

AUSTRALIAN CAPITAL TERRITORY

Domestic Violence (Miscellaneous Amendments) Ordinance 1986

No. 53 of 1986

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 27 August 1986.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

LIONEL BOWEN
Attorney-General

An Ordinance to amend certain Ordinances in consequence of the making of the *Domestic Violence Ordinance 1986*

Short title

1. This Ordinance may be cited as the *Domestic Violence (Miscellaneous Amendments) Ordinance 1986*.¹

Commencement

2. This Ordinance shall come into operation on such date as is fixed by the Minister of State for Territories by notice in the *Gazette*.

Amendments of Crimes Act 1900

3. (1) In this section, "the Crimes Act" means the Crimes Act, 1900 of the State of New South Wales in its application to the Territory.

(2) After section 349 of the Crimes Act the following sections are inserted in Division 1 of Part X:

Police powers of entry

“349A. A police officer may enter premises, and may take such action as is necessary to prevent the commission or repetition of an offence or of a breach of the peace or to protect life or property—

- (a) when invited onto the premises by a person who is apparently a resident of the premises for the purpose of giving assistance to a person on the premises who has suffered, or is in imminent danger of suffering, physical injury at the hands of some other person;
- (b) in pursuance of a warrant issued under section 349B; or
- (c) in circumstances of seriousness and urgency, in accordance with section 349C.

Issue of warrant

“349B. (1) Where a magistrate is satisfied, by information on oath, that—

- (a) there are reasonable grounds to suspect that a person on premises has suffered, or is in imminent danger of, physical injury at the hands of another person and needs assistance to prevent, or deal with, the injury; and
- (b) a police officer has been refused permission to enter the premises for the purpose of giving assistance to the first-mentioned person,

the magistrate may issue a warrant in writing authorising a police officer, with such assistance as is necessary and if necessary by force—

- (c) to enter the premises specified in the warrant, at any time within 24 hours after the issue of the warrant; and
- (d) subject to any conditions specified in the warrant, to take such action as is necessary to prevent the commission or repetition of an offence or of a breach of the peace or to protect life or property.

“(2) The police officer applying for a warrant shall furnish such further information concerning the grounds on which the warrant is sought, either orally on oath or by affidavit, as the magistrate requires.

Entry in emergencies

“349C. A police officer may enter premises where the officer believes on reasonable grounds that—

- (a) an offence or a breach of the peace is being or is likely to be committed, or a person has suffered physical injury or there is imminent danger of injury to a person or damage to property; and
- (b) it is necessary to enter the premises immediately for the purpose of preventing the commission or repetition of an offence or a breach of the peace or to protect life or property.”.

(3) Section 352 of the Crimes Act is amended—

- (a) by omitting from sub-section (1) “and take him, and any property found upon him, before a Magistrate to be dealt with according to law” and substituting—

“and may—

- (c) detain the person only for so long as is necessary and reasonable while the first-mentioned person arranges for the attendance of a police officer; or
- (d) as soon as is reasonably practicable, take the person, and any property found upon the person, to a police officer.”; and
- (b) by omitting sub-section (2) and substituting the following sub-sections:

“(2) A police officer may, without warrant, arrest a person for an offence against a law of the Territory if the police officer believes on reasonable grounds that—

- (a) the person has committed or is committing the offence; and
- (b) proceedings by way of summons against the person in respect of the offence would not achieve one or more of the following purposes:
 - (i) ensuring the appearance of the person before the court in respect of the offence;
 - (ii) preventing the continuation of, or a repetition of, the offence or the commission of some other offence;

- (iii) preventing the concealment, loss or destruction of evidence of, or relating to, the offence;
- (iv) preventing harassment of, or interference with, a person who may be required to give evidence in proceedings in respect of the offence;
- (v) preventing the fabrication of evidence to be given or produced in proceedings in respect of the offence;
- (vi) preserving the safety or welfare of the person.

“(2A) Where—

- (a) a person has been arrested under sub-section (2) in connection with an offence;
- (b) before the person is charged with the offence, the police officer in charge of the investigation into the offence does not have, or ceases to have, reasonable grounds to believe that—
 - (i) the person committed the offence; or
 - (ii) holding the person in custody is necessary for achieving any of the purposes referred to in paragraph (2) (b),

the person shall forthwith be released from custody in respect of the offence.”.

Amendments of *Evidence Ordinance 1971*

4. Section 66 of the *Evidence Ordinance 1971* is amended—

- (a) by omitting from paragraph (3) (a) “or” (last occurring); and
- (b) by inserting after paragraph (3) (b) the following word and paragraph:
 - “; or (c) with an offence that is a domestic violence offence within the meaning of the *Domestic Violence Ordinance 1986* or an offence under section 27 of that Ordinance,”.

Amendments of *Magistrates Court Ordinance 1930*

5. (1) In this section, “Principal Ordinance” means the *Magistrates Court Ordinance 1930*.

(2) Section 80 of the Principal Ordinance is amended by adding at the end of sub-section (2) “of this Ordinance or section 24 of the *Domestic Violence Ordinance 1986*”.

(3) Section 248A of the Principal Ordinance is amended—

(a) by inserting after sub-section (2) the following sub-sections:

“(2A) Where the defendant is charged with a domestic violence offence within the meaning of the *Domestic Violence Ordinance 1986* or an offence under section 27 of that Ordinance, the Court may also order that the recognizance by subject to such of the following further conditions as the Court considers appropriate;

- (a) that the defendant not harass or molest, or cause another person to harass or molest, a specified prescribed person;
- (b) that the defendant not be in premises in which a specified prescribed person resides or works;
- (c) that the defendant not be on or near premises frequented by a specified prescribed person;
- (d) that the defendant not be in a locality in which are situated the premises in which a specified prescribed person resides or works;
- (e) that the defendant not approach within a specified distance of a specified prescribed person;
- (f) where the defendant continues to reside with a specified prescribed person—that the defendant not enter or remain in the place of residence while under the influence of liquor or a drug.

“(2B) In sub-section (2A)—

‘drug’ has the same meaning as in the *Domestic Violence Ordinance 1986*;

‘prescribed person’, in relation to a defendant, means a spouse or a child of the defendant or a parent, child, brother or sister of a spouse of the defendant.”; and

(b) by inserting in sub-section (3) “or (2A)” after “sub-section (2)”.

(4) Section 248B of the Principal Ordinance is amended by inserting after sub-section (4) the following sub-section:

“(4A) Where a police officer believes on reasonable grounds that a person who has been admitted to bail subject to conditions after having been charged with a domestic violence offence within the meaning of the *Domestic Violence Ordinance 1986* or an offence under section 27 of that Ordinance—

- (a) has failed to comply with a condition of the recognizance entered into by the person; or
- (b) will not comply with a condition of the recognizance entered into by the person,

the police officer may apprehend the person without a warrant.”.

(5) Section 248D of the Principal Ordinance is amended—

- (a) by inserting in sub-section (1) “or on the ground specified in paragraph 248B (4A) (a)” after “248B (1)”; and
- (b) by inserting in sub-section (4) “,or without a warrant on the ground specified in paragraph 248B (4A) (b),” after “248B (2)”.

(6) Section 254 of the Principal Ordinance is amended by inserting in paragraph (1) (a) “or under the *Domestic Violence Ordinance 1986* or section 24 of the *Police Ordinance 1927*” after “this Ordinance”.

Amendments of *Magistrates Court (Civil Jurisdiction) Ordinance 1982*

6. Section 282H of the *Magistrates Court (Civil Jurisdiction) Ordinance 1982* is amended—

- (a) by inserting in sub-section (1) “, or otherwise affect the operation,” after “execution”; and
- (b) by omitting from sub-section (2) “or execution” and substituting “, execution or operation”.

Amendments of *Police Ordinance 1927*

7. (1) Section 18 of the *Police Ordinance 1927* is repealed.

(2) Section 24 of the *Police Ordinance 1927* is amended—

- (a) by omitting from sub-section (1) “be forthwith” and substituting “, as soon as practicable, be”;

- (b) by omitting sub-section (3) and substituting the following sub-sections:

“(2A) Nothing in sub-section (1) or (2) applies in relation to a person apprehended in respect of a domestic violence offence within the meaning of the *Domestic Violence Ordinance 1986* or an offence under section 27 of that Ordinance.

“(3) Where a recognizance is entered into before a police officer, whether pursuant to the preceding provisions of this section or otherwise—

- (a) the same consequences of law ensue; and
- (b) the provisions of the *Magistrates Court Ordinance 1930* with respect to recognizances entered into before the Court apply,

as if the recognizance had been entered into before the Court.”.

- (c) by omitting from sub-section (4) “the condition” and substituting “any conditions”; and
- (d) by omitting sub-section (5) and substituting the following sub-section:

“(5) Where—

- (a) the party fails to appear before the Court at the place required not later than one hour after the time required; or
- (b) the party appears before the Court after having been apprehended under section 248B of the *Magistrates Court Ordinance 1930*,

the magistrate shall cause a record of the recognizance to be drawn up and signed by the member of the police force before whom the recognizance was entered into.”.

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 4 September 1986.