



New South Wales

# Crimes Amendment (Apprehended Violence) Act 2006 No 73

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New South Wales

## **Crimes Amendment (Apprehended Violence) Act 2006 No 73**

Act No 73, 2006

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An Act to amend the *Crimes Act 1900* in relation to the protection of persons from domestic and personal violence; and for other purposes. [Assented to 27 October 2006]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Crimes Amendment (Apprehended Violence) Act 2006*.

**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 Schedules 1 and 2.

**4 Amendment of other Acts and regulations**

The Acts and regulations specified in Schedule 3 are amended as set out in that Schedule.

**5 Repeal of Act**

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

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## Schedule 1      Amendment of Crimes Act 1900 relating to Part 15A

(Section 3)

### Part 15A

Omit the Part. Insert instead:

## Part 15A Apprehended violence orders

### Division 1      Preliminary

#### 562A      Definitions

In this Part:

***apprehended domestic violence order*** means an order under Division 2.

***apprehended personal violence order*** means an order under Division 3.

***apprehended violence order*** means:

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

***authorised officer*** has the same meaning as in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

***child*** means a person under the age of 16 years.

***court*** means:

- (a) a Local Court, or
- (b) the Children's Court, or
- (c) the District Court,

exercising jurisdiction under section 562ZZP.

***defendant*** means the person against whom an order is made or is sought to be made.

***domestic relationship***—see section 562B.

***domestic violence offence*** means a personal violence offence committed by a person against another person with whom the person who commits the offence has or has had a domestic relationship.

***final order*** means:

- (a) in relation to an interim apprehended domestic violence order, an order made under Division 2, or

- (b) in relation to an interim apprehended personal violence order, an order made under Division 3.

**intimidation**—see section 562D.

**order** means an apprehended violence order (including a telephone interim order or an interim order made by a court) in force under this Part and, if the order is varied under this Part, means the order as so varied.

**personal violence offence** means:

- (a) an offence under, or mentioned in, section 19A, 24, 26, 27, 28, 29, 30, 31, 33, 33A, 35, 35A, 37, 38, 39, 41, 44, 46, 47, 48, 49, 58, 59, 61, 61B, 61C, 61D, 61E, 61I, 61J, 61JA, 61K, 61L, 61M, 61N, 61O, 65A, 66A, 66B, 66C, 66D, 66EA, 80A, 80D, 86, 87, 93G, 93GA, 195, 196, 198, 199, 200 or 562ZG, or
- (b) an offence of attempting to commit an offence referred to in paragraph (a).

**property recovery order** means a property recovery order made under section 562ZF.

**protected health care provider** means a person who is employed or engaged to provide any care, treatment, advice or service in respect of the physical or mental health of any protected person.

**protected person** means the person for whose protection an order is sought or made.

**relative**—see section 562C.

**stalking** includes 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** includes radio, facsimile and any other communication device.

**telephone interim order** means an interim apprehended violence order made by an authorised officer in accordance with Subdivision 1 of Division 4.

#### **562B Meaning of “domestic relationship”**

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

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- (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 as the other person, or
  - (e) is living or has lived as a long-term resident in the same residential facility as the other person (not being a facility that is a correctional centre within the meaning of the *Crimes (Administration of Sentences) Act 1999* or a detention centre within the meaning of the *Children (Detention Centres) Act 1987*), or
  - (f) has or has had a relationship involving his or her dependence on the ongoing paid or unpaid care of the other person, or
  - (g) is or has been a relative of the other person, or
  - (h) in the case of an Aboriginal person or a Torres Strait Islander, is or has been part of the extended family or kin of the other person according to the Indigenous kinship system of the person's culture.

**562C Meaning of "relative"**

For the purposes of this Part, a person is a *relative* of another 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, step-brother, step-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 has 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, half-sister, step-brother or step-sister, or
  - (iv) an uncle or aunt, or
  - (v) a nephew or niece, or
  - (vi) a cousin,  
of the person's partner.

**562D Meaning of “intimidation”**

- (1) For the purposes of this Part, *intimidation* of a person means:
  - (a) conduct amounting to harassment or molestation of the person, or
  - (b) an approach made to the person by any means (including by telephone, telephone text messaging, e-mailing and other technologically assisted means) that causes the person to fear for his or her safety, 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.
- (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.

**Division 2 Apprehended domestic violence orders**

**562E Objects of Division**

- (1) The objects of this Division are:
  - (a) to ensure the safety and protection of all persons, including children, who experience or witness domestic violence, and
  - (b) to reduce and prevent violence between persons who are in a domestic relationship with each other, and

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- (c) to enact provisions that are consistent with certain principles underlying the Declaration on the Elimination of Violence against Women, and
  - (d) to enact provisions that are consistent with the United Nations Convention on the Rights of the Child.
- (2) This Division aims to achieve its objects by:
- (a) empowering courts to make apprehended domestic violence orders to protect people from domestic violence, intimidation, stalking and harassment, 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 recognises:
- (a) that domestic violence, in all its forms, is unacceptable behaviour, and
  - (b) that domestic violence is predominantly perpetrated by men against women and children, and
  - (c) that domestic violence occurs in all sectors of the community, and
  - (d) that domestic violence extends beyond physical violence and may involve the exploitation of power imbalances and patterns of abuse over many years, and
  - (e) that domestic violence occurs in traditional and non-traditional settings, and
  - (f) the particularly vulnerable position of children who are exposed to domestic violence as victims or witnesses, and the impact that such exposure can have on their current and future physical, psychological and emotional well-being, and
  - (g) that domestic violence is best addressed through an integrated framework of prevention and support and, in certain cases, may be the subject of appropriate intervention by the court.
- (4) A court that, or person who, exercises any power conferred by or under this Division in relation to domestic violence must be guided in the exercise of that power by the objects of this Division.



**562F Application for making of ADVO by court**

- (1) An application may be made in accordance with Subdivision 2 of Division 7 for an apprehended domestic violence order for the protection of:
  - (a) a person against another person with whom he or she has or has had a domestic relationship, or
  - (b) two or more persons against another person with whom at least one of those persons has or has had a domestic relationship.
- (2) An application is to be treated as an application for an apprehended personal violence order if none of the persons for whose protection the order would be made has or has had a domestic relationship with the person against whom it is sought.

**562G Court may make ADVO**

- (1) A court may, on application, make an apprehended domestic violence order if it is satisfied on the balance of probabilities that a person who has or has had 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 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 a child, or
  - (b) the person is, in the opinion of the court, suffering from an appreciably below average general intelligence function, or
  - (c) in the opinion of the court:
    - (i) the person has been subjected at any time to conduct by the defendant amounting to a personal violence offence, and

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- (ii) there is a reasonable likelihood that the defendant may commit a personal violence offence against the person, and
  - (iii) the making of the order is necessary in the circumstances to protect the person from further violence.
- (3) For the purposes of this section, conduct may amount to intimidation 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.

**Note.** Division 5 provides for the matters that may be included in orders and the effect of contravening orders.

**562H Matters to be considered by court**

- (1) In deciding whether or not to make an apprehended domestic violence order, the court must consider the safety and protection of the protected person and any child directly or indirectly affected by the conduct of the defendant alleged in the application for the order.
- (2) Without limiting subsection (1), in deciding whether or not to make an apprehended domestic violence order, the court is to consider:
  - (a) in the case of an order that would prohibit or restrict access to the defendant's residence—the effects and consequences on the safety and protection of the protected person and any children living or ordinarily living at the residence if an order prohibiting or restricting access to the residence is not made, and
  - (b) any hardship that may be caused by making or not making the order, particularly to the protected person and any children, and
  - (c) the accommodation needs of all relevant parties, in particular the protected person and any children, and
  - (d) any other relevant matter.

- (3) When making an apprehended domestic violence order, the court is to ensure that the order imposes only those prohibitions and restrictions on the defendant that, in the opinion of the court, are necessary for the safety and protection of the protected person, and any child directly or indirectly affected by the conduct of the defendant alleged in the application for the order, and the protected person's property.
- (4) If an application is made for an apprehended domestic violence order that prohibits or restricts access by the defendant to any premises or place and the court hearing proceedings in respect of the application decides to make an order without the prohibition or restriction sought, the court is to explain the reasons for that decision.

### **Division 3 Apprehended personal violence orders**

#### **562I Object of Division**

- (1) The object of this Division is to ensure the safety and protection of all persons who experience personal violence outside a domestic relationship.
- (2) This Division aims to achieve its object by:
  - (a) empowering courts to make apprehended personal violence orders in appropriate circumstances to protect people from violence, intimidation, stalking and harassment, and
  - (b) ensuring that access to courts is as speedy, inexpensive, safe and simple as is consistent with justice, and
  - (c) ensuring that other avenues of dispute resolution are encouraged where appropriate.

#### **562J Application for making of APVO by court**

- (1) An application may be made in accordance with Subdivision 2 of Division 7 for an apprehended personal violence order for the protection of one or more persons against another person.
- (2) An application is to be treated as an application for an apprehended domestic violence order if one or more of the persons for whose protection the order would be made has or has had a domestic relationship with the person against whom it is sought.

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**562K Court may make APVO**

- (1) A court may, on application, 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 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 a child, 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 intimidation 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.

**Note.** Division 5 provides for the matters that may be included in orders and the effect of contravening orders.

**562L Matters to be considered by court**

- (1) In deciding whether or not to make an apprehended personal violence order, the court must consider the safety and protection of the person seeking the order and any child directly or indirectly affected by the conduct of the defendant alleged in the application for the order.

- (2) Without limiting subsection (1), in deciding whether or not to make an apprehended personal violence order, the court is to consider:
  - (a) in the case of an order that would prohibit or restrict access to the defendant's residence—the effects and consequences on the safety and protection of the protected person and any children living or ordinarily living at the residence if an order prohibiting or restricting access to the residence is not made, and
  - (b) any hardship that may be caused by making or not making the order, particularly to the protected person and any children, and
  - (c) the accommodation needs of all relevant parties, in particular the protected person and any children, and
  - (d) any other relevant matter.
- (3) When making an apprehended personal violence order, the court is to ensure that the order imposes only those prohibitions and restrictions on the defendant that, in the opinion of the court, are necessary for the safety and protection of the protected person, and any child directly or indirectly affected by the conduct of the defendant alleged in the application for the order, and the protected person's property.
- (4) If an application is made for an apprehended personal violence order that prohibits or restricts access by the defendant to any premises or place and the court hearing proceedings in respect of the application decides to make an order without the prohibition or restriction sought, the court is to explain the reasons for that decision.

**562M Discretion to refuse to issue process in APVO matters**

- (1) An authorised officer may, in accordance with this section, refuse to issue process where an application for an apprehended personal violence order is made, unless the application was made by a police officer.
- (2) An authorised officer refuses to issue process by deciding not to issue a warrant referred to in section 562ZZI or an application notice under Part 6 of the *Local Courts Act 1982*.
- (3) An authorised officer may refuse to issue process if the authorised officer is satisfied that the application:
  - (a) is frivolous, vexatious, without substance or has no reasonable prospect of success, or

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- (b) could be dealt with more appropriately by mediation or other alternative dispute resolution.
  - (4) Unless satisfied that there are compelling reasons for doing so, an authorised officer is not to refuse to issue process if the application discloses allegations of any of the following:
    - (a) a personal violence offence,
    - (b) an offence under section 545AB,
    - (c) harassment relating to the protected person's race, religion, homosexuality, transgender status, HIV/AIDS or other disability.
  - (5) In determining whether or not to issue process, the authorised officer 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 an application for an apprehended personal violence order,
    - (f) the relative bargaining powers of the parties,
    - (g) whether the application is in the nature of a cross application,
    - (h) any other matters that the authorised officer considers relevant.
  - (6) If the authorised officer refuses to issue process under this section, the authorised officer must record the reasons for doing so in writing.

**562N Referral of matters to mediation**

- (1) At any time when considering whether to make an apprehended personal violence order or after making such an order, a court may refer the protected person and the defendant for mediation under the *Community Justice Centres Act 1983*.

- (2) A matter is not to be referred to mediation under this section if the court is of the opinion that:
- (a) there has been a history of physical violence to the protected person by the defendant, or
  - (b) the protected person has been subjected to conduct by the defendant amounting to a personal violence offence, or
  - (c) the protected person has been subjected to conduct by the defendant amounting to an offence under section 545AB, or
  - (d) the defendant has engaged in conduct amounting to harassment relating to the protected person's race, religion, homosexuality, transgender status, HIV/AIDS or other disability, or
  - (e) there has been a previous attempt at mediation in relation to the same matter and the attempt was not successful.
- (3) Nothing in this section affects section 24 of the *Community Justice Centres Act 1983*.
- Note.** Section 24 of the *Community Justice Centres Act 1983* enables the Director of Community Justice Centres to decline to consent to the acceptance of a dispute for mediation and enables the Director or a mediator to terminate a mediation session at any time.
- (4) The Director of Community Justice Centres is to provide a written report on the outcome of the mediation or attempted mediation to the court that referred the matter for mediation.
- (5) On receiving a report under subsection (4), the court is to take such action in accordance with this Act as it considers appropriate in relation to the matter concerned and in doing so may take into account the contents of the report.
- (6) If a matter is referred to mediation under this section without an order having been made, any proceedings in relation to the application are taken to have been stayed until a report is provided under subsection (4).
- (7) If the Director of Community Justice Centres provides a report under subsection (4) or a mediator conducts a mediation of a matter referred under this section, the Director or the mediator is taken, for the purposes of the provisions of the *Community Justice Centres Act 1983*, to be exercising those functions for the purpose of executing that Act.

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## **Division 4 Interim apprehended violence orders**

### **Subdivision 1 Telephone interim orders**

#### **562O Application by telephone**

- (1) A police officer may apply by telephone to an authorised officer for an interim apprehended domestic violence order or an interim apprehended personal violence order.
- (2) 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 officer 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 officer.

#### **562P When application may be made**

- (1) An application may be made by telephone if:
  - (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) a police officer has good reason to believe an order needs to be made immediately to ensure the safety and protection of the person who would be protected by the order or to prevent substantial damage to any property of that person.
- (2) An application may be made at any time and whether or not the court is sitting.

#### **562Q Obligation to apply for order in certain circumstances**

- (1) An application must be made under this Subdivision if:
  - (a) a police officer investigating the incident concerned suspects or believes that:
    - (i) a domestic violence offence or an offence against section 545AB has recently been or is being committed, or is imminent, or is likely to be committed, against the person for whose protection an order would be made, or



- (ii) an offence under section 227 (Child and young person abuse) of the *Children and Young Persons (Care and Protection) Act 1998* (but only in relation to a child) has recently been or is being committed, or is imminent, or is likely to be committed, against the person for whose protection an order would be made, or
    - (iii) proceedings have been commenced against a person for an offence referred to in subparagraph (i) or (ii) against the person for whose protection an order would be made, and
  - (b) the police officer has good reason to believe an order needs to be made immediately to ensure the safety and protection of the person who would be protected by the order or to prevent substantial damage to any property of that person.
- (2) The application may be made by any police officer.
- (3) An application need not be made in the circumstances referred to in subsection (1) if an order is already in force against the defendant for the protection of the person concerned.
- (4) An application need not be made in the circumstances referred to in subsection (1) if the person for whose protection an order would be made is at least 16 years of age at the time of the incident and a police officer investigating the incident believes:
- (a) that the person intends to make an application for an order, or
  - (b) that there is good reason not to make the application.
- (5) However, if the police officer investigating the incident believes that there is good reason not to make the application, the police officer must make a written record of the reason.
- (6) For the purposes of subsection (4), the reluctance of the person to make an application does not, on its own, constitute a good reason for a police officer not to make an application if the police officer reasonably believes that:
- (a) the person has been the victim of violence or there is a significant threat of violence to the person, or
  - (b) the person has an intellectual disability and has no guardian.

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**562R Making of interim order**

- (1) An authorised officer to whom an application is made under this Subdivision may, if satisfied that there are reasonable grounds for doing so, make the interim apprehended violence order (a *telephone interim order*).
- (2) Section 562N (Referral of matters to mediation) applies to an authorised officer when considering whether to make a telephone interim apprehended personal violence order or after making such an order in the same way as it applies to a court.
- (3) Sections 562ZL, 562ZM and 562ZZB apply to the making of a telephone interim order in the same way as they apply to other orders.

**562S Prohibitions and restrictions imposed by telephone interim orders**

- (1) An authorised officer to whom an application is made for a telephone interim order may, by the order, impose any or all of the following prohibitions or restrictions on the behaviour of the defendant if satisfied that there are reasonable grounds for doing so:
  - (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 or restricting the possession of all or any specified firearms by the defendant,
  - (e) prohibiting the defendant from destroying or deliberately damaging or interfering with the protected person's property.

- (2) If the authorised officer makes an order that prohibits or restricts the possession of firearms by the defendant, the authorised officer may by the order require the defendant to dispose of firearms in the defendant's possession and to surrender to the Commissioner of Police any licence, permit or other authority under the *Firearms Act 1996* or the *Weapons Prohibition Act 1998* held by the defendant.
- (3) An authorised officer may not include prohibitions or restrictions referred to in subsection (1) in a telephone interim order if the defendant is a child.
- (4) Any prohibition or restriction imposed by a telephone interim order under this section is in addition to any matters that are taken to be specified by the order under section 562ZE.  
**Note.** Section 562ZE specifies the conduct (such as assault, harassment, intimidation or stalking) that is prohibited by every order, unless ordered otherwise.
- (5) Section 562ZD does not apply to a telephone interim order.

**562T Telephone interim order taken to be application for court order**

- (1) A telephone interim order is taken, for the purposes of this Part, to be an application for an order under Subdivision 2 of Division 7.
- (2) The telephone interim order is to contain a direction for the appearance of the defendant at a hearing of the application by an appropriate court on a date specified in the order by the authorised officer who makes it (being a date that is not more than 28 days after the making of the telephone interim order).

**562U Recording of order**

- (1) The authorised officer who makes a telephone interim order is to inform the applicant of the terms of the order, the date of the hearing of the application and the date and time when the order was made.
- (2) The applicant is to complete a form of order in the terms so indicated and write on it the date of the hearing of the application, the name of the authorised officer and the date and time when the order was made.
- (3) The order so completed is taken to be an order duly made under this Subdivision.
- (4) An authorised officer may, instead of proceeding under subsection (1), furnish the telephone interim order to the applicant by facsimile transmission.

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- (5) The copy of an order produced by transmission under subsection (4) is taken to be the original document.

**562V 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.

**562W Duration**

- (1) A telephone interim order remains in force until midnight on the twenty-eighth day after the order is made, unless it is sooner revoked or ceases to have effect under subsection (2) or the application for a final order is withdrawn or dismissed.
- (2) If a court makes an order against a defendant for the protection of a person protected by a telephone interim order, the telephone interim order ceases to have effect:
- (a) in a case where the defendant is present at court—when the court order is made, or
  - (b) in any other case—when the defendant is served under section 562ZZA with a copy of the order.

**562X Variation or revocation**

- (1) A telephone interim order may be varied or revoked by:
- (a) the authorised officer who made it or any other authorised officer, or
  - (b) any court dealing with an application for an order against the same defendant.
- (2) A telephone interim order may be varied:
- (a) by amending or deleting any prohibitions or restrictions specified in the order, or
  - (b) by specifying additional prohibitions or restrictions in the order.
- (3) An application for a variation or the revocation of a telephone interim order may be made only by a police officer.
- (4) If there is more than one protected person under a telephone interim order, the order may be varied or revoked in its application to all of the protected persons or in relation to any one or more of the protected persons.

- (5) Notice of the variation or revocation is to be served on the defendant, each protected person affected by the variation or revocation and the Commissioner of Police.
- (6) The duration of a telephone interim order may not be varied under this section.

**562Y Detention of defendant for service of documents**

- (1) If a police officer makes or is about to make an application for a telephone interim order, the police officer may direct the person against whom the order is sought to remain at the scene of the incident concerned or, in a case where the person has left the scene of the incident, at another place where a police officer locates the person.
- (2) If the person refuses to remain, the police officer may arrest and detain the person at the scene of the incident or other place, or arrest and take the person to a police station and there detain the person, until the telephone interim order is made and served.
- (3) If a telephone interim order or variation of a telephone interim order is made and a copy of the order or variation is required to be served personally under this Act, a police officer who reasonably suspects that a person is the defendant in relation to the order may direct the person to remain where the person is for the purpose only of serving a copy of the document concerned on the person.
- (4) If the person refuses to remain, the police officer may arrest and detain the person at the same place, or arrest and take the person to a police station and there detain the person, for the purpose only of serving the document concerned on the person.

**562Z Purported renewal or continuance**

- (1) A telephone interim order may not be renewed and a further telephone interim order may not be made in respect of the same incident.
- (2) If a court purports to renew or continue a telephone interim order:
  - (a) the order is taken to be an interim apprehended violence order made by the court at that time, and
  - (b) further service of the order is not required.

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## **Subdivision 2 Interim orders made by court or registrar**

### **562ZA Interim court orders**

- (1) A court may, on application made in accordance with Subdivision 2 of Division 7, 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 either an interim apprehended domestic violence order or an interim apprehended personal violence order.
- (3) 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.
- (4) A court may, in deciding whether to make an interim order, admit affidavit evidence or a written statement by a police officer that is 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
  - (b) the court is satisfied that the matter requires urgent consideration by the court.
- (5) If an interim order is made by a court:
  - (a) the court is to require the defendant to appear at a further hearing of the matter by the court as soon as practicable after the interim order is made, and
  - (b) the court may, at the further hearing or an adjourned further hearing, make a final order in the same terms as the interim order or with variations or may revoke the interim order (whether or not the defendant appears at any such further hearing).
- (6) An interim order has, while it remains in force, the same effect as a final order.

### **562ZB Interim orders made by registrar of court with consent**

- (1) The registrar of a Local Court or the Registrar of the Children's Court may, on application, make an interim apprehended violence order if satisfied that the protected person and the defendant consent to the making of the order.

- (2) Section 562ZW applies in relation to the making of an order by the registrar of a court under this section in the same way as it applies to the making of an interim apprehended violence order by a court.
- (3) If an interim apprehended violence order is made by a registrar:
  - (a) the registrar is to require the defendant to appear at a further hearing of the matter before a court as soon as practicable after the interim order is made, and
  - (b) the court may, at the further hearing or an adjourned hearing, make a final order in the same terms as the interim order or with variations or may revoke the interim order.
- (4) An interim apprehended violence order made by the registrar of a Local Court or the Registrar of the Children's Court under this section is taken to have been made by a Local Court or the Children's Court (as appropriate) and has effect accordingly.
- (5) Section 562ZZ applies to a registrar who makes an interim apprehended violence order under this section.

**562ZC Interim order ceases when court order made or served**

- (1) An interim order made by a court remains in force until:
  - (a) it is revoked, or
  - (b) it ceases to have effect under subsection (2), or
  - (c) the application for a final order is withdrawn or dismissed, whichever first occurs.
- (2) If a final order is made in respect of an interim order (whether with or without variation), the interim order ceases to have effect:
  - (a) in a case where the defendant is present at court—when the final order is made, or
  - (b) in any other case—when the defendant is served under section 562ZZA with a copy of the final order.

**Division 5 Content and effect of apprehended violence orders**

**562ZD Prohibitions and restrictions imposed by orders**

- (1) When making an order, a court may impose such prohibitions or restrictions on the behaviour of the defendant as appear necessary or desirable to the court and, in particular, to ensure the safety and protection of the person in need of protection and any children from domestic or personal violence.

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- (2) Without limiting the generality of subsection (1), an order may do all or any of the following:
- (a) prohibit or restrict approaches by the defendant to the protected person,
  - (b) prohibit or restrict access by the defendant to any or all of the following:
    - (i) to any premises occupied by the protected person from time to time or to any specified premises occupied by the protected person,
    - (ii) to any place where the protected person works from time to time or to any specified place of work of the protected person,
    - (iii) to any specified premises or place frequented by the protected person,  
whether or not the defendant has a legal or equitable interest in the premises or place,
  - (c) prohibit or restrict the defendant from approaching the protected person, or any such premises or place, within 12 hours of consuming intoxicating liquor or illicit drugs,
  - (d) prohibit or restrict the possession of all or any specified firearms by the defendant,
  - (e) prohibit the defendant from destroying or deliberately damaging or interfering with the protected person's property,
  - (f) prohibit or restrict specified behaviour by the defendant which might affect the protected person.
- (3) If the court makes an order that prohibits or restricts the possession of firearms by the defendant, the court may by the order require the defendant to dispose of firearms in the defendant's possession and to surrender to the Commissioner of Police any licence, permit or other authority under the *Firearms Act 1996* or the *Weapons Prohibition Act 1998* held by the defendant.

**562ZE Order prohibits stalking, intimidation etc**

Every order is taken to specify that the defendant is prohibited from doing any of the following:

- (a) assaulting, molesting, harassing, threatening or otherwise interfering with the protected person or a person with whom the protected person has a domestic relationship,



- (b) engaging in any other conduct that intimidates the protected person or a person with whom the protected person has a domestic relationship,
- (c) stalking the protected person or a person with whom the protected person has a domestic relationship.

**562ZF Ancillary property recovery orders may be made**

- (1) A court or an authorised officer may, when making an apprehended domestic violence order or an interim apprehended domestic violence order, make an ancillary property recovery order if:
  - (a) the protected person has left personal property at premises which the defendant occupies, or
  - (b) the defendant has left personal property at premises which the protected person occupies.
- (2) A property recovery order may do any or all of the following:
  - (a) direct the person who occupies the premises concerned to allow access to the premises to the person who has left the personal property at the premises (and any police officer or person who is authorised by the order to accompany the person) to enable the removal of the property,
  - (b) provide that the access to the premises concerned is to be at a time or times arranged between the occupier of the premises and a police officer (whether or not the order requires the person recovering the property to be accompanied by a police officer),
  - (c) require the person who has left the personal property at the premises to be accompanied by a police officer when removing the property from the premises,
  - (d) provide that the person who has left the personal property at the premises may be accompanied by any other specified person,
  - (e) specify the type or types of property to which the order relates.
- (3) A property recovery order does not authorise entry to any premises by means of force.
- (4) A property recovery order does not confer any right on a person to take property that the person does not own or have a legal right to possess even if the type of property is specified in the order.

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- (5) A property recovery order in respect of personal property left by the defendant on premises may not be made in the absence of the defendant.
  - (6) A person must not, without reasonable excuse, contravene an order under this section or obstruct a person who is attempting to comply with an order under this section.  
Maximum penalty: 50 penalty units.
  - (7) The onus of proof of reasonable excuse in proceedings for an offence against subsection (6) lies on the person accused of the offence.

**562ZG Offence of contravening order**

- (1) A person who knowingly contravenes a prohibition or restriction specified in an order made against the person is guilty of an offence.  
Maximum penalty: 50 penalty units or imprisonment for 2 years, or both.
- (2) A person is not guilty of an offence against subsection (1) unless:
  - (a) the person was served under section 562ZZA with a copy 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 562V.
- (3) A person is not guilty of an offence against subsection (1) if the contravention of the prohibition or restriction concerned:
  - (a) was necessary in order to attend mediation under section 562N, or
  - (b) was done in compliance with the terms of a property recovery order.
- (4) Unless the court otherwise orders, a person who is convicted of an offence against subsection (1) must be sentenced to a term of imprisonment if the act constituting the offence was an act of violence against a person.
- (5) Subsection (4) does not apply if the person convicted was under 18 years of age at the time of the alleged offence.
- (6) Where the court determines not to impose a sentence of imprisonment, it must give its reasons for not doing so.

- (7) A police officer is to make a written record of the reasons for:
- (a) a decision by the police officer not to initiate criminal proceedings against a person for an alleged contravention of subsection (1) (whether or not the person is arrested), or
  - (b) a decision by the police officer not to proceed with criminal proceedings against a person for an alleged contravention of subsection (1),
- if the police officer or another police officer suspects on reasonable grounds that the person has committed an offence against subsection (1) or if an alleged contravention of subsection (1) by the person has been reported to the police officer or another police officer.
- (8) A person is not guilty of an offence of aiding, abetting, counselling or procuring the commission of an offence against subsection (1) if the person is a protected person under the order concerned.

**Note.** The *Law Enforcement (Powers and Responsibilities) Act 2002* contains powers of police officers in relation to suspected offences, including a power to arrest a person, without warrant, if the police officer suspects on reasonable grounds that a person has committed an offence.

## **Division 6 Measures for protection of children and others in proceedings**

### **562ZH Measures to protect children in AVO proceedings**

- (1) This section applies to the following proceedings or part of proceedings:
- (a) proceedings in which an order is sought or proposed to be made for the protection of a child,
  - (b) proceedings in relation to an application for the variation or revocation of an order if the protected person or one of the protected persons is a child,
  - (c) any part of proceedings in which an order is sought or proposed to be made in which a child appears as a witness,
  - (d) any part of proceedings in relation to an application for the variation or revocation of an order in which a child appears as a witness.
- (2) Proceedings or any part of proceedings to which this section applies are to be heard in the absence of the public unless the court hearing the proceedings otherwise directs.

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- (3) Even if proceedings or a part of proceedings to which this section applies are open to the public, the court hearing the proceedings may direct any person (other than a person who is directly interested in the proceedings) to leave the place where the proceedings are being heard during the examination of any witness.
  - (4) In any proceedings referred to in subsection (1) (a), (b), (c) or (d), a child should not be required to give evidence in any manner about a matter unless the court is of the opinion that it is in the interests of justice for the child to do so.
  - (5) If a child is required to give evidence under this section, the evidence should be required to be given only in accordance with Parts 3 and 4 of the *Evidence (Children) Act 1997*.
  - (6) For the purposes of subsection (5), Part 3 of the *Evidence (Children) Act 1997* applies to proceedings in relation to an application for an apprehended violence order, or a variation or revocation of such an order, in the same way as it applies to criminal proceedings.

**562ZI Evidence given in cases where certain sexual offences involved**

Section 294B of the *Criminal Procedure Act 1986* applies to the giving of evidence in any proceedings under this Part by a protected person (in the same way as that section applies to the giving of evidence in criminal proceedings) if:

- (a) the defendant in the proceedings is a person who is charged with a prescribed sexual offence within the meaning of that Act, and
- (b) the protected person is the alleged victim of the offence.

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

- (1) The name of a child:
  - (a) for whose protection 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:  
*court* includes the registrar 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.

**562ZK Publication of names and identifying information about other persons involved in ADVO proceedings**

- (1) A court may direct that the name of a person (other than a child to whom section 562ZJ applies):
  - (a) for whose protection 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.

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- (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 562ZJ.
- (8) In this section:
- court* includes the registrar 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.

**562ZL Non-inclusion of protected person's residential address in ADVO**

- (1) 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.
- (2) In this section, *court* includes the registrar of a Local Court or the Registrar of the Children’s Court.

**562ZM Non-inclusion of health care provider’s residential address in APVO**

- (1) The address at which a protected health care provider resides, or intends to reside, must not be stated in an apprehended personal 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 health care provider would not be seriously threatened, or damage would not be likely to be caused to any property of the protected health care provider, by stating the address, or
  - (c) the protected health care provider consents to the address being stated in the order.
- (2) If the address at which a protected health care provider resides or intends to reside must not be stated in an order because of subsection (1), the address at which the protected health care provider ordinarily provides health care services is to be stated instead in the order.
- (3) In this section, *court* includes the registrar of a Local Court or the Registrar of the Children’s Court.

**562ZN Right to presence of supportive person**

- (1) In this section, *party* to a proceeding in relation to an 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.

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- (2) A party to a proceeding in relation to an 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.

**562ZO Consideration of contact with children**

- (1) A person who applies for, or for a variation of, an apprehended violence order must inform the court of:
  - (a) any relevant parenting order of which the person is aware, or
  - (b) any pending application for a relevant parenting order of which the person is aware.

The court is required to inform the applicant of the obligation of the applicant under this subsection.
- (2) In deciding whether or not to make or vary an apprehended violence order, the court is to consider the safety and protection of the protected person and any child directly or indirectly affected by domestic or personal violence.
- (3) Without limiting subsection (2), in deciding whether or not to make or vary an apprehended violence order, the court is to:
  - (a) consider whether contact between the protected person, or between the defendant, and any child of either of those persons is relevant to the making or variation of the order, and



- (b) have regard to any relevant parenting order of which the court has been informed.
- (4) An apprehended violence order, or a variation of such an order, is not invalid merely because of a contravention of this section.
- (5) In this section:
  - apprehended violence order* includes an interim order under section 562ZA, but does not include a telephone interim order.
  - relevant parenting order* means a parenting order (within the meaning of Division 5 of Part VII of the *Family Law Act 1975* of the Commonwealth) that relates to contact between the protected person, or between the defendant, and any child of either of those persons.

## **Division 7 Proceedings relating to apprehended violence orders (other than telephone interim orders)**

### **Subdivision 1 Preliminary**

#### **562ZP Application of Division**

This Division does not apply to telephone interim orders.

### **Subdivision 2 Applications for orders**

#### **562ZQ Making of application for order**

- (1) An application for an order is to be made in accordance with Part 6 of the *Local Courts Act 1982*.
- (2) An application for an order may be made only by:
  - (a) a person for whose protection the order would be made, or
  - (b) a police officer.
- (3) Despite subsection (2), only a police officer may make an application for an order if the person for whose protection the order would be made is a child at the time of the application.
- (4) An application for an order may be made by or on behalf of more than one person.
- (5) The time within which an application for an order may be made is not limited by section 44 of the *Local Courts Act 1982*.
- (6) A court may deal with an application even though the court has only a facsimile transmission or other copy of the application.

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- (7) An applicant for an order who is 16 years of age or over, but under 18 years of age, has full capacity to make the application and to apply for a variation or revocation of the order.

**562ZR Circumstances in which police must make application for order**

- (1) An application must be made for an order if a police officer investigating the matter concerned suspects or believes that:
- (a) a domestic violence offence or an offence against section 545AB has recently been or is being committed, or is imminent, or is likely to be committed, against the person for whose protection an order would be made, or
  - (b) an offence under section 227 (Child and young person abuse) of the *Children and Young Persons (Care and Protection) Act 1998* (but only in relation to a child) has recently been or is being committed, or is imminent, or is likely to be committed, against the person for whose protection an order would be made, or
  - (c) proceedings have been commenced against a person for an offence referred to in paragraph (a) or (b) against the person for whose protection an order would be made.
- (2) The application may be made by any police officer.
- (3) An application need not be made in the circumstances referred to in subsection (1) if an order (including a telephone interim order) is already in force for the protection of the person concerned or if an application has been made under Subdivision 1 of Division 4 for a telephone interim order for the protection of the person.
- (4) An application need not be made in the circumstances referred to in subsection (1) if the person for whose protection an order would be made is at least 16 years of age at the time and the police officer investigating the matter believes:
- (a) that the person intends to make the application, or
  - (b) that there is good reason not to make the application.
- (5) However, if the police officer investigating the matter believes that there is good reason not to make the application, the police officer must make a written record of the reason.
- (6) For the purposes of subsection (4), the reluctance of the person to make an application does not, on its own, constitute a good reason for a police officer not to make an application if the police officer reasonably believes that:
- (a) the person has been the victim of violence or there is a significant threat of violence to the person, or

- (b) the person has an intellectual disability and has no guardian.

**562ZS Non-inclusion of protected person's residential address in application for ADVO**

The address at which the protected person resides must not be stated in an application 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 application, or
- (b) where the application is made by a police officer—the police officer is satisfied that the defendant knows the address.

**562ZT Non-inclusion of health care provider's residential address in application for APVO**

- (1) The address at which a protected health care provider resides must not be stated in any application for or relating to an apprehended personal violence order unless:
  - (a) the protected health care provider consents to the address being included in the application, or
  - (b) if the application is made by a police officer—the police officer is satisfied that the defendant knows the address.
- (2) If the address at which a protected health care provider resides or intends to reside must not be stated in an application because of subsection (1), the address at which the protected health care provider ordinarily provides health care services is to be stated instead in the application.

**Subdivision 3 Ancillary provisions relating to making of orders**

**562ZU Order must be made on guilty plea or guilt finding for certain offences**

- (1) If a person pleads guilty to, or is found guilty of, an offence against section 545AB or a domestic violence offence, the court hearing the proceedings must make an order for the protection of the person against whom the offence was committed, as if an application for an order had been made.

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- (2) However, the court need not make an order under this Part if it is satisfied that it is not required (for example, because an order has already been made against the person).
  - (3) A reference in this section to a court extends to the District Court when exercising jurisdiction apart from under section 562ZZP.
  - (4) A reference in this section to a finding of guilt includes a reference to the making of an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999*.

**562ZV Order must be made on charge for certain offences**

- (1) When a person stands charged before a court with an offence that appears to the court to be an offence against section 545AB or a domestic violence offence, the court must make an interim apprehended violence order under section 562ZA against the defendant for the protection of the person against whom the offence appears to have been committed, as if an application for such an order had been made in accordance with Subdivision 2.
- (2) If an interim order is made by the court, the court is to summon the defendant to appear at a further hearing of the matter on the determination of the charge against the person (instead of as soon as practicable after the order is made, as required by section 562ZA (5) (a)).
- (3) However, the court need not make an order under this section if it is satisfied that it is not required (for example, because an order has already been made against the person).
- (4) A reference in this section to a court extends to the District Court when exercising jurisdiction apart from under section 562ZZP.

**562ZW Orders made with consent of parties**

- (1) A court may make an apprehended violence order under Division 2 or 3, or an interim apprehended violence order under Subdivision 2 of Division 4, without being satisfied as to the matters that are prerequisites to the making of those orders under those provisions if the protected person and the defendant consent to the making of the order.
- (2) Such an order may be made whether or not the defendant admits to any or all of the particulars of the application.
- (3) Before making such an order, the court may conduct a hearing in relation to the particulars of the application only if:
  - (a) the order to be made by the court is final (that is, the order is not an interim apprehended violence order), and

- (b) the court is of the opinion that the interests of justice require it to conduct the hearing.

**562ZX Order can also protect persons with whom person seeking protection has a domestic relationship**

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

**562ZY Duration of final court orders**

- (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 safety and 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 12 months after the date that the order is made.

**562ZZ Explanation of order**

- (1) A court that makes an order must explain to the defendant and the protected person (if either of them is present at the time the order is made):
  - (a) the effect of the order (including any prohibitions and restrictions imposed by the order), and
  - (b) the consequences that may follow from a contravention of the order, and
  - (c) the rights of the defendant and the protected person in relation to the order.
- (2) A court that makes an order is also to cause a written explanation of the matters required to be explained under this section to be given to the defendant and protected person.
- (3) In so far as it is reasonably practicable to do so, an explanation under this section is to be given in a language that is likely to be readily understood by the person being given the explanation.

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- (4) A failure to comply with this section in relation to an order does not affect the validity of the order.

**562ZZA Service of copy of order**

- (1) The registrar of a court that makes an order is to prepare a written copy of the order.
- (2) The registrar of the court is to serve a copy of the order personally on the defendant if the defendant is present in court.
- (3) If the defendant is not present at the time the order is made, the registrar is to arrange for a copy of the order to be served personally on the defendant by a police officer or such other person as the registrar thinks fit.
- (4) If the defendant is present at the time the order is made but the registrar is unable to serve a copy of the order personally on the defendant, the registrar is to arrange for a copy of the order to be sent by post to the defendant or to such other person as the registrar thinks fit.
- (5) Service on the defendant of the copy of the order concerned may be effected in such other manner as the court directs.
- (6) The registrar of the court is to cause a copy of the order and a copy of any application for an order to be forwarded to the Commissioner of Police and (unless it is impracticable or unnecessary to do so) to be given to or sent by post to each protected person.
- (7) 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.

**562ZZB Concurrent criminal proceedings**

A court may make an order against a defendant even though proceedings have been commenced against the defendant for an offence arising out of the same conduct as that out of which the application for the order arose.

**Subdivision 4 Variation or revocation of orders**

**562ZZC Application for variation or revocation of orders**

- (1) An application may, at any time, be made to a court for the variation or revocation of an order.

- (2) An application for variation or revocation may be made only by:
  - (a) the protected person (whether or not the protected person made the application for the original order) or, if there is more than one protected person, by one or more of the protected persons, or
  - (b) a police officer, or
  - (c) the defendant.
- (3) Despite subsection (2), an application for variation or revocation of an order must be made by a police officer if the protected person or one of the protected persons under the order is a child at the time of the application.
- (4) 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.

**562ZZD Variation or revocation of orders**

- (1) The court may, if satisfied that in all the circumstances it is proper to do so, vary or revoke an order.
- (2) In particular, an order may be varied under this section in any one or more of the following ways:
  - (a) by extending or reducing the period during which the order is to remain in force,
  - (b) by amending or deleting any prohibitions or restrictions specified in the order,
  - (c) by specifying additional prohibitions or restrictions in the order.
- (3) The court may decline to hear an application for variation or revocation of an order if the court is satisfied that there has been no change in the circumstances on which the making of the order was based and that the application is in the nature of an appeal against the order.
- (4) An order is not to be varied or revoked on the application of the defendant unless notice of the application has been served on each protected person to whom the order relates.
- (5) An order is not to be varied or revoked on the application of the applicant for the original order or protected person unless notice of the application has been served on the defendant.
- (6) Notice of an application must be served personally or in such other manner as the court hearing the application directs.

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- (7) Despite subsection (5), 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 the applicant lodged the application before the day on which the order is due to expire.
  - (8) Unless sooner revoked, an order extended under subsection (7) 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 that subsection before the order ceases to have effect.

**562ZZE Variation or revocation of orders where more than one protected person**

- (1) This section applies to an order if there is more than one protected person under the order.
- (2) An order to which this section applies may be varied or revoked in its application to all of the protected persons or in relation to any one or more of the protected persons.
- (3) If an application for variation or revocation of an order to which this section applies is made by one of the protected persons under the order, none of the other protected persons can be the subject of the variation or revocation unless the court is satisfied that he or she is at least 16 years of age and has consented to the variation or revocation.

**Note.** Section 562ZZC (3) provides that a police officer only may apply for the variation or revocation of an order where one of the protected persons under the order is a child.

**562ZZF Variation may be made on guilty plea or guilt finding for certain offences**

- (1) If a person pleads guilty to, or is found guilty of, an offence against section 545AB or a domestic violence offence, the court may vary an order 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 Subdivision.
- (2) A reference in this section to a court extends to the District Court when exercising jurisdiction apart from under section 562ZZP.
- (3) A reference in this section to a finding of guilt includes a reference to the making of an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999*.



**562ZZG Explanation of variation**

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

**562ZZH Service of copy of variation or revocation of order**

- (1) The registrar of a court that varies or revokes an order is to prepare a written record of the variation or revocation.
- (2) The registrar of the court is to serve a copy of the record of the variation or revocation of the order personally on the defendant if the defendant is present in court.
- (3) If the defendant is not present at the time the variation or revocation is made, the registrar 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 registrar thinks fit.
- (4) If the defendant is present at the time the variation or revocation is made but the registrar is unable to serve a copy of the record personally on the defendant, the registrar is to arrange for a copy of the order to be sent by post to the defendant or to such other person as the registrar thinks fit.
- (5) Service on the defendant of the copy of the record concerned may be effected in such other manner as the court directs.
- (6) The registrar of the court is to cause a copy of the record of the variation or revocation of an order and a copy of any application for the variation or revocation of an order to be forwarded to the Commissioner of Police and (unless it is impracticable or unnecessary to do so) to be given to or sent by post to each protected person.

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- (7) 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.

### **Subdivision 5 Miscellaneous provisions**

#### **562ZZI Warrant for arrest of defendant in apprehended violence order matters**

- (1) If an application for an apprehended violence order is made, an authorised officer may issue a warrant for the arrest of the defendant.
- (2) The authorised officer may issue a warrant for the arrest of the defendant even though the defendant is not alleged to have committed an offence.
- (3) The authorised officer must issue a warrant for the arrest of the defendant if it appears to the authorised officer 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.
- (4) 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.

#### **562ZZJ Detention of defendant for service of order or variation**

- (1) A police officer who reasonably suspects that a person is the defendant in relation to an order may direct the person to remain where the person is for the purpose only of serving on the person a copy of the order, or a variation of the order, that is required to be served personally under this Act.
- (2) If the person refuses to remain, the police officer may arrest and detain the person at the same place, or arrest and take the person to a police station and there detain the person, for the purpose only of serving the document concerned on the person.

#### **562ZZK Arrangements regarding classification of orders**

- (1) If a court is at any time unable to determine under which of Divisions 2 and 3 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 2 and 3 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 2 or 3 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.

**562ZZL Application of Bail Act 1978**

If an application for an order is made, the *Bail Act 1978* applies to the defendant as if:

- (a) where the defendant is arrested pursuant to a warrant issued under this Part or first appears before a court in answer to a direction to appear given under this Part—the defendant were an accused person charged with an offence, and
- (b) proceedings in respect of the application or order were proceedings in respect of an offence to which section 8 of the *Bail Act 1978* applies.

**562ZZM Costs**

- (1) Subject to this section:
  - (a) a court may, in proceedings under this Part, award costs to the applicant for the order or decision concerned or the defendant, and
  - (b) such costs are to be determined in accordance with Division 4 of Part 2 of Chapter 4 of the *Criminal Procedure Act 1986*.
- (2) A court is not to award costs against an applicant who is the person for whose protection an apprehended domestic violence order is sought unless satisfied that the application was frivolous or vexatious.
- (3) A court is not to award costs against a police officer who makes an application unless satisfied that the police officer made the application knowing it contained matter that was false or misleading in a material particular.
- (4) Subsections (2) and (3) have effect despite any other Act or law.

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- (5) 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 562ZZQ,
  - (b) Division 4 of Part 2 of Chapter 4 of the *Criminal Procedure Act 1986*, 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 Local Court (and with any prescribed modifications),
  - (c) this section does not affect the operation of any provisions of the *Criminal Procedure Act 1986* or any other Act or law relating to the payment of costs in proceedings in an appeal to the District Court.

## **Division 8 Appeals**

### **562ZZN Review and appeal provisions concerning making, variation or revocation of apprehended violence orders**

- (1) A defendant may make an application under Part 2 of the *Crimes (Local Courts Appeal and Review) Act 2001* for the annulment of an apprehended violence order made by a Local Court or the Children's Court in the same way as a defendant may make an application under that Part for the annulment of a conviction or sentence arising from a court attendance notice dealt with under Part 2 of Chapter 4 of the *Criminal Procedure Act 1986*.
- (2) A defendant may appeal to the District Court under Part 3 of the *Crimes (Local Courts Appeal and Review) Act 2001* against an apprehended violence order made by a Local Court or the Children's Court in the same way as a defendant may make an application under that Part against a conviction or sentence arising from a court attendance notice dealt with under Part 2 of Chapter 4 of the *Criminal Procedure Act 1986*.
- (3) In the case of an apprehended violence order made with the consent of the person against whom the order is made, an appeal referred to in subsection (2) may be made only by leave of the District Court.
- (4) An applicant for an order or a defendant may appeal to the District Court under Part 3 of the *Crimes (Local Courts Appeal and Review) Act 2001* against the awarding of costs under section 562ZZM in the same way as a defendant may make an application under that Part against a conviction or sentence arising from a court attendance notice dealt with under Part 2 of Chapter 4 of the *Criminal Procedure Act 1986*.

- (5) A party to an apprehended violence order may appeal to the District Court under Part 3 of the *Crimes (Local Courts Appeal and Review) Act 2001* against any decision of a Local Court or the Children's Court:
  - (a) to vary or revoke the apprehended violence order, or
  - (b) to refuse to vary or revoke the apprehended violence order, in the same way as a defendant may make an application under that Part against a conviction or sentence arising from a court attendance notice dealt with under Part 2 of Chapter 4 of the *Criminal Procedure Act 1986*.
- (6) The *Crimes (Local Courts Appeal and Review) Act 2001* applies to an application or appeal arising under this section with such modifications as are made by or in accordance with the regulations under that Act.
- (7) For the purposes of this section and the *Crimes (Local Courts Appeal and Review) Act 2001*, an order made by the registrar of a Local Court or the Registrar of the Children's Court is taken to have been made by the Local Court or Children's Court, as the case requires.
- (8) In this section, **party** to an apprehended violence order means:
  - (a) the protected person (whether or not the applicant), but only if the protected person is of or above the age of 16 years, or
  - (b) if the applicant was a police officer, that or any other police officer, or
  - (c) the defendant or respondent.
- (9) Section 64 of the *Local Courts Act 1982* does not apply to an application notice under Part 6 of that Act in relation to any matter for which jurisdiction is conferred on a court by this Part.

**562ZZO Presumption against stay of order**

- (1) The lodging of a notice of appeal under section 562ZZN 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 and protection 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.

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- (4) This section has effect despite section 562ZZN of this Act and section 63 of the *Crimes (Local Courts Appeal and Review) Act 2001*.
- (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 registrar 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.

## **Division 9 Jurisdiction of courts**

### **562ZZP Courts authorised to make orders and determine applications**

- (1) The following courts have jurisdiction (in the circumstances specified) to make orders and determine applications under this Part:
- (a) a Local Court—except where the defendant is less than 18 years of age at the time the application is made,
  - (b) the Children's Court—where the defendant is less than 18 years of age at the time the application is made,
  - (c) the District Court—where an application by or on behalf of the person for whose protection an order is sought has been dismissed by a Local Court or the Children's Court.
- (2) A Local Court has jurisdiction to vary or revoke an order made by it or any other court (except where the defendant is less than 18 years of age at the time the application for the variation or revocation is made).
- (3) The Children's Court has jurisdiction to vary or revoke an order made by it irrespective of the age of the defendant at the time the application for variation or revocation is made.
- (4) An order made by a Local Court for the purposes of this Part is not invalid on the ground that it was made in the mistaken belief that the defendant was of or above 18 years of age at the time the application was made.

- (5) This section does not apply to telephone interim orders.

**562ZZQ Jurisdiction of District Court to issue AVO following dismissal of application by Local Court or Children's Court**

- (1) The District Court has original jurisdiction to issue an apprehended violence order, where an application 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 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 application.
- (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).

**562ZZR 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 10 Registration of external protection orders**

**562ZZS 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.

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*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 562G or 562K, 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.

**562ZZT Application for registration of external protection order**

- (1) A person may apply to the registrar of the appropriate court for the registration of an external protection order.
- (2) An application is:
  - (a) to be made in a form approved by the registrar of the appropriate court, and
  - (b) to be accompanied by a copy of the external protection order, and
  - (c) to be accompanied by such evidence of effective service of the external protection order on the person against whom it has been made as the registrar considers appropriate.

**562ZZU Registration of external protection order**

- (1) On receipt of an application under section 562ZZT, the registrar of the appropriate court must:
  - (a) register the external protection order to which the application relates, or
  - (b) refer the external protection order to a Magistrate (or a Children's Magistrate if the appropriate court is the Children's Court) for adaptation or modification.
- (2) On the referral of an external protection order, the Magistrate or Children's Magistrate may do either or both of the following:
  - (a) vary the period during which the order has effect in its operation in New South Wales,
  - (b) make such other adaptations or modifications to the order as the Magistrate or Children's Magistrate considers necessary or desirable for its effective operation in New South Wales.
- (3) The registrar of the appropriate court must register an external protection order which has been adapted or modified under subsection (2).



- (4) On registering an external protection order, the registrar of the appropriate court must provide the Commissioner of Police with a copy of the registered external protection order.
- (5) Notice of the registration of an external protection order is not to be served on the person against whom the order has been made unless the person who applied for that registration has consented to that service.
- (6) A registered external protection order is registered for the period during which the order, or the order as adapted or modified, is in force.

**562ZZV Effect of registration of external protection order**

- (1) An external protection order which has been registered under section 562ZZU:
  - (a) has the same effect as an order made under this Part, and
  - (b) may be enforced against a person as if it were an order which had been made under this Part and as if a copy of the order had been served on that person in accordance with section 562ZZA.
- (2) The variation or revocation of an external protection order by a court of the State, Territory or country in which it was made after the order has been registered under section 562ZZU has no effect in New South Wales.
- (3) An external protection order that has been registered under section 562ZZU (and anything done to effect the registration of the order) is not invalid on the ground that the order has, due to the age of the defendant at the time the application was made, been registered in the wrong court.

**562ZZW Variation etc of registered external protection orders**

- (1) In this section, *prescribed person* means:
  - (a) a person for whose protection a registered external protection order has been made, or
  - (b) a person against whom a registered external protection order has been made, or
  - (c) a police officer, or
  - (d) a person whom the appropriate court in which the external protection order has been registered has granted leave to make an application under this section.

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- (2) A prescribed person may apply to the appropriate court for one or more of the following:
    - (a) the variation of a registered external protection order as it applies in New South Wales,
    - (b) the extension or reduction of the period during which a registered external protection order has effect in its operation in New South Wales,
    - (c) the revocation of the registration of a registered external protection order.
  - (3) The appropriate court may determine the application by doing one or more of the following:
    - (a) by varying the order as it applies in New South Wales,
    - (b) by extending or reducing the period during which the order has effect in its operation in New South Wales,
    - (c) by revoking the registration.
  - (4) A registered external protection order is not to be varied or revoked on the application of a person referred to in subsection (1) (a), (c) or (d) unless notice of the application has been served on the person against whom the order has been made.
  - (5) A registered external protection order is not to be varied or revoked on the application of the person against whom the order has been made unless notice of the application has been served on the person for whose protection the order has been made.
  - (6) Notice of an application is to be served personally or in such other manner as the appropriate court hearing the application directs.
  - (7) A registered external protection order varied under subsection (3) (a) or (b) is registered for the period during which the order, as varied, has effect in its operation in New South Wales.

## **Division 11    Miscellaneous**

### **562ZZX    Parts 2 and 3 of Crimes (Local Courts Appeal and Review) Act 2001**

Except as expressly provided by this Part, nothing in this Part affects the operation that Parts 2 and 3 of the *Crimes (Local Courts Appeal and Review) Act 2001* would have if this Part had not been enacted.

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## Schedule 2 Consequential amendments to Crimes Act 1900

(Section 3)

**[1] Section 4 Definitions**

Omit the definitions of *Domestic violence offence* and *Personal violence offence* from section 4 (1).

**[2] Section 4 (6)**

Omit the subsection.

**[3] Section 4 (8)**

Insert after section 4 (7):

(8) Notes included in this Act do not form part of this Act.

**[4] Section 60B Actions against third parties connected with law enforcement officers**

Omit section 60B (6). Insert instead:

(6) In this section, *domestic relationship* has the same meaning as in section 562B.

**[5] Section 545AB**

Insert after section 545A:

**545AB 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.

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- (5) 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.
  - (6) In this section, *domestic relationship*, *intimidation* and *stalking* have the same meanings as in Part 15A.

**[6] Eleventh Schedule Savings and transitional provisions**

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

**Part Crimes Amendment (Apprehended Violence) Act 2006**

**Definitions**

In this Part:

*amending Act* means the *Crimes Amendment (Apprehended Violence) Act 2006*.

*commencement* means the day on which new Part 15A commences.

*new Part 15A* means Part 15A as inserted by the amending Act.

*old Part 15A* means Part 15A as in force before its substitution 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.

**Existing apprehended violence orders**

- (1) An apprehended domestic violence order (including an interim order) made under the old Part 15A and in force immediately before the commencement is taken to have been made under the new Part 15A.
- (2) An apprehended personal violence order (including an interim order) made under the old Part 15A and in force immediately before the commencement is taken to have been made under the new Part 15A.
- (3) Despite subclauses (1) and (2), section 562H (9)–(10) of the old Part 15A continue to apply in relation to a telephone interim order made under the old Part 15A and in force immediately before the commencement.
- (4) An external protection order registered under Division 3 of the old Part 15A is taken to have been registered under Division 10 of the new Part 15A.
- (5) Any order taken by this clause to have been made under the new Part 15A has effect for the same period as it would have had under the provisions of the old Part 15A but may be varied or revoked in accordance with the new Part 15A.

**Pending applications**

An application for an order under the old Part 15A that has not been determined at the commencement is taken to be an application for the same type of order under the new Part 15A.

**References to repealed offences**

A reference in the new Part 15A to section 545AB includes a reference to section 562AB (as in force before its repeal by the amending Act).

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## Schedule 3      Amendment of other Acts and regulations

(Section 4)

### 3.1 Bail Act 1978 No 161

**[1] Section 4 Definitions**

Insert “Part 15A of” before “the *Crimes Act 1900*” in the definition of *domestic violence offence* in section 4 (1).

**[2] Section 9A Exception from presumption in favour of bail—certain domestic violence offences and offences of contravening apprehended domestic violence orders**

Insert “545AB or” before “562AB” in section 9A (1) (b) (ii).

**[3] Section 9A (3)**

Omit “section 4 (6)” from paragraph (c) of the definition of *apprehended domestic violence order*.

Insert instead “Part 15A”.

**[4] Section 9A (3)**

Insert “Part 15A of” before “the *Crimes Act 1900*” in the definition of *personal violence offence*.

### 3.2 Bail Regulation 1999

**[1] Clause 3 Definitions**

Omit “section 4 (6)” from paragraph (c) of the definition of *apprehended domestic violence order* in clause 3 (1).

Insert instead “Part 15A”.

**[2] Clause 3 (1), definition of “domestic violence offence”**

Insert “Part 15A of” before “the *Crimes Act 1900*”.

**[3] Clause 11 Notice of bail decisions in cases of alleged sexual assault and personal violence offences**

Omit “section 562I” from the definition of *victim* in clause 11 (4).

Insert instead “section 562ZG, or section 562I as in force before its substitution,”.

**[4] Clause 11 (5) (c)**

Omit “section 4 (6)”. Insert instead “Part 15A”.

**[5] Schedule 1 Forms**

Insert “545AB or” before “562AB” in clause 1 (b) (xiii) of Form 2.

**3.3 Commercial Agents and Private Inquiry Agents Regulation 2006**

**Clause 5 Major and minor offences**

Insert “545AB or” before “562AB” in clause 5 (1).

**3.4 Commission for Children and Young People Act 1998 No 146**

**Section 33 (6) (c) (as inserted by the Commission for Children and Young People Amendment Act 2005)**

Omit the paragraph. Insert instead:

- (c) an external protection order (within the meaning of section 562ZZS of the *Crimes Act 1990*) that is not registered under Division 10 of Part 15A of that Act.

**3.5 Commission for Children and Young People Regulation 2000**

**Clause 9 Meaning of “relevant apprehended violence order”**

Omit “section 562RA” from clause 9 (c).

Insert instead “section 562ZZS”.

**3.6 Community Justice Centres Act 1983 No 127**

**Section 27 Exoneration from liability**

Insert “Part 15A of” before “the *Crimes Act 1900*” in section 27 (5).

**3.7 Crimes (Sentencing Procedure) Act 1999 No 92**

**[1] Section 75 Definitions**

Insert “Part 15A of” before “the *Crimes Act 1900*” in the definition of *domestic violence offence*.

**[2] Section 76 Home detention not available for certain offences**

Insert “545AB or” before “562AB” in section 76 (f).

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**[3] Section 77 Home detention not available for offenders with certain history**

Insert “545AB or” before “562AB” in section 77 (1) (b).

**3.8 Criminal Procedure Act 1986 No 209**

**[1] Section 268 Maximum penalties for Table 2 offences**

Insert “545AB or” before “562AB” in section 268 (2) (f).

**[2] Section 279 Compellability of spouses to give evidence in certain proceedings**

Insert “Part 15A of” before “the *Crimes Act 1900*” in section 279 (1) (b).

**[3] Section 348 Offences in respect of which an intervention program may be conducted**

Insert “545AB or” before “562AB” in section 348 (2) (c).

**[4] Schedule 1 Indictable offences triable summarily**

Insert “545AB or” before “562AB” in clause 2 of Part 1 of Table 2.

**3.9 Criminal Procedure Regulation 2005**

**Clause 19A Community conference intervention program**

Insert “Part 15A of” before “the *Crimes Act 1900*” in clause 19A (3) (a).

**3.10 Director of Public Prosecutions Act 1986 No 207**

**[1] Section 3 Definitions**

Omit “and a complainant” from the definition of *prosecutor* in section 3 (1).

Insert instead “, a complainant and an applicant under Part 15A of the *Crimes Act 1900*”.

**[2] Section 20A Proceedings for order under Part 15A (Apprehended violence orders) of Crimes Act 1900**

Omit “a complainant” wherever occurring. Insert instead “an applicant”.

**3.11 Drug Court Act 1998 No 150**

**Section 18E Assessment of eligibility and suitability by the multi-disciplinary team**

Insert “Part 15A of” before “the *Crimes Act 1900*” in section 18E (2) (c).



### **3.12 Evidence (Children) Act 1997 No 143**

**[1] Section 3 Definitions**

Insert “545AB or” before “562AB” in paragraph (b) of the definition of *personal assault offence* in section 3 (1).

**[2] Section 3 (1), paragraph (c) of the definition of “personal assault offence”**

Omit “562I”.

Insert instead “562ZG, or section 562I as in force before its substitution”.

**[3] Section 17 Proceedings to which Part applies**

Omit “a complaint for an apprehended violence order” from section 17 (b).

Insert instead “an application for an apprehended violence order, or a variation or revocation of such an order”.

### **3.13 Explosives Act 2003 No 39**

**[1] Section 13 Commissioner of Police to report on licences**

Insert “545AB or” before “562AB” in section 13 (1) (d).

**[2] Section 22 Special provision—suspension or cancellation of licences where suspicions of violence**

Insert “545AB or” before “562AB” in section 22 (7).

### **3.14 Firearms Act 1996 No 46**

**[1] Section 22 Suspension of licence**

Insert “Part 15A of” before “the *Crimes Act 1900*” in section 22 (2).

**[2] Section 22 (2)**

Omit “that Act”. Insert instead “that Part”.

### **3.15 Law Enforcement (Powers and Responsibilities) Act 2002 No 103**

**Section 81 Definitions**

Omit “562I” from the definition of *personal violence offence* in section 81 (1).

Insert instead “562ZG, or section 562I as in force before its substitution”.

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### **3.16 Local Courts Act 1982 No 164**

#### **Section 36 Proceedings to which Part does not apply**

Omit section 36 (1) (c).

### **3.17 Victims Support and Rehabilitation Act 1996 No 115**

#### **[1] Schedule 1 Compensable injuries**

Insert “Part 15A of” before “the *Crimes Act 1900*” in clause 7A (1) (a).

#### **[2] Dictionary**

Insert “Part 15A of” before “the *Crimes Act 1900*” in paragraph (g) of the definition of *sexual assault and domestic violence*.

### **3.18 Weapons Prohibition Act 1998 No 127**

#### **[1] Section 16 Suspension of permit**

Insert “Part 15A of” before “the *Crimes Act 1900*” in section 16 (2).

#### **[2] Section 16 (2)**

Omit “that Act”. Insert instead “that Part”.

[Second reading speech made in—

Legislative Assembly on 6 September 2006

Legislative Council on 27 September 2006]

BY AUTHORITY