

Queensland



**PENALTIES AND
SENTENCES
(NON-CONTACT ORDERS)
AMENDMENT BILL 2000**



PENALTIES AND SENTENCES (NON-CONTACT ORDERS) AMENDMENT BILL 2000

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2000

A BILL

FOR

An Act to amend the Penalties and Sentences Act 1992

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

The Parliament of Queensland enacts—

1

Short title

2

Clause **1.** This Act may be cited as the *Penalties and Sentences (Non-contact Orders) Amendment Act 2000*.

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4

Act amended

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Clause **2.** This Act amends the *Penalties and Sentences Act 1992*.

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Commencement

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Clause **3.** This Act commences on a day to be fixed by proclamation.

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Amendment of s 4 (Definitions)

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Clause **4.** Section 4—

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insert—

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

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Insertion of new pt 3A

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Clause **5.** After section 43—

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insert—

15

‘PART 3A—NON-CONTACT ORDERS

16

‘Court may make order whether or not it records conviction

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‘**43A.** A court may make a non-contact order whether or not it records a conviction.

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Penalties and Sentences (Non-contact Orders)
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‘Making non-contact order

‘43B.(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.

‘Requirements of non-contact order

‘43C.(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

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

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made, there is an unacceptable risk that the offender would—	1
(a) injure the victim or associate, including for example by injuring the victim or associate psychologically; or	2 3
(b) harass the victim or associate; or	4
(c) damage the property of the victim or associate; or	5
(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—	6 7 8
(i) makes the victim or associate fear that he or she may be injured; or	9 10
(ii) makes the victim or associate fear that his or her property may be damaged; or	11 12
(iii) hinders or stops the victim or associate doing something he or she is lawfully entitled to do; or	13 14
(iv) makes the victim or associate do something he or she is lawfully entitled not to do.	15 16
<i>Example of subparagraph (iii)—</i>	17
Acting in a way that makes the victim significantly change the way the victim would ordinarily travel to work.	18 19
<i>Example of subparagraph (iv)—</i>	20
Acting in a way that makes the victim sell a property the victim would not otherwise sell.	21 22
‘(4) In considering whether to make the order, the court must have regard to all of the circumstances of the case, including for example—	23 24
(a) the terms of any other order relating to the offender and the victim or associate; and	25 26
(b) the viability of making the order in circumstances in which contact between the offender and the victim or associate may be unavoidable; and	27 28 29
(c) the offender’s antecedents.	30

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<i>Example of another order under paragraph (a)—</i>	1
An order under the <i>Family Law Act 1975</i> (Cwlth).	2
<i>Example of unavoidable contact under paragraph (b)—</i>	3
Contact may be unavoidable if the offender and the victim both live in a small remote community.	4 5
‘(5) In this section—	6
“ contact ” the victim or associate means—	7
(a) intentionally initiate contact with the victim or associate in any way, including for example, by phone, mail, fax, email or other technology; or	8 9 10
(b) intentionally follow, loiter near, watch or approach the victim or associate; or	11 12
(c) intentionally loiter near, watch, approach or enter a place where the victim or associate lives, works or visits.	13 14
“ property ” of a victim or associate means—	15
(a) property in which the victim or associate has an interest, whether or not the offender also has an interest in the property; or	16 17
(b) property that is otherwise—	18
(i) in the care or custody of the victim or associate; or	19
(ii) at the premises at which the victim or associate is living.	20
‘ Amending or revoking of non-contact order	21
‘43D.(1) The following persons may apply, in the approved form, to amend or revoke a non-contact order—	22 23
(a) a prosecutor;	24
(b) the victim named in the order;	25
(c) any associate named in the order;	26
(d) the offender.	27
‘(2) However, the offender can not apply within 6 months after the order was made.	28 29

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- ‘(3) The application may be made to— 1
- (a) a court of equivalent jurisdiction to the court in which the order 2
was made; or 3
 - (b) if the offender is appearing before a court of higher jurisdiction in 4
relation to another offence against the victim or associate—the 5
court of higher jurisdiction. 6
- ‘(4) The applicant must, at least 21 days before the day on which the 7
application is to be heard, give a copy of the application to— 8
- (a) if the applicant is the offender, victim or associate— 9
 - (i) if the prosecutor who appeared before the court when the 10
non-contact order was made was a police officer—the 11
commissioner of the police service or someone authorised to 12
accept the application on the commissioner’s behalf; or 13
 - (ii) otherwise—the director of public prosecutions or someone 14
authorised to accept the application on the director’s behalf; 15
or 16
 - (b) if the applicant is a prosecutor—the offender, the victim and any 17
associate named in the order. 18
- ‘(5) For an application made by the offender, victim or associate, the 19
prosecuting authority that received the application under subsection (4)(a) 20
must take all reasonable steps to immediately give a copy of the application 21
to— 22
- (a) if the application is made by the offender—the victim and any 23
associate named in the order; or 24
 - (b) if the application is made by the victim—the offender and any 25
associate named in the order; or 26
 - (c) if the application is made by the associate—the offender and 27
victim. 28
- ‘(6) The prosecutor, offender, victim and associate are each entitled to be 29
heard at the hearing of an application. 30
- ‘(7) For an application made by the offender, the court may amend or 31
revoke the order only if satisfied there has been a material change in the 32

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circumstances of the offender, the victim or any associate named in the order that justifies the amendment or revocation. 1
2

Example of a material change in the victim's circumstances— 3

Because of the relocation of the victim's employer's workplace, the victim starts working in the building in which the offender works. 4
5

'(8) In this section— 6

"prosecutor" means— 7

(a) for the Magistrates Court—a police officer or Crown prosecutor; 8
or 9

(b) otherwise—a Crown prosecutor. 10

'Order to be given to interested persons 11

'43E.(1) A proper officer of the court that makes, amends or revokes a non-contact order for an offender must immediately— 12
13

(a) reduce the order to writing in the approved form; and 14

(b) give a copy of the order to— 15

(i) the prosecutor; and 16

(ii) the offender; and 17

(iii) if the order was amended or revoked on the application of the victim named in the order—the victim; and 18
19

(iv) if the order was amended or revoked on the application of any associate named in the order—the associate; and 20
21

(v) the chief executive (corrective services); and 22

(c) give a copy of the order to the commissioner of the police service by fax, email or a similar facility. 23
24

'(2) Failure to comply with subsection (1) does not invalidate the order. 25

'(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. 26
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‘(4) In this section—	1
“prosecutor” means the prosecutor appearing before the court when the non-contact order was made, amended or revoked.	2 3
‘ Contravention of non-contact order	4
‘43F.(1) An offender must not unlawfully contravene a non-contact order.	5 6
Maximum penalty—40 penalty units or 1 year’s imprisonment.	7
‘(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)—	8 9 10
(a) if the non-contact order was made by a Magistrates Court—amend the order; or	11 12
(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.	13 14 15
‘(3) For subsection (2)(b), the Magistrates Court may also make the following orders—	16 17
(a) an order committing the offender into custody to be brought before the sentencing court;	18 19
(b) an order granting the offender bail on the condition that the offender appear before the sentencing court.	20 21
‘(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.	22 23 24
‘(5) If the Magistrates Court did not sentence the offender under subsection (1), the sentencing court may do the following—	25 26
(a) sentence the offender under subsection (1);	27
(b) in addition to or instead of sentencing the offender under subsection (1), amend the order;	28 29
(c) decide no further action be taken.	30

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‘(6) If an offender fails to appear before the sentencing court as ordered under subsection (2)(b), the sentencing court may issue a warrant to arrest the offender and bring the offender before the sentencing court.’.

Insertion of new s 208

Clause **6.** After section 207—
 insert—

‘Transitional provision for Penalties and Sentences (Non-contact Orders) Amendment Act 2000

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