

Motion by the Hon. Sarah Mitchell, on behalf of the Hon. John Ajaka, agreed to:

That this bill be now read a third time.

Bill read a third time and returned to the Legislative Assembly with a message requesting its concurrence in the amendment.

CRIMES (DOMESTIC AND PERSONAL VIOLENCE) AMENDMENT (NATIONAL DOMESTIC VIOLENCE ORDERS RECOGNITION) BILL 2016

Second Reading

The Hon. DAVID CLARKE (Parliamentary Secretary) [9.23 p.m.], on behalf of the Hon. John Ajaka: I move:

That this bill be now read a second time.

I seek leave to have my second reading speech incorporated in *Hansard*.

Leave granted.

The Government is pleased to introduce the Crimes (Domestic and Personal Violence) Amendment (National Domestic Violence Orders Recognition) Bill 2016.

Today, New South Wales again leads the nation in addressing domestic violence. New South Wales is the first jurisdiction to introduce these model laws adopted by the Council of Australian Governments [COAG] in December 2015 to hold domestic violence perpetrators accountable across the country.

The New South Wales Attorney General has been working together with the Premier, the Deputy Premier and the Minister for the Prevention of Domestic Violence and Sexual Assault—to change the way the New South Wales justice system responds to domestic violence.

This bill shows this Government is not only addressing domestic violence in New South Wales, but is also playing a lead role in the national effort to protect victims of domestic violence throughout Australia.

Domestic violence is an insidious and indiscriminate crime. It is a crime which has no borders. At its heart is the issue of control.

According to a report published in October 2015 by Australia's National Research Organisation for Women's Safety based on data from the Australian Bureau of Statistics, one in four women in Australia have experienced at least one incident of violence by an intimate partner. Four out of 10 women in Australia over the age of 15 years have experienced violence during their lifetime.

That is unacceptable and devastating. The behaviours represented by these statistics cannot continue.

We know that victims of domestic violence across the country are too often forced to flee their homes, jobs and support networks to escape their perpetrator by concealing their whereabouts in another town or interstate.

It is for this reason that all Australian governments agreed to take urgent collective action to ensure that those people affected by domestic violence can access the protection they need,

regardless of where they live in Australia.

Just as importantly, there should be, and there will be, no place for a perpetrator of domestic violence to hide.

In April 2015, the Council of Australian Governments [COAG] committed to developing a National Domestic Violence Order Scheme, where domestic violence orders or DVOs will be automatically recognised and enforceable in any State or Territory of Australia.

Domestic violence orders are a key tool of the justice system to protect victims of domestic violence.

Domestic violence orders issued in New South Wales are called Apprehended Domestic Violence Orders or ADVOs.

An ADVO is a civil order that allows an immediate response to domestic violence that prioritises the safety of the person in need of protection. In New South Wales, the court can make an ADVO if the person has reasonable grounds to fear, and in fact fears, the commission of a "personal violence offence", or an offence of intimidation or stalking by the defendant, with whom they are, or have been, in a domestic relationship.

Following changes introduced by this Government in May 2014, senior police can now approve provisional ADVOs immediately after the incident. This allows victims to remain safely in their home while the defendant is removed from the scene.

An ADVO prohibits the defendant from assaulting, molesting, harassing, threatening or otherwise interfering with, intimidating or stalking the person in need of protection. A court can additionally prohibit or restrict the conduct of the defendant in any way the court considers necessary or desirable to ensure the safety of the person in need of protection.

All states and territories have similar domestic violence order frameworks. Existing state and territory legislation allows DVOs issued by a court in one jurisdiction to be registered and enforced in another jurisdiction.

However, the onus is currently on the victim to apply to the court to have their DVO registered. This is a burden and stressful as it requires the protected person to engage again with court and law enforcement processes in another state or territory.

The National Domestic Violence Order Scheme will remove the need for individuals to negotiate those recognition processes to register their DVO in a new jurisdiction. The scheme will also overcome associated barriers impeding the protection of victims. For example, protected persons are often not aware of the need to register an interstate DVO, they may not wish to make contact with another legal system for fear or re-traumatisation, or they fear that registering the DVO will alert the defendant to their whereabouts.

These significant reforms build on other initiatives of this Government to improve victims' safety and increase victims' confidence in the justice system.

As an Australian first, legislation commenced on 1 June 2015 to provide greater support for domestic violence victims in New South Wales courts by enabling them to give their evidence in chief through a prior recorded video or audio statement. This reduces the pressure on domestic violence victims in court and aims to increase early guilty pleas. Where matters proceed to court, it means victims spend significantly less time reliving their trauma in court and are less pressured by offenders to change their story or withdraw from proceedings at a later time.

The Government has also provided additional support for victims at court including advocacy at court proceedings through the Women's Domestic Violence Court Advocacy Services at 114 Local Courts in New South Wales, the provision of safe rooms in courts and the greater use of remote witness facilities.

The Government has also improved court processes and timeframes to ensure domestic violence matters and applications are dealt with efficiently and swiftly, including specialist domestic violence list days in Local Courts across New South Wales to help standardise procedures for ADVOs. Local Court Practice Notes have been introduced to improve court efficiency by setting timeframes for proceedings in criminal matters and for ADVOs.

New South Wales is also rewriting its ADVOs in plain English to better protect domestic violence victims. These redesigned orders will eliminate excuses for violating domestic violence orders.

These are just a handful of ways in which this Government is already improving the safety of domestic violence victims in New South Wales.

We are proud to introduce this bill, which will increase protection for victims of domestic violence not only in New South Wales, but across Australia.

In December 2015, every state and territory committed to introduce laws to give effect to the National Domestic Violence Order Scheme in the first half of 2016.

The National Domestic Violence Order Scheme Working Group, comprising representatives from justice and police agencies in each jurisdiction, drafted National Model Provisions to assist with that process. This bill is substantially in the form of the model provisions.

The National Model Provisions were drafted to reflect a set of common policy principles that were agreed to by each jurisdiction. These principles are that:

- (1) A DVO made anywhere in Australia or a New Zealand DVO registered anywhere in Australia is nationally recognised and enforceable;
- (2) A DVO that is nationally recognised can be amended in any jurisdiction, but only by a court;
- (3) If a DVO made in one jurisdiction is in force, a new order can (if necessary) be made in another jurisdiction, but only by a court; and
- (4) The latest DVO in time prevails.

The model provisions were also considered by the Advisory Panel on Reducing Violence Against Women and their Children, chaired by Mr Ken Lay, APM, former Victorian Police Commissioner; and Deputy Chairs, Ms Rosie Batty, and Ms Heather Nancarrow. The New South Wales Government thanks all members of the Advisory Panel, including Ms Tracey Howe, of the NSW Council of Social Services, the New South Wales representative on the panel, for their important contribution to these reforms.

The New South Wales Government would also like to take this opportunity to thank the stakeholders consulted in the drafting of this bill in New South Wales, including the Department of Justice, NSW Police, Department of Family and Community Services, Legal Aid NSW, the Chief Magistrate of New South Wales, the Children's Court of New South Wales, the New South Wales Bar Association and the Law Society of New South Wales.

I now turn to the detail of the bill.

The bill inserts a new Part 13B into the Crimes (Domestic and Personal Violence) Act 2007 (NSW) to give effect to the NDVOS model laws within the existing New South Wales ADVO framework.

The general principles for national recognition of DVOs are contained in Division 2 of the bill. A "recognised" DVO means a DVO made in New South Wales, a DVO made in another jurisdiction that has enacted the model provisions, or a New Zealand DVO registered in any participating jurisdiction. A DVO will become "recognised" when it is made.

New section 98W limits the scope of recognition of orders from South Australia and Western Australia to only those that are made to address domestic violence. This is needed because their local legislation does not currently differentiate between DVOs and personal violence orders. The provision allows registrars and courts in South Australia and Western Australia to "declare" their respective orders to be those that address a domestic violence concern, in order for them to be recognised under the new scheme.

Sections 98Z and 98ZA of the bill clarify the circumstances in which variations and revocations are permitted and therefore "recognised" under the model scheme. These provisions, together with Schedule 1 (clauses 1 and 2), make it clear that a DVO can only be varied or revoked by a court in another jurisdiction and that a police-issued DVO cannot override a court DVO made for the same defendant and protected person.

Similarly, section 98ZC clarifies that although a person is not prevented from applying for a new DVO in New South Wales, a police officer should not make a new DVO in New South Wales if that officer is aware that there is already a recognised DVO made by a court in another jurisdiction.

Section 98ZO acts as a safeguard to prevent forum shopping, by creating a leave provision for the variation and revocation of non-local DVOs. The bill sets out a list of matters the court may consider in deciding whether to hear an application for a variation of a non-local DVO. These factors include: consideration of where the defendant and protected person live and work, difficulty of either party to attend the proceedings, whether there is sufficient information available to the court about the DVO, whether there are existing criminal proceedings for a breach of the DVO, the practicality of the applicant applying for a similar DVO in New South Wales, and the impact of the application on children subject to the DVO.

Section 98Z0(5) also specifically clarifies that a court in New South Wales must refuse to hear an application for a variation or revocation made by a defendant, if the defendant would not be entitled to make such an application in the issuing jurisdiction—for example, where there is a time limit on when the defendant can make such an application.

Division 2, subdivision 2, of the bill relates to the enforcement of recognised DVOs. Section 98ZD gives effect to the principle that a recognised DVO is enforceable in all participating jurisdictions once the defendant has been properly notified.

Section 98ZE defines proper notification in New South Wales as where the DVO is made by a court and the defendant is present in court, or when the defendant is served with a copy of the DVO in accordance with the Crimes (Domestic and Personal Violence) Act 2007. Jurisdictions have agreed to accept compliance with the service requirements set out in local laws as proper notification of interstate DVOs and section 98ZE(2) gives effect to this principle.

Division 2, subdivision 3, prescribes the elements of the enforcement of non-local DVOs to ensure that they are treated the same way as a New South Wales DVO would be. This means that New South Wales will recognise prohibitions or restrictions imposed by a non-local DVO as if it were made in New South Wales. Similarly, all existing New South Wales provisions that restrict the grant of a particular licence or permit, such as for example a firearms licence, will extend to a person with a DVO from a participating jurisdiction.

Section 98ZF provides that breaches of DVOs are recognised in all participating jurisdictions. In other words, a contravention of a non-local DVO that is a recognised DVO in New South Wales under the scheme may be enforced in New South Wales as if it were a New South Wales DVO.

Division 4 sets out the principles relating to the exchange of information between jurisdictions for the purpose of enforcing DVOs. While in the interim, police and courts will rely on the National Police Reference System to check details of interstate DVOs, the Commonwealth is working with New South Wales and other jurisdictions on the establishment of a national information-sharing capability to support the enforcement of the NDVOS. Further legislative changes may be required to the information-sharing provisions, depending on the outcome of that work.

Under section 98ZW, the bill will apply prospectively to any New South Wales DVO or New Zealand DVO registered in New South Wales, that is, on or after the commencement date. This is necessary to ensure that all the required information-sharing systems are in place and that parties to the DVOs are properly notified that the DVO can now be enforced nationally.

However, there is some scope for DVOs made before the commencement of the scheme to be nationally recognised. The model bill provides for a declaration process.

Division 6, subdivision 4, outlines the process by which this declaration can be done. The declaration mechanism is based on the existing manual process for registering external DVOs in New South Wales. It requires a person to apply to a registrar to have their DVO declared to be recognised under the national scheme.

While COAG has agreed to develop a comprehensive national DVO information-sharing system that police and courts will be able to use for evidentiary purposes or to enforce DVOs, it is noted this will take several years to fully implement.

Therefore, COAG has agreed in the short term to establish an interim information-sharing system that will provide police and courts with information on all DVOs that have been issued. The interim system will not have the same evidentiary or enforcement capacity as the permanent system, but will go some way in assisting courts and police to clarify information about DVOs made in other jurisdictions.

For this reason, the bill will commence on proclamation to allow time for the interim information sharing capabilities to be put in place.

New South Wales is proud to be the first jurisdiction to implement these significant reforms, which will provide increased protection for victims of domestic violence across jurisdictional borders.

The Attorney General is continuing to work with her Commonwealth, State and Territory colleagues at the Law, Crime and Community Safety Council meeting next month to drive the National Domestic Violence Order Scheme into reality.

I commend the bill to the House.

The Hon. ADAM SEARLE (Leader of the Opposition) [9.23 p.m.]: I lead for the Opposition in