

Serial 113
Justice Legislation Amendment (Domestic and Family Violence) Bill 2019
Ms Fyles

A Bill for an Act to amend the *Bail Act 1982*, the Criminal Code, the *Domestic and Family Violence Act 2007* and the *Sentencing Act 1995*

NORTHERN TERRITORY OF AUSTRALIA

JUSTICE LEGISLATION AMENDMENT (DOMESTIC AND FAMILY
VIOLENCE) ACT 2019

Act No. [] of 2019

Table of provisions

Part 1	Preliminary matters	
1	Short title	1
2	Commencement	1
Part 2	Amendment of Bail Act 1982	
3	Act amended	1
4	Section 7A amended (Presumption against bail for certain offences).....	2
Part 3	Amendment of Criminal Code	
5	Act amended	2
6	Section 186AA inserted	2
	186AA Choking, strangling or suffocating in a domestic relationship	
7	Schedule 1 amended (Provisions of Code to which Part IIAA applies).....	3
Part 4	Amendment of Domestic and Family Violence Act 2007	
8	Act amended	3
9	Section 4 amended (Definitions).....	3
10	Section 23 amended (Order for replacement tenancy agreement)	4
11	Section 24 amended (Order for rehabilitation program)	5
12	Section 48 amended (Who may apply for variation or revocation).....	5
13	Section 65 amended (When application may be made)	6
14	Part 2.11A inserted	6
	Part 2.11A Rehabilitation programs	
	85A Declaration of rehabilitation program	
	85B Satisfactory completion of rehabilitation program	
	85C Failure to comply with rehabilitation program	
	85D Notification obligations of program facilitator	

85E	Bringing defendant before Court for review
85F	Additional power to bring defendant before Court
85G	Revocation of order for rehabilitation program

Part 5 Amendment of Sentencing Act 1995

15	Act amended	8
16	Section 78CA amended (Offence levels).....	9
17	Section 78DI amended (Exceptional circumstance exemption).....	9

Part 6 Repeal of Act

18	Repeal of Act.....	10
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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2019

An Act to amend the *Bail Act 1982*, the Criminal Code, the *Domestic and Family Violence Act 2007* and the *Sentencing Act 1995*

[Assented to [] 2019]
[Introduced [] 2019]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Justice Legislation Amendment (Domestic and Family Violence) Act 2019*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

Part 2 Amendment of Bail Act 1982

3 Act amended

This Part amends the *Bail Act 1982*.

4 Section 7A amended (Presumption against bail for certain offences)

Section 7A(2A)

omit, insert

- (2A) Despite subsection (1), subsection (2) does not apply to a person who is assessed to be suitable to participate in:
- (a) a program of rehabilitation prescribed by the Regulations; or
 - (b) a program declared by the Minister under section 85A(1) of the *Domestic and Family Violence Act 2007* to be a rehabilitation program.

Part 3 Amendment of Criminal Code**5 Act amended**

This Part amends the Criminal Code.

6 Section 186AA inserted

After section 186 in Part VI, Division 4

insert

186AA Choking, strangling or suffocating in a domestic relationship

- (1) A person commits an offence if:
- (a) the person is in a domestic relationship with another person; and
 - (b) the person intentionally chokes, strangles or suffocates the other person; and
 - (c) the other person does not consent to the choking, strangling or suffocating and the person is reckless in relation to that circumstance.

Maximum penalty: Imprisonment for 5 years.

- (2) Strict liability applies to subsection (1)(a).
- (3) To avoid doubt, an offence against this section constitutes domestic violence under section 5 of the *Domestic and Family Violence Act 2007*.

(4) In this section:

chokes, strangles or suffocates, a person, includes the following:

- (a) applies pressure, to any extent, to the person's neck;
- (b) obstructs, to any extent, any part of the person's:
 - (i) respiratory system; or
 - (ii) accessory systems of respiration;
- (c) interferes, to any extent, with the operation of the person's:
 - (i) respiratory system; or
 - (ii) accessory systems of respiration;
- (d) impedes, to any extent, the person's respiration.

domestic relationship, see section 9 of the *Domestic and Family Violence Act 2007*.

7 Schedule 1 amended (Provisions of Code to which Part IIAA applies)

Schedule 1

insert (in numerical order)

Section 186AA (Choking, strangling or suffocating in a domestic relationship)

Part 4 Amendment of Domestic and Family Violence Act 2007

8 Act amended

This Part amends the *Domestic and Family Violence Act 2007*.

9 Section 4 amended (Definitions)

(1) Section 4, definition **rehabilitation program**

omit

(2) Section 4

insert

perpetrators' program, see section 78H(1) of the *Sentencing Act 1995*.

program facilitator means a person who:

- (a) provides a rehabilitation program or a perpetrators' program;
or
- (b) provides assessments, support or case management associated with a rehabilitation program or a perpetrators' program.

rehabilitation program, means a program declared by the Minister under section 85A(1) to be a rehabilitation program.

10 Section 23 amended (Order for replacement tenancy agreement)

(1) Section 23, heading

omit

for replacement

insert

regarding

(2) Section 23(2) and (3)

omit, insert

(2) The Court may, in the DVO, make:

- (a) an order terminating the tenancy agreement; or
- (b) an order terminating the tenancy agreement and creating a new tenancy agreement (the **replacement agreement**) for the benefit of:
 - (i) the protected person and anyone else who was a party to the terminated agreement other than the defendant; or
 - (ii) the defendant and anyone else who was a party to the terminated agreement.

- (3) An order must not be made unless:
- (a) the Court is satisfied there is no reasonable likelihood of the defendant and the protected person living in the premises free of domestic violence; and
 - (b) the landlord consents to the order or, if the landlord refuses consent, the Court is satisfied the refusal is unreasonable; and
 - (c) the protected person consents to the order; and
 - (d) in the case of a replacement agreement – the protected person or defendant, as the case may be, would be able to comply with the replacement agreement; and
 - (e) the Court considers it appropriate in the circumstances to make the order.

11 Section 24 amended (Order for rehabilitation program)

- (1) Section 24(1)
- omit, insert*
- (1) The Court may include in a DVO an order requiring the defendant to take part in a rehabilitation program when making or varying the DVO.
- (1A) In deciding whether to include an order under subsection (1), the safety and protection of the protected person must be the paramount consideration.
- (2) Section 24(2)(a) and (3)
- omit*
- court
- insert*
- Court

12 Section 48 amended (Who may apply for variation or revocation)

- Section 48(5)(b), after "program"
- insert*
- or a perpetrators' program

13 Section 65 amended (When application may be made)

Section 65(3)(b), after "program"

insert

or a perpetrators' program

14 Part 2.11A inserted

After section 85

insert

Part 2.11A Rehabilitation programs**85A Declaration of rehabilitation program**

- (1) The Minister may, by *Gazette* notice, declare a program to be a rehabilitation program for this Act.
- (2) The notice must specify the requirements of the program.

Examples for subsection (2)

- 1 *That the defendant attend 16 weekly group sessions during a 5 month period.*
- 2 *That the defendant attend individual meeting with the program facilitator on request.*
- 3 *That the defendant agree to independent checks on the safety of the protected person while the defendant is participating in the program.*

85B Satisfactory completion of rehabilitation program

- (1) A defendant who is ordered to attend a rehabilitation program is considered to have satisfactorily completed the program if:
 - (a) the defendant did not breach a DVO in force; and
 - (b) the defendant did not commit any further domestic violence; and
 - (c) the defendant did not commit any further violent offences; and
 - (d) the Court receives a completion notice under section 85D(3)(a).

- (2) Despite subsection (1), the Court has discretion to find that a defendant did satisfactorily complete a rehabilitation program if the Court is of the opinion that to find that the defendant did not satisfactorily complete the program would be unjust in the circumstances.
- (3) The Court may make a finding under subsection (2) despite receiving one or more non-compliance notices regarding the defendant under section 85D(3)(b).
- (4) The Court must state its reasons for any finding made under subsection (2).

85C Failure to comply with rehabilitation program

If a defendant who is ordered to attend a rehabilitation program fails to comply with a requirement of the program, the failure does not constitute a contravention of the DVO under section 120.

85D Notification obligations of program facilitator

- (1) A program facilitator must notify both the police and the Court if the facilitator becomes aware of:
 - (a) a defendant committing domestic violence while the defendant is subject to an order to attend a rehabilitation program; or
 - (b) a defendant engaging in conduct that contravenes a DVO while the defendant is subject to an order to attend a rehabilitation program.
- (2) The notice must be in writing and include the particulars of the defendant's conduct of which the program facilitator is aware.
- (3) A program facilitator must provide the following to the Court:
 - (a) if a defendant satisfactorily completes the requirements of a rehabilitation program – a completion notice;
 - (b) if a defendant fails to comply with a requirement of a rehabilitation program – a non-compliance notice;
 - (c) if requested by the Court – a participation notice summarising the defendant's participation in a rehabilitation program.

85E Bringing defendant before Court for review

- (1) The Court may require a defendant who is ordered to attend a rehabilitation program to appear before it from time to time for a review of the defendant's progress in the program.

- (2) The Court may request the program facilitator to provide a participation notice under section 85D(3)(c) for a defendant prior to a review under subsection (1).
- (3) If the Court receives a non-compliance notice from a program facilitator under section 85D(3)(b), the Court must require the defendant to appear before it for a review of the defendant's progress in a rehabilitation program.

85F Additional power to bring defendant before Court

- (1) The Court may issue a summons or warrant under subsection (2) if:
 - (a) the Court is satisfied that the defendant significantly failed to comply with the requirements of a rehabilitation program; or
 - (b) the defendant fails to attend a review under section 85E; or
 - (c) the Court believes that the defendant may present a risk to the safety of the protected person or any other person.
- (2) The Court may:
 - (a) issue a summons for the defendant to appear before the Court; or
 - (b) if satisfied the defendant may not appear – issue a warrant for the arrest of the defendant.
- (3) The summons or warrant may be issued on the Court's initiative or on application.

85G Revocation of order for rehabilitation program

The Court may revoke an order under section 24(1) requiring a defendant to attend a rehabilitation program if satisfied on the balance of probabilities that:

- (a) the defendant is unlikely or unable to make any further progress under the order; or
- (b) there is an unacceptable risk to the safety or welfare of the protected person or any other person.

Part 5 Amendment of Sentencing Act 1995

15 Act amended

This Part amends the *Sentencing Act 1995*.

16 Section 78CA amended (Offence levels)

- (1) Section 78CA(1)(b), after "186,"
insert
186AA,
- (2) Section 78CA(3)
omit, insert
- (3) Each of the following is a **level 3 offence**:
- (a) an offence against section 186AA of the Criminal Code if the offence is not a level 5 offence;
 - (b) an offence against section 188 of the Criminal Code if the offence:
 - (i) is committed in circumstances mentioned in section 188(2), other than paragraph (k); and
 - (ii) is not a level 5 offence.

17 Section 78DI amended (Exceptional circumstance exemption)

- (1) After section 78DI(3)
insert
- (3A) When sentencing an offender in relation to an offence consisting of domestic violence, a court may consider the circumstances of the case to be exceptional if:
- (a) the Court ordered the offender to take part in a rehabilitation program under section 24(1) of the *Domestic and Family Violence Act 2007* in relation to the offence; and
 - (b) the offender satisfactorily completes the rehabilitation program in accordance with section 85B of the *Domestic and Family Violence Act 2007*; and
 - (c) the Court is satisfied that the offender has taken responsibility for the offender's conduct and has made a genuine effort to change the offender's behaviour.

(2) After section 78DI(4)

insert

(5) In this section:

domestic violence, see section 4 of the *Domestic and Family Violence Act 2007*.

Part 6 Repeal of Act

18 Repeal of Act

This Act is repealed on the day after it commences.