



STATUTES AMENDMENT (RESTRAINING ORDERS) ACT 1999

No. 24 of 1999

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ELIZABETHAE II REGINAE

A.D. 1999

No. 24 of 1999

An Act to amend the Criminal Law (Sentencing) Act 1988, the Domestic Violence Act 1994 and the Summary Procedure Act 1921.

[Assented to 1 April 1999]

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Statutes Amendment (Restraining Orders) Act 1999*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. A reference in this Act to the principal Act is a reference to the Act referred to in the heading to the Part in which the reference occurs.

**PART 2
AMENDMENT OF CRIMINAL LAW (SENTENCING) ACT 1988**

Amendment of s. 19A—Restraining orders may be issued on finding of guilt or sentencing

4. Section 19A of the principal Act is amended by inserting after subsection (1) the following subsection:

(1a) Before issuing an order under this section the court must consider whether, if the whereabouts of the person for whose benefit the order would be issued are not known to the defendant, the issuing of the order would be counterproductive.

PART 3
AMENDMENT OF DOMESTIC VIOLENCE ACT 1994

Amendment of s. 4—Grounds for making domestic violence restraining orders

5. Section 4 of the principal Act is amended—

(a) by striking out from subsection (2)(c) "so as to reasonably arouse a family member's apprehension or fear" and substituting "so as to reasonably arouse in a family member apprehension or fear of personal injury or damage to property or any significant apprehension or fear";

(b) by inserting after subsection (2) the following subsections:

(3) The Court may—

(a) in determining whether there is a reasonable apprehension that the defendant may, unless restrained, commit domestic violence, take into account events that have taken place outside of this State; and

(b) make a domestic violence restraining order against a defendant whether resident in or outside of this State.

(4) If a defendant disputes some or all of the grounds on which a domestic violence restraining order is sought or made but consents to the order, the Court may make or confirm the order without receiving any further submissions or evidence as to the grounds.

Amendment of s. 5—Terms of domestic violence restraining orders

6. Section 5 of the principal Act is amended—

(a) by inserting after paragraph (j) of subsection (2) the following paragraph:

(k) if the defendant has possession of a weapon or article (other than a firearm) that has been used, or that there is some reason to believe might be used, by the defendant to threaten or injure a family member or to damage the property of a family member—

(i) order that the weapon or article be confiscated and disposed of or dealt with as directed by the Court; and

(ii) if the circumstances of the case so require—authorise a member of the police force to enter any premises in which such a weapon or article is suspected to be, and search for and take possession of the weapon or article.;

(b) by inserting after subsection (3) the following subsection:

(4) If a domestic violence restraining order that includes an order for the confiscation of a weapon or article is subject to confirmation and the domestic violence restraining order is not confirmed, any weapon or article confiscated under the order must be returned to the defendant.

Amendment of s. 8—Complaints by telephone**7. Section 8 of the principal Act is amended—**

(a) by striking out subsection (2) and substituting the following subsection:

(2) Proceedings conducted by telephone under this section—

- (a) need not be open to the public;
- (b) must be recorded by audio tape or other form of recording from which sound can be produced.;

(b) by striking out subsections (3) and (4) and substituting the following subsections:

(3) The Court may, from time to time without requiring the attendance of any party, adjourn the hearing to which a defendant is summoned under subsection (1)(c) to a later date if satisfied that the summons has not been served or that there is other adequate reason for the adjournment.

(4) The date fixed in the first instance for the hearing to which a defendant is summoned under subsection (1)(c) must be within 7 days of the date of the order, and the date fixed under subsection (3) for an adjourned hearing must be within 7 days of the date on which the adjournment is ordered, unless the Court is satisfied—

- (a) that a later date is required to enable the summons to be served; or
- (b) that there is other adequate reason for fixing a later date.;

(c) by striking out paragraph (b) of subsection (5) and substituting the following paragraph:

- (b) will not be effective after the conclusion of the hearing to which the defendant is summoned, or the adjourned hearing, unless the Court confirms the order—
 - (i) on failure of the defendant to appear at the hearing in obedience to the summons; or
 - (ii) having considered any evidence given by or on behalf of the defendant; or
 - (iii) with the consent of the defendant.;

(d) by inserting after subsection (5) the following subsection:

(5a) The Court may confirm a domestic violence restraining order in an amended form.

Amendment of s. 9—Issue of domestic violence restraining order in absence of defendant**8. Section 9 of the principal Act is amended—**

(a) by striking out subsection (2) and substituting the following subsection:

(2) A domestic violence restraining order may be made in the absence of the defendant and despite the fact that the defendant was not summoned to appear at the hearing of the complaint, but in that case, the Court must summon the defendant to appear before the Court to show cause why the order should not be confirmed.;

(b) by striking out subsections (4), (5) and (6) and substituting the following subsections:

(4) The Court may, from time to time without requiring the attendance of any party, adjourn the hearing to which a defendant is summoned under subsection (2) to a later date if satisfied that the summons has not been served or that there is other adequate reason for the adjournment.

(5) The date fixed in the first instance for the hearing to which a defendant is summoned under subsection (2) must be within 7 days of the date of the order, and the date fixed under subsection (4) for an adjourned hearing must be within 7 days of the date on which the adjournment is ordered, unless the Court is satisfied—

(a) that a later date is required to enable the summons to be served; or

(b) that there is other adequate reason for fixing a later date.

(6) A domestic violence restraining order made under subsection (2)—

(a) continues in force until the conclusion of the hearing to which the defendant is summoned or, if the hearing is adjourned, until the conclusion of the adjourned hearing; but

(b) will not be effective after the conclusion of the hearing to which the defendant is summoned, or the adjourned hearing, unless the Court confirms the order—

(i) on failure of the defendant to appear at the hearing in obedience to the summons; or

(ii) having considered any evidence given by or on behalf of the defendant; or

(iii) with the consent of the defendant.

(7) The Court may confirm a domestic violence restraining order in an amended form.

(8) If a hearing is adjourned under this section, the Court need not be constituted at the adjourned hearing of the same judicial officer as ordered the adjournment.

Amendment of s. 10—Firearms orders

9. Section 10 of the principal Act is amended—

(a) by inserting after paragraph (c) of subsection (1) the following paragraph:

(d) an order that the defendant be prohibited from possessing a firearm in the course of his or her employment.;

(b) by inserting after paragraph (c) of subsection (2) the following paragraph:

- (d) an order prohibiting the defendant from possessing a firearm in the course of his or her employment will lapse if the domestic violence restraining order is not confirmed.

Amendment of s. 11—Service

10. Section 11 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsections:

(2) If a domestic violence restraining order is confirmed in an amended form or is varied before being confirmed or at any other time, the order in its amended form must be served on the defendant personally and until so served—

- (a) the variation is not binding on the defendant; but
- (b) the order as in force prior to the variation continues to be binding on the defendant.

(3) If a member of the police force has reason to believe that a person is subject to a domestic violence restraining order that has not been served on the person, the member may—

- (a) require the person to remain at a particular place for—
- (i) so long as may be necessary for the order, and, if the order is subject to confirmation, the summons to appear before the Court to show cause why the order should not be confirmed, to be served on the person; or
- (ii) two hours,
- whichever is the lesser; and
- (b) if the person refuses or fails to comply with the requirement or the member has reasonable grounds to believe that the requirement will not be complied with, arrest and detain the person in custody (without warrant) for the period referred to in paragraph (a).

(4) The Court may, when making a firearms order, order that a member of the police force, the complainant or the defendant serve a copy of the firearms order on an employer of the defendant specified by the Court in whose employment the Court has reason to believe the defendant may be supplied with or have access to a firearm.

Amendment of s. 12—Variation or revocation of domestic violence restraining order

11. Section 12 of the principal Act is amended—

- (a) by inserting after subsection (1) the following subsection:

(1a) An application for variation or revocation of a domestic violence restraining order may only be made by the defendant with the leave of the Court and leave is only to be granted if the Court is satisfied there has been a substantial change in the relevant circumstances since the order was made or last varied.;

(b) by inserting in subsection (3) "under this section" after "order" first occurring.

Amendment of s. 15—Offence to contravene or fail to comply with domestic violence restraining order

12. Section 15 of the principal Act is amended by striking out the penalty provision from subsection (1) and substituting the following penalty provision:

Maximum penalty: Imprisonment for 2 years.

**PART 4
AMENDMENT OF SUMMARY PROCEDURE ACT 1921**

Amendment of s. 99—Restraining orders

13. Section 99 of the principal Act is amended—

(a) by striking out from subsection (2)(c) "so as to reasonably arouse the person's apprehension or fear" and substituting "so as to reasonably arouse in the person apprehension or fear of personal injury or damage to property or any significant apprehension or fear";

(b) by inserting after subsection (2) the following subsections:

(2a) The Court may—

- (a) in determining whether there is a reasonable apprehension that the defendant may, unless restrained, cause personal injury or damage to property or behave in an intimidating or offensive manner, take into account events that have taken place outside of this State; and
- (b) make a restraining order against a defendant whether resident in or outside of this State.

(2b) If a defendant disputes some or all of the grounds on which a restraining order is sought or made but consents to the order, the Court may make or confirm the order without receiving any further submissions or evidence as to the grounds.;

(c) by inserting after subsection (3) the following subsections:

(3a) Without limiting the effect of subsection (3), if the defendant has possession of a weapon or article (other than a firearm) that has been used, or that there is some reason to believe might be used, by the defendant to threaten or injure a person or to damage property, a restraining order may—

- (a) order that the weapon or article be confiscated and disposed of or dealt with as directed by the Court; and

- (b) if the circumstances of the case so require—authorise a member of the police force to enter any premises in which such a weapon or article is suspected to be, and search for and take possession of the weapon or article.

(3b) If a restraining order that includes an order for the confiscation of a weapon or article is subject to confirmation and the restraining order is not confirmed, any weapon or article confiscated under the order must be returned to the defendant.

Amendment of s. 99B—Complaints by telephone

14. Section 99B of the principal Act is amended—

- (a) by striking out subsection (2) and substituting the following subsection:

(2) Proceedings conducted by telephone under this section—

- (a) need not be open to the public;
- (b) must be recorded by audio tape or other form of recording from which sound can be produced.;

- (b) by striking out subsections (3) and (4) and substituting the following subsections:

(3) The Court may, from time to time without requiring the attendance of any party, adjourn the hearing to which a defendant is summoned under subsection (1)(c) to a later date if satisfied that the summons has not been served or that there is other adequate reason for the adjournment.

(4) The date fixed in the first instance for the hearing to which a defendant is summoned under subsection (1)(c) must be within 7 days of the date of the order, and the date fixed under subsection (3) for an adjourned hearing must be within 7 days of the date on which the adjournment is ordered, unless the Court is satisfied—

- (a) that a later date is required to enable the summons to be served; or
- (b) that there is other adequate reason for fixing a later date.;

- (c) by striking out paragraph (b) of subsection (5) and substituting the following paragraph:

(b) will not be effective after the conclusion of the hearing to which the defendant is summoned, or the adjourned hearing, unless the Court confirms the order—

- (i) on failure of the defendant to appear at the hearing in obedience to the summons; or
- (ii) having considered any evidence given by or on behalf of the defendant; or
- (iii) with the consent of the defendant.;

- (d) by inserting after subsection (5) the following subsection:

(5a) The Court may confirm a restraining order in an amended form.

Amendment of s. 99C—Issue of restraining order in absence of defendant**15. Section 99C of the principal Act is amended—**

(a) by striking out subsection (2) and substituting the following subsection:

(2) A restraining order may be made in the absence of the defendant and despite the fact that the defendant was not summoned to appear at the hearing of the complaint, but in that case, the Court must summon the defendant to appear before the Court to show cause why the order should not be confirmed.;

(b) by striking out subsections (4), (5) and (6) and substituting the following subsections:

(4) The Court may, from time to time without requiring the attendance of any party, adjourn the hearing to which a defendant is summoned under subsection (2) to a later date if satisfied that the summons has not been served or that there is other adequate reason for the adjournment.

(5) The date fixed in the first instance for the hearing to which a defendant is summoned under subsection (2) must be within 7 days of the date of the order, and the date fixed under subsection (4) for an adjourned hearing must be within 7 days of the date on which the adjournment is ordered, unless the Court is satisfied—

(a) that a later date is required to enable the summons to be served; or

(b) that there is other adequate reason for fixing a later date.

(6) A restraining order made under subsection (2)—

(a) continues in force until the conclusion of the hearing to which the defendant is summoned or, if the hearing is adjourned, until the conclusion of the adjourned hearing; but

(b) will not be effective after the conclusion of the hearing to which the defendant is summoned, or the adjourned hearing, unless the Court confirms the order—

(i) on failure of the defendant to appear at the hearing in obedience to the summons; or

(ii) having considered any evidence given by or on behalf of the defendant; or

(iii) with the consent of the defendant.

(7) The Court may confirm a restraining order in an amended form.

(8) If a hearing is adjourned under this section, the Court need not be constituted at the adjourned hearing of the same judicial officer as ordered the adjournment.

Amendment of s. 99D—Firearms orders

16. Section 99D of the principal Act is amended—

(a) by inserting after paragraph (c) of subsection (1) the following paragraph:

(d) an order that the defendant be prohibited from possessing a firearm in the course of his or her employment.;

(b) by inserting after paragraph (c) of subsection (2) the following paragraph:

(d) an order prohibiting the defendant from possessing a firearm in the course of his or her employment will lapse if the restraining order is not confirmed.

Amendment of s. 99E—Service

17. Section 99E of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsections:

(2) If a restraining order is confirmed in an amended form or is varied before being confirmed or at any other time, the order in its amended form must be served on the defendant personally and until so served—

(a) the variation is not binding on the defendant; but

(b) the order as in force prior to the variation continues to be binding on the defendant.

(3) If a member of the police force has reason to believe that a person is subject to a restraining order that has not been served on the person, the member may—

(a) require the person to remain at a particular place for—

(i) so long as may be necessary for the order, and, if the order is subject to confirmation, the summons to appear before the Court to show cause why the order should not be confirmed, to be served on the person; or

(ii) two hours,

whichever is the lesser; and

(b) if the person refuses or fails to comply with the requirement or the member has reasonable grounds to believe that the requirement will not be complied with, arrest and detain the person in custody (without warrant) for the period referred to in paragraph (a).

(4) The Court may, when making a firearms order, order that a member of the police force, the complainant or the defendant serve a copy of the firearms order on an employer of the defendant specified by the Court in whose employment the Court has reason to believe the defendant may be supplied with or have access to a firearm.

Amendment of s. 99F—Variation or revocation of restraining order

18. Section 99F of the principal Act is amended—

(a) by inserting after subsection (1) the following subsection:

(1a) An application for variation or revocation of a restraining order may only be made by the defendant with the leave of the Court and leave is only to be granted if the Court is satisfied there has been a substantial change in the relevant circumstances since the order was made or last varied.;

(b) by inserting in subsection (3) "under this section" after "order" first occurring.

Amendment of s. 189—Costs

19. Section 189 of the principal Act is amended—

(a) by striking out from subsection (1) "subsection (2)" and substituting "this section";

(b) by inserting after subsection (2) the following subsection:

(2a) Costs will not be awarded against a complainant in proceedings for a restraining order unless the Court is satisfied that the complainant has acted in bad faith or unreasonably in bringing the proceedings.;

(c) by inserting after subsection (7) the following subsection:

(8) In this section—

"restraining order" includes a domestic violence restraining order under the *Domestic Violence Act 1994*.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

E. J. NEAL Governor