

# Crimes (Domestic and Personal Violence) Act 2007 No 80

[2007-80]



New South Wales

## Status Information

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Crimes \(Domestic and Personal Violence\) Amendment \(Information Sharing\) Act 2013 No 28](#) (not commenced)
  - [Crimes \(Domestic and Personal Violence\) Amendment Act 2013 No 87](#) (not commenced — to commence on 20.5.2014)
  - [Bail \(Consequential Amendments\) Act 2014 No 5](#) (not commenced — to commence on 20.5.2014)

### Authorisation

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# Crimes (Domestic and Personal Violence) Act 2007 No 80



New South Wales

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# Crimes (Domestic and Personal Violence) Act 2007 No 80



New South Wales

An Act to protect persons from domestic and personal violence; to repeal Part 15A of the [Crimes Act 1900](#); and to make consequential amendments to other Acts and instruments.

## Part 1 Preliminary

### 1 Name of Act

This Act is the [Crimes \(Domestic and Personal Violence\) Act 2007](#).

### 2 Commencement

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

### 3 Definitions

(1) In this Act:

**apprehended domestic violence order** means an order under Part 4.

**apprehended personal violence order** means an order under Part 5.

**apprehended violence order** means:

(a) a final apprehended violence order, or

(b) an interim apprehended violence order.

**apprehended violence order proceedings** means proceedings under this Act in relation to an apprehended violence order or an application for an apprehended violence order.

**authorised officer** has the same meaning as in the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) and includes the Registrar of the Children's Court.

**child** means a person under the age of 16 years.

**court** means:



- (a) the Local Court, or
- (b) the Children's Court,
- (c) (Repealed)

exercising jurisdiction under section 91.

**defendant** means the person against whom an apprehended violence order is made or is sought to be made.

**domestic relationship**—see section 5.

**domestic violence offence**—see section 11.

**final apprehended violence order** means an apprehended domestic violence order or an apprehended personal violence order.

**interim apprehended domestic violence order** means an interim apprehended domestic violence order made by a court or Registrar under Part 6 or an authorised officer under Part 7.

**interim apprehended personal violence order** means an interim apprehended personal violence order made by a court or Registrar under Part 6 or an authorised officer under Part 7.

**interim apprehended violence order** means an interim court order or a provisional order.

**interim court order** means an interim apprehended domestic violence order or an interim apprehended personal violence order made by a court or registrar of a court under Part 6.

**intimidation**—see section 7.

**personal violence offence**—see section 4.

**property recovery order** means a property recovery order made under section 37.

**protected person** means the person for whose protection an apprehended violence order is sought or made.

**provisional order** means an interim apprehended domestic violence order or an interim apprehended personal violence order made by an authorised officer under Part 7.

**Registrar** means a Registrar of the Local Court or the Registrar of the Children's Court.

**relative**—see section 6.

**stalking**—see section 8.

- (2) If an apprehended violence order is varied, a reference in this Act to the order is a reference to the order as so varied.
- (3) A reference in this Act to a person being present in court includes a reference to a person being present in court by way of audio visual link, being facilities (including closed-circuit television) that enable audio and visual communication between persons at different places.
- (4) A reference in this Act to a finding of guilt includes a reference to the making of an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999*.
- (5) Notes included in this Act do not form part of this Act.

#### 4 Meaning of “personal violence offence”

In this Act, **personal violence offence** means:

- (a) an offence under, or mentioned in, section 19A, 24, 25, 26, 27, 28, 29, 30, 31, 33, 33A, 35, 35A, 37, 38, 39, 41, 44, 46, 47, 48, 49, 58, 59, 61, 61B, 61C, 61D, 61E, 61I, 61J, 61JA, 61K, 61L, 61M, 61N, 61O, 65A, 66A, 66B, 66C, 66D, 66EA, 80A, 80D, 86, 87, 93G, 93GA, 195, 196, 198, 199, 200, 562I (as in force before its substitution by the *Crimes Amendment (Apprehended Violence) Act 2006*) or 562ZG of the *Crimes Act 1900*, or
- (b) an offence under section 13 or 14 of this Act, or
- (c) an offence of attempting to commit an offence referred to in paragraph (a) or (b).

#### 5 Meaning of “domestic relationship”

For the purposes of this Act, a person has a **domestic relationship** with another person if the person:

- (a) is or has been married to the other person, or
- (b) is or has been a de facto partner of that other person, or
- (c) has or has had an intimate personal relationship with the other person, whether or not the intimate relationship involves or has involved a relationship of a sexual nature, or
- (d) is living or has lived in the same household as the other person, or
- (e) is living or has lived as a long-term resident in the same residential facility as the other person and at the same time as the other person (not being a facility that is a correctional centre within the meaning of the *Crimes (Administration of Sentences)*

[Act 1999](#) or a detention centre within the meaning of the [Children \(Detention Centres\) Act 1987](#)), or

- (f) has or has had a relationship involving his or her dependence on the ongoing paid or unpaid care of the other person, or
- (g) is or has been a relative of the other person, or
- (h) in the case of an Aboriginal person or a Torres Strait Islander, is or has been part of the extended family or kin of the other person according to the Indigenous kinship system of the person's culture.

**Note—**

“De facto partner” is defined in section 21C of the [Interpretation Act 1987](#).

## **6 Meaning of “relative”**

For the purposes of this Act, a person is a **relative** of another person (the **other person**):

- (a) if the person is:
  - (i) a father, mother, grandfather, grandmother, step-father, step-mother, father-in-law or mother-in-law, or
  - (ii) a son, daughter, grandson, grand-daughter, step-son, step-daughter, son-in-law or daughter-in-law, or
  - (iii) a brother, sister, half-brother, half-sister, step-brother, step-sister, brother-in-law or sister-in-law, or
  - (iv) an uncle, aunt, uncle-in-law or aunt-in-law, or
  - (v) a nephew or niece, or
  - (vi) a cousin,of the other person, or
- (b) where the person has a de facto partner (the **person's partner**)—if the other person is:
  - (i) a father, mother, grandfather, grandmother, step-father or step-mother, or
  - (ii) a son, daughter, grandson, grand-daughter, step-son or step-daughter, or
  - (iii) a brother, sister, half-brother, half-sister, step-brother or step-sister, or
  - (iv) an uncle or aunt, or
  - (v) a nephew or niece, or

- (vi) a cousin,  
of the person's partner.

## **7 Meaning of "intimidation"**

- (1) For the purposes of this Act, **intimidation** of a person means:
  - (a) conduct amounting to harassment or molestation of the person, or
  - (b) an approach made to the person by any means (including by telephone, telephone text messaging, e-mailing and other technologically assisted means) that causes the person to fear for his or her safety, or
  - (c) any conduct that causes a reasonable apprehension of injury to a person or to a person with whom he or she has a domestic relationship, or of violence or damage to any person or property.
- (2) For the purpose of determining whether a person's conduct amounts to intimidation, a court may have regard to any pattern of violence (especially violence constituting a domestic violence offence) in the person's behaviour.

## **8 Meaning of "stalking"**

- (1) In this Act, **stalking** includes the following of a person about or the watching or frequenting of the vicinity of, or an approach to, a person's place of residence, business or work or any place that a person frequents for the purposes of any social or leisure activity.
- (2) For the purpose of determining whether a person's conduct amounts to stalking, a court may have regard to any pattern of violence (especially violence constituting a domestic violence offence) in the person's behaviour.

## **Part 2 Objects of Act in relation to domestic and personal violence**

### **9 Objects of Act in relation to domestic violence**

- (1) The objects of this Act in relation to domestic violence are:
  - (a) to ensure the safety and protection of all persons, including children, who experience or witness domestic violence, and
  - (b) to reduce and prevent violence by a person against another person where a domestic relationship exists between those persons, and
  - (c) to enact provisions that are consistent with certain principles underlying the Declaration on the Elimination of Violence against Women, and
  - (d) to enact provisions that are consistent with the United Nations Convention on the

Rights of the Child.

- (2) This Act aims to achieve those objects by:
- (a) empowering courts to make apprehended domestic violence orders to protect people from domestic violence, intimidation (including harassment) and stalking, and
  - (b) ensuring that access to courts is as safe, speedy, inexpensive and simple as is consistent with justice.
- (3) In enacting this Act, Parliament recognises:
- (a) that domestic violence, in all its forms, is unacceptable behaviour, and
  - (b) that domestic violence is predominantly perpetrated by men against women and children, and
  - (c) that domestic violence occurs in all sectors of the community, and
  - (d) that domestic violence extends beyond physical violence and may involve the exploitation of power imbalances and patterns of abuse over many years, and
  - (e) that domestic violence occurs in traditional and non-traditional settings, and
  - (f) the particularly vulnerable position of children who are exposed to domestic violence as victims or witnesses, and the impact that such exposure can have on their current and future physical, psychological and emotional well-being, and
  - (g) that domestic violence is best addressed through a co-ordinated legal and social response of assistance and prevention of violence and, in certain cases, may be the subject of appropriate intervention by the court.
- (4) A court that, or person who, exercises any power conferred by or under this Act in relation to domestic violence must be guided in the exercise of that power by the objects referred to in this section.

**10 Object of Act in relation to personal violence**

- (1) The object of this Act in relation to personal violence is to ensure the safety and protection of all persons who experience personal violence outside a domestic relationship.
- (2) This Act aims to achieve that object by:
- (a) empowering courts to make apprehended personal violence orders in appropriate circumstances to protect people from violence, intimidation (including harassment) and stalking, and

(b) ensuring that access to courts is as safe, speedy, inexpensive and simple as is consistent with justice, and

(c) ensuring that other avenues of dispute resolution are encouraged where appropriate.

## **Part 3 Domestic violence and other offences**

### **11 Meaning of “domestic violence offence”**

In this Act, **domestic violence offence** means a personal violence offence committed by a person against another person with whom the person who commits the offence has or has had a domestic relationship.

### **12 Recording of domestic violence offences**

- (1) The charge in respect of an offence may indicate that the offence is a domestic violence offence.
- (2) If a person pleads guilty to an offence or is found guilty of an offence and the court is satisfied that the offence was a domestic violence offence, the court is to direct that the offence be recorded on the person’s criminal record as a domestic violence offence.
- (3) If the court makes a direction under this section to record an offence as a domestic violence offence, the prosecution may make an application to the court requesting that the court direct that specified offences in respect of which the person has previously pleaded guilty or been found guilty be recorded as domestic violence offences.
- (4) Any such application is to include sufficient information in support of the request to enable the court to make a decision as to whether such a recording is appropriate.
- (5) The court may require the prosecutor to provide further information to enable it to make a determination as to whether to direct a recording to be made under this section.
- (6) If satisfied after considering an application under subsection (3) that an offence referred to in the application was a domestic violence offence, the court is to direct that the offence be recorded on the criminal record of the person concerned as a domestic violence offence.
- (7) A victim of an offence is not compellable in any proceedings before the court to determine whether the court should make a direction under this section to record an offence as a domestic violence offence.
- (8) A court that directs a recording to be made under this section or is required to take such a recording into account may, on application or on its own motion, correct the

recording if it considers that there is an error in the recording.

- (9) Regulations may be made for or with respect to the recording of offences under this section, including the manner in which and time within which such recordings are to be made.

**Note—**

An indication in the charge for an offence that a person has committed a domestic violence offence will be relevant in bail proceedings. The recording on a person's criminal record that an offence is a domestic violence offence will be relevant to sections 7 and 8 of this Act, where previous behaviour constituting a domestic violence offence is taken into account for the purpose of determining whether a person's behaviour amounts to intimidation or stalking, and to sections 27 and 49 of this Act, which require police to make applications for apprehended domestic violence orders in situations where the person in question has already committed a domestic violence offence. Section 21A of the *Crimes (Sentencing Procedure) Act 1999* provides that a record of previous convictions is an aggravating factor to be taken into account when determining the appropriate sentence for an offence.

**13 Stalking or intimidation with intent to cause fear of physical or mental harm**

- (1) A person who stalks or intimidates another person with the intention of causing the other person to fear physical or mental harm is guilty of an offence.

Maximum penalty: Imprisonment for 5 years or 50 penalty units, or both.

- (2) For the purposes of this section, causing a person to fear physical or mental harm includes causing the person to fear physical or mental harm to another person with whom he or she has a domestic relationship.
- (3) For the purposes of this section, a person intends to cause fear of physical or mental harm if he or she knows that the conduct is likely to cause fear in the other person.
- (4) For the purposes of this section, the prosecution is not required to prove that the person alleged to have been stalked or intimidated actually feared physical or mental harm.
- (5) A person who attempts to commit an offence against subsection (1) is guilty of an offence against that subsection and is punishable as if the offence attempted had been committed.

**14 Offence of contravening apprehended violence order**

- (1) A person who knowingly contravenes a prohibition or restriction specified in an apprehended violence order made against the person is guilty of an offence.

Maximum penalty: Imprisonment for 2 years or 50 penalty units, or both.

- (2) A person is not guilty of an offence against subsection (1) unless:
- (a) in the case of an apprehended violence order made by a court, the person was served with a copy of the order or was present in court when the order was made,

or

(b) in any other case, the person was served with a copy of the apprehended violence order.

- (3) A person is not guilty of an offence against subsection (1) if the contravention of the prohibition or restriction concerned:
- (a) was necessary in order to attend mediation under section 21, or
  - (b) was done in compliance with the terms of a property recovery order.
- (4) Unless the court otherwise orders, a person who is convicted of an offence against subsection (1) must be sentenced to a term of imprisonment if the act constituting the offence was an act of violence against a person.
- (5) Subsection (4) does not apply if the person convicted was under 18 years of age at the time of the alleged offence.
- (6) Where the court determines not to impose a sentence of imprisonment, it must give its reasons for not doing so.
- (7) A person is not guilty of an offence of aiding, abetting, counselling or procuring the commission of an offence against subsection (1) if the person is a protected person under the order concerned.
- (8) A police officer is to make a written record of the reasons for:
- (a) a decision by the police officer not to initiate criminal proceedings against a person for an alleged contravention of subsection (1) or (9) (whether or not the person is arrested), or
  - (b) a decision by the police officer not to proceed with criminal proceedings against a person for an alleged contravention of subsection (1) or (9),
- if the police officer or another police officer suspects on reasonable grounds that the person has committed an offence against either subsection or if an alleged contravention of either subsection by the person has been reported to the police officer or another police officer.
- (9) A person who attempts to commit an offence against subsection (1) is guilty of an offence against that subsection and is punishable as if the offence attempted had been committed.

**Note—**

The [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) contains powers of police officers in relation to suspected offences, including a power to arrest a person, without warrant, if the police officer suspects on reasonable grounds that a person has committed an offence.



## **Part 4 Apprehended domestic violence orders**

### **15 Application for making of apprehended domestic violence order by court**

- (1) An application may be made in accordance with Part 10 for an apprehended domestic violence order for the protection of:
  - (a) a person against another person with whom he or she has or has had a domestic relationship, or
  - (b) two or more persons against another person with whom at least one of those persons has or has had a domestic relationship.
- (2) An application is to be treated as an application for an apprehended personal violence order if none of the persons for whose protection the order would be made has or has had a domestic relationship with the person against whom it is sought.

### **16 Court may make apprehended domestic violence order**

- (1) A court may, on application, make an apprehended domestic violence order if it is satisfied on the balance of probabilities that a person who has or has had a domestic relationship with another person has reasonable grounds to fear and in fact fears:
  - (a) the commission by the other person of a personal violence offence against the person, or
  - (b) the engagement of the other person in conduct in which the other person:
    - (i) intimidates the person or a person with whom the person has a domestic relationship, or
    - (ii) stalks the person,being conduct that, in the opinion of the court, is sufficient to warrant the making of the order.
- (2) Despite subsection (1), it is not necessary for the court to be satisfied that the person for whose protection the order would be made in fact fears that such an offence will be committed, or that such conduct will be engaged in, if:
  - (a) the person is a child, or
  - (b) the person is, in the opinion of the court, suffering from an appreciably below average general intelligence function, or
  - (c) in the opinion of the court:
    - (i) the person has been subjected at any time to conduct by the defendant amounting to a personal violence offence, and

- (ii) there is a reasonable likelihood that the defendant may commit a personal violence offence against the person, and
  - (iii) the making of the order is necessary in the circumstances to protect the person from further violence.
- (3) For the purposes of this section, conduct may amount to intimidation of a person even though:
- (a) it does not involve actual or threatened violence to the person, or
  - (b) it consists only of actual or threatened damage to property belonging to, in the possession of or used by the person.

**Note—**

Part 8 provides for the matters that may be included in orders. Part 9 contains additional provisions relevant to the making of orders.

**17 Matters to be considered by court**

- (1) In deciding whether or not to make an apprehended domestic violence order, the court must consider the safety and protection of the protected person and any child directly or indirectly affected by the conduct of the defendant alleged in the application for the order.
- (2) Without limiting subsection (1), in deciding whether or not to make an apprehended domestic violence order, the court is to consider:
  - (a) in the case of an order that would prohibit or restrict access to the defendant's residence—the effects and consequences on the safety and protection of the protected person and any children living or ordinarily living at the residence if an order prohibiting or restricting access to the residence is not made, and
  - (b) any hardship that may be caused by making or not making the order, particularly to the protected person and any children, and
  - (c) the accommodation needs of all relevant parties, in particular the protected person and any children, and
  - (d) any other relevant matter.
- (3) When making an apprehended domestic violence order, the court is to ensure that the order imposes only those prohibitions and restrictions on the defendant that, in the opinion of the court, are necessary for the safety and protection of the protected person, and any child directly or indirectly affected by the conduct of the defendant alleged in the application for the order, and the protected person's property.
- (4) If an application is made for an apprehended domestic violence order that prohibits or

restricts access by the defendant to any premises or place and the court hearing proceedings in respect of the application decides to make an order without the prohibition or restriction sought, the court is to give reasons for that decision.

## **Part 5 Apprehended personal violence orders**

### **18 Application for making of apprehended personal violence order by court**

- (1) An application may be made in accordance with Part 10 for an apprehended personal violence order for the protection of one or more persons against another person.
- (2) An application is to be treated as an application for an apprehended domestic violence order if one or more of the persons for whose protection the order would be made has or has had a domestic relationship with the person against whom it is sought.

### **19 Court may make apprehended personal violence order**

- (1) A court may, on application, make an apprehended personal violence order if it is satisfied on the balance of probabilities that a person has reasonable grounds to fear and in fact fears:
  - (a) the commission by the other person of a personal violence offence against the person, or
  - (b) the engagement of the other person in conduct in which the other person:
    - (i) intimidates the person, or
    - (ii) stalks the person,being conduct that, in the opinion of the court, is sufficient to warrant the making of the order.
- (2) Despite subsection (1), it is not necessary for the court to be satisfied that the person for whose protection the order would be made in fact fears that such an offence will be committed, or that such conduct will be engaged in, if:
  - (a) the person is a child, or
  - (b) the person is, in the opinion of the court, suffering from an appreciably below average general intelligence function.
- (3) For the purposes of this section, conduct may amount to intimidation of a person even though:
  - (a) it does not involve actual or threatened violence to the person, or
  - (b) it consists only of actual or threatened damage to property belonging to, in the

possession of or used by the person.

**Note—**

Part 8 provides for the matters that may be included in orders. Part 9 contains additional provisions relevant to the making of orders.

**20 Matters to be considered by court**

- (1) In deciding whether or not to make an apprehended personal violence order, the court must consider the safety and protection of the person seeking the order and any child directly or indirectly affected by the conduct of the defendant alleged in the application for the order.
- (2) Without limiting subsection (1), in deciding whether or not to make an apprehended personal violence order, the court is to consider:
  - (a) in the case of an order that would prohibit or restrict access to the defendant's residence—the effects and consequences on the safety and protection of the protected person and any children living or ordinarily living at the residence if an order prohibiting or restricting access to the residence is not made, and
  - (b) any hardship that may be caused by making or not making the order, particularly to the protected person and any children, and
  - (c) the accommodation needs of all relevant parties, in particular the protected person and any children, and
  - (d) any other relevant matter.
- (3) When making an apprehended personal violence order, the court is to ensure that the order imposes only those prohibitions and restrictions on the defendant that, in the opinion of the court, are necessary for the safety and protection of the protected person, and any child directly or indirectly affected by the conduct of the defendant alleged in the application for the order, and the protected person's property.
- (4) If an application is made for an apprehended personal violence order that prohibits or restricts access by the defendant to any premises or place and the court hearing proceedings in respect of the application decides to make an order without the prohibition or restriction sought, the court is to give reasons for that decision.

**21 Referral of matters to mediation**

- (1) At any time when considering whether to make an apprehended personal violence order or after making such an order, a court may refer the protected person and the defendant for mediation under the *Community Justice Centres Act 1983*.
- (2) A matter is not to be referred to mediation under this section if the court is of the opinion that:

- (a) there has been a history of physical violence to the protected person by the defendant, or
- (b) the protected person has been subjected to conduct by the defendant amounting to a personal violence offence, or
- (c) the protected person has been subjected to conduct by the defendant amounting to an offence under section 13, or
- (d) the defendant has engaged in conduct amounting to harassment relating to the protected person's race, religion, homosexuality, transgender status, HIV/AIDS infection or disability, or
- (e) there has been a previous attempt at mediation in relation to the same matter and the attempt was not successful.

(3) Nothing in this section affects section 24 of the *Community Justice Centres Act 1983*.

**Note—**

Section 24 of the *Community Justice Centres Act 1983* enables the Director of Community Justice Centres to decline to consent to the acceptance of a dispute for mediation and enables the Director or a mediator to terminate a mediation session at any time.

- (4) The Director of Community Justice Centres is to provide a written report on the outcome of the mediation or attempted mediation to the court that referred the matter for mediation.
- (5) On receiving a report under subsection (4), the court is to take such action in accordance with this Act as it considers appropriate in relation to the matter concerned and in doing so may take into account the contents of the report.
- (6) If a matter is referred to mediation under this section without an order having been made, any proceedings in relation to the application are taken to have been stayed until a report is provided under subsection (4).
- (7) If the Director of Community Justice Centres provides a report under subsection (4) or a mediator conducts a mediation of a matter referred under this section, the Director or the mediator is taken, for the purposes of the provisions of the *Community Justice Centres Act 1983*, to be exercising those functions for the purpose of executing that Act.

## **Part 6 Interim court orders**

### **22 Interim court orders**

- (1) A court may, on application made in accordance with Part 10, make an interim apprehended domestic violence order or an interim apprehended personal violence order if it appears to the court that it is necessary or appropriate to do so in the

circumstances.

- (2) An interim apprehended domestic violence order or an interim apprehended personal violence order made on application under this Part is referred to in this Act as an ***interim court order***.
- (3) An interim court order may be made by a court whether or not:
  - (a) the defendant is present at the proceedings, or
  - (b) the defendant has been given notice of the proceedings.
- (4) A court may, in deciding whether to make an interim court order, admit affidavit evidence or a written statement by a police officer that is tendered on behalf of the person for whose protection the order would be made if:
  - (a) the person is unable, for any good reason, to be present at the proceedings, and
  - (b) the court is satisfied that the matter requires urgent consideration by the court.
- (5) If an interim court order is made by a court:
  - (a) the court is to require the defendant to appear at a further hearing of the matter by the court as soon as practicable after the interim court order is made, and
  - (b) the court may, at the further hearing or an adjourned further hearing, make a final apprehended violence order in the same terms as the interim court order or with variations or may revoke the interim court order (whether or not the defendant appears at any such further hearing).
- (6) An interim court order has, while it remains in force, the same effect as a final apprehended violence order.

### **23 Interim court orders made by Registrar with consent**

- (1) A Registrar may, on application, make an interim apprehended domestic violence order or an interim apprehended personal violence order if satisfied that the protected person and the defendant consent to the making of the order.
- (2) Section 78 (Orders made with consent of parties) applies in relation to the making of an order by a Registrar under this section in the same way as it applies to the making of an interim court order by a court.
- (3) If an interim court order is made by a Registrar:
  - (a) the Registrar is to require the defendant to appear at a further hearing of the matter before a court as soon as practicable after the interim court order is made, and

(b) the court may, at the further hearing or an adjourned hearing, make a final apprehended violence order in the same terms as the interim court order or with variations or may revoke the interim court order.

(4) An interim court order made by a Registrar of a court under this section is taken to have been made by the court and has effect accordingly.

(5) Section 76 applies to a Registrar who makes an interim court order under this section.

#### **24 Interim court order ceases when final court order made or served**

(1) An interim court order remains in force until:

(a) it is revoked, or

(b) it ceases to have effect under subsection (2), or

(c) the application for a final apprehended violence order is withdrawn or dismissed, whichever first occurs.

(2) If a final apprehended violence order is made in respect of an interim court order (whether with or without variation), the interim court order ceases to have effect:

(a) in a case where the defendant is present at court—when the final apprehended violence order is made, or

(b) in any other case—when the defendant is served in accordance with this Act with a copy of the final apprehended violence order.

### **Part 7 Provisional orders**

#### **25 Application by telephone, facsimile or other communication device**

(1) A police officer may apply by telephone, facsimile or other communication device to an authorised officer for an interim apprehended domestic violence order or an interim apprehended personal violence order.

(2) An interim apprehended domestic violence order or an interim apprehended personal violence order made on an application under this section is referred to in this Act as a **provisional order**.

(3) An application for a provisional order:

(a) may be made at the request of the protected person or on the police officer's own initiative, and

(b) may be transmitted to the authorised officer by another person on behalf of the applicant if it is not practicable for the application to be made by the person by telephone, facsimile or other communication device directly to the authorised

officer.

## **26 When application may be made**

- (1) An application may be made by telephone, facsimile or other communication device if:
  - (a) an incident occurs involving the person against whom the provisional order is sought to be made and the person who would be protected by the provisional order, and
  - (b) a police officer has good reason to believe a provisional order needs to be made immediately to ensure the safety and protection of the person who would be protected by the provisional order or to prevent substantial damage to any property of that person.
- (2) An application may be made at any time and whether or not the court is sitting.

## **27 Obligation to apply for provisional order in certain circumstances**

- (1) An application must be made for a provisional order if:
  - (a) a police officer investigating the incident concerned suspects or believes that:
    - (i) a domestic violence offence or an offence against section 13 has recently been or is being committed, or is imminent, or is likely to be committed, against the person for whose protection an order would be made, or
    - (ii) an offence under section 227 (Child and young person abuse) of the *Children and Young Persons (Care and Protection) Act 1998* (but only in relation to a child) has recently been or is being committed, or is imminent, or is likely to be committed, against the person for whose protection an order would be made, or
    - (iii) proceedings have been commenced against a person for an offence referred to in subparagraph (i) or (ii) committed against the person for whose protection an order would be made, and
  - (b) the police officer has good reason to believe an order needs to be made immediately to ensure the safety and protection of the person who would be protected by the order or to prevent substantial damage to any property of that person.
- (2) The application may be made by any police officer.
- (3) An application need not be made in the circumstances referred to in subsection (1) if an apprehended violence order is already in force against the defendant for the protection of the person concerned.



- (4) An application need not be made in the circumstances referred to in subsection (1) if the person for whose protection an order would be made is at least 16 years of age at the time of the incident and a police officer investigating the incident believes:
  - (a) that the person intends to make an application for an apprehended violence order,  
or
  - (b) that there is good reason not to make the application.
- (5) However, if the police officer investigating the incident believes that there is good reason not to make the application, the police officer must make a written record of the reason.
- (6) For the purposes of subsection (4), the reluctance of the person to make an application does not, on its own, constitute a good reason for a police officer not to make an application if the police officer reasonably believes that:
  - (a) the person has been the victim of violence or there is a significant threat of violence to the person, or
  - (b) the person has an intellectual disability and has no guardian.

## **28 Making of provisional order**

- (1) An authorised 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.
- (2) Section 21 (Referral of matters to mediation) applies to an authorised officer when considering whether to make a provisional order that is an interim personal apprehended violence order or after making such an order in the same way as it applies to a court.
- (3) Section 81 applies to the making of a provisional order in the same way as that section applies to other orders.

## **29 Provisional order taken to be application for court order**

- (1) A provisional order is taken, for the purposes of this Act, to be an application for an order under Part 10.
- (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 authorised officer who makes it (being a date that is not more than 28 days after the making of the provisional order).

## **30 Recording of provisional order**

- (1) The authorised officer who makes a provisional order is to inform the applicant of the terms of the order and the date and time when the order was made.

- (2) The applicant is to complete a form of order in the terms so indicated and write on it the name of the authorised officer, the date and time when the order was made and the date of the hearing of the application.
- (3) When the form of order is completed, it is taken to be a provisional order.
- (4) An authorised officer may, instead of proceeding under subsection (1), furnish the provisional order to the applicant.
- (5) An applicant who is furnished with a provisional order under subsection (4) is to include in the order the date of the hearing of the application.

### **31 Service**

- (1) A provisional order is to be served personally on the defendant by a police officer as soon as practicable after it is made.
- (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.

### **32 Duration**

- (1) A provisional order remains in force until midnight on the twenty-eighth day after the order is made, unless it is sooner revoked or ceases to have effect under subsection (2) or the application for a final apprehended violence order is withdrawn or dismissed.
- (2) If a court makes an apprehended violence order against a defendant for the protection of a person protected by a provisional order, the provisional order ceases to have effect:
  - (a) in a case where the defendant is present at court—when the court order is made, or
  - (b) in any other case—when the defendant is served in accordance with this Act with a copy of the court order.

### **33 Variation or revocation**

- (1) A provisional order may be varied or revoked by:
  - (a) the authorised officer who made it or any other authorised officer, or
  - (b) any court dealing with an application for an apprehended violence order against the same defendant.
- (2) A provisional order may be varied:
  - (a) by amending or deleting any prohibitions or restrictions specified in the order, or

(b) by specifying additional prohibitions or restrictions in the order.

- (3) An application for a variation or the revocation of a provisional order may be made only by a police officer.
- (4) If there is more than one protected person under a provisional order, the order may be varied or revoked in its application to all of the protected persons or in relation to any one or more of the protected persons.
- (5) Notice of the variation or revocation is to be served on the defendant, each protected person affected by the variation or revocation and the Commissioner of Police.
- (6) The duration of a provisional order may not be varied under this section.

#### **34 Purported renewal or continuance**

- (1) A provisional order may not be renewed and a further provisional order may not be made in respect of the same incident.
- (2) If a court purports to renew or continue a provisional order:
  - (a) the order is taken to be an interim court order made by the court at that time, and
  - (b) further service of the order is not required.

### **Part 8 Content and effect of apprehended violence orders**

#### **35 Prohibitions and restrictions imposed by apprehended violence orders**

- (1) When making an apprehended violence order, a court may impose such prohibitions or restrictions on the behaviour of the defendant as appear necessary or desirable to the court and, in particular, to ensure the safety and protection of the person in need of protection and any children from domestic or personal violence.
- (2) Without limiting the generality of subsection (1), an apprehended violence order made by a court may impose any or all of the following prohibitions or restrictions:
  - (a) prohibiting or restricting approaches by the defendant to the protected person,
  - (b) prohibiting or restricting access by the defendant to any or all of the following:
    - (i) to any premises occupied by the protected person from time to time or to any specified premises occupied by the protected person,
    - (ii) to any place where the protected person works from time to time or to any specified place of work of the protected person,
    - (iii) to any specified premises or place frequented by the protected person,whether or not the defendant has a legal or equitable interest in the premises or

place,

- (c) prohibiting or restricting the defendant from approaching the protected person, or any such premises or place, within 12 hours of consuming intoxicating liquor or illicit drugs,
- (d) prohibiting or restricting the possession of all or any specified firearms or prohibited weapons (within the meaning of the *Weapons Prohibition Act 1998*) by the defendant,
- (e) prohibiting the defendant from destroying or deliberately damaging or interfering with the protected person's property,
- (f) prohibiting or restricting specified behaviour by the defendant that might affect the protected person.

(3) A provisional order made by an authorised officer may impose any or all of the prohibitions or restrictions specified in subsection (2) (a)–(e) if the authorised officer is satisfied that there are reasonable grounds for the order doing so and the defendant is not a child.

(4) (Repealed)

(5) A reference in this section to a court includes a reference to a Registrar.

**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.

**Note—**

Section 79 of the *Residential Tenancies Act 2010* terminates the tenancy of a tenant or co-tenant under a residential tenancy agreement if a final apprehended violence order is made that prohibits the tenant or co-tenant from having access to the residential premises under the agreement.

### **36 Apprehended violence order prohibits stalking, intimidation etc**

Every apprehended violence order is taken to specify that the defendant is prohibited from doing any of the following:

- (a) assaulting, molesting, harassing, threatening or otherwise interfering with the protected person or a person with whom the protected person has a domestic relationship,

- (b) engaging in any other conduct that intimidates the protected person or a person with whom the protected person has a domestic relationship,
- (c) stalking the protected person or a person with whom the protected person has a domestic relationship.

**37 Ancillary property recovery orders may be made**

- (1) A court or an authorised officer may, when making an apprehended domestic violence order or an interim apprehended domestic violence order, make an ancillary property recovery order if:
  - (a) the protected person has left personal property at premises which the defendant occupies, or
  - (b) the defendant has left personal property at premises which the protected person occupies.
- (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.
- (2) A property recovery order may do any or all of the following:
  - (a) direct the person who occupies the premises concerned to allow access to the premises to the person who has left the personal property at the premises (and any police officer or person who is authorised by the order to accompany the person) to enable the removal of the property,
  - (b) provide that the access to the premises concerned is to be at a time or times arranged between the occupier of the premises and a police officer (whether or not the order requires the person recovering the property to be accompanied by a police officer),
  - (c) require the person who has left the personal property at the premises to be accompanied by a police officer when removing the property from the premises,
  - (d) provide that the person who has left the personal property at the premises may be accompanied by any other specified person,
  - (e) specify the type or types of property to which the order relates.
- (3) A property recovery order does not authorise entry to any premises by means of force.
- (4) A property recovery order does not confer any right on a person to take property that

the person does not own or have a legal right to possess even if the type of property is specified in the order.

- (5) A property recovery order in respect of personal property left by the defendant on premises may not be made in the absence of the defendant.
- (6) A person must not, without reasonable excuse, contravene a property recovery order or obstruct a person who is attempting to comply with a property recovery order.

Maximum penalty: 50 penalty units.

- (7) The onus of proof of reasonable excuse in proceedings for an offence against subsection (6) lies on the person accused of the offence.

## **Part 9 Additional measures for support and protection of children and others in proceedings**

### **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.

### **39 Apprehended violence order must be made on guilty plea or guilt finding for certain offences**

- (1) If a person pleads guilty to, or is found guilty of, an offence against section 13 or a domestic violence offence (other than murder, manslaughter or an offence under section 25A of the *Crimes Act 1900*), the court hearing the proceedings must make an apprehended violence order for the protection of the person against whom the offence

was committed whether or not an application for such an order had been made.

- (2) However, the court need not make an apprehended violence order if it is satisfied that it is not required (for example, because an apprehended violence order has already been made against the person).
- (3) A reference in this section to a court extends to the District Court when exercising jurisdiction apart from under section 91.

#### **40 Interim apprehended violence order must be made on charge for certain offences**

- (1) When a person is charged with an offence that appears to the court to be a serious offence, the court must make an interim court order against the defendant for the protection of the person against whom the offence appears to have been committed whether or not an application for an order has been made.
- (2) If an interim court order is made by the court, the court is to summon the defendant to appear at a further hearing of the matter on the determination of the charge against the person (instead of as soon as practicable after the order is made, as required by section 22 (5) (a)).
- (3) However, the court need not make an interim court order if it is satisfied that it is not required (for example, because an apprehended violence order has already been made against the person).
- (4) A reference in this section to a court extends to the District Court when exercising jurisdiction apart from under section 91.
- (5) In this section, a **serious offence** means:
  - (a) attempted murder, or
  - (b) a domestic violence offence (other than murder, manslaughter or an offence under section 25A of the *Crimes Act 1900*), or
  - (c) an offence under, or mentioned in, section 33, 35, 61I, 61J, 61JA, 61K, 61L, 61M, 63, 65, 66A, 66B, 66C, 66D, 66EA or 66F of the *Crimes Act 1900*, or
  - (d) an offence of attempting to commit an offence referred to in paragraph (b) or (c),  
or
  - (e) an offence under section 13, or
  - (f) an offence under the law of the Commonwealth, another State or a Territory or of another country that is similar to an offence referred to in paragraph (a), (b), (c), (d) or (e).

#### **41 Measures to protect children in apprehended violence order proceedings**

- (1) This section applies to the following proceedings or part of proceedings:
  - (a) proceedings in which an apprehended violence order is sought or proposed to be made for the protection of a child,
  - (b) proceedings in relation to an application for the variation or revocation of an apprehended violence order if the protected person or one of the protected persons is a child,
  - (c) any part of proceedings in which an apprehended violence order is sought or proposed to be made in which a child appears as a witness,
  - (d) any part of proceedings in relation to an application for the variation or revocation of an apprehended violence order in which a child appears as a witness.
- (2) Proceedings or any part of proceedings to which this section applies are to be heard in the absence of the public unless the court hearing the proceedings otherwise directs.
- (3) Even if proceedings or a part of proceedings to which this section applies are open to the public, the court hearing the proceedings may direct any person (other than a person who is directly interested in the proceedings) to leave the place where the proceedings are being heard during the examination of any witness.
- (4) In any proceedings referred to in subsection (1) (a), (b), (c) or (d), a child should not be required to give evidence in any manner about a matter unless the court is of the opinion that it is in the interests of justice for the child to do so.
- (5) If a child is required to give evidence under this section, the evidence should be required to be given only in accordance with Divisions 3 and 4 of Part 6 of Chapter 6 of the *Criminal Procedure Act 1986*.
- (6) For the purposes of subsection (5), Division 3 of Part 6 of Chapter 6 of the *Criminal Procedure Act 1986* applies to proceedings in relation to an application for an apprehended violence order, or a variation or revocation of such an order, in the same way as it applies to criminal proceedings.

#### **42 Consideration of contact with children**

- (1) A person who applies for, or for a variation of, a final apprehended violence order or interim court order must inform the court of:
  - (a) any relevant parenting order of which the person is aware, or
  - (b) any pending application for a relevant parenting order of which the person is aware.

The court is required to inform the applicant of the obligation of the applicant under



this subsection.

- (2) In deciding whether or not to make or vary a final apprehended violence order or interim court order, the court is to consider the safety and protection of the protected person and any child directly or indirectly affected by domestic or personal violence.
- (3) Without limiting subsection (2), in deciding whether or not to make or vary a final apprehended violence order or interim court order, the court is to:
  - (a) consider whether contact between the protected person, or between the defendant, and any child of either of those persons is relevant to the making or variation of the order, and
  - (b) have regard to any relevant parenting order of which the court has been informed.
- (4) A final apprehended violence order or interim court order, or a variation of such an order, is not invalid merely because of a contravention of this section.
- (5) In this section, **relevant parenting order** means a parenting order (within the meaning of Division 5 of Part VII of the *Family Law Act 1975* of the Commonwealth) that relates to contact between the protected person, or between the defendant, and any child of either of those persons.

**43 Non-inclusion of protected person's residential address in application for apprehended domestic violence order or in apprehended domestic violence order**

- (1) The address at which the protected person resides must not be stated in an application for an apprehended domestic violence order or interim apprehended domestic violence order unless:
  - (a) where the protected person is of or above the age of 16 years—the protected person consents to the address being included in the application, or
  - (b) where the application is made by a police officer—the police officer is satisfied that the defendant knows the address.
- (2) The address at which the protected person resides, or intends to reside, must not be stated in an apprehended domestic violence order or interim apprehended domestic violence order unless the court or authorised officer is satisfied that:
  - (a) the defendant knows the address, or
  - (b) it is necessary to state the address in order to achieve compliance with the order and the personal safety of the protected person would not be seriously threatened, or damage would not be likely to be caused to any property of the protected person, by stating the address, or
  - (c) where the protected person is of or above the age of 16 years—the protected

person consents to the address being stated in the order.

- (3) A reference in this section to an apprehended domestic violence order or interim apprehended domestic violence order includes a reference to any other order relating to such an order.
- (4) In this section, **court** includes a Registrar.

**44 Non-inclusion of health care provider's residential address in application for apprehended personal violence order or in apprehended personal violence order**

- (1) The address at which a protected health care provider resides must not be stated in any application for an apprehended personal violence order or interim apprehended personal violence order unless:
- (a) the protected health care provider consents to the address being included in the application, or
  - (b) if the application is made by a police officer—the police officer is satisfied that the defendant knows the address.
- (2) The address at which a protected health care provider resides, or intends to reside, must not be stated in an apprehended personal violence order or interim apprehended personal violence order unless the court or authorised officer is satisfied that:
- (a) the defendant knows the address, or
  - (b) it is necessary to state the address in order to achieve compliance with the order and the personal safety of the protected health care provider would not be seriously threatened, or damage would not be likely to be caused to any property of the protected health care provider, by stating the address, or
  - (c) the protected health care provider consents to the address being stated in the order.
- (3) If the address at which a protected health care provider resides or intends to reside must not be stated in an application or order because of this section, the address at which the protected health care provider ordinarily provides health care services is to be stated instead in the application or order.
- (4) A reference in this section to an apprehended personal violence order or interim apprehended personal violence order includes a reference to any other order relating to such an order.
- (5) In this section:
- court** includes a Registrar.

**protected health care provider** means a person who is employed or engaged to

provide any care, treatment, advice or service in respect of the physical or mental health of any protected person.

**45 Publication of names and identifying information about children and other persons involved in apprehended violence order proceedings**

(1) The name of a person, being a child:

- (a) for whose protection or against whom an apprehended violence order is sought in any apprehended violence order proceedings, or
- (b) who appears, or is reasonably likely to appear, as a witness before a court in any apprehended violence order proceedings, or
- (c) who is, or is reasonably likely to be, mentioned or otherwise involved in any apprehended violence order proceedings,

must not be published or broadcast before the proceedings are commenced or after the proceedings have been commenced and before they are disposed of.

(2) A court may direct that the name of a person (other than a child to whom subsection (1) applies):

- (a) for whose protection or against whom an apprehended violence order is sought in any apprehended violence order proceedings, or
- (b) who appears, or is reasonably likely to appear, as a witness before a court in any apprehended violence order proceedings, or
- (c) who is, or is reasonably likely to be, mentioned or otherwise involved in any apprehended violence order proceedings,

must not be published or broadcast before the proceedings are commenced or after the proceedings have been commenced and before they are disposed of.

(3) A person who publishes or broadcasts the name of a person in contravention of subsection (1) or in contravention of a direction under subsection (2) is guilty of an offence.

Maximum penalty: Imprisonment for a period not exceeding 2 years, or 200 penalty units, or both (in the case of an individual) or 2,000 penalty units (in the case of a corporation).

(4) This section does not prohibit:

- (a) the publication or broadcasting of an official report of the proceedings of a court that includes the name of any person the publication or broadcasting of which would otherwise be prohibited by this section, or

(b) the publication or broadcasting of the name of a person with the consent of the person or of the court.

(5) For the purposes of this section, a reference to the name of a person includes a reference to any information, picture or other material:

(a) that identifies the person, or

(b) that is likely to lead to the identification of the person.

(6) The offence created by this section is an offence of strict liability.

(7) A court may vary or revoke a direction given by a court under this section. However, only the District Court may vary or revoke a direction given by the District Court.

(8) In this section, **court** includes a Registrar.

#### **46 Right to presence of supportive person when giving evidence**

(1) In this section, **party** to apprehended violence order proceedings means the person for whose protection the relevant order is sought or the defendant.

(2) A party to apprehended violence order proceedings is entitled to choose a person whom the party would like to have present near him or her when giving evidence.

(3) Without limiting a party's right to choose such a person, that person:

(a) may be a parent, guardian, relative, friend or support person of the party, and

(b) may be with the party as an interpreter, for the purpose of assisting the party with any difficulty in giving evidence associated with a disability, or for the purpose of providing the party with other support.

(4) To the extent that the court considers it reasonable to do so, the court must make whatever direction is appropriate to give effect to a party's decision to have such a person present near the party, and within the party's sight, when the party is giving evidence.

(5) The court may permit more than one support person to be present with the party if the court thinks that it is in the interests of justice to do so.

#### **Note—**

Section 306ZK of the [Criminal Procedure Act 1986](#) contains similar provisions to section 46 of this Act in relation to the giving of evidence in apprehended violence order proceedings by vulnerable persons, that is children and intellectually impaired persons.

Section 294B of the [Criminal Procedure Act 1986](#) enables a protected person in apprehended violence order proceedings who is the alleged victim of a prescribed sexual offence (within the meaning of that Act) by the defendant to give evidence from a place other than the courtroom by means of closed-circuit television facilities or other communication facilities or to give evidence in the courtroom if certain measures have been taken to

restrict contact with the accused person.

## **Part 10 Applications for final apprehended violence orders and interim court orders and associated proceedings**

### **Division 1 Preliminary**

#### **47 Definitions**

In this Part:

**application** for an order means an application to a court for the making of a final apprehended violence order or an interim court order.

**application proceedings** means proceedings in relation to an application for an order.

**authorised officer** has the same meaning as in the [Criminal Procedure Act 1986](#) and includes the Registrar of the Children's Court.

**court** means the Local Court or the Children's Court.

**Magistrate** includes a Children's Magistrate.

**rules** means rules of court made under the [Local Court Act 2007](#) or the [Children's Court Act 1987](#).

### **Division 2 Application for order**

#### **48 Making of application for an order**

- (1) An application for an order is to be made in accordance with this Part, despite any provision of any other Act or law (whether or not enacted or made before or after the commencement of this section).
- (2) An application for an order may be made only by:
  - (a) a person for whose protection the order would be made, or
    - (a1) the guardian of the person for whose protection the order would be made, in the case of a person in respect of whom a guardianship order within the meaning of the [Guardianship Act 1987](#) is in force, or
  - (b) a police officer.
- (3) Despite subsection (2), only a police officer may make an application for an order if the person for whose protection the order would be made is a child at the time of the application.
- (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.
- (5) A court may deal with an application even though the court has only a facsimile transmission or other copy of the application.
- (6) An applicant for an order who is 16 years of age or over, but under 18 years of age, has full capacity to make the application and to apply for a variation or revocation of the order.
- (7) A reference in sections 52, 55 (2), 73 (4), 77 (7), 78 (1) and 84 (6) to a protected person includes a reference to the guardian of the person in the case of an application for an order made by the guardian of a person on the person's behalf (as referred to in subsection (2) (a1)).

#### **49 Circumstances in which police must make application for order**

- (1) An application for an order must be made if a police officer investigating the matter concerned suspects or believes that:
- (a) a domestic violence offence or an offence against section 13 has recently been or is being committed, or is imminent, or is likely to be committed, against the person for whose protection an order would be made, or
  - (b) an offence under section 227 (Child and young person abuse) of the *Children and Young Persons (Care and Protection) Act 1998* (but only in relation to a child) has recently been or is being committed, or is imminent, or is likely to be committed, against the person for whose protection an order would be made, or
  - (c) proceedings have been commenced against a person for an offence referred to in paragraph (a) or (b) against the person for whose protection an order would be made.
- (2) The application may be made by any police officer.
- (3) An application need not be made in the circumstances referred to in subsection (1) if an apprehended violence order is already in force for the protection of the person concerned or if an application has been made for a provisional order for the protection of the person.
- (4) An application need not be made in the circumstances referred to in subsection (1) if the person for whose protection an apprehended violence order would be made is at least 16 years of age at the time and the police officer investigating the matter

believes:

(a) that the person intends to make the application, or

(b) that there is good reason not to make the application.

(5) However, if the police officer investigating the matter believes that there is good reason not to make the application, the police officer must make a written record of the reason.

(6) For the purposes of subsection (4), the reluctance of the person to make an application does not, on its own, constitute a good reason for a police officer not to make an application if the police officer reasonably believes that:

(a) the person has been the victim of violence or there is a significant threat of violence to the person, or

(b) the person has an intellectual disability and has no guardian.

### **Division 3 Commencement of application proceedings**

#### **50 Commencement of proceedings by application notice**

Application proceedings are to be commenced in a court by the issuing and filing of an application notice in accordance with this Division.

#### **51 Commencement of proceedings by police officer**

If an application for an order is made by a police officer, the police officer may commence the proceedings by issuing an application notice and filing the notice in accordance with this Division.

#### **52 Commencement of proceedings by protected person**

If an application for an order is made by a protected person, the person may commence the proceedings by issuing an application notice, signed by a registrar, and filing the notice in accordance with this Division.

#### **53 Discretion to refuse to issue process in apprehended personal violence order matters**

(1) An authorised officer or a Registrar may, in accordance with this section, refuse to issue process where an application for an apprehended personal violence order is made unless the application was made by a police officer.

(2) An authorised officer refuses to issue process by deciding not to issue a warrant referred to in section 88.

(3) A Registrar refuses to issue process by deciding not to sign and file an application notice.

- (4) An authorised officer or a Registrar may refuse to issue process if satisfied that the application:
  - (a) is frivolous, vexatious, without substance or has no reasonable prospect of success, or
  - (b) could be dealt with more appropriately by mediation or other alternative dispute resolution.
- (5) Unless satisfied that there are compelling reasons for doing so, an authorised officer or a Registrar is not to refuse to issue process if the application discloses allegations of any of the following:
  - (a) a personal violence offence,
  - (b) an offence under section 13,
  - (c) harassment relating to the protected person's race, religion, homosexuality, transgender status, HIV/AIDS infection or disability.
- (6) In determining whether or not to issue process, the authorised officer or Registrar must take the following matters into account:
  - (a) the nature of the allegations,
  - (b) whether the matter is amenable to mediation or other alternative dispute resolution,
  - (c) whether the parties have previously attempted to resolve the matter by mediation or other means,
  - (d) the availability and accessibility of mediation or other alternative dispute resolution services,
  - (e) the willingness and capacity of each party to resolve the matter otherwise than through an application for an apprehended personal violence order,
  - (f) the relative bargaining powers of the parties,
  - (g) whether the application is in the nature of a cross application,
  - (h) any other matters that the authorised officer or Registrar considers relevant.
- (7) If the authorised officer or Registrar refuses to issue process under this section, the authorised officer or Registrar must record the reasons for doing so in writing.
- (8) If a Registrar refuses to accept an application notice for filing, the question of whether the application notice is to be accepted for filing is to be determined by the court on the application of the applicant.



#### **54 Application notice to be for one matter only**

An application notice may not relate to more than one matter.

#### **55 Service of application notice**

- (1) An application notice issued by a police officer must be served by a police officer in accordance with the rules.
- (2) An application notice issued by a protected person must be served by a person authorised by the rules in accordance with the rules.
- (3) A copy of an application notice must be filed in the relevant court in accordance with the rules.

#### **56 When proceedings commence**

Application proceedings are taken to have commenced on the date on which an application notice is filed.

### **Division 4 Hearing of application proceedings**

#### **57 Time for hearing**

- (1) On the first return date for an application notice in any proceedings, or at such later time as the court determines, the court must set the date, time and place for hearing and determining the matter.
- (2) The court must notify the defendant of the date, time and place, if the defendant is not present.
- (3) However, if the defendant is not present at the first return date, the court may proceed to hear and determine the matter on that day at its discretion.

**Note—**

The powers of the court to adjourn proceedings are set out in section 65.

#### **58 Proceedings to be open to public**

- (1) Application proceedings before the court are to be heard in open court.
- (2) This section is subject to Part 9 and the provisions of any other Act or law.

#### **59 Change of venue**

The court may make an order changing the venue of the proceedings if it thinks it appropriate in the circumstances.

## **60 Right to defend action**

A defendant in application proceedings may defend the action and any proceedings ancillary to the action.

## **61 Right of representation**

- (1) An applicant or defendant may appear personally or by an Australian legal practitioner or other representative empowered by an Act or other law to appear for the applicant or defendant.
- (2) An applicant who is a police officer may appear personally or by a person permitted by subsection (1) or by a police prosecutor.

## **62 Conduct of case**

- (1) The applicant's case may be conducted by the applicant or by the applicant's Australian legal practitioner or any other representative permitted to appear for the applicant (whether under this or any other Act).
- (2) The defendant's case may be conducted by the defendant or by the defendant's Australian legal practitioner or any other representative permitted to appear for the defendant (whether under this or any other Act).

## **63 Evidence to be on oath**

The usual oath must be administered to a witness before the witness is examined.

### **Note—**

For the form of oaths and declarations see the [Oaths Act 1900](#).

## **64 Recording of evidence**

- (1) The evidence of each witness in application proceedings must be recorded.
- (2) Rules may be made for or with respect to the manner in which the evidence may be recorded and the authentication of evidence or of transcripts of evidence given in proceedings.

## **65 Adjournments**

- (1) The court may at any stage of proceedings adjourn the proceedings to a specified time and place.
- (2) An adjournment of proceedings may be in such terms as the court thinks fit.

## **66 Irregularity**

- (1) If, in or in connection with application proceedings or the commencement of application proceedings, there is a failure to comply with any requirement of this Act

or the rules, the failure is to be treated as an irregularity and does not nullify the proceedings or any step taken in the proceedings, or any judgment, document or order in the proceedings.

- (2) Subsection (1) applies to a failure to comply with a requirement relating to time, place, manner, form or content or any other failure.
- (3) In the case of an irregularity, the court may, on terms, set aside wholly or in part the proceedings or any step taken in the proceedings or any document, judgment or order in the proceedings or exercise its powers under the rules to allow judgments and to make orders dealing with the proceedings generally.
- (4) The court must not take action under subsection (3) on the application of a party unless that application is made within a reasonable time and before the party has taken any fresh step after becoming aware of the irregularity.

#### **67 Power to dispense with rules**

- (1) In relation to particular application proceedings, the court may, if of the opinion that it is in the interests of justice to do so, dispense with or vary a requirement of the rules.
- (2) For the purposes of subsection (1), the court may make directions as to the conduct of application proceedings.
- (3) The power conferred by this section does not extend to any rule declared by the rules to be mandatory.

#### **68 Power to stay proceedings**

- (1) Subject to the rules, the court may at any time and from time to time, by order, stay any application proceedings before it, either permanently or until a specified day.
- (2) The power to stay proceedings includes power to order a stay of the enforcement of an order.

#### **69 Arrest of defendant during proceedings**

- (1) A Magistrate may, at any time when or after a matter is first before the court and before it is finally disposed of by the court, issue a warrant to arrest a defendant if the defendant fails to appear personally or to appear by an Australian legal practitioner or other representative and the Magistrate is satisfied that the defendant had notice of the date, time and place of the proceedings.
- (2) A Magistrate, Registrar or authorised officer before whom a defendant is brought on arrest on a warrant issued under this section may, if bail is not dispensed with or granted, issue a warrant:
  - (a) committing the defendant to a correctional centre or other place of security, and

(b) ordering the defendant to be brought before the court at the date, time and place specified in the order.

(3) The Magistrate, Registrar or authorised officer must give notice of the date, time and place set to the applicant.

#### **70 Witnesses and production of evidence**

The provisions of Part 3 of Chapter 4 of the *Criminal Procedure Act 1986* apply, with any necessary modifications, to application proceedings in the same way as they apply to proceedings for summary offences under that Act.

#### **71 Warrants of arrest and warrants of commitment**

The provisions of Part 4 of Chapter 4 of the *Criminal Procedure Act 1986* apply, with any necessary modifications, to warrants of arrest, or warrants of commitment, issued under this Act in the same way as they apply to warrants of arrest or warrants of commitment issued under that Act.

### **Division 5 Variation or revocation of final apprehended violence orders or interim court orders**

#### **72 Application for variation or revocation of final apprehended violence orders**

(1) An application may, at any time, be made to a court for the variation or revocation of a final apprehended violence order or interim court order.

(2) An application for variation or revocation may be made only by:

(a) the protected person (whether or not the protected person made the application for the original order) or, if there is more than one protected person, by one or more of the protected persons, or

(a1) the guardian of the protected person, in the case of a protected person in respect of whom a guardianship order within the meaning of the *Guardianship Act 1987* is in force, or

(b) a police officer, or

(c) the defendant.

(3) Despite subsection (2), an application for variation or revocation of a final apprehended violence order or interim court 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.

(4) The application must set out the grounds on which the application is made and, in the case of a variation, the nature of the variation sought. This subsection does not limit

the powers of the court.

- (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.

**73 Variation or revocation of final apprehended violence orders and interim court orders**

- (1) The court may, if satisfied that in all the circumstances it is proper to do so, vary or revoke a final apprehended violence order or interim court order.
- (2) In particular, a final apprehended violence order or interim court order may be varied under this section in any one or more of the following ways:
- (a) by extending or reducing the period during which the order is to remain in force,
  - (b) by amending or deleting any prohibitions or restrictions specified in the order,
  - (c) by specifying additional prohibitions or restrictions in the order.
- (3) The court may decline to hear an application for variation or revocation of a final apprehended violence order or interim court order if the court is satisfied that there

has been no change in the circumstances on which the making of the order was based and that the application is in the nature of an appeal against the order.

- (4) A final apprehended violence order or interim court order is not to be varied or revoked on the application of the defendant unless notice of the application has been served on each protected person to whom the order relates.
- (5) A final apprehended violence order or interim court order is not to be varied or revoked on the application of the applicant for the original order or protected person unless notice of the application has been served on the defendant.
- (6) Notice of an application must be served personally or in such other manner as the court hearing the application directs.
- (7) Despite subsection (5), the court may make an order extending the period during which the final apprehended violence order or interim court order is to remain in force without notice of the relevant application having been served on the defendant, if the applicant lodged the application before the day on which the apprehended violence order or interim court order is due to expire.
- (8) If an application for the extension of a final apprehended violence order or interim court order is made before the order expires, the order is taken to continue in force until the application is dealt with by the court.
- (9) Unless sooner revoked, an order extended under subsection (7) ceases to have effect 21 days after the order extending it is made or on an earlier date specified in the order extending it. However, further orders may be made from time to time under that subsection before the extended order ceases to have effect.

#### **74 Variation or revocation of final apprehended violence orders and interim court orders where more than one protected person**

- (1) This section applies to a final apprehended violence order or interim court order if there is more than one protected person under the order.
- (2) An order to which this section applies may be varied or revoked in its application to all of the protected persons or in relation to any one or more of the protected persons.
- (3) If an application for variation or revocation of an order to which this section applies is made by one of the protected persons under the order, none of the other protected persons can be the subject of the variation or revocation unless the court is satisfied that he or she is at least 16 years of age and has consented to the variation or revocation.

**Note—**

Section 72 (3) provides that only a police officer may apply for the variation or revocation of an order where one of the protected persons under the order is a child.

**75 Variation may be made on guilty plea or guilt finding for certain offences**

- (1) If a person pleads guilty to, or is found guilty of, an offence against section 13 or a domestic violence offence, the court may vary a final apprehended violence order or an interim court order for the purpose of providing greater protection for the person against whom the offence was committed whether or not an application to vary the order has been made under this Division.
- (2) A reference in this section to a court extends to the District Court when exercising jurisdiction apart from under section 91.

**Division 6 Ancillary provisions**

**76 Explanation of final apprehended violence orders, interim court orders and variations**

- (1) A court that makes a final apprehended violence order or interim court order must explain to the defendant and the protected person (if either of them is present at the time the order is made):
  - (a) the effect of the order (including any prohibitions and restrictions imposed by the order), and
  - (b) the consequences that may follow from a contravention of the order, and
  - (c) the rights of the defendant and the protected person in relation to the order.
- (2) A court that varies a final apprehended violence order or interim court order must explain to the defendant and the protected person (if either of them is present at the time the variation is made):
  - (a) the effect of the variation, and
  - (b) the consequences that may follow from a contravention of the order as varied.
- (3) A court that makes a final apprehended violence order or interim court order is also to cause a written explanation of the matters required to be explained under this section to be given to the defendant and protected person.
- (4) In so far as it is reasonably practicable to do so, an explanation under this section is to be given in a language that is likely to be readily understood by the person being given the explanation.
- (5) A failure to comply with this section in relation to an order does not affect the validity of the order.

**77 Service of copy of apprehended violence order, interim court order or variation or revocation of any such order**

- (1) The Registrar of a court that makes a final apprehended violence order or interim

court order is to prepare a written copy of the order.

- (2) The Registrar of a court that varies or revokes a final apprehended violence order or interim court order is to prepare a written record of the variation or revocation.
- (3) The Registrar of the court is to serve a copy of the order or of the record of the variation or revocation of the order personally on the defendant if the defendant is present in court.
- (4) If the defendant is not present at the time the order is made, the Registrar is to arrange for a copy of the order or the record of the variation or revocation to be served personally on the defendant by a police officer or such other person as the Registrar thinks fit.
- (5) If the defendant is present at the time the order is made but the Registrar is unable to serve a copy of the order or the written record of the variation or revocation personally on the defendant, the Registrar is to arrange for a copy of the order or record to be sent by post to the defendant or to such other person as the Registrar thinks fit.
- (6) Service on the defendant of the copy of the order or record concerned may be effected in such other manner as the court directs.
- (7) The Registrar of the court is to cause a copy of the order or record, and a copy of any application for an order or variation or revocation, to be forwarded to the Commissioner of Police and (unless it is impracticable or unnecessary to do so) to be given to or sent by post to each protected person.
- (8) The Commissioner of Police is to make a record of the details of the material forwarded to the Commissioner under this section and is to retain that record for at least 10 years after the order to which it relates ceases to be in force.

#### **78 Orders made with consent of parties**

- (1) A court may make a final apprehended violence order, or an interim court order, without being satisfied as to the matters that are prerequisites to the making of those orders if the protected person and the defendant consent to the making of the order.
- (2) Such an order may be made whether or not the defendant admits to any or all of the particulars of the application.
- (3) Before making such an order, the court may conduct a hearing in relation to the particulars of the application but only if:
  - (a) the order to be made by the court is a final apprehended violence order, and
  - (b) the court is of the opinion that the interests of justice require it to conduct the hearing.



### **79 Duration of final apprehended violence orders**

- (1) A final apprehended violence order remains in force for such period as is specified in the order by the court.
- (2) The period specified in the order by the court is to be as long as is necessary, in the opinion of the court, to ensure the safety and protection of the protected person.
- (3) If the court fails to specify a period in the order, the order remains in force for a period of 12 months after the date that the order is made.
- (4) This section is subject to section 73 (Variation or revocation of final apprehended violence orders and interim court orders).

### **80 Enforcement of orders for payment of money**

An order for the payment of money by a party to application proceedings (including an order as to payment of costs) may be enforced in a court of competent jurisdiction as if it were a debt due to the person to whom the money is ordered to be paid.

### **81 Concurrent criminal proceedings**

A court may make an apprehended violence order against a defendant even though proceedings have been commenced against the defendant for an offence arising out of the same conduct as that out of which the application for the order arose.

### **82 Arrangements regarding classification of orders**

- (1) If a court is at any time unable to determine whether to make an apprehended domestic violence order or an apprehended personal violence order, it may make whichever apprehended violence order it thinks fit.
- (2) If a court is at any time unable to determine whether an apprehended violence order was made, or should have been made, as an apprehended domestic violence order or apprehended personal violence order, it may treat the order as having been made as whichever type of apprehended violence order it thinks fit.
- (3) If an apprehended violence order is made or treated as having been made as an apprehended domestic violence order or an apprehended personal violence order but should have been made as another type of apprehended violence order, the order is not invalid on that ground and is taken to have been made as that other type of apprehended violence order.

### **83 Application of [Bail Act 1978](#)**

If an application for a final apprehended violence order or interim court order is made, the [Bail Act 1978](#) applies to the defendant as if:

- (a) where the defendant is arrested pursuant to a warrant issued under this Act or first

appears before a court in answer to a direction to appear given under this Act—the defendant were an accused person charged with an offence, and

- (b) proceedings in respect of the application or order were proceedings in respect of an offence to which section 8 of the *Bail Act 1978* applies.

## Division 7 Appeals

### 84 Review and appeal provisions concerning making etc of apprehended violence orders

- (1) An application may be made under Part 2 of the *Crimes (Appeal and Review) Act 2001* by the defendant for the annulment of an apprehended violence order made by the Local Court or the Children’s Court in the same way as an application may be made under that Part by a defendant for the annulment of a conviction arising from a court attendance notice dealt with under Part 2 of Chapter 4 of the *Criminal Procedure Act 1986*.
- (1A) A person who applied to the Local Court or the Children’s Court for an apprehended violence order may apply to the Court for the annulment of the dismissal of the application for the order by the Court, but only if the person was not in attendance before the Court when the application was dismissed.
- (1B) The Local Court or the Children’s Court may grant an application for an annulment made under subsection (1A) if it is satisfied that, having regard to the circumstances of the case, there is just cause for doing so. If such an application is granted, the Court may deal with the application for the apprehended violence order as if the application for the order had not been dismissed.
- (2) An appeal may be made to the District Court:
  - (a) by the defendant against the making of an apprehended violence order by the Local Court or the Children’s Court, or
    - (a1) by the applicant for an apprehended violence order (or, if the applicant was a police officer, either the applicant or the person for whose protection the order would have been made) against the dismissal of the application by the Local Court or the Children’s Court, or
  - (b) by the applicant for an order or a defendant against the awarding of costs under section 99 of this Act, or
  - (c) by a party to an apprehended violence order against the variation or revocation of the order by the Local Court or the Children’s Court, or
  - (d) by a party to an apprehended violence order against a refusal by the Local Court or the Children’s Court to vary or revoke the order.
- (3) An appeal under subsection (2):

- (a) may be made under Part 3 of the *Crimes (Appeal and Review) Act 2001* in the same way as an application may be made under that Part by a defendant against a conviction arising from a court attendance notice dealt with under Part 2 of Chapter 4 of the *Criminal Procedure Act 1986*, and
  - (b) may be made only by leave of the District Court in the case of an appeal against the making of an apprehended violence order that was made with the consent of the defendant.
- (4) The *Crimes (Appeal and Review) Act 2001* applies to an application or appeal arising under this section with such modifications as are made by or in accordance with the regulations under that Act.
- (5) For the purposes of this section and the *Crimes (Appeal and Review) Act 2001*, an order made by a Registrar of a court is taken to have been made by the court.
- (5A) Part 6 (Interim court orders) applies to proceedings with respect to an appeal to the District Court under subsection (2) in the same way as it applies to an application to the Local Court or the Children’s Court under Part 4 or 5.
- (5B) If the District Court allows an appeal made under this section against the refusal to annul an apprehended violence order and remits the matter to the Local Court or the Children’s Court, the District Court must, unless the District Court is satisfied that it is not necessary to do so, make an interim court order under Part 6 as if an application for such an order had been duly made.
- (6) In this section, **party** to an apprehended violence order means:
- (a) the protected person (whether or not the applicant), but only if the protected person is of or above the age of 16 years, or
  - (b) if the applicant was a police officer, that or any other police officer, or
  - (c) the defendant.

## **85 Presumption against stay of order**

- (1) The lodging of a notice of appeal under section 84 does not have the effect of staying the operation of the order concerned.
- (2) The original court may, on application by the defendant, stay the operation of the order, if satisfied that it is safe to do so, having regard to the need to ensure the safety and protection of the protected person or any other person.
- (3) A stay on the operation of the order continues until the appeal is finally determined, subject to any order or direction of the District Court.
- (4) This section has effect despite section 84 of this Act and section 63 of the *Crimes*

*(Appeal and Review) Act 2001.*

(5) A stay on the operation of the order does not have effect if the appellant is in custody when the appeal is made, unless and until the appellant enters into a bail undertaking in accordance with the *Bail Act 1978*, or bail is dispensed with. In the application of the *Bail Act 1978* to the appellant, the appellant is taken to be an accused person who, because of the prohibitions and restrictions imposed by the order, is in custody.

(6) In this section:

**original court**, in relation to an order, means:

- (a) the Local Court, if the order was made by the Local Court or a Registrar of the Local Court, or
- (b) the Children's Court, if the order was made by the Children's Court or the Registrar of the Children's Court.

## **Division 8 Rules**

### **86 Rules in application proceedings**

- (1) The rules may make provision for or with respect to the following matters relating to application proceedings:
  - (a) the practice and procedure in the court and in proceedings before a Registrar,
  - (b) the recording of evidence, including the manner in which the evidence may be recorded and the authentication of evidence or of transcripts of evidence given in proceedings,
  - (c) the filing and service (including substituted service) of notices under this Act,
  - (d) additional requirements for the form of warrants,
  - (e) the functions of Registrars,
  - (f) the hearing of proceedings, including the procedure to be followed and the orders to be made, when a party fails to attend,
  - (g) empowering the court to dispense with rules of evidence for proving any matter that is not genuinely in dispute in any proceedings and to dispense with rules of evidence that might cause expense or delay in proceedings if those rules were applied in specified circumstances,
  - (h) prescribing matters relating to expert evidence, including the disclosure, by providing copies of reports or otherwise, of the nature of expert evidence to be given, and including the exclusion of expert evidence in the case of non-compliance with the rules relating to expert evidence or with any order for

disclosure of the nature of expert evidence,

(i) providing for any matter relating to the costs of proceedings.

(2) Without limiting subsection (1), the rules made for the purposes of this Act may adopt, with or without modification, the provisions of any rules made under the *Civil Procedure Act 2005*.

(3) This section does not give power to make rules with respect to any matter relating to costs that is regulated by Part 3.2 of the *Legal Profession Act 2004*.

## **87 Forms**

(1) The Chief Magistrate or Senior Children's Magistrate:

(a) may approve forms for documents to be used in connection with application proceedings, and

(b) in the case of documents filed with the court, or issued by the court, by means of an ECM system within the meaning of the *Electronic Transactions Act 2000*, may approve the format in which such documents are to be filed or issued.

(2) Copies of the approved forms are to be made available for public inspection at each registry of the court and on the court's internet website.

(3) If a form is approved in relation to a document to be used in connection with proceedings in the court, a document that is filed with or issued by the court is to be in that form.

## **Part 11 Warrants and powers of police to detain defendants**

### **88 Warrant for arrest of defendant in final apprehended violence order matters**

(1) If an application for a final apprehended violence order is made, an authorised officer may issue a warrant for the arrest of the defendant.

(2) The authorised officer may issue a warrant for the arrest of the defendant even though the defendant is not alleged to have committed an offence.

(3) The authorised officer must issue a warrant for the arrest of the defendant if it appears to the authorised officer that the personal safety of the person for whose protection the order is sought will be put at risk unless the defendant is arrested for the purpose of being brought before the court.

(4) A warrant may not be executed more than 12 months after the date on which it is issued, unless the court otherwise orders before the end of the 12-month period.

### **89 Detention of defendant for making and service of provisional order**

- (1) If a police officer makes or is about to make an application for a provisional order, the police officer may direct the person against whom the order is sought to remain at the scene of the incident concerned or, in a case where the person has left the scene of the incident, at another place where a police officer locates the person.
- (2) If the person refuses to remain, the police officer may arrest and detain the person at the scene of the incident or other place, or arrest and take the person to a police station and there detain the person, until the provisional order is made and served.

### **90 Detention of defendant for service of order or variation**

- (1) A police officer who reasonably suspects that a person is the defendant in relation to an apprehended violence order may direct the person to remain where the person is for the purpose only of serving on the person a copy of the order, or a variation of the order, that is required to be served personally under this Act.
- (2) If the person refuses to remain, the police officer may arrest and detain the person at the same place, or arrest and take the person to a police station and there detain the person, for the purpose only of serving the document concerned on the person.

#### **Note—**

Division 1A of Part 3 of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) enables a police officer to require the name of a person who the police officer suspects on reasonable grounds may be the defendant in relation to an apprehended violence order. Section 87 of that Act provides that if a police officer enters a dwelling under a power conferred by that Act and believes on reasonable grounds that a dangerous article or dangerous implement that may have been used or may be used to commit a domestic violence offence is in the dwelling, the police officer may search for the article or implement and seize and detain it.

## **Part 12 Jurisdiction of courts**

### **91 Courts authorised to make orders and determine applications**

- (1) The following courts have jurisdiction (in the circumstances specified) to make orders and determine applications under this Act:
  - (a) the Local Court—except where the defendant is less than 18 years of age at the time the application is made,
  - (b) the Children’s Court—where the defendant is less than 18 years of age at the time the application is made.
  - (c) (Repealed)
- (2) The Local Court has jurisdiction to vary or revoke an order made by it or any other court (except where the defendant is less than 18 years of age at the time the application for the variation or revocation is made).

- (3) The Children's Court has jurisdiction to vary or revoke an order made by it irrespective of the age of the defendant at the time the application for variation or revocation is made.
- (4) An order made by the Local Court for the purposes of this Act is not invalid on the ground that it was made in the mistaken belief that the defendant was of or above 18 years of age at the time the application was made.
- (5) This section does not apply to provisional orders.

## **92 (Repealed)**

## **93 Jurisdiction of District Court under this Act**

The jurisdiction conferred on the District Court by this Act is conferred on the Court in its criminal jurisdiction.

## **Part 13 Registration of external protection orders**

### **94 Definitions**

In this Part:

**appropriate court**, in relation to an external protection order, means:

- (a) the Local Court if the person against whom the order has been made is 18 or more years of age, or
- (b) the Children's Court if the person against whom the order has been made is less than 18 years of age,

on the day on which an application is made under this Part for the registration of the order.

**external protection order** means an order made by a court of another State or Territory or New Zealand that has been made to prevent a person from acting in a manner specified in section 16 or 19, and includes an order made by such a court that is of a kind prescribed by the regulations.

**registered external protection order** means an external protection order registered under this Part.

### **95 Application for registration of external protection order**

- (1) A person may apply to a Registrar of the appropriate court for the registration of an external protection order.
- (2) An application is:
  - (a) to be made in a form approved by the Registrar of the appropriate court, and

- (b) to be accompanied by a copy of the external protection order, and
- (c) to be accompanied by such evidence of effective service of the external protection order on the person against whom it has been made as the Registrar considers appropriate.

#### **96 Registration of external protection order**

- (1) On receipt of an application under section 95, the Registrar of the appropriate court must:
  - (a) register the external protection order to which the application relates, or
  - (b) refer the external protection order to a Magistrate (or a Children's Magistrate if the appropriate court is the Children's Court) for adaptation or modification.
- (2) On the referral of an external protection order, the Magistrate or Children's Magistrate may do either or both of the following:
  - (a) vary the period during which the order has effect in its operation in New South Wales,
  - (b) make such other adaptations or modifications to the order as the Magistrate or Children's Magistrate considers necessary or desirable for its effective operation in New South Wales.
- (3) The Registrar of the appropriate court must register an external protection order that has been adapted or modified under subsection (2).
- (4) On registering an external protection order, the Registrar of the appropriate court must provide the Commissioner of Police with a copy of the registered external protection order.
- (5) Notice of the registration of an external protection order is not to be served on the person against whom the order has been made unless the person who applied for that registration has consented to that service.
- (6) A registered external protection order is registered for the period during which the order, or the order as adapted or modified, is in force.

#### **97 Effect of registration of external protection order**

- (1) An external protection order that has been registered under section 96:
  - (a) has the same effect as an apprehended violence order made under this Act, and
  - (b) may be enforced against a person as if it were an apprehended violence order which had been made under this Act and as if a copy of the order had been served on that person in accordance with section 77.



- (2) The variation or revocation of an external protection order by a court of the State, Territory or country in which it was made after the order has been registered under section 96 has no effect in New South Wales.
- (3) An external protection order that has been registered under section 96 (and anything done to effect the registration of the order) is not invalid on the ground that the order has, due to the age of the defendant at the time the application was made, been registered in the wrong court.

#### **98 Variation etc of registered external protection orders**

- (1) In this section, **prescribed person** means:
  - (a) a person for whose protection a registered external protection order has been made, or
  - (b) a person against whom a registered external protection order has been made, or
  - (c) a police officer, or
  - (d) a person to whom the appropriate court in which the external protection order has been registered has granted leave to make an application under this section.
- (2) A prescribed person may apply to the appropriate court for one or more of the following:
  - (a) the variation of a registered external protection order as it applies in New South Wales,
  - (b) the extension or reduction of the period during which a registered external protection order has effect in its operation in New South Wales,
  - (c) the revocation of the registration of a registered external protection order.
- (3) The appropriate court may determine the application by doing one or more of the following:
  - (a) by varying the order as it applies in New South Wales,
  - (b) by extending or reducing the period during which the order has effect in its operation in New South Wales,
  - (c) by revoking the registration.
- (4) A registered external protection order is not to be varied or revoked on the application of a person referred to in subsection (1) (a), (c) or (d) unless notice of the application has been served on the person against whom the order has been made.
- (5) A registered external protection order is not to be varied or revoked on the application

of the person against whom the order has been made unless notice of the application has been served on the person for whose protection the order has been made.

- (6) Notice of an application is to be served personally or in such other manner as the appropriate court hearing the application directs.
- (7) A registered external protection order varied under subsection (3) (a) or (b) is registered for the period during which the order, as varied, has effect in its operation in New South Wales.

## **Part 14 Miscellaneous**

### **99 Costs**

- (1) A court may, in apprehended violence order proceedings, award costs to the applicant for the order or decision concerned or the defendant in accordance with this section.
- (2) Costs are to be determined in accordance with Division 4 of Part 2 of Chapter 4 of the [Criminal Procedure Act 1986](#).
- (3) A court is not to award costs against an applicant who is the person for whose protection an apprehended domestic violence order is sought unless satisfied that the application was frivolous or vexatious.
- (4) A court is not to award costs against a police officer who makes an application unless satisfied that the police officer made the application knowing it contained matter that was false or misleading in a material particular.
- (5) Subsections (3) and (4) have effect despite any other Act or law.
- (6) (Repealed)

### **100 Parts 2 and 3 of [Crimes \(Appeal and Review\) Act 2001](#)**

Except as expressly provided by this Act, nothing in this Act affects the operation that Parts 2 and 3 of the [Crimes \(Appeal and Review\) Act 2001](#) would have if this Act had not been enacted.

### **101 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### **102 Savings, transitional and other provisions**

Schedule 1 has effect.

### **103 (Repealed)**

## 104 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 3 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.

## Schedule 1 Savings, transitional and other provisions

(Section 102)

### Part 1 General

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
  - this Act
  - Crimes (Domestic and Personal Violence) Amendment Act 2008*
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### Part 2 Provisions consequent on enactment of this Act

#### 2 Preliminary

- (1) In this Part:
  - commencement** means the day on which this Act commences.
  - old Part 15A** means Part 15A of the *Crimes Act 1900* as in force at any time before its

repeal by this Act.

(2) The provisions of this Part are subject to the regulations.

### **3 Existing apprehended violence orders and interim orders**

(1) An apprehended domestic violence order made under the old Part 15A before the repeal of that Part by this Act is taken to have been made under this Act.

(2) An apprehended personal violence order made under the old Part 15A before the repeal of that Part by this Act is taken to have been made under this Act.

(3) An interim order made by a court or registrar under the old Part 15A before the repeal of that Part by this Act is taken to be an interim court order made under this Act.

(4) A telephone interim order made under the old Part 15A before the repeal of that Part by this Act is taken to be a provisional order made under this Act.

(5) An external protection order registered under Division 10 of the old Part 15A is taken to have been registered under Part 13 of this Act.

(6) Any order taken by this clause to have been made under this Act has effect for the same period as it would have had under the provisions of the old Part 15A but may be varied or revoked in accordance with this Act.

### **4 Pending applications**

An application for an order under the old Part 15A that has not been determined before the repeal of that Part by this Act is taken to be an application for the same type of order under this Act.

### **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.

## **6 Recording of domestic violence offences**

Section 12 extends to:

- (a) enabling the making of an application to record a domestic violence offence occurring before the commencement of that section, and
- (b) authorising the recording of domestic violence offences occurring before the commencement of that section.

## **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 (Repealed)**