

Crimes (Family Violence) (Amendment) Bill (No. 2)

EXPLANATORY MEMORANDUM

Clause 1 sets out the purpose of the Act.

Clause 2 provides for the Act to come into operation on the day it receives Royal Assent.

Clause 3 defines the *Crimes (Family Violence) Act 1987* as the Principal Act.

Clause 4 amends section 3 of the Principal Act to re-define “child” as a person under the age of 17 years (previously 18 years) and defines “property” in relation to a family member as including property of a person situated in premises in which the family member lives or works and property of any person that is being used by the family member.

Clause 5 amends section 3 of the Principal Act to give a Children’s Court concurrent jurisdiction with a Magistrates’ Court in intervention order proceedings, where either the aggrieved family member or the defendant is under the age of 17 years. This clause also makes consequential amendments to the *Children and Young Persons Act 1989* and includes transitional provisions pending the commencement of the *Magistrates’ Court Act 1989* and *Children and Young Persons Act 1989*.

Clause 6 expands the definition of “family member” in the Principal Act. The effect of this will be to broaden the category of persons against whom a victim of violence can obtain an order to include relatives of the victim.

Clause 7 permits a child to make a complaint for an intervention order in his or her own right if over the age of 14 years. This clause also permits a third party to make a complaint for a child (of any age) with the leave of the court. At present if the aggrieved family member is a child, a complaint may only be made by a member of the police force, a parent of the child, or a third party with the written consent of a parent.

If the aggrieved family member is an adult in respect of whom there is a guardianship order in force, the appointed guardian or a third party with leave of the court will have standing to make a complaint.

In deciding whether to grant leave to third parties, the court will be required to consider what is in the best interests of the aggrieved family member.

Clause 8 broadens the current criteria for issue of warrants and interim orders. Preservation of property will be grounds for the issue of a warrant or interim order.

Clause 9 amends section 11 to require that a copy of a complaint made on behalf of a child by a third party is to be served on any parent with whom the child normally or regularly resides. If a complaint is made by a third party on behalf of a person in respect of whom a guardianship order is in force, a copy of the complaint must be served on the appointed guardian. *Clause 9* also clarifies that normal service requirements apply to service of a complaint on a defendant.

Clause 10 inserts a provision into the Act to act as a check on the power of a child of or above the age of 14 years to institute proceedings in his or her own right. The court may not hear the case or make an order without first being satisfied that the child understands the nature and consequences of the proceedings.

Clause 11 removes the requirement in section 17 that, if the defendant is in court, the clerk must cause a copy of any order made to be personally served on the defendant at the court. *Clause 11* also amends section 22 to provide that a defendant to whom an explanation of an order has been given in accordance with section 15 will be guilty of an offence if he or she acts in breach of the order.

Clause 12 amends section 18A of the Principal Act to clarify that a member of the police force may seize firearms if an intervention order is in force, whether or not the order refers to firearms.