FAMILY VIOLENCE LEGISLATION REFORM BILL 2019

EXPLANATORY MEMORANDUM

Overview of the Bill

The Family Violence Legislation Reform Bill 2019 amends *The Criminal Code,* the *Sentencing Act 1995,* the *Sentence Administration Act 2003*, the *Bail Act 1982*, the *Restraining Orders Act 1997*, the *Police Act 1892,* the *Road Traffic (Administration) Act 2008,* the *Dangerous Goods Safety Act 2004* and the *Evidence Act 1906*.

Its purpose is to deliver a package of reforms to improve the safety of victims of family violence, ensure accountability of perpetrators of family violence, and increase responsiveness of the justice system by making it easier and less traumatic for victims to obtain protection from violence.

PART 1 – PRELIMINARY

1 Short Title

Clause 1 provides that the Bill, once enacted, will be known as the *Family Violence Legislation Reform Act 2019*.

2 Commencement

Clause 2 provides that sections 1 and 2 will commence on Royal Assent; and the remainder of the Act on a day fixed by proclamation, and different days may be fixed for different provisions.

PART 2 – *THE CRIMINAL CODE* AMENDED

3 Act amended

Clause 3 provides that Part 2 amends *The Criminal Code.*

4 Section 221 amended

Clause 4 amends section 221 of *The Criminal Code* to provide that an offender is to be excluded from the operation of aggravating penalties contained in Part V of *The Criminal Code* if:

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

b) the only aggravating circumstance is that 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.

The exclusions will also apply to the new aggravated penalty under section 444 of *The Criminal Code*.

It will not exempt a child from aggravated penalties arising from any of the other circumstances of aggravation dealt with in *The Criminal Code*.

5 Section 283 amended

Clause 5 amends section 283 of *The Criminal Code* to provide that section 298 (Suffocation and strangulation) is a statutory alternative offence to section 283 (Attempt to unlawfully kill).

6 Section 298 to 300 inserted

Clause 6 inserts 3 new sections into *The Criminal Code.*

The first is section 298 (Suffocation and strangulation).

This new offence is committed if a person unlawfully impedes another person's normal breathing, blood circulation, or both, by manually, or by using any other aid:

a) blocking (completely or partially) another person's nose, mouth or both; or

b) applying pressure on, or to, another person's neck.

Common assault is prescribed as an alternative offence to ensure that where the trier of fact is satisfied that a factual 'assault' occurred, but is not necessarily satisfied of the elements of section 298, the accused may still be found guilty of common assault.

The penalty for the offence is 7 years imprisonment if committed in circumstances of aggravation or, in any other case, 5 years imprisonment. The summary conviction penalty is 3 years imprisonment and a fine of $36 000 if committed in circumstances of aggravation or, in any other case, 2 years imprisonment and a fine of $24 000.

The next addition is new section 299 of *The Criminal Code* (Terms used in relation to section 300 (persistent family violence)).

Section 299 outlines the terms used in the new offence of persistent family violence.

Designated family relationship is defined in subsection (1) as a relationship between 2 persons:

a) who are, or were, married to each other;

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.

The purpose of this definition is to capture persistent offences committed by a perpetrator against a victim with whom they are or were in a direct partner relationship. This definition is consistent with the definition of designated family relationship inserted into section 4 of the *Sentencing Act 1995* by clause 14 of the Bill, section 4 of the *Sentence Administration Act 2003* by clause 39 of the Bill, and section 3 of the *Bail Act 1982* by clause 47 of the Bill.

'De facto relationship' is defined in section 13A of the *Interpretation Act 1984* and means a relationship (other than a legal marriage) between 2 persons who live together in a marriage-like relationship.

Prescribed offence is defined in subsection (1) to mean:

a) an offence against section 221BD, 298, 301, 304(1), 313, 317, 317A, 323, 324, 338B, 338C, 338E or 444(1)(b) of *The Criminal Code,* or an attempt to commit such an offence; or

b) an offence against section 61(1) or 61(1A) of the *Restraining Orders Act 1997* (breach of a family violence restraining order (FVRO) or violence restraining order (VRO)).

The prescribed offences are those offences that are commonly committed by perpetrators against a person with whom they are in a family relationship. The prescribed offences do not include any offences that are indictable only. Indictable only offences are of such a serious nature that they ought to be charged and convicted in their own right. Further, it is more likely that serious indictable only offences will be supported by medical and other corroborating evidence, such that issues related to the inability of the victim to particularise the circumstances are less likely to arise.

Subsection (2) defines **intimate personal relationship** for the purposes of **designated family relationship** to include:

a) persons who are engaged to be married to each other, including a betrothal under cultural or religious tradition; and

b) persons who date each other, or have a romantic involvement, whether or not the relationship involves a sexual relationship.

An intimate personal relationship may exist whether the 2 persons are of the same or opposite sex.

Subsection (3) outlines that in deciding whether an intimate personal relationship exists, the following may be taken into account:

- the circumstances of the relationship, including for example, the level of trust and commitment;

- the length of time the relationship has existed;
- the frequency of contact between the persons; and
- the level of intimacy between the persons.

The new definition of intimate personal relationship and matters to be taken into account in deciding whether an intimate personal relationship exists are consistent across *The Criminal Code, Bail Act 1982, Sentencing Act 1995* and *Sentence Administration Act 2003.*

Subsection (4) defines **an act of family violence** for the purposes of this section and section 300. Both subsection (4)(a) and (4)(b) must be satisfied.

The effect of subsection (4)(a) is that a person does an act of family violence if the person does an act that would constitute a prescribed offence in relation to someone that the person is in a designated family relationship with.

The effect of subsection (4)(b) is that a person does an act of family violence if the person is not a child at the time of doing the act.

Subsection (5) sets out that a person **persistently engages in family violence** if they do an act of family violence on 3 or more occasions, each of which is on a different day. These acts must have occurred within a period not exceeding 10 years and be acts committed against the same person.

Subsection (6) elaborates on subsection (5), providing that the acts of family violence need not all constitute the same prescribed offence, and that only 1 of the acts has to have been committed in Western Australia.

Subsection (7) provides that an act constituting a simple offence cannot be an act of family violence if the date at the end of the period during which it is alleged that that act occurred is outside the period during which it would be possible to charge the accused with that offence.

Section 21(2) of the *Criminal Procedure Act 2004* (WA) provides that a prosecution of a person for a simple offence must be commenced within 12 months after the date on which the offence was allegedly committed, unless another written law provides otherwise or the person consents to it being commenced at a later time. Subsection (7) ensures that if, for example, the limitation period for the offence of breach of an FVRO or VRO has expired, that offence cannot be used to make up the persistent family violence offence (noting that the limitation period for the offence of breach of an FVRO, VRO and police order has been increased to 2 years by clause 91 of the Bill). This is necessary to preserve consistency.

The final section that is added to *The Criminal Code* is section 300 (Persistent family violence).

This new offence is committed if a person persistently engages in family violence as defined in section 299(5) – that is, if a person commits 3 or more acts of family violence, within a 10 year period, against a person with whom they are in a designated family relationship.

This offence recognises that family violence often forms a pattern of offending against a victim, and that the persistent nature of the offending means the victim may find it difficult to recall specific details of each individual act of violence perpetrated against them, or to provide corroborating evidence to assist in particularising the dates and circumstances of this offending.

Subsection (1) creates the offence of persistent family violence. The offence can be heard on indictment, with a maximum penalty of 14 years imprisonment, or summarily, with a maximum penalty of 3 years imprisonment and a fine of $36,000.

Subsection (2) provides that a charge of an offence under subsection (1) must specify the period during which it is alleged that the acts of family violence occurred; however it need not specify the dates, or in any other way particularise the circumstances of the acts of family violence that are alleged to constitute the offence.

This subsection makes it clear that it is not necessary to specify dates or in any other way particularise the circumstances of the alleged acts, such as by providing times or locations at which the acts are alleged to have occurred, either on the indictment or prosecution notice charging the offence, or in the course of proceedings in respect of those charges. It intends to overcome the problem whereby victims of ongoing and prolonged family violence are unable to particularise the acts of family violence perpetrated against them.

Subsection (3) states that subsection (2) applies despite sections 23 and 85 of the *Criminal Procedure Act 2004* which set out the formal requirements of prosecution notices and indictments. It is intended that subsection (2) would otherwise not affect the prosecution's statutory duty of disclosure of evidence to the accused person and to the court during a prosecution.

Subsection (4) sets out that a person charged with an offence against section 300 can also be charged with 1 or more prescribed offences that are alleged to have been committed in the period during which the alleged acts of family violence occurred. The prescribed offences that are alleged under a charge made in accordance with section (4)(b) may be the same act or acts that are alleged as an act of family violence under a charge against subsection (1). This enables the prosecution to charge an accused with the persistent family violence offence and 1 or more prescribed offences. This ensures that in the event that the persistent charge is unsuccessful, the accused may

still be convicted of prescribed offences committed over the same period in respect of which there is sufficient evidence for a conviction.

Subsection (5) prohibits a court from ordering a prosecutor to provide someone who is accused of an offence under section 300 with further particulars of the dates and circumstances of the alleged acts of family violence. This prohibition is imposed despite section 131(3) of the *Criminal Procedure Act 2004* which empowers a court to order a prosecutor to give an accused person further particulars of a charge.

This subsection complements subsection (2) and makes it clear that any particulars of the dates and circumstances of the alleged acts of family violence which are provided in an indictment or prosecution notice cannot be supplemented by a court order for subsequent provision of further particulars.

Subsection (6) provides that where the trier of fact is a jury, the members of the jury need not all be satisfied that the same acts occurred on the same occasions in order to return a guilty verdict. What is required is that each juror is satisfied beyond a reasonable doubt that the accused person committed an act of family violence on at least 3 separate occasions within the alleged period.

This is intended to overcome any common law requirement for jury unanimity in respect of each of the separate acts constituting the offence.

Subsection (7) provides that if a person is found not guilty of an offence under section 300(1), they may nevertheless be found guilty of 1 or more prescribed offences committed in the period specified in the charge if the offence or offences are established by the evidence. This provision provides an additional safeguard to subsection (4) which permits a person to be charged, at the same time, with an offence under subsection (1) and a prescribed offence which is the subject of that charge. However, subsection (8) operates where the accused has not been charged with a prescribed offence and overrides section 10A of *The Criminal Code* which provides, *inter alia,* that when a person is charged with an offence, he or she cannot be convicted of any other offence except in defined circumstances.

The effect of subsection (7) is that if the court is not satisfied of the persistent family violence offence, the court could still convict the offender of 1 or more of the prescribed offences alleged as an act of family violence for the persistent family violence offence if they are satisfied beyond reasonable doubt that those prescribed offences were committed.

Subsection (8) is intended to protect an accused against double jeopardy, where if the criminality of a particular act has already been determined, he or she cannot be tried again for that same act.

Subsection (8)(a) provides that if a person has previously been convicted or acquitted of a prescribed offence, the acts constituting that prescribed offence cannot constitute

1 of the acts of family violence for the purpose of a persistent family violence offence. This prevents the accused from being tried for the same act twice.

Subsection (8)(b) provides that if a person has previously been convicted or acquitted of a persistent family violence offence, the person cannot be convicted of a prescribed offence which is constituted by an act that was the subject of evidence presented to the court for the purpose of the persistent offence. This also prevents the accused from being tried for the same act twice.

Finally, for the avoidance of doubt, subsection (9)(c) makes clear that nothing in this section allows a person to be punished twice for the same act.

Subsection (9) provides that, for the purposes of section 300, a person ceases to be regarded as having been convicted of an offence if the conviction is set aside or quashed.

Subsection (10) provides that an act of family violence includes an act of family violence committed before the commencement of this section if the act constituted a prescribed offence at the time at which it is alleged that the act of family violence occurred. This means that acts that were committed before, on or after the commencement of this section, as long as they were unlawful at the time they were committed, can constitute acts of family violence for the purpose of section 300.

7 Section 333 replaced

Clause 7 amends section 333 of *The Criminal Code* to accommodate current drafting conventions, and inserts subsection (1)(a) to introduce a new penalty of 14 years imprisonment for deprivation of liberty committed in circumstances of aggravation.

8 Section 338A amended

Clause 8 amends section 338A of *The Criminal Code* to introduce new penalties for threats with intent to gain etc made in circumstances of aggravation.

Subsection (e)(i) provides a penalty of 14 years imprisonment for a threat to kill a person that is made in circumstances of aggravation.

Subsection (f)(i) provides a penalty of 10 years imprisonment in the case of any other threat made in circumstances of aggravation.

The penalties for threats committed other than in circumstances of aggravation are retained as 10 years imprisonment where the threat is to kill a person and 7 years in the case of any other threat.

9 Section 338B amended

Clause 9 amends the penalty regime in section 338B of *The Criminal Code* to introduce penalties for threats committed in circumstances of aggravation. Existing penalties are otherwise preserved.

Subsection (a)(ii) provides that a person who makes a threat to kill in circumstances of aggravation is liable to 10 years imprisonment.

Subsection (b)(ii) provides that a person who makes any other threat in circumstances of aggravation is liable to 5 years imprisonment.

10 Section 338C amended

Clause 10 amends section 338C of *The Criminal Code*.

Subsection (3)(a) is amended to provide that a person is liable to 14 years imprisonment for an offence committed in circumstances of aggravation under that subsection.

Subsection (3)(b) is amended to provide that a person is liable to 5 years imprisonment for an offence committed in circumstances of aggravation under that subsection.

A summary conviction penalty for an offence under section 388C(3)(b) committed in circumstances of aggravation is also introduced: imprisonment for 2 years and a fine of $24,000.

Existing penalties are otherwise preserved.

11 Section 444 amended

Clause 11 amends the penalty regime in section 444 of *The Criminal Code* to introduce a penalty for criminal damage committed in circumstances of aggravation.

Subsection (1A) is inserted to provide that **circumstances of aggravation** for the purpose of this offence means circumstances of aggravation as defined in section 221.

Subsection (1)(b) is amended to provide that a person who commits criminal damage in circumstances of aggravation is liable to 14 years imprisonment.

The summary conviction penalty provision is also amended to increase the monetary limit on the amount of injury done in order for the offence to be dealt with summarily to an amount that does not exceed $50,000 (from $25,000). This increase is consistent with all other summary conviction penalties in *The Criminal Code* with a monetary threshold and further ensures matters can be heard in the Magistrates Court where appropriate.

12 Section 740C inserted

Clause 12 inserts section 740C (Review of amendments made by *Family Violence Legislation Reform Act 2019*) into *The Criminal Code*.

Section 740C requires the Minister, being the Attorney General, to review the operation and effectiveness of amendments to *The Criminal Code* contained in the Bill and prepare a report on the review as soon as practicable 3 years after clause 3 of the Bill becomes operational. The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared and not more than 12 months after the review was due to commence.

PART 3 – *SENTENCING ACT 1995* AMENDED

13 Act amended

Clause 13 provides that Part 3 amends the *Sentencing Act 1995* (Sentencing Act).

14 Section 4 amended

Clause 14 inserts a number of definitions into section 4 of the Sentencing Act.

The term **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).

This definition is intended to capture radio frequency devices and global positioning system devices, and any other technology that may be used for the purpose of the electronic monitoring or curfew requirements under a sentencing order, as well as all ancillary equipment associated with those devices. This definition is consistent with the definition of approved electronic monitoring device inserted into section 4 of the *Sentence Administration Act 2003* by clause 39 of the Bill and section 3 of the *Bail Act 1982* by clause 47 of the Bill.

Designated family relationship is defined as a relationship between 2 persons:

a) who are or were married to each other;

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.

The purpose of this definition is to capture offences committed by a perpetrator against a victim or victims with whom they are or were in a direct partner relationship. This definition is consistent with the definition of designated family relationship inserted into section 299(1) of *The Criminal Code* by clause 6 of the Bill, section 4 of the *Sentence Administration Act 2003* by clause 39 of the Bill and section 3 of the *Bail Act 1982* by clause 47 of the Bill.

'De facto relationship' is defined in section 13A of the *Interpretation Act 1984* and means a relationship (other than a legal marriage) between 2 persons who live together in a marriage-like relationship.

Explosive is defined as a substance or an article that is controlled as an explosive under the *Dangerous Goods Safety Act 2004.*

Family violence offence is defined as an offence where the offender and 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 section 61(1) or 61(1A) of the *Restraining Orders Act 1997* for breach of an FVRO or VRO; 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.

This definition is consistent with the definition of family violence offence inserted into section 3 of the *Bail Act 1982* by clause 47 of the Bill and section 4 of the *Sentence Administration Act 2003* by clause 39 of the Bill.

Serial family violence offender is defined by a reference to a person who is a serial family violence offender under section 124E of the Sentencing Act.

Subclause (2) defines **intimate personal relationship** for the purposes of **designated family relationship** to include:

a) persons who are engaged to be married to each other, including a betrothal under cultural or religious tradition; and

b) persons who date each other, or have a romantic involvement, whether or not the relationship involves a sexual relationship.

An intimate personal relationship may exist whether the 2 persons are of the same or opposite sex.

In deciding whether an intimate personal relationship exists, the following may be taken into account:

- the circumstances of the relationship, including for example, the level of trust and commitment;
- the length of time the relationship has existed;
- the frequency of contact between the persons; and

The new definition of intimate personal relationship and matters to be taken into account in deciding whether an intimate personal relationship exists are consistent across *The Criminal Code, Bail Act 1982,* Sentencing Act and *Sentence Administration Act 2003.*

15 Section 33B amended

Clause 15 amends section 33B of the Sentencing Act by inserting subsection (1)(b)(iii). This subsection provides that while a pre-sentence order (PSO) is in force, the offender must comply with any direction imposed under an electronic monitoring requirement under new section 33HA.

16 Section 33H amended

Clause 16 amends section 33H(10) of the Sentencing Act to replace “any device” and “any device or equipment” with “an approved electronic monitoring device”. This amendment is made as a consequence of defining “approved electronic monitoring device” in section 4(1) and to accommodate current drafting conventions.

17 Section 33HA inserted

Clause 17 inserts section 33HA (Electronic monitoring requirement) into the Sentencing Act.

This amendment enables the court to impose a requirement as part of a PSO for electronic location monitoring of a serial family violence offender who is convicted of a family violence offence.

A court, in setting conditions of a PSO for a family violence offence where the person is a serial family violence offender, is required to consider whether an electronic monitoring requirement should be imposed as a condition of the PSO. The section empowers a court to impose such a requirement for the purpose of monitoring the location of the offender. This is to be achieved by directing the offender to wear a monitoring device and/or by placing a monitoring device at the offender’s place of residence or another location.

Subsection (1) provides that section 33HA applies if an offence in respect of which a PSO may apply is a family violence offence and the offender is a serial family violence offender.

Subsection (2) provides that where section 33HA applies, a court must not make a PSO unless the court has considered whether to require electronic monitoring in respect of the offender under this section.

Subsection (3) states that the purpose of electronic monitoring of an offender subject to a PSO is to enable the location of the offender to be monitored.

Subsection (3) does not require the court to consider whether the offender presents a high risk to a person, a group of persons, or the wider community in the same way required under proposed new section 76A (intensive supervision orders) and new section 84CA (conditional suspended imprisonment orders). This is because section 33HA only applies in respect of a serial family violence offender in respect of whom

an assessment of risk has already been undertaken by a court in making the declaration.

Subsection (4) provides that if a court considers that electronic monitoring should occur in a particular case, the court may impose an electronic monitoring requirement under section 33HA.

Subsection (5) provides that if a court imposes an electronic monitoring requirement, a community corrections officer (CCO) may direct the person bound to wear an approved electronic monitoring device and/or to permit the installation of an approved electronic monitoring device at their residence or, if they have no place of residence, any other place specified by the CCO.

Subsection (6) provides that the term of an electronic monitoring requirement must be set by the court when it imposes the requirement.

Subsection (7) provides that an electronic monitoring requirement ceases to be in force when its term ends or when the PSO ceases to be in force, whichever happens first. This ensures that an electronic monitoring requirement can only subsist while the PSO subsists.

18 Section 33L amended

Clause 18 amends the definition of **requirement** in relation to a PSO contained in section 33L of the Sentencing Act to mean:

a) the standard obligations and primary requirements of the PSO; and

b) any direction imposed under an electronic monitoring requirement under section 33HA; and

c) any direction of the court imposed under the PSO.

This amendment ensures that an electronic monitoring requirement is included as a requirement that may be imposed by a court in relation to a PSO for the purpose of Division 2 of the Act.

19 Section 33N amended

Clause 19 amends section 33N of the Sentencing Act by inserting subsection (2)(a)(iia).

This subsection provides that where a court makes an order under subsection 33N(1), a PSO may be amended by adding, amending or cancelling an electronic monitoring requirement under section 33HA.

20 Section 39 amended

Clause 20 amends section 39(8) of the Sentencing Act to allow the court to make a declaration under Part 17 of the Act. However, any such declaration is not to be taken as being part of the sentence. This amendment ensures that the references to Part 17 orders includes the new serial family violence offender declaration contained in section 124E.

21 Section 62 amended

Clause 21 amends section 62 of the Sentencing Act to insert subsection (1)(b)(iii).

Section 62 outlines the nature of a community based order (CBO). New subsection 62(1)(b)(iii) provides that a CBO may include a requirement that the offender must comply with any direction imposed under an electronic monitoring requirement under new section 67A.

22 Section 67A inserted

Clause 22 inserts section 67A (Electronic monitoring requirement) into the Sentencing Act.

This amendment creates a specific electronic monitoring requirement for serial family violence offenders subject to a CBO.

A court, in setting conditions of a CBO for a family violence offence where the person is a serial family violence offender, is required to consider whether an electronic monitoring requirement should be imposed as a condition of the CBO. The section empowers a court to impose such a requirement for the purpose of monitoring the location of the offender. This is to be achieved by directing the offender to wear a monitoring device and/or by placing a monitoring device at the offender's place of residence or another location.

Subsection (1) provides that section 67A applies if an offence in respect of which a CBO may apply is a family violence offence and the offender is a serial family violence offender.

Subsection (2) provides that where section 67A applies, a court must not make a CBO unless the court has considered whether to require electronic monitoring in respect of the offender under this section.

Subsection (3) states that the purpose of electronic monitoring of an offender subject to a CBO is to enable the location of the offender to be monitored.

Subsection (3) does not require the court to consider whether the offender presents a high risk to a person, a group of persons, or the wider community in the same way required under new sections 76A (intensive supervision orders) and 84CA (conditional suspended imprisonment orders). This is because section 67A (consistent with new

section 33HA) only applies to serial family violence offenders in respect of whom an assessment of risk has already been undertaken by a court at the time of making a serial family violence offender declaration.

Subsection (4) provides that an electronic monitoring requirement may be imposed only if the court has received a report from the CEO (corrections) about the suitability of electronic monitoring in a particular case.

This provision does not mean that a court must obtain a suitability report in every case where a serial family violence offender is to be subject to a CBO. However, it does mean that if a court wishes to impose an electronic monitoring requirement as part of the CBO, it must obtain a suitability report before doing so.

Subsection (5) provides that if a court considers electronic monitoring should occur in a particular case, the court may impose an electronic monitoring requirement under section 67A.

Subsection (6) provides that if a court imposes an electronic monitoring requirement, a CCO may direct the person bound to wear an approved electronic monitoring device and/or to permit the installation of an approved electronic monitoring device at their residence or, if they have no place of residence, any other place specified by the CCO.

Subsection (7) provides that the term of an electronic monitoring requirement must be set by the court when it imposes the requirement.

Subsection (8) provides that an electronic monitoring requirement ceases to be in force when its term ends or when the CBO ceases to be in force, whichever happens first. This ensures that an electronic monitoring requirement can only subsist if the CBO subsists.

23 Section 72 amended

Clause 23 amends section 72 of the Sentencing Act to insert subsection (d).

This subsection allows for an electronic monitoring requirement to be imposed as a primary requirement of an intensive supervision order (ISO) in accordance with new section 76A.

24 Section 75 amended

Clause 24 amends section 75(10) of the Sentencing Act to replace “any device” and “any device or equipment” with “an approved electronic monitoring device”. This amendment is made as a consequence of defining “approved electronic monitoring device” in section 4(1).

25 Section 76A inserted

Clause 25 inserts section 76A (Electronic monitoring requirement) into the Sentencing Act.

This amendment allows a court to impose an electronic monitoring requirement when imposing an ISO.

The section empowers a court to impose such an electronic monitoring requirement for the purpose of monitoring the location of the offender. This is achieved by a CCO directing the offender to wear a monitoring device and/or by placing a monitoring device at the offender's place of residence or another location.

Subsection (1) provides that the purpose of an electronic monitoring requirement under section 76A is to enable the location of an offender to be monitored where the offender presents a high risk to a person, a group of persons, or the community more generally.

Subsection (2) provides that where an offence to which an ISO may apply is a family violence offence, and the offender is a serial family violence offender, the court must consider whether to require electronic monitoring under this section. While a court may consider an electronic monitoring requirement in any case it imposes an ISO, this subsection ensures the court gives specific consideration to electronic monitoring where the offender is a serial family violence offender convicted of a family violence offence.

Subsection (3) provides that if a court considers that electronic monitoring should occur in a particular case, the court may impose an electronic monitoring requirement under section 76A.

Subsection (4) provides that if a court imposes an electronic monitoring requirement, a CCO may direct the person bound to wear an approved electronic monitoring device and/or to permit the installation of an approved electronic monitoring device at their residence or, if they have no place of residence, any other place specified by the CCO.

Subsection (5) provides that the term of an electronic monitoring requirement must be set by the court when it imposes the requirement.

Subsection (6) provides that an electronic monitoring requirement ceases to be in force when its term ends or when the ISO ceases to be in force, whichever happens first. This ensures that an electronic monitoring requirement can only subsist while the ISO subsists.

Subsection (7) provides that this section does not apply to an offender who is under 18 years of age at the time of sentencing. This is to ensure that children who may be subject to an ISO cannot be electronically monitored as part of that order.

26 Section 84 amended

Clause 26 amends section 84 of the Sentencing Act to insert subsection (2).

This subsection allows for an electronic monitoring requirement to be imposed as a primary requirement of a conditional suspended imprisonment order.

27 Section 84C amended

Clause 27 amends section 84C(10) of the Sentencing Act to replace “any device” and “any device or equipment” with “an approved electronic monitoring device”. This amendment is made as a consequence of defining “an approved electronic monitoring device” in section 4(1).

28 Section 84CA inserted

Clause 28 inserts section 84CA (Electronic monitoring requirement) into the Sentencing Act.

This amendment empowers a court to impose an electronic monitoring requirement when imposing conditional suspended imprisonment (CSI) for the purpose of monitoring the location of the offender. This is achieved by a CCO directing the offender to wear a monitoring device and/or placing a monitoring device at the offender’s place of residence or another location.

Subsection (1) provides that the purpose of an electronic monitoring requirement under section 84CA is to enable the location of an offender to be monitored where the offender presents a high risk to a person, a group of persons, or the community more generally.

Subsection (2) provides that where an offence in respect of which CSI may apply is a family violence offence, and the offender is a serial family violence offender, the court must consider whether to require electronic monitoring under this section. While a court may consider an electronic monitoring requirement in any case of imposing CSI, this subsection ensures the court gives specific consideration to electronic monitoring where the offender is a serial family violence offender convicted of a family violence offence.

Subsection (3) provides that if a court considers that electronic monitoring should occur in a particular case, the court may impose an electronic monitoring requirement under section 84CA.

Subsection (4) provides that an electronic monitoring requirement may be imposed only if the court has received a report from the CEO (corrections) about the suitability of electronic monitoring in a particular case.

Subsection (5) provides that if a court imposes an electronic monitoring requirement, a CCO may direct the person bound to wear an approved electronic monitoring device

and/or to permit the installation of an approved electronic monitoring device at their residence or, if they have no place of residence, any other place specified by the CCO.

Subsection (6) provides that an electronic monitoring requirement ceases to be in force when the suspension ends. This ensures that an electronic monitoring requirement can only subsist while CSI is in force.

29 Section 97A amended

Clause 29 amends section 97A of the Sentencing Act.

Subsection (6) is inserted, which provides that section 97A also applies if:

a) a court is sentencing an offender to imprisonment for an offence; and

b) the offence is a family violence offence; and

c) the offender is a serial family violence offender.

Subsection (7) provides that in a case where subsection (6) is satisfied, the sentencing court must declare an offence to be a serious offence for the purpose of the *Sentence Administration Act 2003*.

Subsection (8) makes it clear that the court may make both a serious violent offence declaration under section 97A and a serial family violence offender declaration under section 124E in relation to the same person.

These provisions ensure that all serial family violence offenders who are sentenced to imprisonment for a family violence offence may be considered for a post-sentence supervision order under Part 5A of the *Sentence Administration Act 2003*.

30 Part 17 heading amended

Clause 30 amends the heading of Part 17 to 'Other orders and declarations not forming part of a sentence'.

31 Part 17 Division 1 heading inserted

Clause 31 inserts Division 1 – Preliminary into Part 17 of the Sentencing Act.

32 Section 123 amended

Clause 32 amends section 123 of the Sentencing Act to extend the general provisions that apply to the making of orders under Part 17 to declarations.

This amendment is made to accommodate the new serial family violence offender declaration contained in section 124E.

33 Part 17 Division 2 heading inserted

Clause 33 inserts Division 2 – Orders made under other Acts into Part 17 of the Sentencing Act.

34 Part 17 Division 3 inserted

Clause 34 inserts Division 3 – Declarations into Part 17 of the Sentencing Act. Division 3 contains new sections 124D – 124G.

Section 124D (Terms used) contains definitions of the terms used in Division 3.

Approved expert is defined to mean a person, or a person of a class of persons, approved by the CEO (corrections) as having the appropriate qualifications, skills and experience to carry out assessments under section 124E.

Firearm has the meaning given to it in section 106(5).

Prescribed offence is defined to mean:

a) a family violence offence; or

b) an offence against a law of the Commonwealth, of another State or of a Territory, or of a place outside Australia, if the act or acts constituting the offence would, if committed in the State, constitute a family violence offence; or

c) an attempt to commit such an offence under paragraph (a) or (b).

Section 124E (Serial family violence offenders) is then inserted. The effect of this section is to allow the court to declare a person to be a serial family violence offender.

The purpose of the declaration is to identify those offenders who repeatedly commit family violence offences against a single partner or multiple and successive partners. It recognises that serial family violence offenders present a high risk of repeat and escalating offending. The declaration will allow these offenders to be more easily identifiable to the police and courts.

Subsection (1) empowers the court to declare an offender to be a serial family violence offender if an offender has been convicted, at the time the court is considering whether to make a declaration, of:

a) at least 2 prescribed offences if the prescribed offences are only triable on indictment, with at least 2 of those prescribed offences being committed on different days; or

b) at least 3 prescribed offences, with at least 3 of these offences being committed on different days.

Subsection (2) expands on subsection (1) by providing that:

a) the victim of the offences need not be the same person;

b) the offences need not be the same offences;

c) not all of the offences need to have occurred in Western Australia as long as 1 of them did;

d) 1 or more of the convictions may have been convictions by a court outside Western Australia;

e) it is immaterial in which order the offences were committed;

f) an offence will not be taken into account if the offence was committed by a person who was under 18 years of age at the time of the commission of the offence; and

g) each of the offences must have been committed within a period of 10 years unless the court is satisfied that exceptional circumstances exist that make it appropriate to make a declaration, after taking into account the matters in subsection (4) and any other matters the court considers relevant.

Subsection (2)(a) ensures a declaration may be made in respect of offenders who commit family violence offences against the same partner or successive partners.

Subsections (2)(c) and (2)(d), along with the definition of 'prescribed offence', ensure that the declaration can be made in respect of an offender who has committed 1 or more family violence offences outside of Western Australia. This recognises that offenders may move across jurisdictions and that the risk an offender presents to a victim or victims is not confined to offences committed in Western Australia.

Subsection (2)(e) is intended, for the avoidance of doubt, to oust the operation of the common law principle of statutory interpretation (referred to as the "Coke Principle") which might otherwise require that before a person is subject to an increased penalty for a second or subsequent offence, that person must have both committed and have been convicted of the previous offence or offences, and those offences and convictions must have occurred on separate days.

Subsection (2)(f) prevents offences that were committed when the offender was a child from being included as prescribed offences for the purposes of this section. It consequentially also prohibits children from being declared serial family violence offenders.

Subsection (2)(g) ensures that, for a declaration to be made in most cases, the offences must have been committed within a 10 year period. However, it recognises

that exceptional circumstances may exist which warrant a declaration where the offences are outside that timeframe and, therefore, allows the court to make a declaration in those circumstances.

Subsection (3) provides that a declaration may be made by the court on its own initiative or on an application by the prosecutor.

Subsection (4) requires that a court's decision to make a declaration must, in addition to any matter the court considers relevant, be informed by:

a) the risk of the offender committing another family violence offence;

b) the offender's criminal record; and

c) the nature of the prescribed offences for which the offender has been convicted.

This subsection sets out the matters to which the court must have regard in making a declaration, but also allows the court to consider any matter the court thinks relevant in the circumstances. This enables the court to consider whether a declaration would be appropriate in all the circumstances.

Subsection (5) provides that the court may, before making a declaration, order an assessment of the offender by an approved expert and may take the report of that assessment into account when deciding whether to make the declaration. This ensures the court can have regard to an objective assessment of the offender's risk of committing a further family violence offence if the court considers that such an assessment is necessary.

Subsection (6) elaborates on subsection (5) by specifying the responsibilities of an approved expert and the features of such a report, namely that:

- the approved expert is authorised to examine the offender and prepare an independent report; and

- the report may indicate the approved expert's assessment of the level of risk that the offender may commit another family violence offence, and the reasons for this assessment.

In preparing the report, the approved expert may take into account any information or report provided to, or obtained by, them, and include in the report any other assessment or opinion, or address any matter, that the approved expert considers to be relevant in the circumstances.

Subsection (6)(d) allows a report to be prepared even in the absence of cooperation or full cooperation by the offender.

Section 124F (Serial family violence offender declaration – related matters) deals with a range of matters that are related to a serial family violence offender declaration.

Subsection (1) provides that section 124E does not limit the ability of a court to make a declaration in relation to the same person under section 97A in relation to serious offences. This means that a court can make both a serial family violence offender declaration and also declare the offence committed to be a serious offence under section 97A.

Subsection (2) provides that, except as provided in subsections (5) and (6), the declaration will have an effect for an indefinite period; however subsection (3) enables a person subject to the declaration to apply to have it cancelled after 10 years have passed from the date of the declaration coming into effect.

Subsection (4) provides that an application to cancel a declaration may be made to any court of criminal jurisdiction provided that the court is not an inferior court to the court that made the original declaration. This ensures that a person does not need to go back to the same court that made the declaration in order to have it cancelled, as long as the other court is superior in the court hierarchy.

Subsection (5) provides that the matters to be considered by a court in cancelling a declaration are the same matters that are considered in making the declaration. This means that the court must consider the matters outlined in section 124E(4) before a declaration can be cancelled.

Subsection (6) provides that a declaration ceases to be in force where the person's conviction for a prescribed offence that was taken into account for the purposes of making the declaration has been set aside or quashed, unless the person remains convicted of at least 3 other prescribed offences, or 2 if those offences are indictable only offences.

Section 124G (Disqualification if declaration made) is inserted.

Subsection (1)(a) outlines that a declared serial family violence offender is disqualified from holding or obtaining a firearms or explosives licence. Subsection (1)(b) specifies that, as a consequence, any existing licence, permit, approval or authorisation that a serial family violence offender may possess is cancelled.

Subsection (1)(c) provides that the court must ensure that the details of the declaration are made known to the Commissioner of Police and the Chief Officer under the *Dangerous Goods Safety Act 2004.*

Subsection (2) creates an exception to this prohibition in exceptional circumstances.

35 Section 125 amended

Clause 35 amends section 125 of the Sentencing Act.

This clause amends the definition of **requirements** in section 125 to accommodate the addition of section 67A and to ensure that applications to amend, vary or cancel an electronic monitoring requirement imposed under a CBO can be made.

36 Section 147A inserted

Clause 36 inserts section 147A (Monitoring requirements, additional provisions) into the Sentencing Act.

Section 147A is inserted to provide a general provision enabling administration by the Department of Justice of approved electronic monitoring, consistent with the approach in existing legislation.

Subsection (1) allows a CCO to give any reasonable direction to an offender to ensure the proper administration and effectiveness of an electronic monitoring requirement made under a court order.

Subsection (2) provides that an electronic monitoring requirement can be suspended by a CCO if he or she is satisfied that it is not practicable or necessary for the person to be subject to electronic monitoring.

37 Section 151 inserted

Clause 37 inserts section 151 (Review of amendments made by *Family Violence Legislation Reform Act 2019*) into the Sentencing Act.

Section 151 requires the Minister, being the Attorney General, to review the operation and effectiveness of amendments to the Sentencing Act contained in the Bill and prepare a report on the review as soon as practicable 3 years after clause 13 of the Bill becomes operational. The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared and not more than 12 months after the review was due to commence.

PART 4 – *SENTENCE ADMINISTRATION ACT 2003* AMENDED

38 Act amended

Clause 38 provides that Part 4 amends the *Sentence Administration Act 2003* (Sentence Administration Act).

39 Section 4 amended

Clause 39 inserts a number of definitions into section 4 of the Sentence Administration Act.

Approved electronic monitoring device is defined as:

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).

This definition is intended to capture radio frequency devices and global positioning system devices, and any other technology that may be used for the purpose of surveillance and monitoring of a person's location and movements, as well as all ancillary equipment associated with those devices. This definition is consistent with the definition of approved electronic monitoring device inserted into section 4 of the Sentencing Act by clause 14 of the Bill and section 3 of the *Bail Act 1982* by clause 47 of the Bill.

Designated family relationship is defined as a relationship between 2 persons:

a) who are or were married to each other;

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.

'De facto relationship' is defined in section 13A of the *Interpretation Act 1984* and means a relationship (other than a legal marriage) between 2 persons who live together in a marriage-like relationship. This definition is consistent with the definition of designated family relationship inserted into section 299(1) of *The Criminal Code* by clause 6 of the Bill, section 4 of the Sentencing Act by clause 14 of the Bill and section 3 of the *Bail Act 1982* by clause 47 of the Bill.

Family violence offence is defined as an offence where the offender and 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 section 61(1) or 61(1A) of the *Restraining Orders Act 1997* for breach of an FVRO or VRO; 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.

This definition is consistent with the definition of family violence offence inserted into section 3 of the *Bail Act 1982* by clause 47 of the Bill and section 4 of the Sentencing Act by clause 14 of the Bill.

Serial family violence offender is given the meaning to that term in section 124E of the Sentencing Act.

Subclause (2) defines **intimate personal relationship** for the purpose of **designated family relationship** to include:

a) persons who are engaged to be married to each other, including a betrothal under cultural or religious tradition; and

b) persons who date each other, or have a romantic involvement, whether or not the relationship involves a sexual relationship.

An intimate personal relationship may exist whether the 2 persons are of the same or opposite sex.

In deciding whether an intimate personal relationship exists, the following may be taken into account:

- the circumstances of the relationship, including for example, the level of trust and commitment;
- the length of time the relationship has existed;
- the frequency of contact between the persons; and
- the level of intimacy between the persons.

The new definition of intimate personal relationship and matters to be taken into account in deciding whether an intimate personal relationship exists are consistent across *The Criminal Code, Bail Act 1982,* Sentencing Act and Sentence Administration Act.

40 Section 30 amended

Clause 40 amends section 30 of the Sentence Administration Act.

Section 30 is amended to accommodate the new definition of an approved electronic monitoring device. The amendment does not change the operation of existing section 30(1) in relation to the application of an electronic monitoring requirement as part of a parole order.

The amendment also inserts a new subsection (2), which requires the Prisoners Review Board (Board) to consider imposing an electronic monitoring requirement as part of a parole order if a prisoner has been serving imprisonment for a family violence offence and the prisoner is a serial family violence offender. This ensures the Board gives particular consideration to imposing electronic monitoring on declared family violence offenders serving a term imprisonment for a family violence offence upon any grant of parole.

41 Section 57 amended

Clause 41 amends section 57 of the Sentence Administration Act.

Subsection (2) is amended to accommodate the new definition of an approved electronic monitoring device.

Subsection (3) is inserted to provide that the Board must consider imposing an electronic monitoring requirement as part of a re-entry release order (RRO) if a prisoner has been serving imprisonment for a family violence offence and the prisoner is a serial family violence offender. This ensures the Board gives particular consideration to imposing electronic monitoring on declared family violence offenders serving a term imprisonment for a family violence offence upon making an RRO.

42 Section 74G amended

Clause 42 amends section 74G of the Sentence Administration Act.

Subsection (1) is amended to accommodate the new definition of an approved electronic monitoring device.

The amendment inserts a new subsection (2) which mandates that the Board must consider imposing an electronic monitoring requirement as part of a post-sentence supervision order if a prisoner has been serving imprisonment for a family violence offence and the prisoner is a serial family violence offender.

43 Section 118 amended

Clause 43 amends section 118 of the Sentence Administration Act.

Section 118 of the Sentence Administration Act currently provides for a number of offences in relation to interfering with, damaging or destroying, hindering access to and contravening a direction in relation to, monitoring equipment.

To accommodate other amendments to the Sentencing Act and the Sentence Administration Act, and to ensure a consistent approach to penalties in respect of approved electronic devices, section 118 is amended to expand the range of offences that can be committed in relation to monitoring equipment that is installed either at a place or worn by a person.

The definition of **monitoring equipment** in section 118(1) is amended to mean any device or equipment, and any related wiring or other item, that is designed or intended to keep a person under surveillance or to monitor a person's movements and that is required to be worn by a person, or to be installed at a place, under this Act, the Sentencing Act or the *Bail Act 1982*.

Subsection (1A) is inserted to provide that the CEO may give a person who is, or who has been, the subject of a direction or order to wear monitoring equipment a direction to be available at a specific place and time in order to surrender or deliver the monitoring equipment to the CEO.

The offence provided by subsection (2) remains, but the provision is amended to accommodate the new definition of monitoring equipment.

Subsection (3) is amended to provide that a person who, without reasonable excuse, fails to comply with, or contravenes, a direction given under subsection (1A) or (2) commits an offence.

The offence provided by subsection (4) remains, but the provision is amended to accommodate the new definition of monitoring equipment.

Subsection (6) is amended to provide that a person who, without reasonable excuse, removes or interferes with, or interferes with the operation of, any monitoring equipment in such a way as to prevent or impede monitoring of the person's location, commits an offence.

The penalty for each of these offences is $12,000 or imprisonment for 12 months.

44 Schedule 2 amended

Clause 44 amends Schedule 2 of the Sentence Administration Act to provide that a serious offence also includes an offence under new section 61(1A) of the *Restraining Orders Act 1997* – breach of a VRO.

45 Schedule 4 amended

Clause 45 inserts section 298 (Suffocation and strangulation), and section 300 (Persistent family violence), into Schedule 4 (Serious violent offences) of the Sentence Administration Act. This means that offences contrary to sections 298 and 300 of *The*

Criminal Code are serious violent offences for the purposes of Part 5A of the Sentence Administration Act (post-sentence supervision of certain offenders).

PART 5 – *BAIL ACT 1982* AMENDED

46 Act amended

Clause 46 provides that Part 5 amends the *Bail Act 1982* (Bail Act).

47 Section 3 amended

Clause 47 inserts a number of definitions into section 3 of the Bail Act.

The term **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).

This definition is intended to capture radio frequency devices and global positioning system devices, and any other technology that may be used for the purpose of the electronic monitoring or curfew requirements under a sentencing order, as well as all ancillary equipment associated with those devices. This definition is consistent with the definition of approved electronic monitoring device inserted into section 4 of the Sentencing Act by clause 14 of the Bill and section 4 of the Sentence Administration Act by clause 39 of the Bill.

Designated family relationship is defined as a relationship between 2 persons:

a) who are or were married to each other;

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.

'De facto relationship' is defined in section 13A of the *Interpretation Act 1984* and means a relationship (other than a legal marriage) between 2 persons who live together in a marriage-like relationship. This definition is consistent with the definition of designated family relationship inserted into section 299(1) of *The Criminal Code* by clause 6 of the Bill, section 4 of the Sentencing Act by clause 14 of the Bill and section 4 of the Sentence Administration Act by clause 39 of the Bill.

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

Family violence offence is defined as an offence where the offender and 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 section 61(1) or 61(1A) of the *Restraining Orders Act 1997* for breach of an FVRO or VRO; 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.

This definition is consistent with the definition of family violence offence inserted into section 4 of the Sentencing Act by clause 14 of the Bill and section 4 of the Sentence Administration Act by clause 39 of the Bill.

Serial family violence offender is given the meaning to that term in section 124E of the Sentencing Act.

Intimate personal relationship is defined for the purposes of **designated family relationship** to include:

a) persons who are engaged to be married to each other, including a betrothal under cultural or religious tradition; and

b) persons who date each other, or have a romantic involvement, whether or not the relationship involves a sexual relationship.

An intimate personal relationship may exist whether the 2 persons are of the same or opposite sex.

In deciding whether an intimate personal relationship exists, the following may be taken into account:

- the circumstances of the relationship, including for example the level of trust and commitment;
- the length of time the relationship has existed;
- the frequency of contact between the persons; and
- the level of intimacy between the persons.

The new definition of intimate personal relationship and matters to be taken into account in deciding whether an intimate personal relationship exists are consistent across *The Criminal Code,* Bail Act*,* Sentencing Act and Sentence Administration Act*.*

48 Section 6 amended

Clause 48 amends section 6(2) of the Bail Act*.*

The effect of the amendment is to subject an arresting officer's duty to consider bail in section 6 to Schedule 1 Part C clause 3F of the Bail Act, a new clause inserted by the Bill, which deals with bail in cases of a family violence offence involving a serial family violence offender.

49 Section 7 amended

Clause 49 amends section 7(5) of the Bail Act.

The effect of the amendment is to subject the operation of section 7, which relates to a court's consideration of bail for an unconvicted accused, to Schedule 1 Part C clause 3F of the Bail Act, a new clause inserted by the Bill.

50 Section 9 amended

Clause 50 amends section 9 of the Bail Act to insert subsection (1)(c).

This subsection provides that a court may defer consideration of bail for 30 days for an accused charged with an offence where the accused is in a family relationship with the victim or the relevant officer reasonably believes the accused and the victim are in a family relationship.

The purpose of the deferral is to allow the court to determine what, if any, bail conditions should be imposed to enhance the protection of the victim of the alleged offence.

While a judicial officer or authorised officer can already defer consideration of bail, this amendment alerts the relevant officer to give specific consideration to deferring bail in order to inform protective bail conditions in instances of family violence.

51 Section 16A amended

Clause 51 deletes section 16A(3) of the Bail Act.

The effect of this amendment is to allow police to grant bail for breaches of FVROs or VROs in an urban area, as they currently can in regional areas.

Currently, police officers do not have jurisdiction to grant bail to an accused who has been arrested and charged with breaching a restraining order in an urban area. In such cases, bail can only be considered by a court and an accused may be kept in custody overnight until he or she can be brought before a court. This has had the unintended consequence of encouraging police to use the summons process for an offence of breaching a restraining order instead of arresting the offender where the officer considers it unfair or inappropriate to remand an accused in custody to appear at the next court sitting. It is also inconsistent with the discretion afforded to police in regional and remote areas, who have the power to set bail conditions in these circumstances.

52 Section 24A amended

Clause 52 amends section 24A(4) of the Bail Act.

The amendment to this section is part of the proposed changes to facilitate electronic monitoring of an accused on home detention bail.

The amendment ensures a CCO who is writing a report on the suitability of an accused for a home detention condition includes a recommendation as to whether the accused is suitable for electronic monitoring while on home detention.

This amendment interacts with new Schedule 1, Part D, clause 3(4) which provides a judicial officer may impose a home detention condition inclusive of electronic monitoring if a recommendation has been made under section 24A(4).

53 Section 26 amended

Clause 53 amends section 26 of the Bail Act.

Subsection (2) is amended to include a reference to new Schedule 1, Part C, clause 3F (Bail in cases of family violence offence involving serial family violence offender).

54 Section 38 amended

Clause 54 amends section 38 of the Bail Act.

Section 38 is amended to introduce gender-neutral language into the provision and provide that certain people are disqualified from being sureties.

The amendment to section 38(1) adds subsection (d) to the list of persons who are not qualified to be approved as a surety, disqualifying a person if the surety approval officer knows or has reasonable grounds to believe:

- there is a current restraining order between the person and the accused;
- 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
- the person is in a family relationship with the accused and is the alleged victim of the offence of which the accused has been charged.

This amendment is intended to exclude a victim of family violence from being approved as a surety. It requires consideration to be given to the existence of any prior or current violence between the accused and the proposed surety, and aims to ensure that a person cannot be approved as surety if there is a recorded history of family violence (criminal convictions or restraining orders) between the persons.

Surety is intended to provide additional assurance that a person granted bail will appear at the next required court date. It is not appropriate for a victim of family violence to be required to control a perpetrator's behaviour by returning them to court. Where a victim is unable to do so, they could potentially suffer a financial loss by losing the surety amount.

Subsection (3) is also inserted, which prohibits a surety approval officer from asking an applicant any questions that relate to whether he or she meets 1 of the criteria under section 38(1)(d). The surety approval officer should instead rely on the details of the offence and any records to gather that information. This recognises that a victim may be coerced or obliged out of fear or risk of violence to be a surety for a perpetrator of family violence against them. Subsection (3) ensures the victim is not put at risk by being required to disclose that they are a victim of family violence in the presence of the accused.

Subsection (4) provides that section 38(1)(d) does not apply where the accused is a child. This recognises that child offending often occurs in a different context to other family violence offending and that parents and carers may wish to provide surety, notwithstanding that they may have also been victim of an offence committed by a child.

55 Section 40 amended

Clause 55 amends section 40 of the Bail Act to insert subsection (3), which provides that a surety approval officer must not include reasons for a decision not to approve an applicant as surety to the extent that to do so would disclose that the surety approval officer has acted under section 38(1)(d). However, a record of these reasons must still be made.

This amendment provides a further protection to section 38(3) to ensure that if an applicant is not approved as surety because they are disqualified on the basis of section 38(1)(d), this reason is not disclosed to the applicant and the accused.

56 Section 50K deleted

Clause 56 deletes section 50K of the Bail Act.

The effect of section 50K has been incorporated into new section 66E.

57 Section 50L amended

Clause 57 amends section 50L(1) of the Bail Act to accommodate the new definition of an approved electronic monitoring device into the conditions that may be placed on home detention.

58 Section 66E inserted

Clause 58 inserts section 66E (Retrieving monitoring equipment) into the Bail Act.

Section 66E provides that section 118 of the Sentence Administration Act applies if, under the Bail Act, any approved electronic monitoring device has been required to be worn by a person, or has been installed at a place, in connection with keeping an accused under surveillance or to monitor an accused. Section 118 of the Sentence Administration Act contains offences in relation to monitoring equipment.

59 Schedule 1 Part C clause 1 amended

Clause 59 amends Schedule 1 Part C clause 1 of the Bail Act to include a reference to new Schedule 1, Part C, clause 3F.

60 Schedule 1 Part C clause 3F inserted

Clause 60 inserts Schedule 1 Part C clause 3F (Bail in cases of family violence offence involving serial family violence offender) into the Bail Act.

Clause 3F deals with bail for a person charged with a family violence offence who has been declared a serial family violence offender. The effect of the clause is to create a presumption against bail in these circumstances. The presumption may be rebutted if there are exceptional reasons why the accused should not be kept in custody and the officer is satisfied bail may properly be granted.

Subclause (1) states that clause 3F applies where an accused is a serial family violence offender in custody awaiting an appearance in court before conviction for a family violence offence, or waiting to be sentenced or otherwise dealt with for a family violence offence of which the accused has been convicted.

Subclause (2) directs that where this clause applies, bail may only be granted by a judicial officer, other than a justice, and the judicial officer must refuse to grant bail for a family violence offence unless the judicial officer is satisfied:

a) that there are exceptional reasons why the accused should not be held in custody; and

b) that bail may properly be granted having regard to the provisions of clauses 1 and 3.

Under subclause (2), only a judicial officer has jurisdiction to consider bail for a serial family violence offender charged with a family violence offence.

Subclause (3) provides that where a serial family violence offender accused is refused bail under subclause (2) for an appearance for a family violence offence, the accused's case for bail need only be reconsidered for an appearance for that offence if the accused satisfies the judicial officer that:

a) new facts have been discovered, new circumstances have arisen or the circumstances have changed since bail was refused; or

b) the accused failed to adequately present the case for bail on the occasion of that refusal.

Subclause (4) provides that before bail is granted the judicial officer must:

a) request a report be made under section 24A(2) about the suitability of the accused to be subject to a home detention condition; and

b) having regard to the recommendations of the report, consider the imposition of a home detention condition which includes electronic monitoring on the grant of bail.

Subclause (4) ensures that even where exceptional circumstances exist, such than an accused under this section is granted bail, the judicial officer must consider subjecting the accused to a home detention condition inclusive of electronic monitoring.

Subclause (5) provides that where an accused is a serial family violence offender and is granted bail for a family violence offence, on any subsequent appearance for bail in the same case, a judicial officer may order that bail is to continue on the same terms and conditions.

Subclause (6) provides that clause 3F does not apply if bail is being granted under section 33C(6) of the Sentencing Act in connection with a PSO and the court has considered the imposition of an electronic monitoring requirement under section 33HA of that Act.

61 Schedule 1 Part C clause 4 amended

Clause 61 amends Schedule 1 Part C clause 4 of the Bail Act.

Clause 4 is amended to include a reference to new Schedule 1, Part C, clause 3F.

62 Schedule 1 Part D clause 2 amended

Clause 62 amends Schedule 1 Part D clause 2 of the Bail Act.

Clause 2(2a) is amended to provide that on a grant of bail for a purpose set out in subclause (2)(c) or (d), a judicial officer or authorised officer must consider whether that purpose might be better served or assisted by a restraining order, protective bail conditions, or both.

The amendment intends to draw the attention of a judicial officer or authorised officer to existing powers to ensure consideration is given to issuing both protective bail conditions and a restraining order.

Subclause (2AB) is inserted, which provides that where an accused and an alleged victim are in a family relationship, the judicial officer or authorised officer must ensure that any condition imposed under subclause (2)(c) or (d) is not inconsistent with any restraining order in place.

This amendment recognises that the potential exists for protective bail conditions and restraining orders to conflict. It accordingly provides that before settling or amending protective bail conditions for an offence where the accused and the victim are in a family relationship, the judicial officer or authorised officer must consider whether there is an existing restraining order and ensure that the conditions of bail and the conditions of the restraining order are compatible.

Subclause (2AC) is also inserted to provide that subclause (2AB) does not apply if it is deemed necessary that a condition that is inconsistent with an existing restraining order should be imposed in order to protect the safety of an alleged victim or of a child also protected by a restraining order.

The intent of this subclause is to ensure that if a condition would enhance the safety of an alleged victim of family violence or his or her child, even if it is inconsistent with an existing restraining order, it may be imposed as a condition on the accused's bail. This is intended to put the safety of the victim at the forefront of bail considerations in the family violence context.

63 Schedule 1 Part D clause 3 amended

Clause 63 amends Schedule 1 Part D clause 3 of the Bail Act.

Clause 3 deals with a judicial officer's power to impose a home detention condition. The overall effect of the amendments to clause 3 is to allow for electronic monitoring of an accused who is on home detention as part of his or her bail conditions.

Subclause (3)(ca) is inserted to provide that a home detention condition includes a condition that while the accused is on bail, the accused shall, if relevant, comply with any direction under subclause (4).

Subclause (4) provides that a judicial officer may, if a CCO recommends that the accused is suitable for electronic monitoring, direct that the accused, while subject to a home detention condition:

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

b) be under the supervision of a CCO and comply with the directions of the CCO under subclause (5).

The purpose of electronic monitoring under these provisions is to monitor the accused's location to ensure compliance with bail conditions.

Subclause (5) empowers a CCO to do any or all of the following for the purpose of the electronic monitoring of an accused:

a) direct the accused to wear an approved electronic monitoring device;

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

c) give any other reasonable direction to the accused as necessary for the proper administration of the electronic monitoring of the accused.

Subclause (6) allows a CCO to suspend an electronic monitoring requirement if he or she is satisfied that it is not practicable or not necessary for the accused to be subject to such a requirement.

Subclause (7) states that a requirement that an accused subject to a home detention condition while on bail is to wear an electronic monitoring device cannot apply to a person who is under 18 years of age. This prevents children from being subject to electronic monitoring in this context.

64 Schedule 2 amended

Clause 64 amends Schedule 2 of the Bail Act.

This amendment makes the new offences in section 298 (Suffocation and strangulation) and section 300 (Persistent family violence) of *The Criminal Code* serious offences for the purposes of the Bail Act, section 16A (Bail for serious offence in an urban area), section 26 (Record of bail decision and reasons) and Schedule 1, Part C, clauses 3A (Bail for accused charged serious offence committed while on bail or early release for another serious offence) and 3B (Exceptional reasons under cl. 3A(1), determining).

PART 6 – *RESTRAINING ORDERS ACT 1997* AMENDED

65 Act amended

Clause 65 provides that Part 6 amends the *Restraining Orders Act 1997* (Restraining Orders Act).

66 Section 3 amended

Clause 66 inserts a number of definitions into section 3 of the Restraining Orders Act.

Affidavit includes an electronic declaration made in accordance with the rules of court.

Explosive means a substance or an article that is controlled as an explosive under the *Dangerous Goods Safety Act 2004.*

Explosives licence means a licence, permit or authorisation to hold an explosive under the *Dangerous Goods Safety Act 2004.*

Family court proceedings means proceedings under the *Family Law Act 1975* of the Commonwealth or the *Family Court Act 1997*.

Public Advocate means the person holding or acting in the office of the Public Advocate under the *Guardianship and Administration Act 1990*.

67 Section 4 amended

Clause 67 amends section 4 of the Restraining Orders Act.

Clause 67 amends the definition of family relationship in section 4(1) to include a category of family relationship where one person is the former spouse or former de facto partner of the other person's current spouse or current de facto partner.

68 Section 5A amended

Clause 68 amends section 5A(2) of the Restraining Orders Act.

Clause 68 inserts dowry abuse as an example of family violence for the purposes of that section. Dowry abuse involves coercing, threatening, or causing physical abuse, emotional or psychological abuse, or financial abuse, in connection with demanding or receiving dowry, whether before or after any marriage.

This ensures that dowry abuse is explicitly recognised as a specific and unique form of family violence.

69 Section 7A amended

Clause 69 amends section 7A of the Restraining Orders Act to allow a registrar acting under Part 5A to make an order imposing restraints under the Restraining Orders Act. This amendment accommodates the new family violence conference provisions contained in section 49D, which allows a registrar to convene a conference in relation to an application for an FVRO, or an application to vary or cancel an FVRO. The amendment to section 7A allows a registrar to make orders for the purpose of these conferences.

70 Section 8 amended

Clause 70 amends section 8 of the Restraining Orders Act.

Subsection (1)(h) is amended to provide that a court that makes an FVRO or VRO is to explain the effects of sections 14A and 62E which relate to restrictions on the respondent's access to explosives. This accommodates the amendments made to the Restraining Orders Act which provide that an FVRO or VRO may include a prohibition on possessing explosives or an explosives licence.

Subsection (2) is amended to specify that if a person to whom an explanation is given under subsection (1) does not understand English, the court is to arrange for a person over the age of 18 to give the explanation to the person in a way that they can understand. This amendment retains the current statutory requirement that a court is to arrange for an explanation of an order to be given in a manner the person bound understands. However, it requires that the explanation must be given by an adult.

Subsection (2A) is inserted to provide that a person giving an explanation must not be a person of a prescribed class (that is, prescribed in regulations for the purposes of subsection (2A)).

71 Section 9 replaced

Clause 71 deletes and replaces existing section 9 of the Restraining Orders Act.

New section 9 allows the court to make procedural rules in relation to a number of functions relating to restraining order hearings. This amendment is for the purpose of enabling electronic lodgement of restraining orders and so functions that must currently be undertaken by a Registrar can be carried out by the court's electronic system where required.

72 Section 10 amended

Clause 72 deletes section 10(1) and (1a) of the Restraining Orders Act and replaces them with a new section 10(1) and (1A).

The new provisions allow the court to make rules in relation to a number of functions of the Registrar relating to preparing and serving restraining orders. This amendment

is for the purpose of enabling electronic lodgement of restraining orders and so functions that must currently be undertaken by a Registrar can be carried out by the courts electronic system where required.

73 Part 2A Division 1AA inserted

Clause 73 inserts into the Restraining Orders Act Part 2A Division 1AA – Additional circumstances where orders may be made.

Contained in this Part is new section 13A (Cases involving violent offences).

This new division is intended to make it easier and less traumatic for victims of specified offences to obtain an FVRO or VRO. The provisions enable the court to make a restraining order, including on an ex parte basis, if satisfied the applicant is the victim of a specified offence and the respondent is the convicted person.

Subsection (1) provides that this section applies to an application for an FVRO or VRO if:

a) a person has been convicted of an offence referred to in section 63(4AA)(a) (in the case of an application for an FVRO), or a violent personal offence under section 63A(1A) (in the case of an application for either order); and

b) an FVRO or VRO has not been made against the convicted person, including because the offence for which the person was convicted was committed before the offence became subject to section 63(4AA) or 63A; and

c) the application is being made against the convicted person by or on behalf of the victim of the offence.

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

Subsection (3) provides that in the case of an application where a person has been convicted of a violent personal offence under section 63A(1A), the court must make an FVRO or VRO, as is appropriate in the case, against the person.

Subsections (2) and (3) retain the existing distinction between offences specified in sections 63 and 63A, respectively.

Subsection (4) provides that an order under this section may be made on an ex parte application and in the absence of the person who is to be bound by the order. The intent of this provision is to enable an order to be made final if the court is satisfied of the conviction, without needing to hear from the respondent.

Subsection (5) provides that except as provided in subsection (6), an order will be made for a period specified by the court.

Subsection (6) has the effect that an order made on the ground that a person has been convicted of a violent personal offence under section 63A(1A) is to be made for the period of the life of the person who committed the offence.

Subsection (7) provides that if the relevant offence was committed by a person who was a child at the time of the commission of the offence:

a) the court is not required to make an order under this subsection; and

b) if a court makes an order under this section, the order will be made for the period specified by the court and cannot be for the period of life of the person who committed the offence.

Subsection (7) ensures children are not subject to mandatory lifetime restraining orders.

Subsection (8) allows the person bound by the order to apply to vary or cancel the order on the ground that exceptional circumstances exist which justify the variation or cancellation. An application to vary or cancel the order is to be made under section 45 and is subject to the court granting leave if satisfied exceptional circumstances exist.

74 Part 2A Division 1 heading amended

Clause 74 amends the heading of Part 2A Division 1 of the Restraining Orders Act to 'Orders relating to firearms and explosives'.

75 Section 14A inserted

Clause 75 inserts section 14A (Explosives order) into the Restraining Orders Act.

Subsection (1) provides that a court making an FVRO or VRO must consider whether it should include a restraint prohibiting the person who is bound by the order from:

a) being in possession of any explosives; or

b) obtaining, or being in possession of, an explosives licence.

This provision requires the court to consider whether a person bound by an FVRO or VRO should be prohibited from accessing explosives.

Subsection (2) provides that a person bound by a restraint under subsection (1) must give up possession, to a person and in a manner prescribed in the regulations, of all explosives or explosive licences that they possess.

Subsection (3) provides that a person who is subject to the operation of subsection (2), and who is lawfully in possession of explosives or an explosives licence immediately before the order is made, is not in breach of the order if the person is in possession of the explosives or explosives licence during the period necessary to comply with the terms of the order. This subsection intends to prevent a person bound by an FVRO or VRO from being charged with breaching that order while they are in the process of giving up any explosives or explosive licences they lawfully possessed prior to the making of the order.

Subsection (4) provides that in addition to the operation of subsection (1), a court may permit a respondent to have possession of explosives and, if necessary, an explosives licence relating to the explosives, on such conditions as the court thinks fit and specifies as part of the FVRO or VRO.

76 Section 16 amended

Clause 76 amends section 16(4)(c) of the Restraining Orders Act to remove the existing provision that provides that an interim order remains in force until it expires.

This amendment intends to make clear that an interim order is in force until a final order comes into force, or the matter is concluded without an order being made through a hearing or conference, or the interim order is cancelled. This prevents the courts from making interim orders for a fixed period of time.

77 Section 16A amended

Clause 77 amends section 16A of the Restraining Orders Act.

Subsection (3) is amended to tie the commencement of the duration of a final FVRO made against a person who is a prisoner to the time when the person bound is served with the order. This amendment is intended to ensure clarity in the duration of restraining orders, particularly where the person bound is in prison.

Subsection (4) is deleted as a consequence of the amendment to subsection (3).

78 Section 24A amended

Clause 78 amends section 24A of the Restraining Orders Act.

Subsection (1) is amended to delete the words “in person” so that an applicant may make an application for an order online rather than being required to attend court in person.

Subsection (2)(c) is inserted, which allows an application for an FVRO to be made by a person acting on behalf of another person in circumstances prescribed in the regulations.

New subsection (2A) is inserted to provide clarity around whose name an application for an FVRO is made in if it is made by someone other than the person seeking to be protected.

In summary, the amendment provides that where a police officer, a child welfare officer, or guardian appointed under the *Guardianship and Administration Act 1990* applies for a restraining order on behalf of a person, the application is to be made in the name of "the Commissioner of Police," the "CEO (child welfare)" or "Public Advocate," respectively, rather than in the name of the individual officer.

Subsection (2A)(d) provides that where regulations permit a person to make an application on behalf of another person under section 24A(2)(c), regulations may prescribe circumstances where a prescribed body, who applies for a restraining order on behalf of another person, is to be recorded as the applicant.

These amendments are intended to prevent child protection workers, police officers, guardians or other persons from being named as the applicant.

Subsection (3) is amended to compliment amended section (1) allowing a person to make an application for an order online in accordance with rules of the court rather than being required to attend court in person.

79 Section 25 amended

Clause 79 amends section 25 of the Restraining Orders Act.

Subsection (1) is amended to delete the words "in person" so that an applicant may make an application for an order online rather than being required to attend court in person.

Subsection (3) is amended to compliment amended section (1) allowing a person to make an application for an order online in accordance with rules of the court rather than being required to attend court in person.

80 Section 26 amended

Clause 80 amends section 26 of the Restraining Orders Act.

The effect of the amendments to sections 26(2) and 26(3) are to enable rules of court to provide for the method by which hearings are fixed and summons served on a respondent. This allows functions that must currently be undertaken by a Registrar to be carried out by the court's electronic system where required.

81 Section 27 amended

Clause 81 amends section 27 of the Restraining Orders Act.

Clause 81 deletes sections 27(4a) and 27(5). The effect of these provisions is incorporated in new section 44D.

82 Section 30E amended

Clause 82 amends section 30E of the Restraining Orders Act.

Subsection (4) is amended to specify that if a person to whom an explanation is given under subsection (3) does not understand English, the police officer is to arrange for a person over the age of 18 to give the explanation to the person in a way that they can understand. This amendment retains the current statutory requirement that a police officer is to arrange for an explanation of an order to be given in a manner the person bound understands. However, it requires that the explanation must be given by an adult.

Subsection (4A) is inserted to provide that a person giving an explanation must not be a person of a prescribed class (that is, prescribed in regulations for the purposes of subsection (4A)).

83 Section 33 amended

Clause 83 amends section 33 of the Restraining Orders Act.

Section 33(2) is amended to provide that, if an interim order includes a restraint which prohibits the respondent from being in possession of explosives or an explosives licence that the respondent reasonably needs in order to carry on his or her usual occupation, the registrar is to ensure that the date fixed for the final order hearing is as soon as practicable after the respondent returns their endorsement copy of the interim order. This is to ensure that any impact on the respondent's occupation is minimised until a final order is made.

Section 33(3) is inserted which provides that subsection (1) and (2) apply subject to the referral of the matter to a conference under new Part 5A.

84 Section 36 amended

Clause 84 amends section 36 of the Restraining Orders Act.

Subsections (2)(fa) and (3)(d) are inserted to provide that, without limiting the restraints that may be imposed as part of a misconduct restraining order (MRO), a court may restrain the respondent from being in possession of any explosives or an explosives licence, or applying for an explosives licence.

Further, subsection (2)(g) is amended to provide that a court may restrain the respondent from causing or allowing another person to engage in conduct of a type referred to in paragraph (fa).

Subsection (6) is amended to make it clear that if an MRO restrains the respondent from being in possession of firearms or a firearms licence, or applying for a firearms licence, sections 14 and 62E apply as if the MRO were a VRO, as those sections apply in relation to firearms and firearms licences.

Subsection (7) is inserted to provide that if an MRO restrains the respondent from being in possession of explosives or an explosives licence, or applying for an explosives licence, sections 14A and 62E apply as if the MRO were a VRO, as those sections apply in relation to explosives and explosives licences.

85 Section 38 amended

Clause 85 amends section 38 of the Restraining Orders Act.

Subsection (1) is amended to delete the words “in person” so that an applicant may make an application for an order online rather than being required to attend court in person.

Subsection (4) is amended to compliment amended section (1) allowing a person to make an application for an order online in accordance with rules of the court rather than being required to attend court in person.

86 Section 44C amended

Clause 86 amends section 44C of the Restraining Orders Act to insert subsection (3) which provides that section 44C does not derogate from the operation of section 44F. Existing section 44C requires an examiner’s questions to be made through the judicial officer or approved person in certain circumstances. New section 44F extends the steps that the court may take during proceedings related to an FVRO to ensure victims of family violence feel safe.

87 Division 4 inserted

Clause 87 inserts Division 4 – Other provisions to protect applicants into the Restraining Orders Act. This division contains new sections 44D – 44F, which are aimed at making it less traumatic for victims to seek and obtain protection from family violence.

Section 44D (Support and other persons who may be present) encompasses the support provisions for persons seeking to be protected by a restraining order that were formerly contained in sections 27(4a) and 27(5), but extends them to apply to final order hearings in the same way as they currently apply to ex parte hearings. It provides that in any proceedings under this Act, including in relation to a hearing in closed court:

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

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

Subsection (2) specifies that the support person must be approved by the court and precludes a person who is a witness in, or party to, the proceedings from being a support person.

Section 44E (Use of closed circuit television or screening arrangements) adopts the substance of Regulation 10A of the *Restraining Orders Regulations 1997* into the Restraining Orders Act to raise the profile of the ability for courts to allow the use of closed circuit television (CCTV) in the giving of evidence.

Subsection (1) enables a court to use CCTV or other screening arrangements in the giving of evidence by a party to, or witness in, a restraining order proceeding. The use of these arrangements is available where the person is likely, if the arrangements are not made, to:

- be unable to give evidence, or to give evidence satisfactorily; or
- suffer severe emotional trauma or be unnecessarily intimidated or distressed.

Subsection (2) provides that the court may make such arrangements as it thinks fit, including by using CCTV or screens, one-way glass or other suitable shielding devices.

Subsection (3) sets out a number of factors that the court may consider in determining whether arrangements under this section should be made available, namely:

- the person's age;
- the person's cultural background;
- any physical disability or mental impairment of the person;
- the relationship of the person to any other person involved in the proceedings;
- the effect on the person of the presence of another person;
- the nature of the subject-matter of the proceedings;
- the expressed views of the person; and
- any other factor the court considers relevant.

This provision is intended to give broad discretion to the court to determine on what basis special arrangements should be made.

Subsection (4) provides that when making arrangements under this section, the court must ensure that:

a) the judicial officer and all parties to the matter, including their counsel, are able to hear, see and speak to each witness while he or she is giving evidence;

b) each party to the matter has the means of communicating with his or her counsel at all times; and

c) if a person takes part in the proceedings from outside the court room, the person is able to see, hear and speak to the judicial officer at all times.

Subsection (5) states that a court may make these arrangements by application of a party to the proceedings, at the request of a witness, or of its own motion, and that the arrangements can be ordered at any stage of the proceedings.

Subsection (6) mandates that a court, when dealing with an FVRO or VRO matter, must consider whether arrangements under this section ought to be made.

Subsection (7) provides that if a court considers that arrangements ought to be made under this section but the necessary facilities are not available, the court may transfer the matter to another court where those facilities are available as long as doing so is practicable and will not unfairly prejudice any party in the proceedings.

Section 44F (Additional provisions relating to FVROs) provides that a court conducting proceedings relating to an FVRO is to take such steps as are reasonably practicable and appropriate to ensure that a person who has or may have experienced family violence feels safe during proceedings. This includes by actively directing, controlling and managing the conduct of the proceedings, and by limiting cross-examination of a person.

88 Section 45 amended

Clause 88 amends section 45 of the Restraining Orders Act.

Subsection (1)(ba) is inserted which allows an application to vary or cancel a restraining order to be made by, in the case of an application to a court exercising criminal jurisdiction, the person conducting the prosecution on behalf of the person protected by the order.

Subsection (2) is amended to provide that an application to vary or cancel an FVRO can be made by a person who is able to make an application for an order under section 24A(2). This amendment ensures those persons who may make an application on behalf of another person under section 24A(2) can also apply to cancel or vary an order on that person's behalf.

Subsection (3A) is inserted to provide that an application to vary a restraining order may be an application to vary a VRO made before 1 July 2017 to an FVRO. This means that a court may convert a pre July 2017 VRO to an FVRO in the course of criminal proceedings.

Subsection (3B) is inserted, and subsection (4) amended, to enable an application to vary or cancel a restraining order to be made to any court with jurisdiction to make such an order provided that the court is not an inferior court to the court that made the original order. It removes, subject to subsection (7), the current requirement that such an application can only be made at the court that made the original order.

Subsection (7) is inserted to provide that an application to vary or cancel a restraining order can be made as part of criminal proceedings and that, if this occurs, the application need not be in the prescribed form. However, new subsection (8) provides that in this context, the court must not vary or cancel a restraining order unless the person bound is present, and that person, and the protected person, have had an opportunity to make submissions on the matter.

Subsection (9) provides that subsection (8) does not apply if an FVRO or VRO is being varied under section 63A.

89 Section 46 amended

Clause 89 amends section 46 of the Restraining Orders Act.

Subsection (5) is inserted which provides that subsection (4) operates subject to the operation of section 13A(8). This means that in the case of an application for an order made in accordance with new section 13A(8), there must be exceptional circumstances which justify a variation or cancellation being considered.

90 Section 49 amended

Clause 90 amends section 49 of the Restraining Orders Act.

Clause 90 deletes section 49(1)(b)(ii). The effect is that, in an application to vary or cancel a restraining order, a court no longer has the power to make an additional interim order or final order to be read with the original order that states the variations. It is considered more practical and easier for parties to manage a single order, rather than multiple orders that are read together.

91 Section 49C inserted

Clause 91 inserts section 49C (Variation of application to allow a different order to be sought) into the Restraining Orders Act.

Section 49C provides that the court may, if it is satisfied that an applicant has made a mistake as to the nature of their relationship with the respondent for the purposes of this Act, permit an applicant to:

a) vary an application for a VRO to an application for an FVRO; or

b) vary an application for an FVRO to an application for an VRO.

This overcomes the current situation whereby if an applicant for an FVRO or VRO, in the opinion of the court, is mistaken as to whether they are in a family relationship with the respondent, the application must be dismissed and a fresh application must be lodged.

92 Part 5A inserted

Clause 92 inserts Part 5A – Conferences into the Restraining Orders Act.

Part 5A contains new section 49D (Special conference procedures). Section 49D enables registrar-facilitated shuttle conferencing between parties to a contested final FVRO or an application to vary or cancel an FVRO.

It is intended that shuttle conferencing will replace appropriate mention and final order hearings before a Magistrate where a respondent to an FVRO objects to the order becoming final or where a party has applied to vary or cancel existing orders. The aim of shuttle conferencing is to make it easier and less traumatic for victims to obtain restraining orders.

Section 49D enables any FVRO proceeding to be referred by the court to registrar-facilitated conciliation conferencing, rather than to a defended hearing.

Subsection (1)(a) enables a registrar to convene a conference at the request of the court, or on his or her own initiative, in relation to both an application for an FVRO and an application to vary or cancel an FVRO. However, a conference can only be convened in relation to an application for an FVRO if:

a) the applicant has indicated that they wish to proceed to a defended hearing under section 26(1)(b); or

b) the court has made an interim FVRO and the respondent has indicated an objection to the interim order becoming final; or

c) the matter has been adjourned under section 29(1)(c).

This ensures that, in most cases, the court will be required to hear from the applicant and determine whether an interim order ought to be granted prior to referring the matter for a conference. This ensures that the applicant is protected from the risk of

delay that might be associated with a direct referral to a conference upon an application being made.

Subsection (2) provides that a conference cannot be convened if a party objects to participating in a conference under this section. This ensures autonomy for the parties and, in particular, the victim, in determining whether the particular dynamic of the parties' relationship is suitable for conferencing.

Subsection (3) directs the registrar convening a conference to fix a day, time and place for the conference.

Subsection (4) states that the purpose of a conference is to provide a procedure through which an appropriate outcome to the proceedings, including by the making of orders, may be achieved without the parties being together during the conduct of the conference.

Subsection (5) sets out other matters that are relevant to the operation of section 49D, namely:

- a conference will be conducted by a registrar of the court;
- the registrar must ensure that the applicant and the respondent remain in separate rooms during the conference;
- the applicant and the respondent may each be represented by a legal practitioner and have 1 or more other persons present or available to provide support; and
- the registrar conducting the conference may:
    - require a party to furnish such information as the registrar thinks fit;
    - record any agreement reached at the conference and, to the extent provided by such an agreement, make any determination or order on behalf of the court;
    - close the conference at any time if an appropriate agreement cannot be reached;
    - refer the matter back to the court for the purposes of any proceedings, including by taking steps to list the matter for hearing; and
    - otherwise conduct the conference as the registrar thinks fit.

Subsection (6) provides that an agreement reached at a conference may include an undertaking by a party to attend a behaviour change program approved by the Minister, subject to the following:

- the undertaking is unenforceable, even if the agreement is incorporated into a determination or order of the court; and

- Part 1C does not apply in relation to the undertaking even though the party has agreed to attend a behaviour change program.

Subsection (6) provides an alternative avenue for a perpetrator of family violence to agree to attend a behaviour change program as part of a negotiated outcome for an FVRO application. The undertaking is voluntary and is not subject to criminal or civil sanctions for any failure to attend or comply with the undertaking.

Subsection (7) provides that the registrar must consider the matters in section 10F before accepting or declining to give effect to an agreement through the making of an order. Under this subsection, the registrar has discretion to decline to accept or give effect to an agreement if he or she considers that the agreement is inappropriate in the circumstances.

Subsection (8) provides for the actions that a registrar can take if a party to a conference does not attend the conference. The registrar may, if satisfied that the party was notified of the conference:

- adjourn the conference to another day and time;

- if the party is the applicant, dismiss the application;

- if the party is the respondent, proceed to hear the applicant and, if the registrar thinks fit, make an order on behalf of the court (including a final FVRO); or

- refer the matter back to the court.

Subsection (9) requires that any support person needs to be approved by the registrar, and cannot be a person who is a witness in, or a party to, the proceedings.

Subsection (10) provides that anything said or done in a conference is inadmissible in civil proceedings before a court, unless consent is given by all the parties to the proceedings. This subsection does not apply to criminal proceedings.

93 Section 55 amended

Clause 93 amends section 55 of the Restraining Orders Act.

Subsection (1)(c) is amended to provide that a restraining order is to be served personally unless substituted service is allowed under section 60.

Subsection (5A) is amended to specify that if a person to whom an explanation is given does not understand English, the person serving the order is to arrange for a person over the age of 18 to give the explanation to the person in a way that they can

understand. This amendment retains the current statutory requirement that a person serving an order is to arrange for an explanation of an order to be given in a manner the person bound understands. However, it requires that the explanation must be given by an adult.

Subsection (5B) is inserted to provide that a person giving an explanation must not be a person of a prescribed class (that is, prescribed in regulations for the purposes of subsection (5B)).

94 Section 59 amended

Clause 94 amends section 59 of the Restraining Orders Act.

Subsection (2) is amended to provide that as soon as practicable after the registrar receives the proof of service copy of a restraining order, the registrar is to notify the following persons that the order has been served:

a) the applicant; or

b) if an application was made under section 24A(1)(b) or 24A(2), the applicant and the person to be protected by the order.

Subsection (3) is inserted. This subsection provides that a notification that a restraining order has been served may be given in such a manner as the registrar thinks fit, including, if authorised by the person who is to receive the notification, by email, text message, or some other form of electronic communication using contact details provided by the person. The object of this amendment are to ensure that the person protected by the order is informed that service has been achieved and that delays in doing so are minimised.

95 Section 60 amended

Clause 95 amends section 60 of the Restraining Orders Act.

Subsection (1) is amended to reflect current drafting conventions.

The amendments to subsection (1A) retain the existing powers for the court to make an order allowing substituted service, however, provide for new circumstances under which substituted service may occur without an order of the court.

Subsection (1A)(b) is inserted to allow substituted service without application to the court if a person attempting to serve the order has failed to achieve personal service after taking the steps prescribed by the regulations, including on the basis that substituted service may only occur with the approval of a person of a prescribed class or holding a prescribed office. This subsection intends to allow substituted service without application to the court in circumstances where reasonable attempts at personal service have occurred.

The effect of this provision is to minimise delays in service caused by the current requirement to seek an order from the court permitting substituted service. Regulations will prescribe what constitutes reasonable steps at personal service and contemplates substituted service only occurring with the approval of a senior officer (in the case of service by Western Australian Police).

Subsection (2) is amended to add that substituted service is taken to occur if the person serving it takes such steps as a court directs to bring the document to the attention of the person being served, or, in a case where subsection (1A)(b) applies, takes the steps prescribed in the regulations. This subsection allows regulations to prescribe the manner in which substituted service may occur, for example, orally in accordance with section 55(5A). The use of regulations to prescribe the methods of substituted service enables the methods to be expanded in the future with improvements in technology.

96 Section 61 amended

Clause 96 amends section 61 of the Restraining Orders Act.

The amendments to section 61:

- create separate offences for breach of an FVRO and a VRO; and
- increase the monetary penalty for breach of an FVRO, VRO and police order to $10,000, in order to allow a judicial officer to consider a higher penalty for restraining order breaches.

Subsection (6) is inserted to extend the limitation period for prosecution of breach of an FVRO, VRO or police order to 2 years (rather than the 1 year that currently applies by virtue of section 21(2) of the *Criminal Procedure Act 2004*) in order to ensure perpetrators are held to account for breaches. A timely prosecution is made difficult where a complainant is reluctant to make a statement, or recants or delays making a complaint. In circumstances of family violence, the dynamics of coercion, power and control can contribute to delays in the prosecution of breaches.

97 Section 61A amended

Clause 97 amends section 61A of the Restraining Orders Act.

A new definition of **relevant offence** is inserted into section 61A to mean:

- a breach of an FVRO, VRO or police order; or
- an offence under *The Criminal Code* section 338E (Stalking) committed in circumstances of aggravation in which the conduct of the offender in committing

the offence constituted the breach of an order, other than an order under Part 1C, made or registered under this Act or to which the Act applies.

Qualifying relevant offence in subsection (2)(a) is defined to mean a conviction for a relevant offence, and **previous relevant offences** in subsection (2)(b) is defined to mean convictions of at least 2 relevant offences.

Subsections (2A), (2B), (4) and (5) are consequentially amended to accommodate these new definitions.

The purpose of these amendments is to ensure that an offence of aggravated stalking under section 338E of *The Criminal Code* is included as a conviction for the purposes of triggering the presumption of imprisonment. In some circumstances, offenders who commit multiple breaches of an order under the Restraining Orders Act are charged with an offence under section 338E rather than specific breach offences. This amendment means that if an offender is convicted of aggravated stalking involving a breach of a FVRO, VRO or police order, the offence will count as a conviction for the purpose of section 61A.

98 Section 61B amended

Clause 98 amends section 61B of the Restraining Orders Act.

Section 61B(2) is amended to provide that in the sentencing of a person for an offence under section 61, any aiding of the breach of the order by the protected person is not a mitigating factor for the purposes of sentencing if the protected person is in a family relationship with the person bound.

Subsection (2A) is inserted to provide an exception to subsection (2). It states that subsection (2) does not apply if:

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

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

The exception to section 61B(2) is intended to cover only circumstances in which a protected person has initiated the contact with the person bound by the order in the absence of any influence, direct or indirect, from the person bound by the order. Further, the exception does not apply if the person bound has engaged in any conduct that constitutes family violence.

This amendment addresses the potential unfairness that arises if aiding of a breach of a restraining order cannot be taken into account in mitigation in sentencing, while still

recognising the seriousness of a breach committed in circumstances of family violence.

99 Section 62E amended

Clause 99 amends section 62E of the Restraining Orders Act to include explosives.

Subsection (1AA) is inserted to provide that if a person who is bound by a restraint under section 14A in relation to an FVRO or VRO does not give up possession of explosives or an explosives licence in accordance with that section, a police officer may, without a warrant, enter a place where any explosives or an explosive licence are suspected to be and search for and seize any explosives or explosives licence.

Subsection (1B) is inserted to provide that in the exercise of a power under subsection (1AA), a police officer may be accompanied and assisted by a dangerous goods officer under the *Dangerous Goods Safety Act 2004*.

Subsection (2) is amended to provide that any explosives or explosive licences seized are to be delivered to the Commissioner for Police and dealt with in the manner prescribed in the regulations. Regulations will provide for cooperation between the Commissioner of Police and a dangerous goods officer in this respect.

100 Section 63 amended

Clause 100 amends section 63 of the Restraining Orders Act.

Subsection (3AA) is added to make it clear that:

- The Family Court of Western Australia can make restraining orders ex parte in the course of existing proceedings under the *Family Court Act 1997* or the *Family Law Act 1975*.

- The Children's Court of Western Australia can make restraining orders ex parte in the course of protection proceedings under the *Children and Community Services Act 2004.*

Subsection (4)(c) is deleted to remove the requirement that a restraining order can only be made under section 63 if the person is present when the order is made and has been given an opportunity to make submissions on the matter.

The list of offences in subsection (4AA)(a)(i) is amended to include the new offences of strangulation or suffocation and persistent family violence. This makes conviction of these new offences, along with the existing offences prescribed in section 63(4AA), a ground for the court to make an FVRO under section 63.

The reference to section 10G(2) in subsection (4AB)(d) is amended to be section 10G to ensure that a court issuing an FVRO under subsection (4AA) may impose any restraint that applies under section 10G.

Subsection (4a) is amended to replace the reference to subsection (4b) to new subsection (4B).

Subsection (4b) is deleted.

Subsection (4B) is inserted which provides that a restraining order made by a court under subsections (2) or (3) (that is, a restraining order made by the Family Court or Children's Court as part of existing proceedings in those courts) will be an interim restraining order if:

- the person who would be bound by the order objects to it being made and the court considers that the order should be an interim order in the circumstances; or

- the order is made ex parte.

Subsection (4c) is amended to replace the reference to repealed subsection (4b) to new subsection (4B)(a).

101 Section 63A amended

Clause 101 amends section 63A of the Restraining Orders Act.

The definition of **violent personal offence** in subsection (1A) is amended to mean:

- an offence against *The Criminal Code* section 283, 292, 293, 294, 297, 304(2), 320, 321, 321A, 325, 326, 327, 328, 329, or 332; or

- an offence against *The Criminal Code* section 444 that is dealt with on indictment.

This amendment removes the requirement that for the purposes of this section, a victim of a violent personal offence specified in subsection (1A) must be in a family relationship with the offender. This means that all victims of the specified violent personal offences have the same access to mandatory lifetime restraining orders under this section.

Subsection (2) is amended to provide that, except as provided by subsection (2A), an order made, or varied, under subsection (1) is to be made for the period of the life of the person who committed the offence.

Subsection (2A) is inserted which provides that if the violent personal offence was committed by a person who was a child at the time of the commission of the offence, then:

- a court is not required to make an order under this section; and
- if a court does make an order under this section, it can be made for a period specified by the court but not for the period of the life of the offender.

Subsection (2) is amended, and subsection (2a) inserted, in order to prevent children who commit violent personal offences from having a lifetime FVRO or VRO ordered against them. Making an order for the life of a person who committed an offence as a child is contrary to the principles of the *Young Offenders Act 1997.*

Subsection (4) is amended to provide that a parent or guardian acting on behalf of a child who is a victim of the offence for whose benefit the order would be made can object to a lifetime order being made under section 63A.

Subsection (5) qualifies this by stating that the person who committed the offence cannot act on behalf of a child under subsection (4).

Subsections (4) and (5) ensure that an appropriate person can object to an order being made where the victim is a child.

102 Section 63B amended

Clause 102 amends section 63B of the Restraining Orders Act.

The amendment to section 63B removes offences against *The Criminal Code* sections 333, 338A, 338B, 338C, 338E and 444 from the definition of violent personal offence for the purposes of that section. This is as a consequence of penalties in circumstances of aggravation having been added into these offences in *The Criminal Code*.

103 Section 66 replaced

Clause 103 replaces section 66 of the Restraining Orders Act.

The heading of section 66 is amended to read ‘Information about family orders’.

Section 66 is amended to ensure that a court enquires as to whether there are any Family Court orders in place in relation to the parties to a restraining order application before it makes a restraining order. If there are Family Court orders in place, the court must take reasonable steps to obtain a copy or information about the order and take the terms of the order or pending order into account when making a restraining order. These amendments alter the existing provisions which currently place the onus on the applicant to inform the court of any Family Court orders pending or in place.

New subsection (1) provides that a court before which an application for a restraining order has been made must, at a time determined by the court to be appropriate in the circumstances, request the applicant to provide information (of which the applicant is aware):

a) about the existence of:

   i) unless subparagraph (ii) applies, any family orders to which the applicant is a party; or

   ii) if the application is being made on behalf of another person, any family order to which the person for whose benefit the order would be made is a party; and

b) about the existence of:

   i) unless subparagraph (ii) applies, any pending application for a family order in which the applicant is a party to the Family Court proceedings; or

   ii) if the application is being made on behalf of another person, any pending application for a family order in which the person for whose benefit the order would be made is a party to the Family Court proceedings.

Subsection (2) provides that if a court becomes aware of an existing family order, or proceedings for a family order, the court must:

a) take steps to obtain a copy of any family order or, if that is not reasonably practicable in the circumstances, information about the terms of any family order; and

b) without derogating from section 65, take the terms of any family order, or the terms of a family order that are being sought in a pending application for a family order, into account (to the extent that those terms are known to the court) when making any restraining order under this Act.

This subsection ensures the court takes into account any reasonably available information about family orders when making a restraining order. It ensures that no restrictions are placed on a court being able to issue an order for the protection of a victim if it is not reasonably practicable to first obtain a copy of the order. This is particularly important in enabling the court to issue interim orders.

Subsection (3) provides that a restraining order is not invalid merely because of any failure to comply with this section.

104 Section 70 amended

Clause 104 amends section 70 of the Restraining Orders Act.

Subsection (1) is amended to make that subsection subject to new subsection (3A).

Subsection (3A) provides that section 70 does not prevent:

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

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

Currently section 70 prevents the name of any party or witness to a restraining order hearing from being displayed on court notice boards across jurisdictions. This means, for example, that these persons' names cannot be displayed on court notice boards involving unrelated criminal or civil proceedings. This has resulted in people being unable to see their name or matter number on the court lists upon arrival at the court, and subsequently leaving the court precinct because they could not identify in which court their matter was being heard.

This amendment introduces an exception to enable court notice boards to display information about any proceedings involving a party or witness to a restraining order hearing. The exception is limited to the precincts of the court only and does not extend to the online publication of information.

105 Section 73 amended

Clause 105 amends section 73 of the Restraining Orders Act.

Subsection (2) is amended to provide that, without limiting subsection (1), regulations may be made in relation to:

- the manner in which explosives and explosives licences are to be given up by a person bound by a restraining order, and delivered to and dealt with by a prescribed person;

- facilitating the effective operation of restraining orders which prohibit or restrict a person from being in possession of any explosives.

PART 7 – *POLICE ACT 1892* AMENDED

106 Act amended

Clause 106 provides that Part 7 amends the *Police Act 1892* (Police Act).

107 Section 135 amended

Clause 107 inserts section 135 (Family violence incident reporting) into the Police Act.

The effect of this section is to require police officers and other police staff to make a record of every alleged incident of family violence reported to or observed by them, and, if a report is made by, or with the consent of, the alleged victim, to provide the alleged victim with a record number.

Subsection (1) defines **designated person** as

- a police officer;
- any other person appointed to an office under this Act;
- any other person whose duties of office involve or include interacting with members of the public at a police station.

This definition intends to include all persons employed by the Western Australian Police Force, including auxiliary officers and public sector employees who might take counter enquiries at a police station.

Family violence has the meaning given in the Restraining Orders Act section 5A.

Subsection (2) provides that this section applies if a designated person, while acting in the course of duty or employment attends at an incident involving (or allegedly or apparently involving) family violence, or receives an allegation of family violence.

Subsection (3) states that in these circumstances, the designated person must:

- make a written record of the incident or allegation when the designated person is reasonably able to do so; and
- if an allegation of family violence is made by, or apparently with the consent of, a person who appears to be, or claims to be, a victim of the incident or alleged incident, take reasonable steps to ensure that a report number, or other identifying information relating to the report, is provided to that person.

This provision is designed to ensure that there is a formal record of a report of family violence, irrespective of whether or not the police undertake an investigation into the incident. It also means that if an alleged victim, or someone else with the alleged

victim's consent, reports an incident of family violence, then the alleged victim will be provided with a record of making that report.

Subsection (4) then provides that a requirement under subsection (3) is satisfied if the designated person complies with a guidance or policy prepared by the Commissioner of Police for the purposes of this section.

PART 8 – *ROAD TRAFFIC (ADMINISTRATION) ACT 2008* AMENDED

The amendments to the *Road Traffic (Administration) Act 2008* (RTA Act) relate to the identification of responsible persons for traffic offences and infringements and the presumption that applies in respect of infringement notices containing photographic evidence.

The effect of these amendments is to protect victims from the risk of being subjected to family violence by the operation of current statutory requirements requiring a victim to identify the driver of a vehicle.

This addresses, in particular, circumstances where a family violence perpetrator incurs an offence or infringement while driving a car registered in the victim's name, where a victim may then:

- be required to identify the perpetrator which potentially puts their safety at risk;
- decline to identify the driver due to safety concerns and face prosecution for failing to provide information;
- ignore an infringement and bear the financial consequence of default; or
- pay an infringement incurred by the perpetrator due to safety concerns.

A family violence victim will be excluded from requirements to identify the driver of a vehicle and excluded from the presumption they were the driver of a vehicle where an infringement is supported by photographic evidence, if the victim provides a statutory declaration that:

- they were not the driver of the vehicle at the time of the offending; and
- they are concerned about providing the information due to a risk or apprehended risk of being subjected to family violence.

A declaration must be accompanied by a family violence evidentiary document to verify the person is a victim of family violence.

The purpose behind these reforms is to avoid the risk of harm posed to the victim by being obliged to identify the offender of traffic infringements where that offender is the perpetrator of violence against them.

108 Act amended

Clause 108 provides that Part 8 amends the RTA Act.

109 Section 4 amended

Clause 109 inserts a number of definitions into section 4 of the RTA Act.

DVO has the meaning given to that term 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 to that term in the Restraining Orders Act section 5A.

Family violence evidentiary document in relation to a responsible person means any of the following:

- a DVO;
- a Family Court injunction or an application for a Family Court injunction;
- a copy of the prosecution notice or indictment containing the charge relating to violence against the responsible person or a court record of a conviction of the charge;
- 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:
    - a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession;
    - a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the psychology profession;
    - a social worker as defined in the *Mental Health Act 2014* section 4;
    - a police officer;
    - a person in charge of a women's refuge;
    - a prescribed person or class of persons.

110 Section 34 amended

Clause 110 amends section 34 of the RTA Act.

Subsection (3A) is inserted, which provides that the duty created by subsection (2), to identify a person who was driving a vehicle that was involved in a traffic offence, does not apply if the responsible person for the vehicle supplies to the police officer who has made the request for information a statutory declaration that:

a) the responsible person was not the driver or person in charge of the vehicle at the relevant time; and

b) the responsible person is concerned about providing information in response to the request because of a risk or apprehended risk of being subjected to family violence if the responsible person took steps to find or provide that information.

Subsection (3B) is inserted, which provides that a statutory declaration under subsection (3A) must be accompanied by a family violence evidentiary document that relates to the responsible person.

The effect of this amendment is to enable a victim of family violence to be exempt from an offence under subsection (2) if the victim is concerned that disclosing the information would lead to a risk or apprehended risk of being subjected to family violence.

Subsection (3C) provides that the exception in subsection (3A) does not apply to a request for information made under section 57 of the *Road Traffic Act 1975*. This ensures that a person cannot use these provisions to decline to identify a driver where the vehicle was used to cause death or bodily harm.

Subsection (3D) provides that the provision of information under subsection (3A) does not give rise to a requirement for a police officer to carry out an investigation under the Restraining Orders Act section 62A. However, this subsection does not prevent such an investigation occurring if the police officer thinks fit.

111 Section 35 amended

Clause 111 amends section 35 of the RTA Act.

Subsection (3) is inserted, which provides that the duty created by subsection (2), to comply with an identity request, does not apply if the responsible person for the vehicle supplies to the person who has made the identity request a statutory declaration that:

a) the responsible person was not the driver or person in charge of the vehicle at the relevant time; and

b) the responsible person is concerned about providing information in response to the request because of a risk or apprehended risk of being subjected to family violence if the responsible person took steps to find or provide that information.

Subsection (4) is inserted, which provides that a statutory declaration under subsection (3) must be accompanied by a family violence evidentiary document that relates to the responsible person.

The effect of this amendment is to enable a victim of family violence to be exempt from an offence under subsection (2) if the victim is concerned that disclosing the

information would lead to a risk or apprehended risk of being subjected to family violence.

Subsection (5) provides that the exception in subsection (3) does not apply to a request for information made under section 57 of the *Road Traffic Act 1975*. This ensures that a person cannot use these provisions to decline to identify a driver where the vehicle was used to cause death or bodily harm.

Subsection (6) provides that the provision of information under subsection (3) does not give rise to a requirement for a police officer to carry out an investigation under the Restraining Orders Act section 62A. However, this subsection does not prevent such an investigation occurring if the police officer thinks fit.

112 Section 94 amended

Clause 112 amends section 94 of the RTA Act.

Subsection (2) is inserted, which provides that subsection (1), which creates a presumption that the responsible person is the driver or person in charge of a vehicle at the time of an offence, does not apply if the responsible person for the vehicle supplies to the officer specified in the notice a statutory declaration that:

a) the responsible person was not the driver or person in charge of the vehicle at the time of the alleged offence; and

b) the responsible person is concerned about providing information in response to the notice because of a risk or apprehended risk of being subjected to family violence if the responsible person took steps to find or provide any information required under that subsection.

Subsection (3) is inserted, which provides that a statutory declaration under subsection (2) must be accompanied by a family violence evidentiary document that relates to the responsible person.

The effect of this amendment is that a victim of family violence does not need to comply with the provisions in subsection (1)(b) in order to rebut the presumption that they were the person driving the car at the time the offence was committed.

Subsection (4) provides that the provision of information under subsection (2) does not give rise to a requirement for a police officer to carry out an investigation under the Restraining Orders Act section 62A. However, this subsection does not prevent such an investigation occurring if the police officer thinks fit.

113 Section 100 amended

Clause 113 amends section 100 of the RTA Act.

Subsection (1A) is inserted, which provides that subsection (1), which creates an offence for failure to comply with a notice requesting information about a vehicle that has been involved in an infringement, does not apply if the responsible person for the vehicle supplies to the officer specified in the notice a statutory declaration that:

a) the responsible person was not the driver or person in charge of the vehicle at the time of the offence described in the notice; and

b) the responsible person is concerned about providing information in response to the notice because of a risk or apprehended risk of being subjected to family violence if the responsible person took steps to find or provide any information required under that subsection.

Subsection (1B) is inserted, which provides that a statutory declaration under subsection (1A) must be accompanied by a family violence evidentiary document that relates to the responsible person.

The effect of this amendment is to enable a victim of family violence to be exempt from an offence under subsection (1) if the victim is concerned that providing information in response to the notice would lead to a risk or apprehended risk of being subjected to family violence.

Subsection (1C) provides that the provision of information under subsection (1A) does not give rise to a requirement for a police officer to carry out an investigation under the Restraining Orders Act section 62A. However, this subsection does not prevent such an investigation occurring if the police officer thinks fit.

PART 9 – *DANGEROUS GOODS SAFETY ACT 2004* AMENDED

114 Act amended

Clause 114 provides that Part 9 amends the *Dangerous Goods Safety Act 2004* (DGSA).

115 Section 68A inserted

Clause 115 inserts section 68A (Orders prohibiting possession of explosives) into the DGSA.

Subsection (1) defines a number of terms for the purposes of this section.

Approval includes a licence, registration and permit.

Explosive means a substance or article that is controlled as an explosive under the DGSA.

Subsection (2) provides that this section applies if a court makes an order:

a) prohibiting a person from being in possession or having control or management of explosives, or holding an approval which allows a person to be in possession or to have control or management of explosives; and

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

Subsection (3) provides that in a case where this section applies, the Chief Officer:

a) must immediately suspend or cancel (as may be appropriate in the circumstances) any approval or exemption that allows the person to whom the order applies to be in possession or have control or management of explosives; and

b) must suspend, vary or revoke any security card or other authorisation to the extent that the security card or authorisation would allow the person to whom the order applies to be in possession or have control or management of explosives; and

c) must not, to the extent that would be inconsistent with the order, grant an approval, security card or other authorisation to the person to whom the order applies while the order is in force.

Subsection (4) provides that in relation to the suspension of an approval or exemption, the Chief Officer may, depending on the outcome of any court proceedings and as may be appropriate in the circumstances (and at an appropriate time):

a) lift the suspension; or

b) cancel the approval or exemption (as the case may be).

This section ensures that where a court makes an order prohibiting a person from being in possession of explosives or security clearance for explosives, such as a condition on a restraining order under the *Restraining Orders Act 1997*, the respondent is prohibited from being cleared to possess explosives by the Chief Dangerous Goods Officer (DGO).

The DGO would retain existing discretion under the *Dangerous Goods (Explosives) Regulations 2007* to approve or refuse new applications for an explosives licence in the case of current FVROs, VROs or MROs that do not contain an explosives restraint, and in the case of past orders.

PART 10 – *EVIDENCE ACT 1906* AMENDED

116 Act amended

Clause 116 provides that Part 10 amends the *Evidence Act 1906* (Evidence Act).

117 Section 37 to 39G inserted

Clause 117 inserts sections 37 – 39G into the Evidence Act.

Sections 38 – 39B relate to evidence of family violence, and its relevance and admissibility. These sections are intended to make it easier for evidence, including expert evidence, of family violence to be introduced in a criminal proceeding when relevant to issues before the court, including but not limited to, where self-defence against family violence is at issue.

Section 37 (Terms used) defines a number of terms for the purposes of sections 38 – 39G.

Family member is given the meaning in the Restraining Orders Act section 4(3).

Family violence is given the meaning in the Restraining Orders Act section 5A.

Help-seeking behaviour is defined to mean any action undertaken by a victim of family violence to address, or to attempt to address, any aspect of family violence including, but not limited to, reporting the family violence to police, obtaining a restraining order, finding accommodation in a refuge, separating from an abusive person, or seeking counselling or external support.

Safety option is defined, in relation to an accused person who is (or may be) a victim of family violence, as an act that may have stopped the violence, other than an act which constitutes, or allegedly constitutes, an offence with which the person is charged.

Section 38 (What may constitute evidence of family violence) outlines that for the purposes of sections 39 – 39G, 'evidence of family violence' includes, but is not limited to, evidence of any of the following:

- the history of the relationship between the person and a family member, including violence by the family member towards the person or by the person towards the family member, or by the family member of the person in relation to any other family member;
- the cumulative effect of family violence, including psychological effect, on the person or a family member affected by that violence;
- social, cultural or economic factors that impact on the person or a family member who has been affected by family violence;

- responses by family, community or agencies to family violence, including any further violence that may be used by the family member to prevent, or in retaliation to, the person's help-seeking behaviour or use of on safety options;

- ways in which social, cultural, economic or personal factors have affected any help-seeking behaviour undertaken by the person or the safety options realistically available to the person in response to family violence;

- ways in which violence by the family member towards the person, or the lack of availability of safety options, were exacerbated by inequities experienced by the person, including inequities associated with, but not limited to, race, poverty, gender, disability or age.

- the general nature and dynamics of relationships affected by family violence, including the possible consequences of separation from the abuser;

- the psychological effect of violence on people who are or have been in a relationship affected by family violence; and

- social or economic factors that impact on people who are or have been in a relationship affected by family violence.

This subsection provides for a range of evidence that may be relevant where family violence is alleged. Due to the complex issues that may arise where there is a history of family violence, the provision aims to provide some guidance on what evidence may be relevant in these circumstances.

However, the evidence of family violence that might be relevant will vary from case to case. Therefore, the matters in this provision should be regarded as indicative only of the types of matters that are likely to be relevant in the circumstances in which a history of violence has been alleged, and is not an exhaustive list.

Some of the matters listed in subsection (1) relate to the particular accused or complainant. Such evidence may be given by, for example:

- the accused or complainant;

- others who have witnessed the violence or the effects of it; or

- professionals who have undertaken an assessment of the accused;

Other matters listed in subsection (1) concern the general nature and dynamics of family violence, and factors that impact on victims of family violence. Such evidence

may be given by people who can demonstrate expertise in family violence, such as social workers, counsellors and family violence workers or researchers.

Subsection (2) states that subsection (1) does not limit the operation of the Restraining Orders Act section 5A(2).

Section 39 (Expert evidence of family violence) contains the provisions relating to expert witnesses in this context.

Subsection (1) provides that this section applies to any criminal proceedings where evidence of family violence is relevant to a fact in issue.

Subsection (2) provides that the evidence of an expert on the subject of family violence is admissible in relation to any matter that may constitute evidence of family violence.

While community awareness and knowledge about family violence is improving, there is still widespread misunderstanding about the nature and dynamics of abusive relationships and their impacts. In this context, expert evidence given by, for example, researchers, family violence workers and others with expertise in this area, can be particularly vital for the judicial officer or jury to properly understand the issues at trial. This evidence can also work to dispel any misconceptions that the judicial officer or jurors may have about the nature and dynamics of family violence that may impact on their assessment of a case.

Subsection (3) provides that evidence given by the expert may include:

a) evidence about the nature and effects of family violence on any person; and

b) evidence about the effect of family violence on a particular person who has been the subject of family violence.

This provision makes clear that expert evidence can be the subject of both general expert evidence about the nature and effects of family violence, and also case-specific expert evidence which would place the situation of a particular person and his or her reactions into the framework of current knowledge about family violence.

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

This subsection intends to make clear that there are a broad range of individual and professional backgrounds that may qualify a person as an expert for these purposes, including those who can demonstrate expertise but may not necessarily conform to the traditionally accepted experts like psychiatrists and psychologists. This may encompass social workers and family violence workers, who can demonstrate sufficient knowledge and experience of family violence and/or of the specific case.

This reflects that people who are likely to be best qualified to give expert evidence on family violence are those with direct experience in working with people who have experienced family violence and with knowledge of current research in the field.

Section 39A (Evidence of family violence – general provision) provides that in proceedings for an offence, evidence of family violence is admissible if family violence is relevant to a fact in issue.

This provision intends to make clear that evidence of family violence is admissible when relevant to issues before the court, including but not limited to, where self-defence is at issue. The value that this evidence may have in ensuring that the true context and dynamics of a relationship between the accused and complainant, or deceased, is placed before the court warrants that its status be clarified in legislation. This is intended to resolve any residual doubts that may exist about its relevance and admissibility.

Section 39B (Evidence of family violence – self-defence) relates to evidence of family violence in circumstances where self-defence is relevant.

Section 39B provides that without limiting the evidence that may be adduced, in criminal proceedings in which self-defence in response to family violence is an issue, evidence of family violence may be relevant in determining whether:

a) a person has a belief that an act was necessary to defend the person or another person from a harmful act, including a harmful act that was not imminent; or

b) a person's act was a reasonable response by the person in the circumstances as the person believed them to be; or

c) there are reasonable grounds for a particular belief by a person.

This section intends to highlight the value that evidence of family violence can have in supporting a plea of self-defence, and to resolve any doubts about its relevance and admissibility. Expert evidence about family violence may be particularly useful to assist a jury to determine whether the accused's belief of the need to use defensive force, and the degree of force used, was reasonable.

This section will apply to any claim of self-defence in response to family violence regardless of whether the offence charged is a fatal or non-fatal offence.

Sections 39C – 39F relate to judicial directions on family violence. These directions are designed to address common stereotypes, myths and misconceptions about family violence. The directions can be utilised in criminal proceedings where there is evidence of family violence and the evidence is relevant to the determination of issues in the trial.

Section 39C (Request for direction on family violence – self-defence) sets out a framework for requests for directions on family violence where self-defence is at issue in a trial.

Subsection (1) provides that where self-defence in response to family violence is at issue in a trial, the accused or counsel for the accused may request at any time that the trial judge direct the jury on family violence in accordance with section 39E and all or specified parts of section 39F.

This provision allows defence counsel to tailor a request for directions based on the matters in proposed section 39F to those that are relevant to the accused. Where matters in section 39F are not relevant to an accused's case, the jury will not be assisted by such information.

Subsection (2) provides that in this case the trial judge must give the jury a requested direction on family violence including all of the specified parts in section 39F if so requested, unless there are good reasons for not doing so.

This reflects that defence counsel is best placed, in the first instance, to determine which matters are relevant in the particular case. However, the trial judge has overriding responsibility for giving directions and if there are good reasons for not giving the directions, the trial judge is not compelled to do so.

Subsection (3) states that if a direction on family violence is not requested, the trial judge may give the direction if the trial judge considers it is in the interests of justice to do so. This means that even where a party fails to request the trial judge to give a direction to the jury, the trial judge can give the direction where it is in the interests of justice to do so.

Subsection (4) provides that the trial judge must give the direction as soon as practicable after the request is made, and may give the direction before any evidence is to be adduced at trial.

This subsection aims to ensure that any misconceptions jurors may have in relation to family violence can be addressed at an early stage.

Subsection (5) states that the trial judge may repeat a direction at any time in the trial.

Subsection (6) provides that this section, and sections 39E and 39F, do not limit what the trial judge may include in any other direction to the jury, including in relation to evidence given by an expert witness. The directions in section 39F are general in nature and are designed to address general misconceptions of family violence. They will not prevent expert evidence being called in relation to the conduct of a person in a particular case, or about the dynamics of family violence generally.

Section 39D (Request for direction on family violence – general provision) sets out a framework for requests for directions on family violence in other cases.

Subsection (1) provides that in criminal proceedings in which family violence is an issue the prosecution or defence counsel (or the accused if they are unrepresented) may request at any time that the trial judge direct the jury on family violence in accordance with all or specified parts of section 39F.

This provision allows a request for a direction to be made by the prosecution or the defence in any criminal proceedings where family violence is relevant to a fact in issue.

Subsection (2) provides that in this case the trial judge must give the jury a requested direction on family violence, including all of the specified parts in 39F if so requested, unless there are good reasons for not doing so.

This reflects that counsel are best placed, in the first instance, to determine which matters are relevant in the particular case. However, the trial judge has overriding responsibility for giving directions and if there are good reasons for not giving the directions, the trial judge is not compelled to do so.

Subsection (3) provides that if a direction on family violence is not requested, the trial judge may give the direction if the trial judge considers it is in the interests of justice to do so. This means that even where a party fails to request the trial judge to give a direction to the jury, the trial judge can give the direction where it is in the interests of justice to do so.

Subsection (4) provides that the trial judge must give the direction as soon as practicable after the request is made, and may give the direction before any evidence is to be adduced at trial.

Subsection (5) provides that the trial judge may repeat a direction at any time in the trial.

Subsection (6) provides that this section, and section 39F, do not limit what the trial judge may include in any other direction to the jury, including in relation to evidence given by an expert witness.

Section 39E (Content of direction on family violence) relates to the contents of a direction where self-defence is at issue in a trial.

This section provides that in giving a direction under section 39C, the trial judge must inform the jury that:

- self-defence is, or is likely to be, in issue in the trial; and

- as a matter of law, evidence of family violence may be relevant to determining whether the accused acted in self-defence; and

- evidence in the trial is likely to include evidence of family violence committed by the victim against the accused or another person whom the accused was defending.

In a request for a direction under section 39C, these matters must be included in a direction by the trial judge.

Section 39F (Additional matters for direction on family violence) sets out other directions on family violence that may be given.

The matters set out in this section are aimed at addressing misconceptions that jury members may have about family violence.

Research demonstrates that the nature and dynamics of family violence are not well understood in the community. For example, many members of the community do not understand how the dynamics of family violence may impact on the behaviour of victims of family violence, such as why a victim of family violence may remain in an abusive relationship. Consequently, these victims, and any action they may take in self-defence, are often perceived to be irrational or unreasonable. However, research has found that it is not uncommon for victims of family violence to remain in abusive relationships for a variety of reasons, including fear of retaliatory violence, concern for children, lack of finances and/or lack of alternative accommodation.

The matters set out in these directions are therefore designed to proactively address these and other misconceptions jurors may have about family violence and to inform jurors of the factors impacting victims of family violence. This will allow the jury to better assess the actions or claims of an accused or complainant where they are relevant to deciding issues in a trial.

Subsection (1) provides that in giving a direction on family violence under section 39C or 39D, the trial judge may include any of the following matters in the direction:

a) That family violence:
   - is not limited to physical abuse and may, for example, include sexual abuse, psychological abuse or financial abuse;

   - may amount to violence against a person even though it is immediately directed at another person;

   - may consist of a single act;

- may consist of separate acts that form part of a pattern of behaviour which can amount to abuse even though some or all of those acts may, when viewed in isolation, appear to be minor or trivial.

b) If relevant, that experience shows that:
   - people may react differently to family violence and there is no typical, proper or normal response to family violence;
   - it is not uncommon for a person who has been subjected to family violence:
     - to stay with an abusive partner after the onset of family violence, or to leave and then return to the partner;
     - not to report family violence to police or seek assistance to stop family violence;
   - decisions made by a person subjected to family violence about how to address, respond to or avoid family violence are likely to be influenced by a variety of factors;
   - it is not uncommon for a decision to leave an abusive partner or to seek assistance to increase apprehension about, or actual risk, of harm.

c) In the case of self-defence, that, as a matter of law, evidence that the accused assaulted the victim on a previous occasion does not mean that the accused could not have been acting in self-defence in relation to the offence charged.

Subsection (2) provides that in making a direction under subsection (1), the trial judge may also indicate that behaviour, or patterns of behaviour that may constitute family violence may include, but are not limited to:

- placing or keeping a person in a dependent or subordinate relationship;
- isolating a person from friends, relatives or other sources of support;
- controlling, regulating or monitoring a person's day to day activities;
- depriving a person of, or restricting a person's, freedom of movement or action;
- restricting a person's ability to resist violence;
- frightening, humiliating, degrading or punishing a person, including punishing a person for resisting violence;
- compelling a person to engage in unlawful or harmful conduct.

Subsection (3) provides that if the trial judge makes a direction that relates to subsection (1)(b)(iv), the trial judge may also indicate that decisions by a person subjected to family violence about how to address, respond to, or avoid family violence may be influenced by such things as:

- the family violence itself;
- social, cultural, economic and personal factors, or inequities experienced by the person, including inequities associated with, but not limited to, race, poverty, gender, disability or age;
- responses by family, community and agencies to the violence or to any help-seeking behaviour by the person;
- the provision of, or failure in provision of, safety options that might have realistically provided ongoing safety to the person, and the person's perceptions of how effective those safety options may have been in preventing future harm;
- further violence, or threat of further violence, used by the family member to prevent, or in retaliation to, the person's help-seeking behaviour or use of safety options.

Section 39G (Application of s. 39E and 39F to criminal proceedings without juries) specifies how these sections apply in a judge-alone trial.

The section provides that if a court is sitting without a jury, the court's reasoning with respect to any matter in relation to which sections 39E and 39F make provision must, to such extent as the trial judge thinks fit, be consistent with how a jury would be directed in accordance with those sections in the particular case.

118 Section 134 inserted

Clause 118 inserts section 134 (Review of amendments made by *Family Violence Legislation Reform Act 2019*) into Evidence Act.

Section 134 requires the Minister, being the Attorney General, to review the operation and effectiveness of amendments to Evidence Act contained in the Bill and prepare a report on the review as soon as practicable 3 years after clause 111 of the Bill becomes operational. The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared and not more than 12 months after the review was due to commence.