

Western Australia

Restraining Orders Amendment Act 2000

As at 30 Jun 2000

No. 22 of 2000

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Restraining Orders Amendment Act 2000

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Western Australia

Restraining Orders Amendment Act 2000

No. 22 of 2000

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

[Assented to 30 June 2000]

The Parliament of Western Australia enacts as follows:

1. Short title

This Act may be cited as the *Restraining Orders Amendment Act 2000*.

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2. Commencement

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

3. The Act amended

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

[* *Act No. 19 of 1997.*

For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p. 215 and Act No. 11 of 1999.]

4. Section 3 amended

Section 3 is amended as follows:

- (a) by inserting the following definition in its appropriate alphabetical position —

“

“**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 authorized under section 29 of that Act;

”;

- (b) by deleting paragraph (d) of the definition of “final order” and inserting the following paragraph instead —

“

- (d) that is a final order under section 63(4a);

”;

- (c) in the definition of “interim order” by inserting after “section 29(1)(a)” —
“ or 63(4b) ”.

5. Section 7 amended

Section 7(a) is amended by inserting after “of the child” —
“ or a child welfare officer ”.

6. Section 18 replaced

Section 18 is repealed and the following section is inserted instead —

“

18. Who can apply

- (1) An application for a violence restraining order may be made under this Division by —
 - (a) an authorized person on behalf of the person to be protected; or
 - (b) the person to be protected if he or she is introduced to the authorized magistrate by an authorized 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

s. 7. Section 25 replaced

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 authorized magistrate by an
authorized person.

- (3) An authorized person is not to make an application, or
introduce a person to make an application, under
subsection (1) or (2) unless the authorized person
reasonably believes that the case meets the criteria set
out in section 20(1).

”.

7. Section 25 replaced

Section 25 is repealed and the following section is inserted
instead —

“

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.

”.

8. Section 38 replaced

Section 38 is repealed and the following section is inserted instead —

“

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.

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- (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.

”.

9. Section 42 amended

Section 42(2)(a) is deleted and the following paragraph is inserted instead —

“

- (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;

”.

10. Section 45 replaced and consequential amendments

- (1) Section 45 is repealed and the following section is inserted instead —

“

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.

”.

- (2) Section 46(1) is amended by deleting “45(1)(e)” and inserting instead —

“ 45(1)(c) ”.
- (3) Section 47(1) is amended by deleting “45(1)(a) to (d)” and inserting instead —

“ 45(1)(a) or (b), (2) or (3) ”.
- (4) Section 48(1) is amended by deleting “45(1)” and inserting instead —

“ 45 ”.

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11. Section 47 amended

Section 47(2) is amended by deleting paragraphs (a), (b) and (c) and inserting instead —

“

- (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 guardian 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.

”.

12. Section 61 amended

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

“

- (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.

”.

13. Section 63 amended

- (1) Section 63(1), (2) and (3) are repealed and the following subsections are inserted instead —

“

- (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;

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- (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.

”.

- (2) Section 63(4) is amended by deleting “subsection (2)” and inserting instead —

“ this section ”.

- (3) After section 63(4) the following subsections are inserted —

“

- (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.

”.

- (4) Section 63(5), (6) and (7) are amended by deleting “subsection (2)” and inserting instead —

“ this section ”.

14. Section 64 amended

After section 64(6) the following subsection is inserted —

“

- (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*.

”.

15. Section 75 amended

Section 75(1) is repealed and the following subsections are inserted instead —

“

- (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.

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- (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.

”.

16. Section 79B amended

Section 79B(1) is repealed and the following subsections are inserted instead —

“

- (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.

”.

17. Section 86 amended

Section 86(1) is amended by deleting “order.” and inserting instead —

“ order made at a final order hearing. ”.
