

TASMANIA

RESTRAINT ORDERS BILL 2019

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RESTRAINT ORDERS BILL 2019

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
10 September 2019

*(Brought in by the Minister for Justice, the Honourable Elise
Nicole Archer)*

A BILL FOR

**An Act to provide for the issue and enforcement of
restraint orders and for related matters**

Be it enacted by Her 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

1. Short title

This Act may be cited as the *Restraint Orders Act 2019*.

2. Commencement

This Act commences on the day on which the *Magistrates Court (Criminal and General Division) Act 2019* commences.

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3. Interpretation

(1) In this Act, unless the contrary intention appears –

Administrator means the Administrator of the Magistrates Court appointed under section 16 of the *Magistrates Court Act 1987*;

bench justice means a bench justice appointed under section 7 of the *Magistrates Court (Criminal and General Division) Act 2019*;

Chief Magistrate means the Chief Magistrate appointed under section 5 of the *Magistrates Court Act 1987*;

Court means the division of the Magistrates Court known as the Criminal and General Division established by section 9 of the *Magistrates Court (Criminal and General Division) Act 2019*;

district registrar means a district registrar appointed under section 16A of the *Magistrates Court Act 1987*;

district registry means a district registry of the Magistrates Court established under section 15A of the *Magistrates Court Act 1987*;

electronic communication means –

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- (a) electronic communication within the meaning of the *Electronic Transactions Act 2000*; or
- (b) communication where the recipient receives the communication by using a prescribed telephone;

electronic device means any device –

- (a) that is capable of transmitting, sending or receiving information by means of electronic communication; and
- (b) from which a paper copy of any information so communicated may be directly, or indirectly, produced –

including a mobile telephone from which a paper copy of any information so communicated may be directly, or indirectly, produced when used by the recipient of the information to receive information by means other than speech received aurally;

electronic interim restraint order means an order made under section 13;

external restraint order means an order made by a court of another State, a Territory or New Zealand which has been made to prevent a person from acting in a manner specified in section 6(2);

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firearm has the same meaning as in the *Firearms Act 1996*;

firearm accessory means ammunition, firearm part or ordnance, each within the meaning of the *Firearms Act 1996*;

interim restraint order means –

- (a) an order made under section 12(1); or
- (b) an electronic interim restraint order;

legal representative, in relation to a person, means the Australian legal practitioner, within the meaning of the *Legal Profession Act 2007*, who is representing the person in proceedings under this Act.

magistrate has the same meaning as in the *Magistrates Court Act 1987*;

Magistrates Rule Committee means the committee referred to in section 15AC of the *Magistrates Court Act 1987*;

member of the family of another person – see subsection (3);

mobile telephone means a wireless handheld device that allows the user to make telephone calls and send text messages, whether or not the device has other features;

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Part 2 application means an application made under Part 2, other than an application under section 5(2), section 10(2) or section 13(1);

party, to an application under this Act, means the person who makes the application or the respondent to the application;

possession, in relation to a thing, includes –

- (a) having it in one’s custody; and
- (b) having it under one’s control in any place (whether or not another person has custody of it); and
- (c) having an ability to obtain its custody at will; and
- (d) having a claim to its custody if the claimant has committed it to the custody of another person, even though it is temporarily not in the control of the person having the claim;

premises includes any, or any part of any, of the following (whether a public place or private property):

- (a) an area of land;
- (b) a building or structure (whether movable or immovable), including a residence;
- (c) a vehicle, vessel or aircraft;

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(d) a caravan or trailer;

prescribed telephone means –

- (a) a telephone, whether or not a mobile telephone, from which a paper copy of information received on the telephone may not be directly, or indirectly, produced; and
- (b) a mobile telephone, or electronic device, when used by the recipient to receive a communication of information by means of speech received aurally; and
- (c) a radio;

property, in relation to a person, means property that –

- (a) the person owns; or
- (b) the person does not own but in normal circumstances –
 - (i) is used and enjoyed by the person; or
 - (ii) is available for the person's use or enjoyment; or
 - (iii) is in the person's possession; or

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- (iv) is at the premises at which the person is residing;

protected person means a person for whose benefit a restraint order is made;

registered external restraint order means an external restraint order which has been registered under section 25(1) or (3);

regulations means regulations made and in force under this Act;

relevant Family Court order, in relation to a restraint order or interim restraint order, means –

- (a) a parenting plan, or a registered parenting plan, in force under Division 4 of Part VII of the *Family Law Act 1975* of the Commonwealth; or
- (b) a parenting order made under section 65D of the *Family Law Act 1975* of the Commonwealth –

if the plan or order provides for a child to spend time with, or communicate with, the person for whose benefit, or against whom, a restraint order is sought or made and the child is a member of the family of that person;

restrained person means a person against whom a restraint order is made;

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restraint order has the meaning given by section 4;

rules of court means the rules of court made by the Magistrates Rule Committee under section 15AE of the *Magistrates Court Act 1987*;

sealed means –

- (a) sealed with the Court seal; or
- (b) stamped with the Court stamp;

sealed copy includes a facsimile of a sealed copy that has been produced by any electronic means;

stalking means a course of behaviour that consists of the doing of any one or more of the following actions except when done for a lawful purpose:

- (a) following another person in a way that could reasonably be expected to cause the person to be apprehensive or fearful;
- (b) keeping another person under surveillance;
- (c) loitering outside the residence or workplace of another person;
- (d) loitering outside a place that another person frequents;

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- (e) entering or interfering with the property of another person;
- (f) sending offensive material to another person or leaving offensive material where it is likely to be found by, given to or brought to the attention of another person;
- (g) publishing or transmitting offensive material by electronic communication or by any other means in such a way that the offensive material is likely to be found by, or brought to the attention of, another person;
- (h) using the internet or any other form of electronic communication in a way that could reasonably be expected to cause another person to be apprehensive or fearful;
- (i) contacting another person by postal, telephonic, electronic or any other means of communication in a way that could reasonably be expected to cause the person to be apprehensive or fearful;
- (j) acting in another way that could reasonably be expected to cause

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another person to be
apprehensive or fearful;

working day means a day other than a
Saturday, Sunday or a statutory holiday,
within the meaning of the *Statutory
Holidays Act 2000*.

- (2) For the purposes of the definition of *stalking* in subsection (1), an act is done for a lawful purpose if the act is done –
- (a) by a person in the course of performing official duties to –
 - (i) enforce the criminal law; or
 - (ii) administer an Act; or
 - (iii) enforce a law imposing a pecuniary penalty; or
 - (iv) execute a warrant; or
 - (v) protect the public revenue; or
 - (b) by a member of the media (including a freelancer) as part of his or her professional occupation; or
 - (c) by a person during picketing that is otherwise lawful; or
 - (d) by a commercial agent, commercial sub-agent or inquiry agent, within the meaning of the *Security and Investigations Agents Act 2002*, as part of his or her professional occupation; or

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- (e) by another person as part of his or her professional occupation.
- (3) For the purposes of this Act, a person is a member of the family of another person if that person is a member of the family of the other person within the meaning of section 4(1AB) of the *Family Law Act 1975* of the Commonwealth.

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PART 2 – RESTRAINT ORDERS

Division 1 – Restraint orders

4. Restraint order defined

A *restraint order* is an order made under this Act that imposes such restraints and obligations on a person as the Court making the order considers necessary or desirable to prevent the person from acting in a manner specified in section 6(2).

5. Application for restraint order

- (1) An application for a restraint order may be made to the Court –
 - (a) by a police officer; or
 - (b) by a person against whom, or against whose property, the behaviour that forms the subject matter of the application was directed or, where that person is a child, a parent or guardian of that child; or
 - (c) by a person granted leave under subsection (2).
- (2) A person, other than a police officer or person referred to in subsection (1)(b), may apply to the Court for leave to make an application for a restraint order.

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- (3) An application under subsection (2) for leave to make an application for a restraint order may be made in the absence of the respondent to the application.
- (4) An application under subsection (1) or (2) is made by filing the application in a district registry.
- (5) An application for a restraint order must include information of any relevant Family Court order, or of any pending application for a relevant Family Court order, of which the applicant is aware.
- (6) In subsection (5), a reference to an application for a relevant Family Court order includes a reference to any family dispute resolution process or other process undertaken under Part VII of the *Family Law Act 1975* of the Commonwealth to facilitate the making of a relevant Family Court order.

6. Making restraint order

- (1) In this section –
 - personal injury* includes injury or damage to, or impairment of, a person’s physical or mental condition.
- (2) On an application for a restraint order the Court may make a restraint order against a person if satisfied, on the balance of probabilities –
 - (a) that –

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- (i) the person has caused personal injury or damage to property; and
 - (ii) the person is, unless restrained, likely again to cause personal injury or damage to property; or
- (b) that –
 - (i) the person has threatened to cause personal injury or damage to property; and
 - (ii) the person is, unless restrained, likely to carry out that threat; or
- (c) that –
 - (i) the person has behaved in a provocative or offensive manner; and
 - (ii) the person, unless restrained, is likely to behave in the same manner again or in a similar manner; or
- (d) that the person has stalked –
 - (i) the person for whose benefit the order is sought; or
 - (ii) a third person and the stalking of the third person has caused the person for whose benefit the order is sought to feel apprehension or fear.

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- (3) In deciding whether or not to make a restraint order, and what orders should be included in the restraint order, the Court must consider –
- (a) the protection and welfare of the person for whose benefit the order is sought to be of paramount importance; and
 - (b) whether it is relevant to the making of the order that a person for whose benefit, or against whom, the order is sought be able to communicate with, or spend time with, any child who is a member of the family of that person; and
 - (c) whether it is relevant to the making of the order that a person for whose benefit, or against whom, the order is sought be able to communicate with, or spend time with, the other person;
 - (d) any relevant Family Court order of which the Court has been informed.
- (4) A restraint order is not invalid merely because –
- (a) the applicant fails to inform the Court of any relevant Family Court order or of any pending application for a relevant Family Court order; or
 - (b) the Court fails to consider access, contact or communication or any relevant Family Court order as required by subsection (3).

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- (5) Without limiting the nature of the orders which may be included in a restraint order, the Court may include one or more of the following orders:
- (a) an order prohibiting the restrained person from behaving in the manner specified in the order;
 - (b) an order prohibiting the restrained person from approaching or contacting by any means or by the means specified in the order, or both approaching and so contacting, the person for whose benefit the order is sought;
 - (c) an order directing the restrained person to vacate premises, prohibiting the restrained person from entering premises or limiting the restrained person's access to premises, whether or not the restrained person has a legal or equitable interest in the premises;
 - (d) an order prohibiting or restricting the restrained person from having possession, custody or control of any firearm and firearm accessory, as specified in the order, whether or not the restrained person holds a licence or permit under the *Firearms Act 1996*;
 - (e) an order directing the forfeiture, disposal or surrender of any firearm and firearm accessory, as specified in the order, that is in the possession, custody or control of the restrained person –

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- (i) whether or not the restrained person holds a licence or permit under the *Firearms Act 1996*; and
 - (ii) whether or not the firearm is registered under that Act or is a prohibited firearm under that Act;
- (f) an order cancelling or suspending any licence or permit held by the restrained person under the *Firearms Act 1996*;
- (g) an order prohibiting the restrained person from applying for or holding a licence or permit under the *Firearms Act 1996* during the period specified in the order or while the restraint order is in force;
- (h) an order prohibiting the restrained person from applying for the reinstatement of a licence or permit or the return of any firearm and firearm accessory, as specified in the order, under section 51(6) of the *Firearms Act 1996*;
- (i) an order prohibiting the restrained person from stalking the protected person or a third person;
- (j) an order prohibiting the restrained person from causing another person to engage in conduct that the restraint order prohibits, or restrains, the restrained person from doing;
- (k) an order directing the restrained person –

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- (i) to deliver property, in the manner specified in the order, to the protected person; or
 - (ii) to allow the protected person, in the manner specified in the order, to recover possession of property or have access to property.
- (6) Before making an order of a kind referred to in subsection (5)(c), 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; and
 - (c) the need for suitable arrangements to be made to allow the restrained person to take possession of personal property on the premises.
- (7) A restraint order that affects possession of, or access to, premises or property does not affect any legal or equitable interest held by any person in the premises or property.
- (8) In making a restraint order, the Court is to specify in the order that the order has effect until revoked or for the period specified in the order.
- (9) A restraint order has effect –

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-
- (a) for the period specified in it; or
 - (b) if the restraint order is revoked before the order expires, until the order is revoked.
- (10) If the Court makes a restraint order that includes an order of a kind referred to in subsection (5)(d), (e), (f), (g) or (h) –
- (a) the relevant district registrar is to provide a copy of the order to the Commissioner of Police; and
 - (b) the Commissioner of Police is to do all things necessary to facilitate the operation of the terms of that order.

7. Warrants and ancillary and other orders on making restraint order

- (1) On making a restraint order that includes an order –
- (a) prohibiting or restricting the restrained person from having the possession, custody or control of any firearm or firearm accessory; or
 - (b) directing the forfeiture, disposal or surrender of any firearm or firearm accessory in the possession or custody of, or under the control of, the restrained person –

the Court may issue a warrant authorising a police officer, using such force as is necessary, to –

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- (c) enter and remain in the premises specified in the warrant or any premises on or in which the police officer reasonably believes such a firearm, or firearm accessory, may be situated; and
 - (d) seize any such firearm or firearm accessory as specified in the warrant.
- (2) On or in any premises entered in accordance with a warrant issued under subsection (1), the police officer may –
 - (a) search the premises and anything in or on the premises; and
 - (b) open or break open anything in or on the premises in which a firearm or firearm accessory may be kept; and
 - (c) require any person in or on the premises to give reasonable assistance to the police officer in exercising his or her powers under this section.
- (3) On making a restraint order, the Court may make such ancillary and other orders as it considers necessary or appropriate in the circumstances.
- (4) Without limiting the orders that the Court may make under subsection (3), the Court may order that the restrained person or any person who is the subject of an order made under that subsection –
 - (a) remain in the precincts of the courthouse until such time as he or she is provided

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with a copy of the restraint order or other order; or

- (b) immediately provide the district registrar with his or her postal address, or his or her email address for electronic communication, so that the restraint order or other order, or a copy of it, may be provided to the person at that address.

8. Issue of warrant in respect of application for restraint order

- (1) If an application for a restraint order (whether or not filed in a district registry) and the materials required by the rules of court to accompany such an application are produced to a magistrate or bench justice, the magistrate or bench justice may issue a warrant requiring the arrest of the person against whom the restraint order is sought if he or she considers –
- (a) it is a case of urgency; and
- (b) there is sufficient cause to do so.
- (2) If an application for a restraint order has not been filed in a district registry at the time a warrant is issued under subsection (1), the application is to be so filed as soon as practicable after the warrant is issued.

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9. Powers of Court after restraint order application filed

- (1) If an application for a restraint order has been filed in a district registry, the Court may do any one or more of the following if it considers that there is sufficient cause to do so:
 - (a) at any stage of the proceedings in respect of the application for the restraint order, make an interim restraint order;
 - (b) at any stage of the proceedings in respect of the application for the restraint order, make an order varying an interim restraint order made under paragraph (a);
 - (c) whether or not the Court makes an interim restraint order under paragraph (a), give such directions with respect to the further hearing of the application for the restraint order as the Court considers necessary.

- (2) If –
 - (a) an application for a restraint order has been filed in a district registry; and
 - (b) at any stage of the proceedings in respect of the application for the restraint order the Court considers that the application should have been made as an application under section 15 of the *Family Violence Act 2004* for an FVO, within the meaning of that Act –

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the Court may proceed under that Act as if the application were such an application for such an FVO.

10. Application for variation, extension and revocation of restraint orders

- (1) An application for the variation, extension or revocation of a restraint order may be made –
 - (a) by the person who applied for the restraint order; or
 - (b) by a police officer; or
 - (c) by the protected person or, if the protected person is a child, a parent or guardian of that child; or
 - (d) by the restrained person; or
 - (e) by a person granted leave under subsection (2).
- (2) A person, other than a police officer or a person referred to in subsection (1)(a), (c) or (d), may apply to the Court for leave to make an application for the variation, extension or revocation of a restraint order.
- (3) An application under subsection (2) may be made in the absence of the respondent to the application.
- (4) Section 5(4) and (5) applies to an application for the variation, extension or revocation of a

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restraint order in the same manner as it applies to an application for the making of a restraint order.

11. Varying, extending or revoking restraint order

- (1) On an application for the variation, extension or revocation of a restraint order, the Court may vary, extend or revoke the restraint order.
- (2) Section 6(3), (4), (5), (6) and (10) applies, as appropriate, to the variation, extension or revocation of a restraint order in the same manner as it applies to the making of a restraint order.
- (3) A restraint order which has been varied has effect for the period for which the restraint order, before it was varied, had effect unless otherwise provided by the Court hearing the application for that variation.
- (4) A restraint order may be extended for such period as the Court considers necessary to protect the protected person or until an order is made revoking the restraint order.
- (5) On varying, extending or revoking a restraint order, the Court may make such ancillary and other orders as it considers necessary or appropriate in the circumstances.

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Division 2 – Interim restraint orders

12. Interim restraint order

- (1) The Court may make an order under section 9(1)(a) or (b) whether or not it is satisfied of any of the matters specified in section 6(2).
- (2) An order under subsection (1) –
 - (a) may include any order which may be included in a restraint order; and
 - (b) has effect until a restraint order is made and takes effect or proceedings in relation to the restraint order are otherwise terminated.
- (3) An order under subsection (1) may be made, varied or extended in the absence of the person against whom a restraint order is sought whether or not a sealed copy of the application for the restraint order has been provided to that person.
- (4) In addition to, or instead of, making an order under subsection (1), the Court may issue a warrant requiring the arrest of the person against whom the restraint order is sought.
- (5) Section 5(4) and (5), section 6(3), (4), (6) and (10) and section 7 apply to and in relation to the making, variation or extension of an order under subsection (1) in the same manner as they apply to or in relation to the making of a restraint order.

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13. Electronic interim restraint order

- (1) A police officer may apply by electronic device or prescribed telephone to a magistrate for an interim restraint order against a person if –
 - (a) the police officer has reasonable grounds for believing that –
 - (i) the person has behaved in a manner specified in section 6(2); and
 - (ii) the behaviour is likely to continue and give rise to an assault; and
 - (b) it is not practicable to immediately apply for a restraint order by filing the application in a district registry because of the time and place at which the behaviour giving rise to the application occurred.
- (2) A magistrate to whom an application is made under subsection (1) may make an interim restraint order by electronic communication if –
 - (a) he or she considers that there is sufficient cause to do so; and
 - (b) whether or not he or she is satisfied of any of the matters specified in section 6(2).
- (3) On making an interim restraint order by electronic communication, the magistrate, also by electronic communication, may issue a

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warrant, or make an ancillary or other order, under section 7.

- (4) An electronic interim restraint order is made, and a warrant or an ancillary or other order referred to in subsection (3) is issued or made, when the magistrate –
 - (a) sends or otherwise transmits the electronic interim order, warrant or ancillary or other order by electronic communication to the applicant who receives it on an electronic device other than a prescribed telephone; or
 - (b) orally communicates the order to the applicant who receives it orally by the use of a prescribed telephone.
- (5) An electronic interim restraint order –
 - (a) may include any order which may be included in a restraint order; and
 - (b) has effect for such period, not exceeding 5 working days, as is specified in it.
- (6) An electronic interim restraint order may be made in the absence of the person against whom the restraint order is sought and a warrant, ancillary order or other order made in conjunction with an electronic interim restraint order may be made in the absence of the person who is the subject of the warrant or order.
- (7) Section 6(3), (4), (6) and (10) and section 7 apply, as appropriate, to and in relation to the

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making of an electronic interim restraint order in the same manner as they apply to and in relation to the making of a restraint order.

- (8) A record made by a police officer under section 14(3) of an electronic interim restraint order received by the police officer by means of speech to a prescribed telephone, or of a warrant issued or an ancillary or other order made in conjunction with an electronic interim restraint order and also received in the same manner, is taken to be the electronic interim restraint order, warrant or ancillary or other order.
- (9) A paper that has been produced by, or directly from, the electronic communication to the applicant of the electronic interim restraint order, or of a warrant issued or ancillary or other order made in conjunction with the electronic interim restraint order, and received by means of an electronic device other than a prescribed telephone is taken to be the electronic interim restraint order, the warrant or the ancillary or other order.

14. Procedure of magistrate and police officer on making of electronic interim restraint order

- (1) On electronically communicating an electronic interim restraint order, or a warrant issued or an ancillary or other order made in conjunction with an electronic interim restraint order, to be received by a police officer on an electronic device other than a prescribed telephone, the magistrate must electronically communicate that

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restraint order, or warrant or ancillary or other order, to the relevant district registrar.

- (2) On electronically communicating an electronic interim restraint order, or a warrant issued or an ancillary or other order made in conjunction with an electronic interim restraint order, to be received by a police officer by means of a prescribed telephone, the magistrate must –
- (a) record in writing –
 - (i) the name and rank of the applicant police officer; and
 - (ii) the name of the person against whom the order is made; and
 - (iii) the name of the protected person; and
 - (iv) the reasons for the application; and
 - (v) the terms of the order; and
 - (vi) the date and time the order is made; and
 - (vii) the period for which the order operates; and
 - (b) record in writing the details of any warrant issued, or ancillary or other order made, in conjunction with the electronic interim restraint order; and

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- (c) provide that record of the electronic interim restraint order, warrant or ancillary or other order, or a copy of it, to a district registrar.
- (3) As soon as reasonably practicable after receiving, on a prescribed telephone, the electronic communication of an electronic interim restraint order, the police officer must –
- (a) record in writing the name of the magistrate who made the order and the information specified in subsection (2)(a); and
 - (b) record in writing the details of any warrant issued, or ancillary or other order made, in conjunction with the electronic interim restraint order by such means of communication.

15. Detention of person for purpose of making electronic interim restraint order

- (1) A police officer who is making, or intends to make, an application for an electronic interim restraint order, using such force as is necessary and reasonable –
- (a) may detain the person against whom the order is sought at the scene of the behaviour giving rise to the application; or
 - (b) may take the person against whom the order is sought into custody, remove the

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person to a place the police officer considers appropriate for the making of the application and detain the person at that place –

for as long as is reasonably necessary for the application to be made and heard and any electronic interim restraint order, or a copy of it, to be provided to the person.

- (2) A person who has been detained to facilitate the making of an electronic interim restraint order has not been taken into custody for the purposes of section 4E of the *Bail Act 1994*, section 18 of the *Magistrates Court (Criminal and General Division) Act 2019* or section 4 of the *Criminal Law (Detention and Interrogation) Act 1995*.

16. Duty of police officer before expiration of electronic interim restraint order

Before an electronic interim restraint order expires, a police officer must –

- (a) apply for a restraint order; or
- (b) notify the Court of the reasons why an application for a restraint order is not being made.

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Division 3 – Procedure for Part 2 applications

17. Procedure for hearing and determining Part 2 application

- (1) Except as otherwise provided by this Act or ordered by the Court –
 - (a) a Part 2 application is to be heard and determined –
 - (i) in open court; and
 - (ii) in the same manner, as nearly as practicable, as a charge for a summary offence under the *Magistrates Court (Criminal and General Division) Act 2019*; and
 - (b) a person who makes a Part 2 application is to be treated, as nearly as practicable, as a person who has commenced proceedings for an offence against a defendant under the *Magistrates Court (Criminal and General Division) Act 2019*.
- (2) At the hearing of a Part 2 application, the following persons may conduct the applicant or respondent's case and examine and cross-examine witnesses:
 - (a) the applicant or respondent; or
 - (b) the applicant or respondent's legal practitioner; or

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- (c) a police officer representing the applicant or respondent; or
 - (d) any other person to whom the Court grants leave for that purpose.
- (3) At the hearing of a Part 2 application made by a person other than a police officer, the Commissioner of Police –
 - (a) is taken to be a party; and
 - (b) may make submissions for or against the application; and
 - (c) may call witnesses and examine and cross-examine witnesses.
- (4) If a police officer, in his or her professional capacity, could give direct oral evidence of a fact in the hearing of a Part 2 application, the statutory declaration of the police officer in relation to that fact is admissible as evidence of that fact in the hearing whether or not the police officer may be available as a witness.
- (5) Despite subsection (4), a statutory declaration referred to in that subsection is not admissible as evidence in the hearing of a Part 2 application if the Court, having regard to all the circumstances, is of the opinion that the representation of the fact in the statutory declaration ought not be admitted without being tested by cross-examination.
- (6) The opinion of a medical practitioner in a document tending to establish a fact is

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admissible as evidence of the fact in the hearing of a Part 2 application whether or not the medical practitioner may be available as a witness if –

- (a) the medical practitioner, in his or her professional capacity, could give that opinion as direct oral evidence in the hearing; and
 - (b) the Court, having regard to all the circumstances, is of the opinion that justice does not require that the opinion of the medical practitioner be tested by cross-examination.
- (7) If at a hearing of a Part 2 application the Court is satisfied that –
- (a) a sealed copy of the application has been provided to the respondent to the application; or
 - (b) reasonable attempts have been made to provide a sealed copy of the application to that respondent –

the Court may proceed in the absence of the respondent.

- (8) Subsection (7) does not apply in relation to proceedings for an interim restraint order.
- (9) In proceedings under subsection (7) in the absence of the respondent to a Part 2 application, the Court may –

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- (a) make the order sought in the application or such other order as it considers necessary; or
 - (b) issue a warrant requiring the arrest of the respondent.
- (10) If the applicant and respondent to a Part 2 application consent, the Court may make an order under this Act in accordance with the terms so consented to.
- (11) At any time in proceedings under this Act, the Court may determine that it is appropriate that those proceedings be heard and determined by the Magistrates Court (Youth Justice Division) or the Magistrates Court (Children’s Division) and may transfer the proceedings to that court.
- (12) If proceedings are transferred to the Magistrates Court (Youth Justice Division) or the Magistrates Court (Children’s Division) under subsection (11), that court has jurisdiction to hear and determine those proceedings.

Division 4 – Miscellaneous

18. Service of order

- (1) Unless otherwise specified in this Part, an order made under this Part, or a copy of it, is to be personally served on the following person, unless the person was present before the Court when the order was made:

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- (a) in the case of a restraint order, the restrained person;
 - (b) in the case of an ancillary or other order made in conjunction with a restraint order, the person who is the subject of the order;
 - (c) in any other case, the respondent to the application for the order.
- (2) If a person referred to in subsection (1) was present before the Court when the order referred to in that subsection was made, the order or a copy of it is not required to be personally served on the person but is to be provided to the person.
- (3) An order that is to be provided to a person under subsection (2) may be provided to the person by electronic communication to an email address, or a telephone or facsimile number, given to the district registrar by the person and an order sent or transmitted to that address or number is effectively provided to the person.
- (4) Subsection (3) does not prevent the provision of an order or a copy of it under section 29AB of the *Acts Interpretation Act 1931*.

19. When order takes effect

Unless otherwise specified in this Part, an order made under this Part takes effect –

- (a) if the respondent to the application giving rise to the order is present before

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the Court when the order is made, on the making of the order; or

- (b) if that respondent is not present before the Court when the order is made, when the respondent is personally served with the order, or a copy of the order, in accordance with this Part.

20. Powers of Court to remand in custody, admit to bail, &c.

- (1) If for any reason the proceedings in respect of a Part 2 application are adjourned, the Court may –
 - (a) remand the person against whom the restraint order is sought, or the restrained person, in custody; or
 - (b) admit that person to bail; or
 - (c) order that person to appear before the Court at the time and place to which the proceedings are adjourned.
- (2) In making a determination under subsection (1) –
 - (a) the Court must consider the protection and welfare of the person for whose benefit the order is sought, or the protected person, to be of paramount importance; and
 - (b) the Court must take into account any previous violence by the person against

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whom the restraint order is sought, or by the restrained person, against any other person whether or not that person was convicted of an offence, or had a prior restraint order made against him or her, in respect of that violence.

(3) If a person is remanded in custody under subsection (1) –

(a) the Court must inform that person; and

(b) the order must provide –

that that person will be kept for a period not exceeding 28 clear days at any one time, and then be brought before the Court, as specified in the order.

(4) The period for which a person may be admitted to bail under this section on any occasion must not, without his or her consent, exceed 60 days.

(5) An order made under subsection (1)(c) has the same effect as an order to attend, within the meaning of the *Magistrates Court (Criminal and General Division) Act 2019*.

21. Contravention of restraint order, &c.

(1) A person must not contravene a restraint order, interim restraint order or electronic interim restraint order, as made, varied or extended.

Penalty: Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 6 months, or both.

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- (2) If a police officer has reasonable cause to suspect that a person has committed an offence under subsection (1), the officer may –
 - (a) without warrant, arrest and detain that person; and
 - (b) for the purpose of arresting and detaining such a person, enter, by force if necessary, any premises on which he or she has reasonable cause to believe that person is present; and
 - (c) search those premises for that person.
- (3) Section 4E of the *Bail Act 1994* does not apply to a person arrested and detained under subsection (2).

22. Power to make orders under this Act at hearing of charge for offence

If, in proceedings for an offence under any Act, the Court, another court or a judge hearing those proceedings is satisfied on the balance of probabilities as to any of the matters specified in section 6(2), the Court, or that other court or judge, may make an order under this Part in addition to any other order which it, he or she may make.

23. Power of police to enter certain premises

- (1) A police officer –

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- (a) at the request of a person who apparently resides at any premises; or
- (b) if he or she reasonably suspects –
 - (i) that a person on any premises is being, may be imminently or has recently been injured, or threatened with injury, by another person; or
 - (ii) that a person on any premises is damaging, may imminently damage or has recently damaged any property on the premises; or
 - (iii) that a person on any premises is behaving, may imminently behave or has recently behaved in a provocative or offensive manner –

may, without warrant and using such force as is necessary, enter the premises and remain on the premises for such period as he or she considers necessary to prevent a recurrence of that behaviour.

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

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- (a) search any person on the premises that the officer reasonably suspects has in his or her possession an object; and
- (b) search the premises for the presence of an object; and
- (c) seize and retain an object –

which the officer reasonably suspects has been used, or may be used, to threaten or injure any person on the premises.

- (4) For the purposes of subsection (3), if a person on premises entered by a police officer under subsection (1) alleges to a police officer that a specific object has been used to threaten or injure that person, that allegation is sufficient justification for a police officer to search any person on the premises, to search the premises and to seize and retain that object.
- (5) If a police officer reasonably suspects that a person has acted in a manner that would constitute grounds for the making of a restraint order and in so acting has used an object to threaten or injure another person, the officer, without warrant and using such force as is necessary, may –
 - (a) enter any premises on which the officer reasonably suspects that the object may be found; and
 - (b) search any person that the officer reasonably suspects has possession of the object; and

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- (c) search the premises for the object; and
 - (d) seize and retain the object.
- (6) For the purposes of subsection (5), if a person alleges to a police officer that another person has acted in a manner that would constitute grounds for the making of a restraint order and in so acting has used an object to threaten or injure him or her or any other person, that allegation is sufficient justification for a police officer to take any action specified in subsection (5).
- (7) On an application made by a police officer or by any person who claims to be the owner of an object seized and retained under subsection (3) or (5), the Court may order that the object –
- (a) be forfeited to the Crown; or
 - (b) be destroyed; or
 - (c) be returned to that person; or
 - (d) be otherwise disposed of in such manner as the Court considers appropriate.
- (8) If an object is seized and retained under subsection (3) or (5) and an application for an order has not been made under subsection (7) within 60 days after the day of the seizure, the object is to be returned to the person from whom it was seized.

PART 3 – EXTERNAL RESTRAINT ORDERS

24. Application for registration of external restraint order

- (1) A person may apply to the Administrator for the registration of an external restraint order.
- (2) An application is to be –
 - (a) in a form approved by the Administrator; and
 - (b) accompanied by a copy of the external restraint order; and
 - (c) accompanied by such evidence of effective service of the external restraint order on the person against whom it was made as the Administrator considers appropriate.

25. Registration of external restraint order

- (1) On receipt of an application under section 24, the Administrator is to –
 - (a) register the external restraint order to which the application relates; or
 - (b) refer that external restraint order to the Court for adaptation and modification.
- (2) On the referral of an external restraint order, the Court may –

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- (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 the Court considers necessary or desirable for its effective operation in this State.
- (3) The Administrator is to register an external restraint order which has been adapted and modified under subsection (2).
- (4) On registering an external restraint order, the Administrator is to provide the Commissioner of Police with a copy of the registered external restraint order.
- (5) Notice of the registration of an external restraint order is not to be provided to the person against whom the order was made unless the person who applied for that registration has consented to it being so provided.
- (6) A registered external restraint order is registered for the period during which the order, or the order as adapted and modified, is in force.

26. Effect of registration of external restraint order

An external restraint order which has been registered under section 25(1) or (3) –

- (a) has the same effect as a restraint order made under this Act; and

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- (b) may be enforced against a person as if it were a restraint order which had been made under this Act and provided to that person.

27. Application for variation, &c., of registered external restraint order

- (1) In this section –

prescribed person means –

- (a) a person who applied for the registration of an external restraint order; or
 - (b) a person for whose benefit an external restraint order which has been registered under section 25(1) or (3) was made; or
 - (c) a person against whom an external restraint order which has been registered under section 25(1) or (3) was made; or
 - (d) a person to whom the Court has granted leave to make an application under this section.
- (2) A person, other than a person referred to in paragraph (a), (b) or (c) of the definition of *prescribed person* in subsection (1), may apply to the Court for leave to make an application for a variation or cancellation referred to in subsection (3).

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- (3) A prescribed person may apply to the Court for one or more of the following purposes:
 - (a) the variation of a registered external restraint order as it applies in this State;
 - (b) the variation of the period during which a registered external restraint order has effect in its operation in this State;
 - (c) the cancellation of the registration of a registered external restraint order.
- (4) An application under subsection (2) or (3) is made by filing the application in a district registry.
- (5) An application under subsection (3) for the variation of a registered external restraint order as it applies in this State, or the variation of the period during which such an order has effect in its operation in this State, must include information of any relevant Family Court order, or of any pending application for a relevant Family Court order, of which the applicant is aware.

28. Variation, &c., of registered external restraint order

- (1) On receipt of an application under section 27(3), the Court may do one or more of the following:
 - (a) vary the registered external restraint order as it applies in this State;

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- (b) vary the period during which the registered external restraint order has effect in its operation in this State;
 - (c) cancel the registration of the registered external restraint order.
- (2) An application by a person referred to in paragraph (a), (b) or (d) of the definition of *prescribed person* in section 27(1) may be heard and determined in the absence of any person against whom the registered external restraint order has been made.
- (3) A registered external restraint order varied under subsection (1)(a) or (b) is registered for the period during which the order, as varied, has effect in its operation in this State.
- (4) Section 6(3), (4), (5), (6) and (10) applies, as appropriate, to the variation of a registered external restraint order as it applies in this State, or to the variation of the period during which such an order has effect in its operation in this State, in the same manner as it applies to the making of a restraint order.

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PART 4 – MISCELLANEOUS

29. Relevant Family Court order prevails if inconsistency

A restraint order, interim restraint order, electronic interim restraint order or registered external restraint order operates subject to any relevant Family Court order.

30. Costs

- (1) The Court hearing an application under this Act made by a person other than a police officer may, if the Court considers it appropriate, order either party to pay to the other such costs as the Court considers reasonable.
- (2) If costs are ordered to be paid under this section, the costs are to be assessed –
 - (a) by the Court; or
 - (b) if the Court directs, by a district registrar.
- (3) If costs are assessed by a district registrar, he or she must have regard to the same matters the Court would have regard to if the Court were assessing the costs, including the amount that could have been awarded in respect of witnesses' expenses under the *Magistrates Court (Criminal and General Division) Act 2019*.
- (4) An assessment of costs –

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- (a) is part of the order to which it relates;
and
 - (b) is to comply with any requirements
prescribed by the rules of court.
- (5) If costs are ordered to be paid under this section, those costs may be recovered as if they had been allowed under the *Magistrates Court (Civil Division) Act 1992*.
- (6) If costs are ordered to be paid under this section by one party to another party and publication of the name of either of those parties is prohibited under section 31(4) or by an order made under section 31(2), the Court is to report that fact to the Director, Monetary Penalties Enforcement Service appointed under section 8 of the *Monetary Penalties Enforcement Act 2005*.

31. Restriction of publication of names of parties, &c.

- (1) In this section –
- child* means a person who has not attained the age of 18 years.
- (2) If it appears to the Court that in the interests of justice it is desirable to prohibit the publication of any material relating to proceedings before it under this Act, the Court, before or during the course of the proceedings or after the proceedings, may make an order forbidding the publication of that material.

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- (3) A person must not publish any material that is forbidden to be published by an order made under subsection (2).

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 3 months, or both.

- (4) A person must not publish any material relating to proceedings under this Act which discloses, or may disclose, the identity of any child referred to in, or who is concerned with or affected by, the proceedings.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 3 months, or both.

- (5) The publication of any reference or allusion to material which is forbidden, by an order made under subsection (2) or by subsection (4), to be published is taken to be a publication of the material if that reference or allusion is, in the opinion of the Court, intended or sufficient to disclose the material.

32. Form of application, restraint order, &c.

A restraint order, an interim restraint order and an application under this Act, including an application under section 5(2), section 10(2) or section 27(2), are to be in a form approved by the Chief Magistrate.

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33. Rules

Without limiting the matters in respect of which rules of court may be made under section 15AE of the *Magistrates Court Act 1987* in respect of the Court, the rules of court may provide for the practice and procedure of the Court in relation to proceedings under this Act.

34. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may provide for the fees and charges payable in respect of any matter under this Act.
- (3) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (4) The regulations may –
 - (a) provide that a contravention of any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

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- (5) The regulations may authorise any matter to be from time to time determined, approved, applied or regulated by the Chief Magistrate, a magistrate, the Administrator, a district registrar, the Secretary of the Department or another person specified in the regulations.
- (6) The regulations may –
 - (a) provide for savings or transitional matters necessary or expedient for bringing this Act into operation; and
 - (b) provide for any of those savings or transitional matters to take effect on the day on which this Act commences or on a later day specified in the regulations, whether the day so specified is on or after the day on which the regulations are made.

35. Savings and transitional provisions

- (1) In this section –

commencement day means the day on which the *Magistrates Court (Criminal and General Division) Act 2019* commences;

former Act means Part XA of the *Justices Act 1959* as in force immediately before the commencement day.

- (2) A restraint order, interim restraint order, telephone interim restraint order or registered external restraint order made or registered under

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the former Act and in force immediately before the commencement day continues in force in accordance with its terms as if it were a restraint order, interim restraint order, electronic interim restraint order or registered external restraint order made or registered under this Act.

- (3) An application made under the former Act and not finally determined before the commencement day is taken to have been made under this Act.

36. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.