

CRIMES (DOMESTIC AND PERSONAL VIOLENCE) AMENDMENT BILL 2008

Bill introduced on motion by Ms Verity Firth.

Agreement in Principle

Ms VERITY FIRTH (Balmain—Minister for Education and Training, and Minister for Women)
[5.16 p.m.]: I move:

That this bill be now agreed to in principle.

Addressing domestic and family violence is a top priority for the Rees Government. We recognise that strategies must continue to be developed and refined to stop violence, support victims, help them achieve justice through our legal system and respond to the causes of domestic and family violence. The Government will continue to implement policy and legislative reform in order to minimise the occurrence of domestic violence and to reduce its impact, especially on women and children. In 2007 Parliament passed the Crimes (Domestic and Personal Violence) Act 2007, which I will now refer to as the Act. The object of this Act was to repeal and re-enact part 15A of the Crimes Act 1900, which dealt with the issuing of apprehended domestic violence orders and apprehended personal violence orders, and the enforcement of those orders.

This Act is groundbreaking in its capacity to better protect victims of domestic and family violence. It introduced a new specific offence of domestic violence and has made it easier for women and children to obtain apprehended violence orders. It automatically protects victims via an apprehended violence order if their attacker is charged with certain personal violence offences, and it protects children by automatically including them on an apprehended violence order unless there are good reasons for a judge not to do so. In addition, police now have extended powers to apply for provisional apprehended violence orders over the telephone 24 hours a day and can apply for AVOs on behalf of a victim who is reluctant to proceed. These are really important new laws that will make a real difference for victims and give police important new tools to stop perpetrators.

The Act also made a number of amendments to the Law Enforcement (Powers and Responsibilities) Act 2002 to enable a police officer to require a person to disclose his or her identity if the officer reasonably suspected that an apprehended violence order has been made against the person, and expanded the range of dangerous implements that a police officer could search for in a house. The Act commenced on 10 March 2008. Since the Act became operational a number of stakeholders, including the NSW Police Force, the Legal Aid Commission and the Department of Community Services have made some suggestions for further reform in order to improve the effectiveness of the Act and ensure that victims of domestic violence receive the best possible protection.

All these suggestions have been recommended to the Government in consultation with the Apprehended Violence Legal Issues Coordinating Committee [AVLICC], which is an interagency group comprising non-government and government membership. Membership includes representatives from the Attorney General's Department, the NSW Police Force, the Police Ministry, the Office for Women, local courts, the Legal Aid Commission, the Judicial Commission, the Office of the Director of Public Prosecutions and key services such as the Domestic Violence Advocacy Service and the Women's Domestic Violence Court Assistance Scheme. The purpose of the committee is to ensure appropriate coordination of criminal justice system services for people seeking apprehended violence orders [AVOs] and to examine and identify legal, policy and procedural barriers to the provision of adequate criminal justice system services. AVLICC puts forward recommendations to government to improve legislation, policies and procedures, with the needs of women and children experiencing domestic violence given particular attention.

I now turn to the bill in detail. Schedule 1 [1] amends section 4 of the 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 Act to require a provisional order to be served, if practical, on the person whom it was issued to protect. Currently that section only provides for the order to be served on the defendant and it was very important that this anomaly was addressed.

Schedule 1 [3] amends section 35 of the 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 covers only firearms. Again, there is no reason why this section should not cover other weapons, and this amendment corrects that irregularity and ensures the best protection is given to victims. Schedule 1 [4] also amends section 35 of the Act to remove the provision that enables a court or an authorised officer when making an AVO that prohibits or restricts the possession of firearms by the defendant to require the disposal of the firearms and the surrender of licences held under the Firearms Act 1996 and the Weapons Prohibition Act 1998.

The reason for this amendment is that we have also amended those two Acts at schedule 2 to provide for the automatic suspension of licences on the making of a provisional AVO by an authorised officer. On suspension of such a licence or permit, the firearms or weapons concerned must be surrendered to the police. Hence, there was no longer a need for section 35 (4) because firearms and weapons must now be automatically surrendered. Schedule 1 [6] amends section 37 of the Act to provide that an ancillary property recovery order may be made by a court or an authorised officer when making an ADVO or interim ADVO or on the application of a police officer, the protected person or the defendant.

There had been some confusion as to precisely how a property recovery order could be made and upon whose application. Section 37 has been amended to make it clear that an order can be made on an application by a police officer, the protected person or the defendant. Schedule 1 [7] substitutes section 38 of the Act to enable an authorised officer to make an interim AVO, 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. Proposed section 38 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. This amendment makes it clear that section 38 does apply in relation to provisional orders and authorised officers, and is not limited to orders made by a court. Schedule 1 [8] makes 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. As a result of the Supreme Court decision of *Peach v Wymer & Ors* in June 2007 there was a question about whether a person applying for an AVO for himself or herself could also make an application for an AVO on behalf of another person with whom he or she had a domestic relationship.

In that case it was found that the individual could not and that only a police officer was authorised to do so. This amendment makes it clear that an individual who is an applicant, as well as a police officer, can make an application for the protection of more than one person, providing that the primary applicant has or has had a domestic relationship with the secondary person in need of protection. 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 AVOs under the principal Act will include references to apprehended violence orders under 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 AVO 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. These last two amendments are vitally important in order to ensure that protection is provided to victims when they most need it, namely, in the aftermath of the incident that leads to the AVO being applied for. It ensures that the victim is safeguarded against the defendant using his or her firearm or weapon from the earliest stage. This bill is just one more step the Government is taking to ensure that domestic and personal violence is given priority in our legal system. It will assist in ensuring that women and children are adequately protected and feel assured that everything possible is being done to keep them safe. This bill will further strengthen our laws, which protect victims and hold perpetrators to account. I commend the bill to the House.