

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the Crimes (Domestic and Personal Violence) Act 2007 (the Principal Act):

- (a) to include the offence of stalking or intimidating a person as a personal violence offence for the purposes of that Act, and
- (b) to require a provisional order to be served (where practical) on the person for whose protection it was issued, and
- (c) to clarify who may apply for an ancillary property recovery order, and
- (d) to enable an authorised officer to make an interim apprehended domestic violence order that protects not just the person for whom the order was sought but also other persons with whom he or she has a domestic relationship, and
- (e) to require an authorised officer when making an interim apprehended domestic violence order to include as protected persons under the order any children with whom the person for whom the order was sought has a domestic relationship unless there are good reasons for not doing so, and

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- (f) to clarify that an applicant to a court for an apprehended domestic violence order in relation to himself or herself may also apply for the order to be made in relation to another person with whom the applicant has a domestic relationship, and
- (g) to enact further savings and transitional provisions as a consequence of the enactment of that Act.

This Bill also amends the Firearms Act 1996 and the Weapons Prohibition Act 1998 to provide that a licence or permit issued under those Acts is suspended automatically on the making of a provisional order against the licence or permit holder by an authorised officer under the Principal Act (previously known as a telephone interim order). Currently, those Acts provide that such licences or permits are only suspended automatically on the making of an interim apprehended violence order by a court.

The Bill also amends various other Acts and a Regulation as a consequence of the enactment of the Principal Act.

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 the date of assent to the proposed Act.

Clause 3 is a formal provision that gives effect to the amendments to the Crimes (Domestic and Personal Violence) Act 2007 set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the Acts and Regulation set out in Schedule 2.

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 (Domestic and Personal Violence) Act 2007

Schedule 1 [1] amends section 4 of the Principal Act to include in the definition of personal violence offence an offence under section 13 of that Act of stalking or intimidating another person with the intention of causing the other person to fear physical or mental harm.

Schedule 1 [2] amends section 31 of the Principal Act to require a provisional order

to be served (if practical) on the person for whose protection it was issued. Currently that section only provides for the order to be served on the defendant.

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Schedule 1 [3] amends section 35 of the Principal Act to include a power for a court or authorised officer when making an apprehended violence order to prohibit or restrict the possession of prohibited weapons by the defendant. Currently, that power only covers firearms.

Schedule 1 [4] amends section 35 of the Principal Act to remove the provision that enables a court or an authorised officer when making an apprehended violence order that prohibits or restricts the possession of firearms by the defendant to require the disposal of the firearms and the surrender of licences and permits held under the Firearms Act 1996 and the Weapons Prohibition Act 1998. Amendments made to those Acts by Schedule 2 extend the provisions of those Acts that provide for the automatic suspension of such licences and permits on the making of an interim apprehended violence order by a court so that the suspension will also occur on the making of a provisional apprehended violence order by an authorised officer. On suspension of such a licence or permit, the firearms or weapons concerned must be surrendered to the police and may be seized by the police. Schedule 1 [5] makes a consequential amendment.

Schedule 1 [6] amends section 37 of the Principal Act to provide that an ancillary property recovery order may be made by a court or an authorised officer when making an apprehended domestic violence order or interim apprehended domestic violence order or on the application of a police officer, the protected person or the defendant.

Schedule 1 [7] substitutes section 38 of the Principal Act to enable an authorised officer to make an interim apprehended violence order not only for the protection of the person for whom the order is sought but also for the protection of other persons with whom he or she has a domestic relationship. The proposed section also provides that an authorised officer making such an order is to include as a protected person under the order any child with whom the person for whose protection the order was sought has a domestic relationship unless satisfied that there are good reasons for not doing so. Reasons for not doing so must be given. Currently, section 38 makes such provision but only in relation to a court making an apprehended violence order.

Schedule 1 [8] amends section 48 of the Principal Act to make it clear that a person who applies to a court for an apprehended violence order for his or her own protection may also apply for the order to be made for the protection of another person with whom he or she has a domestic relationship.

Schedule 1 [9] amends Schedule 1 to the Principal Act to enable regulations to be made of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [10]–[13] amend Schedule 1 to the Principal Act to make further savings, transitional and other provisions consequent on the enactment of the Principal Act and on the proposed Act.

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Schedule 2 Amendment of other Acts and
Regulation

Schedule 2.1 substitutes the definition of personal violence offence in clause 10 of the Bail Regulation 2008 as a consequence of the enactment of the Principal Act.

Schedule 2.2, 2.3, 2.4 [1] and 2.5 [1] amend the Commission for Children and Young People Act 1998, the Crimes (Sentencing Procedure) Act 1999, the Firearms Act

1996 and the Weapons Prohibition Act 1998, respectively, to make it clear that certain references in those Acts to apprehended violence orders under the Principal Act will include references to apprehended violence orders under the repealed Part 15A of the Crimes Act 1900.

Schedule 2.4 [2] amends the definition of interim apprehended violence order in section 4 (1) of the Firearms Act 1996 so that the term will mean an interim apprehended violence order within the meaning of the Principal Act. The result of the amendment is to include provisional orders made by authorised officers in the definition which will mean that a licence under the Firearms Act 1996 will be suspended automatically under section 23 of that Act on the making of a provisional order against the licence holder.

Schedule 2.5 [2] amends the definition of interim apprehended violence order in section 4 (1) of the Weapons Prohibition Act 1998 so that the term will mean an interim apprehended violence order within the meaning of the Principal Act. The result of the amendment is to include provisional orders made by authorised officers in the definition which will mean that a permit under the Weapons Prohibition Act 1998 will be suspended automatically under section 17 of that Act on the making of a provisional order against the permit holder.