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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

FAMILY VIOLENCE LEGISLATION AMENDMENT BILL 2022

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

**Presented by
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FAMILY VIOLENCE LEGISLATION AMENDMENT BILL 2022

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FAMILY VIOLENCE LEGISLATION AMENDMENT BILL 2022

The *Family Violence Legislation Amendment Bill 2022* (the Bill) is a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004* (HR Act).

OVERVIEW OF THE BILL

The policy objective of this Bill is to ensure that domestic and family violence offenders are held to account, and to help improve access to justice and remove trauma for victims involved in court proceedings.

The Bill implements a number of recommendations from the *Final Report of the Review of the Family Violence Act 2016* (the Report), which was published in February 2021, as well as introduce other important law reform. The Report provided useful insights including from those who work in the family violence sector and those with lived experience of family violence.

The Bill will:

- a) create an aggravated offence scheme to introduce higher maximum penalties for certain offences when committed in the context of family violence;
- b) provide an express legislative basis for the court to grant an adjournment for the preparation of a Victim Impact Statement in sentence proceedings for serious offences;
- c) limit cross-examination on the contents of Victim Impact Statements, including in other proceedings;
- d) extend the existing counselling protections for counselling communications in sexual offence proceedings to family violence offence proceedings;
- e) amend the definition of family violence to include technological abuse;
- f) change the name of the offence of 'sexual relationship with child or young person under special care' to 'persistent sexual abuse of child or young person under special care';
- g) insert certain new aggravated family violence offences into the schedule of disqualifying offences in the *Working with Vulnerable People (Background Checking) Act 2011*; and
- h) create a legislative requirement to review the *Family Violence Act 2016* three years after the commencement of the Bill.

CONSULTATION ON THE PROPOSED APPROACH

The amendments were developed in consultation with key justice stakeholders, and amendments were circulated to the following stakeholders:

- Aboriginal Legal Service;
- Aboriginal and Torres Strait Islander Elected Body;
- Aboriginal and Torres Strait Islander Justice Caucus Group;
- ACT Bar Association;
- ACT Corrective Services;
- ACT Courts and Tribunal;
- ACT Human Rights Commission;
- ACT Law Society;
- ACT Multicultural Advisory Council;
- ACT Ombudsman;
- ACT Policing;
- Advocacy for Inclusion;
- Canberra Community Law;
- Canberra Health Services (including Justice Health Services);
- Canberra Multicultural Community Forum;
- Community Services Directorate;
- Coordinator-General, Family Safety;
- Director of Public Prosecutions;
- Domestic Violence Crisis Service;
- Domestic Violence Prevention Council;
- Human Rights and Social Policy Team (JACS);

- Justice Reform Branch (JACS);
- Legal Aid ACT;
- Office for Aboriginal and Torres Strait Islander Affairs;
- Office for Disability;
- Office for Multicultural Affairs;
- Office for Women;
- Public Advocate and Children and Young People Commissioner;
- Victims Advisory Board;
- Victims of Crime Commissioner;
- Women’s Legal Centre; and
- Women with Disabilities ACT.

CONSISTENCY WITH HUMAN RIGHTS

Rights Promoted

Domestic and family violence claims the lives of more than 100 people in Australia every year and causes enduring damage to individuals and to society as a whole. One in six women and one in 17 men have experienced physical violence by a partner. One in four women and one in six men have experienced emotional abuse by a partner. While domestic and family violence cannot be eliminated through law alone, legal measures are an essential component of any response. The Bill balances the human rights of a person affected by changes in the law and the public interest in protecting an individual’s right to safety within their home and in the community.

Broadly, the Bill engages and supports the following HR Act rights:

- Section 9 – Right to life
- Section 11 – Protection of family and children
- Section 12 – Right to privacy
- Section 18 – Right to security of person

The right to life (section 9 of the HR Act) includes a positive obligation on government to take reasonable actions to safeguard life and protect individuals to address specific threats or pre-existing patterns of violence that may give rise to direct threats to life, such as by taking steps to reduce gender-based, domestic and family violence.

The protection of family and children (section 11 of the HR Act) recognises the importance of the family unit in making up society and the benefits that come from preserving family relations. It also recognises that children have particular vulnerabilities and should be given special protection in addition to other rights.

The right to security of person (section 18 of the HR Act) protects individuals against intentional infliction of bodily or mental injury. It imposes a positive obligation on government to take appropriate measures to protect individuals from foreseeable threats to bodily or mental integrity. This includes a requirement to respond appropriately to patterns of violence against categories of victims such as those of domestic and family violence.

The right to privacy (section 12 of the HR Act) protects individuals from unlawful or arbitrary interference with privacy, including by protecting personal or confidential information from unlawful or arbitrary interference.

The Bill promotes these rights by introducing an aggravated family violence offence scheme to better protect victims of family violence, ensure that perpetrators are held accountable and ultimately to reduce the occurrence of family violence. The amendments to provide an express legislative basis for an adjournment to prepare a Victim Impact Statement, to limit cross-examination on the contents of a Victim Impact Statement and to limit the use of counselling communications in family violence offence proceedings also support these rights by reducing trauma for victims and removing barriers to their engagement with the criminal justice system and professional supports. The amendments to expand the definition of family violence to include technological abuse and to add certain new aggravated offences as disqualifying offences in the workers background check scheme promote these rights by increasing measures to protect vulnerable individuals.

Rights Limited

The Bill may engage and limits the following rights:

- Section 8 – Recognition and equality before the law
- Section 18 – Right to liberty
- Section 21 – Right to a fair trial

- Section 22 – Rights in criminal proceedings
- Section 24 – Right not to be tried or punished more than once
- Section 27B – Right to work

The preamble to the HR Act notes that few rights are absolute and that they may be subject only to the reasonable limits in law that can be demonstrably justified in a free and democratic society. Section 28 (2) of the HR Act contains the framework that is used to determine the acceptable limitations that may be placed on human rights.

The limitations on human rights in the Bill are proportionate and justified in the circumstances because they are the least restrictive means available to achieve the purpose of protecting victims, particularly of domestic and family violence, and the community as a whole.

Detailed human rights discussion

Crimes Act 1900 – Aggravated offence scheme

1. Nature of the right and the limitation (s 28 (2) (a) and (c))

These amendments create a new offence scheme to provide for higher maximum penalties for certain offences when committed in the context of family violence. The amendments may limit the right to liberty (section 18 of the HR Act) because, while the amendments do not create new offences, the higher maximum penalties for the aggravated offences may result in the imposition of a longer term of imprisonment, and thus deprivation of liberty. The right to liberty prohibits the arbitrary and unlawful deprivation of liberty.

2. Legitimate purpose (s 28 (2) (b))

Appropriate sentencing for family violence offending engages and supports the right to life (section 9 of the HR Act), protection of family and children (section 11 of the HR Act), the right to privacy (section 12 of the HR Act) and the right to security of person (section 18 of the HR Act). The primary purpose of these amendments is to recognise the seriousness of family violence offending by creating aggravated offences with higher maximum penalties. These amendments support rights by putting in place measures to adequately address the behaviour of offenders and minimise the risk of further physical, emotional and psychological harm to victims.

3. Rational connection between the limitation and the purpose (s 28 (2) (d))

Setting higher maximum penalties for aggravated offences provides guidance to the courts and the ACT community about the seriousness of family violence offences compared to other offences. The higher maximum penalties will help to prevent family violence offending by deterring individuals from committing these offences.

The penalties will also help to protect the community and victims from the risk of further harm from family violence offenders by allowing longer terms of imprisonment to be imposed and operate as a mechanism to publicly recognise the harm done by family violence offending.

4. Proportionality (s 28 (2) (e))

Any limitation on rights is the least restrictive means to achieve the aim of recognising the complex dynamics of family violence offences and ensuring that offenders are appropriately sentenced. These amendments do not create a mandatory sentencing regime and judicial sentencing discretion is retained to ensure that justice is done in each individual case.

In addition, any limitations are lawful and not arbitrary. The maximum penalty for each aggravated offence is set out in the provision for each relevant offence, ensuring that there is transparency in relation to the alleged offence and maximum penalty at the charge stage. New sections 48D, 72AB, 72EB and 123 of the *Crimes Act 1900* set out alternative verdicts for aggravated offences involving family violence, so that if the trier of fact is not satisfied that the defendant committed the aggravated offence but is satisfied beyond reasonable doubt that the defendant committed an alternative lesser offence listed in the table then the trier of fact may find the defendant guilty of the alternative offence. Moreover, the maximum penalties proposed for the aggravated offences are not excessive and are determined with reference to the penalty framework for other similar aggravated offences in the *Crimes Act 1900*.

Crimes (Sentencing) Act 2005 – Adjournment for preparation of a Victim Impact Statement

1. Nature of the right and the limitation (s 28 (2) (a) and (c))

This amendment creates an express legislative basis for the court to adjourn sentencing proceedings for a serious offence for the preparation of a Victim Impact Statement. The amendment may limit the accused person's right to a fair trial (section 21 of the HR Act) and rights in criminal proceedings (section 22 of the HR Act) by delaying the finalisation of the sentencing process. Both the right to a fair trial and rights in criminal proceedings include the obligation that a criminal matter be heard expeditiously within a reasonable period and without undue delay. Whether a delay is unreasonable will depend on the circumstances of each case.

2. Legitimate purpose (s 28 (2) (b))

The purpose of this amendment is to improve access to justice and reduce trauma for victims of serious offences involved in the criminal justice system. It supports the right to security of person (section 18 of the HR Act) by protecting the health and emotional wellbeing of victims. The amendment will help to ensure that victims can access their entitlement under the *Crimes (Sentencing) Act 2005* to make a Victim

Impact Statement that will be considered by the court in determining how the offender should be sentenced.

3. Rational connection between the limitation and the purpose (s 28 (2) (d))

The limitations on the rights of the accused are necessary to achieve the aim of protecting the victims of serious offences in their engagement with the criminal justice system. In general, Victim Impact Statements are prepared after a plea of guilty is entered or indicated. Where an unexpected plea is entered and the accused wishes to proceed to sentence expediently a victim may need some additional time to have their Victim Impact Statement ready. This amendment is necessary to ensure that victims are still able to make a Victim Impact Statement unless there are special circumstances for the court not allowing an adjournment.

4. Proportionality (s 28 (2) (e))

These restrictions are proportionate to the aim of protecting victims and are the least restrictive impact possible in the circumstances. The requirement to adjourn proceedings for the preparation of a Victim Impact Statement is not absolute and does not allow for an unreasonable delay. The following safeguards have been included in the Bill: the requirement for the court to grant an adjournment only applies for serious offences punishable by imprisonment for five or more years, the adjournment must be for a reasonable period and the court must not adjourn the proceeding if satisfied that special circumstances justify refusing the adjournment.

Evidence (Miscellaneous Provisions) Act 1991 – Cross-examination on Victim Impact Statements

1. Nature of the right and the limitation (s 28 (2) (a) and (c))

These amendments limit the ability for the defence to cross-examine the maker of a Victim Impact Statement on its contents in the principal proceedings and in other proceedings both before and after a finding of guilt has been made in the principal proceedings. These amendments may limit the right to a fair trial (section 21 of the HR Act) and rights in criminal proceedings (section 22 of the HR Act) because they regulate the ability of the accused to examine prosecution witnesses and test their evidence.

2. Legitimate purpose (s 28 (2) (b))

Victim Impact Statements are prepared to assist the court in sentencing and are often a therapeutic process for victims by providing an opportunity for the victim to express how the crime has impacted them. The purpose of these amendments is to limit the ability to use Victim Impact Statements during proceedings for other purposes, including where a victim has prepared a draft Victim Impact Statement at an early stage prior to a finding of guilt. The amendments are also intended to protect victims from the trauma of cross-examination on a Victim Impact Statement,

and as a result promote the right to security of person (section 18 of the HR Act) by introducing an appropriate measure to protect victims from the foreseeable threat to their mental health and wellbeing.

3. Rational connection between the limitation and the purpose (s 28 (2) (d))

The limitations on the rights of the accused by limiting cross-examination on the contents of and use of Victim Impact Statements is likely to be effective in protecting victims from the trauma of cross-examination and in encouraging more victims to prepare Victim Impact Statements. The Report noted that cross-examination is a daunting experience for those surviving family violence and could represent a form of institutional abuse, which is not conducive to healing. The Report noted that, as a consequence of victims' concerns about the treatment of Victim Impact Statements, some stakeholders had observed a smaller uptake of victims preparing Victim Impact Statements. The Report recommended these amendments to address this issue.

4. Proportionality (s 28 (2) (e))

The limitations on the rights of the accused to a fair trial and in criminal proceedings are proportionate to the goal of protecting victims and preserving the purpose of Victim Impact Statements. The amendments include safeguards to ensure that the limitations on the rights of the accused are the least restrictive. In the principal proceedings, the court has the discretion to allow cross-examination on the contents of a Victim Impact Statement before a finding of guilt if the court is satisfied that the Victim Impact Statement has substantial probative value to justify the cross-examination. The court also has the discretion to allow cross-examination after a finding of guilt if the court is satisfied that cross-examination would materially affect the likely sentence to be imposed.

In other proceedings, a Victim Impact Statement can be used after a finding of guilt in the principal proceedings or where the court hearing the principal proceeding grants leave on the basis that the statement has substantial probative value to justify its use in the other proceedings. In addition, these amendments are targeted to protecting victims from cross-examination on the contents of Victim Impact Statements and do not prevent the defence from testing other evidence by cross-examining the victim on other statements or evidence.

Evidence (Miscellaneous Provisions) Act 1991 – Counselling communications

1. Nature of the right and the limitation (s 28 (2) (a) and (c))

These amendments extend the existing protections of counselling communications in sexual offence proceedings in Division 4.4.3 of the *Evidence (Miscellaneous Provisions) Act 1991* to also apply in family violence offence proceedings. These provisions include protections such as that a protected confidence must not be disclosed for a criminal proceeding unless the court gives leave.

These amendments may limit the right to a fair trial (section 21 of the HR Act) and rights in criminal proceedings (section 22 of the HR Act) for the accused because they limit the use of protected confidences as evidence in family violence offence proceedings.

2. Legitimate purpose (s 28 (2) (b))

The purpose of these amendments is to extend existing protections for sexual offence victims to family violence offence victims. The amended provisions provide an immunity for protected confidences of victims of family violence and promote protection of family and children (section 11 of the HR Act), the right to privacy (section 12 of the HR Act) and right to security of person (section 18 of the HR Act). A protected confidence is a counselling communication made by, to or about a person against whom a sexual offence or family violence offence was, or is alleged to have been, committed. Family violence offence victims may attend counselling as part of a therapeutic process and these amendments ensure that disclosures made during that process remain confidential and that victims are not deterred from seeking professional support.

3. Rational connection between the limitation and the purpose (s 28 (2) (d))

The limitation on the rights of the accused to a fair trial and in criminal proceedings by these amendments will increase the protections and privacy for family violence victims. The Report highlighted that counselling sessions for victims are a therapeutic process and to allow these sessions to also be an evidence-gathering process deters victims from seeking professional support and limits their ability to talk freely and honestly with their counsellor. The Report also noted the experiences of some stakeholders where counselling information had been used by the accused as a means of intimidating or humiliating the victim. These amendments may thus also improve the safety of victims from further harm.

4. Proportionality (s 28 (2) (e))

The restrictions on the accused's rights from these amendments are not absolute and are proportionate to the aim of protecting family violence victims and their right to privacy. The provisions in Division 4.4.3 create a general immunity for protected confidences in proceedings. However, on application, the court may grant leave for the disclosure of a protected confidence. The court must first be satisfied that the applicant has established a legitimate forensic purpose for seeking leave and then may grant leave if, in a criminal proceeding, the public interest in ensuring an accused person in the proceeding is given a fair trial outweighs the public interest in preserving the confidentiality of the protected confidence. The immunity does not apply where it appears, on reasonable grounds, that a communication or document was made in the furtherance of an offence, fraud or a similar act. In addition, these protections do not prevent the defence from examining witnesses and testing other evidence during the proceedings.

Family Violence Act 2016 – Definition of family violence

The amendment clarifies that the definition of family violence includes the harmful use of, or interference with, technology. This amendment supports the right to life (section 9 of the HR Act), protection of family and children (section 11 of the HR Act), right to privacy (section 12 of the HR Act) and right to security of person (section 18 of the HR Act) by expanding protections to family violence victims who have been subject to technological abuse such as publication of intimate images online without consent. This amendment does not limit rights as the existing definition of family violence in section 8 of the *Family Violence Act 2016* is already broad and the amendment is intended to clarify that technology-facilitated abuse falls within that definition.

Crimes Act 1900 – Renaming offence ‘persistent sexual abuse of child or young person under special care’

This amendment changes the name of the offence in section 56 of the *Crimes Act 1900* from ‘sexual relationship with child or young person under special care’ to ‘persistent sexual abuse of child or young person under special care’. The substance and elements of the provision remain unchanged. This amendment is intended to improve national consistency in the name of this offence as well as give weight to the victim’s experience, and as a result lead to changes in media coverage and community perceptions of the offence. This amendment does not limit human rights.

Working with Vulnerable People (Background Checking) Act 2011 – Disqualifying offences

1. Nature of the right and the limitation (s 28 (2) (a) and (c))

These amendments insert some of the new aggravated family violence offences into Schedule 3 (Disqualifying offences) of the *Working with Vulnerable People (Background Checking) Act 2011*. Schedule 3 sets out Class A and Class B disqualifying offences which are relevant to the assessment of whether a person can be given registration to engage in a regulated activity that involves contact with a vulnerable person. The categorisation of the new offences in Schedule 3 as Class A or Class B disqualifying offences reflects the existing categorisation of the simple offence for each aggravated offence.

The worker background screening scheme supports and limits a number of human rights. These are addressed in further detail in the Explanatory Statement for the *Working with Vulnerable People (Background Checking) Bill 2019*.

The rights that may be limited include the right to equality (section 8 of the HR Act), the right not to be tried or punished more than once (section 24 of the HR Act) and the right to work (section 27B of the HR Act). The right to work includes the right to not be unfairly deprived of work on discriminatory grounds. The worker background screening scheme may limit the right to work as it may prevent individuals who have

convictions for disqualifying offences from engaging in occupations that require a working with vulnerable people check. The scheme may also limit the right to equality and the right not to be punished more than once by differentiating individuals who have been convicted, found guilty of, or charged (or will be charged) with certain offences and limiting their ability to obtain a registration to work with vulnerable people.

2. Legitimate purpose (s 28 (2) (b))

The purpose of the scheme is to protect vulnerable people from the risk of harm, supporting the right to life (section 9 of the HR Act), protection of the family and children (section 11 of the HR Act) and the right to security of person (section 18 of the HR Act).

3. Rational connection between the limitation and the purpose (s 28 (2) (d))

As discussed in the Explanatory Statement introducing the scheme, it has been found that the early identification and exclusion of those who pose a risk to vulnerable people should lead to a cumulative reduction in the incidence of abuse, violence and exploitation over time. Background checking has a preventative effect in deterring individuals who pose a high risk of harm from seeking work or preventing them from working in the sector. The worker background screening scheme in the *Working with Vulnerable People (Background Checking) Act 2011* forms part of national approach to assess potential workers for risk before they start performing a regulated activity.

4. Proportionality (s 28 (2) (e))

Any limitation on rights is proportionate to the aim of protecting vulnerable people including children. Moreover, while a person is disqualified from engaging in a regulated activity if they have a conviction for a Class A disqualifying offence a person who has been convicted of a Class B disqualifying offence may be registered if there are exceptional circumstances.

Family Violence Act 2016 – Statutory review

This amendment introduces a requirement to review the operation and effectiveness of the *Family Violence Act 2016* three years after the commencement of the Bill. A report of the review must be tabled in the Legislative Assembly. This amendment is intended to provide an opportunity to identify further areas for improvement, and will help to ensure that the ACT's family violence laws continue to operate effectively. This amendment does not limit human rights.

FAMILY VIOLENCE LEGISLATION AMENDMENT BILL 2022

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Family Violence Legislation Amendment Bill 2022**. In my opinion, having regard to the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly **is** consistent with the *Human Rights Act 2004*.

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Shane Rattenbury MLA
Attorney-General

Family Violence Legislation Amendment Bill 2022

Detail

Part 1 – Preliminary

Clause 1 — Name of Act

This is a technical clause that names the short title of the Act. The name of the Act will be the *Family Violence Legislation Amendment Act 2022*.

Clause 2 — Commencement

This clause provides that the Act will commence the seventh day after its notification day.

Clause 3 — Legislation Amended

This clause lists the legislation amended by this Bill. This Bill will amend the *Crimes Act 1900*, *Crimes (Sentencing) Act 2005*, *Evidence (Miscellaneous Provisions) Act 1991*, *Family Violence Act 2016* and the *Working with Vulnerable People (Background Checking) Act 2011*.

Part 2 – Crimes Act 1900

Clause 4 – New section 9A

This clause inserts new section 9A which provides a definition of *aggravated offence* for the purpose of Part 2 of the *Crimes Act 1900*.

Clause 5 – Sections 15 (3), 19 (2), 20 (2), 21 (2), 23 (2) and 24 (2), note

This clause substitutes the note in sections 15 (3), 19 (2), 20 (2), 21 (2), 23 (2) and 24 (2) to state that both section 48A and 48C make provision in relation to an aggravated offence against the section.

Clause 6 – Common assault New section 26 (2)

This clause inserts new section 26 (2) which provides that the maximum penalty for an aggravated offence is imprisonment for 3 years. A note states that section 48C makes provision in relation to an aggravated offence against section 26.

Clause 7 – Acts endangering life etc Section 27 (3)

This clause amends section 27 (3) to provide that the maximum penalty for an aggravated offence is imprisonment for 13 years and that the maximum penalty in any other case remains imprisonment for 10 years. A note states that section 48C makes provision in relation to an aggravated offence against section 27.

Clause 8 – Acts endangering health etc Section 28 (2)

This clause amends section 28 (2) to provide that the maximum penalty for an aggravated offence is imprisonment for 7 years and that the maximum penalty in any other case remains at imprisonment for 5 years. A note states that section 48C makes provision in relation to an aggravated offence against section 28.

Clause 9 – Culpable driving of motor vehicle Section 29 (3), note

This clause substitutes the note in section 29 (3) to state that both section 48A and 48C make provision in relation to an aggravated offence against section 29.

Clause 10 – Threat to kill Section 30 (b)

This clause amends section 30 to provide that the maximum penalty for an aggravated offence is imprisonment for 13 years and that the maximum penalty in any other case remains at imprisonment for 10 years. A note states that section 48C makes provision in relation to an aggravated offence against section 30.

Clause 11 – Threat to inflict grievous bodily harm Section 31 (b)

This clause amends section 31 to provide that the maximum penalty for an aggravated offence is imprisonment for 7 years and that the maximum penalty in any other case remains at imprisonment for 5 years. A note states that section 48C makes provision in relation to an aggravated offence against section 31.

Clause 12 – Demands accompanied by threats Section 32 (1)

This clause amends section 32 (1) to provide that the maximum penalty for an aggravated offence is imprisonment for 25 years and that the maximum penalty in any other case remains at imprisonment for 20 years.

Clause 13 – Section 32 (2)

This clause amends section 32 (2) to provide that the maximum penalty for an aggravated offence is imprisonment for 13 years and that the maximum penalty in any other case remains at imprisonment for 10 years. A note states that section 48C makes provision in relation to an aggravated offence against section 32.

Clause 14 – Stalking Section 35 (1), penalty

This clause amends section 35 to provide that the maximum penalty for an aggravated offence where the offence involved contravention of an injunction or other order made by a court, or the offender was in possession of an offensive weapon is imprisonment for 7 years and in any other case is imprisonment for 3 years. The maximum penalty for an offence other than an aggravated offence where the offence involved contravention of an injunction or other order made by a court, or

the offender was in possession of an offensive weapon remains at imprisonment for 5 years and in any other case remains at imprisonment for 2 years. A note states that section 48C makes provision in relation to an aggravated offence against section 35.

Clause 15 – Section 48A heading

This clause replaces the heading at section 48A with ‘Aggravated offences – pt 2 offences against pregnant women’. This amendment makes it clear that the section only applies to Part 2 offences.

Clause 16 –Section 48A (6), definition of *applied provisions*

This clause omits the definition of *applied provisions* in section 48A (6), as this term is defined in the Dictionary through the amendments made by clause 76.

Clause 17 – Section 48B, heading

This clause replaces the heading at section 48B with ‘Alternative verdicts for aggravated offences – pt 2 offences against pregnant women’. This amendment makes it clear that the section only applies to Part 2 offences.

Clause 18 – Section 48B (1)

This clause substitutes the existing provision to provide that if a trier of fact is not satisfied that the defendant committed an aggravated offence listed in column 2 of Table 48B but is satisfied beyond reasonable doubt that the defendant committed an offence in column 3 then the trier of fact may find the defendant guilty of the alternative offence. The defendant must be given procedural fairness in relation to that finding of guilt. This amendment does not change the effect of the provision but ensures that the formatting is consistent with other alternative verdict provisions introduced by the Bill.

Clause 19 –Table 48B, item 4, column 3, 6th dot point

This clause substitutes the reference to section 26 (Common assault) at item 4 with a reference to section 26 (Common assault), simple offence. This amendment is consequential on the amendments made by this Bill to introduce an aggravated version of that offence.

Clause 20 – Table 48B, new items 4A and 4B

This clause inserts new items 4A and 4B into Table 48B. Item 4A provides an alternative offence for section 23 (Inflicting actual bodily harm) – aggravated offence and item 4B provides alternative offences for section 24 (Assault occasioning actual bodily harm) – aggravated offence.

Clause 21 – Section 48B (2)

This clause omits section 48B (2) which provides definitions of *aggravated offence* and *simple offence* for the purpose of section 48B, as these terms are defined in the Dictionary through the amendments made by clauses 75 and 76.

Clause 22 – New sections 48C and 48D

This clause inserts new sections 48C and 48D.

Section 48C – Aggravated offences – pt 2 offences involving family violence

New section 48C provides that an offence is an *aggravated offence* if the offence involves family violence. The section applies to an offence against the following provisions:

- Section 15 – manslaughter
- Section 19 – intentionally inflicting grievous bodily harm
- Section 20 – recklessly inflicting grievous bodily harm
- Section 21 – wounding
- Section 23 – inflicting actual bodily harm
- Section 24 – assault occasioning actual bodily harm
- Section 26 – common assault
- Section 27 – acts endangering life etc
- Section 28 – acts endangering health etc
- Section 29 – culpable driving of a motor vehicle
- Section 30 – threat to kill
- Section 31 – threat to inflict grievous bodily harm
- Section 32 – demands accompanied by threats
- Section 35 – stalking

The prosecution must state the relevant factor of aggravation in the charge. It is not necessary for the prosecution to prove that the defendant had a fault element in relation to any factor of aggravation. Chapter 2 of the Criminal Code does not apply to an offence to which section 42C applies, whether or not it is an aggravated offence. A note provides that sections 72AA, 72EA and 116 also provide that particular offences involving family violence are aggravated offences.

Section 48D – Alternative verdicts for aggravated offences – offences involving family violence

New section 48D provides that if a trier of fact is not satisfied that the defendant committed an aggravated offence listed in column 2 of Table 48D but is satisfied beyond reasonable doubt that the defendant committed an offence in column 3 then the trier of fact may find the defendant guilty of the alternative offence. The defendant must be given procedural fairness in relation to that finding of guilt.

Clause 23 – Alternative verdicts for certain other offences against the person Table 49

This clause substitutes Table 49 which provides alternative verdicts for certain offences against the person. Technical amendments have been made to replace references to offences that are part of the new aggravated offence scheme with references to the 'simple offence' where appropriate.

Clause 24 – Section 50 heading

This clause substitutes the heading at section 50 with 'Definitions – pt 3', this is consequential on the amendment made by clause 25.

Clause 25 – Section 50 (1), new definition of *aggravated offence*

This clause inserts a definition of *aggravated offence* for the purpose of Part 3 of the *Crimes Act 1900*.

Clause 26 – Sexual assault in the first degree New section 51 (1A)

This clause inserts new section 51 (1A) which provides that the maximum penalty for an aggravated offence for an offence against subsection (1) is imprisonment for 21 years. A note states that section 72AA makes provision in relation to an aggravated offence against section 51.

Clause 27 – New section 51 (3)

This clause inserts new section 51 (3) which provides that the maximum penalty for an aggravated offence for an offence against subsection (2) is imprisonment for 25 years.

Clause 28 – Sexual assault in the second degree New section 52 (1A)

This clause inserts new section 52 (1A) which provides that the maximum penalty for an aggravated offence for an offence against subsection (1) is imprisonment for 18 years. A note states that section 72AA makes provision in relation to an aggravated offence against section 52.

Clause 29 – New section 52 (3)

This clause inserts new section 52 (3) which provides that the maximum penalty for an aggravated offence for an offence against subsection (2) is imprisonment for 21 years.

Clause 30 – Sexual assault in the third degree New section 53 (1A)

This clause inserts new section 53 (1A) which provides that the maximum penalty for an aggravated offence for an offence against subsection (1) is imprisonment for 15 years. A note states that section 72AA makes provision in relation to an aggravated offence against section 53.

Clause 31 – New section 53 (3)

This clause inserts new section 53 (3) which provides that the maximum penalty for an aggravated offence for an offence against subsection (2) is imprisonment for 18 years.

Clause 32 – Sexual intercourse without consent New section 54 (1A)

This clause inserts new section 54 (1A) which provides that the maximum penalty for an aggravated offence for an offence against subsection (1) is imprisonment for 15 years. A note states that section 72AA makes provision in relation to an aggravated offence against section 54.

Clause 33 – New section 54 (2A)

This clause inserts new section 54 (2A) which provides that the maximum penalty for an aggravated offence for an offence against subsection (2) is imprisonment for 18 years.

Clause 34 – Sexual intercourse with young person New section 55 (1A)

This clause inserts new section 55 (1A) which provides that the maximum penalty for an aggravated offence for an offence against subsection (1) is imprisonment for 21 years. A note states that section 72AA makes provision in relation to an aggravated offence against section 55.

Clause 35 – New section 55 (2A)

This clause inserts new section 55 (2A) which provides that the maximum penalty for an aggravated offence for an offence against subsection (2) is imprisonment for 18 years.

Clause 36 – Section 56, heading

This clause substitutes the heading of the offence with 'Persistent sexual abuse of child or young person under special care'. The substance of the provision remains unchanged.

Clause 37 – Act of indecency in the first degree New section 57 (2)

This clause inserts new section 57 (2) which provides that the maximum penalty for an aggravated offence for an offence against subsection (1) is imprisonment for 19 years. A note states that section 72AA makes provision in relation to an aggravated offence against section 57.

Clause 38 – Act of indecency in the second degree New section 58 (2)

This clause inserts new section 58 (2) which provides that the maximum penalty for an aggravated offence for an offence against subsection (1) is imprisonment for 15 years. A note states that section 72AA makes provision in relation to an aggravated offence against section 58.

Clause 39 – Act of indecency in the third degree New section 59 (2)

This clause inserts new section 59 (2) which provides that the maximum penalty for an aggravated offence for an offence against subsection (1) is imprisonment for 13 years. A note states that section 72AA makes provision in relation to an aggravated offence against section 59.

Clause 40 – Act of indecency without consent New section 60 (1A)

This clause inserts new section 60 (1A) which provides that the maximum penalty for an aggravated offence for an offence against subsection (1) is imprisonment for 9 years. A note states that section 72AA makes provision in relation to an aggravated offence against section 60.

Clause 41 – New section 60 (2A)

This clause inserts new section 60 (2A) which provides that the maximum penalty for an aggravated offence for an offence against subsection (2) is imprisonment for 11 years.

Clause 42 – Act of indecency with young people New section 61 (1A)

This clause inserts new section 61 (1A) which provides that the maximum penalty for an aggravated offence for an offence against subsection (1) is imprisonment for 15 years. A note states that section 72AA makes provision in relation to an aggravated offence against section 61.

Clause 43 – New section 61 (2A)

This clause inserts new section 61 (2A) which provides that the maximum penalty for an aggravated offence for an offence against subsection (2) is imprisonment for 13 years.

Clause 44 – Intimate observations or capturing of visual data etc Section 61B (1), penalty

This clause amends section 61B (1) to provide that the maximum penalty for an aggravated offence is 250 penalty units, imprisonment for 3 years or both and that the maximum penalty in any other case remains at 200 penalty units, imprisonment for 2 years or both.

Clause 45 – Section 61B (5), penalty

This clause amends section 61B (5) to provide that the maximum penalty for an aggravated offence is 250 penalty units, imprisonment for 3 years or both and that the maximum penalty in any other case remains at 200 penalty units, imprisonment for 2 years or both. A note states that section 72AA makes provision in relation to an aggravated offence against section 61B.

Clause 46 – Abduction New section 63 (2)

This clause inserts new section 63 (2) which provides that the maximum penalty for an aggravated offence for an offence against subsection (1) is imprisonment for 13 years. A note states that section 72AA makes provision in relation to an aggravated offence against section 63.

Clause 47 – Using child for production of child exploitation material etc Section 64 (1), penalty

This clause amends section 64 (1) to provide that the maximum penalty for an aggravated offence is 1,900 penalty units, imprisonment for 19 years or both and that the maximum penalty in any other case remains at 1,500 penalty units, imprisonment for 15 years or both. A note states that section 72AA makes provision in relation to an aggravated offence against section 64.

Clause 48 – Section 64 (3), penalty

This clause amends section 64 (3) to provide that the maximum penalty for an aggravated offence is 1,300 penalty units, imprisonment for 13 years or both and that the maximum penalty in any other case remains at 1,000 penalty units, imprisonment for 10 years or both. A note states that section 72AA makes provision in relation to an aggravated offence against section 64.

Clause 49 – Trading in child exploitation material Section 64A (1), penalty

This clause amends section 64A (1) to provide that the maximum penalty for an aggravated offence is 1,500 penalty units, imprisonment for 15 years or both and that the maximum penalty in any other case remains at 1,200 penalty units, imprisonment for 12 years or both. A note states that section 72AA makes provision in relation to an aggravated offence against section 64A.

Clause 50 – Possessing child exploitation material Section 65 (1), penalty

This clause amends section 65 (1) to provide that the maximum penalty for an aggravated offence is 900 penalty units, imprisonment for 9 years or both and that the maximum penalty in any other case remains at 700 penalty units, imprisonment for 7 years or both. A note states that section 72AA makes provision in relation to an aggravated offence against section 65.

Clause 51 – Grooming and depraving young people Section 66 (1), penalty

This clause amends section 66 (1) to provide that the maximum penalty for a first offence against a person under 10 years, for an aggravated offence is imprisonment for 11 years and in any other case remains at imprisonment for 9 years. The maximum penalty for a first offence against a young person 10 years or older, for an aggravated offence is imprisonment for 9 years and in any other case remains at imprisonment for 7 years. The maximum penalty for a second or subsequent offence against a person under 10 years, for an aggravated offence is imprisonment for 15 years and in any other case remains at imprisonment for 12 years. The maximum penalty for a second or subsequent offence against a young person 10 years or older, for an aggravated offence is imprisonment for 13 years and in any other case remains at imprisonment for 10 years. A note states that section 72AA makes provision in relation to an aggravated offence against section 66.

Clause 52 – Section 66 (3), penalty

This clause amends section 66 (3) to provide that the maximum penalty for an aggravated offence is 900 penalty units, imprisonment for 9 years or both and that the maximum penalty in any other case remains at 700 penalty units, imprisonment for 7 years or both.

Clause 53 – Section 66AA (8), definition of *applied provisions*

This clause omits the definition of *applied provisions* in section 66AA (8) as this term is defined in the Dictionary resulting from amendments made by clause 76.

Clause 54 – Making false report about child sexual offence Section 66AB, penalty

This clause amends section 66AB to provide that the maximum penalty for an aggravated offence is 125 penalty units, imprisonment for 16 months or both and

that the maximum penalty in any other case remains at 100 penalty units, imprisonment for 12 months or both. A note states that section 72AA makes provision in relation to an aggravated offence against section 66AB.

Clause 55 – Failure by person in authority to protect child or young person from sexual offence Section 66A (5), definition of *applied provisions*

This clause omits the definition of *applied provisions* in section 66A (5) as this term is defined in the Dictionary resulting from amendments made by clause 76. .

Clause 56 – New sections 72AA and 72AB

This clause inserts new sections 72AA and 72AB.

Section 72AA – Aggravated offences – pt 3 offences involving family violence

New section 72AA provides that an offence is an *aggravated offence* if the offence involves family violence. The section applies to an offence against the following provisions:

- Section 51 – sexual assault in the first degree
- Section 52 – sexual assault in the second degree
- Section 53 – sexual assault in the third degree
- Section 54 – sexual intercourse without consent
- Section 55 – sexual intercourse with young person
- Section 57 – act of indecency in the first degree
- Section 58 – act of indecency in the second degree
- Section 59 – act of indecency in the third degree
- Section 60 – act of indecency without consent
- Section 61 – acts of indecency with young people
- Section 61B – intimate observations or capturing visual data etc
- Section 63 – abduction
- Section 64 – using child for production of child exploitation material etc
- Section 64A – trading in child exploitation material
- Section 65 – possessing child exploitation material
- Section 66 – grooming and depraving young people
- Section 66AB – making false report about child sexual offence

The prosecution must state the relevant factor of aggravation in the charge. It is not necessary for the prosecution to prove that the defendant had a fault element in relation to any factor of aggravation. Chapter 2 of the Criminal Code does not apply to an offence to which section 72AA applies, whether or not it is an aggravated offence, unless Chapter 2 already applied to the offence before the commencement of section 72AA. A note provides that sections 48C, 72EA and 116 also provide that particular offences involving family violence are aggravated offences.

Section 72AB – Alternative verdicts for aggravated offences – offences involving family violence

New section 72AB provides that if a trier of fact is not satisfied that the defendant committed an aggravated offence listed in column 2 of Table 72AB but is satisfied beyond reasonable doubt that the defendant committed an offence in column 3 then the trier of fact may find the defendant guilty of the alternative offence. The defendant must be given procedural fairness in relation to that finding of guilt.

Clause 57 – Definitions – pt 3A Section 72A, new definition of *aggravated offence*

This clause inserts a definition of *aggravated offence* for the purpose of Part 3A.

Clause 58 – Non-consensual distribution of intimate images Section 72C, penalty

This clause amends section 72C to provide that the maximum penalty for an aggravated offence is 400 penalty units, imprisonment for 4 years or both and that the maximum penalty in any other case remains at 300 penalty units, imprisonment for 3 years or both. A note states that section 72EA makes provision in relation to an aggravated offence against section 72C.

Clause 59 – Distribution of intimate image of young person Section 72D (1), penalty

This clause amends section 72D to provide that the maximum penalty for an aggravated offence is 600 penalty units, imprisonment for 6 years or both and that the maximum penalty in any other case remains at 500 penalty units, imprisonment for 5 years or both. A note states that section 72EA makes provision in relation to an aggravated offence against section 72D.

Clause 60 – Threaten to capture or distribute intimate images Section 72E (1), penalty

This clause amends section 72E to provide that the maximum penalty for an aggravated offence is 400 penalty units, imprisonment for 4 years or both and that the maximum penalty in any other case remains at 300 penalty units, imprisonment for 3 years or both. A note states that section 72EA makes provision in relation to an aggravated offence against section 72E.

Clause 61 – New sections 72EA and 72EB

This clause inserts new sections 72EA and 72EB.

Section 72EA – Aggravated offences – pt 3A offences involving family violence

New section 72EA provides that an offence is an *aggravated offence* if the offence involves family violence. The section applies to an offence against the following provisions:

- Section 72C – Non-consensual distribution of intimate images
- Section 72D – Distribution of intimate image of young person
- Section 72E – Threaten to capture or distribute intimate images

The prosecution must state the relevant factor of aggravation in the charge. It is not necessary for the prosecution to prove that the defendant had a fault element in relation to any factor of aggravation. A note provides that sections 48C, 72AA and 116 also provide that particular offences involving family violence are aggravated offences.

Section 72EB – Alternative verdicts for aggravated offences – offences involving family violence

New section 72EB provides that if a trier of fact is not satisfied that the defendant committed an aggravated offence listed in column 2 of Table 72EB but is satisfied beyond reasonable doubt that the defendant committed an offence in column 3 then the trier of fact may find the defendant guilty of the alternative offence. The defendant must be given procedural fairness in relation to that finding of guilt.

Clause 62 – Sexual servitude offences Section 79 (1), penalty and note

This clause amends section 79 (1) to provide that the maximum penalty if a person who enters or remains in sexual servitude is younger than 18 years remains at imprisonment for 19 years and the maximum penalty in any other case remains at imprisonment for 15 years. The effect of this provision has not been changed. The amendment is consequential to the other amendments to the *Crimes Act 1900* and ensures that the term *aggravated offence* is not used other than in relation to sections 48A, 48C, 72AA, 72EA and 116.

Clause 63 – Section 79 (2), penalty and note

This clause amends section 79 (2) to provide that the maximum penalty if a person in sexual servitude involved with the business is younger than 18 years remains at imprisonment for 19 years and the maximum penalty in any other case remains at imprisonment for 15 years. The effect of this provision has not been changed. The amendment is consequential to the other amendments to the *Crimes Act 1900* and

ensures that the term *aggravated offence* is not used other than in relation to sections 48A, 48C, 72AA, 72EA and 116.

Clause 64 – Deceptive recruiting for sexual services Section 80, penalty and note

This clause amends section 80 to provide that the maximum penalty if the deceived person is younger than 18 years remains at imprisonment for 9 years and the maximum penalty in any other case remains at imprisonment for 7 years. The effect of this provision has not been changed. The amendment is consequential to the other amendments to the *Crimes Act 1900* and ensures that the term *aggravated offence* is not used other than in relation to sections 48A, 48C, 72AA, 72EA and 116.

Clause 65 – Sections 81 and 82

This clause substitutes sections 81 and 82.

Section 81 – Sexual servitude offence etc against person younger than 18 years – charges and proof

Section 81 provides that in a prosecution for an offence against Part 5, if the prosecution intends to prove that the offence was committed against a person younger than 18 years this allegation must be stated in the charge and the prosecution must prove that the defendant intended to commit, or was reckless about committing, the offence against a young person younger than 18 years. The effect of this provision has not been changed. The amendment is consequential to the other amendments to the *Crimes Act 1900* and ensures that the term *aggravated offence* is not used other than in relation to sections 48A, 48C, 72AA, 72EA and 116.

Section 82 – Alternative verdicts – sexual servitude offence etc

Section 82 provides that, if in a prosecution for an offence against section 79 or 80, the trier of fact is not satisfied that the defendant committed the offence but is satisfied beyond reasonable doubt that the defendant committed another offence against the section carrying a lesser penalty, the trier of fact may find the defendant guilty of the other offence. The defendant must be given procedural fairness in relation to the finding of guilt. This amendment adds the requirement that the defendant be given procedural fairness to ensure consistency with other alternative verdict provisions in the *Crimes Act 1900*. Other than this change, the effect of this provision has not been changed. The amendment is consequential to the other amendments to the *Crimes Act 1900* and ensures that the term *aggravated offence* is not used other than in relation to sections 48A, 48C, 72AA, 72EA and 116.

Clause 66 – Destroying or damaging property Section 116 (1), penalty

This clause amends section 116 (1) to provide that the maximum penalty for an aggravated offence is imprisonment for 25 years and that the maximum penalty in any other case remains at imprisonment for 20 years.

Clause 67 – Section 116 (2), penalty

This clause amends section 116 (2) to provide that the maximum penalty for an aggravated offence is 380 penalty units, imprisonment for 19 years or both and that the maximum penalty in any other case remains at 300 penalty units, imprisonment for 15 years or both.

Clause 68 – Section 116 (3), penalty

This clause amends section 116 (3) to provide that the maximum penalty for an aggravated offence is 60 penalty units, imprisonment for 3 years or both and that the maximum penalty in any other case remains at 50 penalty units, imprisonment for 2 years or both.

Clause 69 – New section 116 (4) to (7)

This clause inserts subsections (4) to (7) in section 116. An offence against section 116 is an *aggravated offence* if the offence involves family violence. The prosecution must state the relevant factor of aggravation in the charge. It is not necessary for the prosecution to prove that the defendant had a fault element in relation to any factor of aggravation. Chapter 2 of the Criminal Code does not apply to an offence against section 116, whether or not it is an aggravated offence. A note provides that sections 48C, 72AA and 72EA also provide that particular offences involving family violence are aggravated offences.

Clause 70 – Section 123

This clause substitutes section 123 to provide that if a trier of fact is not satisfied that the defendant committed an offence against Division 6.3 but is satisfied beyond reasonable doubt that the defendant committed another offence against Division 6.3 carrying a lesser penalty then the trier of fact may find the defendant guilty of the alternative offence. The defendant must be given procedural fairness in relation to that finding of guilt. This amendment adds the requirement that the defendant be given procedural fairness to ensure consistency with other alternative verdict provisions in the *Crimes Act 1900*. The formatting has also been amended but the effect of the provision is otherwise unchanged.

Clause 71 – Interviewing children and young people about offences Section 252G (3), new definition of *family member*

This clause rectifies an unintended omission by inserting a definition of *family member* for the purpose of section 252G.

Clause 72 – Summary disposal of certain cases at prosecutor's election New section 374 (1A)

This clause inserts section 374 (1A) which provides that for section (1) (a) the relevant penalty of imprisonment for an offence charged as an aggravated offence because it involves family violence is the penalty for the simple offence.

Clause 73 – New section 374 (6A)

This clause inserts section 374 (6A) which provides that in sentencing or otherwise dealing with a defendant in relation to an aggravated offence that involves family violence, the court must treat the family violence as an aggravating factor for the offence subject to the limitation in section 374 (7). An example is provided.

Clause 74 – New section 434C

This clause inserts new section 434C which provides that a charge for an offence may state more than one relevant factor of aggravation for the offence. A *relevant factor of an aggravation* is defined by reference to sections 48A (6), 48C (5), 72AA (5), 72EA (5) and 116 (7). An example is provided.

Clause 75 – Dictionary, definitions of *aggravated offence* and *alternative offence*

This clause amends the definitions of *aggravated offence* and *alternative offence* in the Dictionary

Clause 76 – Dictionary, new definitions

This clause inserts new definitions of *applied provisions*, *family violence*, *fault element* and *simple offence* into the Dictionary.

Part 3 – Crimes (Sentencing) Act 2005

Clause 77 – New section 51A

This clause inserts new section 51A which provides that, if the prosecution requests an adjournment for the preparation of a victim impact statement in a sentencing proceeding for a serious offence, the court must grant the adjournment for a reasonable period. The court must not adjourn proceedings if satisfied that special circumstances justify refusing the adjournment. A serious offence is defined as an offence punishable by imprisonment for more than five years.

Clause 78 – Victim impact statements – effect Section 53 (3) to (4)

This clause omits section 53 (3) to (4) and replaces it with a note that the *Evidence (Miscellaneous Provisions) Act 1991*, Chapter 6A deals with cross-examination of the maker of a victim impact statement.

Part 4 – Evidence (Miscellaneous Provisions) Act 1991

The amendments made by clauses 79 to 88 and clause 92 extend the application of provisions protecting counselling communications to those against whom a family violence offence is alleged to have occurred.

Clause 79 – Section 38 (2)

This clause moves the definition of *family violence offence* for the purpose of Chapter 4 from section 38 (2) to new section 38A.

Clause 80 – Special requirements – particular proceedings Section 43

This clause amends section 43 of the *Evidence (Miscellaneous Provisions) Act 1991* (EMPA) to clarify that a reference to a provision mentioned in column 3 is for a table in section 43, for a particular proceeding.

Clause 81 – Table 43.1, item 1, column 3

This clause inserts a reference to div 4.4.3 of the EMPA in item 1, column 3 of Table 43.1, to the effect that in family violence offence proceedings, the special requirements in div 4.4.3 apply to a complainant.

Clause 82 – Part 4.4, heading

This clause substitutes the heading of Part 4.4 with ‘Special requirements – sexual offence and family violence offence proceedings’. Previously the heading only referred to sexual offence proceedings.

Clause 83 – Division 4.4.3 heading

This clause substitutes the heading of Division 4.4.3 with ‘Sexual and family violence offence proceedings – protection of counselling communications’. Previously the heading only referred to sexual offence proceedings.

Clause 84 – Meaning of *protected confidence* – div 4.4. 3 Section 79A (1)

This clause amends the definition of *protected confidence* in section 79A (1) to include reference to family violence offences. Previously the definition only applied to a person against whom a sexual offence was alleged to have occurred.

Clause 85 – Section 79A (2)

This clause substitutes section 79A (2) which outlines when a counselling communication is a protected confidence to apply in relation to family violence offences. Previously the subsection only applied to sexual offences.

Clause 86 – Section 79A (5), new definition of *family violence offence*

This clause inserts a definition of *family violence offence* into section 79A (5).

Clause 87 – No protected confidence immunity for medical information Section 79K (a)

This clause inserts a reference to a family violence offence in section 79K. Previously the section only referred to a sexual offence.

Clause 88 – No protected confidence immunity for communications for criminal investigations and proceedings Section 79L

This clause inserts a reference to a family violence offence in section 79L. Previously the section only referred to a sexual offence.

Clause 89 – New chapter 6A

This clause inserts new Chapter 6A – Victim Impact Statements to introduce rules about when it is or is not appropriate to allow cross-examination of the maker of a victim impact statement.

Section 95 – Definitions – ch 6A

New section 95 inserts definitions of *principal proceeding* and *victim impact statement* for the purpose of chapter 6A.

Section 96 – Victim impact statements – cross-examination in principal proceeding

New section 96 provides that the court must not allow the defence to cross-examine the maker of a victim impact statement about its contents before a finding of guilt has been made, unless the court is satisfied that the statement has substantial probative value to justify allowing the cross-examination.

The court must not allow the defence to cross-examine the maker of a victim impact statement about its contents after a finding of guilt has been made, unless the court is satisfied that the cross-examination would materially affect the likely sentence to be imposed on the offender and gives leave.

Section 97 – Victim impact statements – use in other proceeding

New section 97 provides that a victim impact statement must not be used in a proceeding other than a principal proceeding unless a finding of guilt has been made in the principal proceeding, or the court hearing the principal proceeding is satisfied that the statement has substantial probative value to justify the use of the statement and makes an order allowing the statement to be used. The order may include any conditions the court considers appropriate.

Clause 90 – Dictionary, definition of *family member*

This clause amends the definition of *family member* in the Dictionary.

Clause 91 – Dictionary, new definitions

This clause inserts new definitions of *family violence offence*, *principal proceeding* and *victim impact statement* into the Dictionary.

Clause 92 – Further amendments, mentions of *division 4.4.3 (Sexual offence proceedings – protection of counselling communications)*

This clause substitutes references to ‘division 4.4.3 (Sexual offence proceedings – protection of counselling communications)’ where it appears in definitions in the Dictionary with ‘division 4.4.3 (Sexual and family violence offence proceedings – protection of counselling communications)’.

Part 5 – Family Violence Act 2016

Clause 93 – Meaning of *family violence* New section 8 (2) (f)

This clause inserts new section 8 (2) (f) which provides that family violence includes harmful use of, or interference with, technology. A list of examples is provided.

Clause 94 – New section 156

This clause inserts new section 156 which requires the Minister to review the operation and effectiveness of the *Family Violence Act 2016*, as soon as practicable after the end of three years after the section commences. A report of the review must be presented to the Legislative Assembly before the end of four years after the section commences. The section expires five years after it commences.

Clause 95 – Dictionary, definition of *family violence offence*

This clause amends the definition of *family violence offence* in the Dictionary to clarify the meaning.

Part 6 – Working with Vulnerable People (Background Checking) Act 2011

Clause 96 – Disqualifying offences Schedule 3, parts 3.2 and 3.3

This clause substitutes the tables at Part 3.2 – Class A disqualifying offences and Part 3.3 – Class B disqualifying offences. The substituted tables replicate the tables that were previously in schedule 3 with the addition of the new aggravated family violence offence where appropriate.

Schedule 1 – Consequential amendments

Part 1.1 – Children and Young People Act 2008

[1.1] – Section 246, definition of *privileged*, paragraph (b)

This clause substitutes a reference to ‘division 4.4.3 (Sexual offence proceedings – protection of counselling communications)’ with ‘division 4.4.3 (Sexual and family violence offence proceedings – protection of counselling communications)’.

Part 1.2 – Crimes (Child Sex Offenders) Act 2005

[1.2] – Schedule 1, part 1.1, item 12

This clause substitutes a reference to the offence ‘sexual relationship with a child or young person under special care’ with ‘persistent sexual abuse of child or young person under special care’.

Part 1.3 – Evidence Act 2011

[1.3] – Section 126F (3), except note

This clause substitutes a reference to ‘division 4.4.3 (Sexual offence proceedings – protection of counselling communications)’ with ‘division 4.4.3 (Sexual and family violence offence proceedings – protection of counselling communications)’.

Part 1.4 – Sex Work Act 1992

[1.4] – Schedule 1, item 16

This clause substitutes a reference to the offence ‘sexual relationship with a child or young person under special care’ with ‘persistent sexual abuse of child or young person under special care’.

Part 1.5 – Supreme Court Act 1933

[1.5] – Schedule 2, part 2.2, item 12

This clause substitutes a reference to the offence ‘sexual relationship with a child or young person under special care’ with ‘persistent sexual abuse of child or young person under special care’.