



Western Australia

Restraining Orders Amendment Act 1999

No. 11 of 1999

An Act to amend the *Restraining Orders Act 1997*.

[Assented to 13 May 1999]

The Parliament of Western Australia enacts as follows:

1. Short title

This Act may be cited as the *Restraining Orders Amendment Act 1999*.

2. Commencement

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

3. The Act amended

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

[* *Act No. 19 of 1997.*

For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, p. 199 and Acts Nos. 14 of 1997 and 10 of 1998.]

4. Section 3 amended

Section 3 is amended by inserting the following definitions in their appropriate alphabetical positions —

“

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

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

“**registered**”, in relation to a foreign restraining order, means registered under section 79C;

”.

5. Section 77 amended

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

“

- (1a) Without limiting subsection (1), for the purposes of applying Part 5 to an interstate order —
- (a) a reference to varying a final order is to be read as a reference to making an order varying the operation in this State of the interstate order; and
 - (b) a reference to cancelling a final order is to be read as a reference to making an order cancelling the registration of the interstate order.

”

6. Section 79 replaced

Section 79 is repealed and the following section is inserted instead —

“

79. Variation or cancellation in this State

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

- (a) notify the applicant for registration of the original order, unless the clerk knows that the applicant is already aware of the variation or cancellation;

- (b) notify the Commissioner of Police and give the Commissioner a copy of the order of variation or cancellation; and
- (c) alter the registration accordingly.

”

7. New Part inserted

After Part 7 the following Part is inserted —

“

Part 7A — Foreign restraining orders

79A. Recognition of foreign restraining orders

A foreign restraining order that is in force under a corresponding law of New Zealand or a prescribed country may be registered and enforced under this Part.

79B. Applying for registration of foreign restraining orders

- (1) An application for registration of a foreign restraining order may be made —
 - (a) by a person protected by the order;
 - (b) if the protected person is a child, by a parent or guardian of the child on behalf of the child;
 - (c) if the protected person is under the guardianship of a guardian (however described) appointed under a law of the foreign country, by the guardian on behalf of the protected person; or
 - (d) by a police officer on behalf of the protected person.

- (2) The application is to be made to a court of petty sessions in the form prescribed for the purposes of section 75(2).
- (3) An application need not be served on the person who is bound by the order.

79C. Registration of foreign restraining orders

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

79D. Effect of registration

- (1) A registered foreign restraining order operates in this State, and this Act applies to it, as if it were a violence restraining order that is a final order and that was served in accordance with this Act on the day on which it was registered.

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

- (b) the order had been cancelled under the corresponding law of the foreign country and was not in force in that country at the material time.

79E. Variation or cancellation in a foreign country

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

79F. Variation or cancellation in this State

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

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

”

=====