



AUSTRALIAN CAPITAL TERRITORY

Domestic Violence (Amendment) Act 1998

No. 37 of 1998

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AUSTRALIAN CAPITAL TERRITORY

Domestic Violence (Amendment) Act 1998

No. 37 of 1998

An Act to amend the *Domestic Violence Act 1986*

[Notified in ACT Gazette No. 41: 14 October 1998]

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

1. Short title

This Act may be cited as the *Domestic Violence (Amendment) Act 1998*.

2. Commencement

(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.

3. Principal Act

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

4. Interpretation

Section 3 of the Principal Act is amended—

- (a) by omitting “section 4” from the definition of “protection order” and substituting “subsection 4 (1)”;
- (b) by omitting the definition of “domestic violence offence” and substituting the following definition:
 - “ ‘domestic violence offence’ means an offence referred to in paragraph 4A (1) (c);”;
- (c) by omitting the definition of “household member”; and
- (d) by inserting the following definitions:
 - “ ‘Community Advocate’ means the Community Advocate appointed under the *Community Advocate Act 1991*;
 - ‘domestic violence’ has the meaning given by section 4A;
 - ‘MC (CJ) Act’ means the *Magistrates Court (Civil Jurisdiction) Act 1982*;
 - ‘relevant person’, in relation to a person, means—
 - (a) a spouse of the person;
 - (b) a child of a spouse of the person;
 - (c) a relative of the person; or
 - (d) a person who normally resides, or was normally resident in, the same household as the person (other than as a tenant or boarder);”.

5. Substitution

Sections 4, 5 and 6 of the Principal Act are repealed and the following sections substituted:

“4. Protection orders

(1) Where the Court is satisfied, on the balance of probabilities, that a person has engaged in conduct that constitutes domestic violence, it may make an order against the person in accordance with this Part (in this Act called a ‘protection order’) that restrains the respondent from engaging in conduct that constitutes domestic violence.

“(2) A protection order may also include 1 or more of the conditions specified in section 9.

“(3) A protection order applies to the respondent’s conduct both within and outside the Territory.

“(4) The Court may make an order in accordance with this Part varying or revoking a protection order.

“4A. **Nature of domestic violence**

“(1) For the purposes of this Act, a person’s conduct constitutes domestic violence if it—

- (a) causes physical injury to a relevant person;
- (b) causes damage to the property of a relevant person;
- (c) is directed at a relevant person and constitutes an offence against—
 - (i) section 19D (breach of an order under this Act);
 - (ii) a provision of the Crimes Act specified in Schedule 1A; or
 - (iii) section 129 of the *Motor Traffic Act 1936*;
- (d) constitutes a threat, made to a relevant person, to do anything in relation to that or another relevant person that would fall under paragraph (a), (b) or (c); or
- (e) is harassing or offensive towards a relevant person.

“(2) In subsection (1), a reference to conduct that constitutes an offence includes a reference to conduct, wherever engaged in, that would constitute the offence if it were engaged in within the Territory.

“5. **Applications for orders**

“(1) The Court may make a protection order on application by—

- (a) an aggrieved person;
- (b) where the alleged behaviour involves a child—
 - (i) a person with whom the child normally resides;
 - (ii) a parent or guardian of the child;
 - (iii) the Community Advocate; or
 - (iv) the child;
- (c) where the aggrieved person is a person under a disability within the meaning of the MC (CJ) Act—the Community Advocate; or
- (d) a police officer.

“(2) An application to vary or revoke a protection order may be made by a person—

- (a) who was a party in the proceedings in which the order was made, or in proceedings in which the order was previously varied; or

- (b) whom the Court is satisfied would have been entitled, if no earlier order had been made, to make an application now for a protection order against the respondent.

“(3) The Court shall not proceed with an application made by the Community Advocate unless it is satisfied that the Community Advocate is an appropriate person to make the application in the circumstances.

“(4) An application for a protection order, or for a variation or revocation of a protection order, shall, subject to this Part, be made in accordance with Part III of the MC (CJ) Act.

“(5) This section does not affect any right that a person would have, apart from this section, to make an application on behalf of an aggrieved person or a child referred to in paragraph (1) (b).

“6. Date for return of application before the Court

“(1) Unless subsection (2) applies, the Registrar shall fix a date for the return before the Court of an application for—

- (a) a protection order; or
- (b) the variation or revocation of a protection order;

that is not more than 2 days after the application is filed.

“(2) Where—

- (a) the application is not for an *ex parte* order;
- (b) the applicant requests a later date; and
- (c) the Registrar is satisfied that the later date is necessary to give reasonable time for service of the application on the respondent;

the Registrar may fix a later date for the return of the application, being a date not more than 21 days after the date on which the application is filed.”.

6. Parties

Section 7 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

“(2) Where the applicant is not an aggrieved person, the person identified in the application as aggrieved shall be a party to the proceedings.”.

7. Representation of children

Section 7A of the Principal Act is amended by inserting in paragraph (1) (a) “, or for the variation or revocation of a protection order,” after “protection order”.

8. Court to be informed of relevant contact orders

Section 8A of the Principal Act is amended by inserting in subsection (1) “, or for the variation or revocation of a protection order,” after “protection order”.

9. Insertion

After section 8A of the Principal Act the following section is inserted:

“8B. Evidence

“(1) Where, in proceedings under this Act, the Court is satisfied that it is appropriate, it may—

- (a) permit evidence to be given orally or in writing otherwise than on oath; and
- (b) inform itself on any matter in any manner it thinks fit.

“(2) This section does not limit the application of Part XV of the MC (CJ) Act to proceedings under this Act.”.

10. Restrictions in order

Section 9 of the Principal Act is amended—

- (a) by inserting in subsection (1) “impose such restraints or conditions on the respondent as the Court is satisfied are necessary or desirable in the circumstances, and may, for example” after “a protection order may”;
- (b) by inserting after paragraph (1) (h) the following paragraph:
 - “(ha) prohibit the respondent doing any of the things referred to in paragraphs (a) to (f), subparagraph (g) (i) or paragraph (h) in relation to a child of the aggrieved person;”;
- (c) by omitting subsection (3).

11. Matters to be taken into account

Section 10 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) “violence or harassment” and substituting “domestic violence”;
- (b) by omitting from paragraph (1) (eb) “a domestic violence offence” and substituting “domestic violence”; and
- (c) by omitting subsection (4).

12. Consent orders

Section 10A of the Principal Act is amended by omitting “of guilt” and substituting “that the respondent has engaged in conduct that constitutes domestic violence”.

13. Substitution

Section 11 of the Principal Act is repealed and the following section substituted:

“11. Recommendations by the Court

When the Court hears an application under this Act, the Court may recommend that the respondent, the aggrieved person or any other person participate in a program of counselling, training, rehabilitation or assessment of a kind specified by the Court.”.

14. Service of application

Section 12 of the Principal Act is amended by inserting in subsection (1) “, or for the variation or revocation of a protection order,” after “protection order”.

15. Procedure in absence of respondent

Section 13 of the Principal Act is amended by omitting from paragraph (b) “for the protection order”.

16. Interim orders

Section 14 of the Principal Act is amended—

- (a) by inserting in paragraph (1) (a) “or a variation of a protection order” after “protection order”;
- (b) by omitting subsection (2) and substituting the following subsection:

“(2) The Court shall not make an interim protection order unless the application is supported—

 - (a) by oral evidence on oath given by the applicant; or
 - (b) where the Court is satisfied that it would be unreasonable in the circumstances to require the applicant to give oral evidence—by affidavit evidence given by the applicant.”;
- (c) by omitting from subsection (2B) “or an order varying an interim protection order”;
- (d) by inserting after paragraph (3) (a) the following paragraph:

“(aa) applies to the respondent’s conduct both within and outside the Territory; and”; and

(e) by adding at the end the following subsection:

“(4) The Court may vary or revoke an interim protection order where it is satisfied that it is necessary or desirable having regard to the matters in paragraph (1) (b) and subsection (2A).”.

17. Explaining proposed orders

Section 15 of the Principal Act is amended by inserting in paragraphs (1) (a), (2) (a) and (3) (a) “or vary” after “proposes to make”.

18. Duration of order

Section 17 of the Principal Act is amended by omitting subsection (3) and substituting the following subsections:

“(3) An interim protection order remains in force for the period, being a period of not more than 21 days, specified in the order.

“(3A) The Court shall not specify a period of more than 10 days for the purposes of subsection (3), unless the Court is satisfied that a longer period will be necessary to complete the proceedings and to allow service on the respondent of any protection order, or variation of a protection order, resulting from the proceedings.”.

19. Repeal

Section 18 of the Principal Act is repealed.

20. Insertion

After section 19 of the Principal Act the following sections are inserted in Part II:

“19A. Practice directions

Without limiting section 470 of the MC (CJ) Act, directions under that section with respect to procedures to be followed in proceedings under this Act may be directed at expediting the proceedings, in particular—

(a) by means of conferences or other informal procedures; and

(b) by taking measures to define and limit issues in the proceedings.

“19B. Limitation on powers of Registrar

The Registrar shall exercise the powers under section 481 of the MC (CJ) Act in relation to an application under this Act only with the authorisation of the Chief Magistrate.

“19C. Application not invalid only because made under wrong Act

“(1) This section applies where—

- (a) a person applied in good faith for a protection order under this Part;
- (b) the person was not entitled to apply for a protection order in respect of the alleged conduct of the respondent, but was entitled to apply for a restraining order under Part X of the *Magistrates Court Act 1930*; and
- (c) proceedings have commenced on the basis of the application.

“(2) If the proceedings have not concluded at the time when it becomes apparent that this section applies, the Court shall direct either—

- (a) that the proceedings be continued under this Part; or
- (b) that the proceedings be continued under Part X of the *Magistrates Court Act 1930*.

“(3) If the proceedings have concluded before it becomes apparent that this section applies, any order purportedly made under this Part is as valid as if the application and order had been made under Part X of the *Magistrates Court Act 1930*.

“(4) Where the Court makes a direction under paragraph (2) (a), the proceedings shall be continued as if the applicant were a person entitled to apply for an order against the respondent under this Part.

“(5) Where the Court makes a direction under paragraph (2) (b), the proceedings shall be continued as if the application had been made and proceedings commenced under Part X of the *Magistrates Court Act 1930*.

“19D. Offence

“(1) A person who is subject to a protection order or an interim protection order and—

- (a) was present at the time the order was made; or
- (b) has been personally served with a copy of the order;

shall not contravene the order in any respect.

Penalty: 50 penalty units or imprisonment for a period not exceeding—

- (a) in the case of a first offence—2 years;
- (b) in any other case—5 years;

or both a fine and imprisonment.

“(2) This section applies in relation to the person’s conduct whether within or outside the Territory.

“19E. Recovery of certain expenses

“(1) Where the Court is satisfied that—

- (a) an application is frivolous, vexatious or has not been made in good faith; and
- (b) a person other than the applicant has reasonably incurred expenses in relation to the proceeding in respect of the application;

the Court may order the applicant to pay to the other person an amount, not exceeding the expenses incurred, that it considers reasonable in the circumstances.

“(2) The amount specified in the order is a debt due to the person by the applicant.

“(3) This section shall not be taken to limit the power of the Court under the MC (CJ) Act to make an order for the payment of costs in proceedings under this Act.”.

21. Repeal

Section 27 of the Principal Act is repealed.

22. Restriction on publication of reports of proceedings

Section 30 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

“(1) Subject to this Act, a person shall not disseminate to the public or to a section of the public, by any means, an account of any proceedings, or of a part of any proceedings, under this Act that 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 to the proceedings.”.

23. Substitution

Section 30A of the Principal Act is repealed and the following section substituted:

“30A. Limits of restriction on publication

“(1) Section 30 does not prevent a party to proceedings under this Act from informing another person of the contents of an order made in those proceedings.

- “(2) Section 30 does not prevent—
- (a) any information from being disseminated with the permission of the Court in writing, in accordance with any conditions imposed by the Court;
 - (b) any information from being communicated to a court or tribunal under subsection 68J (1) or (2) of the *Family Law Act 1975* of the Commonwealth;
 - (c) any pleading, transcript of evidence or other document from being communicated to—
 - (i) persons concerned with other proceedings in a court or tribunal, for use in connection with those proceedings;
 - (ii) persons concerned with disciplinary proceedings of a legal practitioner, for use in connection with those proceedings; or
 - (iii) a body that grants legal aid, for the purpose of deciding whether to provide legal aid in a particular case;
 - (d) any matter from being published in law reports or other technical or professional publications; or
 - (e) any matter from being disseminated to a person in connection with the person’s professional practice.
- “(3) The Court shall not give permission to disseminate information that would identify a person referred to in subsection 30 (1) unless it is satisfied that—
- (a) it is in the public interest;
 - (b) it will promote compliance with the order; or
 - (c) it is necessary or desirable for the proper functioning of this Act.
- “(4) In subsection (2)—
- ‘Court’ includes an officer of the Court acting in the proceedings.”.

24. Schedule 1A

Schedule 1A to the Principal Act is amended—

- (a) by omitting from the heading “Section 3” and substituting “Subparagraph 4A (1) (c) (ii)”;
- (b) by inserting after the heading the following item:
“1. An offence listed in the following Table:”; and
- (c) by adding at the end the following item:

“2. An offence against Part VIII of the Crimes Act that relates to an offence listed in the Table in Item 1.”.

25. Schedule 2

Schedule 2 to the Principal Act is amended—

- (a) by omitting from Form 2 “2.” and substituting “*2.”;
- (b) by inserting before the Note to Form 2 the following:
“* Delete for interim protection order.”;
- (c) by omitting from Form 3 “2.” and substituting “*2.”; and
- (d) by inserting before the Note to Form 3 the following:
“* Delete for variation of interim protection order.”.

26. Consequential amendments

The Principal Act is further amended as set out in the Schedule.

SCHEDULE

Section 26

FURTHER AMENDMENTS TO PRINCIPAL ACT

1. The following provisions are amended by omitting “*Magistrates Court (Civil Jurisdiction) Act 1982*” and substituting “MC (CJ) Act”:

Subsections 8 (1) and (2) and 31 (1).

2. The following provisions are amended by omitting “section 27” and substituting “section 19D”:

Paragraphs 15 (2) (d) and (3) (e).

NOTES

Principal Act

1. Reprinted as at 1 June 1998.

Penalty units

See section 33AA of the *Interpretation Act 1967*.

[Presentation speech made in Assembly on 28 May 1998]