

## DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

### *Family Violence Reforms Bill 2022*

*\*check Hansard for delivery\**

Mr Speaker, I move that the Bill now be read a second time.

This Bill continues our Government's clear commitment to implement legislative reform to strengthen legal responses to family and sexual violence.

The Bill delivers on an important election commitment to create a new declaration for repeat family violence offenders, and the commitment to be able to mandate participation in behaviour change programs as part of a Family Violence Order.

This is in addition to delivering on our commitments under the *Safe Homes, Families, Communities: action plan for family and sexual violence 2019-2022*.

I will now provide detail on the key amendments introduced in this important reform.

#### ***The Serial Family Violence Perpetrator Declaration***

Mr Speaker, the Bill will insert a new part 4A in the *Family Violence Act 2004* to provide a 'serial family violence perpetrator' declaration framework.

It will deliver the second phase of a key Government election commitment, which began with the creation of a new 'persistent family violence' indictable offence, at section 170A of the *Criminal Code Act 1924* (the *Criminal Code*). It will also see Tasmania become the second Australian jurisdiction to implement such a framework, following Western Australia which commenced in 2020.

The serial family violence perpetrator declaration is intended to identify perpetrators who continue to disregard the law and commit family violence offences against a current or past spouse or partner. It will enhance accountability by ensuring stricter interventions and oversight from the justice system.

The framework will be applicable to a perpetrator aged 18 years or older who has committed at least:

- two indictable family violence offences occurring on separate days;
- three indictable or summary family violence offences occurring on separate days; or
- been convicted of persistent family violence under section 170A of the *Criminal Code*.
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The third threshold is included separately because, although the crime of persistent family violence is an indictable offence, a conviction requires a finding that a perpetrator committed at least three separate occasions of family violence which, if convicted individually, would otherwise satisfy the first two thresholds.

Mr Speaker, the offending thresholds respond to contemporary data and expert analysis. Research by the Australian Institute of Criminology indicates that a significant proportion of family violence offenders reoffend, and the likelihood and rate of reoffending increases significantly with each repeat offence.

Our Government acknowledges that Tasmania is not immune. Last year, 28 per cent of family violence perpetrators committed at least one more offence within a year of their first offence. Looking over a 10 year period, the position increases markedly, to 58 per cent of perpetrators having committed at least two offences. Of even greater concern is that just 2.5 per cent of perpetrators accounted for around 15 per cent of all incidents in the last 10 years.

This means a small percentage of serial family violence perpetrators are responsible for a great number of reported family violence incidents.

Over time, patterns of serial summary offending can also lead to an escalation in the severity of offending. This pattern is strongly linked to an increased likelihood that a perpetrator will commit strangulation, choking or suffocation offences.

As the Sentencing Advisory Council observed in its recent report on the matter; strangulation, choking or suffocation is a significant risk factor for future homicide. This is why I have recently introduced a Bill to criminalise strangulation as a stand-alone offence, to recognise the significance of this conduct, as part of this important suite of family and sexual violence related reforms.

Mr Speaker, in addition to escalations in family violence offending, many serial offenders go on to commit non-family violence offences. They become generalist offenders. This is particularly so among individuals who become serial offenders before they turn 30.

I want to acknowledge the gravity of the long-lasting and significant impacts caused by serial offending on victim-survivors. It is clear that an intervention response focusing on serial offenders is required to reduce reoffending, to benefit victims, and to significantly reduce the likelihood of violence in our community.

By enabling the serial family violence perpetrator framework to apply to perpetrators who have committed multiple summary offences or multiple indictable offences, the courts and justice system will have increased capacity to respond to serial offending. This will assist with accountability and deterrence for serial offenders.

Mr Speaker, the framework also provides appropriate safeguards.

Firstly, under section 29A the courts can only consider making a declaration at a time when a person has been convicted of a family violence offence. And that can only occur if the perpetrator satisfies the offending thresholds I mentioned earlier. These thresholds must also occur within the past 10 years unless exceptional circumstances apply.

If a perpetrator meets these requirements, the framework provides that a court is to then be of the opinion that a declaration is 'warranted', having regard to –

- (a) the nature and circumstances of the family violence offences relied upon in the declaration application;

- (b) the risk that the offender may commit further family violence offences;
- (c) the offender's antecedents and character; and
- (d) any other matter that the court or judge considers relevant.

In consideration of these factors and as part of its risk assessment, the Bill provides that a court may order that a report be prepared by Corrective Services or another person.

Where a court is of the opinion that a declaration is warranted, it will have discretion to determine the duration of the declaration for a period of up to five years. The declaration will be recorded on the perpetrator's criminal record.

The framework further provides, at section 29D, a mechanism for review of a declaration, for it to be discharged early in exceptional circumstances, or for the declaration's duration to be extended.

Mr Speaker, a declaration has consequences for a perpetrator over and above any sentence imposed for the conviction that caused the application, to address the serial nature of their family violence offending.

Part 9 of the Bill will amend the *Firearms Act* to prevent a person from holding a firearms licence for the duration of their declaration. Firearms ownership is a privilege. It is established that perpetrators with access to firearms are likely to commit more severe family violence than those who do not. The Government considers that serial perpetrators have forfeited their right to possess a firearm for the duration of the court's declaration.

If the perpetrator is sentenced to a period of imprisonment for their family violence offending, the amendment to section 72 of the *Corrections Act* provides that it will be a factor considered by the Parole Board in a parole eligibility assessment.

The Bill amends section 13 of the *Family Violence Act*. If the perpetrator commits another family violence offence while the declaration is active, that is to be regarded by the court as an aggravating factor at sentencing for that family violence offence. A similar, technical amendment will be made to existing section 13(a) of the *Family Violence Act* to reflect this language, directing that the court 'is to' consider the aggravating factor, rather than the current discretion that the court 'may' consider it.

Together with the amendments to section 13 of the *Family Violence Act*, the Bill amends the *Dangerous Criminals and High Risk Offenders Act*, to provide that being a declared serial family violence perpetrator is a matter to be considered by the Supreme Court in determining whether to make a High Risk Offender Order.

In addition to these immediate outcomes, the new part 4A in the *Family Violence Act* provides that a court will be directed to assess the making of a family violence order. This may include, as a condition, that the perpetrator is to be electronically monitored and/or that the declared perpetrator attend and participate in a rehabilitation program.

Mr Speaker, as I mentioned earlier, Tasmania will be the second jurisdiction in Australia, after Western Australia, to implement a serial family violence perpetrator declaration.

framework. Accordingly, and in response to consultation feedback, the Bill includes a statutory review provision, which is to commence five years after the framework's commencement.

A five year period was assessed as being of sufficient length to provide a reasonable number of persons whose declaration has run its entire duration, thereby enabling for a longitudinal evaluation.

As is usual for statutory review provisions, the review report will be required to be tabled in both Houses of Parliament within 10 sitting days of it being received by the Minister for Justice.

### ***Behaviour Change Program Participation***

Mr Speaker, this leads me to the second key reform in this Bill.

Under Action 25 of the *Safe Homes, Families, Communities* action plan, the Government committed to introducing amendments allowing for mandated behaviour change program participation as part of a Family Violence Order.

The amendment to section 16 of the *Family Violence Act* will deliver on this commitment. Importantly, it will empower the court to engage a perpetrator in a rehabilitation program earlier, enabling a targeted intervention that addresses the perpetrator's behaviour. It will overcome an existing barrier where a court cannot order rehabilitation program participation until a conviction is recorded.

For the court to engage a person in a rehabilitation program as a family violence order condition, the Bill provides that the court must first order that a program assessment be undertaken to determine eligibility. Following the result of the assessment, the court must be satisfied that the person is both eligible to participate and that the program is available to participate in, at a suitable place and time.

To safeguard against a person not complying with an order, or potential increased risk of offending, the Bill provides that a court may require that the person report to Corrective Services.

With respect to programs available through Community Corrections, I note that there is a dedicated high-risk program, the Family Violence Offender Intervention Program; as well as a community-based low-medium risk program, EQUIPS – which stands for *Explore, Question, Understand, Investigate, Practice, Succeed*; as well as the dedicated Men Employing New Strategies program.

Importantly, under the *Safe Homes, Families, Communities* action plan, our Government has committed to funding these important programs.

### ***Miscellaneous amendments***

Mr Speaker, I now turn to the miscellaneous amendments included in this Bill.

In further amendments to the *Family Violence Act* under Part 2, section 4 of that Act is amended to expand the definition of 'harassing' to include "making unwelcome contact, directly or indirectly, with the person".

It is common for a police family violence order, or court issued family violence order, to contain an order that prevents one person from harassing another. This amendment is intended to ensure that the definition accurately reflects conduct generally understood to be harassment, to better capture it as a form of family violence.

Following this amendment, the Bill amends the definition of 'family violence' in section 7 of the Act by extending it to include reference to the crimes of:

- aggravated assault (in s183 of the *Criminal Code*);
- rape (in s185 of the *Criminal Code*);
- committing an unlawful act intended to cause bodily harm (in s170 of the *Criminal Code*); and
- wounding and causing grievous bodily harm (in s172 of the *Criminal Code*)
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This amendment is intended to provide greater clarity to the existing definition, to avoid a judge considering they are limited in the conduct that they can consider as constituting family violence when imposing a sentence.

Importantly, it will improve legal clarity when sentencing for convictions under the crime of persistent family violence, at section 170A of the *Criminal Code*. An associated consequential amendment is also made by the Bill to update the alternative convictions provision in section 337A of the *Criminal Code* and reflect these changes.

Moreover, for avoidance of doubt and to reflect that conduct listed under the definition of family violence is intended to be non-exhaustive, the Bill will also insert a new catch-all of "any other conduct that causes personal injury".

Section 14 of the *Family Violence Act* is amended to expand the types of conditions that can be made on a police family violence order (PFVO). At present, section 14(3) of the Act provides a list of conduct that police can order a person to refrain from doing. However, the list does not incorporate all conduct captured under the definition of family violence.

This amendment provides that a person who has a PFVO issued against them can be ordered to refrain from committing any of the acts under the definition of family violence. It will future proof the police family violence framework by automatically capturing any future changes to the definition of family violence.

Mr Speaker, Parts 3, 7, 8 and 11 of the Bill will make important, technical amendments to reflect, in particular, the introduction of the crime of 'persistent family violence' under section 170A of the *Criminal Code*.

Mr Speaker, Part 5 of the Bill will amend the *Criminal Code*. Importantly, the Bill omits section 54 from the *Criminal Code*. This is an antiquated provision concerning "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 conduct is family violence. It is explicitly recognised at section 7(c) of the *Family Violence Act*. Section 54 of the *Criminal Code* is outdated and does not accord with the current expectation of what amounts to unlawful conduct.

Lastly, Part 10 of the Bill will amend section 61 of the *Justices Act*. This amendment will revise existing subsection (2)(a)(vi) to improve clarity in its operation. This amendment will clarify section 61(2)(a)(vi) to refer generally to the commission of an offence that involves, or relates to, family violence.

Mr Speaker, broad public and targeted consultation processes were undertaken on a draft version of this Bill and I sincerely thank those who provided feedback and input to help inform the development of this important family violence reform.

Our Government is committed to ensuring that our laws protect victim-survivors of family violence and ensure perpetrators appropriately face the consequences of their actions. The provisions in this Bill will improve our justice system response and provide more opportunities for the court to intervene and engage rehabilitation for perpetrators.

I commend the Bill to the House.