

**CRIMES (APPREHENDED VIOLENCE) AMENDMENT
ACT 1989 No. 62**

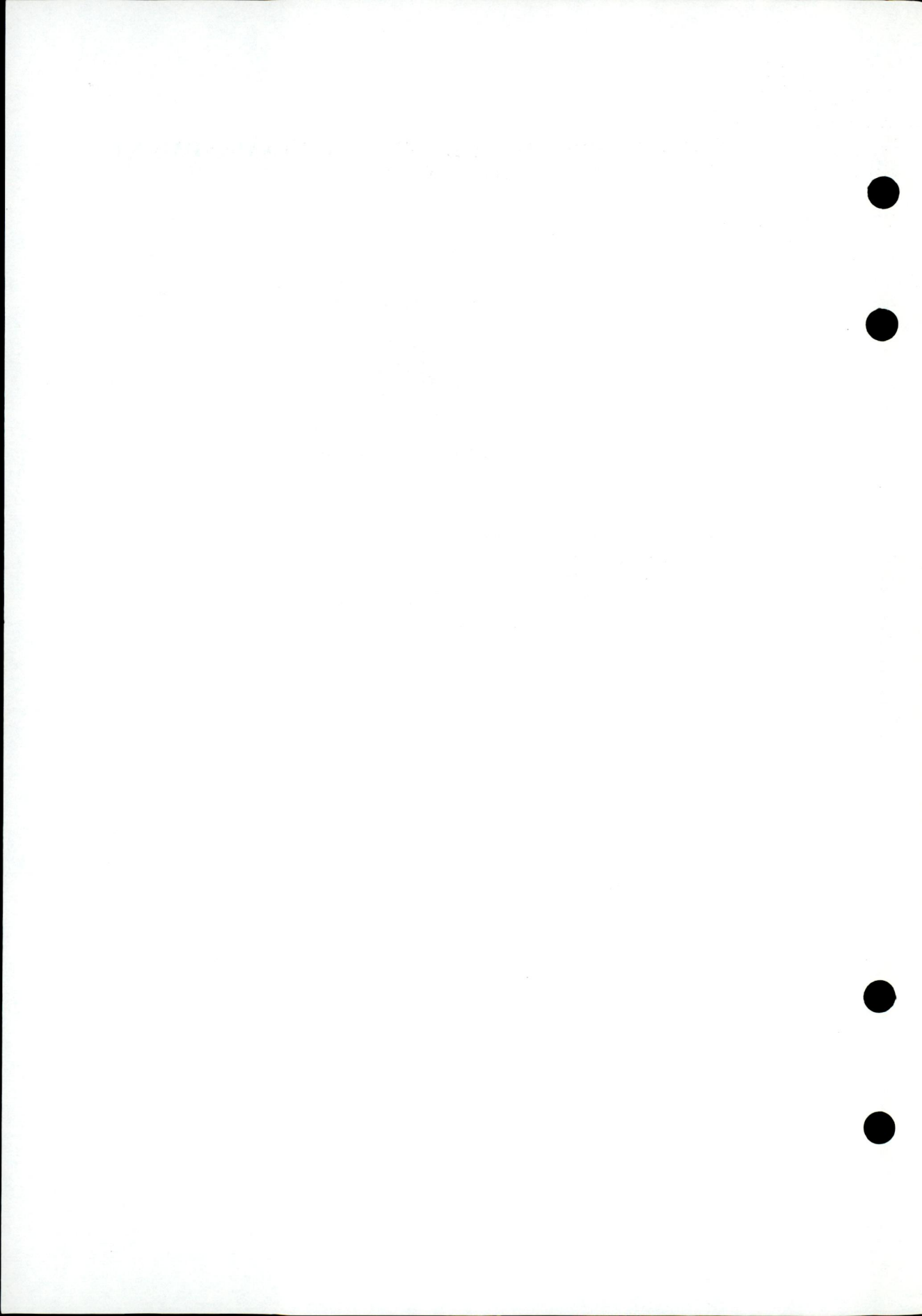
NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Crimes Act 1900 No. 40
4. Amendment of Bail Act 1978 No. 161
5. Amendment of Periodic Detention of Prisoners Act 1981 No. 18

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900



CRIMES (APPREHENDED VIOLENCE) AMENDMENT ACT 1989
No. 62

NEW SOUTH WALES



Act No. 62, 1989

An Act to amend the Crimes Act 1900 in relation to apprehended violence orders and to make consequential amendments to the Bail Act 1978 and the Periodic Detention of Prisoners Act 1981. [Assented to 23 May 1989]

Crimes (Apprehended Violence) Amendment 1989

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Crimes (Apprehended Violence) Amendment Act 1989.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Crimes Act 1900 No. 40

3. The Crimes Act 1900 is amended as set out in Schedule 1.

Amendment of Bail Act 1978 No. 161

4. The Bail Act 1978 is amended by omitting from section 48 (1) the words "apprehended domestic" and by inserting instead the word "apprehended".

Amendment of Periodic Detention of Prisoners Act 1981 No. 18

5. The Periodic Detention of Prisoners Act 1981 is amended—

(a) by omitting section 5A (1) and by inserting instead the following subsection:

(1) In this section, "domestic violence offence" means a domestic violence offence as defined in section 4 (1) of the Crimes Act 1900.

(b) by inserting in section 5A (2) after the words "Summary Offences Act 1988 or" the words "an offence against section 562i of the Crimes Act 1900 or".

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900

(Sec. 3)

(1) Section 1 (**Short title and contents of Act**)—

From the matter relating to Part 15A, omit "DOMESTIC".

(2) Section 4 (**Definitions**)—

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

Omit the definition, insert instead:

"Domestic violence offence" means a personal violence offence committed against—

(a) a person who is or has been married to the person who commits the offence; or

*Crimes (Apprehended Violence) Amendment 1989*SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued*

- (b) 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
 - (c) a person who is living with or has lived ordinarily in the same household as the person who commits the offence (otherwise than merely as a tenant or boarder); or
 - (d) a person who is or has been a relative (within the meaning of subsection (6)) of the person who commits the offence; or
 - (e) a person who has or has had an intimate personal relationship with the person who commits the offence.
- (b) Section 4 (1)—
Before the definition of “Place of Divine worship”, insert:
“Personal violence offence” means—
- (a) an offence under, or mentioned in, section 19, 24, 27, 28, 29, 30, 33, 33A, 35, 39, 41, 44, 46, 47, 48, 49, 58, 59, 61, 61B, 61C, 61D or 61E; or
 - (b) an offence of attempting to commit an offence referred to in paragraph (a).
- (c) Section 4 (6)—
After section 4 (5), insert:
- (6) For the purposes of the definition of “domestic violence offence”, a relative is—
- (a) a father, mother, grandfather, grandmother, step-father, step-mother, father-in-law or mother-in-law; or
 - (b) a son, daughter, grandson, granddaughter, step-son, step-daughter, son-in-law or daughter-in-law; or
 - (c) a brother, sister, half-brother, half-sister, brother-in-law or sister-in-law; or
 - (d) an uncle, aunt, uncle-in-law or aunt-in-law; or
 - (e) a nephew or niece; or
 - (f) a cousin,
- and includes, in the case of de-facto partners, a person who would be such a relative if the de-facto partners were married.
- (3) Section 407AA (**Compellability of spouses to give evidence in certain proceedings**)—
Section 407AA (1) (b), (d)—
Omit “aggrieved person” wherever occurring, insert instead “protected person”.

Crimes (Apprehended Violence) Amendment 1989

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued*

(4) Part 15A, heading—

Omit “DOMESTIC”.

(5) Section 562A (**Definitions**)—

(a) Omit the definition of “aggrieved person”.

(b) From the definition of “order”, omit “domestic”.

(c) After the definition of “order”, insert:

“protected person” means the person for whose protection an order is made.

(d) Omit the definition of “relative”.

(6) Section 562B—

Omit the section, insert instead:

Apprehended violence orders

562B. (1) A court may, on complaint, make an apprehended violence order if it is satisfied on the balance of probabilities that a person has reasonable grounds to fear and in fact fears—

(a) the commission by another person of a personal violence offence against the person; or

(b) the engagement of another person in conduct amounting to harassment or molestation of the person, being conduct that, in the opinion of the court, is sufficient to warrant the making of the order.

(2) Despite subsection (1), it is not necessary for the court to be satisfied that the person for whose protection the order would be made in fact fears that such an offence will be committed, or that such conduct will be engaged in, if—

(a) the person is under the age of 18 years; or

(b) the person is, in the opinion of the court, suffering from an appreciably below average general intellectual function.

(3) For the purposes of this section, conduct may amount to harassment or molestation of a person even though—

(a) it does not involve actual or threatened violence to the person; or

(b) it consists only of actual or threatened damage to property belonging to, in the possession of or used by the person.

Crimes (Apprehended Violence) Amendment 1989

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued*

(4) An order may impose such prohibitions or restrictions on the behaviour of the defendant as appear necessary or desirable to the court.

(7) Section 562C (**Making of complaint**)—

(a) Section 562C (2)—

Omit the subsection, insert instead:

(2) A complaint for an order may be made only by—

(a) a person for whose protection the order would be made;
or

(b) a member of the Police Force.

(b) Section 562C (3)—

Omit “aggrieved person”, insert instead “person for whose protection the order would be made”.

(c) Section 562C (4)—

Omit “aggrieved”.

(8) Sections 562D (1), 562E (2), 562F (1), (2), (5) and (6), 562J (3)—

Omit “aggrieved person” wherever occurring, insert instead “protected person”.

(9) Sections 562G (1) (c), 562K (3), 562N (2)—

Omit “aggrieved person” wherever occurring, insert instead “person for whose protection an order is sought”.

(10) Section 562R—

Omit the section, insert instead:

Transitional provisions

562R. (1) In this section, “the amending Act” means the Crimes (Apprehended Violence) Amendment Act 1989.

(2) An order in force under this Part immediately before the commencement of Schedule 1 (6) to the amending Act shall be taken to be an order under this Part, as amended by the amending Act.

Crimes (Apprehended Violence) Amendment 1989

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued*

(3) A complaint for an order under this Part, or an application for the variation or revocation of such an order, pending on the commencement of Schedule 1 (6) to the amending Act, shall be taken to be a complaint or an application under this Part, as amended by the amending Act.

(4) A reference to an apprehended domestic violence order in any other Act or instrument shall be taken to include a reference to an order under this Part, as amended by the amending Act.

[*Minister's second reading speech made in—
Legislative Assembly on 3 May 1989
Legislative Council on 11 May 1989 a.m.*]

FIRST PRINT

CRIMES (APPREHENDED VIOLENCE) AMENDMENT BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

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

The object of this Bill is to amend the Crimes Act 1900 to further protect potential victims of violence. Part 15A of that Act currently restricts the availability of apprehended domestic violence orders to spouses or de-facto partners, relatives and persons who have an intimate personal relationship or who share a household. The Bill extends the availability of orders so as to empower a court to make an order where any person fears violence or serious harassment or molestation from any other person.

The Bill also amends the Bail Act 1978 and the Periodic Detention of Prisoners Act 1981 consequentially.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Crimes Act 1900.

Clause 4 amends section 48 (1) of the Bail Act 1978 to substitute a reference to an apprehended violence order for a reference to an apprehended domestic violence order as a consequence of the amendments to be made by Schedule 1.

Clause 5 amends section 5A of the Periodic Detention of Prisoners Act 1981 so as to empower a court to order that a term of imprisonment of less than 3 months that is imposed for a breach of an apprehended violence order is to be served by way of periodic detention.

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900

Apprehended violence orders

Schedule 1 (6) substitutes section 562B of the Crimes Act 1900 so as to empower a court to make an apprehended violence order if a person has reason to fear that someone else will commit an offence against his or her person (a "personal violence offence") or will harass or molest him or her.

Crimes (Apprehended Violence) Amendment 1989

The court must, in the usual case, be satisfied that the person fears violence, harassment or molestation. However, substituted section 562B enables an apprehended violence order to be made where the person for whose protection an order is sought is a child or a person with an intellectual disability and is unaware of the threat to his or her safety.

The amendments made by **Schedule 1 (1), (2), (4) and (5) (b) and (d)** are consequential on the substitution of section 562B.

Protected persons

Schedule 1 (7) amends section 562C so as to more adequately describe the persons who may apply for apprehended violence orders. As a consequence, **Schedule 1 (5) (a) and (c)** replace a definition of "aggrieved person" with a definition of "protected person" (a person for whose protection an apprehended violence order is made). Other consequential amendments are made by **Schedule 1 (3), (8) and (9)**.

Transitional

Schedule 1 (10) repeals and replaces section 562R (containing transitional provisions) so as to save orders in force, and complaints and applications pending, under Part 15A immediately before the commencement of the proposed Act.

CRIMES (APPREHENDED VIOLENCE) AMENDMENT BILL 1989

NEW SOUTH WALES



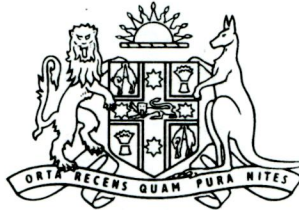
TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Crimes Act 1900 No. 40
4. Amendment of Bail Act 1978 No. 161
5. Amendment of Periodic Detention of Prisoners Act 1981 No. 18

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900

**CRIMES (APPREHENDED VIOLENCE) AMENDMENT
BILL 1989**

NEW SOUTH WALES



No. , 1989

A BILL FOR

An Act to amend the Crimes Act 1900 in relation to apprehended violence orders and to make consequential amendments to the Bail Act 1978 and the Periodic Detention of Prisoners Act 1981.

Crimes (Apprehended Violence) Amendment 1989

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Crimes (Apprehended Violence) Amendment Act 1989.

5 Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Crimes Act 1900 No. 40

3. The Crimes Act 1900 is amended as set out in Schedule 1.

10 Amendment of Bail Act 1978 No. 161

4. The Bail Act 1978 is amended by omitting from section 48 (1) the words "apprehended domestic" and by inserting instead the word "apprehended".

Amendment of Periodic Detention of Prisoners Act 1981 No. 18

15 5. The Periodic Detention of Prisoners Act 1981 is amended—

(a) by omitting section 5A (1) and by inserting instead the following subsection:

(1) In this section, "domestic violence offence" means a domestic violence offence as defined in section 4 (1) of the Crimes Act 1900.

20 (b) by inserting in section 5A (2) after the words "Summary Offences Act 1988 or" the words "an offence against section 562i of the Crimes Act 1900 or".

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900

(Sec. 3)

25 (1) Section 1 (**Short title and contents of Act**)—

From the matter relating to Part 15A, omit "DOMESTIC".

(2) Section 4 (**Definitions**)—

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

Omit the definition, insert instead:

30 "Domestic violence offence" means a personal violence offence committed against—

(a) a person who is or has been married to the person who commits the offence; or

*Crimes (Apprehended Violence) Amendment 1989*SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued*

- (b) 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
- 5 (c) a person who is living with or has lived ordinarily in the same household as the person who commits the offence (otherwise than merely as a tenant or boarder); or
- (d) a person who is or has been a relative (within the meaning of subsection (6)) of the person who commits the offence; or
- 10 (e) a person who has or has had an intimate personal relationship with the person who commits the offence.
- (b) Section 4 (1)—
Before the definition of “Place of Divine worship”, insert:
- 15 “Personal violence offence” means—
- (a) an offence under, or mentioned in, section 19, 24, 27, 28, 29, 30, 33, 33A, 35, 39, 41, 44, 46, 47, 48, 49, 58, 59, 61, 61B, 61C, 61D or 61E; or
- (b) an offence of attempting to commit an offence referred to in paragraph (a).
- (c) Section 4 (6)—
After section 4 (5), insert:
- (6) For the purposes of the definition of “domestic violence offence”, a relative is—
- 25 (a) a father, mother, grandfather, grandmother, step-father, step-mother, father-in-law or mother-in-law; or
- (b) a son, daughter, grandson, granddaughter, step-son, step-daughter, son-in-law or daughter-in-law; or
- (c) a brother, sister, half-brother, half-sister, brother-in-law or sister-in-law; or
- 30 (d) an uncle, aunt, uncle-in-law or aunt-in-law; or
- (e) a nephew or niece; or
- (f) a cousin,
- and includes, in the case of de-facto partners, a person who would be such a relative if the de-facto partners were married.
- 35 (3) Section 407AA (**Compellability of spouses to give evidence in certain proceedings**)—
Section 407AA (1) (b), (d)—
Omit “aggrieved person” wherever occurring, insert instead
- 40 “protected person”.

*Crimes (Apprehended Violence) Amendment 1989*SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued*

(4) Part 15A, heading—

Omit “DOMESTIC”.

(5) Section 562A (**Definitions**)—

(a) Omit the definition of “aggrieved person”.

5 (b) From the definition of “order”, omit “domestic”.

(c) After the definition of “order”, insert:

“protected person” means the person for whose protection an order is made.

(d) Omit the definition of “relative”.

10 (6) Section 562B—

Omit the section, insert instead:

Apprehended violence orders

562B. (1) A court may, on complaint, make an apprehended violence order if it is satisfied on the balance of probabilities that a person has reasonable grounds to fear and in fact fears—

15

(a) the commission by another person of a personal violence offence against the person; or

20

(b) the engagement of another person in conduct amounting to harassment or molestation of the person, being conduct that, in the opinion of the court, is sufficient to warrant the making of the order.

25

(2) Despite subsection (1), it is not necessary for the court to be satisfied that the person for whose protection the order would be made in fact fears that such an offence will be committed, or that such conduct will be engaged in, if—

(a) the person is under the age of 18 years; or

(b) the person is, in the opinion of the court, suffering from an appreciably below average general intellectual function.

30

(3) For the purposes of this section, conduct may amount to harassment or molestation of a person even though—

(a) it does not involve actual or threatened violence to the person; or

(b) it consists only of actual or threatened damage to property belonging to, in the possession of or used by the person.

35

(4) An order may impose such prohibitions or restrictions on the behaviour of the defendant as appear necessary or desirable to the court.

*Crimes (Apprehended Violence) Amendment 1989*SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued*

- (7) Section 562C (**Making of complaint**)—
- (a) Section 562C (2)—
Omit the subsection, insert instead:
- (2) A complaint for an order may be made only by—
- 5 (a) a person for whose protection the order would be made;
or
(b) a member of the Police Force.
- (b) Section 562C (3)—
Omit “aggrieved person”, insert instead “person for whose
10 protection the order would be made”.
- (c) Section 562C (4)—
Omit “aggrieved”.
- (8) Sections 562D (1), 562E (2), 562F (1), (2), (5) and (6), 562J (3)—
Omit “aggrieved person” wherever occurring, insert instead
15 “protected person”.
- (9) Sections 562G (1) (c), 562K (3), 562N (2)—
Omit “aggrieved person” wherever occurring, insert instead
“person for whose protection an order is sought”.
- (10) Section 562R—
20 Omit the section, insert instead:
- Transitional provisions**
- 562R. (1) In this section, “the amending Act” means the
Crimes (Apprehended Violence) Amendment Act 1989.
- (2) An order in force under this Part immediately before the
25 commencement of Schedule 1 (6) to the amending Act shall be
taken to be an order under this Part, as amended by the amending
Act.
- (3) A complaint for an order under this Part, or an application
for the variation or revocation of such an order, pending on the
30 commencement of Schedule 1 (6) to the amending Act, shall be
taken to be a complaint or an application under this Part, as
amended by the amending Act.
- (4) A reference to an apprehended domestic violence order in
any other Act or instrument shall be taken to include a reference
35 to an order under this Part, as amended by the amending Act.

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1989

mp
!

