



AUSTRALIAN CAPITAL TERRITORY

## **Domestic Violence (Amendment) Act (No. 2) 1998**

No. 68 of 1998

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### **An Act to amend the *Domestic Violence Act 1986***

*[Notified in ACT Gazette S212: 23 December 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 (No. 2) 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. Principal Act**

In this Act, “Principal Act” means the *Domestic Violence Act 1986*.<sup>1</sup>

**4. Interpretation**

Section 3 of the Principal Act is amended—

- (a) by omitting “or an interim protection order” from the definition of “respondent” and substituting “, an interim protection order or an emergency protection order”;
- (b) by inserting the following definitions:
  - “ ‘emergency protection order’ means an order made under section 19F;
  - ‘judicial officer’ means—
    - (a) a Magistrate;
    - (b) the Registrar of the Court; or
    - (c) a person authorised to act as a judicial officer under section 19N;
  - ‘sitting hours of the Court’ has the meaning given by subsection (2);”;
- (c) by adding at the end the following subsection:
  - “(2) For the purposes of this Act, a time is within the sitting hours of the Court if it is—
    - (a) on a day on which the Court is open for business; and
    - (b) between the earliest and latest times that the Court would normally sit on that day.”.

## **5. Offence**

Section 19D of the Principal Act is amended by omitting from subsection (1) “or an interim protection order” and substituting “, an interim protection order or an emergency protection order”.

## **6. Insertion**

After Part II of the Principal Act the following Part is inserted:

### **“PART IIA—EMERGENCY PROTECTION ORDERS**

#### **“19F. Emergency protection orders**

“(1) A judicial officer may make an emergency protection order against a person in relation to a relevant person (in this section called the ‘aggrieved person’) if—

- (a) the time is outside the sitting hours of the Court; and
- (b) on an application by a police officer in accordance with this Part, the judicial officer is satisfied that—

- (i) the respondent has engaged in conduct that gives reasonable grounds for believing that the respondent might, unless restrained, physically injure the aggrieved person; and
- (ii) it is not practicable to arrest, or there are no grounds for arresting, the respondent.

“(2) An emergency protection order—

- (a) shall restrain the respondent from engaging in the conduct in relation to the aggrieved person on which the application for the order is based;
- (b) applies to the respondent’s conduct both within and outside the Territory;
- (c) may prohibit the respondent from being on premises on which the aggrieved person resides;
- (d) shall not prohibit a respondent under the age of 18 from being on premises on which he or she normally resides unless the judicial officer is satisfied that adequate arrangements have been made for his or her care and safety; and
- (e) may contain a prohibition or condition specified in section 9 if the judicial officer is satisfied, in the circumstances of the case, that it is necessary to ensure the safety of the aggrieved person.

“(3) In making an emergency protection order, a judicial officer shall have regard to whether access between the aggrieved person or the respondent, and any child of either of those persons, is relevant to the making of the order, and to any relevant contact order of which the judicial officer is aware.

“(4) A failure to have regard to the matters mentioned in subsection (3) does not affect the validity of an emergency protection order.

**“19G. Recording of reasons when no emergency protection order is applied for**

Where a police officer—

- (a) deals with an incident in which the conduct of a person and the other circumstances appear to constitute the grounds mentioned in subsection 19F (1) for an emergency protection order; and
- (b) decides not to apply for an emergency protection order;

he or she shall make a record of the decision, setting down briefly the reasons for it.

**“19H. Duration of emergency protection orders**

- “(1) An emergency protection order remains in force until—
- (a) the close of business of the second sitting day of the Court following the issue of the order;
  - (b) a protection order or interim protection order is made against the respondent in relation to the aggrieved person; or
  - (c) the order is revoked under section 19L;
- whichever is earlier.

- “(2) An emergency protection order shall not be renewed or extended.

**“19I. Procedure for obtaining an emergency protection order**

- “(1) A police officer may apply to a judicial officer by telephone for an emergency protection order.

- “(2) The police officer shall—
- (a) satisfy the judicial officer as to his or her identity and position;
  - (b) describe the conduct on which the application is based;
  - (c) give the reasons for the application;
  - (d) inform the judicial officer of any relevant family contact order, or any pending application for such an order, of which the police officer is aware; and
  - (e) provide such other information as the judicial officer requires.

- “(3) Where it is reasonably practicable in the circumstances, the police officer shall provide a brief written statement of the matters mentioned in paragraphs (2) (b) and (c) by facsimile.

- “(4) An order shall be made in a form approved by the Registrar of the Court, including—

- (a) the name, rank and identification number of the police officer;
- (b) the name of the person for whose protection the order is sought;
- (c) the terms of the order;
- (d) the date and time the order was made; and
- (e) the name and position of the judicial officer.

- “(5) The order shall be—

- (a) where it is reasonably practicable—sent to the police officer by facsimile; or
- (b) otherwise—dictated to the police officer by telephone.

“(6) A paper produced by the facsimile transmission or written under the dictation mentioned in subsection (4) shall be treated as the emergency protection order.

“(7) The judicial officer shall record in writing—

- (a) if the statement mentioned in subsection (3) has not been provided by facsimile—a brief account of the description and reasons mentioned in paragraphs (2) (b) and (c); and
- (b) if the application is refused—
  - (i) the name, rank and identification number of the police officer;
  - (ii) the name of the person for whose protection the order is sought; and
  - (iii) the reasons for refusing to make the order.

“(8) The judicial officer shall provide the record (including any facsimiles received from the police officer) and any order made, or copies of them, to the proper officer of the Court.

**“19J. Detention of person against whom an order is sought**

“(1) Where it is proposed to apply for an emergency protection order against a person, a police officer may—

- (a) where appropriate, remove the person to another place; and
- (b) detain the person until the application for the order has been dealt with and any order served on the person.

“(2) A person shall not be detained under this section for longer than 4 hours.

**“19K. Serving an emergency protection order**

“(1) A copy of an emergency protection order shall be served personally on each of the respondent and the aggrieved person by a police officer as soon as is reasonably possible.

“(2) The police officer serving the order shall take such steps as are reasonable in the circumstances to explain to the respondent the effect of the order and the consequences of breaching it.

**“19L. Revoking or varying an emergency protection order**

“(1) An emergency protection order may be revoked by an order of the Court on an application by a police officer, the respondent or the aggrieved person.

“(2) Outside the sitting hours of the Court, an emergency protection order may be revoked or varied by a judicial officer, on an application by a police officer.

“(3) The procedure for revoking or varying an emergency protection order under subsection (2) is the same, subject to any necessary modifications, as that set out in—

- (a) section 19I, with paragraph (2) (b) omitted; and
- (b) section 19K.

**“19M. Effect of orders on licences for firearms**

“(1) Where an emergency protection order is made in respect of a person who holds a licence under the *Firearms Act 1996*, the licence is by force of this section suspended while the order remains in force, and the order may require—

- (a) the seizure of the licence for the period of the order; and
- (b) the seizure and detention for that period of any firearm and any ammunition for a firearm in the respondent’s possession.

“(2) Where an expression used in this section is defined in the *Firearms Act 1996*, it has the same meaning as in that Act.

**“19N. Authorisation of judicial officers**

The Chief Magistrate may, by instrument in writing, authorise a Deputy Registrar of the Court to act as a judicial officer for the purposes of this Part.”.

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**NOTE**

**Principal Act**

1. Reprinted as at 1 June 1998. See also Act No. 37, 1998.

*[Presentation speech made in Assembly on 24 September 1998]*