

DRAFT SECOND READING SPEECH

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Restraint Orders Bill 2019

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Madam Speaker, I move that the Bill now be read a second time.

This Bill is cognate with the *Magistrates Court (Criminal and General Division) Bill 2019* as it replaces Part XA of the *Justices Act 1959*.

Restraint order provisions were first introduced as Part XA of the *Justices Act* in 1985, and substantially revised and amended in 1988.

Until the introduction of the *Family Violence Act* in 2004 these provisions applied to both domestic and non-domestic situations. The *Family Violence Act 2004* brought in separate provisions for family violence orders under that Act, while retaining the restraint order provisions in the *Justices Act 1959* for other situations. The Bill retains this separation and does not make any changes to the provisions for family violence orders made under the *Family Violence Act 2004*.

Restraint orders provide important protections for persons who have been subjected to violence, threats to their person or property, harassment or intimidation, and they aim to prevent further violence or unwanted behaviours.

These orders may contain conditions which make it unlawful for a person who is the subject of the order to do or not do certain things, such as approach the person who is protected by the order, approach or damage that person's property, or contact the person who is protected by the order. If a restraint order is breached, the person who is the subject of the order may be arrested and detained, and charged with a criminal offence.

For example, a restraint order may be sought where the relationship between neighbours or former friends has become acrimonious and there is a threat of personal injury or damage to property if such an order is not made. This Bill retains the key principles embodied in the existing restraint order provisions under the *Justices Act 1959*, updates the provisions, and improves the operation and availability of orders made under those provisions.

I will now explain in more detail the key provisions of the Bill.

Part 2 of the Bill deals with restraint orders and interim restraint orders, including electronic interim restraint orders. These provisions largely replicate the equivalent provisions under Part XA of the *Justices Act 1959*.

Restraint Orders

Division 1 of Part 2 contains the provisions for restraint orders, including:

- how an application for a restraint order is made to a court and who can apply for a restraint order;

- the tests a court must apply in determining whether to make an order;
- a non-exhaustive list of orders that may be included in a restraint order; and
- the period for which a restraint order has effect, being the period specified in the order unless it is revoked before it expires.

The substantive test that the Court must apply in determining whether to make an order is that it must be satisfied, on the balance of probabilities, that the person to be restrained:

- has caused personal injury or damage to property and unless restrained is likely to do so again;
- has threatened to cause personal injury or damage to property and unless restrained is likely to carry out that threat;
- has behaved in a provocative or offensive manner and unless restrained is likely to behave the same way again; or
- has stalked the person for whose benefit the order is sought, or has stalked a third person and the stalking of the third person has caused the beneficiary of the order to feel apprehension or fear.

In deciding whether or not to make a restraint order, and what orders should be included in the restraint order, the Bill also provides that the Court must consider:

- the protection and welfare of the person for whose benefit the order is sought to be of paramount importance;
- whether a party to the order should be able to communicate or spend time with a child who is a family member;
- whether a party to the order should be able to communicate or spend time with the other person; and
- any relevant Family Court orders.

Another important feature of the Bill is the wide range of orders that are available to the Court when making a restraint order to protect a person. These include, but are not limited to, the following types of orders:

- orders prohibiting the restrained person from behaving in a particular way, including prohibiting them from approaching or contacting the other person;
- orders directing the restrained person to vacate premises, or to prohibit them from entering premises or limiting their access to premises;
- orders prohibiting or restricting the restrained person from having the possession, custody or control of any firearm or firearm accessory, or directing the forfeiture, disposal or surrender of a firearm or firearm accessory;
- orders cancelling or suspending a firearms licence or permit held by the restrained person;
- orders prohibiting the restrained person from applying for or holding a firearms licence or permit, from applying for the reinstatement of such a licence or permit, or for the return of any firearm and/or firearm accessory;

- orders prohibiting the restrained person from stalking the protected person or a third person;
- orders prohibiting the restrained person from causing another person to engage in conduct that the restraint order otherwise prohibits; and
- orders directing the restrained person to deliver property to, or to allow the protected person to recover or have access to property.

In addition to these orders, the Bill provides that the Court may make any ancillary or other orders it considers appropriate in the circumstances.

The Court may also issue a warrant authorising a police officer to enter and remain in the premises specified in the warrant, or any premises on or in which the police officer reasonably believes a firearm, or firearm accessory, may be situated and seize any such firearm or firearm accessory. It should be noted that while a police officer may use such force as is necessary in these circumstances, there are limitations imposed on the exercise of the power, which may only be exercised in respect of the premises specified in the warrant or if the police officer reasonably believes a firearm or firearm accessory is situated on premises.

The Bill also provides that the Court may order that restrained person or person who is the subject of the order to remain in the precincts of the courthouse until they are provided with a copy of the order, or alternatively, the Court may order that person to immediately provide the District Registrar with his or her postal address, or email address so the order, or copy of it can be provided to the person at that address. This is a new feature of the Bill. It reflects the fact that electronic communication is now more commonplace and is designed to ensure that the restrained person or person who is the subject of the order is served promptly with the relevant order.

In order to accommodate for urgent situations and when there is sufficient cause to do so, the Bill also makes provision for a magistrate or bench justice to issue a warrant for arrest of the person against whom the restraint order is sought.

The Bill further provides that where an application for a restraint order has been filed in a district registry, the Court may make an interim restraint order or make an order varying an interim restraint order. The Bill also sets out those persons who can make an application for the variation, extension or revocation of a restraint order made under the Bill, and the Court's powers to vary, extend or revoke the order.

Interim Restraint Orders

Division 2 of Part 2 of the Bill deals with interim restraint orders. It provides that an interim restraint order may include any order which may be included in a restraint order, and it has effect until a restraint order is made or until proceedings are otherwise terminated.

An interim restraint order may be made, varied or extended in the absence of the person against whom the order is sought, and the provisions of the Bill that apply to the making, variation or extension of a restraint order under Division 1, largely apply to the making, variation or extension of an interim restraint order.

Electronic Interim Restraint Orders

Division 2 of Part 2 deals with electronic interim restraint orders. It provides for a police officer to apply by electronic device or prescribed telephone to a magistrate for an interim

restraint order against a person in certain circumstances. That is, where certain behaviour is believed to have occurred and it is not practicable to immediately file the application in a district registry because of the time and place at which the relevant behaviour occurred.

In these circumstances, the presiding magistrate may make an electronic interim restraint order if satisfied that there is sufficient cause to do so. The magistrate may also issue a warrant or make an ancillary order or other order in the same way that warrants and other orders are made for restraint orders.

These provisions largely replicate the existing telephone interim restraint order provisions under the *Justices Act 1959*, except that the terminology has been updated to reflect changes in technology, specifically the increased use of electronic communication.

Application and Service Procedures

Division 3 of Part 2 sets out the procedures for hearing and determining applications for restraint orders and interim restraint orders under Part 2.

Division 4 deals with the various miscellaneous matters that arise in relation to applications under Part 2, including service of the order, when it takes effect, the powers of the Court to remand a person in custody or admit them to bail, and powers of police to enter certain premises.

External Restraint Orders

Part 3 of the Bill deals with how external restraint orders that are made interstate and in New Zealand are to be dealt with. It also clarifies their status in Tasmania. The external restraint order provisions also largely replicate the current provisions of the *Justices Act 1959*.

In particular, the Bill sets out the process for registering an external restraint order, the effect of registration and the processes for the variation and cancellation of registered external restraint orders.

An external restraint order which has been registered, has the same effect as a restraint order made under the Act and may be enforced against a person as if it were a restraint order made under this Act and provided to that person.

Miscellaneous Provisions

Part 4 of the Bill sets out a range of miscellaneous provisions to support the earlier provisions, including clarification that any relevant Family Court order prevails to the extent of any inconsistency with an order made under this Act, provisions in relation to when and how costs may be awarded and restrictions on the publication of the names of parties to an order.

It provides that a restraint order, interim restraint order and an application under this Act are to be in a form approved by the Chief Magistrate. It also includes provision for rules of the Court, provides a head of power for the making of regulations under the Act to support its operation, and provides savings and transitional provisions in relation to the *Justices Act 1959*.

New Restraint Order Rules will be developed to provide for the electronic filing of applications, service of process and other procedural matters which are required to support the Bill. It is intended the new Rules will commence when the new *Restraint Orders Act 2019* commences.

Madam Speaker, I commend the Bill to the House.