



New South Wales

Crimes (Domestic and Personal Violence) Amendment (National Domestic Violence Orders Recognition) Bill 2016

Explanatory note

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

Overview of Bill

The object of this Bill is to give effect to the New South Wales component of a national recognition scheme for domestic violence orders.

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 by proclamation.

Schedule 1 **Amendment of Crimes (Domestic and Personal Violence) Act 2007 No 80**

Schedule 1 [9] inserts proposed Part 13B into the *Crimes (Domestic and Personal Violence) Act 2007* (the *principal Act*) to give effect to the New South Wales component of a national recognition scheme for domestic violence orders. The proposed Part incorporates model provisions that were approved by the Council of Australian Governments on 11 December 2015.

Division 1 of proposed Part 13B deals with preliminary matters and contains proposed sections 98R–98X.

Proposed section 98R sets out the object of the proposed Part which is to establish, in conjunction with corresponding laws, a national recognition scheme for domestic violence orders (*DVOs*).

Proposed section 98S sets out definitions for the purposes of the proposed Part.

Proposed sections 98T–98V define *local DVO*, *interstate DVO* and *registered foreign order*. A local DVO is an apprehended domestic violence order or an interim apprehended domestic violence order made under the principal Act. An interstate DVO is a domestic violence order (or an order that addresses a domestic violence concern) made under various pieces of legislation of other States and Territories. A registered foreign order means a foreign order (which at this stage only includes New Zealand DVOs) that is registered under Part 13 and was made to prevent a person acting in a manner specified in section 16 of the principal Act, or that was made under provisions similar to Part 13 in legislation of other States and Territories.

South Australia and Western Australia do not have a distinct category of domestic violence orders. Therefore to distinguish domestic violence orders from other orders for the protection of persons in those States, the definition of *interstate DVO* (when referring to orders from those States) is limited to orders that address domestic violence concerns. **Proposed section 98W** sets out when an order will be taken to address a domestic violence concern.

Proposed section 98X provides that a registered foreign order is taken to be made in the jurisdiction in which it is registered and is taken to have been made when it is so registered. If the registration of the order is varied or revoked, then the order is varied or revoked.

Division 2 of proposed Part 13B deals with the national recognition of DVOs and contains proposed sections 98Y–98ZK.

Proposed section 98Y sets out that *recognised DVO* means a local DVO, an interstate DVO made in a *participating jurisdiction* (being New South Wales or another jurisdiction that has enacted provisions that correspond with proposed Part 13B (a *corresponding law*)) or a foreign order that is a registered foreign order in any participating jurisdiction. **Schedule 1 [7]** removes an existing power for an interstate DVO to be registered in New South Wales as this is now no longer necessary because of proposed Part 13B.

Proposed sections 98Z and 98ZA set out the circumstances in which a variation to, or revocation of, a recognised DVO is recognised in New South Wales. In the case of a local DVO, the variation or revocation is recognised if it is done in accordance with the principal Act or it is done by a court in a participating jurisdiction under a corresponding law. In the case of an interstate DVO or foreign order the variation or revocation is recognised if it is done in the issuing jurisdiction under the law of that jurisdiction or it is done in a participating jurisdiction under a corresponding law. A variation to a DVO that is recognised in New South Wales is a *recognised variation*.

Proposed section 98ZB provides that a recognised DVO that is newer than an earlier comparable recognised DVO supersedes the earlier recognised DVO. A DVO is comparable if it is made against the same defendant and it is made for the protection of one or more of the same protected persons.

Proposed section 98ZC provides that proposed Part 13B does not prevent the making of a local DVO even if a recognised DVO is in force that applies to the same defendant. However, a person cannot make a provisional order against a defendant under Part 7 of the principal Act if the person is aware that a recognised DVO is in force against the defendant and that recognised DVO applies to the same protected person and was made by a court. **Schedule 1 [1] and [2]** make consequential amendments.

Proposed section 98ZD provides that both a recognised DVO and a recognised variation to a recognised DVO, is enforceable in New South Wales. **Schedule 1 [8]** makes a consequential amendment.

Proposed section 98ZE sets out the circumstances in which a defendant is taken to be properly notified about the making of a local DVO or an interstate DVO, or about the variation of a recognised DVO.

Proposed section 98ZF provides that a *non-local DVO* (being an interstate DVO or a foreign DVO) that is a recognised DVO and (under proposed section 98ZD) is enforceable in New South Wales may be enforced as if it were a local DVO and as if the defendant had been properly notified

in New South Wales about the making of the DVO. It also provides for the circumstances in which a variation may be enforced in New South Wales.

Proposed section 98ZG provides that a recognised DVO that is a non-local DVO has the same effect in New South Wales as a local DVO.

Proposed section 98ZH provides that any law of New South Wales that limits a person's ability to hold an authorisation (such as a licence or permit) because the person is subject to a local DVO extends in the same way to a person who is subject to a recognised non-local DVO.

Proposed sections 98ZI and 98ZJ provide that if a person is disqualified from holding an authorisation to possess a firearm or a prohibited weapon in another jurisdiction because of a recognised non-local DVO, the person is also disqualified from holding a licence or permit to possess the firearm under the *Firearms Act 1996* or from holding a permit to possess the weapon under the *Weapons Prohibition Act 1998*.

Proposed section 98ZK provides that non-local DVO, to the extent that it requires the payment of money, cannot be enforced in New South Wales and that the recognition of a DVO in New South Wales does not permit a New South Wales court to award costs in respect of proceedings occurring in another jurisdiction.

Division 3 of proposed Part 13B deals with the variation and revocation of recognised non-local DVOs and contains proposed sections 98ZL–98ZO.

Proposed section 98ZL sets out a definition of *court* for the purposes of the proposed Division, which is defined to mean a New South Wales court that can make an apprehended domestic violence order or an interim apprehended domestic violence order under the principal Act.

Proposed section 98ZM sets out when a court can vary or revoke a recognised non-local DVO.

Proposed section 98ZN sets out the circumstances in which an application can be made to a court for the variation or revocation of a recognised non-local DVO.

Proposed section 98ZO provides a court with a discretion to hear or decline to hear an application for the variation or revocation of a recognised non-local DVO. However, a court must refuse to hear the application if made by the defendant during any period in which the defendant is not entitled to apply for the variation or revocation of the DVO in the jurisdiction in which the DVO was issued.

Division 4 of proposed Part 13B deals with the exchange of information and contains proposed sections 98ZP–98ZS.

Proposed section 98ZP permits a New South Wales *issuing authority* (being a court or other person with power to make, vary or revoke a DVO) to obtain and use information from an issuing authority of another jurisdiction, or from a New South Wales or interstate law enforcement agency.

Proposed section 98ZQ requires a New South Wales issuing authority that makes, varies or revokes a DVO to provide, on request, information about the DVO to a court in a participating jurisdiction for the purposes of a corresponding law or to a New South Wales or interstate law enforcement agency for the purposes of its law enforcement functions.

Proposed section 98ZR permits a New South Wales law enforcement agency (being the NSW Police Force) to obtain information about a DVO from an issuing authority (in New South Wales or another jurisdiction) or interstate law enforcement agency and to use the information for the purposes of its law enforcement functions.

Proposed section 98ZS requires a New South Wales law enforcement agency to provide, on request, information about a DVO to an interstate law enforcement agency for the purpose of exercising its law enforcement functions.

Division 5 of proposed Part 13B deals with miscellaneous matters and contains proposed section 98ZT.

Proposed section 98ZT permits certificates to be issued stating that the making of, or variation to, a DVO has been properly notified in New South Wales or another jurisdiction. The certificate is admissible in evidence in proceedings.

Division 6 of proposed Part 13B sets out transitional provisions and contains proposed sections 98ZU–98ZZE.

Proposed section 98ZU inserts a definition of *commencement date* for the purposes of the proposed Division. The commencement date is the day on which proposed Part 13B commences.

Proposed section 98ZV provides that proposed Part 13B does not affect the enforceability in New South Wales of a local DVO made before the commencement date or of any interstate DVO or foreign order registered under Part 13 of the principal Act in New South Wales before the commencement date except as otherwise provided under the proposed Part.

Proposed sections 98ZW and 98ZX provide that Division 2 (National recognition of DVOs) of proposed Part 13B will apply to all local DVOs and foreign orders made in New South Wales on or after the commencement date and to all DVOs made in other participating jurisdictions that are recognised DVOs under that jurisdiction's corresponding law.

Proposed section 98ZY provides that *recognised DVO* includes any DVO that has been declared by the registrar of a court in New South Wales or in a participating jurisdiction to be a recognised DVO. **Proposed section 98ZZ** states that the DVO is still recognised even if the relevant declaration was made before the commencement date.

Proposed section 98ZZA sets out a definition of *registrar* for the purposes of proposed sections 98ZZB–98ZZD, being a registrar of a court in New South Wales that can make local DVOs.

Proposed section 98ZZB permits a registrar to declare that a DVO made in any jurisdiction is a recognised DVO in New South Wales.

Proposed section 98ZZC provides that an application for a declaration may be made by any person who would be able to make an application for variation of the DVO if the DVO were a recognised DVO.

Proposed section 98ZZD permits a court (that has the power to make a DVO in New South Wales) to exercise the functions of a registrar under proposed sections 98ZZB–98ZZD.

Proposed section 98ZZE provides for the principal Act to continue to apply to interstate DVOs that are currently registered under Part 13 as if proposed Part 13B had not commenced. An interstate DVO ceases to be registered under that Part (and proposed Part 13B applies to the order) if the order becomes a recognised DVO in New South Wales.

Schedule 1 [3]–[6] extend protections in Part 9 of the principal Act to proceedings under proposed Part 13B. Those protections relate to the giving of evidence by children, preventing the disclosure of the residential address of protected persons and preventing the publication of names. Those provisions are extended to proceedings for the variation or revocation of a recognised non-local DVO and proceedings for a declaration that a DVO is a recognised DVO.