

Family Violence Reforms Bill 2021

The Tasmanian Government is committed to employing a range of strategies to reduce levels of family violence in the State and to improving the way Tasmania's justice system deals with perpetrators of family violence.

In its 'Safe Homes, Safe Families: Next Steps' election commitment, the Government committed to strengthening family violence laws by creating a new declaration for repeat family violence offenders. The Government also committed, at Action 25 of the *Safe Homes Families Communities action plan for family and sexual violence 2019-2022*, to introducing the ability to mandate participation in behaviour change programs as part of a Family Violence Order. This draft Bill delivers on these commitments and includes additional miscellaneous amendments to improve the operation of the family and sexual violence legislative framework.

Specifically, the draft Bill amends provisions of the:

- *Family Violence Act 2004*
- *Community Protection (Offender Reporting) Act 2005*
- *Corrections Act 1997*
- *Criminal Code Act 1924*
- *Evidence Act 2000*,
- *Evidence (Children and Special Witnesses) Act 2001*
- *Firearms Act 1996* and
- *Sentencing Act 1997*.

The Serial Family Violence Perpetrator Declaration

The Serial Family Violence Perpetrator (SFVP) declaration established in this Bill is designed to identify perpetrators who repeatedly commit family violence offences against a single partner or multiple and successive partners. The introduction of a SFVP declaration recognises that serial family violence perpetrators present a high risk of repeat and escalating offending. It aims to provide for a heightened justice response proportionate to the severity of a perpetrator's family violence offending and assessed risk of future family violence offending, through the imposition of certain restrictions, facilitating rehabilitation or providing for enhanced supervision.

The draft Bill provides that either the Supreme Court of Tasmania or Magistrates Court may make an SFVP declaration if the perpetrator is at least 18 years old at the time an application is made and:

- has been convicted of at least two indictable family violence offences committed on separate days; or
- three family violence offences committed on separate days if they are summary offences or a combination thereof; or
- they have plead or been found guilty of the crime of persistent family violence at section 170A of the *Criminal Code*.

The draft Bill outlines the factors a court may have regard to in making the declaration, and includes an ability to require a pre-sentence report from Community Corrections. The duration of a declaration will be at the discretion of the court up to a maximum of 5 years, and includes an ability to vary, extend or discharge the declaration in certain circumstances by application.

Upon an SFVP declaration being made by the court, it will be recorded on the perpetrator's criminal record, restrict their ability to possess a firearm, be considered as an aggravating factor at sentencing for a subsequent family violence offence committed while the declaration is in force, and be considered in a parole application. The court will also be directed to take further steps at sentencing to enhance supervision and facilitate rehabilitation, through the making of a Family Violence Order with electronic monitoring and/or behavioural change program participation conditions.

The Bill makes related consequential changes to other Acts to require that the Commissioner of Police take into account any SFVP declaration on a person applying for a firearms licence, to require the Parole Board in determining whether or not a prisoner should be released on parole to take into consideration that the prisoner is a declared SFVP, and to require the court when determining whether to make a High Risk Offender order is to consider whether the perpetrator is a declared SFVP.

Mandated behavioural change program participation

Action 25 of the Government's Safe Homes Families Communities action plan for family and sexual violence 2019-2022 commits to introducing the ability to require mandated behaviour change program participation as part of a Family Violence Order. Under this action, it is noted that "participation in the Men Employing New Strategies program, EQUIPS program or the Family Violence Intervention Program can be court-mandated as part of a Family Violence Order". This reform will ensure that family violence offenders are eligible to participate in behavioural change programs that may assist in addressing recidivism. The draft Bill includes an amendment to section 16 of the *Family Violence Act* to support implementation of this Action.

Miscellaneous family and sexual violence reforms

Under the *Family Violence Act*, the Bill expands the definition of 'family violence' to include additional specific offences, providing for alternative convictions for certain offences in the *Criminal Code*; and expands the definition of 'harassing',

to reflect that making unwelcome contact is a form of family violence. The Bill also expands the list of conditions available under Police Family Violence Orders, to enhance the Safe at Home response in circumstances where a person has committed or is likely to commit family violence.

Under the *Criminal Code*, the Bill will remove section 54 'Liability of husband and wife for offences committed by either with respect to the other's property'. It is well known that perpetrators of family violence often injure or destroy their spouse's property. This type of conduct is a form of family violence as recognised, and captured, by the existing definition of family violence contained in the section 7(c)(i)-(iii) of the *Family Violence Act*. Section 54 of the *Criminal Code* is outdated and does not accord with the expectation of what amounts to unlawful conduct.

Following introduction of section 170A (persistent family violence) of the *Criminal Code*, the Department has identified that certain statutes require consequential amendment to reflect the introduction of this crime and resolve procedural irregularities. The Bill will make minor amendments to the *Community Protection (Offender Reporting) Act 2005*, *Evidence Act 2001*, *Evidence (Children and Special Witnesses) Act*, and *Sentencing Act 1997*. Finally, the Bill includes an additional amendment to the *Evidence (Children and Special Witnesses) Act* to include reference to section 192 (stalking and bullying) of the *Criminal Code*.