

TASMANIA

FAMILY VIOLENCE AMENDMENT BILL 2017

CONTENTS

1. Short title
2. Commencement
3. Principal Act
4. Section 13A amended (Recording of family violence offences)
5. Sections 13B and 13C inserted
 - 13B. Effect of failure to submit evidence
 - 13C. Limited liability of affected person for instigating, &c., breach of protection order
6. Section 16 amended (Family violence orders)
7. Section 39A inserted
 - 39A. Review of effectiveness of use of electronic monitoring
8. Repeal of Act

FAMILY VIOLENCE AMENDMENT BILL 2017

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
17 October 2017

*(Brought in by the Minister for State Growth, the Honourable
Matthew Guy Groom, acting for and on behalf of the Minister
for Justice)*

A BILL FOR

An Act to amend 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:

1. Short title

This Act may be cited as the *Family Violence Amendment Act 2017*.

2. Commencement

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

Family Violence Amendment Act 2017
Act No. of 2017

s. 3

3. Principal Act

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

4. Section 13A amended (Recording of family violence offences)

Section 13A of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “or judge” after “and the court”;
- (b) by inserting in subsection (1) “or judge” after “offence, the court”;
- (c) by inserting in subsection (2) “or judge” after “A court”;
- (d) by omitting from subsection (2) “its” and substituting “its, his or her”;
- (e) by omitting from subsection (2) “it” and substituting “the court or judge”;
- (f) by omitting from subsection (3) “court.” and substituting “court or judge.”.

5. Sections 13B and 13C inserted

After section 13A of the Principal Act, the following sections are inserted in Part 2:

*No. 67 of 2004

13B. Effect of failure to submit evidence

(1) If –

- (a) a person is charged with a family violence offence (the *first charge*) in a court of summary jurisdiction but is acquitted because the prosecution has informed the court that it will not be offering any evidence in support of the charge; and
- (b) the person is charged with another family violence offence (the *second charge*), whether in a court of summary jurisdiction or on indictment –

that acquittal does not prevent the admission, in a hearing on the second charge, of first charge evidence as evidence of the relationship between the person and another person, tendency evidence or coincidence evidence.

(2) In this section –

coincidence evidence has the same meaning as in the *Evidence Act 2001*;

first charge evidence means evidence that could have been offered by the prosecution in a hearing on the first charge;

Family Violence Amendment Act 2017
Act No. of 2017

s. 5

tendency evidence has the same meaning as in the *Evidence Act 2001*.

13C. Limited liability of affected person for instigating, &c., breach of protection order

- (1) Despite section 73 of the *Justices Act 1959*, an affected person named in an external family violence order, an interim FVO, an FVO, a PFVO or a DVO who –
- (a) does any act or makes any omission for the purpose of enabling or aiding a prescribed person to commit a relevant family violence offence in relation to that external family violence order, interim FVO, FVO, PFVO or DVO; or
 - (b) abets a prescribed person in committing a relevant family violence offence in relation to that external family violence order, interim FVO, FVO, PFVO or DVO; or
 - (c) instigates a prescribed person to commit a relevant family violence offence in relation to that external family violence order, interim FVO, FVO, PFVO or DVO –

may only be taken to be guilty, found guilty or convicted, in accordance with

Family Violence Amendment Act 2017
Act No. of 2017

s. 5

that section, of that relevant family violence offence if the affected person knew, or ought to have known, that his or her conduct in so enabling, aiding, abetting or instigating the commission of that relevant family violence offence by the prescribed person could reasonably be expected to place an affected child named in the order in a position of risk.

(2) In this section –

DVO has the same meaning as in the
Domestic Violence Orders
(National Recognition) Act 2016;

position of risk means a position
where –

- (a) the affected child named
in the external family
violence order, interim
FVO, FVO, PFVO or
DVO referred to in
subsection (1) might
witness family violence;
or
- (b) the safety, psychological
wellbeing or interests of
such an affected child
might be affected by
family violence;

prescribed person means the person
against whom the external family
violence order, interim FVO,

Family Violence Amendment Act 2017
Act No. of 2017

s. 6

FVO, PFVO or DVO referred to in subsection (1) is made;

relevant family violence offence
means an offence consisting of the contravention of the external family violence order, interim FVO, FVO, PFVO or DVO referred to in subsection (1).

6. Section 16 amended (Family violence orders)

Section 16 of the Principal Act is amended as follows:

- (a) by omitting from subsection (3)(b) “possession.” and substituting “possession;”;
- (b) by inserting the following paragraph after paragraph (b) in subsection (3):
 - (c) submit to being electronically monitored by wearing and not removing, or always carrying, an electronic device which allows –
 - (i) the Commissioner of Police; or
 - (ii) a police officer, State Service officer, State Service employee or other person, or a person of a class of persons (whether police officers, State

Family Violence Amendment Act 2017
Act No. of 2017

s. 6

Service officers, State
Service employees or
other persons), authorised
by the Commissioner of
Police –

to find or monitor the
geographical location of the
person.

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

(4) Despite subsections (2) and (3),
the court may only include in an
FVO a condition of the kind
referred to in subsection (3)(c) –

(a) on the application of a
police officer who is
presenting the case for the
applicant for the FVO or,
in any other case, the
Commissioner of Police;
and

(b) if the court is satisfied
that the person to be
electronically monitored –

(i) previously has
been found guilty
of a family
violence offence;
or

Family Violence Amendment Act 2017
Act No. of 2017

s. 7

- (ii) currently is charged with a family violence offence; or
- (iii) has a history of committing family violence.

7. Section 39A inserted

After section 39 of the Principal Act, the following section is inserted in Part 5:

39A. Review of effectiveness of use of electronic monitoring

- (1) As soon as practicable after the end of the relevant period, the Minister is to cause a review to be conducted in respect of the effectiveness of the inclusion in FVOs of a condition that the person who is subject to an FVO submit to being electronically monitored, as specified in section 16(3)(c).
- (2) The review is to be completed, and a report on the outcome of the review to be provided to the Minister, no later than 6 months after the end of the relevant period.
- (3) The Minister is to cause the report on the outcome of the review to be tabled in each House of Parliament within 10 sitting-days after receiving it.

Family Violence Amendment Act 2017
Act No. of 2017

s. 8

(4) In this section –

relevant period means the period of 18 months commencing on the commencement of the *Family Violence Amendment Act 2017*.

8. Repeal of Act

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