

APPENDIX C

NORTHERN TERRITORY OF AUSTRALIA

DRAFT DOMESTIC VIOLENCE LEGISLATION

*Justices Amendment Bill (No. 2)*

*Police Administration Amendment Bill (No. 2)*

*Bail Amendment Bill (No. 2)*

(These Bills were tabled in the  
Legislative Assembly by the  
Hon. Stephen Paul Hatton, the Chief Minister,  
during the May 1988 sittings of the Assembly)



Serial 107  
Justices Amendment  
(No. 2)  
Mr Hatton

## NORTHERN TERRITORY OF AUSTRALIA

# A BILL for AN ACT

to amend the *Justices Act*

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

### 1. SHORT TITLE

This Act may be cited as the *Justices Amendment Act (No. 2) 1988*.

### 2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

### 3. PRINCIPAL ACT

The *Justices Act* is in this Act referred to as the Principal Act.

### 4. REPEAL AND SUBSTITUTION

Division 7 of Part IV of the Principal Act is repealed and the following substituted:

*"Division 7 - Orders to Keep the Peace*

#### "99. ORDER TO KEEP PEACE

"(1) Where, on a complaint made in accordance with subsection (2), the Court is satisfied, on the balance of probabilities -

(a) that the defendant -

(i) has caused personal injury or damage to property; and

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- (ii) is, unless restrained, likely again to cause personal injury or damage to property;
- (b) that the defendant -
  - (i) has threatened to cause personal injury or damage to property; and
  - (ii) is, unless restrained, likely to carry out that threat; or
- (c) that -
  - (i) the defendant has behaved in a provocative or offensive manner;
  - (ii) the behaviour is such as is likely to lead to a breach of the peace; and
  - (iii) the defendant is, unless restrained, likely again to behave in the same or a similar manner,

it may make an order imposing such restraints on the defendant as are necessary or desirable to prevent the defendant from acting in the apprehended manner.

"(2) A complaint under this section may be made by -

- (a) a member of the Police Force; or
- (b) a person against whom, or against whose property, the behaviour the subject of the complaint was or is likely to be directed.

"(3) An order under subsection (1) may be made in the absence of the defendant whether or not the defendant was summoned to appear at the hearing of the complaint.

"(4) As soon as practicable after an order under subsection (1) is made, the Clerk shall cause a copy of the order to be served personally on the defendant and shall forward a copy of the order to the Commissioner of Police and, where the complainant is not a member of the Police Force, the complainant.

"(5) Subject to subsection (6), an order under subsection (1) has effect immediately it is made notwithstanding that a copy of the order may not have been served under subsection (4) on the defendant.

"(6) Where an order under subsection (1) is made in the absence of the defendant and the defendant was not summoned to appear at the hearing of the complaint, the defendant shall be summoned to appear before the Court to show cause why the order should not be confirmed and the order is not effective after the conclusion of the hearing to which the defendant is summoned unless -

- (a) the defendant does not appear at that hearing in obedience to the summons; or
- (b) the Court, having considered the evidence of or adduced by the defendant, and any other evidence before it, confirms the order.

"(7) As soon as practicable after the conclusion of the hearing to which the defendant is summoned under subsection (6), the Clerk shall cause a copy of the order recording the decision of the Court to be served personally on the defendant and shall also cause a copy to be sent to the Commissioner of Police and, where the complainant is not a member of the Police Force, also to the complainant.

"(8) An order confirmed as referred to in subsection (6) continues to have effect notwithstanding that a copy of the order recording the decision of the Court may not have been served under subsection (7) on the defendant.

"(9) Without limiting the generality of subsection (1), the Court may make an order under that subsection restraining the defendant from entering premises, or limiting his or her access to premises, whether or not the defendant has a legal or equitable interest in the premises, but before making such an order it shall consider the effect of making or declining to make the order -

- (a) on the accommodation of; and
- (b) on any children of, or in the care of,

the persons affected by the proceedings.

#### "100. ORDERS IN SPECIAL CIRCUMSTANCES

"(1) A member of the Police Force may, by telephone, apply to a magistrate for an order under this section.

"(2) Before applying to a magistrate for an order under this section the member of the Police Force shall prepare a form of complaint and affidavit setting out the grounds on which the making of the order is sought.

"(3) Where in the opinion of the magistrate to whom an application under subsection (1) is made it is not practicable for the member of the Police Force, in the circumstances of the case, to obtain from the Court an order under section 99(1), the magistrate may make an order under this section in the same terms as the Court may make an order under section 99(1) notwithstanding that the person against whom the order is made has not been given an opportunity to answer any allegation in the complaint, and the order has effect according to its tenor as if it were an order made under that section.

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"(4) A magistrate shall not make an order under this section unless satisfied that he or she might reasonably have made the order under section 99(1) on the grounds set out in the complaint and affidavit referred to in section (2) had the magistrate been sitting as the Court.

"(5) A magistrate who makes an order under this section shall -

- (a) reduce the application to writing;
- (b) complete and sign the order;
- (c) record on the order the reasons for making it and when and where it is to be returned;
- (d) inform the member of the Police Force, by telephone, of the terms of the order and the time and place it is to be returned; and
- (e) as soon as practicable, cause the writ referred to in paragraph (a), and a copy of the order, to be forwarded to the Clerk for the Court file.

"(6) On being informed under subsection (5) of the making and terms of the order, the member of the Police Force shall, in triplicate, prepare a form of the order on the terms furnished to the member by the magistrate and show on the form the name of the magistrate, the date and time the order was made, the time and place it is to be returned, and such other information (if any) as is prescribed.

"(7) As soon as practicable after an order under this section is made, the member of the Police Force shall cause a copy prepared under subsection (6) to be served personally on the defendant and shall forward a copy to the Clerk for the Court file.

"(8) A form of order referred to in subsection (6) shall be deemed to be a summons to the defendant requiring the defendant to appear before the Court, at the time and place shown on the form for its return, to show cause why the order should not be confirmed by the Court.

"(9) An order under this section has effect immediately it is made but has no effect after the conclusion of the hearing to which the defendant is summoned under subsection (8) unless -

- (a) the defendant does not appear at that hearing in obedience to the summons; or
- (b) the Court, having considered the evidence of or adduced by the defendant, and any other evidence before it, confirms the order.

"(10) As soon as practicable after the conclusion of the hearing to which the defendant is summoned under subsection (8), the Clerk shall cause a copy of the order recording the decision of the Court to be served on the defendant.

"(11) An order confirmed as referred to in subsection (9) continues to have effect notwithstanding that a copy of the order recording the decision of the Court may not have been served under subsection (10) on the defendant.

#### "100A. VARIATION OF REVOCATION OF ORDER

"(1) A party to a proceeding in which an order has been made under section 99(1) or 100(3) may, at any time, apply to the Court for a variation or revocation of the order.

"(2) The Court may, on receiving an application under subsection (1) or of its own motion, after all parties and other person who, in the opinion of the Court, have a direct interest in the outcome have had an opportunity to be heard on the matter, vary or revoke, or refuse to vary or revoke, an order made under section 99(1) or 100(3).

"(3) Where an order made under section 99(1) or 100(3) is varied or revoked under this section, the Clerk shall, as soon as practicable, cause a copy of the order as so varied or notice of the revocation, as the case may be, to be served personally on the defendant and shall also notify the Commissioner of Police and, where the complainant in relation to the original order was not a member of the Police Force, the complainant, of the variation or revocation.

"(4) The variation of an order under this section has effect immediately the variation order is made, whether or not the defendant is present or has been served under subsection (3) with a copy of the order.

#### "100B. BREACH OF ORDER

"(1) A person against whom an order under this Division is in force who contravenes or fails to comply with the order is, subject to subsection (2), guilty of a regulatory offence.

Penalty: \$1,000 or imprisonment for 6 months.

"(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves on the balance of probabilities that -

- (a) the contravention or failure was as the result of such an emergency that an ordinary person similarly circumstanced would have acted in the same or a similar way;

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- (b) the act complained of was reasonable and no more than was necessary to enable the defendant to exercise a right or perform a duty specifically given to or imposed on the defendant by a Commonwealth or Territory court or a court of a State or another Territory of the Commonwealth exercising Territory jurisdiction; or
- (c) the defendant did not know and had no reasonable suspect that such an order had been made and was in force.

"100C. EXPARTE PROCEDURES NOT TO APPLY

"Sections 62, 62AB and 63A do not apply to or in relation to a complaint under section 99 or 100.

"100D. EVIDENCE

"In making, confirming, varying or revoking an order under this Division the Court or magistrate may admit or act on hearsay evidence."

5. TRANSITIONAL

(1) Notwithstanding the repeal effected by section 4 but subject to subsection (2) of this section, Division 7 of Part IV of the Principal Act continues to apply to and in relation to all orders made and recognizances entered into under, and sureties referred to in, this Division and in force immediately before the commencement of this Act as if this Act had never commenced, and they may be enforced accordingly.

(2) An order referred to in subsection (1) may be varied or revoked under Division 7 of Part IV of the Principal Act as amended by this Act as if it were an order duly made under section 99 of the Principal Act as amended by this Act, and section 100B of the Principal Act as amended by this Act applies accordingly.



Serial 110  
Police Administration  
Amendment (No. 2)  
Mr Hatton

## NORTHERN TERRITORY OF AUSTRALIA

### A BILL for AN ACT

to amend the *Police Administration Act*

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

#### 1. SHORT TITLE

This Act may be cited as the *Police Administration Amendment Act (No. 2) 1988*.

#### 2. COMMENCEMENT

This Act shall come into operation on the commencement of the *Justices Amendment Act (No. 2) 1988*

#### 3. POWER TO ENTER TO MAKE ARREST OR PRESERVE PEACE

Section 126 of the *Police Administration Act* is amended by inserting after subsection (2) the following:

"(2A) A member of the Police Force may enter any premises, vehicle or vessel if he believes, on reasonable grounds, that -

- (a) a person on or in the premises, vehicle or vessel has suffered, is suffering or is in imminent danger of suffering personal injury at the hands of another person; or
- (b) a contravention of an order under Division 7 of Part IV of the *Justices Act* has occurred, is occurring or is about to occur on or in the premises, vehicle or vessel,



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and remain on or in the premises, vehicle or vessel for such period as the member considers necessary -

- (c) to verify the grounds of the member's belief;
- (d) to ensure that, in the member's opinion, the danger no longer exists;
- (e) to prevent a breach of the peace or a contravention of the order; or
- (f) where a person on or in the premises, vehicle or vessel has suffered personal injury, to give or arrange such assistance to that person as is reasonable in the circumstances.

"(2B) In subsection (2A) 'premises' includes land and any building or structure on land."

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Serial 109  
Bail Amendment  
(No. 2)  
Mr Hatton

## NORTHERN TERRITORY OF AUSTRALIA

# A BILL for AN ACT

to amend the *Bail Act*

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

### 1. SHORT TITLE

This Act may be cited as the *Bail Amendment Act (No. 2) 1988*.

### 2. COMMENCEMENT

This Act shall come into operation on the commencement of the *Justices Amendment Act (No. 2) 1988*.

### 3. CRITERIA TO BE CONSIDERED IN BAIL APPLICATIONS

Section 24(1) of the *Bail Act* is amended -

- (a) by omitting from paragraph (b)(iv) "and";
- (b) by omitting from paragraph (c)(iv) "the child or juvenile." and substituting "the child or juvenile; and" and
- (c) by adding at the end the following:
  - "(d) where the offence alleged against the accused person involves the contravention of, or a failure to comply with, an order under Division 7 of Part IV of the *Justices Act*, the likelihood of -
    - (i) personal injury being caused, or threats being made, to a person for whose benefit, expressly or impliedly, the order exists;

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- (ii) damage to property in the possession of being used by a person referred to subparagraph (i) occurring; or
  - (iii) a breach of the peace involving accused person occurring."
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