

CLAUSE NOTES

Family Violence Amendment Bill 2017

- Clause 1: **Short title:**
Specifies the name of the proposed Act.
- Clause 2: **Commencement:**
Provides that the Act commences on Royal Assent.
- Clause 3: **Principal Act:**
Provides that the Principal Act is the *Family Violence Act 2004*.
- Clause 4: **Section 13A amended (Recording of family violence offences)**
Amends section 13A of the Principal Act by inserting reference to a judge to provide for a judge to direct that an indictable offence dealt with by the Supreme Court be recorded as a family violence offence on a perpetrator's criminal record.
- Clause 5: **Sections 13B and 13C inserted**
After section 13A of the Principal Act sections 13B and 13C are inserted.

13B. Effect of failure to submit evidence

This clause inserts new section 13B into the Principal Act. New section 13B provides a statutory override of the common law on the effect of an acquittal in a case where the prosecution tenders no evidence in respect of a family violence offence before the Magistrates Court.

Section 13B provides that evidence that might have been led in a case where an acquittal was entered on the basis of the prosecution tendering no evidence may be lead as relationship, tendency or co-incidence evidence in any subsequent court proceedings before the Magistrates Court or Supreme Court for a family violence offence.

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

This clause inserts new section 13C which limits accessorial liability of an affected person for committing a summary offence of instigating, abetting or aiding the breach of a protection order referred to in section 13C(1).

New section 13C provides that an affected person (a person against whom family violence is directed) who is protected by a:

- family violence order;
- police family violence order;
- interim family violence order;
- external family violence order; or
- a DVO;

can only be taken to be guilty, found guilty or convicted with committing a summary offence of instigating, abetting or aiding the breach of a protection

order if the affected person knew, or ought to have known that their conduct in so enabling the commission of a breach of a protection order could be reasonably expected to place an affected child named on the order in a position of risk.

This clause provides a number of definitions for new section 13C, including 'position of risk', 'prescribed person', 'DVO' and 'relevant family violence offence'.

Clause 6: Section 16 amended (Family violence orders)

Amends section 16 of the Principal Act by inserting a new paragraph in subsection (3) to provide that a court may require the person against whom a family violence order is made to wear or carry an electronic device which enables the police, or another person authorised by the Commissioner of Police, to locate or monitor the geographical position of that person.

New subsection (4)(a) provides that only a police officer on behalf of an applicant or in any other case the Commissioner of Police can apply to the court to make a family violence order that includes an electronic monitoring condition. In addition, new paragraph (b) in subsection (4) provides that 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.

Clause 7: Section 39A inserted

After section 39 of the Principal Act, section 39A is inserted.

39A. Review of effectiveness of use of electronic monitoring

Provides that the Minister is to cause a review of the effectiveness of the inclusion of electronic monitoring conditions in family violence orders as soon as practicable 18 months after section 39A commences.

The review is to be completed and the Minister is to be provided with a report on the outcome of the review no later than 6 months after the period of 18 months after the commencement of section 39A.

The Minister is to cause the report to be tabled in each House of Parliament within 10 sitting days after it is given to the Minister.

Clause 8: 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.