

**RESTRAINING ORDERS AMENDMENT BILL 2000.**  
**Explanatory Notes**

*Clause 1 Short title*

Short title of the Act.

*Clause 2 Commencement*

The Act comes into operation on the day on which it receives the Royal Assent.

*Clause 3 The Act amended*

The various amendments proposed throughout the Act are amendments to the *Restraining Orders Act 1997*.

*Clause 4 Section 3 amended*

Section 3 of the *Restraining Orders Act 1997*, which contains the definitions of words and phrases used throughout the Act, is amended to include the definition of "child welfare officer".

The purpose of including this definition in the *Restraining Orders Act 1997* is to specify the persons who are authorised as a "child welfare officer".

The definitions of "final" and "interim order" are amended to accommodate the amendments to section 63 of the Act, as contained in *Clause 13*.

*Clause 5 Section 7 amended*

Section 7 of the *Restraining Orders Act 1997*, prescribes the meaning of the word "applicant" if an application is made on behalf of another person. The section is amended, in the case of a child, to include a child welfare officer.

This amendment is necessary as a consequence of the amendments to sections 18, 25, 38, 45, 47 and 75 wherein it is now provided that a child welfare officer can make an application on behalf of a child.

*Clause 6 Section 18 replaced*

The existing section 18 of the *Restraining Orders Act 1997* is repealed and replaced in a redrafted format to follow the layout of sections 25, 38 and 45 for the purposes of consistency throughout the Act.

Subsection (2)(a) however, has been amended to provide that a child welfare officer may apply for a telephone restraining order on behalf of a child. This will enable a child welfare officer, on behalf of a child who appears, or is suspected, to be in need of care and protection, to approach the Police in urgent after hour's situations and seek a telephone order. The present provisions only provide for the parent or guardian of a child to request the Police to seek a telephone order.

*Clause 7 Section 25 replaced*

The existing section 25 of the *Restraining Orders Act 1997* is repealed and replaced in a redrafted format to follow the layout of sections 18, 38 and 45 for the purposes of consistency throughout the Act.

Subsection (2)(a) has been amended to include that a child welfare officer may make an application for violence restraining order on behalf of a child. The existing provisions only allow for a parent or guardian to make application on behalf of a child.

*Clause 8 Section 38 replaced*

The existing section 38 of the *Restraining Orders Act 1997* is repealed and replaced in a redrafted format to follow the layout of sections 18, 25 and 45 for the purposes of consistency throughout the Act.

Subsection (2)(a), however, has been amended to include a child welfare officer, in addition to the existing entitlement of a parent or guardian, as a person who can make an application for a misconduct restraining order on behalf of a child.

*Clause 9 Section 42 amended*

During the course of drafting the amendments to address the changes relating to the jurisdiction of the *Restraining Orders Act 1997* being extended to the Family Court, it was ascertained that an oversight had occurred in the drafting of the original section 42(2)(a).

The current legislation provides that where a final order hearing is set down and the respondent does not appear, then the court may make a final order in the absence of the respondent if it is satisfied that they were served with a summons. Sections 40 and 41 provide for the setting down of a matter for a final order hearing, and require the court to issue a summons, as the respondent would not have been present. Section 33 which also allows for the setting down of a final order hearing, only requires the respondent to be notified, not summonsed, as they would have been present at the first hearing.

To address both situations it is necessary to amend section 42(2)(a) to provide separate requirements in regard the court being satisfied as to the "notification to" or "summonsing of" a respondent.

*Clause 10 Section 45 amended and consequential amendments*

The existing section 45 of the *Restraining Orders Act 1997* is repealed and replaced in a redrafted format to follow the layout of sections 18, 25 and 38 for the purposes of consistency throughout the Act.

Subsection (2)(a), however, has been amended to provide that a child welfare officer, as well as a parent or guardian, may make an application for a variation or cancellation of a restraining order on behalf of a child.

As a result of the redrafting of section 45, consequential amendments to section 46(1), 47(1), 48(1) and 79 are necessary to correct the references to specific subsections of section 45 that are referred to in those sections.

*Clause 11 Section 47 amended*

Section 47 deals with the requirement for the Clerk of the Court to issue a summons in relation to an application to vary or cancel a restraining order.

Subsection (2) of section 47 has been amended to include the provision for a summons to be served on a child welfare officer on behalf of a child, if the clerk considers it appropriate. This is necessary for the situations where a child welfare officer had applied for the order sought to be varied, or cancelled, on behalf of a child.

The subsection is also redrafted to follow the format used in previous sections for the sake of consistency.

*Clause 12 Section 61 amended*

Section 61 of the Act is amended to include the specific provision that where a child breaches a restraining order, the proceedings for breach are to be commenced in the Children's Court. It also provides that in all other cases proceedings for breach are to be commenced in a court of petty sessions. Breaches of orders made by a court exercising family law jurisdiction are therefore instituted in a court of petty sessions. This is because a breach of a restraining order is deemed to be a criminal offence and therefore, not a matter to be dealt with by a court exercising family law jurisdiction.

This amendment is required to clarify the situation in regard to which courts' applications for breach of restraining orders are to be commenced in.

*Clause 13 Section 63 amended*

Section 63 of the Act presently allows for, "A court, including a judicial officer considering a case for bail, **before which a person charged with an offence is appearing** may make a restraining order.....". This section allows a court of its own motion, or on the application of a person giving evidence before it, to make a restraining order during the conduct of the hearing of another matter.

The amendment to this section is to expand the jurisdictions and circumstances under which a court may make a restraining order during the conduct of other proceedings. The amendment inserts, a court hearing proceedings under the *Family Court Act* or *Family Law Act* (subsection (2)), or a court hearing a care and protection application in regard to a child (subsection (3)). It also provides that if the person to be protected is a child, then an application can be made by a child welfare officer on behalf of a child (subsection (3a)(c)(iii)).

Subsections (4a) and (4b) are added to enable a Court hearing family law proceedings to make either a final order or an interim order under this section. The Act presently only provides for a final order to be made under this section. It is necessary to empower the court to make an interim order as many applications for restraining orders are likely to be made during the disposition of lengthy lists of matters where there is insufficient time for the court to hear all the evidence for the purposes of making a final order. This amendment will allow the court to make an interim order, then adjourn the matter for determination on a date to be fixed when the evidence can be taken.

New subsection (4c) deems that a person appearing before the court who objects to the making of an interim order, has met the pre-requisites of the conditions relating to such an order and the court can proceed to immediately list the application for final orders to be made.

Subsection (1) is redrafted for consistency in format. Consequential amendments are necessarily made to subsections (4), (5), (6) and (7) of section 63.

#### *Clause 14 Section 64 amended*

Subsection (6a) is added to section 64 to provide the forum for appeals from a court hearing proceedings under the *Family Court Act* or *Family Law Act*. These amendments are required as the family law jurisdiction has its own specific appeal venues that are different from other jurisdictions before which restraining orders are made.

#### *Clause 15 Section 75 amended*

Section 75(1) has been redrafted for consistency and subsection (1a)(a) has been amended to provide that a child welfare officer may apply to register an interstate order on behalf of a child.

#### *Clause 16 Section 79B amended*

Section 79B(1) has been redrafted for consistency and subsection (1a)(a) has been amended to provide that a child welfare officer may apply to register a foreign order on behalf of a child.

#### *Clause 17 Section 86 amended*

Section 86 of the *Restraining Orders Act 1997* currently provides that orders made previously under Part VII of the *Justices Act 1902* are deemed to be misconduct restraining orders under the present Act.

During the course of the recent evaluation of the *Restraining Orders Act 1997*, concern was expressed as to the willingness of courts of petty sessions to exercise authority to vary such 'old' orders. This concern was based around the belief held by a number of magistrates that such orders were not "final orders" within the meaning of the *Restraining Orders Act 1997*.

While the present Act does not specifically reference these 'old' orders within the definition of "final order", they nevertheless should be treated as such. In order to clarify this matter, the Bill seeks to amend section 86(1) of the *Restraining Orders Act 1997* to provide that these "old" orders are "final orders" within the meaning of the Act.