



AUSTRALIAN CAPITAL TERRITORY

Magistrates Court (Amendment) Act 1990

No. 65 of 1990

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SCHEDULE



AUSTRALIAN CAPITAL TERRITORY

Magistrates Court (Amendment) Act 1990

No. 65 of 1990

An Act to amend the *Magistrates Court Act 1930*

[Notified in ACT Gazette S98: 24 December 1990]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *Magistrates Court (Amendment) Act 1990*.

Principal Act

2. In this Act, “Principal Act” means the *Magistrates Court Act 1930*.¹

Substitution

3. Part X of the Principal Act is repealed and the following Part substituted:

“PART X—RESTRAINING ORDERS**Interpretation**

“196. In this Part, unless the contrary intention appears—

‘aggrieved person’ means the person in respect of whom, or in respect of whose property, conduct or alleged conduct was engaged in;

‘child’ means a person who has not attained the age of 18 years;

‘interim restraining order’ means an order under section 206C;

‘relative’, in relation to an aggrieved person, means—

- (a) a parent of the person;
- (b) a child of the person who has attained the age of 18 years;
or
- (c) a brother or sister of the person who has attained the age of 18 years;

‘respondent’, in relation to a restraining order or interim restraining order, means the person in respect of whom the order is sought or made;

‘restraining order’ means an order under section 197.

Power to make

“197. (1) The Court may, on application and if satisfied on the balance of probabilities that—

- (a) the respondent has caused personal injury or damage to property and, unless the respondent is restrained, the respondent is likely to cause further personal injury or damage to property;
- (b) the respondent has threatened to cause personal injury or damage to property and, unless the respondent is restrained, the respondent is likely to carry out the threat; or

(c) the respondent has behaved in an offensive or harassing manner;
make an order restraining the respondent from 1 or more of the following:

- (d) causing personal injury or damage to property;
- (e) threatening to cause personal injury or damage to property;
- (f) behaving in an offensive or harassing manner;

and may impose 1 or more of the prohibitions and conditions specified in section 205.

“(2) Subsection (1) applies in respect of conduct engaged in outside the Territory.

Entitlement to apply

“198. (1) An application may be made by—

- (a) the aggrieved person;
- (b) a relative of the aggrieved person;
- (c) where the aggrieved person is a child—
 - (i) a person with whom the child normally resides;
 - (ii) a parent or guardian of the child; or
 - (iii) the child; or
- (d) a police officer.

“(2) A person is not entitled to make an application in respect of alleged conduct under this Part if the person is entitled to make an application in respect of that conduct under the *Domestic Violence Act 1986*.

Hearing dates

“199. The Clerk shall fix a date for the hearing of an application that is not more than 2 days after the date on which the application is filed.

Parties—applications by relatives and police officers

“200. (1) Where the applicant is—

- (a) a relative; or
- (b) a police officer;

the aggrieved person shall be a party to the proceedings.

“(2) Subsection (1) does not apply where the aggrieved person is a child.

Parties—applications involving children

“201. (1) Where the aggrieved person is a child, the Clerk shall, as soon as practicable, cause a copy of the application, together with notice of the date, time and place of the hearing, to be served—

- (a) on a person (other than the respondent) with whom the child normally resides; and
- (b) where the child has a parent or guardian with whom the child does not normally reside—on that parent or guardian.

“(2) A person who has been served shall, on application to the Court, be made a party to the proceedings.

Representation of children

“202. (1) Where—

- (a) an application has been made by a child;
- (b) the child is not separately represented by another person; and
- (c) it appears to the Court that the child should be so represented;

the Court may, of its own motion or on the application of a person (including the child), order that the child be separately represented by another person and the Court may make such other orders as it thinks necessary to secure that representation.

“(2) Where the Court orders that a child be separately represented, the Court may request that the representation be arranged by the Legal Aid Office (A.C.T.).

Hearing of applications

“203. (1) Section 20 of the *Magistrates Court (Civil Jurisdiction) Act 1982* (other than paragraph (4) (a) and subsection (5)) applies in relation to proceedings under this Part.

“(2) Section 198 of the *Magistrates Court (Civil Jurisdiction) Act 1982* does not apply in relation to proceedings under this Part.

“(3) Notwithstanding the provisions of sections 205 and 206 of the *Magistrates Court (Civil Jurisdiction) Act 1982*—

- (a) an affidavit; and
- (b) a notice referred to in subsection 206 (1) of that Act;

shall each be served—

- (c) as soon as practicable before the hearing; or
- (d) within such other time as the Court orders.

“(4) Where a period of time, being a period of 5 days or less, is prescribed or allowed for any purpose under this Part, that period shall be reckoned exclusive of any day on which the office of the Court is closed.

Matters to be taken into account

“204. (1) When determining an application, the Court shall have regard to the following:

- (a) the need to ensure that the aggrieved person is protected from violence, threats or harassment;
- (b) the welfare of a child affected, or likely to be affected, by the respondent’s conduct;
- (c) the need to ensure that property is protected from damage;
- (d) any other matter that the Court considers relevant.

“(2) The Court shall regard the matters specified in paragraphs (1) (a) and (b) as being of primary importance.

Restrictions in orders

“205. A restraining order may—

- (a) prohibit the respondent from being on premises on which the aggrieved person resides or works;

- (b) prohibit the respondent from being on premises specified in the order, being premises frequented by the aggrieved person;
- (c) prohibit the respondent from being in a locality specified in the order;
- (d) prohibit the respondent from approaching within a specified distance of the aggrieved person;
- (e) prohibit the respondent from contacting, harassing, threatening or intimidating the aggrieved person;
- (f) prohibit the respondent from damaging property of the aggrieved person;
- (g) prohibit the respondent from causing another person to engage in conduct referred to in paragraph (e) or (f); or
- (h) specify conditions subject to which the respondent may—
 - (i) be on premises;
 - (ii) be in a locality; or
 - (iii) approach or contact a person;specified in the order.

Consent orders

“206. The Court may make any order with the consent of the parties to the proceedings.

Service of applications

“206A. (1) Subject to section 206M, the Clerk shall, as soon as practicable after an application has been filed, cause—

- (a) a copy of the application, together with a notice in accordance with Form 1 in the First Schedule, to be served personally on the respondent; and
- (b) where the applicant is a relative or police officer—a copy of the application, together with notice of the date, time and place of the hearing, to be served personally on the aggrieved person (other than an aggrieved person who is a child).

“(2) Where a hearing is adjourned because the respondent has not been served, the date, time and place stated in the notice shall be the date, time and place fixed by the Court for the adjourned hearing.

Procedure in absence of respondent

“206B. Where the respondent—

- (a) has been served; and
- (b) fails to appear in person at the Court at the time fixed for the hearing;

the Court may—

- (c) proceed to hear and determine the application in the respondent’s absence; or
- (d) where the Court is satisfied that it is appropriate to do so—adjourn the matter and issue a warrant for the respondent to be apprehended and brought before the Court.

Interim restraining orders

“206C. (1) Where—

- (a) an application has been made; and
- (b) the Court is satisfied that it is necessary, in order to ensure the safety of the aggrieved person, to make an interim restraining order;

the Court may make an interim restraining order whether or not the respondent has been served.

“(2) The Court shall not make an interim restraining order unless the application is supported by oral evidence on oath given by the applicant or the aggrieved person.

“(3) An interim restraining order—

- (a) shall restrain the respondent from engaging in conduct on which the application is based and—
 - (i) if the conduct consisted of causing personal injury or damage to property—from threatening to cause further injury or damage; or

- (ii) if the conduct consisted of a threat—from carrying out the threat;
- (b) may prohibit the respondent from being on premises on which the aggrieved person resides or works or which the aggrieved person frequents; and
- (c) shall not contain any other prohibition or condition specified in section 205 unless the Court is satisfied, by reason of the circumstances of the case, that it is necessary to do so to ensure the safety of the aggrieved person.

Seizure of weapons

“206D. (1) Where a restraining order is made in respect of a person who is the holder of a licence under the *Gun Licence Act 1937*, the licence is by force of this section cancelled unless, on application being made to it at the time of the making of the order, the Court is satisfied that the licence should not be cancelled.

“(2) In determining an application under subsection (1), the Court shall have regard to the matters specified in section 204.

“(3) The Court may, in addition to making the restraining order, order the seizure, and detention for the period during which the order is in force, of any gun or pistol in the respondent’s possession.

“(4) Where a licence is cancelled by force of subsection (1), cancellation of the licence takes effect on the date of service of the order on that person.

“(5) Where the Court makes an interim restraining order, it may, if the respondent is the holder of a licence under the *Gun Licence Act 1937*, make an order—

- (a) suspending the licence for the period specified in the order; and
- (b) directing the seizure and detention for that period of any gun or pistol in the respondent’s possession.

“(6) In this section—

‘gun’ and ‘pistol’ have the same respective meanings as in the *Gun Licence Act 1937*.

Explaining proposed orders

“206E. (1) Where—

- (a) the Court proposes to make a restraining order or interim restraining order; and
- (b) the respondent is before the Court;

the Court shall, before making the order, explain or cause to have explained to the respondent in language likely to be understood by the respondent—

- (c) the purpose, terms and effect of the proposed order;
- (d) the consequences that may follow if the respondent fails to comply with the terms of the proposed order; and
- (e) the means by which the proposed order may be varied or revoked.

“(2) Where—

- (a) the Court proposes to make a restraining order or interim restraining order; and
- (b) the aggrieved person is before the Court;

the Court shall, before making the order, explain or cause to have explained to the aggrieved person in language likely to be understood by that person—

- (c) the matters specified in paragraphs (1) (c), (d) and (e); and
- (d) the consequences of the aggrieved person aiding or abetting the respondent in the commission of an offence against section 206L.

Counselling

“206F. Where the Court makes a restraining order, the Court may recommend that the respondent, the aggrieved person or any other person participate in counselling, or attend a conflict resolution service, of a nature specified by the Court.

Power of Court to make orders where person charged

“206G. The power of the Court to make a restraining order or interim restraining order in respect of a person may be exercised notwithstanding that the person has been charged with an offence arising out of conduct in respect of which the application has been made.

Duration of orders

“206H. (1) A restraining order remains in force for the period (not exceeding 12 months) specified by the Court in the order.

“(2) Where a restraining order contains a prohibition or condition of a kind specified in section 205, the Court may specify the period (not exceeding the period of the order) for which the prohibition or condition remains in force.

“(3) An interim restraining order remains in force for the period (not exceeding 10 days) specified by the Court in the order.

“(4) Where—

- (a) the Court adjourns the hearing of an application; and
- (b) an interim restraining order is in force;

the Court may, with or without hearing further evidence, extend the period for which the order remains in force until the date fixed for the further hearing of the application.

“(5) An interim restraining order ceases to be in force—

- (a) where a restraining order is made and the respondent is present when that order is made—when that order is made;
- (b) where a restraining order is made but the respondent is not present when that order is made—when that order is served on the respondent; or
- (c) when the application is dismissed.

Variation and revocation of orders

“206J. (1) Where a restraining order or interim restraining order is in force, the Court may, on application by—

- (a) a party to the proceedings in which the order was made; or
- (b) the aggrieved person;

vary or revoke the order.

“(2) The Clerk shall cause a copy of the application to be served personally on each other party to those proceedings.

“(3) When determining an application, the Court shall have regard to the matters specified in subsection 204 (1).

Service etc. of orders

“206K. (1) Where a restraining order or interim restraining order is made or varied by the Court, the Clerk shall—

- (a) arrange for an order in the prescribed form to be engrossed and filed in the Court;
- (b) cause a copy of the order to be served personally on the respondent; and
- (c) cause a copy of the order to be given to—
 - (i) the Commissioner of Police;
 - (ii) the Registrar of Gun Licences; and
 - (iii) each other party to the proceedings.

“(2) In subsection (1), a reference to an order in the prescribed form shall be read as a reference to—

- (a) in the case of the making of a restraining order or interim restraining order—an order in accordance with Form 1A in the First Schedule; and
- (b) in the case of the varying of a restraining order or interim restraining order—an order in accordance with Form 1B in the First Schedule.

“(3) Where an order is made under section 206D, the Clerk shall cause a copy of the order to be forwarded to the Registrar of Gun Licences.

Offence

“206L. Where—

- (a) a restraining order or interim restraining order is in force;
- (b) the respondent—
 - (i) was present at the time the order was made; or
 - (ii) was served personally with a copy of the order; and

- (c) the respondent contravenes the order;

the respondent is guilty of an offence punishable, on conviction, by a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months, or both.

Service other than personal service

“206M. Where it appears to the Court that it is not practicable to serve a copy of an application personally, the Court may—

- (a) order that the copy be served by such other means as the Court thinks just; or
- (b) make an order for substituted service.

Service by police officers

“206N. (1) Where the Court is satisfied that it is appropriate to do so, the Court may direct that a document be served by a police officer.

“(2) Where the Court gives such a direction, the police officer for the time being in charge of a police station shall, when requested to do so by the Clerk, arrange for the document to be served by a police officer.

Restrictions on publication of reports of proceedings

“206P. (1) A person shall not, otherwise than pursuant to a direction or order of a court, print or publish by any means a report or account of proceedings under this Part if the printing or publication identifies—

- (a) a party to the proceedings;
- (b) a person who is related to, or associated with, a party to the proceedings or is, or is alleged to be, in any other way concerned in the matter to which the proceedings relate; or
- (c) a witness in the proceedings.

“(2) A person who contravenes subsection (1) is guilty of an offence punishable, on conviction—

- (a) in the case of a body corporate—by a fine not exceeding \$25,000; or
- (b) in the case of a natural person—by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both.

“(3) Proceedings for an offence against this section shall not be commenced except by, or with the written consent of, the Attorney-General or the Director of Public Prosecutions.

Appeals

“206Q. (1) Part XIXA of the *Magistrates Court (Civil Jurisdiction) Act 1982* applies in relation to an appeal from—

- (a) the making, variation or revocation of a restraining order; or
- (b) a refusal of the Court to make such an order;

as if the appeal were an appeal from a judgment or order of a kind specified in subsection 282C (2) of that Act.

“(2) An appeal to the Supreme Court does not lie from—

- (a) the making, variation or revocation of an interim restraining order; or
- (b) the refusal of the Court to make such an order.

Application of Crimes Act

“206R. Nothing in this Part shall be taken to affect the operation of subsection 547 (1) of the Crimes Act.”.

Jurisdiction of Supreme Court

4. Section 207 of the Principal Act is amended by inserting in subsection (1) “(other than a decision under Part X)” after “Act”.

Appeals to which this Division applies

5. Section 208 of the Principal Act is amended by omitting paragraph (1) (f).

Appeals in cases other than civil cases

6. Section 214 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

“(1) This section applies to an appeal referred to in paragraph 208 (1) (a), (b), (c), (d), (e) or (g).”.

The First Schedule

7. The First Schedule to the Principal Act is amended—

- (a) by omitting Form 1 and substituting the forms set out in the Schedule; and
- (b) by omitting Forms 15, 28, 29, 67 and 78.

Amendment of *Domestic Violence Act 1986*

8. Section 14A of the *Domestic Violence Act 1986* is amended by inserting in subsection (3) “, and detention for the period during which the order is in force,” after “seizure”.

SCHEDULE

Section 7

Form 1

Paragraph 206A (1) (a)

Magistrates Court Act 1930

NOTICE OF PROCEEDINGS

IN THE MAGISTRATES
COURT AT CANBERRA

No. of 19

Between (applicant)
and (respondent)

To the Respondent

An application in accordance with Part X of the *Magistrates Court Act 1930* for a restraining order has been made by [name of applicant] against you. A copy of the application is attached. The application has been set down for hearing on 19 at (time) at (place).

If you do not appear in person at the hearing of the application, the Court may—

- (a) deal with the application in your absence; or
- (b) issue a warrant for your apprehension to be brought before the Court.

Dated 19 .

[Signature]

Clerk of the Magistrates Court

Form 1A

Paragraph 206K (2) (a)

Magistrates Court Act 1930

**RESTRAINING ORDER or
INTERIM RESTRAINING ORDER**

(Heading as in Form 1)

The Court, having heard an application made by [name of applicant] under the *Magistrates Court Act 1930* in respect of the conduct [or threatened conduct] of [name of respondent] towards [name of aggrieved person]:

Now the Court this day orders that, for [period]:

- 1. [name of respondent] not engage in the following conduct:
- 2. [name of respondent] comply with the following prohibitions and conditions:

[specify prohibitions and conditions and any other period or periods for which they are imposed]

Dated 19 .

[Signature]

Clerk of the Magistrates Court

SCHEDULE—continued

Form 1B

Paragraph 206K (2) (b)

*Magistrates Court Act 1930***ORDER VARYING RESTRAINING ORDER or
INTERIM RESTRAINING ORDER***(Heading as in Form 1)*

The Court, having heard an application made by [*name of applicant*] under the *Magistrates Court Act 1930* in respect of the conduct [*or threatened conduct*] of [*name of respondent*] towards [*name of aggrieved person*], and having on [*date of original order*] ordered that, for [*period*]:

1. [*name of respondent*] not engage in the following conduct:
2. [*name of respondent*] comply with the following prohibitions and conditions:

[*specify prohibitions and conditions and any other period or periods for which they are imposed*]

Now the Court, on the application of [*name of applicant*], this day orders that the Restraining Order [*or Interim Restraining Order*] be varied as follows:

[*specify details of variation*]

Dated 19 .

[*Signature*]

Clerk of the Magistrates Court

NOTE

1. Ordinance No. 21, 1930 as amended by No. 21, 1932; No. 17, 1934; No. 13, 1936; Nos. 5 and 28, 1937; Nos. 25 and 35, 1938; Nos. 20 and 22, 1940; No. 13, 1949; Nos. 7 and 12, 1951; No. 14, 1953; No. 12, 1958; No. 2, 1961; No. 2, 1966; No. 1, 1967; No. 25, 1968; No. 12, 1969; No. 15, 1970; No. 37, 1972; No. 48, 1973; Nos. 14 and 47, 1974; No. 42, 1976; Nos. 4, 34, 56 and 61, 1977; No. 46, 1978; Nos. 33 and 41, 1979; Nos. 4 and 10, 1980; Nos. 2 and 3, 1982; Nos. 9, 10, 16, 61 and 62, 1984; Nos. 17, 18, 41, 66 and 67, 1985; Nos. 33, 53, 57, 71, 74 and 83, 1986; No. 56, 1987; No. 45, 1988; Nos. 21, 25, 55, 59 and 60, 1989; Nos. 1, 5 and 9, 1990.

[Presentation speech made in Assembly on 11 December 1990.]

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