

Acts Amendment (Family and Domestic Violence) Bill 2004

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended in committee)

**Acts Amendment (Family and Domestic
Violence) Bill 2004**

A Bill for

An Act to amend —

- **the *Restraining Orders Act 1997*;**
- **the *Bail Act 1982*; and**
- ***The Criminal Code*.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Acts Amendment (Family and Domestic Violence) Act 2004*.

5 **2. Commencement**

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

Part 2 — *Restraining Orders Act 1997* amended

3. The Act amended

The amendments in this Part are to the *Restraining Orders Act 1997**.

5 [* Reprinted as at 6 October 2000.
For subsequent amendments see *Western Australian
Legislation Information Tables for 2003, Table 1, p. 329 and
Act No. 50 of 2003.*]

4. Long title amended

10 The long title is amended by deleting “restraining orders, to
amend the *Justices Act 1902* and various other Acts” and
inserting instead —

“
15 **orders to restrain people from committing acts of family
and domestic or personal violence by imposing
restraints on their behaviour and activities**
”.

5. Section 3 amended

20 (1) Section 3 is amended by inserting in the appropriate
alphabetical positions the following definitions —

“
“**act of abuse**” means an act of family and domestic
violence or an act of personal violence;
“**act of family and domestic violence**” has the
25 meaning given by section 6;
“**act of personal violence**” has the meaning given by
section 6;
“**application**” means an application made under this
Act;

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“**CEO (child welfare)**” means the Director-General within the meaning of the *Child Welfare Act 1947*;

“**Commissioner of Police**” means the person holding or acting in the office of Commissioner of Police under the *Police Act 1892*;

5

“**exposed**”, in relation to an act of abuse, includes —

- (a) to see or hear the act of abuse; or
- (b) to witness physical injuries resulting from the act of abuse;

10

“**family and domestic relationship**” has the meaning given by section 4;

“**imagined personal relationship**” means a relationship where one person claims to have, or have had, an intimate personal relationship, or other personal relationship, with another person but that other person disagrees with that claim;

15

“**person who is bound**”, in relation to an order made under this Act, means the person named in the order on whose lawful activities and behaviour restraints are imposed by the order;

20

“**proceedings under this Act**” means —

- (a) the hearing of an application; or
- (b) proceedings for an offence against this Act;

“**property**”, in relation to a person, means property —

25

- (a) owned by the person;
- (b) in the care or custody of the person;
- (c) used or enjoyed by the person, or available for the person’s use or enjoyment; or
- (d) at premises where the person lives or works;

30

”.

- (2) Section 3 is amended by deleting the definition of “person to be protected” and “person protected” and inserting in the appropriate alphabetical positions the following definitions —

“

5 **“person protected”** means a person named in an order made under this Act as a person for whose benefit the order is made;

“person seeking to be protected” means —

- 10 (a) the person who has applied for a violence restraining order or a misconduct restraining order; or
- (b) if an application for a violence restraining order or a misconduct restraining order has been made on behalf of another person, the person on behalf of whom the application is made;
- 15

”.

- (3) Section 3 is amended by deleting the definitions of “applicant”, “on behalf of” and “violent personal offence”.

- 20 (4) Section 3 is amended by deleting paragraph (a) of the definition of “child welfare officer” and “or” after it and inserting instead —

“

25 (a) the CEO (child welfare); or

”.

- (5) Section 3 is amended in the definition of “corresponding law” by deleting “a foreign country, means a law of the country that empowers a court of the country” and inserting instead —

“

30 another State or Territory or a foreign country, means a law of that State, Territory or country that empowers a court of that State, Territory or country

”.

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(6) Section 3 is amended in the definition of “final order” as follows:

(a) by inserting after paragraph (ba) the following paragraph —

5

“

(bb) made under section 41(1) at a mention hearing with the consent of the respondent;

”;

(b) in paragraph (d) by inserting after “section 63(4a)” —

10

“ or 63A(3) ”.

(7) Section 3 is amended by deleting the semicolon after the definition of “violence restraining order” and inserting a full stop instead.

6. Section 4 replaced

15

Section 4 is repealed and the following section is inserted instead —

“

4. Meaning of “family and domestic relationship”

(1) In this Act —

20

“family and domestic relationship” means a relationship between 2 persons —

(a) who are, or were, married to each other;

(b) who are, or were, in a de facto relationship with each other;

25

(c) who are, or were, related to each other;

(d) one of whom is a child who —

(i) ordinarily resides, or resided, with the other person; or

30

(ii) regularly resides or stays, or resided or stayed, with the other person;

- 5
- (e) one of whom is, or was, a child of whom the other person is a guardian; or
 - (f) who have, or had, an intimate personal relationship, or other personal relationship, with each other.

(2) In subsection (1) —

10 **“other personal relationship”** means a personal relationship of a domestic nature in which the lives of the persons are, or were, interrelated and the actions of one person affects, or affected, the other person;

“related”, in relation to a person, means a person who —

- 15
- (a) is related to that person taking into consideration the cultural, social or religious backgrounds of the 2 persons; or
 - (b) is related to the person’s —
 - (i) spouse or former spouse; or
 - (ii) de facto partner or former de facto partner.
- 20

”.

s. 7

7. Section 6 replaced

Section 6 is repealed and the following section is inserted instead —

“

5 **6. Meaning of “act of family and domestic violence”
and “act of personal violence”**

(1) In this Act —

10 **“act of family and domestic violence”** means one of
the following acts that a person commits against
another person with whom he or she is in a family
and domestic relationship —

- 15 (a) assaulting or causing personal injury to the
person;
- (b) kidnapping or depriving the person of his or
her liberty;
- (c) damaging the person’s property, including
the injury or death of an animal that is the
person’s property;
- 20 (d) behaving in an ongoing manner that is
intimidating, offensive or emotionally
abusive towards the person;
- (e) causing the person or a third person to be
pursued —
 - 25 (i) with intent to intimidate the person; or
 - (ii) in a manner that could reasonably be
expected to intimidate, and that does in
fact intimidate, the person;
- (f) threatening to commit any act described in
paragraphs (a) to (c) against the person.

(2) In this Act —

“act of personal violence” means one of the following acts that a person commits against another person with whom he or she is not in a family and domestic relationship —

5

- (a) assaulting or causing personal injury to the person;
- (b) kidnapping or depriving the person of his or her liberty;
- 10 (c) causing the person or a third person to be pursued —
 - (i) with intent to intimidate the person; or
 - (ii) in a manner that could reasonably be expected to intimidate, and that does in fact intimidate, the person;
- 15 (d) threatening to commit any act described in paragraph (a) or (b) against the person;
- (e) if the person who commits the act has an imagined personal relationship with the person against whom the act is committed, an act that would constitute an act of family and domestic violence if those persons were in a family and domestic relationship.

15

20

(3) For the purposes of this Act, a person who procures another person to commit an act of abuse, or part of such an act, is to be taken to have also committed the act himself or herself.

25

(4) In this section —

“assaulting” includes —

30

- (a) an assault within the meaning of *The Criminal Code*; and

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(b) behaving in a manner described in paragraph (a), (b) or (c) of section 319(3) of *The Criminal Code*;

5

“**intimidate**” has the same meaning as in section 338D of *The Criminal Code*;

“**kidnapping or depriving the person of his or her liberty**” includes behaving in a manner described in section 332 of *The Criminal Code*;

10

“**pursue**” has the same meaning as in section 338D of *The Criminal Code*.

”.

8. Section 7 replaced by sections 7 and 7A

Section 7 is repealed and the following sections are inserted instead —

15

“

7. Persons protected, and bound, by order to be natural persons

20

A person protected by an order under this Act, and a person bound by an order under this Act, must be natural persons.

7A. Orders under this Act imposing restraints

An order imposing restraints may be made under this Act by —

25

- (a) a court of petty sessions hearing an application under section 25, 38 or 45;
- (b) the Children’s Court hearing an application under section 25, 38 or 45;
- (c) an authorised magistrate hearing a telephone application;
- (d) a court acting under section 63 or 63A; or

30

- (e) a police officer acting under Part 2
Division 3A.

”.

9. Section 8 repealed and Part 1A inserted

5 Section 8 is repealed and the following Part is inserted
instead —

“

Part 1A — Restraining orders generally

8. Explanation about orders to be given

- 10 (1) Subject to this section, a court that makes a restraining
order is to explain, as is appropriate, to —
- (a) the person who is bound by the order; and
 - (b) the —
 - 15 (i) person protected by the order; or
 - (ii) parent or guardian of that person, if the
parent or guardian made the application
for the order on behalf of that person,
- who are in court when the order is made —
- 20 (c) the purpose, terms and effects of the order,
including that the order may be registered and
enforced in another Australian jurisdiction;
 - (d) the consequences that may follow if the person
who is bound by the order contravenes the
order;
 - 25 (e) the consequences that may follow if the person
protected by the order —
 - (i) encourages or invites the person who is
bound by the order to contravene the
order; or

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- (ii) by his or her actions causes the person who is bound by the order to breach the order;
- 5 (f) that the order must be varied or cancelled if the person who is bound by the order and the person protected by the order intend to have contact or reconcile with the other person;
- (g) how the order may be varied, cancelled or extended;
- 10 (h) if the order is a violence restraining order, the effects of sections 14 and 62E relating to firearms; and
- (i) that counselling and support services may be of assistance, and where appropriate, the court is to refer the person to specific services.
- 15
- (2) If a person to whom an explanation is to be given under subsection (1) does not readily understand English, or the court is not satisfied that the person understood the explanation, the court is, as far as practicable, to
- 20 arrange for someone else to give the explanation to the person in a way that the person can understand.
- (3) If —
- (a) a person referred to in subsection (1)(a) or (b) is not present in court when the order is made; or
- 25 (b) it is not practicable for the court to give the explanation at the time the restraining order is made,
- then the clerk is to cause a document containing the explanation to be —
- 30 (c) in the case of subsection (1)(a), served on the person; and
- (d) in the case of subsection (1)(b), delivered to the person.

- (4) An order is not invalid merely because a person who should have been given the explanation referred to in subsection (1) was not given the explanation.

”.

5 **10. Section 10 amended**

- (1) Section 10(1)(b) is amended by deleting “delivered to the applicant” and inserting instead —

“

delivered to —

- 10 (i) the person seeking to be protected by the order; or
- (ii) the parent or guardian of that person, if the parent or guardian made the application for the order on behalf of
- 15 that person

”.

- (2) Section 10(2)(b) is amended by deleting “delivered to the applicant” and inserting instead —

“

delivered to —

- 20 (i) the person seeking to be protected by the order; or
- (ii) the parent or guardian of that person, where the parent or guardian made the application for the order on behalf of
- 25 that person

”.

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11. Section 11 replaced by sections 11, 11A and 11B

Section 11 is repealed and the following sections are inserted instead —

“

5 **11. Violence restraining order to specify names of person bound, and person protected, by the order**

A violence restraining order is to specify —

- 10 (a) the name of the person for whose benefit the order is made; and
- (b) the name of the person on whose lawful activities and behaviour restraints are imposed by the order.

11A. When violence restraining orders may be made

15 A court may make a violence restraining order if it is satisfied that —

- (a) the respondent has committed an act of abuse against a person seeking to be protected and the respondent is likely again to commit such an act against that person; or
- 20 (b) a person seeking to be protected, or a person who has applied for the order on behalf of that person, reasonably fears that the respondent will commit an act of abuse against the person seeking to be protected,

25 and that making a violence restraining order is appropriate in the circumstances.

11B. Violence restraining order may be made for child in circumstances of family and domestic violence

A violence restraining order may be made for the benefit of a child if the court is satisfied that —

- 5 (a) the child has been exposed to an act of family and domestic violence committed by or against a person with whom the child is in a family and domestic relationship and the child is likely again to be exposed to such an act; or
- 10 (b) the applicant, the child or a person with whom the child is in a family and domestic relationship reasonably fears that the child will be exposed to an act of family and domestic violence committed by or against a person with whom the child is in a family and domestic relationship,
- 15

and that making a violence restraining order is appropriate in the circumstances.

”.

20 **12. Section 12 amended**

- (1) Section 12(1)(a) is amended by deleting “applicant is protected from personal violence” and inserting instead —

“
25 person seeking to be protected is protected from acts of abuse

”.

- (2) Section 12(1)(b) is amended by deleting “the applicant will suffer personal violence” and inserting instead —

“
30 the person seeking to be protected will have committed against him or her an act of abuse

”.

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(3) After section 12(1)(b) the following paragraph is inserted —

“

(ba) the need to ensure that children are not exposed to acts of family and domestic violence;

5

”.

(4) After section 12(1)(d) the following paragraph is inserted —

“

(da) the past history of the respondent and the person seeking to be protected with respect to applications under this Act, whether in relation to the same act or persons as are before the court or not;

10

”.

(5) Section 12(2) is amended by deleting “and (c)” and inserting instead —

15

“ , (ba) and (c) ”.

(6) After section 12(2) the following subsections are inserted —

“

(3) In having regard to the matters set out in subsection (1)(da), a past history of applications under this Act is not to be regarded in itself as sufficient to give rise to any presumption as to the merits of the application.

20

(4) The Commissioner of Police, is, where practicable, to provide to a court any information in the possession of the Police Force of Western Australia referred to in subsection (1)(h) or (i) that is relevant to a matter before the court.

25

”.

13. Section 13 amended

- (1) Section 13(1)(a) and “or” after it is deleted and the following is inserted instead —

“

5

(a) committing an act of abuse against the person seeking to be protected;

(aa) if the person seeking to be protected by the order is a child, exposing a child to an act of abuse committed by the respondent; or

10

”.

- (2) Section 13(1)(b) is amended by deleting “the applicant (or if the application is made by another person on behalf of the applicant, that other person) to fear that the respondent will commit such an offence.” and inserting instead —

“

15

fear that the respondent will commit such an act.

”.

- (3) Section 13(2)(e) is amended by inserting after “from” —

20

“ obtaining and ”.

- (4) After section 13(4) the following subsection is inserted —

“

25

(5) If a violence restraining order imposes a restraint referred to in subsection (4) or for some other reason the court is satisfied that it is necessary to do so, the court is to ensure that the order makes provision for the person seeking to be protected or the respondent to recover personal, and other prescribed, property from a place specified in the order —

30

(a) in the manner set out by the court in the order;
or

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- (b) in accordance with the procedures set out in the regulations.

”.

14. Section 16 amended

5 Section 16(5)(c) is amended by deleting “becomes final order” and inserting instead —

“ becomes a final order ”.

15. Section 27 amended

After section 27(3) the following subsections are inserted —

10

“

(4) A hearing fixed under section 26(2) is to be heard in closed court and, at that hearing, the person seeking to be protected is entitled to have near to him or her a person, or more than one person, to provide support.

15

(5) A person to provide support is to be approved by the court and is not to be a person who is a witness in, or a party to, the proceedings.

”.

16. Section 28 amended

20

Section 28(1) is amended by deleting “court may accept affidavits of evidence” and inserting instead —

“

applicant may provide evidence by affidavit in support of the application and the court must accept such affidavit

25

”.

17. Section 29 amended

Section 29(1) is amended as follows:

- (a) after paragraph (b) by deleting “or”;

(b) after paragraph (c) by deleting the full stop and inserting —

“

; or

5 (d) at the request of the applicant, discontinue the application.

”.

18. Division 3A inserted in Part 2 and consequential amendments

10 (1) After section 30 the following Division is inserted —

“

Division 3A — Police officers may make police orders where family and domestic violence

30A. When a police order may be made

15 (1) A police officer may make a police order in accordance with this Division if the officer reasonably believes that the case meets the criteria set out in section 20(1)(a) or (b) as if the order were to be a violence restraining order and —

20 (a) if the officer reasonably believes that —

(i) a person has committed an act of family and domestic violence and is likely again to commit such an act; or

25 (ii) a child has been exposed to an act of family and domestic violence committed by or against a person with whom the child is in a family and domestic relationship and the child is likely again to be exposed to such an act;

30

or

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(b) if the officer reasonably fears, or reasonably believes that another person reasonably fears, that —

5

(i) a person will have committed against him or her an act of family and domestic violence; or

10

(ii) a child will be exposed to an act of family and domestic violence committed by or against a person with whom the child is in a family and domestic relationship,

and that making a police order is necessary to ensure the safety of a person.

15

(2) A police officer may make a police order whether or not an application for an order has been made.

(3) A police officer must not make a police order if a telephone application has been dismissed under section 23(1)(b) in relation to the same facts.

30B. Matters to be considered by police officer

20

In considering whether to make a police order, and the terms of a police order, a police officer is to have regard to —

25

(a) the need to ensure that a person is protected from acts of family and domestic violence;

(b) the need to prevent behaviour that could reasonably be expected to cause fear that a person will have committed against him or her an act of family and domestic violence;

30

(c) the need to ensure that children are not exposed to acts of family and domestic violence;

- 5
- (d) the welfare of children likely to be affected by the behaviour of the persons involved or the operation of a proposed order;
- (e) the accommodation needs of the persons involved;
- (f) hardship that may be caused if the order is made;
- 10 (g) any similar behaviour by any person involved, whether in relation to the same person or otherwise; and
- (h) any other matter the police officer considers relevant.

30C. Restraints that may be imposed

- 15 (1) In making a police order a police officer may impose such restraints on the lawful activities and behaviour of a person as the officer considers appropriate to prevent a person —
- (a) committing an act of family and domestic violence; or
- 20 (b) behaving in a manner that could reasonably be expected to cause a person to fear that such an act will be committed.
- (2) Without limiting the restraints that may be imposed, a police officer may restrain a person from doing all or
- 25 any of the following —
- (a) being on or near premises where a person lives or works;
- (b) approaching within a specified distance of another person;
- 30 (c) causing or allowing another person to engage in conduct of a type referred to in paragraph (a) or (b).

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- 5
- (3) A restraint may be imposed on a person absolutely or on such terms as the police officer considers appropriate.
- (4) A police order may restrain a person from entering or remaining in a place, or restrict a person's access to a place, even if the person has a legal or equitable right to be at the place.
- 10
- (5) A police officer making a police order is to ensure that the order made is as least restrictive of the personal rights and liberties of the person to be bound by the order as possible while still ensuring that the person for whose benefit the order is made is protected from acts of abuse.

30D. Children not to be restrained by police orders

15 A police order cannot impose restraints on a child.

30E. Police order to be prepared, served and explained

- (1) A police officer who makes an order under this Division is to prepare and serve the order.
- 20
- (2) A police order is to specify —
- (a) the name of the person for whose benefit the order is made; and
- (b) the name of the person on whose lawful activities and behaviour restraints are imposed by the order.
- 25
- (3) A police officer who makes a police order is to explain at the time the order is made, or served, to the person who is bound by the order, and the person for whose benefit the order is made —
- 30
- (a) the purpose, duration, terms and effects of the order;

- 5
- (b) the consequences that may follow if the person who is bound by the order contravenes the order;
- (c) that counselling and support service may be of assistance, and where appropriate, the police officer is to refer the person to specific services.
- 10
- (4) If a person to whom an explanation is to be given under subsection (3) does not readily understand English, or the police officer is not satisfied that the person understood the explanation, the officer is, as far as practicable, to arrange for someone else to give the explanation to the person in a way that the person can understand.
- 15
- (5) A police order is not invalid merely because —
- (a) the police officer did not give the explanation referred to in subsection (3) or arrange for someone else to give the explanation; or
- (b) a person whom the police officer arranged to give the explanation did not give the explanation.
- 20

30F. Duration of police orders

- (1) A police order is to be either a 24 hour police order or a 72 hour police order.
- 25
- (2) A 24 hour police order —
- (a) remains in force for 24 hours after it has been served on the person to be bound by it; and
- (b) if it is not served on the person to be bound by it within 2 hours of the order being made, the order lapses.
- 30
- (3) A 72 hour police order —
- (a) remains in force for 72 hours (or such shorter time as is specified in the order which, in the

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opinion of the police officer, would be a sufficient time for an application to be made to a court under Division 3) after it has been served on the person to be bound by it; and

- 5 (b) lapses if it is not served on the person to be bound by it within 24 hours of the order being made.
- (4) A police order is to specify the duration of the order.

30G. Consent required for 72 hour police orders

10 A 72 hour police order cannot be made unless consent to the making of the order has been given —

- (a) by the person who is to be protected by the order; or
- 15 (b) if the person who is to be protected by the order —
- (i) is a child, by a parent or guardian of the child, or a child welfare officer; or
- (ii) is a person for whom a guardian has been appointed under the *Guardianship and Administration Act 1990*, by the guardian.
- 20

30H. Order not to be renewed by police officer

25 The duration of a police order cannot be extended or renewed and another police order cannot be made in relation to the same facts.

30I. Review of Division

- 30 (1) The Minister is to carry out a review of the operation and effectiveness of this Division as soon as is practicable after the expiration of 24 months from the commencement of section 18 of the *Acts Amendment (Family and Domestic Violence) Act 2004* and in the

course of that review the Minister is to consider and have regard to —

- (a) the effectiveness of this Division;
 - (b) the need for the retention of this Division; and
 - 5 (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Division.
- (2) Without limiting subsection (1), in carrying out a review under that subsection, the Minister is to consult with and have regard to the views of the Commissioner of Police.
- 10
- (3) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared is to cause it to be laid before each House of Parliament.
- 15

”.

- (2) Section 3 is amended by inserting in the appropriate alphabetical position the following definition —

“

20 “**police order**” means an order made by a police officer under Part 2 Division 3A;

”.

- (3) After section 10(3) the following subsection is inserted —

“

- 25 (4) If a police officer is to prepare and serve a police order the officer is to prepare the order in the prescribed form and cause —
- (a) a copy of the order to be given to the person to be bound by it;
 - 30 (b) a copy of the order to be given to the person for whose benefit the order is to be made; and

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(c) the police copy of the order to be delivered to the Commissioner of Police.

”.

(4) Section 18(3) is amended by inserting after “20(1)” —

5 “ (a) or (b) ”.

(5) Section 20(3) is amended by inserting after “subsection (2)” —

“ , or the failure by a police officer to make a police order, ”.

(6) Section 21(4)(b) is amended by inserting after “20(1)” —

“ (a) or (b) ”.

10 (7) The heading to Part 2 Division 3 is amended by inserting after “person” —

“ **to a court** ”.

19. Section 35 amended

(1) Section 35(1)(e) is deleted.

15 (2) Section 35(2)(e) is deleted.

20. Section 35A inserted

After section 35 the following section is inserted —

“

35A. Misconduct restraining orders not for persons in a family and domestic relationship

20

A court is not to make a misconduct restraining order unless it is satisfied that the person seeking to be protected by the order and the person bound by the order are not in a family and domestic relationship with each other.

25

”.

21. Section 36 amended

Section 36(2)(e) is deleted.

22. Heading to Part 4 amended

The heading to Part 4 is amended by inserting after
5 “Hearings” —

“ **and evidence** ”.

23. Section 42 amended

(1) Section 42(2)(a) is amended by inserting before “to hear” —
“ , subject to subsection (3), ”.

10 (2) Section 42(3) is repealed and the following subsections are
inserted instead —

“

(3) If —

- 15 (a) a respondent does not attend a final order
hearing;
- (b) the applicant does attend;
- (c) the court is satisfied in accordance with
subsection (2)(a); and
- 20 (d) an earlier restraining order is in force in respect
of the matter,

the court is to make a final order in the same terms as
the earlier order unless any new ground or matter is
raised by the applicant at the final order hearing.

(4) At a final order hearing —

- 25 (a) attended by the applicant but not by the
respondent; or
- (b) attended by both the applicant and the
respondent,

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5 subject to the rules of evidence, a court is to receive as
evidence any record of evidence given (including any
affidavit filed) at a prior hearing in relation to the
application, except that such record of evidence is not
to be received as evidence unless the person who gave
the evidence is available to be cross-examined on that
evidence.

”.

24. Section 43 amended

10 Section 43(2) is repealed and the following subsections are
inserted instead —

“

15 (2) If, at a final order hearing, the respondent consents to a
final order being made, the court may make the order
by consent without being satisfied there are grounds for
making the order.

20 (3) If a respondent consents to a final order being made,
the consent does not constitute an admission by the
respondent of all or any of the matters alleged in the
application.

”.

25. Section 43A inserted and consequential amendments

(1) After section 43 the following section is inserted —

“

25 **43A. Decision under s. 42 in default of appearance may
be set aside**

30 (1) In this section —
“**respondent**”, in respect of a decision to dismiss an
application in default of appearance of the
applicant, means the person who was the
respondent at the final order hearing at which the
decision was dismissed.

(2) Where the court —

(a) has dismissed an application in default of appearance of the applicant under section 42(1)(a), that applicant may, within 21 days of becoming aware that the application was dismissed; or

(b) has made a restraining order under section 42 in default of appearance of the respondent, that respondent may within 21 days of the order being served on the respondent,

or such further period as the court may allow at a hearing fixed under subsection (3), apply to the court, in the prescribed form setting out the grounds of the application, to have that decision set aside.

(3) On receiving an application under subsection (2) the clerk is to fix a hearing, to be held in the absence of the other party to the proceedings, at which, subject to subsection (4), the court —

(a) where the application was made out of time, is to grant leave for the person to continue the application out of time if satisfied that there was a reasonable excuse for not commencing the application within the time allowed; and

(b) after taking into account the grounds of the application, is to —

(i) adjourn the hearing of the matter to allow the other party to oppose the matter if satisfied that the person who made the application may have had a reasonable cause not to attend the hearing at which the application was dismissed, or the restraining order made; or

(ii) dismiss the application.

s. 25

- (4) If the applicant does not attend a hearing fixed under subsection (3), the court, if it is satisfied that the applicant was notified of the hearing, is to dismiss the application.
- 5 (5) If the court adjourns the matter under subsection (3)(b)(i) the clerk is to fix a hearing and summons the other party to the hearing.
- (6) At a hearing fixed under subsection (5), where the other party is present, or if the other party is not present the court is satisfied the other party was served with the summons, the court is to hear the matter and —
- 10 (a) if satisfied that the applicant had reasonable cause not to attend the hearing at which the application was dismissed or the restraining order made, is to set aside the decision made under section 42; or
- 15 (b) is to dismiss the application.
- (7) Where, under subsection (6)(a), the court sets aside a decision made under section 42 —
- 20 (a) if, immediately before the hearing at which the decision under section 42 was made, an earlier order was in force in respect of the matter, the court is to make an interim order in the same terms as the earlier order, unless any new ground or matter is raised at the hearing fixed under subsection (3) or (5); and
- 25 (b) the clerk is to fix a hearing as soon as is practicable and summons the respondent to the hearing.
- 30 (8) The clerk is to prepare and serve an interim order made under subsection (7)(a).

(9) At a hearing fixed under subsection (7)(b) the court is to re-hear the matter under section 42.

”.

5 (2) Section 3 is amended in the definition of “final order hearing” by deleting “or 41(4)” and inserting instead —

“ , 41(4) or 43A(7)(b) ”.

(3) Section 3 is amended in the definition of “interim order” by inserting after “29(1)(a)” —

“ , 43A(7)(a) ”.

10 (4) Section 42(2)(a)(ii) is amended by deleting “or 41(4)” and inserting instead —

“ , 41(4) or 43A(7)(b) ”.

26. Division 3 inserted in Part 4

After section 44 the following Division is inserted in Part 4 —

15 “

Division 3 — Evidence

44A. Rules of evidence not to apply at ex-parte hearing

(1) At a hearing fixed under section 26(2) —

- 20 (a) a court is not bound by the rules of evidence;
- (b) a court may inform itself on any matter in such manner as it considers appropriate; and
- (c) without limiting paragraph (b), evidence of a representation about a matter that is relevant to the application is admissible as evidence,
- 25 despite the rule against hearsay.

(2) The court may give such weight as it thinks fit to evidence admitted under subsection (1)(c).

- (3) In this section —
 “representation” includes an express or implied representation, whether oral or in writing, and a representation inferred from conduct.

5 **44B. Access to affidavit evidence**

Subject to section 70, at the request of a party to an application, the clerk of the court where the application was made is to provide to the person a copy of any affidavit received in evidence in relation to the application.

10 **44C. Cross-examination of certain persons**

- (1) If in any proceedings under this Act a respondent, or a person who is bound by an order —
 (a) is not represented; and
 (b) wishes to cross-examine a person with whom the examiner is in a family and domestic relationship or an imagined personal relationship,

the court is to order that the examiner —

- 20 (c) is not entitled to do so directly; but
 (d) may put any question to the person to be examined by stating the question to a judicial officer or a person approved by the court,

and that person is to repeat the question accurately to the person to be examined.

- 25 (2) Subsection (1) does not apply —
 (a) if —
 (i) the person to be examined requests that the order not be made; and

(ii) the court considers it appropriate in all the circumstances for the order not to be made;

or

5 (b) if the court is of the opinion that it is not just or desirable for such an order to be made.

”.

27. Section 45 amended

10 (1) Section 45(1) is amended by deleting “final” and inserting instead —

“ restraining ”.

(2) Section 45(2) is amended by deleting “final” and inserting instead —

“ restraining ”.

15 (3) Section 45(4) is repealed and the following subsections are inserted instead —

“

20 (4) An application to vary or cancel a restraining order is to be made in the prescribed form to the court that made the order.

(5) The form prescribed under subsection (4) is to contain a brief summary of the effect of subsection (6).

(6) If an application is made to vary —

25 (a) a restraining order that is a final order; or

(b) a misconduct restraining order,

which includes an application to vary the order by extending the duration of the order, then, despite anything else in this Act, the order is not to expire before the application is determined if the person

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bound by the order has been given a copy of the application.

”.

28. Section 45A inserted

5 After section 45 the following section is inserted —

“

45A. Application by CEO (child welfare)

- 10 (1) Where the CEO (child welfare) intervenes in proceedings under section 50D by making an application to vary or cancel a violence restraining order, the clerk is to fix a hearing for that purpose and notify the CEO (child welfare) and the parties to the application for the violence restraining order of the hearing.
- 15 (2) If the CEO (child welfare) has specified on an application referred to in subsection (1) that the application needs to be heard as a matter of urgency then the time fixed for the hearing under subsection (1) is to be as soon as possible.
- 20 (3) Sections 54(1) and 56(2) do not apply in respect of an urgent hearing fixed under subsection (2).

”.

29. Section 46 amended

- 25 (1) Section 46(1) is amended by deleting “final” and inserting instead —
“ restraining ”.

- (2) Section 46(4) is repealed and the following subsection is inserted instead —

“

5

- (4) Subject to subsection (3), at a hearing fixed under subsection (1) the court —

10

- (a) is to grant leave for the person to continue the application to vary or cancel the order if it is satisfied that —

15

- (i) there is evidence to support a claim that a person protected by the order has persistently invited or encouraged the applicant to breach the order, or by his or her actions has persistently attempted to cause the applicant to breach the order;

20

- (ii) there has been a substantial change in the relevant circumstances since the order was made; or

25

- (iii) in respect of an application to vary an interim order, there is evidence to support a claim that the restraints imposed by the order are causing the applicant serious and unnecessary hardship and that it is appropriate that the application is heard as a matter of urgency;

or

- (b) otherwise, is to dismiss the application.

”.

30

30. Section 47 amended

Section 47(2) is amended as follows:

- (a) by deleting “ final” and inserting instead —
“ restraining ”;

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(b) by deleting paragraph (a)(i).

31. Section 48 amended

Section 48(3) is repealed and the following subsection is inserted instead —

5 “
(3) At a hearing referred to in subsection (2) —
(a) attended by the applicant but not by a person
summonsed under section 47(1) or 47(2) or a
police officer nominated under section 47(3); or
10 (b) attended by both the applicant and by a person
summonsed under section 47(1) or 47(2) or a
police officer nominated under section 47(3),
subject to the rules of evidence, a court is to receive as
evidence any record of evidence given (including any
15 affidavit filed) at a prior hearing in relation to the
application, or the application for the original
restraining order, except that such record of evidence is
not to be received as evidence unless the person who
gave the evidence is available to be cross-examined on
20 that evidence.

”.

32. Section 48A inserted

After section 48 the following section is inserted —

“
25 **48A. Ex parte application to cancel order by person
protected by order**
(1) In an application to cancel a restraining order made
under section 45(1)(a) the applicant may indicate that
he or she wishes to have the application heard in the
30 absence of the person who is bound by the order.

- (2) If the applicant wishes to have the application heard in the absence of the person who is bound by the order, the clerk is to fix a hearing for that purpose.

”.

5 **33. Section 49 amended**

- (1) After section 49(1) the following subsection is inserted —

“

- (1a) At a hearing fixed under section 48A the court may cancel the original restraining order.

10

”.

- (2) Section 49(2) is amended by deleting “subsection (1)” and inserting instead —

“ subsection (1) or (1a) ”.

- (3) After section 49(4) the following subsection is inserted —

15

“

- (5) The cancellation of an order under subsection (1a) has effect at the conclusion of the hearing at which the order is cancelled.

”.

20 **34. Section 49A inserted**

After section 49 the following section is inserted in Part 5 —

“

49A. Correcting minor errors in restraining orders

- (1) Where a restraining order contains —

25

- (a) a clerical mistake;
(b) an error arising from an accidental slip or omission; or
(c) a material mistake in the description of any person, thing or matter referred to in the order,

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the clerk may correct the order, or the court, on an application by, or on behalf of, the person protected, or the person who is bound, by the order, may make an order correcting the restraining order.

- 5 (2) Subsection (1) does not apply if the correction would adversely affect the interests of the person protected, or the person who is bound, by the order.

”.

35. Heading to Part 6 Division 1 replaced

10 The heading to Part 6 Division 1 is deleted and the following heading is inserted instead —

“

Division 1 — Children

”.

15 **36. Sections 50A, 50B, 50C and 50D inserted**

After section 50 the following sections are inserted —

“

50A. Restraining order against child not to exceed 6 months

20 A restraining order that is a final order made against a child is to have a duration of 6 months or less, unless the order is made under section 63A.

50B. Child welfare laws not affected

25 (1) A court must not make a restraining order under this Act in relation to a child who is under the control or in the care (however described) of a person under a child welfare law unless —

- 30 (a) the order is made as a result of the intervention of the CEO (child welfare) under section 50D;
or

5 (b) the order is made in proceedings that have been instigated or continued with the written consent of a person who, under the relevant child welfare law, has responsibility for the control or care (however described) of the child.

(2) Nothing in this Act, and no restraining order made under this Act, affects —

10 (a) the jurisdiction of a court or the power of an authority, under a child welfare law, to make an order, or to take any other action, by which a child is placed under control or in the care (however described) of a person under a child welfare law;

(b) any such order made or action taken; or

15 (c) the operation of a child welfare law in relation to a child.

(3) If it appears to a court that another court or an authority proposes to make an order, or to take any other action, of the kind referred to in subsection (2)(a) in relation to a child, the court may adjourn any proceedings before it that relate to the child.

(4) In this section —
“**child welfare law**” has the same meaning as in the *Family Court Act 1997*.

25 **50C. CEO (child welfare) to be notified before certain orders are made**

(1) Before a court makes a violence restraining order where —

30 (a) the respondent is a child who has not attained the age of 16 years; and

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- 5
- (b) the person seeking to be protected by the order is —
 - (i) a parent or guardian of the child; or
 - (ii) a person responsible for the day to day care of the child, or with whom the child habitually resides,

the clerk is to notify the CEO (child welfare) that such an order may be made.

- 10
- (2) If an order referred to in subsection (1) is made the CEO (child welfare) is to cause such inquiries to be made as the CEO (child welfare) considers necessary for the purpose of determining whether action should be taken to safeguard or promote the child's wellbeing.

50D. Intervention by CEO (child welfare)

- 15
- (1) In any proceedings under this Act that affect, or may affect, the welfare of a child the court hearing the proceedings may request the CEO (child welfare) to intervene in the proceedings and the CEO (child welfare) may intervene in those proceedings on that request.
- 20
- (2) The CEO (child welfare) may intervene in any proceedings under this Act —
 - (a) if they involve a child who, in the opinion of the CEO (child welfare), appears to be a child in need of care and protection within the meaning of the *Child Welfare Act 1947*; or
 - (b) if, in the opinion of the CEO (child welfare), the operation of a restraining order has affected, or may affect, the welfare of a child.
- 25
- (3) If the CEO (child welfare) intervenes in proceedings the CEO (child welfare) is to be treated as a party to
- 30

the proceedings with all the rights, duties and liabilities
of a party.

”.

37. Sections 53A, 53B, 53C, 53D, 53E and 53F inserted

5 After section 53 the following sections are inserted in Part 6
Division 1 —

“

**53A. Children not to give oral evidence without leave of
court, other than in Children’s Court**

- 10 (1) A child is not to give oral evidence in any proceedings
under this Act unless —
- (a) a court makes an order allowing the child to
give oral evidence; or
 - (b) the evidence is given in the Children’s Court.
- 15 (2) A court is not to make an order under subsection (1)(a)
unless the court, having weighed the availability of
other evidence and the interests of the child, is satisfied
that exceptional circumstances exist which, in the
interests of justice, justify the making of the order.

20 **53B. Evidence of children**

- (1) This section applies where —
- (a) in accordance with section 53A, a child is
giving oral evidence in any proceedings under
this Act; and
 - (b) the necessary facilities and equipment are
available.
- 25 (2) If this section applies, the child is to give evidence
outside the courtroom but within the court precincts,
and the evidence is to be transmitted to the courtroom
by means of video link.
- 30

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(3) Where arrangements are made under this section the child's evidence is to be visually recorded.

(4) In this section —
“**video link**” has the same meaning as in section 120 of the *Evidence Act 1906*.

5

53C. Child who gives evidence entitled to support

(1) A child giving oral evidence in any proceedings under this Act in accordance with section 53A is entitled to have near to him or her a person, or more than one person, to provide support.

10

(2) A person to provide support is to be approved by the court and is not to be a person who is a witness in, or a party to, the proceedings.

53D. Cross-examination of child by unrepresented person

15

If, in any proceedings under this Act, a person who is not represented wishes to cross-examine a child who, in accordance with section 53A, has given oral evidence, the examiner —

20

- (a) is not entitled to do so directly; but
- (b) may put any question to the child by stating the question to a judicial officer or a person approved by the court,

25

and that person is to repeat the question accurately to the child.

53E. Admissibility of evidence of representations made by children

(1) Evidence of a representation made by a child about a matter that is relevant to proceedings under this Act is admissible as evidence in those proceedings, despite the rule against hearsay.

30

-
- (2) The court may give such weight as it thinks fit to evidence admitted under subsection (1).
- (3) If a representation is to be admitted in evidence, evidence of the making and content of the affected child's statement is to be given by any person to whom the affected child made the statement.
- (4) In this section —
“**representation**” includes an express or implied representation, whether oral or in writing, and a representation inferred from conduct.

53F. Summoning of children

- (1) Despite any other provision of this Act, a child is not to be summonsed to the hearing of an application unless —
- (a) a court makes an order allowing the child to be summonsed; or
- (b) the hearing is to be held in the Children's Court.
- (2) A court is not to make an order under subsection (1)(a) unless the court is satisfied that exceptional circumstances exist which, in the interests of justice, justify summonsing the child.

38. Section 55 amended and consequential amendment

- (1) Section 55(3) is amended as follows:
- (a) in paragraph (c) by inserting after “section 41” —
“ or 43 ”;
- (b) in paragraph (d) by inserting after “section 63” —
“ or 63A ”.

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(2) After section 55(3) the following subsection is inserted —

“

(3a) A restraining order is taken to have been served if the person who is bound by the order is present in court when the order is made.

”.

(3) Section 55(5)(d) is amended by inserting after “order” —

“

, and a document containing the explanation to be given under section 8(1),

”.

(4) After section 10(1) the following subsection is inserted —

“

(1a) If a restraining order is taken to have been served under section 55(3a), the respondent’s copy and the respondent’s endorsed copy is not required to be served under subsection (1)(a) but is to be delivered to the respondent.

”.

20 **39. Section 59 amended**

Section 59 is amended by inserting after “complete” —

“ the ”.

40. Heading to Part 6 Division 3 amended

The heading to Part 6 Division 3 is amended by inserting after “order” —

“ **or police order** ”.

41. Section 61 amended

- (1) The penalty provision at the end of section 61(1) is deleted and the following is inserted instead —

“

5 Penalty: \$6 000 or imprisonment for 2 years, or both.

”.

- (2) After section 61(2) the following subsection is inserted —

“

10 (2a) A person who is bound by a police order and who breaches that order commits an offence.

 Penalty: \$6 000 or imprisonment for 2 years, or both.

”.

- (3) Section 61(3) is amended by inserting after “order” —

“ or a police order ”.

- 15 (4) After section 61(3) the following subsections are inserted —

“

20 (4) It is to be taken to be an aggravating factor for the purposes of section 7(1) of the *Sentencing Act 1995* if, in committing an offence under this section, a child with whom the offender is in a family and domestic relationship is exposed to an act of abuse.

25 (5) For the avoidance of doubt, subsection (4) does not affect the discretion of a court to decide whether or not any factor is an aggravating factor for the purposes of any offence.

”.

s. 42

42. Section 62 replaced

Section 62 is repealed and the following section is inserted instead —

“

5

62. Defence

(1) It is a defence to a charge under section 61 for the person who is bound by the order to satisfy the court that in carrying out the act that constituted the offence, the person was —

10

(a) using a primary dispute resolution method, as defined in section 47 of the *Family Court Act 1997*;

15

(b) instructing, or acting through, a legal practitioner or a person acting under section 48 of the *Aboriginal Affairs Planning Authority Act 1972*, or using conciliation, mediation or another form of consensual dispute resolution provided by a legal practitioner;

20

(c) acting in accordance with an action taken by a person or authority under a child welfare law, within the meaning of section 50B(4); or

(d) acting as the result of such an emergency that an ordinary person in similar circumstances would have acted in the same or a similar way.

25

(2) In subsection (1)(b) —

“**legal practitioner**” has the meaning given in the *Legal Practice Act 2003*.

”.

43. Division 3A inserted in Part 6 and consequential amendments

(1) After Part 6 Division 3 the following Division is inserted —

“

5

Division 3A — Police functions

62A. Investigation of suspected family and domestic violence

10

A police officer is to investigate whether an act of family and domestic violence is being, or has been committed, or whether an act of family and domestic violence is likely to be committed, if the police officer reasonably suspects that a person is committing, or has committed, an act of family and domestic violence which —

15

- (a) is a criminal offence; or
- (b) has put the safety of a person at risk.

62B. Entry and search of premises if family and domestic violence suspected

20

(1) If a police officer reasonably suspects that a person is committing an act of family and domestic violence, or that such an act was committed before the officer's arrival, on any premises, the officer may without a warrant but with the approval of a senior officer under section 62D, enter those premises and may remain in those premises for as long as the officer considers necessary —

25

30

- (a) to investigate whether or not an act of family and domestic violence has been committed;
- (b) to ensure that, in the officer's opinion, there is no imminent danger of a person committing an act of family and domestic violence on the premises; and

s. 43

- (c) to give or arrange for such assistance as is reasonable in the circumstances.
- (2) If, after entering premises (under subsection (1) or otherwise) a police officer reasonably suspects that an act of family and domestic violence is being committed, or was committed before the officer's arrival, on the premises the officer without further authority may —
- (a) search the premises to establish whether any person on the premises —
- (i) is in need of assistance; or
- (ii) is in possession of a weapon;
- (b) search —
- (i) the premises for a weapon; and
- (ii) any person on the premises whom the officer reasonably suspects is in possession of a weapon;
- and
- (c) seize any weapon found on the premises, or on a person, that the officer reasonably suspects —
- (i) was used to commit an act of family and domestic violence; or
- (ii) may be used to commit an act of family and domestic violence.
- (3) A police officer may use such force, and such assistance, as is necessary and reasonable in the circumstances in order to perform a function under this section.
- (4) A weapon seized under this section is to be delivered to the Commissioner of Police, and dealt with, in the prescribed manner.

(5) A police officer who seizes a weapon is, where practicable, to inform the person from whose possession it is seized of the place to which the weapon is to be taken.

5 (6) This section does not limit any other power a police officer may have under this Act, any other written law or at common law.

10 **62C. Action to be taken by police officer after investigating suspected family and domestic violence**

After an investigation referred to in section 62A, or after entering or searching premises under section 62B, a police officer is to make —

- 15 (a) an application for a restraining order under section 18(1)(a) or 25(1)(b);
- (b) a police order; or
- (c) a written record of the reasons why he or she did not take either of the actions set out in paragraph (a) or (b).

20 **62D. Approval of senior officer**

- (1) An application for the approval of a senior officer referred to in section 62B(1) must be made to another officer who is a senior officer and who is not involved in the proposed entry.
- 25 (2) An application to a senior officer may be made, and the approval may be given, orally in person or by remote communication.

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- 5
- (3) A police officer making the application for approval to a senior officer must —
- (a) give the address, or describe the premises, to which it relates, and, if known, the person to whom it relates; and
- (b) state the grounds on which the police officer suspects that —
- 10 (i) a person is on the premises; and
- (ii) the person has committed, or is committing, an act of family and domestic violence against another person.
- (4) On an application for the approval of a senior officer the senior officer may give approval for the entry of the premises without a warrant at any time.
- 15
- (5) A senior officer must not give approval for the entry unless satisfied that there are reasonable grounds for the police officer to suspect that a person is committing an act of family and domestic violence, or that such an act was committed before the officer's arrival, on the premises.
- 20
- (6) As soon as practicable after giving approval a senior officer must make a record of —
- (a) the date and time when it was given; and
- 25 (b) the reasons for giving it.
- (7) The approval of a senior officer referred to in section 62B(1) has effect only for a period of 24 hours after it is given by the officer.
- (8) In this section —
- 30 **“remote communication”** means any way of communicating at a distance including by telephone, fax, email and radio;

“**senior officer**” means a police officer who —

- (a) is senior in rank to the officer making the application; and
- (b) is of or above the rank of inspector.

5 **62E. Seizure of firearms**

(1) If a person who is bound by a violence restraining order does not give up possession of a firearm or firearms licence in accordance with section 14(2), a police officer may, without a warrant, enter a place where —

10

- (a) a firearm that is, or is reasonably suspected to be, in the possession of the person; or
- (b) a firearms licence held by the person,

is reasonably suspected to be, and search for and seize the firearm or firearms licence.

15

(2) A firearm or firearms licence seized under subsection (1) is to be delivered to the Commissioner of Police, and dealt with, in the prescribed manner.

20 **62F. Detention of respondent during telephone hearing or while police order is being made**

If —

- (a) a telephone application has been, or is about to be, made; or
- (b) a police order is being made,

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a police officer may, without a warrant and in order to facilitate service of any resulting order on the person against whom the order is being, or is to be, sought or made —

- 5 (c) require that person to remain in a place designated by the police officer while —
- (i) the telephone application is made and heard; or
 - (ii) the police order is made;
- 10 and
- (d) if the person does not, or the police officer reasonably believes the person will not, remain in the place, arrest and detain the person in custody for up to 2 hours.

15 **62G. Police officer may conduct hearing for applicant**

A police officer is authorised, at any stage of a hearing of an application for a restraining order made by another person, to conduct proceedings on behalf of that person, if the person so requests.

20

”.

- (2) Section 15 is repealed.
- (3) Section 22 is repealed.
- (4) Section 36(6) is amended by deleting “15” and inserting instead —

25

“ 62E ”.

44. Section 63 amended

Section 63(4)(a) is amended by deleting “Section 11” and inserting instead —

“ section 11A, 11B ”.

45. Section 63A, 63B and 63C inserted

After section 63 the following sections are inserted —

“

5 **63A. Restraining order to be made if certain violent personal offences committed**

- 10 (1) A court convicting a person for a violent personal offence, within the meaning of subsection (5), is —
- (a) to make a violence restraining order against that person for the protection of a victim of the offence unless there is such an order in force already for the period of the life of the person who committed the offence; or
- (b) where a violence restraining order is in force for the protection of a victim of the offence, to vary that order by extending the duration of the order.
- 15 (2) An order made, or varied, under subsection (1) is to specify that the order is to remain in force for the period of the life of the person who committed the offence.
- 20 (3) A restraining order made under this section is a final order.
- (4) A court must not make an order under this section if a victim of the offence for whose benefit the court proposes to make a violence restraining order objects to that order being made.
- 25 (5) In subsection (1) —
- “violent personal offence”** means an offence against section 283, 297, 325, 326, 327 or 328 of *The Criminal Code*.
- 30

63B. Circumstances to be taken into account when sentencing for certain offences

- 5 (1) Where a person has committed a violent personal offence, within the meaning of subsection (3), and —
- (a) is in a family and domestic relationship with a victim of the offence;
- (b) a child was present when the offence was committed; or
- 10 (c) the conduct of the offender in committing the offence constituted a breach of a restraining order,
- the court sentencing the offender is to determine the seriousness of the offence taking that circumstance into account.
- 15 (2) For the avoidance of doubt, subsection (1) does not affect the discretion of a court to decide whether or not a circumstance set out in that subsection is a circumstance to take into account in sentencing an offender for any other offence.
- 20 (3) In this section —
- “violent personal offence”** means —
- (a) an offence mentioned in section 277 (other than infanticide); or
- 25 (b) an offence against section 283, 332, 333, 338A, 338B, 338C or 338E,
- of *The Criminal Code*.

63C. Criminal and civil liability not affected by restraining orders

- 30 (1) A court may make or vary a restraining order even though the respondent has been charged with, or convicted of, an offence arising out of the same

conduct as that out of which the application for the order arose.

- (2) The making or varying of a restraining order does not, except as provided by this Act, affect the civil or criminal liability of a person bound by the order in respect of the same conduct as that out of which the application for the order arose.

”.

46. Section 67 replaced

Section 67 is repealed and the following section is inserted instead —

“

67. Adjourments

- (1) In addition to the specific provisions of this Act regarding adjourments, a court may also grant an adjournment —

(a) at a final order hearing, if the court is satisfied that an injustice would result if an adjournment were not granted; or

(b) at any other hearing, if the court is satisfied that there is good reason to do so,

when, and for the period of time, the court considers appropriate.

- (2) If a court grants an adjournment under subsection (1), it is to make a written record of the reasons why the adjournment was granted.

- (3) If an adjournment is granted, whether under subsection (1) or under another provision, the clerk is to notify each party who is permitted to attend the hearing who was not present when the adjournment was granted.

”.

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47. Section 69 amended

(1) Section 69(1) is amended by deleting “subsection (2)” and inserting instead —

“ subsections (2) and (3) ”.

5 (2) Section 69(2) is repealed and the following subsections are inserted instead —

“

10 (2) A court is not to order an applicant for a restraining order to pay costs to the respondent unless it considers the application was frivolous or vexatious.

(3) A court is not to order costs to be paid by an applicant if the applicant is a police officer who —

15 (a) makes an application under this Act for a restraining order, represents another officer at a hearing or acts under section 62G; and

(b) acts in good faith and in the normal course of duty in making the application, or appearing at the hearing.

”.

20 **48. Section 70 replaced by sections 70 and 70A**

Section 70 is repealed and the following sections are inserted instead —

“

70. Information on identity of certain person restricted

25 (1) Subject to subsection (3), any information in the custody of a court that would, or would be likely to, reveal or lead to the revelation of the whereabouts of —

(a) a party to proceedings under this Act; or

30 (b) any person who gives evidence in proceedings under this Act,

is not to be disclosed by the court or a clerk of the court —

- (c) to a party to the proceedings; or
- (d) in such a manner that the information will, or may, be revealed to a party to the proceedings.

5

- (2) Subject to subsection (3), a person must not publish in a newspaper or periodical publication or by radio broadcast, television or other electronic means, or otherwise disseminate to the public or to a section of the public by any means any information that would, or would be likely to, reveal or lead to the revelation of the whereabouts of —

10

- (a) a party to proceedings under this Act; or
- (b) any person who gives evidence in proceedings under this Act.

15

Penalty: \$6 000 or imprisonment for 18 months.

- (3) This section does not apply if the court is satisfied —
- (a) that the person to whom the information is to be, or may be, disclosed is already aware of the whereabouts of the person to whom the information applies; or
 - (b) that the person who would otherwise be protected by this section —
 - (i) understands the effect of this section; and
 - (ii) has agreed that this section is not to apply,

20

25

and specifies in the restraining order that this section does not apply.

30

- (4) In this section “**under this Act**” includes proceedings in which the existence of a restraining order is a material fact in the proceedings.

70A. Exchange of information

(1) In this section —

“interested party” means —

- (a) the Commissioner of Police;
- 5 (b) the Chief Executive Officer of the department of the Public Service principally assisting the Minister in the administration of this Act; or
- (c) the CEO (child welfare);

10 **“prescribed information”** means information of a description or class prescribed about a person protected by a violence restraining order, or a child affected by such an order.

15 (2) An interested party may provide to another interested party prescribed information if the parties agree that the provision of such information is necessary to ensure the safety of a person protected by a violence restraining order, or the wellbeing of a child affected by such an order.

20 (3) Any information provided under subsection (2) must be provided in confidence.

 (4) If information is provided under subsection (2) in confidence and good faith —

- 25 (a) no civil or criminal liability is incurred in respect of the provision of the information;
- (b) the provision of the information is not to be regarded as a breach of section 70 or of any duty of confidentiality or secrecy imposed by any written or other law; and
- 30 (c) the provision of the information is not to be regarded as a breach of professional ethics or standards or as unprofessional conduct.

- (5) Information provided under subsection (2) must not be used by the party to whom the information is provided for any purpose other than that specified in subsection (2).

5

”.

49. Section 73 amended

- (1) Section 73(2) is amended as follows:

(a) after paragraph (e) by inserting —
“ and ”;

10

(b) after paragraph (f) by deleting “; and” and inserting a full stop;

(c) by deleting paragraph (g).

- (2) After section 73(2) the following subsection is inserted —

“

15

- (3) The forms prescribed for a restraining order and a telephone order are to contain a brief summary of the effect of section 44B.

”.

50. Section 74 amended

20

Section 74 is amended in the definition of “interstate order” by deleting “law prescribed for the purposes of this definition” and inserting instead —

“ corresponding law of that State or Territory ”.

51. Section 75 amended

25

- (1) Section 75(1)(a) is deleted and the following paragraph is inserted instead —

“

- (a) the person named in the order for whose benefit the order is made;

30

”.

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(2) Section 75(1a)(a) is amended by deleting “protected by the order” and inserting instead —

“ named in the order for whose benefit the order is made ”.

5 (3) Section 75(1a)(b) is amended by deleting “protected by the order” and inserting instead —

“ named in the order for whose benefit the order is made ”.

52. Section 79B amended

(1) Section 79B(1)(a) is amended by deleting “protected by the order” and inserting instead —

10 “ named in the order for whose benefit the order is made ”.

(2) Section 79B(1a)(a) is amended by deleting “protected by the order” and inserting instead —

“ named in the order for whose benefit the order is made ”.

15 (3) Section 79B(1a)(b) is amended by deleting “protected by the order” and inserting instead —

“ named in the order for whose benefit the order is made ”.

53. Part 8 repealed

Part 8 is repealed.

54. Various references to “applicant” amended

20 Each provision referred to in the Table to this section is amended by deleting “applicant” in each place where it occurs and inserting instead —

“ person seeking to be protected ”.

Table

| | |
|----------------------------|---------------------------------------------|
| s. 12(1)(d) and (g) | s. 35(1)(a)(i) and (ii), (c) and (f) |
| s. 13(2)(a), (c), (d), (e) | s. 36(1)(a) and (b), (2)(a), (c) and (d) |
| s. 34(a)(i) and (ii) | |

55. References to “person to be protected” amended

Each provision referred to in the Table to this section is amended by deleting “person to be protected” in each place where it occurs and inserting instead —

“ person seeking to be protected ”.

Table

| | |
|----------------------------------------|-------------------------------------|
| s. 12(1)(i) | s. 35(1)(h) |
| s. 14(6) | s. 38(1)(a), (2)(a) and (b) and (3) |
| s. 18(1)(a) and (b) and (2)(a) and (b) | s. 63(3a)(c) and (d) |
| s. 25(1)(a) and (2)(a) and (b) | s. 66(3)(a) |

56. Notes about applicants under various sections removed

The notes under sections 11, 12, 13, 34, 35 and 36 are removed.

57. Further amendments related to the *Children and Community Services Act 2004*

(1) The day fixed under section 2 of this Act for the commencement of this section cannot be before the commencement of —

(a) sections 5(1) and (7), 18 and 36 of this Act; and

(b) clause 23 of Schedule 2 to the *Children and Community Services Act 2004*.

s. 57

- (2) Section 3 is amended in the definition of “CEO (child welfare)” by deleting “Director-General within the meaning of the *Child Welfare Act 1947*,” and inserting instead —

“

5

CEO within the meaning of the *Children and Community Services Act 2004*;

”.

- (3) Section 3 is amended by deleting the full stop after the definition of “violence restraining order” and inserting a semicolon instead.

10

- (4) Section 3 is amended by inserting after the definition of “violence restraining order” the following definition —

“

15

“**wellbeing**” has the same meaning as in the *Children and Community Services Act 2004*.

”.

- (5) Each provision listed in the Table to this subsection is amended by deleting “welfare” and inserting instead —

“ wellbeing ”.

20

Table

| | |
|-------------|----------------------------------------------------|
| s. 12(1)(c) | s. 35(2)(b) |
| s. 30B(d) | s. 50D(1) (in the first place where it occurs) |
| s. 35(1)(b) | s. 50D(2)(b) (in the second place where it occurs) |

Part 4 — *The Criminal Code* amended

62. *The Criminal Code* amended

The amendments in this Part are to *The Criminal Code**.

5 [* Reprint 10 as at 7 February 2003 (see the Schedule to the
Criminal Code Act 1913 appearing as Appendix B to the
Criminal Code Act Compilation Act 1913).
For subsequent amendments see Western Australian
Legislation Information Tables for 2003, Table 1, p. 95 and
Acts Nos. 50 of 2003 and 4 of 2004.]

10 63. Heading to Chapter XXVI amended

The heading to Part V Chapter XXVI is amended by deleting
“and excuse” and inserting instead —

“ , **excuse and circumstances of aggravation** ”.

64. Section 221 inserted

15 Before section 222 in Chapter XXVI the following section is
inserted —

“

20 221. **Circumstances of aggravation for offences in this Part**

(1) In this Part —

“**circumstances of aggravation**” means circumstances
in which —

- 25 (a) the offender is in a family and domestic
relationship with the victim of the offence;
- (b) a child was present when the offence was
committed;
- (c) the conduct of the offender in committing
the offence constituted a breach of an order
made or registered under the *Restraining*

Orders Act 1997 or to which that Act
applies; or

(d) the victim is of or over the age of 60 years.

(2) In this section —

5 “**family and domestic relationship**” has the same
 meaning as it has in section 4 of the *Restraining
Orders Act 1997*.

”.

65. Section 297 amended

10 Section 297 is amended by deleting “If the person harmed is of
or over the age of 60 years” and inserting instead —

“

 If the offence is committed in circumstances of
aggravation

15

”.

66. Section 301 amended

 Section 301 is amended by deleting “if the person wounded is of
or over the age of 60 years” and inserting instead —

“

20

 if the offence is committed in circumstances of
aggravation

”.

67. Section 313 amended

25 Section 313(1) is amended by deleting “if the person assaulted
is of or over the age of 60 years” and inserting instead —

“

 if the offence is committed in circumstances of
aggravation

”.

s. 68

68. Section 317 amended

Section 317(1) is amended by deleting “if the person assaulted is of or over the age of 60 years” and inserting instead —

“
5 if the offence is committed in circumstances of
aggravation
”.

69. Section 317A amended

10 Section 317A is amended by deleting “if the person assaulted is
of or over the age of 60 years” and inserting instead —

“
if the offence is committed in circumstances of
aggravation
”.

15 **70. Section 319 amended**

Section 319(1) is amended in the definition of “circumstances of
aggravation” as follows:

(a) by deleting “means” and inserting instead —

“
20 , without limiting the definition of that expression
in section 221, includes
”;

(b) by deleting paragraph (b) and inserting the following
paragraph instead —

25 “
(b) the victim is of or over the age of 13 years
and under the age of 16 years.
”.

71. Section 338D amended

Section 338D(1) is amended in the definition of “circumstances of aggravation” as follows:

(a) by deleting “means” and inserting instead —

5

“

, without limiting the definition of that expression in section 221, includes

”;

(b) by deleting paragraph (b) and inserting instead —

10

“

(b) the conduct of the offender in committing the offence constituted a breach of a condition on which bail has been granted to the offender;

15

”.

=====