



SUMMARY PROCEDURE (RESTRAINING ORDERS) AMENDMENT ACT 1994

No. 20 of 1994

SUMMARY OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of s. 4—Interpretation
4. Substitution of Part 4 Division 7

DIVISION 7—RESTRAINING ORDERS

99. Restraining orders
 - 99A. Complaints
 - 99B. Complaints by telephone
 - 99C. Issue of restraining order in absence of defendant
 - 99D. Firearms orders
 - 99E. Service
 - 99F. Variation or revocation of restraining order
 - 99G. Notification of making, etc., of restraining orders
 - 99H. Registration of foreign restraining orders
 - 99I. Offence to contravene or fail to comply with restraining order
 - 99J. Complaints or applications by or on behalf of child
 - 99K. Burden of proof
 - 99L. Relation to Domestic Violence Act
5. Transitional provision



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ELIZABETHAE II REGINAE

A.D. 1994

No. 20 of 1994

An Act to amend the Summary Procedure Act 1921.

[Assented to 26 May 1994]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Summary Procedure (Restraining Orders) Amendment Act 1994*.

(2) The *Summary Procedure Act 1921* is referred to in this Act as "the principal Act".

Commencement

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

Amendment of s. 4—Interpretation

3. Section 4 of the principal Act is amended—

(a) by inserting in the definition of "defendant" in subsection (1) "or granted" after "sought";

(b) by inserting after the definition of "defendant" in subsection (1) the following definitions:

"firearms order" means an order under section 99D supplementary to an order under section 99;

"foreign restraining order" means an order made under a law of another State or a Territory of the Commonwealth or New Zealand declared by regulation to be a law corresponding to Division 7 of Part 4;

(c) by striking out from subsection (1) the definition of "guardian";

(d) by striking out from subsection (1) the definition of "interstate summary protection order";

(e) by inserting after the definition of "Registrar" in subsection (1) the following definition:

"restraining order" means an order under section 99 and includes a firearms order supplementary to that order;;

(f) by striking out from subsection (1) the definition of "summary protection order".

Substitution of Part 4 Division 7

4. Division 7 of Part 4 of the principal Act is repealed and the following Division is substituted:

DIVISION 7—RESTRAINING ORDERS

Restraining orders

99. (1) On a complaint under this Division, the Court may make a restraining order against the defendant if—

- (a) 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; and
- (b) the Court is satisfied that the making of the order is appropriate in the circumstances.

(2) For the purposes of this section, a defendant behaves in an intimidating or offensive manner if on two or more separate occasions—

- (a) the defendant follows a person; or
- (b) the defendant loiters outside the place of residence of a person or some other place frequented by the person; or
- (c) the defendant enters or interferes with property occupied by, or in the possession of, a person; or
- (d) the defendant gives offensive material to a person or leaves offensive material where it will be found by, given to or brought to the attention of a person; or
- (e) the defendant keeps a person under surveillance; or
- (f) the defendant takes any other action in relation to a person or a person's property,

so as to reasonably arouse the person's apprehension or fear.

(3) A restraining order may impose such restraints on the defendant as are necessary or desirable to prevent the defendant acting in the apprehended manner.

(4) The Court may make a restraining order restraining the defendant from entering premises, or limiting the defendant's access to premises, whether or not the defendant has a legal or equitable interest in the premises, but before making such an order the Court must consider—

- (a) the effect of making or declining to make the order on the accommodation of the persons affected by the proceedings; and
- (b) the effect of making or declining to make the order on any children of, or in the care of, the persons affected by the proceedings.

Complaints

99A. A complaint may be made—

- (a) by a member of the police force; or
- (b) by a person against whom, or against whose property, the behaviour that forms the subject matter of the complaint has been, or may be, directed.

Complaints by telephone

99B. (1) A complaint may be made and dealt with by telephone as follows:

- (a) the complainant must be—
 - (i) a member of the police force who establishes his or her identity and official position in a manner acceptable to the Court; or
 - (ii) a person introduced by a member of the police force who establishes his or her identity and official position in a manner acceptable to the Court;
- (b) the Court must satisfy itself (as far as practicable) that the complaint is genuine, and that the case is of sufficient urgency to justify making a restraining order without requiring the personal attendance of the complainant, by the oral questioning of the complainant and any other available witnesses by telephone;
- (c) if the Court is then satisfied that it is appropriate to make a restraining order, the member of the police force who made the complaint or introduced the complainant—
 - (i) must make out, in accordance with directions communicated by the Court by telephone, a document in the form required by the rules comprising—
 - (A) the terms of the Court's order; and
 - (B) a summons requiring the defendant to appear before the Court at a specified time and place to show cause why the order should not be confirmed; and

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- (ii) must return a copy of the completed document, or send it by facsimile, to the Court;
- (d) if the Court is not satisfied that it is an appropriate case for making a restraining order without requiring the personal attendance of the complainant, the Court may adjourn the hearing of the complaint to a time and place fixed by the Court and inform the complainant of the time and place so fixed.
- (2) A tape recording must be made of any oral proceedings conducted by telephone under this section.
- (3) 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 after the date of the restraining order but, if it then appears—
- (a) that the summons has not yet been served; or
- (b) that there is some other adequate reason to defer the date of the hearing,
- the Court may, without requiring the attendance of any party, adjourn the hearing to a later date.
- (4) Successive adjournments may be granted under subsection (3) but no such adjournment may be for more than 7 days unless the Court is satisfied that there is adequate reason for a longer adjournment.
- (5) A restraining order issued on a complaint made by telephone without requiring the personal attendance of the defendant—
- (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 unless—
- (i) the defendant does not appear at that hearing in obedience to the summons; or
- (ii) the Court, having considered any evidence given by or on behalf of the defendant, confirms the order.
- (6) 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.
- (7) If a member of the police force has reason to believe that a complaint is being or is about to be made against a person by telephone, the member may—

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- (a) require the person to remain at a particular place while the complaint is made and dealt with so that any order or summons made or issued on the complaint may be served on the person; 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—
 - (i) so long as may be necessary for the complaint to be made and dealt with and any order or summons made or issued to be served on the person; or
 - (ii) two hours,whichever is the lesser.

Issue of restraining order in absence of defendant

99C. (1) A restraining order may be made in the absence of the defendant if the defendant was required by summons or conditions of bail to appear at the hearing of the complaint and failed to appear in obedience to the summons.

(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—

- (a) the Court must summon the defendant to appear before the Court to show cause why the order should not be confirmed; and
- (b) the order is not effective after the conclusion of the hearing to which the defendant is summoned unless—
 - (i) the defendant does not appear at that hearing in obedience to the summons; or
 - (ii) the Court, having considered the evidence of the defendant and any other evidence adduced by the defendant, confirms the order.

(3) The Court may make an order under subsection (2) on the basis of evidence received in the form of an affidavit but, in that case—

- (a) the deponent must, if the defendant so requires, appear personally at the proceedings for confirmation of the order to give oral evidence of the matters referred to in the affidavit; and
- (b) if the deponent does not appear personally to give evidence in pursuance of such a requirement, the Court may not rely on the evidence contained in the affidavit for the purpose of confirming the order.

(4) The date fixed in the first instance for the hearing to which a defendant is summoned under subsection (2) must be within 7 days after the date of the order but, if it then appears—

- (a) that the summons has not yet been served; or
- (b) that there is some other adequate reason to defer the date of the hearing,

the Court may, without requiring the attendance of any party, adjourn the hearing to a later date.

(5) Successive adjournments may be granted under subsection (4) but no such adjournment may be for more than 7 days unless the Court is satisfied that there is adequate reason for a longer adjournment.

(6) If the hearing is adjourned under subsection (4) or (5), the restraining order continues in force until the conclusion of the adjourned hearing.

Firearms orders

99D. (1) Subject to subsection (2), when the Court makes a restraining order, it must also make the following supplementary orders:

- (a) if the defendant has possession of a firearm—
 - (i) an order that the firearm be confiscated, and disposed of or dealt with as directed by the Court; and
 - (ii) if the circumstances of the case so require—an order authorising a member of the police force to enter any premises in which such a firearm is suspected to be, and search for and take possession of any such firearm; and
- (b) if the defendant has a licence or permit to be in possession of a firearm—an order that the licence or permit be cancelled and delivered up to the Registrar of Firearms; and
- (c) an order that the defendant be disqualified from holding or obtaining a licence or permit to be in possession of a firearm.

(2) If the restraining order is subject to confirmation—

- (a) an order for confiscation of a firearm must provide for the return of any confiscated firearm to the defendant if the restraining order is not confirmed; and

- (b) if the defendant has a licence or permit to be in possession of a firearm—an order will be made in the first instance for the suspension of the licence or permit until the court determines whether to confirm the restraining order, but if the restraining order is confirmed, an order must then be made for the cancellation of the licence or permit and its delivery up to the Registrar of Firearms; and
- (c) an order disqualifying the defendant from holding or obtaining a licence or permit to be in possession of a firearm will lapse if the restraining order is not confirmed.

Service

99E. A restraining order must be served on the defendant personally and is not binding on the defendant until it has been so served.

Variation or revocation of restraining order

99F. (1) The Court may vary or revoke a restraining order on application—

- (a) by a member of the police force; or
- (b) by the person for whose benefit the order was made; or
- (c) by the defendant.

(2) A firearms order cannot be revoked unless the Court is satisfied—

- (a) that the restraining order should be revoked in its entirety; or
- (b) that the defendant has never been guilty of violent or intimidatory conduct and needs to have a firearm for purposes related to earning a livelihood.

(3) The Court must, before varying or revoking a restraining order, allow all parties a reasonable opportunity to be heard on the matter.

Notification of making, etc., of restraining orders

99G. (1) Where a restraining order is made, the Principal Registrar must forward a copy of the order to the Commissioner of Police and, if the complainant is not a member of the police force, the complainant.

(2) Where a restraining order is varied or revoked, the Principal Registrar must notify the Commissioner of Police, and, where the complainant is not a member of the police force, the complainant, of the variation or revocation.

Registration of foreign restraining orders

99H. (1) The Principal Registrar may, subject to the rules, register a foreign restraining order in the Court.

(2) Subject to subsection (3), a registered foreign restraining order has the same effect, and may be enforced in the same way, as a restraining order made under this Division.

(3) The Court may—

- (a) give such directions; and
- (b) make such adaptations or modifications to the order (as it applies in this State),

as the Court considers necessary or desirable for the effective operation of the order in this State.

(4) The Court may—

- (a) vary a registered foreign restraining order as it applies in this State; or
- (b) cancel the registration of a foreign restraining order,

at any time on application—

- (c) by a member of the police force; or
- (d) by the person for whose benefit the order was made; or
- (e) by the person against whom the order was made.

(5) If a foreign restraining order is registered under this section, the Principal Registrar must forward a copy of the order to the Commissioner of Police.

(6) If the Court varies a registered foreign restraining order as it applies in this State, or cancels the registration of the order, the Principal Registrar must notify the Commissioner of Police of the variation or cancellation.

Offence to contravene or fail to comply with restraining order

99I. (1) A person who contravenes or fails to comply with a restraining order or a registered foreign restraining order is guilty of an offence.

Penalty: Division 5 imprisonment.

(2) If a member of the police force has reason to suspect that a person has committed an offence against subsection (1), the member may, without warrant, arrest and detain that person.

(3) A person arrested and detained under subsection (2) must be brought before the Court as soon as practicable, and, in any event, not more than 24 hours after arrest, to be dealt with for the offence.

(4) In calculating the time that has elapsed since arrest for the purposes of subsection (3), no period falling on a Saturday, Sunday or public holiday will be counted.

Complaints or applications by or on behalf of child

99J. A complaint or application that could otherwise be made by a person under this Division may, if the person is a child, be made—

- (a) by the child with the leave of the Court, if the child has attained the age of 14 years; or
- (b) on behalf of the child—
 - (i) by a parent or guardian of the child; or
 - (ii) by a person with whom the child normally or regularly resides.

Burden of proof

99K. In proceedings under this Division other than for an offence, the Court is to decide questions of fact on the balance of probabilities.

Relation to Domestic Violence Act

99L. A complaint made under this Division that could have been made under the *Domestic Violence Act 1994* may be dealt with as if it had been made under that Act.

Transitional provision

5. An order in force or registered under Part 4 Division 7 of the principal Act immediately before the commencement of this Act continues to have effect as if it were an order in force or registered under that Part as substituted by this Act.

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

BASIL S. HETZEL, Governor's Deputy