

TASMANIA

FAMILY VIOLENCE REFORMS BILL 2021

CONTENTS

PART 1 – PRELIMINARY

1. Short title
2. Commencement

PART 2 – FAMILY VIOLENCE ACT 2004 AMENDED

3. Principal Act
4. Section 4 amended (Interpretation)
5. Section 7 amended (Family violence)
6. Section 13 amended (Sentencing factors)
7. Section 13A amended (Recording of family violence offences and serial family violence perpetrators)
8. Section 14 amended (Police family violence orders)
9. Section 16 amended (Family violence orders)
10. Part 4A inserted
 - PART 4A – Declaration of serial family violence perpetrator
 - 29A. Court or judge may declare offender to be serial family violence perpetrator
 - 29B. Duration of declaration
 - 29C. Making of orders if declaration
 - 29D. Review of declaration of serial family violence perpetrator
11. Section 39A repealed

**PART 3 – COMMUNITY PROTECTION (OFFENDER REPORTING)
ACT 2005 AMENDED**

12. Principal Act
13. Schedule 2 amended (Class 2 offences)
14. Schedule 3 amended (Class 3 offences)

PART 4 – CORRECTIONS ACT 1997 AMENDED

15. Principal Act
16. Section 3 amended (Interpretation)
17. Section 72 amended (Release on parole)
18. Section 87A amended (Eligible persons register)

PART 5 – CRIMINAL CODE ACT 1924 AMENDED

19. Principal Act
20. Schedule 1 amended

PART 6 – EVIDENCE ACT 2001 AMENDED

21. Principal Act
22. Section 194K amended (Publication of certain identifying particulars prohibited)

**PART 7 – EVIDENCE (CHILDREN AND SPECIAL WITNESSES) ACT
2001 AMENDED**

23. Principal Act
24. Section 3 amended (Interpretation)

PART 8 – FIREARMS ACT 1996 AMENDED

25. Principal Act
26. Section 29 amended (General restrictions on granting licence)
27. Section 51 amended (Cancellation of licence)

PART 9 – SENTENCING ACT 1997 AMENDED

28. Principal Act
29. Section 11A amended (Matters to be taken or not taken into account in sentencing certain sexual offenders)

PART 10 – REPEAL OF ACT

30. Repeal of Act

Draft

Draft

FAMILY VIOLENCE REFORMS BILL 2021

*(Brought in by the Minister for Justice, the Honourable Elise
Nicole Archer)*

A BILL FOR

An Act to amend the *Family Violence Act 2004*, the *Community Protection (Offender Reporting) Act 2005*, the *Corrections Act 1997*, the *Criminal Code Act 1924*, the *Evidence Act 2001*, the *Evidence (Children and Special Witnesses) Act 2001*, the *Firearms Act 1996* and the *Sentencing Act 1997*

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Family Violence Reforms Act 2021*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

Family Violence Reforms Act 2021
Act No. of 2020

s. 3

Part 2 – Family Violence Act 2004 Amended

PART 2 – FAMILY VIOLENCE ACT 2004 AMENDED

3. Principal Act

In this Part, the *Family Violence Act 2004** is referred to as the Principal Act.

4. Section 4 amended (Interpretation)

Section 4 of the Principal Act is amended as follows:

- (a) by inserting the following definitions after the definition of *Director, MPES*:

Director of Corrective Services means the Director of Corrective Services appointed under section 5 of the *Corrections Act 1997*;

DPP means the Director of Public Prosecutions;

- (b) by inserting the following paragraph after paragraph (i) in the definition of *harassing*:

- (j) making unwelcome contact, directly or indirectly, with the person;

- (c) by inserting the following definition after the definition of *property*:

*No. 67 of 2004

Family Violence Reforms Act 2021
Act No. of 2020

Part 2 – Family Violence Act 2004 Amended

s. 5

rehabilitation program means a structured treatment program designed to reduce the likelihood of a person committing family violence;

(d) by omitting “structured treatment program designed to reduce the likelihood that a person who has committed a family violence offence will re-offend” from the definition of *rehabilitation program assessment* and substituting “rehabilitation program”;

(e) by inserting the following definitions after the definition of *safety audit*:

serial family violence declaration, in relation to an offender, means a declaration under section 29A that is in force in relation to that offender;

serial family violence perpetrator means an offender in respect of whom a declaration under section 29A is in force;

5. Section 7 amended (Family violence)

Paragraph (a) of the definition of *family violence* in section 7 of the Principal Act is amended as follows:

(a) by omitting subparagraph (i) and substituting the following subparagraph:

Family Violence Reforms Act 2021
Act No. of 2020

s. 6

Part 2 – Family Violence Act 2004 Amended

- (i) assault, including but not limited to sexual assault, indecent assault and aggravated assault;
- (b) by omitting subparagraph (v) and substituting the following subparagraphs:
 - (v) rape;
 - (vi) wounding or bodily harm, including grievous bodily harm and committing an unlawful act intended to cause bodily harm;
 - (vii) penetrative sexual abuse of a child, a young person or a person with a mental impairment;
 - (viii) attempting or threatening to commit conduct referred to in subparagraph (i), (ii), (iii) (iv), (v), (vi) or (vii); or

6. Section 13 amended (Sentencing factors)

Section 13 of the Principal Act is amended by omitting paragraph (a) and substituting the following paragraph:

- (a) may consider the following to be an aggravating factor:
 - (i) the fact that the offender knew, or was reckless as to whether, a child was present or on the premises at the time of the offence;

Family Violence Reforms Act 2021
Act No. of 2020

Part 2 – Family Violence Act 2004 Amended

s. 7

- (ii) the fact that the offender knew, or was reckless as to whether, the affected person was pregnant;
- (iii) the fact that the offender is a serial family violence perpetrator; and

7. Section 13A amended (Recording of family violence offences and serial family violence perpetrators)

Section 13A of the Principal Act is amended by inserting after subsection (1) the following subsections:

- (1A) If a person pleads guilty to an offence, or is found guilty of an offence, and the court or judge is satisfied that the offence was a family violence offence, the court or judge, on application, may direct that a previous offence for which that person has been convicted be recorded on the person's criminal record as a family violence offence if satisfied that –
 - (a) the previous offence for which that person was convicted was a family violence offence; and
 - (b) the previous offence has not been recorded under subsection (1).
- (1B) If a person is declared to be a serial family violence perpetrator, the court or judge that declares the person to be a serial family violence perpetrator is to

Family Violence Reforms Act 2021
Act No. of 2020

s. 8

Part 2 – Family Violence Act 2004 Amended

direct that the declaration be recorded on
the person’s criminal record.

8. Section 14 amended (Police family violence orders)

Section 14(3) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (f) “conditions.” and substituting “conditions;”;
- (b) by inserting the following paragraph after paragraph (f):
 - (g) refrain from engaging in any other conduct specified in the order that constitutes, or may constitute, family violence.

9. Section 16 amended (Family violence orders)

Section 16 of the Principal Act is amended as follows:

- (a) by omitting from subsection (3)(c) “person.” and substituting “person;”;
- (b) by inserting the following paragraph after paragraph (c) in subsection (3):
 - (d) attend and participate in a rehabilitation program and in doing so comply with the reasonable directions of a person

Family Violence Reforms Act 2021
Act No. of 2020

employed or engaged to conduct such a program;

(c) by inserting the following subsections after subsection (3):

(3A) Before including a condition in an FVO under subsection (3)(d), the court must –

(a) make an order that a rehabilitation program assessment be undertaken in respect of the person and provided to the court by the Director of Corrective Services or another suitable person; and

(b) satisfy itself that the person is eligible to participate in the rehabilitation program; and

(c) satisfy itself that the rehabilitation program is available for the person to participate in at a suitable place and time.

(3B) If the court includes in an FVO a condition of the kind referred to in subsection (3)(d), the court may require the person against whom the FVO is to be made to,

Family Violence Reforms Act 2021
Act No. of 2020

s. 1

Part 2 – Family Violence Act 2004 Amended

whilst attending and participating in the rehabilitation program, report to a person nominated by the Director of Corrective Services at such reasonable times and places as are determined by the Director of Corrective Services.

10. Part 4A inserted

After section 29 of the Principal Act, the following Part is inserted:

**PART 4A – DECLARATION OF SERIAL FAMILY
VIOLENCE PERPETRATOR**

**29A. Court or judge may declare offender to be
serial family violence perpetrator**

(1) In this section –

recorded, in relation to a family violence offence, means recorded on the person's criminal record pursuant to a direction under section 13A.

(2) This section applies to a court or a judge before whom an offender is –

(a) convicted of a family violence offence; or

Family Violence Reforms Act 2021
Act No. of 2020

Part 2 – Family Violence Act 2004 Amended

s. 1

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- (b) brought up for sentence after being convicted of a family violence offence.
- (3) The court or judge may on the court or judge's own initiative, or on the application of the prosecution, declare the offender to be a serial family violence perpetrator if –
- (a) the offender has attained the age of 18 years; and
 - (b) the offender has –
 - (i) on that conviction, been convicted of at least 2 indictable family violence offences that have been recorded, with at least 2 of those offences being committed on different days; or
 - (ii) on that conviction, been convicted of at least 3 family violence offences that have been recorded, whether indictable or summary, with at least 3 of those offences being committed on different days; or
 - (iii) on that conviction, been convicted of persistent family violence under

Family Violence Reforms Act 2021
Act No. of 2020

s. 1

Part 2 – Family Violence Act 2004 Amended

section 170A of the
Criminal Code; and

- (c) the court or judge is of the opinion that the declaration is warranted.
- (4) In determining under subsection (3)(c) whether to declare an offender to be a serial family violence perpetrator, the court or judge may have regard to any or all of the following:
 - (a) the nature and circumstances of the family violence offences referred to in subsection (3);
 - (b) the risk that the offender may commit further family violence offences;
 - (c) any other matter that the court or judge considers relevant.
- (5) For the purposes of subsection (3), each of the family violence offences taken into account must have been committed within the 10-year period immediately preceding the declaration, unless the court or judge is satisfied that exceptional circumstances exist that make it appropriate to make a declaration under this section.
- (6) In determining under subsection (5) whether exceptional circumstances exist,

Family Violence Reforms Act 2021
Act No. of 2020

the court or judge may have regard to any or all of the following:

- (a) the level of risk that the offender may commit another family violence offence;
 - (b) the offender's criminal record, antecedents and character;
 - (c) the nature of the family violence offences for which the offender has been convicted;
 - (d) any other matter that the court or judge considers relevant.
- (7) The court or judge –
- (a) may order the Director of Corrective Services or any other person to prepare and provide to the court or judge a report in relation to the risk of the offender committing further family violence offences or any other matters that the court or judge specifies in the order; and
 - (b) may have regard to the report for the purpose of determining under subsection (3)(c) whether to declare an offender to be a serial family violence perpetrator.
- (8) The court or judge is to provide –

Family Violence Reforms Act 2021
Act No. of 2020

s. 1

Part 2 – Family Violence Act 2004 Amended

- (a) the prosecution with a copy of a report that is provided to the court or judge in accordance with an order under subsection (7), other than a report provided to the court or judge by the prosecution; and
 - (b) the offender with a copy of a report in relation to the offender that is provided to the court or judge in accordance with an order under subsection (7).
- (9) For the purposes of this section, an offence committed by an offender outside this State is taken to have been recorded, if that offence would have been a family violence offence if it had been committed in this State.

29B. Duration of declaration

The declaration of an offender as a serial family violence perpetrator remains in force for such period not exceeding 5 years as the court determines.

29C. Making of orders if declaration

- (1) If a court or judge declares an offender to be a serial family violence perpetrator, the court or judge, in addition to that declaration –

Family Violence Reforms Act 2021
Act No. of 2020

Part 2 – Family Violence Act 2004 Amended

s. 1

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- (a) is to make an FVO order if satisfied on the balance of probabilities as to the matters set out in section 16(1); and
 - (b) may make any other order under this Act which the court or judge may make.
- (2) A court or judge may, for the purposes of subsection (1)(a), order the Commissioner of Police or any other person to provide the court or judge with an assessment of the suitability of a person for electronic monitoring for the purposes of subsection (1)(b).

29D. Review of declaration of serial family violence perpetrator

- (1) The DPP may make an application to a court (*a review application*) for a review of a declaration of an offender as a serial family violence perpetrator.
- (2) An offender may make an application to a court (*a review application*) for a review of a serial family violence declaration on the grounds that exceptional circumstances apply in relation to the offender.
- (3) A review application is to be in writing.
- (4) A copy of –

Family Violence Reforms Act 2021
Act No. of 2020

s. 1

Part 2 – Family Violence Act 2004 Amended

- (a) a review application under subsection (1) is to be served on the offender to whom the declaration relates; and
 - (b) a review application under subsection (2) is to be served on the DPP.
- (5) A review application may be withdrawn or discontinued by leave of the court.
- (6) On a review application in relation to the declaration of an offender as a serial family violence perpetrator, the court may, after taking into account the matters that would be taken into account by a court when considering whether to make such a declaration under section 29A(3) –
- (a) make an order discharging the declaration if satisfied that the declaration need no longer apply; or
 - (b) in the case of a review application under subsection (2), make an order extending the duration of the declaration if satisfied that the duration of the declaration should be extended; or
 - (c) refuse to make an order under paragraph (a) or (b).

Family Violence Reforms Act 2021
Act No. of 2020

Part 2 – Family Violence Act 2004 Amended

s. 1

- (7) The duration of a serial family violence declaration may be extended by a court under subsection (6)(b) for such period not exceeding 5 years as the court determines.
- (8) A review application under this section may not be made to an inferior court of criminal jurisdiction to the court that made the declaration.
- (9) The discharge of a declaration in relation to an offender does not affect a sentence of imprisonment imposed on the offender.

11. Section 39A repealed

Section 39A of the Principal Act is repealed.

Family Violence Reforms Act 2021
Act No. of 2020

s. 1

Part 3 – Community Protection (Offender Rep

PART 3 – COMMUNITY PROTECTION (OFFENDER REPORTING) ACT 2005 AMENDED

12. Principal Act

In this Part, the *Community Protection (Offender Reporting) Act 2005** is referred to as the Principal Act.

13. Schedule 2 amended (Class 2 offences)

Schedule 2 to the Principal Act is amended by inserting after

Section 169

Administering a drug with intent to facilitate the commission of an offence

the following item:

Section 170A

Persistent family violence (the commission of which involved an unlawful family violence act involving an offence against another provision listed in this Schedule)

14. Schedule 3 amended (Class 3 offences)

Schedule 3 to the Principal Act is amended by inserting after

*No. 61 of 2005

Family Violence Reforms Act 2021
Act No. of 2020

Part 3 – Community Protection (Offender Rep

s. 1

Section 169

Administering a drug with intent to facilitate the commission of an offence (if the person against whom the offence is committed is a child)

the following item:

Section 170A

Persistent family violence (the commission of which involved an unlawful family violence act involving an offence against another provision listed in this Schedule)

Family Violence Reforms Act 2021
Act No. of 2020

s. 1

Part 4 – Corrections Act 1997 Amended

PART 4 – CORRECTIONS ACT 1997 AMENDED

15. Principal Act

In this Part, the *Corrections Act 1997** is referred to as the Principal Act.

16. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended by inserting after the definition of *eligible persons register* the following definition:

family violence offence means family violence offence within the meaning of the *Family Violence Act 2004*;

17. Section 72 amended (Release on parole)

Section 72(4) of the Principal Act is amended by inserting after paragraph (b) the following paragraph:

- (ba) if the prisoner is serving a period of imprisonment for a family violence offence, whether the prisoner has been declared a serial family violence perpetrator within the meaning of the *Family Violence Act 2004*; and

*No. 51 of 1997

Family Violence Reforms Act 2021
Act No. of 2020

Part 4 – Corrections Act 1997 Amended

s. 1

18. Section 87A amended (Eligible persons register)

Section 87A(7) of the Principal Act is amended by omitting the definition of *family violence offence*.

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Family Violence Reforms Act 2021
Act No. of 2020

s. 1

Part 5 – Criminal Code Act 1924 Amended

PART 5 – CRIMINAL CODE ACT 1924 AMENDED

19. Principal Act

In this Part, the *Criminal Code Act 1924** is referred to as the Principal Act.

20. Schedule 1 amended

Schedule 1 to the Principal Act is amended as follows:

- (a) by omitting section 54;
- (b) by inserting the following paragraph after paragraph (a) in section 337A(1):
 - (ab) aggravated assault;
- (c) by inserting the following paragraph after paragraph (b) in section 337A(1):
 - (ba) committing an unlawful act intended to cause bodily harm;
- (d) by inserting the following paragraphs after paragraph (j) in section 337A(1):
 - (k) attempting to commit any crime or offence referred to in paragraphs (a) to (j), both inclusive;
 - (l) inciting a person to commit any crime or offence referred to in

*No. 69 of 1924

Family Violence Reforms Act 2021
Act No. of 2020

Part 5 – Criminal Code Act 1924 Amended

s. 2

paragraphs (a) to (j), both inclusive;

- (m) being an accessory after the fact to any offence or crime referred to in paragraphs (a) to (j), both inclusive.

Draft

Family Violence Reforms Act 2021
Act No. of 2020

s. 2

Part 6 – Evidence Act 2001 Amended

PART 6 – EVIDENCE ACT 2001 AMENDED

21. Principal Act

In this Part, the *Evidence Act 2001** is referred to as the Principal Act.

22. Section 194K amended (Publication of certain identifying particulars prohibited)

Section 194K(1) of the Principal Act is amended by inserting after paragraph (b) the following paragraph:

- (ba) if a crime is alleged to have been committed under section 170A of the *Criminal Code* and the accused person is alleged, in the commission of that crime, to have committed a sexual offence in relation to his or her spouse or partner –
- (i) any person in respect of whom the crime is alleged to have been committed; or
 - (ii) any witness or intended witness, other than the defendant, in those proceedings; or

*No. 76 of 2001

Family Violence Reforms Act 2021
Act No. of 2020

Part 7 – Evidence (Children and Special Wit

s. 2

PART 7 – EVIDENCE (CHILDREN AND SPECIAL WITNESSES) ACT 2001 AMENDED

23. Principal Act

In this Part, the *Evidence (Children and Special Witnesses) Act 2001** is referred to as the Principal Act.

24. Section 3 amended (Interpretation)

Paragraph (b) of the definition of *prescribed proceeding* in section 3 of the Principal Act is amended as follows:

- (a) by inserting “170A,” after “170,”;
- (b) by inserting “, 192” after “191A”.

*No. 79 of 2001

Family Violence Reforms Act 2021
Act No. of 2020

s. 2

Part 8 – Firearms Act 1996 Amended

PART 8 – FIREARMS ACT 1996 AMENDED

25. Principal Act

In this Part, the *Firearms Act 1996** is referred to as the Principal Act.

26. Section 29 amended (General restrictions on granting licence)

Section 29(2) of the Principal Act is amended by inserting after paragraph (f) the following paragraph:

- (fa) whether the person is a serial family violence perpetrator within the meaning of the *Family Violence Act 2004*;

27. Section 51 amended (Cancellation of licence)

Section 51 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (1) A licence that authorises the holder to possess or use a firearm is automatically cancelled if the holder –
 - (a) becomes subject to any firearms prohibition order or a restraint order relating to personal injury or a family violence order or a recognised DVO, within the

*No. 23 of 1996

Family Violence Reforms Act 2021
Act No. of 2020

Part 8 – Firearms Act 1996 Amended

s. 2

meaning of the *Domestic Violence Orders (National Recognition) Act 2016*; or

- (b) is a serial family violence perpetrator within the meaning of the *Family Violence Act 2004*.

Draft

PART 9 – SENTENCING ACT 1997 AMENDED

28. Principal Act

In this Part, the *Sentencing Act 1997** is referred to as the Principal Act.

29. Section 11A amended (Matters to be taken or not taken into account in sentencing certain sexual offenders)

The definition of *sexual offence* in section 11A(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) “definition.” and substituting “definition; or”;
- (b) by inserting the following paragraph after paragraph (b):
 - (c) a crime under section 170A of the *Criminal Code*, the commission of which involved an unlawful family violence act involving –
 - (i) a crime referred to in paragraph (a) of this definition; or
 - (ii) an attempt to commit a crime referred to in

*No. 59 of 1997

Family Violence Reforms Act 2021
Act No. of 2020

Part 9 – Sentencing Act 1997 Amended

s. 2

paragraph (a) of this
definition.

Draft

Family Violence Reforms Act 2021
Act No. of 2020

s. 3

Part 10 – Repeal of Act

PART 10 – REPEAL OF ACT

30. Repeal of Act

This Act is repealed on the first anniversary of the day on which the last uncommenced provision of this Act commenced.

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