

Criminal Laws (Domestic Violence) Amendment Bill 2016

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Western Australia

LEGISLATIVE ASSEMBLY

(Introduced by Mark McGowan MLA)

**Criminal Laws (Domestic Violence) Amendment
Bill 2016**

A Bill for

An Act to amend the *Criminal Procedure Act 2004*, the *Evidence Act 1906*, the *Restraining Orders Act 1997*, the *Sentencing Act 1995* and *The Criminal Code*.

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Criminal Laws (Domestic Violence) Amendment Act 2016*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

1 **Part 2 — *Criminal Procedure Act 2004* amended**

2 **3. Act amended**

3 This Part amends the *Criminal Procedure Act 2004*.

4 **4. Section 3 amended**

5 In section 3(1) insert in alphabetical order:

6
7 *domestic violence offence* means an offence against an
8 Act, other than the *Restraining Orders Act 1997*,
9 committed by a person where the act done, or omission
10 made, which constitutes the offence is also —

- 11 (a) an act of family and domestic violence as
12 defined in the *Restraining Orders Act 1997*
13 section 6(1), committed by the person; or
14 (b) a contravention of the *Restraining Orders*
15 *Act 1997* section 61(1);
16

17 **5. Section 132 amended**

18 After section 132(6) insert:

- 19
20 (6A) Without limiting subsection (6), if the court considers
21 the offence charged in the prosecution notice or
22 indictment is also a domestic violence offence, the
23 court may, for the purposes of the *Sentencing Act 1995*
24 section 9AB, order that the prosecution notice or
25 indictment be amended to state that the offence is also
26 a domestic violence offence.
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1 **6. Schedule 1 clause 8A inserted**

2 At the end of Schedule 1 Division 2 insert:

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4 **8A. Prosecution notice or indictment may state that the**
5 **offence charged is also domestic violence offence**

6 For the purposes of the *Sentencing Act 1995* section 9AB, a
7 prosecution notice or indictment for a charge alleging an
8 offence may state the offence is also a domestic violence
9 offence.

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Part 3 — Evidence Act 1906 amended

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7. Act amended

This Part amends the *Evidence Act 1906*.

8. Section 106A amended

(1) In section 106A insert in alphabetical order:

domestic violence offence means an offence against an Act, other than the *Restraining Orders Act 1997*, committed by a person where the act done, or omission made, which constitutes the offence is also —

- (a) an act of family and domestic violence as defined in the *Restraining Orders Act 1997* section 6(1), committed by the person; or
- (b) a contravention of the *Restraining Orders Act 1997* section 61(1);

(2) In section 106A in the definition of ***victim*** delete “offence or a criminal organisation” and insert:

offence, criminal organisation offence or domestic violence

9. Section 106R amended

After section 106R(3B) insert:

(3C) Despite subsection (3), in any proceeding for a domestic violence offence an order must be made under subsection (1) in respect of any person who is a victim of the offence or a witness for the prosecution unless the court is satisfied —

- (a) that subsection (3) does not apply to the person; and

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- 1 (b) that the person does not wish to be declared to
2 be a special witness.
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Part 4 — *Restraining Orders Act 1997* amended

10. Act amended

This Part amends the *Restraining Orders Act 1997*.

11. Section 61 amended

(1) In section 61(1) delete “an offence.” and insert:

a crime.

(2) In section 61(1) delete the Penalty and insert:

Penalty for this subsection: imprisonment for 3 years.

(3) In section 61(2) delete the Penalty and insert:

Penalty for this subsection: imprisonment for 6 months.

(4) In section 61(2a) delete “an offence.” and insert:

a crime.

(5) In section 61(2a) delete the Penalty and insert:

Penalty for this subsection: imprisonment for 3 years.

12. Section 61A amended

In section 61A(2)(b) delete “2 offences” and insert:

one offence

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Part 5 — Sentencing Act 1995 amended

13. Act amended

This Part amends the *Sentencing Act 1995*.

14. Section 4 amended

In section 4(1) insert in alphabetical order:

domestic violence offence means an offence against an Act, other than the *Restraining Orders Act 1997*, committed by a person where the act done, or omission made, which constitutes the offence is also —

- (a) an act of family and domestic violence as defined in the *Restraining Orders Act 1997* section 6(1), committed by the person; or
- (b) a contravention of the *Restraining Orders Act 1997* section 61(1);

15. Section 9AB inserted

At the end of Part 2 Division 1 insert:

9AB. Convictions for domestic violence offences

- (1) This section applies if —
 - (a) a prosecution notice, or an indictment, for a charge for an offence states the offence is also a domestic violence offence; and
 - (b) a court convicts the offender of the offence; and
 - (c) the court is satisfied that the offence is also a domestic violence offence.

- 1 (2) The court must order that the conviction also be —
2 (a) recorded as a conviction for a domestic
3 violence offence; and
4 (b) entered in the offender’s criminal history
5 accordingly.
- 6 (3) If the court makes an order under subsection (2), the
7 prosecution may apply to the court for an order that an
8 offence stated in the application, of which the offender
9 has previously been convicted (a *previous offence*),
10 also be —
11 (a) recorded as a conviction for a domestic
12 violence offence; and
13 (b) entered in the offender’s criminal history
14 accordingly.
- 15 (4) The application —
16 (a) may be made in writing or orally; and
17 (b) must include enough information to allow the
18 court to make a decision about whether it is
19 appropriate to make the order.
- 20 (5) The court may ask the prosecutor for further
21 information for it to decide whether to make an order
22 under subsection (6).
- 23 (6) If, after considering the application, the court is
24 satisfied a previous offence is a domestic violence
25 offence, the court must grant the application.
- 26 (7) A person against whom the domestic violence offence
27 was committed is not compellable as a witness in
28 proceedings before the court to decide the application.
- 29 (8) If a court is satisfied an error has been made in
30 recording or entering an offence as a domestic violence
31 offence, the court may, on an application or its own
32 initiative, correct the error.
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1 **16. Section 148 amended**

2 After section 148(2) insert:

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- 4 (3) Regulations may prescribe matters relating to the
5 recording of convictions for domestic violence
6 offences, or the making of entries in criminal histories
7 about domestic violence offences, including, for
8 example, the way in which, and time within which, the
9 records or entries are to be made.

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Part 6 — *The Criminal Code* amended

17. Act amended

This Part amends *The Criminal Code*.

18. Section 281 amended

In section 281(1) delete “liable to imprisonment for 10 years.”
and insert:

liable —

- (a) if the offence is committed in circumstances of aggravation, to imprisonment for 20 years; or
- (b) in any other case, to imprisonment for 10 years.

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