

## **Explanatory note**

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* with modifications as a Principal Act. That Part deals with the issuing of apprehended domestic violence orders and apprehended personal violence orders by courts and authorised officers and the enforcement of those orders. The modifications made by the Bill to the current provisions contained in Part 15A:

- (a) will enable the charge in respect of an offence to indicate whether the offence is a domestic violence offence (which is defined in the Bill), and
- (b) will require a court in criminal proceedings where a person has been found guilty of a domestic violence offence to direct that a recording be made in the person's criminal record that the offence was a domestic violence offence and to direct that similar recordings be made in relation to domestic violence offences previously committed by the person, and
- (c) will require a court when making an apprehended domestic violence order or interim apprehended domestic violence order for an adult to include as a protected person under the order any child with whom the adult has a domestic relationship unless there are good reasons for not doing so, and
- (d) will require a court, when a person is charged with a serious personal violence offence, to make an interim apprehended violence order to protect the victim of the alleged offence, and
- (e) will incorporate the offence of stalking or intimidation with the intention of causing someone to fear physical or mental harm (currently section 545AB of the *Crimes Act 1900*), and
- (f) will set out the application procedures and provisions relating to apprehended violence order proceedings rather than, as is currently the case, providing for Part 6 of the *Local Courts Act 1982* to apply.

The Bill will also amend the *Law Enforcement (Powers and Responsibilities) Act 2002*:

- (a) to enable a police officer to require a person to disclose his or her identity if the police officer reasonably suspects that an apprehended violence order has been made against the person, and
- (b) to expand the range of dangerous implements that a police officer may search for in a dwelling provided the police officer reasonably believes they may have been used or may be used to commit a domestic violence offence.

The Bill also amends other Acts and regulations consequentially.

### Outline of provisions

#### **Part 1 Preliminary**

**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** defines certain words and expressions used in the proposed Act.

**Clause 4** defines ***personal violence offence*** for the purposes of the proposed Act.

**Clause 5** defines ***domestic relationship*** for the purposes of the proposed Act.

**Clause 6** defines ***relative*** for the purposes of the proposed Act.

**Clause 7** defines ***intimidation*** for the purposes of the proposed Act.

**Clause 8** defines ***stalking*** for the purposes of the proposed Act.

#### **Part 2 Objects of Act in relation to domestic and personal violence**

**Clause 9** sets out the objects of the proposed Act in relation to domestic violence.

**Clause 10** sets out the objects of the proposed Act in relation to personal violence.

#### **Part 3 Domestic violence and other offences**

**Clause 11** defines ***domestic violence offence*** for the purposes of the proposed Act.

**Clause 12** provides that a charge in respect of an offence may indicate that the offence is a domestic violence offence and requires a court, in proceedings where a person has been found guilty of a domestic violence offence, to direct a recording to be made in the person's criminal record to reflect that the offence committed was a domestic violence offence. A prosecutor in proceedings where the accused has been found guilty of a domestic violence offence and the court has directed that such a record be made may request the court to direct the recording on the person's criminal record of other specified offences previously committed by the person as domestic violence offences.

**Clause 13** re-enacts the offence currently contained in section 545AB of the *Crimes Act 1900* (stalking or intimidation with intent to cause fear of physical or mental harm).

**Clause 14** makes it an offence to contravene an apprehended violence order. The proposed section 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.

#### **Part 4 Apprehended domestic violence orders**

**Clause 15** enables an application to be made to a court for an apprehended domestic violence order.

**Clause 16** 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.

**Clause 17** 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.

#### **Part 5 Apprehended personal violence orders**

**Clause 18** enables an application to be made to a court for an apprehended personal violence order.

**Clause 19** 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.

**Clause 20** 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.

**Clause 21** 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.

#### **Part 6 Interim court orders**

**Clause 22** enables a court to make an interim apprehended violence order (referred to as an *interim court order*) if it considers it appropriate to do so in the circumstances.

**Clause 23** enables a Registrar of the Local Court or the Registrar of the Children's Court to make an interim court order if the parties concerned consent to the making of the order.

**Clause 24** provides that an interim court order ceases to have effect when a court makes a final apprehended violence order or, if the defendant is not present when the final apprehended violence order is made, when a copy of the final apprehended violence order is served on the defendant.

#### **Part 7 Provisional orders**

**Clause 25** enables a police officer to apply by telephone, facsimile or other communication device to an authorised officer for an interim apprehended domestic violence order or an interim apprehended personal violence order (a *provisional*

*order*).

**Clause 26** provides that a provisional order may be made if an incident occurs and a police officer has good reason to believe that a provisional order needs to be made to ensure the safety and protection 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 the relevant court is sitting.

**Clause 27** sets out circumstances in which a police officer investigating an incident must make an application for a provisional order.

**Clause 28** enables an authorised officer to make a provisional order if satisfied that there are reasonable grounds for doing so. The proposed section also applies the mediation provisions of proposed section 21 to provisional orders.

**Clause 29** provides that a provisional order is taken to be an application for an apprehended violence order made by a court and is to contain a direction for the appearance of the defendant at a hearing of the application on a date specified in the order (being not more than 28 days after the provisional order is made).

**Clause 30** sets out the procedure for the recording of a provisional order.

**Clause 31** provides for service of a provisional order on the defendant.

**Clause 32** provides that a provisional order remains in force for 28 days after it is made, unless it is revoked or ceases to have effect. A provisional order ceases to have effect when a court makes a final apprehended violence order or, if the defendant is not present when the final apprehended violence order is made, when a copy of the final apprehended violence order is served on the defendant.

**Clause 33** enables a provisional order to be varied or revoked by the authorised officer who made it or a court dealing with an application for an apprehended violence order against the same defendant.

**Clause 34** provides that a provisional order may not be renewed.

#### **Part 8 Content and effect of apprehended violence orders**

**Clause 35** sets out the prohibitions and restrictions that may be imposed on a defendant by an apprehended violence order or interim 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. An authorised officer may impose prohibitions and restrictions specified in the proposed section.

**Clause 36** provides that 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.

**Clause 37** enables ancillary property recovery orders to be made to allow the retrieval of property of a person protected by an apprehended violence order or of the defendant under such an order.

#### **Part 9 Additional measures for support and protection of children and others in proceedings**

**Clause 38** 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.

The proposed section also requires a court when making an apprehended domestic violence order to protect an adult to include as a protected person under the order any child with whom the adult has a domestic relationship. The court may determine not to extend the order to any such child if it is satisfied that there are good reasons for not doing so but, in that case, must give the reasons for not doing so.

**Clause 39** requires a court in criminal proceedings, where the defendant has pleaded

guilty or been found guilty of a stalking or intimidation offence or a domestic violence offence, to make an interim apprehended violence order for the protection of the victim.

**Clause 40** requires a court in criminal proceedings, where a person has been charged with a specified serious personal violence offence, to make an apprehended violence order for the protection of the alleged victim regardless of whether an application for such an order has been made.

**Clause 41** 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. The proposed section also requires 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).

**Clause 42** 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.

**Clause 43** places certain restrictions on the address of a person to be protected by an apprehended domestic violence order or interim apprehended violence order being stated in the order or an application for an order.

**Clause 44** places certain restrictions on the address of a health care provider for a person to be protected by an apprehended personal violence order or interim apprehended violence order being stated in the order or an application for the order.

**Clause 45** 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.

**Clause 46** 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.

## **Part 10 Applications for final apprehended violence orders and interim court orders and associated proceedings**

### **Division 1 Preliminary**

**Clause 47** defines certain terms used in the proposed Part.

### **Division 2 Application for order**

**Clause 48** provides that an application for a final apprehended violence order or an interim court order to be made by the Local Court or the Children's Court is to be made in accordance with the proposed Part and may be made by a person seeking protection or a police officer.

**Clause 49** 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. The proposed section 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.

### **Division 3 Commencement of application proceedings**

**Clause 50** provides that application proceedings are to be commenced by filing an application notice.

**Clause 51** explains how proceedings are to be commenced if the applicant is a police

officer.

**Clause 52** explains how proceedings are to be commenced if the applicant is a person seeking protection.

**Clause 53** gives an authorised officer or a Registrar of a court 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.

**Clause 54** provides that an application notice may relate to only one matter.

**Clause 55** deals with service of the application notice.

**Clause 56** provides for when application proceedings are taken to have commenced.

#### **Division 4 Hearing of application proceedings**

**Clause 57** sets out when proceedings are to be heard.

**Clause 58** provides that proceedings are to be open to the public. The proposed provision is subject to proposed Part 9 which contains provisions enabling the court to close proceedings in certain circumstances.

**Clause 59** enables the court to change the venue for the proceedings in appropriate circumstances.

**Clause 60** provides that a defendant in the proceedings may defend the action.

**Clause 61** provides for the manner in which parties to the proceedings may be represented.

**Clause 62** deals with how application proceedings are to be conducted.

**Clause 63** requires that witnesses in proceedings be examined under oath.

**Clause 64** requires the evidence in the proceedings to be recorded.

**Clause 65** enables the court to adjourn proceedings.

**Clause 66** enables the court to deal with irregularities in proceedings (such as a failure to comply with a requirement of the proposed Act) without the result that the proceedings are invalidated.

**Clause 67** enables the court to dispense with the requirements of certain rules in proceedings if satisfied that it is in the interests of justice to do so.

**Clause 68** gives the court a power to stay proceedings.

**Clause 69** enables a Magistrate in apprehended violence order proceedings to issue a warrant for the arrest and detention of the defendant if the defendant does not appear personally or by his or her representative and had notice of the proceedings.

**Clause 70** applies certain provisions of the *Criminal Procedure Act 1986* dealing with the attendance of witnesses and production of evidence in lower courts to proceedings under the proposed Part.

**Clause 71** applies certain provisions of the *Criminal Procedure Act 1986* dealing with warrants to proceedings under the proposed Part.

#### **Division 5 Variation or revocation of final apprehended violence orders or interim court orders**

**Clause 72** enables an application to be made for the variation or revocation of a final apprehended violence order or interim court order and specifies the persons who may make such an application.

**Clause 73** sets out the procedure of the court for dealing with an application for variation or revocation.

**Clause 74** deals with the variation or revocation of a final apprehended violence order or interim court order where the order protects more than one person.

**Clause 75** enables the court, in circumstances where a person has pleaded guilty to or been found guilty of a stalking or intimidation offence or a domestic violence offence, to vary an existing final apprehended violence order or interim court order against the person without an application so as to provide greater protection to the victim of the offence.

#### **Division 6 Ancillary provisions**

**Clause 76** requires the court to explain the effect of making or varying a final

apprehended violence order or interim court order to the parties to the order.

**Clause 77** requires a copy of a final apprehended violence order or interim court order, or a copy of a record of the variation or revocation of any such order, to be served personally on the defendant unless the defendant was present when the order was made, varied or revoked.

**Clause 78** provides for a court to make a final apprehended violence order or interim court order without being satisfied of the matters normally required to be considered if the parties consent to the making of the order.

**Clause 79** provides for the period for which a final 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.

**Clause 80** enables an order for the payment of money (including a costs order) in proceedings under the proposed Act to be enforced in the same way as a debt.

**Clause 81** provides that a court is not prevented from making a final apprehended violence order or interim court order even though the defendant has been charged with an offence arising out of the same conduct concerned.

**Clause 82** provides that a court may at any time treat a final apprehended violence order, or an application for such an order, as having been made as a final apprehended domestic violence order or a final apprehended personal violence order, or an application for such an order, as it considers appropriate.

**Clause 83** provides for the application of the *Bail Act 1978* in cases where the defendant in proceedings for a final apprehended violence order or interim court order is arrested by warrant issued under the proposed Act.

#### **Division 7 Appeals**

**Clause 84** deals with appeals in relation to proceedings relating to a final apprehended violence order or interim court order.

**Clause 85** provides that the lodging of an appeal does not stay an apprehended violence order unless the original court hearing the proceedings orders otherwise.

#### **Division 8 Rules**

**Clause 86** enables rules of court to be made under the relevant court legislation with respect to proceedings relating to final apprehended violence orders or interim court orders.

**Clause 87** enables forms to be approved for the purposes of proceedings relating to final apprehended violence orders or interim court orders.

#### **Part 11 Warrants and powers of police to detain defendants**

**Clause 88** enables an authorised officer to issue an arrest warrant in relation to the defendant when an application for an apprehended violence order is made.

**Clause 89** enables a police officer in certain circumstances to detain or arrest a person against whom a provisional order is sought but only for the purpose of serving a copy of the order on the person.

**Clause 90** enables a police officer to detain a defendant in proceedings for an apprehended violence order so as to serve a copy of the order.

#### **Part 12 Jurisdiction of courts**

**Clause 91** confers jurisdiction on the Local Court, the Children's Court and the District Court for various proceedings under the proposed Act.

**Clause 92** provides that the District Court has original jurisdiction to issue an apprehended violence order where an application for the order has been dismissed by the Local Court or the Children's Court.

**Clause 93** provides that the jurisdiction conferred on the District Court by the proposed Act is conferred on the Court in its criminal jurisdiction.

#### **Part 13 Registration of external protection orders**

**Clause 94** defines certain terms used in the proposed Part. 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.

**Clause 95** enables a person to apply for registration of an external protection order.

**Clause 96** provides for the registration of an external protection order.

**Clause 97** provides for the effect of registration of an external protection order.

**Clause 98** sets out the procedure for the variation of an external protection order.

#### **Part 14 Miscellaneous**

**Clause 99** enables a court in proceedings for an apprehended violence order to award costs to either party (with certain exceptions).

**Clause 100** mirrors existing section 562ZZX of the *Crimes Act 1900* which ensures that, except as expressly provided by the proposed Act, nothing in the proposed Act affects the operation that Parts 2 and 3 of the *Crimes (Appeal and Review) Act 2001* would have if the proposed Act were not enacted. Those Parts deal with applications for review of and appeals against certain decisions of Local Courts.

**Clause 101** enables the Governor to make regulations for the purposes of the proposed Act.

**Clause 102** is a formal provision that gives effect to the savings, transitional and other provisions set out in Schedule 1.

**Clause 103** is a formal provision that gives effect to the amendments to the Acts and regulations set out in Schedule 2.

**Clause 104** provides for the review of the proposed Act in 3 years.

#### **Schedule 1 Savings, transitional and other provisions**

**Schedule 1** contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

#### **Schedule 2 Amendment of other Acts and regulations**

**Schedule 2** amends consequentially the Acts and regulations specified in the Schedule.

In particular, **Schedule 2.15** amends the *Law Enforcement (Powers and Responsibilities) Act 2002* in the manner described in the Overview.