



New South Wales

Crimes Amendment (Apprehended Violence Orders) Bill 1996

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 Act 1900* and the *Director of Public Prosecutions Act 1986* to improve the apprehended violence order (“AVO”) scheme. The major changes to the AVO scheme can be summarised as follows:

- (a) A court that convicts a person of a stalking or intimidation offence is required to make an AVO against the convicted person for the protection of the person against whom the offence was committed, unless the court is satisfied it is not required.
 - (b) An AVO may prohibit or restrict the defendant’s access to any premises occupied by the protected person or any place of work of the protected person from time to time. There is no need for the AVO to disclose the address of the protected person to the defendant.
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- (c) A court that makes an AVO that does not prohibit or restrict access by the defendant to any premises or place is required, if such a prohibition or restriction was applied for, to give reasons for the decision not to make an AVO in those terms.
- (d) The circumstances in which a police officer must apply for an AVO are extended to include any circumstances in which the police officer believes a stalking offence has recently been or is being committed.
- (e) Proceedings for making a telephone interim order are changed to ensure that the interim order remains in force until the defendant appears before court for a hearing of a complaint against the defendant. However, the maximum duration of the telephone interim order will be 14 days.
- (f) A police officer who attends an incident that justifies the making of a telephone interim order is required to make an application for a telephone interim order in certain circumstances involving domestic violence or children under 16 years of age.
- (g) A court that makes or varies an AVO will be required to explain the effects of the order or variation to the defendant and the person protected by the order.
- (h) A court hearing AVO proceedings that relate to the protection of a child is given the power to hear the proceedings in the absence of the public.
- (i) The Director of Public Prosecutions is given the power to institute and conduct AVO proceedings on behalf of a complainant.

The above changes and other changes to the AVO scheme are explained in more detail in the notes relating to Schedules 1 and 2.

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 proclaimed.

Clause 3 gives effect to the amendments to the *Crimes Act 1900* set out in Schedule 1.

Clause 4 gives effect to the amendment to the *Director of Public Prosecutions Act 1986* set out in Schedule 2.

Schedule 1 Amendment of Crimes Act 1900

Stalking and intimidation

AVO against person convicted of offence. The amendment to section 562AB (relating to the offence of stalking or intimidation) requires a court that convicts a person of an offence against that section to make an AVO against the person for the protection of the person against whom the offence was committed, as if a complaint for an order had been made. The court need not make an order if it is satisfied that it is not required. (See Schedule 1 [1] and [24])

Concurrent proceedings. Section 562O, which requires a court that is dealing with a charge for a domestic violence offence to inquire whether a complaint for an order has been made, and to deal with such a complaint concurrently with the offence proceedings, is extended to apply to charges of stalking or intimidation under section 562AB of the Act. (See Schedule 1 [23])

Circumstances in which police officer must apply for AVO. Section 562C is amended to require a police officer to make a complaint for an order if the police officer suspects or believes that an offence against section 562AB has recently been or is being committed. (See Schedule 1 [6])

Restrictions on access by defendant to premises and places

Address of residence or place of work of protected person need not be disclosed. Section 562D is amended to provide that an order may prohibit or restrict access by the defendant to premises occupied by the protected person, or any place of work of the protected person, from time to time. There is no need for the premises or place to be specified in the order. (See Schedule 1 [7] and [24])

Reasons to be given for failure to prohibit or restrict access by the defendant to premises. New section 562DA provides that if an application is made for an order that prohibits or restricts access by the defendant to premises or a place, and the court fails to include such a term in its order, the court must give reasons for that decision. (See Schedule 1 [8])

Telephone interim orders

Duration and effect. At present, a telephone interim order remains in force (unless sooner revoked) for the period specified in the order. The period must be no longer than 5 working days after the order is made or 1 working day if the order restricts access to premises. As soon as practicable after the telephone order is made the police officer who applied for the order (or some other police officer) must make a complaint for a court order in the matter or report to an authorised justice as to why such a complaint has not been made. The amendments to section 562H change this procedure. Under the new procedure an authorised justice who makes a telephone interim order is required to summons the person against whom the order is made to appear at an appropriate court for a hearing of the matter. There is no need for the police officer who applied for the order to make a complaint as the making of a telephone interim order acts as a complaint. The police officer will simply serve the interim order (which contains the summons) on the person against whom it is made. The hearing date for the complaint is to be specified by the authorised justice and is to be as soon as practicable after the interim order is made. The order remains in force for a maximum period of 14 days, or less if it is sooner revoked by an authorised justice or replaced by a court order against the defendant. (See Schedule 1 [13], [14], [15] and [24])

Order prohibits stalking and intimidation. Section 562H (4) is amended to make it a standard term of all telephone interim orders that the defendant is prohibited from stalking or intimidating the protected person. (See Schedule 1 [12])

Defendant may be detained at police station. At present a police officer who makes or is about to make an application for a telephone interim order may direct the person against whom the order is sought to remain at the scene of the incident concerned. If the person refuses to do so, the police officer may arrest and detain the person at the scene until the interim order is made and served. Amendments to section 562H (12) allow the police officer, if the person refuses to remain at the scene of the incident concerned, to arrest and take the person to a police station and there detain the person until the order is made and served. (See Schedule 1 [16])

Order may prohibit persons between 16 and 18 years from entering premises. Amendments to section 562H (15) allow a telephone interim order to include a term that prohibits or restricts access by the defendant to the protected person or to premises occupied by the protected person as long as the defendant is 16 years of age or older. At present such a prohibition or restriction cannot be made if the defendant is under 18 years. (See Schedule 1 [18])

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Circumstances justifying telephone interim order. It is made clear that the circumstances in which a telephone interim order may be sought include where the police officer attending the incident concerned has good reason to believe that unless an order is made the person who would be protected by the order may suffer a personal violence offence. (See Schedule 1 [19])

Circumstances in which police officer must seek telephone interim order. Section 562H (2A) requires a police officer attending an incident in circumstances that justify an application for a telephone interim order to apply for the order if the circumstances involve domestic violence or children. These circumstances are similar to the circumstances in which a police officer would be required to make a complaint for an apprehended violence order by a court. (See Schedule 1 [11] and [24])

AVO proceedings

Explanation of order. New section 562GC requires a court that makes an AVO to explain to the defendant and the person protected by the order the effect of the order, the consequences of contravention and the rights of both parties in relation to the order. Similar requirements are to apply if a court varies an AVO. (See Schedule 1 [10])

Variation or revocation of AVO. Amendments to section 562F allow a court to decline to hear an application for variation or revocation of an order if there has been no change in circumstances since the order was made and the court is satisfied that the application is in the nature of an appeal against the order. The object of this amendment is to prevent variation or revocation applications from becoming defacto appeals. (See Schedule 1 [9] and [24])

Making of AVOs by District Court. New sections 562GA and 562GB provide for the making of AVOs by the District Court. Section 562GA provides for rules for the making of complaints to the District Court for an AVO following a dismissal of a complaint by a Local Court or the Children's Court. Section 562GB makes it clear that the powers conferred on the District Court in relation to AVOs are conferred on the Court in its criminal jurisdiction. (See Schedule 1 [10] and [24])

Proceedings concerning children can be heard in absence of public. New section 562NA allows a court that is hearing proceedings for an AVO for the protection of a child under the age of 16 years to hear the proceedings in the absence of the public or in the absence of any specified member of the public. (See Schedule 1 [22] and [24])

Age of protected person. At present a court is not required to be satisfied, before making an AVO, that the person for whose protection the AVO would be made in fact fears the commission by another person of an offence or other conduct that justifies the making of an AVO if the person in need of protection is under the age of 18 years. Amendments reduce this age to 16 years. (See Schedule 1 [2])

Consent orders. An amendment to section 562BA provides that a court that makes an AVO with the consent of the parties concerned may only hear evidence in relation to the subject of the complaint if the interests of justice require it to do so. (See Schedule 1 [3] and [24])

Other miscellaneous changes

Pre-sentencing reports. Section 562I is amended so that a court that decides to impose a sentence of imprisonment on a person for contravening an AVO is not required to consider a full psychiatric assessment or psychological assessment and pre-sentence report on the person before doing so. (See Schedule 1 [20])

Summons or warrant must be issued on complaint. Section 562K is amended to make it clear that an authorised justice who receives a complaint for an order *must* either issue a summons for the appearance of the person against whom the order is sought or issue a warrant for his or her arrest. The authorised justice does not have the discretion to reject a complaint that is duly made. (See Schedule 1 [21])

Orders for the protection of children. Section 562BD is amended to make it clear that an order may be made for the protection of a child under the age of 16 years with whom the person for whose protection the order was applied for has a domestic relationship, even though a police officer did not make a complaint for the order. (See Schedule 1 [5])

Interim court orders. Section 562BB is amended to require a court to summon a defendant against whom an interim order is made for a further hearing of the matter as soon as practicable (rather than as soon as possible) after the interim order is made. (See Schedule 1 [4])

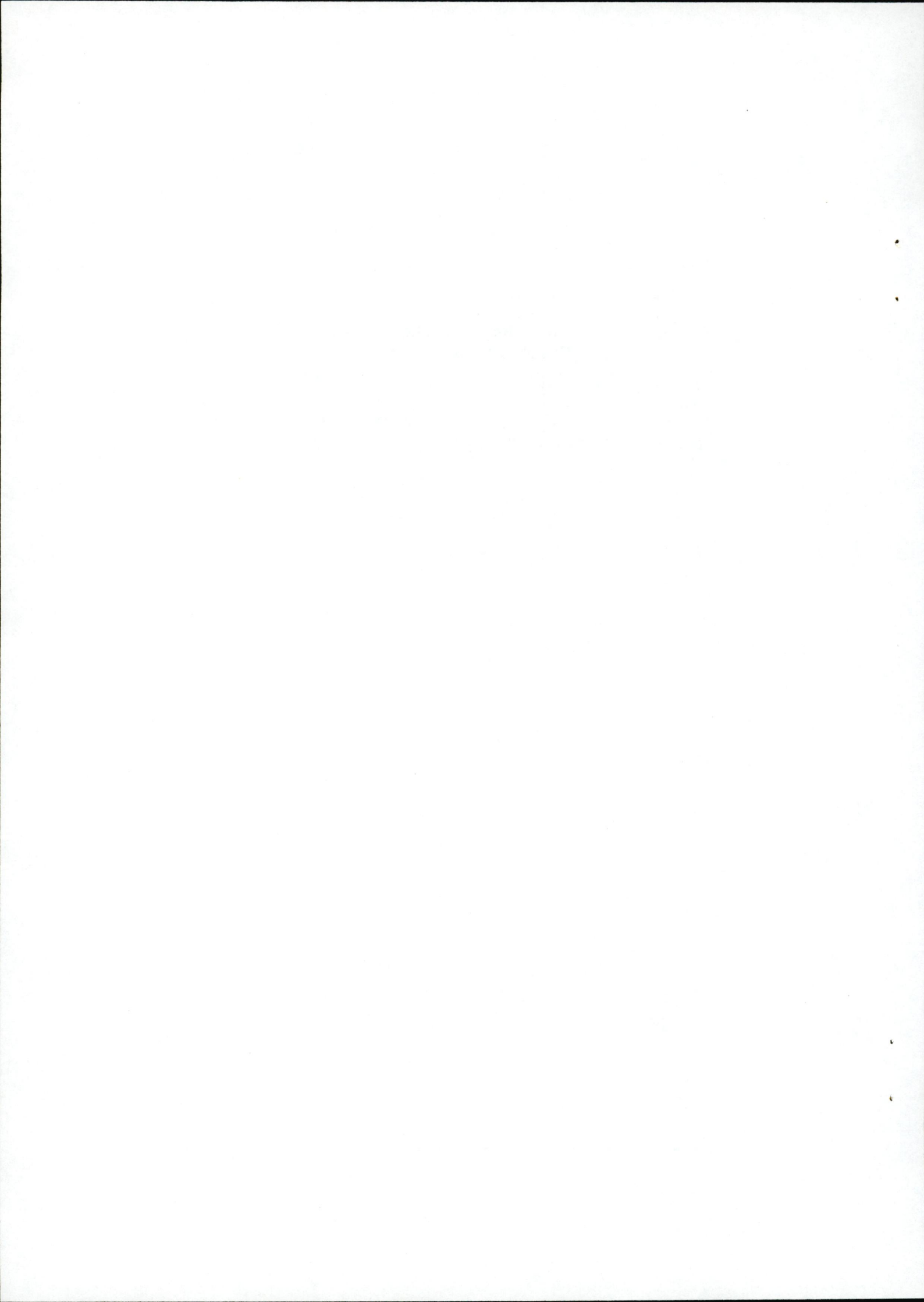
Savings, transitional and consequential amendments. The Bill also contains savings, transitional and consequential amendments. (See Schedule 1 [17] and [24])

Crimes Amendment (Apprehended Violence Orders) Bill 1996

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**Schedule 2 Amendment of Director of Public
Prosecutions Act 1986**

The amendment provides that the Director of Public Prosecutions may institute and conduct, on behalf of the complainant, AVO proceedings. The Director may also conduct, on behalf of the complainant as respondent, appeals in any court in relation to AVO proceedings.



First print



New South Wales

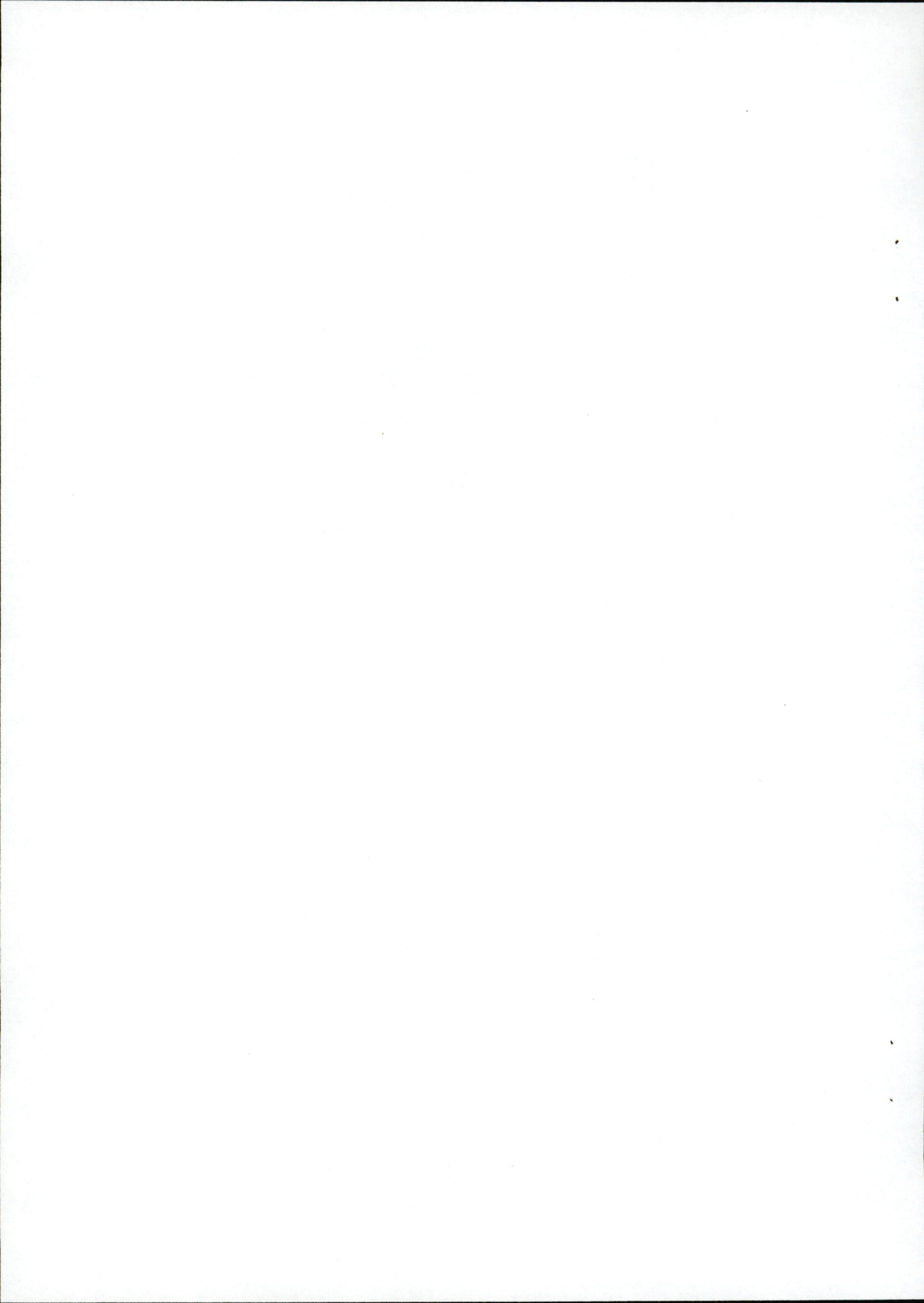
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Crimes Amendment (Apprehended Violence Orders) Bill 1996

No. , 1996

A Bill for

An Act to amend the *Crimes Act 1900* with respect to apprehended violence orders; to amend the *Director of Public Prosecutions Act 1986* to allow the Director of Public Prosecutions to take proceedings with respect to apprehended violence orders; and for related purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Amendment (Apprehended Violence Orders) Act 1996*.

2 Commencement

5

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

3 Amendment of Crimes Act 1900 No 40

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

4 Amendment of Director of Public Prosecutions Act 1986 No 207

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The *Director of Public Prosecutions Act 1986* is amended as set out in Schedule 2.

Schedule 1 Amendment of Crimes Act 1900

(Section 3)

[1] Section 562AB Stalking, intimidation with intent to cause fear for personal safety

Insert at the end of the section:

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- (5) A court that convicts a person of an offence against this section must, on that conviction, make an order under this Part for the protection of the person against whom the offence was committed as if a complaint for an order had been made under section 562C. However, the court need not make an order if it is satisfied that it is not required (for example, because an order has already been made against the person pursuant to section 562O).

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[2] Section 562B Court may make apprehended violence orders

Omit "the age of 18 years" from subsection (2) (a).
Insert instead "the age of 16 years".

15

[3] Section 562BA Orders made by court with consent of parties

Insert after subsection (2):

- (3) The court may only conduct a hearing in relation to the particulars of a complaint before making such an order if it is of the opinion that the interests of justice require it to do so.

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[4] Section 562BB Interim court orders

Omit "as soon as possible" from subsection (4) (a).
Insert instead "as soon as practicable".

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[5] Section 562BD Order can also protect persons with whom person seeking protection has a domestic relationship

Insert at the end of the section:

- (2) Without limiting subsection (1), an order may be made for the protection of a child under the age of 16 years with whom the person for whose protection the order was applied for has a domestic relationship even though a complaint for the order was not made by a police officer pursuant to section 562C (3) (b). 5

[6] Section 562C Making of complaint for court order 10

Omit subsections (3) and (3A). Insert instead:

- (3) Despite subsection (2), a complaint for an order must be made by a police officer:
- (a) if the police officer suspects or believes that a domestic violence offence or an offence against section 562AB has recently been or is being committed, or that a domestic violence offence is imminent or is likely to be committed, against the person for whose protection an order would be made, or 15
- (b) if the person for whose protection an order would be made is a child under the age of 16 years at the time of the complaint. 20
- (3A) A police officer need not make a complaint for an order in the circumstances referred to in subsection (3) (a) if the police officer believes that the person for whose protection an order would be made intends to make the complaint or that there is good reason not to make the complaint. However, if the police officer believes there is good reason not to make the complaint, the police officer must make a written record of the reason. 25 30

[7] Section 562D Prohibitions and restrictions imposed by orders

Omit subsection (1) (b). Insert instead:

(b) prohibit or restrict access by the defendant:

(i) to any premises occupied by the protected person from time to time or to any specified premises occupied by the protected person, 5

(ii) to any place where the protected person works from time to time or to any specified place of work of the protected person,

(iii) to any specified premises or place frequented by the protected person, 10

whether or not the defendant has a legal or equitable interest in the premises or place,

[8] Section 562DA

Insert after section 562D: 15

562DA Reasons to be given if order does not prohibit or restrict access to premises or place

If application is made for an order that prohibits or restricts access by the defendant to premises or a place (as referred to in section 562D (1) (b)) and the court hearing proceedings in respect of the application decides to make an order without the prohibition or restriction sought, the court must explain the reasons for that decision. 20

[9] Section 562F Variation or revocation of court orders 25

Insert after subsection (4):

(4A) The court may decline to hear an application for variation or revocation of an order if the court is satisfied that there has been no change in the circumstances on which the making of the order was based and that the application is in the nature of an appeal against the order. 30

[10] Sections 562GA–562GC

Insert after section 562G:

562GA Making of orders by District Court

- (1) A complaint by or on behalf of a person for whose protection an order is sought from the District Court must be made within 28 days after the date a Local Court or the Children’s Court dismissed the earlier complaint. 5
- (2) The District Court may, without further hearing, admit in evidence any evidence that was admitted in the proceedings before the Local Court or Children’s Court. 10
- (3) Further evidence may be given, but only with the leave of the District Court.
- (4) The rules of the District Court may make provision for or with respect to the procedure to be followed in respect of proceedings in the District Court for an order (including the variation or revocation of an order). 15

562GB Jurisdiction of District Court under this Part

The jurisdiction conferred on the District Court by this Part is conferred on the Court in its criminal jurisdiction.

562GC Explanation of order

- (1) A court that makes an order must explain to the defendant and the protected person (if either of them is present at the time the order is made): 20
 - (a) the effect of the order (including any prohibitions and restrictions imposed by the order), and 25
 - (b) the consequences that may follow from a contravention of the order, and
 - (c) the rights of the defendant and the protected person in relation to the order.

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- (2) A court that varies an order must explain to the defendant and the protected person (if either of them is present at the time the order is made):
- (a) the effect of the variation, and
 - (b) the consequences that may follow from a contravention of the order as varied. 5
- (3) A court that makes or varies an order is also to cause a written explanation of the matters required to be explained under this section to be given to the defendant and protected person. 10
- (4) In so far as it is reasonably practicable to do so, an explanation under this section is to be given in a language that is likely to be readily understood by the person being given the explanation.
- (5) A failure to comply with this section in relation to an order or variation of order does not affect the validity of the order or variation. 15

[11] Section 562H Telephone interim orders

Insert after subsection (2):

- (2A) **Obligation to make application in domestic violence incidents and incidents concerning children.** The police officer attending the incident concerned must make an application under this section: 20
- (a) if the police officer suspects or believes that a domestic violence offence has recently been or is being committed, or is imminent, or is likely to be committed, against the person for whose protection an order would be made, or 25
 - (b) if the person for whose protection an order would be made is a child under the age of 16 years at the time of the incident. 30

The police officer need not make an application for an order in the circumstances referred to in paragraph (a) if the police officer believes that the person for whose

protection an order would be made intends to make a complaint for an order or that there is good reason not to make the application. However, if the police officer believes there is good reason not to make the application, the police officer must make a written record of the reason. 5

[12] Section 562H (4)

Insert "stalking, intimidating" after "harassing".

[13] Section 562H (5A)

Insert after subsection (5): 10

(5A) **Summons.** A telephone interim order is taken, for the purposes of section 562B, to be a complaint for an order under section 562C. The telephone interim order is to contain a summons for the appearance of the defendant at a hearing of the complaint by an appropriate court on a date specified in the order by the authorised justice who makes it (being a date that is as soon as practicable after the order is made). 15

[14] Section 562H (6)

Omit the subsection. Insert instead: 20

(6) **Recording of order.** The authorised justice who makes a telephone interim order is to inform the applicant of the terms of the order, the date of the hearing of the complaint and the date and time when the order was made. The applicant is to complete a form of order in the terms so indicated and write on it the date of the hearing of the complaint, the name of the authorised justice and the date and time when the order was made. The order so completed is taken to be an order duly made under this section. 25
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[15] Section 562H (9), (10)

Omit the subsections. Insert instead:

- (9) **Duration.** A telephone interim order remains in force until midnight on the fourteenth day after the order is made, unless it is sooner revoked or it otherwise ceases to have effect. 5
- (10) **Court order.** A telephone interim order ceases to have effect if a court makes an order against the defendant for the protection of the person protected by the telephone interim order. The telephone interim order ceases to have effect when the court order is made (in the case of a defendant who is present at court) or when the defendant is served under section 562J with a copy of the record of the order (in any other case). 10

[16] Section 562H (12)

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Insert “, or arrest and take the person to a police station and there detain the person,” after “the police officer may arrest and detain the person at the scene of the incident”.

[17] Section 562H (13)

Omit “562G”. Insert instead “562GC”. 20

[18] Section 562H (15) (a)

Omit “18 years of age”. Insert instead “16 years of age”.

[19] Section 562H (16)

Insert in alphabetical order:

personal injury includes a personal violence offence. 25

[20] Section 562I Offence of contravening order

Omit subsection (2B).

[21] Section 562K Summons for appearance or arrest of defendant

Insert after subsection (1):

- (1A) The authorised Justice must issue a summons for the appearance of the defendant, unless the Justice issues a warrant for the arrest of the defendant. 5

[22] Section 562NA

Insert after section 562N:

562NA Proceedings that relate to protection of a child can be heard in absence of public 10

- (1) If an order is sought or proposed to be made for the protection of a child under the age of 16 years, or an application is made for the variation or revocation of such an order, proceedings in relation to that order or application are to be heard in the absence of the public unless the court hearing the proceedings otherwise directs. 15
- (2) Even if proceedings referred to in this section are open to the public, the court hearing the proceedings may direct any person (other than a person who is directly interested in the proceedings) to leave the place where the proceedings are being heard during the examination of any witness. 20

[23] Section 562O Concurrent criminal proceedings 25

Insert "or an offence against section 562AB" after "domestic violence offence" in subsection (2).

[24] Eleventh Schedule Savings and transitional provisions

Insert after Part 7:

Part 8 Crimes Amendment (Apprehended Violence Orders) Act 1996

20 Definitions

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In this Part:

AVO Amendment Act 1996 means the *Crimes Amendment (Apprehended Violence Orders) Act 1996*.

order has the meaning given it in section 562A.

21 Stalking and intimidation—obligation of court

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Subsection (5) of section 562AB (which was inserted by the AVO Amendment Act 1996) applies in respect of a court that convicts a person of an offence against section 562AB on or after the commencement of that subsection, even if proceedings for the offence were commenced before the commencement of that subsection.

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22 Consent orders

Subsection (3) of section 562BA (which was inserted by the AVO Amendment Act 1996) applies to any proceedings for an order of the kind referred to in section 562BA, whether the proceedings were commenced before, on or after the commencement of that subsection, but not to proceedings before a court that the court started to hear before the commencement of that subsection.

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23 Specification of restricted premises or place in order

The amendment to section 562D contained in the AVO Amendment Act 1996 extends to any order made before the commencement of that amendment that is the subject of an application for variation at any time on or after the commencement of that amendment.

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24 Application for variation or revocation of order

The amendment to section 562F contained in the AVO Amendment Act 1996 does not apply in respect of an application for variation or revocation of order that was made before the commencement of that amendment. 5

25 Time limit for making of complaint for order by District Court

(1) Subsection (1) of section 562GA (which was inserted by the AVO Amendment Act 1996) does not apply in respect of a complaint for an order by the District Court that was made before the commencement of that subsection. 10

(2) Subsection (1) of section 562GA applies to a complaint for an order by the District Court that is made on or after the commencement of that subsection, even if it relates to an earlier complaint that was dismissed by a Local Court or the Children's Court before the commencement of that subsection. For the purposes of the application of section 562GA to such an earlier complaint, the earlier complaint is taken to have been dismissed on the date of commencement of that subsection. 15
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26 Proceedings for an order by District Court

Subsections (2) and (3) of section 562GA (as inserted by the AVO Amendment Act 1996) apply to any proceedings in the District Court for an order that are commenced before, on or after the commencement of those subsections, except proceedings before the Court that the Court started to hear before the commencement of those subsections. 25

27 Telephone interim orders 30

The amendments to section 562H (made by the AVO Amendment Act 1996) do not apply in respect of a telephone interim order that was made before the commencement of those amendments. Section 562H (as

in force immediately before the commencement of those amendments) continues to apply in respect of such a telephone interim order.

28 Proceedings that relate to protection of child

Subsection (1) of section 562NA (which was inserted by the AVO Amendment Act 1996) does not apply to proceedings referred to in that subsection before a court that the court started to hear before the commencement of that subsection. However, the remainder of such proceedings are to be heard in the absence of the public if the court so directs.

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Schedule 2 Amendment of Director of Public Prosecutions Act 1986

(Section 4)

Section 20A

Insert after section 20: 5

20A Proceedings for an order under Part 15A (Apprehended violence) of the Crimes Act 1900

- (1) The Director may institute and conduct, on behalf of a complainant, proceedings for an order under Part 15A of the *Crimes Act 1900* in a Local Court, the Children's Court or the District Court. 10
- (2) The Director may conduct, on behalf of a complainant as respondent, appeals in any court arising from such proceedings.
- (3) This Act applies in relation to any proceedings for an order under Part 15A of the *Crimes Act 1900* as if the proceedings were a prosecution or proceedings in respect of an offence. 15



New South Wales

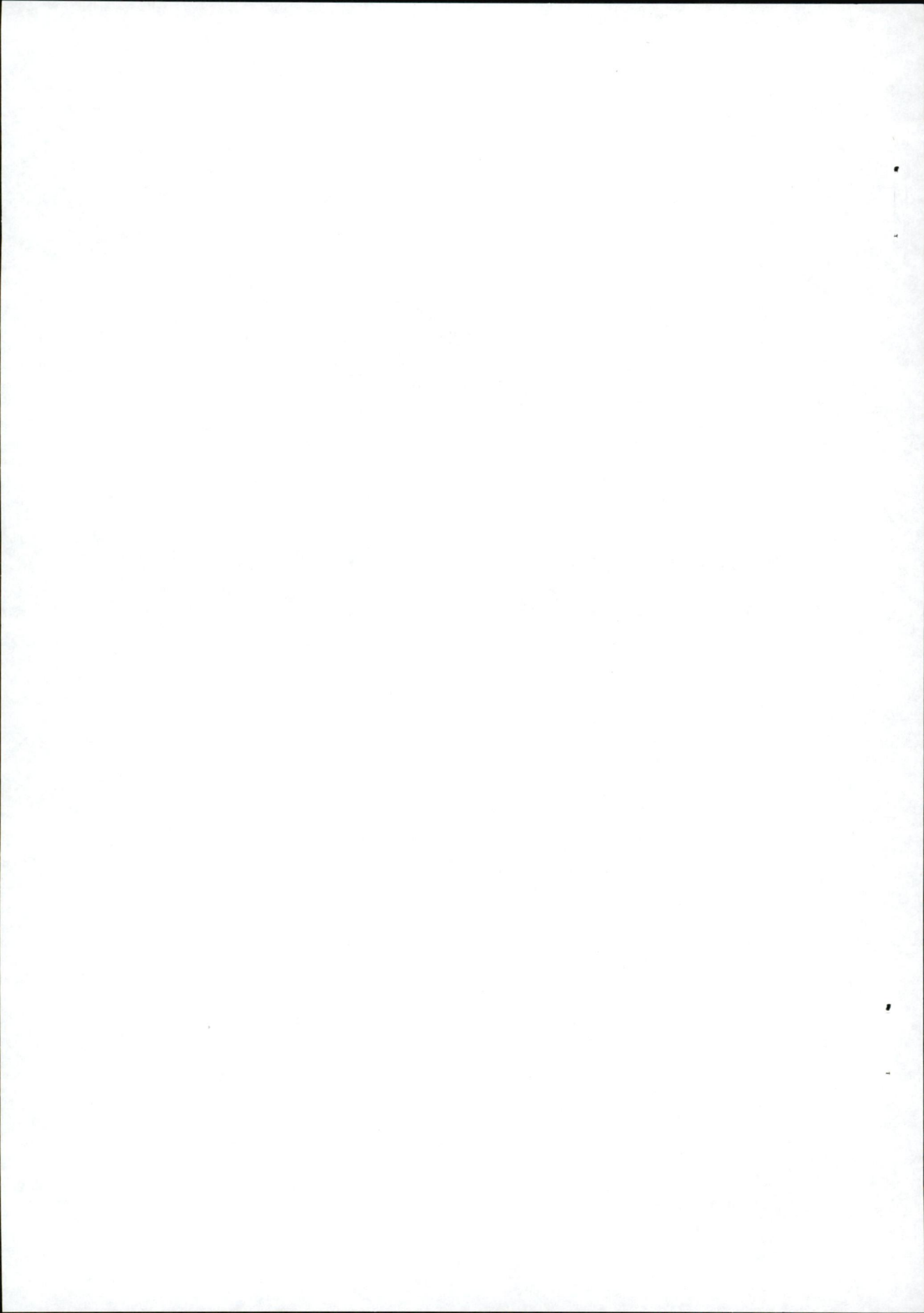
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New South Wales

Crimes Amendment (Apprehended Violence Orders) Act 1996 No 93

Act No 93, 1996

An Act to amend the *Crimes Act 1900* with respect to apprehended violence orders; to amend the *Director of Public Prosecutions Act 1986* to allow the Director of Public Prosecutions to take proceedings with respect to apprehended violence orders; and for related purposes. [Assented to 26 November 1996]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Amendment (Apprehended Violence Orders) Act 1996*.

2 Commencement

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

3 Amendment of Crimes Act 1900 No 40

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

**4 Amendment of Director of Public Prosecutions Act 1986
No 207**

The *Director of Public Prosecutions Act 1986* is amended as set out in Schedule 2.

Schedule 1 Amendment of Crimes Act 1900

(Section 3)

[1] Section 562B Court may make apprehended violence orders

Omit "the age of 18 years" from subsection (2) (a).

Insert instead "the age of 16 years".

[2] Section 562BA Orders made by court with consent of parties

Insert after subsection (2):

- (3) The court may only conduct a hearing in relation to the particulars of a complaint before making such an order if it is of the opinion that the interests of justice require it to do so.

[3] Section 562BB Interim court orders

Omit "as soon as possible" from subsection (4) (a).

Insert instead "as soon as practicable".

[4] Section 562BD Order can also protect persons with whom person seeking protection has a domestic relationship

Insert at the end of the section:

- (2) Without limiting subsection (1), an order may be made for the protection of a child under the age of 16 years with whom the person for whose protection the order was applied for has a domestic relationship even though a complaint for the order was not made by a police officer.

[5] Section 562BE

Insert after section 562BD:

562BE Order must be made on conviction for certain offences

- (1) A court that convicts a person of an offence against section 562AB or a domestic violence offence must, on that conviction, make an order under this Part for the protection of the person against whom the offence was committed as if a complaint for an order had been made under section 562C.
- (2) However, the court need not make an order under this section if it is satisfied that it is not required (for example, because an order has already been made against the person or the person for whose protection the order would be made opposes the making of the order).

[6] Section 562BF

Insert before section 562C:

562BF Order must be made on charge for certain offences

- (1) When a person stands charged before a court with an offence that appears to the court to be an offence against section 562AB or a domestic violence offence, the court must make an interim apprehended violence order under section 562BB against the defendant for the protection of the person against whom the offence appears to have been committed, as if a complaint for an order had been made under section 562C.
- (2) If an interim order is made by the court, the court is to summon the defendant to appear at a further hearing of the matter on the determination of the charge against the person (instead of as soon as practicable after the order is made, as required by section 562BB (4) (a)).

- (3) However, the court need not make an order under this section if it is satisfied that it is not required (for example, because an order has already been made against the person or the person for whose protection the order would be made opposes the making of the order).

[7] Section 562C Making of complaint for court order

Omit subsections (3) and (3A). Insert instead:

- (2A) Despite subsection (2), only a police officer can make a complaint for an order if the person for whose protection the order would be made is a child under the age of 16 years at the time of the complaint.
- (3) A police officer must make a complaint for an order if the police officer suspects or believes that any of the following offences has recently been or is being committed, or is imminent, or is likely to be committed, against the person for whose protection an order would be made:
- (i) a domestic violence offence,
 - (ii) an offence against section 562AB,
 - (iii) an offence against section 25 (Child abuse) of the *Children (Care and Protection) Act 1987* (but only if the person is a child under the age of 16 years).
- (3A) A police officer need not make a complaint for an order in the circumstances referred to in subsection (3) if the person for whose protection an order would be made is at least 16 years of age at the time and the police officer believes:
- (a) that the person intends to make the complaint, or
 - (b) that there is good reason not to make the complaint.

However, if the police officer believes that there is good reason not to make the complaint, the police officer must make a written record of the reason.

[8] Section 562D Prohibitions and restrictions imposed by orders

Omit subsection (1) (b). Insert instead:

- (b) prohibit or restrict access by the defendant:
 - (i) to any premises occupied by the protected person from time to time or to any specified premises occupied by the protected person,
 - (ii) to any place where the protected person works from time to time or to any specified place of work of the protected person,
 - (iii) to any specified premises or place frequented by the protected person,

whether or not the defendant has a legal or equitable interest in the premises or place,

[9] Section 562DA

Insert after section 562D:

562DA Reasons to be given if order does not prohibit or restrict access to premises or place

If application is made for an order that prohibits or restricts access by the defendant to any premises or place (as referred to in section 562D (1) (b)) and the court hearing proceedings in respect of the application decides to make an order without the prohibition or restriction sought, the court must explain the reasons for that decision.

[10] Section 562F Variation or revocation of court orders

Insert after subsection (4):

- (4A) The court may decline to hear an application for variation or revocation of an order if the court is satisfied that there has been no change in the circumstances on which the making of the order was based and that the application is in the nature of an appeal against the order.

- (4B) If there is more than one protected person under an order, the following additional provisions apply to the variation or revocation of the order under this section:
- (a) the order need not be varied or revoked in its application to all of the protected persons and can be varied or revoked in its application to any one or more of the protected persons,
 - (b) it is not necessary for all of the protected persons to have applied for the variation or revocation,
 - (c) if the application for variation or revocation was made by one of the protected persons, none of the other protected persons can be the subject of the variation or revocation unless the court is satisfied that:
 - (i) he or she is at least 16 years of age and has consented to the variation or revocation, or
 - (ii) he or she is a child under the age of 16 years and (in the case of revocation) is no longer in need of protection or (in the case of variation) is no longer in need of greater protection than that which will be afforded by the order as proposed to be varied,
 - (d) if a child under the age of 16 years is one of the protected persons it does not matter that the application for variation or revocation was made by a person other than a police officer.
- (4C) If a child under the age of 16 years is a protected person under an order made under section 562BD, the applicant for the order (even if he or she is not a protected person under the order) can apply for the variation or revocation of the order in its application to the child. The court is not to grant the application unless satisfied that the child is (in the case of revocation) no longer in need of protection or (in the case of variation) no longer in need of greater protection than that which will be afforded by the order as proposed to be varied.

[11] Sections 562GA–562GC

Insert after section 562G:

562GA Making of orders by District Court

- (1) A complaint by or on behalf of a person for whose protection an order is sought from the District Court must be made within 28 days after the date a Local Court or the Children’s Court dismissed the earlier complaint.
- (2) The District Court may, without further hearing, admit in evidence any evidence that was admitted in the proceedings before the Local Court or Children’s Court.
- (3) Further evidence may be given, but only with the leave of the District Court.
- (4) The rules of the District Court may make provision for or with respect to the procedure to be followed in respect of proceedings in the District Court for an order (including the variation or revocation of an order).

562GB Jurisdiction of District Court under this Part

The jurisdiction conferred on the District Court by this Part is conferred on the Court in its criminal jurisdiction.

562GC Explanation of order

- (1) A court that makes an order must explain to the defendant and the protected person (if either of them is present at the time the order is made):
 - (a) the effect of the order (including any prohibitions and restrictions imposed by the order), and
 - (b) the consequences that may follow from a contravention of the order, and
 - (c) the rights of the defendant and the protected person in relation to the order.

- (2) A court that varies an order must explain to the defendant and the protected person (if either of them is present at the time the order is made):
 - (a) the effect of the variation, and
 - (b) the consequences that may follow from a contravention of the order as varied.
- (3) A court that makes or varies an order is also to cause a written explanation of the matters required to be explained under this section to be given to the defendant and protected person.
- (4) In so far as it is reasonably practicable to do so, an explanation under this section is to be given in a language that is likely to be readily understood by the person being given the explanation.
- (5) A failure to comply with this section in relation to an order or variation of order does not affect the validity of the order or variation.

[12] Section 562H Telephone interim orders

Insert after subsection (2):

- (2A) **Obligation to apply for order in certain circumstances.** The police officer attending the incident concerned must make an application under this section if the police officer suspects or believes that a domestic violence offence, or an offence under section 25 (Child abuse) of the *Children (Care and Protection) Act 1987* against a child under the age of 16 years, has recently been or is being committed, or is imminent, or is likely to be committed, against the person for whose protection an order would be made.
- (2B) **Exceptions to requirement to apply for order.** A police officer need not make an application for an order in the circumstances referred to in subsection (2A) if the

person for whose protection an order would be made is at least 16 years of age at the time of the incident and the police officer believes:

- (a) that the person intends to make a complaint for an order, or
- (b) that there is good reason not to make the application.

However, if the police officer believes that there is good reason not to make the application, the police officer must make a written record of the reason.

[13] Section 562H (4)

Insert "stalking, intimidating" after "harassing".

[14] Section 562H (5A)

Insert after subsection (5):

- (5A) **Summons.** A telephone interim order is taken, for the purposes of section 562B, to be a complaint for an order under section 562C. The telephone interim order is to contain a summons for the appearance of the defendant at a hearing of the complaint by an appropriate court on a date specified in the order by the authorised justice who makes it (being a date that is as soon as practicable after the order is made).

[15] Section 562H (6)

Omit the subsection. Insert instead:

- (6) **Recording of order.** The authorised justice who makes a telephone interim order is to inform the applicant of the terms of the order, the date of the hearing of the complaint and the date and time when the order was made. The applicant is to complete a form of order in the

terms so indicated and write on it the date of the hearing of the complaint, the name of the authorised justice and the date and time when the order was made. The order so completed is taken to be an order duly made under this section.

[16] Section 562H (9), (10)

Omit the subsections. Insert instead:

- (9) **Duration.** A telephone interim order remains in force until midnight on the fourteenth day after the order is made, unless it is sooner revoked or it otherwise ceases to have effect.
- (10) **Court order.** A telephone interim order ceases to have effect if a court makes an order against the defendant for the protection of the person protected by the telephone interim order. The telephone interim order ceases to have effect when the court order is made (in the case of a defendant who is present at court) or when the defendant is served under section 562J with a copy of the record of the order (in any other case).

[17] Section 562H (12)

Insert “, or arrest and take the person to a police station and there detain the person,” after “the police officer may arrest and detain the person at the scene of the incident”.

[18] Section 562H (13)

Omit “562G”. Insert instead “562GC”.

[19] Section 562H (15) (a)

Omit “18 years of age”. Insert instead “16 years of age”.

[20] Section 562H (16)

Insert in alphabetical order:

personal injury includes a personal violence offence.

[21] Section 562I Offence of contravening order

Omit subsection (2B).

[22] Section 562K Summons for appearance or arrest of defendant

Insert after subsection (1):

- (1A) The authorised Justice must issue a summons for the appearance of the defendant, unless the Justice issues a warrant for the arrest of the defendant.

[23] Section 562NA

Insert after section 562N:

562NA Measures to protect children in AVO proceedings

- (1) If an order is sought or proposed to be made for the protection of a child under the age of 16 years, or an application is made for the variation or revocation of such an order, proceedings in relation to that order or application are to be heard in the absence of the public unless the court hearing the proceedings otherwise directs.
- (2) Even if proceedings referred to in this section are open to the public, the court hearing the proceedings may direct any person (other than a person who is directly interested in the proceedings) to leave the place where the proceedings are being heard during the examination of any witness.

- (3) In proceedings on an application for an order or for the variation or revocation of an order, a child under the age of 16 years should not be required to give direct evidence about a matter unless the court is of the opinion that in the absence of the child's evidence insufficient evidence about the matter will be adduced.
- (4) Section 405CA (Children have a right to the presence of a supportive person while giving evidence) applies to proceedings in relation to a complaint for an order.

[24] Section 562O Concurrent criminal proceedings

Omit section 562O (2) and (3).

[25] Eleventh Schedule Savings and transitional provisions

Insert after Part 7:

Part 8 Crimes Amendment (Apprehended Violence Orders) Act 1996

20 Definitions

In this Part:

AVO Amendment Act 1996 means the *Crimes Amendment (Apprehended Violence Orders) Act 1996*.

order has the meaning given it in section 562A.

21 Order must be made on conviction for certain offences

Section 562BE applies in respect of a conviction for an offence on or after the commencement of that section even if proceedings for the offence were commenced before the commencement of that section.

22 Order must be made on charge for certain offences

Section 562BF does not apply in respect of proceedings before a court that the court started to hear before the commencement of that section. Section 562O continues to apply in respect of any such proceedings as if that section had not been amended by the AVO Amendment Act 1996.

23 Consent orders

Subsection (3) of section 562BA (which was inserted by the AVO Amendment Act 1996) applies to any proceedings for an order of the kind referred to in section 562BA, whether the proceedings were commenced before, on or after the commencement of that subsection, but not to proceedings before a court that the court started to hear before the commencement of that subsection.

24 Specification of restricted premises or place in order

The amendment to section 562D contained in the AVO Amendment Act 1996 extends to any order made before the commencement of that amendment that is the subject of an application for variation at any time on or after the commencement of that amendment.

25 Application for variation or revocation of order

An amendment to section 562F contained in the AVO Amendment Act 1996 does not apply in respect of an application for variation or revocation of order that was made before the commencement of that amendment.

26 Time limit for making of complaint for order by District Court

- (1) Subsection (1) of section 562GA (which was inserted by the AVO Amendment Act 1996) does not apply in respect of a complaint for an order by the District Court that was made before the commencement of that subsection.

- (2) Subsection (1) of section 562GA applies to a complaint for an order by the District Court that is made on or after the commencement of that subsection, even if it relates to an earlier complaint that was dismissed by a Local Court or the Children's Court before the commencement of that subsection. For the purposes of the application of section 562GA to such an earlier complaint, the earlier complaint is taken to have been dismissed on the date of commencement of that subsection.

27 Proceedings for an order by District Court

Subsections (2) and (3) of section 562GA (as inserted by the AVO Amendment Act 1996) apply to any proceedings in the District Court for an order that are commenced before, on or after the commencement of those subsections, except proceedings before the Court that the Court started to hear before the commencement of those subsections.

28 Telephone interim orders

The amendments to section 562H (made by the AVO Amendment Act 1996) do not apply in respect of a telephone interim order that was made before the commencement of those amendments. Section 562H (as in force immediately before the commencement of those amendments) continues to apply in respect of such a telephone interim order.

29 Measures to protect children in AVO proceedings

A provision of section 562NA (which was inserted by the AVO Amendment Act 1996), other than subsection (2), does not apply in respect of proceedings before a court that the court started to hear before the commencement of the provision. However, the remainder of any such proceedings are to be heard in the absence of the public if the court so directs.

Schedule 2 Amendment of Director of Public Prosecutions Act 1986

(Section 4)

Section 20A

Insert after section 20:

20A Proceedings for an order under part 15A (Apprehended violence) of the Crimes Act 1900

- (1) The Director may institute and conduct, on behalf of a complainant, proceedings for an order under Part 15A of the *Crimes Act 1900* in a Local Court, the Children's Court or the District Court.
- (2) The Director may conduct, on behalf of a complainant as respondent, appeals in any court arising from such proceedings.
- (3) This Act applies in relation to any proceedings for an order under Part 15A of the *Crimes Act 1900* as if the proceedings were a prosecution or proceedings in respect of an offence.

[Minister's second reading speech made in—
Legislative Council on 1 May 1996
Legislative Assembly on 23 October 1996]

BY AUTHORITY