



**JUSTICE LEGISLATION AMENDMENT (DOMESTIC
VIOLENCE) ACT 1992**

No. 21 of 1992

**AN ACT to amend the *Criminal Code*, the *Justices Act 1959*
and the *Police Offences Act 1935***

[Royal Assent 6 August 1992]

BE it enacted by His Excellency the Governor of Tasmania,
by and with the advice and consent of the Legislative
Council and House of Assembly, in Parliament assembled, as
follows:—

PART 1

PRELIMINARY

Short title

1—This Act may be cited as the *Justice Legislation
Amendment (Domestic Violence) Act 1992*.

Commencement

2—This Act commences on the day on which it receives the Royal Assent.

PART 2**AMENDMENTS OF CRIMINAL CODE*****Appendix A to *Criminal Code* amended (Crimes for which offender may be arrested without warrant)**

3—Appendix A to the *Criminal Code* is amended by inserting the following items before the item “Any crime under Chapter V.”:—

Assault.

Aggravated assault.

PART 3**AMENDMENTS OF JUSTICES ACT 1959†****Section 34 amended (Release by police officer)**

4—Section 34 (1) of the *Justices Act 1959* is amended as follows:—

(a) by inserting “or for the purpose of applying for a restraint order under Part XA” after “offence”;

* Schedule 1 to 14 Geo. V No. 69. For the *Criminal Code Act 1924* and the *Criminal Code*, as amended to 1 March 1980, see the continuing Reprint of Statutes. Subsequently amended by No. 19 of 1980, No. 52 of 1981, Nos. 33 and 99 of 1982, No. 77 of 1983, No. 3 of 1984, No. 17 of 1985, Nos. 77, 86 and 93 of 1986, Nos. 26, 71, 81 and 83 of 1987, Nos. 14 and 29 of 1988, Nos. 7, 9 and 33 of 1989, No. 13 of 1990 and Nos. 3, 43 and 46 of 1991.

† No. 77 of 1959. For this Act, as amended to 1 May 1982, see the continuing Reprint of Statutes. Subsequently amended by Nos. 33 and 51 of 1982, Nos. 45 and 75 of 1983, Nos. 29, 48 and 55 of 1984, Nos. 9, 51 and 121 of 1985, Nos. 45, 77, 93 and 115 of 1986, Nos. 45, 57 and 82 of 1987, Nos. 8 and 15 of 1988, Nos. 13 and 34 of 1989, Nos. 5 and 13 of 1990 and Nos. 41, 43 and 46 of 1991.

- (b) by omitting from paragraph (d) “subsection (3).” and substituting “subsection (3); and”;
- (c) by inserting the following paragraph after paragraph (d) :—
 - (e) in the case of a person taken into custody to facilitate the making of an application for a restraint order under Part XA, on that person undertaking to comply with the conditions—
 - (i) which the officer of police or other police officer considers are necessary or desirable to prevent that person from acting in a manner specified in section 106B (1); and
 - (ii) which are specified in that notice.

Section 34A amended (Procedure on arrest)

5—Section 34A of the *Justices Act 1959* is amended by inserting the following subsections after subsection (2):—

(3) A person taken into custody to facilitate the making of an application for a restraint order under Part XA and not released under section 34 (1) must be brought before a justice as soon as practicable after the person has been taken into custody.

(4) Where a person is brought before a justice under subsection (3), the justice must—

- (a) cause the application for the restraint order to be read to the person or explain to the person, in simple terms, the contents and meaning of the application; and
- (b) determine whether there is alleged against the person conduct of a kind specified in section 106B (1).

(5) If a justice is satisfied that—

- (a) there is not alleged against a person brought before the justice under subsection (3) conduct of a kind specified in section 106B (1), the justice must release the person; or

- (b) there is alleged against that person any such conduct, the justice must—
- (i) proceed as provided in section 35; or
 - (ii) make an interim restraint order under section 106D; or
 - (iii) make a restraint order under section 106B.

Section 106A amended (Interpretation)

6—Section 106A (1) of the *Justices Act 1959* is amended by inserting the following definitions after the definition of “interim restraint order”:

“interstate restraint order” means an order made by a court of another State or a Territory of the Commonwealth which has been made to prevent a person from acting in a manner specified in section 106B (1);

“registered interstate restraint order” means an interstate restraint order which has been registered under section 106GB (1) (a) or (3);

Section 106B amended (Restraint orders)

7—Section 106B of the *Justices Act 1959* is amended by inserting the following subsections after subsection (6):

- (7) A restraint order may—
- (a) cancel or suspend any licence or other permit relating to the possession of a firearm by the person against whom the order is made; and
 - (b) prohibit the person from applying for, or being granted or issued, any such licence or other permit during the period specified in the order.

(8) A cancellation or suspension referred to in subsection (7) takes effect when the restraint order is served on the person against whom it is made.

Section 106D amended (Interim restraint orders)

8—Section 106D of the *Justices Act 1959* is amended by inserting the following subsections after subsection (6):—

- (7) An interim restraint order may—
- (a) suspend, for the period during which the order is in force, any licence or other permit relating to the possession of a firearm by the person against whom the order is made; and
 - (b) prohibit the person from applying for, or being granted or issued, any such licence or other permit during that period.

(8) A suspension referred to in subsection (7) takes effect when the interim restraint order is served on the person against whom it is made.

Sections 106GA, 106GB, 106GC and 106GD inserted

9—After section 106G of the *Justices Act 1959*, the following sections are inserted:—

Application for registration of interstate restraint order

106GA—(1) A person may apply to the Chief Clerk of Petty Sessions for the registration of an interstate restraint order.

- (2) An application is to—
- (a) be made in a form approved by the Chief Clerk of Petty Sessions; and
 - (b) be accompanied by a copy of the interstate restraint order; and
 - (c) be accompanied by such evidence of effective service of the interstate restraint order on the person against whom it was made as the Chief Clerk considers appropriate.

Registration of interstate restraint order

106GB—(1) On receipt of an application under section 106GA, the Chief Clerk of Petty Sessions must—

- (a) register the interstate restraint order to which the application relates; or

- (b) refer that interstate restraint order to justices for adaptation and modification.
- (2) On the referral of an interstate restraint order, justices may—
- (a) vary the period during which the order has effect in its operation in this State; and
- (b) make such other adaptations and modifications to the order as they consider necessary or desirable for its effective operation in this State.
- (3) The Chief Clerk of Petty Sessions must register an interstate restraint order which has been adapted and modified under subsection (2).
- (4) On registering an interstate restraint order, the Chief Clerk of Petty Sessions must provide the Commissioner of Police with a copy of the registered interstate restraint order.
- (5) Notice of the registration of an interstate restraint order is not to be served on the person against whom the order was made except where the person who applied for that registration has consented to that service.
- (6) A registered interstate restraint order is registered for the period during which the order, or the order as adapted and modified, is in force.

Effect of registration of interstate restraint order

106GC—An interstate restraint order which has been registered under section 106GB (1) (a) or (3)—

- (a) has the same effect as a restraint order made under this Part; and
- (b) may be enforced against a person as if it were a restraint order which had been made under this Part and personally served on that person.

Variation, &c., of registered interstate restraint order

106GD—(1) In this section, “prescribed person” means—

- (a) a person who applied for the registration of an interstate restraint order; or
- (b) a person for whose benefit a registered interstate restraint order has been made; or

- (c) a person against whom a registered interstate restraint order has been made; or
- (d) a person whom justices have granted leave to make an application under this section.

(2) A prescribed person may apply to justices for one or more of the following purposes:—

- (a) the variation of a registered interstate restraint order as it applies in this State;
- (b) the variation of the period during which a registered interstate restraint order has effect in its operation in this State;
- (c) the cancellation of the registration of a registered interstate restraint order.

(3) On receipt of an application under subsection (2), justices may do one or more of the acts specified in that subsection.

(4) An application by a person referred to in subsection (1) (a), (b) or (d) may be heard and determined in the absence of any person against whom the registered interstate restraint order has been made.

(5) A registered interstate restraint order varied under subsection (2) (a) or (b) is registered for the period during which the order, as varied, has effect in its operation in this State.

Section 106L amended (Powers of police officer in certain circumstances)

10—Section 106L of the *Justices Act 1959* is amended as follows:—

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

(1A) A police officer who has entered premises pursuant to subsection (1) may apprehend, without warrant, a person on those premises to facilitate the making of an application for a restraint order in respect of that person.

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

(3A) If a person who is on premises entered by a police officer pursuant to subsection (1) alleges to the officer that an object has been used to threaten or injure that person, the officer may, without warrant—

(a) enter any other premises on which the officer has reasonable cause to suspect that the object may be found; and

(b) search any person on those other premises whom the officer has reasonable cause to suspect has possession of the object; and

(c) search those other premises for the object; and

(d) seize and detain the object.

(c) by inserting in subsection (4) “or (3A)” after “subsection (2)”;

(d) by inserting in subsection (5) “or (3A)” after “subsection (2)”.

PART 4

AMENDMENTS OF POLICE OFFENCES ACT 1935*

Section 55 amended (Arrest)

11—Section 55 of the *Police Offences Act 1935* is amended by inserting the following subsections after subsection (2C):—

(2D) A police officer may, without warrant, arrest any person whom the police officer has reasonable grounds for believing has committed an offence under section 35.

(2E) A police officer may, without warrant, arrest a person to facilitate the making of an application for a restraint order under Part XA of the *Justices Act 1959*, if the police officer has reasonable grounds for believing—

(a) that the person has intimidated another person; and

* 26 Geo. V No. 44. For this Act, as amended to 1 October 1977, see the continuing Reprint of Statutes. Subsequently amended by No. 117 of 1976, Nos. 86 and 87 of 1981, Nos. 51, 63, 74 and 99 of 1982, No. 42 of 1984, Nos. 1, 51 and 100 of 1985, No. 93 of 1986, Nos. 13, 90 and 112 of 1987, No. 7 of 1988, Nos. 5, 13 and 44 of 1990 and Nos. 43 and 46 of 1991.

(b) that the intimidation is likely to continue and give rise to an assault.

(2F) For the purposes of subsection (2E), intimidation may be verbal, physical or both verbal and physical.

