

2001

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

PROTECTION ORDERS (CONSEQUENTIAL AMENDMENTS) BILL 2001

EXPLANATORY MEMORANDUM

Circulated by authority of the
Attorney-General
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**PROTECTION ORDERS (CONSEQUENTIAL AMENDMENTS)
BILL 2001**

This Bill makes amendments consequential to the Protection Orders Bill 2001.

Clauses 1 and 2 are formal clauses setting out the name of the Act and commencement arrangements. The commencement is tied to the commencement of the *Protection Orders Act 2001*.

Clause 3 provides that Schedule 1 amends the Acts and regulations mentioned in that schedule.

Clause 4 repeals the *Protection Orders (Reciprocal Arrangements) Act 1992*. Provisions for the reciprocal recognition of interstate protection orders are included in part 9 of the Protection Orders Bill.

SCHEDULE

Amendments to Bail Act 1992

Amendments 1.1 substitutes a new definition of *domestic violence offence* to take account of the new offence provision in the Protection Orders Bill.

Amendment 1.2 omits the definition of *household member*. This definition is no longer required as the definition *domestic violence offence* now refers to *relevant person* consistently with the Protection Orders Bill.

Amendments 1.3 substitutes a new definition of *relative* consistently with the Protection Orders Bill 2001.

Amendment 1.4 inserts a new definition of *relevant person* consistently with the Protection Orders Bill. This definition includes a household member.

Amendment 1.5 changes the reference to an offence against the *Domestic Violence Act 1986* or part 10 of the *Magistrates Court Act 1930* to the new reference to the relevant offence provision under the Protection Orders Bill.

Amendment 1.6 substitutes new sections 7A to 8A. These sections refer to protection orders under the Protection Orders Bill. Section 7A concerns the granting of bail where a person is arrested for a breach of the peace or an apprehended breach of the peace. Section 8 concerns the granting of bail for offences other than minor offences. The section is expressed not to apply to the grant of bail by an authorised officer to a person accused of a domestic violence offence. Section 8A provides for the granting of bail by an authorised officer where a person is accused of a domestic violence offence.

Amendment 1.7 substitutes a new sections 16(3), (4) and (5) so that this provision is structured consistently with new section 8A. Section 16(3) requires an authorised officer to inform a protected person about bail decisions in relation to a person accused of a domestic violence offence.

Amendment 1.8 provides for the renumbering of section 16 in the next republication of the Act.

Amendment 1.9 substitutes new section 25(2)(e). Section 25(2)(e) concerns conditions that may be imposed on the grant of bail to a person accused of a domestic violence offence.

Amendment 1.10 substitutes new section 59. This is a transitional provision for the definition of *domestic violence offence* that relates to the repeal of the *Motor Traffic Act 1936*. It is incorrectly numbered in the existing Act as section 39.

Amendment 1.11 substitutes a new Schedule 1. Schedule 1 specifies domestic violence offences against the *Crimes Act 1900* for the purposes of the definition of *domestic violence offence* in section 3 of the Act.

Amendment 1.12 provides for the renumbering of the divisions of the Act in the next republication of the Act.

Amendments to the Children and Young People Act 1999

Amendment 1.13 amends the definition of *abuse* in section 151 of the Act to refer to behaviour that is a domestic violence offence within the meaning of the Protection Orders Bill.

Amendment 1.14 amends the definition of *final care and protection order* in section 194 of the Act to take account of the new term *protection order* under the Protection Orders Bill.

Amendments 1.15, 1.16 and 1.17 substitute new sections 205, 255(7) and 380(4)(b) respectively as a consequence of the creation of the new term *protection order* in the Protection Orders Bill.

Amendments 1.20 and 1.22 respectively omit the definitions of *domestic violence order* and *restraining order* from the dictionary. These terms have been replaced by the single term *protection order*.

Amendments 1.19 and 1.20 substitute a new single definition of *interim order* which defines this term for the purposes of both chapter 7 and chapter 8 of the Act.

Amendment 1.21 inserts a new definition of *protection order* as a consequence of the new definition in the Protection Orders Bill.

Amendments to the Crimes Act 1900

Amendment 1.23 substitutes new sections 349D(2B), (2C) and (3) to refer to protection orders under the Protection Orders Bill.

Amendment 1.24 provides for the renumbering of section 349D in the next republication of the Act.

Amendments 1.25 and 1.26 substitute new section 349DA(1) with new references to the Protection Orders Bill.

Amendment 1.27 substitutes new Schedule 2. Schedule 2 defines domestic violence offences for the purposes of the Act.

Amendment 1.28 substitutes a new definition of *domestic violence offence* with references to the Protection Orders Bill.

Amendment 1.29 omits the definition of *household member*. This definition is no longer required as the definition *domestic violence offence* now refers to *relevant person* consistently with the Protection Orders Bill.

Amendment 1.30 substitutes a new definition of *relative* consistently with the Protection Orders Bill 2001.

Amendment 1.31 inserts a new definition of *relevant person* consistently with the Protection Orders Bill. This definition includes a household member.

Amendment 1.32 provides for the renumbering of the divisions of the Act in the next republication of the Act.

Amendments to the Domestic Violence Act 1986

Amendment 1.33 changes the name of the Act to *Domestic Violence Agencies Act 1986*. This change reflects the changed role of the Act following the repeal of the substantive protection orders provisions as a consequence of their inclusion in the Protection Orders Bill.

Amendment 1.34 substitutes new sections 3 and 4. These are formal provisions setting out how the dictionary and notes to the Act should be used.

Amendment 1.35 omits Parts II and IIA of the Act. These parts deal with protection orders and emergency protection orders respectively. Equivalent provisions to these parts are located in the Protection Orders Bill.

Amendment 1.36 omits section 20 of the Act. This is an interpretation section and these definitions are now located in the dictionary.

Amendment 1.37 and 1.38 substitute new sections 23(4)(b) and 23(5) respectively. The sections are redrafted in accordance with current drafting practice.

Amendment 1.39 omits section 23(7). This section is covered by section 13BB(3) of the *Interpretation Act 1967* which provides that the exercise of a function or power by a body is not affected merely because of a vacancy in membership.

Amendment 1.40 omits existing sections 24 and 25 and substitutes a new section 24 in accordance with current drafting practice. The provisions relating to reappointment and resignation of members of the Domestic Violence Prevention Council are not required as they are included in the *Interpretation Act 1967*.

Amendment 1.41 omits section 26B. This is an interpretation section and is included in the new dictionary.

Amendment 1.42 omits section 26E. This section is no longer required as the power to do all things necessary or convenient in connection with the performance of a function is included under section 25B of the *Interpretation Act 1967*.

Amendments 1.43 and 1.45 omit provisions relating to the reappointment and resignation of the Domestic Violence Coordinator. As is noted in the new note included by **Amendment 1.44**, these provisions are not required as they are included in the *Interpretation Act 1967*.

Amendment 1.46 substitutes a new section 26I in accordance with current drafting practice to provide for the appointment of a person to act as coordinator.

Amendments 1.47 and 1.49 omit provisions dealing with protection orders. Equivalent provisions are located in the Protection Orders Bill.

Amendment 1.49 also inserts a dictionary for the purposes of the Act.

Amendment 1.48 omits section 35. This section provides for approved forms and is no longer required because forms are approved under the Protection Orders Bill.

Amendment 1.50 provides for the renumbering of the Act on republication.

Amendments to the Evidence Act 1971

Amendment 1.51 omits section 66 from the Act. This section provides for the compellability of a husband or wife in proceedings where the accused is charged with particular offences, including a domestic violence offence. The provision is no longer required as it is provided for in the Commonwealth *Evidence Act 1995*.

Amendments to the Evidence (Miscellaneous Provisions) Act 1971

Amendment 1.52 omits the subsection number (1) as it is redundant.

Amendments 1.53 and 1.54 substitute a reference to proceedings under the Protection Orders Bill so that the special provisions for the giving of evidence by children about sexual offences in part 2 of the Act apply to protection order proceedings.

Amendment 1.55 provides for the renumbering of the section 5 on republication.

Amendments to the Firearms Act 1996

Amendments 1.56, 1.57 and 1.58 insert new definitions of *corresponding order*, *interim protection order* and *protection order* as a consequence of the new terminology in the Protection Orders Bill.

Amendment 1.59 substitutes a new section 21(5)(d) as a consequence of the use of the new term *interim protection order*. The section provides that the registrar must have regard to any interim protection order or corresponding order issued within the last 10 years in determining whether or not an applicant is a fit and proper person to hold a firearms licence.

Amendment 1.60 substitutes new section 22(1)(a) as a consequence of the use of the new term *protection order*. The section provides that the registrar must refuse an application where the applicant has, within the last 10 years, been subject to a protection order, other than an order that has been successfully appealed against.

Amendment 1.61 provides for the renumbering of section 22(4) on republication as a consequence of the insertion of a new section 22(4).

Amendment 1.62 inserts new section 22(4). This section clarifies what is meant by an order having been successfully appealed.

Amendments 1.63 and 1.64 amend section 39 as a consequence of the repeal of the *Domestic Violence Act 1986* and the inclusion of the relevant provisions in the Protection Orders Bill.

Amendments 1.65 and 1.66 respectively omit section 40 and substitute new section 41(1). These sections provide for the automatic suspension or cancellation of a firearms licence where an interim protection order or protection order is made under the *Domestic Violence Act 1986*. Equivalent provisions are contained in the Protection Orders Bill and hence do not require duplication in the *Firearms Act 1996*.

Amendment 1.67 substitutes new section 46(3)(b) as a consequence of the repeal of the *Domestic Violence Act 1986*. The existing section provides that a permit may not be issued to a person who has, within the last 10 years, been subject to a protection order under the *Domestic Violence Act*, other than a protection order that has been revoked. The proviso that the section only applies to order that have not been revoked is now contained in new section 46(3A), which is inserted by **Amendment 1.68**.

Amendments 1.69 and 1.70 provide for renumbering on republication of the Act.

Amendments to the Magistrates Court Act 1930

Amendment 1.71 repeals part 10 of the Act. This part provides for restraining orders and these provisions are now substantively included in the Protection Orders Bill.

Amendment 1.72 omits a reference to the repealed part 10.

Amendment 1.73 omits part 16 of the Act. This is a transitional provision that refers to part 10 of the Act. Notwithstanding the repeal of the provision, the effect of the provision continues by virtue of section 88 of the *Legislation Act 2001*.

Amendments to the Magistrates Court (Civil Jurisdiction) Act 1982

Amendment 1.74 inserts new section 4(a). This amendment is necessary to ensure that the *Magistrates Court (Civil Jurisdiction) Act 1982* does not apply to protection order proceedings. These proceedings have their own regulations under the Protection Orders Bill.

Amendment 1.75 provides for renumbering on republication of the Act.

Amendments to the Prohibited Weapons Regulations

Amendment 1.76 substitutes a new regulation 1 which provides for the citation of the regulations in accordance with current drafting practice.

Amendment 1.77 substitutes a new definition of registrar in accordance with current drafting practice.

Amendment 1.78 substitutes new regulation 5(3) as a consequence of the changes in terminology made by the Protection Orders Bill.

Amendment 1.79 substitutes new regulation 5(5) which defines *protection order* and associated terms consistently with the Protection Orders Bill.