

1992

LEGISLATIVE ASSEMBLY OF THE AUSTRALIAN CAPITAL TERRITORY

PROTECTION ORDERS (RECIPROCAL ARRANGEMENTS) BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by the Authority of

Mr Terence Connolly MLA

Attorney-General)

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OUTLINE

As the law stands, domestic violence protection orders have no effect outside the particular State or Territory in which they were granted. This means that the police may be unable to arrest a person who has earlier been violent or threatening, even though that person has been ordered by a Court not to approach the applicant and has proceeded to do so.

The Bill provides for the portability of domestic violence protection orders across State or Territory borders by enabling interstate protection orders to be enforced in the same way as an order made under the *Domestic Violence Act 1986*, upon registration in the Magistrates Court. The practical effect of this is that sanctions for breaches of interstate orders committed in the ACT are made available to victims of domestic violence without them having to go through the process of taking out another order in this jurisdiction.

FINANCIAL IMPLICATIONS

The new procedures proposed in the Bill will be implemented within existing budgetary constraints.

CLAUSE NOTES

Clause 1, 2 and 3: Formal Clauses

Clauses 1, 2 and 3 are formal. They contain the short title of the Bill, a commencement provision and the meaning of the terms used within the Bill.

Clause 4: Application for Registration of Interstate Order

This clause enables a person to apply to the Registrar of the Magistrates Court for registration of an interstate order. The application must be in the form approved by the Registrar and accompanied by a copy of the order.

Clause 5: Duties of Registrar

This clause imposes a duty upon the Registrar to register orders where an application for registration has been made. In addition, the Registrar must provide a copy of both the registered order and the application for registration to the Commissioner of the AFP and notify the interstate court that made the order of the registration.

Clause 6: Effect of Registration

This clause gives the registered order the same effect as an order made under section 4 or 14 of the *Domestic Violence Act 1986*. It is in this way that a registered order attracts enforceability and penalties if breached in the ACT. It is not intended to effect the nature of the protection offered by the order, for example, the range of people protected.

Paragraph 6(1)(b) asserts enforceability of a registered order notwithstanding that the respondent has not been served notice of the registration. It should be noted that the scheme envisages that the respondent will be warned at the time the original order issues that the order may be registered and enforced in any State or Territory.

Paragraph 6(1)(c) allows a registered order to be varied by following the procedure laid down in the *Domestic Violence Act 1986*. Variation includes adaptation and modification.

Subclause 6(2) re-enforces the right of any party to the original proceedings in which an interstate order was granted to seek a variation. This is intended to overcome any possible problems caused by differences between jurisdictions.

Subclause 6(3) is formal, defining terms used in clause 6.

Clause 7: Variation of a Registered Order

This clause requires the Registrar to follow the usual procedures set out in the Domestic Violence Act and to notify the interstate Court that made the order after an interstate order is varied.

Clause 8: Revocation of Interstate Order

Clause 8 requires the Registrar to cancel registration if notified by an interstate Court that the order that has been registered has been revoked by the Court that made the original order. The Registrar is also required under this clause to notify the Commissioner of the AFP and the person for whose benefit the order was registered of the cancellation of the registration.

Clause 9: Variation of Interstate Order

This clause lays down the procedure to be followed when an interstate order is varied by the Court that made the order. The Registrar is required to cancel the existing registration and register the varied order. Subclause 9(2) provides that a varied order registered in this way takes effect upon the cancellation of the registration of the earlier version of the order.

Subclause 9(3) provides that a breach of the original order remains enforceable under the varied order as long that breach would constitute a breach of the varied order.

Clause 10: Notification by Interstate Court of Registration

This clause lays down the procedure to be followed when the Magistrates Court varies or revokes an order for which notice of registration has been received from an interstate court. When the Court varies or revokes an order it knows has been registered in another jurisdiction the registering Court must be notified. In addition, subclause 10(d) requires that a copy of the varied order be sent to the Court that has registered the order.

Clause 11: Evidence

Clause 11 gives evidentiary effect to a registered order. The clause also provides that the copy is evidence of the matters stated in the order.

Clause 12: Regulations

This clause gives the Executive the capacity to make regulation.