

Tabled, by leave,

CRIMES (DOMESTIC AND PERSONAL VIOLENCE) AMENDMENT BILL 2024

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STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

Clerk of the Parliaments

24/9 124

The Crimes (Domestic and Personal Violence) Amendment Bill 2024 forms a key element of the ongoing Government response to address domestic, family and sexual violence in NSW. It follows previous legislative reforms targeting high risk domestic violence offenders, introduced in May 2024 by the *Bail and Other Legislation Amendment (Domestic Violence) Act 2024 (Amendment Act)*.

The legislative reforms introduced by this Bill include amendments to the *Crimes (Domestic and Personal Violence) Act 2007 (CDPVA)* to:

- introduce two new aggravated offences, with higher maximum penalties, to better reflect serious breaches of an Apprehended Domestic Violence Order (**ADVO**) that indicate a high risk of possible harm to the protected person
- introduce a new civil protection order scheme of 'serious domestic abuse prevention orders' (**SDAPOs**) that targets serious domestic violence offenders
- amend the definition of 'stalking' to more clearly cover technology facilitated tracking or monitoring conduct
- allow electronic service of police-issued provisional apprehended violence orders (**AVOs**) and clarify service requirements when provisional AVOs are converted into interim court or final AVOs to address operational issues.

The Bill also includes amendments to:

- the Amendment Act, to clarify that where an accused is subject to an electronic monitoring bail condition under new section 28B of the *Bail Act 2013*, they must not be released from custody until the electronic monitoring device is fitted
- the *Evidence (Audio and Audio Visual Links) Act 1998 (AVL Act)*, to provide an exception to the requirement for the accused to appear physically in first appearance bail matters where a magistrate is not physically present at the location at which the accused is to appear
- the *Births, Deaths and Marriages Registration Act 1995 (BDMR Act)*, to allow a sole parent to change their child's name if the parent has a court order granting sole responsibility to make decisions about the child's name or all major long term issues.

Objectives: What is the policy's objective couched in terms of the public interest?

Primarily, the Bill aims to improve community safety by introducing legislative reforms to support greater protections against high risk domestic and family violence offenders.

Options: What alternative policies and mechanisms were considered in advance of the bill?

The legislative reforms introduced by the Bill are part of a multifaceted response to address domestic, family and sexual violence in NSW, including:

- the previous phase of legislative reforms introduced by the Amendment Act, which make it more difficult for those accused of serious domestic violence offences to get bail, and
- a funding package of \$245.6 million, announced on 6 May 2024, to improve the response to domestic and family violence through primary prevention, early intervention and crisis response measures.

Legislative amendment to the BDMR Act is required to allow sole parents with appropriate court orders to apply to change their child's name as this is not permitted under the current legislative settings.

Analysis: What were the pros/cons and benefits/costs of each option considered?

The Bill targets serious domestic violence offenders to keep victim survivors and the community safer.

Introducing new aggravated offences into the CDPVA, with higher maximum penalties, will give police more options to deal with breaches of ADVOs that are particularly serious or persistent. They will also enable courts to impose a higher penalty when sentencing offenders for such breaches.

SDAPOs will complement the AVO scheme as a more serious civil protection order which can enable greater levels of police oversight over high risk domestic violence offenders. This is because the SDAPO scheme:

- focusses on the perpetrator and the risk that they pose to a class of persons, including family members, current and former intimate partners, and most notably, potential intimate partners. In this way, it is a forward looking order, which can sit alongside an AVO which contains protections specific to the circumstances of particular victim-survivors; and
- it can impose conditions, prohibitions and restrictions appropriate to prevent involvement in domestic abuse. This can include positive conditions which are not available under AVOs, such as a requirement that the person report to police or notify them of dating apps that they use.

The amendments to the definition of stalking will make clear that technology facilitated conduct, such as tracking or monitoring a person through GPS trackers or monitoring online accounts, is treated in the same way as "in person" conduct currently is. This reflects the increasing role of technology in modern life, and responds to the emerging evidence that perpetrators of domestic abuse are engaging in such conduct to exert control over their victims.

Clarifying that an accused person who is subject to an electronic monitoring bail condition under section 28B of the *Bail Act 2013* may only be released from custody once the device is fitted gives effect to the policy intent of this reform, which is to keep victim-survivors safer.

Amending the AVL Act to include an exception to the requirement for the accused to appear physically in first appearance bail matters where a magistrate is not physically present will enable implementation of the reform introduced by the Amendment Act to remove registrars as bail decision makers, particularly in regional areas.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

Schedules 1[3], 2.1, 2.2 and 2.4 will commence on 1 December 2024 or on an earlier day or days appointed by proclamation. The remainder of the Bill will commence on proclamation, as further time is needed to establish necessary infrastructure and processes for implementation.

The Department of Communities and Justice will notify relevant stakeholders in advance of the commencement of the Bill.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

Targeted consultation was undertaken with:

- NSW Government agencies, including the NSW Police Force, the Office of the Women's Safety Commissioner, the Office of the Director of Public Prosecutions, Legal Aid NSW, the Public Defenders, the Judicial Commission of NSW, Heads of Jurisdiction for the Supreme, District, Local and Children's Courts, Corrective Services NSW, the Registrar of Births Deaths and Marriages, the Department of Customer Service and the Cabinet Office.
- legal stakeholders, including the Law Society of NSW, the NSW Bar Association, the Aboriginal Legal Service NSW/ACT, the Women's Legal Service NSW and Wirringa Baiya Aboriginal Women's Legal Centre
- representatives from the domestic and family violence sector, including Domestic Violence NSW, Full Stop Australia, Women's Community Shelters, No To Violence and the Women and Girls Emergency Centre.