

# CONCURRENCE COPY

## CRIMES (DOMESTIC VIOLENCE) AMENDMENT BILL, 1983

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### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The object of this Bill is to amend certain provisions of the Crimes Act, 1900, which relate to domestic violence so as—

- (a) to extend the application of those provisions to cases of violence and apprehended violence between persons who have been, but are no longer, spouses (whether de jure or de facto) (Schedule 1 (1));
- (b) to allow an order (“an apprehended domestic violence order”) under section 547AA of the Crimes Act, 1900, to be made in sufficiently serious cases of complaints of apprehended harassment or molestation (Schedule 1 (2) (a));
- (c) to provide that a defendant to a complaint of harassment or molestation is not liable to arrest in the first instance (Schedule 1 (2) (d));
- (d) to permit a court, in addition to imposing a period of imprisonment, to fine an offender against an apprehended domestic violence order, the maximum fine being \$2,000 (Schedule 1 (2) (c)); and
- (e) to clarify certain aspects relating to the application of the Bail Act, 1978, where apprehended domestic violence complaints and orders are made, in particular where a defendant appeals against such an order (Schedule 2).

The Bill also contains consequential and ancillary provisions.

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**CRIMES (DOMESTIC VIOLENCE) AMENDMENT BILL, 1983**

No.       , 1983.

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**A BILL FOR**

An Act to amend the Crimes Act, 1900, with respect to domestic violence.

[MR WRAN—19 *October*, 1983.]

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*Crimes (Domestic Violence) Amendment.*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

5 **Short title.**

1. This Act may be cited as the "Crimes (Domestic Violence) Amendment Act, 1983".

**Commencement.**

2. (1) Except as provided by subsections (2) and (3), this Act shall  
10 commence on the date of assent to this Act.

(2) Section 4, in its application to a provision of Schedule 1 or 2, shall commence on the day on which that provision commences.

(3) The several provisions of Schedule 1 shall commence on such  
15 day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Schedules.**

3. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE CRIMES ACT, 1900, IN RELATION TO DOMESTIC VIOLENCE.

20 SCHEDULE 2.—AMENDMENTS TO THE CRIMES ACT, 1900, IN RELATION TO BAIL IN CASES OF APPREHENDED DOMESTIC VIOLENCE.

**Amendment of Act No. 40, 1900.**

4. The Crimes Act, 1900, is amended in the manner set forth in Schedules 1 and 2.



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*Crimes (Domestic Violence) Amendment.*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900, IN RELATION TO  
DOMESTIC VIOLENCE—*continued.*

## (2) (a) Section 547AA (1)—

5 Omit “probabilities that the commission by a person of a domestic violence offence upon another person (in this section referred to as the aggrieved spouse of the defendant) is apprehended by the aggrieved spouse of the defendant and that the apprehension is reasonable,”; insert instead:—

10 probabilities that a person apprehends—

(a) the commission by another person of a domestic violence offence upon the person; or

(b) the commission by—

15 (i) another person who is or has been married to the person; or

(ii) another person who is living with or has lived with the person as his wife or her husband, as the case may be, on a bona fide domestic basis although not married to him or her, as the case may be,

20 of conduct consisting of harassment or molestation of the person, being conduct which falls short of actual or threatened violence but which, in the opinion of the court, is sufficient to warrant the making of an order under this section,

25 and is satisfied on the balance of probabilities that the apprehension is reasonable,

## (b) Section 547AA (1A)—

After section 547AA (1), insert:—

30 (1A) In this section, “aggrieved spouse of the defendant”, in relation to a complaint under this section or an order made upon such a complaint, means the person whose apprehension concerning the commission of a domestic violence offence or conduct referred to in subsection (1) (b) is the subject of the complaint.

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*Crimes (Domestic Violence) Amendment.*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE CRIMES ACT, 1900, IN RELATION TO  
DOMESTIC VIOLENCE—*continued.*

(c) Section 547AA (7)—

5 After “6 months”, insert “, or to a fine of \$2,000, or both”.

(d) Section 547AA (14) (a)—

Before “a warrant”, insert “(except in the case of a complaint relating exclusively to the apprehension by a person of conduct referred to in subsection (1) (b))”.

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SCHEDULE 2.

(Sec. 4.)

AMENDMENTS TO THE CRIMES ACT, 1900, IN RELATION TO  
BAIL IN CASES OF APPREHENDED DOMESTIC VIOLENCE.

(1) Section 547AA (14) (b)—

15 Omit the paragraph, insert instead:—

(b) the Bail Act, 1978, applies to and in respect of the defendant as if—

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- (i) where the defendant is arrested pursuant to a warrant issued upon the complaint or first appears before a court in answer to a summons so issued, the defendant were an accused person charged with an offence; and
- (ii) proceedings in respect of the complaint or an order made under this section upon the complaint were proceedings in respect of an offence.

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*Crimes (Domestic Violence) Amendment.*

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE CRIMES ACT, 1900, IN RELATION TO  
BAIL IN CASES OF APPREHENDED DOMESTIC VIOLENCE—*continued.*

(2) Section 547AA (15)—

5 Omit the subsection, insert instead:—

(15) Where an order has been made under this section—

(a) the order shall be deemed to be an order whereby the defendant is punished within the meaning of section 122 of the Justices Act, 1902; and

10 (b) in the application of section 123 of that Act and the Bail Act, 1978, to and in respect of the defendant, the defendant shall be deemed to be an accused person who, by reason of the restrictions or prohibitions imposed by the order on the behaviour of the defendant, is in custody.

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BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1983

(40c)

**CRIMES (DOMESTIC VIOLENCE) AMENDMENT ACT,  
1983, No. 116**

**New South Wales**



ANNO TRICESIMO SECUNDO

**ELIZABETHÆ II REGINÆ**

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**Act No. 116, 1983.**

An Act to amend the Crimes Act, 1900, with respect to domestic violence.  
[Assented to, 14th December, 1983.]

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*Crimes (Domestic Violence) Amendment.*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**Short title.**

**1.** This Act may be cited as the "Crimes (Domestic Violence) Amendment Act, 1983".

**Commencement.**

**2. (1)** Except as provided by subsections (2) and (3), this Act shall commence on the date of assent to this Act.

**(2)** Section 4, in its application to a provision of Schedule 1 or 2, shall commence on the day on which that provision commences.

**(3)** The several provisions of Schedule 1 shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Schedules.**

**3.** This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE CRIMES ACT, 1900, IN RELATION TO DOMESTIC VIOLENCE.

SCHEDULE 2.—AMENDMENTS TO THE CRIMES ACT, 1900, IN RELATION TO BAIL IN CASES OF APPREHENDED DOMESTIC VIOLENCE.

**Amendment of Act No. 40, 1900.**

**4.** The Crimes Act, 1900, is amended in the manner set forth in Schedules 1 and 2.

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*Crimes (Domestic Violence) Amendment.*

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**Validation.**

5. Any act, matter or thing done or omitted to be done before the date of assent to this Act which would have been lawful had the Crimes Act, 1900, as amended in the manner set forth in Schedule 2, been in force when the act, matter or thing was done or omitted to be done is hereby validated and shall be deemed always to have been valid.

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**SCHEDULE 1.**

(Sec. 4.)

**AMENDMENTS TO THE CRIMES ACT, 1900, IN RELATION TO DOMESTIC VIOLENCE.**

(1) Section 4 (1), definition of "*Domestic violence offence*"—

From paragraph (a), omit "committed upon a person at a time when the person who commits the offence and the person upon whom the offence is committed are married to each other or, although not married to each other, are living together as husband and wife on a bona fide domestic basis; or", insert instead:—

committed upon—

- (i) a person who is or has been married to the person who commits the offence; or
- (ii) a person who is living with or has lived with the person who commits the offence as his wife or her husband, as the case may be, on a bona fide domestic basis although not married to him or her, as the case may be; or

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*Crimes (Domestic Violence) Amendment.*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900, IN RELATION TO  
DOMESTIC VIOLENCE—*continued.*

## (2) (a) Section 547AA (1)—

Omit “probabilities that the commission by a person of a domestic violence offence upon another person (in this section referred to as the aggrieved spouse of the defendant) is apprehended by the aggrieved spouse of the defendant and that the apprehension is reasonable,” insert instead:—

probabilities that a person apprehends—

(a) the commission by another person of a domestic violence offence upon the person; or

(b) the commission by—

(i) another person who is or has been married to the person; or

(ii) another person who is living with or has lived with the person as his wife or her husband, as the case may be, on a bona fide domestic basis although not married to him or her, as the case may be,

of conduct consisting of harassment or molestation of the person, being conduct which falls short of actual or threatened violence but which, in the opinion of the court, is sufficient to warrant the making of an order under this section,

and is satisfied on the balance of probabilities that the apprehension is reasonable,

## (b) Section 547AA (1A)—

After section 547AA (1), insert:—

(1A) In this section, “aggrieved spouse of the defendant”, in relation to a complaint under this section or an order made upon such a complaint, means the person whose apprehension concerning the commission of a domestic violence offence or conduct referred to in subsection (1) (b) is the subject of the complaint.

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*Crimes (Domestic Violence) Amendment.*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE CRIMES ACT, 1900, IN RELATION TO  
DOMESTIC VIOLENCE—*continued.*

(c) Section 547AA (7)—

After “6 months”, insert “, or to a fine of \$2,000, or both”.

(d) Section 547AA (14) (a)—

Before “a warrant”, insert “(except in the case of a complaint relating exclusively to the apprehension by a person of conduct referred to in subsection (1) (b))”.

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SCHEDULE 2.

(Sec. 4.)

AMENDMENTS TO THE CRIMES ACT, 1900, IN RELATION TO  
BAIL IN CASES OF APPREHENDED DOMESTIC VIOLENCE.

(1) Section 547AA (14) (b)—

Omit the paragraph, insert instead:—

(b) the Bail Act, 1978, applies to and in respect of the defendant as if—

- (i) where the defendant is arrested pursuant to a warrant issued upon the complaint or first appears before a court in answer to a summons so issued, the defendant were an accused person charged with an offence; and
- (ii) proceedings in respect of the complaint or an order made under this section upon the complaint were proceedings in respect of an offence.

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*Crimes (Domestic Violence) Amendment.*

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SCHEDULE 2—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900, IN RELATION TO  
BAIL IN CASES OF APPREHENDED DOMESTIC VIOLENCE—*continued.*

## (2) Section 547AA (15)—

Omit the subsection, insert instead:—

(15) Where an order has been made under this section—

- (a) the order shall be deemed to be an order whereby the defendant is punished within the meaning of section 122 of the Justices Act, 1902; and
- (b) in the application of section 123 of that Act and the Bail Act, 1978, to and in respect of the defendant, the defendant shall be deemed to be an accused person who, by reason of the restrictions or prohibitions imposed by the order on the behaviour of the defendant, is in custody.

*In the name and on behalf of Her Majesty I assent to this Act.*

J. A. ROWLAND,  
*Governor.*

*Government House,  
Sydney, 14th December, 1983.*



