

Queensland



**PENALTIES AND SENTENCES
(NON-CONTACT ORDERS)
AMENDMENT ACT 2001**

Act No. 94 of 2001

Queensland



PENALTIES AND SENTENCES (NON-CONTACT ORDERS) AMENDMENT ACT 2001

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Queensland



**Penalties and Sentences (Non-contact Orders)
Amendment Act 2001**

Act No. 94 of 2001

An Act to amend the *Penalties and Sentences Act 1992* and *Evidence Act 1977*

[Assented to 10 December 2001]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Penalties and Sentences (Non-contact Orders) Amendment Act 2001*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

PART 2—AMENDMENT OF PENALTIES AND SENTENCES ACT 1992

3 Act amended in pt 2

This part amends the *Penalties and Sentences Act 1992*.

4 Amendment of s 4 (Definitions)

Section 4—

insert—

‘**“Crown prosecutor”**, for part 3A, includes—

- (a) the Attorney-General; and
- (b) the director of public prosecutions; and
- (c) another person, other than a police officer, appearing for the State.

“non-contact order” means a non-contact order in force under part 3A.

“prosecutor”, for part 3A, means—

- (a) in the context of a proceeding before, or an application to, a Magistrates Court—a police officer or Crown prosecutor; or
- (b) otherwise—a Crown prosecutor.’.

5 Insertion of new pt 3A

After section 43—

insert—

‘PART 3A—NON-CONTACT ORDERS

‘43A Court may make order whether or not it records conviction

‘A court may make a non-contact order whether or not it records a conviction.

‘43B Making non-contact order

‘(1) If a court convicts an offender of a personal offence, whether on indictment or summarily, the court may make a non-contact order for the offender.

‘(2) The order may be made in addition to any other order the court may make under this or another Act.

‘(3) However, the court must not make a non-contact order if an order may be made under the *Domestic Violence (Family Protection) Act 1989*, section 30.¹

‘(4) In this section—

“personal offence” means an indictable offence committed against the person of someone.

¹ *Domestic Violence (Family Protection) Act 1989*, section 30 (Power of court if spouse pleads or is found guilty of related offences)

‘43C Requirements of non-contact order

‘(1) A non-contact order is an order that contains either or both of the following—

- (a) a requirement that the offender not contact the victim against whom the offence was committed, or someone who was with the victim when the offence was committed (an “**associate**”), for a stated time;
- (b) a requirement that the offender not go to a stated place, or within a stated distance of a stated place, for a stated time.

‘(2) The time stated in the order must be a period starting when the order is made and ending no later than—

- (a) if the offender is sentenced to a term of imprisonment for the offence and the sentence is not suspended—2 years after the day on which the term of imprisonment ends; or
- (b) otherwise—2 years after the day on which the order is made.

‘(3) The court may make the order if satisfied that, unless the order is made, there is an unacceptable risk that the offender would—

- (a) injure the victim or associate, including for example by injuring the victim or associate psychologically; or
- (b) harass the victim or associate; or
- (c) damage the property of the victim or associate; or
- (d) act in a way that could reasonably be expected to cause a detriment to the victim or associate, including for example by acting in a way that—
 - (i) makes the victim or associate fear that he or she may be injured; or
 - (ii) makes the victim or associate fear that his or her property may be damaged; or
 - (iii) hinders or stops the victim or associate doing something he or she is lawfully entitled to do; or
 - (iv) makes the victim or associate do something he or she is lawfully entitled not to do.

Example of subparagraph (iii)—

Acting in a way that makes the victim significantly change the way the victim would ordinarily travel to work.

Example of subparagraph (iv)—

Acting in a way that makes the victim sell a property the victim would not otherwise sell.

‘(4) In considering whether to make the order, the court must have regard to all of the circumstances of the case, including for example—

- (a) the terms of any other order relating to the offender and the victim or associate; and
- (b) the viability of making the order in circumstances in which contact between the offender and the victim or associate may be unavoidable; and
- (c) the offender’s antecedents.

Example of another order under paragraph (a)—

An order under the *Family Law Act 1975* (Cwlth).

Example of unavoidable contact under paragraph (b)—

Contact may be unavoidable if the offender and the victim both live in a small remote community.

‘(5) In this section—

“**contact**” the victim or associate means—

- (a) intentionally initiate contact with the victim or associate in any way, including for example, by phone, mail, fax, email or other technology; or
- (b) intentionally follow, loiter near, watch or approach the victim or associate; or
- (c) intentionally loiter near, watch, approach or enter a place where the victim or associate lives, works or visits.

“**property**” of a victim or associate means—

- (a) property in which the victim or associate has an interest, whether or not the offender also has an interest in the property; or
- (b) property that is otherwise—

- (i) in the care or custody of the victim or associate; or
- (ii) at the premises where the victim or associate is living.

‘43D Amending or revoking non-contact order

‘(1) The following persons may apply, in the approved form, to amend or revoke a non-contact order—

- (a) a prosecutor;
- (b) the victim named in the order;
- (c) any associate named in the order;
- (d) the offender.

‘(2) However, the offender can not apply within 6 months after the order was made.

‘(3) The application may be made to—

- (a) a court of equivalent jurisdiction to the court in which the order was made; or
- (b) if the offender is appearing before a court of higher jurisdiction in relation to another offence against the victim or associate—the judge before whom the offender is appearing.

‘(4) The applicant must give a copy of the application to—

- (a) if the applicant is the offender, victim or associate—the prosecuting authority; or
- (b) if the applicant is a prosecutor—the offender, the victim and any associate named in the order.

‘(5) The applicant must give the copy at least 21 days before the day on which the application is to be heard.

‘(6) For an application made by the offender, victim or associate, the prosecuting authority who received the application under subsection (4)(a) must take all reasonable steps to immediately give a copy of the application to—

- (a) if the application is made by the offender—the victim and any associate named in the order; or
- (b) if the application is made by the victim—the offender and any associate named in the order; or

- (c) if the application is made by the associate—the offender and the victim.

‘(7) The prosecutor, offender, victim and associate are each entitled to be heard at the hearing of an application.

‘(8) A court may amend or revoke the order only if satisfied there has been a material change in the circumstances of the offender, the victim or any associate named in the order that justifies the amendment or revocation.

Example of a material change in the victim’s circumstances—

Because of the relocation of the victim’s employer’s workplace, the victim starts working in the building in which the offender works.

‘(9) In this section—

“prosecuting authority” means—

- (a) if the prosecutor who appeared before the court when the non-contact order was made was a police officer—the commissioner of the police service or someone authorised to accept the application on the commissioner’s behalf; or
- (b) if the prosecutor who appeared before the court when the non-contact order was made was a Crown prosecutor—the director of public prosecutions or someone authorised to accept the application on the director’s behalf.

‘43E Order to be given to interested persons

‘(1) A proper officer of the court that makes, amends or revokes a non-contact order for an offender must immediately—

- (a) reduce the order to writing in the approved form; and
- (b) give a copy of the order to—
- (i) if the prosecutor who appeared before the court when the non-contact order was made was a Crown prosecutor—the director of public prosecutions or someone authorised to accept the order on the director’s behalf; and
- (ii) the offender; and
- (iii) if the order was amended or revoked on the application of the victim named in the order—the victim; and

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- (iv) if the order was amended or revoked on the application of any associate named in the order—the associate; and
 - (v) the chief executive (corrective services); and
 - (c) give a copy of the order to the commissioner of the police service, or someone authorised to accept the order on the commissioner’s behalf, by fax, email or a similar facility.

‘(2) Failure to comply with subsection (1) does not invalidate the order.

‘(3) If the proper officer is not required under subsection (1) to give a copy of the order to the victim or associate, the prosecutor, or someone on the prosecutor’s behalf, must take all reasonable steps to give a copy of the order to the victim or associate.

‘43F Contravention of non-contact order

‘(1) An offender must not unlawfully contravene a non-contact order.

Maximum penalty—40 penalty units or 1 year’s imprisonment.

‘(2) A Magistrates Court that convicts an offender of an offence against subsection (1) may, in addition to or instead of sentencing the offender under subsection (1)—

- (a) if the non-contact order was made by a Magistrates Court—amend the order; or
- (b) if the non-contact order was made by the Supreme or District Court (the “**sentencing court**”)—order the offender to appear before the sentencing court.

‘(3) If an order is made under subsection (2)(b), the Magistrates Court must also make 1 of the following orders—

- (a) an order committing the offender into custody to be brought before the sentencing court;
- (b) an order granting the offender bail on the condition that the offender appear before the sentencing court.

‘(4) If the Magistrates Court sentenced the offender under subsection (1), the sentencing court may amend the order or decide no further action be taken.

‘(5) If the Magistrates Court did not sentence the offender under subsection (1), the sentencing court may do the following—

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- (a) sentence the offender under subsection (1);
 - (b) in addition to or instead of sentencing the offender under subsection (1), amend the order;
 - (c) decide no further action be taken.’.

6 Insertion of new s 209

After section 208—

insert—

‘209 Transitional provision for Penalties and Sentences (Non-contact Orders) Amendment Act 2001

‘Part 3A applies only to an offence committed after the commencement of this section.’.

PART 3—AMENDMENT OF EVIDENCE ACT 1977

7 Act amended in pt 3

This part amends the *Evidence Act 1977*.

8 Amendment of s 132C (Fact finding on sentencing)

Section 132C(5)(a), after ‘15’—

insert—

‘or evidence given at a hearing in relation to an order under part 3A² of that Act’.

2 *Penalties and Sentences Act 1992*, part 3A (Non-contact orders)

