



New South Wales

Crimes (Domestic and Personal Violence) Amendment Bill 2013

Explanatory note

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

Overview of Bill

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

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

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

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

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

Issue of interim apprehended domestic violence orders by senior police officers

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

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

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

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

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

Powers of police in relation to provisional orders

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

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

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

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

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

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

Miscellaneous amendments

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

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

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

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

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

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

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

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