

Act 1993 No. 101

CRIMES (DOMESTIC VIOLENCE) AMENDMENT BILL 1993*

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Bail (Domestic Violence) Amendment Bill 1993 is cognate with this Bill.

The object of this Bill is to amend the Crimes Act 1900 to provide further protection to the victims, or potential victims, of domestic or other personal violence.

Part 15A of the Crimes Act 1900 enables a court to make an apprehended violence order if a person fears violence or serious harassment or molestation from any other person.

The main features of this Bill are:

- (a) to enable Magistrates, Clerks of Local Courts and certain other specially authorised justices to make interim apprehended violence orders after hours, on the application of police officers by telephone, in circumstances in which the personal safety of a person may be at immediate risk (the interim orders will be for a short duration pending appropriate court action); and
- (b) to create a separate offence of intimidation in connection with domestic relationships and to provide that it extends to all forms of intimidation (such as threats, harassment, molestation, following about and watching) that are intended to instil fear for the personal safety of the victim or the victim's family; and
- (c) to increase the penalty for offences relating to breaches of apprehended violence orders and for other intimidation etc. offences; and
- (d) to enable young persons over 16 years of age to make complaints on their own behalf for apprehended violence orders; and
- (e) to make other changes designed to facilitate and expedite the making and enforcement of apprehended violence orders.

Clause 1 specifies the short title of the proposed Act.

*Amended in committee—see table at end of volume.

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Clause 2 provides for the commencement of the proposed Act on a day or days to be proclaimed.

Clause 3 gives effect to the Schedules of amendments to the Crimes Act 1900.

Clause 4 gives effect to the Schedule of consequential amendments to the Firearms Act 1989.

Clause 5 provides that any existing apprehended violence order continues to have effect, and any pending application for such an order may continue to be dealt with, despite the proposed amendments to Part 15A of the Crimes Act 1900.

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

Telephone interim apprehended violence orders

Schedule 1 (7) substitutes section 562H to enable police officers to apply to an authorised justice by telephone after hours for an interim apprehended violence order if satisfied that the personal safety of a person may be at risk unless an order is made immediately. The police officer can make such an application if called to an incident at a time or place when an ordinary complaint for a court order is not practical and if the defendant is not arrested in connection with the incident. The authorised justice (being a Magistrate, a Clerk of a Local Court or other specially authorised justice) must be satisfied that there are reasonable grounds for making the order. The order may exclude the defendant from the premises (or prevent approaches to the protected person) if there is an immediate danger of personal injury. The duration of the order is limited to 9 p.m. on the next working day (in the case of exclusions from premises or the prevention of approaches to the protected person) or 9 p.m. on the fifth working day (in any other case). The applicant police officer is to follow up the matter by making a complaint for a court order or giving an authorised justice reasons why such an order is not being sought. The telephone interim order may be revoked by the court or any authorised justice. The defendant may be detained at the premises to enable a telephone interim order to be made and served.

Schedule 1 (1) (c) expands the definition of “order” in Part 15A to include a telephone interim order. Accordingly, a contravention of such an order also constitutes an offence.

Interim court apprehended violence orders and consent orders

Schedule 1 (3) inserts section 562BA into the Act (in place of existing section 562H) to clarify the existing provisions (which allow a court to make an interim apprehended violence order in the absence of the defendant and without the defendant having been given notice of the proceedings). The amendment makes it clear that an interim order can be made even if the defendant is present or has been given notice. The proposed section also enables the court in certain circumstances to admit affidavit evidence tendered on behalf of the person for whose protection the interim order would be made.

Schedule 1 (3) also inserts proposed section 562BB which provides that a court may make an apprehended violence order if the complainant and the defendant have consented to the making of the order (in which case the court need not be satisfied on the balance of probabilities that the person for whose protection the order would be made has reasonable grounds to fear violence or serious harassment or molestation). The

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proposed section makes it clear that an order made with the consent of the parties can be made by the court whether or not the defendant admits to the particulars of the complaint made against the defendant.

Increased maximum penalty for contravention of order

At present, section 562I of the Crimes Act 1900 provides that the maximum penalty for contravening an apprehended violence order is a fine of \$2,000 or 6 months' imprisonment, or both. **Schedule 1 (8) (a)** increases that maximum penalty to a fine of \$5,000 or 2 years' imprisonment, or both.

Complaints for orders

At present, a complaint for an apprehended violence order must be made by a police officer if the person for whose protection an order would be made is a child under the age of 18 years. Schedule 1 (4) (b) lowers the age to 16 years to enable persons of or above the age of 16 to make a complaint in their own right.

Schedule 1 (6) (b) makes the same amendment in relation to applications for the variation or revocation of orders.

Schedule 1 (4) (c) provides that the time within which a complaint for an order can be made is not to be limited by section 56 of the Justices Act 1902 (which provides for complaints to be made within 6 months from the time when the matter of the complaint arose). It also provides that the complaint may be dealt with if lodged with the court by facsimile transmission.

Duration of orders

Schedule 1 (5) substitutes section 562E of the Act so that an apprehended violence order will not be automatically defective if it does not specify a period for which it is in force. The proposed section restates the existing provision that the period specified in an order is to be as long as is necessary in the court's opinion to ensure the safety of the protected person but it also provides that if the court fails to specify a period, then the order will be in force for 6 months.

The proposed section also ensures that any interim court order continues in force until it is revoked or confirmed.

Service of orders

At present, the clerk of a court which makes or varies an order is required to prepare a written record of the order and serve a copy on the defendant. Schedule 1 (9) provides for alternative service where the clerk is unable to do so.

The amendment in **Schedule 1 (8) (b)** ensures that a person who is present in court when an order is made may be convicted of an offence for contravening an order even if the person is, not served with a copy of the order.

Miscellaneous

Schedule 1 (4) (a), (6) (a) and (11) update references to members of the Police Force as a consequence of the establishment of the Police Service.

Schedule 1 (1) (a) and (b), (2) and (10) are consequential amendments.

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

Schedule 2 (1) increases the maximum penalty for an offence under section 545B of the Crimes Act 1900 relating to intimidation from 6 months' imprisonment or a fine of \$500 (or both) to 2 years' imprisonment or a fine of \$5,000 (or both).

Schedule 2 (2) creates a new offence, in connection with domestic relationships, of intimidation with the intention of causing fear for the personal safety of a person. The intimidation concerned is extended to cover threats, harassment, molestation, following a person about or watching at the person's home or work. The offence may be established if the accused has reasonable cause to believe that his or her conduct was capable of causing the fear.

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

The amendments made by **Schedule 3** are consequential. The amendments substitute the definitions of "apprehended violence order" and "interim apprehended violence order" in the Firearms Act 1989 as a consequence of the amendments to the Crimes Act 1900 relating to interim apprehended violence orders.
