



New South Wales

Crimes Amendment (Apprehended Violence Orders) Act 1996 No 93

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Crimes Amendment (Apprehended Violence Orders) Act 1996 No 93

Act No 93, 1996

An Act to amend the *Crimes Act 1900* with respect to apprehended violence orders; to amend the *Director of Public Prosecutions Act 1986* to allow the Director of Public Prosecutions to take proceedings with respect to apprehended violence orders; and for related purposes. [Assented to 26 November 1996]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Amendment (Apprehended Violence Orders) Act 1996*.

2 Commencement

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

3 Amendment of Crimes Act 1900 No 40

The *Crimes Act 1900* is amended as set out in Schedule 1.

4 Amendment of Director of Public Prosecutions Act 1986 No 207

The *Director of Public Prosecutions Act 1986* is amended as set out in Schedule 2.

Schedule 1 Amendment of Crimes Act 1900

(Section 3)

[1] Section 562B Court may make apprehended violence orders

Omit “the age of 18 years” from subsection (2) (a).
Insert instead “the age of 16 years”.

[2] Section 562BA Orders made by court with consent of parties

Insert after subsection (2):

- (3) The court may only conduct a hearing in relation to the particulars of a complaint before making such an order if it is of the opinion that the interests of justice require it to do so.

[3] Section 562BB Interim court orders

Omit “as soon as possible” from subsection (4) (a).
Insert instead “as soon as practicable”.

[4] Section 562BD Order can also protect persons with whom person seeking protection has a domestic relationship

Insert at the end of the section:

- (2) Without limiting subsection (1), an order may be made for the protection of a child under the age of 16 years with whom the person for whose protection the order was applied for has a domestic relationship even though a complaint for the order was not made by a police officer.

[5] Section 562BE

Insert after section 562BD:

562BE Order must be made on conviction for certain offences

- (1) A court that convicts a person of an offence against section 562AB or a domestic violence offence must, on that conviction, make an order under this Part for the protection of the person against whom the offence was committed as if a complaint for an order had been made under section 562C.
- (2) However, the court need not make an order under this section if it is satisfied that it is not required (for example, because an order has already been made against the person or the person for whose protection the order would be made opposes the making of the order).

[S] Section 562BF

Insert before section 562C:

562BF Order must be made on charge for certain offences

- (1) When a person stands charged before a court with an offence that appears to the court to be an offence against section 562AB or a domestic violence offence, the court must make an interim apprehended violence order under section 562BB against the defendant for the protection of the person against whom the offence appears to have been committed, as if a complaint for an order had been made under section 562C.
- (2) If an interim 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 562BB (4) (a)).

- (3) However, the court need not make an order under this section if it is satisfied that it is not required (for example, because an order has already been made against the person or the person for whose protection the order would be made opposes the making of the order).

[7] Section 562C Making of complaint for court order

Omit subsections (3) and (3A). Insert instead:

- (2A) Despite subsection (2), only a police officer can make a complaint for an order if the person for whose protection the order would be made is a child under the age of 16 years at the time of the complaint.
- (3) A police officer must make a complaint for an order if the police officer suspects or believes that any of the following offences 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:
- (i) a domestic violence offence,
 - (ii) an offence against section 562AB,
 - (iii) an offence against section 25 (Child abuse) of the *Children (Care and Protection) Act 1987* (but only if the person is a child under the age of 16 years).
- (3A) A police officer need not make a complaint for an order in the circumstances referred to in subsection (3) if the person for whose protection an order would be made is at least 16 years of age at the time and the police officer believes:
- (a) that the person intends to make the complaint, or
 - (b) that there is good reason not to make the complaint.

However, if the police officer believes that there is good reason not to make the complaint, the police officer must make a written record of the reason.

[8] Section 562D Prohibitions and restrictions imposed by orders

Omit subsection (1) (b). Insert instead:

- (b) prohibit or restrict access by the defendant:
 - (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,

[9] Section 562DA

Insert after section 562D:

562DA Reasons to be given if order does not prohibit or restrict access to premises or place

If application is made for an order that prohibits or restricts access by the defendant to any premises or place (as referred to in section 562D (1) (b)) and the court hearing proceedings in respect of the application decides to make an order without the prohibition or restriction sought, the court must explain the reasons for that decision.

[10] Section 562F Variation or revocation of court orders

Insert after subsection (4):

- (4A) The court may decline to hear an application for variation or revocation of an 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.

- (4B) If there is more than one protected person under an order, the following additional provisions apply to the variation or revocation of the order under this section:
- (a) the order need not be varied or revoked in its application to all of the protected persons and can be varied or revoked in its application to any one or more of the protected persons,
 - (b) it is not necessary for all of the protected persons to have applied for the variation or revocation,
 - (c) if the application for variation or revocation was made by one of the protected persons, none of the other protected persons can be the subject of the variation or revocation unless the court is satisfied that:
 - (i) he or she is at least 16 years of age and has consented to the variation or revocation, or
 - (ii) he or she is a child under the age of 16 years and (in the case of revocation) is no longer in need of protection or (in the case of Variation) is no longer in need of greater protection than that which will be afforded by the order as proposed to be varied,
 - (d) if a child under the age of 16 years is one of the protected persons it does not matter that the application for variation or revocation was made by a person other than a police officer.
- (4C) If a child under the age of 16 years is a protected person under an order made under section 562BD, the applicant for the order (even if he or she is not a protected person under the order) can apply for the variation or revocation of the order in its application to the child. The court is not to grant the application unless satisfied that the child is (in the case of revocation) no longer in need of protection or (in the case of variation) no longer in need of greater protection than that which will be afforded by the order as proposed to be varied.

[1 1] Sections 562GA–562GC

Insert after section 562G:

562GA Making of orders by District Court

- (1) A complaint by or on behalf of a person for whose protection an order is sought from the District Court must be made within 28 days after the date a Local Court or the Children’s Court dismissed the earlier complaint.
- (2) The District Court may, without further hearing, admit in evidence any evidence that was admitted in the proceedings before the Local Court or Children’s Court.
- (3) Further evidence may be given, but only with the leave of the District Court.
- (4) The rules of the District Court may make provision for or with respect to the procedure to be followed in respect of proceedings in the District Court for an order (including the variation or revocation of an order).

562GB Jurisdiction of District Court under this Part

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

562GC Explanation of order

- (1) A court that makes an 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 an 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 variation, and
 - (b) the consequences that may follow from a contravention of the order as varied.
- (3) A court that makes or varies an 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 or variation of order does not affect the validity of the order or variation.

[1 2] Section 562H Telephone interim orders

Insert after subsection (2):

- (2A) **Obligation to apply for order in certain circumstances.** The police officer attending the incident concerned must make an application under this section if the police officer suspects or believes that a domestic violence offence, or an offence under section 25 (Child abuse) of the *Children (Care and Protection) Act 1987* against a child under the age of 16 years, 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.
- (2B) **Exceptions to requirement to apply for order.** A police officer need not make an application for an order in the circumstances referred to in subsection (2A) 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 the police officer believes:

- (a) that the person intends to make a complaint for an order, or
- (b) that there is good reason not to make the application.

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

[1 3] Section 562H (4)

Insert “stalking, intimidating” after “harassing”.

[1 4] Section 562H (5A)

Insert after subsection (5):

- (5A) **Summons.** A telephone interim order is taken, for the purposes of section 562B, to be a complaint for an order under section 562C. The telephone interim order is to contain a summons for the appearance of the defendant at a hearing of the complaint by an appropriate court on a date specified in the order by the authorised justice who makes it (being a date that is as soon as practicable after the order is made).

[1 5] Section 562H (6)

Omit the subsection. Insert instead:

- (6) **Recording of order.** The authorised justice who makes a telephone interim order is to inform the applicant of the terms of the order, the date of the hearing of the complaint and the date and time when the order was made. The applicant is to complete a form of order in the

terms so indicated and write on it the date of the hearing of the complaint, the name of the authorised justice and the date and time when the order was made. The order so completed is taken to be an order duly made under this section.

[16] Section 562H (9), (10)

Omit the subsections. Insert instead:

- (9) **Duration.** A telephone interim order remains in force until midnight on the fourteenth day after the order is made, unless it is sooner revoked or it otherwise ceases to have effect.
- (10) **Court order.** A telephone interim order ceases to have effect if a court makes an order against the defendant for the protection of the person protected by the telephone interim order. The telephone interim order ceases to have effect when the court order is made (in the case of a defendant who is present at court) or when the defendant is served under section 562J with a copy of the record of the order (in any other case).

[17] Section 562H (12)

Insert “, or arrest and take the person to a police station and there detain the person,” after “the police officer may arrest and detain the person at the scene of the incident”.

[18] Section 562H (13)

Omit “562G”. Insert instead “562GC”.

[19] Section 562H (15) (a)

Omit “18 years of age”. Insert instead “16 years of age”.

[20] Section 562H (16)

Insert in alphabetical order:

personal injury includes a personal violence offence.

[21] Section 562I Offence of contravening order

Omit subsection (2B).

[22] Section 562K Summons for appearance or arrest of defendant

Insert after subsection (1):

- (1A) The authorised Justice must issue a summons for the appearance of the defendant, unless the Justice issues a warrant for the arrest of the defendant.

[23] Section 562NA

Insert after section 562N:

562NA Measures to protect children in AVO proceedings

- (1) If an order is sought or proposed to be made for the protection of a child under the age of 16 years, or an application is made for the variation or revocation of such an order, proceedings in relation to that order or application are to be heard in the absence of the public unless the court hearing the proceedings otherwise directs.
- (2) Even if proceedings referred to in this section 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.

- (3) In proceedings on an application for an order or for the variation or revocation of an order, a child under the age of 16 years should not be required to give direct evidence about a matter unless the court is of the opinion that in the absence of the child's evidence insufficient evidence about the matter will be adduced.
- (4) Section 405CA (Children have a right to the presence of a supportive person while giving evidence) applies to proceedings in relation to a complaint for an order.

[24] Section 562O Concurrent criminal proceedings

Omit section 562O (2) and (3).

[25] Eleventh Schedule Savings and transitional provisions

Insert after Part 7:

Part 8 Crimes Amendment (Apprehended Violence Orders) Act 1996

20 Definitions

In this Part:

AVO Amendment Act 1996 means the *Crimes Amendment (Apprehended Violence Orders) Act 1996*.

order has the meaning given it in section 562A.

21 Order must be made on conviction for certain offences

Section 562BE applies in respect of a conviction for an offence on or after the commencement of that section even if proceedings for the offence were commenced before the commencement of that section.

22 Order must be made on charge for certain offences

Section 562BF does not apply in respect of proceedings before a court that the court started to hear before the commencement of that section. Section 562O continues to apply in respect of any such proceedings as if that section had not been amended by the AVO Amendment Act 1996.

23 Consent orders

Subsection (3) of section 562BA (which was inserted by the AVO Amendment Act 1996) applies to any proceedings for an order of the kind referred to in section 562BA, whether the proceedings were commenced before, on or after the commencement of that subsection, but not to proceedings before a court that the court started to hear before the commencement of that subsection.

24 Specification of restricted premises or place in order

The amendment to section 562D contained in the AVO Amendment Act 1996 extends to any order made before the commencement of that amendment that is the subject of an application for variation at any time on or after the commencement of that amendment.

25 Application for variation or revocation of order

An amendment to section 562F contained in the AVO Amendment Act 1996 does not apply in respect of an application for variation or revocation of order that was made before the commencement of that amendment.

26 Time limit for making of complaint for order by District court

- (1) Subsection (1) of section 562GA (which was inserted by the AVO Amendment Act 1996) does not apply in respect of a complaint for an order by the District Court that was made before the commencement of that subsection.

- (2) Subsection (1) of section 562GA applies to a complaint for an order by the District Court that is made on or after the commencement of that subsection, even if it relates to an earlier complaint that was dismissed by a Local Court or the Children's Court before the commencement of that subsection. For the purposes of the application of section 562GA to such an earlier complaint, the earlier complaint is taken to have been dismissed on the date of commencement of that subsection.

27 Proceedings for an order by District Court

Subsections (2) and (3) of section 562GA (as inserted by the AVO Amendment Act 1996) apply to any proceedings in the District Court for an order that are commenced before, on or after the commencement of those subsections, except proceedings before the Court that the Court started to hear before the commencement of those subsections.

28 Telephone interim orders

The amendments to section 562H (made by the AVO Amendment Act 1996) do not apply in respect of a telephone interim order that was made before the commencement of those amendments. Section 562H (as in force immediately before the commencement of those amendments) continues to apply in respect of such a telephone interim order.

29 Measures to protect children in AVO proceedings

A provision of section 562NA (which was inserted by the AVO Amendment Act 1996), other than subsection (2), does not apply in respect of proceedings before a court that the court started to hear before the commencement of the provision. However, the remainder of any such proceedings are to be heard in the absence of the public if the court so directs.

Schedule 2 Amendment of Director of Public Prosecutions Act 1986

(Section 4)

Section 20A

Insert after section 20:

20A Proceedings for an order under part 15A (Apprehended violence) of the Crimes Act 1900

- (1) The Director may institute and conduct, on behalf of a complainant, proceedings for an order under Part 15A of the *Crimes Act 1900* in a Local Court, the Children's Court or the District Court.
- (2) The Director may conduct, on behalf of a complainant as respondent, appeals in any court arising from such proceedings.
- (3) This Act applies in relation to any proceedings for an order under Part 15A of the *Crimes Act 1900* as if the proceedings were a prosecution or proceedings in respect of an offence.

[Minister's second reading speech made in—
Legislative Council on 1 May 1996
Legislative Assembly on 23 October 1996]