

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

DOMESTIC VIOLENCE (MISCELLANEOUS AMENDMENTS)

ORDINANCE 1986

No. 53, 1986

This Ordinance amends the Crimes Act 1900 of New South Wales in its application to the Territory, the Evidence Ordinance 1971, the Magistrates Court Ordinance 1930, the Magistrates Court (Civil Jurisdiction) Ordinance 1982 and the Police Ordinance 1927 consequent upon the Domestic Violence Ordinance 1986.

Details of the Ordinance are as follows:

Section 1 provides that the Ordinance may be cited as the Domestic Violence (Miscellaneous Amendments) Ordinance 1986.

Section 2 provides that the Ordinance comes into force on a date fixed by notice in the Gazette.

Amendment of the Crimes Act 1900

Section 3 amends the Crimes Act 1900 of the State of New South Wales in its application to the Territory. Sub-section 3(2) inserts new sections 349A, 349B and 349C which deal with the powers of police to enter premises in certain circumstances.

Section 349A sets out the circumstances in which a police officer may enter premises to take action to prevent the commission or repetition of an offence or breach of the peace or to take steps to protect life, or to prevent damage to property. The section enables a police officer to enter premises when invited by any person, including a child, who is apparently a resident of the premises.

Section 349B empowers a Magistrate to issue a warrant of entry where he/she is satisfied by information on oath that a police officer has been refused permission to enter premises for the purpose of giving assistance, and that there are reasonable grounds to suspect that a person on the premises has suffered, or is in imminent danger of, physical injury and needs assistance to prevent or deal with the injury. The Magistrate may request such further information, either orally on oath or by affidavit, as he/she requires.

Section 349C enables a police officer to enter premises without a warrant where he/she believes on reasonable grounds that an offence or breach of the peace is being or is likely to be committed, that a person has suffered injury or there is imminent danger of injury to a person or damage to property and immediate entry is necessary to protect life. This provision reflects the common law powers of police to enter premises without warrant.

Sub-section 3(3) amends sub-section 352(1) of the Act, substitutes a new sub-section 352(2) and adds new sub-section 352(2A)

Sub-section 352(1) is amended to provide that a person who apprehends without warrant another person, who is in the act of committing an offence or who has committed an offence, is to detain that person only for so long as is necessary and reasonable until he/she can arrange for the attendance of a police officer, or take the person to a police officer.

Sub-section 352(2) is repealed and a new provision substituted empowering a police officer to arrest a person without a warrant for a breach of Territory law where he/she believes on reasonable grounds that a summons would not ensure one or more of the following: the person's appearance in court; his/her safety; that no further offence is committed; the preservation of evidence; the protection of witnesses or that evidence is not fabricated.

Sub-section 352(2A) requires the release of a person arrested without warrant under sub-section 352(2) where, before the person has been charged, the investigating officer does not have, or ceases to have, reasonable grounds to believe either that the person committed the offence or that it is necessary to continue to hold the person in custody to achieve the purposes set out in new sub-section 352(2).

Amendment of the Evidence Ordinance 1971

Section 4 amends section 66 of the Evidence Ordinance 1971 ('the Principal Ordinance') to provide that the husband or wife of a person charged with a domestic violence offence within the meaning of the Domestic Violence Ordinance 1986 is a compellable witness in the proceedings.

Under section 66 of the Principal Ordinance the husband or wife of a person charged with a criminal offence is a competent but not compellable witness.

The rule does not apply to de facto spouses nor does it apply as between husband and wife where an offence against a person under the age of 16 is involved (section 66 of the Principal Ordinance contains a specific exemption in respect of the latter category).

The rule has been criticised as it serves to restrict the evidence available to the court. In criminal prosecutions a court should have available to it all relevant evidence.

It is considered that in the case of domestic violence, (as in the case of assault of a child under the existing law) a spouse should be a compellable witness. Such an exception to the statutory rule was recommended in 1977 by the Senate Standing Committee on Constitutional and Legal Affairs in its Report on the ACT Evidence Bill.

Amendment of Magistrates Court Ordinance 1930

Section 5 amends the Magistrates Court Ordinance 1930 ('the Principal Ordinance') to provide for the inclusion of special conditions by the Court when granting bail to a person charged with a domestic violence offence, the apprehension of a person admitted to bail where there are reasonable grounds for believing that that person has failed to comply or will not comply with conditions attached to it and for enforcement of a recognizance that has not been complied with.

Sub-section 5(1) defines (for the purposes of section 5) 'Principal Ordinance' to mean the Magistrates Court Ordinance 1930.

Sub-section 5(2) amends sub-section 80(2) of the Principal Ordinance to exclude the application of sub-section 80(1) (which relates to enforcement of forfeited recognizances) in respect of failure to comply with special conditions that may be imposed in police bail under section 24 of the Domestic Violence Ordinance 1986. As is currently the case with special conditions in Court bail, the consequences of failure to comply with such conditions is to be governed by Part XIII A of the Principal Ordinance.

Sub-section 5(3) amends section 248A of the Principal Ordinance (which allows the Court to impose further conditions on bail) to specify special conditions that may be imposed by the Court on a defendant released on bail after being charged with a domestic violence offence.

Sub-section 5(4) amends section 248B of the Principal Ordinance to empower a police officer, who believes on reasonable grounds that a person released on bail after having been charged with a domestic violence offence has failed to comply or will not comply with a condition of the bail, to apprehend that person without a warrant.

Sub-section 5(5) amends section 248D of the Principal Ordinance (which deals with the effect on a recognizance of the apprehension of a defendant) consequent upon the amendment in sub-section 5(4).

Sub-section 5(6) amends section 254 of the Principal Ordinance to ensure that its provisions (which relate to enforcement of forfeited recognizances) apply to recognizances entered into under the Domestic Violence Ordinance 1986 and section 24 of the Police Ordinance 1927.

Amendment of Magistrates Court (Civil Jurisdiction) Ordinance 1982

Section 6 amends section 282H of the Magistrates Court (Civil Jurisdiction) Ordinance 1982 (which provides that the institution of an appeal does not operate as a stay of enforcement or execution of the judgment or order appealed from unless the Supreme Court otherwise orders) to make it clear that an appeal to the Supreme Court from the making of a protection order by the Magistrates Court does not operate as a stay of operation of that order unless the Supreme Court otherwise orders.

Amendment of the Police Ordinance 1927

Section 7 repeals section 18 of the Police Ordinance 1927 which deals with the power of police officers to arrest without warrant in certain circumstances (sub-section 7(1)). This is now dealt with in the amendment to section 352 of the Crimes Act 1900 in section 3 of the Ordinance.

Sub-section 7(2) amends section 24 of the Police Ordinance 1927 so that a person who has been apprehended without a warrant shall as soon as practicable be delivered into the custody of a member of the Police Force who is in charge of the nearest police station. This amendment is consequent upon new section 352(2A) of the Crimes Act 1900, inserted by section 3 of the Ordinance.

Section 24 is also amended (by the insertion of new sub-section 24(2A)) so that the provisions of sub-sections 24(1) and (2) - which relate to the release on bail of persons apprehended without warrant - no longer apply to a person apprehended in respect of a domestic violence offence. The release of persons apprehended in respect of these offences is now covered by Part III of the Domestic Violence Ordinance 1986.

Sub-section 24(3) is amended to apply the provisions of the Magistrates Court Ordinance 1930 relating to recognizances to any recognizance entered into by a person before a police officer whether the recognizance is taken under the Police Ordinance 1927 or under the Domestic Violence Ordinance 1986. This provision enables a breach of such a recognizance to be dealt with under the Magistrates Court Ordinance 1930.

Authorised by the
Attorney-General

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