

SUMMARY OF CHANGES TO THE CRIMES (DOMESTIC AND PERSONAL VIOLENCE) ACT

Section	DEALS WITH	FORMER	NEW
4 & 11	Meaning of domestic violence offence	There are 55 criminal 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 PINOP or cause them to be intimidated or fearful (eg the Commonwealth <i>Crimes Act</i> use carriage service to menace/harass offences).
5	Who can get an ADVO	Definition of domestic relationship is restricted to victim, her and between victims partner and her ex	Definition expanded to include relationship between PINOP's current partner and her ex.
16	Test for ADVOs	<p>Two different tests:</p> <p>(1) PINOP has reasonable grounds to fear [objective test] and in fact fears [subjective test] a personal violence offence or stalking/intimidation</p> <p>(2) No subjective test for children, cognitively impaired or where PINOP has been subjected at any time to conduct by the defendant amounting to a personal violence offence.</p>	<p>Test (1) remains as is: any condition (prohibition or restriction on conduct) under s36 is available.</p> <p>Test (2) is amended by:</p> <ul style="list-style-type: none"> • removal of the phrase "at any time" in s16(2)(c)(i) and its replacement with "on more than one occasion" • the addition of a standalone category for PINOPs where <p><i>(d) The court is satisfied on the balance of probabilities that the person has reasonable grounds to fear the commission of a personal violence offence against the person.</i></p> <p>Mandatory orders only can be obtained where (d) is relied on.</p> <p><u>The net effect is:</u></p> <ul style="list-style-type: none"> • the previous test for PINOPs who've been subject to a PVO "at any time" has been narrowed: such

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			<p>victims now have to establish multiple past offending</p> <ul style="list-style-type: none"> The subjective limb has been removed in any event for all PINOPs. <p><i>Note: The Second Reading Speech states that the revised test will allow courts to make an ADVO to protect a victim who may be reluctant to express fear due to concerns about retaliation. However the amendment is not restricted to such category of PINOPs.</i></p>
32	Duration of a provisional order	Provisional order lasts for 28 days unless it is sooner revoked, or AVO is made by court and/or served or application for final order is withdrawn or dismissed	The 28 limit is removed. Note that section 29 still applies: provisional order acts as summons to appear at court and must be listed within 28 days.
36	Mandatory conditions	<p>Every AVO is taken to specify that the defendant is prohibited from:</p> <ul style="list-style-type: none"> (a) assaulting, molesting, harassing, threatening or otherwise interfering with the PINOP (b) engaging in any other conduct that intimidates the PINOP (c) stalking the PINOP 	<p>Every AVO is taken to specify that the defendant is prohibited from:</p> <ul style="list-style-type: none"> (a) assaulting or threatening the PINOP (b) stalking, harassing or intimidating the PINOP (c) intentionally or recklessly destroying or damaging any property that belongs to, or is in the possession of PINOP <p><i>Note:</i></p> <ul style="list-style-type: none"> <i>new plain English order forms reflect these changes</i> <i>the damage/destroy property condition is broader than the offence provision</i> <i>“Molest” and “otherwise interfere with” removed.</i>
39	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.	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 LC. However, Local or Children’s Court can rely on transcript of

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		attempted murder). Final ADVO has to be remitted to the Local Court at conclusion of DC hearing.	evidence given in the DC (and in any Supreme Court proceedings for a serious offence).
40A	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 the child and any relative (living on same property as child) or may vary or revoke any exiting order protecting those individuals. Police and FACs to be notified and given standing to appear before AVO is made.
41A	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.	Child who gives evidence in dv proceedings cannot be cross examined directly by the defendant but must be by lawyer or “suitable person” appointed by court (i.e. legislative entrenchment of current Local Court Practice Note).
57	Making of ADVOs in absence of defendant	Court can make order in absence of defendant as long as defendant notified of hearing date	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.
72	Applications to vary ADVO	Application to vary order where child involved can only be made by Police. Where no child involved PINOP can apply to vary without police involvement.	<u>Police issued original order</u> : Interested party can apply to vary where order covers a child, subject to leave of court. <u>Private ADVO</u> : no leave requirement but court may notify police and give them standing (best interests of child test) 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).

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99	Costs	<p>Common law (<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 order, costs immunity expanded beyond common law. Costs immunity now only where police:</p> <ul style="list-style-type: none">• made application knowing it contained false/misleading material• deviated from reasonable case management so significantly as to be inexcusable (this was an example cited in <i>Redman v Wilcox</i>. It is now elevated to a statutory exception) <p>Additional express exceptions to costs being ordered against police:</p> <ul style="list-style-type: none">• PINOP indicating they will be unfavourable, does not want order or has no fears, giving unfavourable evidence or failing to attend. <p>Costs will be as specified by court or as agreed or assessed.</p>
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