

LEGISLATIVE COUNCIL

Read 1° 3 April 1990

(Brought from the Legislative Assembly)

(No. 2)

A BILL

for

An Act to amend the *Crimes (Family Violence) Act 1987* and the
Children and Young Persons Act 1989 and for other purposes.

Crimes (Family Violence) (Amendment) Act 1990

The Parliament of Victoria enacts as follows:

Purposes

1. The main purposes of this Act are to amend the *Crimes (Family Violence) Act 1987* so as—

- 5 (a) to confer concurrent jurisdiction under that Act on the
 Children's Court if either the aggrieved family member or
 the defendant is under the age of 17 years; and
- (b) to expand the definition of "family member"; and
- 10 (c) to allow interim intervention orders to be made or arrest
 warrants to be issued where necessary to ensure the
 preservation of property; and
- (d) to provide for the seizure of firearms if an intervention
 order is made.

Commencement

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

No. 19/1987.
Amended by Nos
40/1988, 69/
1988, 56/1989
and 57/1989.

Principal Act

3. In this Act the *Crimes (Family Violence) Act 1987* is referred to as the Principal Act.

Definitions

4. (1) In section 3 of the Principal Act, for the definition of “Child” substitute— 5

‘ “Child” means a person who is under the age of 17 years.’.

(2) In section 3 of the Principal Act, after the definition of “Parent” insert—

‘ “Property”, in relation to a family member, includes— 10

- (a) property of any person situated in premises in which the family member lives or works; and
- (b) property of any person that is being used by the family member.’.

Jurisdiction of Children’s Court 15

5. (1) In section 3 of the Principal Act—

- (a) in the definition of “Clerk” after “Court” (where twice occurring) insert “or a children’s court (as the case requires)”;
- and
- (b) in the definition of “Court” after “means” insert “, subject to section 3A,”; and 20
- (c) in the definition of “Registrar” (as proposed to be inserted by item 44.1 (c) of the Schedule to the *Magistrates’ Court (Consequential Amendments) Act 1989*) after “Court” (where twice occurring) insert “or the Children’s Court (as the case requires)”. 25

(2) After section 3 of the Principal Act insert—

Jurisdiction of Children’s Court

“3A. (1) If the aggrieved family member or the defendant is under the age of 17 years at the time the complaint or other application is made, the Family Division of the Children’s Court and the Magistrates’ Court each have jurisdiction under this Act with respect to the complaint or other application despite anything to the contrary in section 17 of the *Children and Young Persons Act 1989*. 30 35

(2) If a complaint or other application is made under this Act to the Magistrates’ Court and the Magistrates’ Court considers that, in all the circumstances of the case, the matter should be dealt with by the Children’s Court, the Magistrates’ Court may discontinue the proceeding and order that it be transferred to the Children’s Court. 40

5 (3) If a complaint or other application is made under this Act to the Children’s Court and the Children’s Court considers that, in all the circumstances of the case, the matter should be dealt with by the Magistrates’ Court, the Children’s Court may discontinue the proceeding and order that it be transferred to the Magistrates’ Court.

(4) A court has jurisdiction to revoke, vary or extend in accordance with this Act an order made under this Act by it or any other court.”.

10 (3) In sections 20 (6) and 21 (5) of the Principal Act, before “so far as” insert “or the *Children and Young Persons Act* 1989 (as the case requires)”.

(4) In section 15 of the *Children and Young Persons Act* 1989—

(a) after “15.” insert “(1)”; and

15 (b) at the end of the section insert—

“(2) The jurisdiction given by sub-section (1) is additional to the jurisdiction given to the Family Division by the *Crimes (Family Violence) Act* 1987.”.

20 (5) Until the commencement of section 8 (1) of the *Children and Young Persons Act* 1989, section 3 of the Principal Act has effect as if in the definition of “Registrar” for the words “the Children’s Court” there were substituted the words “a children’s court”.

(6) Until the commencement of section 8 (1) of the *Children and Young Persons Act* 1989—

25 (a) section 3A (1) of the Principal Act has effect as if—

(i) for the words “the Family Division of the Children’s Court” there were substituted the words “a children’s court”; and

30 (ii) for the expression “section 17 of the *Children and Young Persons Act* 1989” there were substituted the expression “section 16 (1) of the *Children’s Court Act* 1973”; and

(b) sub-sections (2) and (3) of section 3A of the Principal Act have effect as if for the words “the Children’s Court” there were substituted the words “a children’s court”; and

35 (c) sections 20 (6) and 21 (5) of the Principal Act have effect as if for the expression “the *Children and Young Persons Act* 1989” there were substituted the expression “sections 52 and 53 of the *Children’s Court Act* 1973”.

40 (7) Until the commencement of Part 2 of the *Magistrates’ Court Act* 1989, section 3A of the Principal Act has effect as if for the words “the Magistrates’ Court” there were substituted the words “a Magistrates’ Court”.

Definition of “Family member”

6. (1) In section 3 of the Principal Act—
- (a) after “3.” insert “(1)”; and
 - (b) in the definition of “Family member” for paragraph (b) substitute— 5
 - “(b) a person who is or has been a relative of that person; or
 - (ba) a child who normally or regularly resides with that person; or
 - (bb) a child of whom that person is a guardian; or”.
- (2) At the end of section 3 of the Principal Act insert— 10
- “(2) For the purposes of the definition of “Family member” in sub-section (1), a relative, in relation to a person, means—
- (a) a father, mother, grandfather, grandmother, step-father, step-mother, father-in-law or mother-in-law of that person; or 15
 - (b) a son, daughter, grandson, granddaughter, step-son, step-daughter, son-in-law or daughter-in-law of that person; or
 - (c) a brother, sister, half-brother, half-sister, brother-in-law or sister-in-law of that person; or 20
 - (d) an uncle, aunt, uncle-in-law or aunt-in-law of that person; or
 - (e) a nephew or niece of that person; or
 - (f) a cousin of that person—
- and includes, in the case of de facto spouses, a person who would be such a relative if the de facto spouses were married to each other.”. 25

Persons who may make a complaint

7. (1) Section 7 of the Principal Act is amended as follows:
- (a) After “7.” insert “(1)”; 30
 - (b) In paragraph (b) after “member” insert “if he or she is of or above the age of 14 years”;
 - (c) In paragraph (c), after “a child” insert “(including a child who is of or above the age of 14 years)”;
 - (d) In paragraph (c) (iii), after “the child” insert “or with the leave of the court”; 35
 - (e) In paragraph (d), after “member” insert “if the aggrieved family member is of or above the age of 17 years”;
 - (f) After paragraph (d) insert— 40
 - “; or
 - (e) if a guardianship order under the *Guardianship and Administration Board Act 1986* is in force in respect of

the aggrieved family member, by the guardian appointed under that Act, or with the leave of the court, by any other person.”.

(2) After section 7 (1) of the Principal Act insert—

5 “(2) If an application for leave is made under sub-section (1) (c) (iii) or (e), the court must grant leave if it is satisfied that it is in the best interests of the aggrieved family member to do so.”.

10 (3) In section 13 (1) of the Principal Act, after “parent” insert “(if any)”.

Preservation of property

8. (1) In section 8 (1) of the Principal Act, after “member” insert “or to preserve any property of the aggrieved family member”.

(2) In section 9 (1) (b) of the Principal Act—

15 (a) in sub-paragraph (i) after “assault” insert “or that damage has been caused or threatened to be caused to property of the aggrieved family member”; and

20 (b) in sub-paragraph (ii) after “threatened” insert “or that damage would be likely to be caused to any property of the aggrieved family member”.

Service of complaint

9. Section 11 of the Principal Act is amended as follows:

(a) After “11.” insert “(1)”;

25 (b) For “and the complaint was made with the consent of a parent under section 7 (c) (iii), on that parent” substitute “, on any parent with whom the child normally or regularly resides or, if a guardianship order under the *Guardianship and Administration Board Act* 1986 is in force in respect of the aggrieved family member, on the guardian appointed under that Act”;

30 (c) At the end of the section insert—

“(2) A complaint must be served on the defendant by—

35 (a) delivering a true copy of the complaint to the defendant personally; or

(b) leaving a true copy of the complaint for the defendant at the defendant’s last or most usual place of residence or of business with a person who apparently resides or works there and who apparently is not less than 16 years of age.

40 (3) If it appears to the court, by evidence on oath or by affidavit, that service cannot be promptly effected, the court may make an order for substituted service.”.

New section 12A inserted**10. After section 12 of the Principal Act insert—****Procedure where aggrieved family member is 14–16 years old**

“12A. If a complaint for an intervention order is made under section 7 (1) (b) by an aggrieved family member who is a child, the court must not hear or determine the matter unless it is satisfied that the child understands the nature and consequences of the proceedings.”

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Service of intervention orders**11. (1) Section 17 (1) of the Principal Act is amended as follows:**

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(a) In paragraph (b)—

(i) omit “if the defendant is in court,”; and

(ii) omit “at the court”;

(b) Paragraph (c) is repealed.

(2) In section 22 (a) of the Principal Act, after “order” insert “or has had an explanation of the order given to him or her in accordance with section 15”.

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Seizure of firearms**12. Section 18A of the Principal Act is amended as follows:**

(a) In sub-section (2) after “Minister” insert “administering the *Firearms and Other Weapons Act 1958*”.

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(b) After sub-section (2) insert—

“(3) If an intervention order is made in respect of a person under section 4, whether or not the order refers to firearms, any member of the police force may seize any firearm in the defendant’s possession and, for that purpose, may, without warrant, enter and search any premises where the defendant resides or has resided.

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(4) Any firearm seized under sub-section (3) must be forfeited or disposed of in accordance with the directions in the order or, if there are no such directions in the order, must be returned to the person, forfeited to the Crown or disposed of, as the Minister administering the *Firearms and Other Weapons Act 1958* directs.”.

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