



AUSTRALIAN CAPITAL TERRITORY

Domestic Violence (Amendment) Act (No. 3) 1997

No. 65 of 1997

An Act to amend the *Domestic Violence Act 1986*

[Notified in ACT Gazette S300: 9 October 1997]

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

Short title

1. This Act may be cited as the *Domestic Violence (Amendment) Act (No. 3) 1997*.

Commencement

2. (1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Principal Act

3. In this Act, “Principal Act” means the *Domestic Violence Act 1986*.¹

Interpretation

4. Section 3 of the Principal Act is amended by inserting the following definitions:

- “ ‘extension request’ means a notice referred to in subsection 17A (1);
 - ‘original order’ means a protection order that is sought to be extended, whether or not that order has already been extended;
 - ‘relevant period’, in relation to the extension of an original order, means—
 - (a) if the period of the extension applied for is—
 - (i) equal to the period of the original order; or
 - (ii) 2 years or less;
 - the period of the extension applied for; or
 - (b) in any other case—a period of 2 years;
- commencing on the day on which the original order expires;”.

Making of orders

5. Section 4 of the Principal Act is amended—
- (a) by omitting from paragraphs (1) (a) and (b) all the words after “domestic violence offence” (first occurring);
 - (b) by omitting from paragraph (1) (c) “such” and “that—”; and
 - (c) by omitting subparagraphs (1) (c) (v) and (vi).

Matters to be taken into account

6. Section 10 of the Principal Act is amended—
- (a) by inserting after paragraph (1) (ea) the following paragraphs:
 - “(eb) if the respondent has previously engaged in conduct that constitutes a domestic violence offence—that conduct;
 - (ec) if a protection order has been made in relation to the respondent at any time—particulars of the order;

- (ed) if the respondent has contravened a protection order made in relation to him or her—particulars of the contravention;
 - (ee) the need to ensure that property is protected from damage;”; and
- (b) by adding at the end the following subsections:
- “(4) In paragraph (1) (eb), a reference to conduct that constitutes a domestic violence offence shall be read as including a reference to conduct engaged in outside the Territory that, if it were engaged in within the Territory, would constitute a domestic violence offence.
 - “(5) In paragraphs (1) (ec) and (ed), a reference to a protection order shall be read as including a reference to an order under a law of a State or another Territory having the same effect or substantially the same effect as a protection order.”.

Duration of order

7. Section 17 of the Principal Act is amended by omitting subsection (1) and substituting the following subsections:

“(1) Unless the Court specifies otherwise in the order, a protection order remains in force for a period of 2 years.

“(1A) The Court shall not specify that an order is to remain in force—

- (a) for a period greater than 2 years; or
- (b) until the Court otherwise orders;

unless satisfied that there are special or exceptional circumstances that justify the making of such an order.”.

Insertion

8. After section 17 of the Principal Act the following sections are inserted:

Application for extension of order

“17A. (1) No later than 21 days before the day on which a protection order is to expire, a person who would have been entitled under section 5 to have applied for the order may lodge with the Registrar a notice requesting an extension of the order.

“(2) Notwithstanding subsection (1), the Court may grant leave to a person to lodge an extension request less than 21 days before the expiration of the original order.

“(3) An extension request shall—

- (a) be in a form approved by the Registrar; and
- (b) contain statements to the following effect:
 - (i) that the respondent may, on or before the day fixed for the hearing of the request, lodge with the Registrar a notice in a form approved by the Registrar opposing the extension of the order;
 - (ii) if no notice opposing the extension of the original order is made before the day fixed for the hearing of the request, the order shall be extended for the relevant period commencing on the day on which the original order expires.

Court action on extension request

“17B. (1) Where an extension request is lodged with the Registrar in accordance with section 17A—

- (a) the Court shall fix a hearing date no later than 14 days after the day on which the request is lodged; and
- (b) the Registrar shall endeavour to cause notice of the making of the extension request and of the date fixed for hearing the request to be served on the respondent.

“(2) If notice of the making of the extension request and of the date fixed for hearing the request has not been served on the respondent before the date fixed for hearing the request—

- (a) the Court may extend the original order for the relevant period notwithstanding the absence of the respondent; and
- (b) if the Court extends the order—the Court shall cause to be personally served on the respondent notice to the effect that—
 - (i) the original order has been extended; and
 - (ii) the respondent may, within 7 days of being personally served with the notice, apply for the cancellation of the extended order.

“(3) The Court shall extend an original order for the relevant period—

(a) if, on the hearing of the extension request, the respondent fails to satisfy the Court that the order should not be extended;

(b) if—

(i) notice of the making of the extension request and of the date fixed for hearing the request has been served on the respondent before the date fixed for hearing the request; and

(ii) the respondent does not lodge a notice opposing the extension on or before the date of the hearing; or

(c) if—

(i) the respondent has lodged with the Registrar on or before the date fixed for the hearing of the extension request a notice opposing the extension of the order;

(ii) the respondent fails to appear on the date fixed for the hearing; and

(iii) the Court is satisfied that an adjournment is not warranted.

“(4) The Court may grant an interim extension of an original order where the respondent has lodged with the Registrar on or before the date fixed for the hearing of the extension request a notice opposing the extension of the order—

(a) if there is insufficient time to hear and determine the extension request before the expiration of the original order; or

(b) if—

(i) the respondent fails to appear on the date fixed for hearing; and

(ii) the Court is satisfied that an adjournment is warranted.

“(5) Where the Court grants an interim extension of an original order in accordance with subsection (4), it shall notify the respondent and applicant of the time fixed for the further hearing or the new hearing.

“(6) If, on the hearing of a request for extension, the respondent satisfies the Court that the original order should not be extended, the Court shall not extend the order.

“(7) A notice opposing the extension of an order shall be in a form approved by the Registrar.

Application for cancellation of extended order

“17C. (1) If, within 7 days of being personally served with a notice in accordance with paragraph 17B (2) (b), a person lodges with the Registrar an application for cancellation of a protection order extended in accordance with subsection 17B (2), the Court shall—

- (a) fix a hearing date; and
- (b) notify the person who applied for the extension of the original order of the making of the application and of the hearing date.

“(2) If, on the hearing of an application referred to in subsection (1), the applicant satisfies the Court that the protection order should be cancelled, the Court shall—

- (a) cancel the order; and
- (b) notify any person who was protected by the order and who is not present at the hearing that the order has been cancelled.”.

NOTE

Principal Act

1. Reprinted as at 30 November 1996. See also Act No. 74, 1996; Nos. 24 and 37, 1997.

[Presentation speech made in Assembly on 25 June 1997]