

## DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

### *Family Violence Reforms Bill 2018*

*\*check Hansard for delivery\**

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

This Bill delivers on the Government's commitment to create a new offence of persistent family violence and makes changes to clarify the operation of section 125A of the *Criminal Code* and provisions of the *Evidence (Children and Special Witnesses) Act 2001*.

Clause 4 of the Bill inserts section 170A in the *Criminal Code*.

Section 170A provides a new offence of 'persistent family violence'. This offence recognises that a family violence perpetrator can maintain an abusive relationship, physically or psychologically, with a spouse or partner for an extensive period of time.

Like other existing continuing offences in Tasmania, this new offence addresses the difficulty of proving the particulars of each offence in circumstances where multiple offences are alleged over a prolonged period of time.

It is often difficult for victims of family violence to recall in specific detail each individual occasion where they were subjected to a family violence offence. Victims of family violence may spend months, even years, under the control of a violent or abusive partner and be subjected to a range of offences such as assault, wounding or serious sexual assault.

This may result in victims only being able to provide general evidence which may cause difficulties in proving individual family violence offences and can result in the number of charges being greatly reduced.

This new offence is modelled on other continuing offences, such as the existing offence of maintaining a sexual relationship with a young person under section 125A of the *Criminal Code*.

In order to prove this charge, the Crown is to show that the accused committed an unlawful family violence act in relation to his or her spouse or partner on at least three occasions.

For this offence:

- an unlawful family violence act is an act that constitutes a family violence offence;
- the indictment is to specify the period during which it is alleged that the unlawful family violence acts were committed and that the indictment is not to include a separate charge for an unlawful family violence act during that period;

- it is not necessary to prove exact dates or circumstances of the unlawful family violence acts;
- the unlawful family violence acts committed on one of the occasions can be different to the other occasions; and
- on a trial before a jury, each member of the jury is not required to agree on which unlawful family violence acts constitute the persistent family violence relationship.

This offence is intended to overcome the problem whereby victims of family violence are unable to particularise the alleged family violence acts sufficiently to enable the alleged acts to be charged separately.

This may be for a number of reasons for this. For example, a victim may be unable to provide specific circumstances, dates or places when the alleged offences took place, or the repetitive nature of the family violence offences could mean that a victim is unable to specify each offence to the degree necessary to tell apart repeated family violence offences.

The offence also provides that an unlawful family violence act committed outside Tasmania can be considered an unlawful family violence act for the purpose of section 170A, provided that the act would have been an unlawful family violence act if committed in Tasmania and at least one of the required unlawful family violence acts that constitutes an offence under this section was committed in Tasmania.

In sentencing a person for an offence under section 170A, 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 person 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.

Madam Speaker, this new crime has appropriate checks and balances in place.

Section 170A provides that this offence will only be proceeded with if the Director of Public Prosecution consents. The proposed requirement for the written authority of the Director of Public Prosecutions to charge is an important safeguard to protect an accused person's rights.

The purpose of this new offence is to address difficulties of proving the particulars of each offence in cases of persistent family violence where multiple family violence offences are alleged. The varied impacts on victims from family violence are well documented and can be long-lasting. In such circumstances victims can find it difficult to recall specific details of each individual offence.

For a person charged with conduct comprising continuing family violence acts against their spouse or partner to be held to account by the court and sentenced for that course of conduct, the court needs to be in a position to sentence the accused to reflect the gravity of their conduct.

This offence will be used where there is serious criminal conduct, that is, where there are at least three occasions of serious indictable offences. The Director of Public Prosecutions is best placed

to consider the weight of the evidence establishing the seriousness of the alleged conduct and whether to lay charges.

The Director of Public Prosecutions will also issue prosecution guidelines in relation to prosecutions for this proposed offence. The prosecution guidelines will provide a standard by which the Office of the Director of Public Prosecutions and its prosecutors will conduct criminal proceedings on behalf of the State to ensure transparency and maintain a consistent approach.

The guidelines have been drafted and will be publicly available and will enable the judiciary, the legal profession, Tasmania Police, victims, accused persons, persons engaged with the criminal justice system and interested members of the public to understand the actions of the Office of the Director of Public Prosecutions.

This new offence of persistent family violence enables the courts to have regard in sentencing to the 'relationship' nature of family violence and may result in more successful family violence prosecutions by relieving victims from having to recall in specific detail each individual occasion of family violence.

The *Criminal Code* provides that in certain circumstances a person charged with one offence may be convicted of another similar offence instead of the one charged, provided that the evidence establishes that the alternative offence has been committed.

The inclusion of section 337A in this Bill provides that where an accused person is found not guilty of the crime of persistent family violence they may be convicted of an alternative crime or offence, such as rape, assault or abduction. To be convicted of one of the alternative offences or crimes listed in the proposed section 337A, the trial judge must be satisfied that there was sufficient evidence, adduced at the trial, to try or convict the person of the alternative crime or offence.

Clause 4 of the Bill also amends section 125A of the *Criminal Code*.

Madam Speaker, the recent Criminal Justice Report of the Royal Commission into Institutional Responses to Child Sexual Abuse considered the matter of the requirement for extended jury unanimity, that is, the requirement that the jury identify and agree on the same occasions of sexual abuse.

The Royal Commission recommended that each State and Territory should introduce legislation to amend its persistent child sexual abuse offence so that each member of the jury must be satisfied that the unlawful sexual relationship existed but that each member of the jury need not be satisfied of the same unlawful sexual acts.

At present the offence of 'maintaining a sexual relationship with a young person under the age of 17 years' at section 125A of the *Criminal Code* provides the requirement that the accused committed an unlawful sexual act in relation to the young person on at least three occasions (s125A(3)(a)) and the unlawful sexual act that was committed on any one of the occasions need not be the same (s125A(4)(b)), the provision does not go to whether all members of the jury need to be satisfied of the same unlawful sexual acts.

This Bill implements the recommendation of the Royal Commission by amending section 125A of the *Criminal Code* through the inclusion of paragraph (c) to overcome the requirement that all members of the jury be satisfied of the same unlawful sexual acts regarding a charge under section 125A.

Subsection (6B) proposes that when sentencing the accused for the offence against section 125A a judge does not need to inquire of the jury which unlawful sexual acts the finding of guilt was based upon. The sentencing judge is to make her or his own findings as to the nature and/or character of the unlawful sexual relationship on the evidence heard at trial and sentence the accused accordingly.

Madam Speaker, this clarifies that the judge is to sentence on the basis that the identified occasions were not isolated acts, rather ones that took place during the course of the relationship.

The proposed provisions for the new offence at section 170A, also a 'relationship' offence, are consistent with the proposed provisions to section 125A of the *Criminal Code*.

New section 170A similarly clarifies that each member of the jury need not be satisfied of the same unlawful family violence acts that constitute the persistent family violence relationship and provides that the sentencing judge is to make her or his own findings as to the nature and/or character of the unlawful family violence acts committed on the evidence heard at trial and sentence the accused accordingly.

I will now address Part 3 of this Bill and the proposed amendments to Part 4 of the *Evidence (Children & Special Witnesses) Act 2001*.

Currently the *Evidence (Children and Special Witnesses) Act 2001* provides that in a proceeding where a person has been charged with a family violence offence a self-represented defendant is not permitted to cross-examine a witness who is the alleged victim of the offence.

Appearing in court can be an intimidating experience for victims of family violence. One area that can be particularly challenging is where the alleged perpetrator of family violence can cross-examine the victim.

Madam Speaker, the effect of the proposed amendments is to ensure that in circumstances where an application is made for a family violence order or an interim family violence order, or an application to vary, extend or revoke a police family violence order or a family violence order and in relation to applications for bail, that cross-examination of a witness who is the alleged victim of the family violence offence can only be undertaken by counsel.

The amendments remedy an inconsistency and make clear that a self-represented defendant is not permitted to cross-examine a witness who is the alleged victim of a family violence offence during certain applications for family violence protection orders and applications for bail.

This proposed amendment does not undermine procedural fairness. Cross-examination is an important part of proceedings and the evidence can still be tested with the assistance of counsel.

The Principal Act provides that where a defendant is not legally represented that the judge is to ensure that the defendant is warned of the prohibition, advised that he or she may be entitled to legal assistance from Legal Aid and given a reasonable opportunity to obtain the assistance of counsel. A defendant may also be provided with legal assistance at the direction of the court.

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 for dealing with family violence offences and for perpetrators to be held to account.

This Bill also clarifies the operation of section 125A of the *Criminal Code* in response to recommendations contained in the Criminal Justice Report of the Royal Commission into Institutional Responses to Child Sexual Abuse and enhances provisions to protect vulnerable witnesses during court proceedings.

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.