

Crimes (Domestic and Personal Violence) Amendment (Review) Act 2016 No 33

[2016-33]



New South Wales

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Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Note**

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Authorisation

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Crimes (Domestic and Personal Violence) Amendment (Review) Act 2016 No 33



New South Wales

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Crimes (Domestic and Personal Violence) Amendment (Review) Act 2016 No 33



New South Wales

An Act to make miscellaneous amendments to the *Crimes (Domestic and Personal Violence) Act 2007* and Chapter 9A of the *Coroners Act 2009* to give effect to the recommendations arising from the statutory reviews of that Act and Chapter; and for other purposes.

1 Name of Act

This Act is the *Crimes (Domestic and Personal Violence) Amendment (Review) Act 2016*.

2 Commencement

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

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

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

Children's Magistrate includes the President of the Children's Court.

parent has the same meaning as in the *Children and Young Persons (Care and Protection) Act 1998*.

[2] Section 4 Meaning of "personal violence offence"

Omit "44," from section 4 (a). Insert instead "43, 43A, 44, 45, 45A,".

[3] Section 4 (a)

Insert "73, 78A," after "66EA,".

[4] Section 4 (a)

Insert "110," after "93GA,".

[5] Section 4 (b1)

Insert after section 4 (b):

- (b1) an offence under section 109, 111, 112, 113, 114, 115 or 308C of the *Crimes Act 1900*, but only if the serious indictable offence or indictable offence referred to in those sections is an offence referred to in paragraph (a) or (b), or

[6] Section 4 (c)

Omit “or (b)”. Insert instead “, (b) or (b1)”.

[7] Section 5 Meaning of “domestic relationship”

Insert at the end of the section after the note:

- (2) Two persons also have a **domestic relationship** with each other for the purposes of this Act if they have both had a domestic relationship of a kind set out in subsection (1) (a), (b) or (c) with the same person.

Note—

A woman’s ex-partner and current partner would therefore have a domestic relationship with each other for the purposes of this Act even if they had never met.

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

Insert after section 9 (3) (f):

- (f1) the particular impact of domestic violence on Aboriginal persons and Torres Strait Islanders, persons from culturally and linguistically diverse backgrounds, persons from gay, lesbian, bisexual, transgender and intersex communities, older persons and persons with disabilities, and

[9] Section 11

Omit the section. Insert instead:

11 Meaning of “domestic violence offence”

- (1) In this Act, **domestic violence offence** means an offence committed by a person against another person with whom the person who commits the offence has (or has had) a domestic relationship, being:
- (a) a personal violence offence, or
- (b) an offence (other than a personal violence offence) that arises from substantially the same circumstances as those from which a personal

violence offence has arisen, or

(c) an offence (other than a personal violence offence) the commission of which is intended to coerce or control the person against whom it is committed or to cause that person to be intimidated or fearful (or both).

(2) In this section, **offence** includes an offence under the *Criminal Code Act 1995* of the Commonwealth.

[10] Section 16 Court may make apprehended domestic violence order

Omit “personal violence offence” from section 16 (1) (a).

Insert instead “domestic violence offence”.

[11] Section 16 (2) (c) (i)

Omit “at any time”. Insert instead “on more than one occasion”.

[12] Section 16 (2) (d)

Insert at the end of section 16 (2) (c) (iii):

, or

(d) the court is satisfied on the balance of probabilities that the person has reasonable grounds to fear the commission of a domestic violence offence against the person.

[13] Section 16 (2A)

Insert after section 16 (2):

(2A) An apprehended domestic violence order that is made in reliance on subsection (2) (d) cannot impose prohibitions or restrictions on the behaviour of the defendant other than those prohibitions that are taken to be specified in the order by section 36.

[14] Section 32

Omit the section. Insert instead:

32 Duration

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

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

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

Omit section 33 (6).

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

Insert after section 35 (2) (c):

(c1) prohibiting or restricting the defendant from locating or attempting to locate the protected person,

[17] Section 36

Omit the section. Insert instead:

36 Prohibitions taken to be specified in every apprehended violence order

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

(a) assaulting or threatening the protected person or a person with whom the protected person has a domestic relationship,

(b) stalking, harassing or intimidating the protected person or a person with whom the protected person has a domestic relationship,

(c) intentionally or recklessly destroying or damaging any property that belongs to, or is in the possession of, the protected person or a person with whom the protected person has a domestic relationship.

[18] Section 37 Ancillary property recovery orders may be made

Insert after section 37 (1B):

- (1C) An application for a property recovery order made by a protected person or a defendant must include details of the following:
- (a) any relevant order with respect to property made under the *Family Law Act 1975* of the Commonwealth (a **family law property order**) of which the applicant is aware,
 - (b) any pending application for a family law property order of which the applicant is aware.
- (1D) Before making a property recovery order, a court or authorised officer is to:
- (a) make such inquiries of the parties about any relevant family law property orders as the court or officer considers to be appropriate, and
 - (b) if any such order is brought to the attention of the court or authorised officer, take the order into consideration.

[19] Section 39

Omit the section. Insert instead:

39 Final order to be made on guilty plea or guilt finding for serious offence

- (1) If a person pleads guilty to, or is found guilty of, a serious offence, the court hearing the proceedings must make a final apprehended violence order for the protection of the person against whom the offence was committed regardless of whether an interim apprehended violence order has been made or whether an application for an apprehended violence order has been made.
- (2) However, the court need not make a final apprehended violence order if it is satisfied that it is not required (for example, because a final apprehended violence order has already been made against the person).
- (3) In this section:
 - court** includes the District Court.
 - serious offence** has the same meaning as in section 40.

[20] Section 40 Interim apprehended violence order must be made on charge for certain offences

Omit section 40 (4). Insert instead:

- (4) The transcript of proceedings and any evidence admitted in the District Court or the

Supreme Court in respect of a serious offence is admissible in the Local Court or Children's Court for the purposes of determining any one or more of the following:

- (a) an application for the variation or revocation of an interim court order made under this section in respect of the serious offence,
- (b) an application for a final apprehended violence order to be made in respect of any such interim court order,
- (c) an application for the variation or revocation of any such final apprehended violence order.

(4A) In this section **court** includes the District Court and the Supreme Court.

[21] Section 40A

Insert after section 40:

40A Apprehended violence order may be made in care proceedings

- (1) The Children's Court may, during care proceedings, make an apprehended violence order for the protection of:
 - (a) the child to whom the care proceedings relate, and
 - (b) any person who is a relative of, or who resides on the same property as, the child,or may vary or revoke any existing order that protects any of those persons.
- (2) The Children's Court may make, vary or revoke an order on the application of a party to the care proceedings or on its own motion if the Court considers that the circumstances justify making, varying or revoking the order.
- (3) The Children's Court is not to make or vary an order under this section that protects a person if the Court is aware that the defendant is subject to criminal proceedings before another court and those criminal proceedings arose out of some or all of the circumstances that justify the making of the order.
- (4) Before making, varying or revoking an order under this section, the Children's Court is to notify the Commissioner of Police and the Secretary of the Department of Family and Community Services and give the Commissioner and Secretary standing to appear in the proceedings.
- (5) Before varying or revoking a police-initiated order under this section the Children's Court is to notify the Commissioner of Police and give the Commissioner standing to appear in the proceedings.

- (6) Sections 48 (3) and 72B do not apply to an application made under subsection (2).
- (7) The parties to the care proceedings and the defendant against whom the apprehended violence order is proposed to be made all have standing to appear in respect of the making of the apprehended violence order.
- (8) Subject to the regulations, section 91 (Appeals) of the *Children and Young Persons (Care and Protection) Act 1998* applies to an apprehended violence order made under this section.

(9) In this section:

care proceedings has the same meaning as in the *Children and Young Persons (Care and Protection) Act 1998*.

child includes a young person within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*.

police-initiated order has the same meaning as in section 72.

relative of a child has the same meaning as in the *Children and Young Persons (Care and Protection) Act 1998*.

reside on a property has the same meaning as in the *Child Protection (Working with Children) Act 2012*.

[22] Section 41A

Insert after section 41:

41A Questioning child witness in apprehended domestic violence order proceedings

- (1) A child who appears as a witness in any of the following proceedings cannot be questioned by a defendant directly but only by the defendant's Australian legal practitioner or other Australian legal practitioner or a suitable person appointed by the court:
 - (a) proceedings in which an apprehended domestic violence order is sought or proposed to be made,
 - (b) proceedings in relation to an application for the variation or revocation of an apprehended domestic violence order.
- (2) This section applies in addition to the protections set out in section 41.

[23] Section 48 Making of application for an order

Omit section 48 (3). Insert instead:

- (3) Despite subsection (2), an application for an order may be made only by a police officer if, at the time the application is made, each person for whose protection the order would be made is a child.

[24] Section 48 (4A)

Insert after section 48 (4):

- (4A) A court may refer an application for an order to the Commissioner of Police at any time if:
- (a) the applicant is not a police officer, and
 - (b) a person for whose protection the order would be made is a child at the time of the application, and
 - (c) the court considers that it would be in the best interests of the child for a police officer to appear in the application.

[25] Section 50 Commencement of proceedings by application notice

Omit section 50 (2) and (3). Insert instead:

- (2) The regulations may make provision for or with respect to the form of an application notice for an apprehended violence order under this Division or for the information to be included in the application notice.
- (3) Without limiting subsection (2), the regulations may require inclusion of the following information in an application notice for an apprehended personal violence order:
- (a) whether there is an existing commercial relationship between the applicant and the defendant,
 - (b) whether there is an outstanding debt owed by the defendant to the applicant or by the applicant to the defendant,
 - (c) whether there have been previous civil or criminal proceedings between the applicant and the defendant,
 - (d) that it is an offence under this Act to make a statement in the application that the applicant knows is false or misleading in a material particular.

- (4) Without limiting subsection (2), the regulations may require inclusion of the following information in an application notice for an apprehended domestic violence order:
- (a) whether there are any current proceedings under the *Family Law Act 1975* of the Commonwealth that may be relevant to the application,
 - (b) whether any property orders have been made or are being sought under that Act that may be relevant to the application and the terms of those orders,
 - (c) if a parenting order has been made under that Act and the application may affect that order—the basis on which the parenting order was made and the reasons why the applicant believes that the court (to which the application is being made) should intervene.

[26] Section 57A

Insert after section 57:

57A Procedure if party not present on hearing date

- (1) In this section, **party** to application proceedings means the person for whose protection the relevant order is sought or the defendant.
- (2) If one or more parties to application proceedings are not present on the day and at the time and place set for the hearing of the matter (including a day to which the hearing has been adjourned), the court may proceed to hear and determine the matter in the absence of those parties if the court is satisfied that:
 - (a) each absent party had reasonable notice of the first return date or the date, time and place of the hearing, and
 - (b) it is otherwise in the interests of justice to do so.
- (3) Before determining the matter, the court must consider the grounds set out in the application notice (if any) and any written statement provided to the court by a police officer.

[27] Sections 72-72D

Omit section 72. Insert instead:

72 Definitions

In this Division:

application means an application for the variation or revocation of a final

apprehended violence order or interim court order.

interested party, in relation to an order, means each of the following:

- (a) each protected person under the order (whether or not the protected person made the application for the original order),
- (b) each guardian of a protected person under the order, 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,
- (c) in the case of a protected person who is a child:
 - (i) each parent of a protected person under the order, and
 - (ii) the Secretary of the Department of Family and Community Services,
- (d) the defendant.

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

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

72A Making of application—general

- (1) An application may be made to a court at any time.
- (2) An application may be made only by a police officer or by an interested party in relation to the order.
- (3) An 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.

72B Making of application—police-initiated order where protected person is child

- (1) An interested party in relation to a police-initiated order requires leave of a court to make an application to the court in respect of the order if the protected person (or one of the protected persons) under the order is a child.
- (2) The court may grant leave for the interested party to make the application if the court is satisfied of any one or more of the following:
 - (a) that there has been a significant change in circumstances since the order was made (or was last varied),

- (b) that the application is proposed to be made by the Secretary of the Department of Family and Community Services on the basis that a care plan (within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*) for the child is inconsistent with the police-initiated order,
 - (c) that it is otherwise in the interests of justice to do so.
- (3) The court is not to grant leave if it is of the opinion that the application, if successful, would significantly increase the risk of harm to the child.

72C Commissioner must be notified if application relates to police-initiated order

- (1) The court must decline to hear an application in respect of a police-initiated order unless:
- (a) the application is made by a police officer, or
 - (b) the court is satisfied that notice of the application has been served on the Commissioner of Police in accordance with the rules of the court.
- (2) The Commissioner of Police has standing to appear in proceedings for the variation or revocation of any police-initiated order.

72D Notification of application if protected person is child

The court may notify an application to the Commissioner of Police and any interested party and give the Commissioner and interested party standing to appear in proceedings if the protected person (or one of the protected persons) under the order is a child at the time of the application and the court considers it to be in the best interests of the child to do so.

[28] Section 73 Variation or revocation of final apprehended violence orders and interim court orders

Omit “for variation or revocation of a final apprehended violence order or interim court order” from section 73 (3).

Insert instead “in respect of an order”.

[29] Section 74 Variation or revocation of final apprehended violence orders and interim court orders where more than one protected person

Omit “for variation or revocation of” from section 74 (3). Insert instead “in respect of”.

[30] Section 74, note

Omit the note.

[31] Section 78 Orders made with consent of parties

Insert after section 78 (3):

(4) In this section:

court includes the District Court.

[32] Section 87 Forms

Omit “or Senior Children’s Magistrate” from section 87 (1).

Insert instead: “of the Local Court or the President of the Children’s Court”.

[33] Section 92

Insert after section 91:

92 Jurisdiction of Supreme Court under this Act

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

[34] Sections 99 and 99A

Omit section 99. Insert instead:

99 Costs

(1) In this section:

professional costs means costs relating to professional expenses and disbursements (including witnesses’ expenses) in respect of proceedings before a court (but not court fees payable to a court).

(2) Costs, other than professional costs, are not to be awarded in apprehended violence order proceedings.

(3) A court may, subject to section 99A, award professional costs in apprehended violence order proceedings to the applicant for the order or decision concerned or the defendant in accordance with this section.

(4) If professional costs are awarded against a person under this section, the costs must be paid by the person to the registrar of the court, for payment to:

- (a) the defendant, in the case of costs awarded against an applicant, or
- (b) the applicant, in the case of costs awarded against a defendant.

- (5) A court may make an order as to professional costs at the end of apprehended violence order proceedings or following the adjournment of the proceedings.
- (6) An order as to professional costs may be made following the adjournment of the proceedings only if the court is satisfied that the other party has incurred additional costs because of the unreasonable conduct or delays of the party against whom the order is made.
- (7) An order as to professional costs made following the adjournment of proceedings may be made whatever the result of the proceedings and may provide for the determination of the amount at the end of the proceedings.
- (8) An order as to professional costs may specify the amount of any professional costs payable or may specify that it is to be the amount as agreed or assessed.
- (9) The State is to indemnify a police officer, who acts in his or her capacity as a police officer in apprehended violence order proceedings, for any professional costs awarded against the police officer personally.
- (10) This section applies to apprehended violence order proceedings, including apprehended violence order proceedings conducted in the absence of one or more of the parties.

99A Limitations on professional costs being awarded

- (1) A court cannot, in apprehended violence order proceedings, award professional costs against an applicant who is a protected person in respect of the order unless satisfied that the application was frivolous or vexatious.
- (2) A court cannot, in apprehended domestic violence order proceedings, award professional costs against an applicant who is a police officer unless satisfied that:
 - (a) the applicant made the application knowing it contained matter that was false or misleading in a material particular, or
 - (b) the applicant has deviated from the reasonable case management of the proceedings so significantly as to be inexcusable.
- (3) The mere fact that a protected person does any one or more of the following in relation to apprehended domestic violence order proceedings does not give rise to a ground to award costs against an applicant who is a police officer and who made the application in good faith:
 - (a) indicating that he or she will give unfavourable evidence,
 - (b) indicating that he or she does not want an apprehended domestic violence order or that he or she has no fears,

- (c) giving unfavourable evidence or failing to attend to give evidence.
- (4) This section has effect despite section 99 or any other provision of this or any other Act or law.
- (5) In this section:
- apprehended domestic violence order proceedings*** means proceedings under this Act in relation to an apprehended domestic violence order or an application for an apprehended domestic violence order.

professional costs has the same meaning as in section 99.

[35] Schedule 1 Savings, transitional and other provisions

Insert after Part 3:

**Part 4 Provisions consequent on enactment of Crimes
(Domestic and Personal Violence) Amendment (Review)
Act 2016**

10 Definition

In this Part:

amending Act means the *Crimes (Domestic and Personal Violence) Amendment (Review) Act 2016*.

11 Amendments do not extend to current applications

(1) In this clause:

application means an application for a final apprehended violence order or an application within the meaning of section 72.

(2) The amendment of a provision of the Act by the amending Act does not affect an application made but not finally dealt with before the amendment nor does it affect any proceedings arising from any such application even if those proceedings take place after the amendment and, in any such case, the provision as in force immediately before its amendment is taken to continue to apply.

(3) Subclause (2) is subject to the other provisions of this Part.

12 Duration of provisional orders

Section 32, as substituted by the amending Act, extends to a provisional order that is in force immediately before that substitution.

13 Orders made on guilty plea or finding of guilt

Section 39, as substituted by the amending Act, applies in respect of a guilty plea or finding of guilt in proceedings even if the proceedings commenced before that substitution.

14 Evidence of serious offence admissible

The transcript of proceedings and any evidence admitted in the District Court or the Supreme Court in respect of a serious offence is admissible in the Local Court or Children's Court for the purposes of determining an application referred to in section 40 (4) even if the proceedings to which the transcript or evidence relates took place before the substitution of section 40 (4) by the amending Act.

15 Orders made during care proceedings

Section 40A applies in respect of care proceedings (and any appeal arising from those proceedings) even if the care proceedings were commenced before the commencement of that section.

16 Questioning child directly

Section 41A applies in respect of proceedings even if the proceedings were commenced before the commencement of that section. However, this clause does not cause evidence given before that commencement to be inadmissible.

17 Costs

- (1) Section 99, as substituted by the amending Act, does not apply to proceedings that commenced before that substitution and that section, as in force immediately before its substitution, continues to apply to any such proceedings as if it had not been substituted.
- (2) Section 99A does not apply to proceedings that commenced before the commencement of that section.

Schedule 2 Amendment of [Coroners Act 2009 No 41](#)

[1] Section 101B Interpretation

Insert in alphabetical order in section 101B (1):

domestic relationship has the same meaning it has in the [Crimes \(Domestic and Personal Violence\) Act 2007](#).

[2] Section 101C Meaning of “domestic relationship”

Omit the section.

[3] Section 101E Members of Team

Omit section 101E (3). Insert instead:

(3) The Team is to include representatives of each of the following:

- (a) the Department of Premier and Cabinet,
- (b) the Department of Education,
- (c) the Department of Family and Community Services,
- (d) the Department of Justice,
- (e) the NSW Health Service,
- (f) the NSW Police Force.

(3A) The regulations may set out additional requirements in respect of the appointment of representatives of an organisation referred to in subsection (3) including, but not limited to, the following:

- (a) the number of representatives to be appointed,
- (b) the parts or functions of the organisation that are to be represented,
- (c) the qualifications, experience or expertise that any representative is required to have.

[4] Section 101E (4A)

Insert after section 101E (4):

(4A) In addition, the Commissioner of Victims Rights is to be appointed as a member of the Team.

[5] Section 101E (6)

Insert “, and if no other member of the Team is an Aboriginal person or Torres Strait Islander, the Minister is to appoint an additional person who is an Aboriginal person or a Torres Strait Islander as a member of the Team” after “Team”.

[6] Section 101J Reports

Omit section 101J (1). Insert instead:

(1) The Team must prepare, within the period of 4 months after 30 June 2017 and then every 2 years after that, and furnish to the Presiding Officer of each House of

Parliament, a report on domestic violence deaths reviewed in the previous 2 years.