

CRIMES (DOMESTIC AND PERSONAL VIOLENCE) AMENDMENT (REVIEW) BILL 2016

First Reading

Bill introduced on motion by the Hon. Gabrielle Upton, read a first time and printed.

Second Reading

Ms GABRIELLE UPTON (Vaucluse—Attorney General) (10:11): I move:

That this bill be now read a second time.

The Government is pleased to introduce the Crimes (Domestic and Personal Violence) Amendment (Review) Bill 2016. Reducing domestic violence reoffending is one of the Premier's top priorities for New South Wales. Domestic violence is a complex issue and delivering on that priority requires a significant effort across all of government. As the Attorney General of New South Wales, I have been working with my ministerial colleagues, in particular, the Premier, the Deputy Premier and Minister for Justice and Police, and the Minister for the Prevention Domestic Violence and Sexual Assault, to improve the way in which the New South Wales justice system responds to domestic violence. I am committed to ensuring that our laws in this area provide the best possible protection for victims of domestic violence that will lead to the least traumatic and stressful experience for those victims throughout our court system.

This is the second bill I have introduced this year with those vital objectives in mind. In March I was proud to introduce model laws to implement the New South Wales component of the National Domestic Violence Order Scheme. In passing those model laws, New South Wales became the first jurisdiction to give effect to the scheme to ensure that domestic violence perpetrators are held accountable across the nation. Under the scheme, apprehended domestic violence orders issued in New South Wales will automatically be recognised and enforced across the nation, removing the need for victims to register their ADVOs in a court of the new jurisdiction to have them enforced, and to protect them when moving interstate.

I recently returned from a meeting of the Law, Crime and Community Safety Council, the membership of which includes the Ministers responsible for law and justice from each State and Territory and the Commonwealth, and the New Zealand Government. The council assists the Council of Australian Governments in promoting best practice in law, criminal justice and community safety. At that meeting I called on my State and Territory colleagues to fast-track their commitment to adopt the model laws, as New South Wales has, in order to drive the National Domestic Violence Order Scheme into reality.

Today I am introducing another bill to significantly improve the operation of our domestic violence legislation and the protections it offers to victims of domestic violence. The amendments in this bill implement the recommendations of the statutory reviews conducted by the Department of Justice of the Crimes (Domestic and Personal Violence) Act 2007, and of chapter 9A of the Coroners Act 2009 relating to the Domestic Violence Death Review Team. I tabled both statutory review reports in Parliament yesterday. The Crimes (Domestic and Personal Violence) Act and chapter 9A of the Coroners Act are key parts of the New South Wales legislative framework for addressing domestic violence.

The primary objectives of the Crimes (Domestic and Personal Violence) Act are to, first, ensure the safety and protection of all persons who experience or witness domestic violence; and, secondly, reduce and prevent violence by a person against another person where a domestic relationship exists between those persons. The Act aims to achieve those objectives by empowering courts and, following reforms introduced by this Government in May 2014, senior police to make apprehended domestic violence orders [ADVOs]. An ADVO is a civil order that allows an immediate response to domestic violence, prioritising the safety of the victim. A civil ADVO scheme was first introduced in New South Wales in 1982 and was continuously refined and improved until the current Crimes (Domestic and Personal Violence) Act was passed with bipartisan support in 2007. Today ADVOs remain a key tool of the justice system to protect victims of domestic violence.

The primary objective of the Domestic Violence Death Review Team, as set out in chapter 9A of the Coroners Act, is to examine domestic violence related deaths with a view to reducing the incidence of such deaths in New South Wales and to promote improvements in systems and services. The team is convened by the State Coroner, Michael Barnes, and brings together key government agencies, non-government organisations and sector experts. Both statutory reviews concluded that the policy objectives of the respective Acts remain valid and that their terms mostly remain appropriate for securing those objectives. However, the reviews did make recommendations to improve the way the New South Wales justice system responds to domestic violence.

The Government supports all the recommendations of both statutory reviews. To the extent the recommendations of the reviews require legislative changes, they are implemented in this bill. In giving effect to those recommendations, this bill will expand the availability of ADVOs and give courts and police greater flexibility in the ADVO process to ensure they can offer the best protection and support to victims. In relation to the Domestic Violence Death Review Team, the bill will further enhance the team's role in reducing domestic violence in New South Wales by expanding its membership and reporting every two years to allow the team to fulfil its legislative function to the highest possible standard and better facilitate interagency collaboration.

The bill also makes an amendment to introduce plain English ADVOs, as announced by this Government in November last year. ADVOs are being rewritten in simple language tailored to the individual, removing the complex legal language found in current ADVO forms. This reform means that domestic violence perpetrators will no longer have an excuse for not understanding or complying with ADVOs and victims will better understand the protections afforded to them.

Before turning to the detail of the bill, I take this opportunity to thank the many stakeholders from government and non-government sectors who contributed significant time and expertise to the development of these important pieces of work. A list of all stakeholders who provided input to the statutory reviews is set out in appendices to each review. The statutory review process also involved consideration of the numerous reviews that have taken place in recent years, including the Australian and NSW Law Reform Commission 2010 report, "Family Violence—A National Legal Response", which I will refer to as the Family Violence report, and the 2012 report of the Legislative Council Standing Committee on Social Issues, "Domestic violence trends and issues in NSW". In short, consultation on these reforms has been detailed, considered and extensive. It was important to get these changes right.

I now turn to the detail of the bill before the House. The bill is divided into two schedules. Schedule 1 sets out amendments to the Crimes (Domestic and Personal Violence) Act 2007 arising from the statutory review of that Act and plain English apprehended domestic violence order [ADVO] forms. Schedule 2 sets out amendments to chapter 9A of the Coroner's Act 2009 arising from the statutory review of the provisions relating to the Domestic Violence Death Review team.

I will first address the amendments to the Crimes (Domestic and Personal Violence) Act in schedule 1 to the bill. The bill amends the objects of the Crimes (Domestic and Personal Violence) Act to acknowledge the particular impact of domestic violence on Indigenous persons; those from culturally and linguistically diverse backgrounds; those from the gay, lesbian, bisexual, transgender and intersex communities; older persons; and persons with disabilities. This was also a recommendation of the Family Violence report.

Clauses 1 to 5 and 8 of the bill amend key definitions regarding who can get an ADVO. For example, the Act currently allows a person to apply to the court for an ADVO where the person is in or has been in a domestic relationship with the defendant. "Domestic relationship" is defined in section 5 of the Act. The bill expands this definition so that the victim's current partner can also seek an ADVO if they are being harassed by the victim's ex-partner. Currently this kind of relationship and this kind of availability is not covered or available. Perpetrators are often possessive and may behave threateningly towards a victim's new partner. This change will ensure that everyone who is at risk has the legal protection of an ADVO.

The statutory review recommended—and this bill introduces—a number of reforms relating to when a person can get an ADVO. Importantly for victims of domestic violence, the ranges of offences that are categorised as domestic violence offences for which an ADVO may be sought are to be expanded. Currently the Act nominates 55 existing criminal offences, which, when committed or attempted in the context of a domestic relationship, are grounds for seeking an ADVO. This bill expands that list to include any other New South Wales criminal offence or offence under the Commonwealth criminal code when committed in a domestic relationship and intended to coerce or control a victim or cause them to be fearful. For example, the Commonwealth offence of using a carriage service to menace, harass or cause offence—such as sending abusive text messages—will now be considered a domestic violence offence when committed in a domestic relationship and, therefore, becomes grounds for seeking an ADVO and obtaining its protection.

In this way the Act will, for the first time, recognise the very broad range of physical and non-physical behaviours that can constitute domestic violence. Expanding the range of offences in this way also recognises that at its core domestic violence is about controlling behaviours and constitutes any behaviour that is coercive or engenders fear in a domestic relationship. This change was also a recommendation of the Family Violence report. In addition, the bill adds some relevant offences that were missing from the existing list of 55 criminal offences and also includes in the definition of "domestic violence offence" any New South Wales or Commonwealth offence arising from

substantially the same set of circumstances as one of the offences on the list. This reform will also have the effect of expanding the types of offences recorded as domestic violence offences on a perpetrator's criminal record.

The bill also expands when a person can get an ADVO by revising the threshold for making an ADVO. Currently, under section 16 (1) of the Act before making an ADVO the court has to be satisfied that the person has reasonable grounds to fear, and in fact fears, the commission of a personal violence offence against them by the defendant. Section 16 (2), however, permits the court to make an ADVO without being satisfied that the person in fact fears the relevant conduct if that person is a child or is suffering from an appreciably below average intelligence function or where there is a history of personal violence.

The bill amends section 16 of the Act to allow the court to make an order for any other person in need of protection without needing to be satisfied that that person in fact fears the relevant conduct. This is a vital reform as we know victims are often reluctant to tell police that they are afraid of their partner due to concerns about reprisals. However, an ADVO made under this section will be limited to the standard orders set out in section 36 of the Act, which already constitute a criminal offence. This amendment will allow courts to make an ADVO to protect a victim who may be reluctant to express fear due to concerns about retaliation, while ensuring that they are not subject to intrusive orders they do not want.

The bill amends section 48 of the Act in relation to ADVOs to protect children. Currently, section 48 of the Act provides that only a police officer may make an application for an ADVO if the person for whose protection the order would be made is a child. Stakeholders stated that reluctance in certain communities about approaching and involving police is delaying and sometimes even dissuading people with children from seeking otherwise appropriate ADVO protection. The Act is accordingly being amended to clarify that the requirement in section 48 (3) for police to appear on behalf of a child applies only where the child is the sole person for whom protection is sought. This will clarify that women and men with children can make private applications for an ADVO, in the same way that women and men without children can. Importantly, the bill retains the court's discretion to refer any application involving a child to police at any time during proceedings, where it would be in the best interests of the child to do so.

The bill makes a number of procedural amendments to the Act to clarify and streamline its provisions. The bill amends section 32 of the Act to clarify when a provisional ADVO remains in force. A provisional ADVO is a type of urgent interim ADVO made by an authorised officer or by a senior police officer. This amendment addresses concerns raised in the statutory review where a final ADVO has been made but not yet served on the defendant, but the 28-day limit on a provisional ADVO has expired, which can leave the victim without the protection of an ADVO for that short window. This amendment closes that gap.

The bill inserts a new section 57A into the Act to allow the court to proceed to hear and determine an application for a final apprehended violence order [AVO] even if the defendant and person seeking protection are not present, provided that the court is satisfied that the requirements for service have been met and it is in the interests of justice to do so. This amendment is consistent with the court's existing power to make interim orders in the absence of both parties in certain circumstances. The bill inserts a new section 41A into the Act to prohibit the defendant in an application for an ADVO from personally cross-examining any child. This amendment formalises the existing Local Court of NSW Practice Note for Domestic and Personal Violence Proceedings, which states that children cannot be questioned by an unrepresented defendant and may only be questioned by a person appointed by the court who is an Australian legal practitioner or other suitable person. This is an important reform that will help the most vulnerable of people appearing before our courts—our children and young people—so they do not feel even more intimidated or re-traumatised by these proceedings.

The bill amends section 39 of the Act to expand the list of offences for which the court is required to make an AVO on a guilty verdict or guilty plea. It also clarifies that the court is not required to make an AVO if it is satisfied that a final AVO is already in place against the defendant. The bill also amends section 40 of the Act to allow evidence admitted in the District Court or Supreme Court in the hearing for a serious charge to subsequently be admitted in the Local Court and Children's Court in a related ADVO application, where the ADVO is remitted back for final determination. This will ensure that, where an interim ADVO has been made on a charge for a serious offence that does not result in a conviction, victims are not required to give evidence twice for a final ADVO, which often results in double handling and leads to delay in matters, which leads to trauma and revisitation of all the very difficult things that lead people to the circumstance of being before the court.

The NSW Police Force submitted to the statutory review that, while it may appear as the applicant and obtain orders for the protection of the victim, an application can subsequently be made to vary or revoke the order without notice to it. This may result in defendants coercing the victim into consenting to inappropriate applications for variation or revocation. Section 72 of the Act is accordingly being amended to provide that the Commissioner of Police must be notified of any application made to revoke or vary an ADVO which was originally sought by police and the commissioner must be given standing to appear in relation to the matter. The amendments will also provide that, where a person applies to vary or revoke an ADVO that was initiated by police and one of the protected persons is a child, the application requires leave of the court before such an application can be heard.

These changes maintain the safeguards for children and adult victims who may be coerced into consenting to inappropriate applications for variations and revocations by maintaining the need for police involvement to ensure the best interests of the child are always paramount. With the passing of this bill, sections 72 (5) to (8) of the Act will be repealed so that a defendant can no longer apply for an ADVO to be revoked after it has expired. Those provisions were inserted into the Act to ameliorate the effect of other pieces of legislation, specifically those governing licensing of firearms and other weapons. This is because, for 10 years following an ADVO's expiry, a person who was subject to it could not hold a firearms license or a prohibited weapons permit.

The insertion of these provisions meant that a defendant was able to revoke an expired ADVO and therefore become eligible to apply for a licence or permit as though the ADVO had never existed. The statutory review considered that the ability to revoke an expired ADVO in order to avoid the consequences flowing from the record of that order's existence is anomalous, unique and undesirable. The Act currently lists a range of possible conditions that the court may wish to make in an ADVO including, for example, location restrictions and restrictions on approaches to the victim when under the influence of alcohol and drugs. A prohibition on attempting to locate the protected person is not currently included in the list of potential conditions. Including this prohibition was a recommendation of the Family Violence report.

The statutory review also recommended redrafting the costs provisions of the Act to clarify when costs orders may be made against police officers in response to the Supreme Court's decision in *Constable Redman v Willcocks*. This decision considered the complexities that arise between section 99 of the Act, which allows for costs orders against police officers only where the police officer made the application knowing that it contained matter that was false or misleading in a material particular, and the provisions in the Criminal Procedure Act 1986 (NSW), which, pursuant to sections 211 to 218, do not require these exceptional circumstances where the procedural misconduct is proven. The bill accordingly creates a standalone provision governing the award of costs in ADVO proceedings, without reference to other legislation. The provision limits costs in ADVO proceedings against police unless the court is satisfied that:

- (a) The police officer made the application knowing it contained matter that was false or misleading in a material particular, or
- (b) The police officer has deviated from the reasonable case management of the proceedings so significantly as to be inexcusable.

The new section 99A will also set out certain situations that alone will not give rise to an award of costs against police, such as where the victim does not turn up to court or gives unfavourable evidence. This bill makes a number of amendments to improve the interaction between ADVOs and family law orders, which are made by the Family Court. Consistent with the Family Violence report, section 50 of the Act is being amended to provide for a regulation-making power to prescribe the ADVO application form. The form will require applicants to indicate whether family law proceedings are on foot and whether parenting or property orders have been made, and to provide the terms of any order to the court. These changes will ensure that New South Wales courts have access to information on all relevant Family Court orders, which may in some cases conflict with ADVOs.

Consistent with the Family Violence report, the bill amends section 37 so that applicants are also required to inform the court of any existing or pending family law property orders, and that judicial officers are required to inform the applicant of this obligation. This ensures that any New South Wales court property orders are consistent with orders made by the Family Court. Finally, the bill introduces a new section 40A into the Act to give the Children's Court jurisdiction to make an ADVO where care proceedings are before it and are not related to concurrent criminal proceedings in another jurisdiction. The amendments will allow the Children's Court to make an ADVO with the child the subject of the care proceedings named as the protected person, as well as jurisdiction to make an ADVO to protect that child's siblings and any adult who is affected by the same circumstances.

The amendments also extend the jurisdiction of the Children's Court to allow it to vary or revoke any existing ADVO, on the application of a party or its own motion, where care proceedings

are before the court and where the circumstances justify making the order. The Secretary of the New South Wales Department of Family and Community Services and the Commissioner of Police will be notified and given the right of appearance before the Children's Court. These reforms implement the Family Violence report recommendation which aims to avoid parties being involved in multiple court proceedings arising from similar facts or circumstances. The bill also gives effect to the Government's plain-English ADVO reforms announced in November last year by amending sections 36 and 50 of the Act. The bill applies these reforms to both ADVOs and apprehended personal violence orders, together referred to as apprehended violence orders, or AVOs.

The Department of Justice has worked with the Department of Premier and Cabinet's Behavioural Insights Unit to develop plain-English personalised AVOs designed to increase defendant understanding of, and compliance with, those orders. These changes are being introduced in response to issues identified by stakeholders who work directly with domestic violence defendants and victims. These stakeholders noted that some of the terms of the AVO orders are difficult for both parties to understand, as they often use detailed or legal language that people are not familiar with. There is strong evidence that improving the legibility of forms will improve compliance and the protection of victims.

The bill amends section 50 to allow the AVO application forms to be better regulated, and also amends section 36 of the Act relating to the standard orders to remove the word "molest" and replace the phrase "otherwise interfere with". Both phrases have sexual connotations and caused some defendants to distance themselves from the proscribed behaviour and the order. Section 36 now includes a standard order prohibiting a defendant from intentionally or recklessly damaging or destroying any property that belongs to or is in the possession of the protected person. This new standard order replaces the phrase "otherwise interfere with", providing both victims and defendants greater clarity with regard to their rights and obligations and further strengthening the AVO framework. Regulations are being drafted concurrently with these amendments and will prescribe the new plain-English AVO application forms.

I now turn to schedule 2 to the bill which implements the recommendations of the statutory review of chapter 9A of the Coroners Act relating to the Domestic Violence Death Review Team. Schedule 2, item [1] amends section 101B of the Coroners Act to align the definition of "domestic relationship" to the corresponding definition in the Crimes (Domestic and Personal Violence) Act 2007. This is to ensure that all domestic violence related deaths are reviewed by that team. Items [3] to [5] amend the section governing the membership of that team. The Commissioner of Victims' Rights will be included on the team to recognise the critical role that victim's services play in domestic and family violence policy and service delivery. An Indigenous representative will also be added to the team to assist in identifying gaps in service delivery and to provide information, expertise and perspectives on issues particularly affecting Indigenous populations.

Finally, item [6] of the bill will mean that the Domestic Violence Death Review Team will in future report every two years to Parliament, rather than annually. The State Coroner submitted that the current requirement to report annually does not allow sufficient time for the development of evidence-based policy recommendations within a collaborative, interagency framework. It also does not allow sufficient time to adequately monitor the implementation of the team's past recommendations. Biennial reporting requirements will be consistent with similar bodies that report on qualitative and quantitative research, such as the NSW Ombudsman's reviewable child deaths report and the Australian Institute of Criminology's National Homicide Monitoring Program report.

Domestic violence is a serious crime and a personal violation of trust, all at once. The system for preventing and responding to such a multifaceted problem and challenge to our community, and our response to it, must be comprehensive. These laws must reflect the fact, as they will, that domestic violence is about a perpetrator controlling a victim—it is not just physical abuse. These changes must also be responsive and flexible to the feedback we get from those working in the team. This bill is the result of a comprehensive statutory review undertaken by this Government, including a thorough examination of the ADVO system, which is the primary mechanism through which individuals are protected from domestic violence in New South Wales.

The reforms expand the coverage of the Act to give police and courts greater flexibility in the ADVO process, with the result being increased safety and freedom from violence for victims and their children. Domestic violence in all its forms is completely unacceptable. This bill is further evidence of the Government's ongoing commitment to both prevent domestic violence and provide victims with the support and protection they need in real time when it does occur. The Government will not resile from the strong commitment it has made to protect victims of domestic violence. I commend the bill to the House.

Debate adjourned.