



Western Australia

Restraining Orders Act 1997

Reprinted as at 6 October 2000

Western Australia

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Defined Terms



Western Australia

**Reprinted under the
Reprints Act 1984 as
at 6 October 2000**

Restraining Orders Act 1997

An Act to provide for restraining orders, to amend the *Justices Act 1902* and various other Acts, and for related purposes.

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Restraining Orders Act 1997* ¹.

2. Commencement

This Act comes into operation on such day as is fixed by proclamation ¹.

3. Interpretation

In this Act unless the contrary intention appears —

“**applicant**” means, subject to section 7, an applicant for a restraining order;

“**authorised magistrate**” means a magistrate authorised under section 17(1)(a);

“**authorised person**” means a police officer or a person who is, or who is in a class of persons that is, prescribed for the purposes of this definition;

“**child**” means a person under 18 years of age;

“**child welfare officer**” means —

(a) the Director-General as defined in the *Child Welfare Act 1947*; or

(b) an officer of the Department, as defined in the *Child Welfare Act 1947*, who is authorised under section 29 of that Act;

“**clerk**” means the clerk or a registrar of the relevant court;

“**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;

“**court**” includes an authorised magistrate;

“**family order**” has the meaning given by section 5;

“final order” means a restraining order —

- (a) made at a final order hearing;
- (b) that becomes a final order under section 32;
- (ba) made under section 40(3);
- (c) made under section 49(1); or
- (d) that is a final order under section 63(4a);

“final order hearing” means a hearing fixed under section 33(1), 40(3) or 41(4);

“firearm” has the same meaning as it has in the *Firearms Act 1973*;

“firearms licence” means —

- (a) a licence issued, permit granted or approval given, under the *Firearms Act 1973*, entitling a person to be in possession of a firearm; and
- (b) a Firearms Act Extract of Licence issued under the *Firearms Act 1973*;

“fix a hearing” has the meaning given by section 9;

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

“interim order” means a telephone order or an order made under section 29(1)(a) or 63(4b), the duration of which is more than 72 hours;

“mention hearing” means a hearing fixed under section 23(2), 26(3), 29(2) or 39;

“misconduct restraining order” means an order made under this Act imposing restraints of the kind referred to in section 36;

“on behalf of”, in relation to the making of an application, includes the meaning given by section 6;

“person to be protected” and **“person protected”** have the meanings given by section 8;

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“prepare and serve” has the meaning given by section 10;

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

“respondent” means the person against whom a restraining order is sought;

“restraining order” means a violence restraining order or misconduct restraining order;

“satisfied” means satisfied on the balance of probabilities;

“specified” in relation to a restraining order, means specified in the order;

“telephone application” means an application under Division 2 of Part 2 for a violence restraining order;

“telephone order” means a violence restraining order made on a telephone application;

“violence restraining order” means an order made under this Act imposing restraints of the kind referred to in section 13;

“violent personal offence” means an offence against the person under Part V of *The Criminal Code*, other than Chapters XXXIV and XXXV.

[Section 3 amended by No. 10 of 1998 s.62(1); No. 11 of 1999 s.4; No. 22 of 2000 s.4.]

4. Making a restraining order

A restraining order may be made by —

- (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;
or
- (d) a court acting under section 63.

5. Meaning of “family order”

- (1) A reference in this Act to a **“family order”** is a reference to —
- (a) a residence order made under the *Family Law Act 1975* of the Commonwealth or the *Family Court Act 1997*, as is relevant to the case;
 - (b) a contact order made under the *Family Law Act 1975* of the Commonwealth or the *Family Court Act 1997*, as is relevant to the case;
 - (c) any of the things set out in subsection (2) —
 - (i) to the extent that the thing deals with the person or persons with whom a child is to live; or
 - (ii) to the extent that the thing requires or authorises (expressly or impliedly) contact between a child and another person or other persons;
 - (d) a right or liability within the meaning of the *Family Court of Western Australia (Orders of Registrars) Act 1997* of the Commonwealth that —
 - (i) is in respect of a matter to which paragraph (a), (b) or (c) applies; and
 - (ii) is conferred, imposed or affected by section 5 of that Act.

Note: The effects of the transitional provisions of the *Family Law Reform Act 1995* of the Commonwealth apply to rights and liabilities referred to in the *Family Court of Western Australia (Orders of Registrars) Act 1997* of the Commonwealth — s.4(5) of the latter Act.

- (2) The things referred to in subsection (1)(c) are —
- (a) a recovery order, a specific issues order or any other order (however described) made;
 - (b) an injunction granted;
 - (c) an undertaking given to, and accepted by, a court;
 - (d) a parenting plan registered; or

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(e) a recognisance entered into in accordance with an order, under the *Family Law Act 1975* of the Commonwealth or the *Family Court Act 1997*, as is relevant to the case, or any thing treated, under either of those Acts or the *Family Law Reform Act 1995* of the Commonwealth, as an order or thing referred to in subsection (1).

Note: Under clause 5 of Schedule 2 to the *Family Court Act 1997* the effects of the transitional provisions in that clause apply to rights and liabilities referred to in the *Family Court (Orders of Registrars) Act 1997*.

[Section 5 inserted by No. 41 of 1997 s.36.]

6. Meaning of application “on behalf of”

A reference in this Act to the making of an application for a restraining order “**on behalf of**” another person includes a reference to the making of an application for a restraining order —

- (a) for the protection or benefit of the other person; or
- (b) in respect of conduct relating to the other person.

7. Meaning of “applicant” if application made on behalf of another person

If an application for a restraining order is made on behalf of —

- (a) a child, by a parent or guardian of the child or a child welfare officer;
- (b) a person for whom a guardian has been appointed under the *Guardianship and Administration Act 1990*, by the guardian; or
- (c) a person, by a police officer or other authorised person,

a reference to the applicant in a provision listed in the Table to this section is to be read as a reference to the child or person on whose behalf the application was made.

Table

s. 11	s. 34
s. 12	s. 35
s. 13	s. 36

[Section 7 amended by No. 22 of 2000 s.5.]

8. Meaning of “person to be protected” and “person protected”

- (1) A reference in this Act to the **“person to be protected”**—
- (a) in relation to an application for a violence restraining order is a reference to —
 - (i) the person who will be protected from personal violence if the order is made; or
 - (ii) if the order is to prevent behaviour that could reasonably be expected to cause fear that a person will suffer personal violence, that person;
 - and
 - (b) in relation to an application for a misconduct restraining order is a reference to the person who will be protected from intimidatory or offensive behaviour, or whose property will be protected from damage, if the order is made.
- (2) A reference in this Act to the **“person protected”** by a restraining order means the person who was, when the application for the order was made, the person to be protected.

9. Fixing a hearing

- (1) If a clerk is to fix a hearing and summons a person to the hearing, the clerk is to —
- (a) fix a day, time and place for the hearing;
 - (b) prepare a summons in the prescribed form;

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- (c) cause the summons to be served on the person; and
 - (d) notify all other parties of the hearing.
- (2) If the clerk is to fix a hearing that is to be held in the absence of one party, the clerk is to —
 - (a) fix a day, time and place for the hearing; and
 - (b) notify the party who is to be present of the hearing.

10. Preparation and service of orders

- (1) If a clerk is to prepare and serve a restraining order, the clerk is to prepare the order in the prescribed form and cause —
 - (a) the respondent's copy and the respondent's endorsement copy (if one is required to be served) of the order to be served on the person who is bound by the order;
 - (b) the applicant's copy of the order to be delivered to the applicant;
 - (c) the police copy of the order to be delivered to the Commissioner of Police; and
 - (d) the court copy of the order to be placed on the court's records.
- (2) If an authorised person is to prepare and serve a telephone order the person is to prepare the order in the prescribed form in accordance with the instructions of the authorised magistrate who made the order and cause —
 - (a) the respondent's copy and the respondent's endorsement copy of the order to be served on the respondent;
 - (b) the applicant's copy of the order to be delivered to the applicant;
 - (c) the police copy of the order to be delivered to the Commissioner of Police; and
 - (d) the court copy of the order to be delivered —
 - (i) if the respondent is a child, to the Children's Court; or

- (ii) otherwise, to the court of petty sessions,
where the magistrate who made the order is based.
- (3) If an order is delivered to a court under subsection (2)(d) the clerk of that court is to register it and then cause it to be delivered to the authorised magistrate who made the order.

Part 2 — Violence restraining order

Division 1 — Violence restraining order

11. Grounds for a violence restraining order

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

- (a) unless restrained, the respondent is likely to —
 - (i) commit a violent personal offence against the applicant; or
 - (ii) behave in a manner that could reasonably be expected to cause 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
- (b) granting a violence restraining order is appropriate in the circumstances.

Note: In this section “applicant” may have the special meaning given by section 7.

12. Matters to be considered by court

- (1) When considering whether to make a violence restraining order and the terms of the order a court is to have regard to —
 - (a) the need to ensure that the applicant is protected from personal violence;
 - (b) the need to prevent behaviour that could reasonably be expected to cause fear that the applicant will suffer personal violence;
 - (c) the welfare of children who are likely to be affected by the respondent’s behaviour or the operation of the proposed order;

- (d) the accommodation needs of the respondent and the applicant;
 - (e) hardship that may be caused to the respondent if the order is made;
 - (f) any family orders;
 - (g) other current legal proceedings involving the respondent or the applicant;
 - (h) any criminal record of the respondent;
 - (i) any previous similar behaviour of the respondent whether in relation to the person to be protected or otherwise; and
 - (j) other matters the court considers relevant.
- (2) A court is to have regard to the matters set out in subsection (1)(a), (b) and (c) as being of primary importance.

Note: In this section “applicant” may have the special meaning given by section 7.

13. Restraints on respondent

- (1) In making a violence restraining order a court may impose such restraints on the lawful activities and behaviour of the respondent as the court considers appropriate to prevent the respondent —
- (a) committing a violent personal offence against the applicant; or
 - (b) behaving in a manner that could reasonably be expected to cause 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.
- (2) Without limiting the restraints that may be imposed, a court may restrain the respondent from doing all or any of the following —
- (a) being on or near premises where the applicant lives or works;

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- (b) being on or near specified premises or in a specified locality or place;
 - (c) approaching within a specified distance of the applicant;
 - (d) communicating, or attempting to communicate, (by whatever means) with the applicant;
 - (e) preventing the applicant from using personal property reasonably needed by the applicant, even if the respondent is the owner of, or has a right to be in possession of, the property;
 - (f) causing or allowing another person to engage in conduct of a type referred to in paragraphs (a) to (e).
- (3) A restraint may be imposed on the respondent absolutely or on such terms as the court considers appropriate.
- (4) A violence restraining order may restrain the respondent from entering or remaining in a place, or restrict the respondent's access to a place, even if the respondent has a legal or equitable right to be at the place.

Note: In this section "applicant" may have the special meaning given by section 7.

14. Firearms order

- (1) Subject to subsection (5), every violence restraining order includes a restraint prohibiting the person who is bound by the order from —
 - (a) being in possession of a firearm or firearms licence; and
 - (b) obtaining a firearms licence.
- (2) A person who is bound by a violence restraining order must give up possession, to the prescribed person and in the prescribed manner, of all firearms and firearms licences held by the person.
- (3) A firearm or firearms licence given up under subsection (2) is to be dealt with in the prescribed manner.

- (4) If a person who is bound by a violence restraining order —
- (a) was lawfully in possession of a firearm or firearms licence before the order was made; and
 - (b) gives up possession of the firearm or firearms licence under subsection (2),
- the person does not breach the order by reason only of being in possession of the firearm or firearms licence for the period necessary to comply with subsection (2).
- (5) When making a violence restraining order a court may permit the respondent to have possession of a firearm, and, if necessary, a firearms licence relating to it, on such conditions as the court thinks fit, if the court is satisfied that —
- (a) the respondent cannot carry on the respondent's usual occupation unless the respondent is permitted to have possession of a firearm;
 - (b) the behaviour in relation to which the order was sought did not involve the use, or threatened use, of a firearm; and
 - (c) the safety of any person, or their perception of their safety, is not likely to be adversely affected by the respondent's possession of a firearm.
- (6) If, under subsection (5), a court permits a respondent to have possession of a firearm, the court must make that possession subject to such conditions (in addition to any conditions imposed under that subsection) as the applicant or person to be protected requests unless the court considers the requested conditions to be unreasonable.
- (7) When making a violence restraining order a court may shorten the prescribed period within which the respondent must give up possession of firearms and firearms licences.

15. 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 —
 - (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.
- (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.

16. Duration of a violence restraining order

- (1) Subject to subsection (2), a violence restraining order comes into force when it is served on the person who is bound by the order, or if a later time is specified in the order, at that time.
- (2) If a telephone order or an order made under section 29(1)(a) is specified to have a duration of 72 hours or less and is not served on the respondent within 24 hours of the order being made, the order lapses.
- (3) Subject to subsection (2) and section 24(3)(b), if a telephone order or an order made under section 29(1)(a) is specified to have a duration of 72 hours or less, the order remains in force for the period specified in it.
- (4) Subject to section 24(3)(b), an interim order remains in force until one of the following occurs —
 - (a) a final order in respect of the matter comes into force;
 - (b) a final order hearing in respect of the matter is concluded without a final order being made;

- (c) the interim order is cancelled or expires; or
 - (d) in the case of a telephone order, 3 months elapse from the time the order came into force.
- (5) Subject to Part 5, a final violence restraining order remains in force for —
- (a) in the case of an order made at a final order hearing —
 - (i) the period specified in the order; or
 - (ii) if no period is specified, 2 years,from the date on which the final order came into force;
 - (b) in the case of a telephone order which became a final order under section 32 — 3 months from when the telephone order came into force or such shorter period as is specified in that order; and
 - (c) in the case of any other interim order which becomes final order under section 32 —
 - (i) the period specified in it; or
 - (ii) if no period is specified, 2 years,from the date on which the interim order came into force.

Division 2 — Telephone applications

17. Authorised magistrates

- (1) The Chief Stipendiary Magistrate is to —
 - (a) authorise such magistrates as the Chief Stipendiary Magistrate thinks fit to hear telephone applications; and
 - (b) ensure that, as far as practicable, there is at least one such authorised magistrate available at all times.
- (2) In this Division —
“Chief Stipendiary Magistrate” has the same meaning as it has in the *Stipendiary Magistrates Act 1957*.

18. Who can apply

- (1) An application for a violence restraining order may be made under this Division by —
 - (a) an authorised person on behalf of the person to be protected; or
 - (b) the person to be protected if he or she is introduced to the authorised magistrate by an authorised person.
- (2) An application for a violence restraining order may also be made under this Division —
 - (a) if the person to be protected is a child, by a parent or guardian of the child, or a child welfare officer, on behalf of the child; or
 - (b) if the person to be protected is a person for whom a guardian has been appointed under the *Guardianship and Administration Act 1990*, by the guardian on behalf of the person,

if the parent, child welfare officer or guardian is introduced to the authorised magistrate by an authorised person.
- (3) An authorised person is not to make an application, or introduce a person to make an application, under subsection (1) or (2) unless the authorised person reasonably believes that the case meets the criteria set out in section 20(1).

[Section 18 inserted by No. 22 of 2000 s.6.]

19. How to make a telephone application

An application under this Division for a violence restraining order —

- (a) is to be made to an authorised magistrate;
- (b) may be made by telephone, fax, radio, video conference, electronic mail or another similar method, or any combination of such methods; and
- (c) need not be in a particular form.

20. When a telephone application may be heard

- (1) An authorised magistrate may hear a telephone application if the authorised magistrate is satisfied that —
 - (a) it would not be practical for an application for a violence restraining order to be made in person because of —
 - (i) the time when, or the location at which, the behaviour complained of occurred, is occurring or is likely to occur; or
 - (ii) the urgency with which the order is required;or
 - (b) there is some other factor that justifies making a violence restraining order as a matter of urgency and without requiring the applicant to appear in person before a court.
- (2) If an authorised magistrate is not satisfied of those matters, the authorised magistrate is to dismiss the application.
- (3) The dismissal of a telephone application under subsection (2) does not prevent an application for a violence restraining order being made in person in relation to the same facts.

21. How hearing to be conducted

- (1) The hearing of a telephone application may be conducted by telephone, fax, radio, video conference, electronic mail or another similar method, or any combination of such methods, as the authorised magistrate considers appropriate.
- (2) Subject to subsection (3)(b), the hearing of a telephone application is to be conducted in the absence of the respondent.
- (3) An authorised magistrate hearing a telephone application may communicate with —
 - (a) the applicant; and
 - (b) if the authorised magistrate considers it necessary to do so, and it will not unreasonably delay the hearing, the respondent and any other person.

- (4) An authorised magistrate to whom a telephone application is made is to make a written record of —
- (a) the name and address of the applicant, the respondent and, if the applicant is making the application on behalf of another person, the other person;
 - (b) whether the authorised magistrate is satisfied the criteria set out in section 20(1) have been met and the reasons for that decision;
 - (c) if the authorised magistrate is satisfied those criteria have been met, the grounds for the application; and
 - (d) the terms of any order made under section 23(1), including the day and time the order was made.

22. Detention of respondent during telephone hearing

If a telephone application has been, or is about to be, made 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 —

- (a) require that person to remain in a place designated by the police officer while the application is made and heard; and
- (b) 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.

23. Orders at telephone hearing

- (1) An authorised magistrate hearing a telephone application is to —
- (a) make a telephone order;
 - (b) dismiss the application; or
 - (c) adjourn the matter to a mention hearing.
- (2) If the authorised magistrate adjourns the matter under subsection (1)(c) the clerk is to fix a hearing and summons the respondent to the hearing.

- (3) If the duration of a telephone order is more than 72 hours the order is an interim order and Division 4 applies.

24. Telephone order to be prepared and served

- (1) If an authorised magistrate makes a telephone order the authorised person who made the application or introduced the applicant is to prepare and serve the order.
- (2) On receipt of the court copy of the order, the authorised magistrate is to check the order and, if it is correct, sign it and cause the signed copy to be kept on the court's records.
- (3) If there is a discrepancy between the order made by the authorised magistrate and the written order prepared by the authorised person —
- (a) as soon as practicable after becoming aware of the discrepancy the clerk is to prepare a new telephone order correcting the discrepancy and serve that order;
 - (b) the original order (as prepared by the authorised person) is cancelled with effect from the time when the order prepared under paragraph (a) is served; and
 - (c) the telephone order served under paragraph (a) remains in force for the period for which the original order would have remained in force if it had not been cancelled.
- (4) Section 16(2) does not apply to a telephone order served under subsection (3)(a).

Division 3 — Applications in person

25. Application

- (1) An application for a violence restraining order may be made in person by —
- (a) the person to be protected; or
 - (b) a police officer on behalf of that person.

- (2) An application for a violence restraining order may also be made —
 - (a) if the person to be protected is a child, by a parent or guardian of the child, or a child welfare officer, on behalf of the child; or
 - (b) if the person to be protected is a person for whom a guardian has been appointed under the *Guardianship and Administration Act 1990*, by the guardian on behalf of the person.
- (3) An application for a violence restraining order made in person is to be made in the prescribed form to —
 - (a) if the respondent is a child, the Children’s Court; or
 - (b) otherwise, a court of petty sessions.

[Section 25 inserted by No. 22 of 2000 s.7.]

26. Applicant to choose whether to have hearing in absence of respondent

- (1) In an application under section 25 the applicant must indicate whether the applicant wishes to —
 - (a) have the first hearing of the application held in the absence of the respondent; or
 - (b) proceed directly to a defended hearing.
- (2) If the applicant wishes to have the first hearing held in the absence of the respondent, the clerk is to fix a hearing for that purpose.
- (3) If the applicant wishes to proceed directly to a defended hearing, the clerk is to fix a hearing and summons the respondent to the hearing.

27. Attendance at hearing in absence of respondent

- (1) A hearing fixed under section 26(2) is to be held in the absence of the respondent.

- (2) If an applicant does not attend a hearing fixed under section 26(2) and has not filed an affidavit under section 28, the court —
 - (a) if it is satisfied the applicant was notified of the hearing, is to dismiss the application; or
 - (b) otherwise, is to adjourn the hearing.
- (3) If an applicant does not attend a hearing fixed under section 26(2) but, before the time fixed for the hearing, has filed an affidavit under section 28, the court is to hear the matter in the absence of the applicant.

28. Affidavit evidence

- (1) At a hearing fixed under section 26(2) the court may accept affidavits of evidence in support of the matters alleged in the application and may determine the application on that evidence.
- (2) The court may accept a faxed copy of an affidavit if it considers it appropriate.

29. Order at hearing in absence of respondent

- (1) Subject to section 27, at a hearing fixed under section 26(2) the court may —
 - (a) make a violence restraining order;
 - (b) dismiss the application; or
 - (c) adjourn the matter to a mention hearing.
- (2) If the court adjourns the matter under subsection (1)(c) the clerk is to fix a hearing and summons the respondent to the hearing.
- (3) If the duration of a violence restraining order made under subsection (1)(a) is more than 72 hours the order is an interim order and Division 4 applies.

30. Order to be prepared and served

The clerk is to prepare and serve an order made under section 29(1)(a).

Division 4 — Procedure when interim order made

31. 21 days for respondent to object

Within 21 days of being served with an interim order a respondent must complete the respondent's endorsement copy of the order in accordance with the instructions on it, and return it to the clerk.

32. If respondent does not object to final order being made

(1) If a respondent —

- (a) returns the respondent's endorsement copy of an interim order in accordance with section 31; and
- (b) indicates on it that the respondent does not object to the interim order becoming final,

the interim order becomes a final order with the same terms as the interim order.

(2) If a respondent does not return the respondent's endorsement copy of an interim order in accordance with section 31, the interim order becomes a final order with the same terms as the interim order.

(3) A final order under this section comes into force —

- (a) in the case of an order under subsection (1), on the day on which the clerk receives the returned copy of the order; and
- (b) in the case of an order under subsection (2), at the end of the 21 day period referred to in section 31.

(4) The clerk is to notify the respondent, the applicant and the Commissioner of Police when an order becomes a final order under this section.

33. If respondent objects to final order being made

- (1) If a respondent —
- (a) returns the respondent's endorsement copy of an interim order in accordance with section 31; and
 - (b) indicates on it that the respondent objects to the interim order becoming final,

the clerk is to fix a hearing and notify all parties of the hearing.

- (2) If the interim order includes a restraint on the respondent that prohibits or restricts the respondent from —
- (a) being on premises where the respondent usually resides;
 - (b) having contact with the respondent's children;
 - (c) being on premises where the respondent usually works, or otherwise carrying on the respondent's usual occupation; or
 - (d) being in possession of a firearm that the respondent reasonably needs in order to carry on the respondent's usual occupation,

the clerk is to ensure that the date fixed under subsection (1) for the final order hearing is as soon as practicable after the respondent returns the respondent's endorsement copy of the interim order.

Part 3 — Misconduct restraining order

34. Grounds for a misconduct restraining order

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

- (a) unless restrained, the respondent is likely to —
 - (i) behave in a manner that could reasonably be expected to be intimidating or offensive to the applicant and that would, in fact, intimidate or offend the applicant;
 - (ii) cause damage to property owned by, or in the possession of, the applicant; or
 - (iii) behave in a manner that is, or is likely to lead to, a breach of the peace;
- and
- (b) granting a misconduct restraining order is appropriate in the circumstances.

Note: In this section “applicant” may have the special meaning given by section 7.

35. Matters to be considered by court

- (1) When considering whether to make a misconduct restraining order for reasons referred to in section 34(a)(i) or (ii) and the terms of the order a court is to have regard to —
 - (a) the need to ensure that —
 - (i) the applicant is protected from intimidatory or offensive behaviour; and
 - (ii) property owned by, or in the possession of, the applicant is protected from damage;
 - (b) the welfare of children who are likely to be affected by the respondent’s behaviour or the operation of the proposed order;

- (c) the accommodation needs of the respondent and the applicant;
 - (d) hardship that may be caused to the respondent if the order is made;
 - (e) any family orders;
 - (f) other current legal proceedings involving the respondent or the applicant;
 - (g) any criminal record of the respondent;
 - (h) any previous similar behaviour of the respondent whether in relation to the person to be protected or otherwise; and
 - (i) other matters the court considers relevant.
- (2) When considering whether to make a misconduct restraining order for reasons referred to in section 34(a)(iii) and the terms of the order a court is to have regard to —
- (a) the need to ensure that the public is protected from breaches of the peace;
 - (b) the welfare of children who are likely to be affected by the respondent's behaviour or the operation of the proposed order;
 - (c) the accommodation needs of the respondent;
 - (d) hardship that may be caused to the respondent if the order is made;
 - (e) any family orders;
 - (f) any criminal record of the respondent;
 - (g) other current legal proceedings involving the respondent; and
 - (h) other matters the court considers relevant.
- (3) A court is to have regard to the matters set out in subsection (1)(a) and (b) or (2)(a) and (b) as being of primary importance.

Note: In this section “applicant” may have the special meaning given by section 7.

36. Restraints on respondent

- (1) In making a misconduct restraining order a court may impose such restraints on the lawful activities and behaviour of the respondent as the court considers appropriate to prevent the respondent —
 - (a) behaving in a manner that could reasonably be expected to be intimidating or offensive to the applicant and that would, in fact, intimidate or offend the applicant;
 - (b) causing damage to property owned by, or in the possession of, the applicant; or
 - (c) behaving in a manner that is, or is likely to lead to, a breach of the peace.
- (2) Without limiting the restraints that may be imposed for the purposes of subsection (1)(a) or (b), a court may restrain the respondent from doing all or any of the following —
 - (a) being on or near premises where the applicant lives or works;
 - (b) being on or near specified premises or in a specified locality or place;
 - (c) approaching within a specified distance of the applicant;
 - (d) communicating, or attempting to communicate, (by whatever means) with the applicant;
 - (e) preventing the applicant from using personal property reasonably needed by the applicant, even if the respondent is the owner of, or has a right to be in possession of, the property;
 - (f) being in possession of a firearm or firearms licence, or applying for a firearms licence;
 - (g) causing or allowing another person to engage in conduct of a type referred to in paragraphs (a) to (f).

- (3) Without limiting the restraints that may be imposed for the purposes of subsection (1)(c), a court may restrain the respondent from doing all or any of the following —
- (a) being on or near specified premises or in a specified locality or place;
 - (b) engaging in behaviour of a specified kind, either at all or in a specified place, at a specified time or in a specified manner; or
 - (c) being in possession of a firearm or firearms licence, or applying for a firearms licence.
- (4) A restraint may be imposed on the respondent absolutely or on such terms as the court considers appropriate.
- (5) A misconduct restraining order may restrain the respondent from entering or remaining in a place, or restrict the respondent's access to a place, even if the respondent has a legal or equitable right to be at the place.
- (6) If a misconduct restraining order restrains the respondent from being in possession of a firearm or firearms licence, or applying for a firearms licence, sections 14 and 15 apply as if the misconduct restraining order were a violence restraining order.

Note: In this section “applicant” may have the special meaning given by section 7.

37. Duration of a misconduct restraining order

- (1) A misconduct restraining order comes into force when it is served on the respondent, or if a later time is specified in the order, at that time.
- (2) Subject to Part 5, a misconduct restraining order remains in force for the period specified in the order or, if no period is specified, for one year from when it came into force.

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38. Application

- (1) An application for a misconduct restraining order may be made in person by —
 - (a) the person to be protected; or
 - (b) a police officer on behalf of that person.
- (2) An application for a misconduct restraining order may also be made —
 - (a) if the person to be protected is a child, by a parent or guardian of the child, or a child welfare officer, on behalf of the child; or
 - (b) if the person to be protected is a person for whom a guardian has been appointed under the *Guardianship and Administration Act 1990*, by the guardian on behalf of the person.
- (3) If there is no particular person to be protected an application for a misconduct restraining order may be made by a police officer on behalf of the public generally.
- (4) An application for a misconduct restraining order is to be made in the prescribed form to —
 - (a) if the respondent is a child, the Children’s Court; or
 - (b) otherwise, a court of petty sessions.

[Section 38 inserted by No. 22 of 2000 s.8.]

39. Clerk to fix hearing and issue summons

If an applicant makes an application for a misconduct restraining order the clerk is to fix a hearing and summons the respondent to the hearing.

Part 4 — Hearings

Division 1 — Mention hearings

40. Attendance at hearing

- (1) If an applicant does not attend a mention hearing, the court —
 - (a) if it is satisfied the applicant was notified of the hearing, is to dismiss the application; or
 - (b) otherwise, is to adjourn the hearing.
- (2) If a respondent does not attend a mention hearing and the applicant does attend, the court —
 - (a) if it is satisfied the respondent was served with the summons requiring the respondent to attend the hearing, is to hear the matter in the absence of the respondent; or
 - (b) otherwise, is to adjourn the hearing.
- (3) When hearing a matter in the absence of the respondent, the court is to —
 - (a) make a restraining order;
 - (b) dismiss the application;
 - (c) direct the clerk to fix a hearing and summons the respondent to attend the hearing; or
 - (d) adjourn the mention hearing.
- (4) The clerk is to prepare and serve an order made under subsection (3)(a).

[Section 40 amended by No. 10 of 1998 s.62(2).]

41. Consent order or final order hearing to be fixed

- (1) If, at a mention 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.

- (2) 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.
- (3) The clerk is to prepare and serve a final order made by consent under subsection (1).
- (4) Subject to section 40, at a mention hearing at which a consent order is not made, the court is to direct the clerk to fix a hearing and summons the respondent to attend the hearing.

Division 2 — Final order hearings

42. Attendance at final order hearing

- (1) If an applicant does not attend a final order hearing, the court —
 - (a) if it is satisfied the applicant was notified of the hearing, is to dismiss the application; or
 - (b) otherwise, is to adjourn the hearing.
- (2) If a respondent does not attend a final order hearing and the applicant does attend, the court —
 - (a) if it is satisfied that the respondent was —
 - (i) in the case of a hearing fixed under section 33, notified of the hearing; or
 - (ii) in the case of a hearing fixed under section 40(3)(c) or 41(4), served with a summons requiring the respondent to attend the hearing,is to hear the matter in the absence of the respondent; or
 - (b) otherwise, is to adjourn the hearing.
- (3) At a hearing under subsection (2), the court may receive as evidence any record of evidence given (including any affidavit filed) at a prior hearing in relation to the matter.

[Section 42 amended by No. 22 of 2000 s.9.]

43. Making a final order

- (1) Subject to section 42, at a final order hearing a court may make a final order of the type, and with the terms, the court considers appropriate.
- (2) Without limiting the types of order that may be made at a final order hearing, a court may make —
 - (a) a final violence restraining order even if the application was for a misconduct restraining order; or
 - (b) a final misconduct restraining order even if —
 - (i) the application was for a violence restraining order; and
 - (ii) an interim order is in force.

44. Order to be prepared and served

The clerk is to prepare and serve a final order made at a final order hearing.

Part 5 — Variation or cancellation

45. Application

- (1) An application to vary or cancel a final order may be made by —
 - (a) the person protected by the order;
 - (b) a police officer on behalf of the person protected by the order; or
 - (c) the person bound by the order.
- (2) An application to vary or cancel a final order may also be made —
 - (a) if the person protected by the order is a child, by a parent or guardian of the child, or a child welfare officer, on behalf of the child; or
 - (b) if the person protected by the order is a person for whom a guardian has been appointed under the *Guardianship and Administration Act 1990*, by the guardian on behalf of the person.
- (3) If the original application for a final order was made by a police officer on behalf of the public generally an application to vary or cancel the order may be made by a police officer on behalf of the public generally.
- (4) An application to vary or cancel a final order is to be made in the prescribed form to the court that made the final order.

[Section 45 inserted by No. 22 of 2000 s.10(1).]

46. Leave hearing

- (1) If a person who is bound by a final order makes an application under section 45(1)(c) the clerk is to fix a hearing at which the court will consider whether to grant leave for the person to continue the application.

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- (2) The hearing fixed under subsection (1) is to be held in the absence of the person for whose benefit the order was made.
 - (3) If the person who is bound by the order does not attend a hearing fixed under subsection (1) the court —
 - (a) if it is satisfied the person was notified of the hearing, is to dismiss the application; or
 - (b) otherwise, is to adjourn the hearing.
 - (4) Subject to subsection (3), at a hearing fixed under subsection (1) the court —
 - (a) if it is satisfied there has been a substantial change in the relevant circumstances since the final order was made, is to grant leave for the person to continue the application to vary or cancel the order; or
 - (b) otherwise, is to dismiss the application.

[Section 46 amended by No. 22 of 2000 s.10(2).]

47. Clerk to issue summons

- (1) If an application is made under section 45(1)(a) or (b), (2) or (3) the clerk is to fix a hearing for that purpose and summons the person who is bound by the order to the hearing.
- (2) If a person who is bound by a final order is granted leave under section 46(4)(a) to continue an application the clerk is to fix a hearing for that purpose and summons to the hearing —
 - (a) if the person protected by the order is a child —
 - (i) the child;
 - (ii) a parent or guardian of the child on behalf of the child; or
 - (iii) a child welfare officer on behalf of the child, as the clerk considers appropriate;
 - (b) if the person protected by the order is a person for whom a guardianship has been appointed under the *Guardianship*

and Administration Act 1990, the guardian on behalf of the person; or

(c) otherwise, the person protected by the order.

- (3) If a clerk fixes a hearing under subsection (2) in relation to a misconduct restraining order made for the benefit of the public generally, the clerk is to notify the Commissioner of Police of the hearing and a police officer, nominated by the Commissioner, may attend at the hearing as if the officer were the applicant and had been summonsed under subsection (2).

[Section 47 amended by No. 22 of 2000 ss.10(3) and 11.]

48. Attendance at hearing

- (1) If a person who made an application under section 45 does not attend a hearing fixed under section 47, the court —
- (a) if it is satisfied the person was notified of the hearing, is to dismiss the application; or
 - (b) otherwise, is to adjourn the hearing.

- (2) If —

- (a) a person summonsed under section 47(1) or 47(2) does not attend; or
- (b) where the Commissioner of Police was notified under section 47(3), no police officer nominated under that section attends,

a hearing fixed under that section and the person who made the application does attend, the court —

- (c) if it is satisfied the summonsed person was served with the summons, or that the Commissioner of Police was notified of the hearing, is to hear the matter in the absence of the summonsed person or a nominated police officer; or
- (d) otherwise, is to adjourn the hearing.

- (3) At a hearing under subsection (2) on an application by the person who is bound by the order, the court may receive as evidence any record of evidence given (including any affidavit filed) at the hearing under section 46 in relation to the matter.

[Section 48 amended by No. 22 of 2000 s.10(4).]

49. Variation or cancellation

- (1) Subject to section 48, at a hearing fixed under section 47 the court may —
- (a) dismiss the application;
 - (b) make a new restraining order in addition to the original restraining order;
 - (c) cancel the original restraining order and make a new restraining order; or
 - (d) cancel the original restraining order.
- (2) The clerk is to prepare and serve an order made under subsection (1).
- (3) If the court cancels a restraining order the clerk —
- (a) if the person protected by the order was not present at the hearing, is to notify that person;
 - (b) if the person who was bound by the order was not present at the hearing, is to notify that person;
 - (c) is to notify the Commissioner of Police; and
 - (d) if the court is aware that the cancelled order is registered in a court of another State or Territory under a law equivalent to Part 7, is to notify the relevant officer of that court.
- (4) The cancellation of an order under subsection (1) has effect —
- (a) if another order is made when the original order is cancelled, at the time the new order comes into force; or
 - (b) otherwise, at the conclusion of the hearing at which the order was cancelled.

Part 6 — General

Division 1 — Restraining orders against children

50. No restraining orders against children under 10

No restraining order is to be made against a child who is under 10 years of age.

51. Responsible adult to attend

In a matter relating to a restraining order where the respondent or person who is bound by an order is a child, section 45 of the *Young Offenders Act 1994* applies as if the matter were a proceeding for an offence.

52. Transfer between courts

- (1) If the Children's Court hears an application under this Act in the belief that the respondent or person who is bound by an order is a child when in fact the person is not a child —
 - (a) as soon as it becomes aware the person is not a child, the Children's Court is to transfer the matter to a court of petty sessions;
 - (b) the Children's Court proceedings are not, for that reason, invalidated; and
 - (c) an order made by the Children's Court before it became aware the person was not a child, is as valid and has the same effect as if it had been made by the court of petty sessions to which the matter is transferred.
- (2) If a court of petty sessions hears an application under this Act in the belief that the respondent or person who is bound by an order is not a child when in fact the person is a child —
 - (a) as soon as it becomes aware the person is a child, the court of petty sessions is to transfer the matter to the Children's Court;

- (b) the court of petty sessions proceedings are not, for that reason, invalidated; and
 - (c) an order made by the court of petty sessions before it became aware the person was a child, is as valid and has the same effect as if it had been made by the Children's Court.
- (3) If a court transfers a matter to another court under this section, the clerks of each court are to give effect to the transfer.

53. Telephone order made against a child

If an authorised magistrate hearing a telephone application against a child —

- (a) makes a telephone order the duration of which is more than 72 hours; or
- (b) adjourns the matter to a mention hearing,

the authorised magistrate, at the same time, is to transfer the matter to the Children's Court.

Division 2 — Service

54. Service of summons

- (1) A summons relating to a restraining order is to be served —
 - (a) personally, at least 7 days before the hearing date; or
 - (b) by post in accordance with subsection (2), at least 14 days before the hearing date.
- (2) A summons served by post is to be sent —
 - (a) by prepaid registered post;
 - (b) to the person to whom it is directed at the person's last known place of residence or business; and
 - (c) by the clerk, a police officer or a person authorised by the clerk.

55. Service of restraining order

- (1) A restraining order is to be served personally unless —
 - (a) the clerk has authorised oral service under subsection (2); or
 - (b) subsection (3) applies to the order.
- (2) The clerk may authorise oral service of a restraining order if the clerk is satisfied reasonable efforts have been made to serve the order personally.
- (3) The following orders may be served by post in accordance with subsection (4) —
 - (a) a final order under section 32;
 - (b) a final order that was preceded by an interim order that is still in force;
 - (c) an order made by consent under section 41; and
 - (d) an order made under section 63.
- (4) A restraining order being served by post is to be sent —
 - (a) by ordinary prepaid post;
 - (b) to the person to whom it is directed at the person's last known place of residence or business; and
 - (c) by the clerk, a police officer or a person authorised by the clerk.
- (5) If a person is serving a restraining order orally that person is to inform the person being served of —
 - (a) the fact that the restraining order has been made;
 - (b) the general nature of the restraints imposed by the order;
 - (c) the duration of the order; and
 - (d) a place where a written copy of the order can be obtained.

- (6) Oral service may be effected face to face or by telephone, radio, video conference or another similar method.

56. Delivery or notification

- (1) Notification of a matter is to be given in writing to the person to be notified —
 - (a) personally; or
 - (b) by sending it by ordinary prepaid post to the person at the person's last known place of residence or business.
- (2) Notification of a hearing —
 - (a) if it is given personally, is to be given at least 7 days before the hearing date; or
 - (b) if it is given by post, is to be posted at least 14 days before the hearing date.
- (3) A document delivered to a person may be —
 - (a) given to the person personally; or
 - (b) sent by ordinary prepaid post to the person at the person's last known place of residence or business.

57. Copy of document sufficient for service

It is sufficient to constitute personal or postal service of a document if the document given or posted to the person being served is a photocopy or a faxed copy of the document instead of the original.

58. Proof of service

- (1) If a person certifies in writing that on the day and at the time and place stated in the certificate the person —
 - (a) personally served on a person the requisite copy or copies of a summons or restraining order in accordance with this Division;

- (b) orally served on a person a restraining order in accordance with this Division and that the person so served appeared to understand what was said; or
- (c) posted to a person the requisite copy or copies of a restraining order or summons in accordance with this Division,

in the absence of evidence to the contrary, the certificate is sufficient proof of service of the summons or restraining order on the person stated to have been so served.

- (2) If a person certifies in writing that on the day and at the time and place stated in the certificate the person —
 - (a) personally notified, or delivered a document to, a person; or
 - (b) posted to a person a notification or document in accordance with section 56,

in the absence of evidence to the contrary, the certificate is sufficient proof of the notification of, or delivery of the document to, the person referred to in the certificate.

59. Notification of service

As soon as practicable after a restraining order is served on the person who is bound by the order, the person who served the order is to complete proof of service copy of the order and —

- (a) cause it to be delivered to the clerk; and
- (b) cause a copy of it to be delivered to the applicant.

60. Deliberate avoidance of service

- (1) If a court is satisfied that a person is deliberately avoiding being served with a document under this Act, the court may authorise substituted service of the document.

- (2) A document is served by substituted service if the person serving it takes such steps as the court directs to bring the document to the attention of the person being served.

Division 3 — Breach of restraining order

61. Breach of a restraining order

- (1) A person who is bound by a violence restraining order and who breaches that order commits an offence.

Penalty:

- (a) if the duration of the order is 72 hours or less, \$2 000 or imprisonment for 6 months; or
- (b) otherwise, \$6 000 or imprisonment for 18 months.
- (2) A person who is bound by a misconduct restraining order and who breaches that order commits an offence.

Penalty: \$1 000.

- (3) Proceedings for a breach of a restraining order are to be brought —
- (a) if the alleged offender is a child, in the Children’s Court; or
- (b) otherwise, in a court of petty sessions.

[Section 61 amended by No. 22 of 2000 s.12.]

62. Consent as a defence

- (1) Subject to subsection (2), it is a defence to a charge of breaching a restraining order for the person who is bound by the order to satisfy the court that the person acted with the consent, as defined in section 319(2)(a) of *The Criminal Code*, of the person protected by the order.
- (2) The defence set out in subsection (1) is not available in respect of a breach of a restraining order if the person protected by the

order is a child or a person for whom a guardian has been appointed under the *Guardianship and Administration Act 1990*.

- (3) If a person charged with breaching a restraining order establishes a defence under subsection (1), the court hearing the charge may cancel the order.

Division 4 — General

63. Making restraining orders during other proceedings

- (1) A court, including a judicial officer considering a case for bail, before which a person charged with an offence is appearing may make a restraining order against that person or any other person who gives evidence in relation to the charge.
- (2) A court hearing proceedings under the *Family Court Act 1997* or the *Family Law Act 1975* of the Commonwealth may make a restraining order against a party to the proceedings or any other person who gives evidence in the proceedings.
- (3) A court hearing an application under the *Child Welfare Act 1947* to declare a child in need of care and protection may make a restraining order against a party to the proceedings or any other person who gives evidence in the proceedings.
- (3a) A restraining order may be made under this section —
- (a) on the initiative of the court;
 - (b) at the request of a party to the proceedings;
 - (c) if the person to be protected is a child, at the request of —
 - (i) the child;
 - (ii) a parent or guardian of the child on behalf of the child; or
 - (iii) in a matter referred to in subsection (3), a child welfare officer on behalf of the child;

- (d) if the person to be protected is a person for whom a guardian has been appointed under the *Guardianship and Administration Act 1990*, at the request of the guardian on behalf of the person; or
 - (e) at the request of a person who gives evidence in the proceedings or in relation to the charge.
- (4) A court is not to make a restraining order under this section unless —
 - (a) the court is satisfied that there are grounds for making the order under section 11 or 34, as is appropriate to the case;
 - (b) the court has had regard to the matters set out in section 12 or 35, as is appropriate to the case; and
 - (c) the person is present when the order is made and has been given an opportunity to be heard on the matter.
- (4a) Subject to subsection (4b) a restraining order made under this section is a final order.
- (4b) If a court referred to in subsection (2) is considering making a restraining order and the person who would be bound by the order objects to it being made, the court may make an interim order.
- (4c) Sections 33, 42, 43 and 44 apply to an interim order made under subsection (4b) as if the person bound by the order —
 - (a) were the respondent; and
 - (b) had returned the respondent's endorsement copy of the interim order —
 - (i) in accordance with section 31;
 - (ii) on the day after the interim order was made; and
 - (iii) indicating that the person objected to the order becoming final.

- (5) If a restraining order has been, or is about to be, made under this section, the court may, in order to facilitate service of the restraining order, order the person against whom the order has been, or is about to be, made to remain in a place designated by the court for a period of not more than one hour until the order is served on that person.
- (6) A restraining order made under this section by a judicial officer is taken to have been made by the court of which that judicial officer is an officer.
- (7) A restraining order made under this section is to be prepared and served —
 - (a) by the clerk in accordance with section 10(1); or
 - (b) if the clerk is not available at the time the order is made, by the person making that order in accordance with section 10(1) as if that person were the clerk.

[Section 63 amended by No. 22 of 2000 s.13.]

64. Appeals

- (1) A person aggrieved by the decision of a court —
 - (a) under section 23(1)(b) or 29(1)(b) to dismiss an application; or
 - (b) in relation to a final order,may appeal against that decision in accordance with this section.
- (2) If the decision was made by a court of petty sessions, the appeal is to be made to the Supreme Court in accordance with Part VIII of the *Justices Act 1902*.
- (3) If the decision was made by the Children's Court when constituted so as not to consist of or include a Judge, the appeal is to be made to the Supreme Court in accordance with section 41 of the *Children's Court of Western Australia Act 1988* as if the decision were a decision within the meaning of section 41(2) of that Act.

- (4) If the decision was made by the Children's Court when constituted so as to consist of or include a Judge, the appeal is to be made to the Full Court in accordance with section 43 (other than subsections (2) and (3)) of the *Children's Court of Western Australia Act 1988* as if the decision were a decision within the meaning of section 43(3b) of that Act.
- (5) If the decision was made by the District Court, the appeal is to be made to the Full Court in accordance with section 79(1)(a) of the *District Court of Western Australia Act 1969*.
- (6) If the decision was made by a Judge of the Supreme Court, the appeal is to be made to the Full Court in accordance with section 58 of the *Supreme Court Act 1935*.
- (6a) If the decision was made by a court hearing proceedings under the *Family Court Act 1997* or the *Family Law Act 1975* of the Commonwealth, the appeal is to be made —
 - (a) in the case of a decision of a court of summary jurisdiction, to the Family Court of Western Australia in accordance with section 211(2) of the *Family Court Act 1997*; and
 - (b) otherwise to the Full Court of the Supreme Court in accordance with section 211(3) of the *Family Court Act 1997*.
- (7) In this section —

“Full Court” has the same meaning as it has in the *Supreme Court Act 1935*.

[Section 64 amended by No. 22 of 2000 s.14.]

65. Orders not to conflict with certain family orders

If a court does not have jurisdiction to adjust a family order the court is not to make a restraining order that conflicts with that family order.

66. Notification of family orders

- (1) In this section —
- “inform the court”** means —
- (a) in the case of an application for a restraining order made in person, state in the application; or
 - (b) in the case of a telephone application, inform the authorised magistrate at the hearing.
- (2) An applicant must inform the court of any family order, or any pending application for such an order, of which the applicant is aware.
- (3) If the applicant is aware of an existing family order, the applicant —
- (a) in the case of an application made in person where the person to be protected is a party to the family order, must provide a copy of that order to the court; or
 - (b) in any other case, must inform the court of the terms of the family order so far as the applicant is aware of them.
- (4) If the applicant is aware of a pending application for a family order, the applicant, so far as the applicant is aware of the information, must inform the court of —
- (a) the names of the parties to the application;
 - (b) the terms of the family order being sought; and
 - (c) whether the application is being opposed.
- (5) If an applicant is making an application on behalf of another person, the applicant must take reasonable steps to obtain from the person details of any family order, or pending application for such an order, of which the person is aware.
- (6) A restraining order is not invalid merely because the applicant does not comply with this section.

67. Adjournments

- (1) Despite any other provision of this Act a court may adjourn a hearing when, and for the period, the court considers appropriate.
- (2) If a hearing is adjourned, whether under subsection (1) or under another provision, the clerk is to notify each party who was required or permitted to attend the hearing but who was not present when the hearing was adjourned.

68. Orders may be extended to apply to other people

- (1) When making a restraining order a court may extend the order to operate for the benefit of a person named in the order in addition to the person protected by the order.
- (2) If an order is so extended the provisions of this Act apply to the named person as if that person were the person protected by the order.

69. Costs

- (1) Subject to subsection (2) and the regulations, a court may make such orders as to costs as it considers appropriate.
- (2) If, after hearing an application for a violence restraining order, a court does not make a restraining order, the court is not to order the applicant to pay costs to the respondent unless it considers the application was frivolous or vexatious.

70. Protection of person protected by order

A court is to ensure that the whereabouts of the person protected by a restraining order (including the person's address, telephone number and place of work) are not revealed to a respondent unless —

- (a) the respondent already knows those details; or
- (b) it is necessary to do so in order to ensure that the restraining order will be effective.

71. Notification when firearms order made

(1) In this section —

“firearms order” means —

- (a) a violence restraining order; or
- (b) a misconduct restraining order that prohibits a person from being in possession of a firearm;

“responsible person” means, in relation to a restrained person who uses or has access to a firearm in the course of that person’s usual occupation, the person who holds a firearms licence (or the equivalent under a law of another State or Territory) for that firearm, or if there is no such person —

- (a) if the restrained person is a police officer or a member of an armed force — the officer in command of that police force or armed force in the State or Territory where the restrained person is based;
- (b) if the restrained person is otherwise employed or engaged by an employing authority, as defined in the *Public Sector Management Act 1994*, (or an equivalent body for the purposes of a corresponding law of another State, a Territory or the Commonwealth) — that employing authority (or equivalent body); or
- (c) in any other case — the person by whom the restrained person is employed or engaged;

“restrained person” means the person bound by a firearms order.

(2) A person who personally or orally serves a firearms order must —

- (a) ask the restrained person —
 - (i) whether the person uses or has access to any firearms in the course of the restrained person’s usual occupation;

- (ii) if so, the name and business address of the responsible person;
 - (iii) whether the person and another person (“**the co-licensee**”) hold firearms licences in respect of the same firearm; and
 - (iv) if so, the name and address of the co-licensee;
 - (b) complete the relevant part of the police copy of the order in accordance with the response given by the restrained person to those questions; and
 - (c) tell the restrained person that the responsible person will be notified that the order has been made.
- (3) A restrained person who fails to answer, or gives a false answer to, a question asked under subsection (2)(a) commits an offence.
Penalty: \$2 000 or imprisonment for 6 months.
- (4) On receipt of a police copy of an order that indicates that the restrained person uses or has access to a firearm in the course of the restrained person’s usual occupation or holds a firearms licence in respect of a firearm for which a co-licensee also holds a firearms licence the Commissioner of Police is to promptly notify the responsible person or co-licensee, as the case requires —
- (a) that a restraining order has been made against the restrained person;
 - (b) that the order prohibits the restrained person from being in possession of a firearm (or if the court acted under section 14(5), that the restrained person is prohibited from being in possession of a firearm other than on the conditions specified by the court under that section);
 - (c) of the duration of the order; and
 - (d) that it is an offence for the responsible person or co-licensee to allow the restrained person to use or have access to a firearm in contravention of the order.

- (5) When the Commissioner of Police receives the police copy of a firearms order that —
- (a) has been served on the restrained person by post; and
 - (b) is a final order which was preceded by an interim order in relation to which the responsible person or co-licensee was notified under subsection (4),

the Commissioner of Police is to promptly notify the responsible person or co-licensee of the matters set out in subsection (4).

- (6) A responsible person or co-licensee notified under subsection (4) or (5) who allows the restrained person to use or have access to a firearm, except as permitted under the firearms order, commits an offence.

Penalty: In the case of a responsible person — \$4 000.
 In the case of a co-licensee — \$4 000 or imprisonment for 12 months.

72. Practice and procedure generally

- (1) Unless otherwise prescribed by this Act, the practices and procedures to be followed in matters relating to restraining orders are, if the matter is being heard by —
- (a) a court of petty sessions, the practices and procedures applying in that court under the *Justices Act 1902* for matters commenced by complaint; or
 - (b) the Children's Court, the practices and procedures applying in the non-criminal jurisdiction of that court under the *Children's Court of Western Australia Act 1988*.
- (2) If a matter is being heard by a court of petty sessions section 65 of the *Justices Act 1902* applies as if the matter were a criminal proceeding.

73. Regulation making power

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or that are necessary or convenient to be prescribed to give effect to the purposes of this Act.
- (2) Without limiting subsection (1), regulations may be made in relation to —
 - (a) practices and procedures to be followed;
 - (b) the manner in which firearms and firearms licences are to be —
 - (i) given up by a person who is bound by a restraining order; and
 - (ii) delivered to, and dealt with by, a prescribed person;
 - (c) facilitating the effective operation of restraining orders which prohibit or restrict a person from being in possession of a firearm;
 - (d) forms to be used;
 - (e) fees to be paid;
 - (f) orders as to costs; and
 - (g) prescribing laws of another State or Territory for the purposes of the definition of interstate order in section 74.

Part 7 — Interstate restraining orders

74. Interpretation

In this Part —

“clerk” means the clerk to whom an application for registration of an interstate order is made or another clerk of the same court;

“interstate order” means a restraint order made by a court of another State or Territory under a law prescribed for the purposes of this definition;

“registered order” means an interstate order registered under this Part.

75. Application for registration of interstate order

- (1) An application for registration of an interstate order may be made by —

- (a) the person protected by the order; or
- (b) a police officer on behalf of that person.

- (1a) An application for registration of an interstate order may also be made —

- (a) if the person protected by the order is a child, by a parent or guardian of the child, or a child welfare officer, on behalf of the child; or
- (b) if the person protected by the order is a person for whom a guardian has been appointed under the *Guardianship and Administration Act 1990* (or a similar Act of the State or Territory in which the interstate order was made), by the guardian on behalf of the person.

- (2) An application for registration is to be made in the prescribed manner to a clerk of a court of petty sessions.

- (3) An application for registration need not be served on the person who is bound by the order.

[Section 75 amended by No. 22 of 2000 s.15.]

76. Registration

- (1) If a person makes an application for registration of an interstate order the clerk is to —
 - (a) register the interstate order;
 - (b) notify —
 - (i) the court in which the interstate order was made;
 - (ii) the person who applied for registration; and
 - (iii) the Commissioner of Police,
of the registration; and
 - (c) cause a copy of the interstate order to be delivered to the Commissioner of Police.
- (2) Notice of the registration is not to be given to the person who is bound by the order unless the person who applied for registration has requested in writing that such notice be given.

77. Effect of registration

- (1) A registered order operates in this State as if it were a violence restraining order which is a final order —
 - (a) with the terms (including as to its duration) set out in the order or applying to it under the law under which it was made; and
 - (b) served in accordance with this Act on the day on which it was registered,and the provisions of this Act apply to it as if it were such an order.
- (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

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- (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.
- (2) In proceedings for a breach, committed in this State, of a registered order no proof is required of —
 - (a) the making of the interstate order or of a variation of it that operates in this State under section 78; or
 - (b) the service of such an order or variation on the person who is bound by the order.

[Section 77 amended by No. 11 of 1999 s.5.]

78. Variation or cancellation in another State or Territory

- (1) If —
 - (a) a registered order is varied by a court in the State or Territory in which it was made; and
 - (b) notice of the variation is given to the clerk by an officer of that court,

the variation operates in this State as if the interstate order, as varied, had been registered under section 76 on the day on which the clerk received the notice.

- (2) If —
 - (a) a registered order is cancelled by a court in the State or Territory in which it was made; and
 - (b) notice of the cancellation is given to the clerk by an officer of that court,

the registration in this State of the order is cancelled from the day on which the clerk received the notice.

- (3) If the clerk receives notice of the variation or cancellation of a registered order, the clerk is to notify the person who applied for registration of the order and the Commissioner of Police.

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.

[Section 79 inserted by No. 11 of 1999 s.6.]

Part 7A — Foreign restraining orders

[Heading inserted by No. 11 of 1999 s.7.]

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.

[Section 79A inserted by No. 11 of 1999 s.7.]

79B. Applying for registration of foreign restraining orders

- (1) An application for registration of a foreign restraining order may be made by —

- (a) the person protected by the order; or
- (b) a police officer on behalf of that person.

- (1a) An application for registration of a foreign restraining order may also be made —

- (a) if the person protected by the order is a child, by a parent or guardian of the child, or a child welfare officer, on behalf of the child; or
- (b) if the person protected by the order is under the guardianship of a guardian (however described) appointed under the law of the foreign country, by the guardian on behalf of the 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.

[Section 79B inserted by No. 11 of 1999 s.7; amended by No. 22 of 2000 s.16.]

79C. Registration of foreign restraining orders

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

[Section 79C inserted by No. 11 of 1999 s.7.]

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.

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- (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.

[Section 79D inserted by No. 11 of 1999 s.7.]

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.

[Section 79E inserted by No. 11 of 1999 s.7.]

79F. Variation or cancellation in this State

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

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

[Section 79F inserted by No. 11 of 1999 s.7.]

Part 8 — Consequential amendments to other Acts

80. *Justices Act 1902* amended

- (1) Section 42 of the *Justices Act 1902** is amended by deleting “Proceedings” and substituting the following —

“

Unless otherwise provided, proceedings

”.

- (2) Parts VII and VIIA of the *Justices Act 1902** are repealed.
- (3) Notwithstanding subsection (1), Parts VII and VIIA of the *Justices Act 1902** are taken to remain in force to the extent necessary for the purposes of Part 9.

[Reprinted as at 21 June 1995.*

For subsequent amendments see Acts Nos. 88 of 1994, 78 of 1995 and 8, 14, 36, 49, 59 and 69 of 1996.]

[81-84. Omitted under the Reprints Act 1984 s.7(4)(e).]

Part 9 — Transitional

Division 1 — Interpretation

85. Interpretation

In this Part —

“commencement date” means the day on which this Act comes into operation;

“Justices Act” means the *Justices Act 1902* as in force immediately before the commencement date;

“Part VII order” means an order to keep the peace made under Part VII of the Justices Act;

“previous registered order” means an interstate order registered under Part VIIA of the Justices Act.

Division 2 — Part VII orders

86. Existing Part VII orders

- (1) Subject to subsection (3), a Part VII order —

- (a) in force immediately before the commencement date; or
- (b) made, confirmed or varied under section 87 after the commencement date,

is taken to be a misconduct restraining order with the terms (including as to its duration) set out in the order or applying to it under the Justices Act, and the provisions of this Act, other than section 61, apply to it as if it were a misconduct restraining order made at a final order hearing.

- (2) A person who breaches a Part VII order which is taken to be a misconduct restraining order commits an offence.

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

- (3) A Part VII order made before the commencement date in the absence of the defendant which is not, as at the commencement

date, confirmed, continues in force under the Justices Act until the conclusion of the hearing under section 172(4)(a) of that Act, as if section 80(2) and subsection (1) were not in operation.

- (4) If a Part VII order is taken to be a misconduct restraining order under subsection (1) —
- (a) the complainant and defendant to the proceeding which led to the Part VII order are taken to be (respectively) the applicant for the misconduct restraining order and the person bound by the order; and
 - (b) a person for whose benefit the Part VII order is expressed to have been made (other than the complainant) is taken to be a person for whose benefit the order has been extended under section 68.

[Section 86 amended by No. 22 of 2000 s.17.]

87. Current proceedings under Justices Act

- (1) If a proceeding to which this section applies commenced before the commencement date but, as at that date is not concluded, the proceeding may be dealt with and determined under the Justices Act as if sections 80(2) and 86(1)(a) were not in operation.
- (2) This section applies to —
- (a) a complaint under section 172 of the Justices Act seeking a Part VII order if, in relation to the complaint —
 - (i) no Part VII order has been made; or
 - (ii) an interim Part VII order has been made but has not been confirmed;
 - (b) an application under section 174 of the Justices Act to vary or revoke a Part VII order;
 - (c) an application under section 136A of the Justices Act to set aside a Part VII order;

- (d) an appeal under Part VIII of the Justices Act in relation to a Part VII order; and
- (e) a prosecution for breach of a Part VII order.

Division 3 — Interstate orders

88. Existing registered order

A previous registered order —

- (a) in force in this State immediately before the commencement date; or
- (b) varied under section 89 after that date,

is taken to be an interstate order registered under this Act.

89. Current proceedings in relation to previous registered orders

An application made before the commencement date under section 182A of the Justices Act to vary or cancel a previous registered order which, as at the commencement date, is not concluded, may be dealt with and determined under the Justices Act as if sections 80(2) and 88(a) were not in operation.

90. Existing interstate orders

- (1) Part 7 applies to an interstate order made before the commencement date.
- (2) Section 78 applies to a variation or cancellation made before the commencement date if notice of the variation or cancellation is received by the clerk on or after that date.

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Notes

- ¹ This reprint is a compilation as at 6 October 2000 of the *Restraining Orders Act 1997* and includes all amendments effected by the other Acts referred to in the following Table.

Table of Acts

Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Restraining Orders Act 1997</i>	19 of 1997	28 August 1997	Proclaimed 15 September 1997 (see section 2 and <i>Gazette</i> 12 September 1997 p.5149)	
<i>Family Court (Orders of Registrars) Act 1997</i> , section 12	21 of 1997	7 September 1997	15 September 1997 (see section 2(2) and <i>Gazette</i> 12 September 1997 p.5149)	
<i>Acts Amendment and Repeal (Family Court) Act 1997</i> , section 36	41 of 1997	9 December 1997	26 September 1998 (see section 2 and <i>Gazette</i> 25 September 1998 p.5295)	
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> , section 62	10 of 1998	30 April 1998	30 April 1998 (see section 2(1))	
<i>Restraining Orders Amendment Act 1999</i>	11 of 1999	13 May 1999	13 May 1999 (see section 2)	
<i>Restraining Orders Amendment Act 2000</i>	22 of 2000	30 June 2000	30 June 2000 (see section 2)	

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
applicant.....	3
authorised magistrate	3
authorised person	3
Chief Stipendiary Magistrate	17(2)
child	3
child welfare officer	3
clerk	3, 74
commencement date.....	85
corresponding law	3
court	3
family order.....	5(1)
final order.....	3
final order hearing.....	3
firearm.....	3
firearms licence	3
firearms order.....	71(1)
fix a hearing	3
foreign restraining order.....	3
Full Court	64(7)
inform the court.....	66(1)
interim order.....	3
interstate order	74
Justices Act	85
mention hearing	3
misconduct restraining order.....	3
on behalf of	6
Part VII order	85
person protected	8(2)
person to be protected	8(1)
prepare and serve	3
previous registered order.....	85
registered.....	3
registered order	74
respondent.....	3
responsible person.....	71(1)
restrained person	71(1)
restraining order	3
satisfied	3
specified	3

Defined Terms

telephone application	3
telephone order.....	3
the co-licensee.....	71(2)(a)(iii)
violence restraining order.....	3
violent personal offence	3