

Issues Paper

Personal Violence Restraining Orders Bill 2015

December 2015

This paper has been prepared for internal government discussion purposes only and any views expressed are not to be taken to represent the views of the Northern Territory Government, the Northern Territory Attorney-General and Minister for Justice or the Department of the Attorney-General and Justice.

Legal Policy
Department of the Attorney-General and Justice
68 The Esplanade, Darwin NT 0800
GPO Box 1722, DARWIN NT 0801
File: 20151463; PCD15/10268
Telephone: (08) 8935 7659 Facsimile: (08) 8935 7662
<http://www.nt.gov.au/justice>

THIS PAGE INTENTIONALLY LEFT BLANK

TABLE OF CONTENTS

Contents

1. PURPOSE	4
2. BACKGROUND	4
3. CURRENT PROVISIONS OF THE <i>JUSTICES ACT</i> CONCERNING PERSONAL VIOLENCE RESTRAINING ORDERS	5
4. HISTORICAL BACKGROUND TO PART IVA OF THE <i>JUSTICES ACT</i>	5
6. CONSIDERATION OF THE ISSUES	7
7. MAKING A SUBMISSION	9

1. PURPOSE

The Department of the Attorney-General and Justice is seeking your comments and suggestions on the Personal Violence Restraining Orders Bill 2015 (the Bill).

This issues paper is intended to provide a background to personal violence restraining orders and an outline of the Bill. Additionally, the paper outlines a number of policy issues for consideration with respect to personal violence restraining orders.

2. BACKGROUND

The Bill was introduced in the Legislative Assembly of the Northern Territory on 3 December 2015.

The main purpose of the Bill is to allow for the enactment of a standalone Act dealing specifically with personal violence restraining orders.

Currently, provisions with respect to personal violence restraining order are contained in Part IVA of the *Justices Act*.

The Personal Violence Restraining Orders Bill 2015 repeals Part IVA of the *Justices Act* and replicates Part IVA as a standalone Act. The Bill currently makes no intended changes to the policy with respect to personal violence restraining orders provisions.

The *Local Court Act 2015*, enacted earlier in 2015, provides for the establishment of a new Local Court that has jurisdiction over both criminal and civil matters (and the consequent abolition of the Court of Summary Jurisdiction) and for ancillary reforms relating to consistency of proceedings within the Local Court, the Supreme Court, the Youth Justice Court and the Work Health Court.

A decision was made that, as part this reform process, Part IVA of the *Justices Act* concerning personal violence restraining orders be made into a standalone Act.

3. CURRENT PROVISIONS OF THE *JUSTICES ACT* CONCERNING PERSONAL VIOLENCE RESTRAINING ORDERS

Currently, Part IVA of the *Justices Act* contains provisions with respect to applying for and enforcement of 'Personal Violence Restraining Orders'.

A person who is not in a domestic relationship may apply for a Personal Violence Restraining Order through the Court of Summary Jurisdiction.

The circumstances under which a person can apply for a Personal Violence Restraining Order include if a person has committed, or is likely to commit, a 'personal violence offence' against another person. Personal violence offence is defined in the *Justices Act* (section 80) as being an offence against the following provisions of the Criminal Code:

- (a) Part V, Division 2;
- (b) Part VI, Divisions 3 to 6A; and
- (c) section 211 or 212.

This generally includes offences which may cause personal injury, such as assault, indecent assault and reckless behaviour.

4. HISTORICAL BACKGROUND TO PART IVA OF THE *JUSTICES ACT*

Part IVA of the *Justices Act* was inserted into the *Justices Act* in 2007 by the *Domestic and Family Violence Act* (section 45).

Section 45 of the *Domestic and Family Violence Act 2007* repealed Part IV, Division 7 of the *Justices Act*, which previously dealt with recognisances to keep the peace or be of good behaviour, and substituted Part IVA Personal Violence Restraining Orders.

The former Part IV, Division 7 of the *Justices Act* previously empowered the Court of Summary Jurisdiction to order a defendant, upon complaint, to enter into a recognisance to keep the peace or be of good behaviour.

The 2007 amendments introduced a scheme for the making of 'personal violence restraining orders'. The new provisions were more detailed than the previous recognisance provisions.

New Part IVA allowed those who experienced violence in a relationship, but do not live with the perpetrator (ie not in a domestic relationship), to seek a civil remedy called a 'Personal Violence Restraining Order'. The primary purpose of the order was to secure the safety of the victim, with the grounds for the order being a finding,

on the balance of probabilities, that the defendant committed a personal violence offence that caused harm to the victim as defined in the Criminal Code.

These provisions replaced section 99 of the *Justices Act*, which stakeholders explained during consultation in 2007 were inadequate to the task and provided limited protection of victims because they were not enforceable by police. The new mechanism was aimed at allowing the Court of Summary Jurisdiction to refer a matter to compulsory mediation before the Court is required to determine an application, unless the matter is of such a significant nature that the Court is obliged to hear the matter immediately.

The amendment to insert Part IVA of the *Justices Act* also allowed police to make an application on behalf of persons in circumstances where, for example, they believe a child has been, or is being, sexually assaulted by a perpetrator who is not in a domestic relationship with that child. The aim of the specific provisions was to allow police to act immediately to protect that child while they complete their investigation in these circumstances. These provisions were sought to be a useful complementary measure to criminal proceedings.

5. SITUATIONS IN OTHER JURISDICTIONS

All other Australian jurisdictions have legislative provisions for the making of civil restraining orders, specifically to protect against forms of violence directed against a person or against a person's property where there is no domestic or personal relationship.

These orders are variously referred to as 'personal protection orders' in the Australian Capital Territory, 'apprehended personal violence orders' in New South Wales, 'restraining orders' in South Australia, 'restraint orders' in Tasmania, 'peace and good behaviour orders' and 'intervention orders' in Victoria, and 'violence restraining orders' or 'misconduct restraining orders' in Western Australia.

A number of jurisdictions have also made the decision to have a standalone Act dealing specifically with personal violence restraining orders and/or including domestic and family violence orders.

Such jurisdictions include:

- Victoria with the *Personal Safety Intervention Orders Act 2010* (VIC) (note this is separate legislation from Domestic Violence Legislation);
- New South Wales with the *Crimes (Domestic and Personal Violence) Act 2007* (NSW);
- Western Australia with the *Restraining Orders Act 1997* (WA);

- South Australia with the *Intervention Orders (Prevention of Abuse) Act 2009* (SA); and
- the Australian Capital Territory with the *Domestic Violence and Protection Orders Act 2008* (ACT).

6. CONSIDERATION OF THE ISSUES

The Bill as introduced makes no changes to the policy with respect to personal violence restraining orders provisions. The Bill merely repeals Part IVA of the *Justices Act* and replicates Part IVA as a standalone Act.

A number of issues regarding the current operation of provisions in the *Justices Act*, now contained in the Personal Violence Restraining Orders Bill 2015, concerning personal violence restraining orders have been raised. Such issues include:

- consideration of a provision to allow for the making of interim personal violence restraining orders.

Currently, there is no relevant provision in the *Justices Act* (and therefore the Personal Violence Restraining Orders Bill 2015) permitting the granting of an Interim Violence Restraining Order. Applicants are currently unable to obtain Interim Personal Violence Restraining Orders. This often leaves victims vulnerable for a minimum of a month before the matter is set for final hearing. The absence of a provision, enabling a court to order an Interim Personal Violence Restraining Order to immediately protect the person, has meant that a person, in some instances, must wait until the situation escalates in seriousness to warrant police intervention (that is, sufficient evidence for charges to be laid for assault or property damage) or it runs its course through the court system. A number of Australian jurisdictions allow for the making of interim restraining orders in certain circumstances. In New South Wales, the making of interim orders is not limited to the courts. Police, if they deem it necessary in the circumstances, can make interim orders to take effect immediately. Section 26 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) gives police the discretion whether or not to make a provisional order and, in particular, section 26(2) applies in circumstances where ‘the police officer has good reason to believe a provisional order needs to be made immediately to ensure the safety and protection of the person who would be protected by the provisional order or to prevent substantial damage to any property of that person’;

- amend provisions with respect to mediation (see clause 10(2) of the Personal Violence Restraining Orders Bill 2015 and current section 86(2) of the *Justices Act*) to enable the court to hear an application without the need for mediation in circumstances where the court considers it appropriate to do so.

Section 86 of the *Justices Act* (and now clause 10(2) of the Personal Violence Restraining Orders Bill 2015) currently requires that parties are referred to mediation before a magistrate (or local court Judge) can hear the application, except where the court 'is satisfied it is in the interests of justice to do so'. It has been suggested that these provisions should be made clearer as this provision has been the subject of differing interpretation by the judiciary. There has been a suggestion that the application of this provision varies depending on the magistrate (or local court Judge), ie where on strict interpretation the absence of violence means that the matter can be mediated;

- enable the option for longer-term orders in exceptional circumstances;
- the filing fee for Personal Violence Restraining Order applications to be significantly reduced and the court to have the discretion to waive the fee completely where appropriate.

It has been suggested that the filing fee for a Personal Violence Restraining Order is excessive, particularly as it concerns vulnerable victims experiencing financial hardship who are unable to initiate proceedings as a result. It is noted that there is no filing fee under the *Domestic and Family Violence Act* for applications for a Domestic Violence Order. It has also been suggested that the court should also have the discretion to waive the fee completely, where appropriate; and

- amend relevant provisions to more accurately define what constitutes a 'personal violence offence', rather than simply referring to the relevant provisions of the Criminal Code in clause 3 of the Personal Violence Restraining Orders Bill 2015 definition of 'personal violence offence' (currently section 80 of the *Justices Act*).

The legislation and the definition of 'personal violence offence' only applies where the conduct amounts to a personal violence offence under particular provisions of the Criminal Code. It has been suggested that there may be matters that do not fit within that definition however are nevertheless matters in which it would be appropriate to provide some restraint of the defendant's conduct. Generally, these are cases where a person is engaging in some form of intimidating, abusive or harassing behaviour, not sufficient to amount to a threat of assault or stalking, but sufficient to cause considerable distress to the person concerned. The *Domestic and Family Violence Act* includes in its definition of domestic violence 'intimidation' and that term is then further defined (refer section 6) to pick up the sort of conduct that might be appropriately included in personal violence matters.

7. MAKING A SUBMISSION

You are invited to provide comments on both the Personal Violence Restraining Orders Bill 2015 and any relevant policy issues concerning personal violence restraining orders to the Department of the Attorney-General and Justice.

Comments can be as short or informal as an email or letter, or can be a more substantial document. Comments do not have to address all aspects of the Bill nor are confined to the issues as discussed in this paper.

Electronic copies of comments are preferred and should be sent whenever possible by email to Policy.AGD@nt.gov.au.

Comments can also be sent to:

Director, Legal Policy
Department of the Attorney-General and Justice
GPO Box 1722
DARWIN NT 0801

The contact officer is Ms Tamika Williams (8935 7670)

The closing date for comments on this Consultation Paper is 30 January 2016.

Any feedback or comment received by the Department of the Attorney-General and Justice will be treated as a public document unless clearly marked as 'confidential'. In the absence of such clear indication, the Department of the Attorney-General and Justice will treat the feedback or comment as non-confidential.

Non-confidential feedback or comments are likely to be made publicly available and published on the Department of the Attorney-General and Justice website. The Department of the Attorney-General and Justice may draw upon the contents of such and quote from them or refer to them in reports, which may be made publicly available.