

## CLAUSE NOTES

### *Family Violence Reforms Bill 2018*

#### Part I - Preliminary

##### Clause 1: Short title

Specifies the name of the proposed Act.

##### Clause 2: Commencement

Provides that the Act commences on Royal Assent.

#### Part 2 – Criminal Code Act 1924 Amended

##### Clause 3: Principal Act

Provides that the Principal Act that is being amended in this part is the *Criminal Code Act 1924*.

##### Clause 4: Schedule I amended (*Criminal Code*)

Amends the Principal Act in the following manner:

- a) Inserts in section 125A(4) a new paragraph (c) to provide that each member of the jury does not have to agree on the same unlawful sexual acts that constitute the unlawful sexual relationship with a young person for an offence under subsection (2).
- b) Inserts in section 125A a new subsection (6B) to provide that in sentencing a person for an offence under subsection (2), the sentencing judge is to make her or his own findings as to the nature and character of the unlawful sexual relationship and sentence the accused accordingly.

In doing so, the judge does not need to ask the jury which of the unlawful sexual acts the jury agreed were proved for the maintenance of the sexual relationship.

- c) Inserts a new section 170A which:
  - o creates the new offence of persistent family violence;
  - o defines certain terms and words for the purposes of the new offence and in particular, defines key terms and words such as “family violence offence”, “spouse or partner” and “unlawful family violence act”;
  - o provides that a person is guilty of the offence of persistent family violence if the accused person committed an unlawful family violence act in relation to his or her spouse or partner (including an ex-spouse or partner) on at least three occasions;

- o provides for the three occasions where an unlawful family violence act was committed that:
    - the dates on which, or the exact circumstances in which, any of the unlawful family violence acts were committed do not have to be proved;
    - the unlawful family violence acts do not need to be the same acts on each or any of the occasions;
    - each member of the jury does not have to agree on the same unlawful family violence acts that constitute persistent family violence for an offence under subsection (2);
  - o requires that an indictment for an offence against subsection (2) is to specify the period during which it is alleged the unlawful family violence acts were committed between the accused in relation to his or her spouse or partner and the indictment is not to include a separate charge for an unlawful family violence act during that period;
  - o allows an unlawful family violence act committed outside the State to be an unlawful family violence act for the purpose of section 170A provided the act would have been an unlawful family violence offence if committed in Tasmania and at least one of the required unlawful family violence acts in relation to the spouse or partner (including ex-spouse or partner) of the accused person was committed in Tasmania;
  - o provides that in sentencing a person for an offence under subsection (2), the sentencing judge is to make her or his own findings as to the nature and character of the unlawful family violence acts and sentence the accused accordingly. In doing so, the judge does not need to ask the jury which of the unlawful family violence acts the jury agreed were proved for the maintenance of the persistent family violence between the accused and his or her spouse or partner (including ex-spouse or partner);
  - o requires the written authority of the Director of Public Prosecutions to commence a prosecution for an offence against this section.
- d) Inserts section 337A in *Chapter XXXIX - Powers of Conviction Upon Particular Indictments*. Section 337A provides possible alternative convictions for other crimes or offences. The accused person can only be convicted of a crime or offence listed in section 337A(1) if the trial judge is satisfied that the accused was capable of being tried on indictment for that crime or offence based on the evidence presented during the trial for an offence against section 170A.
- e) The offence of persistent family violence is inserted in Appendixes A and D.

## Part 3 – Evidence (Children and Special Witnesses) Act 2001 Amended

### Clause 5: Principal Act

Provides that the Principal Act that is being amended is the *Evidence (Children and Special Witnesses) Act 2001*.

### Clause 6: Section 3 amended (Interpretation)

Amends section 3 of the Principal Act by:

- inserting in the definition of “defendant” three new paragraphs to identify who the defendant is in relation to applications under Parts 3 and 4 of the *Family Violence Act 2004* and in respect of an order for bail made under the *Bail Act 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;
- inserting a definition of ‘family violence offence’ as per the *Family Violence Act 2004* in section 3 of the Principal Act and omitting it from paragraph (ab) of “prescribed proceedings”;
- inserting in the definition of “prescribed proceeding” applications for an order for bail made under the *Bail Act 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.

### Clause 7: Section 8 amended (Special witness)

Omits subsection (7) from section 8 of the Principal Act.

### Clause 8: Heading amended

Amends the heading of Part 4 of the Principal Act to include applications.

### Clause 9: Section 8A amended (Cross-examination of victims of certain offences applications)

Inserts in section 8A of the Principal Act subsection (1A) to provide that a self-represented defendant is not permitted to cross-examine a witness who is the alleged victim of family violence during an application under Parts 3 or 4 of the *Family Violence Act 2004* or an application for an order for bail made under the *Bail Act 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.

## Part 4 – Family Violence Act 2004 Amended

### Clause 10: Principal Act

Provides that the Principal Act that is being amended is the *Family Violence Act 2004*.

## Clause 11: Section 31 amended (Procedure in relation to hearing and determining applications)

Inserts in section 31 of the Principal Act subsection (2B) to provide that the procedure in relation to hearing applications under Parts 3 or 4 is subject to section 8A of the *Evidence (Children and Special Witnesses) Act 2001*.

## Part 5 – Repeal of Act

### Clause 12: Repeal of Act

This automatically repeals the amending legislation after the Act commences. The provisions that the amending legislation inserts into the Principal Acts still remain in force after the repeal of the Amending Act.