

Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Yvette D’Ath MP

Title of the Bill

Criminal Law (Domestic Violence) Amendment Bill 2015

Objectives of the Amendments

The proposed amendments to be moved during consideration in detail amend the Criminal Law (Domestic Violence) Amendment Bill 2015 (the Bill) to insert a commencement provision in relation to certain provisions, make minor amendments to the scheme for noting domestic violence offences (notation scheme) to clarify its operation and correct a drafting error.

The Bill does not currently contain a commencement clause; meaning that the amendments in the Bill will commence on assent. During consultation undertaken by the Department of Justice and Attorney-General (DJAG) on the Bill, it was identified that implementation of the notation scheme will require a number of operational and computer system changes. To allow these system changes to take place, the proposed amendment provides for commencement on a fixed date, 1 December 2015.

An offence under the *Domestic and Family Violence Protection Act 2012* (DFVP Act) is excluded from the definition of domestic violence offence used for the notation scheme, given that it is self-evident that a charge or conviction under the DFVP Act relates to domestic or family violence. However, this means that there is currently no capacity for the court to examine a person’s past criminal history where they are convicted and being sentenced for an offence under the DFVP Act. The amendments will remedy this by ensuring that the court can make a notation against a conviction on a person’s past criminal history to identify that it occurred in a domestic and family violence context when they are before the court for any domestic violence offence (i.e. including an offence under part 7 of the DFVP Act).

Minor amendments to the notation scheme are also made to clarify that it is the judicial officer acting as the court (and not a jury) who makes the finding that an offence is a domestic violence offence post-conviction as part of the sentencing process.

Further, an amendment is made to the new definition of *domestic violence offence* in the DFVP Act to correct a drafting error.

Achievement of the Objectives

The policy objectives are achieved by amending the Bill to:

- insert a commencement provision so that sections 4 and 5 and parts 5 and 6 of the Bill commence on 1 December 2015;
- amend the definition of domestic violence offence in clause 7 to correct a drafting error;
- clarify that the power of the court under new section 12A (clause 18) to make notations is exercised by the sentencing judge or magistrate post-conviction; and
- clarify that a conviction under the DVFP Act will enliven the provisions to make a previous offence notation under new section 12A (clause 18).

Alternative Ways of Achieving Policy Objectives

The policy objectives can only be achieved through legislative amendment.

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 amendments are consistent with fundamental legislative principles.

Consultation

Consultation was undertaken with key stakeholders on the Bill following introduction and this consultation has informed the amendments.

NOTES ON PROVISIONS

Amendment 1 inserts new clause 1A which provides that sections 4 and 5 and parts 5 and 6 of the Bill commence on 1 December 2015.

Amendment 2 amends clause 7 to correct a drafting error.

Amendment 3 amends clause 18 to change the heading for new section 12A.

Amendment 4 amends clause 18 to make an amendment to new section 12A(1). This amendment makes it clear that subsection (2) only applies in the circumstances outlined in subsection (1).

Amendment 5 amends clause 18 to insert a new section 12A(1)(b) and (c). This amendment clarifies that new subsection 12A(2) applies after the offender has been convicted and that a court (not jury) must be satisfied the offence is also a domestic violence offence as part of the sentencing proceeding.

Amendment 6 amends clause 18 to insert a reference to ‘a court’ at the beginning of new subsection 12A(3). This is a consequence of Amendment 7.

Amendment 7 amends clause 18 to expand the operation of new subsection 12A(3), to include if a court convicts an offender of an offence against the *Domestic and Family Violence Protection Act 2012*, part 7.