

New South Wales

Crimes and Firearms Legislation Amendment (Apprehended Violence Orders) Bill 2004

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

This Bill amends:

- (a) the provisions of the *Crimes Act 1900* that deal with apprehended violence orders (*AVOs*):
 - (i) to provide that a court must refuse to make an AVO, or to confirm an interim AVO, if it is satisfied that the defendant was not advised of the particulars of the complaint or matter, and given a chance to be interviewed, before the complaint was made or the interim AVO was re-heard or is satisfied that the matter was not adequately investigated or that the complaint or request is frivolous, vexatious or without substance, and
 - (ii) to require a court making an AVO to explain to the defendant how long the order operates, that it can be revoked and the procedure for revocation, and

- (iii) to create an obligation to return firearms licences and permits to the defendant when an AVO is revoked, and
- (iv) to create offences of making vexatious, frivolous or false applications (complaints) or requests for AVOs, and
- (b) the provisions of the *Firearms Act 1996* that require firearms and firearms licences and permits to be surrendered when an AVO is made:
 - (i) to provide that the current restrictions on being issued with a licence or permit that apply to any person who has, at any time within 10 years before applying for a licence or permit, been subject to an AVO only apply if the person held a firearms licence or permit at the time the AVO was made, and
 - (ii) to provide that a licence or permit is no longer automatically suspended or revoked on the making of an interim AVO or an AVO but is suspended or revoked only if the court specifically so orders, and
 - (iii) to provide that the negative consequences of the making of an AVO on a person's ability to obtain a licence, permit or certain employment do not apply automatically but apply only when the court specifically so orders, and
 - (iv) to provide that if an AVO is revoked, any licence or permit that was revoked by the making of the AVO is restored and must be returned to its holder, and
 - (v) to provide for any firearm surrendered or seized because of the suspension or revocation of a licence or permit to be immediately returned to its owner if an AVO is revoked.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent.

Clause 3 is a formal provision giving effect to the amendments to the *Crimes Act 1900* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Firearms Act 1996* set out in Schedule 2.

Schedule 1 Amendment of Crimes Act 1900

Part 15A of the *Crimes Act 1900* deals with apprehended violence. It provides for the making of apprehended domestic violence orders (*ADVOs*) and apprehended personal violence orders (*APVOs*), which are generally described as *apprehended violence orders (AVOs)*. A court may make an AVO only if the court is satisfied on the balance of probabilities that the person it seeks to protect has reasonable grounds to fear, and in fact fears, certain domestic violence or personal violence or other unlawful acts. Part 15A also provides for the making of interim AVOs by a court and for the confirmation of those orders (where appropriate) at a further hearing of the matter.

Duty to refuse to make AVO or interim AVO or issue certain process

Schedule 1 [1] and [3] provide that a court must refuse to make an AVO if it is satisfied that:

- (a) the defendant was not advised of the particulars of the complaint before the complaint was made, or
- (b) the defendant was not given an opportunity to be officially interviewed regarding the particulars of the complaint before the complaint was made, or
- (c) the particulars of the complaint were not adequately investigated before the complaint was made, or
- (d) the complaint is frivolous, vexatious or without substance.

Schedule 1 [7] imposes a similar obligation on a court considering whether or not to confirm an interim AVO.

Schedule 1 [2] and [5] provide that a court has an obligation to refuse to issue process in respect of AVOs if the court is satisfied that the complaint is frivolous, vexatious or without substance. **Schedule 1 [4]** makes a consequential amendment.

AVOs and interim AVOs made with consent of parties

Schedule 1 [6] provides that a court must not make an AVO or interim AVO with the consent of both parties unless the court is satisfied that, before giving his or her consent, the defendant was given a written statement explaining the consequences of the making of an AVO or interim AVO on the defendant's ability to possess a firearm, his or her ability to be issued with or hold a licence or permit under the *Firearms Act 1996* and his or her eligibility to hold certain employment.

Defendant must be told how long AVO applies

Schedule 1 [8] requires a court that makes an AVO to ensure that the defendant is given a written statement explaining how long the AVO applies for, that it can be revoked and the procedure for revocation.

No costs if AVO successfully revoked

Schedule 1 [9] provides that if a person has an AVO against him or her revoked, he or she is not liable to pay court costs or any other participant's costs.

Obligation to return firearms licence or permit if AVO is revoked

When a court makes an AVO it can make an order requiring the defendant to surrender to the Commissioner of Police any licence, permit or other authority that the defendant holds under the *Firearms Act 1996*.

Section 562F of the *Crimes Act 1900* provides for an AVO to be revoked, but does not explain the impact of that revocation on a firearms licence, permit or authority that was previously surrendered.

Schedule 1 [10] provides that if a court revokes an AVO it must also make an order requiring the Commissioner of Police to return to the defendant any licence or permit surrendered in compliance with the original AVO.

Offences relating to making of complaints for AVOs and requests for interim AVOs

Schedule 1 [11] makes it an offence to make a frivolous or vexatious complaint for an AVO or request for an interim AVO, to make a complaint or request that is without substance or to make a complaint or request that contains false or misleading statements.

Schedule 2 Amendment of Firearms Act 1996

Various provisions of the *Firearms Act 1996* provide for the consequences of the making of an AVO (which is defined in section 4 (1) of that Act to include the making of an interim order that is confirmed):

- (a) sections 11 (5) (c) and 29 (3) (c) provide that a firearms licence or permit under the Act must not be issued to a person who is subject to an AVO or who has, at any time within 10 years before the application for the licence or permit was made, been subject to an AVO (other than an AVO that has been revoked), and
- (b) section 23 provides for the automatic suspension of a licence on the making of an interim AVO, and

- (c) section 24 provides for the automatic revocation of a licence that authorises a person to possess or use a firearm if the licensee becomes subject to an AVO, and
- (d) section 25 (1) requires a person whose licence is suspended or revoked to immediately surrender to a police officer any firearm in the person's possession and any licence under the Act, and
- (e) section 25 (2) authorises a police officer to seize any firearm in the possession of a person whose licence is suspended or revoked, and
- (f) section 30 (4) provides that a permit may be suspended or revoked for any reason for which a licence may be suspended or revoked, and
- (g) section 44A prevents a firearms dealer from employing, or allowing to participate in the management of the dealer's business, any person subject to an AVO.

Change to general restrictions on issue of licences or permits

Schedule 2 [1] provides that the current restriction on being issued with a licence that applies to any person who has, at any time within 10 years before applying for a licence, been subject to an AVO only applies if the person held a firearms licence or permit at the time the AVO was made.

Schedule 2 [7] makes the same amendment to the restrictions on the issuing of permits.

Impact of making of AVO on licences, permits and employment

Schedule 2 [2] substitutes section 23, which presently provides that a licence is automatically suspended on the making of an interim AVO, so that a licence is suspended only if the court makes a specific order for that suspension.

Schedule 2 [3] amends section 24 (1), which presently provides that a licence is automatically revoked on the making of an AVO, to remove reference to that revocation.

Schedule 2 [4] provides instead that a licence is revoked only if the court makes a specific order for that revocation (*a revocation order*).

Schedule 2 [8] makes a consequential amendment.

Schedule 2 [6] (to the extent that it inserts proposed section 25A) provides that a court that makes an apprehended violence order against a person may order that the making of the apprehended violence order is to be disregarded for the purposes of section 11, 29 or 44A (that is, from the provisions that would otherwise disqualify a person from holding a licence, a permit or certain employment).

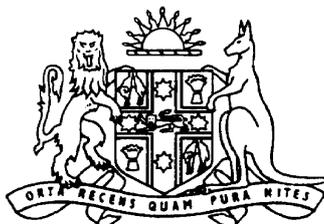
Schedule 2 [1], [7] and [9] make consequential amendments.

Restoration of licences, permits and firearms when AVO revoked

An AVO may be revoked by an order under section 562F of the *Crimes Act 1900*. However, the *Firearms Act 1996* does not make any provision for the consequences of such a revocation.

Schedule 2 [5] imposes a duty on the Commissioner of Police to ensure that any firearm surrendered or seized because of the making of an AVO is maintained in the same condition as when it was surrendered or seized.

Schedule 2 [6] (to the extent that it inserts proposed sections 25B and 25C) provides that if an AVO or a revocation order is revoked, the licence or permit revoked by the making of an AVO or revocation order is restored. It also provides for the licence or permit to be returned to the person and for any firearm surrendered or seized because of the suspension or revocation of a licence or permit to be immediately returned.



New South Wales

Crimes and Firearms Legislation Amendment (Apprehended Violence Orders) Bill 2004

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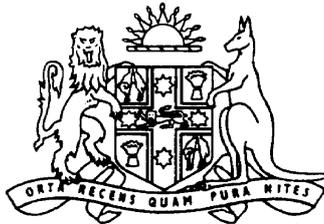
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No. , 2004

A Bill for

An Act to amend the *Crimes Act 1900* to create an offence of making vexatious or frivolous applications for apprehended violence orders; to amend the *Firearms Act 1996* with respect to the effect of apprehended violence orders; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Crimes and Firearms Legislation Amendment (Apprehended Violence Orders) Act 2004</i> .	3 4
2 Commencement	5
This Act commences on the date of assent.	6
3 Amendment of Crimes Act 1900 No 40	7
The <i>Crimes Act 1900</i> is amended as set out in Schedule 1.	8
4 Amendment of Firearms Act 1996 No 46	9
The <i>Firearms Act 1996</i> is amended as set out in Schedule 2.	10

Schedule 1 Amendment of Crimes Act 1900

(Section 3)

[1] Section 562AEA

Insert after section 562AE:

562AEA Obligation to refuse to make order in certain ADVO matters

A court must refuse to make an apprehended domestic violence order if the court is satisfied that:

- (a) the defendant was not advised of the particulars of the complaint before the complaint was made, or
- (b) the defendant was not given an opportunity to be officially interviewed regarding the particulars of the complaint before the complaint was made, or
- (c) the particulars of the complaint were not adequately investigated before the complaint was made, or
- (d) the complaint is frivolous, vexatious or without substance.

[2] Section 562AFA

Insert after section 562AF:

562AFA Obligation to refuse to issue process in certain ADVO matters

An authorised justice must refuse to issue process where a complaint for an apprehended domestic violence order is made if the authorised justice is satisfied that the complaint is frivolous, vexatious or without substance.

[3] Section 562AIA

Insert after section 562AI:

562AIA Obligation to refuse to make order in certain APVO matters

A court must refuse to make an apprehended personal violence order if the court is satisfied that:

- (a) the defendant was not advised of the particulars of the complaint before the complaint was made, or

- (b) the defendant was not given an opportunity to be officially interviewed regarding the particulars of the complaint before the complaint was made, or 1
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 - (c) the particulars of the complaint were not adequately investigated before the complaint was made, or 4
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 - (d) the complaint is frivolous, vexatious or without substance. 6
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- [4] Section 562AK Discretion to refuse to issue process in APVO matters** 8
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- Omit “is frivolous, vexatious, without substance or” from section 562AK (3). 10
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- [5] Section 562AKA** 12
- Insert after section 562AK: 13
- 562AKA Obligation to refuse to issue process in certain APVO matters** 14
- An authorised justice must refuse to issue process where a complaint for an apprehended personal violence order is made if the authorised justice is satisfied that the complaint is frivolous, vexatious or without substance. 15
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- [6] Section 562BA Orders made with consent of parties** 19
- Insert after section 562BA (3): 20
- (4) A court must not make such an order unless the court is satisfied that, before giving his or her consent to the making of the order, the defendant was given a written statement explaining the consequences of the making of the order on the defendant’s ability to possess a firearm, his or her ability to be issued with or hold a licence or permit under the *Firearms Act 1996* and his or her eligibility to hold certain employment. 21
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- [7] Section 562BB Interim court orders** 28
- Insert after section 562BB (6): 29
- (7) A court must refuse to make an order under section 562AE or 562AI confirming an interim order if the court is satisfied that: 30
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- (a) the defendant was not advised of the particulars of the matter before the defendant was required to appear at the further hearing of the matter by the court, or
 - (b) the defendant was not given an opportunity to be officially interviewed regarding the particulars of the matter before the defendant was required to appear at the further hearing of the matter by the court, or
 - (c) the particulars of the matter were not adequately investigated before the defendant was required to appear at the further hearing of the matter by the court, or
 - (d) the matter is frivolous, vexatious or without substance.

[8] Section 562DB

Insert after section 562DA:

562DB Defendant must be told how long AVO applies

A court that makes an order must ensure that the defendant is given a written statement explaining the following:

- (a) the period for which the order remains in force,
- (b) that the order will remain in force for that period unless it is revoked, even if the protected person is no longer fearful of the defendant,
- (c) that the defendant has the right to apply to the court for variation or revocation of the order,
- (d) the procedure for applying to the court for variation or revocation of the order,
- (e) that if the defendant is successful in having the order revoked, the defendant will not be required to pay court costs or any other participant's costs,
- (f) that, unless the order is revoked, it will have the effect of denying the defendant the right to be issued with certain licences, permits or authorities in relation to firearms for a period of up to 10 years.

[9] Section 562F Variation or revocation of court orders	1
Insert after section 562F (8):	2
(9) If an order is revoked under this section, no court costs (such as any application fee or other court fee) are payable by the defendant in relation to the revocation of the order and no order for costs can be made against the defendant in relation to the revocation.	3 4 5 6 7
[10] Section 562FAA	8
Insert after section 562F:	9
562FAA Obligation to return firearms licence or permit if AVO revoked	10
(1) This section applies if a court made an order under section 562D (3) requiring a person to surrender to the Commissioner of Police any licence or permit under the <i>Firearms Act 1996</i> when it made an apprehended violence order.	11 12 13 14 15
(2) If a court revokes an apprehended violence order it must also make an order requiring the Commissioner of Police to return to the defendant any licence or permit under the <i>Firearms Act 1996</i> surrendered in accordance with the court's order when it made the apprehended violence order.	16 17 18 19 20
[11] Section 562XA	21
Insert after section 562X:	22
562XA Offences relating to making of complaints for AVOs and requests for interim AVOs	23 24
(1) A person must not make a complaint for an apprehended violence order, or a request for an interim apprehended violence order, that is frivolous, vexatious or without substance.	25 26 27 28
Maximum penalty: 20 penalty units.	29
(2) A person must not make more than one complaint for an apprehended violence order, or a request for an interim apprehended violence order, where those complaints, requests, or complaints and requests, together are vexatious.	30 31 32 33
Maximum penalty: 20 penalty units.	34

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- (3) A person (*the applicant*) must not make a complaint for an apprehended violence order, or a request for an interim apprehended violence order, against another person unless the applicant in fact fears:
- (a) the commission by the other person of a personal violence offence against the applicant, or
 - (b) the engagement of the other person in conduct amounting to harassment or molestation of the applicant, or
 - (c) the engagement of the other person in conduct in which the other person intimidates the applicant or a person with whom the applicant has a domestic relationship or stalks the applicant.
- Maximum penalty: 20 penalty units.
- (4) A person must not make a statement in a complaint for an apprehended violence order, or in a request for an interim apprehended violence order:
- (a) that the person knows is false or misleading in a material particular, or
 - (b) that the person knows omits any matter or thing without which the statement is misleading in a material particular.
- Maximum penalty: 20 penalty units.
- (5) In determining the penalty to be imposed for an offence under this section, the court may have regard to the effect that the application for an apprehended violence order or the request for an interim apprehended violence order, and the hearing of that application or that request, had on the defendant's life, employment, reputation, rights and liberties. This does not limit the other matters to which the court may have regard.

Schedule 2 Amendment of Firearms Act 1996

(Section 4)

[1] Section 11 General restrictions on issue of licences

Omit section 11 (5) (c). Insert instead:

- (c) is subject to an apprehended violence order, unless a court has made an order under section 25A that the apprehended violence order is to be disregarded for this purpose from the time specified in the further order, or
- (c1) has, at any time within 10 years before the application for the licence was made, been both:
 - (i) subject to an apprehended violence order (other than an order that has been revoked), and
 - (ii) the holder of a licence or permit under this Act or the *Firearms Act 1989*,

unless a court has made a further order under section 25A that the apprehended violence order is to be disregarded for this purpose from the time specified in the further order, or

[2] Section 23

Omit the section. Insert instead:

23 Court may suspend licence on making of interim apprehended violence order

- (1) A court that makes an interim apprehended violence order against a person may order that any licence that authorises the person to possess or use a firearm is suspended (*a suspension order*).
- (2) A suspension order may be made at the time of the making of the interim apprehended violence order or at a later time while the interim apprehended violence order remains in force.
- (3) The court must not make such a suspension order unless the court has had regard to the nature of the matters that gave rise to the interim apprehended violence order and, having done so, is satisfied that the person's licence should be suspended.

(4)	If a suspension order is made, the licence concerned is suspended until the interim apprehended violence order is confirmed or revoked, or until such time as the court otherwise orders.	1 2 3 4
(5)	A court that has made a suspension order may revoke the order at any time while the interim apprehended violence order remains in force.	5 6 7
[3]	Section 24 Revocation of licence	8
	Omit “or an apprehended violence order” from section 24 (1).	9
[4]	Section 24A	10
	Insert after section 24:	11
24A	Court may revoke licence on making of apprehended violence order	12 13
(1)	A court that makes an apprehended violence order against a person may order that any licence that authorises the person to possess or use a firearm is revoked (<i>a revocation order</i>).	14 15 16
(2)	A revocation order may be made at the time of the making of the apprehended violence order or at a later time while the apprehended violence order remains in force.	17 18 19
(3)	The court must not make a revocation order unless the court has had regard to the nature of the complaint that gave rise to the apprehended violence order and, having done so, is satisfied that the person’s licence should be revoked.	20 21 22 23
(4)	A court that has made a revocation order may revoke the order at any time while the apprehended violence order remains in force.	24 25 26
[5]	Section 25 Surrender and seizure of firearms when licence suspended or revoked	27 28
	Insert after section 25 (2):	29
(3)	The Commissioner must ensure that any firearm surrendered or seized under this section is maintained in the same condition as when it was surrendered or seized.	30 31 32

[6] Sections 25A–25C	1
Insert after section 25:	2
25A Court making apprehended violence order may specify the consequences of making of order on issue of licences and permits and on employment	3 4 5
(1) A court that makes an apprehended violence order against a person may order that the making of the apprehended violence order is to be disregarded for the purposes of section 11, 29 or 44A from the time specified in the order.	6 7 8 9
(2) Such an order may be made at the time of the making of the apprehended violence order or at a later time, regardless of whether the apprehended violence order remains in force.	10 11 12
(3) The court must not make such an order unless the court has had regard to the nature of the complaint that gave rise to the apprehended violence order and, having done so, is satisfied that the apprehended violence order should be disregarded for the purposes of section 11, 29 or 44A.	13 14 15 16 17
25B Restoration of licence or permit if AVO or revocation order revoked	18 19
(1) This section applies if:	20
(a) a person’s licence or permit was revoked by an order under section 24A because the person became subject to an apprehended violence order, and	21 22 23
(b) the apprehended violence order is subsequently revoked in accordance with section 562F of the <i>Crimes Act 1900</i> or the order under section 24A is subsequently revoked.	24 25 26 27
(2) If this section applies:	28
(a) the licence or permit of the person is automatically restored from the time of the revocation of the apprehended violence order or the order under section 24A, as the case may be, and	29 30 31 32
(b) the Commissioner must immediately return any licence or permit surrendered by the person when the person’s licence or permit was revoked or must issue a new licence or permit to the person immediately.	33 34 35 36

25C Restoration of firearms if AVO or revocation order revoked

- (1) This section applies if:
- (a) a person's licence or permit was suspended by an order under section 23, or revoked by an order under section 24A, because the person became subject to an apprehended violence order, and
 - (b) the apprehended violence order is subsequently revoked in accordance with section 562F of the *Crimes Act 1900* or the order under section 24A is subsequently revoked.
- (2) If this section applies, any firearm surrendered by the person under section 25 (1) or seized by a police officer under section 25 (2) must be immediately returned to the person in the same condition as when it was surrendered or seized.

[7] Section 29 General restrictions on issuing permits

Omit section 29 (3) (c). Insert instead:

- (c) is subject to an apprehended violence order, unless a court has made an order under section 25A that the apprehended violence order is to be disregarded for this purpose from the time specified in the further order, or
- (c1) has, at any time within 10 years before the application for the permit was made, been both:
 - (i) subject to an apprehended violence order (other than an order that has been revoked), and
 - (ii) the holder of a licence or permit under this Act or the *Firearms Act 1989*,unless a court has made a further order under section 25A that the apprehended violence order is to be disregarded for this purpose from the time specified in the further order, or

[8] Section 30 Provisions relating to permits

Omit "by the Commissioner" from section 30 (4).

[9] Section 44A Prescribed persons not to be involved in firearms dealing business

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Insert “, unless a court has made a further order under section 25A that the apprehended violence order is to be disregarded for this purpose from the time specified in the further order” after “order” in section 44A (3) (d).

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