



New South Wales

Crimes (Domestic and Personal Violence) Amendment Bill 2008

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 include the offence of stalking or intimidating a person as a **personal violence offence** for the purposes of that Act, and
- (b) to require a provisional order to be served (where practical) on the person for whose protection it was issued, and
- (c) to clarify who may apply for an ancillary property recovery order, and
- (d) to enable an authorised officer to make an interim apprehended domestic violence order that protects not just the person for whom the order was sought but also other persons with whom he or she has a domestic relationship, and
- (e) to require an authorised officer when making an interim apprehended domestic violence order to include as protected persons under the order any children with whom the person for whom the order was sought has a domestic relationship unless there are good reasons for not doing so, and

- (f) to clarify that an applicant to a court for an apprehended domestic violence order in relation to himself or herself may also apply for the order to be made in relation to another person with whom the applicant has a domestic relationship, and
- (g) to enact further savings and transitional provisions as a consequence of the enactment of that Act.

This Bill also amends the *Firearms Act 1996* and the *Weapons Prohibition Act 1998* to provide that a licence or permit issued under those Acts is suspended automatically on the making of a provisional order against the licence or permit holder by an authorised officer under the Principal Act (previously known as a telephone interim order). Currently, those Acts provide that such licences or permits are only suspended automatically on the making of an interim apprehended violence order by a court.

The Bill also amends various other Acts and a Regulation as a consequence of the enactment of the Principal Act.

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 the date of assent to the proposed Act.

Clause 3 is a formal provision that gives effect to the amendments to the *Crimes (Domestic and Personal Violence) Act 2007* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the Acts and Regulation set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Crimes (Domestic and Personal Violence) Act 2007

Schedule 1 [1] amends section 4 of the Principal Act to include in the definition of *personal violence offence* an offence under section 13 of that Act of stalking or intimidating another person with the intention of causing the other person to fear physical or mental harm.

Schedule 1 [2] amends section 31 of the Principal Act to require a provisional order to be served (if practical) on the person for whose protection it was issued. Currently that section only provides for the order to be served on the defendant.

Schedule 1 [3] amends section 35 of the Principal Act to include a power for a court or authorised officer when making an apprehended violence order to prohibit or restrict the possession of prohibited weapons by the defendant. Currently, that power only covers firearms.

Schedule 1 [4] amends section 35 of the Principal Act to remove the provision that enables a court or an authorised officer when making an apprehended violence order that prohibits or restricts the possession of firearms by the defendant to require the disposal of the firearms and the surrender of licences and permits held under the *Firearms Act 1996* and the *Weapons Prohibition Act 1998*. Amendments made to those Acts by Schedule 2 extend the provisions of those Acts that provide for the automatic suspension of such licences and permits on the making of an interim apprehended violence order by a court so that the suspension will also occur on the making of a provisional apprehended violence order by an authorised officer. On suspension of such a licence or permit, the firearms or weapons concerned must be surrendered to the police and may be seized by the police. **Schedule 1 [5]** makes a consequential amendment.

Schedule 1 [6] amends section 37 of the Principal Act to provide that an ancillary property recovery order may be made by a court or an authorised officer when making an apprehended domestic violence order or interim apprehended domestic violence order or on the application of a police officer, the protected person or the defendant.

Schedule 1 [7] substitutes section 38 of the Principal Act to enable an authorised officer to make an interim apprehended violence order not only for the protection of the person for whom the order is sought but also for the protection of other persons with whom he or she has a domestic relationship. The proposed section also provides that an authorised officer making such an order is to include as a protected person under the order any child with whom the person for whose protection the order was sought has a domestic relationship unless satisfied that there are good reasons for not doing so. Reasons for not doing so must be given. Currently, section 38 makes such provision but only in relation to a court making an apprehended violence order.

Schedule 1 [8] amends section 48 of the Principal Act to make it clear that a person who applies to a court for an apprehended violence order for his or her own protection may also apply for the order to be made for the protection of another person with whom he or she has a domestic relationship.

Schedule 1 [9] amends Schedule 1 to the Principal Act to enable regulations to be made of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [10]–[13] amend Schedule 1 to the Principal Act to make further savings, transitional and other provisions consequent on the enactment of the Principal Act and on the proposed Act.

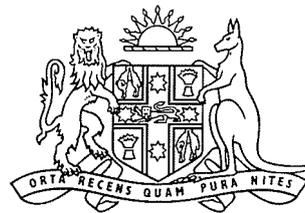
Schedule 2 Amendment of other Acts and Regulation

Schedule 2.1 substitutes the definition of *personal violence offence* in clause 10 of the *Bail Regulation 2008* as a consequence of the enactment of the Principal Act.

Schedule 2.2, 2.3, 2.4 [1] and 2.5 [1] amend the *Commission for Children and Young People Act 1998*, the *Crimes (Sentencing Procedure) Act 1999*, the *Firearms Act 1996* and the *Weapons Prohibition Act 1998*, respectively, to make it clear that certain references in those Acts to apprehended violence orders under the Principal Act will include references to apprehended violence orders under the repealed Part 15A of the *Crimes Act 1900*.

Schedule 2.4 [2] amends the definition of *interim apprehended violence order* in section 4 (1) of the *Firearms Act 1996* so that the term will mean an interim apprehended violence order within the meaning of the Principal Act. The result of the amendment is to include provisional orders made by authorised officers in the definition which will mean that a licence under the *Firearms Act 1996* will be suspended automatically under section 23 of that Act on the making of a provisional order against the licence holder.

Schedule 2.5 [2] amends the definition of *interim apprehended violence order* in section 4 (1) of the *Weapons Prohibition Act 1998* so that the term will mean an interim apprehended violence order within the meaning of the Principal Act. The result of the amendment is to include provisional orders made by authorised officers in the definition which will mean that a permit under the *Weapons Prohibition Act 1998* will be suspended automatically under section 17 of that Act on the making of a provisional order against the permit holder.



New South Wales

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New South Wales

Crimes (Domestic and Personal Violence) Amendment Bill 2008

No. , 2008

A Bill for

An Act to amend the *Crimes (Domestic and Personal Violence) Act 2007* with respect to applications for, and the issuing of, orders under that Act; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Crimes (Domestic and Personal Violence) Amendment Act 2008</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6
3 Amendment of Crimes (Domestic and Personal Violence) Act 2007 No 80	7
The <i>Crimes (Domestic and Personal Violence) Act 2007</i> is amended as set out in Schedule 1.	8 9
4 Amendment of other Acts and Regulation	10
The Acts and Regulation specified in Schedule 2 are amended as set out in that Schedule.	11 12
5 Repeal of Act	13
(1) This Act is repealed on the day following the day on which this Act commences.	14 15
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	16 17

Schedule 1	Amendment of Crimes (Domestic and Personal Violence) Act 2007	1
		2
	(Section 3)	3
[1]	Section 4 Meaning of “personal violence offence”	4
	Insert “13 or” after “section” in section 4 (b).	5
[2]	Section 31 Service	6
	Insert at the end of the section:	7
	(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.	8 9 10
[3]	Section 35 Prohibitions and restrictions imposed by apprehended violence orders	11 12
	Insert “or prohibited weapons (within the meaning of the <i>Weapons Prohibition Act 1998</i>)” after “firearms” in section 35 (2) (d).	13 14
[4]	Section 35 (4)	15
	Omit the subsection.	16
[5]	Section 35	17
	Insert at the end of the section:	18
	Note. Section 23 of the <i>Firearms Act 1996</i> 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 <i>Weapons Prohibition Act 1998</i> 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.	19 20 21 22 23 24 25 26 27 28 29 30 31
[6]	Section 37 Ancillary property recovery orders may be made	32
	Insert after section 37 (1):	33
	(1A) A property recovery order may be made under subsection (1):	34
	(a) on the motion of the court or authorised officer making the relevant apprehended domestic violence order or interim apprehended domestic violence order, or	35 36 37

	(b) on the application of a police officer, the protected person or the defendant.	1 2
[7]	Section 38	3
	Omit the section. Insert instead:	4
38	Apprehended violence orders made by court or authorised officer can also protect persons with whom person seeking protection has a domestic relationship	5 6 7
	(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.	8 9 10 11 12
	(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.	13 14 15 16 17 18 19
	(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.	20 21 22 23
	(4) For the avoidance of doubt, subsections (2) and (3) are subject to sections 41 and 42.	24 25
	(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.	26 27 28
[8]	Section 48 Making of application for an order	29
	Omit section 48 (4). Insert instead:	30
	(4) An application for an order:	31
	(a) may be made by more than one person, and	32
	(b) if made by a police officer, may be made on behalf of more than one person, and	33 34
	(c) if made by a person for whose protection the order would be made (<i>the applicant</i>), may also be made by the applicant on behalf of any other person with whom the applicant has a domestic relationship.	35 36 37 38

[9] Schedule 1 Savings, transitional and other provisions	1
Insert at the end of clause 1 (1):	2
<i>Crimes (Domestic and Personal Violence) Amendment Act 2008</i>	3
[10] Schedule 1, definition of “old Part 15A” in clause 2 (1)	4
Insert “at any time” after “as in force”.	5
[11] Schedule 1, clause 3 (1)–(4)	6
Omit “and in force immediately” wherever occurring.	7
[12] Schedule 1, clause 5	8
Omit the clause. Insert instead:	9
5 References to repealed provisions	10
(1) A reference in any other Act or instrument to Part 15A of the <i>Crimes Act 1900</i> includes a reference to this Act.	11 12
(2) A reference to this Act in any other Act or instrument includes a reference to old Part 15A.	13 14
(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 <i>Crimes Act 1900</i> (as in force before their repeal).	15 16 17
(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 <i>Crimes Amendment (Apprehended Violence) Act 2006</i>) and 562ZG (as in force before its repeal) of the <i>Crimes Act 1900</i> .	18 19 20 21 22
(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.	23 24 25
(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.	26 27 28 29
(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.	30 31 32

- (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.

[13] Schedule 1, Part 3

Insert after Part 2 of Schedule 1:

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.

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- (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. 1
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- 9 Service of provisional order on defendant** 5
- 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. 6
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8

Schedule 2	Amendment of other Acts and Regulation	1
		2
	(Section 4)	3
2.1	Bail Regulation 2008	4
	Clause 10 Notice of bail decisions in cases of alleged sexual assault and personal violence offences	5
		6
	Omit the definition of <i>personal violence offence</i> from clause 10 (4).	7
	Insert instead:	8
	<i>personal violence offence</i> has the same meaning as in the <i>Crimes (Domestic and Personal Violence) Act 2007</i> , but includes an offence under section 61 of the <i>Crimes Act 1900</i> , or an offence of attempting to commit an offence under that section, only if the accused person has a domestic relationship with the alleged victim of the offence.	9
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2.2	Commission for Children and Young People Act 1998 No 146	15
	Section 33 Definitions	16
	Omit the definition of <i>relevant apprehended violence order</i> from section 33 (1).	17
		18
	Insert instead:	19
	<i>relevant apprehended violence order</i> means (subject to subsection (6)) a final apprehended violence order made under the <i>Crimes (Domestic and Personal Violence) Act 2007</i> , or a final order made under Part 15A of the <i>Crimes Act 1900</i> before its repeal, being an order made on the application of a police officer or other public official for the protection of a child (or a child and others).	20
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2.3	Crimes (Sentencing Procedure) Act 1999 No 92	27
	Section 77 Home detention not available for offenders with certain history	28
		29
	Omit section 77 (1) (e). Insert instead:	30
	(e) who is (or has at any time within the last 5 years been) subject to an apprehended violence order (within the meaning of the <i>Crimes (Domestic and Personal Violence) Act 2007</i>), or an apprehended violence order made under Part 15A of the <i>Crimes Act 1900</i> before its repeal, being an	31
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	order made for the protection of a person with whom it is likely the offender would reside, or continue or resume a relationship, if a home detention order were made.	1 2 3
2.4	Firearms Act 1996 No 46	4
[1]	Section 4 Definitions	5
	Insert after paragraph (a) of the definition of <i>apprehended violence order</i> in section 4 (1):	6 7
	(b) a final order made under Part 15A of the <i>Crimes Act 1900</i> before its repeal, or	8 9
[2]	Section 4 (1), paragraph (a) of the definition of “interim apprehended violence order”	10 11
	Omit “interim court order under”.	12
	Insert instead “interim apprehended violence order within the meaning of”.	13
2.5	Weapons Prohibition Act 1998 No 127	14
[1]	Section 4 Definitions	15
	Insert after paragraph (a) of the definition of <i>apprehended violence order</i> in section 4 (1):	16 17
	(b) a final order made under Part 15A of the <i>Crimes Act 1900</i> before its repeal, or	18 19
[2]	Section 4 (1), paragraph (a) of the definition of “interim apprehended violence order”	20 21
	Omit “interim court order under”.	22
	Insert instead “interim apprehended violence order within the meaning of”.	23