DRAFT SECOND READING SPEECH

HON. MATTHEW GROOM MP

Family Violence Amendment Bill 2017

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

This Bill forms part of a series of reforms by this Government to improve legal responses to better protect victims of family violence and to hold perpetrators of family violence to account.

This Bill makes a number of changes to enhance the *Family Violence Act 2004*.

The Government previously released a Consultation Paper, *Family Violence: Strengthening Our Legal Responses*, which asked for feedback on a range of potential reform options to strengthen Tasmania's legal responses to family violence.

The proposed changes to Tasmania's family violence legislation have been developed following careful consideration of the responses received to that consultation paper.

Two of the amendments in this Bill draw on issues identified in the consultation paper. These are:

- breaches of protection orders by protected persons; and
- effects of tendering no evidence in family violence cases.

This Bill also introduces the option to include an electronic monitoring condition in a family violence order.

Tasmania has partnered with the Commonwealth to trial innovative technology solutions to increase perpetrator accountability and improve safety of victims and children experiencing family violence.

I will now turn to the amendments contained in the Bill before the House.

Clause 4 of the Bill amends section 13A of the *Family Violence Act 2004*.

Under the present law, when a person pleads guilty or is found guilty of a family violence offence, the court is to direct that the perpetrator's criminal record identifies the offence as a family violence offence. The notation of a family violence offence on a perpetrator's criminal history currently only applies to the recording of family violence offences dealt with summarily. That is, charges dealt with in the Magistrates Court.

This Bill amends section 13A of the Act by inserting reference to a judge. This provides for family violence offences dealt with by the Supreme Court to be identified on a perpetrator's criminal record as family violence offences.

Clause 5 inserts sections 13B and 13C in the *Family Violence Act 2004*.

New section 13B provides a response to a particular issue that may arise in relation to summary family violence offences dismissed in the Magistrates Court as a result of the prosecution tendering no evidence.

There can be many reasons why prosecution tender no evidence for family violence offences. In some cases the complainant may be unwilling to give evidence as she or he is afraid of the consequences if she or he does give evidence. In other cases the complainant may forgive the defendant for what she or he considers to be a one-off occasion of family violence and wish to continue the relationship with the defendant.

At present, when the prosecution informs the court it will tender no evidence in relation to a summary charge for a family violence offence, this results in an acquittal being recorded for the offence.

The entry of an acquittal prevents any future prosecution of the charge and prevents the prosecution from relying on the evidence that would have been tendered in the discontinued charge as relationship, tendency or coincidence evidence in court proceedings for a later family violence offence by the same defendant.

The new provision provides that where the prosecution tenders no evidence for an alleged family violence offence and the charge is discontinued, the evidence that would have been led had that matter proceeded may be admissible as relationship, tendency or coincidence evidence in any subsequent family violence charges against the perpetrator.

This change may enable the prosecution to lead evidence of the discontinued charge in order to demonstrate a pattern of family violence. This can assist the court to understand a perpetrator's state of mind or a tendency for the perpetrator to act in a certain way.

Madam Speaker, this change is not without constraints. The evidence of the discontinued charge that is sought to be admitted in respect of a later charge against the same defendant will be limited in criminal proceedings by the exclusionary restrictions on the use of tendency and coincidence evidence that already exist under the *Evidence Act 2001*.

This proposed amendment will assist in putting a family violence offence in context. For example, following an alleged series of minor assaults a complainant may not want to give evidence in respect of charges that police have laid against the perpetrator.

As a result, the prosecution will tender no evidence on those charges, and an acquittal will be entered. However, at a later point in time, the complainant may be subject to a far more serious assault at the hands of the same perpetrator.

In situations like this it is important for the prosecution to be able to demonstrate that the later assault is not an isolated incident and to reveal the escalating nature of family violence in the relationship between the complainant and defendant.

Madam Speaker, this section is limited to family violence offences. A family violence offence is defined by the *Family Violence Act 2004* to mean any offence the commission of which constitutes family violence.

This provision applies only where the prosecution tells the court that no evidence will be tendered in support of the family violence offence. Where evidence has been offered or there has been a hearing on the merits for a family violence charge an acquittal for the matter will be conclusive, and this provision will not apply.

Further, the charge for which no evidence is tendered will not be able to be resurrected at a later time, even though the evidence may be able to be used for limited purposes in respect of another family violence charge.

This Bill also inserts a new section 13C into the *Family Violence Act 2004*.

At present under section 73 of the *Justices Act 1959* a victim of family violence who has obtained a protection order under the Act can be charged with committing the offence of instigating, abetting or aiding the breach of a protection order, if they are suspected of being complicit in the breach.

Such a charge could arise if the protected person agrees to meet with the person named in the order or invites that person to visit a place from which he or she is barred under the protection order.

Madam Speaker, the basis for the present law arises from the principle that all parties to a protection order must observe its conditions without exception. Protection orders, such as a family violence order or a police family violence order made under the Act are designed to help victims of family violence and the ability for a victim of family violence to waive that protection should be discouraged.

However, the dynamics and impacts of family violence may result in circumstances where a protected person is pressured by the person named on the order to have contact, or the protected person may genuinely believe that the person against whom an order has been made has changed and they wish to continue their relationship with that person.

Consultation on this issue highlighted the risk that, where charges might be laid against a victim of family violence, this may result in victims underreporting breaches of protection orders for fear of prosecution, potentially victimising already vulnerable people and resulting in a loss of confidence in the legal system.

The new section 13C removes the possibility of a protected person being taken to be guilty, found guilty or convicted as an accessory to a breach of a protection order. The exception to this will be when a protected person knew, or ought to have known, that their actions place an child named in the order in a position of risk.

The effect of this provision is that the option for police to charge a protected person with accessorial liability is reserved for situations where the child named on the protection order might witness family violence or their safety, psychological wellbeing or interests might be affected by family violence.

I will now address the new electronic monitoring condition that may be included in a family violence order made under the Act.

This Bill amends section 16 of the Act to provide that an electronic monitoring condition may be included in a family violence order.

Under the Act, a court may make a family violence order if satisfied that a person has committed family violence and that they may again commit family violence.

A family violence order may be made by the court to impose conditions, such as limiting contact or prohibiting certain behaviour to prevent family violence between the affected person and perpetrator of family violence.

A condition providing for a family violence perpetrator to be electronically monitored will be in addition to any other conditions specified on the family violence order.

The imposition of an electronic monitoring condition as part of a family violence order will require an offender to wear or carry an electronic device which allows Tasmania Police or someone authorised to act on their behalf, to track their location.

A court may impose an electronic monitoring condition where satisfied that the person to be electronically monitored:

- has previously been found guilty of a family violence offence;
- is charged with a family violence offence; or
- has a history of committing family violence.

The Bill provides that only a police officer can apply to the court to make a family violence order that includes an electronic monitoring condition.

The period of electronic monitoring will be at the discretion of the court and appropriate to the circumstances of the family violence order being made.

Nothing in this Bill alters the existing process provided by the Act to vary a family violence order. A person against whom a family violence order has been made may at any time apply to a court for a variation of the order.

In relation to any contravention of the electronic monitoring condition it will be a matter for the court to deal with the breach of a family violence order as it sees fit in the circumstances of the individual case.

Finally, this Bill inserts section 39A which requires a review to evaluate the effectiveness of the inclusion of electronic monitoring as a condition in family violence orders. The review is to be undertaken 18 months after the commencement of this section.

Targeted consultation was undertaken on a draft version of this Bill and I thank those who made comments in response to the draft.

Madam Speaker, the provisions in this Bill provide more options to those involved with dealing with family violence offences and for perpetrators to be held to account for family violence offences.

Family violence is a serious issue affecting too many Tasmanians and this Government is committed to improving the protection and safety of victims and children of family violence and the way our justice system deals with family violence perpetrators.

I commend the Bill to the House.