



New South Wales

Crimes (Domestic and Personal Violence) Amendment (Review) 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 recommendations contained in the *Statutory Review of the Crimes (Domestic and Personal Violence) Act 2007 (NSW)* and the *Statutory Review of Chapter 9A of the Coroners Act 2009: The Domestic Violence Death Review Team* prepared by the Department of Justice and to make other minor amendments.

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 a day or days to be appointed by proclamation.

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

Schedule 1 gives effect to the recommendations contained in the *Statutory Review of the Crimes (Domestic and Personal Violence) Act 2007 (NSW)* (the *review*) and makes some other minor amendments.

Schedule 1 [7] extends the definition of *domestic relationship* so as to include the relationship between a current partner and former partner of a person as a domestic relationship. This gives effect to **recommendation 1** of the review.

Schedule 1 [8] provides that, in enacting the *Crimes (Domestic and Personal Violence) Act 2007* (the *principal Act*), Parliament recognises the particular impact of domestic violence on Aboriginal persons and Torres Strait Islanders, persons from culturally and linguistically diverse backgrounds, persons from gay, lesbian, bisexual, transgender and intersex communities, older persons and persons with disabilities. This gives effect to **recommendation 2** of the review.

Schedule 1 [4] and [5] add a number of offences to the definition of *personal violence offence* set out in section 4 of the principal Act. The offences that are added are offences that have a personal violence offence as an element. **Schedule 1 [6]** makes a consequential amendment. This gives effect to **recommendation 3** of the review. **Schedule 1 [2] and [3]** add additional offences to that definition, including offences relating to abandoning or exposing a child, failing to provide a child with the necessities of life, female genital mutilation, sexual intercourse with a person under special care between the ages of 16 and 18 and incest.

Schedule 1 [9] extends the definition of *domestic violence offence* for the purposes of the principal Act. Offences other than personal violence offences are now caught if they are committed by a person against a person with whom the person has (or has had) a domestic relationship and the offence arises from substantially the same circumstances as a personal violence offence or the offence is committed against the person in order to coerce or control the person or to cause the person to be intimidated or fearful. **Schedule 1 [10]** makes a consequential amendment. This gives effect to **recommendation 4** of the review.

A court may make an apprehended domestic violence order if it is satisfied that the person for whose protection the order is to be made has reasonable grounds to fear and in fact fears intimidation, stalking or the commission of a personal violence offence by a person with whom the person has a domestic relationship. However, it is not necessary for the court to be satisfied that the person in fact fears those things in certain circumstances, such as if the person is a child. **Schedule 1 [12]** adds a new circumstance when a court can make an order for the protection of a person without being satisfied that the person in fact fears those things. A court may now make the order if satisfied that the person has reasonable grounds to fear the commission of a domestic violence offence against the person. **Schedule 1 [13]** provides that when an apprehended domestic violence order is made in these circumstances the only prohibitions that are imposed on the defendant by the order are those that are taken to be specified in every apprehended violence order by section 36 of the principal Act (see Schedule 1 [17]). Those prohibitions only prohibit what is already criminal conduct. This gives effect to **recommendation 5** of the review. **Schedule 1 [11]** makes a related amendment that restricts (in the light of the new circumstance) an existing circumstance in which a court can make an order for the protection of a person without being satisfied that the person in fact fears the relevant things. In that case an order can be made only where there has been a history of personal violence offences committed.

Schedule 1 [23] provides that an application for an order (being an application to a court for a final apprehended violence order or an interim court order) may not be made by any person other than a police officer if only children (and no adults) are to be protected by the order. **Schedule 1 [24]** permits a court to refer, to the Commissioner of Police, an application for an order if the applicant is not a police officer and a person to be protected by the order is a child. **Schedule 1 [27]** (proposed section 72D) permits the court to notify the Commissioner of Police of an application for the variation or revocation of an order if a person to be protected by the order is a child. This gives effect to **recommendation 6** of the review.

Schedule 1 [14] specifies when a provisional order (being an interim apprehended violence order made under Part 7 of the principal Act by a police officer or an authorised officer) ceases to have effect. **Schedule 1 [15]** makes a consequential amendment. This gives effect to **recommendation 7** of the review.

Schedule 1 [26] permits a court, in proceedings in relation to an application for an order, to proceed to hear and determine the matter in the absence of one or more of the parties if the court is satisfied that the absent party had reasonable notice of the proceedings and it is otherwise in the interests of justice to do so. This gives effect to **recommendation 8** of the review.

Schedule 1 [22] prevents a defendant from directly questioning a child in proceedings for the making, varying or revoking of an apprehended domestic violence order. In such a case, only the defendant's Australian legal practitioner or any other Australian legal practitioner or suitable person appointed by the court may question the child on the defendant's behalf. This gives effect to **recommendation 9** of the review.

Schedule 1 [20] permits the transcript of proceedings and any evidence admitted in the District Court or the Supreme Court in respect of a serious offence to be admissible in the Local Court or Children's Court for the purposes of determining related apprehended violence order proceedings. This gives effect to part of **recommendation 10** of the review. **Schedule 1 [20]** also extends to the Supreme Court, the requirement that a court must make an interim apprehended violence order against a person if the person is charged with a serious offence. **Schedule 1 [33]** makes a consequential amendment.

Schedule 1 [27] omits section 72 of the principal Act and instead inserts proposed sections 72–72D. **Schedule 1 [28]–[30]** make consequential amendments.

Proposed section 72 inserts definitions to be used in Division 5 of Part 10 of the principal Act (which is the Division in which proposed sections 72–72D are to be located).

Proposed section 72A provides that an *application* (being an application to a court for the variation or revocation of a final apprehended violence order or interim court order) may be made at any time and may be made only by a police officer or an *interested party* (being a person protected by the order, the guardian of the person (if any) and the defendant) and includes, if the protected person is a child, a parent of the child and the Secretary of the Department of Family and Community Services).

Proposed section 72B provides that an application may be made by an interested party only with the leave of the court if the application is in respect of a *police-initiated order* (being a final apprehended violence order or an interim court order where the application for the order was made by a police officer or a police officer was a party to the application proceedings) and one or more of the persons protected by the order is a child.

Proposed section 72C requires a court to decline to hear an application in respect of a police-initiated order unless the application is made by a police officer or notice of the application has been served on the Commissioner of Police. The Commissioner has standing to appear in proceedings for the variation or revocation of any police-initiated order.

Proposed section 72D permits the court to notify the Commissioner of Police and any interested party of an application (and give the Commissioner and interested party standing to appear) if the order that is the subject of the application protects a child.

Proposed sections 72–72C give effect to **recommendation 11** of the review.

Most provisions of the repealed section 72 are re-enacted in proposed sections 72B–72D. However, provisions which permitted a final apprehended violence order to be revoked after it had expired have not been re-enacted. This gives effect to **recommendation 12** of the review.

Schedule 1 [34] omits section 99 of the principal Act and inserts proposed sections 99 and 99A. Proposed section 99 makes provision for the award of professional costs in apprehended violence order proceedings. Proposed section 99A modifies proposed section 99 by placing additional limitations on the award of costs in apprehended violence order proceedings. Costs cannot be awarded against an applicant who is a protected person unless the application was frivolous or vexatious. Also a court cannot, in domestic violence order proceedings, award costs against an applicant who is a police officer unless the applicant made the application knowing that it contained false or misleading matter or the applicant significantly deviated from the reasonable case management of the proceedings. This gives effect to **recommendation 13** of the review.

A court may impose any prohibitions or restrictions on the behaviour of a defendant when making an apprehended violence order as the court considers to be necessary or desirable. Without limiting this broad power, section 35 (2) of the principal Act gives guidance to a court by setting

out a number of specific prohibitions or restrictions that it may consider imposing. **Schedule 1 [16]** adds to this list, prohibiting or restricting the defendant from locating or attempting to locate the protected person. This gives effect to **recommendation 14** of the review.

Schedule 1 [25] permits the regulations under the principal Act to make provision for the form of an application notice for an apprehended domestic violence order and the information to be included in any such application notice, including information about matters under the *Family Law Act 1975* of the Commonwealth. This gives effect to **recommendation 15** of the review.

Schedule 1 [18] provides that if an application for a property recovery order is made by a defendant or protected person, the applicant must include details of any *family law property orders* (being property orders under the *Family Law Act 1975* of the Commonwealth) relevant to the application that the applicant is aware have been made or are being sought. Also, before making a property recovery order, the court or authorised officer is to inquire about relevant family law property orders and to take into consideration any such order. This gives effect to **recommendation 16** of the review. It should be noted that application forms for apprehended domestic violence orders could also include requirements that applicants disclose relevant family law property orders (see Schedule 1 [25]).

Schedule 1 [21] permits the Children's Court to make an apprehended violence order during care proceedings or to vary or revoke an order. An order may be made for the protection of the child to whom the care proceedings relate and any person who is a relative of, or who lives on the same property as, the child. The Children's Court may make, vary or revoke an order if the circumstances justify it. This gives effect to **recommendation 17** of the review.

Schedule 1 [17] substitutes section 36 of the principal Act which sets out the prohibitions that are taken to be included in every apprehended violence order. The substituted section simplifies the existing provisions and adds a new prohibition, which prohibits the defendant from destroying or damaging any property that belongs to, or is in the possession of, the protected person or a person with whom the protected person has a domestic relationship.

Schedule 1 [1] inserts a number of definitions for the purposes of the amendments proposed to be made by Schedule 1 and clarifies that a reference in the principal Act to a Children's Magistrate includes a reference to the President of the Children's Court.

Schedule 1 [19] requires the Local Court, Children's Court or District Court to make a final apprehended violence order for the protection of a person against whom a serious offence is committed if a person pleads guilty to, or is found guilty of, the serious offence.

Schedule 1 [31] extends to the District Court the power to make a final apprehended violence order or an interim court order in circumstances where the protected person and the defendant consent to the making of the order.

Schedule 1 [32] updates a reference to a renamed judicial office.

Schedule 1 [35] inserts a number of savings and transitional provisions consequential on the other amendments proposed to be made by Schedule 1.

Schedule 2 Amendment of Coroners Act 2009 No 41

Schedule 2 gives effect to the recommendations contained in the *Statutory Review of Chapter 9A of the Coroners Act 2009: The Domestic Violence Death Review Team* (the **review**).

Schedule 2 [1] aligns the definition of *domestic relationship* in Chapter 9A (Domestic Violence Death Review Team) of the *Coroners Act 2009* with that used in the *Crimes (Domestic and Personal Violence) Act 2007*. **Schedule 2 [2]** makes a consequential amendment. This gives effect to **recommendation 1** of the review.

Schedule 2 [3]–[5] update the membership of the Domestic Violence Death Review Team to take account of changes to Public Service agencies, to include the Commissioner of Victims Rights and representatives from the Department of Premier and Cabinet as members of the Team, and to

allow the Minister to nominate an Aboriginal person or a Torres Strait Islander as a member of the Team. This gives effect to **recommendations 3–5** of the review.

Schedule 2 [6] requires the Domestic Violence Death Review Team to prepare a report every 2 years on the domestic violence deaths it has reviewed in the previous 2 years. This gives effect to **recommendation 6** of the review.