

**CRIMES (DOMESTIC VIOLENCE) AMENDMENT ACT 1993
No. 101**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Crimes Act 1900 No. 40
4. Consequential amendment of Firearms Act 1989 No. 25
5. Transitional provisions

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900 RELATING TO
APPREHENDED VIOLENCE ORDERS

SCHEDULE 2—AMENDMENT OF CRIMES ACT 1900 RELATING TO
INTIMIDATION ETC. OFFENCES

SCHEDULE 3—CONSEQUENTIAL AMENDMENT OF FIREARMS ACT 1989

CRIMES (DOMESTIC VIOLENCE) AMENDMENT ACT 1993

No. 101

NEW SOUTH WALES



Act No. 101, 1993

An Act to amend the Crimes Act 1900 to protect the victims and potential victims of domestic or other personal violence; and for other purposes.
[Assented to 2 December 1993]

See also Bail (Domestic Violence) Amendment Act 1993.

Crimes (Domestic Violence) Amendment Act 1993 No. 101

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Crimes (Domestic Violence) Amendment Act 1993.

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 Schedules 1 and 2.

Consequential amendment of Firearms Act 1989 No. 25

4. The Firearms Act 1989 is amended as set out in Schedule 3.

Transitional provisions

5. (1) Any order made under Part 15A (Apprehended violence orders) of the Crimes Act 1900 and in force at the commencement of an amendment of that Part by this Act continues to have effect as if made under that Part, as so amended.

(2) A complaint for such an order pending on the commencement of an amendment of that Part by this Act is to continue to be dealt with under that Part, as so amended.

**SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900
RELATING TO APPREHENDED VIOLENCE ORDERS**

(Sec. 3)

(1) Section 562A (**Definitions**):

- (a) Omit the definition of “authorised Justice”.
- (b) In the definition of “defendant”, after “made”, insert “or is sought to be made”.
- (c) In the definition of “order”, after “apprehended violence order”, insert “(including a telephone interim order or an interim order made by a court)”.

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900
RELATING TO APPREHENDED VIOLENCE ORDERS—*continued*

(d) Insert, in alphabetical order:

“intimidation” means:

- (a) conduct amounting to harassment or molestation;
or
- (b) the making of repeated telephone calls; or
- (c) any conduct that causes a reasonable apprehension of injury to a person or to a person with whom he or she has a domestic relationship, or of violence or damage to any person or property;

“stalking” means the following of a person about or the watching or frequenting of the vicinity of or an approach to a person’s place of residence, business or work or any place that a person frequents for the purposes of any social or leisure activity;

“telephone interim order” means an interim apprehended violence order made by an authorised justice in accordance with section 562H;

(e) At the end of section 562A, insert:

(2) For the purpose of determining whether a person’s conduct amounts to intimidation, a court may have regard to any pattern of violence (especially violence constituting a domestic violence offence) in the person’s behaviour.

(3) For the purposes of this Part, a person has a **domestic relationship** with another person if the person:

- (a) is or has been the spouse or de-facto partner of the other person; or
- (b) is living with or has lived ordinarily in the same household as the other person (otherwise than merely as a tenant or boarder); or
- (c) is or has been a relative (within the meaning of section 4 (6)) of the other person; or
- (d) has or has had an intimate personal relationship with the other person.

Crimes (Domestic Violence) Amendment Act 1993 No. 101

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900
RELATING TO APPREHENDED VIOLENCE ORDERS—*continued*

(2) Section 562B (**Court may make apprehended violence orders**):

(a) At the end of section 562B (1) (b), insert:

; or

(c) the engagement of another person in conduct in which the other person:

(i) intimidates the person or a person with whom he or she has a domestic relationship; or

(ii) stalks the person,

being conduct that, in the opinion of the court, is sufficient to warrant the making of the order.

(b) After “An order” in section 562B (4), insert “made under this section”.

(3) Sections 562BA, 562BB:

After section 562B, insert:

Orders made by court with consent of parties

562BA. (1) A court may make an apprehended violence order without being satisfied as to the matters referred to in section 562B if the complainant and the defendant have consented to the order being made.

(2) Such an order may be made whether or not the defendant admits to any or all of the particulars of the complaint.

Interim court orders

562BB. (1) A court may make an interim apprehended violence order (an “**interim order**”) if it appears to the court that it is necessary or appropriate to do so in the circumstances.

(2) An interim order may be made by a court whether or not:

(a) the defendant is present at the proceedings; or

(b) the defendant has been given notice of the proceedings.

(3) A court may, in deciding whether to make an interim order, admit affidavit evidence tendered on behalf of the person for whose protection the order would be made if:

(a) the person is unable, for any good reason, to be present at the proceedings; and

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900
RELATING TO APPREHENDED VIOLENCE ORDERS—*continued*

(b) the court is satisfied that the matter requires urgent consideration by the court.

(4) If an interim order is made by a court:

(a) the court is to summon the defendant to appear at a further hearing of the matter by the court as soon as possible after the order is made; and

(b) the court may, at the further hearing or an adjourned further hearing, confirm the interim order (with or without variation) or revoke the interim order (whether or not the defendant appears at any such further hearing).

(5) An interim order is confirmed by the making of an order under section 562B against the defendant (with or without variation). In that case, the interim order ceases to have effect when the order under section 562B is made (in the case of a defendant who is then present in court) or when the defendant is served under section 562J with a copy of the record of the order under section 562B (in any other case).

(6) An interim order has, while it remains in force, the same effect as an order made under section 562B.

Order prohibits stalking, intimidation etc.

562BC. Unless otherwise ordered, every order is taken to specify that the defendant is prohibited from doing any of the following:

(a) engaging in conduct that intimidates the protected person or a person with whom he or she has a domestic relationship;

(b) stalking the protected person.

Order can also protect family etc.

562BD. The power of a court under this Part to make an order for the protection of a person extends to authorise the making of an order for the protection of a person with whom the person for whose protection the order was applied for has a domestic relationship.

(4) Section 562C (**Making of complaint for court order**):

(a) Omit “member of the Police Force” wherever occurring, insert instead “police officer”.

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900
RELATING TO APPREHENDED VIOLENCE ORDERS—*continued*

- (b) From section 562C (3) (b), omit “18 years”, insert instead “16 years”.
- (c) At the end of the section, insert:
- (5) The time within which a complaint for an order may be made is not limited by section 56 of the Justices Act 1902.
- (6) A court may deal with a complaint even though the court has only a facsimile transmission or other copy of the complaint.
- (7) A complainant for an order who is 16 years of age or over, but under 18 years of age, has full capacity to make the complaint and to apply for a variation or revocation of the order.
- (5) Section 562E:
- Omit the section, insert instead:
- Duration of court orders**
- 562E. (1) An order (other than an interim order) remains in force for such period as is specified in the order by the court.
- (2) The period specified in the order by the court is to be as long as is necessary, in the opinion of the court, to ensure the protection of the protected person.
- (3) If the court, fails to specify a period in the order, the order remains in force for a period of 6 months.
- (4) An interim order made by a court remains in force until it is revoked or it otherwise ceases to have effect.
- (6) Section 562F (**Variation or revocation of court orders**):
- (a) Omit “member of the Police Force” wherever occurring, insert instead “police officer”.
- (b) From section 562F (2), omit “18 years”, insert instead “16 years”.
- (7) Section 562H:
- Omit the section, insert instead:
- Telephone interim orders after hours**
- 562H. (1) **Application by telephone.** A police officer may apply by telephone to an authorised justice for an interim apprehended violence order.

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900
RELATING TO APPREHENDED VIOLENCE ORDERS—*continued*

(2) **When application may be made.** An application may be made by telephone in the following circumstances:

- (a) an incident occurs involving the person against whom the order is sought to be made and the person who would be protected by the order; and
- (b) it is not practicable to make an immediate complaint for an interim order by a court because of the time at which, or the place at which, the incident occurs; and
- (c) the police officer attending the incident has good reason to believe that unless an order is made immediately the person who would be protected by the order may suffer personal injury.

(3) **Making of interim order.** An authorised justice to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, make the interim apprehended violence order (a “telephone interim order”).

(4) **Standard terms of order.** A telephone interim order is an order which states that the defendant is prohibited from causing any personal injury to, or from harassing or molesting, the protected person.

(5) **Further terms for exclusion of defendant from premises etc.** If the police officer making the application for the telephone interim order has good reason to believe that the protected person is in imminent danger of personal injury from the defendant, the police officer may, in the application, request the authorised justice to impose all or any of the following prohibitions or restrictions on the behaviour of the defendant:

- (a) prohibiting or restricting approaches by the defendant to the protected person;
- (b) prohibiting or restricting access by the defendant to any specified premises occupied by the protected person (whether or not the defendant has a legal or equitable interest in the premises).

The authorised justice may impose any or all of those prohibitions or restrictions by the order if satisfied there are reasonable grounds for doing so.

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900
RELATING TO APPREHENDED VIOLENCE ORDERS—*continued*

(6) **Recording of order.** The authorised justice who makes a telephone interim order is to inform the applicant of the terms of the order and of the date and time when it was made. The applicant is to complete a form of order in the terms so indicated and write on it the name of the authorised justice and the date and time when it was made. The order so completed is taken to be an order duly made under this section.

(7) **Facsimile transmission.** An authorised justice may, instead of proceeding under subsection (6), furnish the telephone interim order to the applicant by facsimile transmission. In that case, the copy produced by the transmission is taken to be the original document.

(8) **Service.** A telephone interim order is to be served personally on the defendant by a police officer as soon as practicable after it is made.

(9) **Duration.** A telephone interim order remains in force (unless sooner revoked) for such period as is specified in the order. The period specified must not extend beyond 9 p.m. on the fifth working day after the order is made. If the order includes prohibitions or restrictions referred to in subsection (5), the order must specify the period for which those prohibitions or restrictions remain in force and the period so specified must not extend beyond 9 p.m. on the next working day after the order is made.

(10) **Action by police officer.** As soon as practicable after a telephone interim order is made, the applicant for the order (or some other police officer) must make a complaint for an order of a court in the matter or report to an authorised justice the reasons why a complaint has not been made. This subsection applies whether or not the telephone interim order has expired or been revoked.

(11) **Revocation.** A telephone interim order may be revoked by:

- (a) the authorised justice who made it or any other authorised justice; or
- (b) any court dealing with a complaint for an order against the same defendant.

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900
RELATING TO APPREHENDED VIOLENCE ORDERS—*continued*

Notice of the revocation is to be served on the defendant, the protected person and the Commissioner of Police.

(12) **Detention of defendant.** 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 of the incident until the order is made and served.

(13) **Excluded provisions.** Sections 562C–562G and 562J–562N do not apply to telephone interim orders.

(14) Miscellaneous matters relating to applications. An application for a telephone interim order:

- (a) may be made at the request of the protected person or on the police officer’s own initiative; and
- (b) may be transmitted to the authorised justice by another person on behalf of the applicant if it is not practicable for the application to be made by the person by telephone directly to the authorised justice.

(15) **Miscellaneous matters relating to orders.** A telephone interim order:

- (a) may not include prohibitions or restrictions referred to in subsection (5) if the defendant is under 18 years of age; and
- (b) may not be renewed and a further telephone interim order may not be made in respect of the same incident.

(16) **Definitions.** In this section:

“authorised justice” means:

- (a) a Magistrate; or
- (b) a justice of the peace who is a Clerk of a Local Court; or
- (c) a justice of the peace who is employed in the Department of Courts Administration and who is declared under the Search Warrants Act 1985 to be an authorised justice for the purposes of that Act;

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900
RELATING TO APPREHENDED VIOLENCE ORDERS—*continued*

“**telephone**” includes radio, facsimile and any other communication device;

“**working day**” means a day which is not a Saturday, Sunday or public holiday.

(8) Section 562I (**Offence of contravening order**):

(a) Omit “Penalty: 20 penalty units or imprisonment for 6 months, or both.”, insert instead “Maximum penalty: 50 penalty units or imprisonment for 2 years, or both.”.

(b) Omit section 562I (2), insert instead:

(2) A person is not guilty of an offence under this section unless:

(a) the person was served under section 562J with a copy of the record of the order concerned or was present in court when the order was made; or

(b) in the case of a telephone interim order—the person was served with the order or a copy of the order under section 562H.

(2A) Unless the court otherwise orders, if a person is convicted of an offence against this section, the person must be sentenced to a term of imprisonment if the act constituting the offence was an act of violence against a person. This subsection does not apply if the person convicted was under 18 years of age at the time of the alleged offence.

(2B) Unless the court otherwise orders, where the court determines to impose a sentence of imprisonment in the circumstances referred to in subsection (2A), the court must consider a full psychiatric assessment and pre-sentence report on the person.

(2C) Where the court determines not to impose a sentence of imprisonment, it must give its reasons for not doing so.

(9) Section 562J (**Service of copy of order on defendant, police etc.**):

(a) Omit section 562J (2), insert instead:

(2) The clerk of the court is to serve a copy of the record of the order (or of the variation of the order) personally on the defendant if the defendant is present in court.

**SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900
RELATING TO APPREHENDED VIOLENCE ORDERS—*continued***

(2A) If the defendant is not present at the time the order or variation is made, or is present but the clerk is unable to serve a copy of the record personally on the defendant, the clerk is to arrange for a copy of the record to be served personally on the defendant by a police officer or such other person as the clerk thinks fit.

(2B) Service on the defendant of the copy of the record of the order concerned may be effected in such other manner as the court directs.

(b) After section 562J (3), insert:

(4) The Commissioner of Police is to make a record of the details of the material forwarded to the Commissioner under this section and is to retain that record for at least 10 years after the order to which it relates ceases to be in force.

(10) Section 562K (**Summons for appearance or arrest of defendant**):

At the end of the section, insert:

(4) In this section:

“authorised justice” means:

(a) a Magistrate; or

(b) a justice of the peace who is employed in the Department of Courts Administration.

(11) Section 562N (**Costs**):

From section 562N (2A), omit “member of the Police Force”, insert instead “police officer”.

**SCHEDULE 2—AMENDMENT OF CRIMES ACT 1900
RELATING TO INTIMIDATION ETC. OFFENCES**

(Sec. 3)

(1) Section 545B (**Intimidation or annoyance by violence or otherwise**):

From section 545B (1), omit “shall, on conviction before two justices, be liable to imprisonment for six months, or to a fine of 5 penalty units, or both”, insert instead “is liable, on conviction before a Magistrate, to imprisonment for 2 years, or to a fine of 50 penalty units, or both”.

SCHEDULE 2—AMENDMENT OF CRIMES ACT 1900
RELATING TO INTIMIDATION ETC. OFFENCES—*continued*

(2) Section 562AB:

After section 562A, insert:

Stalking, intimidation with intent to cause fear for personal safety

562AB. (1) A person who stalks or intimidates another person with whom he or she has a domestic relationship with the intention of causing the other person to fear personal injury is liable, on conviction before a Magistrate, to imprisonment for 2 years, or to a fine of 50 penalty units, or both.

(2) For the purposes of this section, causing a person to fear personal injury includes causing the person to fear personal injury to another person with whom he or she has a domestic relationship.

(3) For the purposes of this section, a person intends to cause fear of personal injury if he or she knows that the conduct is likely to cause fear in the other person.

(4) For the purposes of this section, the prosecution is not required to prove that the person alleged to have been stalked or intimidated actually feared personal injury.

**SCHEDULE 3—CONSEQUENTIAL AMENDMENT OF
FIREARMS ACT 1989**

(Sec. 4)

Section 3 (**Definitions**):

- (a) From section 3 (1), omit the definition of “apprehended violence order”, insert instead:

“apprehended violence order” means:

- (a) an order within the meaning of Part 15A of the Crimes Act 1900 (other than an interim order under that Part); or
- (b) an interim order under that Part that is confirmed; or
- (c) an order or decision under an Act or law of a place other than New South Wales, being an order or decision that is prescribed for the purposes of this definition by the regulations;

Crimes (Domestic Violence) Amendment Act 1993 No. 101

SCHEDULE 3—CONSEQUENTIAL AMENDMENT OF FIREARMS
ACT 1989—*continued*

- (b) From section 3 (1), omit the definition of “interim apprehended violence order”, insert instead:

“interim apprehended violence order” means:

- (a) an interim order made by a court under Part 15A of the Crimes Act 1900; or
 - (b) an order or decision under an Act or law of a place other than New South Wales, being an order or decision that is prescribed for the purposes of this definition by the regulations;
-

*[Minister’s second reading speech made in—
Legislative Assembly on 15 September 1993
Legislative Council on 20 November 1993 a.m.]*