



## NSW Legislative Council Hansard

### Crimes Amendment (Apprehended Violence) Bill

Extract from NSW Legislative Council Hansard and Papers Wednesday 27 September 2006.

#### Second Reading

**The Hon. JOHN DELLA BOSCA** (Minister for Finance, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, and Vice-President of the Executive Council) [8.00 p.m.]: I move:

That this bill be now read a second time.

As the speech has been delivered in the other place, I seek leave to incorporate it in *Hansard*.

#### Leave granted.

I am pleased to introduce the Crimes Amendment (Apprehended Violence) Bill 2006.

The Government is committed to its responsibility to respect, protect, fulfil and promote the rights of its citizens, in particular women and children, to live free from violence.

Initiatives include:

- Funding for the Domestic Violence Helpline and 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 on going 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;
- 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 six and nine 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 a 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 this Bill will provide them with renewed commitment and focus in achieving their goals of reducing and preventing violence.

This 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.

This Bill goes a long way to ensuring that a clear message is sent to those who are perpetrators of violent actions that such behaviour will not be tolerated. The Bill also 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 the steps to break the cycle of abuse.

The safety and protection of persons affected by violence is paramount and this Bill is aimed at guaranteeing that New South Wales has the most advanced and effective laws possible.

The reforms being proposed in this Bill arise primarily out of the New South Wales Law Reform Commission's report into Part 15A of the Crimes Act 1900. The Law Reform Commission conducted a comprehensive and thorough enquiry 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, Apprehended Violence Legal Issues Co-ordinating Committee (AVLICC) 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 a 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, an AVO led to a reduction or cessation of the abusive behaviour.

The Law Reform Commission Report contains 56 recommendations for fine-tuning 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 this 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 AVO proceedings have on our most vulnerable members of society, children; and
- ensure that New South Wales has the most progressive and up to date laws it can with respect to this very important and highly poignant area of concern.

I do not propose to address each clause of the Bill separately however I will address areas where there has been substantive reform, in particular:

- 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 order,
- New provisions concerning the granting of telephone interim orders,
- New limited police powers of detain and arrest for the purposes of serving an order,
- 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 provision 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 will now turn to the detail of the bill**

#### **New expanded definitions including expanded personal violence offences**

**Proposed section 562A** defines certain terms used in the Part. Importantly, the definition of "stalking" has been amended to make the definition of "stalking" 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 violent offences.

**Proposed section 562B** defines the term **domestic relationship**. 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. 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 to specifically include a reference to an approach made to the person by telephone, telephone text messaging, e-mailing and other technologically assisted means. This amendment is vital, as 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.

#### **Revised test for granting the apprehended violence order and additional considerations**

**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 does in fact 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 for 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 AVOs 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.

#### ***Mediation for apprehended personal violence orders***

**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.

#### ***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 had been made that a variation, such as a change of address or 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.

#### ***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.

#### ***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.

#### ***New provision for property recovery orders***

**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.

#### ***Protection of children and victims of sexual assault in AVO proceedings***

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 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 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. So 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.

### ***The abolition of the outdated complaints and summons process***

Currently Part 15A 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 order 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.

### ***Revised police discretion not to make an application***

**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 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 has no guardian.

### ***Extended duration for 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 6 months to provide greater prolonged protection to victims.

### ***Revised variation and revocation provisions***

**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 only be made by a police officer where any of the persons protected by the order is 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, this 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 would like to stress that it is vital that there be legal mechanisms to protect victims of domestic and personal violence. This Bill is another demonstration of the Government's dedication to ensuring the safety of victims from people who have or are likely to commit crimes of violence. This 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.

