

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to repeal and re-enact Part 15A of the Crimes Act 1900 (the Principal Act) with changes following a review of that Part by the Law Reform Commission. Part 15A deals primarily with the issue of apprehended violence orders by Local Courts, the Children's Court or authorised officers to protect persons from violence arising from domestic relationships or violence arising outside domestic relationships (personal violence).

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the Crimes Act 1900 set out in Schedules 1 and 2.

Clause 4 is a formal provision that gives effect to the amendments to the Acts and regulations set out in Schedule 3.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the Interpretation Act 1987 provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Crimes Act 1900 relating to Part 15A

Schedule 1 substitutes Part 15A of the Principal Act. The new Part contains the following provisions:

Part 15A Apprehended violence orders

Division 1 Preliminary

Proposed section 562A defines certain terms used in the Part.

Proposed section 562B defines domestic relationship between a person and another person for the purposes of the Part. The definition has been amended to include, in the case of an Aboriginal person or a Torres Strait Islander, a relationship arising because the person is or has been part of the extended family or kin of the other person according to the Indigenous kinship system of the person's culture.

Proposed section 562C defines relative for the purposes of the Part.

Proposed section 562D defines intimidation for the purposes of the Part. The definition is amended to specifically include a reference to an approach made to the person by telephone, telephone text messaging, e-mailing and other technologically assisted means that causes a person to fear for his or her safety.

Division 2 Apprehended domestic violence orders

Proposed section 562E sets out the objects of the Division.

Proposed section 562F enables an application to be made for an apprehended domestic violence order.

Proposed section 562G enables a court to make an apprehended domestic violence order for the protection of a person in fear of another person with whom he or she has or has had a domestic relationship.

Proposed section 562H sets out the matters that are to be considered by a court when making an apprehended domestic violence order. The court is firstly to consider the safety and protection of the person seeking the order and any child directly or indirectly affected by domestic violence.

Division 3 Apprehended personal violence orders

Proposed section 562I sets out the object of the Division.

Proposed section 562J enables an application to be made for an apprehended personal violence order.

Proposed section 562K enables a court to make an apprehended personal violence order for the protection of a person in fear of another person where no domestic relationship is involved.

Proposed section 562L sets out the matters that are to be considered by a court when making an apprehended personal violence order. The court is firstly to consider the safety and protection of the person seeking the order and any child directly or indirectly affected by the alleged conduct of the defendant.

Proposed section 562M gives an authorised officer a discretion to refuse to issue process where an application for an apprehended personal violence order has been made unless the application for the

order was made by a police officer. The proposed section sets out the grounds on which the discretion is to be exercised.

Proposed section 562N is a new provision that enables a court at any time when considering whether to make an apprehended personal violence order or after making such an order, to refer the parties for mediation under the Community Justice Centres Act 1983. The proposed section sets out the circumstances in which a matter is not to be referred to mediation.

Division 4 Interim apprehended violence orders Subdivision 1 Telephone interim orders

Proposed section 562O enables a police officer to apply by telephone to an authorised officer for an interim apprehended violence order.

Proposed section 562P provides that a telephone interim apprehended violence order may be made if an incident occurs and a police officer has good reason to believe that an order needs to be made to ensure the safety of a person involved or to prevent substantial damage to any property of a person involved. The proposed section makes it clear that an application may be made at any time and regardless of whether a court is sitting.

Proposed section 562Q sets out circumstances in which a police officer investigating an incident must make an application for a telephone interim apprehended violence order.

Proposed section 562R enables an authorised officer to make a telephone interim apprehended violence order if satisfied that there are reasonable grounds for doing so. The proposed section also applies the mediation provisions of proposed section 562N to telephone interim apprehended personal violence orders.

Proposed section 562S sets out the effect of a telephone interim apprehended violence order and the types of prohibitions and restrictions that can be included in such an order by an authorised officer.

Proposed section 562T provides that a telephone interim apprehended violence order is taken to be an application for an apprehended violence order by a court and is to include a direction for the appearance of the defendant at a hearing of the application on a date specified in the order (being not later than 28 days after the interim order is made).

Proposed section 562U sets out the procedure for recording the making of a telephone interim apprehended violence order.

Proposed section 562V provides for service of a telephone interim apprehended violence order on the defendant.

Proposed section 562W provides that a telephone interim apprehended violence order remains in force for 28 days after it is made, unless it ceases to have effect or is revoked. A telephone interim apprehended violence order ceases to have effect when a court makes a final order or, if the defendant is not present when the final order is made, when a copy of the final order is served on the defendant. Currently, a telephone interim apprehended violence order remains in force for 14 days (or 28 days if the order is made in certain circumstances).

Proposed section 562X enables a telephone interim apprehended violence order to be varied or revoked by an authorised officer or a court dealing with an application for an apprehended violence order.

Proposed section 562Y enables a police officer in certain circumstances to detain or arrest a person against whom a telephone interim apprehended violence order is sought but only for the purpose of serving a copy of the order on the person.

Proposed section 562Z provides that a telephone interim apprehended violence order may not be renewed.

Subdivision 2 Interim orders made by court or registrar

Proposed section 562ZA enables a court to make an interim apprehended violence order if it considers it appropriate to do so in the circumstances.

Proposed section 562ZB enables the registrar of a Local Court or the Registrar of the Children's Court to make an interim apprehended violence order if the parties concerned consent to the making of the order.

Proposed section 562ZC provides that an interim apprehended violence order ceases to have effect when a court makes a final order or, if the defendant is not present when the final order is made, when a copy of the final order is served on the defendant.

Division 5 Content and effect of apprehended violence orders

Proposed section 562ZD sets out the prohibitions and restrictions that may be imposed on a defendant by an apprehended violence order. A court may impose such prohibitions or restrictions on the behaviour of the defendant as appear necessary or desirable to the court and, in particular, to ensure the safety and protection of the person in need of protection and any children from domestic or personal violence.

Proposed section 562ZE provides that, unless the court orders otherwise, every apprehended violence order prohibits certain conduct of the defendant, including assaults, harassment, stalking and other intimidating conduct directed towards the person or persons who are protected by the order.

Proposed section 562ZF is a new provision that enables ancillary property recovery orders to be made that enable the retrieval of property of a person protected by an apprehended violence order or of the defendant under such an order.

Proposed section 562ZG makes it an offence to contravene an apprehended violence order. The proposed section contains a new provision that provides that a protected person under an apprehended violence order is not guilty of an offence of aiding or abetting a contravention of the order.

Division 6 Measures for protection of children and others in proceedings

Proposed section 562ZH provides that proceedings relating to apprehended violence orders are to be closed to the public (unless the court otherwise directs) if they are for the protection of a child under the age of 16 years. An additional provision is included to require any part of proceedings relating to an apprehended violence order in which a child under the age of 16 years appears as a witness to be closed to the public (unless the court otherwise directs).

Proposed section 562ZI is a new provision that enables a person who is the alleged victim of a prescribed sexual offence (within the meaning of the Criminal Procedure Act 1986) and is required to give evidence in proceedings relating to an apprehended violence order where the defendant has been charged with the offence to be given the option of giving evidence in a manner allowed by section 294B of that Act for criminal proceedings in which such offences are involved.

Proposed section 562ZJ prevents the publishing or broadcasting of certain material, before or during proceedings relating to an apprehended violence order, that would identify a child under 16 years of age who is involved in the proceedings.

Proposed section 562ZK enables a court to direct that the publishing or broadcasting of certain material is prohibited, before or during proceedings relating to an apprehended violence order, being material that would identify a person who is involved in the proceedings.

Proposed section 562ZL places certain restrictions on the address of a person protected by an apprehended domestic violence order being stated in the order.

Proposed section 562ZM places certain restrictions on the address of a health care provider for a person protected by an apprehended personal violence order being stated in the order.

Proposed section 562ZN enables a party to proceedings relating to an apprehended violence order to choose to have a person present (such as a relative, friend or support person) when giving evidence.

Proposed section 562ZO requires an applicant in proceedings relating to an apprehended violence order to inform the court of any relevant parenting order of the Commonwealth that relates to contact between a party to the proceedings and any of their children. The proposed section sets out certain matters that the court hearing the proceedings is to consider where children are involved.

Division 7 Proceedings relating to apprehended violence orders (other than telephone interim orders)

Subdivision 1 Preliminary

Proposed section 562ZP states that the Division does not apply to telephone interim apprehended violence orders.

Subdivision 2 Applications for orders

Proposed section 562ZQ sets out the manner in which applications for apprehended violence orders are to be made. Currently, the procedure for seeking an apprehended violence order is by complaint made orally or in writing to a justice of the peace. The new procedure provides for an application to be made under the Local Courts Act 1982.

Proposed section 562ZR sets out certain circumstances in which a police officer is to make an application for an apprehended violence order. The police officer has a discretion not to make an application if the person for whom the order would be sought is at least 16 years of age and the police officer believes that the person intends to make an application themselves or there is other good reason

not to make the application. A new provision makes it clear that the reluctance of the person is not a good reason for the police officer not to make an application in cases where the person for whom the order would be sought is the victim of violence or threatened violence, or has an intellectual disability and has no guardian.

Proposed section 562ZS places certain restrictions on the address of a person for whose protection an apprehended domestic violence order is sought being stated in an application for the order.

Proposed section 562ZT places certain restrictions on the address of a health care provider for a person for whose protection an apprehended personal violence order is sought being stated in an application for the order.

Subdivision 3 Ancillary provisions relating to making of orders

Proposed section 562ZU requires a court hearing proceedings for an apprehended violence order to make the order in certain circumstances where the defendant has pleaded guilty or been found guilty of certain specified offences.

Proposed section 562ZV requires a court hearing proceedings for an apprehended violence order to make the order in certain circumstances where the defendant has been charged with certain specified offences.

Proposed section 562ZW provides for a court to make an apprehended violence order without being satisfied of the matters normally required to be considered if the parties consent to the making of the order.

Proposed section 562ZX enables a court hearing proceedings for an apprehended violence order to extend the protection of the order to a person with whom the person for whose protection the order was sought has a domestic relationship.

Proposed section 562ZY provides for the period for which an apprehended violence order remains in force. The court may specify the relevant period, but if no period is specified, it ceases to have effect after 12 months.

Proposed section 562ZZ requires a court hearing proceedings for an apprehended violence order to explain the effect and consequences of the order to the parties present and their rights in relation to the order.

Proposed section 562ZZA provides for service of an apprehended violence order.

Proposed section 562ZZB provides that a court is not prevented from making an apprehended violence order even though the defendant has been charged with an offence arising out of the same conduct concerned.

Subdivision 4 Variation or revocation of orders

Proposed section 562ZZC deals with applications for variation or revocation of apprehended violence orders. The proposed section now provides that an application for variation or revocation may be made only by a police officer where any of the persons protected by the order is under 16 years of age.

Proposed section 562ZZD deals with the procedure for varying or revoking an apprehended violence order.

Proposed section 562ZZE enables an apprehended violence order for the protection of more than one person to be varied or revoked in its application to one of those persons only without affecting its ongoing operation in relation to the other persons.

Proposed section 562ZZF enables a court to vary an apprehended violence order in order to afford greater protection against a person who has pleaded guilty to or been found guilty of certain offences.

Proposed section 562ZZG requires a court that varies an apprehended violence order to explain the effect and consequences of the variation of the order to the parties present.

Proposed section 562ZZH provides for the service of the record of a variation or revocation of an apprehended violence order.

Subdivision 5 Miscellaneous provisions **Proposed section 562ZZI** enables an authorised officer to issue an arrest warrant in relation to the defendant when an application for an apprehended violence order is made.

Proposed section 562ZZJ enables a police officer to detain a defendant in proceedings for an apprehended violence order in order to serve a copy of the order.

Proposed section 562ZZK provides that a court may at any time treat an apprehended violence order, or an application for such an order, as having been made as an apprehended domestic violence order or

an apprehended personal violence order, or an application for such an order, as it considers appropriate. **Proposed section 562ZZL** provides for the application of the Bail Act 1978 in cases where the defendant in proceedings for an apprehended violence order is arrested by warrant issued under the Part.

Proposed section 562ZZM enables a court in proceedings for an apprehended violence order to award costs to either party.

Division 8 Appeals

Proposed section 562ZZN deals with appeals in relation to proceedings relating to an apprehended violence order.

Proposed section 562ZZO provides that the lodging of an appeal does not stay an apprehended violence order unless the original court hearing the proceedings orders otherwise.

Division 9 Jurisdiction of courts

Proposed section 562ZZP confers jurisdiction on Local Courts, the Children's Court and the District Court for various proceedings under the Part.

Proposed section 562ZZQ provides that the District Court has original jurisdiction to issue an apprehended violence order where an application for the order has been dismissed by a Local Court or the Children's Court.

Proposed section 562ZZR provides that the jurisdiction conferred on the District Court by the Part is conferred on the Court in its criminal jurisdiction.

Division 10 Registration of external protection orders

Proposed section 562ZZS defines certain terms used in the Division. In particular, external protection order means an order made by a court of another State or Territory or New Zealand that is made for similar purposes as an apprehended violence order.

Proposed section 562ZZT enables a person to apply for registration of an external protection order.

Proposed section 562ZZU provides for the registration of an external protection order.

Proposed section 562ZZV provides for the effect of registration of an external protection order.

Proposed section 562ZZW sets out the procedure for the variation of an external protection order.

Division 11 Miscellaneous

Proposed section 562ZZX mirrors existing section 562Y of the Principal Act which ensures that, except as expressly provided by the Part, nothing in the Part affects the operation that Parts 2 and 3 of the Crimes (Local Courts Appeal and Review) Act 2001 would have if the proposed Part were not enacted.

Schedule 2 Consequential amendments to Crimes Act 1900

Schedule 2 contains consequential amendments to the Principal Act. In particular,

Schedule 2 [5] re-enacts the offence currently contained in section 562AB (stalking or intimidation with intent to cause fear of physical or mental harm) as section 545AB.

Schedule 3 Amendment of other Acts and regulations

Schedule 3 amends consequentially the Acts and regulations specified in the Schedule.