

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

NEW SOUTH WALES



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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

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- (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”.

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(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.

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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.

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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.*]