

Crimes and Firearms Legislation Amendment (Apprehended Violence Orders) Bill 2004

Explanatory note

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

Overview of Bill

This Bill amends:

- (a) the provisions of the *Crimes Act 1900* that deal with apprehended violence orders (**AVOs**):
 - (i) to provide that a court must refuse to make an AVO, or to confirm an interim AVO, if it is satisfied that the defendant was not advised of the particulars of the complaint or matter, and given a chance to be interviewed, before the complaint was made or the interim AVO was re-heard or is satisfied that the matter was not adequately investigated or that the complaint or request is frivolous, vexatious or without substance, and
 - (ii) to require a court making an AVO to explain to the defendant how long the order operates, that it can be revoked and the procedure for revocation, and
 - (iii) to create an obligation to return firearms licences and permits to the defendant when an AVO is revoked, and
 - (iv) to create offences of making vexatious, frivolous or false applications (complaints) or requests for AVOs, and
- (b) the provisions of the *Firearms Act 1996* that require firearms and firearms licences and permits to be surrendered when an AVO is made:
 - (i) to provide that the current restrictions on being issued with a licence or permit that apply to any person who has, at any time within 10 years before applying for a licence or permit, been subject to an AVO only apply if the person held a firearms licence or permit at the time the AVO was made, and
 - (ii) to provide that a licence or permit is no longer automatically suspended or revoked on the making of an interim AVO or an AVO but is suspended or revoked only if the court specifically so orders, and
 - (iii) to provide that the negative consequences of the making of an AVO on a person's ability to obtain a licence, permit or certain employment do not apply automatically but apply only when the court specifically so orders, and
 - (iv) to provide that if an AVO is revoked, any licence or permit that was revoked by the making of the AVO is restored and must be returned to its holder, and
 - (v) to provide for any firearm surrendered or seized because of the suspension or revocation of a licence or permit to be immediately returned to its owner if an AVO is revoked.

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.

Clause 3 is a formal provision giving effect to the amendments to the *Crimes Act 1900* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Firearms Act 1996* set out in Schedule 2.

Schedule 1 Amendment of Crimes Act 1900

Part 15A of the *Crimes Act 1900* deals with apprehended violence. It provides for the making of

apprehended domestic violence orders (**ADVOs**) and apprehended personal violence orders (**APVOs**), which are generally described as **apprehended violence orders (AVOs)**. A court may make an AVO only if the court is satisfied on the balance of probabilities that the person it seeks to protect has reasonable grounds to fear, and in fact fears, certain domestic violence or personal violence or other unlawful acts. Part 15A also provides for the making of interim AVOs by a court and for the confirmation of those orders (where appropriate) at a further hearing of the matter.

Duty to refuse to make AVO or interim AVO or issue certain process

Schedule 1 [1] and [3] provide that a court must refuse to make an AVO if it is satisfied that:

- (a) the defendant was not advised of the particulars of the complaint before the complaint was made, or
- (b) the defendant was not given an opportunity to be officially interviewed regarding the particulars of the complaint before the complaint was made, or
- (c) the particulars of the complaint were not adequately investigated before the complaint was made, or
- (d) the complaint is frivolous, vexatious or without substance.

Schedule 1 [7] imposes a similar obligation on a court considering whether or not to confirm an interim AVO.

Schedule 1 [2] and [5] provide that a court has an obligation to refuse to issue process in respect of AVOs if the court is satisfied that the complaint is frivolous, vexatious or without substance. **Schedule 1 [4]** makes a consequential amendment.

AVOs and interim AVOs made with consent of parties

Schedule 1 [6] provides that a court must not make an AVO or interim AVO with the consent of both parties unless the court is satisfied that, before giving his or her consent, the defendant was given a written statement explaining the consequences of the making of an AVO or interim AVO on the defendant's ability to possess a firearm, his or her ability to be issued with or hold a licence or permit under the *Firearms Act 1996* and his or her eligibility to hold certain employment.

Defendant must be told how long AVO applies

Schedule 1 [8] requires a court that makes an AVO to ensure that the defendant is given a written statement explaining how long the AVO applies for, that it can be revoked and the procedure for revocation.

No costs if AVO successfully revoked

Schedule 1 [9] provides that if a person has an AVO against him or her revoked, he or she is not liable to pay court costs or any other participant's costs.

Obligation to return firearms licence or permit if AVO is revoked

When a court makes an AVO it can make an order requiring the defendant to surrender to the Commissioner of Police any licence, permit or other authority that the defendant holds under the *Firearms Act 1996*. Section 562F of the *Crimes Act 1900* provides for an AVO to be revoked, but does not explain the impact of that revocation on a firearms licence, permit or authority that was previously surrendered.

Schedule 1 [10] provides that if a court revokes an AVO it must also make an order requiring the Commissioner of Police to return to the defendant any licence or permit surrendered in compliance with the original AVO.

Offences relating to making of complaints for AVOs and requests for interim AVOs

Schedule 1 [11] makes it an offence to make a frivolous or vexatious complaint for an AVO or request for an interim AVO, to make a complaint or request that is without substance or to make a complaint or

request that contains false or misleading statements.

Schedule 2 Amendment of Firearms Act 1996

Various provisions of the *Firearms Act 1996* provide for the consequences of the making of an AVO (which is defined in section 4 (1) of that Act to include the making of an interim order that is confirmed):

- (a) sections 11 (5) (c) and 29 (3) (c) provide that a firearms licence or permit under the Act must not be issued to a person who is subject to an AVO or who has, at any time within 10 years before the application for the licence or permit was made, been subject to an AVO (other than an AVO that has been revoked), and
- (b) section 23 provides for the automatic suspension of a licence on the making of an interim AVO, and
- (c) section 24 provides for the automatic revocation of a licence that authorises a person to possess or use a firearm if the licensee becomes subject to an AVO, and
- (d) section 25 (1) requires a person whose licence is suspended or revoked to immediately surrender to a police officer any firearm in the person's possession and any licence under the Act, and
- (e) section 25 (2) authorises a police officer to seize any firearm in the possession of a person whose licence is suspended or revoked, and
- (f) section 30 (4) provides that a permit may be suspended or revoked for any reason for which a licence may be suspended or revoked, and
- (g) section 44A prevents a firearms dealer from employing, or allowing to participate in the management of the dealer's business, any person subject to an AVO.

Change to general restrictions on issue of licences or permits

Schedule 2 [1] provides that the current restriction on being issued with a licence that applies to any person who has, at any time within 10 years before applying for a licence, been subject to an AVO only applies if the person held a firearms licence or permit at the time the AVO was made.

Schedule 2 [7] makes the same amendment to the restrictions on the issuing of permits.

Impact of making of AVO on licences, permits and employment

Schedule 2 [2] substitutes section 23, which presently provides that a licence is automatically suspended on the making of an interim AVO, so that a licence is suspended only if the court makes a specific order for that suspension.

Schedule 2 [3] amends section 24 (1), which presently provides that a licence is automatically revoked on the making of an AVO, to remove reference to that revocation.

Schedule 2 [4] provides instead that a licence is revoked only if the court makes a specific order for that revocation (*a revocation order*).

Schedule 2 [8] makes a consequential amendment.

Schedule 2 [6] (to the extent that it inserts proposed section 25A) provides that a court that makes an apprehended violence order against a person may order that the making of the apprehended violence order is to be disregarded for the purposes of section 11, 29 or 44A (that is, from the provisions that would otherwise disqualify a person from holding a licence, a permit or certain employment).

Schedule 2 [1], [7] and [9] make consequential amendments.

Restoration of licences, permits and firearms when AVO revoked

An AVO may be revoked by an order under section 562F of the *Crimes Act 1900*. However, the *Firearms*

Act 1996 does not make any provision for the consequences of such a revocation.

Schedule 2 [5] imposes a duty on the Commissioner of Police to ensure that any firearm surrendered or seized because of the making of an AVO is maintained in the same condition as when it was surrendered or seized.

Schedule 2 [6] (to the extent that it inserts proposed sections 25B and 25C) provides that if an AVO or a revocation order is revoked, the licence or permit revoked by the making of an AVO or revocation order is restored. It also provides for the licence or permit to be returned to the person and for any firearm surrendered or seized because of the suspension or revocation of a licence or permit to be immediately returned.