



Western Australia

Family Violence Legislation Reform Act 2020

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Family Violence Legislation Reform Act 2020

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Western Australia

Family Violence Legislation Reform Act 2020

No. 30 of 2020

An Act to amend —

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

[Assented to 9 July 2020]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Family Violence Legislation Reform Act 2020*.

2. Commencement

(1) This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) sections 12, 31 and 95 — on the day after that day;
- (c) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

(2) However —

- (a) if no day is fixed under subsection (1)(c) before the end of the period of 10 years beginning on the day on which this Act receives the Royal Assent, this Act is repealed on the day after that period ends; or
- (b) if paragraph (a) does not apply, and a provision of this Act does not come into operation before the end of the period of 10 years beginning on the day on which this Act receives the Royal Assent, the provision is repealed on the day after that period ends.

Part 2 — *The Criminal Code* amended

3. Act amended

This Part amends *The Criminal Code*.

4. Section 221 amended

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

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

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

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

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

- (2) After section 221(1) insert:

(1A) This subsection applies if —

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

5. Section 283 amended

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

298,

6. Sections 298 to 300 inserted

After section 297 insert:

298. Suffocation and strangulation

A person commits a crime if the 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.

Alternative offence: s. 313.

Penalty:

- (a) if the offence is committed in circumstances of aggravation, imprisonment for 7 years; or
- (b) in any other case, imprisonment for 5 years.

Summary conviction penalty:

- (a) in a case to which the Penalty paragraph (a) applies, imprisonment for 3 years and a fine of \$36 000; or
- (b) in a case to which the Penalty paragraph (b) applies, imprisonment for 2 years and a fine of \$24 000.

299. Terms used in relation to s. 300 (persistent family violence)

- (1) In this section and section 300 —
- designated family relationship*** means a relationship between 2 persons —
- (a) who are, or were, married to each other; or
 - (b) who are, or were, in a de facto relationship with each other; or
 - (c) who have, or had, an intimate personal relationship with each other;
- prescribed offence*** means —
- (a) an offence against section 221BD, 298, 301, 304(1), 313, 317, 317A, 323, 324, 338B, 338C, 338E or 444(1)(b), or an attempt to commit such an offence; or
 - (b) an offence against the *Restraining Orders Act 1997* section 61(1) or (1A).
- (2) For the purposes of this section, an ***intimate personal relationship*** exists between 2 persons (including persons of the same sex) if —
- (a) the persons are engaged to be married to each other, including a betrothal under cultural or religious tradition; or
 - (b) the persons date each other, or have a romantic involvement with each other, whether or not a sexual relationship is involved.
- (3) In deciding whether an intimate personal relationship exists under subsection (2)(b), the following may be taken into account —
- (a) the circumstances of the relationship, including, for example, the level of trust and commitment;
 - (b) the length of time the relationship has existed;

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

300. Persistent family violence

- (1) A person commits a crime if the person persistently engages in family violence.

Penalty for this subsection: imprisonment for 14 years.

Summary conviction penalty for this subsection:
imprisonment for 3 years and a fine of \$36 000.

- (2) A charge of an offence under subsection (1) —
 - (a) must specify the period during which it is alleged that the acts of family violence occurred; and
 - (b) 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.
- (3) Subsection (2) applies despite the *Criminal Procedure Act 2004* sections 23 and 85.
- (4) A person may be charged with both —
 - (a) an offence against subsection (1); and
 - (b) 1 or more prescribed offences that are alleged to have occurred in the period during which it is alleged that the acts of family violence constituting the offence under subsection (1) occurred (including an offence or offences allegedly constituted by an act or acts that are the subject of allegations made for the purposes of an offence against subsection (1)).
- (5) A court cannot order the prosecutor to give a person charged with an offence under subsection (1) further particulars of the dates and circumstances of the acts of family violence that are alleged to constitute the offence, despite the *Criminal Procedure Act 2004* section 131.
- (6) If in a trial by jury of a charge of an offence under subsection (1) there is evidence of acts of family violence on 4 or more occasions, the jury members need not all be satisfied that the same acts of family violence occurred on the same occasions as long as the

jury is satisfied that the accused person persistently engaged in acts of family violence in the period specified.

- (7) If a person is found not guilty of an offence against subsection (1), the person may nevertheless be found guilty of 1 or more prescribed offences committed during the period specified in the charge for the offence against that subsection if the commission of the prescribed offence or prescribed offences is established by the evidence even if the person has not been charged with one or more of those prescribed offences, despite section 10A.
- (8) However —
 - (a) if a person has been convicted or acquitted of a prescribed offence, the act constituting the prescribed offence cannot constitute an act of family violence for the purposes of establishing an offence against subsection (1) in separate or subsequent proceedings; and
 - (b) if a person has been convicted or acquitted of an offence against subsection (1), the person cannot, in separate or subsequent proceedings, be found guilty of a prescribed offence constituted by an act that was the subject of evidence presented to the court for the purposes of proceedings for the offence against subsection (1); and
 - (c) nothing in this section otherwise allows a person to be punished twice for the same act.
- (9) For the purposes of this section, a person ceases to be regarded as having been convicted of an offence if the conviction is set aside or quashed.

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

7. Section 333 replaced

Delete section 333 and insert:

333. Deprivation of liberty

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

Penalty:

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

8. Section 338A amended

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

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

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

9. Section 338B amended

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

- (a) where the threat is to kill a person —
 - (i) if the offence is committed in circumstances of racial aggravation, to imprisonment for 14 years; or
 - (ii) if the offence is committed in circumstances of aggravation, to imprisonment for 10 years; or
 - (iii) in any other case, to imprisonment for 7 years;or
- (b) in the case of any other threat —
 - (i) if the offence is committed in circumstances of racial aggravation, to imprisonment for 6 years; or
 - (ii) if the offence is committed in circumstances of aggravation, to imprisonment for 5 years; or
 - (iii) in any other case, to imprisonment for 3 years.

10. Section 338C amended

In section 338C(3):

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

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

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

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

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

penalty for this subsection:

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

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

- (i) if the offence is committed in circumstances of aggravation, imprisonment for 2 years and a fine of \$24 000; or
- (ii) in any other case, imprisonment for 18 months and a fine of \$18 000.

11. Section 444 amended

(1) Before section 444(1) insert:

(1A) In this section —

circumstances of aggravation has the meaning given in section 221.

(2) In section 444(1):

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

circumstances of aggravation or in

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

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

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

\$50 000,

12. Section 740C inserted

After section 740B insert:

740C. Review of amendments made by *Family Violence Legislation Reform Act 2020*

(1) The Minister must review the operation and effectiveness of the amendments made to this Act by the *Family Violence Legislation Reform Act 2020*, and

prepare a report based on the review, as soon as practicable after the 3rd anniversary of the day on which the *Family Violence Legislation Reform Act 2020* section 3 comes into operation.

- (2) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 3rd anniversary.
- (3) The Minister must transmit a copy of the report to the Clerk of a House of Parliament if —
 - (a) the report has been prepared; and
 - (b) the Minister is of the opinion that the House will not sit during the period of 21 days after the finalisation of the report.
- (4) A copy of the report transmitted to the Clerk of a House is taken to have been laid before that House.
- (5) The laying of a copy of a report that is taken to have occurred under subsection (4) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the receipt of the copy by the Clerk.

Part 3 — *Sentencing Act 1995* amended

13. Act amended

This Part amends the *Sentencing Act 1995*.

14. Section 4 amended

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

designated family relationship means a relationship between 2 persons —

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

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

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

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

serial family violence offender means a person who is a serial family violence offender under section 124E;

(2) After section 4(1) insert:

- (1A) For the purposes of the definition of *designated family relationship* in subsection (1), an *intimate personal relationship* exists between 2 persons (including persons of the same sex) if —
- (a) the persons are engaged to be married to each other, including a betrothal under cultural or religious tradition; or
 - (b) the persons date each other, or have a romantic involvement with each other, whether or not a sexual relationship is involved.
- (1B) In deciding whether an intimate personal relationship exists under subsection (1A)(b), the following may be taken into account —
- (a) the circumstances of the relationship, including, for example, the level of trust and commitment;
 - (b) the length of time the relationship has existed;
 - (c) the frequency of contact between the persons;
 - (d) the level of intimacy between the persons.

15. Section 33B amended

In section 33B(1):

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

imposes; and
- (b) after paragraph (b)(ii) insert:
 - (iii) any direction imposed under an electronic monitoring requirement under section 33HA.

16. Section 33HA inserted

After section 33H insert:

33HA. Electronic monitoring requirement

- (1) This section 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.
- (2) Where this section 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 (an *electronic monitoring requirement*).
- (3) The purpose of electronic monitoring of an offender subject to a PSO is to enable the location of the offender to be monitored.
- (4) If a court considers that electronic monitoring should occur in a particular case, the court may impose an electronic monitoring requirement under this section.
- (5) If an electronic monitoring requirement is imposed, a CCO may do 1 or both of the following —
 - (a) direct the offender to wear an approved electronic monitoring device;
 - (b) direct the offender to permit the installation of an approved electronic monitoring device at the place where the offender resides or, if the offender does not have a place of residence, at any other place specified by the CCO.
- (6) The term of an electronic monitoring requirement must be set by the court when it imposes the requirement.

- (7) 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.

17. Section 33L amended

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

requirement, in relation to a PSO, means —

- (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.

18. Section 33N amended

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

- (iia) by adding, amending or cancelling an electronic monitoring requirement under section 33HA; or

19. Section 39 amended

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

or declaration

20. Section 62 amended

In section 62(1):

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

63; and

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

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

21. Section 67A inserted

After section 67 insert:

67A. Electronic monitoring requirement

- (1) This section 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.
- (2) Where this section 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 (an *electronic monitoring requirement*).
- (3) The purpose of electronic monitoring of an offender subject to a CBO is to enable the location of the offender to be monitored.
- (4) 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 the particular case.

- (5) If a court considers that electronic monitoring should occur in a particular case, the court may impose an electronic monitoring requirement under this section.
- (6) If an electronic monitoring requirement is imposed, a CCO may do 1 or both of the following —
 - (a) direct the offender to wear an approved electronic monitoring device;
 - (b) direct the offender to permit the installation of an approved electronic monitoring device at the place where the offender resides or, if the offender does not have a place of residence, at any other place specified by the CCO.
- (7) The term of an electronic monitoring requirement must be set by the court when it imposes the requirement.
- (8) 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.

22. Section 76A amended

- (1) After section 76A(1) insert:
 - (1A) Where an offence in respect of 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.

23. Section 84CA amended

After section 84CA(1) insert:

- (1A) 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.

24. Section 97A amended

After section 97A(5) insert:

- (6) In addition to subsection (2), this section 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.
- (7) In a case where subsection (6) applies, the sentencing court must make a declaration under this section.
- (8) This section does not limit the ability of a court to make a declaration in relation to the same person under section 124E.

25. Part 17 heading amended

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

and declarations

26. Part 17 Division 1 heading inserted

At the beginning of Part 17 insert:

Division 1 — Preliminary

27. Section 123 amended

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

or declaration

28. Part 17 Division 2 heading inserted

After section 123 insert:

Division 2 — Orders made under other Acts

29. Part 17 Division 3 inserted

At the end of Part 17 insert:

Division 3 — Declarations

124D. Terms used

In this Division —

approved expert means 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 in section 106(5);

prescribed offence means —

- (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).

124E. Serial family violence offenders

- (1) A court convicting an offender of a family violence offence may declare the offender to be a serial family violence offender if —
 - (a) the offender has, on that conviction, been convicted of at least 2 prescribed offences which may only be tried on indictment, with at least 2 of those prescribed offences having been committed on different days; or
 - (b) the offender has, on conviction, been convicted of at least 3 prescribed offences, with at least 3 of those prescribed offences having been committed on different days.
- (2) For the purposes of subsection (1) —
 - (a) the victim of each offence may, but need not be, the same person; and
 - (b) the offences need not be the same offences; and
 - (c) the offences need not to have occurred in the State as long as 1 of them did; and
 - (d) 1 or more of the convictions may have been convictions by a court outside the State; and
 - (e) it is immaterial in which order the offences were committed; and

- (f) an offence will not be taken into account if the offence was committed by a person who, at the time of the commission of the offence, was under 18 years of age; and
 - (g) each of the offences taken into account must have been committed within a period of 10 years of each other unless the court is satisfied that exceptional circumstances exist that make it appropriate to make a declaration under this section (after taking into account the matters referred to in subsection (4) and such other matters as the court may consider to be relevant).
- (3) A declaration may be made by the court on its own initiative or on an application by the prosecutor.
 - (4) Without limiting any other matter that a court dealing with an application under this section may consider to be relevant, the court must have regard to the following —
 - (a) the level of risk that the offender may commit another family violence offence;
 - (b) the offender's criminal record;
 - (c) the nature of the prescribed offences for which the offender has been convicted.
 - (5) In addition, the court may —
 - (a) before it makes a declaration, order an assessment of the offender by an approved expert; and
 - (b) take the report of that assessment into account when deciding whether to make the declaration.
 - (6) In connection with the operation of subsection (5) —
 - (a) an approved expert is authorised by this subsection to examine and assess the offender

- and to report in accordance with this section;
and
- (b) the report may indicate —
- (i) the approved expert's assessment of the level of risk that the offender may commit another family violence offence; and
 - (ii) the reasons for this assessment;
- and
- (c) in preparing the report, the approved expert may —
- (i) take into account any other information or report provided to, or obtained by, the approved expert; and
 - (ii) include in the report any other assessment or opinion, or address any other matter, that the approved expert considers to be relevant in the circumstances;
- and
- (d) the approved expert may prepare the report even if the offender does not cooperate, or does not fully cooperate, in any examination associated with the assessment.

124F. Serial family violence offender declaration — related matters

- (1) Section 124E does not limit the ability of a court to make a declaration in relation to the same person under section 97A.
- (2) Except as provided in subsections (5) and (6), the declaration of a person as a serial family violence offender will have effect for an indefinite period.

- (3) A person who is subject to a declaration may apply for the cancellation of the declaration if the declaration has been in effect for a period of at least 10 years.
- (4) An application may be made to any court of criminal jurisdiction unless the court is an inferior court to the court that made the declaration.
- (5) A court may cancel a declaration if satisfied that the declaration need no longer apply after taking into account the matters that would be taken into account by a court when considering whether to make a declaration under section 124E(1).
- (6) If a person is declared to be a serial family violence offender and the person's conviction for a prescribed offence taken into account for the purposes of making the declaration is set aside or quashed, the declaration ceases to be in force at the conclusion of the proceedings in which the conviction is set aside or quashed unless there are still at least 3 other prescribed offences, or 2 other prescribed offences which may be only be tried on indictment, that qualify for the making of a declaration under section 124E(1).

124G. Disqualification if declaration made

- (1) If a court makes a declaration under this Division —
 - (a) the serial family violence offender is disqualified from —
 - (i) holding or obtaining a licence or permit, or an approval, for a firearm under the *Firearms Act 1973*; or
 - (ii) holding or obtaining a licence, permit or authorisation to hold an explosive under the *Dangerous Goods Safety Act 2004*;and

- (b) by force of this section any relevant licence, permit, approval or authorisation in relation to which a disqualification applies under paragraph (a) is cancelled; and
 - (c) the court must ensure that details of the declaration are made known to —
 - (i) the Commissioner of Police; and
 - (ii) the Chief Officer under the *Dangerous Goods Safety Act 2004*.
- (2) The court that makes a declaration under this Division may grant an exemption from the operation of subsection (1) if it is satisfied that exceptional circumstances exist in a particular case.

30. Section 125 amended

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

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

31. Section 151 inserted

After section 150 insert:

151. Review of amendments made by *Family Violence Legislation Reform Act 2020*

- (1) The Minister must review the operation and effectiveness of the amendments made to this Act by the *Family Violence Legislation Reform Act 2020*, and prepare a report based on the review, as soon as

practicable after the 3rd anniversary of the day on which the *Family Violence Legislation Reform Act 2020* section 13 comes into operation.

- (2) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 3rd anniversary.
- (3) The Minister must transmit a copy of the report to the Clerk of a House of Parliament if —
 - (a) the report has been prepared; and
 - (b) the Minister is of the opinion that the House will not sit during the period of 21 days after the finalisation of the report.
- (4) A copy of the report transmitted to the Clerk of a House is taken to have been laid before that House.
- (5) The laying of a copy of a report that is taken to have occurred under subsection (4) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the receipt of the copy by the Clerk.

Part 4 — Sentence Administration Act 2003 amended

32. Act amended

This Part amends the *Sentence Administration Act 2003*.

33. Section 4 amended

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

designated family relationship means a relationship between 2 persons —

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

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

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

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

- (2) After section 4(2) insert:
- (2A) For the purposes of the definition of *designated family relationship* in subsection (2), an *intimate personal relationship* exists between 2 persons (including persons of the same sex) if —
- (a) the persons are engaged to be married to each other, including a betrothal under cultural or religious tradition; or
 - (b) the persons date each other, or have a romantic involvement with each other, whether or not a sexual relationship is involved.
- (2B) In deciding whether an intimate personal relationship exists under subsection (2A)(b), the following may be taken into account —
- (a) the circumstances of the relationship, including, for example, the level of trust and commitment;
 - (b) the length of time the relationship has existed;
 - (c) the frequency of contact between the persons;
 - (d) the level of intimacy between the persons.

34. Section 30 amended

- (1) In section 30 delete “A parole” and insert:
- (1) A parole
- (2) At the end of section 30 insert:
- (2) If the parole order relates to a prisoner who has been serving imprisonment for a family violence offence and the prisoner is a serial family violence offender, the

s. 35

Board must give specific consideration as to whether to impose a requirement under subsection (1)(c), (d) or (e).

35. Section 57 amended

After section 57(2) insert:

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

36. Section 74G amended

- (1) In section 74G delete “A PSSO” and insert:

- (1) A PSSO

- (2) At the end of section 74G insert:

- (2) If the supervised offender has been serving imprisonment for a family violence offence and the prisoner is a serial family violence offender, the Board must give specific consideration as to whether it should impose a requirement under subsection (1)(c), (d) or (e).

37. Schedule 4 amended

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

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

Part 5 — *Bail Act 1982* amended

38. Act amended

This Part amends the *Bail Act 1982*.

39. Section 3 amended

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

designated family relationship means a relationship between 2 persons —

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

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

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

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

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

(2) After section 3(1) insert:

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

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

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

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

40. Section 6 amended

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

3A, 3D and 3F.

41. Section 7 amended

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

3D, 3E and 3F.

42. Section 9 amended

In section 9(1):

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

(2); or

(b) after paragraph (b) insert:

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

43. Section 26 amended

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

3D, 3E or 3F

44. Section 38 amended

(1) In section 38(1):

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

the person

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

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

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

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

- (d) after paragraph (c) insert:

- (d) the surety approval officer knows, or has reasonable grounds to believe, that —
- (i) there is a current restraining order between the person and the accused under the *Restraining Orders Act 1997*; or
 - (ii) the person is in a family relationship with the accused and was a victim of an offence for which the accused has been convicted within the last 10 years; or
 - (iii) the person is the alleged victim of the offence of which the accused has been charged and is in a family relationship with the accused.

s. 45

(2) After section 38(2) insert:

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

45. Section 40 amended

After section 40(2) insert:

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

46. Schedule 1 Part C clause 1 amended

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

3D, 3E and 3F,

47. Schedule 1 Part C clause 3F inserted

After Schedule 1 Part C clause 3E insert:

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

- (1) This clause applies where an accused is a serial family violence offender in custody —
 - (a) awaiting an appearance in court before conviction for a family violence offence; or
 - (b) waiting to be sentenced or otherwise dealt with for a family violence offence of which the accused has been convicted.
- (2) Despite clause 1, 2 or 4 or any other provision of this Act, where this clause applies bail may only be granted by a judicial officer, other than a justice, in whom jurisdiction is vested and the judicial officer must refuse to grant bail for the family violence offence unless the judicial officer —
 - (a) is satisfied that there are exceptional reasons why the accused should not be kept in custody; and
 - (b) is satisfied that bail may properly be granted having regard to the provisions of clauses 1 and 3.
- (3) Despite section 7(1), where an accused is refused bail under subclause (2) for an appearance for a family violence offence, the accused's case for bail need not be considered again under that subsection for an appearance for that offence unless the accused satisfies the judicial officer who may order detention 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 adequately to present the case for bail on the occasion of that refusal.

s. 48

- (4) Before a judicial officer grants bail under subclause (2), the judicial officer must —
 - (a) request that a report be made under section 24A(2); and
 - (b) having regard to the recommendations in the report, consider the imposition of a home detention condition as a condition on the grant of bail that includes electronic monitoring.
- (5) Where an accused is granted bail under subclause (2), 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.
- (6) This clause does not apply if bail is being granted under the *Sentencing Act 1995* section 33C(6) and the court has considered the imposition of an electronic monitoring requirement under section 33HA of that Act.

48. Schedule 1 Part C clause 4 amended

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

3D, 3E and 3F,

49. Schedule 1 Part D clause 2 amended

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

assisted —

- (a) by a restraining order made under the *Restraining Orders Act 1997* and whether, in the case of a judicial officer, to exercise the power in section 63 of that Act or, in the case of an authorised officer, to make a telephone application under that Act; or

- (b) by a combination of conditions for those purposes and a restraining order as envisaged by paragraph (a).

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

- (2AB) Where the 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 under the *Restraining Orders Act 1997*.
- (2AC) Subclause (2AB) does not apply if the judicial officer or authorised officer considers that an inconsistency is necessary to protect the safety of an alleged victim or of a child who is also protected by an order under the *Restraining Orders Act 1997*.

50. Schedule 2 amended

(1) In Schedule 2 item 1 after the row relating to s. 297 insert:

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

(2) In Schedule 2 item 2b delete the row relating to s. 61(1) and insert:

- | | |
|-----------|---|
| s. 61(1) | Breach of a family violence restraining order |
| s. 61(1A) | Breach of a violence restraining order |

Part 6 — *Restraining Orders Act 1997* amended

51. Act amended

This Part amends the *Restraining Orders Act 1997*.

52. Section 3 amended

In section 3(1) insert in alphabetical order:

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* (Commonwealth) or the *Family Court Act 1997*;

53. Section 4 amended

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

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

other; or

(b) after paragraph (f) insert:

(g) one of whom is the former spouse or former de facto partner of the other person’s current spouse or current de facto partner.

54. Section 5A amended

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

- (ha) 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;

55. Section 7A amended

In section 7A:

- (a) in paragraph (e) delete “3A.” and insert:

3A; or

- (b) after paragraph (e) insert:

(f) a registrar acting under Part 5A.

56. Section 8 amended

- (1) In section 8(1)(h) delete “14 and 62E relating to firearms; and” and insert:

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

- (2) Delete section 8(2) and insert:

- (2) If a person to whom an explanation is to be given under subsection (1) does not readily understand English, or the court is not satisfied that the person understood the explanation, the court is, as far as practicable, to

arrange for someone else who is 18 years of age or older to give the explanation to the person in a way that the person can understand.

- (2A) However, a person giving an explanation under subsection (2) must not be a person of a class prescribed in the regulations.

57. Part 2A Division 1AA inserted

At the beginning of Part 2A insert:

Division 1AA — Additional circumstances where orders may be made

13A. Cases involving violent offences

- (1) This section applies to an application for an FVRO or VRO if —
- (a) a person has been convicted of —
 - (i) an offence referred to in section 63(4AA)(a) (in the case of an application for an FVRO); or
 - (ii) a violent personal offence under section 63A(1A) (in the case of an application for either order);
 - and
 - (b) an FVRO or VRO, as appropriate in the case, 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 (as the case may be)); and

- (c) the application is being made against the convicted person by or on behalf of a victim of the offence.
- (2) 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.
- (3) In the case of an application where the 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.
- (4) 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.
- (5) Except as provided in subsection (6), an order will be made for a period specified by the court.
- (6) An order under subsection (3) is to be made for the period of the life of the person who committed the offence.
- (7) Despite a preceding subsection, if the relevant offence was committed by a person who was a child at the time of the commission of the offence —
 - (a) a court is not required to make an order under this section; and
 - (b) if a court makes an order under this section, the order will be made for a period specified by the court (and, in the case of a conviction for a violent personal offence under section 63A(1A), not for the period of the life of the person who committed the offence).

- (8) The person bound by an order under this section may apply to vary or cancel the order on the ground that exceptional circumstances exist which justify the variation or cancellation (as the case may be).

58. Part 2A Division 1 heading amended

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

and explosives

59. Section 14A inserted

At the end of Part 2A Division 1 insert:

14A. Explosives order

- (1) 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.
- (2) A person who is bound by a restraint under subsection (1) must give up possession, to a person and in a manner prescribed by the regulations, of all explosives and explosives licences held by the person who is bound.
- (3) 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 under subsection (1) 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.

- (4) In addition to the operation of subsection (1), a court may permit the person who is bound by an FVRO or VRO 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.

60. Section 16A amended

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

at the time of service of the order

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

61. Section 27 amended

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

62. Section 30E amended

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

18 years

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

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

63. Section 33 amended

- (1) In section 33(2):
 - (a) in paragraph (d) delete “occupation,” and insert:

occupation; or
 - (b) after paragraph (d) insert:

(e) being in possession of explosives or an explosives licence that the respondent reasonably needs in order to carry on the respondent’s usual occupation,
- (2) After section 33(2) insert:
- (3) Subsections (1) and (2) apply subject to the referral of the matter to a conference under Part 5A.

64. Section 36 amended

- (1) In section 36(2):
 - (a) after paragraph (f) insert:

(fa) being in possession of any explosives or an explosives licence, or applying for an explosives licence;
 - (b) in paragraph (g) delete “(f).” and insert:

(fa).

- (2) In section 36(3):
- (a) in paragraph (c) delete “licence.” and insert:

licence; or
 - (b) after paragraph (c) insert:

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

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

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

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

- (7) If an MRO restrains the respondent from being in possession of any 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).

65. Section 38 amended

- (1) In section 38(1) delete “in person”.
- (2) In section 38(4) delete “in the prescribed form” and insert:

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

66. Section 44C amended

After section 44C(2) insert:

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

67. Part 4 Division 4 inserted

At the end of Part 4 insert:

Division 4 — Other provisions to protect applicants

44D. Support and other persons who may be present

- (1) 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.
- (2) A person to provide support is to be approved by the court and is not to be a person who is a witness in, or a party to, the proceedings.

44E. Use of closed circuit television or screening arrangements

- (1) A court may make arrangements under this section in any proceedings under this Act if it is of the opinion that, if those arrangements are not made, a party to the proceedings or a witness would be likely —
 - (a) to be unable to give evidence, or to give evidence satisfactorily; or

- (b) to suffer severe emotional trauma or be unnecessarily intimidated or distressed.
- (2) In acting under this section, the court may make such arrangements as it thinks fit, including by using closed circuit television or screens, one-way glass or other suitable shielding devices.
- (3) When considering whether to make arrangements under this section in respect of a person, the court may have regard to —
- (a) the person's age; and
 - (b) the person's cultural background; and
 - (c) any physical disability or mental impairment (as defined in the *Criminal Law (Mentally Impaired Accused) Act 1996* section 8) of the person; and
 - (d) the relationship of the person to any other person involved in the proceedings; and
 - (e) the effect on the person of the presence of another person; and
 - (f) the nature of the subject-matter of the proceedings; and
 - (g) the expressed views of the person; and
 - (h) any other factor the court considers relevant.
- (4) When making arrangements under this section, the court must ensure that —
- (a) the judicial officer and all parties to the matter (or their counsel, if any) are able to see, hear and speak to each witness while the witness is giving evidence; and
 - (b) each party to the matter has the means of communicating with their 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.
- (5) The court may make arrangements under this section —
 - (a) on the application of a party to the proceedings, at the request of a witness, or of its own motion; and
 - (b) at any stage of proceedings.
- (6) Whenever a matter relating to an FVRO or VRO comes before a court, the court must consider whether it ought to make arrangements under this section.
- (7) 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 if to do so is practicable and will not unfairly prejudice any party in the proceedings.

44F. Additional provisions relating to FVROs

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 who may have) experienced family violence feels safe during the course of those proceedings, including by —

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

68. Section 45 amended

- (1) After section 45(1)(b) insert:
 - (ba) 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; or

- (2) In section 45(2):
 - (a) in paragraph (b) delete “person.” and insert:

person; or
 - (b) after paragraph (b) insert:
 - (c) in the case of an FVRO, by a person who is able to make an application for an order under section 24A(2).

- (3) After section 45(3) insert:
 - (3A) An application to vary a restraining order may be an application to vary a VRO made before 1 July 2017 to an FVRO.
 - (3B) An application to vary or cancel a restraining order may be made to any court with jurisdiction to make such an order (including a court that is different to the court that made the order but not including a court that is an inferior court to the court that made the order).

- (4) In section 45(4):
- (a) delete “An” and insert:
- Except as provided in subsection (7), an
- (b) delete “form to the court that made the order.” and insert:
- form.
- (5) After section 45(6) insert:
- (7) Except as provided in subsection (8), an application to vary or cancel a restraining order made to a court exercising criminal jurisdiction may be made as part of the criminal proceedings and without the need to comply with subsection (4).
- (8) A court exercising criminal jurisdiction must not vary or cancel a restraining order as part of the criminal proceedings unless the person bound by the order is present and that person, and the person protected by the order, have had an opportunity to make submissions on the matter.
- (9) Subsection (8) does not apply in the circumstances applying under section 63A.

69. Section 46 amended

After section 46(4) insert:

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

70. Section 49 amended

In section 49(1):

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

variations;
- (b) delete paragraph (b)(ii).

71. Section 49C inserted

At the end of Part 5 insert:

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

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 —

- (a) to vary an application for a VRO to an application for an FVRO; or
- (b) to vary an application for an FVRO to an application for a VRO.

72. Part 5A inserted

Before Part 6 insert:

Part 5A — Conferences

49D. Special conference procedures

- (1) A registrar may convene a conference under this section at the request of the court, or on the registrar's own initiative —
 - (a) in relation to an application for an FVRO, if —
 - (i) the applicant has indicated a wish to proceed to a defended hearing under section 26(1)(b); or
 - (ii) the court has made an FVRO under section 29(1)(a) which is an interim order under section 29(3) and the respondent has indicated an objection to the interim order becoming final; or
 - (iii) the matter has been adjourned under section 29(1)(c);or
 - (b) in relation to an application to vary or cancel an FVRO.
- (2) However, a conference will not be convened if a party objects to participating in a conference under this section.
- (3) If a conference is to be convened, the registrar is to fix a day, time and place for the conference.
- (4) 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.

- (5) In particular —
- (a) a conference will be conducted by a registrar of the court; and
 - (b) the registrar must ensure that the applicant and the respondent remain in separate rooms during a conference; and
 - (c) 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
 - (d) the registrar conducting a conference may —
 - (i) require a party to furnish such information as the registrar thinks fit; and
 - (ii) record any agreement reached at the conference and, to the extent provided by such an agreement, make any determination (including a determination that the proceedings be discontinued), or make any order (including an FVRO or a behaviour management order), on behalf of the court; and
 - (iii) close the conference at any time if, in the registrar's opinion, an agreement (or an appropriate agreement) cannot be reached; and

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

- (c) 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
 - (d) refer the matter back to the court.
- (9) A person to provide support under subsection (5)(c) is to be approved by the registrar and is not to be a person who is a witness in, or a party to, the proceedings.
- (10) Evidence of anything said or done in the course of a conference is inadmissible in civil proceedings before a court except by consent of all parties to the proceedings.

73. Section 55 amended

- (1) In section 55(5A) delete “16 years” and insert:

18 years

- (2) After section 55(5A) insert:

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

74. Section 61A amended

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

relevant offence means —

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

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- (b) an offence under *The Criminal Code* section 338E committed in the 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 this Act applies.

- (2) In section 61A(1) in the definition of **conviction** paragraph (b) delete “quashed.” and insert:

quashed;

- (3) Delete section 61A(2)(a) and (b) and insert:

- (a) is convicted of a relevant offence (the **qualifying relevant offence**); and
- (b) has committed, and been convicted of, at least 2 offences that are also relevant offences (the **previous relevant offences**) within the period of 2 years before the person’s conviction of the qualifying relevant offence.

- (4) In section 61A(2A):

- (a) after “previous” (1st occurrence) insert:

relevant

- (b) in paragraph (a) delete “relevant offence, or any of the previous” and insert:

qualifying relevant offence, or any of the previous relevant

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

relevant

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

qualifying

75. Section 61B amended

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

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

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

- (2A) However, 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).

76. Section 62E amended

- (1) After section 62E(1) insert:
- (1AA) 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 any explosives or an explosives licence in accordance with that section, a police officer may, without a warrant —
- (a) enter a place where any explosives that are, or are reasonably suspected to be, in the possession of the person are reasonably suspected to be, and search for and seize the explosives; or
 - (b) enter a place where an explosives licence held by the person is reasonably suspected to be, and search for and seize the licence.
- (2) In section 62E(1a) delete “subsection (1),” and insert:
- subsection (1) or (1AA),
- (3) After section 62E(1a) insert:
- (1B) 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*.

- (4) In section 62E(2) delete “subsection (1) is” and insert:

subsection (1), or any explosives or an explosives licence seized under subsection (1AA), are

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

Seizure of firearms and explosives

77. Section 63 amended

In section 63(4AA)(a)(i) after “section” insert:

298, 300,

78. Section 63A amended

- (1) In section 63A(1A) delete the definition of *violent personal offence* and insert:

violent personal offence means —

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

- (2) In section 63A(2):

- (a) delete “An” and insert:

Except as provided in subsection (2A), an

- (b) delete “specify that the order is to remain in force” and insert:
 - be made

- (3) After section 63A(2) insert:
 - (2A) If the violent personal offence was committed by a person who was a child at the time of the commission of the offence —
 - (a) a court is not required to make an order under this section; and
 - (b) if a court makes an order under this section, the order will be made for a period specified by the court (and not for the period of the life of the person who committed the offence).

- (4) Delete section 63A(4) and insert:
 - (4) A court must not make an order under this section if a request not to make the order is made by —
 - (a) the victim of the offence for whose benefit the order would be made; or
 - (b) a parent or guardian acting on behalf of a child who is the victim of the offence for whose benefit the order would be made.
 - (5) The person who committed the offence cannot act on behalf of a child under subsection (4)(b).

79. Section 63B amended

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

329 or 332.

80. Section 66 replaced

Delete section 66 and insert:

66. Information about family orders

(1) 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 (being information of which the applicant is aware) —

(a) about the existence of —

(i) unless subparagraph (ii) applies, any family order 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

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- (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.
- (2) If a court, on making a request under subsection (1), or in any other circumstances, 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 a restraining order (including an order agreed between the parties) under this Act.
- (3) A restraining order is not invalid merely because of any failure to comply with this section.

81. Section 70 amended

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

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

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

(3A) This section does not prevent —

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

82. Section 73 amended

In section 73(2):

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

licenses, and explosives and explosives licences,
- (b) in paragraph (c) delete “firearm; and” and insert:

firearm or any explosives; and

Part 7 — *Police Act 1892* amended

83. Act amended

This Part amends the *Police Act 1892*.

84. Section 135 inserted

At the beginning of Part VIII insert:

135. Family violence incident reporting

(1) In this section —

designated person means —

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

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

(2) This section applies if a designated person, while acting in the course of duty or employment —

- (a) attends at an incident involving (or allegedly or apparently involving) family violence; or
- (b) receives an allegation of family violence.

(3) In a case where this section applies, the designated person must —

- (a) make a written record of the incident or allegation when the designated person is reasonably able to do so; and
- (b) if the report 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.

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

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

85. Act amended

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

86. Section 4 amended

In section 4 insert in alphabetical order:

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

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

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

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

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

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

87. Section 34 amended

After section 34(3) insert:

- (3A) Subsection (2) 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 —
 - (a) that the responsible person was not the driver or person in charge of the vehicle at the relevant time; and
 - (b) that 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.
- (3B) A statutory declaration under subsection (3A) must be accompanied by a family violence evidentiary document that relates to the responsible person.

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- (3C) Subsection (3A) does not apply if the request for information was made under the *Road Traffic Act 1974* section 57.
- (3D) 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 1997* section 62A (but this subsection does not prevent such an investigation occurring if the police officer thinks fit).

88. Section 35 amended

After section 35(2) insert:

- (3) Subsection (2) does not apply if the responsible person for the vehicle supplies to the person who has made the identity request a statutory declaration —
 - (a) that the responsible person was not the driver or person in charge of the vehicle at the relevant time; and
 - (b) that the responsible person is concerned about providing information in response to the identity 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.
- (4) A statutory declaration under subsection (3) must be accompanied by a family violence evidentiary document that relates to the responsible person.
- (5) Subsection (3) does not apply if the request for information was made under the *Road Traffic Act 1974* section 57.

- (6) 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 1997* section 62A (but this subsection does not prevent such an investigation occurring if the police officer thinks fit).

89. Section 94 amended

- (1) In section 94 delete “If an” and insert:
- (1) If an
- (2) At the end of section 94 insert:
- (2) Subsection (1) does not apply if the responsible person for the vehicle supplies to the officer specified in the notice a statutory declaration —
- (a) that the responsible person was not the driver or person in charge of the vehicle at the time of the alleged offence; and
- (b) that 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.
- (3) A statutory declaration under subsection (2) must be accompanied by a family violence evidentiary document that relates to the responsible person.
- (4) 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 1997 section 62A (but this subsection does not prevent such an investigation occurring if the police officer thinks fit).

90. Section 100 amended

After section 100(1) insert:

- (1A) Subsection (1) does not apply if the responsible person for the vehicle supplies to the officer specified in the notice a statutory declaration —
- (a) that 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) that 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.
- (1B) A statutory declaration under subsection (1A) must be accompanied by a family violence evidentiary document that relates to the responsible person.
- (1C) 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 1997* section 62A (but this subsection does not prevent such an investigation occurring if the police officer thinks fit).

Part 9 — *Dangerous Goods Safety Act 2004* amended

91. Act amended

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

92. Section 68A inserted

After section 68 insert:

68A. Orders prohibiting possession of explosives

(1) In this section —

approval includes a licence, registration and permit;

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

(2) This section applies if —

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

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

(ii) 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.

(3) 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 to 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 to 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.
- (4) 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).

Part 10 — Evidence Act 1906 amended

93. Act amended

This Part amends the *Evidence Act 1906*.

94. Sections 37 to 39G inserted

After section 36C insert:

37. Terms used

In sections 38 to 39G —

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

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

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

safety option, in relation to an accused person who is (or may be) a victim of family violence, means 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.

38. What may constitute evidence of family violence

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

- (b) the cumulative effect of family violence, including the psychological effect, on the person or a family member affected by that violence;
- (c) social, cultural or economic factors that impact on the person or a family member who has been affected by family violence;
- (d) responses by family, community or agencies to family violence, including further violence that may be used by a family member to prevent, or in retaliation to, any help-seeking behaviour or use of safety options by the person;
- (e) 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;
- (f) ways in which violence by the family member towards the person, or the lack 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;
- (g) the general nature and dynamics of relationships affected by family violence, including the possible consequences of separation from a person who commits family violence;
- (h) the psychological effect of family violence on people who are or have been in a relationship affected by family violence;

- (i) social or economic factors that impact on people who are or have been in a relationship affected by family violence.
- (2) Subsection (1) does not limit the operation of the *Restraining Orders Act 1997* section 5A(2).

39. Expert evidence of family violence

- (1) This section applies to any criminal proceedings where evidence of family violence is relevant to a fact in issue.
- (2) 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.
- (3) 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.
- (4) 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.

39A. Evidence of family violence — general provision

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

39B. Evidence of family violence — self-defence

Without limiting any other 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 to 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.

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

- (1) In criminal proceedings in which self-defence in response to family violence is an issue, defence counsel (or, if the accused is unrepresented, 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.
- (2) The trial judge must give the jury a requested direction on family violence, including all or specified parts of section 39F if so requested, unless there are good reasons for not doing so.
- (3) If a direction on family violence is not requested, the trial judge may give the direction if the trial judge considers that it is in the interests of justice to do so.
- (4) The trial judge —
 - (a) must give the direction as soon as practicable after the request is made; and
 - (b) may give the direction before any evidence is adduced in the trial.

- (5) The trial judge may repeat a direction at any time in the trial.
- (6) 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.

39D. Request for direction on family violence — general provision

- (1) In criminal proceedings in which family violence is an issue, prosecution or defence counsel (or, if the accused is unrepresented, the accused) 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.
- (2) The trial judge must give the jury a requested direction on family violence, including all or specified parts of section 39F if so requested, unless there are good reasons for not doing so.
- (3) If a direction on family violence is not requested, the trial judge may give the direction if the trial judge considers that it is in the interests of justice to do so.
- (4) The trial judge —
 - (a) must give the direction as soon as practicable after the request is made; and
 - (b) may give the direction before any evidence is adduced in the trial.
- (5) The trial judge may repeat a direction at any time in the trial.
- (6) 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.

39E. Content of direction on family violence

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

- (a) self-defence is, or is likely to be, an issue in the trial; and
- (b) as a matter of law, evidence of family violence may be relevant to determining whether the accused acted in self-defence; and
- (c) 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.

39F. Additional matters for direction on family violence

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

- (a) that family violence —
 - (i) is not limited to physical abuse and may, for example, include sexual abuse, psychological abuse or financial abuse;
 - (ii) may amount to violence against a person even though it is immediately directed at another person;
 - (iii) may consist of a single act;
 - (iv) 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 —
 - (i) people may react differently to family violence and there is no typical, proper or normal response to family violence;
 - (ii) 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;
 - (iii) it is not uncommon for a person who has been subjected to family violence not to report family violence to police or seek assistance to stop family violence;
 - (iv) decisions made by a person subjected to family violence about how to address, respond to or avoid family violence may be influenced by a variety of factors;
 - (v) it is not uncommon for a decision to leave an abusive partner, or to seek assistance, to increase apprehension about, or the 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.
- (2) 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) —
- (a) placing or keeping a person in a dependent or subordinate relationship;
 - (b) isolating a person from family, friends or other sources of support;

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- (c) controlling, regulating or monitoring a person's day-to-day activities;
 - (d) depriving or restricting a person's freedom of movement or action;
 - (e) restricting a person's ability to resist violence;
 - (f) frightening, humiliating, degrading or punishing a person, including punishing a person for resisting violence;
 - (g) compelling a person to engage in unlawful or harmful conduct.
- (3) If the trial judge makes a direction that relates to subsection (1)(b)(iv), the trial judge may also indicate that decisions made 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 following —
- (a) the family violence itself;
 - (b) social, cultural, economic or personal factors, or inequities experienced by the person, including inequities associated with (but not limited to) race, poverty, gender, disability or age;
 - (c) responses by family, community or agencies to the family violence or to any help-seeking behaviour or use of safety options by the person;
 - (d) the provision of, or failure in the provision of, safety options that might realistically have provided ongoing safety to the person, and the person's perceptions of how effective those safety options might have been to prevent further harm;

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

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

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 court thinks fit, be consistent with how a jury would be directed in accordance with those sections in the particular case.

95. Section 134 inserted

After section 133 insert:

134. Review of amendment made by *Family Violence Legislation Reform Act 2020*

- (1) The Minister must review the operation and effectiveness of the amendment made to this Act by the *Family Violence Legislation Reform Act 2020*, and prepare a report based on the review, as soon as practicable after the 3rd anniversary of the day on which the *Family Violence Legislation Reform Act 2020* section 93 comes into operation.
- (2) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 3rd anniversary.

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



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