



New South Wales

Stronger Communities Legislation Amendment (Domestic Violence) Bill 2020

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Crimes (Domestic and Personal Violence) Act 2007* and the *Criminal Procedure Act 1986* in relation to domestic violence matters, including as follows—

- (a) to extend the meaning of intimidation, as defined in the *Crimes (Domestic and Personal Violence) Act 2007* to include harm to an animal in particular circumstances,
- (b) to ensure police officers may issue a provisional apprehended domestic violence order where there is a comparable interim or final order already in place and provide for the provisional order to be taken to be an application under Part 10 of the *Crimes (Domestic and Personal Violence) Act 2007*,
- (c) to require that an apprehended domestic violence order, imposed by the court for certain offenders who are sentenced to imprisonment, continues for a period of 2 years after the term of imprisonment is completed, or another period specified by the court,
- (d) to provide that a court may grant leave to make an application to vary or revoke an indefinite apprehended domestic violence order if it is in the interests of justice,
- (e) to clarify that the prohibition imposed by an apprehended violence order under the *Crimes (Domestic and Personal Violence) Act 2007* relating to destroying or damaging property of a protected person, which is taken to be specified in every order, extends to the harming of an animal,
- (f) to provide that certain parts of domestic violence proceedings in which a complainant gives evidence must be held in closed court, unless a court otherwise directs,

- (g) to provide domestic violence complainants with the entitlement to give evidence using alternative arrangements or by alternative means, including audio visual link, in certain domestic violence proceedings,
- (h) to amend the *Criminal Procedure Act 1986* to provide for a warning that may be given by a Judge in relation to domestic violence offences,
- (i) to make minor and consequential amendments.

The Bill also repeals the *Crimes Legislation Amendment Act 2018*.

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.

Clause 3 repeals the *Crimes Legislation Amendment Act 2018*. The remaining Schedule to that Act contains uncommenced new sections 73A and 79C that were to be inserted into the *Crimes (Domestic and Personal Violence) Act 2007*, a consequential amendment to section 39 of that Act and transitional provisions.

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

Schedule 1[1] extends the definition of *intimidation* to include conduct that causes a reasonable apprehension of harm to an animal that belongs or belonged to, or is or was in the possession of, a person or another person with whom the person has a domestic relationship.

Schedule 1[2] clarifies that an existing apprehended violence order does not prevent an application being made for a provisional order.

Schedule 1[3] provides that a prohibition or restriction specified in a provisional order must not decrease the protection afforded to the protected person, and if a prohibition or restriction decreases the protection, the prohibition or restriction is of no effect.

Schedule 1[4] provides that a provisional order is taken to be an application by the applicant officer under Part 10.

Schedule 1[5] provides that if, due to court sitting arrangements, a provisional order contains a date that is more than 28 days after the making of the provisional order, but is the next date on which the matter can be listed on a domestic violence list at the appropriate court, the validity of the order is not affected.

Schedule 1[6]–[8] extend the provisions about duration and variation of orders to reflect the proposed amendment to section 29(1).

Schedule 1[9] amends section 35(2)(e) to make it clear that the prohibition on destroying or deliberately damaging the protected person's property imposed under an apprehended violence order is not discretionary. Under section 36(c) every apprehended violence order is taken to contain the prohibition on destroying or damaging a protected person's property.

Schedule 1[10] provides that every apprehended violence order prohibits a defendant from harming an animal belonging to, or in the possession of, a protected person or a person with whom the protected person has a domestic relationship.

Schedule 1[11] and [12] amend section 39 to ensure that an apprehended domestic violence order made at the time of conviction of a person sentenced to a term of imprisonment for a serious offence will remain in force for an additional 2 years after the end of the person's imprisonment, or another period specified by the sentencing court.

Schedule 1[13], [15] and [16] make consequential amendments.

Schedule 1[14] amends the definition of *application* in section 47 to include the definition of application used in Part 10, Division 5 and makes a consequential amendment to include the definition of *police-initiated order*.

Schedule 1[17] enables a court to grant leave to make an application for the variation or revocation of an indefinite apprehended domestic violence order where it is in the interests of justice. The proposed amendment also makes it clear that, where leave may be sought under section 72B, that section prevails and leave is not to be sought under section 79B.

Schedule 1[18] provides that if multiple orders relating to the same defendant and protected person are in force, and there is a prohibition or restriction specified in the orders that is inconsistent with or contrary to another order, the most recent prohibition or restriction prevails, subject to section 28B.

Schedule 1[19] inserts savings and transitional provisions.

Schedule 2 Amendment of Criminal Procedure Act 1986 No 209

Schedule 2[1] defines *apprehended violence order proceedings* for the *Criminal Procedure Act 1986*.

Schedule 2[2] clarifies that Chapter 6, Part 4B, Division 4 applies to recorded statements of domestic violence complainants.

Schedule 2[3] inserts a proposed Division to provide that any part of domestic violence proceedings in which a complainant gives evidence must be held in closed court, unless a court otherwise directs. The proposed Division also provides that a complainant who gives evidence in proceedings for a domestic violence offence is entitled to alternative arrangements, or to give evidence by alternative means including by audio visual link or other technology. The court may make an order that alternative means of giving evidence should not be used only if there are special reasons in the interests of justice for the complainant's evidence not to be given by alternative means.

Schedule 2[4]–[6] and [8]–[10] make consequential amendments.

Schedule 2[7] and [11] provide that in a trial of a person for a domestic violence offence, if evidence is given or a question is asked of a witness that tends to suggest the absence of, or the delay in making, a complaint about a domestic violence offence, the Judge is to give a warning about that delay or absence. A Judge must not warn the jury that the delay is relevant to the victim's credibility unless there is sufficient evidence to justify such a warning. The warning may be combined, or given twice, if both a domestic violence offence and a prescribed sexual offence are alleged to have been committed by the person against the complainant.

Schedule 2[12] inserts a transitional provision in relation to the amendments in Schedule 2[7] and [11] to provide that the amendments do not apply to proceedings the hearing of which began before the commencement of the amendments.