



New South Wales

Crimes (Domestic and Personal Violence) and Other Legislation Amendment Bill 2024

Explanatory note

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

Overview of Bill

The objects of this Bill are to—

- (a) amend the *Crimes (Domestic and Personal Violence) Act 2007 (CDPVA)* to allow certain courts, on application, to make a serious domestic abuse prevention order (*SDAPO*) for a person, and
- (b) amend the CDPVA to create further offences for a person who breaches an apprehended domestic violence order (*ADVO*) in certain circumstances, and
- (c) make miscellaneous amendments to the CDPVA, and
- (d) make miscellaneous amendments to certain Acts to protect persons from domestic and personal violence.

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.

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

Serious domestic abuse prevention orders

Schedule 1[17] inserts proposed Part 10A.

Proposed section 87A sets out relevant definitions for the proposed part.

Proposed section 87B provides that certain courts may, on application by the Commissioner of Police or the Director of Public Prosecutions (an *eligible applicant*), make an SDAPO against a person who is at least 18 years of age if the court is satisfied that—

- (a) during the previous 10 years, the person has been convicted of 2 or more domestic violence offences with a maximum penalty of imprisonment for 7 years or been involved in serious domestic abuse activity, and
- (b) there are reasonable grounds to believe the making of the order would protect certain persons by preventing the person engaging in domestic abuse.

The proposed section sets out what must be contained in an application for an SDAPO, the service requirements an eligible applicant must follow and what evidence the court may consider when determining an application, including, in certain circumstances, hearsay evidence that would otherwise be inadmissible under the *Evidence Act 1995*.

Proposed section 87C provides that an SDAPO may contain prohibitions, restrictions, requirements and other provisions as the court considers appropriate to prevent the person from engaging in domestic abuse. The proposed section also sets out provisions that must not be contained in an SDAPO.

Proposed section 87D sets out when the duration of an SDAPO has effect and provides that an SDAPO must not have effect for more than 5 years.

Proposed section 87E makes it an offence for a person to knowingly contravene an SDAPO and carries a maximum penalty of imprisonment for 5 years or 300 penalty units, or both.

Proposed section 87F provides that an eligible applicant and a person against whom an SDAPO is made has a right of appeal in relation to the making of an SDAPO.

Proposed section 87G sets out the circumstances in which the court that makes an SDAPO may vary or revoke an SDAPO. Proposed section 87H sets out circumstances in which the court that makes an SDAPO may vary or revoke an existing apprehended violence order (*AVO*).

Proposed sections 87I–87K set out miscellaneous provisions for the court to consider when making an SDAPO.

Schedule 1[1], [2], [10], [12]–[14] and [16] make consequential amendments.

Schedule 1[8] and [11] make it clear that measures to protect children and young persons apply where a child or young person appears as a witness in proceedings when an SDAPO is sought or when an application is made to vary or revoke an SDAPO. **Schedule 1[9]** makes a consequential amendment.

Schedule 1[15] makes it clear that certain persons in SDAPO proceedings are entitled to a support person when giving evidence.

Offences for contravening an apprehended violence order

Schedule 1[4] inserts proposed section 14(1A)–(1E).

Proposed section 14(1A) makes it an offence for a person to knowingly contravene a prohibition or restriction specified in an ADVO with an intent to cause the protected person—

- (a) physical or mental harm, or
- (b) to fear for the protected person’s safety or the safety of another person.

The maximum penalty is imprisonment for 3 years or 100 penalty units, or both. Proposed section 14(1B) sets out what can be considered by the court when assessing whether the intent of a person has been established under proposed section 14(1A).

Proposed section 14(1C) makes it an offence for a person—

- (a) to knowingly contravene a prohibition or restriction in an ADVO, and
- (b) on at least 2 occasions within a period of 28 days before the contravention, to contravene a prohibition or restriction in certain ADVOS,

if a reasonable person would consider the person's conduct to cause the protected person physical or mental harm, or to fear for the safety of the protected person or another person.

The maximum penalty is imprisonment for 5 years or 150 penalty units, or both.

Proposed section 14(1D) and (1E) set out circumstances in which a jury or the court may acquit a person of an offence under section 14(1A) or (1C) and find the person guilty of another offence.

Schedule 1[5] and [6] make consequential amendments.

Miscellaneous

Schedule 1[3] makes it clear that the definition of *stalking* includes monitoring or tracking a person's activities, communications or movements.

Schedule 1[7] replaces the service requirements for a provisional AVO. Proposed section 31 provides that a provisional AVO may be served on a defendant or protected person personally or by electronic means in certain circumstances. Proposed section 32 makes it clear when service of certain orders of a court on a defendant or protected person is required and when it is not required.

Schedule 1[18] requires the Minister to review the provisions inserted by the proposed Act as soon as possible after the period of 12 months from the commencement and table a report on the outcome of the review within 6 months after the end of the period of 12 months in each House of Parliament.

Schedule 1[19] contains a transitional provision consequent on the enactment of the proposed Act.

Schedule 2 Amendment of other legislation

2.1 Bail and Other Legislation Amendment (Domestic Violence) Act 2024 No 30

Schedule 2.1[1] provides that an accused person who has been granted conditional bail that requires the accused person to be subject to electronic monitoring must remain in custody until the accused person has been fitted with a device that permits the electronic monitoring.

Schedule 2.1[2] provides that a bail authority is not prevented from varying the bail conditions of an accused person to allow the accused person to be released on bail without being subject to electronic monitoring if there are sufficient reasons in the interests of justice for the variation.

Schedule 2.1[3] makes it clear that an accused person can be subject to an electronic monitoring bail condition by a bail authority as a pre-release requirement or when the bail authority is required to impose an electronic monitoring condition under the *Bail Act 2013* for certain offences.

2.2 Births, Deaths and Marriages Registration Act 1995 No 62

Schedule 2.2 inserts proposed section 28(3)(a1) to allow a parent who has sole parental responsibility under a final parenting order made under the *Family Law Act 1975* of the Commonwealth to make an application for registration of a change of a child's name in certain circumstances.

2.3 Criminal Procedure Act 1986 No 209

Schedule 2.3[1] and [2] ensure that the provisions allowing a complainant to give evidence in camera apply to SDAPO proceedings only if—

- (a) the person against whom the SDAPO is sought is also charged with a domestic violence offence, and
- (b) the alleged victim has a certain relationship with the person.

Schedule 2.3[3] makes an offence under the CDPVA, proposed section 87E a Table 1 offence, which is to be dealt with summarily unless the prosecutor or person charged elects otherwise.

Schedule 2.3[4] makes an offence under the CDPVA, proposed section 14(1A) or (1C) a Table 2 offence, which is to be dealt with summarily unless the prosecutor elects otherwise.

2.4 Evidence (Audio and Audio Visual Links) Act 1998 No 105

Schedule 2.4[3] provides that an accused detainee charged with an offence is not required to appear before a NSW court physically for bail proceedings if a Magistrate is not available at the court at which the accused detainee is required to appear physically. **Schedule 2.4[1], [2] and [4]** make consequential amendments.

2.5 Firearms Act 1996 No 46

Schedule 2.5[2]–[5] provide that—

- (a) a firearms licence must not be issued to a person who is subject to an SDAPO or has at any time in the previous 10 years been subject to an SDAPO, other than an order that has been revoked, and
- (b) a firearms licence must be revoked if the licensee becomes subject to an SDAPO, and
- (c) a firearms permit must not be issued to a person who is subject to an SDAPO or has at any time in the previous 10 years been subject to an SDAPO, other than an order that has been revoked, and
- (d) a licensed firearms dealer must not employ or allow a person to act on behalf of the firearm dealer's business if the person is subject to an SDAPO.

Schedule 2.5[1] makes a consequential amendment.

Schedule 2.5[6] makes it clear that a person cannot apply to the Civil and Administrative Tribunal for a review of a decision to revoke a licence or permit when the decision was on the basis that the holder of the licence or permit is subject to an AVO or SDAPO.

2.6 Weapons Prohibition Act 1998 No 127

Schedule 2.6[2] provides that a permit for a prohibited weapon must not be issued to a person who is subject to an SDAPO or who has at any time within 10 years before the application of the permit been subject to an SDAPO unless the order has been revoked.

Schedule 2.6[3] provides that a permit for a prohibited weapon must be revoked if the permit holder becomes subject to an SDAPO.

Schedule 2.6[1] makes a consequential amendment.