

Western Australia

## **Restraining Orders Amendment Act 2011**

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As at 12 Sep 2011

No. 32 of 2011

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# Restraining Orders Amendment Act 2011

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Western Australia

## **Restraining Orders Amendment Act 2011**

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**No. 32 of 2011**

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**An Act to amend the *Restraining Orders Act 1997* and to make a consequential amendment to the *Criminal Investigation Act 2006*.**

*[Assented to 12 September 2011]*

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

**1.        Short title**

This is the *Restraining Orders Amendment Act 2011*.

**2.        Commencement**

This Act comes into operation as follows —

- (a)    sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b)    the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

## **Part 2 — *Restraining Orders Act 1997* amended**

**3. Act amended**

This Part amends the *Restraining Orders Act 1997*.

**4. Section 12 amended**

After section 12(4) insert:

- (5) The information is to be provided in the form of a certificate signed by a police officer of or above the rank of inspector.
- (6) The certificate is prima facie evidence of the matters specified in it, without proof of the signature of the person purporting to have signed it or proof that the purported signatory was a police officer of or above the rank of inspector.

**5. Section 13 amended**

After section 13(5) insert:

- (6) A violence restraining order may inform the respondent that certain behaviour and activities are unlawful.

**6. Section 16 amended**

After section 16(2) insert:

- (3A) Any other interim order, or a final order, lapses if it is not served on the respondent within 2 years, or any shorter period specified in the order, of the order being made.

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**7.        Section 25 amended**

In section 25(3)(a) after “respondent” insert:

or person seeking to be protected

**8.        Section 30D replaced**

Delete section 30D and insert:

**30D.     Police orders against children**

- (1) A police order cannot impose restraints on a child unless the child is in a family and domestic relationship with the person for whose benefit the order is made.
- (2) A police officer must not make a police order against a child that might affect the care and wellbeing of the child unless the police officer is satisfied that appropriate arrangements have been made for the care and wellbeing of the child.

**9.        Section 30F replaced**

Delete section 30F and insert:

**30F.     Duration of police orders**

- (1) A police order —
  - (a) remains in force for 72 hours (or any shorter period specified in the order in accordance with subsection (2)) after it has been served on the person to be bound by it; and



- (b) lapses if it is not served on the person to be bound by it within 24 hours of the order being made.
- (2) A period shorter than 72 hours may be specified in the police order if, in the opinion of the police officer who makes the order, that shorter period would be sufficient for an application to be made to a court under Division 3.

**10. Section 30G deleted**

Delete section 30G.

**11. Section 31A inserted**

At the beginning of Part 2 Division 4 insert:

**31A. Term used: respondent**

In this Division —

***respondent***, in respect of an interim order or final order, means the person bound by the order.

**12. Section 32 amended**

After section 32(4) insert:

- (5) Where an interim order (the ***earlier order***) becomes a final order under subsection (2), the respondent may within 21 days of being notified under subsection (4), or such further period as the court may allow at a hearing fixed under subsection (6), apply to the court, in the prescribed form setting out the grounds of the application, to have that final order set aside.

- (6) On receiving an application under subsection (5) the registrar is to fix a hearing, to be held in the absence of the other party to the proceedings, at which, subject to subsection (7), the court —
  - (a) where the application was made out of time, is to grant leave for the person to continue the application out of time if satisfied that there was a reasonable excuse for not commencing the application within the time allowed; and
  - (b) after taking into account the grounds of the application, is to —
    - (i) adjourn the hearing of the matter to allow the other party to oppose the application if the court is satisfied that the respondent may have had a reasonable cause not to return the respondent's endorsement copy of the earlier order in accordance with section 31; or
    - (ii) dismiss the application.
- (7) If the respondent does not attend a hearing fixed under subsection (6), the court, if it is satisfied that the respondent was notified of the hearing, is to dismiss the application.
- (8) If the court adjourns the hearing of the matter under subsection (6)(b)(i) the registrar is to fix a hearing and summons the other party to the hearing.
- (9) At a hearing fixed under subsection (8), where the other party is present, or if the other party is not present the court is satisfied the other party was served with the summons, the court is to hear the matter and —
  - (a) if satisfied that the respondent had reasonable cause not to return the respondent's endorsement copy of the earlier order in

accordance with section 31, is to set aside the final order; or

(b) is to dismiss the application.

(10) Where, under subsection (9)(a), the court sets aside the final order —

(a) the court is to make an interim order in the same terms as the earlier order, unless any new ground or matter is raised at the hearing fixed under subsection (6) or (8); and

(b) section 33 applies as if the respondent had —

(i) returned the respondent's endorsement copy of the interim order in accordance with section 31; and

(ii) indicated on it that the respondent objected to the interim order becoming final.

**13. Section 45 amended**

In section 45(6) delete “given a copy of the application.” and insert:

served with a summons under section 47.

**14. Section 53G inserted**

At the end of Part 6 Division 1 insert:

**53G. Arrangements for care and wellbeing of children bound by restraining orders**

(1) A court is not to make a restraining order against a child that might affect the care and wellbeing of the

child unless the court is satisfied that appropriate arrangements have been made for the care and wellbeing of the child.

- (2) If a court makes a restraining order of the kind referred to in subsection (1), the court may require the parties to the proceedings to appear before the court on a regular basis during the period that the order is in force in order to report on those arrangements.

**15. Sections 61A and 61B inserted**

After section 61 insert:

**61A. Penalty for repeated breach of restraining order**

- (1) In this section —  
**conviction** —
- (a) includes a finding or admission of guilt despite a conviction not being recorded under the *Young Offenders Act 1994* section 55; and
  - (b) does not include a conviction that has been set aside or quashed.
- (2) This section applies if a person —
- (a) is convicted of an offence under section 61(1) or (2a) (the **relevant offence**); and
  - (b) has committed, and been convicted of, at least 2 offences under section 61(1) or (2a) within the period of 2 years before the person's conviction of the relevant offence.
- (3) This section applies despite the *Sentencing Act 1995* and the *Young Offenders Act 1994*.

- (4) Except as provided in subsection (6), if the person is a child a penalty must be imposed on the person for the relevant offence that is or includes —
  - (a) imprisonment under the *Young Offenders Act 1994* section 118(1)(a); or
  - (b) detention under the *Young Offenders Act 1994* section 118(1)(b).
- (5) Except as provided in subsection (6), if the person is not a child a penalty must be imposed on the person for the relevant offence that is or includes imprisonment.
- (6) A court may decide not to impose a penalty on the person that is or includes imprisonment or detention, as the case requires, if —
  - (a) imprisonment or detention would be clearly unjust given the circumstances of the offence and the person; and
  - (b) the person is unlikely to be a threat to the safety of a person protected or the community generally.
- (7) A court that does not, because of subsection (6), impose a penalty on a person that is or includes imprisonment or detention must give written reasons why imprisonment or detention was not imposed.

**61B. Protected person aiding breach of a restraining order or police order**

- (1) In this section —  
*aid*, in relation to the breach of an order, means —
  - (a) do or omit to do any act for the purpose of enabling or aiding a person bound by the order to commit the breach; or
  - (b) aid a person bound by the order to commit the breach; or

- (c) counsel or procure a person bound by the order to commit the breach;

***bound person***, in relation to an order, means the person bound by the order;

***order*** means a restraining order or a police order;

***protected person***, in relation to an order, means the person protected by the order.

- (2) In the sentencing of a bound person for an offence under section 61, any aiding of the breach of the order by the protected person is not a mitigating factor for the purposes of the *Sentencing Act 1995* section 8(1).
- (3) Despite *The Criminal Code* section 7, the protected person does not commit an offence under section 61 by aiding the breach of the order.
- (4) However in the case of a breach of a restraining order, the court sentencing the bound person may, if it is satisfied that the protected person aided the breach, on its own initiative exercise the powers in section 49(1)(b) and (c) and (1a) as if it were hearing an application under section 45, and section 49(1b) to (5) apply with any necessary modifications.

## **Part 3 — *Criminal Investigation Act 2006* amended**

**16. Act amended**

This Part amends the *Criminal Investigation Act 2006*.

**17. Section 128 amended**

In section 128(1) delete the definition of *serious offence* and insert:

*serious offence* means an offence —

- (a) the statutory penalty for which is or includes imprisonment for 5 years or more or life; or
- (b) under the *Restraining Orders Act 1997* section 61(1) or (2a); or
- (c) that involves an act of family and domestic violence as referred to in the definition of ***act of family and domestic violence*** paragraphs (a) to (c) and (f) in the *Restraining Orders Act 1997* section 6(1).

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