

Criminal Law (Domestic Violence) Amendment Bill 2015

Short title

The short title of the Bill is the Criminal Law (Domestic Violence) Amendment Bill 2015.

Policy objectives and the reasons for them

The objectives of the Bill are to:

1. increase accountability of perpetrators of domestic and family violence; and
2. increase protection for victims of domestic and family violence.

On 28 February 2015, the Special Taskforce on Domestic and Family Violence (the Taskforce) in Queensland released its report, *Not Now, Not Ever: Putting an End to Domestic Violence in Queensland* (the Taskforce Report). The Report contained several recommendations for reforms to criminal and related laws – in particular that:

- The Queensland Government makes provision in legislation for domestic and family violence related convictions to be recorded, consistent with the approach adopted in New South Wales (Recommendation 119).
- The Queensland Government considers the sufficiency of penalties to hold perpetrators to account for repeat contraventions of Domestic Violence Orders (Recommendation 121).
- The Attorney-General, in consultation with the Chief Magistrate and Chief Judge, implements alternative evidence procedures for victims of domestic and family violence providing evidence in related criminal matters to reduce the trauma of this experience, including legislative amendment and/or procedural changes. Consideration should be given to allowing for admissibility of any video recordings made at the time of initial police intervention (Recommendation 133).

The Government response accepted these recommendations.

Following several recent very public domestic and family violence incidents, including deaths in South East Queensland, the Queensland Government has committed to fast track reforms to increase perpetrator accountability and enhance community protection against this form of violence.

Achievement of policy objectives

The Bill will achieve its objectives by:

- increasing maximum penalties for breaches of domestic violence orders under the *Domestic and Family Violence Protection Act 2012* (Taskforce Recommendation 121);

- enabling charges for criminal offences to indicate that they occurred in a domestic violence context and providing that convictions for domestic violence offences be noted on a person's criminal history (Taskforce Recommendation 119); and
- amending the *Evidence Act 1977* to ensure the availability of protections for special witnesses apply to all victims of domestic violence (Taskforce Recommendation 133).

Alternative ways of achieving policy objectives

The policy objectives are underpinned by the findings in the Taskforce Report. The Taskforce considered a range of options in delivering the objectives. The Taskforce also undertook extensive consultation in preparing its report. Informed by this thorough consultation process, the Taskforce ultimately determined that legislative reform represented the best way of achieving the policy objectives.

Estimated cost for government implementation

Any costs arising from these legislative amendments will be met from existing agency resources. The future allocation of resources will be determined through normal budgetary processes.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. A potential breach of fundamental legislative principles is addressed below.

Legislation has sufficient regard to the rights and liberties of individuals (section 4(2) *Legislative Standards Act 1992*).

Clause 7 - Increases to the maximum penalties for offences under section 177 of the *Domestic and Family Violence Protection Act 2012*

Clause 7 of the Bill amends section 177 of the *Domestic and Family Violence Protection Act 2012* (the Act) to increase maximum penalties for offences. This constitutes a potential infringement of the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals (section 4(2) *Legislative Standards Act 1992*).

Currently, the maximum penalty for a breach of a domestic violence order under section 177 is:

- if the respondent has, in the last five years, previously been convicted of breaching a domestic violence order, a police protection notice or release conditions – 3 years imprisonment or 120 penalty units; or
- if the person is otherwise convicted of an offence under the Act – 2 years imprisonment or 60 penalty units.

Clause 7 increases these maximum penalties as follows:

- if the respondent has previously been convicted, in the last five years, of an offence under the Act or another domestic violence offence – 5 years imprisonment or 240 penalty units; or

- if the person is otherwise convicted of an offence under the Act – 3 years imprisonment or 120 penalty units.

The increase in penalties is considered justified due to the seriousness of the offences, particularly where there is a pattern of domestic violence behaviour involved. The increase also brings maximum penalties closer into line with those applying in some other Australian jurisdictions, for example, Victoria, Tasmania and the Australian Capital Territory.

Clause 17 – Notations of domestic violence offences

To assist with the process of identifying ‘domestic violence offences’, a court will have the power under clause 17 of the Bill to order that previous criminal offences, for example, assault occasioning bodily harm, be noted on a person’s criminal history as a ‘domestic violence offence’. There is also provision for the court, on application of the prosecutor, to direct that notations be made on a person’s criminal history that previous convictions were committed in a domestic violence context if the court is satisfied of this.

Although this further information is being added retrospectively, it will assist in ensuring that an offender’s pattern of domestic violence behaviour is more easily identifiable on a person’s criminal history and therefore ensures that offenders can be sentenced more appropriately. It also provides greater protection for victims against future violence through timely identification of this type of conduct by agencies to reduce escalated violence.

Consultation

The Taskforce undertook extensive consultation in preparing its report. The consultation process included meeting with 367 different groups of victims, service providers and community leaders. This consultation informed the Taskforce recommendations, which are being implemented through this Bill.

The Parliamentary Committee consultation process will provide a forum for stakeholders and concerned community members to provide their views on the provisions of the Bill.

Consistency with legislation of other jurisdictions

Notation of domestic violence offences

The amendments in the Bill for the notation of domestic violence offences on charges and criminal histories are based on similar provisions in New South Wales under the *Crimes (Domestic and Personal Violence) Act 2007*.

Increasing maximum penalties for breaches of domestic violence orders under the *Domestic and Family Violence Protection Act 2012*

A maximum penalty of 5 years is in line with other Australian jurisdictions. For instance, the Australian Capital Territory has a maximum penalty of 5 years imprisonment for domestic violence order breaches, regardless of whether it is a first or subsequent breach; Victoria imposes a maximum penalty of 5 years for repeated breaches (at least 3 breaches in 28 days) and for single contraventions with an intent to cause harm or fear for safety; and Tasmania has

a hierarchy of penalties, with a maximum penalty of 5 years for a fourth or subsequent breach offence.

Notes On Provisions

Part 1 Preliminary

Clause 1 states that, when enacted, the Bill will be cited as the *Criminal Law (Domestic Violence) Amendment Act 2015*.

Part 2 Amendment of Criminal Code

Clause 2 states that Part 2 of the Bill amends the Criminal Code.

Clause 3 inserts into section 1 (Definitions) a new definition of *domestic violence offence*. *Domestic violence offence* means an offence (other than an offence under the *Domestic and Family Violence Protection Act 2012*) where the act or omission constituting the offence is also domestic violence, associated domestic violence or a contravention of a domestic violence order under section 177 of the *Domestic and Family Violence Protection Act 2012*.

Clause 4 inserts a new subsection (3A) into section 564 (Form of indictment) to make provision for an indictment to state that an offence is a domestic violence offence.

Clause 5 amends section 572 (Amendment of indictments) to clarify that the court can amend a charge to state that it is a domestic violence offence.

Part 3 Amendment of Domestic and Family Violence Protection Act 2012

Clause 6 states that Part 3 of the Bill amends the *Domestic and Family Violence Protection Act 2012*.

Clause 7 amends section 177(2) to increase the maximum penalties for breaches of domestic violence orders. Particularly, it amends section 177(2) to provide that the maximum penalty for a breach of a domestic violence order is:

- in circumstances where the respondent has been convicted of an offence under the Act or another domestic violence offence (as defined in section 1 of the Criminal Code), within the previous five years — 240 penalty units or five years imprisonment;
- otherwise — 120 penalty units or three years imprisonment.

This amendment increases the current maximum imprisonment terms by two years and one year respectively and doubles the maximum penalty units available in both instances. It also expands the circumstances in which the highest maximum penalty can be imposed to include convictions for any prior offences committed in a domestic violence context, not just those under the Act.

The clause also inserts a new subsection 177(7) which defines *domestic violence offence* for the purposes of section 177.

The policy intent behind increasing the maximum penalties for breach of domestic violence orders is to provide greater deterrence for perpetrators of domestic violence and to reinforce the community's view that domestic violence is not acceptable and will not be tolerated. The amendment responds to Taskforce Recommendation 121: that the Queensland Government consider the sufficiency of penalties to hold perpetrators to account for repeat contraventions of domestic violence orders.

Clause 8 omits section 181 (Prosecution of offences) and replaces it with a new section which provides that an offence under the *Domestic and Family Violence Protection Act 2012* that has a penalty of more than three years will be an indictable offence. Further it provides that a proceeding on a charge for an indictable offence will be heard summarily. This will apply in relation to a charge under section 177(2)(a) as amended by the Bill. However, a Magistrates Court must abstain from dealing summarily with a charge for an indictable offence under this Act if satisfied, either because of the nature or seriousness of the offence or any other relevant consideration, the defendant may not be adequately punished on summary conviction, or if satisfied, that because of exceptional circumstances, the charge should not be heard summarily. The maximum term of imprisonment which can be imposed on summary conviction for an indictable offence is three years imprisonment.

Clause 9 amends section 182 (When a proceeding for offence may start) to clarify that the section only applies to offences which are to be heard summarily.

Part 4 Amendment of Evidence Act 1977

Clause 10 states that Part 4 of the Bill amends the *Evidence Act 1977*.

Clause 11 subsection (1) inserts a new definition of *domestic violence* into section 21A(1). The new definition adopts the definition of domestic violence contained in section 8 of the *Domestic and Family Violence Protection Act 2012*.

Subsection (2) amends the existing definition of *special witness* in section 21A(1) to include within that definition a person who is a victim of domestic violence and who also is to give evidence about the commission of an offence committed by the person who committed the domestic violence.

Part 5 Amendment of Justices Act 1886

Clause 12 states that Part 5 of the Bill amends the *Justices Act 1886*.

Clause 13 amends section 4 (Definitions) to insert a new definition of *domestic violence offence*. The definition adopts the definition of *domestic violence offence* contained in section 1 of the Criminal Code.

Clause 14 amends section 47 (What is sufficient description of offence) to insert new subsection (9). New subsection (9) of section 47 provides that a complaint for any offence may state that the offence is a domestic violence offence.

Clause 15 amends section 48 (Amendment of complaint) to clarify that the court can amend a charge to state that it is a domestic violence offence.

Part 6 Amendment of Penalties and Sentences Act 1992

Clause 16 states that Part 6 of the Bill amends the *Penalties and Sentences Act 1992*.

Clause 17 inserts into section 4 (Definitions) a new definition of *domestic violence offence*. The definition adopts the definition of *domestic violence offence* contained in section 1 of the Criminal Code.

Further the definition of *prosecutor* contained in section 4 is amended to include reference to new section 12A (convictions for domestic violence offences).

Clause 18 creates new section 12A (Convictions for domestic violence offences). This new provision sets out the framework for the identification of convictions for offences occurring in a domestic violence and family violence context. Under this new provision the court must make an order, for an offence for which a conviction is recorded, that the conviction also be recorded as a conviction for a domestic violence offence. The court is also required to order that the offence also be entered in the offender's criminal history as a domestic violence offence.

Subsection (3) enables a prosecutor to apply to the court for an order that a previous offence of which the offender has been convicted is also recorded as a conviction for a domestic violence offence and be entered on the offender's criminal history as a domestic violence offence.

Subsections (4)–(7) set out the procedural requirements for an application under subsection (3).

Subsection (8) provides that where a court is satisfied that an error has been made in recording or entering an offence as a domestic violence offence, it may on application or on its own motion, correct the error.

Clause 19 inserts a new subsection (2) in section 196 (Regulation-making power). This new subsection provides that a regulation under the *Penalties and Sentences Act 1992* may prescribe matters that relate to the recording of convictions for domestic violence offences, or the making of entries in criminal histories about domestic violence offences, including the way in which and time within which the records or entries are to be made.