

## SUMMARY OF CRIMES (DOMESTIC AND PERSONAL VIOLENCE) AMENDMENT REVIEW BILL 2016

(Note: the info below is current as at 30 May 2016. The Bill has passed the Lower House and, if enacted, will commence on proclamation)

Section	DEALS WITH	CURRENT	NEW
<b>4 &amp; 11</b>	Meaning of domestic violence offence	There are 55 personal violence offences which, when committed in the context of a domestic relationship, are grounds for seeking an ADVO.	List of offences expanded (eg to include housebreaking offences under ss109ff of the NSW <i>Crimes Act</i> ) plus a catch all to cover any offence intended to coerce or control the Person in Need of Protection (PINOP) or cause them to be intimidated or fearful (eg the Commonwealth <i>Crimes Act</i> use carriage service to menace/harass offences).
<b>5</b>	Who can get an ADVO	Definition of domestic relationship is restricted to, inter alia, relationship between victim and her ex.	Definition expanded to include relationship between PINOP's current partner and her ex.
<b>16</b>	Test for ADVOs	<p>Two different tests:</p> <p>(1) PINOP has <b>reasonable grounds to fear</b> [objective test] and <b>in fact fears</b> [subjective test] a personal violence offence or stalking/intimidation (s16(1))</p> <p>(2) No subjective test for children, cognitively impaired or where PINOP has been subjected <b>at any time</b> to conduct by the defendant amounting to a personal violence offence (s16(2))</p>	<p>Test (1) remains as is: <b>any condition</b> (prohibition or restriction on conduct) under s35 is available.</p> <p>Test (2) is amended by:</p> <ul style="list-style-type: none"> <li>• removal of the phrase "at any time" in s16(2)(c)(i) and its replacement with "<b>on more than one occasion</b>"</li> <li>• the addition of a <b>further category</b> for <b>any PINOP</b> where: <p style="margin-left: 20px;"><i>(d) The court is satisfied on the balance of probabilities that the person has <b>reasonable grounds to fear</b> the commission of a personal violence offence against the person.</i></p> <p>But: Mandatory orders only can be obtained where (d) is relied on.</p> <p><u>The net effect is:</u></p> </li> </ul>

## SUMMARY OF CRIMES (DOMESTIC AND PERSONAL VIOLENCE) AMENDMENT REVIEW BILL 2016

*(Note: the info below is current as at 30 May 2016. The Bill has passed the Lower House and, if enacted, will commence on proclamation)*

			<ul style="list-style-type: none"> <li>the previous test for PINOPs who've been subject to a PVO "at any time" has been narrowed: such victims now have to establish multiple past offending</li> <li>The subjective limb has been removed in any event <b>for all PINOPs.</b></li> </ul>
<b>36</b>	Mandatory conditions	<p>Every AVO is taken to specify that the defendant is prohibited from:</p> <ul style="list-style-type: none"> <li>(a) assaulting, molesting, harassing, threatening or otherwise interfering with the PINOP</li> <li>(b) engaging in any other conduct that intimidates the PINOP</li> <li>(c) stalking the PINOP</li> </ul>	<p>Every AVO is taken to specify that the defendant is prohibited from:</p> <ul style="list-style-type: none"> <li>(a) assaulting or threatening the PINOP</li> <li>(b) stalking, harassing or intimidating the PINOP</li> <li>(c) intentionally or recklessly destroying or damaging any property that belongs to, or is in the possession of PINOP</li> </ul> <p><i>Note:</i></p> <ul style="list-style-type: none"> <li><i>this anticipates new plain English order forms to be introduced by regulation later this year.</i></li> <li><i>the damage/destroy property condition is broader than the offence provision in s195(1) of Crimes Act</i></li> <li><i>"Molest" and "otherwise interfere with" removed.</i></li> </ul>
<b>39</b>	Making of AVOs in higher courts	Local and District Courts are required to make final ADVO where conviction entered for a dv offence or an intimidation offence, but not more serious offences e.g. attempted murder: in those cases, application for a final ADVO has to be remitted to the Local Court at conclusion of the DC hearing.	District Court now has power to make ADVO on finding of guilt or plea of guilty to a serious offence or a DV offence – only where jury acquits will DC remit the ADVO to the Local Court. However, Local or Children's Court can rely on transcript of evidence given in the DC (and in any Supreme Court proceedings for a serious offence).
<b>40A</b>	ADVOs where concurrent care proceedings	Children's Court cannot make ADVO in care proceedings. Separate application must be made to the Local Court.	Where care proceedings are before Children's Court that are not related to concurrent criminal proceedings, the Children's Court will be able to make AVO for protection of

**SUMMARY OF CRIMES (DOMESTIC AND PERSONAL VIOLENCE) AMENDMENT REVIEW BILL 2016**

*(Note: the info below is current as at 30 May 2016. The Bill has passed the Lower House and, if enacted, will commence on proclamation)*

			<p>the child and any relative (living on same property as child) or may vary or revoke any exiting order protecting those individuals.</p> <p>Police and FACs to be notified and given standing to appear before AVO is made.</p>
<b>41A</b>	Cross examining children in ADVO proceedings	Local Court Practice Note No 2 of 2012 (para 8.1) prevents direct cross examination of children by unrepresented defendants. Not legislated however.	Child who gives evidence in dv proceedings cannot be cross examined directly by the defendant. XE must be by lawyer or "suitable person" appointed by court (i.e. legislative entrenchment of the Local Court Practice Note).
<b>57</b>	Making of ADVOs in absence of defendant	Court can make order in absence of defendant as long as defendant notified of hearing date (s57).	Court can make order in absence of PINOP as well as defendant (or in absence of PINOP only) subject to reasonable notice to each of them and interests of justice test.
<b>72</b>	Applications to vary ADVOs	Application to vary order <b>where child involved</b> can only be made by police (s72(3)).	<p><u>Police issued original ADVO</u>: Interested party can apply to vary where order covers a child, subject to leave of court.</p> <p><u>Private ADVO</u>: no leave requirement but court may notify police and give them standing (best interests of child test)</p>
		<b>Where no child involved</b> PINOP can apply to vary without police involvement (72(2)).	If police issued original order: presumption against court hearing the application unless police applied for order or PINOP has served notice on police (in accordance with rules of court).
<b>72(5)</b>	Application to revoke final ADVO	A defendant can apply to revoke an expired final ADVO	This right removed altogether. Consequence is that once a final ADVO is made, a firearms licence cannot be issued to the defendant for 10 years (s 11 of the <i>Firearms Act 1996</i> ).

## SUMMARY OF CRIMES (DOMESTIC AND PERSONAL VIOLENCE) AMENDMENT REVIEW BILL 2016

(Note: the info below is current as at 30 May 2016. The Bill has passed the Lower House and, if enacted, will commence on proclamation)

99	Costs	<p>Current common law (Supreme Court 2010 decision in <i>Redman v Wilcox</i>) position is that costs against police officers determined by referencing the DV Act and s214 of the CPA. Police have costs immunity in respect of initial decision to bring proceedings but not re subsequent conduct of proceedings (in that case, costs awarded against police for failing to notify defendant of decision to withdraw matter).</p>	<p>New standalone provision in the DV Act dealing with costs in all AVO matters. Where police initiate ADVO, costs immunity now expanded. Costs now only possible where police:</p> <ul style="list-style-type: none"><li>• made application knowing it contained false/misleading material</li><li>• deviated from reasonable case management so significantly as to be inexcusable.</li></ul> <p>Additional express exceptions to costs being ordered against police:</p> <ul style="list-style-type: none"><li>• PINOP indicating she will be unfavourable, does not want ADVO or has no fears, gives unfavourable evidence or fails to attend.</li></ul>
----	-------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------