



New South Wales

Crimes (Domestic and Personal Violence) Amendment Bill 2013

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Crimes (Domestic and Personal Violence) Act 2007* (the *principal Act*):

- (a) to enable police officers of or above the rank of sergeant to issue provisional apprehended domestic violence orders, and
- (b) to expand the powers of police officers to give directions to persons in connection with the application for, and service on them of, provisional apprehended domestic violence orders, and
- (c) to enable police officers to detain persons while transporting them to a police station for the purpose of applying for, and serving on them, provisional apprehended domestic violence orders, and
- (d) to impose requirements in relation to the treatment of persons so detained and the keeping of records by officers of any such detention, and
- (e) to provide that it is an offence to make a false or misleading statement for the purpose of making an application for an apprehended personal violence order, and
- (f) to provide that an application for review of a Registrar's decision to refuse to accept an application notice for filing may be determined by a Magistrate, rather than the court, and
- (g) to provide for the referral to mediation of parties to interim apprehended personal violence orders, and

- (h) to require a court to refer parties to an apprehended personal violence order (or an interim apprehended personal violence order) to mediation unless it is satisfied that there is good reason not to do so.

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 a day or days to be appointed by proclamation.

Schedule 1 Amendments to Crimes (Domestic and Personal Violence) Act 2007 No 80 relating to provisional orders

Issue of interim apprehended domestic violence orders by senior police officers

Schedule 1 [5] substitutes section 25 of the principal Act to enable a senior police officer to issue a provisional order which is an interim apprehended domestic violence order. Currently, those orders may only be issued by an authorised officer (being a Magistrate, Children's Magistrate, registrar of the Local Court or an authorised employee of the Department of Attorney General and Justice). Provisional orders are made in situations where there has been an incident and a police officer has good reason to believe that an order should be made immediately to ensure the safety of a person or to protect property.

Schedule 1 [1]–[3] amend the definitions in the principal Act consequentially and insert a definition of *senior police officer* which means a police officer of or above the rank of sergeant.

Schedule 1 [7] contains provisions relating to the making of interim apprehended domestic violence orders by senior police officers and provides that a senior police officer may not make such an order if the police officer is also the applicant for the order.

Schedule 1 [13] provides that a provisional order that is made by a senior police officer may be varied or revoked by any court that deals or is to deal with an application for an apprehended violence order against the defendant.

Schedule 1 [4], [6], [9]–[12] and [15]–[18] make consequential amendments.

Powers of police in relation to provisional orders

Schedule 1 [19] and [21] expand the power of a police officer to direct a person to remain at the scene where a relevant incident occurred so as to enable a provisional order to be served on the person. Under proposed section 89A of the principal Act, a police officer will be able to make various directions to a person against whom a provisional order that is an interim apprehended domestic violence order is sought, including to go to and remain at a particular place or a specified police station or to accompany a police officer to a police station. If the person fails or refuses to comply with a direction, the person may be detained (and taken to a police station). A person who is directed to accompany a police officer to a police station may be detained for the purpose of transporting the person to the police station.

Proposed section 90A of the principal Act provides that a person may be directed to remain at a place for as long as is reasonably necessary for the provisional order, or copy of the apprehended violence order or variation, to be served on the person. A person may be detained for the time that it takes to serve the provisional order, or copy of the apprehended violence order or variation, on the person but, in any case, no longer than 2 hours.

Proposed section 90B of the principal Act specifies the rights of a person so detained such as being given an opportunity to contact a responsible person, being given food, drink and bedding and being kept (if practicable) separately from persons who have committed offences and not in a cell.

Proposed section 90C of the principal Act enables a police officer to search a person so detained.

Proposed section 90D provides that records must be made in accordance with the regulations in relation to persons so detained.

Schedule 1 [20] provides that a person who fails or refuses to comply with a direction of a police officer to remain at a place for the purpose of the service of an apprehended violence order or a variation of the order may be detained at that place or detained and taken to a police station.

Miscellaneous amendments

Schedule 1 [8] changes the current requirement to specify in a provisional order the date on which the person against whom the order is made must appear in court, being a date that is not more than 28 days after the order is made. Proposed section 29 (3) provides that the date specified must, in addition, be the next date on which the matter can be listed on a domestic violence list at an appropriate court.

Schedule 1 [14] provides that if a senior police officer incorrectly makes a provisional order as an interim apprehended personal violence order, a person is not liable for anything done or omitted to be done in good faith in reliance on the provisional order or any ancillary property recovery order.

Schedule 2 Amendments to Crimes (Domestic and Personal Violence) Act 2007 No 80 relating to apprehended personal violence orders

Schedule 2 [1] requires a court, when considering whether to make an apprehended personal violence order, to refer the parties to the order for mediation under the *Community Justice Centres Act 1983* unless it is satisfied that there is good reason not to do so.

Schedule 2 [2] provides for the factors that the court is to consider in determining whether there is good reason not to refer a matter to mediation (such as any history of physical violence to the protected person by the defendant and any previous unsuccessful mediation). Currently, the court is not permitted to refer a matter to mediation in such circumstances. **Schedule 2 [3]** provides that the existence of one or more of these factors does not prevent the court from referring a matter to mediation.

Schedule 2 [4] provides that the provisions of the principal Act relating to the referral of parties to mediation apply in relation to an interim apprehended personal violence order in the same way as they apply in relation to an apprehended personal violence order.

Schedule 2 [5] provides that a person is guilty of an offence if the person makes a statement (for the purpose of making an application for an apprehended personal violence order) that the person knows to be false or misleading. The maximum penalty is imprisonment for 12 months or 10 penalty units, or both.

Schedule 2 [6] provides that a review of a Registrar's decision to refuse to accept an application notice for filing may be determined by a Magistrate, rather than the court.



New South Wales

Crimes (Domestic and Personal Violence) Amendment Bill 2013

Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendments to Crimes (Domestic and Personal Violence) Act 2007 No 80 relating to provisional orders	3
Schedule 2 Amendments to Crimes (Domestic and Personal Violence) Act 2007 No 80 relating to apprehended personal violence orders	10



New South Wales

Crimes (Domestic and Personal Violence) Amendment Bill 2013

No. , 2013

A Bill for

An Act to amend the *Crimes (Domestic and Personal Violence) Act 2007* with respect to the making of provisional orders and apprehended personal violence orders; and for other purposes.

The Legislature of New South Wales enacts:

1

1 Name of Act

2

This Act is the *Crimes (Domestic and Personal Violence) Amendment Act 2013*.

3

2 Commencement

4

This Act commences on a day or days to be appointed by proclamation.

5

Schedule 1	Amendments to Crimes (Domestic and Personal Violence) Act 2007 No 80 relating to provisional orders	1
		2
		3
[1] Section 3 Definitions		4
	Insert “or senior police officer” after “authorised officer” in the definition of <i>interim apprehended domestic violence order</i> in section 3 (1).	5
		6
[2] Section 3 (1)		7
	Insert in alphabetical order:	8
	<i>applicant officer</i> —see section 25.	9
	<i>issuing officer</i> —see section 25.	10
	<i>senior police officer</i> means a police officer of or above the rank of sergeant.	11
[3] Section 3 (1), definition of “provisional order”		12
	Omit the definition. Insert instead:	13
	<i>provisional order</i> means an interim apprehended domestic violence order or an interim apprehended personal violence order made under Part 7.	14
		15
[4] Section 15 Application for making of apprehended domestic violence order by court		16
	Insert after section 15 (2):	17
	(3) Subsection (2) does not apply to a provisional order that is made by a senior police officer and treated as an application for an order pursuant to section 29.	18
		19
[5] Section 25		20
	Omit the section. Insert instead:	21
25 Application by telephone, facsimile or other communication device		22
	(1) A police officer may apply by telephone, facsimile or other communication device:	23
		24
	(a) to an authorised officer or senior police officer for an interim apprehended domestic violence order, or	25
		26
	(b) to an authorised officer for an interim apprehended personal violence order.	27
		28
	(2) In this Act:	29
	(a) an interim apprehended domestic violence order or an interim apprehended personal violence order made on an application under this section is referred to as a <i>provisional order</i> , and	30
		31
	(b) the police officer who applies for a provisional order is referred to as the <i>applicant officer</i> , and	33
		34
	(c) the authorised officer or senior police officer who makes a provisional order is referred to as the <i>issuing officer</i> .	35
		36
	(3) An application for a provisional order:	37
	(a) may be made at the request of the protected person or on the applicant officer’s own initiative, and	38
		39
	(b) may be transmitted to the authorised officer or senior police officer by another person on behalf of the applicant officer if it is not practicable for the application to be made by the applicant officer by telephone,	40
		41
		42

	facsimile or other communication device directly to the authorised officer or senior police officer.	1 2
[6]	Section 28 Making of provisional order by authorised officer	3
	Insert “by an authorised officer” after “order” in section 28 (3).	4
[7]	Section 28A	5
	Insert after section 28:	6
28A	Making of provisional order by senior police officer	7
	(1) A senior police officer to whom an application is made for a provisional order may, if satisfied that there are reasonable grounds for doing so, make the provisional order.	8 9 10
	(2) However, a senior police officer may not make a provisional order in circumstances where he or she is the applicant officer.	11 12
	(3) The provisional order is to contain the address or facsimile number of the Local Area Commander of Police at which the defendant may serve an application for variation or revocation of the order.	13 14 15
[8]	Section 29 Provisional order taken to be application for court order	16
	Omit section 29 (2). Insert instead:	17
	(2) The provisional 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 issuing officer.	18 19 20
	(3) The specified date must be:	21
	(a) the next date on which the matter can be listed on a domestic violence list at the appropriate court, and	22 23
	(b) in any case, a date that is not more than 28 days after the making of the provisional order.	24 25
[9]	Sections 30 (1), (2) and (4), 38 (1), (2) and (3), 43 (2) and 44 (2)	26
	Omit “authorised officer” wherever occurring. Insert instead “issuing officer”.	27
[10]	Section 33 Variation or revocation of provisional order on application of police officer	28 29
	Insert “made by an authorised officer” after “provisional order” in section 33 (1).	30
[11]	Section 33 (3)	31
	Insert “under this section” after “provisional order”.	32
[12]	Section 33 (7)	33
	Insert after section 33 (6):	34
	(7) This section does not apply to the variation or revocation of a provisional order in accordance with section 33A.	35 36

[13] Section 33A	1
Insert after section 33:	2
33A Variation or revocation of provisional order on application of defendant	3
(1) A provisional order made by a senior police officer may be varied or revoked on the application of the defendant by any court that deals, or is to deal, with an application for an apprehended violence order against that defendant.	4 5 6
(2) Despite subsection (1), an application for variation or revocation of a provisional 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.	7 8 9 10
(3) Sections 73 (1), (2), (4) and (6), 74 (1) and (2), 76 (2), (4) and (5) and 77 (2)–(8) apply to the variation or revocation of a provisional order under this section in the same way as they apply to the variation or revocation of a final apprehended violence order or interim court order.	11 12 13 14
(4) In addition to the requirements of section 73 (4), a provisional order is not to be varied or revoked on the application of the defendant under this section unless notice of the application has been served on the Local Area Commander of Police.	15 16 17 18
(5) The applicant officer or another police officer is entitled to appear in proceedings for a variation or revocation of the provisional order under this section.	19 20 21
[14] Section 34A	22
Insert after section 34:	23
34A Defects in interim apprehended domestic violence orders	24
(1) This section applies if a senior police officer has, in good faith, purported to make a provisional order as an interim apprehended domestic violence order but none of the persons for whose protection the order was made has or has had a domestic relationship with the person against whom the order was sought.	25 26 27 28 29
(2) If a provisional order has such a defect, no action lies against any police officer or any other person merely because of that defect in respect of anything done or omitted to be done by the police officer or other person in good faith in reliance on the provisional order or any ancillary property recovery order.	30 31 32 33
[15] Section 35 Prohibitions and restrictions imposed by apprehended violence orders	34
Omit “made by an authorised officer” from section 35 (3).	35
[16] Section 35 (3)	36
Omit “the authorised officer”. Insert instead “the issuing officer”.	37
[17] Section 37 Ancillary property recovery orders may be made	38
Omit section 37 (1) and (1A). Insert instead:	39
(1) A property recovery order may be made by a court or authorised officer:	40
(a) when making an apprehended domestic violence order or interim apprehended domestic violence order, or	41 42
(b) in relation to an interim apprehended domestic violence order that has been made by a senior police officer.	43 44

(1A)	A court or authorised officer may make a property recovery order only if satisfied that:	1
		2
(a)	the protected person has left personal property at premises which the defendant occupies, or	3
		4
(b)	the defendant has left personal property at premises which the protected person occupies.	5
		6
(1B)	A property recovery order may be made under this section:	7
(a)	on the motion of a court or authorised officer when making an apprehended domestic violence order or interim apprehended domestic violence order, or	8
		9
		10
(b)	on the application of a police officer, the protected person or the defendant.	11
		12
[18]	Section 81 Concurrent criminal proceedings	13
	Insert “, and a senior police officer may make a provisional order,” after “violence order”.	14
[19]	Sections 89 and 89A	15
	Omit section 89. Insert instead:	16
89	Detention of defendant for making and service of interim apprehended personal violence order	17
		18
(1)	A police officer who is making or is about to make an application for a provisional order that is an interim apprehended personal violence order may give either of the following directions to the person against whom the order is sought:	19
		20
		21
		22
(a)	that the person remain at the scene where the incident occurred that was the reason for making the application,	23
		24
(b)	in a case where the person has left the scene of that incident—that the person remain at another place where the police officer locates the person.	25
		26
		27
(2)	If a person refuses or fails to comply with a direction under this section, the police officer who gave the direction or another police officer may detain the person at the scene of the incident or other place, or detain the person and take the person to a police station.	28
		29
		30
		31
89A	Detention of defendant for making and service of interim apprehended domestic violence order	32
		33
(1)	A police officer who is making or is about to make an application for a provisional order that is an interim apprehended domestic violence order may give any of the following directions to the person against whom the order is sought:	34
		35
		36
		37
(a)	that the person remain at the scene where the incident occurred that was the reason for making the application,	38
		39
(b)	in a case where the person has left the scene of that incident—that the person remain at another place where the police officer locates the person,	40
		41
		42
(c)	that the person go to and remain at another place that has been agreed to by the person,	43
		44
(d)	that the person go to and remain at a specified police station,	45

(e)	that the person accompany a police officer to a police station and remain at the police station,	1 2
(f)	that the person accompany a police officer to another place that has been agreed to by the person, or to another place (whether or not agreed to by the person) for the purpose of receiving medical attention, and remain at that other place.	3 4 5 6
(2)	If a person refuses or fails to comply with a direction under this section, the police officer who gave the direction or another police officer may detain the person at the scene of the incident or other place, or detain the person and take the person to a police station.	7 8 9 10
(3)	If a direction is given under subsection (1) (e) or (f), the police officer may detain the person in the vehicle in which the person accompanies the police officer to the police station or other place for so long as is necessary to transport the person to the police station or other place.	11 12 13 14
(4)	In considering whether to detain a person under subsection (3), a police officer may have regard to the following matters:	15 16
(a)	the need to ensure the safety of the person for whose protection the interim apprehended domestic violence order is sought, including the need to:	17 18 19
(i)	ensure the service of the order, and	20
(ii)	remove the defendant from the scene of the incident, and	21
(iii)	prevent substantial damage to property,	22
(b)	the circumstances of the defendant,	23
(c)	any other relevant matter.	24
[20]	Section 90 Detention of defendant for service of order or variation	25
	Omit section 90 (2). Insert instead:	26
(2)	If a person refuses or fails to comply with a direction under this section, the police officer who gave the direction or another police officer may detain the person at the place where the person is, or detain the person and take the person to a police station, for the purpose only of serving the order or variation on the person.	27 28 29 30 31
[21]	Sections 90A–90D	32
	Insert after section 90:	33
90A	Period for which person may be directed to remain or be detained	34
(1)	A person may be directed under this Part to remain at a place for as long as is reasonably necessary for:	35 36
(a)	in the case of a direction under section 89 or 89A—the application for the provisional order to be made and the provisional order to be served on the person, or	37 38 39
(b)	in the case of a direction under section 90—a copy of the apprehended violence order or variation of the order to be served on the person.	40 41
(2)	A person may be detained under this Part for no longer than:	42
(a)	the time it takes for:	43
(i)	in the case of detention under section 89 or 89A—the application for the provisional order to be made and the provisional order to be served on the person, or	44 45 46

(ii)	in the case of detention under section 90—a copy of the apprehended violence order or variation of the order to be served on the person, or	1 2 3
(b)	2 hours (excluding any reasonable amount of time for travel to the place or police station), whichever is the lesser.	4 5 6
90B	Detention of person at police station or other place or in vehicle	7
(1)	A person who is detained under this Part at a police station or other place or in a vehicle may be detained there by any police officer.	8 9
(2)	As far as is reasonably practicable, a person who is detained under this Part at a police station:	10 11
(a)	must be given an opportunity by the person in charge of the police station to contact a friend, relative, guardian or independent person (other than a protected person), and	12 13 14
(b)	must be kept separately from any person detained at the police station in connection with the commission or alleged commission of an offence, and	15 16 17
(c)	if the person is apparently under the age of 18 years—must be kept separately from any person over that age detained at the police station, and	18 19 20
(d)	must not be detained in a cell at the police station unless it is necessary to do so, and	21 22
(e)	must be provided with necessary food, drink, bedding and blankets appropriate to the person’s needs.	23 24
(3)	As far as is reasonably practicable, a person who is detained under this Part in a place other than a police station or vehicle:	25 26
(a)	must be given an opportunity by the person in charge of the place to contact a friend, relative, guardian or independent person (other than a protected person), and	27 28 29
(b)	must be provided with necessary food, drink, bedding and blankets appropriate to the person’s needs.	30 31
(4)	As far as is reasonably practicable, a person who is to be detained under this Part in a vehicle must be given an opportunity by the person in charge of the vehicle to contact a friend, relative, guardian or independent person (other than a protected person) before being detained in the vehicle.	32 33 34 35
90C	Searching detained persons	36
(1)	A police officer by whom a person is detained under this Part may:	37
(a)	conduct a search of the person or of articles in the possession of the person that may include:	38 39
(i)	requiring the person to remove only his or her overcoat, coat or jacket or similar article of clothing and any gloves, shoes, socks and hat, and	40 41 42
(ii)	an examination of those items, and	43
(b)	take possession of any personal belongings found in the person’s possession.	44 45
(2)	A person is entitled to the return of the personal belongings taken from the person under this section when the person ceases to be detained under this Part.	46 47

90D	Records required to be kept	1
(1)	Records must be made in accordance with the regulations in relation to the detention of a person under this Part.	2 3
(2)	A person who has custody of a record required to be made by this section must retain the record for a period of 3 years after it is made.	4 5
(3)	A person who has the custody of a record made under this section must, when required to do so by a person authorised by the Minister for the purposes of this subsection, make it available for inspection by that person.	6 7 8
(4)	This section does not require a person to make a record of a matter in relation to the detention or search of a person, if another person has already made a record of that matter as required by this section.	9 10 11

Schedule 2	Amendments to Crimes (Domestic and Personal Violence) Act 2007 No 80 relating to apprehended personal violence orders	1
		2
		3
[1] Section 21 Referral of matters to mediation		4
Omit section 21 (1). Insert instead:		5
(1) If an application for an apprehended personal violence order is made to a court, the court:		6
(a) when considering whether to make the order—is to refer the protected person and the defendant for mediation under the <i>Community Justice Centres Act 1983</i> unless it is satisfied that there is good reason not to do so, and		7
(b) at any other time—may refer the protected person and the defendant for mediation under that Act.		8
		9
		10
		11
		12
		13
[2] Section 21 (2)		14
Omit “A matter is not to be referred to mediation under this section if the court is of the opinion that:”.		15
Insert instead “Without limiting subsection (1), in determining whether there is good reason not to refer a matter to mediation, the court is to consider whether:”.		16
		17
		18
[3] Section 21 (2A)		19
Insert after section 21 (2):		20
(2A) The existence of any one or more of the factors referred to in subsection (2) does not prevent a court from referring a matter to mediation.		21
		22
[4] Section 24A		23
Insert after section 24:		24
24A Referral of matters to mediation		25
Section 21 applies in relation to an interim apprehended personal violence order in the same way as it applies in relation to an apprehended personal violence order.		26
		27
		28
[5] Section 49A		29
Insert after section 49:		30
49A False or misleading applications for apprehended personal violence order		31
A person is guilty of an offence if:		32
(a) the person makes a statement (whether orally, in a document or in any other way), and		33
(b) the person does so knowing that the statement is false or misleading in a material particular, and		34
(c) the statement is made to a Registrar or Magistrate for the purpose of making an application for an apprehended personal violence order under section 18.		35
		36
		37
		38
		39
Maximum penalty: Imprisonment for 12 months or 10 penalty units, or both.		40

[6] Section 53 Discretion to refuse to issue process in apprehended personal violence order matters	1
	2
Omit “the court” from section 53 (8). Insert instead “a Magistrate”.	3