



NSW Legislative Assembly Hansard

Crimes Amendment (Apprehended Violence) Bill

Extract from NSW Legislative Assembly Hansard and Papers Wednesday 6 September 2006.

Second Reading

Mr NEVILLE NEWELL (Tweed—Parliamentary Secretary) [8.40 p.m.], on behalf of Mr Bob Debus: I move:

That this bill be now read a second time.

I am pleased to introduce the Crimes Amendment (Apprehended Violence) Bill. The Government is committed to its responsibility to respect, protect, fulfil and promote the rights of its citizens, particularly women and children, to live free from violence. Initiatives include:

Funding for the domestic violence helpline and Department of Community Services [DOCS] Helpline, community service centres and family support services;

The Supported Accommodation Assistance Program, which provides support and supported accommodation for women, especially women escaping domestic violence and their children;

The domestic violence intervention court model pilot, which focuses on increasing accountability for perpetrators of domestic violence whilst providing greater support and safety for victims;

Intensive domestic violence training for all new DOCS caseworkers as well as ongoing training for experienced DOCS regional caseworkers. Thorough training is also being provided for non-government organisations in order to facilitate a better understanding of domestic violence issues and the best ways to overcome and prevent domestic violence.

Priority public housing for victims of domestic violence, especially women and their children, and emergency crisis accommodation;

The provision of legal advice and representation to women who apply for apprehended domestic violence orders [AVOs];

The Women's Domestic Violence Court Assistance Program and Domestic Violence Advocacy Service, which provide women and their children with support, advocacy, referral and information;

115 NSW Police domestic violence liaison officers around the State, who are specially trained to assist victims of domestic violence.

The NSW Health Education Centre Against Violence, which provides specialised training, consultancy and resource development to NSW Health and interagency workers dealing with children and adults who have experienced sexual assault, domestic violence and/or physical and emotional abuse and neglect; and

The Violence Against Women Specialist Unit, which aims to develop and promote effective prevention of domestic violence strategies, and improve access to services for all victims.

It is a sad and terrible fact that each year across Australia somewhere between 6 per cent and 9 per cent of Australian women aged 18 and over are physically assaulted. In the majority of cases the assailant is a man they know. Domestic assaults currently account for approximately one-third of the assaults recorded by police each year. In many cases children are also victims of the violence, or are witnesses to it. For many years government and non-government agencies and individuals have worked tirelessly to educate their communities about domestic violence. They have worked to prevent and reduce the violence that is occurring by providing practical assistance to women and children. I applaud their efforts and trust that the bill will provide them with renewed commitment and focus in achieving their goals of reducing and preventing violence.

The bill maintains and strengthens the Government's position that violence in all its manifestations is completely unacceptable. Under this enhanced legislative framework, the safety of victims is paramount. Our response to victims must be respectful of their courage and of their right to be involved in, and informed about, proceedings for their protection. The Government's focus will continue to be on how to ensure the long-term safety of victims through the provision of information and integrated assistance for their needs.

The bill goes a long way towards ensuring that a clear message is sent to those who are perpetrators of violent actions that such behaviour will not be tolerated. It aims to provide women and children with the confidence that

they have the full support of the legal system behind them when they courageously take steps to break the cycle of abuse. The safety and protection of persons affected by violence is paramount, and the bill is aimed at guaranteeing that New South Wales has the most advanced and effective laws possible.

The reforms proposed in the bill arise primarily out of the report of the New South Wales Law Reform Commission into part 15A of the Crimes Act 1900. The Law Reform Commission conducted a comprehensive and thorough inquiry into this area and consulted extensively, including consultation with advocacy and representative organisations, women's refuges, community legal centres, community justice centres, government departments, the police service, the Apprehended Violence Legal Issues Co-ordinating Committee, and interested individuals. The recommendations made in the report also drew on the expertise of the commissioners of the Law Reform Commission, who include eminent judges and practitioners.

The Law Reform Commission found there was general consensus that AVOs are adequate and effective as a means of preventing violence, intimidation and harassment. This reinforces earlier research conducted by the Bureau of Crime Statistics and Research that found, for the vast majority of protected people, that an AVO led to a reduction in or cessation of the abusive behaviour. The Law Reform Commission report contains 56 recommendations for finetuning the operation of AVOs and further enhancing the protection they provide. The report was the culmination of over 12 months research and extensive consultation. Many of these recommendations have been adopted by the Government in the bill.

In essence, the bill is designed to offer greater protection to victims of domestic and personal violence; recognise the gravity of domestic violence and how it may differ from other violent crimes; minimise as much as possible the stress and trauma that is associated with apprehended violence orders; streamline the process of making an application and having that application heard; minimise the impact of AVO proceedings on the most vulnerable members of society, our children; and ensure that New South Wales has the most progressive and up-to-date laws possible with respect to this very important and highly poignant area of concern.

I do not propose to address each measure in the bill separately. However, I will address areas where there has been substantive reform, particularly new, expanded definitions; a revised test for granting an apprehended domestic violence order and additional considerations; new provisions for referral to mediation for apprehended personal violence orders; new provisions concerning the granting of telephone interim orders; new, limited police powers to detain and arrest for the purpose of serving an order; the protection of children and victims of sexual assault in AVO proceedings; revised restrictions and prohibitions that may be imposed upon a defendant for both interim orders and final orders; new provisions for property recovery orders; the abolition of the outdated complaints and summons process; revised police discretion not to make an application; extended duration for final orders; and revised variation and revocation provisions.

I turn now to the detail of the bill. In relation to new, expanded definitions, including the definition of expanded personal violence offences, proposed section 562A defines certain terms used in the part. Importantly, the definition of "stalking" has been amended to make it inclusive rather than exclusive. This means that stalking includes, rather than means, the following of a person about, or the watching or frequenting of the vicinity of or an approach to a person's place of residence, business, or work. The reference to any place that a person frequents for the purposes of any social or leisure activity is to remain. The definition of what constitutes a personal violence offence has also been expanded to encompass an additional number of violence offences.

Proposed section 562B defines the term "domestic relationship". The definition has been amended to include, in the case of an Aboriginal person or 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. This is extremely important, as statistics have shown that the prevalence of domestic violence is higher in areas that have a higher percentage of indigenous residents.

Proposed section 562D defines "intimidation". The definition is amended specifically to include a reference to an approach made to the person by telephone, telephone text messaging, emailing, or other technologically assisted means. This amendment is vital because modern technology has given people the tools to menace and harass from afar. Mobile phones and the Internet have provided a raft of new methods of tormenting victims and it is time to update the laws to recognise this frightening trend.

Proposed section 562E sets out the objects of the division, which have been considerably expanded, and sets out and expands upon the matters that Parliament recognises in enacting this legislation. 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. The amendment to the test for the issuing of an order is extremely important and provides a solution to a problem that has long been recognised by those who have contact with victims of domestic violence; namely, that as the current test stands, it is necessary for the court to be satisfied that the victim is, in fact, in fear. This creates a dilemma if a victim is reluctant to proceed with an application and tells the court she or he is not in fear.

Examples of why a victim might say this include being intimidated and worrying about retribution if they proceed,

worrying that the defendant will get a criminal record, wanting to try to "fix" the relationship, or perhaps simply being scared of going to court. This amendment allows a court to still make the order if the victim has been subjected at any time to conduct by the defendant amounting to a personal violence offence and there is a reasonable likelihood that the defendant may commit a personal violence offence against the person, and the making of the order is necessary in the circumstances to protect the person from further violence. When the court is considering the making of the order it will have recourse to the history between the victim and the defendant, and be able to take into account previous AVOs, previous convictions for violence or breaches of an AVO, and where complaints have been made by the victim but subsequently withdrawn.

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. Proposed section 562I sets out the objects of the division regarding apprehended personal violence orders, which have also been expanded. Proposed section 562L sets out the matters that are to be considered by a court when making an apprehended personal violence order. As in the case of 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.

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 expanded grounds upon which the discretion is to be exercised, for example where matters should be referred to mediation.

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, such as where there has been a history of physical violence. This amendment is important so that appropriate matters can be diverted away from the court process and dealt with more expediently and economically for the parties involved.

In regard to new provisions regarding telephone interim orders, proposed section 562P provides that a telephone interim 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 one of the persons or to prevent substantial damage to any property of one of the persons. The proposed section makes it clear that an application may be made at any time and regardless of whether a court is sitting. This is extremely important.

According to the findings of the Law Reform Commission, some courts have interpreted the existing section to mean that a telephone interim order should only be available outside of court sitting times or where distance precludes visiting a court; otherwise, an ordinary interim order must be sought. However, applying for an interim order may involve waiting at a local court for hours, which may not be feasible or desirable in situations requiring immediate action. Amending the section in this manner will ensure greater access to telephone interim orders and provide emergency protection for victims.

Proposed section 562Q sets out circumstances in which a police officer investigating an incident must make an application for a telephone apprehended violence order. Proposed section 562S sets out the effect of a telephone interim apprehended violence order. The proposed section has been amended so that it is no longer necessary for a police officer making an application for a telephone interim apprehended violence order to request additional restrictions to be imposed on the defendant. Provided that the test is met for the order to be made, an authorised officer may now, of his or her own volition, impose restrictions or prohibitions on the behaviour of the defendant.

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 order is made. This is an important amendment as it allows the victim to be assured that the matter will be given priority and listed within 28 days.

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. By extending the duration of the order, applicants can be satisfied that in the rare instance where a matter is not listed within 14 days, the order is still in effect and offering protection.

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. This section has

been extended to include the power to vary the telephone interim order. This amendment is designed to cover scenarios where the police have made an application for and been granted a telephone interim order but it becomes apparent after the order has been made that a variation, such as a change of address or a need for an additional condition, is required. This section will now allow the police officer to request an urgent variation, which in turn will provide greater and enhanced protection to the victim.

In regard to new limited police powers of detain and arrest for the purposes of service, proposed section 562Y enables a police officer in certain circumstances to detain or arrest a person against whom a telephone apprehended violence order is sought, but only for the purpose of serving a copy of the order on the person. This amendment allows police to do their job more effectively and ensure that immediate protection is granted to a victim.

In relation to revised restrictions and prohibitions that may be imposed upon a defendant for both interim orders and final orders, proposed sections 562S and 562ZD set 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 protect 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 the defendant under such an order. This is a significant amendment that recognises that in domestic violence situations people are often forced to leave the house at short notice, thereby leaving behind important personal possessions. 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.

The protection of children and victims of sexual assault is of particular concern to the Government. Proposed section 562ZH provides that a child who is either a witness or in need of protection is not required to give evidence in proceedings unless it is in the interests of justice to do so. If a child is required to give evidence, the proposed section provides that proceedings relating to apprehended violence orders are to be closed to the public, unless the court directs otherwise, 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 directs otherwise.

Proposed section 562ZI is a new provision that enables a person who is the alleged victim of a prescribed sexual offence 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 that section for criminal proceedings in which such offences are involved. For instance, a victim could give evidence by way of closed-circuit television facilities or screens. 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.

As to the abolition of the outdated complaints and summons process, part 15A currently provides that an application for an apprehended violence order may be made by laying a complaint before an authorised justice of the peace, who may then issue a summons or warrant to arrange for the attendance of the defendant at court. This procedure is no longer consistent with the procedures that apply to other matters that come before the court. The complaints and summons process is to be replaced by an application process. This will streamline the process and make more efficient use of police time.

Proposed section 562ZQ sets out the manner in which applications for apprehended violence orders are to be made. The current 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.

As to revised police discretion when making applications, 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 the 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 the person intends to make an application themselves or there is another good reason not to make the application. A new provision makes it clear that it 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 reluctant to make the application but is the victim of violence or threatened violence, or has an intellectual disability and no guardian.

With regard to extending the duration of final orders, 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. This has been extended from six months to provide greater prolonged protection to victims.

Turning to revised variations and revocation provisions, proposed section 562ZZC deals with applications for the variation or revocation of apprehended violence orders. The proposed section now provides that an application for variation or revocation may be made by a police officer only when any of the persons protected by the order are under 16 years of age. This is to ensure that children are not subject to untoward influences regarding an application to vary or revoke an order.

Upon all of us rests a weighty obligation to ensure the safety and protection of all persons, including children, who experience or witness domestic violence, and to reduce and prevent violence between persons who are in a relationship with each other. To achieve these aims, the Government is committed to providing the most up-to-date and effective legislative regime to victims of domestic and personal violence and to those, such as children, who might suffer directly or indirectly.

In summary, I stress that it is vital that there be legal mechanisms to protect victims of domestic and personal violence. The bill is another demonstration of the Government's dedication to ensuring the safety of victims from people who have committed, or who are likely to commit, crimes of violence. The bill is aimed at preventing that conduct and ensuring that a clear message is sent to the community that this kind of behaviour will not be tolerated. I commend the bill to the House.