

TASMANIA

FAMILY VIOLENCE REFORMS BILL 2018

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FAMILY VIOLENCE REFORMS BILL 2018

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

A BILL FOR

**An Act to amend the *Criminal Code Act 1924*, *Evidence
(Children and Special Witnesses) Act 2001* and the *Family
Violence Act 2004***

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 2018*.

2. Commencement

This Act commences on the day on which this
Act receives the Royal Assent.

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Part 2 – Criminal Code Act 1924 Amended

PART 2 – CRIMINAL CODE ACT 1924 AMENDED

3. Principal Act

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

4. Schedule 1 amended (*Criminal Code*)

Schedule 1 to the Principal Act is amended as follows:

- (a) by omitting from section 125A(4)(b) “occasions.” and substituting “occasions; and”;
- (b) by inserting the following paragraph after paragraph (b) in section 125A(4):
 - (c) on a trial before a jury for an offence against subsection (2), it is not necessary for each member of the jury to be satisfied that the unlawful sexual acts were committed on the same 3 occasions.
- (c) by inserting the following subsection after subsection (6A) in section 125A:
 - (6B) A Court sentencing a person for an offence against subsection (2) is to make findings in relation to

*No. 69 of 1924

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Part 2 – Criminal Code Act 1924 Amended

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either the nature or the character, or both the nature and the character, of the sexual relationship maintained and, in doing so, the Court is not required to ask any questions of the jury for the purposes of making those findings.

- (d) by inserting the following section after section 170:

170A. Persistent family violence

- (1) In this section –

family relationship has the same meaning as in the *Family Violence Act 2004*;

family violence has the same meaning as in the *Family Violence Act 2004*;

family violence offence has the same meaning as in the *Family Violence Act 2004*;

spouse or partner, of an accused person, means another person with whom the accused person is, or has been, in a family relationship;

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unlawful family violence act

means an act that constitutes a family violence offence whether committed before, on or after the commencement of this section.

- (2) A person who commits persistent family violence in relation to another person with whom the person is, or has been, in a family relationship is guilty of a crime.

Charge: Persistent family violence.

- (3) An accused person is guilty of having committed an offence against subsection (2) if the accused person committed an unlawful family violence act in relation to his or her spouse or partner on at least 3 occasions.

- (4) For the purposes of subsection (3) –

- (a) it is not necessary to prove the dates on which any of the unlawful family violence acts were committed or the exact circumstances in which any of the unlawful

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family violence acts were committed; and

- (b) an unlawful family violence act that was committed on any one of the occasions need not have been the same as the unlawful family violence act that was committed on each or any of the other occasions; and
 - (c) on a trial before a jury for an offence against subsection (2), it is not necessary for each member of the jury to be satisfied that the unlawful family violence acts were committed on the same 3 occasions.
- (5) An indictment charging a person with having committed an offence against subsection (2) –
- (a) is to specify the particular period during which it is alleged that the accused person committed the unlawful family violence acts in relation to his or her spouse or partner; and

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- (b) is not to contain a separate charge that the accused committed an unlawful family violence act in relation to his or her spouse or partner during that period.
- (6) A reference in this section to an unlawful family violence act that is committed by a person in relation to his or her spouse or partner includes a reference to conduct that was, in relation to that spouse or partner, committed by the person outside this State if –
 - (a) the conduct was unlawful in the State, Territory or country in which it was committed and, if it had been committed in this State by the person in relation to his or her spouse or partner, the conduct would have been an unlawful family violence act; and
 - (b) at least one unlawful family violence act in relation to the spouse or partner was committed by the person in this State.

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(7) A Court sentencing a person for an offence against subsection (2) is to make findings in relation to either the nature or the character, or both the nature and the character, of the unlawful family violence acts committed and, in doing so, the Court is not required to ask any questions of the jury for the purposes of making those findings.

(8) A prosecution for an offence against this section is not to be commenced without the written authority of the Director of Public Prosecutions.

(e) by inserting the following section after section 337:

337A. Persistent family violence

(1) Subject to subsection (2), upon an indictment for persistent family violence, the accused person may be convicted of one or more of the following crimes or offences:

(a) assault;

(b) assault on pregnant woman;

(c) abduction;

(d) rape;

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- (e) stalking;
- (f) indecent assault;
- (g) wounding [*or* causing grievous bodily harm];
- (h) sexual intercourse with a person with a mental impairment;
- (i) an offence against section 8 of the *Family Violence Act 2004*;
- (j) an offence against section 9 of the *Family Violence Act 2004*.

(2) The accused person may only be convicted of a crime or an offence specified in subsection (1) if the trial judge is satisfied, on the evidence adduced at trial, that the accused person was capable of being tried on indictment for that crime or being convicted summarily for that offence.

(f) by inserting in Appendix A after

Wounding or causing grievous bodily harm.

the following item:

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Persistent family violence.

(g) by inserting in Appendix D after

| | |
|-------------|-------------------------------------------------------------------|
| Section 170 | Committing an unlawful act intended to cause grievous bodily harm |
|-------------|-------------------------------------------------------------------|

the following item:

| | |
|--------------|----------------------------|
| Section 170A | Persistent family violence |
|--------------|----------------------------|

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s. 5 Part 3 – Evidence (Children and Special Witnesses) Act 2001 Amended

**PART 3 – EVIDENCE (CHILDREN AND SPECIAL
WITNESSES) ACT 2001 AMENDED**

5. Principal Act

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

6. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following paragraphs after paragraph (a) in the definition of *defendant*:
 - (ab) in respect of an application to a court under Part 3 of the *Family Violence Act 2004* to vary, extend or revoke a police family violence order, the person to whom the relevant police family violence order is issued; or
 - (ac) in respect of an application to a court under Part 4 of the *Family Violence Act 2004* for a family violence order, an interim family violence order or a variation, extension or revocation of a family violence order, the person

*No. 79 of 2001

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against whom the family violence order is made or is sought to be made; or

- (ad) in respect of an order, admitting a person to bail, varying or adding a condition of an order for bail or revoking an order for bail, under the *Bail Act 1994*, *Criminal Code Act 1924* or *Justices Act 1959*, made in relation to a proceeding in which a person has been charged with a family violence offence, the person in respect of whom the order is made; or
- (b) by inserting the following definition after the definition of *defendant*:

family violence offence has the same meaning as in the *Family Violence Act 2004*;
- (c) by omitting “, within the meaning of the *Family Violence Act 2004*” from paragraph (ab) of the definition of *prescribed proceeding*;
- (d) by inserting the following paragraph after paragraph (ac) in the definition of *prescribed proceeding*:
 - (ad) an application in respect of an order, admitting a person to bail, varying or adding a condition of an order for bail or revoking an order for bail, under the *Bail Act*

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1994, Criminal Code Act 1924 or Justices Act 1959, in which the person in respect of whom the order is made has been charged with a family violence offence; or

7. Section 8 amended (Special witness)

Section 8 of the Principal Act is amended by omitting subsection (7).

8. Part 4: Heading amended

Part 4 of the Principal Act is amended by inserting in the heading to that Part “**AND APPLICATIONS**” after “**OFFENCES**”.

9. Section 8A amended (Cross-examination of victims of certain offences and applications)

Section 8A of the Principal Act is amended as follows:

(a) by inserting the following subsection after subsection (1):

(1A) In an application referred to in paragraph (ac) or (ad) of the definition of *prescribed proceeding* in section 3, a defendant referred to in paragraph (ab), (ac) or (ad) of the definition of *defendant* in section 3 is not to be permitted to cross-examine a person who is the alleged victim

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of any family violence offence to which the application relates unless the cross-examination is undertaken by counsel.

- (b) by omitting from subsection (2) “any such witness” and substituting “a witness who is referred to in subsection (1), or a person who is referred to in subsection (1A)”.

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Part 4 – Family Violence Act 2004 Amended

PART 4 – FAMILY VIOLENCE ACT 2004 AMENDED

10. Principal Act

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

11. Section 31 amended (Procedure in relation to hearing and determining applications)

Section 31 of the Principal Act is amended by inserting after subsection (2A) the following subsection:

- (2B) Despite this section, section 8A of the *Evidence (Children and Special Witnesses) Act 2001* applies in respect of the cross-examination of a witness who is the alleged victim of any prescribed proceeding, as defined in that Act, for a family violence offence to which an application under Part 3 or 4 relates.

*No. 67 of 2004

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Part 5 – Repeal of Act

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PART 5 – REPEAL OF ACT

12. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.