

**CRIMES (DOMESTIC VIOLENCE) AMENDMENT
ACT, 1982, No. 116**

New South Wales



ANNO TRICESIMO PRIMO

ELIZABETHÆ II REGINÆ

Act No. 116, 1982.

An Act to amend the Crimes Act, 1900, in relation to the compellability of spouses to give evidence in domestic violence proceedings, police powers of entry to investigate or prevent domestic violence and apprehended domestic violence orders. [Assented to, 7th December, 1982.]

See also Periodic Detention of Prisoners (Domestic Violence) Amendment Act, 1982.

Crimes (Domestic Violence) Amendment.

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, 1982".

Commencement.

2. (1) Except as provided by subsections (2), (3) and (4), this Act shall commence on the date of assent to this Act.

(2) Section 4 shall, in its application to a provision of Schedules 1–3, commence on the day on which the provision commences.

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

(4) The several provisions of Schedules 2 and 3 shall commence on such day or days (being a day or days not earlier than the day appointed and notified under subsection (3)) 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 COMPELLABILITY OF SPOUSES TO GIVE EVIDENCE IN DOMESTIC VIOLENCE PROCEEDINGS.

SCHEDULE 2.—AMENDMENTS TO THE CRIMES ACT, 1900, IN RELATION TO POLICE POWERS OF ENTRY IN CASES OF DOMESTIC VIOLENCE.

Crimes (Domestic Violence) Amendment.

SCHEDULE 3.—AMENDMENTS TO THE CRIMES ACT, 1900, IN
RELATION TO APPREHENDED DOMESTIC VIOLENCE ORDERS.

Amendment of Act No. 40, 1900.

4. The Crimes Act, 1900, is amended in the manner set forth in Schedules 1–3.

SCHEDULE 1.

(Sec. 4.)

AMENDMENTS TO THE CRIMES ACT, 1900, IN RELATION TO COMPEL-
LABILITY OF SPOUSES TO GIVE EVIDENCE IN DOMESTIC VIOLENCE
PROCEEDINGS.

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

After the definition of “*Document of title to land*”, insert:—

“*Domestic 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, 61E, 493 or 494 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
- (b) an offence of attempting to commit an offence referred to in paragraph (a).

(2) Section 407—

Omit “save as hereinafter provided”, insert instead “except as provided in this section and section 407AA”.

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SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900, IN RELATION TO COMPELLABILITY OF SPOUSES TO GIVE EVIDENCE IN DOMESTIC VIOLENCE PROCEEDINGS—*continued.*

(3) Section 407AA—

After section 407, insert:—

Compellability of spouses to give evidence in domestic violence proceedings.

407AA. (1) In this section—

- (a) a reference to the husband or wife of an accused person includes a reference to a person living with the accused person as the husband or wife of the accused person on a bona fide domestic basis although not married to the accused person; and
- (b) a reference to a domestic violence offence committed upon the husband or wife of an accused person includes a reference to an offence of failing to comply with a restriction or prohibition specified in an order under section 547AA where that husband or wife was the aggrieved spouse of the accused person, as referred to in section 547AA.

(2) Except as provided in subsection (3), the husband or wife of an accused person in a criminal proceeding shall, where the offence charged is a domestic violence offence (other than an offence constituted by a negligent act or omission) committed upon that husband or wife, be compellable to give evidence in the proceeding in every Court, either for the prosecution or for the defence, and without the consent of the accused person.

(3) The husband or wife of an accused person shall not be compellable to give evidence for the prosecution as referred to in subsection (2) if that husband or wife has applied to, and been excused by, the Judge or Justice.

(4) A Judge or Justice may excuse the husband or wife of an accused person from giving evidence for the prosecution as referred to in subsection (2) if satisfied that the application to be

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SCHEDULE 1—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900, IN RELATION TO COMPEL-
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PROCEEDINGS—*continued.*

excused is made by that husband or wife freely and independently of threat or any other improper influence by any person and that having regard to—

- (a) the importance in the case of the facts in relation to which it appears that that husband or wife is to be asked to give evidence and the availability of other evidence to establish those facts; and
- (b) the seriousness of the domestic violence offence with which the accused person is charged.

that husband or wife should be excused.

(5) A Judge or Justice shall, when excusing the husband or wife of an accused person from giving evidence under subsection (4), state the reasons for so doing and cause those reasons to be recorded in writing in a form prescribed by regulations made under subsection (9).

(6) An application under this section by the husband or wife of an accused person to be excused from giving evidence shall be made and determined in the absence of the jury (if any) and the accused person but in the presence of the legal representative (if any) of the accused person.

(7) A Judge or Justice may conduct the hearing of an application under this section in any manner thought fit and is not bound to observe rules of law governing the admission of evidence but may obtain information on any matter in any manner thought fit.

(8) The fact that the husband or wife of an accused person in a criminal proceeding has applied under this section to be excused, or has been excused, from giving evidence in the proceeding shall not be made the subject of any comment by the Judge or by any party in the proceeding.

(9) The Governor may make regulations, not inconsistent with this Act, prescribing the form of a record required to be made as referred to in subsection (5).

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SCHEDULE 2.

(Sec. 4.)

AMENDMENTS TO THE CRIMES ACT, 1900, IN RELATION TO POLICE
POWERS OF ENTRY IN CASES OF DOMESTIC VIOLENCE.

- (1) (a) Section 1, matter relating to Part X—
After “WARRANTS,”, insert “POWERS OF ENTRY”.
- (b) Section 1, matter relating to Part X—
After “357E.”, insert:—
(2A) *Powers of entry in cases of domestic violence.—ss.
357F–357H.*
- (2) Part X, heading—
After “WARRANTS”, insert “, POWERS OF ENTRY”.
- (3) Sections 357F–357H—
After section 357E, insert:—
Powers of entry in cases of domestic violence.
- Entry by invitation.**
- 357F. (1) In this section, “occupier”, in relation to a dwelling-house, means a person immediately entitled to possession of the dwelling-house.
- (2) A member of the police force who believes on reasonable grounds that an offence has recently been or is being committed, or is imminent, or is likely to be committed, in any dwelling-house and that the offence is a domestic violence offence, may, subject to subsection (3)—
- (a) enter the dwelling-house; and

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SCHEDULE 2—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900, IN RELATION TO POLICE
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(b) remain in the dwelling-house,

for the purpose of investigating whether such an offence has been committed or, as the case may be, for the purpose of taking action to prevent the commission or further commission of such an offence, if invited to do so by a person who apparently resides in the dwelling-house, whether or not the person is an adult.

(3) Except as provided in subsection (4), a member of the police force may not enter or remain in a dwelling-house by reason only of an invitation given as referred to in subsection (2) if authority to so enter or remain is expressly refused by an occupier of the dwelling-house and the member of the police force is not otherwise authorised (whether under this or any other Act or at common law) to so enter or remain.

(4) The power of a member of the police force to enter or remain in a dwelling-house by reason of an invitation given as referred to in subsection (2) by the person whom the member of the police force believes to be the person upon whom a domestic violence offence has recently been or is being committed, or is imminent, or is likely to be committed in the dwelling-house may be exercised by the member of the police force notwithstanding that an occupier of the dwelling-house expressly refuses authority to the member of the police force to so enter or remain.

Entry by radio/telephone warrant, etc., where entry denied.

357G. (1) In this section, a reference to—

(a) a telephone includes a reference to a radio or any other communication device; and

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- (b) a stipendiary magistrate includes a reference to a Justice who has been nominated by the Minister as referred to in subsection (2) and whose nomination has not been revoked.

(2) The Minister may, by notification published in the Gazette—

- (a) nominate a Justice employed in the Department of the Attorney General and of Justice—
- (i) who is admitted by the Supreme Court of New South Wales as a barrister-at-law or a solicitor; or
 - (ii) who has fulfilled such of the requirements for eligibility to be so admitted as relate to the passing of examinations,

as a person empowered to grant warrants under this section;
or

- (b) revoke any such nomination.

(3) Upon complaint made by a member of the police force to a stipendiary magistrate that—

- (a) the member of the police force has been denied entry to a specified dwelling-house; and
- (b) the member of the police force suspects or believes that—
- (i) a domestic violence offence has recently been or is being committed, or is imminent, or is likely to be committed in the dwelling-house; and
 - (ii) it is necessary for a member of the police force to enter the dwelling-house immediately in order to investigate whether a domestic violence offence has been committed or, as the case may be, to take action to prevent the commission or further commission of a domestic violence offence,

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the stipendiary magistrate may, if satisfied that there are reasonable grounds for that suspicion or belief, by warrant, authorise and require the member of the police force to enter the dwelling-house and to investigate whether a domestic violence offence has been committed or, as the case may be, to take action to prevent the commission or further commission of a domestic violence offence.

(4) A complaint under this section may be made by a member of the police force to a stipendiary magistrate in person or by telephone and may be made directly to the stipendiary magistrate or, where, in all the circumstances, it is impracticable to make the complaint directly, by causing the complaint to be transmitted by another member of the police force by either of those means.

(5) The fact that a complaint is made under this section to a stipendiary magistrate by a member of the police force who causes the complaint to be transmitted by another member of the police force to the stipendiary magistrate does not, if the stipendiary magistrate is of the opinion that it is, in all the circumstances, impracticable to communicate directly with the member of the police force making the complaint, prevent the stipendiary magistrate being satisfied as to the matters referred to in subsection (3).

(6) A stipendiary magistrate grants a warrant under subsection (3) by stating the terms of the warrant.

(7) Where a stipendiary magistrate grants a warrant under subsection (3), the stipendiary magistrate shall cause a record to be made in writing in a form prescribed by regulations made under subsection (14) of—

- (a) the name of the member of the police force who was the complainant;
- (b) where the complaint was transmitted by a member of the police force on behalf of the complainant—the name of the member of the police force who so transmitted the complaint;

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- (c) the details of the complaint, including the name of any person who is alleged to have informed the police as to the domestic violence the subject of the warrant and the grounds which the stipendiary magistrate was satisfied were reasonable grounds for the suspicion or belief by reason of which the warrant was granted;
- (d) the terms of the warrant (which shall include the address of the dwelling-house the subject of the warrant); and
- (e) the date and time the warrant was granted.

(8) A warrant granted under subsection (3) shall be executed as soon as practicable after the warrant is granted and may be executed by day or night.

(9) For the purpose of executing a warrant granted under subsection (3), a member of the police force may use force, whether by breaking open doors or otherwise, for the purpose of entering a dwelling-house.

(10) A member of the police force may execute a warrant granted under subsection (3) with the aid of such assistants as the member of the police force deems necessary.

(11) A warrant granted under subsection (3) is not invalidated by any defect, other than a defect which affects the substance of the warrant in a material particular.

(12) Where a warrant has been granted under subsection (3) a record in triplicate in a form prescribed by regulations made under subsection (14) shall be made containing the following details:—

- (a) the address of the dwelling-house the subject of the warrant;
- (b) the name of the stipendiary magistrate who granted the warrant;

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- (c) the name of the member of the police force who was the complainant authorised to enter the dwelling-house pursuant to the warrant;
- (d) the time at which the warrant was granted.

(13) The copies of a record relating to a warrant and made as referred to in subsection (12) shall be dealt with as follows:—

- (a) the first copy shall, upon entry into the dwelling-house the subject of the warrant or as soon as practicable thereafter, if a person who appears to reside in the dwelling-house and to be of or above the age of 18 years is present, be furnished to such a person together with a statement in a form prescribed by regulations made under subsection (14) and containing a summary of the nature of the warrant and the powers given by the warrant;
- (b) the second and third copies shall be endorsed with—
 - (i) the name of the person (if any) who informed the police as to the domestic violence the subject of the warrant; and
 - (ii) a notation as to whether a dwelling-house was entered pursuant to the warrant and, if so, the time of entry and the action taken in the dwelling-house;
- (c) the second copy shall be forwarded to the Director of the Magistrates Courts Administration or such other officer as may be prescribed for the purposes of this subsection by regulations made under subsection (14);
- (d) the third copy shall be retained by the member of the police force authorised to enter a dwelling-house pursuant to the warrant to be dealt with in such manner as may be prescribed by regulations made under subsection (14).

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SCHEDULE 2—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900, IN RELATION TO POLICE
POWERS OF ENTRY IN CASES OF DOMESTIC VIOLENCE—*continued.*

(14) The Governor may make regulations, not inconsistent with this Act, prescribing any matter required or permitted to be prescribed under this section.

Provisions relating to powers of entry under sections 357F and 357G.

357H. (1) Where a member of the police force enters a dwelling-house in pursuance of an invitation (as referred to in section 357F), or in pursuance of a warrant granted under section 357G, for the purpose, in either case, of investigating whether an offence which the member of the police force suspects or believes to be a domestic violence offence has been committed or, as the case may be, for the purpose of taking action to prevent the commission or further commission of such an offence, the member of the police force shall—

- (a) take only such action in the dwelling-house as is reasonably necessary—
 - (i) to investigate whether such an offence has been committed;
 - (ii) to render aid to any person who appears to be injured;
 - (iii) to exercise any lawful power to arrest a person; and
 - (iv) to prevent the commission or further commission of such an offence; and
- (b) remain in the dwelling-house only as long as is reasonably necessary to take that action.

(2) Nothing in subsection (1) or in section 357F or 357G limits any other power which a member of the police force may have under this or any other Act or at common law to enter or remain in or on premises.

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SCHEDULE 3.

(Sec. 4.)

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

(1) Section 1, matter relating to Chapter III of Part XIV—

After “547”, insert “, 547AA”.

(2) Section 547AA—

After section 547, insert:—

Apprehended domestic violence orders.

547AA. (1) Where, upon complaint made in accordance with subsection (2), a court of summary jurisdiction is satisfied on the balance of 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, the court may make an order imposing, for a period not exceeding 6 months, such restrictions or prohibitions on the behaviour of the defendant as appear necessary or desirable.

(2) A complaint under this section shall be made in the manner prescribed by regulations made under subsection (16) and may be made by—

- (a) the aggrieved spouse of the defendant; or
- (b) a member of the police force.

(3) Without limiting the generality of subsection (1), an order made under this section may do all or any of the following things:—

- (a) prohibit or restrict approaches by the defendant to the aggrieved spouse of the defendant;
- (b) prohibit or restrict access by the defendant to any specified premises occupied by, any specified place of work of, or any other specified premises or place frequented by, the

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SCHEDULE 3—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900, IN RELATION TO APPREHENDED
DOMESTIC VIOLENCE ORDERS—*continued.*

aggrieved spouse of the defendant, whether or not the defendant has a legal or equitable interest in the premises or place;

- (c) prohibit or restrict specified behaviour by the defendant which might affect the aggrieved spouse of the defendant.

(4) Before making an order under this section which prohibits or restricts access by a person to premises or a place in which the defendant resides, the court shall consider the accommodation needs of all relevant parties and the effect of making such an order on any children.

(5) Where a person stands charged before a court of summary jurisdiction with an offence which appears to the court to be a domestic violence offence, the court shall enquire whether a complaint under this section has been made or is to be made either by a member of the police force or the person upon whom the domestic violence offence is alleged to have been committed and, where such a complaint has been made or is made, the court may deal with the complaint forthwith.

(6) An order under this section may, if in all the circumstances it appears to the court to be necessary or appropriate, be made in the absence of the defendant.

(7) A person against whom an order has been made under this section and who—

- (a) has been served personally with a copy of a record of the order made in the form and in the manner prescribed by regulations made under subsection (16); and
- (b) after having been so served, knowingly fails to comply with a restriction or prohibition specified in the order so served,

shall be guilty of an offence and liable on conviction before a stipendiary magistrate to imprisonment for 6 months.

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SCHEDULE 3—*continued.*

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

(8) Where a member of the police force believes on reasonable grounds that a person has committed an offence under subsection (7), the member of the police force may, without warrant, arrest and detain the person.

(9) A person arrested and detained as referred to in subsection (8) shall be brought as soon as practicable before a stipendiary magistrate to be dealt with for the offence.

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

- (a) the complainant;
- (b) where the complainant was a member of the police force—
the aggrieved spouse of the defendant; or
- (c) the defendant,

may at any time apply to a court of summary jurisdiction for variation or revocation of the order and the court may, if satisfied that in all the circumstances it is proper to do so, vary or revoke the order by a further order.

(11) Where a complaint or order is made under this section or an order so made is varied or revoked, the clerk of the court at which the complaint is made or by which the order is made, varied or revoked shall forward a copy of the complaint, order, variation or revocation, as the case may be, to the Commissioner of Police and, where the complaint is made by a member of the police force, to the aggrieved spouse of the defendant.

(12) Upon a complaint under this section, the court may award costs to the complainant or the defendant, to be recovered as costs in summary jurisdiction cases are recoverable.

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SCHEDULE 3—*continued.*AMENDMENTS TO THE CRIMES ACT, 1900, IN RELATION TO APPREHENDED
DOMESTIC VIOLENCE ORDERS—*continued.*

(13) Nothing in this section prevents or restricts the application of section 547 in relation to cases to which this section may apply.

(14) Where a complaint has been made under this section—

- (a) a Justice may issue a summons for the appearance of the defendant or a warrant for the arrest of the defendant as if the complaint alleged the commission of an offence; and
- (b) the Bail Act, 1978, applies to and in respect of a person arrested pursuant to a warrant so issued as if the defendant were accused of an offence and the hearing of the complaint were proceedings in respect of the offence.

(15) An order made under this section shall be deemed to be an order whereby a person is punished within the meaning of section 122 of the Justices Act, 1902.

(16) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that is required or permitted to be prescribed under this section or that is necessary or convenient to be prescribed for carrying out or giving effect to this section.
