



Western Australia

Restraining Orders and Related Legislation Amendment (Family Violence) Act 2016

As at 29 Nov 2016

No. 49 of 2016

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Restraining Orders and Related Legislation Amendment (Family Violence) Act 2016

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Western Australia

Restraining Orders and Related Legislation Amendment (Family Violence) Act 2016

No. 49 of 2016

An Act to amend the following —

- **the *Restraining Orders Act 1997*;**
- **the *Bail Act 1982*;**
- **the *Children and Community Services Act 2004*;**
- **the *Community Protection (Offender Reporting) Act 2004*;**
- ***The Criminal Code*;**
- **the *Criminal Investigation Act 2006*;**
- **the *Prisons Act 1981*;**
- **the *Sentence Administration Act 2003*.**

[Assented to 29 November 2016]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Restraining Orders and Related Legislation Amendment (Family Violence) Act 2016*.

2. Commencement

This Act comes into operation as follows —

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

Part 2 — *Restraining Orders Act 1997* amended

3. Act amended

This Part amends the *Restraining Orders Act 1997*.

4. Long title amended

In the long title delete “**acts of family and domestic or**” and insert:

family violence or

5. Section 3 amended

(1) In section 3 delete “In this Act” and insert —

(1) In this Act

(2) In section 3 delete the definitions of:

act of abuse

act of family and domestic violence

act of personal violence

exposed

family and domestic relationship

final order

restraining order

(3) In section 3 insert in alphabetical order:

assault includes an assault within the meaning of *The Criminal Code*;

conduct agreement order has the meaning given in section 10H(1);

consent order means an order made under section 41(1) or 43(2);

cyber-stalking, in relation to a person, means stalking, monitoring the movement or communications of, or repeatedly communicating with or harassing, the person using electronic means;

exposed, in relation to family violence or personal violence, has the meaning given in section 6A(1);

family member has the meaning given in section 4(3);

family relationship has the meaning given in section 4(1);

family violence has the meaning given in section 5A(1);

family violence restraining order means an order made under this Act imposing restraints of the kind referred to in section 10G;

final order means any of the following —

- (a) in relation to an FVRO, a conduct agreement order;
- (b) in relation to a VRO or MRO, a consent order;
- (c) a restraining order that becomes a final order under section 32;
- (d) a restraining order made under section 40(3);
- (e) a restraining order made at a final order hearing;
- (f) a restraining order made under section 49(1)(b) to vary a final order, being a replacement or additional final order made under that section;
- (g) a restraining order that is a final order under section 63(4a) or 63A(3);

kidnapping, or depriving the liberty of a person includes behaving towards the person in a manner described in *The Criminal Code* section 332;

legal practitioner means an Australian legal practitioner as defined in the *Legal Profession Act 2008* section 3;

personal violence has the meaning given in section 6;

prescribed form means a form prescribed in rules of court;

restraining order means an FVRO, MRO or VRO;

sexual assault includes an offence under *The Criminal Code* Chapter XXXI;

stalking, a person, includes committing an offence under *The Criminal Code* Chapter XXXIIIB against the person;

- (4) In section 3 in the definition of ***authorised person*** after “prescribed” insert:

in the regulations

- (5) In section 3 in the definition of ***family order*** delete “by” and insert:

in

- (6) In section 3 in the definition of ***fix a hearing*** delete “by” and insert:

in

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(7) In section 3 in the definition of *person seeking to be protected* paragraphs (a) and (b) delete “violence restraining order or a misconduct”.

(8) In section 3 in the definition of *prepare and serve* delete “by” and insert:

in

(9) In section 3 in the definition of *telephone application* delete “of Part 2 for a violence restraining order;” and insert:

for an FVRO or VRO;

(10) In section 3 in the definition of *telephone order* delete “a violence restraining order” and insert:

an FVRO or VRO

(11) At the end of section 3 insert:

(2) In this Act the following abbreviations are used —
FVRO for family violence restraining order;
MRO for misconduct restraining order;
VRO for violence restraining order.

6. Section 4 amended

(1) In section 4(1) in the definition of *family and domestic relationship* delete “*and domestic*”.

(2) After section 4(2) insert:

(3) In this Act a person is a *family member* of another person if the persons are in a family relationship.

Note: The heading to amended section 4 is to read:

Terms used: family relationship and family member

7. Section 5A inserted

After section 5 insert:

5A. Term used: family violence

(1) A reference in this Act to *family violence* is a reference to —

- (a) violence, or a threat of violence, by a person towards a family member of the person; or
- (b) any other behaviour by the person that coerces or controls the family member or causes the member to be fearful.

(2) Examples of behaviour that may constitute family violence include (but are not limited to) the following —

- (a) an assault against the family member;
- (b) a sexual assault or other sexually abusive behaviour against the family member;
- (c) stalking or cyber-stalking the family member;
- (d) repeated derogatory remarks against the family member;
- (e) damaging or destroying property of the family member;

- (f) causing death or injury to an animal that is the property of the family member;
 - (g) unreasonably denying the family member the financial autonomy that the member would otherwise have had;
 - (h) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or a child of the member, at a time when the member is entirely or predominantly dependent on the person for financial support;
 - (i) preventing the family member from making or keeping connections with the member's family, friends or culture;
 - (j) kidnapping, or depriving the liberty of, the family member, or any other person with whom the member has a family relationship;
 - (k) distributing or publishing, or threatening to distribute or publish, intimate personal images of the family member;
 - (l) causing any family member who is a child to be exposed to behaviour referred to in this section.
- (3) For the purposes of this Act, a person who procures another person to commit family violence is taken to have also committed the family violence.

8. Section 6 amended

- (1) Delete section 6(1).
- (2) In section 6(2) in the definition of *act of personal violence*:
 - (a) delete "*act of*";
 - (b) delete "and domestic";

- (c) delete paragraph (b) and (c) and insert:
 - (b) kidnapping, or depriving the liberty of, the person;
 - (c) stalking the person;

- (d) in paragraph (e) delete “an act of family and domestic violence if those persons were in a family and domestic relationship.” and insert:

family violence if those persons were in a family relationship.

(3) Delete section 6(3) and (4) and insert:

- (3) For the purposes of this Act, a person who procures another person to commit personal violence is taken to have also committed the personal violence.

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

Term used: personal violence

9. Section 6A inserted

After section 6 insert:

6A. Term used: exposed

- (1) For the purposes of this Act, a child is *exposed* to family violence or personal violence if the child sees or hears the violence or otherwise experiences the effects of the violence.

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- (2) Examples of situations that may constitute a child being exposed to family violence or personal violence include (but are not limited to) the child —
- (a) overhearing threats of death or personal injury to a person; or
 - (b) seeing or hearing an assault of a person; or
 - (c) comforting or providing assistance to a person who has been assaulted; or
 - (d) cleaning up a site after property damage; or
 - (e) being present when police or ambulance officers attend an incident involving the violence.

10. Section 7 amended

In section 7 after “and a person” insert:

who is

11. Section 7A amended

In section 7A(a) and (b) delete “section 25,” and insert:

section 24A, 25,

12. Section 8 amended

- (1) In section 8(1)(h) delete “a violence restraining order,” and insert:

an FVRO or VRO,

- (2) In section 8(2) after “someone else” insert:

who is 16 years of age or older

13. Section 10 amended

In section 10(4) delete “the prescribed form” and insert:

the form prescribed in the regulations

14. Parts 1B and 1C inserted

After section 10 insert:

Part 1B — Family violence restraining order

10A. Objects

The objects of this Part are as follows —

- (a) to maximise the safety of persons who have experienced, or are at risk of, family violence;
- (b) to prevent, or reduce to the greatest extent possible, the incidence and consequences of family violence;
- (c) to protect the wellbeing of children by preventing them from being subjected or exposed to family violence;
- (d) to encourage perpetrators of family violence to accept responsibility for their behaviour and the effect it has on others;
- (e) to make perpetrators of family violence accountable to the court for contraventions of

court-imposed restrictions designed to prevent them from committing further family violence.

10B. Principles to be observed in performing functions in relation to FVROs

- (1) In performing a function under this Act relating to FVROs, a person, court or other body must have regard to the following —
 - (a) the need to ensure that persons at risk of family violence are protected from that violence;
 - (b) the need to prevent behaviour that could reasonably be expected to cause a person to apprehend that they will have family violence committed against them;
 - (c) the particular need to ensure the wellbeing of children by protecting them from family violence, behaviour referred to in paragraph (b) or otherwise being subjected or exposed to family violence;
 - (d) that perpetrators of family violence are solely responsible for that violence and its impact on others and should be held accountable accordingly;
 - (e) that complex emotional factors arising from coercion, control and fear often make it difficult for victims of family violence to report the violence or leave a family relationship in which family violence is being committed;
 - (f) the need to understand the impact of factors such as culture (including Aboriginal and Torres Strait Island culture), language, sexual orientation, gender identity, age, disability and remoteness of location in reporting family

violence or leaving a family relationship in which family violence is being committed;

- (g) that perpetrators of family violence who are children have special needs and that these must be taken into account;
 - (h) the need to identify, to the extent possible, the person or persons in a family relationship most in need of protection from family violence, including in situations where 2 or more family members are committing that violence;
 - (i) the need to recognise that perpetrators of family violence might seek to misuse the protections available under this Act to further their violence, and the need to prevent that misuse;
 - (j) that in order to encourage victims of family violence to report that violence and seek help, proceedings under this Act should be conducted in a way that treats victims with respect and dignity and endeavours to reduce the degree to which victims might be subject to re-traumatisation during those proceedings.
- (2) The person, court or other body is to have regard to the matters set out in subsection (1)(a), (b) and (c) as being of primary importance.

10C. FVRO to specify names of person bound, and person protected, by order

An FVRO is to specify —

- (a) the name of the person for whose benefit the order is made; and
- (b) the name of the person on whose lawful activities and behaviour restraints are imposed by the order.

10D. When FVROs may be made

- (1) A court may make an FVRO if it is satisfied that —
 - (a) the respondent has committed family violence against a person seeking to be protected and the respondent is likely again to commit family violence against that person in the future; or
 - (b) a person seeking to be protected, or a person who has applied for the order on behalf of that person, has reasonable grounds to apprehend that the respondent will commit family violence against the person seeking to be protected.
- (2) If the court is satisfied in accordance with subsection (1), the court must make the order unless there are special circumstances that would make the order inappropriate.
- (3) For the purposes of subsection (2), special circumstances do not exist simply because the applicant or respondent can apply, or has applied, for a particular family order.

10E. FVRO may be made for child in circumstances of family violence

- (1) An FVRO may be made for the benefit of a child if the court is satisfied that —
 - (a) the child has been exposed to family violence committed by or against a person with whom the child is in a family relationship and the child is likely again to be exposed to such violence; or
 - (b) the applicant, the child or a person with whom the child is in a family relationship has reasonable grounds to apprehend that the child will be exposed to family violence committed

by or against a person with whom the child is in a family relationship.

- (2) If the court is satisfied in accordance with subsection (1), the court must make the order unless there are special circumstances that would make the order inappropriate.
- (3) For the purposes of subsection (2), special circumstances do not exist simply because the applicant or respondent can apply, or has applied, for a particular family order.

10F. Matters to be considered by court generally

- (1) When considering whether to make an FVRO and the terms of the order, a court is to have regard to the following —
 - (a) the need to ensure that the person seeking to be protected is protected from family violence;
 - (b) the need to prevent behaviour that could reasonably be expected to cause the person seeking to be protected to apprehend that they will have family violence committed against them;
 - (c) the need to ensure the wellbeing of children by protecting them from family violence, behaviour referred to in paragraph (b) or otherwise being subjected or exposed to family violence;
 - (d) the accommodation needs of the respondent and the person seeking to be protected;
 - (e) the past history of the respondent and the person seeking to be protected with respect to applications under this Act, whether in relation to the same act or persons as are before the court or not;

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- (f) hardship that may be caused to the respondent if the order is made;
 - (g) any family orders;
 - (h) other current legal proceedings involving the respondent or the person seeking to be protected;
 - (i) any criminal convictions of the respondent;
 - (j) any police orders made against the respondent;
 - (k) any previous similar behaviour of the respondent whether in relation to the person seeking to be protected or otherwise;
 - (l) any police incident reports relating to the respondent;
 - (m) any risk assessment, or risk-relevant information, relating to the relationship between the respondent and the person seeking to be protected;
 - (n) any other matters the court considers relevant.
- (2) A court is to have regard to the matters set out in subsection (1)(a), (b) and (c) as being of primary importance.
- (3) In having regard to the matters set out in subsection (1)(e), a past history of applications under this Act is not to be regarded in itself as sufficient to give rise to any presumption as to the merits of the application.
- (4) The Commissioner of Police, is, where practicable, to provide to a court any information in the possession of the Police Force of Western Australia referred to in subsection (1)(i), (j) or (l) that is relevant to a matter before the court.

- (5) The information is to be provided in the form of a certificate signed by —
- (a) a police officer of or above the rank of sergeant; or
 - (b) a person —
 - (i) employed or engaged in the department of the Public Service principally assisting the Minister in the administration of the *Police Act 1892*; and
 - (ii) approved by the Commissioner of Police for the purposes of this subsection.
- (6) The certificate is prima facie evidence of the matters specified in it, without proof of the signature of the person purporting to have signed it or proof that the purported signatory was a police officer of or above the rank of sergeant or a person referred to in subsection (5)(b), as the case requires.
- (7) In addition to subsections (3) to (6), the court may have regard to any of its own records for the purposes of subsection (1).
- (8) Records referred to in subsection (7) are taken to be proof of their contents in the absence of evidence to the contrary.

10G. Restraints on respondent

- (1) In making an FVRO a court may impose such restraints on the lawful activities and behaviour of the respondent as the court considers appropriate to prevent the respondent —
- (a) committing family violence against the person seeking to be protected; or

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- (b) if the person seeking to be protected by the order is a child, exposing a child to family violence committed by the respondent; or
 - (c) behaving in a manner that could reasonably be expected to cause the person seeking to be protected to apprehend that they will have family violence committed against them.
- (2) Without limiting the restraints that may be imposed under subsection (1), a court may restrain the respondent from doing all or any of the following —
- (a) being on or near premises where the person seeking to be protected lives or works;
 - (b) being on or near specified premises or in a specified locality or place;
 - (c) approaching within a specified distance of the person seeking to be protected;
 - (d) stalking or cyber-stalking the person seeking to be protected;
 - (e) communicating, or attempting to communicate, (by whatever means) with the person seeking to be protected;
 - (f) preventing the person seeking to be protected from obtaining and using personal property reasonably needed by the person seeking to be protected, even if the respondent is the owner of, or has a right to be in possession of, the property;
 - (g) distributing or publishing, or threatening to distribute or publish, intimate personal images of the person seeking to be protected;
 - (h) causing or allowing another person to engage in conduct of a type referred to in paragraphs (a) to (g).

- (3) A restraint may be imposed on the respondent on such terms as the court considers appropriate.
- (4) An FVRO may restrain the respondent from entering or remaining in a place, or restrict the respondent's access to a place, even if the respondent has a legal or equitable right to be at the place.
- (5) If an FVRO imposes a restraint referred to in subsection (4), or for some other reason the court is satisfied that it is necessary to do so, the court is to ensure that the order makes provision for the person seeking to be protected, or the respondent, to recover personal property, and other property of a kind prescribed in the regulations, from a place specified in the order —
 - (a) in the manner set out by the court in the order; or
 - (b) in accordance with the procedures set out in the regulations.
- (6) An FVRO may inform the respondent that certain behaviour and activities are unlawful.

10H. Conduct agreement

- (1) If, at any stage of proceedings under this Act relating to an FVRO, the respondent agrees (a **conduct agreement**) to the making of a final order imposing restraints of the kind referred to in section 10G (a **conduct agreement order**), the court may make the order without being satisfied there are grounds for making an FVRO in the same terms.
- (2) A conduct agreement does not constitute an admission by the respondent of all or any of the matters alleged in the application for the relevant FVRO.

- (3) A conduct agreement order is not an FVRO but is taken to be an FVRO for the purposes of this Act.
- (4) The registrar must cause a conduct agreement order to be prepared and served on the respondent.

Part 1C — Behaviour management order

Division 1 — Preliminary

10I. Terms used

In this Part —

behaviour change order has the meaning given in section 10M(1);

behaviour change programme has the meaning given in section 10P(2);

behaviour change programme provider has the meaning given in section 10P(3);

behaviour management order means —

- (a) an eligibility assessment order; or
- (b) a behaviour change order;

court means a court prescribed in the regulations for the purposes of this Part;

eligibility assessment interview has the meaning given in section 10L(1)(b);

eligibility assessment order has the meaning given in section 10L(1);

eligibility assessment report has the meaning given in section 10L(1)(a);

eligibility assessor has the meaning given in section 10P(1).

proceeding means a proceeding under this Part;

variation or cancellation order has the meaning given in section 10T.

10J. Objects

The objects of this Part are to provide for a court that has made a final order that is an FVRO to make an additional order —

- (a) to assess the eligibility of the respondent for a programme designed —
 - (i) to encourage the respondent to accept responsibility for the respondent's family violence and the effect it has on others; and
 - (ii) to encourage the respondent to stop committing further family violence;
- and
- (b) if appropriate, to require the respondent to attend the programme.

10K. Application of Part

This Part applies to a respondent only if —

- (a) a final order that is an FVRO has been made against the respondent; and
- (b) the respondent is an adult.

Division 2 — Eligibility assessment order

10L. Making an eligibility assessment order

- (1) The court may, on the application of the person protected by the final order or on its own initiative, make an order requiring —
 - (a) an eligibility assessor to give a report (an *eligibility assessment report*) to the court, by a

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- date specified in the order, on whether the respondent is eligible to attend a behaviour change programme; and
- (b) the respondent to attend an interview (an ***eligibility assessment interview***) with the eligibility assessor for the purposes of preparing the eligibility assessment report.
- (2) However, a court is not to make an eligibility assessment order if —
- (a) there is already in force a behaviour management order in respect of the respondent; or
- (b) the court is satisfied that —
- (i) there is no behaviour change programme that is reasonably practicable for the respondent to attend; or
- (ii) in all the circumstances of the case, it is not appropriate to make the order.
- (3) The eligibility assessment report must assess the respondent as eligible to attend a behaviour change programme unless the eligibility assessor considers that the respondent does not have the ability or capacity to participate in a behaviour change programme because of one or more of the following —
- (a) the respondent's character, personal history or language skills;
- (b) any disabilities of the respondent;
- (c) any severe mental health conditions of the respondent;
- (d) any alcohol or other drug problems of the respondent;

- (e) any other matters that the eligibility assessor considers relevant.
- (4) An eligibility assessment order must —
 - (a) specify the date by which the respondent must undergo an eligibility assessment interview; and
 - (b) require the eligibility assessor to give reasonable written notice to the respondent of the interview; and
 - (c) require the respondent to attend that interview.
- (5) A respondent who, without reasonable excuse, contravenes an eligibility assessment order by failing to attend the eligibility assessment interview commits an offence.
Penalty for this subsection: a fine of \$1 000.
- (6) The respondent is taken to have contravened the order by failing to attend the eligibility assessment interview if the respondent does not attend the interview at the time and place specified in the notice under subsection (4)(b).

10M. Order to attend behaviour change programme

- (1) If a court is given an eligibility assessment report and is satisfied that the respondent is eligible to attend a behaviour change programme, it must make an order (a ***behaviour change order***) requiring the respondent to attend the behaviour change programme.
- (2) However, a court is not required to make the order if —
 - (a) there is already in force a behaviour change order in respect of the respondent; or
 - (b) the court is satisfied that —

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- (i) there is no behaviour change programme that is reasonably practicable for the respondent to attend; or
 - (ii) in all the circumstances of the case, it is not appropriate to make the order.
- (3) An order under subsection (1) must —
 - (a) specify the date by which the respondent must contact the behaviour change programme provider; and
 - (b) require the behaviour change programme provider to give reasonable written notice to the respondent of the behaviour change programme sessions to be conducted in the course of that programme; and
 - (c) require the respondent to attend each of those sessions.
- (4) A respondent who, without reasonable excuse, contravenes a behaviour change order by failing to attend a behaviour change programme commits an offence.
Penalty for this subsection: a fine of \$1 000.
- (5) The respondent is taken to have contravened the order by failing to attend a behaviour change programme if the respondent does not attend a behaviour change programme session at the time and place specified in the notice under subsection (3)(b).
- (6) A respondent who contravenes a behaviour change order is only liable to be prosecuted once for an offence against subsection (4), regardless of how many behaviour change programme sessions the respondent fails to attend.

10N. Effect of appeal against final order

- (1) If an appeal is lodged under section 64 against a decision to make a final order against a respondent —
 - (a) the operation of a related behaviour management order in respect of the respondent is stayed for any period during which the operation of the whole of the final order is stayed; and
 - (b) a related behaviour management order in respect of the respondent ceases to be in force if the effect of the appeal is that the final order ceases to be in force, unless the court hearing the appeal makes an order to the contrary.
- (2) A behaviour management order in respect of a respondent does not otherwise cease to be in force merely because the related final order made against the respondent ceases to be in force.

Division 3 — Procedures relating to behaviour management order

10O. Notice of hearings

- (1) Before a court makes a behaviour management order, or varies or cancels a behaviour management order, a registrar for the court must cause the notice of the hearing to be served on the respondent.
- (2) The court may make the order in the respondent's absence if the respondent fails to attend the hearing.
- (3) Despite subsection (1), if the respondent is before a court when it makes a final order against the respondent, the court may make an eligibility assessment order, without giving any notice to the respondent, immediately after it makes the final order.

10P. Approval of persons and of behaviour change programme

- (1) The Minister may approve, in writing, any person (an *eligibility assessor*) who the Minister considers has appropriate experience and qualifications to conduct eligibility assessment interviews and prepare eligibility assessment reports.
- (2) The Minister may approve, in writing, a programme (a *behaviour change programme*) that the Minister considers appropriate to —
 - (a) facilitate the acceptance by a respondent of responsibility for the respondent's family violence and the effect it has on others; and
 - (b) encourage the respondent to stop committing further family violence; and
 - (c) deal with any other issues relating to the perpetrators of family violence.
- (3) For the purposes of subsection (2), the Minister is to specify the person or body providing a behaviour change programme (a *behaviour change programme provider*).
- (4) The Minister must make available to a court if asked —
 - (a) a list of the persons approved under subsection (1) and their contact details; and
 - (b) a list of the behaviour change programmes approved under subsection (2); and
 - (c) the contact details of the behaviour change programme providers under subsection (3).

10Q. Eligibility assessor may be required to attend hearing

- (1) The court or the respondent may require an eligibility assessor to attend to give evidence at the hearing of the proceeding to which the report relates by filing a written notice with the court as soon as possible and, if practicable, not later than 2 working days before the hearing.
- (2) On the filing of a notice, a registrar for the court must immediately arrange for the person concerned to be notified that the person's attendance is required on the date stated in the notice.
- (3) A person who under this section, has been required by the respondent to attend the hearing of a proceeding must, if required by the respondent, be called as a witness and may be cross-examined by the respondent on the contents of the eligibility assessment report.

10R. Disputed eligibility assessment report

- (1) If the respondent disputes any matter in an eligibility assessment report, the court must not take the disputed matter into consideration when determining the proceeding unless it is satisfied, on the balance of probabilities, that the matter is true.
- (2) The court must not, without the respondent's consent, take into consideration an eligibility assessment report, or part of such a report, when determining the proceeding if —
 - (a) the respondent disputes all or part of the report; and
 - (b) the eligibility assessor who gave the report to the court does not attend the hearing of the

proceeding despite having been required to attend under section 10Q.

10S. Explanation of behaviour management orders

If a court proposes to make a behaviour management order and the respondent is before the court, it must explain to the respondent before making the order —

- (a) the purpose, terms and effect of the proposed order; and
- (b) the consequences that may follow if the respondent fails to comply with the terms of the proposed order; and
- (c) the means by which the proposed order may be varied or cancelled.

10T. Variation or cancellation of behaviour management orders

- (1) A court may make an order (a *variation or cancellation order*) varying or cancelling a behaviour management order if —
 - (a) in relation to a behaviour management order —
 - (i) there is no longer any behaviour change programme that is reasonably practicable for the respondent to attend; or
 - (ii) in all the circumstances of the case, the order is no longer appropriate for any other reason;
 - or
 - (b) in relation to a behaviour change order, there has been a change in the circumstances in which the order was made that significantly impacts on the respondent's ability or capacity

to participate in a behaviour change programme.

- (2) A court may make the order on its own initiative or on the application of —
 - (a) the respondent; or
 - (b) in relation to an eligibility assessment order, the eligibility assessor; or
 - (c) in relation to a behaviour change order, the behaviour change programme provider.
- (3) The appropriate registrar for the court must cause a copy of an application under subsection (2) to be served on —
 - (a) in relation to an application by the respondent, the eligibility assessor or behaviour change programme provider, as the case may be; or
 - (b) in relation to an application by the eligibility assessor or behaviour change programme provider, the respondent.

10U. Service of orders

- (1) If a court makes a behaviour management order, the registrar is to prepare the order in the prescribed form and —
 - (a) cause the respondent's copy and the respondent's endorsement copy (if one is required to be served) of the order to be served on the person who is bound by the order; and
 - (b) cause the applicant's copy of the order to be delivered to —
 - (i) in relation to an eligibility assessment order, or a variation or cancellation order relating to an eligibility

assessment order, the eligibility
assessor; or

- (ii) in relation to a behaviour change order,
or a variation or cancellation order
relating to a behaviour change order, the
behaviour change programme provider.
- (2) The registrar must cause a copy of the eligibility
assessment report, a report under section 10V or a
certificate under section 10W to be served on the
respondent as soon as practicable, and not later than
10 days after a court receives the report or certificate,
as the case requires.

Division 4 — Other matters

10V. Respondent's participation in behaviour change programme

- (1) This section applies if a respondent participates in a
behaviour change programme.
- (2) The behaviour change programme provider must, as
soon as practicable after the end of a programme,
provide a report, in the prescribed form, to the court
specifying details of the following —
 - (a) whether the respondent completed the
programme and the respondent's general
attendance at the programme;
 - (b) an assessment of the extent to which the
respondent's behaviour has changed or is likely
to change;
 - (c) an assessment of whether the respondent is still
a safety risk to any family member for whose
protection the relevant behaviour management
order was made (the *victim*);

- (d) any known views of the victim regarding the matters referred to in paragraphs (a) to (c).

10W. Respondent's contravention of behaviour management order

- (1) This section applies if a respondent contravenes a behaviour management order.
- (2) The eligibility assessor or behaviour change programme provider, as the case may be, must —
 - (a) notify the Commissioner of Police, in writing, of the contravention; and
 - (b) lodge with the court that made the behaviour management order a certificate, in the prescribed form, setting out the details of the contravention.
- (3) In the absence of evidence to the contrary, the certificate referred to in paragraph (b) is proof of the facts contained in it.

10X. Confidentiality of interviews and reports

- (1) An eligibility assessor must not disclose any information obtained during the course of conducting an eligibility assessment interview or preparing an eligibility assessment report to any person who is not entitled to receive or have access to the report.
Penalty for this subsection: a fine of \$1 000.
- (2) A person who receives or otherwise has access to all or part of an eligibility assessment report, or a copy of the report, must not disclose any information contained in the report to any person who is not entitled to receive or have access to the report.
Penalty for this subsection: a fine of \$1 000.

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- (3) A behaviour change programme provider must not disclose any information in a report under section 10V to any person who is not entitled to receive or have access to the report.

Penalty for this subsection: a fine of \$1 000.

- (4) A person who receives or otherwise has access to all or part of a report under section 10V, or a copy of the report, must not disclose any information contained in the report to any person who is not entitled to receive or have access to the report.

Penalty for this subsection: a fine of \$1 000.

- (5) This section does not apply to the following disclosures —

- (a) a disclosure by, or authorised in writing by, the respondent who is the subject of the eligibility assessment report;
- (b) a disclosure to a legal practitioner in connection with the giving of legal advice or the provision of representation in a proceeding under this Act;
- (c) a disclosure that is authorised by a court as necessary for the purposes of this Part or proceedings for a contravention of an order under this Part (including any offence constituted by such a contravention);
- (d) a disclosure that is required, authorised or permitted (whether expressly or impliedly) by or under a law or by a court;
- (e) a disclosure that does not identify the respondent or from which the respondent's identity cannot reasonably be ascertained;
- (f) a disclosure of a kind prescribed in the regulations.

10Y. Confidentiality of behaviour change programme

- (1) A behaviour change programme provider must not disclose any information obtained during the course of providing the behaviour change programme to any person who is not entitled to the information.

Penalty for this subsection: a fine of \$1 000.

- (2) Subsection (1) does not apply to the following disclosures —
- (a) a disclosure by, or authorised in writing by, the respondent to whom the behaviour change programme is provided;
 - (b) a disclosure to a legal practitioner in connection with the giving of legal advice or the provision of representation in a proceeding under this Act;
 - (c) a disclosure that is authorised by a court as necessary for the purposes of this Part or of a proceeding;
 - (d) a disclosure that is required, authorised or permitted (whether expressly or impliedly) by or under a law or by a court;
 - (e) a disclosure that does not identify the respondent or from which the respondent's identity cannot reasonably be ascertained;
 - (f) a disclosure of a kind prescribed in the regulations.

10Z. Delegation

The Minister may delegate to an officer of the department of the Public Service principally assisting the Minister in the administration of this Act all or any of the functions that the Minister has under this Part, other than this power of delegation.

15. Part 2 Division 1 heading deleted

Delete the heading to Part 2 Division 1.

16. Section 11 amended

In section 11 delete “violence restraining order” and insert:

VRO

Note: The heading to amended section 11 is to read:

**VRO to specify names of person bound, and person protected, by
order**

17. Section 11A amended

In section 11A:

- (a) delete “violence restraining order” (each occurrence)
and insert:

VRO

- (b) delete “an act of abuse” (each occurrence) and insert:

personal violence

- (c) in paragraph (a) delete “such an act” and insert:

personal violence

- (d) in paragraph (b) delete “reasonably fears” and insert:

has reasonable grounds to apprehend

Note: The heading to amended section 11A is to read:

When VROs may be made

18. Section 11B deleted

Delete section 11B.

19. Section 12 amended

(1) In section 12(1):

(a) delete “violence restraining order” and insert:

VRO

(b) delete “to — ” and insert:

to the following —

(c) in paragraph (a) delete “acts of abuse; and” and insert:

personal violence;

(d) delete paragraphs (b), (ba) and (c) and insert:

(b) the need to prevent behaviour that could reasonably be expected to cause the person seeking to be protected to apprehend that they will have personal violence committed against them;

(c) the need to ensure the wellbeing of children by protecting them from personal violence, behaviour referred to in paragraph (b) or otherwise being exposed to personal violence;

(e) delete paragraph (f);

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- (f) in paragraph (h) delete “record” and insert:

convictions
- (g) after each of paragraphs (d) to (i) delete “and”.
- (2) In section 12(2) delete “(b), (ba)” and insert:

(b)
- (3) Delete section 12(5) and insert:

(5) The information is to be provided in the form of a certificate signed by —
 - (a) a police officer of or above the rank of sergeant; or
 - (b) a person —
 - (i) employed or engaged in the department of the Public Service principally assisting the Minister in the administration of the *Police Act 1892*; and
 - (ii) approved by the Commissioner of Police for the purposes of this subsection.
- (4) In section 12(6) delete “inspector.” and insert:

sergeant or a person referred to in subsection (5)(b), as the case requires.

(5) After section 12(6) insert:

- (7) In addition to subsections (3) to (6), the court may have regard to any of its own records for the purposes of subsection (1).
- (8) Records referred to in subsection (7) are taken to be proof of their contents in the absence of evidence to the contrary.

Note: The heading to amended section 12 is to read:

Matters to be considered by court generally

20. Section 12A inserted

After section 12 insert:

12A. VROs not for persons in family relationship

A court is not to make a VRO unless it is satisfied that the person seeking to be protected by the order and the person bound by the order are not in a family relationship with each other.

21. Section 13 amended

(1) In section 13(1):

- (a) delete “violence restraining order” and insert:

VRO

- (b) in paragraphs (a) and (aa) delete “an act of abuse” and insert:

personal violence

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(c) delete paragraph (b) and insert:

(b) behaving in a manner that could reasonably be expected to cause the person seeking to be protected to apprehend that they will have personal violence committed against them.

(2) After section 13(2)(c) insert:

(ca) stalking the person seeking to be protected;

(3) In section 13(3) delete “absolutely or”.

(4) In section 13(4) delete “violence restraining order” and insert:

VRO

(5) In section 13(5):

(a) delete “violence restraining order” and insert:

VRO

(b) delete “personal, and other prescribed, property” and insert:

personal property, and other property of a kind prescribed in the regulations,

(6) In section 13(6) delete “violence restraining order” and insert:

VRO

22. Part 2A heading and Part 2A Division 1 heading inserted

After section 13 insert:

Part 2A — Provisions for FVRO and VRO

Division 1 — Orders relating to firearms

23. Section 14 amended

- (1) In section 14(1) delete “violence restraining order” and insert:

FVRO or VRO

- (2) In section 14(2):

- (a) delete “a violence restraining order” and insert:

an FVRO or VRO

- (b) delete “the prescribed person and in the prescribed manner,” and insert:

a person and in a manner prescribed in the regulations,

- (3) In section 14(3) delete “the prescribed manner.” and insert:

a manner prescribed in the regulations.

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- (4) In section 14(4) delete “a violence restraining order —” and insert:

an FVRO or VRO —

- (5) In section 14(5) delete “a violence restraining order” and insert:

an FVRO or VRO

- (6) In section 14(7):

- (a) delete “a violence restraining order” and insert:

an FVRO or VRO

- (b) delete “prescribed period” and insert:

period prescribed in the regulations

24. Part 2A Division 1A heading inserted

After section 14 insert:

Division 1A — Duration of orders

25. Section 16 amended

- (1) In section 16(1) delete “a violence restraining order” and insert:

an FVRO or VRO

- (2) Delete section 16(5).

Note: The heading to amended section 16 is to read:

Duration of FVRO or VRO generally

26. Section 16A and 16B inserted

After section 16 insert:

16A. Duration of FVRO

- (1) In this section —

prisoner means a person committed to prison for punishment, or on remand, or for trial, safe custody, or otherwise.

- (2) Unless varied or cancelled under Part 5, a final order that is an FVRO made against a respondent who is not a prisoner remains in force for —

- (a) in the case of an order made at a final order hearing or under section 10H —

- (i) the period (of whatever duration) specified in the order from the date on which the final order came into force; or
(ii) if no period is specified, 2 years from the date on which the final order came into force;

and

- (b) in the case of a telephone order which became a final order under section 32 — 3 months from when the telephone order came into force or such shorter period as is specified in that order; and

- (c) in the case of any other interim order which becomes a final order under section 32 —
 - (i) the period (of whatever duration) specified in it from the date on which the interim order came into force; or
 - (ii) if no period is specified, 2 years from the date on which the interim order came into force.
- (3) Unless varied or cancelled under Part 5, a final order that is an FVRO made against a respondent who is a prisoner remains in force from the date on which the final order comes into force for a period of —
 - (a) in the case of an order made at a final order hearing or under section 10H, or any interim order which becomes a final order under section 32 — 2 years, or such longer period as is specified in that order, from when the respondent is released from prison; and
 - (b) in the case of a telephone order which became a final order under section 32 — 3 months, or such shorter period as is specified in that order, from when the respondent is released from prison.
- (4) For the purposes of subsection (3), the date on which the final order comes into force may be a date on which the respondent is in prison.
- (5) In specifying a period for which an FVRO remains in force, the court must have regard to the following —
 - (a) that the safety of the person protected is paramount;
 - (b) any assessment by the applicant or person protected of the risk of family violence being committed by the respondent.

- (6) In specifying a period for which an FVRO remains in force, the court may also take into account any matters raised by the respondent that are relevant to the duration of the order.
- (7) Nothing in this section affects the operation of section 50A.

16B. Duration of VRO

Unless varied or cancelled under Part 5, a final order that is a VRO remains in force for —

- (a) in the case of an order made at a final order hearing —
 - (i) the period (of whatever duration) specified in the order from the date on which the final order came into force; or
 - (ii) if no period is specified, 2 years from the date on which the final order came into force;

and

- (b) in the case of a telephone order which became a final order under section 32 — 3 months from when the telephone order came into force or such shorter period as is specified in that order; and
- (c) in the case of any other interim order which becomes a final order under section 32 —
 - (i) the period (of whatever duration) specified in it from the date on which the interim order came into force; or
 - (ii) if no period is specified, 2 years from the date on which the interim order came into force.

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27. Section 18 amended

In section 18(1) and (2) delete “a violence restraining order” and insert:

an FVRO or VRO

28. Section 19 amended

In section 19 delete “a violence restraining order —” and insert:

an FVRO or VRO —

29. Section 20 amended

In section 20(1)(a) and (b) and 20(3) delete “a violence restraining order” and insert:

an FVRO or VRO

30. Section 24A inserted

After section 24 insert:

24A. Application for FVRO

- (1) An application for an FVRO may be made in person by —
 - (a) the person seeking to be protected, if the person is 16 years of age or older; or
 - (b) a police officer on behalf of the person seeking to be protected, regardless of the age of the person.

- (2) An application for an FVRO may also be made —
- (a) if the person seeking to be protected is a child, by a parent or guardian of the child, or a child welfare officer, on behalf of the child; or
 - (b) if the person seeking to be protected is a person for whom a guardian has been appointed under the *Guardianship and Administration Act 1990*, by the guardian on behalf of the person.
- (3) An application for an FVRO made in person is to be made in the prescribed form to —
- (a) if the respondent is a child, the Children’s Court; or
 - (b) if the respondent is not a child and the person seeking to be protected is a child, the Children’s Court or the Magistrates Court; or
 - (c) otherwise, the Magistrates Court.

31. Section 25 amended

In section 25(1), (2) and (3) delete “a violence restraining order” and insert:

a VRO

Note: The heading to amended section 25 is to read:

Application for VRO

32. Section 26 amended

In section 26(1) delete “section 25” and insert:

section 24A or 25

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33. Section 29 amended

- (1) In section 29(1)(a) delete “ a violence restraining order; or” and insert:

an FVRO or VRO; or

- (2) In section 29(3) delete “a violence restraining order” and insert:

an FVRO or VRO

34. Part 2A Division 3A heading amended

In the heading to Part 2A Division 3A delete “**and domestic**”.

35. Section 30A amended

In section 30A:

- (a) delete “a violence restraining order” and insert:

an FVRO

- (b) in paragraph (a)(i) delete “an act of family and domestic” and insert:

family

- (c) in paragraph (a)(i) delete “such an act;” and insert:

that violence;

- (d) in paragraph (a)(ii) delete “an act of family and domestic” and insert:

family

- (e) in paragraph (a)(ii) before “relationship” delete “and domestic”;

- (f) in paragraph (a)(ii) delete “such an act;” and insert:

that violence;

- (g) in paragraph (b) delete “reasonably fears,” (each occurrence) and insert:

has reasonable grounds to apprehend,

- (h) in paragraph (b)(i) delete “him or her” and insert:

the person

- (i) in paragraph b(i) and (ii) delete “an act of family and domestic” and insert:

family

36. Section 30B amended

In section 30B:

- (a) delete “to —” and insert:

to the following —

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- (b) in paragraph (a) delete “acts of family and domestic violence; and” and insert:

family violence;

- (c) delete paragraphs (b), (c) and (d) and insert:

(b) the need to prevent behaviour that could reasonably be expected to cause the person seeking to be protected to apprehend that they will have family violence committed against them;

(c) the need to ensure the wellbeing of children by protecting them from family violence, behaviour referred to in paragraph (b) or otherwise being exposed to family violence;

- (d) after each of paragraphs (e) to (g) delete “and”.

Note: The heading to amended section 30B is to read:

Matters to be considered by police officer generally

37. Section 30C amended

- (1) In section 30C(1):

- (a) in paragraph (a) delete “an act of family and domestic violence; or” and insert:

family violence; or

- (b) delete paragraph (b) and insert:

(b) behaving in a manner that could reasonably be expected to cause the person seeking to be

protected to apprehend that they will have family violence committed against them.

- (2) In section 30C(3) delete “absolutely or”.

38. Section 30D amended

In section 30D(1) delete “and domestic”.

39. Section 30E amended

- (1) Delete section 30E(1) and insert:

(1) Any police officer may serve a police order.

- (2) In section 30E(4) after “someone else” insert:

who is 16 years of age or older

Note: The heading to amended section 30E is to read:

Police order to be served and explained

40. Section 34 amended

In section 34 delete “a misconduct restraining order” (each occurrence) and insert:

an MRO

41. Section 35 amended

- (1) In section 35(1):
(a) delete “a misconduct restraining order” and insert:

an MRO

(b) in paragraph (g) delete “record” and insert:

convictions

(2) In section 35(2):

(a) delete “a misconduct restraining order” and insert:

an MRO

(b) in paragraph (f) delete “record” and insert:

convictions

Note: The heading to amended section 35 is to read:

Matters to be considered by court generally

42. Section 35A amended

In section 35A:

(a) delete “a misconduct restraining order” and insert:

an MRO

(b) delete “and domestic”.

Note: The heading to amended section 35A is to read:

MROs not for persons in family relationship

43. Section 36 amended

(1) In section 36(1) delete “a misconduct restraining order” and insert:

an MRO

- (2) After section 36(2)(c) insert:

(ca) stalking the person seeking to be protected;

- (3) In section 36(4) delete “absolutely or”.

- (4) In section 36(5) delete “A misconduct restraining order” and insert:

An MRO

- (5) In section 36(6):

(a) delete “a misconduct restraining order” and insert:

an MRO

(b) delete “misconduct restraining order were a violence restraining order.” and insert:

MRO were a VRO.

44. Section 37 amended

- (1) In section 37(1) delete “A misconduct restraining order” and insert:

An MRO

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- (2) In section 37(2) delete “a misconduct restraining order” and insert:

an MRO

Note: The heading to amended section 37 is to read:

Duration of MRO

45. Section 38 amended

In section 38(1), (2), (3) and (4) delete “a misconduct restraining order” and insert:

an MRO

46. Section 39 amended

In section 39 delete “a misconduct restraining order” and insert:

an MRO

47. Section 41 amended

In section 41(1) and (2) delete “made,” and insert:

made in relation to a VRO or MRO,

48. Section 43 amended

- (1) In section 43(1a):
- (a) in paragraph (a) delete “violence restraining order even if the application was for a misconduct restraining order;” and insert:

order for a VRO even if the application was for an MRO;

- (b) in paragraph (b) delete “misconduct restraining order —” and insert:

order for an MRO —

- (c) in paragraph (b)(i) delete “a violence restraining order; and” and insert:

a VRO; and

- (2) In section 43(2) and (3) after “final order” (each occurrence) insert:

for a VRO or MRO

- (3) After section 43(3) insert:

- (4) Nothing in this section affects the power of the court to make a conduct agreement order at a final order hearing.

49. Section 44A amended

- (1) In section 44A(1) delete “section 26(2) —” and insert:

section 26(2), a final order hearing for an FVRO or a hearing fixed under section 47 for an FVRO —

(2) After section 44A(2) insert:

- (2A) Except as otherwise provided in this Act, at a final order hearing for an FVRO, the court may refuse to admit, or may limit the use to be made of, evidence if—
- (a) the court is satisfied it is just and equitable to do so; or
 - (b) the probative value of the evidence is substantially outweighed by the danger that the evidence may be unfairly prejudicial to a party or misleading or confusing.

Note: The heading to amended section 44A is to read:

Rules of evidence not to apply in certain circumstances

50. Section 44C amended

In section 44C(1)(b) delete “and domestic”.

51. Section 45 amended

- (1) In section 45(5) delete “form prescribed under subsection (4)” and insert:

prescribed form

- (2) Delete section 45(6)(b) and insert:

(b) an MRO,

52. Section 45A amended

In section 45A:

(a) delete “a violence restraining order,” and insert:

an FVRO or VRO,

(b) delete “the violence restraining order” and insert:

the FVRO or VRO

53. Section 47 amended

In section 47(3) delete “a misconduct restraining order” and insert:

an MRO

54. Section 49B inserted

At the end of Part 5 insert:

49B. Matters to be considered by court generally

- (1) When considering whether to vary or cancel an FVRO, the court is to have regard to —
 - (a) the matters referred to in section 10F; and
 - (b) if the application for the variation or cancellation is made by the person protected, whether or not it is possible that threats have been made against, or some other pressure has been brought to bear on, the person protected.
- (2) When considering whether to vary or cancel a VRO, the court is to have regard to the matters referred to in section 12.

s. 55

55. Section 50C amended

In section 50C:

- (a) delete “a violence restraining order” and insert:

an FVRO or VRO

- (b) in paragraph (a) delete “has not attained the age of 16 years; and” and insert:

is under 16 years of age; and

Note: The heading to amended section 50C is to read:

**CEO (child welfare) to be notified before certain FVROs or VROs
are made**

56. Section 55 amended

- (1) In section 55(1):

- (a) in paragraph (b) delete “order.” and insert:

order; or

- (b) after paragraph (b) insert:

- (c) the court makes an order for substituted service under section 60.

- (2) Delete section 55(3)(c) and insert:

- (c) a conduct agreement order or a consent order;
and

(3) After section 55(5) insert:

(5A) If a person to whom information is to be given under subsection (5) does not readily understand English, or the person serving the restraining order is not satisfied that the person understood the information, the person serving the order is, as far as practicable, to arrange for someone else who is 16 years of age or older to give the information to the person in a way that the person can understand.

(4) After section 55(6) insert:

(7) Oral service of a restraining order does not require the person serving the order to be in possession of a copy of it at the time of service if the terms of the order are communicated to the respondent.

s. 57

57. Section 58 amended

In section 58(1):

- (a) in paragraph (c) delete “Division,” and insert:

Division; or

- (b) after paragraph (c) insert:

- (d) effected substituted service in accordance with section 60,

58. Section 60 amended

- (1) After section 60(1) insert:

- (1A) A court may order substituted service of an FVRO if it is satisfied that —

- (a) personal service or service by post is impracticable for any reason, including (but not limited to) the following —

- (i) the person to be served does not have a fixed place of residence or business;
- (ii) the person to be served has a place of residence or business that is too remote to permit personal service or service by post;
- (iii) the person to be served is likely to avoid personal service or service by post;

and

- (b) any delay in service is likely to put at risk the safety of the person seeking to be protected.

- (2) After section 60(2) insert:
 - (3) The court is to consider making an order for substituted service in relation to an FVRO in every case, whether it is an interim order or a final order.
 - (4) The court may make an order for substituted service in relation to an FVRO at the time of making the FVRO or at any other time during the relevant proceedings.

Note: The heading to amended section 60 is to read:

Substituted service

59. Section 61 amended

- (1) In section 61(1) delete “a violence restraining order” and insert:

an FVRO or VRO

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

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

- (3) In section 61(2) delete “a misconduct restraining order” and insert:

an MRO

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

Penalty for this subsection: a fine of \$1 000.

s. 60

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

Penalty for this subsection: \$6 000 or imprisonment for
2 years, or both.

- (6) In section 61(4):

- (a) delete “to be taken” and insert:

taken

- (b) delete “and domestic”;

- (c) delete “an act of abuse.” and insert:

family or personal violence.

60. Section 61A amended

- (1) In section 61A(2)(b) after “or (2a)” insert:

(the *previous offences*)

- (2) After section 61A(2) insert:

- (2A) For the purposes of subsection (2)(b) each of the
previous offences is to be counted, regardless of
whether the convictions for them —

- (a) were recorded before or after the date on which
the relevant offence, or any of the previous
offences, was committed; or
(b) have been counted in sentencing under this
section for a different relevant offence.

- (2B) For the purposes of subsection (2)(b), convictions for 2 or more previous offences committed on the same day are to be treated as a single conviction.

61. Section 61C inserted

After section 61B insert:

61C. Report under s. 10V to be considered in sentencing for breach of FVRO

A court convicting a person for an offence under section 61 for the breach of an FVRO must consider any report under section 10V relating to the FVRO.

62. Section 62 amended

- (1) After section 62(1)(c) insert:

(ca) attending a court hearing in proceedings under this Act or under any other written law; or

- (2) Delete section 62(2).

63. Section 62A amended

In section 62A delete “an act of family and domestic” (each occurrence) and insert:

family

Note: The heading to amended section 62A is to read:

Investigation of suspected family violence

s. 64

64. Section 62B amended

(1) In section 62B(1):

- (a) delete “an act of family and domestic” (each occurrence) and insert:

family

- (b) delete “such an act” and insert:

family violence

(2) In section 62B(2) delete “an act of family and domestic” (each occurrence) and insert:

family

(3) In section 62B(4) delete “prescribed manner.” and insert:

manner prescribed in the regulations.

Note: The heading to amended section 62B is to read:

Entry and search of premises if family violence suspected

65. Section 62C amended

In section 62C(a) delete “section 18(1)(a)” and insert:

section 18(1)(a), 24A(1)(b)

Note: The heading to amended section 62C is to read:

Action to be taken by police officer after investigating suspected family violence

66. Section 62D amended

- (1) In section 62D(1) delete “section 62B(1)” and insert:

section 62B(1a)

- (2) Delete section 62D(3)(b)(ii) and insert:

(ii) a person has committed, or is committing, family violence against another person.

- (3) In section 62D(5) delete “an act of family and domestic violence, or that such an act” and insert:

family violence, or that family violence

- (4) In section 62D(8) in the definition of *senior officer* in paragraph (b) delete “inspector.” and insert:

sergeant.

67. Section 62E amended

- (1) In section 62E(1) delete “a violence restraining order” and insert:

an FVRO or VRO

s. 68

- (2) In section 62E(2) delete “prescribed manner.” and insert:

manner prescribed in the regulations.

68. Section 62F amended

- (1) In section 62F(1):

- (a) in paragraph (c) delete “require that person to remain in a place designated by the police officer” and insert:

order that person to remain in a place designated by the police officer, or accompany the police officer to a police station or some other place and wait at that place,

- (b) in paragraph (d) delete “remain in the place,” and insert:

comply with the order under paragraph (c),

- (2) After section 62F(1) insert:

- (1A) A person who, without reasonable excuse, does not comply with an order under section 62F(1)(c) commits an offence.

Penalty for this subsection: a fine of \$3 000 or imprisonment for 12 months.

- (3) In section 62F(2):

- (a) delete paragraph (a) and insert:

- (a) order that person to remain in a place designated by the police officer, or accompany the police officer to a police station or some

other place and wait at that place, while the officer gets the restraining order; and

(b) in paragraph (b) delete “remain in the place,” and insert:

comply with the order under paragraph (a),

(4) After section 62F(2) insert:

(3) A person who, without reasonable excuse, does not comply with an order under section 62F(2)(a) commits an offence.

Penalty for this subsection: a fine of \$3 000 or imprisonment for 12 months.

69. Section 63 amended

(1) In section 63(4):

(a) in paragraph (a) delete “section 11A, 11B” and insert:

section 10D, 11A

(b) in paragraph (b) delete “section 12” and insert:

section 10F, 12

(c) in paragraph (c) delete “be heard” and insert:

make submissions

(2) After section 63(4) insert:

- (4AA) In the absence of exceptional circumstances, a court is taken to have grounds for making an FVRO against a person if —
- (a) the person pleads guilty to, or is found guilty of —
 - (i) an offence against *The Criminal Code* section 301, 304(1), 313, 317, 317A, 323, 324, 333, 338A, 338B, 338C or 338E; or
 - (ii) an offence against *The Criminal Code* section 444 that is dealt with summarily;
- and
- (b) the court is satisfied, by a victim impact statement given in relation to the offence or by any other means, that a family member of the person wants to be protected by the FVRO.
- (4AB) An FVRO made under subsection (4AA) is to restrain the person from doing all or any of the following —
- (a) being on or near premises where the person seeking to be protected lives or works;
 - (b) approaching within a specified distance of the person seeking to be protected;
 - (c) communicating, or attempting to communicate, (by whatever means) with the person seeking to be protected;
 - (d) anything else referred to in section 10G(2) that is specified by the court in the FVRO.

70. Section 63A amended

(1) Before section 63A(1) insert:

(1A) In this section —

violent personal offence means —

- (a) an offence against *The Criminal Code* section 283, 297, 325, 326, 327 or 328; or
- (b) where the person committing the offence is in a family relationship with a victim of the offence —
 - (i) an offence against *The Criminal Code* section 292, 293, 294, 304(2), 320, 321, 321A, 329 or 332;
 - (ii) an offence against *The Criminal Code* section 444 that is dealt with on indictment.

(2) In section 63A(1) delete “offence, within the meaning of subsection (5),” and insert:

offence

(3) In section 63A(1)(a) and (b) delete “a violence restraining order” and insert:

an FVRO or VRO, as is appropriate to the case,

(4) In section 63A(4) delete “a violence restraining order” and insert:

the order

- (5) Delete section 63A(5).

Note: The heading to amended section 63A is to read:

**FVRO or VRO made if certain violent personal offences
committed**

71. Section 63B replaced

Delete section 63B and insert:

**63B. Circumstances to be taken into account when
sentencing for certain offences**

- (1) In this section —
violent personal offence means —
- (a) an offence mentioned in *The Criminal Code* section 277; or
 - (b) an offence against *The Criminal Code* section 281, 283, 292, 293, 294, 304, 320, 321, 321A, 329, 332, 333, 338A, 338B, 338C, 338E or 444.
- (2) Where a person commits a violent personal offence, the court sentencing the person is to determine the seriousness of the offence by reference to whether —
- (a) the person is in a family relationship with a victim of the offence; or
 - (b) a child was present when the offence was committed; or
 - (c) the conduct of the person in committing the offence constituted a breach of a restraining order.
- (3) Nothing in subsection (2) affects the discretion of a court to decide whether or not a circumstance set out in

that subsection is a circumstance to take into account in sentencing an offender for any other offence.

72. Section 63D inserted

After section 63C insert:

63D. Court to give reasons for certain decisions

- (1) A court must give reasons for —
 - (a) making an order relating to an FVRO under section 23(1)(b) or (c), 29(1)(b) or (c) or 40(3)(b) or (c); or
 - (b) refusing to make an order under section 43(1) relating to an FVRO.
- (2) The reasons must address the principles referred to in section 10B(1)(a), (b) and (c).

73. Section 64 amended

Delete section 64(1)(b) and insert:

- (b) to do any of the following —
 - (i) make, vary or cancel a final order;
 - (ii) refuse to make, vary or cancel a final order;
 - (iii) make any other order in relation to a final order,

74. Section 67 amended

After section 67(2) insert:

- (2A) The reasons must address the principles referred to in section 10B(1)(a), (b) and (c).

75. Section 68 amended

- (1) In section 68(1) delete “order.” and insert:

order (a *third party*) if it is satisfied that it would have been able to make the order in respect of the third party had the third party made a separate application for the order.

- (2) After section 68(2) insert:

- (3) This section does not apply to an FVRO made under section 63(4AA).

76. Section 70 amended

- (1) In section 70(1) delete “subsection (3),” and insert:

subsection (1A) or (3),

- (2) After section 70(1) insert:

- (1A) Subsection (1) does not apply to a disclosure of information to a person who is, or who is in a class of persons that is, prescribed in the regulations for the purposes of this subsection.
- (1B) If the information is disclosed to a person referred to in subsection (1A) —

- (a) no civil or criminal liability is incurred in respect of the disclosure of the information; and
- (b) the disclosure of the information is not to be regarded as a breach of any duty of confidentiality or secrecy imposed by any written or other law; and
- (c) the disclosure of the information is not to be regarded as a breach of professional ethics or standards or as unprofessional conduct.

- (3) In section 70(2) delete the Penalty and insert:

Penalty for this subsection: a fine of \$6 000 or imprisonment for 18 months.

77. Section 70A amended

- (1) In section 70A(1) in the definition of ***prescribed information***:

- (a) after “prescribed” insert:

in the regulations

- (b) delete “a violence restraining order,” and insert:

an FVRO or VRO,

- (2) In section 70A(2) delete “a violence restraining order,” and insert:

an FVRO or VRO,

s. 78

78. Section 71 amended

- (1) In section 71(1) delete the definition of *firearms order* and insert:

firearms order means —

- (a) an FVRO or VRO; or
- (b) an MRO that prohibits a person from being in possession of a firearm;

- (2) In section 71(3) delete the Penalty and insert:

Penalty for this subsection: a fine of \$2 000 or imprisonment for 9 months.

- (3) In section 71(6) delete the Penalty and insert:

Penalty for this subsection:

- (a) in the case of a responsible person — a fine of \$4 000;
- (b) in the case of a co-licensee — a fine of \$4 000 or imprisonment for 12 months.

79. Section 72A inserted

After section 72 insert:

72A. Forms

The prescribed forms for a restraining order and a telephone order must contain a brief summary of the effect of section 44B.

80. Section 73 amended

Delete section 73(3).

81. Section 73A inserted

At the end of Part 6 insert:

73A. Review of certain amendments relating to FVROs

(1) In this section —

review date means the second anniversary of the day on which the *Restraining Orders and Related Legislation Amendment (Family Violence) Act 2016* section 3 comes into operation.

(2) As soon as practicable after the review date the Minister is to review the operation and effectiveness of the amendments made to this Act by the *Restraining Orders and Related Legislation Amendment (Family Violence) Act 2016* Part 2.

(3) The Minister is to cause a report of the review to be laid before each House of Parliament within 6 months after the review date.

82. Section 75 amended

In section 75(2) delete “manner” and insert:

form

s. 83

83. Section 77 amended

In section 77(1) delete “a violence restraining order” and insert:

an FVRO or VRO

84. Section 79A amended

In section 79A delete “prescribed country” and insert:

country prescribed in the regulations

85. Section 79B amended

In section 79B(2) delete “form prescribed for the purposes of” and insert:

prescribed form referred to in

86. Section 79D amended

In section 79D(1) delete “a violence restraining order” and insert:

an FVRO or VRO

Part 3 — Consequential amendments to other Acts

Division 1 — *Bail Act 1982* amended

87. Act amended

This Division amends the *Bail Act 1982*.

88. Section 16A amended

In section 16A(3) before “violence” insert:

family violence restraining orders or

89. Schedule 1 amended

In Schedule 1 Part C clause 3B(6) in the definition of *protective condition or order* paragraph (b) delete “a violence” and insert:

a family violence restraining order or a violence

Division 2 — *Children and Community Services Act 2004* amended

90. Act amended

This Division amends the *Children and Community Services Act 2004*.

91. Section 3 amended

- (1) In section 3 delete the definitions of:
act of family and domestic violence
exposed

- (2) In section 3 insert in alphabetical order:

exposed, in relation to family violence, has the meaning given in the *Restraining Orders Act 1997* section 6A(1);

family violence has the meaning given in the *Restraining Orders Act 1997* section 5A(1);

- (3) In section 3 in the definition of *social services* paragraph (1) delete “and domestic”.

92. Section 23 amended

In section 23 in the definition of *relevant information* paragraph (a)(iii) delete “one or more acts of family and domestic” and insert:

family

93. Section 28A amended

In section 28A(1) in the definition of *relevant information* paragraph (a)(ii) delete “one or more acts of family and domestic” and insert:

family

94. Section 28 amended

In section 28(1) in the definition of *emotional abuse* paragraph (b) delete “an act of family and domestic” and insert:

family

**Division 3 — *Community Protection (Offender Reporting)*
Act 2004 amended**

95. Act amended

This Division amends the *Community Protection (Offender Reporting) Act 2004*.

96. Section 107 amended

- (1) In section 107(1) delete the definitions of:
misconduct restraining order, *police order* and *violence restraining order*
- (2) In section 107(1) insert in alphabetical order:

restraining order means —

- (a) a restraining order as defined in the *Restraining Orders Act 1997* section 3(1); or
- (b) a police order as defined in the *Restraining Orders Act 1997* section 3(1).

Division 4 — *The Criminal Code* amended

97. Act amended

This Division amends *The Criminal Code*.

98. Section 1 amended

After section 1(4) insert:

- (4A) In this Code, unless the context otherwise indicates —
 - (a) a reference to causing or doing bodily harm to a person includes, if the person is a pregnant

- woman, a reference to causing or doing bodily harm to the woman's unborn child; and
- (b) a reference to intending to cause or intending to do bodily harm to a person includes, if the person is a pregnant woman, a reference to intending to cause or intending to do bodily harm to the woman's unborn child; and
 - (c) a reference to causing or doing grievous bodily harm to a person includes, if the person is a pregnant woman —
 - (i) a reference to causing or doing grievous bodily harm to the woman's unborn child; and
 - (ii) a reference to causing the loss of the woman's pregnancy;
- and
- (d) a reference to intending to cause or intending to do grievous bodily harm to a person includes, if the person is a pregnant woman —
 - (i) a reference to intending to cause or intending to do grievous bodily harm to the woman's unborn child; and
 - (ii) a reference to intending to cause the loss of the woman's pregnancy.

99. Section 221 amended

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

- (a) in paragraph (a) delete “and domestic”;
- (b) in paragraph (c) delete “order” and insert:

order, other than an order under Part 1C,

(2) Delete section 221(2) and insert:

(2) In this section —

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

100. Section 281 amended

In section 281(1) delete “10 years.” and insert:

20 years.

Division 5 — *Criminal Investigation Act 2006* amended

101. Act amended

This Division amends the *Criminal Investigation Act 2006*.

102. Section 128 amended

In section 128(1) in the definition of ***serious offence*** delete paragraph (c) and insert:

(c) that involves family violence as defined in the
Restraining Orders Act 1997 section 5A(2)(a),
(b), (e) or (j) or a threat to enact that violence;
or

103. Section 135 amended

In section 135(2):

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

place; or

(b) after paragraph (b) insert:

(c) the person is complying with an order under the *Restraining Orders Act 1997* section 62F(1)(c) or (2)(a).

Division 6 — Prisons Act 1981 amended

104. Act amended

This Division amends the *Prisons Act 1981*.

105. Section 113B amended

(1) In section 113B(1) insert in alphabetical order:

violent personal offence means —

- (a) an offence specified in the *Restraining Orders Act 1997* section 63(4AA)(a); or
- (b) a violent personal offence as defined in the *Restraining Orders Act 1997* section 63A(1A).

(2) In section 113B(1) in the definition of ***victim***:

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

deceased; or

(b) after paragraph (b) insert:

- (c) a person protected by a family violence restraining order under the *Restraining Orders Act 1997* to which the prisoner is a respondent; or
 - (d) a person who can demonstrate, to the satisfaction of the chief executive officer that —
 - (i) the person is the victim of an act that, if prosecuted successfully, would constitute a violent personal offence committed by the prisoner; and
 - (ii) the act was committed by the prisoner in the context of a family relationship, as defined in the *Restraining Orders Act 1997* section 4, with the person.
- (3) After section 113B(1) insert:
- (1A) For the purposes of subsection (1) in the definition of *victim* paragraph (c) or (d), it is irrelevant that the family violence restraining order or the violent personal offence, as the case requires, is unrelated to the offence referred to in paragraph (a) or (b) of that definition.

Division 7 — *Sentence Administration Act 2003* amended

106. Act amended

This Division amends the *Sentence Administration Act 2003*.

107. Section 4 amended

In section 4(2) delete the definition of *victim* and insert:

victim of an offender or prisoner has the meaning given in section 5D;

108. Section 5A amended

In section 5A(d) delete “an offence for which the prisoner is in custody if the prisoner” and insert:

the prisoner if the prisoner

109. Section 5C amended

In section 5C(1) delete “offence for which a prisoner” and insert:

offender who

110. Section 5D inserted

At the end of Part 2 Division 1 insert:

5D. Term used: victim of an offender or prisoner

(1) In this Act —

victim of an offender or prisoner means —

- (a) a person who has suffered injury, loss or damage as a direct result of an offence committed by the offender or prisoner, whether or not that injury, loss or damage was reasonably foreseeable by the offender or prisoner; or

- (b) where an offence committed by the offender or prisoner resulted in a death, any member of the immediate family of the deceased; or
- (c) a person protected by a family violence restraining order under the *Restraining Orders Act 1997* to which the offender or prisoner is a respondent; or
- (d) a person who can demonstrate, to the satisfaction of the CEO that —
 - (i) the person is the victim of a violent personal offence previously committed by the offender or prisoner; and
 - (ii) the violent personal offence occurred in the context of a family relationship, as defined in the *Restraining Orders Act 1997* section 4, with the offender or prisoner.

violent personal offence means —

- (a) an offence specified in the *Restraining Orders Act 1997* section 63(4AA)(a); or
 - (b) a violent personal offence as defined in the *Restraining Orders Act 1997* section 63A(1A).
- (2) For the purposes of subsection (1) in the definition of ***victim*** paragraph (c) or (d), it is irrelevant that the family violence restraining order or the previous violent personal offence, as the case requires, is unrelated to the offence referred to in paragraph (a) or (b) of that definition.

111. Section 30 amended

In section 30(b) delete “an offence committed by the prisoner” and insert:

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Division 7 Sentence Administration Act 2003 amended

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a prisoner

112. Section 97D amended

Delete section 97D(1).

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