

Family Violence Legislation Reform Bill 2019

Contents

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2

Part 2 — *The Criminal Code* amended

3.	Act amended	3
4.	Section 221 amended	3
5.	Section 283 amended	4
6.	Sections 298 to 300 inserted	4
	298. Suffocation and strangulation	4
	299. Terms used in relation to s. 300 (persistent family violence)	5
	300. Persistent family violence	6
7.	Section 333 replaced	9
	333. Deprivation of liberty	9
8.	Section 338A amended	9
9.	Section 338B amended	10
10.	Section 338C amended	11
11.	Section 444 amended	12
12.	Section 740C inserted	12
	740C. Review of amendments made by <i>Family Violence Legislation Reform Act 2019</i>	12

Part 3 — *Sentencing Act 1995* amended

13.	Act amended	14
14.	Section 4 amended	14
15.	Section 33B amended	16
16.	Section 33H amended	16

Contents

17.	Section 33HA inserted	17
	33HA. Electronic monitoring requirement	17
18.	Section 33L amended	18
19.	Section 33N amended	18
20.	Section 39 amended	18
21.	Section 62 amended	19
22.	Section 67A inserted	19
	67A. Electronic monitoring requirement	19
23.	Section 72 amended	20
24.	Section 75 amended	21
25.	Section 76A inserted	21
	76A. Electronic monitoring requirement	21
26.	Section 84 amended	22
27.	Section 84C amended	23
28.	Section 84CA inserted	23
	84CA. Electronic monitoring requirement	23
29.	Section 97A amended	24
30.	Part 17 heading amended	25
31.	Part 17 Division 1 heading inserted	25
	Division 1 — Preliminary	
32.	Section 123 amended	25
33.	Part 17 Division 2 heading inserted	25
	Division 2 — Orders made under other Acts	
34.	Part 17 Division 3 inserted	26
	Division 3 — Declarations	
	124D. Terms used	26
	124E. Serial family violence offenders	26
	124F. Serial family violence offender declaration — related matters	29
	124G. Disqualification if declaration made	30
35.	Section 125 amended	31
36.	Section 147A inserted	31
	147A. Monitoring requirements, additional provisions	31
37.	Section 151 inserted	31
	151. Review of amendments made by <i>Family Violence Legislation Reform Act 2019</i>	31
	Part 4 — Sentence Administration Act 2003 amended	
38.	Act amended	33
39.	Section 4 amended	33

40.	Section 30 amended	34
41.	Section 57 amended	36
42.	Section 74G amended	36
43.	Section 118 amended	38
44.	Schedule 2 amended	40
45.	Schedule 4 amended	40

Part 5 — *Bail Act 1982* amended

46.	Act amended	41
47.	Section 3 amended	41
48.	Section 6 amended	42
49.	Section 7 amended	43
50.	Section 9 amended	43
51.	Section 16A amended	43
52.	Section 24A amended	44
53.	Section 26 amended	44
54.	Section 38 amended	44
55.	Section 40 amended	46
56.	Section 50K deleted	46
57.	Section 50L amended	46
58.	Section 66E inserted	47
	66E. Retrieving monitoring equipment	47
59.	Schedule 1 Part C clause 1 amended	47
60.	Schedule 1 Part C clause 3F inserted	47
	3F. Bail in cases of family violence offence involving serial family violence offender	47
61.	Schedule 1 Part C clause 4 amended	49
62.	Schedule 1 Part D clause 2 amended	49
63.	Schedule 1 Part D clause 3 amended	50
64.	Schedule 2 amended	51

**Part 6 — *Restraining Orders Act 1997*
amended**

65.	Act amended	52
66.	Section 3 amended	52
67.	Section 4 amended	52
68.	Section 5A amended	53
69.	Section 7A amended	53
70.	Section 8 amended	53
71.	Section 9 replaced	54
	9. Fixing a hearing	54

Contents

72.	Section 10 amended	55
73.	Part 2A Division 1AA inserted	56
	Division 1AA — Additional circumstances where orders may be made	
	13A. Cases involving violent offences	56
74.	Part 2A Division 1 heading amended	58
75.	Section 14A inserted	58
	14A. Explosives order	58
76.	Section 16 amended	59
77.	Section 16A amended	59
78.	Section 24A amended	59
79.	Section 25 amended	60
80.	Section 26 amended	61
81.	Section 27 amended	61
82.	Section 30E amended	61
83.	Section 33 amended	62
84.	Section 36 amended	63
85.	Section 38 amended	64
86.	Section 44C amended	64
87.	Part 4 Division 4 inserted	65
	Division 4 — Other provisions to protect applicants	
	44D. Support and other persons who may be present	65
	44E. Use of closed circuit television or screening arrangements	65
	44F. Additional provisions relating to FVROs	67
88.	Section 45 amended	67
89.	Section 46 amended	69
90.	Section 49 amended	70
91.	Section 49C inserted	70
	49C. Variation of application to allow a different order to be sought	70
92.	Part 5A inserted	71
	Part 5A — Conferences	
	49D. Special conference procedures	71
93.	Section 55 amended	74
94.	Section 59 amended	75
95.	Section 60 amended	75
96.	Section 61 amended	77
97.	Section 61A amended	77
98.	Section 61B amended	79
99.	Section 62E amended	80

100.	Section 63 amended	81
101.	Section 63A amended	82
102.	Section 63B amended	84
103.	Section 66 replaced	84
	66. Information about family orders	84
104.	Section 70 amended	86
105.	Section 73 amended	86
Part 7 — <i>Police Act 1892</i> amended		
106.	Act amended	87
107.	Section 135 inserted	87
	135. Family violence incident reporting	87
Part 8 — <i>Road Traffic (Administration) Act 2008</i> amended		
108.	Act amended	89
109.	Section 4 amended	89
110.	Section 34 amended	90
111.	Section 35 amended	91
112.	Section 94 amended	92
113.	Section 100 amended	93
Part 9 — <i>Dangerous Goods Safety Act 2004</i> amended		
114.	Act amended	94
115.	Section 68A inserted	94
	68A. Orders prohibiting possession of explosives	94
Part 10 — <i>Evidence Act 1906</i> amended		
116.	Act amended	96
117.	Sections 37 to 39G inserted	96
	37. Terms used	96
	38. What may constitute evidence of family violence	96
	39. Expert evidence of family violence	98
	39A. Evidence of family violence — general provision	98
	39B. Evidence of family violence — self-defence	98

Contents

	39C.	Request for direction on family violence — self-defence	99	
	39D.	Request for direction on family violence — general provision	100	
	39E.	Content of direction on family violence	101	
	39F.	Additional matters for direction on family violence	101	
	39G.	Application of s. 39E and 39F to criminal proceedings without juries	104	
118.		Section 134 inserted		104
	134.	Review of amendment made by <i>Family Violence Legislation Reform Act 2019</i>	104	

Western Australia

LEGISLATIVE ASSEMBLY

(As amended during consideration in detail)

Family Violence Legislation Reform Bill 2019

A Bill for

An Act to amend —

- ***The Criminal Code; and***
- ***the Sentencing Act 1995; and***
- ***the Sentence Administration Act 2003; and***
- ***the Bail Act 1982; and***
- ***the Restraining Orders Act 1997; and***
- ***the Police Act 1892; and***
- ***the Road Traffic (Administration) Act 2008; and***
- ***the Dangerous Goods Safety Act 2004; and***
- ***the Evidence Act 1906.***

The Parliament of Western Australia enacts as follows:

1
2
3
4
5
6
7
8
9

Part 1 — Preliminary

1. Short title

This is the *Family Violence Legislation Reform Act 2019*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — 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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Part 2 — *The Criminal Code* amended

3. Act amended

This Part amends *The Criminal Code*.

4. Section 221 amended

(1) In section 221(1) in the definition of *circumstances of aggravation*:

(a) in paragraph (a) delete “offence; or” and insert:

offence, other than where subsection (1A) applies; or

(b) in paragraph (b) delete “committed; or” and insert:

committed, other than where subsection (1A) applies; or

(2) After section 221(1) insert:

(1A) This subsection applies if —

(a) the offender was a child at the time of the commission of the relevant offence; and

(b) the only circumstance of aggravation is the offender was in a family relationship with the victim at the time of the commission of the offence, or a child was present at the time of the commission of the offence, or both.

s. 5

1 **5. Section 283 amended**

2 In section 283(1) in the Alternative offence after “297,” insert:

3

4 298,

5

6 **6. Sections 298 to 300 inserted**

7 After section 297 insert:

8

9 **298. Suffocation and strangulation**

10 A person commits a crime if the person unlawfully
11 impedes another person’s normal breathing, blood
12 circulation, or both, by manually, or by using any other
13 aid —

14 (a) blocking (completely or partially) another
15 person’s nose, mouth, or both; or

16 (b) applying pressure on, or to, another person’s
17 neck.

18 Alternative offence: s. 313.

19 Penalty:

20 (a) if the offence is committed in circumstances
21 of aggravation, imprisonment for 7 years; or

22 (b) in any other case, imprisonment for 5 years.

23 Summary conviction penalty:

24 (a) in a case to which the Penalty paragraph (a)
25 applies, imprisonment for 3 years and a fine
26 of \$36 000; or

27 (b) in a case to which the Penalty paragraph (b)
28 applies, imprisonment for 2 years and a fine
29 of \$24 000.

-
- 1 **299. Terms used in relation to s. 300 (persistent family**
2 **violence)**
- 3 (1) In this section and section 300 —
- 4 ***designated family relationship*** means a relationship
5 between 2 persons —
- 6 (a) who are, or were, married to each other; or
7 (b) who are, or were, in a de facto relationship with
8 each other; or
9 (c) who have, or had, an intimate personal
10 relationship with each other;
- 11 ***prescribed offence*** means —
- 12 (a) an offence against section 221BD, 298, 301,
13 304(1), 313, 317, 317A, 323, 324, 338B, 338C,
14 338E or 444(1)(b), or an attempt to commit
15 such an offence; or
16 (b) an offence against the *Restraining Orders*
17 *Act 1997* section 61(1) or (1A).
- 18 (2) For the purposes of this section, an ***intimate personal***
19 ***relationship*** exists between 2 persons (including
20 persons of the same sex) if —
- 21 (a) the persons are engaged to be married to each
22 other, including a betrothal under cultural or
23 religious tradition; or
24 (b) the persons date each other, or have a romantic
25 involvement with each other, whether or not a
26 sexual relationship is involved.
- 27 (3) In deciding whether an intimate personal relationship
28 exists under subsection (2)(b), the following may be
29 taken into account —
- 30 (a) the circumstances of the relationship, including,
31 for example, the level of trust and commitment;
32 (b) the length of time the relationship has existed;

s. 6

- 1 (c) the frequency of contact between the persons;
2 (d) the level of intimacy between the persons.
- 3 (4) For the purposes of this section and section 300, a
4 person does an *act of family violence* if —
- 5 (a) the person does an act that would constitute a
6 prescribed offence in relation to another person
7 with whom the person is in a designated family
8 relationship; and
- 9 (b) the person is not a child at the time of doing the
10 act.
- 11 (5) For the purposes of this section and section 300, a
12 person *persistently engages in family violence* if the
13 person does an act of family violence on 3 or more
14 occasions each of which is on a different day over a
15 period not exceeding 10 years against the same person.
- 16 (6) For the purposes of subsection (5), the acts of family
17 violence —
- 18 (a) need not all constitute the same prescribed
19 offence; and
- 20 (b) need not all have occurred in this State as long
21 as at least 1 of them did.
- 22 (7) However, in relation to an act that constitutes a simple
23 offence, an act cannot be an act of family violence if
24 the date at the end of the period during which it is
25 alleged that the acts of family violence occurred for the
26 purposes of this section is outside the period during
27 which it would be possible to charge the accused
28 person with that offence.

29 **300. Persistent family violence**

- 30 (1) A person commits a crime if the person persistently
31 engages in family violence.
32 Penalty for this subsection: imprisonment for 14 years.

- 1 Summary conviction penalty for this subsection:
2 imprisonment for 3 years and a fine of \$36 000.
- 3 (2) A charge of an offence under subsection (1) —
4 (a) must specify the period during which it is
5 alleged that the acts of family violence
6 occurred; and
7 (b) need not specify the dates, or in any other way
8 particularise the circumstances, of the acts of
9 family violence that are alleged to constitute the
10 offence.
- 11 (3) Subsection (2) applies despite the *Criminal Procedure*
12 *Act 2004* sections 23 and 85.
- 13 (4) A person may be charged with both —
14 (a) an offence against subsection (1); and
15 (b) 1 or more prescribed offences that are alleged
16 to have occurred in the period during which it is
17 alleged that the acts of family violence
18 constituting the offence under subsection (1)
19 occurred (including an offence or offences
20 allegedly constituted by an act or acts that are
21 the subject of allegations made for the purposes
22 of an offence against subsection (1)).
- 23 (5) A court cannot order the prosecutor to give a person
24 charged with an offence under subsection (1) further
25 particulars of the dates and circumstances of the acts of
26 family violence that are alleged to constitute the
27 offence, despite the *Criminal Procedure Act 2004*
28 section 131.
- 29 (6) If in a trial by jury of a charge of an offence under
30 subsection (1) there is evidence of acts of family
31 violence on 4 or more occasions, the jury members
32 need not all be satisfied that the same acts of family
33 violence occurred on the same occasions as long as the

s. 6

- 1 jury is satisfied that the accused person persistently
2 engaged in acts of family violence in the period
3 specified.
- 4 (7) If a person is found not guilty of an offence against
5 subsection (1), the person may nevertheless be found
6 guilty of 1 or more prescribed offences committed
7 during the period specified in the charge for the offence
8 against that subsection if the commission of the
9 prescribed offence or prescribed offences is established
10 by the evidence even if the person has not been
11 charged with one or more of those prescribed offences,
12 despite section 10A.
- 13 (8) However —
- 14 (a) if a person has been convicted or acquitted of a
15 prescribed offence, the act constituting the
16 prescribed offence cannot constitute an act of
17 family violence for the purposes of establishing
18 an offence against subsection (1) in separate or
19 subsequent proceedings; and
- 20 (b) if a person has been convicted or acquitted of
21 an offence against subsection (1), the person
22 cannot, in separate or subsequent proceedings,
23 be found guilty of a prescribed offence
24 constituted by an act that was the subject of
25 evidence presented to the court for the purposes
26 of proceedings for the offence against
27 subsection (1); and
- 28 (c) nothing in this section otherwise allows a
29 person to be punished twice for the same act.
- 30 (9) For the purposes of this section, a person ceases to be
31 regarded as having been convicted of an offence if the
32 conviction is set aside or quashed.

- 1 (10) For the purposes of this section, an act that constitutes
2 a prescribed offence may have occurred before the
3 commencement of this section, unless the prescribed
4 offence was not an offence at the time at which the act
5 occurred.
6

7 **7. Section 333 replaced**

8 Delete section 333 and insert:
9

10 **333. Deprivation of liberty**

11 A person commits a crime if the person unlawfully
12 detains another person.

13 Penalty:

- 14 (a) if the offence is committed in circumstances
15 of aggravation, imprisonment for 14 years;
16 or
17 (b) in any other case, imprisonment for 10 years.
18

19 **8. Section 338A amended**

20 Delete section 338A(e) and (f) and insert:
21

- 22 (e) where the threat is to kill a person —
23 (i) if the offence is committed in
24 circumstances of aggravation, to
25 imprisonment for 14 years; or
26 (ii) in any other case, to imprisonment for
27 10 years;
28 or

s. 9

- 1 (f) in the case of any other threat —
2 (i) if the offence is committed in
3 circumstances of aggravation, to
4 imprisonment for 10 years; or
5 (ii) in any other case, to imprisonment for
6 7 years.
7

8 **9. Section 338B amended**

9 Delete section 338B(a) and (b) and insert:

- 10
11 (a) where the threat is to kill a person —
12 (i) if the offence is committed in
13 circumstances of racial aggravation, to
14 imprisonment for 14 years; or
15 (ii) if the offence is committed in
16 circumstances of aggravation, to
17 imprisonment for 10 years; or
18 (iii) in any other case, to imprisonment for
19 7 years;
20 or
21 (b) in the case of any other threat —
22 (i) if the offence is committed in
23 circumstances of racial aggravation, to
24 imprisonment for 6 years; or
25 (ii) if the offence is committed in
26 circumstances of aggravation, to
27 imprisonment for 5 years; or
28 (iii) in any other case, to imprisonment for
29 3 years.
30

1 **10. Section 338C amended**

2 In section 338C(3):

3 (a) in paragraph (a) after “years” insert:

4

5 or, if the offence is committed in circumstances of
6 aggravation, imprisonment for 14 years,

7

8 (b) in paragraph (b) after “years” insert:

9

10 or, if the offence is committed in circumstances of
11 aggravation, imprisonment for 5 years,

12

13 (c) in the Summary conviction penalty delete “penalty:” and
14 insert:

15

16 penalty for this subsection:

17

18 (d) in the Summary conviction penalty delete paragraph (b)
19 and insert:

20

21 (b) in a case to which subsection (3)(b)
22 applies —

23 (i) if the offence is committed in
24 circumstances of aggravation,
25 imprisonment for 2 years and a fine of
26 \$24 000; or

27 (ii) in any other case, imprisonment for
28 18 months and a fine of \$18 000.

29

s. 11

1 **11. Section 444 amended**

2 (1) Before section 444(1) insert:

3

4 (1A) In this section —

5 *circumstances of aggravation* has the meaning given
6 in section 221.

7

8 (2) In section 444(1):

9 (a) in paragraph (b) before “circumstances” insert:

10

11 circumstances of aggravation or in

12

13 (b) in the Summary conviction penalty delete paragraph (a)
14 and insert:

15

16 (a) in a case where subsection (1)(b) applies;
17 and

18

19 (c) in the Summary conviction penalty paragraph (b) delete
20 “\$25 000,” and insert:

21

22 \$50 000,

23

24 **12. Section 740C inserted**

25 After section 740B insert:

26

27 **740C. Review of amendments made by *Family Violence***
28 ***Legislation Reform Act 2019***

29 (1) The Minister must review the operation and
30 effectiveness of the amendments made to this Act by
31 the *Family Violence Legislation Reform Act 2019*, and

- 1 prepare a report based on the review, as soon as
2 practicable after the 3rd anniversary of the day on which
3 the *Family Violence Legislation Reform Act 2019*
4 section 3 comes into operation.
- 5 (2) The Minister must cause the report to be laid before
6 each House of Parliament as soon as practicable after it
7 is prepared, but not later than 12 months after the 3rd
8 anniversary.
- 9 (3) The Minister must transmit a copy of the report to the
10 Clerk of a House of Parliament if —
- 11 (a) the report has been prepared; and
12 (b) the Minister is of the opinion that the House
13 will not sit during the period of 21 days after
14 the finalisation of the report.
- 15 (4) A copy of the report transmitted to the Clerk of a
16 House is taken to have been laid before that House.
- 17 (5) The laying of a copy of a report that is taken to have
18 occurred under subsection (4) must be recorded in the
19 Minutes, or Votes and Proceedings, of the House on
20 the first sitting day of the House after the receipt of the
21 copy by the Clerk.
22

1 **Part 3 — Sentencing Act 1995 amended**

2 **13. Act amended**

3 This Part amends the *Sentencing Act 1995*.

4 **14. Section 4 amended**

5 (1) In section 4(1) insert in alphabetical order:

6

7 ***approved electronic monitoring device*** means —

- 8 (a) an electronic monitoring device that has been
9 approved by the CEO (corrections); and
10 (b) any equipment, wires or other items associated
11 with a device under paragraph (a);

12 ***designated family relationship*** means a relationship
13 between 2 persons —

- 14 (a) who are, or were, married to each other; or
15 (b) who are, or were, in a de facto relationship with
16 each other; or
17 (c) who have, or had, an intimate personal
18 relationship with each other;

19 ***explosive*** means a substance or an article that is
20 controlled as an explosive under the *Dangerous Goods*
21 *Safety Act 2004*;

22 ***family violence offence*** means an offence where the
23 offender and the victim are in a designated family
24 relationship with each other at the time of the
25 commission of the offence and the offence is —

- 26 (a) an offence against the *Restraining Orders*
27 *Act 1997* section 61(1) or (1A); or

- 1 (b) an offence against *The Criminal Code*
2 section 221BD, 279, 280, 281, 283, 292, 293,
3 294, 297, 298, 300, 301, 304, 313, 317, 317A,
4 323, 324, 325, 326, 328, 332, 333, 338A, 338B,
5 338C, 338E or 444;

6 ***serial family violence offender*** means a person who is
7 a serial family violence offender under section 124E;
8

9 (2) After section 4(1) insert:
10

11 (1A) For the purposes of the definition of ***designated family***
12 ***relationship*** in subsection (1), an ***intimate personal***
13 ***relationship*** exists between 2 persons (including
14 persons of the same sex) if —

- 15 (a) the persons are engaged to be married to each
16 other, including a betrothal under cultural or
17 religious tradition; or
18 (b) the persons date each other, or have a romantic
19 involvement with each other, whether or not a
20 sexual relationship is involved.

21 (1B) In deciding whether an intimate personal relationship
22 exists under subsection (1A)(b), the following may be
23 taken into account —

- 24 (a) the circumstances of the relationship, including,
25 for example, the level of trust and commitment;
26 (b) the length of time the relationship has existed;
27 (c) the frequency of contact between the persons;
28 (d) the level of intimacy between the persons.
29

s. 15

1 **15. Section 33B amended**

2 In section 33B(1):

3 (a) in paragraph (b)(ii) delete “imposes.” and insert:

4

5 imposes; and

6

7 (b) after paragraph (b)(ii) insert:

8

9 (iii) any direction imposed under an
10 electronic monitoring requirement under
11 section 33HA.
12

13 **16. Section 33H amended**

14 In section 33H(10):

15 (a) delete “offender —” and insert:

16

17 offender to do 1 or both of the following —

18

19 (b) delete paragraphs (a) and (b) and insert:

20

21 (a) wear an approved electronic monitoring device;

22 (b) permit the installation of an approved electronic
23 monitoring device at the place where the
24 offender resides.
25

1 **17. Section 33HA inserted**

2 After section 33H insert:

3

4 **33HA. Electronic monitoring requirement**

- 5 (1) This section applies if an offence in respect of which a
6 PSO may apply is a family violence offence and the
7 offender is a serial family violence offender.
- 8 (2) Where this section applies, a court must not make a
9 PSO unless the court has considered whether to require
10 electronic monitoring in respect of the offender under
11 this section (an *electronic monitoring requirement*).
- 12 (3) The purpose of electronic monitoring of an offender
13 subject to a PSO is to enable the location of the
14 offender to be monitored.
- 15 (4) If a court considers that electronic monitoring should
16 occur in a particular case, the court may impose an
17 electronic monitoring requirement under this section.
- 18 (5) If an electronic monitoring requirement is imposed, a
19 CCO may do 1 or both of the following —
- 20 (a) direct the offender to wear an approved
21 electronic monitoring device;
- 22 (b) direct the offender to permit the installation of
23 an approved electronic monitoring device at the
24 place where the offender resides or, if the
25 offender does not have a place of residence, at
26 any other place specified by the CCO.
- 27 (6) The term of an electronic monitoring requirement must
28 be set by the court when it imposes the requirement.

s. 18

- 1 (7) An electronic monitoring requirement ceases to be in
2 force when its term ends, or when the PSO ceases to be
3 in force, whichever happens first.
4

5 **18. Section 33L amended**

6 In section 33L(1) delete the definition of *requirement* and
7 insert:

- 8
9 *requirement*, in relation to a PSO, means —
10 (a) the standard obligations and primary
11 requirements of the PSO; and
12 (b) any direction imposed under an electronic
13 monitoring requirement under section 33HA;
14 and
15 (c) any direction of the court imposed under the
16 PSO.
17

18 **19. Section 33N amended**

19 After section 33N(2)(a)(ii) insert:

- 20
21 (iia) by adding, amending or cancelling an
22 electronic monitoring requirement under
23 section 33HA; or
24

25 **20. Section 39 amended**

26 In section 39(8) after “order” (each occurrence) insert:

27
28 or declaration
29

1 **21. Section 62 amended**

2 In section 62(1):

3 (a) in paragraph (b)(ii) delete “63.” and insert:

4

5 63; and

6

7 (b) after paragraph (b)(ii) insert:

8

9 (iii) must comply with any direction
10 imposed under an electronic monitoring
11 requirement under section 67A.

12

13 **22. Section 67A inserted**

14 After section 67 insert:

15

16 **67A. Electronic monitoring requirement**

17 (1) This section applies if an offence in respect of which a
18 CBO may apply is a family violence offence and the
19 offender is a serial family violence offender.

20 (2) Where this section applies, a court must not make a
21 CBO unless the court has considered whether to
22 require electronic monitoring in respect of the offender
23 under this section (an *electronic monitoring*
24 *requirement*).

25 (3) The purpose of electronic monitoring of an offender
26 subject to a CBO is to enable the location of the
27 offender to be monitored.

28 (4) An electronic monitoring requirement may be imposed
29 only if the court has received a report from the CEO
30 (corrections) about the suitability of electronic
31 monitoring in the particular case.

s. 23

- 1 (5) If a court considers that electronic monitoring should
2 occur in a particular case, the court may impose an
3 electronic monitoring requirement under this section.
- 4 (6) If an electronic monitoring requirement is imposed, a
5 CCO may do 1 or both of the following —
- 6 (a) direct the offender to wear an approved
7 electronic monitoring device;
- 8 (b) direct the offender to permit the installation of
9 an approved electronic monitoring device at the
10 place where the offender resides or, if the
11 offender does not have a place of residence, at
12 any other place specified by the CCO.
- 13 (7) The term of an electronic monitoring requirement must
14 be set by the court when it imposes the requirement.
- 15 (8) An electronic monitoring requirement ceases to be in
16 force when its term ends, or when the CBO ceases to
17 be in force, whichever happens first.
18

19 **23. Section 72 amended**

20 In section 72:

- 21 (a) in paragraph (c) delete “75.” and insert:
22
23 75;
24
- 25 (b) after paragraph (c) insert:
26
- 27 (d) an electronic monitoring requirement under
28 section 76A.
29

1 **24. Section 75 amended**

2 In section 75(10):

3 (a) in paragraph (a) delete “any device; or” and insert:

4

5 an approved electronic monitoring device; or

6

7 (b) in paragraph (b) delete “any device or equipment” and
8 insert:

9

10 an approved electronic monitoring device

11

12 **25. Section 76A inserted**

13 At the end of Part 10 insert:

14

15 **76A. Electronic monitoring requirement**

16 (1) The purpose of electronic monitoring under this section
17 is to enable the location of an offender to be monitored
18 where the offender presents a high risk to —

19 (a) a person; or

20 (b) a group of persons; or

21 (c) the community more generally.

22 (2) Where an offence in respect of which an ISO may
23 apply is a family violence offence and the offender is a
24 serial family violence offender, the court must consider
25 whether to require electronic monitoring under this
26 section.

27 (3) If a court considers that electronic monitoring should
28 occur in a particular case, the court may impose a
29 requirement (an *electronic monitoring requirement*)
30 under this section.

s. 26

- 1 (4) If an electronic monitoring requirement is imposed, a
2 CCO may do 1 or both of the following —
- 3 (a) direct the offender to wear an approved
4 electronic monitoring device;
- 5 (b) direct the offender to permit the installation of
6 an approved electronic monitoring device at the
7 place where the offender resides or, if the
8 offender does not have a place of residence, at
9 any other place specified by the CCO.
- 10 (5) The term of an electronic monitoring requirement must
11 be set by the court when it imposes the requirement.
- 12 (6) An electronic monitoring requirement ceases to be in
13 force when its term ends, or when the ISO ceases to be
14 in force, whichever happens first.
- 15 (7) This section does not apply to an offender who, at the
16 time of sentencing, is under 18 years of age.
17

18 **26. Section 84 amended**

- 19 (1) In section 84 delete “CSI” and insert:
20
- 21 (1) CSI
22
- 23 (2) At the end of section 84 insert:
24
- 25 (2) CSI may also contain an electronic monitoring
26 requirement under section 84CA as a primary
27 requirement.
28

1 **27. Section 84C amended**

2 In section 84C(10):

3 (a) in paragraph (a) delete “any device; or” and insert:

4

5 an approved electronic monitoring device; or

6

7 (b) in paragraph (b) delete “any device or equipment” and
8 insert:

9

10 an approved electronic monitoring device

11

12 **28. Section 84CA inserted**

13 At the end of Part 12 Division 1 insert:

14

15 **84CA. Electronic monitoring requirement**

16 (1) The purpose of electronic monitoring under this section
17 is to enable the location of an offender to be monitored
18 where the offender presents a high risk to —

19 (a) a person; or

20 (b) a group of persons; or

21 (c) the community more generally.

22 (2) Where an offence in respect of which CSI may apply is
23 a family violence offence and the offender is a serial
24 family violence offender, the court must consider
25 whether to require electronic monitoring under this
26 section.

27 (3) If a court considers that electronic monitoring should
28 occur in a particular case, the court may impose a
29 requirement (an *electronic monitoring requirement*)
30 under this section.

s. 29

- 1 (4) An electronic monitoring requirement may be imposed
2 only if the court has received a report from the CEO
3 (corrections) about the suitability of electronic
4 monitoring in the particular case.
- 5 (5) If an electronic monitoring requirement is imposed, a
6 CCO may do 1 or both of the following —
- 7 (a) direct the offender to wear an approved
8 electronic monitoring device;
- 9 (b) direct the offender to permit the installation of
10 an approved electronic monitoring device at the
11 place where the offender resides or, if the
12 offender does not have a place of residence, at
13 any other place specified by the CCO.
- 14 (6) An electronic monitoring requirement ceases to be in
15 force when the suspension period ends.
16

17 **29. Section 97A amended**

18 After section 97A(5) insert:
19

- 20 (6) In addition to subsection (2), this section applies if —
- 21 (a) a court is sentencing an offender to
22 imprisonment for an offence; and
- 23 (b) the offence is a family violence offence; and
- 24 (c) the offender is a serial family violence
25 offender.
- 26 (7) In a case where subsection (6) applies, the sentencing
27 court must make a declaration under this section.
- 28 (8) This section does not limit the ability of a court to
29 make a declaration in relation to the same person under
30 section 124E.
31

1 **30. Part 17 heading amended**

2 In the heading to Part 17 after “**orders**” insert:

3

4 **and declarations**

5

6 **31. Part 17 Division 1 heading inserted**

7 At the beginning of Part 17 insert:

8

9 **Division 1 — Preliminary**

10

11 **32. Section 123 amended**

12 In section 123(1) to (4) after “order” (each occurrence) insert:

13

14 or declaration

15

16 **33. Part 17 Division 2 heading inserted**

17 After section 123 insert:

18

19 **Division 2 — Orders made under other Acts**

20

1 **34. Part 17 Division 3 inserted**

2 At the end of Part 17 insert:

3

4 **Division 3 — Declarations**

5 **124D. Terms used**

6 In this Division —

7 *approved expert* means a person, or a person of a class
8 of persons, approved by the CEO (corrections) as
9 having the appropriate qualifications, skills and
10 experience to carry out assessments under
11 section 124E;

12 *firearm* has the meaning given in section 106(5);

13 *prescribed offence* means —

- 14 (a) a family violence offence; or
15 (b) an offence against a law of the Commonwealth,
16 of another State or of a Territory, or of a place
17 outside Australia, if the act or acts constituting
18 the offence would, if committed in the State,
19 constitute a family violence offence; or
20 (c) an attempt to commit such an offence under
21 paragraph (a) or (b).

22 **124E. Serial family violence offenders**

23 (1) A court convicting an offender of a family violence
24 offence may declare the offender to be a serial family
25 violence offender if —

- 26 (a) the offender has, on that conviction, been
27 convicted of at least 2 prescribed offences
28 which may only be tried on indictment, with at
29 least 2 of those prescribed offences having been
30 committed on different days; or

- 1 (b) the offender has, on conviction, been convicted
2 of at least 3 prescribed offences, with at least 3
3 of those prescribed offences having been
4 committed on different days.
- 5 (2) For the purposes of subsection (1) —
- 6 (a) the victim of each offence may, but need not
7 be, the same person; and
- 8 (b) the offences need not be the same offences; and
- 9 (c) the offences need not to have occurred in the
10 State as long as 1 of them did; and
- 11 (d) 1 or more of the convictions may have been
12 convictions by a court outside the State; and
- 13 (e) it is immaterial in which order the offences
14 were committed; and
- 15 (f) an offence will not be taken into account if the
16 offence was committed by a person who, at the
17 time of the commission of the offence, was
18 under 18 years of age; and
- 19 (g) each of the offences taken into account must
20 have been committed within a period of
21 10 years of each other unless the court is
22 satisfied that exceptional circumstances exist
23 that make it appropriate to make a declaration
24 under this section (after taking into account the
25 matters referred to in subsection (4) and such
26 other matters as the court may consider to be
27 relevant).
- 28 (3) A declaration may be made by the court on its own
29 initiative or on an application by the prosecutor.

s. 34

- 1 (4) Without limiting any other matter that a court dealing
2 with an application under this section may consider to
3 be relevant, the court must have regard to the
4 following —
- 5 (a) the level of risk that the offender may commit
6 another family violence offence;
- 7 (b) the offender’s criminal record;
- 8 (c) the nature of the prescribed offences for which
9 the offender has been convicted.
- 10 (5) In addition, the court may —
- 11 (a) before it makes a declaration, order an
12 assessment of the offender by an approved
13 expert; and
- 14 (b) take the report of that assessment into account
15 when deciding whether to make the declaration.
- 16 (6) In connection with the operation of subsection (5) —
- 17 (a) an approved expert is authorised by this
18 subsection to examine and assess the offender
19 and to report in accordance with this section;
20 and
- 21 (b) the report may indicate —
- 22 (i) the approved expert’s assessment of the
23 level of risk that the offender may
24 commit another family violence
25 offence; and
- 26 (ii) the reasons for this assessment;
- 27 and
- 28 (c) in preparing the report, the approved expert
29 may —
- 30 (i) take into account any other information
31 or report provided to, or obtained by,
32 the approved expert; and

- 1 (ii) include in the report any other
2 assessment or opinion, or address any
3 other matter, that the approved expert
4 considers to be relevant in the
5 circumstances;
6 and
7 (d) the approved expert may prepare the report
8 even if the offender does not cooperate, or does
9 not fully cooperate, in any examination
10 associated with the assessment.

11 **124F. Serial family violence offender declaration —**
12 **related matters**

- 13 (1) Section 124E does not limit the ability of a court to
14 make a declaration in relation to the same person under
15 section 97A.
16 (2) Except as provided in subsections (5) and (6), the
17 declaration of a person as a serial family violence
18 offender will have effect for an indefinite period.
19 (3) A person who is subject to a declaration may apply for
20 the cancellation of the declaration if the declaration has
21 been in effect for a period of at least 10 years.
22 (4) An application may be made to any court of criminal
23 jurisdiction unless the court is an inferior court to the
24 court that made the declaration.
25 (5) A court may cancel a declaration if satisfied that the
26 declaration need no longer apply after taking into
27 account the matters that would be taken into account by
28 a court when considering whether to make a
29 declaration under section 124E(1).
30 (6) If a person is declared to be a serial family violence
31 offender and the person's conviction for a prescribed
32 offence taken into account for the purposes of making

s. 34

1 the declaration is set aside or quashed, the declaration
2 ceases to be in force at the conclusion of the
3 proceedings in which the conviction is set aside or
4 quashed unless there are still at least 3 other prescribed
5 offences, or 2 other prescribed offences which may be
6 only be tried on indictment, that qualify for the making
7 of a declaration under section 124E(1).

8 **124G. Disqualification if declaration made**

- 9 (1) If a court makes a declaration under this Division —
- 10 (a) the serial family violence offender is
11 disqualified from —
- 12 (i) holding or obtaining a licence or permit,
13 or an approval, for a firearm under the
14 *Firearms Act 1973*; or
- 15 (ii) holding or obtaining a licence, permit or
16 authorisation to hold an explosive under
17 the *Dangerous Goods Safety Act 2004*;
- 18 and
- 19 (b) by force of this section any relevant licence,
20 permit, approval or authorisation in relation to
21 which a disqualification applies under
22 paragraph (a) is cancelled; and
- 23 (c) the court must ensure that details of the
24 declaration are made known to —
- 25 (i) the Commissioner of Police; and
26 (ii) the Chief Officer under the *Dangerous*
27 *Goods Safety Act 2004*.
- 28 (2) The court that makes a declaration under this Division
29 may grant an exemption from the operation of
30 subsection (1) if it is satisfied that exceptional
31 circumstances exist in a particular case.
32

1 **35. Section 125 amended**

2 In section 125(1) in the definition of *requirements*
3 paragraph (b) delete “standard obligations of the order and” and
4 insert:

5

6 standard obligations of the order, and any
7 requirements under section 67A, and

8

9 **36. Section 147A inserted**

10 After section 147 insert:

11

12 **147A. Monitoring requirements, additional provisions**

13 (1) A CCO may give any reasonable direction to an
14 offender as is necessary for the proper administration
15 of a requirement imposed on the offender by or under
16 this Act in relation to an electronic monitoring device.

17 (2) A CCO may suspend the electronic monitoring of an
18 offender under this Act —

19 (a) while satisfied that it is not practicable to
20 subject the offender to electronic monitoring; or

21 (b) while satisfied that it is not necessary for the
22 person to be subject to electronic monitoring.

23

24 **37. Section 151 inserted**

25 After section 150 insert:

26

27 **151. Review of amendments made by *Family Violence***
28 ***Legislation Reform Act 2019***

29 (1) The Minister must review the operation and
30 effectiveness of the amendments made to this Act by

s. 37

- 1 the *Family Violence Legislation Reform Act 2019*, and
2 prepare a report based on the review, as soon as
3 practicable after the 3rd anniversary of the day on
4 which the *Family Violence Legislation Reform*
5 *Act 2019* section 13 comes into operation.
- 6 (2) The Minister must cause the report to be laid before
7 each House of Parliament as soon as practicable after it
8 is prepared, but not later than 12 months after the 3rd
9 anniversary.
- 10 (3) The Minister must transmit a copy of the report to the
11 Clerk of a House of Parliament if —
12 (a) the report has been prepared; and
13 (b) the Minister is of the opinion that the House
14 will not sit during the period of 21 days after
15 the finalisation of the report.
- 16 (4) A copy of the report transmitted to the Clerk of a
17 House is taken to have been laid before that House.
- 18 (5) The laying of a copy of a report that is taken to have
19 occurred under subsection (4) must be recorded in the
20 Minutes, or Votes and Proceedings, of the House on
21 the first sitting day of the House after the receipt of the
22 copy by the Clerk.
23

1 **Part 4 — Sentence Administration Act 2003 amended**

2 **38. Act amended**

3 This Part amends the *Sentence Administration Act 2003*.

4 **39. Section 4 amended**

5 (1) In section 4(2) insert in alphabetical order:

6

7 *approved electronic monitoring device* means —

- 8 (a) an electronic monitoring device that has been
9 approved by the CEO; and
- 10 (b) any equipment, wires or other items associated
11 with a device under paragraph (a);

12 *designated family relationship* means a relationship
13 between 2 persons —

- 14 (a) who are, or were, married to each other; or
- 15 (b) who are, or were, in a de facto relationship with
16 each other; or
- 17 (c) who have, or had, an intimate personal
18 relationship with each other;

19 *family violence offence* means an offence where the
20 offender and the victim are in a designated family
21 relationship with each other at the time of the
22 commission of the offence and the offence is —

- 23 (a) an offence against the *Restraining Orders*
24 *Act 1997* section 61(1) or (1A); or
- 25 (b) an offence against *The Criminal Code*
26 section 221BD, 279, 280, 281, 283, 292, 293,
27 294, 297, 298, 300, 301, 304, 313, 317, 317A,
28 323, 324, 325, 326, 328, 332, 333, 338A, 338B,
29 338C, 338E or 444;

s. 40

1 *serial family violence offender* means a person who is
2 a serial family violence offender under the *Sentencing*
3 *Act 1995* section 124E;

4

5 (2) After section 4(2) insert:

6

7 (2A) For the purposes of the definition of *designated family*
8 *relationship* in subsection (2), an *intimate personal*
9 *relationship* exists between 2 persons (including
10 persons of the same sex) if —

11 (a) the persons are engaged to be married to each
12 other, including a betrothal under cultural or
13 religious tradition; or

14 (b) the persons date each other, or have a romantic
15 involvement with each other, whether or not a
16 sexual relationship is involved.

17 (2B) In deciding whether an intimate personal relationship
18 exists under subsection (2A)(b), the following may be
19 taken into account —

20 (a) the circumstances of the relationship, including,
21 for example, the level of trust and commitment;

22 (b) the length of time the relationship has existed;

23 (c) the frequency of contact between the persons;

24 (d) the level of intimacy between the persons.

25

26 **40. Section 30 amended**

27 (1) In section 30:

28 (a) delete “A parole” and insert:

29

30 (1) A parole

31

- 1 (b) in paragraph (c) delete “any device for monitoring
2 purposes;” and insert:
3
4 an approved electronic monitoring device;
5
6 (c) in paragraph (d) delete “any device or equipment at the
7 place where the prisoner resides for monitoring
8 purposes;” and insert:
9
10 an approved electronic monitoring device at the place
11 where the prisoner resides;
12
13 (d) delete paragraph (e)(i) and (ii) and insert:
14
15 (i) wear an approved electronic monitoring
16 device; or
17 (ii) permit the installation of an approved
18 electronic monitoring device at the
19 place where the prisoner resides;
20
21 (2) At the end of section 30 insert:
22
23 (2) If the parole order relates to a prisoner who has been
24 serving imprisonment for a family violence offence and
25 the prisoner is a serial family violence offender, the
26 Board must give specific consideration as to whether to
27 impose a requirement under subsection (1)(c), (d)
28 or (e).
29

s. 41

1 **41. Section 57 amended**

2 (1) In section 57(2):

3 (a) in paragraph (a) delete “any device for monitoring
4 purposes;” and insert:

5

6 an approved electronic monitoring device; or

7

8 (b) in paragraph (b) delete “any device or equipment at the
9 place where the prisoner resides for monitoring
10 purposes.” and insert:

11

12 an approved electronic monitoring device at the place
13 where the prisoner resides.

14

15 (2) After section 57(2) insert:

16

17 (3) If the prisoner has been serving imprisonment for a
18 family violence offence and the prisoner is a serial
19 family violence offender, the Board must give specific
20 consideration as to whether to impose a requirement
21 under subsection (2).

22

23 **42. Section 74G amended**

24 (1) In section 74G:

25 (a) delete “A PSSO” and insert:

26

27 (1) A PSSO

28

- 1 (b) in paragraph (c) delete “any device for monitoring
2 purposes;” and insert:
3
4 an approved electronic monitoring device;
5
6 (c) in paragraph (d) delete “any device or equipment at the
7 place where the offender resides for monitoring
8 purposes;” and insert:
9
10 an approved electronic monitoring device at the place
11 where the offender resides;
12
13 (d) delete paragraph (e)(i) and (ii) and insert:
14
15 (i) wear an approved electronic monitoring
16 device; or
17 (ii) permit the installation of an approved
18 electronic monitoring device at the
19 place where the offender resides;
20
21 (2) At the end of section 74G insert:
22
23 (2) If the supervised offender has been serving
24 imprisonment for a family violence offence and the
25 prisoner is a serial family violence offender, the Board
26 must give specific consideration as to whether it should
27 impose a requirement under subsection (1)(c), (d)
28 or (e).
29

s. 43

1 **43. Section 118 amended**

2 (1) In section 118(1) delete the definition of *monitoring equipment*
3 and insert:

4
5 *monitoring equipment* means any device or equipment
6 (and any related wiring or other item) that is —

7 (a) designed or intended to keep a person under
8 surveillance or to monitor a person’s
9 movements; and

10 (b) required to be worn by a person, or to be
11 installed at a place, under this Act, the
12 *Sentencing Act 1995* or the *Bail Act 1982*.
13

14 (2) After section 118(1) insert:

15
16 (1A) The CEO may give a person who is, or who has been,
17 the subject of a direction or order to wear monitoring
18 equipment a direction to be available at a specified
19 place and time in order to surrender or deliver the
20 monitoring equipment to the CEO.
21

22 (3) In section 118(2) delete “equipment to the CEO within a set”
23 and insert:

24
25 monitoring equipment to the CEO within a specified
26

27 (4) Delete section 118(3) and insert:

28
29 (3) A person who, without reasonable excuse, fails to
30 comply with, or contravenes, a direction given under
31 subsection (1A) or (2) commits an offence.

1 Penalty for this subsection: a fine of \$12 000 or
2 imprisonment for 12 months.

3

4 (5) In section 118(4) before “equipment.” insert:

5

6 monitoring

7

8 (6) At the end of section 118(5) insert:

9

10 Penalty for this subsection: a fine of \$12 000 or
11 imprisonment for 12 months.

12

13 (7) Delete section 118(6) and insert:

14

15 (6) A person who, without reasonable excuse, removes or
16 interferes with, or interferes with the operation of, any
17 monitoring equipment in such a way as to prevent or
18 impede monitoring of a person’s location, commits an
19 offence.

20 Penalty for this subsection: a fine of \$12 000 or
21 imprisonment for 12 months.

22

23 (8) At the end of section 118(7) insert:

24

25 Penalty for this subsection: a fine of \$12 000 or
26 imprisonment for 12 months.

27

28 (9) At the end of section 118 delete the Penalty.

s. 44

1 **44. Schedule 2 amended**

2 In Schedule 2 paragraph (k) delete “61(1)” and insert:

3

4 61(1), (1A)

5

6 **45. Schedule 4 amended**

7 In Schedule 4 item 1 after the row relating to s. 297 insert:

8

s. 298 Suffocation and strangulation

s. 300 Persistent family violence

9

Part 5 — *Bail Act 1982* amended

46. Act amended

This Part amends the *Bail Act 1982*.

47. Section 3 amended

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

approved electronic monitoring device means —

- (a) an electronic monitoring device that has been approved by the CEO (corrections); and
- (b) any equipment, wires or other items associated with a device under paragraph (a);

designated family relationship means a relationship between 2 persons —

- (a) who are, or were, married to each other; or
- (b) who are, or were, in a de facto relationship with each other; or
- (c) who have, or had, an intimate personal relationship with each other;

family relationship has the meaning given in the *Restraining Orders Act 1997* section 4(1);

family violence offence means an offence where the offender and the victim are in a designated family relationship with each other at the time of the commission of the offence and the offence is —

- (a) an offence against the *Restraining Orders Act 1997* section 61(1) or (1A); or
- (b) an offence against *The Criminal Code* section 221BD, 279, 280, 281, 283, 292, 293, 294, 297, 298, 300, 301, 304, 313, 317, 317A, 323, 324, 325, 326, 328, 332, 333, 338A, 338B, 338C, 338E or 444;

s. 48

1 *serial family violence offender* means a person
2 declared to be a serial family violence offender under
3 the *Sentencing Act 1995* section 124E;
4

5 (2) After section 3(1) insert:

6
7 (1A) For the purposes of the definition of *designated family*
8 *relationship* in subsection (1), an *intimate personal*
9 *relationship* exists between 2 persons (including
10 persons of the same sex) if —

11 (a) the persons are engaged to be married to each
12 other, including a betrothal under cultural or
13 religious tradition; or

14 (b) the persons date each other, or have a romantic
15 involvement with each other, whether or not a
16 sexual relationship is involved.

17 (1B) In deciding whether an intimate personal relationship
18 exists under subsection (1A)(b), the following may be
19 taken into account —

20 (a) the circumstances of the relationship, including,
21 for example, the level of trust and commitment;

22 (b) the length of time the relationship has existed;

23 (c) the frequency of contact between the persons;

24 (d) the level of intimacy between the persons.
25

26 **48. Section 6 amended**

27 In section 6(2)(b) delete “3A and 3D.” and insert:

28
29 3A, 3D and 3F.
30

1 **49. Section 7 amended**

2 In section 7(5) delete “3D and 3E.” and insert:

3

4 3D, 3E and 3F.

5

6 **50. Section 9 amended**

7 In section 9(1):

8 (a) in paragraph (b) delete “(2).” and insert:

9

10 (2); or

11

12 (b) after paragraph (b) insert:

13

14 (c) without limiting paragraph (a) or (b), in the
15 case of an accused charged with an offence
16 where the accused and an alleged victim of the
17 offence are, or are reasonably believed by the
18 judicial officer or authorised officer to be, in a
19 family relationship — to consider what, if any,
20 conditions should be imposed to enhance the
21 protection of the alleged victim.

22

23 **51. Section 16A amended**

24 Delete section 16A(3).

s. 52

1 **52. Section 24A amended**

2 In section 24A(4) delete the passage that begins with
3 “condition,” and ends with “condition.” and insert:

4

5 condition, the officer must —

- 6 (a) include in the report a recommendation as to
7 whether or not the accused is suitable for
8 electronic monitoring while the accused is
9 subject to the home detention condition; and
- 10 (b) annex to the report, and provide to the accused
11 or the accused’s solicitor or counsel, a list of
12 those conditions in rules made under
13 section 50L that may be applied to the accused
14 by the CEO (corrections) while the accused is
15 subject to the home detention condition.

16

17 **53. Section 26 amended**

18 In section 26(2)(aa) delete “3D or 3E” and insert:

19

20 3D, 3E or 3F

21

22 **54. Section 38 amended**

23 (1) In section 38(1):

24 (a) in paragraph (a) delete “he” and insert:

25

26 the person

27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

(b) in paragraph (b) delete “his assets, after provision is made for his debts and liabilities, is less than the amount which he might become liable to forfeit under his” and insert:

the person’s assets, after provision is made for the person’s debts and liabilities, is less than the amount which the person might become liable to forfeit under the person’s

(c) in paragraph (c) delete “he has been, or will be, indemnified by any person against any forfeiture referred to in paragraph (b).” and insert:

the person has been, or will be, indemnified by any person against any forfeiture referred to in paragraph (b); or

(d) after paragraph (c) insert:

(d) the surety approval officer knows, or has reasonable grounds to believe, that —

- (i) there is a current restraining order between the person and the accused under the *Restraining Orders Act 1997*; or
- (ii) the person is in a family relationship with the accused and was a victim of an offence for which the accused has been convicted within the last 10 years; or
- (iii) the person is the alleged victim of the offence of which the accused has been charged and is in a family relationship with the accused.

s. 55

1 (2) After section 38(2) insert:

2

3 (3) A surety approval officer must not ask an applicant
4 questions that relate to a matter under subsection (1)(d)
5 but rather should rely on any information that is
6 reasonably available from the details of the offence,
7 records or similar sources of information.

8 (4) Subsection (1)(d) does not apply where the accused is a
9 child.

10

11 **55. Section 40 amended**

12 After section 40(2) insert:

13

14 (3) The surety approval officer must not include reasons
15 under subsection (2) to the extent that to do so would
16 disclose that the surety approval officer has acted under
17 section 38(1)(d) (but must still make a record of these
18 reasons).

19

20 **56. Section 50K deleted**

21 Delete section 50K.

22 **57. Section 50L amended**

23 In section 50L(1):

24 (a) in paragraph (a) delete “any device;” and insert:

25

26 an approved electronic monitoring device;

27

1 (b) in paragraph (b) delete “any device or equipment” and
2 insert:

3

4 an approved electronic monitoring device

5

6 **58. Section 66E inserted**

7 After section 66D insert:

8

9 **66E. Retrieving monitoring equipment**

10 The *Sentence Administration Act 2003* section 118
11 applies if, under this Act, any approved electronic
12 monitoring device has been required to be worn by a
13 person, or has been installed at a place, in connection
14 with keeping an accused under surveillance or to
15 monitor an accused.

16

17 **59. Schedule 1 Part C clause 1 amended**

18 In Schedule 1 Part C clause 1 delete “3D and 3E,” and insert:

19

20 3D, 3E and 3F,

21

22 **60. Schedule 1 Part C clause 3F inserted**

23 After Schedule 1 Part C clause 3E insert:

24

25 **3F. Bail in cases of family violence offence involving serial**
26 **family violence offender**

27 (1) This clause applies where an accused is a serial family
28 violence offender in custody —

29 (a) awaiting an appearance in court before conviction
30 for a family violence offence; or

s. 60

- 1 (b) waiting to be sentenced or otherwise dealt with for a
2 family violence offence of which the accused has
3 been convicted.
- 4 (2) Despite clause 1, 2 or 4 or any other provision of this Act,
5 where this clause applies bail may only be granted by a
6 judicial officer, other than a justice, in whom jurisdiction is
7 vested and the judicial officer must refuse to grant bail for
8 the family violence offence unless the judicial officer —
- 9 (a) is satisfied that there are exceptional reasons why
10 the accused should not be kept in custody; and
- 11 (b) is satisfied that bail may properly be granted having
12 regard to the provisions of clauses 1 and 3.
- 13 (3) Despite section 7(1), where an accused is refused bail under
14 subclause (2) for an appearance for a family violence
15 offence, the accused's case for bail need not be considered
16 again under that subsection for an appearance for that
17 offence unless the accused satisfies the judicial officer who
18 may order detention that —
- 19 (a) new facts have been discovered, new circumstances
20 have arisen or the circumstances have changed
21 since bail was refused; or
- 22 (b) the accused failed adequately to present the case for
23 bail on the occasion of that refusal.
- 24 (4) Before a judicial officer grants bail under subclause (2), the
25 judicial officer must —
- 26 (a) request that a report be made under section 24A(2);
27 and
- 28 (b) having regard to the recommendations in the report,
29 consider the imposition of a home detention
30 condition as a condition on the grant of bail that
31 includes electronic monitoring.
- 32 (5) Where an accused is granted bail under subclause (2), on
33 any subsequent appearance for bail in the same case a
34 judicial officer may order that bail is to continue on the
35 same terms and conditions.

1 (6) This clause does not apply if bail is being granted under the
2 *Sentencing Act 1995* section 33C(6) and the court has
3 considered the imposition of an electronic monitoring
4 requirement under section 33HA of that Act.
5

6 **61. Schedule 1 Part C clause 4 amended**

7 In Schedule 1 Part C clause 4(1) delete “3D and 3E,” and insert:
8

9 3D, 3E and 3F,
10

11 **62. Schedule 1 Part D clause 2 amended**

12 (1) In Schedule 1 Part D clause 2(2a) delete the passage that begins
13 with “assisted,” and ends with “Act.” and insert:
14

15 assisted —

- 16 (a) by a restraining order made under the *Restraining*
17 *Orders Act 1997* and whether, in the case of a
18 judicial officer, to exercise the power in section 63
19 of that Act or, in the case of an authorised officer, to
20 make a telephone application under that Act; or
21 (b) by a combination of conditions for those purposes
22 and a restraining order as envisaged by
23 paragraph (a).
24

25 (2) After Schedule 1 Part D clause 2(2a) insert:
26

27 (2AB) Where the accused and an alleged victim are in a family
28 relationship, the judicial officer or authorised officer must
29 ensure that any condition imposed under subclause (2)(c) or
30 (d) is not inconsistent with any restraining order in place
31 under the *Restraining Orders Act 1997*.

32 (2AC) Subclause (2AB) does not apply if the judicial officer or
33 authorised officer considers that an inconsistency is

s. 63

1 necessary to protect the safety of an alleged victim or of a
2 child who is also protected by an order under the
3 *Restraining Orders Act 1997*.
4

5 **63. Schedule 1 Part D clause 3 amended**

6 (1) After Schedule 1 Part D clause 3(3)(c) insert:

7

8 (ca) if relevant, comply with any direction under
9 subclause (4); and
10

11 (2) After Schedule 1 Part D clause 3(3) insert:
12

13 (4) A judicial officer who imposes a home detention condition
14 under this clause may, if a community corrections officer
15 under section 24A(4)(a) recommends that the accused is
16 suitable for electronic monitoring, direct that the accused,
17 while subject to a home detention condition —

18 (a) be subject to electronic monitoring under
19 subclause (5) so as to allow the location of the
20 accused to be monitored; and

21 (b) be under the supervision of a community
22 corrections officer and comply with the directions
23 of the community corrections officer under
24 subclause (5).

25 (5) For the purpose of the electronic monitoring of an accused,
26 a community corrections officer may do any or all of the
27 following —

28 (a) direct the accused to wear an approved electronic
29 monitoring device; and

30 (b) direct the accused to permit the installation of an
31 approved electronic monitoring device at the place
32 where the accused is to remain; and

33 (c) give any other reasonable direction to the accused
34 necessary for the proper administration of the
35 electronic monitoring of the accused.

- 1 (6) A community corrections officer may suspend the electronic
2 monitoring of an accused subject to direction under
3 subclause (4) —
4 (a) while satisfied that it is not practicable to subject
5 the accused to electronic monitoring; or
6 (b) while satisfied that it is not necessary for the
7 accused to be subject to electronic monitoring.
- 8 (7) A requirement that an accused subject to a home detention
9 condition while on bail wear an electronic monitoring
10 device cannot apply to a person who is under 18 years of
11 age.
12

13 **64. Schedule 2 amended**

14 In Schedule 2 item 1 after the row relating to s. 297 insert:
15

s. 298	Suffocation and strangulation
s. 300	Persistent family violence

16

1 **Part 6 — Restraining Orders Act 1997 amended**

2 **65. Act amended**

3 This Part amends the *Restraining Orders Act 1997*.

4 **66. Section 3 amended**

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

6

7 *affidavit* includes an electronic declaration made in
8 accordance with the rules of court;

9 *explosive* means a substance or an article that is
10 controlled as an explosive under the *Dangerous Goods*
11 *Safety Act 2004*;

12 *explosives licence* means a licence, permit or
13 authorisation to hold an explosive under the *Dangerous*
14 *Goods Safety Act 2004*;

15 *family court proceedings* means proceedings under the
16 *Family Law Act 1975* (Commonwealth) or the *Family*
17 *Court Act 1997*;

18 *Public Advocate* means the person holding or acting in
19 the office of Public Advocate under the *Guardianship*
20 *and Administration Act 1990*;

21

22 **67. Section 4 amended**

23 In section 4(1) in the definition of *family relationship*:

24 (a) in paragraph (f) delete “other.” and insert:

25

26 other; or

27

1 (b) after paragraph (f) insert:

2

3 (g) one of whom is the former spouse or former
4 de facto partner of the other person's current
5 spouse or current de facto partner.

6

7 **68. Section 5A amended**

8 After section 5A(2)(h) insert:

9

10 (ha) coercing, threatening, or causing physical
11 abuse, emotional or psychological abuse or
12 financial abuse, in connection with demanding
13 or receiving dowry, whether before or after any
14 marriage;

15

16 **69. Section 7A amended**

17 In section 7A:

18 (a) in paragraph (e) delete "3A." and insert:

19

20 3A; or

21

22 (b) after paragraph (e) insert:

23

24 (f) a registrar acting under Part 5A.

25

26 **70. Section 8 amended**

27 (1) In section 8(1)(h) delete "14 and 62E relating to firearms; and"
28 and insert:

29

30 14, 14A and 62E relating to firearms and explosives; and

31

s. 71

- 1 (2) Delete section 8(2) and insert:
2
- 3 (2) If a person to whom an explanation is to be given under
4 subsection (1) does not readily understand English, or
5 the court is not satisfied that the person understood the
6 explanation, the court is, as far as practicable, to
7 arrange for someone else who is 18 years of age or
8 older to give the explanation to the person in a way that
9 the person can understand.
- 10 (2A) However, a person giving an explanation under
11 subsection (2) must not be a person of a class
12 prescribed in the regulations.
13

14 **71. Section 9 replaced**

15 Delete section 9 and insert:
16

17 **9. Fixing a hearing**

18 The rules of court may make provision for —

- 19 (a) fixing, selecting or arranging a day, time and
20 place for a hearing; and
21 (b) requiring a person to attend a hearing; and
22 (c) preparing, or arranging for the preparation of, a
23 summons in the prescribed form; and
24 (d) causing a summons to be served on a person;
25 and
26 (e) notifying all other parties of the hearing.
27

1 **72. Section 10 amended**

2 Delete section 10(1) and (1A) and insert:

3

4 (1) A restraining order may be prepared in a manner
5 authorised under the rules of court and the rules may
6 make provision for —

7 (a) serving the respondent's copy and the
8 respondent's endorsement copy (if 1 is required
9 to be served) of the order on the person who is
10 bound by the order; and

11 (b) delivering the applicant's copy of the order
12 to —

13 (i) the person seeking to be protected by
14 the order; or

15 (ii) the parent or guardian of that person, if
16 the parent or guardian made the
17 application for the order on behalf of
18 that person;

19 and

20 (c) delivering the police copy of the order to the
21 Commissioner of Police; and

22 (d) placing the court copy of the order on the
23 court's records.

24 (1A) If a restraining order is taken to have been served under
25 section 55(3a), the respondent's copy and the
26 respondent's endorsement copy are not required to be
27 served under rules of court made under
28 subsection (1)(a) but are to be —

29 (a) delivered to the respondent; and

30 (b) if rules of court make provision for delivery
31 under paragraph (a) — delivered in accordance
32 with those rules.

33

s. 73

1 **73. Part 2A Division 1AA inserted**

2 At the beginning of Part 2A insert:

3

4 **Division 1AA — Additional circumstances where orders**
5 **may be made**

6 **13A. Cases involving violent offences**

7 (1) This section applies to an application for an FVRO or
8 VRO if —

9 (a) a person has been convicted of —

10 (i) an offence referred to in
11 section 63(4AA)(a) (in the case of an
12 application for an FVRO); or

13 (ii) a violent personal offence under
14 section 63A(1A) (in the case of an
15 application for either order);

16 and

17 (b) an FVRO or VRO, as appropriate in the case,
18 has not been made against the convicted person
19 (including because the offence for which the
20 person was convicted was committed before the
21 offence became subject to section 63(4AA) or
22 63A (as the case may be)); and

23 (c) the application is being made against the
24 convicted person by or on behalf of a victim of
25 the offence.

26 (2) In the case of an application where the person has been
27 convicted of an offence referred to in
28 section 63(4AA)(a), the court is, in the absence of
29 exceptional circumstances, taken to have grounds for
30 making an FVRO against the person.

- 1 (3) In the case of an application where the person has been
2 convicted of a violent personal offence under
3 section 63A(1A), the court must make an FVRO or
4 VRO, as is appropriate in the case, against the person.
- 5 (4) An order under this section may be made on an
6 ex parte application and in the absence of the person
7 who is to be bound by the order.
- 8 (5) Except as provided in subsection (6), an order will be
9 made for a period specified by the court.
- 10 (6) An order under subsection (3) is to be made for the
11 period of the life of the person who committed the
12 offence.
- 13 (7) Despite a preceding subsection, if the relevant offence
14 was committed by a person who was a child at the time
15 of the commission of the offence —
- 16 (a) a court is not required to make an order under
17 this section; and
- 18 (b) if a court makes an order under this section, the
19 order will be made for a period specified by the
20 court (and, in the case of a conviction for a
21 violent personal offence under
22 section 63A(1A), not for the period of the life
23 of the person who committed the offence).
- 24 (8) The person bound by an order under this section may
25 apply to vary or cancel the order on the ground that
26 exceptional circumstances exist which justify the
27 variation or cancellation (as the case may be).
28

s. 74

1 **74. Part 2A Division 1 heading amended**

2 In the heading to Part 2A Division 1 after “**firearms**” insert:

3

4 **and explosives**

5

6 **75. Section 14A inserted**

7 At the end of Part 2A Division 1 insert:

8

9 **14A. Explosives order**

- 10 (1) A court making an FVRO or VRO must consider
11 whether it should include a restraint prohibiting the
12 person who is bound by the order from —
- 13 (a) being in possession of any explosives; or
- 14 (b) obtaining, or being in possession of, an
15 explosives licence.
- 16 (2) A person who is bound by a restraint under
17 subsection (1) must give up possession, to a person and
18 in a manner prescribed by the regulations, of all
19 explosives and explosives licences held by the person
20 who is bound.
- 21 (3) A person who is subject to the operation of
22 subsection (2) and who is lawfully in possession of
23 explosives or an explosives licence immediately before
24 the order is made under subsection (1) is not in breach
25 of the order if the person is in possession of the
26 explosives or explosives licence during the period
27 necessary to comply with the terms of the order.
- 28 (4) In addition to the operation of subsection (1), a court
29 may permit the person who is bound by an FVRO or
30 VRO to have possession of explosives, and, if
31 necessary, an explosives licence relating to the

1 explosives, on such conditions as the court thinks fit
2 and specifies as part of the FVRO or VRO.
3

4 **76. Section 16 amended**

5 In section 16(4)(c) delete “cancelled or expires; or” and insert:

6

7 cancelled; or

8

9 **77. Section 16A amended**

10 (1) In section 16A(3) after “prisoner” insert:

11

12 at the time of service of the order

13

14 (2) Delete section 16A(4).

15 **78. Section 24A amended**

16 (1) In section 24A(1) delete “in person”.

17 (2) In section 24A(2):

18 (a) in paragraph (b) delete “person.” and insert:

19

20 person; or

21

22 (b) after paragraph (b) insert:

23

24 (c) if the regulations so provide, by a person acting
25 on behalf of another person in circumstances
26 prescribed by the regulations for the purposes
27 of this paragraph.
28

s. 79

- 1 (3) After section 24A(2) insert:
2
- 3 (2A) In connection with the operation of subsections (1)
4 and (2) —
- 5 (a) an application by a police officer under
6 subsection (1)(b) is taken to have been made in
7 the name of the Commissioner of Police; and
- 8 (b) an application by a child welfare officer under
9 subsection (2)(a) will be taken to have been
10 made in the name of the CEO (child welfare);
11 and
- 12 (c) except as provided in the regulations, an
13 application by a guardian under
14 subsection (2)(b) will be taken to have been
15 made in the name of the Public Advocate; and
- 16 (d) if the regulations so provide, an application by
17 a person under subsection (2)(c) will, in
18 circumstances prescribed by the regulations, be
19 taken to have been made in the name of an
20 officer or authority prescribed by the
21 regulations.
22
- 23 (4) In section 24A(3) delete “made in person is to be made in the
24 prescribed form” and insert:
25
- 26 is to be made in accordance with the rules of court (using, if the
27 regulations so require, the prescribed form)
28
- 29 **79. Section 25 amended**
- 30 (1) In section 25(1) delete “in person”.

1 (2) In section 25(3) delete “made in person is to be made in the
2 prescribed form” and insert:

3

4 is to be made in accordance with the rules of court (using, if the
5 regulations so require, the prescribed form)

6

7 **80. Section 26 amended**

8 (1) In section 26(2) delete “the registrar is to fix a hearing for that
9 purpose.” and insert:

10

11 a hearing for that purpose must be fixed in accordance with the
12 rules of court.

13

14 (2) In section 26(3) delete “the registrar is to fix a hearing and
15 summons the respondent to the hearing.” and insert:

16

17 a hearing must be fixed, and a summons served on the
18 respondent, in accordance with the rules of court.

19

20 **81. Section 27 amended**

21 Delete section 27(4a) and (5).

22 **82. Section 30E amended**

23 (1) In section 30E(4) delete “16 years” and insert:

24

25 18 years

26

s. 83

1 (2) After section 30E(4) insert:

2

3 (4A) However, a person giving an explanation under
4 subsection (4) must not be a person of a class
5 prescribed in the regulations.

6

7 **83. Section 33 amended**

8 (1) In section 33(2):

9 (a) in paragraph (d) delete “occupation,” and insert:

10

11 occupation; or

12

13 (b) after paragraph (d) insert:

14

15 (e) being in possession of explosives or an
16 explosives licence that the respondent
17 reasonably needs in order to carry on the
18 respondent’s usual occupation,

19

20 (2) After section 33(2) insert:

21

22 (3) Subsections (1) and (2) apply subject to the referral of
23 the matter to a conference under Part 5A.

24

1 **84. Section 36 amended**

2 (1) In section 36(2):

3 (a) after paragraph (f) insert:

4

5 (fa) being in possession of any explosives or an
6 explosives licence, or applying for an
7 explosives licence;

8

9 (b) in paragraph (g) delete “(f).” and insert:

10

11 (fa).

12

13 (2) In section 36(3):

14 (a) in paragraph (c) delete “licence.” and insert:

15

16 licence; or

17

18 (b) after paragraph (c) insert:

19

20 (d) being in possession of any explosives or an
21 explosives licence, or applying for an
22 explosives licence.

23

24 (3) In section 36(6) delete “VRO.” and insert:

25

26 VRO (as those sections apply in relation to firearms and
27 firearms licences).

28

s. 85

1 (4) After section 36(6) insert:

2

3 (7) If an MRO restrains the respondent from being in
4 possession of any explosives or an explosives licence,
5 or applying for an explosives licence, sections 14A and
6 62E apply as if the MRO were a VRO (as those
7 sections apply in relation to explosives and explosives
8 licences).

9

10 **85. Section 38 amended**

11 (1) In section 38(1) delete “in person”.

12 (2) In section 38(4) delete “in the prescribed form” and insert:

13

14 in accordance with the rules of court (using, if the regulations so
15 require, the prescribed form)

16

17 **86. Section 44C amended**

18 After section 44C(2) insert:

19

20 (3) This section does not derogate from the operation of
21 section 44F.

22

1 **87. Part 4 Division 4 inserted**

2 At the end of Part 4 insert:

3

4 **Division 4 — Other provisions to protect applicants**

5 **44D. Support and other persons who may be present**

6 (1) In any proceedings under this Act (including in relation
7 to a hearing in closed court) —

8 (a) the person seeking to be protected by an order
9 (or on whose behalf an order is sought) is
10 entitled to have 1 or more persons near to
11 provide support; and

12 (b) the court may permit any person who is not a
13 party to the proceedings to be in court.

14 (2) A person to provide support is to be approved by the
15 court and is not to be a person who is a witness in, or a
16 party to, the proceedings.

17 **44E. Use of closed circuit television or screening**
18 **arrangements**

19 (1) A court may make arrangements under this section in
20 any proceedings under this Act if it is of the opinion
21 that, if those arrangements are not made, a party to the
22 proceedings or a witness would be likely —

23 (a) to be unable to give evidence, or to give
24 evidence satisfactorily; or

25 (b) to suffer severe emotional trauma or be
26 unnecessarily intimidated or distressed.

27 (2) In acting under this section, the court may make such
28 arrangements as it thinks fit, including by using closed
29 circuit television or screens, one-way glass or other
30 suitable shielding devices.

s. 87

- 1 (3) When considering whether to make arrangements
2 under this section in respect of a person, the court may
3 have regard to —
- 4 (a) the person’s age; and
5 (b) the person’s cultural background; and
6 (c) any physical disability or mental impairment
7 (as defined in the *Criminal Law (Mentally*
8 *Impaired Accused) Act 1996* section 8) of the
9 person; and
10 (d) the relationship of the person to any other
11 person involved in the proceedings; and
12 (e) the effect on the person of the presence of
13 another person; and
14 (f) the nature of the subject-matter of the
15 proceedings; and
16 (g) the expressed views of the person; and
17 (h) any other factor the court considers relevant.
- 18 (4) When making arrangements under this section, the
19 court must ensure that —
- 20 (a) the judicial officer and all parties to the matter
21 (or their counsel, if any) are able to see, hear
22 and speak to each witness while the witness is
23 giving evidence; and
24 (b) each party to the matter has the means of
25 communicating with their counsel at all times;
26 and
27 (c) if a person takes part in the proceedings from
28 outside the court room, the person is able to
29 see, hear and speak to the judicial officer at all
30 times.

- 1 (5) The court may make arrangements under this
2 section —
- 3 (a) on the application of a party to the proceedings,
4 at the request of a witness, or of its own
5 motion; and
- 6 (b) at any stage of proceedings.
- 7 (6) Whenever a matter relating to an FVRO or VRO comes
8 before a court, the court must consider whether it ought
9 to make arrangements under this section.
- 10 (7) If a court considers that arrangements ought to be made
11 under this section but the necessary facilities are not
12 available, the court may transfer the matter to another
13 court where those facilities are available if to do so is
14 practicable and will not unfairly prejudice any party in
15 the proceedings.

16 **44F. Additional provisions relating to FVROs**

17 A court conducting proceedings relating to an FVRO is
18 to take such steps as are reasonably practicable and
19 appropriate to ensure that a person who has (or who
20 may have) experienced family violence feels safe
21 during the course of those proceedings, including by —

- 22 (a) actively directing, controlling and managing the
23 conduct of the proceedings; and
- 24 (b) without limiting paragraph (a), limiting
25 cross-examination of a person.
26

27 **88. Section 45 amended**

- 28 (1) After section 45(1)(b) insert:
29
- 30 (ba) in the case of an application to a court
31 exercising criminal jurisdiction, the person

s. 88

- 1 conducting the prosecution on behalf of the
2 person protected by the order; or
3
- 4 (2) In section 45(2):
- 5 (a) in paragraph (b) delete “person.” and insert:
6
7 person; or
8
- 9 (b) after paragraph (b) insert:
10
- 11 (c) in the case of an FVRO, by a person who is
12 able to make an application for an order under
13 section 24A(2).
14
- 15 (3) After section 45(3) insert:
16
- 17 (3A) An application to vary a restraining order may be an
18 application to vary a VRO made before 1 July 2017 to
19 an FVRO.
- 20 (3B) An application to vary or cancel a restraining order
21 may be made to any court with jurisdiction to make
22 such an order (including a court that is different to the
23 court that made the order but not including a court that
24 is an inferior court to the court that made the order).
25
- 26 (4) In section 45(4):
- 27 (a) delete “An” and insert:
28
29 Except as provided in subsection (7), an
30

1 (b) delete “form to the court that made the order.” and
2 insert:

3

4 form.

5

6 (5) After section 45(6) insert:

7

8 (7) Except as provided in subsection (8), an application to
9 vary or cancel a restraining order made to a court
10 exercising criminal jurisdiction may be made as part of
11 the criminal proceedings and without the need to
12 comply with subsection (4).

13 (8) A court exercising criminal jurisdiction must not vary
14 or cancel a restraining order as part of the criminal
15 proceedings unless the person bound by the order is
16 present and that person, and the person protected by the
17 order, have had an opportunity to make submissions on
18 the matter.

19 (9) Subsection (8) does not apply in the circumstances
20 applying under section 63A.

21

22 **89. Section 46 amended**

23 After section 46(4) insert:

24

25 (5) Subsection (4) operates subject to the operation of
26 section 13A(8).

27

s. 90

1 **90. Section 49 amended**

2 In section 49(1):

3 (a) in paragraph (b)(i) delete “variations; or” and insert;

4

5 variations;

6

7 (b) delete paragraph (b)(ii).

8 **91. Section 49C inserted**

9 At the end of Part 5 insert:

10

11 **49C. Variation of application to allow a different order to**
12 **be sought**

13 The court may, if it is satisfied that an applicant has
14 made a mistake as to the nature of their relationship
15 with the respondent for the purposes of this Act, permit
16 an applicant —

17 (a) to vary an application for a VRO to an
18 application for an FVRO; or

19 (b) to vary an application for an FVRO to an
20 application for a VRO.
21

1 **92. Part 5A inserted**

2 Before Part 6 insert:

3

4 **Part 5A — Conferences**

5 **49D. Special conference procedures**

6 (1) A registrar may convene a conference under this
7 section at the request of the court, or on the registrar’s
8 own initiative —

9 (a) in relation to an application for an FVRO, if —

10 (i) the applicant has indicated a wish to
11 proceed to a defended hearing under
12 section 26(1)(b); or

13 (ii) the court has made an FVRO under
14 section 29(1)(a) which is an interim
15 order under section 29(3) and the
16 respondent has indicated an objection to
17 the interim order becoming final; or

18 (iii) the matter has been adjourned under
19 section 29(1)(c);

20 or

21 (b) in relation to an application to vary or cancel an
22 FVRO.

23 (2) However, a conference will not be convened if a party
24 objects to participating in a conference under this
25 section.

26 (3) If a conference is to be convened, the registrar is to fix
27 a day, time and place for the conference.

28 (4) The purpose of a conference is to provide a procedure
29 through which an appropriate outcome to the
30 proceedings, including by the making of orders, may

s. 92

- 1 be achieved without the parties being together during
2 the conduct of the conference.
- 3 (5) In particular —
- 4 (a) a conference will be conducted by a registrar of
5 the court; and
- 6 (b) the registrar must ensure that the applicant and
7 the respondent remain in separate rooms during
8 a conference; and
- 9 (c) the applicant and the respondent may each be
10 represented by a legal practitioner, and have
11 1 or more other persons present or available to
12 provide support; and
- 13 (d) the registrar conducting a conference may —
- 14 (i) require a party to furnish such
15 information as the registrar thinks fit;
16 and
- 17 (ii) record any agreement reached at the
18 conference and, to the extent provided
19 by such an agreement, make any
20 determination (including a
21 determination that the proceedings be
22 discontinued), or make any order
23 (including an FVRO or a behaviour
24 management order), on behalf of the
25 court; and
- 26 (iii) close the conference at any time if, in
27 the registrar’s opinion, an agreement (or
28 an appropriate agreement) cannot be
29 reached; and

- 1 (iv) refer the matter back to the court for the
2 purposes of any proceedings, including
3 by taking steps to list the matter for
4 hearing; and
- 5 (v) otherwise conduct the conference as the
6 registrar thinks fit.
- 7 (6) An agreement reached at a conference may include an
8 unenforceable undertaking by a party to attend a
9 behaviour change programme approved by the Minister
10 as envisaged by section 10P, subject to the following
11 qualifications —
- 12 (a) the undertaking will be unenforceable even if
13 the agreement is incorporated into a
14 determination or order of the court;
- 15 (b) Part 1C will not apply in relation to the
16 undertaking even though the party has agreed to
17 attend a behaviour change programme.
- 18 (7) The registrar conducting a conference must, before
19 making an order that gives effect to an agreement
20 proposed or reached at the conference, have regard to
21 the matters set out in section 10F and may decline to
22 accept or give effect to an agreement if the registrar
23 considers that the agreement is inappropriate in the
24 circumstances.
- 25 (8) If a party does not attend a conference, the registrar
26 may, if satisfied that the party was notified of the
27 conference —
- 28 (a) adjourn the conference to another day and time;
29 or
- 30 (b) if the party is the applicant, dismiss the
31 application; or

s. 93

- 1 (c) if the party is the respondent, proceed to hear
2 the applicant and, if the registrar thinks fit,
3 make an order on behalf of the court (including
4 a final FVRO); or
5 (d) refer the matter back to the court.
- 6 (9) A person to provide support under subsection (5)(c) is
7 to be approved by the registrar and is not to be a person
8 who is a witness in, or a party to, the proceedings.
- 9 (10) Evidence of anything said or done in the course of a
10 conference is inadmissible in civil proceedings before a
11 court except by consent of all parties to the
12 proceedings.
13

14 **93. Section 55 amended**

- 15 (1) Delete section 55(1)(c) and insert:
16
17 (c) substituted service is allowed under section 60.
18
- 19 (2) In section 55(5A) delete “16 years” and insert:
20
21 18 years
22
- 23 (3) After section 55(5A) insert:
24
- 25 (5B) However, a person giving an explanation under
26 subsection (5A) must not be a person of a class
27 prescribed in the regulations.
28

1 **94. Section 59 amended**

2 (1) In section 59(2) delete “applicant” and insert:

3

4 applicant, and in the case of an application under
5 section 24A(1)(b) or (2), the person on whose behalf the
6 application was made,

7

8 (2) After section 59(2) insert:

9

10 (3) A notification under subsection (2) may be given in
11 such manner as the registrar thinks fit, including, if
12 authorised by the person who is to receive the
13 notification, by email, text message to a mobile phone
14 number or some other form of electronic
15 communication using contact details provided by the
16 person.

17

18 **95. Section 60 amended**

19 Delete section 60(1) to (2) and insert:

20

21 (1) Substituted service of a document may occur by order
22 of a court if the court is satisfied that a person is
23 deliberately avoiding being served with the document.

24 (1A) Substituted service of an FVRO may also occur —

25

 (a) by order of a court if —

26

 (i) the court is satisfied that personal
27 service or service by post is
28 impracticable for any reason (including
29 that the person to be served does not
30 have a fixed address or is located at a
31 place that is too remote to reasonably

31

s. 95

- 1 permit personal service or service by
2 post); or
- 3 (ii) the court is satisfied that the person to
4 be served is likely to avoid personal
5 service or service by post; or
- 6 (iii) the court considers that substituted
7 service is necessary, appropriate or
8 advisable in the circumstances of the
9 particular case (including that any delay
10 in service is likely to put at risk the
11 safety of the person seeking to be
12 protected);
- 13 or
- 14 (b) if a person attempting to serve the order has
15 failed to achieve personal service after taking
16 the steps prescribed by the regulations
17 (including on the basis that substituted service
18 may only occur with the approval of a person of
19 a prescribed class or holding a prescribed
20 office).
- 21 (2) A document is served by substituted service if the
22 person serving it —
- 23 (a) takes such steps as a court directs to bring the
24 document to the attention of the person being
25 served; or
- 26 (b) in a case where subsection (1A)(b) applies,
27 takes the steps prescribed by the regulations.
28

1 **96. Section 61 amended**

2 (1) Delete section 61(1) and insert:

3

4 (1) A person who is bound by an FVRO and who breaches
5 that order commits an offence.

6 Penalty for this subsection: a fine of \$10 000 or
7 imprisonment for 2 years, or both.

8 (1A) A person who is bound by a VRO and who breaches
9 that order commits an offence.

10 Penalty for this subsection: a fine of \$10 000 or
11 imprisonment for 2 years, or both.

12

13 (2) In section 61(2a) in the Penalty delete “\$6 000” and insert:

14

15 a fine of \$10 000

16

17 (3) After section 61(5) insert:

18

19 (6) A prosecution for an offence under subsection (1), (1A)
20 or (2a) must be commenced within 2 years after the
21 day on which the offence is alleged to have been
22 committed.

23

24 **97. Section 61A amended**

25 (1) In section 61A(1) insert in alphabetical order:

26

27 *relevant offence* means —

28 (a) an offence under section 61(1), (1A) or (2a); or

29 (b) an offence under *The Criminal Code*
30 section 338E committed in the circumstances of

1 (5) In section 61A(2B) after “previous” insert:

2

3 relevant

4

5 (6) In section 61A(4) and (5) before “relevant” insert:

6

7 qualifying

8

9 **98. Section 61B amended**

10 (1) In section 61B(2) delete “section 8(1).” and insert:

11

12 section 8(1) if the protected person is in a family relationship
13 with the bound person.

14

15 (2) After section 61B(2) insert:

16

17 (2A) However, subsection (2) does not apply if —

18 (a) the protected person, without any influence on
19 the part of the bound person (including any
20 influence attributable to family violence),
21 initiated the breach of the order; and

22 (b) at the time of the commission of the offence, no
23 conduct of the bound person (whether or not
24 constituting part of the offence) constituted
25 family violence).

26

s. 99

1 **99. Section 62E amended**

2 (1) After section 62E(1) insert:

3

4 (1AA) If a person who is bound by a restraint under
5 section 14A in relation to an FVRO or VRO does not
6 give up possession of any explosives or an explosives
7 licence in accordance with that section, a police officer
8 may, without a warrant —

- 9 (a) enter a place where any explosives that are, or
10 are reasonably suspected to be, in the
11 possession of the person are reasonably
12 suspected to be, and search for and seize the
13 explosives; or
14 (b) enter a place where an explosives licence held
15 by the person is reasonably suspected to be, and
16 search for and seize the licence.

17

18 (2) In section 62E(1a) delete “subsection (1),” and insert:

19

20 subsection (1) or (1AA),

21

22 (3) After section 62E(1a) insert:

23

24 (1B) In the exercise of a power under subsection (1AA), a
25 police officer may be accompanied and assisted by a
26 dangerous goods officer under the *Dangerous Goods*
27 *Safety Act 2004*.

28

- 1 (4) In section 62E(2) delete “subsection (1) is” and insert:
2
3 subsection (1), or any explosives or an explosives licence seized
4 under subsection (1AA), are

6 Note: The heading to amended section 62E is to read:

7 **Seizure of firearms and explosives**

8 **100. Section 63 amended**

- 9 (1) After section 63(3) insert:
10
11 (3AA) To avoid doubt, a court acting under subsection (2) or
12 (3) may make a restraining order in the absence of the
13 person against whom the order is made if the court is
14 satisfied that the order should be made in the
15 circumstances.
16
17 (2) In section 63(4):
18 (a) in paragraph (b) delete “case; and” and insert:
19 case.
20 (b) delete paragraph (c).
21
22 (3) In section 63(4AA)(a)(i) after “section” insert:
23 298, 300,
24
25 (4) In section 63(4AB)(d) delete “section 10G(2)” and insert:
26
27 section 10G
28
29
30

s. 101

- 1 (5) In section 63(4a) delete “subsection (4b)” and insert”
2
3 subsection (4B)
4
- 5 (6) Delete section 63(4b) and insert:
6
- 7 (4B) A restraining order made by a court under
8 subsection (2) or (3) will be an interim restraining
9 order if —
- 10 (a) the person who would be bound by the order
11 objects to it being made and the court considers
12 that the order should be an interim order in the
13 circumstances; or
- 14 (b) the person against whom the order is made is
15 not present when the order is made.
16
- 17 (7) In section 63(4c) delete “subsection 4(b)” and insert:
18
- 19 subsection (4B)(a)
20
- 21 **101. Section 63A amended**
- 22 (1) In section 63A(1A) delete the definition of *violent personal*
23 *offence* and insert:
24
- 25 *violent personal offence* means —
- 26 (a) an offence against *The Criminal Code*
27 section 283, 292, 293, 294, 297, 304(2), 320,
28 321, 321A, 325, 326, 327, 328, 329 or 332; or
- 29 (b) an offence against *The Criminal Code*
30 section 444 that is dealt with on indictment.
31

- 1 (2) In section 63A(2):
2 (a) delete “An” and insert:
3
4 Except as provided in subsection (2A), an
5
6 (b) delete “specify that the order is to remain in force” and
7 insert:
8
9 be made
10
- 11 (3) After section 63A(2) insert:
12
- 13 (2A) If the violent personal offence was committed by a
14 person who was a child at the time of the commission
15 of the offence —
16 (a) a court is not required to make an order under
17 this section; and
18 (b) if a court makes an order under this section, the
19 order will be made for a period specified by the
20 court (and not for the period of the life of the
21 person who committed the offence).
22
- 23 (4) Delete section 63A(4) and insert:
24
- 25 (4) A court must not make an order under this section if a
26 request not to make the order is made by —
27 (a) the victim of the offence for whose benefit the
28 order would be made; or
29 (b) a parent or guardian acting on behalf of a child
30 who is the victim of the offence for whose
31 benefit the order would be made.

s. 102

1 (5) The person who committed the offence cannot act on
2 behalf of a child under subsection (4)(b).
3

4 **102. Section 63B amended**

5 In section 63B(1) in the definition of *violent personal offence*
6 paragraph (b) delete “329, 332, 333, 338A, 338B, 338C, 338E
7 or 444.” and insert:

8
9 329 or 332.
10

11 **103. Section 66 replaced**

12 Delete section 66 and insert:

13
14 **66. Information about family orders**

15 (1) A court before which an application for a restraining
16 order has been made must, at a time determined by the
17 court to be appropriate in the circumstances, request
18 the applicant to provide information (being information
19 of which the applicant is aware) —

20 (a) about the existence of —

21 (i) unless subparagraph (ii) applies, any
22 family order to which the applicant is a
23 party; or

24 (ii) if the application is being made on
25 behalf of another person, any family
26 order to which the person for whose
27 benefit the order would be made is a
28 party;

29 and

- 1 (b) about the existence of —
- 2 (i) unless subparagraph (ii) applies, any
- 3 pending application for a family order in
- 4 which the applicant is a party to the
- 5 family court proceedings; or
- 6 (ii) if the application is being made on
- 7 behalf of another person, any pending
- 8 application for a family order in which
- 9 the person for whose benefit the order
- 10 would be made is a party to the family
- 11 court proceedings.
- 12 (2) If a court, on making a request under subsection (1), or
- 13 in any other circumstances, becomes aware of an
- 14 existing family order, or proceedings for a family
- 15 order, the court must —
- 16 (a) take steps to obtain a copy of any family order
- 17 or, if that is not reasonably practicable in the
- 18 circumstances, information about the terms of
- 19 any family order; and
- 20 (b) without derogating from section 65, take the
- 21 terms of any family order, or the terms of a
- 22 family order that are being sought in a pending
- 23 application for a family order, into account (to
- 24 the extent that those terms are known to the
- 25 court) when making a restraining order
- 26 (including an order agreed between the parties)
- 27 under this Act.
- 28 (3) A restraining order is not invalid merely because of any
- 29 failure to comply with this section.
- 30

s. 104

1 **104. Section 70 amended**

2 (1) In section 70(1) delete “subsection (1A) or (3),” and insert:

3

4 subsection (1A), (3) or (3A),

5

6 (2) After section (70)(3) insert:

7

8 (3A) This section does not prevent —

9 (a) the matter number of any proceedings (whether
10 under this Act or otherwise) being displayed by
11 a court in the precincts of the court; or

12 (b) the name of a party to any proceedings
13 (whether under this Act or otherwise), or the
14 name of any other person who is to give
15 evidence in any such proceedings, being
16 revealed by or on behalf of a court in the
17 precincts of the court.

18

19 **105. Section 73 amended**

20 In section 73(2):

21 (a) in paragraph (b) delete “licences” and insert:

22

23 licenses, and explosives and explosives licences,

24

25 (b) in paragraph (c) delete “firearm; and” and insert:

26

27 firearm or any explosives; and

28

s. 107

1 claims to be, a victim of the incident or alleged
2 incident, take reasonable steps to ensure that a
3 report number, or other identifying information
4 relating to the report, is provided to that person.

5 (4) A requirement under subsection (3) is satisfied if the
6 designated person complies with a guideline or policy
7 prepared by the Commissioner of Police for the
8 purposes of this section.
9

**Part 8 — Road Traffic (Administration) Act 2008
amended**

108. Act amended

This Part amends the *Road Traffic (Administration) Act 2008*.

109. Section 4 amended

In section 4 insert in alphabetical order:

DVO has the meaning given in the *Domestic Violence Orders (National Recognition) Act 2017* section 4(1);

Family Court injunction means an injunction under the *Family Court Act 1997* section 235 or 235A or the *Family Law Act 1975* (Commonwealth) section 68B or 114;

family violence has the meaning given in the *Restraining Orders Act 1997* section 5A;

family violence evidentiary document, in relation to a responsible person, means any of the following —

- (a) a DVO;
- (b) a Family Court injunction or an application for a Family Court injunction;
- (c) a copy of a prosecution notice or indictment containing a charge relating to violence against the responsible person or a court record of a conviction of the charge;
- (d) a report of family violence, in a form approved by the Minister, completed by a person who has worked with the responsible person and is 1 of the following —
 - (i) a person registered under the *Health Practitioner Regulation National Law*

s. 110

- 1 (Western Australia) in the medical
2 profession;
- 3 (ii) a person registered under the *Health*
4 *Practitioner Regulation National Law*
5 (Western Australia) in the psychology
6 profession;
- 7 (iii) a social worker as defined in the *Mental*
8 *Health Act 2014* section 4;
- 9 (iv) a police officer;
- 10 (v) a person in charge of a women's refuge;
- 11 (vi) a prescribed person or class of persons;
- 12

13 **110. Section 34 amended**

14 After section 34(3) insert:

15

- 16 (3A) Subsection (2) does not apply if the responsible person
17 for the vehicle supplies to the police officer who has
18 made the request for information a statutory
19 declaration —
- 20 (a) that the responsible person was not the driver or
21 person in charge of the vehicle at the relevant
22 time; and
- 23 (b) that the responsible person is concerned about
24 providing information in response to the
25 request because of a risk or apprehended risk of
26 being subjected to family violence if the
27 responsible person took steps to find or provide
28 that information.
- 29 (3B) A statutory declaration under subsection (3A) must be
30 accompanied by a family violence evidentiary
31 document that relates to the responsible person.

1 (3C) Subsection (3A) does not apply if the request for
2 information was made under the *Road Traffic Act 1974*
3 section 57.

4 (3D) The provision of information under subsection (3A)
5 does not give rise to a requirement for a police officer
6 to carry out an investigation under the *Restraining*
7 *Orders Act 1997* section 62A (but this subsection does
8 not prevent such an investigation occurring if the
9 police officer thinks fit).

10
11 **111. Section 35 amended**

12 After section 35(2) insert:

13
14 (3) Subsection (2) does not apply if the responsible person
15 for the vehicle supplies to the person who has made the
16 identity request a statutory declaration —

17 (a) that the responsible person was not the driver or
18 person in charge of the vehicle at the relevant
19 time; and

20 (b) that the responsible person is concerned about
21 providing information in response to the
22 identity request because of a risk or
23 apprehended risk of being subjected to family
24 violence if the responsible person took steps to
25 find or provide that information.

26 (4) A statutory declaration under subsection (3) must be
27 accompanied by a family violence evidentiary
28 document that relates to the responsible person.

29 (5) Subsection (3) does not apply if the request for
30 information was made under the *Road Traffic Act 1974*
31 section 57.

s. 112

- 1 (6) The provision of information under subsection (3) does
2 not give rise to a requirement for a police officer to
3 carry out an investigation under the *Restraining Orders*
4 *Act 1997* section 62A (but this subsection does not
5 prevent such an investigation occurring if the police
6 officer thinks fit).
7

8 **112. Section 94 amended**

- 9 (1) In section 94 delete “If an” and insert:
10

- 11 (1) If an
12

- 13 (2) At the end of section 94 insert:
14

- 15 (2) Subsection (1) does not apply if the responsible person
16 for the vehicle supplies to the officer specified in the
17 notice a statutory declaration —
18 (a) that the responsible person was not the driver or
19 person in charge of the vehicle at the time of
20 the alleged offence; and
21 (b) that the responsible person is concerned about
22 providing information in response to the notice
23 because of a risk or apprehended risk of being
24 subjected to family violence if the responsible
25 person took steps to find or provide any
26 information required under that subsection.

- 27 (3) A statutory declaration under subsection (2) must be
28 accompanied by a family violence evidentiary
29 document that relates to the responsible person.

- 30 (4) The provision of information under subsection (2) does
31 not give rise to a requirement for a police officer to
32 carry out an investigation under the *Restraining Orders*

1 *Act 1997* section 62A (but this subsection does not
2 prevent such an investigation occurring if the police
3 officer thinks fit).
4

5 **113. Section 100 amended**

6 After section 100(1) insert:
7

- 8 (1A) Subsection (1) does not apply if the responsible person
9 for the vehicle supplies to the officer specified in the
10 notice a statutory declaration —
- 11 (a) that the responsible person was not the driver or
12 person in charge of the vehicle at the time of
13 the offence described in the notice; and
- 14 (b) that the responsible person is concerned about
15 providing information in response to the notice
16 because of a risk or apprehended risk of being
17 subjected to family violence if the responsible
18 person took steps to find or provide any
19 information required under that subsection.
- 20 (1B) A statutory declaration under subsection (1A) must be
21 accompanied by a family violence evidentiary
22 document that relates to the responsible person.
- 23 (1C) The provision of information under subsection (1A)
24 does not give rise to a requirement for a police officer
25 to carry out an investigation under the *Restraining*
26 *Orders Act 1997* section 62A (but this subsection does
27 not prevent such an investigation occurring if the
28 police officer thinks fit).
29

1 **Part 9 — *Dangerous Goods Safety Act 2004* amended**

2 **114. Act amended**

3 This Part amends the *Dangerous Goods Safety Act 2004*.

4 **115. Section 68A inserted**

5 After section 68 insert:

6

7 **68A. Orders prohibiting possession of explosives**

8 (1) In this section —

9 *approval* includes a licence, registration and permit;

10 *explosive* means a substance or article that is controlled
11 as an explosive under this Act.

12 (2) This section applies if —

13 (a) a court makes an order prohibiting a person
14 from —

15 (i) being in possession or having control or
16 management of explosives; or

17 (ii) holding an approval which allows a
18 person to be in possession or to have
19 control or management of explosives;

20 and

21 (b) the Chief Officer is given notice of the order in
22 accordance with any requirements prescribed
23 by the regulations.

24 (3) In a case where this section applies, the Chief
25 Officer —

26 (a) must immediately suspend or cancel (as may be
27 appropriate in the circumstances) any approval
28 or exemption that allows the person to whom

- 1 the order applies to be in possession or to have
2 control or management of explosives; and
- 3 (b) must suspend, vary or revoke any security card
4 or other authorisation to the extent that the
5 security card or authorisation would allow the
6 person to whom the order applies to be in
7 possession or to have control or management of
8 explosives; and
- 9 (c) must not, to the extent that would be
10 inconsistent with the order, grant an approval,
11 security card or other authorisation to the
12 person to whom the order applies while the
13 order is in force.
- 14 (4) In relation to the suspension of an approval or
15 exemption, the Chief Officer may, depending on the
16 outcome of any court proceedings and as may be
17 appropriate in the circumstances (and at an appropriate
18 time) —
- 19 (a) lift the suspension; or
- 20 (b) cancel the approval or exemption (as the case
21 may be).
- 22

1 **Part 10 — Evidence Act 1906 amended**

2 **116. Act amended**

3 This Part amends the *Evidence Act 1906*.

4 **117. Sections 37 to 39G inserted**

5 After section 36C insert:

6

7 **37. Terms used**

8 In sections 38 to 39G —

9 *family member* has the meaning given in the
10 *Restraining Orders Act 1997* section 4(3);

11 *family violence* has the meaning given in the
12 *Restraining Orders Act 1997* section 5A;

13 *help-seeking behaviour* means any action undertaken
14 by a victim of family violence to address, or attempt to
15 address, any aspect of the family violence including
16 (but not limited to) reporting the family violence to the
17 police, obtaining a restraining order, finding
18 accommodation in a refuge, separating from an abusive
19 person, or seeking counselling or external support;

20 *safety option*, in relation to an accused person who is
21 (or may be) a victim of family violence, means an act
22 that may have stopped the violence, other than an act
23 which constitutes (or allegedly constitutes) an offence
24 with which the person is charged.

25 **38. What may constitute evidence of family violence**

26 (1) For the purposes of sections 39 to 39G, evidence of
27 family violence, in relation to a person, includes (but is
28 not limited to) evidence of any of the following —

29 (a) the history of the relationship between the
30 person and a family member, including

- 1 violence by the family member towards the
2 person, or by the person towards the family
3 member, or by the family member of the person
4 in relation to any other family member;
- 5 (b) the cumulative effect of family violence,
6 including the psychological effect, on the
7 person or a family member affected by that
8 violence;
- 9 (c) social, cultural or economic factors that impact
10 on the person or a family member who has been
11 affected by family violence;
- 12 (d) responses by family, community or agencies to
13 family violence, including further violence that
14 may be used by a family member to prevent, or
15 in retaliation to, any help-seeking behaviour or
16 use of safety options by the person;
- 17 (e) ways in which social, cultural, economic or
18 personal factors have affected any help-seeking
19 behaviour undertaken by the person, or the
20 safety options realistically available to the
21 person, in response to family violence;
- 22 (f) ways in which violence by the family member
23 towards the person, or the lack of safety
24 options, were exacerbated by inequities
25 experienced by the person, including inequities
26 associated with (but not limited to) race,
27 poverty, gender, disability or age;
- 28 (g) the general nature and dynamics of
29 relationships affected by family violence,
30 including the possible consequences of
31 separation from a person who commits family
32 violence;
- 33 (h) the psychological effect of family violence on
34 people who are or have been in a relationship
35 affected by family violence;

s. 117

1 (i) social or economic factors that impact on
2 people who are or have been in a relationship
3 affected by family violence.

4 (2) Subsection (1) does not limit the operation of the
5 *Restraining Orders Act 1997* section 5A(2).

6 **39. Expert evidence of family violence**

7 (1) This section applies to any criminal proceedings where
8 evidence of family violence is relevant to a fact in
9 issue.

10 (2) The evidence of an expert on the subject of family
11 violence is admissible in relation to any matter that
12 may constitute evidence of family violence.

13 (3) Evidence given by the expert may include —
14 (a) evidence about the nature and effects of family
15 violence on any person; and
16 (b) evidence about the effect of family violence on
17 a particular person who has been the subject of
18 family violence.

19 (4) For the purposes of this section, an expert on the
20 subject of family violence includes a person who can
21 demonstrate specialised knowledge, gained by training,
22 study or experience, of any matter that may constitute
23 evidence of family violence.

24 **39A. Evidence of family violence — general provision**

25 In proceedings for an offence, evidence of family
26 violence is admissible if family violence is relevant to a
27 fact in issue.

28 **39B. Evidence of family violence — self-defence**

29 Without limiting any other evidence that may be
30 adduced, in criminal proceedings in which self-defence

1 in response to family violence is an issue, evidence of
2 family violence may be relevant to determining
3 whether —

- 4 (a) a person has a belief that an act was necessary
5 to defend the person or another person from a
6 harmful act, including a harmful act that was
7 not imminent; or
8 (b) a person's act was a reasonable response by the
9 person in the circumstances as the person
10 believed them to be; or
11 (c) there are reasonable grounds for a particular
12 belief by a person.

13 **39C. Request for direction on family violence —**
14 **self-defence**

- 15 (1) In criminal proceedings in which self-defence in
16 response to family violence is an issue, defence counsel
17 (or, if the accused is unrepresented, the accused) may
18 request at any time that the trial judge direct the jury on
19 family violence in accordance with section 39E and all
20 or specified parts of section 39F.
- 21 (2) The trial judge must give the jury a requested direction
22 on family violence, including all or specified parts of
23 section 39F if so requested, unless there are good
24 reasons for not doing so.
- 25 (3) If a direction on family violence is not requested, the
26 trial judge may give the direction if the trial judge
27 considers that it is in the interests of justice to do so.
- 28 (4) The trial judge —
29 (a) must give the direction as soon as practicable
30 after the request is made; and
31 (b) may give the direction before any evidence is
32 adduced in the trial.

s. 117

- 1 (5) The trial judge may repeat a direction at any time in the
2 trial.
- 3 (6) This section, and sections 39E and 39F, do not limit
4 what the trial judge may include in any other direction
5 to the jury, including in relation to evidence given by
6 an expert witness.
- 7 **39D. Request for direction on family violence — general**
8 **provision**
- 9 (1) In criminal proceedings in which family violence is an
10 issue, prosecution or defence counsel (or, if the
11 accused is unrepresented, the accused) may request at
12 any time that the trial judge direct the jury on family
13 violence in accordance with all or specified parts of
14 section 39F.
- 15 (2) The trial judge must give the jury a requested direction
16 on family violence, including all or specified parts of
17 section 39F if so requested, unless there are good
18 reasons for not doing so.
- 19 (3) If a direction on family violence is not requested, the
20 trial judge may give the direction if the trial judge
21 considers that it is in the interests of justice to do so.
- 22 (4) The trial judge —
23 (a) must give the direction as soon as practicable
24 after the request is made; and
25 (b) may give the direction before any evidence is
26 adduced in the trial.
- 27 (5) The trial judge may repeat a direction at any time in the
28 trial.
- 29 (6) This section, and section 39F, do not limit what the
30 trial judge may include in any other direction to the
31 jury, including in relation to evidence given by an
32 expert witness.

1 **39E. Content of direction on family violence**

2 In giving a direction under section 39C, the trial judge
3 must inform the jury that —

- 4 (a) self-defence is, or is likely to be, an issue in the
5 trial; and
- 6 (b) as a matter of law, evidence of family violence
7 may be relevant to determining whether the
8 accused acted in self-defence; and
- 9 (c) evidence in the trial is likely to include
10 evidence of family violence committed by the
11 victim against the accused or another person
12 whom the accused was defending.

13 **39F. Additional matters for direction on family violence**

14 (1) In giving a direction requested under section 39C
15 or 39D, the trial judge may include any of the
16 following matters in the direction —

- 17 (a) that family violence —
- 18 (i) is not limited to physical abuse and
19 may, for example, include sexual abuse,
20 psychological abuse or financial abuse;
- 21 (ii) may amount to violence against a
22 person even though it is immediately
23 directed at another person;
- 24 (iii) may consist of a single act;
- 25 (iv) may consist of separate acts that form
26 part of a pattern of behaviour which can
27 amount to abuse even though some or
28 all of those acts may, when viewed in
29 isolation, appear to be minor or trivial;

s. 117

- 1 (b) if relevant, that experience shows that —
- 2 (i) people may react differently to family
- 3 violence and there is no typical, proper
- 4 or normal response to family violence;
- 5 (ii) it is not uncommon for a person who
- 6 has been subjected to family violence to
- 7 stay with an abusive partner after the
- 8 onset of family violence, or to leave and
- 9 then return to the partner;
- 10 (iii) it is not uncommon for a person who
- 11 has been subjected to family violence
- 12 not to report family violence to police or
- 13 seek assistance to stop family violence;
- 14 (iv) decisions made by a person subjected to
- 15 family violence about how to address,
- 16 respond to or avoid family violence may
- 17 be influenced by a variety of factors;
- 18 (v) it is not uncommon for a decision to
- 19 leave an abusive partner, or to seek
- 20 assistance, to increase apprehension
- 21 about, or the actual risk of, harm;
- 22 (c) in the case of self-defence, that, as a matter of
- 23 law, evidence that the accused assaulted the
- 24 victim on a previous occasion does not mean
- 25 that the accused could not have been acting in
- 26 self-defence in relation to the offence charged.
- 27 (2) In making a direction under subsection (1), the trial
- 28 judge may also indicate that behaviour, or patterns of
- 29 behaviour, that may constitute family violence may
- 30 include (but are not limited to) —
- 31 (a) placing or keeping a person in a dependent or
- 32 subordinate relationship;
- 33 (b) isolating a person from family, friends or other
- 34 sources of support;

- 1 (c) controlling, regulating or monitoring a person's
2 day-to-day activities;
- 3 (d) depriving or restricting a person's freedom of
4 movement or action;
- 5 (e) restricting a person's ability to resist violence;
- 6 (f) frightening, humiliating, degrading or
7 punishing a person, including punishing a
8 person for resisting violence;
- 9 (g) compelling a person to engage in unlawful or
10 harmful conduct.
- 11 (3) If the trial judge makes a direction that relates to
12 subsection (1)(b)(iv), the trial judge may also indicate
13 that decisions made by a person subjected to family
14 violence about how to address, respond to or avoid
15 family violence may be influenced by such things as
16 the following —
- 17 (a) the family violence itself;
- 18 (b) social, cultural, economic or personal factors,
19 or inequities experienced by the person,
20 including inequities associated with (but not
21 limited to) race, poverty, gender, disability or
22 age;
- 23 (c) responses by family, community or agencies to
24 the family violence or to any help-seeking
25 behaviour or use of safety options by the
26 person;
- 27 (d) the provision of, or failure in the provision of,
28 safety options that might realistically have
29 provided ongoing safety to the person, and the
30 person's perceptions of how effective those
31 safety options might have been to prevent
32 further harm;

s. 118

- 1 (e) further violence, or the threat of further
2 violence, used by a family member to prevent,
3 or in retaliation to, any help-seeking behaviour
4 or use of safety options by the person.

5 **39G. Application of s. 39E and 39F to criminal**
6 **proceedings without juries**

7 If a court is sitting without a jury, the court's reasoning
8 with respect to any matter in relation to which
9 sections 39E and 39F make provision must, to such
10 extent as the court thinks fit, be consistent with how a
11 jury would be directed in accordance with those
12 sections in the particular case.
13

14 **118. Section 134 inserted**

15 After section 133 insert:
16

17 **134. Review of amendment made by *Family Violence***
18 ***Legislation Reform Act 2019***

- 19 (1) The Minister must review the operation and
20 effectiveness of the amendment made to this Act by the
21 *Family Violence Legislation Reform Act 2019*, and
22 prepare a report based on the review, as soon as
23 practicable after the 3rd anniversary of the day on
24 which the *Family Violence Legislation Reform*
25 *Act 2019* section 116 comes into operation.
- 26 (2) The Minister must cause the report to be laid before
27 each House of Parliament as soon as practicable after it
28 is prepared, but not later than 12 months after the 3rd
29 anniversary.

- 1 (3) The Minister must transmit a copy of the report to the
2 Clerk of a House of Parliament if —
3 (a) the report has been prepared; and
4 (b) the Minister is of the opinion that the House
5 will not sit during the period of 21 days after
6 the finalisation of the report.
- 7 (4) A copy of the report transmitted to the Clerk of a
8 House is taken to have been laid before that House.
- 9 (5) The laying of a copy of a report that is taken to have
10 occurred under subsection (4) must be recorded in the
11 Minutes, or Votes and Proceedings, of the House on
12 the first sitting day of the House after the receipt of the
13 copy by the Clerk.
14

15
