



New South Wales

Stronger Communities Legislation Amendment (Domestic Violence) Act 2020 No 36

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Stronger Communities Legislation Amendment (Domestic Violence) Act 2020 No 36

Act No 36, 2020

An Act to amend the Crimes (Domestic and Personal Violence) Act 2007 and the Criminal Procedure Act 1986 in relation to domestic violence matters and to repeal the Crimes Legislation Amendment Act 2018. [Assented to 25 November 2020]

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Stronger Communities Legislation Amendment (Domestic Violence) Act 2020*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by this section.
- (2) Schedule 1[1] and [11]–[13] commence on a day or days to be appointed by proclamation.
- (3) Schedule 2[3], to the extent it inserts section 289VA, commences on 1 September 2021 or on a day or days to be appointed by proclamation, whichever is sooner.

3 Repeal

The *Crimes Legislation Amendment Act 2018* No 83 is repealed.

Schedule 1 Amendment of Crimes (Domestic and Personal Violence) Act 2007 No 80

[1] Section 7 Meaning of “intimidation”

Omit section 7(1)(c). Insert instead—

- (c) conduct that causes a reasonable apprehension of—
 - (i) injury to the person or to another person with whom the person has a domestic relationship, or
 - (ii) violence to any person, or
 - (iii) damage to property, or
 - (iv) harm to an animal that belongs or belonged to, or is or was in the possession of, the person or another person with whom the person has a domestic relationship.

[2] Section 9 Objects of Act in relation to domestic violence

Insert after section 9(3)(f1)—

- (f2) the intersection between animal abuse and domestic violence, and

[3] Section 27 Obligation to apply for provisional order in certain circumstances

Insert after section 27(3)—

- (3A) However, subsection (3) does not prevent an application being made.

[4] Section 28B

Insert after section 28A—

28B Interaction with existing orders

- (1) This section applies if an apprehended violence order is already in force against the defendant for the protection of the person concerned (an *existing order*).
- (2) An issuing officer must not make a prohibition or restriction in a provisional order that would be inconsistent with a prohibition or restriction in the existing order if the effect would be to decrease the protection afforded to the protected person under the existing order.
- (3) A prohibition or restriction specified in a provisional order that is inconsistent with a prohibition or restriction specified in the existing order in a way that would decrease the protection afforded to the protected person under the existing order is of no effect.

Note—

See section 81A for the effect of concurrent orders if there is an inconsistency between 2 or more concurrent orders.

[5] Section 29 Provisional order taken to be application for court order

Omit “for an order” from section 29(1). Insert instead “by the applicant officer”.

[6] Section 29(3A)

Insert after section 29(3)—

- (3A) Failure to comply with the requirement under subsection (3)(b) does not affect the validity of the provisional order if the failure is due to court sitting

arrangements that prevent the matter from being heard by the appropriate court.

[7] Section 32 Duration

Omit “for a final apprehended violence order” from section 32(1)(c).

Insert instead “under Part 10”.

[8] Section 33 Variation or revocation of provisional order on application of police officer

Insert “, or variation of an apprehended violence order,” after “order” in section 33(1)(b).

[9] Section 33A Variation or revocation of provisional order on application of defendant

Insert “, or variation of an apprehended violence order,” after “apprehended violence order” in section 33A(1).

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

Omit “destroying or deliberately damaging or” from section 35(2)(e).

[11] Section 36 Prohibitions taken to be specified in every apprehended violence order

Insert “, or harming an animal,” after “property” in section 36(c).

[12] Section 39 Final order to be made on guilty plea or guilt finding for serious offence

Omit section 39(1). Insert instead—

(1) This section applies to a person who pleads guilty to, or is found guilty of, a serious offence.

(1A) A court must make a final apprehended violence order for the protection of the person against whom the offence was committed whether or not—

(a) an interim apprehended violence order has been made, or

(b) an application for an apprehended violence order has been made.

[13] Section 39(2A)–(2D)

Insert after section 39(2)—

(2A) For an apprehended domestic violence order imposed by a court under this section, subsections (2B)–(2D) apply if the person—

(a) was at least 18 years of age at the time of the commission of the offence, and

(b) is sentenced to a term of imprisonment, other than by way of intensive correction in the community, for the offence.

(2B) Subject to subsection (2C), the court is to specify that the apprehended domestic violence order remains in force for—

(a) the period of the term of imprisonment for the offence, and

(b) an additional 2 years after the term of imprisonment ends.

(2C) The court may specify a different period if, in the opinion of the court, there is a good reason to impose a different period.

(2D) The date on which the apprehended domestic violence order comes into force may be a day before the day the person starts serving the person’s term of imprisonment.

[14] Section 40A Apprehended violence order may be made in care proceedings

Omit “section 72” from the definition of *police-initiated order* in section 40A(9).

Insert instead “Part 10”.

[15] Section 47 Definitions

Omit the definition of *application*. Insert in alphabetical order—

application—

- (a) for Division 5—see section 72, or
- (b) otherwise—for an order, means an application to a court for the making of a final apprehended violence order or an interim court order.

police-initiated order means a final apprehended violence order or an interim court order where—

- (a) the application for the order was made by a police officer, or
- (b) a police officer was a party to the application proceedings for the order.

[16] Section 72 Definitions

Omit the definition of *police-initiated order*.

[17] Section 79A Duration of apprehended domestic violence orders

Omit “73, 73A and 79C” from section 79A(5). Insert instead “39 and 73”.

[18] Section 79B Apprehended domestic violence orders may be of indefinite duration

Omit section 79B(5). Insert instead—

- (5) The court may grant leave to make an application referred to in subsection (4) only if the court is satisfied that—
 - (a) there has been a significant change in circumstances since the relevant order was made or last varied, or
 - (b) it is otherwise in the interests of justice.
- (6) Subsections (4) and (5) do not apply in respect of a police-initiated order where the protected person, or 1 of the protected persons, is a child and leave must instead be sought under section 72B.

[19] Section 81A

Insert after section 81—

81A Effect of concurrent orders

- (1) This section applies if—
 - (a) more than 1 apprehended violence order has been made in relation to a defendant, and
 - (b) more than 1 of the orders applies to the same protected person.
- (2) If a prohibition or restriction specified in an order is inconsistent with, or contrary to, a prohibition or restriction specified in another order applying to the same protected person, the most recent prohibition or restriction prevails.
- (3) This section is subject to section 28B.

[20] Schedule 1 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering—

Part Provisions consequent on enactment of Stronger Communities Legislation Amendment (Domestic Violence) Act 2020

Definition

In this Part—

amending Act means the *Stronger Communities Legislation Amendment (Domestic Violence) Act 2020*.

Changes to definition of “intimidation”

- (1) An application for an apprehended violence order made but not finally determined before the amendment of section 7 by the amending Act is to be dealt with as if that section had not been amended.
- (2) Section 7, as amended by the amending Act, applies to an application, made after the amendment, for the variation or revocation of a final apprehended violence order or interim court order in force immediately before the amendment.

Prohibitions taken to be specified in every apprehended violence order

To remove any doubt, section 36(c) as amended by the amending Act does not apply to an order made before the amendment.

Period of final apprehended domestic violence order to be made on guilty plea or guilt finding for serious offence

Section 39, as amended by the amending Act, does not extend to a person who pleaded guilty to, or was found guilty, of a serious offence before the commencement of Schedule 1[11] of the amending Act.

Schedule 2 Amendment of Criminal Procedure Act 1986 No 209

[1] Section 3 Definitions

Insert in alphabetical order in section 3(1)—

apprehended violence order proceedings has the same meaning as in the *Crimes (Domestic and Personal Violence) Act 2007*.

[2] Chapter 6, Part 4B, Division 4, heading

Insert “provisions for recorded statements” after “Miscellaneous”.

[3] Chapter 6, Part 4B, Division 5

Insert after Division 4—

Division 5 Giving of evidence by domestic violence complainants—other provisions

289T Application of Division

- (1) This Division applies to the following—
 - (a) proceedings for a domestic violence offence,
 - (b) apprehended violence order proceedings but only if—
 - (i) the defendant in the proceedings is a person charged with a domestic violence offence, and
 - (ii) the protected person is the alleged victim of the offence.
- (2) If the complainant in the proceedings is a person against whom a prescribed sexual offence is alleged to have been committed by the accused person, this Division applies in addition to Part 5.

289U Proceedings must be held in camera when complainant gives evidence

- (1) Unless a court otherwise directs, the following parts of proceedings must be held in camera—
 - (a) parts in which evidence is given by a complainant,
 - (b) parts in which a recording of evidence of the complainant is heard by the court.
- (2) The court may direct that a part of proceedings specified in subsection (1) be held in open court only—
 - (a) at the request of a party to the proceedings, and
 - (b) if the court is satisfied that—
 - (i) special reasons in the interests of justice require the part of the proceedings to be held in open court, or
 - (ii) the complainant consents to giving their evidence in open court.
- (3) The principle that proceedings for an offence should generally be open or public in nature, or that justice should be seen to be done, does not of itself constitute special reasons in the interests of justice requiring the part of the proceedings to be held in open court.
- (4) This section—
 - (a) applies to a complainant who—

- (i) gives evidence in a way provided for by the other provisions of this Part, or
- (ii) if the complainant is a vulnerable person—gives evidence in a way provided for by Part 6, and
- (b) does not affect an entitlement of the complainant to—
 - (i) give evidence in a way provided for by the other provisions of this Part, or
 - (ii) have a support person present when giving evidence under section 306ZQ, or
 - (iii) if the complainant is a vulnerable person—give evidence in a way provided for by Part 6.

289UA Other parts of proceedings may be heard in camera

- (1) The court may direct that any other part of any proceedings not specified in section 289U in relation to a domestic violence offence, or the entire proceedings, be held in camera.
- (2) The court may make a direction under this section on the court's own motion or at the request of a party to the proceedings.
- (3) In determining whether to make a direction under this section, the court is to consider the following matters—
 - (a) the need of the complainant to have any person excluded from those proceedings,
 - (b) the need of the complainant to have any person present in those proceedings,
 - (c) the interests of justice,
 - (d) any other matter that the court considers relevant.
- (4) The requirement under section 289U that any part of the proceedings in which evidence is given by a complainant be held in camera unless the court otherwise directs still applies whether or not a direction is made under this section.
- (5) If the court makes a direction under this section, it may, either absolutely or subject to conditions, exempt any person from the direction to the extent necessary to allow that person to be present as a support for a person giving evidence or for any other purpose that the court thinks fit.
- (6) This section does not affect—
 - (a) the entitlement of a complainant to have a person or persons present when giving evidence under section 306ZQ, or
 - (b) the entitlement of a vulnerable person to have a person present when giving evidence under section 306ZK.

289V Alternative means of giving evidence and alternative arrangements for complainants

- (1) A complainant who gives evidence in proceedings is entitled, but may choose not—
 - (a) to give the evidence from a place other than the courtroom by audio visual link or other technology that enables communication between the place and the courtroom (*alternative means*), or

- (b) to give the evidence by use of arrangements made to restrict contact, including visual contact, between the complainant and the accused person or other persons in the courtroom (*alternative arrangements*), including the following—
 - (i) use of screens,
 - (ii) planned seating arrangements for persons who have an interest in the proceedings, including the level at which the persons are seated and the persons in the complainant's line of vision.
- (2) If, to enable evidence to be given by alternative means or by use of alternative arrangements, the court considers it appropriate, the court may adjourn the proceedings or part of the proceedings from the courtroom to another court or place.
- (3) Despite subsection (1)(a), a complainant must not give evidence by alternative means if a court orders, on the court's own initiative or on application by a party to the proceedings, that alternative means must not be used.
- (4) A court may make an order under subsection (3) only if the court is satisfied that there are special reasons, in the interests of justice, for the complainant's evidence not to be given by alternative means.
- (5) In proceedings in which there is a jury and evidence is given by alternative means or by use of alternative arrangements, the Judge must—
 - (a) inform the jury that it is standard procedure for complainants' evidence in proceedings for a domestic violence offence to be given by the means or by use of the arrangements, and
 - (b) warn the jury not to draw any inference adverse to the accused person or give the evidence greater or lesser weight because it is given by the means or by use of the arrangements.
- (6) A place outside the courtroom from which a complainant gives evidence under this section is taken to be part of the courtroom in which the proceedings are being held.
- (7) If a complainant gives evidence by alternative means or by use of alternative arrangements in a place other than a courtroom, the court may order that a court officer be present at the place.
- (8) This section does not apply to or in relation to the giving of evidence by a vulnerable person if Part 6, Division 4 applies to the giving of the evidence.
- (9) This section extends to evidence given in proceedings instituted before the commencement of this section, including a new trial that was ordered to take place before that commencement and proceedings that have been partly heard.

Note—

Part 3B of the *Witness Protection Act 1995* provides for alternative means for the giving of evidence by a person who is, or was, a participant in a witness protection program under that Act.

289VA Arrangements for complainant giving evidence in proceedings for domestic violence offence when accused person is unrepresented

- (1) This section applies to proceedings during which the accused person is not represented by an Australian legal practitioner.
- (2) A complainant cannot be directly examined in chief, cross-examined or re-examined by the accused person, but may instead be examined—
 - (a) by a person appointed by the court, or

- (b) through the use of court technology.
- (3) For the purposes of subsection (2), the regulations may prescribe the following—
 - (a) a class of person who may be appointed by the court,
 - (b) the type of technology that is suitable for use,
 - (c) the procedures that apply for asking questions of the complainant.
- (4) A person appointed by the court is to ask the complainant only the questions that the accused person requests that the person put to the complainant.
- (5) A person acting in the course of an appointment under this section must not independently give the accused person legal or other advice.
- (6) The court does not have a discretion to decline to appoint a person under this section, or to decline the use of court technology under this section, despite anything to the contrary in section 306ZL or another Act or law.
- (7) This section applies whether or not an audio visual link or other similar technology, or alternative arrangements, are used by the complainant to give evidence.
- (8) If a person is appointed in proceedings before a jury, or court technology is used, the Judge must—
 - (a) inform the jury that it is standard procedure in these cases to appoint a person or use technology to put the questions to the complainant, and
 - (b) warn the jury not to draw any inference adverse to the accused person or to give the evidence any greater or lesser weight because of the arrangement.
- (9) This section extends to proceedings instituted before the commencement of this section, including proceedings that have been partly heard.
- (10) If a person appointed under this section is an Australian lawyer, anything done or omitted to be done when acting in the course of the appointment or otherwise in accordance with this section does not, if the thing was done or omitted to be done in good faith, subject the person personally to any action, liability, claim or demand.

[4] Section 291 Proceedings must be held in camera when complainant gives evidence

Insert “289V or” after “under section” in section 291(2).

[5] Section 291(5)

Insert “289V or” after “by section”.

[6] Section 291C Media access to proceedings held in camera

Insert “289V or” after “whether under section” in section 291C(1).

[7] Section 294 Warning to be given by Judge in relation to lack of complaint in certain sexual offence proceedings

Insert after section 294(2)—

- (3) If the trial of the person also relates to a domestic violence offence alleged to have been committed by the person against the same victim, the Judge may—
 - (a) also give a warning under section 306ZR, or
 - (b) give a single warning to address both types of offences.

[8] Section 294B Giving of evidence by complainant in prescribed sexual offence proceedings—alternative arrangements

Omit “(within the meaning of the *Crimes (Domestic and Personal Violence) Act 2007*)” from section 294B(1A).

[9] Section 294C Complainant entitled to have support person or persons present when giving evidence

Insert “289V or” after “under section” in section 294C(2)(a).

[10] Section 306ZK Vulnerable persons have a right to presence of a support person while giving evidence

Omit “within the meaning of the *Crimes (Domestic and Personal Violence) Act 2007*” from section 306ZK(1)(c).

[11] Section 306ZR

Insert after section 306ZQ—

306ZR Warning to be given by Judge in relation to lack of complaint in certain domestic violence offence proceedings

- (1) This section applies if, on the trial of a person for a domestic violence offence, evidence is given or a question is asked of a witness that tends to suggest—
 - (a) an absence of complaint in respect of the commission of the alleged offence by the person on whom the offence is alleged to have been committed, or
 - (b) delay by that person in making a complaint.
- (2) The Judge—
 - (a) must warn the jury that absence of complaint or delay in complaining does not necessarily indicate that the allegation that the offence was committed is false, and
 - (b) must inform the jury that there may be good reasons why a victim of domestic violence may hesitate in making, or may refrain from making, a complaint about a domestic violence offence, and
 - (c) must not warn the jury that delay in making a complaint is relevant to the victim’s credibility unless there is sufficient evidence to justify the warning.
- (3) If the trial of the person also relates to a prescribed sexual offence alleged to have been committed by the person against the same victim, the Judge may—
 - (a) also give a warning under section 294, or
 - (b) give a single warning to address both types of offences.

[12] Schedule 2 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering—

Part Provisions consequent on enactment of Stronger Communities Legislation Amendment (Domestic Violence) Act 2020

Application of provisions in relation to warning to be given for certain domestic violence offence proceedings

- (1) The relevant amendments do not apply to proceedings the hearing of which began before the commencement of the relevant amendments.
- (2) In this clause—
relevant amendments means the amendments made by Schedule 2[7] and [11] to the *Stronger Communities Legislation Amendment (Domestic Violence) Act 2020*.

[Second reading speech made in—

Legislative Assembly on 22 October 2020

Legislative Council on 12 November 2020]