



New South Wales

Crimes (Domestic and Personal Violence) Amendment Act 2008 No 119

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New South Wales

Crimes (Domestic and Personal Violence) Amendment Act 2008 No 119

Act No 119, 2008

An Act to amend the *Crimes (Domestic and Personal Violence) Act 2007* with respect to applications for, and the issuing of, orders under that Act; and for other purposes. [Assented to 10 December 2008]

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *Crimes (Domestic and Personal Violence) Amendment Act 2008*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Amendment of Crimes (Domestic and Personal Violence) Act 2007 No 80

The *Crimes (Domestic and Personal Violence) Act 2007* is amended as set out in Schedule 1.

4 Amendment of other Acts and Regulation

The Acts and Regulation specified in Schedule 2 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- (1) This Act is repealed on the day following the day on which this Act commences.
- (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.

Schedule 1 Amendment of Crimes (Domestic and Personal Violence) Act 2007

(Section 3)

[1] Section 4 Meaning of “personal violence offence”

Insert “13 or” after “section” in section 4 (b).

[2] Section 31 Service

Insert at the end of the section:

- (2) A provisional order is to be served personally on the protected person by a police officer as soon as practicable after it is made unless it is impractical to do so.

[3] Section 35 Prohibitions and restrictions imposed by apprehended violence orders

Insert “or prohibited weapons (within the meaning of the *Weapons Prohibition Act 1998*)” after “firearms” in section 35 (2) (d).

[4] Section 35 (4)

Omit the subsection.

[5] Section 35

Insert at the end of the section:

Note. Section 23 of the *Firearms Act 1996* provides for the automatic suspension of a licence under that Act on the making of an interim apprehended violence order against the licence holder and section 24 of that Act provides for the automatic revocation of a licence on the making of a final apprehended violence order against the licence holder. Section 17 of the *Weapons Prohibition Act 1998* provides for the automatic suspension of a permit under that Act on the making of an interim apprehended violence order against the permit holder and section 18 of that Act provides for the automatic revocation of a permit on the making of a final apprehended violence order against the permit holder. On the suspension or revocation of such licences or permits, the relevant firearms or weapons must be surrendered to the police and may be seized by the police.

[6] Section 37 Ancillary property recovery orders may be made

Insert after section 37 (1):

- (1A) A property recovery order may be made under subsection (1):
- (a) on the motion of the court or authorised officer making the relevant apprehended domestic violence order or interim apprehended domestic violence order, or

- (b) on the application of a police officer, the protected person or the defendant.

[7] Section 38

Omit the section. Insert instead:

38 Apprehended violence orders made by court or authorised officer can also protect persons with whom person seeking protection has a domestic relationship

- (1) The power of a court or an authorised officer under this Act to make an apprehended violence order for the protection of a person extends to authorise the making of such an order for the protection of a person with whom the person for whose protection the order was sought has a domestic relationship.
- (2) If the court makes an apprehended domestic violence order, or the court or authorised officer makes an interim apprehended domestic violence order, for the protection of a person of or above 18 years of age, the court or authorised officer must include as a protected person under the order any child with whom the person of or above 18 years of age has a domestic relationship.
- (3) A court or authorised officer is not required to comply with subsection (2) if satisfied that there are good reasons for not doing so. However, in that case the court or authorised officer is to give the reasons for not doing so.
- (4) For the avoidance of doubt, subsections (2) and (3) are subject to sections 41 and 42.
- (5) An apprehended violence order may be made by a court for the protection of a child in accordance with this section even though an application for the order was not made by a police officer.

[8] Section 48 Making of application for an order

Omit section 48 (4). Insert instead:

- (4) An application for an order:
 - (a) may be made by more than one person, and
 - (b) if made by a police officer, may be made on behalf of more than one person, and
 - (c) if made by a person for whose protection the order would be made (*the applicant*), may also be made by the applicant on behalf of any other person with whom the applicant has a domestic relationship.

[9] Section 72 Application for variation or revocation of final apprehended violence orders

Insert after section 72 (4):

- (5) An application for revocation of a final apprehended violence order may be made by the defendant even though the order has expired. Subsection (3) does not apply to such an application.

Note. Certain consequences result from an apprehended violence order being made against a person if it is not revoked. For example, section 11 of the *Firearms Act 1996* provides that a firearms licence must not be issued to a person who is subject to a final apprehended violence order or who at any time in the previous 10 years has been subject to such an order (other than an order that has been revoked).

- (6) A court may make an order under this Division revoking a final apprehended violence order even though that final order has expired if the court is satisfied that, were that final order still in force, it should be revoked.
- (7) In applying the provisions of this Division to an application for revocation of a final apprehended violence order that has expired, a reference to a protected person includes a reference to a person for whom the expired order was sought or made.
- (8) If an application is made by the defendant for revocation of a final apprehended violence order that has expired:
- (a) the Commissioner of Police is to be notified of the application, and
 - (b) the court hearing the application must take into account (in addition to any other matters that it is required to take into account) the effect that revocation of the expired order may now have on the protected person, having regard to the grounds on which the expired order was made, and
 - (c) the court may order that a further application for revocation of the expired order may not be made by the defendant except with the leave of the court.

[10] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Crimes (Domestic and Personal Violence) Amendment Act 2008

[11] Schedule 1, definition of “old Part 15A” in clause 2 (1)

Insert “at any time” after “as in force”.

[12] Schedule 1, clause 3 (1)–(4)

Omit “and in force immediately” wherever occurring.

[13] Schedule 1, clause 5

Omit the clause. Insert instead:

5 References to repealed provisions

- (1) A reference in any other Act or instrument to Part 15A of the *Crimes Act 1900* includes a reference to this Act.
- (2) A reference to this Act in any other Act or instrument includes a reference to old Part 15A.
- (3) A reference in this Act or any other Act or instrument to section 13 of this Act includes a reference to sections 545AB and 562AB of the *Crimes Act 1900* (as in force before their repeal).
- (4) A reference in this Act or any other Act or instrument to section 14 of this Act includes a reference to sections 562I (as in force before its substitution by the *Crimes Amendment (Apprehended Violence) Act 2006*) and 562ZG (as in force before its repeal) of the *Crimes Act 1900*.
- (5) A reference in this or any other Act or instrument to a final apprehended violence order made under this Act includes a reference to a final order within the meaning of old Part 15A.
- (6) A reference in this or any other Act or instrument to an interim apprehended violence order made under this Act includes a reference to an interim order made by a court under old Part 15A or a telephone interim order within the meaning of old Part 15A.
- (7) A reference in this or any other Act or instrument to an application for an order under this Act includes a reference to a complaint or application for an order under old Part 15A.
- (8) A reference in this or any other Act or instrument to apprehended violence order proceedings within the meaning of this Act includes a reference to proceedings under old Part 15A in relation to an apprehended violence order or an application or complaint for an apprehended violence order.

[14] **Schedule 1, Part 3**

Insert after Part 2 of Schedule 1:

**Part 3 Provisions consequent on enactment of
Crimes (Domestic and Personal Violence)
Amendment Act 2008**

7 Definition

In this Part, *relevant amendment* means:

- (a) an amendment made to Part 2 of this Schedule by the *Crimes (Domestic and Personal Violence) Amendment Act 2008*, or
- (b) an amendment made to an Act or regulation by Schedule 2 to the *Crimes (Domestic and Personal Violence) Amendment Act 2008*.

8 Effect of certain savings and transitional amendments

- (1) Anything done or omitted to be done on or after the commencement of this Act, but before the commencement of a relevant amendment, that would have been valid if the amendment had been in force at the time that it was done or omitted is taken to have been validly done or omitted.
- (2) Anything done or omitted to be done before the commencement of this Act in purported compliance with the *Firearms Act 1996* that would have been valid if, at the time that the thing was done or omitted, the definition of *interim apprehended violence order* in section 4 (1) of that Act included a reference to a telephone interim order within the meaning of Part 15A of the *Crimes Act 1900* is taken to have been validly done or omitted.
- (3) Anything done or omitted to be done before the commencement of this Act in purported compliance with the *Weapons Prohibition Act 1998* that would have been valid if, at the time that the thing was done or omitted, the definition of *interim apprehended violence order* in section 4 (1) of that Act included a telephone interim order within the meaning of Part 15A of the *Crimes Act 1900* is taken to have been validly done or omitted.
- (4) Subclauses (1)–(3) do not affect any decision of a court or tribunal made before the commencement of this clause or any proceedings before a court or tribunal commenced before the commencement of this clause.

9 Service of provisional order on defendant

Section 31 (2) (as inserted by the *Crimes (Domestic and Personal Violence) Amendment Act 2008*) does not apply to a provisional order made before the commencement of the subsection.

Schedule 2 Amendment of other Acts and Regulation

(Section 4)

2.1 Bail Regulation 2008

Clause 10 Notice of bail decisions in cases of alleged sexual assault and personal violence offences

Omit the definition of *personal violence offence* from clause 10 (4).

Insert instead:

personal violence offence has the same meaning as in the *Crimes (Domestic and Personal Violence) Act 2007*, but includes an offence under section 61 of the *Crimes Act 1900*, or an offence of attempting to commit an offence under that section, only if the accused person has a domestic relationship with the alleged victim of the offence.

2.2 Commission for Children and Young People Act 1998 No 146

Section 33 Definitions

Omit the definition of *relevant apprehended violence order* from section 33 (1).

Insert instead:

relevant apprehended violence order means (subject to subsection (6)) a final apprehended violence order made under the *Crimes (Domestic and Personal Violence) Act 2007*, or a final order made under Part 15A of the *Crimes Act 1900* before its repeal, being an order made on the application of a police officer or other public official for the protection of a child (or a child and others).

2.3 Crimes (Sentencing Procedure) Act 1999 No 92

Section 77 Home detention not available for offenders with certain history

Omit section 77 (1) (e). Insert instead:

- (e) who is (or has at any time within the last 5 years been) subject to an apprehended violence order (within the meaning of the *Crimes (Domestic and Personal Violence) Act 2007*), or an apprehended violence order made under Part 15A of the *Crimes Act 1900* before its repeal, being an

order made for the protection of a person with whom it is likely the offender would reside, or continue or resume a relationship, if a home detention order were made.

2.4 Firearms Act 1996 No 46

[1] Section 4 Definitions

Insert after paragraph (a) of the definition of *apprehended violence order* in section 4 (1):

- (b) a final order made under Part 15A of the *Crimes Act 1900* before its repeal, or

[2] Section 4 (1), paragraph (a) of the definition of “interim apprehended violence order”

Omit “interim court order under”.

Insert instead “interim apprehended violence order within the meaning of”.

2.5 Weapons Prohibition Act 1998 No 127

[1] Section 4 Definitions

Insert after paragraph (a) of the definition of *apprehended violence order* in section 4 (1):

- (b) a final order made under Part 15A of the *Crimes Act 1900* before its repeal, or

[2] Section 4 (1), paragraph (a) of the definition of “interim apprehended violence order”

Omit “interim court order under”.

Insert instead “interim apprehended violence order within the meaning of”.

[Agreement in principle speech made in Legislative Assembly on 27 November 2008
Second reading speech made in Legislative Council on 4 December 2008]

BY AUTHORITY