

TASMANIA

FAMILY VIOLENCE AMENDMENT BILL 2015

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FAMILY VIOLENCE AMENDMENT BILL 2015

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*
26 August 2015

*(Brought in by the Premier, the Honourable William Edward
Felix Hodgman)*

A BILL FOR

**An Act to amend the *Family Violence Act 2004* and the
*Justices Act 1959***

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:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Family Violence Amendment Act 2015*.

2. Commencement

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

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Part 2 – Family Violence Act 2004 Amended

PART 2 – FAMILY VIOLENCE ACT 2004 AMENDED

3. Principal Act

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

4. Section 7 amended (Family violence)

The definition of *family violence* in section 7 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b)(iii) “a PFVO.” and substituting “a PFVO; or”;
- (b) by inserting the following after paragraph (b):
 - (c) any damage caused by a person, directly or indirectly, to any property –
 - (i) jointly owned by that person and his or her spouse or partner; or
 - (ii) owned by that person’s spouse or partner; or
 - (iii) owned by an affected child.

*No. 67 of 2004

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5. Section 9A inserted

After section 9 of the Principal Act, the following is inserted in Part 2:

9A. Limitation period for offences under section 8 or 9

A complaint for an offence against section 8 or 9 must be made against a person within 12 months from the time when the matter of complaint arose.

6. Section 10 amended (Power of police to enter certain premises)

Section 10 of the Principal Act is amended as follows:

(a) by inserting the following paragraph after paragraph (a) in subsection (2):

(ab) orally direct any person on the premises to remain on the premises in the company of the police officer, or another police officer stated in the direction, for as long as is reasonably necessary to conduct a search under subsection (3) in respect of that person; and

(b) by inserting the following subsection after subsection (2):

(2A) If a person is directed to remain on premises under

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subsection (2)(ab), a police officer may use such force as is reasonably necessary to detain the person and conduct a search under subsection (3).

(c) by omitting from subsection (6) “subsection (3), (4) or (5)” and substituting “subsection (2A), (3), (4) or (5)”;

(d) by inserting the following subsections after subsection (7):

(7A) For the purpose of exercising his or her powers under this section, a police officer may authorise any other person, including another police officer, to assist the police officer as is necessary in the circumstances.

(7B) A person authorised under subsection (7A) to assist a police officer may use such force as is reasonably necessary in the circumstances to so assist.

(7C) A person must comply with a direction given to the person by a police officer under subsection (2)(ab).

Penalty: Fine not exceeding 80 penalty units

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7. Section 12 amended (Bail)

Section 12(2) of the Principal Act is amended by omitting paragraph (c).

8. Section 14 amended (Police family violence orders)

Section 14 of the Principal Act is amended by inserting after subsection (9) the following subsection:

(9A) If an application is made under subsection (9) to vary, extend or revoke a PFVO under this section, the court may make an interim FVO as set out in section 23.

9. Section 23 amended (Court may make interim order)

Section 23 of the Principal Act is amended as follows:

(a) by inserting the following subsection after subsection (1):

(1A) If an application is made under section 14(9) to vary, extend or revoke a PFVO, the court may make an interim FVO, whether or not it is satisfied of the matters set out in section 14(1).

(b) by omitting from subsection (3) “section 15” and substituting “section 14 or 15”.

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Part 2 – Family Violence Act 2004 Amended

10. Section 25A inserted

After section 25 of the Principal Act, the following section is inserted in Part 4:

25A. Powers of court to remand in custody, admit to bail, &c.

- (1) If for any reason the proceedings in respect of an application for an FVO are adjourned, a court may decide to –
 - (a) remand the respondent to the application in custody and issue a warrant accordingly; or
 - (b) admit the respondent to the application to bail; or
 - (c) issue a summons to the respondent to the application ordering the respondent to appear before a court at a time and place, mentioned in the summons, to which the proceedings are adjourned.
- (2) In making a decision under subsection (1), the court must consider the safety and interests of the respondent's spouse or partner, and any affected child, to be of paramount importance.
- (3) If a court remands a respondent to an application for an FVO in custody in

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accordance with subsection (1)(a), the court is to –

- (a) specify in the warrant –
 - (i) that the respondent is to be kept in custody for a period not exceeding 28 days at any one time; and
 - (ii) the date the respondent is to be brought before the court; and
- (b) inform the respondent of the matters specified in the warrant in accordance with paragraph (a).

- (4) The period for which a respondent to an application for an FVO may be admitted to bail in accordance with subsection (1)(b) must not exceed 60 days.

11. Section 26 amended (Application for registration of external family violence order)

Section 26 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Chief”;
- (b) by omitting from subsection (2)(c) “Chief”.

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Part 2 – Family Violence Act 2004 Amended

12. Section 27 amended (Registration of external family violence order)

Section 27 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Chief”;
- (b) by omitting from subsection (3) “Chief”;
- (c) by omitting from subsection (4) “Chief”.

13. Section 32 amended (Restriction of publication of names of parties, &c.)

Section 32 of the Principal Act is amended by omitting subsections (2), (3) and (4) and substituting the following :

- (2) A person must not publish any material that is forbidden to be published under subsection (1).

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 3 months.

- (3) A person must not publish any material relating to proceedings under this Act which may disclose the identity of an affected child.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 3 months.

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- (4) The publication of any reference, or allusion, to any material which is forbidden to be published under subsection (1) or subsection (3) is taken to be a publication of the material, if that reference or allusion is, in the opinion of the court, intended, or is sufficient, to disclose that material.

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Part 3 – Justices Act 1959 Amended

PART 3 – JUSTICES ACT 1959 AMENDED

14. Principal Act

In this Part, the *Justices Act 1959** is referred to as the Principal Act.

15. Section 106BA inserted

After section 106B of the Principal Act, the following is inserted in Part XA:

106BA. Powers of justices to make family violence orders after restraint order applications made

If –

- (a) an application for a restraint order has been made in accordance with section 106B; and
- (b) at any stage of the proceedings in respect of the application for the restraint order, the justices consider that the application should have been made as an application under section 15 of the *Family Violence Act 2004* for a family violence order –

the justices may proceed under that Act as if the application for the restraint order

*No. 77 of 1959

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were an application for a family violence
order.

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Part 4 – Repeal

PART 4 – REPEAL

16. Repeal of Act

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