

2004

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

**DOMESTIC VIOLENCE AND PROTECTION ORDERS
AMENDMENT BILL 2004**

EXPLANATORY STATEMENT

Circulated with the authority of
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Outline

This Bill amends the *Protection Orders Act 2001*.

The amendments were undertaken in response to a legal requirement to examine the Territory's domestic violence and protection orders legislation for consistency with Model Domestic Violence Laws, and review the operation of the provisions relating to domestic violence and personal protection orders.

In considering the legislation's compatibility with the *Human Rights Act 2004* (the HRA), regard was had to the nature of personal and domestic violence orders, and the obvious restrictions on a respondent's freedom of movement and expression.

As the Bill increases the safety and protection of people from violence, harassment, and intimidation, while not unduly interfering with the civil liberties of the individual, the proposed amendments are covered by the "reasonable limits" exemption under section 28 of the HRA. Section 28 allows the Territory to impose reasonable limits on human rights where those limits can be demonstrably justified in a free and democratic society. In addition, the right to protection from cruel, inhuman or degrading treatment in section 10 of the HRA requires effective legislative measures against domestic and personal violence.

The Bill introduces a new name for the current *Protection Orders Act 2001*, renaming it as the *Domestic Violence and Protection Orders Act 2001*. The new name acknowledges the difference between domestic violence orders and personal protection orders and gives greater recognition to domestic violence as a particular form of interpersonal violence that requires a higher level of protective response.

The Bill expands the definition of domestic violence to include threats to, or acts against pets and animals; burglary; and destroying and damaging property; and the definition of 'relative' to take into account the kinship and cultural ties of Aboriginal People and Torres Strait Islanders, members of communities with non-English speaking backgrounds and people with particular religious beliefs.

The Bill also expands the definition of ‘relevant person’ to include relationships with similar dynamics to ‘domestic relationships’.

The provisions of the Bill are explained in detail below.

The formal parts of the Bill are contained in **clauses 1 to 5**. This part sets out the name of the Act, arrangements for commencement of the Act and how the dictionary and notes to the Act should be used. **Clause 5** also outlines the operation of the *Criminal Code 2002* to the Act.

The objects and principles in **clauses 6 and 7** are a legislative statement of the fundamental reasons for the Act and the balancing of interests that occurs in making orders. The paramount consideration under the Act is the need to facilitate the safety and protection of people who fear or experience violence by ensuring that an aggrieved person is protected from domestic or personal violence.

Clause 8 expands the definition of ‘domestic violence’ to include threats to, or acts against pets and animals; burglary; and destroying and damaging property. **Clause 8** also recognises that a person’s behaviour will be domestic violence if it causes personal injury, and not just physical injury, to someone. This provision reflects the realisation of mental injury as a domestic violence crime. The recognition of a wider range of harm associated with domestic violence is consistent with the definition in the *United Nations Declaration on the Elimination of Violence Against Women*, which includes psychological violence.

Clause 9 expands the definition of ‘relative’ to include *anyone else who could reasonably be considered to be a relative of the original person*. This expansion reflects that for some members of the community the concept of ‘relative’ is wider than is ordinarily understood. This definition is consistent with the importance given to the protection of the family under section 11 of the *Human Rights Act 2004* (ACT) and the broad meaning given to ‘family’ under the *International Covenant on Civil and Political Rights*.

Clause 10 extends the rights of an aggrieved person with a legal disability to apply for a protection order in the person's own right with the leave of the Magistrates Court.

Clause 11 imposes an obligation on the Registrar at any time during a preliminary conference for a protection order application, to refer parties to mediation, if satisfied that the application is likely to be more effectively resolved by mediation. This obligation highlights the importance of alternative dispute mechanisms in preventing further violence by facilitating discussions between the parties to an order.

Clauses 12 and 13 increase the obligation on the Magistrates Court when making the protection order to explain to the aggrieved person that the order may be registered and enforced in another state or territory or in New Zealand. This provision improves the effectiveness, understanding, and inter-jurisdictional nature of protection orders.

Clause 14 adds a new note stating that the *Criminal Code 2002*, part 2.4, deals with offences of aiding and abetting.

Clause 15 outlines the steps required of a respondent seeking amendment or revocation of a protection order. **Clause 15** also inserts a new step in the process in the use of a preliminary ex-parte hearing to determine the merits of an application to amend or revoke an order. The intention behind this provision is to prevent a respondent from bringing repeated and unmeritorious applications before the court, and reduce the exposure of the aggrieved person to unnecessary distressing hearings.

Clause 16 provides that where an aggrieved person is 15 years old or younger, a protection order may be amended if the Magistrates Court is satisfied that the aggrieved person is no longer in need of the greater protection. This clause reflects the importance of ensuring that amended protection orders do not reduce the level of protection afforded in the original order to an aggrieved person.

Clause 17 grants the Children's Court the same jurisdiction under this Act as the Magistrates Court.

Clause 18 sets out the basic procedural steps to be followed by the Registrar in relation to service of non-emergency orders.

Clause 19 increases the penalty provision in the Act to reflect the seriousness of contravening a protection order. This clause provides that a person commits an offence if the person engages in conduct that contravenes a condition of a protection order, the penalty being 50 penalty units, imprisonment for five years or both.

Clause 20 imposes a requirement on the Magistrates Court where the original order is a domestic violence order, on application, to amend the original order by extending it for a stated period unless satisfied that a protection order is no longer necessary to protect the aggrieved person from domestic violence by the respondent. This provision improves the level of protection afforded to an aggrieved party by removing the time restriction of one year on the extension of domestic violence orders.

Clause 21 sets out the grounds for making a final order other than a workplace order. The provision provides that the Magistrates Court may make such an order if satisfied that if an interim order has been made in relation to the application, the respondent has been served with the interim order, and the respondent has engaged in domestic violence or personal violence, and may engage in personal violence during the time the order is proposed to operate.

Clause 22 provides greater protection to children by extending the prohibition on the respondent from doing anything outlined in a final order in relation to a child of the aggrieved person, or to any other child, if the Magistrates Court is satisfied that there is an unacceptable risk of the child being exposed to domestic violence.

Clauses 23 and 24 detail a new provision that allows the Magistrates Court to make a workplace order on application by an employee of a child facility if satisfied that the respondent poses a risk to people in the workplace, for example children, carers and teachers. ‘Child facility’ is defined to mean a preschool, childcare centre, school or other facility the main purpose of which is the care or education of children.

Clause 25 is a new provision that requires that there be a period of 21 days after an interim order is made before the return date for the application.

Clause 26 extends the grounds under which the Magistrates Court may make an interim order to include ensuring the safety of a child of the aggrieved person and prevent substantial damage to the property of the aggrieved person or injury to a child of the aggrieved person.

Clause 27 is a new section that provides for the return of personal items reasonably needed by the aggrieved person or a child of the aggrieved person in an interim order. Example of personal items provided in the clause include personal clothing, toiletries, books, photographs, house or car key.

Clause 28 inserts a new section detailing the steps required of the Magistrates Court when making an interim order in the absence of a respondent, and any representative of the respondent, and outlines when an interim order becomes a final order against the respondent.

Clause 29 extends the criteria that allows a judicial officer to make an emergency order and provides that an order may be made where the judicial officer has reasonable grounds for believing that the respondent may, if an emergency order is not made, cause physical injury to, or substantial damage to the property, of the aggrieved person or a child of the aggrieved person.

Clause 30 in relation to the length of emergency orders provides that an emergency order remains in force until a final order or interim order is served on the respondent.

Clause 31 requires a police officer serving a copy of an emergency order on a respondent to not only explain to the respondent the effect of the order, but also the purpose and terms of the order.

Clause 32 is a typographical rewrite of the original section 100 (1) relating to restrictions on the publication of reports about proceedings.

Clause 33 improves the case management of the respondent and aggrieved person as it provides for the provision of information relating to protection order proceedings to the Director of Corrective Services and the Community Advocate in relation to the exercise of the Director's or Community Advocate's functions.

Clause 34 requires the paragraphs of the Act, on its next publication, to be renumbered.

Clause 35 is a signpost provision that points a reader to the definition of 'relative' in section 10A of the Act.

Clause 36 and clause 37 extends the scope of domestic violence provisions in the Act with the inclusion of the definition of 'relevant person' as someone whose relationship with the original person would be a domestic partnership if the person were not a child; or a parent of a child of the original person.

Clause 38 provides a new definition of 'return date' to refer to the return of the application before the Magistrates Court.

Clause 39 outlines substitutions of 'behaviour' with 'conduct'.

End.