



New South Wales

Crimes Amendment (Apprehended Violence) Act 1999 No 88

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New South Wales

Crimes Amendment (Apprehended Violence) Act 1999 No 88

Act No 88, 1999

An Act to amend the *Crimes Act 1900* in relation to apprehended violence orders, the offence of stalking or intimidation, and associated matters; and for other purposes. [Assented to 6 December 1999]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Amendment (Apprehended Violence) Act 1999*.

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.

Schedule 1 Amendments

(Section 3)

[1] Section 4 Definitions

Omit the definition of *Domestic violence offence* in section 4 (1).

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
- (b) a person who has or has had a de facto relationship, within the meaning of the *Property (Relationships) Act 1984*, with the person who commits the offence, or
- (c) a person who has or has had an intimate personal relationship with the person who commits the offence, whether or not the intimate relationship involves or has involved a relationship of a sexual nature, or
- (d) a person who is living or has lived in the same household or other residential facility as the person who commits the offence, or
- (e) a person who has or has had a relationship involving his or her dependence on the ongoing paid or unpaid care of the person who commits the offence, or
- (f) a person who is or has been a relative (within the meaning of section 4 (6)) of the person who commits the offence.

[2] Section 4 (1)

Omit “or 61O” from paragraph (a) of the definition of *Personal violence offence*.

Insert instead “, 61O, 195, 196, 198, 199, 200 or 562I”.

[3] Section 4 (6)

Omit the subsection. Insert instead:

- (6) For the purposes of the definition of *Domestic violence offence*, a person is a relative of a person (the *other person*):
- (a) if the person is:
 - (i) a father, mother, grandfather, grandmother, step-father, step-mother, father-in-law or mother-in-law, or
 - (ii) a son, daughter, grandson, grand-daughter, step-son, step-daughter, son-in-law or daughter-in-law, or
 - (iii) a brother, sister, half-brother, half-sister, brother-in-law or sister-in-law, or
 - (iv) an uncle, aunt, uncle-in-law or aunt-in-law, or
 - (v) a nephew or niece, or
 - (vi) a cousin,of the other person, or
 - (b) where the person is in a de facto relationship, within the meaning of the *Property (Relationships) Act 1984*, with somebody else (the *person's partner*)—if the other person is:
 - (i) a father, mother, grandfather, grandmother, step-father or step-mother, or
 - (ii) a son, daughter, grandson, grand-daughter, step-son or step-daughter, or
 - (iii) a brother, sister, half-brother or half-sister, or
 - (iv) an uncle or aunt, or
 - (v) a nephew or niece, or
 - (vi) a cousin,of the person's partner.

[4] Section 562A Definitions

Insert in alphabetical order in section 562A (1):

apprehended domestic violence order means an order under Division 1A.

apprehended personal violence order means an order under Division 1B.

apprehended violence order means:

- (a) an apprehended domestic violence order, or
- (b) an apprehended personal violence order.

authorised justice means (except in section 562H):

- (a) a Magistrate, or
- (b) a justice of the peace who is employed in the Attorney General's Department.

[5] Section 562A (1)

Omit the definitions of *interstate restraint order*, *registered interstate restraint order*, and *the appropriate court*.

[6] Section 562A (3)

Omit the subsection. Insert instead:

- (3) For the purposes of this Part, a person has a ***domestic relationship*** with another person if the person:
 - (a) is or has been married to the other person, or
 - (b) has or has had a de facto relationship, within the meaning of the *Property (Relationships) Act 1984*, with the other person, or
 - (c) has or has had an intimate personal relationship with the other person, whether or not the intimate relationship involves or has involved a relationship of a sexual nature, or
 - (d) is living or has lived in the same household or other residential facility as the other person, or
 - (e) has or has had a relationship involving his or her dependence on the ongoing paid or unpaid care of the other person, or
 - (f) is or has been a relative (within the meaning of section 4 (6)) of the other person.

[7] Section 562AB

Omit the section. Insert instead:

562AB Stalking or intimidation with intent to cause fear of physical or mental harm

- (1) A person who stalks or intimidates another person with the intention of causing the other person to fear physical or mental harm is liable to imprisonment for 5 years, or to a fine of 50 penalty units, or both.
- (2) For the purposes of this section, causing a person to fear physical or mental harm includes causing the person to fear physical or mental harm 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 physical or mental harm 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 physical or mental harm.

[8] Part 15A, Divisions 1A and 1B

Insert after section 562AB:

Division 1A Apprehended domestic violence orders

562AC Objects of Division

- (1) The objects of this Division are:
 - (a) to ensure the safety and protection of all persons who experience domestic violence, and
 - (b) to reduce and prevent violence between persons who are in a domestic relationship with each other, and
 - (c) to enact provisions that are consistent with certain principles underlying the Declaration on the Elimination of Violence against Women.

- (2) This Division aims to achieve its objects by:
 - (a) empowering courts to make apprehended domestic violence orders to protect people from domestic violence, and
 - (b) ensuring that access to courts is as speedy, inexpensive, safe and simple as is consistent with justice.
- (3) In enacting this Division, Parliament:
 - (a) recognises that domestic violence, in all its forms, is unacceptable behaviour, and
 - (b) recognises that domestic violence is predominantly perpetrated by men against women and children, and
 - (c) recognises that domestic violence occurs in all sectors of the community.
- (4) A court that, or person who, exercises any power conferred by or under this Part in relation to domestic violence must be guided in the exercise of that power by the objects of this Division.

562AD Application for ADVO

- (1) An application may be made, by way of complaint, for an apprehended domestic violence order for the protection of:
 - (a) a person against another person with whom he or she has a domestic relationship, or
 - (b) two or more persons against another person with whom at least one of those persons has a domestic relationship.
- (2) If the person or all of the persons for whose protection the order would be made does or do not have a domestic relationship with the person against whom it is sought, the complaint is to be treated as an application for an apprehended personal violence order.

562AE Court may make ADVO

- (1) A court may, on complaint, make an apprehended domestic violence order if it is satisfied on the balance of probabilities that a person who has a domestic relationship with another person has reasonable grounds to fear and in fact fears:
 - (a) the commission by the other person of a personal violence offence against the person, or
 - (b) the engagement of the other 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, or
 - (c) the engagement of the other person in conduct in which the other person:
 - (i) intimidates the person or a person with whom the person 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.
- (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 16 years, or
 - (b) the person is, in the opinion of the court, suffering from an appreciably below average general intelligence 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.
- (4) An order made under this section may impose such prohibitions or restrictions on the behaviour of the defendant as appear necessary or desirable to the court.

562AF Summons for appearance or arrest of defendant in ADVO matters

- (1) If a complaint for an apprehended domestic violence order is made, an authorised justice may issue:
 - (a) a summons for the appearance of the defendant, or
 - (b) a warrant for the arrest of the defendant.
- (2) The authorised justice must issue a summons for the appearance of the defendant, unless the authorised justice issues a warrant for the arrest of the defendant.
- (3) The authorised justice may issue a warrant for the arrest of the defendant even though the defendant is not alleged to have committed an offence.
- (4) The authorised justice must issue a warrant for the arrest of the defendant if it appears to the authorised justice that the personal safety of the person for whose protection the order is sought will be put at risk unless the defendant is arrested for the purpose of being brought before the court.
- (5) A warrant may not be executed more than 12 months after the date on which it is issued, unless the court otherwise orders before the end of the 12-month period.
- (6) If the court is satisfied, by evidence on oath or by affidavit, that it is not reasonably practicable to serve a copy of a summons as provided by law, service of the copy of the summons may be effected in such other manner as the court directs.

562AG Non-inclusion of protected person's residential address in ADVO or complaint for ADVO

- (1) The address at which the protected person resides must not be stated in the complaint for an apprehended domestic violence order (or the application for an order relating to such an order), unless:
 - (a) where the protected person is of or above the age of 16 years—the protected person consents to the address being included in the complaint, or
 - (b) where the complaint is made by a police officer—the police officer is satisfied that the defendant knows the address.

- (2) The address at which the protected person resides, or intends to reside, must not be stated in an apprehended domestic violence order (or an order relating to such an order), unless the court is satisfied that:
- (a) the defendant knows the address, or
 - (b) it is necessary to state the address in order to achieve compliance with the order and the personal safety of the protected person would not be seriously threatened, or damage would not be likely to be caused to any property of the protected person, by stating the address, or
 - (c) where the protected person is of or above the age of 16 years—the protected person consents to the address being stated in the order.
- (3) In this section:
- court* includes the Clerk of a Local Court or the Registrar of the Children’s Court.
- protected person* means the person for whose protection an apprehended domestic violence order is made or sought.

Division 1B Apprehended personal violence orders

562AH Application for APVO

- (1) An application may be made, by way of complaint, for an apprehended personal violence order for the protection of one or more persons against another person.
- (2) If the person (or at least one of the persons) for whose protection the order would be made has a domestic relationship with the person against whom it is sought, the complaint is to be treated as a complaint for an apprehended domestic violence order.

562AI Court may make APVO

- (1) A court may, on complaint, make an apprehended personal 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 the other person of a personal violence offence against the person, or

- (b) the engagement of the other 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, or
 - (c) the engagement of the other person in conduct in which the other person:
 - (i) intimidates the person, or
 - (ii) stalks 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 16 years, or
 - (b) the person is, in the opinion of the court, suffering from an appreciably below average general intelligence 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.
- (4) An order made under this section may impose such prohibitions or restrictions on the behaviour of the defendant as appear necessary or desirable to the court.

562AJ Summons for appearance or arrest of defendant in APVO matters

- (1) If a complaint for an apprehended personal violence order is made, an authorised justice may issue:
 - (a) a summons for the appearance of the defendant, or
 - (b) a warrant for the arrest of the defendant.

- (2) If the complaint was made by a police officer, the authorised justice must issue a summons for the appearance of the defendant, unless the authorised justice issues a warrant for the arrest of the defendant.
- (3) The authorised justice may issue a warrant for the arrest of the defendant even though the defendant is not alleged to have committed an offence.
- (4) The authorised justice must issue a warrant for the arrest of the defendant if it appears to the authorised justice that the personal safety of the person for whose protection the order is sought will be put at risk unless the defendant is arrested for the purpose of being brought before the court.
- (5) A warrant may not be executed more than 12 months after the date on which it is issued, unless the court otherwise orders before the end of the 12-month period.
- (6) If the court is satisfied, by evidence on oath or by affidavit, that it is not reasonably practicable to serve a copy of a summons as provided by law, service of the copy of the summons may be effected in such other manner as the court directs.

562AK Discretion to refuse to issue process in APVO matters

- (1) An authorised justice has a discretion to refuse to issue process where a complaint for an apprehended personal violence order is made, unless the complaint was made by a police officer.
- (2) The authorised justice may exercise the discretion in accordance with this section or may decline to exercise it. The authorised justice:
 - (a) exercises the discretion by deciding to issue neither a summons nor a warrant referred to in section 562AJ, or
 - (b) is taken to decline to exercise the discretion by deciding to issue such a summons or warrant.
- (3) The authorised justice may exercise the discretion if the authorised justice is satisfied that the complaint is frivolous, vexatious, without substance or has no reasonable prospect of success.

- (4) There is a presumption against exercising the discretion if the complaint discloses allegations of:
 - (a) a personal violence offence, or
 - (b) an offence under section 562AB, or
 - (c) harassment relating to the complainant's race, religion, homosexuality, transgender status, HIV/AIDS or other disability.
- (5) In determining whether or not to exercise the discretion, the authorised justice must take the following matters into account:
 - (a) the nature of the allegations,
 - (b) whether the matter is amenable to mediation or other alternative dispute resolution,
 - (c) whether the parties have previously attempted to resolve the matter by mediation or other means,
 - (d) the availability and accessibility of mediation or other alternative dispute resolution services,
 - (e) the willingness and capacity of each party to resolve the matter otherwise than through a complaint for an apprehended personal violence order,
 - (f) the relative bargaining powers of the parties,
 - (g) whether the complaint is in the nature of a cross application,
 - (h) any other matters that the authorised justice considers relevant.
- (6) If the authorised justice exercises the discretion, the authorised justice must record the reasons for doing so in writing.

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

Omit the section.

[10] Section 562BA Orders made with consent of parties

Omit "section 562B" where firstly occurring from section 562BA (1).
Insert instead "section 562AE or 562AI".

[11] Section 562BA (1)

Omit “section 562B” where secondly occurring.
Insert instead “section 562AE, 562AI”.

[12] Section 562BB Interim court orders

Insert after section 562BB (1):

- (1A) An interim order may be either an interim apprehended domestic violence order or an interim apprehended personal violence order.

[13] Section 562BB (5) and (6)

Omit “section 562B” wherever occurring.
Insert instead “section 562AE or 562AI as appropriate”.

[14] Section 562BBA Interim orders made by clerk of court with consent

Omit “section 562B” wherever occurring from section 562BBA (4).
Insert instead “section 562AE or 562AI as appropriate”.

[15] Section 562BE Order must be made on guilty plea or guilt finding for certain offences

Omit section 562BE (1). Insert instead:

- (1) If a person pleads guilty to, or is found guilty of, an offence against section 562AB or a domestic violence offence, the court must make an order under this Part for the protection of the person against whom the offence was committed, as if a complaint for an apprehended violence order had been made under this Part.
- (1A) If a person pleads guilty to, or is found guilty of, an offence against section 562AB or a domestic violence offence, the court may vary an order under this Part for the purpose of providing greater protection for the person against whom the offence was committed, as if an application to vary an apprehended violence order had been made under this Part.

[16] Section 562BE (3) and (4)

Insert after section 562BE (2):

- (3) A reference in this section to a court extends to the District Court when exercising jurisdiction apart from under section 562G.
- (4) Without limiting the interpretation of the expression, a reference in this section to a finding of guilt includes a reference to the making of an order under section 556A.

[17] Section 562BF Order must be made on charge for certain offences

Insert after section 562BF (3):

- (4) A reference in this section to a court extends to the District Court when exercising jurisdiction apart from under section 562G.

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

Omit “section 562B” from section 562D (1).

Insert instead “sections 562AE and 562AI”.

[19] Section 562E Duration of court orders

Omit section 562E (4). Insert instead:

- (4) An interim order made by a court remains in force until:
 - (a) it is revoked, or
 - (b) it ceases to have effect under section 562BB (5), or
 - (c) the relevant complaint is withdrawn or dismissed,whichever first occurs.

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

Insert after section 562F (2):

- (2A) The application must set out the grounds on which the application is made and, in the case of a variation, the nature of the variation sought. This subsection does not limit the powers of the court.

[21] Section 562F (8)

Insert after section 562F (7):

- (8) Despite subsection (6), the court may make an order extending the period during which the order is to remain in force without notice of the relevant application having been served on the defendant, if:
- (a) the applicant lodged the application no later than 21 days before the day on which the order is due to expire, and
 - (b) the application is listed for mention before the court no later than 14 days after the day the application was lodged, and
 - (c) notice of the application has not been served on the defendant by the time the matter is heard by the court,
- but, unless sooner revoked, such an order ceases to have effect 21 days after it is made or on an earlier date specified in the order. However, further orders may be made from time to time under this subsection before the order ceases to have effect.

[22] Section 562G Courts authorised to make orders etc

Omit section 562G (4).

[23] Section 562GA Making of orders by District Court

Omit the section.

[24] Section 562GB Jurisdiction of District Court under this Part

Omit the section.

[25] Section 562H Telephone interim orders

Insert after section 562H (1):

- (1A) Such an interim apprehended violence order may be either an interim apprehended domestic violence order or an interim apprehended personal violence order.

[26] Section 562H (2) (c)

Omit the paragraph. Insert instead:

- (c) the police officer attending the incident has good reason to believe an order is necessary to ensure the safety of the person who would be protected by the order or to prevent substantial damage to any property of that person.

[27] Section 562H (4) and (5)

Omit the subsections. Insert instead:

(4) Standard terms of order

A telephone interim order is an order that states that the defendant must not assault, molest, harass, threaten or otherwise interfere with the protected person. Nothing in this subsection affects section 562BC.

(5) Further terms of orders

If the police officer making the application for the telephone interim order has good reason to believe that the safety of the protected person is in imminent danger 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 or all of the following:
 - (i) any premises occupied by the protected person from time to time or any specified premises occupied by the protected person,
 - (ii) any place where the protected person works from time to time or any specified place of work of the protected person,
 - (iii) 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,

- (c) prohibiting or restricting the defendant from approaching the protected person, or any such premises or place, within 12 hours of consuming intoxicating liquor or illicit drugs,
- (d) prohibiting the defendant from destroying or deliberately damaging or interfering with the protected person's property.

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.

[28] Section 562H (15A)

Insert after section 562H (15):

(15A) **Purported renewal or continuance**

However, if a court purports to renew or continue a telephone interim order, the order is taken to be an interim apprehended violence order made by the court at that time. An authorised justice may at any time make an endorsement on the order to that effect and make any appropriate amendments to the order, but that action is not a necessary prerequisite to its status as an interim apprehended violence order. Further service of the order is not required.

[29] Section 562H (16)

Omit "Department of Courts Administration" from paragraph (c) of the definition of *authorised justice*.

Insert instead "Attorney General's Department".

[30] Section 562H (16)

Omit the definition of *personal injury*.

[31] Section 562I Offence of contravening order

Insert after section 562I (5):

- (6) If:
- (a) a police officer believes on reasonable grounds that:
 - (i) a person has committed an offence against this section, or
 - (ii) a person, in respect of whom an alleged breach of this section has been reported to that or another police officer, has not committed an offence against this section, and
 - (b) that or another police officer:
 - (i) decides not to initiate criminal proceedings against the person, in respect of the alleged offence, whether or not the person has been arrested, or
 - (ii) decides not to proceed with criminal proceedings,

the police officer must make a written record of the reasons for the decision.

[32] Section 562J Service of copy of order

Omit “, or is present but the clerk is unable to serve a copy of the record personally on the defendant,” from section 562J (2A).

[33] Section 562J (2AA)

Insert after section 562J (2A):

- (2AA) If the defendant is present at the time the order or variation is made 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 order to be sent by post to the defendant or to such other person as the clerk thinks fit.

[34] Section 562J (3)

Omit “to the protected person”.

Insert instead “(unless it is impracticable or unnecessary to do so) to be given to or sent by post to each protected person”.

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

Omit the section.

[36] Section 562M Appeal to District Court by defendant against order made by Local Court or Children's Court

Omit the section.

[37] Section 562N

Omit the section. Insert instead:

562N Costs

- (1) Subject to this section:
 - (a) a court may, in proceedings under this Part, award costs to the complainant or the defendant, and
 - (b) such costs are to be determined in accordance with section 81 of the *Justices Act 1902*.
- (2) A court is not to award costs against a complainant who is the person for whose benefit an apprehended domestic violence order is sought unless satisfied that the complaint was frivolous or vexatious. This subsection has effect despite any other Act or law.
- (3) A court is not to award costs against a police officer who makes a complaint unless satisfied that the police officer made the complaint knowing it contained matter that was false or misleading in a material particular. This subsection has effect despite any other Act or law.
- (4) The following provisions have effect in relation to the District Court:
 - (a) Subsection (1) applies to the District Court only when it is exercising original jurisdiction under section 562W.
 - (b) Section 81 of the *Justices Act 1902*, in its application to the District Court when exercising that jurisdiction, applies to the District Court in the same way as it applies to a Justice or Justices (and with any prescribed modifications).

- (c) This section does not affect the operation of any provisions of the *Justices Act 1902* or any other Act or law relating to the payment of costs in proceedings in an appeal to the District Court.

[38] Sections 562NB and 562NC

Insert after section 562NA:

562NB Publication of names and identifying information about children under 16 involved in AVO proceedings

- (1) The name of a child:
 - (a) for whose benefit or against whom an order is sought in any relevant proceedings, or
 - (b) who appears, or is reasonably likely to appear, as a witness before a court in any relevant proceedings, or
 - (c) who is, or is reasonably likely to be, mentioned or otherwise involved in any relevant proceedings,

must not be published or broadcast before the proceedings are commenced or after the proceedings have been commenced and before they are disposed of.

- (2) A person who publishes or broadcasts the name of a child in contravention of subsection (1) is guilty of an offence.

Maximum penalty: 200 penalty units or imprisonment for a period not exceeding 2 years or both (in the case of an individual) or 2,000 penalty units (in the case of a corporation).

- (3) Subsection (1) does not prohibit:
 - (a) the publication or broadcasting of an official report of the proceedings of a court that includes the name of any child the publication or broadcasting of which would otherwise be prohibited by subsection (1), or
 - (b) the publication or broadcasting of the name of a child with the consent of the court.

- (4) For the purposes of this section, a reference to the name of a child includes a reference to any information, picture or other material:
 - (a) that identifies the child, or
 - (b) that is likely to lead to the identification of the child.
- (5) The offence created by this section is an offence of strict liability.
- (6) In this section:
 - child* means a person who is under the age of 16 years.
 - court* includes the Clerk of a Local Court or the Registrar of the Children's Court.
 - relevant proceedings* means proceedings in or before a court under this Part for or relating to an apprehended violence order.

562NC Publication of names and identifying information about persons involved in ADVO proceedings

- (1) A court may direct that the name of a person (other than a child to whom section 562NB applies):
 - (a) for whose benefit or against whom an order is sought in any relevant proceedings, or
 - (b) who appears, or is reasonably likely to appear, as a witness before a court in any relevant proceedings, or
 - (c) who is, or is reasonably likely to be, mentioned or otherwise involved in any relevant proceedings,must not be published or broadcast before the proceedings are commenced or after the proceedings have been commenced and before they are disposed of.
- (2) A person who publishes or broadcasts the name of a person in contravention of a direction under subsection (1) is guilty of an offence.

Maximum penalty: 200 penalty units or imprisonment for a period not exceeding 2 years or both (in the case of an individual) or 2,000 penalty units (in the case of a corporation).

- (3) Subsection (1) does not prohibit:
 - (a) the publication or broadcasting of an official report of the proceedings of a court that includes the name of any person the publication or broadcasting of which would otherwise be prohibited by subsection (1), or
 - (b) the publication or broadcasting of the name of a person with the consent of the person or of the court.
- (4) For the purposes of this section, a reference to the name of a person includes a reference to any information, picture or other material:
 - (a) that identifies the person, or
 - (b) that is likely to lead to the identification of the person.
- (5) The offence created by this section is an offence of strict liability.
- (6) A court may vary or revoke a direction given by a court under this section. However, only the District Court may vary or revoke a direction given by the District Court.
- (7) Nothing in this section affects section 562NB.
- (8) In this section:

court includes the Clerk of a Local Court or the Registrar of the Children's Court.

relevant proceedings means proceedings in or before a court under this Part for or relating to an apprehended domestic violence order.

[39] Section 562ND

Insert as section 562ND:

562ND Right to presence of supportive person

- (1) In this section:

party to a proceeding in relation to a complaint for or application relating to an order means the person for whose protection the order is sought or the defendant, but does not include a child to whom section 27 of the *Evidence (Children) Act 1997* applies in relation to the proceeding.

- (2) A party to a proceeding in relation to a complaint for or application relating to an order who gives evidence in the proceeding is entitled to choose a person whom the party would like to have present near him or her when giving evidence.
- (3) Without limiting a party's right to choose such a person, that person:
 - (a) may be a parent, guardian, relative, friend or support person of the party, and
 - (b) may be with the party as an interpreter, for the purpose of assisting the party with any difficulty in giving evidence associated with a disability, or for the purpose of providing the party with other support.
- (4) To the extent that the court considers it reasonable to do so, the court must make whatever direction is appropriate to give effect to a party's decision to have such a person present near the party, and within the party's sight, when the party is giving evidence.
- (5) The court may permit more than one support person to be present with the party if the court thinks that it is in the interests of justice to do so.

[40] Part 15A, Division 3, heading

Omit "interstate restraint orders". Insert instead "external protection orders".

[41] Section 562RA

Insert before section 562S:

562RA Definitions

In this Division:

appropriate court, in relation to an external protection order, means:

- (a) a Local Court if the person against whom the order has been made is 18 or more years of age, or

(b) the Children's Court if the person against whom the order has been made is less than 18 years of age,

on the day on which an application is made under this Division for the registration of the order.

external protection order means an order made by a court of another State or Territory or New Zealand that has been made to prevent a person from acting in a manner specified in section 562AE or 562AI, and includes an order made by such a court that is of a kind prescribed by the regulations.

registered external protection order means an external protection order registered under this Division.

[42] Sections 562S–562V

Omit “interstate restraint” wherever occurring.
Insert instead “external protection”.

[43] Section 562U Effect of registration of external protection order

Omit “Division 2” wherever occurring from section 562U (1).
Insert instead “this Part”.

[44] Section 562U (2)

Omit “State or Territory”. Insert instead “State, Territory or country”.

[45] Part 15A, Divisions 4 and 5

Insert after section 562V:

Division 4 Jurisdiction of and appeals to District Court

562W Jurisdiction of District Court to issue AVO following dismissal of complaint by Local Court or Children's Court

(1) The District Court has original jurisdiction to issue an apprehended violence order, where a complaint by or on behalf of the person for whose protection an order has been sought has been dismissed by a Local Court or the Children's Court.

- (2) An application (in this Part referred to as 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.
- (3) 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.
- (4) Further evidence may be given, but only with the leave of the District Court.
- (5) The District Court has jurisdiction to vary or revoke an order made by it.
- (6) 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).

562WA Appeal to District Court about making, variation or revocation of apprehended violence order

- (1) A defendant may appeal to the District Court under Part 5A of the *Justices Act 1902* against an apprehended violence order made by a Local Court or the Children's Court.
- (2) A party to an apprehended violence order may appeal to the District Court under Part 5A of the *Justices Act 1902* against any order of a Local Court or the Children's Court to vary or revoke the apprehended violence order or to refuse to vary or revoke it.
- (3) Part 5A of the *Justices Act 1902* applies with any necessary adaptations to such an appeal.
- (4) An order made by the Clerk of a Local Court or the Registrar of the Children's Court under this Part is taken, for the purposes of this section and Part 5A of the *Justices Act 1902*, to have been made by the court concerned.
- (5) In this section:
party to an apprehended violence order means:
 - (a) the protected person (whether or not the complainant or applicant), if of or above the age of 16 years, or

- (b) if the complainant or applicant for the order was a police officer—that or any other police officer, or
- (c) the defendant or respondent.

562WB Presumption against stay of order

- (1) The lodging of a notice of appeal under section 562WA does not have the effect of staying the operation of the order concerned.
- (2) The original court may, on application by the defendant, stay the operation of the order, if satisfied that it is safe to do so, having regard to the need to ensure the safety of the protected person or any other person.
- (3) A stay on the operation of the order continues until the appeal is finally determined, subject to any order or direction of the District Court.
- (4) This section has effect despite section 562WA (3) of this Act and section 127 of the *Justices Act 1902*.
- (5) A stay on the operation of the order does not have effect if the appellant is in custody when the appeal is made, unless and until the appellant enters into a bail undertaking in accordance with the *Bail Act 1978*, or bail is dispensed with. In the application of the *Bail Act 1978* to the appellant, the appellant is taken to be an accused person who, because of the prohibitions and restrictions imposed by the order, is in custody.
- (6) In this section:
original court, in relation to an order, means:
 - (a) a Local Court, if the order was made by a Local Court or the Clerk of a Local Court, or
 - (b) the Children’s Court, if the order was made by the Children’s Court or the Registrar of the Children’s Court.

562WC 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.

Division 5 Miscellaneous

562X Arrangements regarding classification of orders

- (1) If a court is at any time unable to determine under which of Divisions 1A and 1B an apprehended violence order should be made, it may make the order under whichever Division it thinks fit.
- (2) If a court is at any time unable to determine under which of Divisions 1A and 1B an apprehended violence order was or should have been made, it may treat the order as having been made under whichever Division it thinks fit.
- (3) If an apprehended violence order is made or treated as having been made under either Division 1A or Division 1B but should have been made under the other Division, the order is not invalid on that ground and is taken to have been made under the other Division.

562Y Parts 4A and 5A of Justices Act 1902 not affected

Except as expressly provided, nothing in this Part affects the operation that Parts 4A and 5A of the *Justices Act 1902* would have if Division 4 of this Part had not been enacted.

562Z Review of Part

- (1) The Minister is to review this Part to determine whether the policy objectives of the Part remain valid and whether the terms of the Part remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 2 years from the commencement of this section.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period referred to in subsection (2).

[46] Eleventh Schedule Savings and transitional provisions

Insert at the end of the Schedule (with the insertion of appropriate Part and clause numbers):

**Part Crimes Amendment (Apprehended Violence)
Act 1999**

Definitions

(1) In this Part:

amending Act means the *Crimes Amendment (Apprehended Violence) Act 1999*.

(2) Words and expressions used in this Part have the same meanings as in Part 15A.

Existing orders

(1) An apprehended violence order in force immediately before the omission of section 562B by the amending Act is taken to be an apprehended violence order issued under Part 15A as amended by the amending Act.

(2) An apprehended violence order in force immediately before the omission of section 562B by the amending Act is taken to be:

(a) an apprehended domestic violence order, if the protected person (or at least one of the protected persons) for whose protection the order was made has a domestic relationship with the person against whom it was issued, or

(b) an apprehended personal violence order, if the protected person (or each of the protected persons) for whose protection the order was made does not have a domestic relationship with the person against whom it was issued.

(3) An order (other than an order referred to in subclause (1) or (2)) in force under Part 15A immediately before the commencement of an amendment made by the amending Act is taken to have been made under that Part as amended by the amending Act.

- (4) A registered interstate restraint order within the meaning of Part 15A immediately before its amendment by the amending Act is taken to be a registered external protection order within the meaning of section 562RA as inserted by the amending Act.

Existing complaints and applications

- (1) A complaint for an apprehended violence order pending immediately before the omission of section 562B by the amending Act is taken to be:
- (a) a complaint for an apprehended domestic violence order, if the protected person (or at least one of the protected persons) for whose protection the order is sought has a domestic relationship with the person against whom it is sought, or
 - (b) a complaint for an apprehended personal violence order, if the protected person (or each of the protected persons) for whose protection the order is sought does not have a domestic relationship with the person against whom it is sought.
- (2) An application (other than a complaint referred to in subclause (1)) pending under a provision of Part 15A immediately before the commencement of an amendment made by the amending Act is taken to have been made under that Part as amended by the amending Act.

References to interstate restraint orders

- (1) A reference (however expressed) in any other Act, in any instrument under any Act or in any other document of any kind to an interstate restraint order within the meaning of Part 15A is taken to be a reference to an external protection order within the meaning of section 562RA as inserted by the amending Act.
- (2) A reference (however expressed) in any other Act, in any instrument under any Act or in any other document of any kind to a registered interstate restraint order within the meaning of Part 15A is taken to be a reference to a registered external protection order within the meaning of section 562RA as inserted by the amending Act.

Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the amending Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the amending Act or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

[Minister's second reading speech made in—
Legislative Council on 25 November 1999
Legislative Assembly on 2 December 1999 am]