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SOME IMPORTANT CHANGES TO DOMESTIC VIOLENCE LAWS IN NSW

In 2016, the Government made changes to the Crimes (Domestic and Personal Violence) Act 2007 (“the Act”). The Act is the primary piece of legislation governing domestic violence matters in NSW.

1. Section 5 of the Act defines a domestic relationship and has been broadened to now include two persons who have had a “domestic relationship” (the kind set out in subsection (1)(a),(b) or (c)) with the same person. The section provides a specific example of the type of relationship which now falls into the definition of a domestic relationship.

The example: A woman’s ex-partner and current partner would have a domestic relationship with each other. This is so, even if they have not met each other.

2. Section 9 of the Act specifies the objectives of the Act in relation to domestic violence.

A new subsection (3) (f1) has been inserted. In addition to subsection (3)(a) to (f) and (3)(g), the Parliament recognises the particular impact of domestic violence on Aboriginal persons and Torres Strait Islanders, persons from culturally and linguistically diverse backgrounds, persons from gay, lesbian, bisexual, transgender and intersex communities, older persons and persons with disabilities.

3. A “domestic violence offence” has been broadened and now includes an offence (other than a personal violence offence) the commission of which is intended to coerce or control the person against whom it is committed or to cause that person to be intimidated or fearful (or both).
4. The test for granting an apprehended domestic violence order (“ADVO”) has also changed. There is a new subsection (2)(d) in section 16 of the Act.

Essentially, the Court does not need to be satisfied that the person whose protection the order would be made in fact fears that an offence (as outlined in section 16 (1)) will be committed, or that such conduct will be engaged in, if the Court is satisfied that on the balance of probabilities, that the person has reasonable grounds to fear the commission of a domestic violence offence against the person.

Additionally, if an ADVO is made in reliance on subsection (2)(d), restrictions or prohibitions on the behaviour of the defendant cannot be imposed, other than those that are outlined in section 36, namely:

Prohibiting the defendant from doing:

- a) Assaulting or threatening the protected person or a person with whom the protected person has a domestic relationship;
- b) Stalking, harassing or intimidating the protected person or a person with whom the protected person has a domestic relationship;

- c) Intentionally or recklessly destroying or damaging any property that belongs to, or is in the possession of, the protected person or a person with whom the protected person has a domestic relationship.

These are the prohibitions that are now to be stated in every apprehended violence order.

- 5. A provisional apprehended domestic violence orders will now remain in force until the order is revoked, or it ceases to have effect pursuant to section 32(2) or the application for a final ADVO is withdrawn or dismissed. Provisional ADVO's are no longer limited to 28 days.
- 6. An interested party must have leave of the Court to make an application to the Court in respect of an ADVO, if one or more of the protected persons is a child. (section 72B(1)).

The circumstances in which a Court may grant leave are outlined in section 72(B)(2):

- a) If there has been a significant change in circumstances since the order was made, or last varied;
- b) The application is proposed to be made by the Secretary of the Department of Family and Community Services on the basis that a care plan for the child is inconsistent with the police-initiated order;
- c) That it is otherwise in the interests of justice to do so.

The Court however is not to grant leave if the Court is of the opinion that if the application is successful, it would significantly increase the risk of harm to the child.

Section 72C indicates that the Commissioner of Police must be notified if the application relates to a police-initiated order, unless the applicant is a Police Officer. The Commissioner also has standing to appear in relation to a variation or revocation of a police-initiated order.

- 7. The Children's Court can now make, vary or revoke an apprehended violence order in care proceedings.
- 8. The Court can make an ADVO in the absence of a PINOP (person in need of protection) and/or the defendant if the requirement for notice has been given and it is in the interests of justice to do so. (Section 57A).

The above information reflects the Law as at January 2017.

This document is not intended to constitute legal advice, therefore, you should seek legal advice before acting on any of the content of this document.

If you are involved in apprehended violence order proceedings, you have a right to seek legal advice and it is recommended that you seek such advice promptly.

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