

Crimes Legislation Amendment Act 2018 No 83

[2018-83]



New South Wales

Status Information

Currency of version

Historical version for 22 November 2019 to 28 March 2020 (accessed 4 May 2024 at 0:14)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

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

Notes—

- **Note**
Amending Acts and amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.
- **Editorial note**
The Parliamentary Counsel's Office is progressively updating certain formatting styles in versions of NSW in force legislation published from 29 July 2019. For example, colons are being replaced by em-rules (em-dashes). Text of the legislation is not affected.

This version has been updated.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 17 January 2020

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Crimes Legislation Amendment Act 2018 No 83



New South Wales

An Act to make miscellaneous amendments to various Acts with respect to the making, duration and variation of apprehended domestic violence orders, eligibility for victims support and a further indictable offence of choking, suffocating or strangulation.

1 Name of Act

This Act is the *Crimes Legislation Amendment Act 2018*.

2 Commencement

- (1) Except as provided by this section, this Act commences on a day or days to be appointed by proclamation.
- (2) Schedule 2 [2] commences on the date of commencement of Schedule 1 [3] to the *Victims Rights and Support Amendment (Statutory Review) Act 2018*, or on the date of assent to this Act, whichever occurs later.
- (3) Schedule 3 commences on 1 December 2018, or on the date of assent to this Act, whichever occurs later.

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

[1] Section 39 Final order to be made on guilty plea or guilt finding for serious offence

Insert after section 39 (2)—

- (2A) In the case of an apprehended domestic violence order, the period of the order is to be determined in accordance with section 79C.

[2] (Repealed)

[3] Section 73A

Insert after section 73—

73A Variation of interim or final apprehended domestic violence order by police

- (1) The conditions of an apprehended domestic violence order or an interim apprehended domestic violence order (the **existing order**) relating to a defendant who is aged 16 years or older may be varied by a police officer (a **police variation**).
- (2) A police officer may make a police variation only if there has been a change in circumstances since the existing order was made, resulting in an increased risk to the safety of the protected person that requires an urgent response, and the officer is of the opinion that—
 - (a) the increased risk cannot be addressed under the existing order, and
 - (b) there are reasonable grounds for the urgent making of the police variation (including, but not limited to, that the increased risk cannot be addressed by an immediate application to an appropriate court for variation of the existing order), and
 - (c) the variation is appropriate to address the increased risk.
- (3) A police officer must not make a police variation in relation to an existing order unless the police officer has had regard to each of the following to the extent that the police officer has knowledge of those matters—
 - (a) any views expressed by or on behalf of the protected person, and
 - (b) the circumstances of the defendant.
- (4) A police officer must not make a police variation to an existing order if doing so decreases the protection afforded to the protected person.
- (5) A police variation is of no effect unless it has been made or approved by a senior police officer.
- (6) A police variation takes effect when notice of the police variation is served on the defendant.
- (7) For the purposes of this Part, a police variation is taken to be an application to the appropriate court for a variation of the conditions of the existing order.
- (8) Notice of the police variation served on the defendant is to contain a direction for the appearance of the defendant at a hearing of the application on a day specified in the notice, being a day that is not more than 28 days after the day on which the police variation takes effect.
- (9) The day specified in the notice must be the earliest date on which the matter

can be listed at the appropriate court.

- (10) Despite subsection (9), the matter is to be listed on a domestic violence list at the appropriate court if it is possible to do so within 28 days after the police variation takes effect, even if the matter could have been listed on an earlier day on another list.
- (11) An appropriate court, when hearing the application, may determine to—
 - (a) vary the conditions of the existing order in accordance with the police variation, or
 - (b) vary the conditions of the existing order in some other way to address the increased risk, or
 - (c) not vary the conditions of the existing order.
- (12) The police variation, including any variation to the existing order, is revoked—
 - (a) when the court makes a determination under subsection (11), or
 - (b) if the court does not make a determination within 28 days after the police variation takes effect—28 days after the police variation takes effect.
- (13) If a court makes a determination under subsection (11) with respect to a police variation, a subsequent police variation cannot be made under this section in relation to the same risk to the safety of the protected person that gave rise to the earlier police variation.

[4] Section 79 Duration of apprehended personal violence orders

Omit “A final apprehended violence order” from section 79 (1).

Insert instead “An apprehended personal violence order”.

[5] Sections 79A-79C

Insert after section 79—

79A Duration of apprehended domestic violence orders

- (1) An apprehended domestic violence order remains in force for—
 - (a) the period specified in the order by the court, or
 - (b) if the court fails to specify a period in the order, the default period.
- (2) The period specified 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) In forming the opinion, the court is to consider the following matters—
- (a) the circumstances of the protected person and that person's views,
 - (b) the circumstances of the defendant and, if the defendant was under 18 years of age when the application for the order was first made, the impact of the order if the duration of the order were to be more than the default period,
 - (c) any material that the court relied on under sections 16 and 17 in deciding to make an apprehended domestic violence order,
 - (d) any other matter that the court considers to be relevant.

Note—

Section 9(4) requires the court to be guided by the objects referred to in section 9 when exercising a power in relation to domestic violence. Section 9(3)(d) may be of particular relevance when determining the appropriate duration for an apprehended domestic violence order.

- (4) The court may form the opinion at the same time that it decides to make the order under Part 4.
- (5) This section is subject to sections 73, 73A and 79C.
- (6) In this section—

default period means—

- (a) if the order relates to a defendant who was under 18 years of age when the application for the order was first made—1 year after the date the order is made, or
- (b) in any other case—2 years after the date the order is made.

79B Apprehended domestic violence orders may be of indefinite duration

- (1) A court, when determining the period of an apprehended domestic violence order under section 79A, may determine that the order remain in force for an indefinite period (an **indefinite order**) if the court is satisfied that—
- (a) the applicant has sought an indefinite order, and
 - (b) the order relates to a defendant who was 18 years of age or older when the application for the order was first made, and
 - (c) there are circumstances giving rise to a significant and ongoing risk of death or serious physical or psychological harm to the protected person or any dependants of the protected person, and

- (d) that risk cannot be adequately mitigated by an order of limited duration.
- (2) In determining whether there are circumstances giving rise to a significant and ongoing risk of death or serious physical or psychological harm to the protected person or any dependants of the protected person, the court must have regard to—
 - (a) any prior conviction of the defendant for a domestic violence offence, including for a contravention of any other apprehended domestic violence order in relation to the protected person or any other person who was the protected person under that order, and
 - (b) the conduct of the defendant in respect of the protected person that is relevant to the risk of death or serious physical or psychological harm, such as assaults, stalking, threats to kill or use of weapons, and
 - (c) the nature, number and timing of the incidents involved in the conduct referred to in paragraphs (a) and (b).
- (3) If a court makes an indefinite order, the order remains in force until varied, revoked or set aside on appeal.
- (4) A person against whom an indefinite order is made may make an application for the variation or revocation of the order only by leave of the court.
- (5) The court may grant leave to make an application referred to in subsection (4) only if the court is satisfied that there has been a significant change in circumstances since the relevant order was made.

79C Duration of apprehended domestic violence order if defendant is in prison

- (1) An apprehended domestic violence order made against a person who is 18 years of age or older who has been sentenced to, or is serving, a term of imprisonment for a domestic violence offence against the protected person (the **relevant domestic violence offence**) remains in force for—
 - (a) the duration of that person's sentence for the relevant domestic violence offence (the **head sentence**), and
 - (b) an additional 2 years after the head sentence ends.
- (2) A court may vary the period under subsection (1) (b) if, after having regard to the matters specified in section 79A(3), the court is satisfied that it is appropriate to do so.
- (3) For the purposes of subsection (1), the date on which the apprehended domestic violence order comes into force may be a day that is before the day on which

the person starts serving the person's term of imprisonment.

- (4) Subsection (1) does not apply to an apprehended domestic violence order that is specified as being of indefinite duration.

[6] Schedule 1 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering—

Part Provisions consequent on enactment of [Crimes Legislation Amendment Act 2018](#)

Definition

In this Part—

amending Act means the [Crimes Legislation Amendment Act 2018](#).

Amendment about variations of orders extends to variation of existing orders

Section 73A, as inserted by the amending Act, extends to the variation of a final apprehended domestic violence order or an interim apprehended domestic violence order that was in force immediately before the commencement of the section.

Amendments about duration of orders do not apply to current applications or orders

- (1) An application for an apprehended domestic violence order made but not finally determined before the commencement of sections 79A–79C, as inserted by the amending Act, is to be dealt with as if those sections had not commenced.
- (2) Sections 79A–79C, as inserted by the amending Act, apply only to apprehended domestic violence orders made after the commencement of those sections.

Schedules 2, 3 (Repealed)