

# RESTRAINING ORDERS AND RELATED LEGISLATION AMENDMENT (FAMILY VIOLENCE) BILL 2016

## EXPLANATORY MEMORANDUM

### Overview of the Bill

The Restraining Orders and Related Legislation Amendment Bill 2016 aims to make the civil restraining orders regime created under the *Restraining Orders Act 1997* (RO Act) more responsive to the particular issues associated with family violence. In doing so, it aims to increase safety for victims of family violence, and strengthen integrated, accountable and effective interventions targeting perpetrators of family violence and abuse.

The Bill aims to achieve these outcomes through the creation of a new class of order, the family violence restraining order (FVRO), which is separate from violence restraining orders (VROs) and misconduct restraining orders (MROs).

FVROs are established under a new Part 1B of the RO Act. FVROs are supported by new objects, principles and definitions, all of which promote a contemporary understanding of the nature and seriousness of family violence. Matters specific to family violence that were previously addressed in the provisions relating to VROs have been migrated into the new Part 1B.

The introduction of the new Part 1B necessitates numerous consequential amendments to other sections of the Act. VROs are retained for use in cases of personal violence, but will no longer be used for people in a family relationship. MROs are also retained and will continue to be used for people not in a family relationship where intimidating or offensive, but not violent, behaviour has occurred.

Part 1B is complemented by the new Part 1C, which empowers a court to compel perpetrators of family violence to undertake an approved behavioural change program (BCP), if they are assessed as eligible. These orders – to be known as behaviour management orders (BMOs) - will encourage perpetrators to accept responsibility for their actions and to refrain from committing further family violence. The inclusion of Part 1C couples the traditional legal protections provided under restraining orders with a preventative mechanism aimed at tackling the cause of family violence and thereby reducing the risk of future violence.

In addition to the creation of FVROs, the Bill makes substantive changes to a range of other aspects of the RO Act, for example, relating to the breach of restraining orders and the making of restraining orders during criminal proceedings.

The Bill also makes various consequential amendments to other related Acts mainly to correct cross-references to the new definitions of ‘family violence’ and ‘family relationship’.

Separately to the changes to the civil restraining orders regime, the Bill amends *The Criminal Code* to criminalise and more stringently penalise unlawful acts that cause death or harm to unborn children, and to raise the penalty for unlawful assault causing death under section 281 of *The Criminal Code* from 10 to 20 years.

A clause by clause commentary of the Bill is as follows:

<b>Clause 1</b>	<p><b>Short title</b></p> <p>Clause 1 provides that the title of the proposed Act is the <i>Restraining Orders and Related Legislation Amendment (Family Violence) Act 2016</i>.</p>
<b>Clause 2</b>	<p><b>Commencement</b></p> <p>Clause 2 provides that Part 1 will come into operation on the day on which the Act receives Royal Assent. The balance of the Act will come into force on a day fixed by proclamation, and different days may be fixed for different provisions.</p>
<b>Clause 3</b>	<p><b>Act amended</b></p> <p>Clause 3 explains that Part 2 amends the <i>Restraining Orders Act 1997</i> (‘RO Act’).</p> <p>The following clause notes for this Part refer to the affected section of the RO Act.</p>
<b>Clause 4</b>	<p><b>Long title amended</b></p> <p>Clause 4 is the first of a number of amendments removing the term ‘domestic’ from the phrase ‘family and domestic’. This shift in terminology is intended to remove the connotation that family violence is ‘just a domestic’ or private matter.</p> <p>Clause 4 is also the first of a number of amendments removing the phrases ‘acts of’ or ‘act of’ from references to family violence. The removal of these words signals a shift away from focusing exclusively on discrete ‘acts’ and towards a broader view that also recognises other behaviour that coerces, controls or causes fear as family violence.</p>

**Clause 5****Section 3 amended**

Clause 5 amends section 3 (Terms used). It deletes the following definitions from section 3: *act of abuse, act of family and domestic violence, act of personal violence, exposed, family and domestic relationship, final order and restraining order.*

The definition of ‘act of abuse’ has been deleted as part of the shift in terminology explained in relation to clause 4 above. The Act now refers to ‘family violence’ and ‘personal violence’ in place of ‘act of abuse’. The definition of ‘act of family and domestic violence’ is deleted and replaced by the new definition of ‘family violence’.

The definition of ‘act of personal violence’ is deleted and replaced by the new definition of ‘personal violence’.

The definition of ‘exposed’ is deleted and replaced with a new definition that refers to the meaning given in the new section 6A(1).

The definition of ‘family and domestic relationship’ is deleted and replaced by the definition of ‘family relationship’.

The definition of ‘final order’ has been deleted and replaced with a new definition of the same term that reflects the creation of new classes of order (the FVRO and conduct agreement order).

The definition of ‘restraining order’ has been deleted and replaced by a new definition that includes the new class of restraining order created under Part 1B, the FVRO.

Clause 5(3) inserts the following new definitions into section 3 of the RO Act:

**Assault** – this definition has been moved to the general ‘terms used’ provision in section 3 from its previous location in section 6. This shift provides for the definition to apply to the new section 5A (family violence) as well as section 6 (personal violence). The previous reference to ‘behaving in a manner described in paragraph (a), (b) or (c) of section 319(3) of *The Criminal Code*’, which refers to indecent dealing with a child or an incapable person, has not been retained in the new definition on the basis that these behaviours are now included under the new definition of ‘sexual assault’ introduced by this clause. The definition uses the term ‘includes’ to indicate that it is not necessary to establish all of the elements required under *The Criminal Code*.

**Conduct agreement order** – this is a new form of order that is substantively defined in section 10H(1).

**Consent order** – this new definition refers to an order made under section 41(1) or 43(2). The term ‘consent order’ replaces the previous, less concise formulation ‘order made with consent under section 41 or 43’, and applies to VROs and MROs. It is to be distinguished from a ‘conduct agreement order’ made by consent which applies to FVROs.

**Cyber-stalking** – this new definition refers to stalking, monitoring the movement or communications of, or repeatedly communicating with or harassing, the person using electronic means. By way of example, this may include using social media or installing GPS tracking devices in a person’s mobile phone or car. Cyber stalking is cited as an example of behaviour that may constitute ‘family violence’ under section 5A.

**Exposed** – this new definition of ‘exposed’ refers to the substantive definition in the new section 6A(1).

**Family member** – this new definition refers to the substantive definition in section 4(3). The phrase ‘family member’ is introduced throughout the Act in place of the previous, less concise formulation ‘person with whom he or she is in a family and domestic relationship’.

**Family relationship** – this new definition refers to the substantive definition in section 4(1). The term ‘family relationship’ is introduced in place of ‘family and domestic relationship’.

**Family violence** – this new definition refers to the substantive definition in the new section 5A(1). This phrase is used throughout the Act in place of the previous formulation ‘act of family and domestic violence’.

**Family violence restraining order** – this new definition refers to ‘an order made under this Act imposing the restraints referred to in section 10G’. As noted previously, this new type of order has been created to better address the particular dynamics and issues that are associated with family violence.

**Final order** – this definition has been expanded to include conduct agreement orders, a new type of order that may be made in relation to an FVRO under Part 1B; and adjusted to reflect other changes in

terminology introduced in this section.

**Kidnapping, or depriving the liberty of** – this definition has been moved to the general ‘terms used’ provision from its current location in section 6. This provides for the definition to apply to the new section 5A (family violence) as well as section 6 (personal violence). The definition uses the term ‘includes’ to indicate that it is not necessary to establish all of the elements required under *The Criminal Code*.

**Legal practitioner** – this definition is moved to section 3 from section 62, which was previously the only provision of the RO Act to use the term. As the term is now also used in new sections 10X and 10Y, it is appropriate that the definition be included in the general ‘terms used’ provision.

**Personal violence** – this new definition refers to the substantive definition of ‘personal violence’ that is inserted into section 6. The phrase ‘personal violence’ replaces the previous formulation ‘act of personal violence’.

**Prescribed form** – this definition clarifies that ‘prescribed form’ refers to a form prescribed in rules of court, rather than prescribed in regulations.

**Restraining order** – the definition of restraining order has been expanded to include the new class of order created under the new Part 1B, the FVRO. The definition now encompasses three categories of order: FVRO, VRO and MRO.

**Sexual assault** – this new definition refers to Chapter XXXI of *The Criminal Code* (Sexual offences). The term ‘sexual assault’ is used in the definition of ‘family violence’ under the new section 5A. The definition uses the term ‘includes’ to indicate that it is not necessary to establish all of the elements required under *The Criminal Code*.

**Stalking** – this definition is inserted to support the inclusion of stalking in the substantive definitions of ‘family violence’ (section 5A) and ‘personal violence’ (section 6). The definition uses the term ‘includes’ to indicate that it is not necessary to establish all of the elements required under *The Criminal Code*.

Clause 5 also amends the following existing definitions in section 3 of the RO Act:

	<p><b>Authorised person</b> – the words ‘in the regulations’ have been included to enhance clarity.</p> <p><b>Family order</b> - the word ‘by’ is replaced with ‘in’ to modernise the drafting and enhance clarity.</p> <p><b>Fix a hearing</b> - the word ‘by’ is replaced with ‘in’ to modernise the drafting and enhance clarity.</p> <p><b>Person seeking to be protected</b> – the words ‘violence restraining order or a misconduct’ are deleted on the basis that it is not necessary to elaborate on ‘restraining order’ with reference to specific types of order; ‘restraining order’ is defined under this section to include FVROs, VROs and MROs.</p> <p><b>Prepare and serve</b> – the word ‘by’ is replaced with ‘in’ to modernise the drafting and enhance clarity.</p> <p><b>Telephone application</b> - this definition has been adjusted to reflect the creation of a new class of restraining order, the FVRO.</p> <p><b>Telephone order</b> – this definition has been adjusted to reflect the creation of a new class of restraining order, the FVRO.</p> <p>Clause 5(11) inserts a new subsection that provides for the use of the abbreviations FVRO, VRO and MRO for use throughout the Act (including in this section) for brevity.</p>
<p><b>Clause 6</b></p>	<p><b>Section 4 amended</b></p> <p>This clause amends section 4 (Term used: family and domestic relationship).</p> <p>Subclause (1) deletes the words ‘and domestic’ from section 4(1) as part of a change in terminology introduced throughout the Act and explained in relation to clause 4 above.</p> <p>Subclause (2) inserts a new definition of ‘family member’ which is referred to in the definition of ‘family violence’ in section 5A. A person is a family member of another person if the persons are in a family relationship.</p> <p>The heading of section 4 is amended to ‘Term used: family relationship and family member’ to reflect the terminology used in the body of the section.</p>

<p><b>Clause 7</b></p>	<p><b>Section 5A inserted</b></p> <p>This clause inserts a new section 5A in the RO Act, which provides a new definition of ‘family violence’ to replace the definition of ‘act of family and domestic violence’ that is deleted from section 6. The new definition aims to better reflect the contemporary understanding of the scope, dynamics and nature of family violence.</p> <p>The new definition has two parts: a description of the nature of family violence (section 5A(1)), and a series of examples of behaviour that may constitute family violence (section 5A(2)).</p> <p>Subsection (1) defines family violence as violence, or a threat of violence, by a person towards a family member of the person; or any other behaviour by the person that coerces or controls the family member, or causes the family member to be fearful. This new terminology is based on equivalent definitions contained in the <i>Family Law Act 1975 (Cth)</i> and the <i>Family Court Act 1997 (WA)</i>.</p> <p>Subsection (2) is a non-exhaustive list of examples of behaviour that may constitute family violence, also based on the equivalent definition in the <i>Family Law Act 1975 (Cth)</i> and the <i>Family Court Act 1997 (WA)</i>.</p> <p>These examples are intended to serve as a guide and to provide further support for an understanding of family violence that extends beyond acts of physical violence.</p> <p>Subsection (3) provides that for the purposes of this Act, a person who procures another person to commit family violence is taken to have also committed the family violence.</p>
<p><b>Clause 8</b></p>	<p><b>Section 6 amended</b></p> <p>This clause amends section 6 (Terms used: act of family and domestic violence and act of personal violence). Subsection (1) is deleted on the basis that it has been superseded by the new section 5A, which defines ‘family violence’. Section 6 is now exclusively concerned with the meaning of ‘personal violence’.</p> <p>The substantive definition of ‘personal violence’ is amended by:</p> <ul style="list-style-type: none"> <li>• deleting the words ‘act of’ and ‘and domestic’ in line with the new terminology introduced throughout the Bill and explained in relation to clause 4 above; and</li> <li>• deleting the existing paragraphs (b) and (c) and replacing</li> </ul>

	<p>them with ‘kidnapping, or depriving the liberty of’ and ‘stalking’ the person, which are now defined terms under the amended section 3 (Terms used).</p> <p>The substance of these provisions does not change but the terminology has been amended purely for consistency with the new terminology introduced throughout the Act. It is not intended that there be any change to the scope or meaning of ‘personal violence’ under this section.</p> <p>Subclause (3) deletes the existing section 6(3), and inserts a new subsection (3) which makes clear that a person who procures another person to commit personal violence (as opposed to the previous ‘act of abuse’) is taken to have also committed personal violence. An equivalent provision in relation to procuring someone else to commit ‘family violence’ is included at section 5A(3). Subclause (3) also deletes the existing subsection (4) in section 6, which contained definitions of ‘assaulting’, ‘intimidate,’ ‘kidnapping’ and ‘pursue’. These are no longer necessary because ‘assault’ and ‘kidnapping’ are now defined under section 3 (Terms used), and ‘intimidate’ and ‘pursue’ have been made redundant by the introduction of the term ‘stalking’ in section 3 (noting that ‘stalking’ is defined to include an offence committed under Chapter XXXIIIB of the Criminal Code, which incorporates the terms ‘intimidate’ and ‘pursue’).</p>
<p><b>Clause 9</b></p>	<p><b>Section 6A inserted</b></p> <p>This clause inserts a new definition of ‘exposed’ into the RO Act which replaces the previous definition of ‘exposed’ in section 3. The previous definition was limited to seeing or hearing an act of abuse, or witnessing physical injuries resulting from the act of abuse. The new definition has been broadened to reflect the reality that the impact of family violence may be felt through experiences that do not necessarily involve the direct witnessing of abuse or associated injuries. The non-exhaustive list of examples provided in the definition now includes:</p> <ul style="list-style-type: none"> <li>• Comforting or providing assistance to a person who has been assaulted;</li> <li>• Cleaning up a site after property damage; and</li> <li>• Being present when emergency responders attend an incident.</li> </ul>



	<p>This new definition supports a key objective of the Bill by strengthening the protection of children who are affected by family violence.</p> <p>The term ‘exposed’ appears in: the new definition of family violence in section 5A, which refers to ‘<i>causing any family member who is a child to be exposed to behaviour referred to in this section</i>’; and in several other sections of the RO Act, including: section 10A (objects); section 10B (principles); section 10E (FVRO for a child); section 10F (matters to be considered by the court – FVRO); section 10G (restraints on respondent – FVRO); section 12 (matters to be considered by the court – VRO); section 13 (restraints on respondent – VRO); section 30A (police orders); section 30B (matters to be considered by police officer); and section 61(4) (breach of restraining order).</p>
<p><b>Clause 10</b></p>	<p><b>Section 7 amended</b></p> <p>This clause inserts the words “who is” for clarity. Section 7 deals with ‘Persons protected, and bound, by order to be natural persons’.</p>
<p><b>Clause 11</b></p>	<p><b>Section 7A amended</b></p> <p>This clause amends section 7A (Orders under this Act imposing restraints) to reflect the insertion of new section 24A (Application for FVRO).</p>
<p><b>Clause 12</b></p>	<p><b>Section 8 amended</b></p> <p>This clause amends section 8 (Explanation about orders to be given). Subclause (1) deletes the reference to ‘a violence restraining order’ and replaces it with ‘an FVRO or VRO’. This is a consequence of the introduction of a new class of order, the FVRO, and is in preference to using a collective term for both types of order. The use of abbreviations is provided for under the amended section 3 (Terms used).</p> <p>Subclause (2) inserts the words ‘who is 16 years of age or older’ into section 8(2) to prevent a court from enlisting a child under the age of 16 to explain the matters listed in section 8 to a person who does not readily understand English. The purpose of the amendment is to prevent children under the age of 16 from being asked to explain complex and potentially distressing concepts to family members.</p>

<p><b>Clause 13</b></p>	<p><b>Section 10 amended</b></p> <p>This clause amends section 10 (Preparation and service of orders) to clarify that, in relation to the preparation and service of a police order, the form is to be prescribed in regulations rather than in the rules of the court. This is because the form is used by police and is not a court form.</p>
<p><b>Clause 14</b></p>	<p><b>Parts 1B and 1C inserted</b></p> <p>Clause 14 inserts two new Parts into the RO Act. Part 1B deals with FVROs generally. Part 1C deals with behaviour management orders.</p> <p><b>New PART 1B: Family violence restraining order</b></p> <p><i>New section 10A: Objects</i></p> <p>The RO Act does not currently include a statement of objects. The inclusion of an objects clause in Part 1B is intended to elevate awareness of the purpose of FVROs and to assist decision makers to apply the provisions in accordance with Parliament’s intent.</p> <p><i>New section 10B: Principles to be observed</i></p> <p>The RO Act does not currently include a statement of principles. The principles set out in section 10B(1) are intended to provide decision makers with guidance as to the complex dynamics and varied manifestations of family violence. Every person, court or other body performing a function under the Act in relation to FVROs must have regard to these principles.</p> <p>Subsection (2) provides that the matters in subsection (1) paragraphs (a), (b) and (c) are to be regarded as being of primary importance. These paragraphs relate to victim protection, the prevention of further family violence, and the protection of children respectively. The identification of these matters as primary considerations is consistent with the objects identified in the new section 10A.</p> <p>New sections 10C to 10G largely replicate existing provisions relating to the grounds for, and making, of restraining orders. The duplication of these provisions, with significant modification, is part of the broader separation between ‘personal violence’ and ‘family violence’ brought about by the Bill. The existing provisions that are being duplicated will remain in Part 2, but will only apply in relation</p>

to personal violence that does not occur in the context of a family relationship.

*New section 10C: FVRO to specify names of person bound*

New section 10C requires that an FVRO specify the names of the person for whose benefit the order is made and the person upon whom restraints are imposed. This provision replicates the current section 11.

*New section 10D: When FVROs may be made*

New section 10D(1) provides that a court may make an FVRO if satisfied of one of the grounds listed in paragraphs (a) and (b). This largely replicates the existing section 11A apart from the following important changes:

- The reference to ‘the person reasonably fears that the respondent will commit family violence’ is replaced by ‘the person has reasonable grounds to apprehend that the respondent will commit family violence.’ This is intended to be a more neutral concept and avoid any argument as to whether the person’s ‘fear’ is ‘reasonable’.
- The reference in section 11A to the court being satisfied that making a restraining order is ‘appropriate in the circumstances’ has not been retained in section 10D. The nature of the court’s discretion is dealt with separately, and in a modified manner, in subsection (2).

Subsection (2) provides that if a court is satisfied of the grounds in accordance with subsection (1), it must make the order unless there are special circumstances that would make the order inappropriate. This is a narrower discretion than currently exists under section 11A. Section 11A currently provides the Magistrate with a broad discretion to refuse to make an order (even if the grounds are met) because it is not “appropriate in the circumstances.” (This will continue to apply in relation to VROs).

In considering whether ‘special circumstances’ exist, the court will be required to have regard to the principles set out in section 10B. Special circumstances may be said to exist where the making of an order would create a clear inconsistency with the principles; for example, where the person seeking protection is not the person in the relationship most in need of protection or is a perpetrator of family violence who is attempting to use the RO Act as a means of

further controlling the respondent.

Section 10D(3) further provides that ‘special circumstances’ do not exist simply because the applicant or respondent can apply, or has applied, for a family order. ‘Family order’ is substantively defined in section 5.

*New Section 10E: FVRO may be made for child in circumstances of family violence*

Section 10E largely replicates the deleted section 11B. The relocation of this provision is one aspect of the broader migration of matters relating to family violence from Part 2, which provides for the making of VROs, to the new Part 1B, which provides for the making of FVROs.

Section 10E(2) adopts the same modifications from the deleted section 11B as described above in relation to section 10D(1); that is, it narrows the discretion to refuse an order and adopts the more neutral language of ‘reasonable grounds to apprehend’.

Section 10E(3) further provides that ‘special circumstances’ do not exist simply because the applicant or respondent can apply, or has applied, for a family order. ‘Family order’ is substantively defined in section 5.

*New Section 10F: Matters to be considered by court generally*

Section 10F(1) sets out the matters that the court is to have regard to when considering whether to make an FVRO and, if the order is to be made, the terms of the FVRO. The provision largely replicates the existing section 12. However, several additional matters have been included. These are:

- (j) any police orders made against the respondent;
- (l) any police incident reports relating to the respondent; and
- (m) any risk assessment, or risk-relevant information relating to the relationship between the respondent and the person seeking to be protected.

The inclusion of these additional matters is intended to ensure that decisions are made in view of all available information that pertains to the risk of future family violence.

Also, the language in the following sections has been amended (relative to the equivalent provisions of section 12) as follows:

10F(1)(a): 'acts of abuse' has been replaced with 'family violence'.

10F(1)(b): 'fear' has been replaced with 'apprehend' (for consistency with the modifications in the new 10D and 10E).

10F(1)(c): this replaces the previous 12(1)(c), which referred to 'the wellbeing of children who are likely to be affected by the respondent's behaviour or the operation of the proposed order', with the following more detailed description, '*the need to ensure the wellbeing of children by protecting them from family violence, behaviour referred to in paragraph (b) or otherwise being subjected or exposed to family violence*'. This provides consistency with the new section 10B.

10F(1)(i): 'any criminal record of the respondent' has been replaced with 'any criminal convictions' to complement the court's ability to have regard to its own records in 10F(7) (noting that the term 'criminal record' is commonly understood to refer to records produced by the Police).

Section 10F(2) offers further guidance by requiring the court to have regard to the matters in subsection (1) paragraphs (a)-(c) as being of primary importance. This effectively replicates section 12(2). These subsections relate to victim protection, the prevention of further violence, and the protection of children respectively. The identification of these matters as primary considerations mirrors the approach taken in relation to the principles set out in section 10B, and is consistent with the objects identified in 10A.

Section 10F(3) effectively replicates section 12(3).

Sections 10F(4)-(6) provide for the provision of relevant information by the Commissioner of Police in the form of a 'police certificate.' Subject to the adjustments identified below, these subsections effectively replicate existing sections 12(4)-(6).

Subsection (4) differs from the existing section 12(4) by including a reference to the new section 10F(1)(l), which refers to police incident reports. Subsection (5) provides that a police certificate may be signed off by:

- A police officer of or above the rank of sergeant; or
- A police public servant who is approved by the Commissioner of Police for this purpose.

This is broader than the existing section 12(5), which requires sign-

off by a police officer of or above the rank of inspector. The new position is intended to support timely and informed decision making by streamlining access to police certificates. As explained below, section 12(5) is amended to reflect the new position in 10F.

The new position in section 10F(5) is reflected in section 10F(6), which otherwise replicates the existing section 12(6).

The new subsection (7) provides that a court may have regard to its own records for the purposes of subsection (1). This is intended to assist courts in taking a risk management approach, especially during interim order hearings where the applicant has not had the opportunity to apply for a police certificate and the court itself holds relevant information, for example, of the respondent's previous convictions for violent personal offences.

New subsection (8) also provides that, for the avoidance of doubt, the court records referred to in subsection (7) are proof of their contents in the absence of evidence to the contrary.

#### *New Section 10G: restraints on respondent*

New section 10G is concerned with the restraints that the court may impose in making an FVRO. The provision largely replicates the existing section 13. However, two additional matters have been included in the non-exhaustive list of restraints that may be imposed: (2)(d) stalking or cyber-stalking; and (2)(g) distributing or publishing, or threatening to publish, intimate images (colloquially referred to as 'revenge pornography'). These inclusions recognise the role of technology in facilitating family violence and mirror the references in section 5A (which defines family violence). New section 10G(3) is amended slightly to remove the words 'absolutely or' for modernisation of drafting.

#### *Section 10H: Conduct agreement*

New section 10H introduces a new concept – that of a 'Conduct Agreement'. If at any stage of proceedings under the Act relating to an FVRO a respondent agrees to the making of a final order imposing restraints of the kind referred to in section 10G, the court may make a conduct agreement order without being satisfied there are grounds for making an FVRO in the same terms.

Subsection (2) provides that a conduct agreement does not constitute an admission by the respondent.

Subsection (3) ensures that while a conduct agreement order is not an FVRO in name, it is for all other purposes under the Act an FVRO, for example, a breach of which is an offence under the Act.

Subsection (4) provides for the preparation and service of a conduct agreement order.

### **New PART 1C – Behaviour management order**

Clause 14 also inserts a new Part 1C into the RO Act dealing with the new concept of behaviour management orders (BMOs). Part 1C provides a mechanism for the court to require individuals who commit family violence to participate in approved behavioural change programs. It is intended to provide an additional legislative tool with which to effect positive behavioural change, an outcome that is consistent with the objectives and principles of FVROs enumerated in sections 10A and 10B.

Among other things, the regime created under Part 1C includes distinct definitions, objects, confidentiality requirements and processes relating to assessment, court hearings, appeal, enforcement and the approval of relevant service providers.

New **Section 10I** provides a number of definitions that apply only to Part 1C. ‘Court’ is defined to mean ‘a court prescribed in the regulations for the purposes of this Part’. This means that only courts prescribed in the regulations can issue BMOs.

New **Section 10J** sets out the objects of Part 1C. Paragraphs (a) and (b) make clear that the purpose of this Part is to encourage perpetrators of family violence to take responsibility for their actions, and to refrain from perpetrating family violence in the future.

New **Section 10K** defines the scope of Part 1C. It applies if a final order that is an FVRO has been made against the respondent and the respondent is an adult.

New **Section 10L** sets out the process for assessing whether a respondent is eligible to participate in a behaviour change program (BCP). Subsection (1) provides that the court may, on the application of the person protected by the final FVRO or on its own initiative, make an eligibility assessment order requiring:

- an eligibility assessor to give an eligibility assessment report to the court; and
- the respondent to attend an assessment interview with the

assessor to enable the preparation of the report.

Subsection (2) limits subsection (1) by preventing the court from making an assessment order in certain circumstances, namely where a BMO is already in place; where it would not be practicable for the respondent to attend a BCP; or where it is otherwise not appropriate to make the order.

Subsection (3) sets out the test that assessors must apply when determining whether a respondent is eligible to attend a BCP. It creates a presumption in favour of eligibility, which is overturned if the assessor considers that the respondent does not have the 'ability or capacity' to participate for one or more of the reasons listed in paragraphs (a)-(e). The exceptions are designed to avoid orders being issued in cases where the BCP is unlikely to be complied with or is not an appropriate response to the individual's specific issues.

Subsection (4) provides that an assessment order must: specify the date by which the assessment interview is to take place; require the assessor to give the respondent reasonable written notice of the interview; and require the respondent to attend the interview.

Subsection (5) provides for enforceability by making it an offence to contravene an assessment order without reasonable excuse. This provision is supported by section 10W, which compels eligibility assessors and BCP providers to report contraventions of BMOs.

Subsection (6) clarifies the preceding subsection by providing that the respondent is taken to have contravened an assessment order if he or she does not attend the interview at the time and place specified in the notice under subsection (4).

**New section 10M** deals with an order to attend a BCP, once eligibility has been assessed under section 10L. Subsection (1) provides for the making of behaviour change orders (BCOs). A BCO is an order requiring the respondent to attend a BCP. The power to make a BCO arises only where the court has received an eligibility assessment report under section 10L, and is satisfied that the respondent is eligible to attend a BCP. Subject to the exceptions listed in subsection (2), the court is obliged to make a BCO if satisfied that the person is eligible.

The exceptions listed in subsection (2) mirror those that apply in relation to the making of an eligibility assessment order under



section 10L. That is, the court is not required to make the order if there is already an order in place; or the court is satisfied that attendance at a BCP would not be reasonably practicable or would not be appropriate for another reason.

Subsection (3) provides for a respondent who is subject to a BCO to be required to initiate contact with the BCP provider by a specified date; for the BCP provider to provide the respondent with reasonable written notice of the sessions to be conducted in the course of the BCP; and for the respondent to attend those sessions.

Subsection (4) provides for enforceability by making it an offence to contravene a BCO by failing to attend a BCP without reasonable excuse. This provision is supported by section 10W, which compels eligibility assessors and BCP providers to report contraventions of BMOs.

Subsection (5) clarifies what constitutes contravention of a BCO, and subsection (6) provides that a respondent may only be prosecuted once for contravening an order, irrespective of how many sessions the respondent fails to attend.

**New section 10N** deals with the effect of an appeal against a final order. Subsection (1) provides that a decision by a court to stay or overturn a final order in response to an appeal has the same effect on a related BMO. Subsection (2) has the effect of ensuring that a BMO remains in force after the related final order has ceased to be in effect for other reasons. These other reasons may include cancellation of the final order or the effluxion of time (noting that final orders are time limited).

**New Part 1C Division 3** sets out procedures relating to notice of hearings, approval of assessors and BCPs and court proceedings.

**New section 10O** deals with notice of hearings involving BMOs. Subsection (1) requires a court registrar to cause notice of a hearing that involves the making, variation or cancellation of a BMO to be served on the respondent. Subsection (2) enables the court to make an order in the absence of the respondent. This is to ensure that the non-attendance cannot be used to circumvent the BMO scheme. Subsection (3) creates an exception to the general notice requirement in subsection (1).

**New section 10P** provides for the approval of eligibility assessors and BCPs by the Minister. By virtue of section 10I, only those individuals and bodies approved by the Minister under this section can perform the functions of eligibility assessors and BCPs created under Part 1C of the Act. The process of Ministerial approval is designed to assure the quality and probity of the BMO regime. Section 12 of the *Interpretation Act 1984* provides that a reference in written law to ‘the Minister’ shall be construed to refer to the Minister who is responsible for administering the Act. The Attorney General is presently the Minister responsible for administering the RO Act.

Subsection (1) is concerned with the approval of individuals to undertake eligibility assessment interviews and prepare associated court reports. The reference to ‘appropriate experience and qualifications’ is intended to ensure that approved persons are able to properly assess the factors listed in section 10L(3); that is, any character, language, disability, mental health condition, substance misuse or other issue that may affect the person’s ability to undertake a BCP. It is anticipated that most assessors will have a professional qualification in a field such as psychology or social work.

Subsection (2) provides that the Minister may approve a behaviour change programme that he or she considers appropriate to facilitate the acceptance of personal responsibility by the respondent; encourage the respondent to stop perpetrating further family violence; and deal with any other issues arising from family violence. These matters are included as a means of ensuring that BCPs help to meet the objects of Part1C specified in section 10J. Subsection (3) requires the Minister to specify the particular person or body providing a BCP (as opposed to merely describing the model of intervention). Subsection (4) further requires the Minister to provide a court with information about the particular approved persons or bodies on request. This information will assist the courts to:

- Determine whether it is ‘reasonably practicable’ for a person to attend a BCP as contemplated under sections 10L(2) and 10M(2); and
- Link respondents with eligibility assessors and programme

providers as required under sections 10L(4) and 10M(3).

**New section 10Q** provides a process for requiring an eligibility assessor to attend and, if required by the respondent, be called as a witness at the court hearing at which the content of a report will be considered. By virtue of section 10R(2), subsequent non-attendance at the hearing by the assessor can result in the court being unable to consider parts of the report that are disputed by the respondent. The combined effect of these provisions is to ensure that the respondent has the benefit of procedural fairness.

**New section 10R** sets out the court's obligations when presented with a report all or part of which is contested by the respondent. Subsection (1) establishes a general principle that the court is only to consider disputed matters that it considers to be true on the balance of probabilities. As noted above in relation to section 10Q, the court is not to take disputed matters into consideration without the respondent's consent if the relevant eligibility assessor fails to attend a hearing despite have been required to attend under section 10Q.

**New section 10S** deals with the explanation of BMOs. It promotes procedural fairness by ensuring that the respondent is made aware of important matters relating to BMOs, including the consequences of non-compliance and the right to apply for the order to be varied or cancelled.

**New Section 10T** sets out the grounds on which a BMO may be varied or cancelled. These grounds substantially mirror the grounds for making an order under section 10L (Making an eligibility assessment order) and 10M (Order to attend behavioural change programme). Subsection (2) provides that an application may be made on the court's own initiative or on the application of the respondent or the relevant service provider (ie, eligibility assessor or BCP provider). Subsection (3) provides for the service of copies of applications made under subsection (2).

**New section 10U** provides for BMOs to be served on the respondent and, as relevant, the eligibility assessor or the BCP provider. This is to ensure that all affected parties are made aware of their obligations under the BMO. Subsection (2) provides for the timely service of relevant documents on the respondent.

**New section 10V** requires the BCP provider to report to the court on the matters listed in subsection (2) regarding the respondent's

	<p>participation in, or completion of, a BCP. Among other things, the report must include an assessment of whether the respondent continues to pose a safety risk to the victim, and any known views of the victim regarding relevant matters. As provided for in section 10F(1), and in particular 10F(1)(e) and (m), this information may be used by the court in subsequent proceedings relating to the respondent under the RO Act. In addition, new section 61C requires a court convicting a person for a breach of an FVRO to have regard to any report provided to the court under section 10V when sentencing the person.</p> <p><b>New section 10W</b> requires eligibility assessors and BCP providers to notify WA Police and the court when a respondent contravenes a BMO. This is intended to facilitate prosecutions for the offences of contravening EAOs and BCOs created under subsections 10(L)(5) and 10(M)(4) respectively.</p> <p><b>New section 10X</b> deals with confidentiality and makes it an offence to divulge information obtained through the eligibility assessment interview process or via court reports required under this part of the Act. The confidentiality requirements created under subsections (1) - (4) are subject to the exceptions created under subsection (5).</p> <p><b>New section 10Y</b> also deals with confidentiality and makes it an offence for a BCP provider to divulge information obtained in the provision of a BCP. The exceptions created under section 10X are reproduced in subsection (2).</p> <p><b>New section 10Z</b> authorises the Minister to delegate the Minister's functions under Part 1C of the Act, other than the power of delegation.</p>
<b>Clause 15</b>	<p><b>Part 2 Division 1 heading deleted</b></p> <p>This clause deletes the heading to Part 2 Division 1.</p>
<b>Clause 16</b>	<p><b>Section 11 amended</b></p> <p>This clause amends section 11 (Violence restraining order to specify names of person bound, and person protected, by order) by abbreviating 'violence restraining order' to VRO as provided for under the amended section 3 (Terms used). This change is also made to the heading.</p>

<p><b>Clause 17</b></p>	<p><b>Section 11A amended</b></p> <p>This clause amends section 11A (When violence restraining order may be made) to maintain consistency with the new terminology introduced throughout the Act. In particular, paragraph (b) replaces ‘act of abuse’ with ‘personal violence’; paragraph (c) replaces ‘such an act’ with personal violence; and paragraph (d) replaces the expression ‘reasonably fears’ with ‘has reasonable grounds to apprehend’ for consistency with section 10D.</p> <p>Apart from these changes to wording, there is not intended to be any other substantive change to VROs in this section.</p>
<p><b>Clause 18</b></p>	<p><b>Section 11B deleted</b></p> <p>This clause deletes section 11B on the basis that it has been superseded by the new section 10E, which enables an FVRO to be made for a child in circumstances of family violence. It is no longer possible for a child to seek a VRO in circumstances of family violence. This change is part of the broader separation of family violence from personal violence provided for in the Bill.</p>
<p><b>Clause 19</b></p>	<p><b>Section 12 amended</b></p> <p>This clause amends section 12 (Matters to be considered by court).</p> <p>Subclause (1) amends subsection (1) to maintain consistency with the new terminology introduced throughout the Act and to accommodate the introduction of FVROs under the new Part 1B. Specifically, ‘act of abuse’ is deleted and replaced with ‘personal violence’; paragraphs (b), (ba) and (c) are deleted and replaced with the new wording of these paragraphs in the new section 10F(1) paragraphs (a) - (c); reference to ‘family orders’ is deleted (since this is no longer a relevant matter for the court to have regard to when deciding whether to grant a VRO); and ‘criminal record’ is replaced with ‘criminal convictions’ for consistency with 10F.</p> <p>Subclause (2) amends subsection (2) to maintain consistency with the amended subsection (1).</p> <p>Subclause (3) deletes and replaces subsection (5), which deals with police certificates. The new wording of this provision mirrors the new section 10F(5) (the equivalent provision relating to FVROs). That is, it provides for a police certificate to be signed off by an officer of or above the rank of sergeant (rather than inspector as was previously the case), or a police public servant who is</p>

	<p>approved by the Commissioner of Police for this purpose.</p> <p>Subclause (4) amends subsection (6) to maintain consistency with the amended subsection (5).</p> <p>Subclause (5) inserts new subsections (7) and (8) into section 12. New subsection (7) provides that a court may have regard to its own records for the purposes of subsection (1). This mirrors new section 10F(7). New subsection (8) provides that the court records referred to in subsection (7) are proof of their contents in the absence of evidence to the contrary. This mirrors new section 10F(8).</p>
<b>Clause 20</b>	<p><b>Section 12A inserted</b></p> <p>This clause inserts the new section 12A (VROs not for persons in family relationship) providing that a court is not to make a VRO for persons in a family relationship. This is because matters involving people in a family relationship are to be dealt with under the new Part 1B, which provides for the making of FVROs.</p>
<b>Clause 21</b>	<p><b>Section 13 amended</b></p> <p>This clause amends the wording of section 13 (Restraints on respondent) to maintain consistency with the new terminology introduced throughout the Act.</p>
<b>Clause 22</b>	<p><b>Part 2A heading and Part 2A Division 1 heading inserted</b></p> <p>This clause inserts a new heading after section 13 signalling that the next part of the Act is Part 2A – Provisions for FVRO and VRO. Part 2A deals with general provisions relating to firearms, duration and telephone applications that apply to both FVROs and VROs.</p>
<b>Clause 23</b>	<p><b>Section 14 amended</b></p> <p>This clause amends the wording of section 14 (Firearms order) to maintain consistency with the new terminology used in section 3 (Terms used).</p>
<b>Clause 24</b>	<p><b>Part 2A Division 1A heading inserted</b></p> <p>This clause inserts a new heading after section 14, Division 1A – Duration of orders.</p>

<p><b>Clause 25</b></p>	<p><b>Section 16 amended</b></p> <p>This clause amends section 16 (Duration of violence restraining order). Subclause (1) inserts a reference to ‘an FVRO’ into subsection (1) to extend the application of the provision to that type of order. In addition, ‘violence restraining order’ is abbreviated to ‘VRO’ as provided for under the amended section 3 (Terms used). These changes are replicated in the section heading.</p> <p>Subclause (2) deletes subsection (5). The subject matter of the deleted subsection (5) is dealt with in two new sections introduced by clause 26 below: 16A, which is specific to FVROs; and 16B, which is specific to VROs. Previously, subsection 5 applied equally to orders made in respect of family violence and other personal violence.</p>
<p><b>Clause 26</b></p>	<p><b>Section 16A and 16B inserted</b></p> <p>Clause 26 inserts new sections 16A and 16B in place of the deleted section 16(5).</p> <p>New section 16A deals with the duration of FVROs specifically. Subsection (1) defines ‘prisoner’ for the purposes of this section. Subsection (2) reproduces the substance of the deleted section 16(5) by providing that an FVRO remains in force for the period specified in the order or, if no such period is specified, two years (in the case of a final order or interim order that becomes a final order) or three months (in the case of a telephone order that becomes a final order). These periods are subject to any relevant variation or cancellation of the order under Part 5.</p> <p>New section 16A(3) varies this position for cases where the respondent is a prisoner (as defined in subsection (1)). In such cases, the FVRO remains in force from the date the order was made until 2 years (or such longer period as specified) from when the prisoner is released from prison.</p> <p>This new provision, which has no analogue in the existing RO Act, is intended to better protect victims of family violence during the often distressing and high-risk period following a perpetrator’s release from prison; and to save them from having to re-apply for an FVRO if it has expired. New subsection (4) confirms that for the purposes of subsection (3), the date on which the final order comes into force may be a date on which the respondent is in prison. This provision is intended to remove any doubt as to the intended</p>

	<p>interpretation of subsection (3).</p> <p>New subsection (5) provides guidance to the court when determining the appropriate duration of an FVRO. Consistent with the objects and principles of the new Part 1B of the Act, the safety of the protected person is identified as a paramount consideration. In addition, the responsiveness of the regime is enhanced by a requirement that the court have regard to the views of the person protected by the order with regards to the risk posed by the respondent.</p> <p>New subsection (6) provides for the court to have regard to the views of the respondent on duration.</p> <p>New subsection (7) provides that nothing in section 16A is to affect the operation of section 50A (which provides that a final restraining order made against a child is not to exceed 6 months duration unless it is made under section 63A).</p> <p>Clause 26 also inserts a new section 16B into the RO Act, which deals with duration of a VRO. Section 16B reproduces the substance of the deleted section 16(5). The difference is that the deleted section 16(5) applied to both personal and family violence, whereas the new section 16B applies only to the former.</p>
<b>Clause 27</b>	<p><b>Section 18 amended</b></p> <p>This clause amends section 18 (Telephone applications) to include reference to the new class of order created under Part 1B, the FVRO, and to adopt the abbreviation 'VRO' as provided for under the amended section 3 (Terms used).</p>
<b>Clause 28</b>	<p><b>Section 19 amended</b></p> <p>This clause amends section 19 (How to make telephone application) to include reference to the new class of order created under Part 1B, the FVRO, and to adopt the abbreviation 'VRO' as provided for under the amended section 3 (Terms used).</p>
<b>Clause 29</b>	<p><b>Section 20 amended</b></p> <p>This clause amends section 20 (When telephone application may be heard) to include reference to the new class of order created under Part 1B, the FVRO, and to adopt the abbreviation 'VRO' as provided for under the amended section 3 (Terms used).</p>



<p><b>Clause 30</b></p>	<p><b>Section 24A inserted</b></p> <p>This clause inserts a new section 24A into the RO Act to deal with applications for FVROs. Section 25 deals with the same subject matter in relation to VROs.</p> <p>Subsection (1) deals with applications made in person. The provision reproduces the existing section 25(1), but inserts 16 as the minimum age at which an application may be made in person.</p> <p>Subsection (2) mirrors the existing section 25(2) by providing for an application to be made by a parent, guardian or child welfare officer (where the person seeking protection is a child); and by a guardian appointed under the <i>Guardianship and Administration Act 1990</i>.</p> <p>Subsection (3), which sets out the courts to which applications may be made, replicates the existing section 25(3).</p>
<p><b>Clause 31</b></p>	<p><b>Section 25 amended</b></p> <p>This clause amends section 25 (Application) to adopt the abbreviation 'VRO' as provided for under the amended section 3 (Terms used). The same change is made to the heading of the section.</p> <p>As a result of the creation of FVROs, section 25 now applies only to applications pertaining to personal violence, not family violence. Applications for FVROs are dealt with separately under the new section 24A.</p>
<p><b>Clause 32</b></p>	<p><b>Section 26 amended</b></p> <p>This clause amends section 26 (Applicant to choose whether to have hearing in absence of respondent) to cross-reference to both the new section 24A (which applies to FVROs) and section 25 (which applies to VROs).</p>
<p><b>Clause 33</b></p>	<p><b>Section 29 amended</b></p> <p>This clause amends section 29 (Order at hearing in absence of respondent) to include reference to the new class of order created under Part 1B, the FVRO, and to adopt the abbreviation 'VRO' as provided for under the amended section 3 (Terms used).</p>
<p><b>Clause 34</b></p>	<p><b>Part 2A Division 3A heading amended</b></p> <p>This clause deletes 'and domestic' from the heading in Part 2A Division 3A in line with the change in terminology introduced</p>

	throughout the Act and explained in relation to clause 4 above.
<b>Clause 35</b>	<p><b>Section 30A amended</b></p> <p>This clause amends section 30A (When police order may be made) to reflect the creation of FVROs and to maintain consistency with the terminology used in the amended section 3 (Terms used) and the new Part 1B – Family Violence Restraining Order.</p>
<b>Clause 36</b>	<p><b>Section 30B amended</b></p> <p>This clause amends section 30B (Matters to be considered by police officer) to maintain consistency with the amended section 3 (Terms used); and the wording in the new section 10F, which sets out the matters the court is to have regard to when considering whether to make an FVRO, to the extent that there are equivalent provisions. Apart from updating the terminology, it is not intended that there be any substantive change to the matters which a police officer must consider when deciding whether to issue a police order.</p>
<b>Clause 37</b>	<p><b>Section 30C amended</b></p> <p>This clause amends section 30C (Restraints that may be imposed) to provide for consistency with the amended section 3 (Terms used) and the language used in the new subsection 10G(1), which sets out the restraints that a court may impose when making an FVRO. In addition, the words ‘absolutely or’ are deleted from section 30C(3) on the basis that they are superfluous.</p>
<b>Clause 38</b>	<p><b>Section 30D amended</b></p> <p>This clause deletes the words ‘and domestic’ from section 30D (police orders against children) in line with the change in terminology introduced throughout the Act and explained in relation to clause 4 above.</p>
<b>Clause 39</b>	<p><b>Section 30E amended</b></p> <p>This clause amends section 30E, which deals with the preparation, service and explanation of police orders.</p> <p>Subclause (1) deletes subsection (1) and replaces it with a new provision that will enable a police order to be served by <i>any</i> police officer, rather than only the officer who makes the order as is the case under the current wording of the Act. The current restriction creates a barrier to the timely service of orders by preventing service from occurring until the officer who made the order is</p>

	<p>available. Removal of this restriction will promote victim safety by ensuring that the legal restraints imposed under a police order come into effect without undue delay.</p> <p>Subclause (2) is designed to protect younger children (those under the age of 16) from being asked to explain complex and potentially distressing concepts to family members.</p>
<b>Clause 40</b>	<p><b>Section 34 amended</b></p> <p>This clause amends section 34 (Grounds for a misconduct restraining order) by abbreviating the term ‘misconduct restraining order’ to ‘MRO’ as provided for under the amended section 3 (Terms used).</p>
<b>Clause 41</b>	<p><b>Section 35 amended</b></p> <p>This clause amends section 35 (Matters to be considered by court) as follows:</p> <ul style="list-style-type: none"> <li>• the term ‘misconduct restraining order’ is abbreviated to ‘MRO’ as provided for under the amended section 3 (Terms used); and</li> <li>• references to criminal ‘record’ are deleted and replaced with criminal ‘convictions’. This is intended to provide for the consideration of past convictions irrespective of whether these are conveyed to the court via a formal ‘criminal record’ or via other means.</li> </ul>
<b>Clause 42</b>	<p><b>Section 35A amended</b></p> <p>This clause amends section 35A (Misconduct restraining orders not for persons in family and domestic relationship) as follows:</p> <ul style="list-style-type: none"> <li>• the term ‘misconduct restraining order’ (including where it appears in the heading) is abbreviated to ‘MRO’ as provided for under the amended section 3 (Terms used); and</li> <li>• the words ‘and domestic’ have been removed in line with the new terminology introduced throughout the Act and explained in relation to clause 4 above.</li> </ul>
<b>Clause 43</b>	<p><b>Section 36 amended</b></p> <p>This clause amends section 36 (Restraints on respondent), as follows:</p>

	<ul style="list-style-type: none"> <li>• the terms ‘misconduct restraining order’ and ‘violence restraining order’ are abbreviated to ‘MRO’ and ‘VRO’ respectively, as provided for under the amended section 3 (Terms used);</li> <li>• the new subsection 2(ca) adds stalking to the non-exhaustive list of things the court can restrain the respondent from doing; and</li> <li>• the words ‘absolutely or’ are deleted on the basis that they are superfluous.</li> </ul>
<b>Clause 44</b>	<p><b>Section 37 amended</b></p> <p>This clause amends section 37 (Duration of misconduct restraining order), by abbreviating the term ‘misconduct restraining order’, including where it appears in the heading, to ‘MRO’ as provided for under the amended section 3 (Terms used).</p>
<b>Clause 45</b>	<p><b>Section 38 amended</b></p> <p>This clause amends section 38 (Application) (in relation to the making of an application for a misconduct restraining order), by abbreviating the term ‘misconduct restraining order’ to ‘MRO’ as provided for under the amended section 3 (Terms used).</p>
<b>Clause 46</b>	<p><b>Section 39 amended</b></p> <p>This clause amends section 39 (Registrar to fix hearing and issue summons) by abbreviating the term ‘misconduct restraining order’ to ‘MRO’ as provided for under the amended section 3 (Terms used).</p>
<b>Clause 47</b>	<p><b>Section 41 amended</b></p> <p>This clause amends section 41 (Consent order or final order hearing to be fixed), to add the words ‘made in relation to a VRO or MRO’. These words clarify that section 41 applies only if the ‘final order’ is a VRO or an MRO.</p> <p>FVROs are excluded from the scope of section 41 on the basis that, in relation to family violence, the concept of a consent order has been superseded by the new concept of a ‘conduct agreement order’ (see section 10H).</p>

<p><b>Clause 48</b></p>	<p><b>Section 43 amended</b></p> <p>This clause amends section 43 (Making final order), as follows:</p> <ul style="list-style-type: none"> <li>• The amendments to subsection (1)(a) abbreviate ‘violence restraining order’ to ‘VRO’ and ‘misconduct restraining order’ to ‘MRO’ as provided for under the amended section 3 (Terms used).</li> <li>• The amendments to subsections (2) and (3) reflect the exclusion of FVROs from the scope of the ‘consent order’ provisions. As explained in relation to clause 47 above, this is on the basis that where family violence is involved, the concept of a consent order is replaced by the new concept of a ‘conduct agreement order’.</li> <li>• The new subsection (4) provides that the preceding subsections do not limit the capacity of the court to issue a conduct agreement order. As explained in relation to section 10H above, conduct agreement orders provide the imposition of restraints without an attendant need for the respondent to admit to perpetrating family violence or the court to be satisfied that the grounds for the making of an FVRO are met.</li> </ul>
<p><b>Clause 49</b></p>	<p><b>Section 44A amended</b></p> <p>This clause amends section 44A (Rules of evidence not to apply at ex parte hearing). Subsection 44A(1) currently provides that the rules of evidence do not apply in relation to ex parte hearings fixed under 26(2). These hearings can lead to the making of an interim order. The amendment to this subsection extends the relaxation of the rules of evidence to hearings fixed for a final order for an FVRO and for the variation or cancellation of an FVRO. This change was recommended by the LRCWA as a means of overcoming existing issues relating to the courts’ capacity to access and consider information relating to the grounds for imposing a restraining order in cases of family violence.</p> <p>The new subsection 2A creates safeguards around the relaxation of the rules of evidence provided for by the amendment to subsection (1).</p> <p>The heading of section 44A is amended to maintain consistency with the substance of the provision.</p>

<b>Clause 50</b>	<p><b>Section 44C amended</b></p> <p>This clause amends section 44C (Cross-examination of certain persons) by removing the words ‘and domestic’. This amendment maintains consistency with the new terminology introduced throughout the Act and explained in relation to clause 4 above.</p>
<b>Clause 51</b>	<p><b>Section 45 amended</b></p> <p>This clause amends section 45 (Application) as follows:</p> <ul style="list-style-type: none"> <li>• Section 45(5) is amended to reflect the inclusion of a new definition of ‘prescribed form’ in section 3 (Terms used). The amendment has the effect of clarifying that the form is to be prescribed in rules of court rather than in regulations; and</li> <li>• in section 45(6) paragraph (b), the term ‘misconduct restraining order’ is abbreviated to ‘MRO’ as provided for under the amended section 3 (Terms used).</li> </ul>
<b>Clause 52</b>	<p><b>Section 45A amended</b></p> <p>This clause amends section 45A (Application by CEO (child welfare)’, as follows:</p> <ul style="list-style-type: none"> <li>• A reference to ‘FVRO’ has been included to ensure that the process set out in 45A applies in relation to the new class of order created under Part 1B, the FVRO; and</li> <li>• the term ‘violence restraining order’ is abbreviated to ‘VRO’ as provided for under the amended section 3 (Terms used).</li> </ul>
<b>Clause 53</b>	<p><b>Section 47 amended</b></p> <p>This clause amends section 47 (Registrar to issue summons), by abbreviating the term ‘misconduct restraining order’ to MRO as provided for under the amended section 3 (Terms used).</p>
<b>Clause 54</b>	<p><b>Section 49B amended</b></p> <p>Clause 54 inserts a new section 49B (Matters to be considered by court).</p> <p>The new section sets out the matters that the court must have regard to when considering whether to vary or cancel an FVRO or VRO. Subsection (1) relates to FVROs while subsection (2) relates to VROs. The references to ‘the matters referred to in section 10F’ in subsection (1) and ‘the matters referred to in section 12’ in subsection (2) have the effect of aligning the matters that the court</p>

	<p>must have regard to when considering whether to vary or cancel an order with the matters that the court must have regard to when considering whether to make an order in the first place.</p> <p>In addition, the new section 49B(1) paragraph (b) creates a safeguard against manipulation of the person protected by the order by requiring the court to consider whether an application for variation or cancellation made by the person protected may have been influenced by threats or other forms of pressure. This only applies in relation to family violence matters.</p>
<p><b>Clause 55</b></p>	<p><b>Section 50C amended</b></p> <p>This clause amends section 50C (CEO (child welfare) to be notified before certain orders are made).</p> <p>A reference to 'FVRO' has been included to ensure that the notification to the CEO (child welfare) requirement created under subsection 50C(1) applies to this new class of order. In addition, the term 'violence restraining order' is abbreviated to 'VRO' as provided for under the amended section 3 (Terms used).</p> <p>The wording of subsection 50C(1)(a) has been amended to enhance readability.</p> <p>The section heading is amended to read: 'CEO (child welfare) to be notified before certain FVROs or VROs are made' to reflect the wording of the section as amended.</p>
<p><b>Clause 56</b></p>	<p><b>Section 55 amended</b></p> <p>This clause amends section 55 (Service of restraining order), as follows:</p> <ul style="list-style-type: none"> <li>• A new paragraph (c) is inserted in section 55(1) to reflect the expanded power for the court to make an order for substituted service under the amended section 60 (as explained in relation to clause 58 below).</li> <li>• Section 55(3) paragraph(c) is updated to reflect the new terminology used in the Bill (specifically the inclusion of 'consent order' as a defined term under section 3 (Terms used)); and the creation of a new type of order, the conduct agreement order, under new section 10H. Conduct agreement orders are included in this paragraph because they are similar in nature to consent orders. Service by post is appropriate for consent orders and conduct agreement</li> </ul>

	<p>orders as they involve the respondent voluntarily agreeing to abide by certain restraints.</p> <ul style="list-style-type: none"> <li>• The new section 55(5A) replicates other provisions that provide for communication with individuals who do not readily understand English (see for example sections 8(2) and 30E(4) as amended).</li> <li>• The new section 55(7) has been included to clarify that a person providing oral service does not need to be in possession of the document itself, provided that the terms of the order are communicated.</li> </ul>
<b>Clause 57</b>	<p><b>Section 58 amended</b></p> <p>This clause inserts a new paragraph (d) into section 58 (Proof of service) subsection (1). This change is consequential to the amendments to section 60 (Substituted service) explained below in relation to clause 58.</p>
<b>Clause 58</b>	<p><b>Section 60 amended</b></p> <p>This clause amends section 60 (Deliberate avoidance of service’).</p> <p>Substituted service provides a means of serving a document in circumstances where conventional methods of service are not effective. Under the existing section 60(2) (which is not amended) the steps that constitute substituted service are determined by the court on a case-by-case basis. By way of example, this may involve service by a call to a mobile telephone number, or leaving the order pinned to the door of a house.</p> <p>The new section 60(1A) gives the courts broader discretion to authorise substituted service where the document to be served is an FVRO. It provides that a court may authorise substituted service where conventional (ie, personal or postal) service is impracticable for a range of reasons (including, but not limited to those set out in section 60(1A) paragraph(a)), and where any delay in service is likely to put at risk the safety of the person protected by the order.</p> <p>The new section 60(3) reinforces the importance of considering risk in cases involving family violence by requiring that the court give consideration to making an order for substituted service in relation to an FVRO in every case, whether at an interim order or final order stage.</p>



	<p>The new section 60(4) provides that the court may make an order for substituted service in relation to an FVRO at the time of making the FVRO or at any other time during the relevant proceedings. This is a departure from the existing position, and the position that will remain in relation to other types of orders, which allows the court to authorise substituted service only if it is satisfied that a person is deliberately avoiding being served with a document under the Act. The new position in relation to FVROs promotes the consideration of risk for victims of family violence at all key decision points in the process of an applicant seeking that an FVRO be made.</p> <p>The changes introduced by the new subsections (1A), (3) and (4) reflect the overriding importance of serving documents – and by extension bringing legal protections into force – in a timely manner in cases that involve family violence. The new position is consistent with the objects of the part of the Act dealing with FVROs as set out in section 10A, and in particular the object of maximising ‘the safety of persons who have experienced, or are at risk of, family violence’ set out in section 10A.</p> <p>The section heading is amended to reflect the changes to the substance of the provision.</p>
<p><b>Clause 59</b></p>	<p><b>Section 61 amended</b></p> <p>This clause amends section 61 (Breach of restraining order), as follows:</p> <ul style="list-style-type: none"> <li>• The amendment to subsection 61(1) extends this offence provision to cover a breach of an FVRO.</li> <li>• Abbreviations of ‘violence restraining order’ (VRO) and ‘misconduct restraining order’ (MRO) are adopted in subsections 61(1) and 61(2) as provided for under the amended section 3 (Terms used).</li> <li>• The wording used to define the penalties under subsections 61(1), 61(2) and 61(2a) has been amended for clarity. The penalties themselves are not affected by the amendments.</li> <li>• Subsection 61(4) has been amended to reflect the new terminology relating to ‘family violence’ and ‘personal violence’ that is introduced throughout the Act.</li> </ul>
<p><b>Clause 60</b></p>	<p><b>Section 61A amended</b></p> <p>This clause amends section 61A (Penalty for repeated breach of restraining order). Section 61A creates a presumption of</p>

	<p>imprisonment in sentencing for a third breach of a restraining order.</p> <p>The amendments to section 61A are intended to clarify the method used to count breaches. The new section 61(2A) ensures that offences are counted as breaches for the purposes of section 61A irrespective of whether the convictions for them:</p> <ul style="list-style-type: none"> <li>• were recorded before or after the date on which the relevant offence, or any of the previous offences, was committed; or</li> <li>• have been counted in sentencing under this section for a different relevant offence.</li> </ul> <p>The new section 61A(2B) provides that convictions for multiple offences committed on the same day count as one ‘strike’ only.</p> <p>These amendments regarding counting rules have been drafted for legislative consistency with similar amendments in relation to how ‘strikes’ are counted in the home burglary provisions in sections 401A and 401B of <i>The Criminal Code</i>.</p>
<p><b>Clause 61</b></p>	<p><b>Section 61C inserted</b></p> <p>Clause 61 inserts a new section 61C (Report under s.10V to be considered in sentencing for breach of FVRO). This provision requires a court sentencing a person for a breach of an FVRO to have regard to any report under section 10V relating to the FVRO. Reports under section 10V provide information about the person’s involvement with a BCP, including whether the BCP was successfully completed, and are provided to the court by the BCP provider.</p>
<p><b>Clause 62</b></p>	<p><b>Section 62 amended</b></p> <p>This clause amends section 62 (Defence).</p> <p>Section 62 sets out a number of defences to the offences created under section 61. The new section 62(1) paragraph (ca) creates an additional defence for circumstances where the ‘breach’ is the result of the person’s attendance at a court hearing under the Act or under any other written law. This defence is necessary because hearings are often attended by both the person restrained by an order and the person protected, resulting in a degree of proximity that may not be permitted under the terms of the order.</p> <p>The definition of ‘legal practitioner’ is deleted on the basis that this definition has been inserted into the amended section 3 (Terms</p>

	used).
<b>Clause 63</b>	<p><b>Section 62A amended</b></p> <p>This clause removes the words ‘and domestic’ where they appear in section 62A (Investigation of suspected family and domestic violence) to maintain consistency with the new terminology of ‘family violence’ introduced throughout the Act and explained in relation to clause 4 above. This includes amending the heading to read ‘Investigation of family violence’.</p>
<b>Clause 64</b>	<p><b>Section 62B amended</b></p> <p>This clause amends section 62B (Investigation of suspected family and domestic violence) and the heading of section 62C.</p> <p>The amendments to subsections (1) and (2) and to the section heading maintain consistency with the new terminology of ‘family violence’ introduced throughout the Act.</p> <p>Subsection 62B(4) is amended to clarify that the form is to be prescribed in regulations, rather than in the rules of the court.</p>
<b>Clause 65</b>	<p><b>Section 62C amended</b></p> <p>This clause amends section 62C (Action to be taken by police officer after investigating suspected family and domestic). The amendment maintains the accuracy of cross-references to earlier provisions of the Act that have been affected by the creation of FVROs. Section 62C will now provide for a police officer who has investigated suspected family violence to apply for an FVRO, rather than a VRO as was previously the case.</p> <p>The heading of section 62C has been amended to refer to ‘family violence’ rather than ‘family and domestic violence’ in order to maintain consistency with the new terminology used in the Act.</p>
<b>Clause 66</b>	<p><b>Section 62D amended</b></p> <p>This clause amends section 62D (Approval of senior officer).</p> <p>The amendment to section 62D(1) corrects a cross-reference to section 62B.</p> <p>The change to subsection (3) paragraph (b)(ii) (which is effected through the deletion and replacement of the existing provision) provides for a police officer to apply for approval to enter premises</p>

	<p>in circumstances where the suspected perpetrator of family violence is not present.</p> <p>The change to the definition of 'senior officer' in section 62D(8) will serve to broaden the ranks of officers who are able to approve entry to premises under this section. This change will make the approval more accessible to front-line officers, thus reducing the likelihood of delay or, alternatively, reliance on the unauthorised entry power created under section 62B(1a) of the Act.</p>
<b>Clause 67</b>	<p><b>Section 62E amended</b></p> <p>This clause amends section 62E (Seizure of firearms).</p> <p>The insertion of the reference to 'an FVRO' ensures that the seizure power created by section 62E applies to this new type of order. The phrase 'violence restraining order' is abbreviated to VRO as provided for under the amended section 3 (Terms used).</p> <p>The amendment to subsection 62E(2) clarifies that the form is to be prescribed in regulations rather than in the rules of the court.</p>
<b>Clause 68</b>	<p><b>Section 62F amended</b></p> <p>This clause amends section 62F (Detention of respondent during telephone hearing or while police order is being made). The amendments to section 62F(1) paragraph (c) and 62F(2) paragraph (a) provide that a police officer may, in addition to requiring a person to remain at a designated place, require the person to accompany the officer to a police station or some other place and wait at that place. These amendments necessitate consequential changes to section 62F(1) paragraph (d) and section 62F(2) paragraph (b) respectively.</p> <p>The insertion of subsections (1A) and (2A) makes it an offence to fail to comply with an order under subsection (1) and subsection (2) respectively. The penalty for both these offences is a fine of \$3,000 or imprisonment for 12 months.</p>
<b>Clause 69</b>	<p><b>Section 63 amended</b></p> <p>Clause 69 amends section 63 (Making restraining orders during other proceedings).</p> <p>The changes to section 63(4) paragraphs (a) and (b) are consequential to the creation of FVROs under the new Part 1B of</p>

the Act.

The amendment to subsection 63(4) paragraph (c) makes clear that a court purporting to exercise jurisdiction under section 63 must permit a respondent the opportunity to make submissions to the court. The amendment makes clear that it is unnecessary for a court to proceed to a full hearing of the evidence in order to satisfy the requirement in section paragraph (c).

The new section 63(4AA) provides that, in the absence of exceptional circumstances, a court is taken to have grounds to make an FVRO if:

- an offender pleads guilty to, or is found guilty of, an offence specified in paragraph (a); and
- a family member of the offender who is a victim of the offence satisfies the court (via a victim impact statement or some other means) that he or she wants to be protected by an FVRO.

Subsection 63(4AA)(a) specifies the offences against *The Criminal Code* to which subsection 63(4AA) applies. The relevant sections of *The Criminal Code* are:

- 301: Wounding;
- 304(1): Act or omission causing bodily harm or danger;
- 313: Common assault;
- 317: Assault causing bodily harm;
- 317A: Assault with intent;
- 323: Indecent assault;
- 324: Aggravated indecent assault;
- 333: Deprivation of liberty;
- 338A: Threat with intent to gain;
- 338B: Threats;
- 338C: Statement or act creating false apprehension as to or existence of threat or danger;
- 338E: Stalking; and
- 444: Criminal damage (where offending against section 444 is dealt with summarily).

The new subsection 63(4AB) provides that an order made under subsection (4AA) is to restrain the person from doing all or any of the things listed in paragraphs (a)-(d).

**Clause 70****Section 63A amended**

This clause amends section 63A (Restraining order to be made if certain violent personal offences committed). Section 63A requires a court convicting a person of a 'personal violent offence' to impose a lifetime restraining order protecting the victim, except where the victim objects.

The new subsection (1A) defines 'violent personal offence' for the purposes of this section, replacing the definition included in the deleted subsection (5). 'Violent personal offence' is defined with reference to offences against specified provisions of *The Criminal Code*. The new definition retains all of the offences that were included in the previous definition, specifically:

- 283: Attempt to unlawfully kill;
- 297: Grievous bodily harm;
- 325: Sexual penetration without consent;
- 326: Aggravated sexual penetration without consent;
- 327: Sexual coercion; and
- 328: Aggravated sexual coercion.

The new definition is expanded to include offences against the following sections of the *Criminal Code*, where the offending occurs in a family violence context:

- 292: Disabling in order to commit indictable offence;
- 293: Stupefying in order to commit indictable offence;
- 294: Act intended to cause grievous bodily harm or prevent arrest;
- 304(2): Act or omission causing bodily harm or danger;
- 320: Sexual Offences against children under 13 years;
- 321: Sexual Offences against children of or over 13 but under 16 years;
- 321A: Persistent sexual conduct with a child under 16;
- 329: Sexual offences by relatives;
- 332: Kidnapping; and
- 444: Criminal damage (where offending against section 444 is dealt with on indictment).

The effect of broadening the definition is that lifetime restraining orders will automatically be made in response to a broader range of offending behaviour.

	<p>The amendments to section 63A(1) paragraphs (a) and (b) and section 63A(4) extend the application of those provisions to FVROs.</p> <p>As already noted, section 63A(5) is deleted as it has been replaced with the new subsection 1A. This restructuring necessitates the removal of the words ‘within the meaning of subsection (5)’ from section 63A(1), as provided for under clause 70(2).</p> <p>The heading is amended to clarify that section 63A provides for the making of FVROs and VROs.</p>
<p><b>Clause 71</b></p>	<p><b>Section 63B amended</b></p> <p>Section 63B requires that a court, when sentencing a person for a ‘violent personal offence’ (as that term is defined), must determine the seriousness of the offence by reference to whether the person is in a family relationship with a victim of the offence; or a child was present when the offence was committed; or the conduct of the offender in committing the offence constituted a breach of a restraining order. This provision ensures that sentencing decisions take into account the particularly serious nature of offending that occurs within a family violence context.</p> <p>Clause 71 provides that the existing section 63B is to be deleted and replaced with a newly inserted provision.</p> <p>The new definition retains the following offences from the previous definition:</p> <ul style="list-style-type: none"> <li>• 277: unlawful homicide;</li> <li>• 283: attempt to unlawfully kill;</li> <li>• 332: kidnapping;</li> <li>• 333: deprivation of liberty;</li> <li>• 338A: threat with intent to gain etc;</li> <li>• 338B: threats;</li> <li>• 338C: statement or act creating false apprehension as to existence of threat or danger; and</li> <li>• 338E: stalking.</li> </ul> <p>The definition has been expanded to include the following additional offences:</p> <ul style="list-style-type: none"> <li>• 281: Unlawful assault causing death;</li> <li>• 292: Disabling in order to commit indictable offence;</li> <li>• 293: Stupefying in order to commit indictable offence;</li> </ul>

	<ul style="list-style-type: none"> <li>• 294: Act intended to cause grievous bodily harm or prevent arrest;</li> <li>• 304: Act or omission causing bodily harm or danger;</li> <li>• 320: Sexual offences against a child under 13;</li> <li>• 321: Sexual offences against a child of or over 13 and under 16;</li> <li>• 321A: Persistent sexual conduct with a child under 16;</li> <li>• 329: Sexual offences by relatives and the like; and</li> <li>• 444: Criminal damage.</li> </ul> <p>The newly inserted section 63B has been reordered and reworded to improve readability but the substance of the existing provision has otherwise been retained.</p>
<p><b>Clause 72</b></p>	<p><b>Section 63D inserted</b></p> <p>Clause 72 inserts a new section to require the court to give reasons for doing one of the following in respect of an FVRO:</p> <ul style="list-style-type: none"> <li>• Dismissing or adjourning a telephone application (section 23 (1)(b) or (c)).</li> <li>• Dismissing or adjourning an application at an ex parte hearing (section 29(1)(b) or (c)).</li> <li>• Dismissing an application, or directing the registrar to fix a hearing and summons the respondent, at a mention hearing in the absence of the respondent (section 40(3)(b) or (c)).</li> <li>• Refusing to make a final order (section 43(1)).</li> </ul> <p>The new subsection (2) provides that the reasons given under subsection (1) must address the primary principles relating to FVROs set out in section 10B(1)(a), (b) and (c).</p> <p>The intention of this new section is to ensure that courts consider the safety risks to the victim when they dismiss or adjourn certain applications for FVROs.</p>
<p><b>Clause 73</b></p>	<p><b>Section 64 amended</b></p> <p>This clause amends section 64 (Appeals). The primary purpose of this amendment is to ensure that a decision of a court to refuse to make a final order may be appealed in accordance with section 64. This addresses an issue that was brought to light in the Supreme Court decision in <i>BV (on behalf of M, N and O) v TP</i> [2016] WASC 228. In that case, the Court indicated that the existing (unamended) wording of section 64(1) paragraph (b), ‘a decision in relation to a</p>



	<p>final order', does not include a decision <i>not</i> to make such an order. The amendment also seeks to minimise the risk of any further uncertainty by providing a more prescriptive account of the decisions that may be appealed.</p>
<b>Clause 74</b>	<p><b>Section 67 amended</b></p> <p>This clause amends section 67 (Adjournments). Section 76(2) requires the court to give reasons when granting an adjournment under subsection (1). The amendment to this provision inserts a new subsection (2A) requiring that the reasons address the three primary principles set out in section 10B. The intent of this provision is to ensure that the court considers the safety risk to a victim that may result from a decision to adjourn where there is no interim order in place.</p>
<b>Clause 75</b>	<p><b>Section 68 amended</b></p> <p>This clause amends section 68 (Orders may be extended to apply to other people) to clarify the grounds on which a court may extend the protections provided under an order to a third party (ie, a person other than the person protected). The test stipulated is that the court must be satisfied that it would have been able to make the order in respect of the third party had an application for such an order been made separately.</p> <p>The new subsection (3) provides that the power to extend the protection of an order to a third party does not apply to an FVRO made during the course of criminal proceedings under section 63(4AA). This is because the streamlined process created under that section does not provide for due consideration of whether the test stipulated in the amended subsection (1) is met.</p>
<b>Clause 76</b>	<p><b>Section 70 amended</b></p> <p>This clause amends section 70 (Information on identity of certain person restricted).</p> <p>Subclause (1) is a cross referencing adjustment that is necessitated by the amendment in subclause (2).</p> <p>Subclause (2) inserts two new subsections, (1A) and (1B). New subsection (1A) creates another exception to the restriction created by subsection (1). This new exception applies where information that is subject to subsection (1) is disclosed to a person who is, or who is in a class of persons that is, prescribed for the purposes of</p>

	<p>this subsection. This is supported by the new subsection (1B), which provides that such disclosure is not unlawful and is not to be regarded as unprofessional or a breach of professional ethics or standards.</p> <p>The purpose of these new subsections is to facilitate the release of relevant information to the Australian Criminal Intelligence Commission as a step in the development of a National Domestic Violence Order Scheme.</p> <p>Subclause (3) modernises the drafting in section 70(2).</p>
<b>Clause 77</b>	<p><b>Section 70A amended</b></p> <p>This clause amends section 70A to maintain consistency with the amended section 3 (Terms used) and to extend the application of the provision to FVROs.</p>
<b>Clause 78</b>	<p><b>Section 71 amended</b></p> <p>This clause amends section 71 (Notification when firearms order made) The definition of ‘firearms order’ is amended to include reference to FVROs, and to adopt the abbreviations provided for under the amended section 3 (Terms used).</p> <p>The wording of the penalty provisions in subsections (2) and (6) is amended to modernise the drafting. The penalties themselves are not affected by the amendment.</p>
<b>Clause 79</b>	<p><b>Section 72A inserted</b></p> <p>This clause inserts a new section 72A (Forms) that largely replicates section 73(3), which is to be deleted. The provision has been moved out of section 73 for coherence.</p>
<b>Clause 80</b>	<p><b>Section 73 amended</b></p> <p>This clause deletes section 73(3) which has now become the new section 72A.</p>
<b>Clause 81</b>	<p><b>Section 73A inserted</b></p> <p>This clause inserts a new section 73A which requires the Minister to review the operation of the changes provided for under this amending Act. The review is to commence as soon as practicable after two years of operation; and is to be tabled in Parliament six</p>

	months from that date.
<b>Clause 82</b>	<b>Section 75 amended</b> This clause amends section 75(2) to replace 'manner' with 'form' for clarity.
<b>Clause 83</b>	<b>Section 77 amended</b> This clause amends section 77 to include reference to FVROs and to adopt the abbreviations provided for under the amended section 3 (Terms used).
<b>Clause 84</b>	<b>Section 79A amended</b> This clause amends section 79A to clarify that the reference to 'prescribed' means 'prescribed in regulations' (as opposed to prescribed in rules of court).
<b>Clause 85</b>	<b>Section 79B amended</b> This clause amends section 79B(2) for clarity.
<b>Clause 86</b>	<b>Section 79D amended</b> This clause amends section 79D to include reference to FVROs and to adopt the abbreviations provided for under the amended section 3 (Terms used).
<b>Clause 87</b>	This clause states that Division 1 of Part 3 amends the <b><i>Bail Act 1982</i></b> .
<b>Clause 88</b>	Clause 88 is a consequential amendment that reflects the creation of FVROs.
<b>Clause 89</b>	Clause 89 is a consequential amendment that reflects the creation of FVROs.
<b>Clause 90</b>	Clause 90 states that Division 2 of Part 3 amends the <b><i>Children and Community Services Act 2004</i></b> (CCS Act).
<b>Clause 91</b>	Clause 91 contains consequential amendments to section 3 of the CCS Act in order to maintain consistency in language between the amended RO Act and the CCS Act.
<b>Clause 92</b>	Clause 92 is a consequential amendment that maintains consistency in language between the amended RO Act and the

	CCS Act.
<b>Clause 93</b>	Clause 93 is a consequential amendment that maintains consistency in language between the amended RO Act and the CCS Act.
<b>Clause 94</b>	Clause 94 is a consequential amendment that maintains consistency in language between the amended RO Act and the CCS Act.
<b>Clause 95</b>	Clause 95 states that Division 3 of Part 3 amends the <b><i>Community Protection (Offender Reporting) Act 2004</i></b> .
<b>Clause 96</b>	Clause 96 contains consequential amendments that maintain the accuracy of cross-references to the amended RO Act in section 107 of the <i>Community Protection (Offender Reporting) Act 2004</i> .
<b>Clause 97</b>	Clause 97 states that Division 4 of Part 3 amends <b><i>The Criminal Code</i></b> .
<b>Clause 98</b>	Clause 98 extends the concepts of bodily harm and grievous bodily harm to apply to a pregnant woman's unborn child. This change reflects the added seriousness of offending against pregnant women, including in circumstances where the offending directly targets the unborn child.
<b>Clause 99</b>	Clause 99 amends section 221 of <i>The Criminal Code</i> in order to maintain consistency in language between the amended RO Act and <i>The Criminal Code</i> . Clause 99(1) paragraph (b) additionally amends section 221(1) paragraph (c) of <i>The Criminal Code</i> to clarify that the circumstances of aggravation do not include conduct of the offender that constitutes a breach of a Behaviour Management Order made under Part 1C of the amended RO Act.
<b>Clause 100</b>	Clause 100 increases the maximum penalty for the offence of unlawful assault causing death, contrary to section 281 of <i>The Criminal Code</i> , from 10 years to 20 years.
<b>Clause 101</b>	Clause 101 states that Division 5 of Part 3 amends the <b><i>Criminal Investigation Act 2006 (CI Act)</i></b> .
<b>Clause 102</b>	Clause 102 is a consequential amendment to section 128(1) paragraph (c) of the CI Act that is intended to replicate the existing subsection using language and cross-referencing consistent with the amended RO Act.

<b>Clause 103</b>	<p>Clause 103 amends section 135(2) of the CI Act.</p> <p>Section 135 provides that certain people in custody may be searched. Subsection (2) sets out the meaning of ‘in custody’ for the purposes of this section.</p> <p>The amendment inserts a new paragraph (c) that refers to sections 62F(1)(c) and (2)(a) of the RO Act as amended (under these provisions, a police officer may order a person to remain in a designated place, or to accompany a police officer to a police station or some other place and wait at that place, to facilitate the making or service of an order).</p> <p>The effect of the amendment is to ensure that a person who is subject to such an order may be searched in accordance with section 135 of the CI Act.</p>
<b>Clause 104</b>	<p>Clause 104 states that Division 6 of Part 3 amends the <b><i>Prisons Act 1981</i></b>.</p>
<b>Clause 105</b>	<p>Clause 105 extends the existing victim disclosure scheme created under section 113B of the <i>Prisons Act 1984</i> to victims of family violence who are protected by an FVRO or who are otherwise able to demonstrate, to the satisfaction of the CEO of the Department of Corrective Services, that they are the victim of a violent personal offence (as that phrase is defined) committed in the context of a family relationship.</p> <p>The term ‘violent personal offence’ is defined by subclause (1) with reference to sections 63(4AA) and 63A(1A) of the RO Act as amended.</p> <p>Subclause (3), which inserts a new subsection 113B(1A) into the <i>Prisons Act 1981</i>, makes clear that the victim disclosure scheme applies irrespective of whether there is a link between the offence that led to imprisonment and the offence or other family violence committed against the victim.</p>
<b>Clause 106</b>	<p>Clause 106 states that Division 7 of Part 3 amends the <b><i>Sentence Administration Act 2003</i></b>.</p>
<b>Clause 107</b>	<p>Clause 107 amends section 4 of the <i>Sentence Administration Act 2003</i> by replacing the substantive definition of ‘victim’ with a new definition that refers to the new section 5D of the <i>Sentence</i></p>

	<i>Administration Act 2003</i> , to be inserted pursuant to clause 110.
<b>Clause 108</b>	Clause 108 is a consequential amendment to section 5A of the <i>Sentence Administration Act 2003</i> as a result of the new definition of 'victim' provided by clause 110.
<b>Clause 109</b>	Clause 109 is a consequential amendment to section 5C of the <i>Sentence Administration Act 2003</i> as a result of the new definition of 'victim' provided by clause 110.
<b>Clause 110</b>	<p>Clause 110 inserts a new section 5D into the <i>Sentence Administration Act 2003</i> which provides a revised definition of 'victim of an offender or prisoner'. The new definition includes a person who is protected by an FVRO to which the prisoner is a respondent, as well as a person who has been the victim of a violent personal offence committed by the prisoner in the context of a family relationship.</p> <p>The new definition ensures that the safety and other interests of victims of family violence are considered in the course of deliberations regarding the person's release, even if that victim is not the victim of the offence for which the offender is currently imprisoned.</p>
<b>Clause 111</b>	Clause 111 amends section 30 of the <i>Sentence Administration Act 2003</i> to reflect the definition of 'victim' that is provided in the new section 5D.
<b>Clause 112</b>	Clause 112 provides for the deletion of section 97D(1) of the <i>Sentence Administration Act 2003</i> on the basis that it duplicates the definition inserted by clause 110.