

CLAUSE NOTES

Family Violence Reforms Bill 2022

PART 1 - PRELIMINARY	
Clause 1	Short title Specifies the name of the proposed Act.
Clause 2	Commencement Provides for the Act to commence by proclamation.
PART 2 – FAMILY VIOLENCE ACT 2004 AMENDED	
Clause 3	Principal Act Provides that the Principal Act that is being amended in Part 2 is the <i>Family Violence Act 2004</i> .
Clause 4	Section 4 amended (Interpretation) Inserts new definitions including 'Director of Corrective Services', 'DPP', 'rehabilitation program', 'serial family violence declaration', and 'serial family violence perpetrator'. The section also expands the existing definition of 'harassing'.
Clause 5	Section 7 amended (Family violence) Amends section 7(a) by expanding the definition of 'family violence' to include reference to specific crimes in the <i>Criminal Code Act 1924</i> , including, for example, assault, including (but not limited to) sexual assault, indecent assault and aggravated assault; rape; and penetrative sexual abuse of a child, a young person or a person with a mental impairment. Inserts a new subsection 7(a)(viii) to provide for 'any other conduct that causes personal injury'.
Clause 6	Section 13 amended (Sentencing factors) Section 13(a) is amended and includes a new aggravating factor at 13(a)(iii) 'the fact that the offender is a serial family violence perpetrator'.
Clause 7	Section 13A amended (Recording of family violence offences and serial family violence perpetrators)

	Provides that section 13A includes a new subsection 13A(1A) to provide that the court is to direct that a person declared a serial family violence perpetrator is to have that declaration recorded on the person's criminal record.
Clause 8	<p>Section 14 amended (Police family violence orders)</p> <p>Inserts a new paragraph (g) in section 14(3) to expand the conditions that may be included in a police family violence order. Under the new paragraph (g) the person against whom the PFVO is made is to 'refrain from engaging in any other conduct specified in the order that constitutes, or may constitute, family violence'.</p>
Clause 9	<p>Section 16 amended (Family violence orders)</p> <p>Provides that section 16(3) is amended to include a new paragraph (d); and to insert new subsections 16(3A) and 16(3B).</p> <p>New paragraph (d) enables the court, when making a family violence order, to include as a condition of that order that the person against whom it is made is to 'attend and participate in a rehabilitation program and in doing so comply with the reasonable directions of a person employed or engaged to conduct the program'.</p> <p>New subsection 16(3A) requires the court, prior to imposing a condition under section 16(3)(d), to order that: a rehabilitation program assessment be completed (by the Director of Corrective Services or another person) for the person against whom the condition will be made; satisfy itself that the person is eligible to participate in the rehabilitation program; and satisfy itself that the rehabilitation program is available for the person to participate in at a suitable place and time.</p> <p>New subsection 16(3B) enables the court to require the person (against whom a section 16(3)(d) condition is made) whilst attending and participating in the rehabilitation program, to 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.</p>
Clause 10	<p>Part 4A inserted</p> <p>Provides for a new "Part 4A – Declaration of Serial Family Violence Perpetrator" in the Principal Act.</p> <p>Part 4A provides for a new 'declaration of serial family violence perpetrator' framework, under sections 29A, 29B, 29C, 29D, and 29E.</p> <p>Section 29A. Court or judge may declare offender to be serial family violence perpetrator.</p>

Section 29A provides that a court or judge may declare an offender to be a serial family violence perpetrator. Subsections (1)–(7) specify the criteria for making a declaration.

- Subsection (1) provides that section 29A applies to an offender before the court or a judge who is convicted of a family violence offence, or is before the court or judge for sentence after being convicted of a family violence offence.
- Subsection (2) provides that the offender must be aged 18 years or older, been convicted of a certain number of family violence offences, and that the court or judge is of the opinion that the declaration is warranted to declare the offender to be a serial family violence perpetrator.
- Subsection (3) lists the factors that the court or judge is to have regard to in determining if a declaration is warranted.
- Subsection (4) provides that the family violence offences taken into account by the court or judge under subsections (2) must have been committed within the past 10 years, unless exceptional circumstances exist.
- Subsection (5) provides factors that the court or judge is to have regard to in determining if exceptional circumstances exist under subsection (4).
- Subsection (6) provides that a court or judge may order 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 may have regard to that report for the purposes of making a determination under subsection (2)(c).
- Subsection (7) provides that if the court or judge obtains a report under subsection (6), a copy of the report is to be provided to the prosecution (unless the prosecution prepared the report), and the offender.

Section 29B. Duration of declaration

Section 29B provides that a serial family violence perpetrator declaration may be in force up to five years, as determined by the court.

Section 29C. Making of orders if declaration

Section 29C provides that if court or judge declares an offender to be a serial family violence perpetrator, it is to make a family violence order if satisfied that the offender meets the criteria at section 16(1); and any other order it had the power to make. The section provides that, when determining whether to make any other order, a court or judge may 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.

Section 29D. Review of declaration of serial family violence perpetrator

	<p>Section 29D provides a process for a serial family violence perpetrator declaration to be reviewed. An application may be made by either the Director of Public Prosecutions or the declared offender. This review mechanism provides that pursuant to the review application process, a court or judge may discharge the declaration, extend its duration by up to five years as the court or judge determines, or refuse to make an order. The review application process requires a court or judge to take into account the matters that would be taken into account by a court or judge when considering whether to make such a declaration under section 29A(3).</p> <p>Section 29E. Review of Part 4A</p> <p>Section 29E provides a statutory review mechanism, for the Minister to cause a review to be undertaken of Part 4A as soon as practicable five years after the Part commenced. It requires the person who undertakes the review to provide a report to the Minister as soon as practicable after the review is completed; and the Minister, upon receiving the report, to table that report in both Houses of Parliament within 10 sitting-days of its receipt.</p>
Clause 11	<p>Section 39A repealed</p> <p>Repeals section 39A of the Principal Act (review of effectiveness of use of electronic monitoring).</p>
PART 3 – COMMUNITY PROTECTION (OFFENDER REPORTING) ACT 2005 AMENDED	
Clause 12	<p>Principal Act</p> <p>Provides that in Part 3 the Principal Act that is being amended is the <i>Community Protection (Offender Reporting) Act 2005</i>.</p>
Clause 13	<p>Schedule 2 amended (Class 2 offences)</p> <p>Inserting in Schedule 2 reference to section 170A of the <i>Criminal Code</i> (persistent family violence), where the commission of that offence involved an unlawful family violence act involving an offence against another provision listed in the Schedule.</p>
Clause 14	<p>Schedule 3 amended (Class 3 offences)</p> <p>Inserting in Schedule 3 reference to section 170A of the <i>Criminal Code</i> (persistent family violence), where the commission of that offence involved an unlawful family violence act involving an offence against another provision listed in the Schedule.</p>
PART 4 – CORRECTIONS ACT 1997 AMENDED	
Clause 15	<p>Principal Act</p>

	Provides that in Part 4 the Principal Act that is being amended is the <i>Corrections Act 1997</i> .
Clause 16	Section 3 amended (Interpretation) Inserts a definition of 'family violence offence' in the Principal Act.
Clause 17	Section 72 amended (Release on parole) Inserts in section 72(4) of the Principal Act a new paragraph (ba). The new paragraph (ba) provides for the Parole Board to consider, when determining whether or not a prisoner should be released on parole, whether the prisoner (if they are serving a period of imprisonment for a family violence offence) has been declared a serial family violence perpetrator within the meaning of the <i>Family Violence Act 2004</i> .
Clause 18	Section 87A amended (Eligible persons register) Provides that under section 87A(7) of the Principal Act, the definition of 'family violence offence' is omitted.
PART 5 – CRIMINAL CODE ACT 1924 AMENDED	
Clause 19	Principal Act Provides that in Part 5 the Principal Act that is being amended is the <i>Criminal Code Act 1924</i> .
Clause 20	Schedule 1 amended Provides a series of amendments to Schedule 1 of the Principle Act: <ul style="list-style-type: none"> (a) Omits section 54 from the Principle Act; (b) Inserts at section 337A(1) a new paragraph (ab), referring to 'aggravated assault'; (c) Inserts at section 337A(1) a new paragraph (ba), referring to 'committing an unlawful act intended to cause bodily harm'; (d) Inserts at section 337A(1) a new paragraphs (k), (l), (m), which respectfully list 'attempting to commit any crime or offence referred to in paragraphs (a) to (j), both inclusive'; 'inciting a person to commit any crime or offence referred to in paragraphs (a) to (j), both inclusive'; and 'being an accessory after the fact to any offence or crime referred to in paragraphs (a) to (j), both inclusive'.
PART 6 – DANGEROUS CRIMINALS AND HIGH RISK OFFENDERS ACT 2021 AMENDED	
Clause 21	Principal Act

	Provides that in Part 6 the Principal Act that is being amended is the <i>Dangerous Criminals and High Risk Offenders Act 2021</i> .
Clause 22	<p>Section 36 amended (Matters to be considered in determining whether to make HRO order)</p> <p>Inserts a new paragraph (ha) which provides that 'any serial family violence declaration under section 29A of the <i>Family Violence Act 2004</i> that is in force in relation to the offender' is a matter to be considered by the Supreme Court.</p>
PART 7 – EVIDENCE ACT 2001 AMENDED	
Clause 23	<p>Principal Act</p> <p>Provides that in Part 7 the Principal Act that is being amended is the <i>Evidence Act 2001</i>.</p>
Clause 24	<p>Section 194K amended (Publication of certain identifying particulars prohibited)</p> <p>Inserts a new paragraph (ba).</p> <p>Paragraph (ba) will expand the application of section 194K to any person in respect of whom the crime is alleged to have been committed, or any witness or intended witness, other than the defendant, in those proceedings, in circumstances where a crime is alleged to have been committed under section 170A of the <i>Criminal Code</i> (persistent family violence) 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'.</p>
PART 8 – EVIDENCE (CHILDREN AND SPECIAL WITNESSES) ACT 2001 AMENDED	
Clause 25	<p>Principal Act</p> <p>Provides that in Part 8 the Principal Act that is being amended is the <i>Evidence (Children and Special Witnesses) Act 2001</i>.</p>
Clause 26	<p>Section 3 amended (Interpretation)</p> <p>Provides that section 3(b) of the Principal Act is amended to insert reference to <i>Criminal Code Act 1926</i> sections 170A (persistent family violence) and 192 (stalking and bullying).</p>
PART 9 – FIREARMS ACT 1996 AMENDED	
Clause 27	<p>Principal Act</p> <p>Provides that in Part 9 the Principal Act that is being amended is the <i>Firearms Act 1996</i>.</p>
Clause 28	Section 29 amended (General restrictions on granting licence)

	Inserts a new paragraph (fa) to include as a restriction consideration (for the granting of a firearms licence) if the person is a serial family violence perpetrator within the meaning of the <i>Family Violence Act 2004</i> .
Clause 29	Section 51 amended (Cancellation of licence) Amends section 51 to insert a new paragraph (b), to automatically cancel a firearms licence if the holder of the licence is a serial family violence perpetrator within the meaning of the <i>Family Violence Act 2004</i> .
PART 10 – JUSTICES ACT 1959 AMENDED	
Clause 30	Principal Act Provides that in Part 10 the Principal Act that is being amended is the <i>Justices Act 1959</i> .
Clause 31	Section 61 amended (Interpretation) Provides that section 61(2)(a) of the Principal Act is amended to revise subparagraph (vi), to clarify that an 'affected person' as defined under subsection (2) includes a person, against whom or in respect of whom another person is charged with an offence, the commission of which involves, or relates to, family violence within the meaning of the <i>Family Violence Act 2004</i> .
PART 11 – SENTENCING ACT 1997 AMENDED	
Clause 32	Principal Act Provides that in Part 11 the Principal Act that is being amended is the <i>Sentencing Act 1997</i> .
Clause 33	Section 11A amended (Matters to be taken or not taken into account in sentencing certain sexual offenders) Provides that section 11A(1) (definition of sexual offence) in the Principal Act is amended to insert a new paragraph (b), to include reference to section 170A of the <i>Criminal Code</i> (persistent family violence), in circumstances where the commission of section 170A involved a crime or attempt to commit a crime referred to in section 11A(1)(a).
PART 12 – REPEAL OF ACT	
Clause 34	Provides that the Act is automatically repealed one year after the last uncommenced provision of this Act commences.