a modification to the former *Justices Act* and inserts after regulation 43 a new Division 12 ‘*Personal Violence Restraining Orders*’.

Act.

Clause 21. Part 3, Division 10A inserted

This clause inserts after regulation 36 a new Division 10A Personal Violence Restraining Orders Act. A new Regulation 14A is inserted to ensure that a personal violence restraining order made by a prescribed court of the Territory and the order is made or varied in a cross-border proceeding, the registrar must give a copy of the order as made or varied to their counterpart in South Australia or Western Australia.

Division 3 Firearms Act

Clause 22. Act amended

This division amends the *Firearms Act* to ensure the relevant Act and section are referred to.

Clause 23. Section 3 amended

The definition of personal violence restraining order is amended by omitting ‘made under Part IVA, Division 2 of the *Local Court (Criminal Procedure) Act*’ and inserting ‘under the *Personal Violence Restraining Orders Act*’.

Division 4 Local Court (Criminal Procedure) Act

Clause 24. Act amended

This Division amends the *Local Court (Criminal Procedure) Act* to ensure cross-referencing is correct.

Clause 25. Section 4 amended

The definition ‘defendant’ is amended by omitting ‘personal violence offence, personal violence restraining order and protected person’.

Clause 26. Part IVA repealed

This clause provides that Part IVA of the *Local Court (Criminal Procedure) Act* is repealed.

Clause 27. Part VIII, Division 5 inserted

This clause provides that after section 209 a new Part VIII, Division 5 concerning Transitional matters for *Personal Violence Restraining Orders Act 2015* is inserted.

This clause defines various words and expressions used in the Act regarding transitional matters. Such definitions include:

amendment Act means the *Personal Violence Restraining Orders*

Act 2015.

commencement means 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.

New clause 211 provides that on the commencement of the *Personal Violence Restraining Orders Act 2015*, an existing order becomes a personal violence restraining order under this Act.

New clause 212 provides that on the commencement, proceedings before the Court of Summary Jurisdiction under the Part IVA of the *Local Court (Criminal Procedure) Act* become proceedings under this Act.

Additionally, that those proceedings continue uninterrupted and are not affected by the enactment of this Act in place of the Part IVA of the *Local Court (Criminal Procedure) Act*.

New clause 213 provides that a summons, warrant or other document relating to an order made under the former Act that, immediately before the commencement, had ongoing effect, continues with the same force and effect after the commencement.

Division 5 Weapons Control Act

Clause 28. Act amended

This Division amends the *Weapons Control Act* to ensure cross-referencing is correct.

Clause 29. Section 15 amended

The definition ‘personal violence restraining order’ omits ‘made under Part IVA, Division 2 of the *Local Court (Criminal Procedure) Act*’ and inserts ‘under the *Personal Violence Restraining Orders Act*’.

Division 6 Expiry of Part

Clause 30. Expiry of Part

This is a standard clause which provides that this Part expires the day after it commences.