

1998

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

DOMESTIC VIOLENCE (AMENDMENT) BILL (NO. 2) 1998

EXPLANATORY MEMORANDUM

CIRCULATED BY AUTHORITY OF

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DOMESTIC VIOLENCE (AMENDMENT) BILL (No. 2) 1998

Explanatory Memorandum

Outline

The *Domestic Violence Act 1986* (the Principal Act) provides for a civil system of orders for the protection of victims of domestic violence.

The *Domestic Violence (Amendment) Bill (No. 2) 1998* (the Bill) amends the Principal Act to provide for protection orders to be made when the Magistrates Court is not sitting. These orders which will be of more limited duration than other orders made under the Act, will be able to be sought by police on behalf of a person requiring protection, and will be able to be made over the telephone. They will be known as emergency protection orders.

Financial Impact

There are no financial implications arising from the Bill.

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Notes on clauses

FORMAL PROVISIONS

Clauses 1, 2 and 3 are formal provisions setting out the short title of the Bill, commencement arrangements and providing that a reference to the "Principal Act" in the Bill, is a reference to the *Domestic Violence Act 1986*.

INTERPRETATION

Clause 4 amends section 3 of the Act - an interpretation provision.

Paragraph 4(a) replaces the current definition of 'authorised police officer' to reflect the requirement that an authorised police officer for the purpose of making an application for an emergency protection order must be of the rank of sergeant or above.

Paragraph 4(b) amends the definition of 'respondent' to include a person against whom an emergency protection order is sought.

Paragraph 4(c) inserts a number of new definitions for the following terms which are introduced by the Bill - 'emergency protection order', 'judicial officer', and 'sitting hours of the Court'.

Paragraph 4(d) inserts a *new subsection 2* which establishes the meaning of 'a time within the sitting hours of the Court', for the purposes of the Act.

Offence

Clause 5 amends section 19D of the Principal Act which creates the offence for the breach of a protection order. The amendment extends the application of the penalty provision to cover a breach of an emergency protection order.

INSERTION

Clause 6 inserts after Part II of the Principal Act a new Part IIA titled 'Emergency Protection Orders'.

New subsection 19 F(1) provides that, a judicial officer may if the time is outside the sitting hours of the Court make an emergency protection order against a respondent in relation to an aggrieved person on an application made by an authorised police officer where the judicial officer is satisfied that :

- the respondent has engaged in conduct in relation to an aggrieved person, which gives reasonable grounds for believing that the respondent may, unless restrained, physically injure an aggrieved person; and
- in the circumstances, it is not practicable to arrest the respondent or there are no grounds to arrest the respondent.

New subsection 19F(2) sets out the following in relation to an emergency protection order:

- that an emergency protection order must restrain the respondent from engaging in conduct in relation to the aggrieved person on which the application is based;
- that an emergency protection order applies to a respondent's conduct both within and outside the Territory;
- that an emergency protection order may prohibit the respondent from being on premises on which the aggrieved person resides;
- that a judicial officer must not make an emergency protection order which prohibits a respondent under the age of 18 from being on premises on which he or she normally resides unless satisfied that adequate arrangements have been made for that person's care and safety; and
- that a judicial officer, in making an emergency protection order, may in circumstances where it is necessary to ensure the safety of an aggrieved person, impose any prohibition and condition listed in section 9 of the Principal Act. These are the prohibitions or conditions which may be imposed where a protection order or an interim protection order is made.

New subsection 19F(3) provides that a judicial officer, in making an emergency protection order, must 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 a protection order.

New subsection 19F(4) provides that a failure to have regard to ***new subsection 19F(3)*** does not effect the validity of an emergency protection order.

Recording of reasons when no emergency order is applied for

New subsection 19G(1) provides that a police officer dealing with an incident where the conduct of a person and other circumstances would support the making of an application for an emergency protection order as prescribed in ***new subsection 19F(1)*** is required to inform an authorised police officer.

New subsection 19G(2) provides that where an authorised police officer declines to apply for an emergency protection order, the authorised officer is required to make a record of the decision, setting out the reasons for the decision.

Duration of emergency protection orders

New subsection 19H(1) enables an emergency protection order to remain in force until the occurrence of the earliest of the following events:

- the close of business on the second sitting day of the Court after the order is made;
- a protection order or interim protection order being made against the respondent in relation to the aggrieved person; or
- the order being revoked in accordance with ***new section 19L***.

New subsection 19H(2) provides that an emergency protection order cannot be renewed or extended.

Procedure for obtaining an emergency order

New subsection 19I(1) provides that an application for an emergency protection order may be made by an authorised police officer to a judicial officer by telephone.

New subsection 19I(2) provides that an authorised police officer must comply with the requirements detailed in ***new paragraph 19I(2)(a) - (d)*** to obtain an emergency protection order. These requirements require an authorised officer to:

- satisfy a judicial officer as to his or her identity and position;
- describe the conduct on which the application is based;
- give the reasons for the application;
- inform the judicial officer of any relevant family contact order or pending application for such an order of which the police officer is aware; and
- provide such other information as the judicial officer may require.

New subsection 19I(3) provides that where it is reasonably practicable in the circumstances, the authorised police officer must provide a brief statement of the matters detailed in ***new paragraphs 19I(2)(b) and (c)*** by facsimile that is, describe the conduct on which the application is based and give the reasons for the application.

New subsection 19I(4) provides that an order must be made in a form approved by the Registrar of the Court and must include the information detailed in ***new paragraphs 19I(3)(a) - (e)***. The following information is required:

- name, rank and identification number of the authorised police officer;
- the name of the aggrieved person on whose behalf the application is sought;
- the terms of the order made by the Court;
- the date and time the order of the Court is made; and
- the name and position of the judicial officer.

New paragraph 19(5) sets out the manner in which an emergency order can be sought from a judicial officer as detailed in **new paragraphs 19(4)(a) and (b)**

This requires:

- where reasonably practicable, the order is to be sent to an authorised police officer by facsimile; or alternatively
- the order is to be dictated to an authorised police officer by telephone.

New subsection 19(6) enables a paper produced by facsimile transmission or written under dictation in accordance with **new subsections 19(4) and (5)** to be treated as an original order of the Court.

New subsection 19(7) provides that a judicial officer must make a record in writing of:

- where **new subsection 19(3)** is not complied with by facsimile, a description of the conduct on which the application is based and the reasons for making the application; and
- where an application for an emergency protection order is refused, the information requested in **new subparagraphs 19(7)(b)(i) and (iii)** that is,
 - . the name, rank and identification number of the authorised police officer;
 - . the name of the person for whose protection the order is sought; and
 - . the reasons for refusing to make the order.

New subsection 19(8) requires a judicial officer to provide the record including any facsimile received from the authorised police officer and any order made, including copies, to the proper officer of the Court.

Restraint of person against whom an order is sought

New subsection 19J(1) provides that where an application for an emergency protection order is being sought against a person, a police officer may where appropriate, remove the person to another place and, for the purposes of having the application dealt with and any order of the Court served, detain the person at any of the locations detailed under **new paragraphs 19J(1)(a), (b) and (c)**. These locations are:

- a police station;
- the scene of the events on which the application is based; or
- another place from which the application is being made.

New subsection 19J(2) provides that a person must not be detained under this new section for longer than 4 hours.

Serving an emergency order

New subsection 19K(1) requires a police officer to personally serve upon both the respondent and the aggrieved person a copy of an emergency order as soon as reasonably possible.

New subsection 19K(2) requires a police officer before serving an emergency protection order to take reasonable steps to explain to the respondent the effect of the order made and the consequences of breaching it.

Revoking or varying an emergency protection order

New subsection 19L(1) enables an emergency protection order to be revoked by a Court order on an application made to the Court by either an authorised police officer, the respondent or the aggrieved person.

New subsection 19L(2) provides that where the court is not sitting, an authorised officer may make an application to a judicial officer seeking a variation or revocation of an emergency protection order.

New subsection 19L(3) provides that the relevant procedure revoking or varying an emergency protection order follows the procedure for the making of an order detailed in ***new sections 19I and 19K***.

Effect of orders on licences for firearms

New subsection 19M(1) provides that where an emergency protection order is made against a person who holds a licence under the *Firearms Act 1996*, that licence is suspended while such an order remains in force and the order may also require the seizure of licence, and the seizure and detention of any firearm and any ammunition for the firearm in that person's possession for the duration of that order.

New subsection 19M(2) provides that where terms used in ***new subsection 19M(1)*** are defined in the *Firearms Act 1996* they have the same meaning as they have under the Act.

Authorisation of judicial officers

New section 19N enables the Chief Magistrate to authorise by instrument in writing a Deputy Registrar of the Court to act as a judicial officer for the purpose of this new Part.