

1990
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Domestic Violence (Amendment) Bill 1990

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SCHEDULE
FURTHER AMENDMENTS

1990
THE LEGISLATIVE ASSEMBLY
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(As presented)

(Attorney-General)

Domestic Violence (Amendment) Bill 1990

A BILL

FOR

An Act to amend the *Domestic Violence Act 1986*

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

Short title

5 1. This Act may be cited as the *Domestic Violence (Amendment) Act 1990*.

Principal Act

2. In this Act, "Principal Act" means the *Domestic Violence Act 1986*.¹

Interpretation

10 3. Section 3 of the Principal Act is amended—

- (a) by omitting "27, 28, 29, 30, 31, 33, 33A, 35, 37, 38, 39, 41, 46, 47, 54, 58, 59, 61, 83, 90A" from paragraph (c) of the definition of "prescribed offence" and substituting "19, 20, 21,

22, 23, 24, 25, 26, 27, 28, 30 or 31, paragraph 32 (1) (a) or 32 (2) (a) or section 33, 37”;

- (b) by omitting the definitions of “child” and “domestic violence offence” and substituting the following definitions:

“ ‘child’—

5

(a) means a person who has not attained the age of 18 years; and

(b) in relation to a person, includes a child—

(i) who normally or regularly resides with the person; or

10

(ii) of whom the person is a guardian;

‘domestic violence offence’ means a prescribed offence committed by a person against—

(a) a spouse of the person;

(b) a child of the person or of a spouse of the person;

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(c) a relative; or

(d) a household member;”;

- (c) by inserting the following definitions:

“ ‘aggrieved person’ means a person in respect of whom the alleged conduct has been, or is likely to be, engaged in;

20

‘household member’, in relation to a person, means a person who normally resides, or was normally resident, in the same household as the first-mentioned person (other than as a tenant or boarder);

‘relative’, in relation to a person—

25

(a) means—

(i) the father, mother, grandfather, grandmother, step-father, step-mother, father-in-law or mother-in-law of the person;

(ii) the son, daughter, grandson, granddaughter, step-son, step-daughter, son-in-law or daughter-in-law of the person;

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(iii) the brother, sister, half-brother, half-sister, brother-in-law or sister-in-law of the person;

(iv) the uncle, aunt, uncle-in-law or aunt-in-law of the person;

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(v) the nephew or niece of the person; or

(vi) the cousin of the person;

(b) includes a person who would have been a relative of a kind referred to in paragraph (a) if the first-mentioned person had been legally married to his or her defacto spouse; and

40

(c) includes a former relative of a kind referred to in paragraph (a) or (b);”.

Making of orders

4. Section 4 of the Principal Act is amended by omitting paragraph (1) (c) and substituting the following paragraph:

5 “(c) the respondent has engaged in conduct of such an offensive or harassing nature in respect of—

- (i) a spouse of the respondent;
- (ii) a relative;
- (iii) a household member; or
- (iv) a child of the spouse or of the respondent;

10 that—

- (v) the spouse, relative, household member or child fears for his or her safety; or
- (vi) the spouse fears for the safety of the child;”.

Applications for orders

15 5. Section 5 of the Principal Act is amended—

(a) by omitting paragraph (a) and substituting the following paragraph:

“(a) an aggrieved person;”;

(b) by omitting from subparagraph (b) (i) “or”; and

20 (c) by adding at the end of paragraph (b) the following subparagraph:

“(iii) the child; or”.

Insertion

25 6. After section 7 of the Principal Act the following section is inserted:

Representation of children

“7A. (1) Where—

- (a) an application for a protection order is made by a child;
- (b) the child is not separately represented by another person; and
- 30 (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.

35 “(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.).”.

Restrictions in orders

7. Section 9 of the Principal Act is amended—

(a) by omitting paragraph (1) (j) and substituting the following word and paragraph:

“ or (j) specify conditions subject to which the respondent may— 5

(i) be on premises;

(ii) be in a locality; or

(iii) approach or contact a person (including a child); specified in the order.”; and 10

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

“(3) Where the Court makes an order that includes a prohibition or direction of a kind referred to in subsection (1), the Court may extend the prohibition or direction to apply in relation to a child of the aggrieved person.”. 15

Insertion

8. After section 10 of the Principal Act the following section is inserted:

Consent orders

“10A. The Court may, with the consent of the parties to the proceedings, make any order under this Act without proof or admission of guilt.”. 20

Counselling

9. Section 11 of the Principal Act is amended by omitting “or the spouse of the respondent, or both,” and substituting “, the aggrieved person or any other person”. 25

Explaining proposed orders

10. Section 15 of the Principal Act is amended—

(a) by inserting “or cause to have explained” after “explain”; and

(b) by adding at the end the following subsections: 30

“(2) Where—

(a) the Court proposes to make a protection order or an interim protection 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 readily understood by the aggrieved person— 35

(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 27.

“(3) Where—

- 5 (a) the Court proposes to make a protection order or an interim protection order;
- (b) the aggrieved person is a child; and
- (c) the person who has the care and control of the child is before the Court;

10 the Court shall, before making the order, explain or cause to have explained to the person who has that care and control, in language likely to be readily understood by that person—

- (d) the matters specified in paragraphs (1) (c), (d) and (e); and
- 15 (e) the consequences of that person or the aggrieved person aiding or abetting the respondent in the commission of an offence against section 27.”.

Substitution

11. Section 20 of the Principal Act is repealed and the following section substituted:

20 **Interpretation**

“20. In this Part—

‘prescribed person’, in relation to a person admitted to bail, means—

- (a) a child of the person;
- (b) the aggrieved person; or
- 25 (c) a child, parent, brother or sister of the aggrieved person.”.

Insertion

12. After section 30 of the Principal Act the following section is inserted:

Exemption from restrictions on publication

30 “30A. Section 30 does not apply to a party to proceedings under this Act who informs a person of the contents of an order made in those proceedings.”.

Further amendments

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

SCHEDULE

Section 13

FURTHER AMENDMENTS

Subsection 7 (2)—

Omit all the words from and including “the spouse” to and including “engaged in”, substitute “the aggrieved person”.

Paragraph 9 (1) (a)—

Omit all the words from and including “the spouse” (first occurring) to and including “of the respondent,” (last occurring), substitute “the aggrieved person”.

Paragraph 9 (1) (b)—

Omit all the words after “frequented by”, substitute “the aggrieved person;”.

Paragraph 9 (1) (d)—

Omit all the words after “distance of”, substitute “the aggrieved person;”.

Paragraph 9 (1) (e)—

Omit all the words after “intimidating”, substitute “the aggrieved person;”.

Paragraph 9 (1) (f)—

Omit all the words after “property of”, substitute “the aggrieved person;”.

Subparagraph 9 (1) (g) (i)—

Omit all the words after “needed by”, substitute “the aggrieved person; or”.

Subparagraph 9 (1) (g) (ii)—

Omit all the words after “needed by”, substitute “the aggrieved person to the aggrieved person;”.

Paragraph 10 (1) (a)—

Omit all the words from and including “the spouse” (first occurring) to and including “respondent,” (last occurring), substitute “the aggrieved person”.

Paragraph 10 (1) (b)—

Omit the paragraph, substitute the following paragraph:

“(b) the welfare of a child affected, or likely to be affected, by the respondent’s conduct;”.

Paragraph 10 (1) (c)—

Omit all the words after “needs of”, substitute “the aggrieved person, the children (if any) of the aggrieved person and the children (if any) of the respondent;”.

Paragraph 10 (1) (e)—

Omit all the words after “respondent” (first occurring), substitute “and of the aggrieved person (other than an aggrieved person who is a child);”.

Paragraph 12 (1) (b)—

Omit all the words after “personally on”, substitute “the aggrieved person (other than an aggrieved person who is a child).”.

SCHEDULE—continued

Paragraph 14 (1) (b)—

Omit “the spouse or a child of the spouse or of the respondent”, substitute “the aggrieved person”.

Subsection 14 (2)—

Omit “or the spouse”.

Paragraphs 14 (3) (b) and (c)—

Omit “the spouse or a child of the spouse or of the respondent”, substitute “the aggrieved person”.

Subparagraphs 26 (3) (a) (i) and (ii)—

Omit the subparagraphs, substitute the following subparagraphs:

- “(i) the aggrieved person; or
- (ii) where the aggrieved person is a child—the person who has the care and control of the child;”.

Paragraph 26 (3) (b)—

Omit the paragraph, substitute the following paragraph:

- “(b) where the authorised police officer decides not to admit the person to bail, inform—
 - (i) the aggrieved person; or
 - (ii) where the aggrieved person is a child—the person who has the care and control of the child.”.

NOTE

1. Ordinance No. 52, 1986 as amended by Nos. 14, 21 and 38, 1989.