



New South Wales

Crimes Legislation Amendment Bill 2018

Explanatory note

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

The following Bills are cognate with this Bill:

Crimes (Domestic and Personal Violence) Amendment Bill 2018

Mental Health (Forensic Provisions) Amendment (Victims) Bill 2018

Victims Rights and Support Amendment (Motor Vehicles) Bill 2018.

Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the Crimes (Domestic and Personal Violence) Act 2007 to make further provision for the period for which apprehended domestic violence orders remain in force,
- (b) to authorise senior police officers to provisionally vary the conditions of apprehended domestic violence orders made under the Crimes (Domestic and Personal Violence) Act 2007 to address an increased risk of domestic violence against a protected person,
- (c) to provide that a person is not ineligible to receive victims support under the *Victims Rights and Support Act 2013* in respect of a terrorist act involving the use of a motor vehicle,
- (d) to extend the types of agencies that may provide documentary evidence to support applications for victims support under the *Victims Rights and Support Act 2013* to include non-government agencies funded by the Commonwealth,
- (e) to include in the *Crimes Act 1900* an indictable offence of intentionally choking, suffocating or strangling another person without the other person's consent and provide for the offence to be dealt with summarily in accordance with Criminal Procedure Act 1986 unless the prosecutor or person charged elects otherwise.

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.

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

Schedule 1 [2] provides that the default period for an apprehended domestic violence order that relates to a defendant who is 18 years of age or older is 2 years and the default period for an apprehended domestic violence order that relates to a defendant who is under 18 years of age is 1 year. An application is taken to be for the default period although the applicant can seek a different period (including an indefinite period if the defendant is 18 years of age or older). A period longer than the default period can only be sought in certain circumstances and an applicant must provide reasons for seeking the longer period.

Schedule 1 [3] authorises senior police officers to vary apprehended domestic violence orders and interim apprehended domestic violence orders relating to a defendant who is aged 16 years or older, but only if there has been a change in circumstances since the relevant existing order was made, resulting in an increased risk to the safety of the protected person that requires an urgent response, and only if the variation does not decrease the protection afforded to the protected person. That variation operates provisionally, until a court makes a determination on the variation, or for 28 days if no court determination is made in that time.

Schedule 1 [4] amends a section that provides for the duration of all final apprehended violence orders, so that it applies only to apprehended personal violence orders, as a consequence of proposed section 79A, which makes further provision for the duration of apprehended domestic violence orders.

Schedule 1 [5] inserts proposed sections 79A–79C.

Proposed section 79A provides that the default period for an apprehended domestic violence order that relates to a defendant who is 18 years of age or older is 2 years and the default period for an apprehended domestic violence order that relates to a defendant who is under 18 years of age is 1 year. A court may specify a different period if it is of the opinion that the different period is sufficient.

Proposed section 79B provides that a court may specify that an apprehended domestic violence order made against a person who is 18 years of age or older remains in force for an indefinite period if, after considering certain matters, the court is satisfied that there are circumstances giving rise to a significant and ongoing risk of death or serious physical or psychological harm to the protected person or any dependants of the protected person and that risk cannot be adequately mitigated by an order of limited duration.

Proposed section 79C provides for apprehended domestic violence orders made against a defendant who has been sentenced to, or is serving, a term of imprisonment for a domestic violence offence against the protected person to remain in force for the duration of that person's sentence for the relevant domestic violence offence and either an additional 2 years after the sentence ends or any other additional period after the sentence ends that is specified in the order by the court.

Schedule 1 [1] makes a consequential amendment to a section about the making of apprehended violence orders if a person pleads guilty to, or is found guilty of, a serious offence to provide that, in the case of an apprehended domestic violence order, the period of the order is to be determined in accordance with proposed section 79C.

Schedule 1 [6] makes savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Victims Rights and Support Act 2013 No 37

Schedule 2 [1] and [3] create an exception to the general rule that a person is not eligible to receive victims support under the *Victims Rights and Support Act 2013* in respect of an act of violence relating to a motor accident. A victim will be eligible (if otherwise qualified) for victims support where the act of violence relating to a motor accident was a terrorist act.

Schedule 2 [2] has the effect that an uncommenced amendment to the *Victims Rights and Support Act 2013* that allows a report of an agency that provides support services to victims of crime to be accepted as part of the documentary evidence supporting applications for victims support commences will, when it commences, extend to non-government agencies that are funded by the Commonwealth to provide support services to victims of crime.

Schedule 3 Amendments relating to offence of strangulation

Schedule 3.1 amends the *Crimes Act 1900* to create a further indictable offence of choking, suffocating or strangling another person. A person will be guilty of the offence if the person intentionally chokes, suffocates or strangles another person without the other person's consent. The maximum penalty will be imprisonment for 5 years.

Schedule 3.2 makes a consequential amendment to the *Criminal Procedure Act 1986* to provide that the additional indictable offence of strangulation is to be dealt with summarily under that Act unless the prosecutor or person charged elects otherwise.