

WESTERN AUSTRALIA

LEGISLATIVE ASSEMBLY/COUNCIL

***RESTRAINING ORDERS AMENDMENT BILL 1998***

A BILL FOR

AN ACT to amend the *Restraining Orders Act 1997* to make provision for the registration and enforcement of restraining orders made in New Zealand and other prescribed countries.

PROPOSED LEGISLATION	COMMENTS
<p><b>Short title</b></p> <p>1. This Act may be cited as the <i>Restraining Orders Amendment Act 1998</i>.</p>	<p>Short Title</p>
<p><b>Commencement</b></p> <p>2. This Act comes into operation on the day on which it receives the Royal Assent.</p>	
<p><b>The Act amended</b></p> <p>3. The amendments in this Act are to the <i>Restraining orders Act 1997</i>.</p>	

**Section 3 amended**

4. Section 3 is amended by inserting the following definitions in their appropriate alphabetic positions —

"**corresponding law**", in relation to a foreign country, means a law of the country that empowers a court of the country to make orders (however described) having an effect that is the same as or similar to the effect of restraining orders made under this Act;

"**foreign restraining order**" means an order (however described) made by a court of a foreign country under a corresponding law of the country;

"**registered**", in relation to a foreign restraining order, means registered under section 79C.

Additional definitions are required to define the nature of the legislation in a foreign country under which orders equivalent in meaning to a Western Australian restraining order are made, and that the order must be registered in Western Australia for it to have effect in Western Australia.

**Section 77 amended**

5. After section 77(1) the following subsection is inserted —

(1a) Without limiting subsection (1), for the purposes of applying Part 5 to an interstate order —

(a) a reference to varying a final order is to be read as a reference to making an order varying the operation in this State of the interstate order; and

(b) a reference to cancelling a final order is to be read as a reference to making an order cancelling the registration of the interstate order.

Section 77 in the present legislation specifies that an interstate order registered in Western Australia operates in this state as if it were a final violence restraining order. The proposed amendments ensure that, once registered, the variation and cancellation of operation of interstate orders is subject to the same processes as those for orders originating in this state. The amendment ensures that treatment of interstate orders is the same as that for orders from a foreign country.

<p><b>Section 79 replaced</b></p> <p>6. Section 79 is repealed and the following section is inserted instead —</p> <p><b>79. Variation or cancellation in this State</b></p> <p>If an order is made under Part 5 varying the operation in this State, or cancelling the registration, of an interstate order, the clerk of the court that made the order of variation or cancellation must —</p> <p>(a) notify applicant for registration of the original order, unless the clerk knows that the applicant is already aware of the variation or cancellation;</p> <p>(b) notify the Commissioner for Police and give the Commissioner a copy of the order of variation or cancellation; and</p> <p>(c) alter the registration accordingly.</p>	<p>The new Section 79 specifies the actions requires by the Clerk of Court when the operation of an interstate order is varied or cancelled. The changes bring the processing of interstate orders into line with that for orders from a foreign country.</p>
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<p><b>New Part inserted</b></p> <p>7. After Part 7 the following Part is inserted —</p> <p><b>Part 7A — Foreign restraining orders</b></p> <p><b>79A. Recognition of foreign restraining orders</b></p> <p>A foreign restraining order that is in force under a corresponding law of New Zealand or a prescribed country may be registered and enforced under this Part.</p>	<p>Part 7A specifies legislation with respect to the registration and enforcement of restraining orders made in foreign countries.</p> <p>Section 79A identifies New Zealand as a prescribed country and recognizes restraining orders made under a corresponding law in a foreign country.</p>
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**New Part inserted (continued)**

**79B. Applying for registration of foreign restraining orders**

- (1) An application for registration of a foreign restraining order may be made —
  - (a) by a person protected by the order;
  - (b) if the protected person is a child, by a parent or guardian of the child on behalf of the child;
  - (c) if the protected person is under the guardianship of a guardian (however described) appointed under a law of the foreign country, by the guardian on behalf of the protected person; or
  - (d) by a police officer on behalf of the protected person.
- (2) The application is to be made to a court of petty sessions in the form prescribed for the purposes of section 75(2).
- (3) An application need not be served on the person who is bound by the order.

**79C. Registration of foreign restraining orders**

- (1) When a person applies for registration of a foreign restraining order, the clerk of the court is to register the order.
- (2) The clerk must give notice of the registration —
  - (a) to the applicant; and
  - (b) where practicable, to the court that made the order.
- (3) The clerk must also give notice of the registration of the order, and a copy of the order, to the Commissioner of Police.
- (4) The clerk is not to give notice of the registration to the person who is bound by the order unless the applicant has made a written request for notice to be given to the person.

Section 79B specifies who may apply for registration of a foreign restraining order and how the application can be progressed.

Section 79B specifies the actions that must be taken by the Clerk of Courts on receipt of an application for the registration of a foreign restraining order.

**New Part inserted (continued)**

**79D. Effect of registration**

- (1) A registered foreign restraining order operates in this State, and this Act applies to it, as if it were a violence restraining order that is a final order and that was served in accordance with this Act on the day on which it was registered.
- (2) Without limiting subsection (1), for the purposes of applying Part 5 to a registered foreign restraining order —
  - (a) a reference to varying a final order is to be read as a reference to making an order varying the operation in this State of the registered foreign restraining order; and
  - (b) a reference to cancelling a final order is to be read as a reference to making an order cancelling the registration of the foreign restraining order.
- (3) The order operates as a final order even though an appeal against it may be pending, or it may still be subject to appeal, in the courts of the foreign country.
- (4) In proceedings for a breach of the order, proof is not required —
  - (a) that the order was made by the foreign court; or
  - (b) that the order was served on the person who is bound by it.
- (5) It is a defence to a charge of breaching the order for the person who is bound by the order to satisfy the court that —
  - (a) the order has been varied under the corresponding law in the foreign country so that the behaviour that is alleged to constitute the breach did not amount to a breach of the order as in force in the foreign country at the material time; or
  - (b) the order had been cancelled under the corresponding law of the foreign country and was not in force in that country at the material time.

Section 79D specifies that a foreign restraining order registered in this state operates as if it were a final violence restraining order. In addition, it specifies where breach provisions applicable to a foreign order are different from those for an order made in this state to account for changes to the order made in the foreign country.

**New Part inserted (continued)**

**79E. Variation or cancellation in a foreign country**

- (1) If the clerk of the court that registered a foreign restraining order has reasonable grounds for believing that an order varying the restraining order is in force under the corresponding law of the foreign country, the clerk is to register the variation.
- (2) The variation takes effect on the day on which it is registered.
- (3) If a registered foreign restraining order is cancelled by a court of the foreign country, the registration of the order is cancelled on the day on which the court of registration becomes aware of the cancellation.
- (4) If a variation of the registered foreign restraining order is registered, or the order is cancelled, the clerk of the court of registration must —
  - (a) notify the applicant for registration of the original order, unless the clerk knows that the applicant is already aware of the variation or cancellation; and
  - (b) notify the Commissioner of Police and give the Commissioner a copy of the order of variation or cancellation if one is available.

**79F Variation or cancellation in this State**

If an order is made under Part 5 varying the operation in this State, or cancelling the registration, of a registered foreign restraining order, the clerk of the court that made the order of variation or cancellation must —

- (a) notify the applicant for registration of the original order, unless the clerk knows that the applicant is already aware of the variation or cancellation;
- (b) notify the Commissioner of Police and give the Commissioner a copy of the order of variation or cancellation; and
- (c) alter the registration accordingly.

Section 79E specifies the actions to be taken by the Clerk of Courts when a foreign restraining order, registered in this state, is varied or cancelled in the foreign country.

Section 79F specifies the actions to be taken by the Clerk of Courts when the operation in this state of a foreign restraining order is varied or cancelled.