

## FAMILY VIOLENCE AMENDMENT BILL 2024 (No. 51)

## **Second Reading**

[12.04 p.m.]

Ms JOHNSTON (Clark) - Honourable Deputy Speaker, I move -

That the bill be now read a second time.

I rise today to introduce two simple and hopefully uncontroversial amendments to the *Family Violence Act 2004*. The amendments address two issues that Tasmanian Legal Aid and other organisations who work with victim/survivors of family violence have told me create significant further harms to victim/survivors: circumstances for granting an extension of a family violence order, and the awarding of costs.

Before I get on to the substantive details of the bill, I want to give some context which will be familiar to many of you in the Chamber that merits stating, especially today, three days into 16 Days of Activism against Gender-Based Violence, and I note the government's intention to move a motion to acknowledge this in the House tomorrow.

We all know family violence is a serious and widespread issue in Tasmania, as it is in Australia and indeed around the world. Here are three statistics to remind us of the scale of the issue. Two in five women have experienced violence since the age of 15. On average, one woman is killed every nine days by a current or former partner. Research shows that about one in four men in Australia aged 18 to 45 say they have used physical and/or sexual violence against an intimate partner. They are sobering statistics.

We know the impacts of this spread far beyond the perpetrator and the victim/survivor alone. Domestic or family violence is a leading driver of homelessness that is putting pressure on an already overstretched housing and crisis support system. It contributes massively to mental and physical health costs for governments. It has an impact in workplaces through staff retention, presentation, absenteeism and morale, and undermines productivity. Because children are often involved as witnesses, the impacts become intergenerational, affecting children's wellbeing, their schooling and their likelihood of being perpetrators and/or victim/survivors in the future. Despite how devastatingly common it is, it is often under-reported, hidden behind closed doors and not always addressed as urgently as it should be.

I am pleased to say that the Tasmanian government, with the support of everyone in this place and the other place, acknowledges the seriousness of the issue and in recent years in particular, they have introduced a range of legislative policy and funding measures to prevent family violence, address offending, ensure justice is delivered to perpetrators, fund crisis counselling and support services and deliver support to victim/survivors.

With major drivers of family violence being gender stereotypes and attitudes towards women, we know that change will not be immediate. This makes it all the more urgent that we do whatever we can now to change the systems and processes that inflict more harm on victim/survivors. That is why I am introducing these amendments to the *Family Violence Act*. There is low-hanging fruit we can address now while we wait for the outcome of a broader review of the act, which I am pleased to say is currently being undertaken by the department.

To my amendments. The first amendment addresses the unnecessarily complex process of seeking an extension to a family violence order. Orders typically are in place for 12 months. Currently, to be granted an extension of an order, the applicant needs to demonstrate a substantial change in relevant circumstances since the order was made or last varied. Courts have largely interpreted this to mean that a breach of the order has occurred. The problem is, though, there may have been no breach precisely because the order was successful and had done its job. Just because no breach has been reported or substantiated does not mean there has not been one. There are all sorts of reasons why this can occur, fear and manipulation of the process being two common ones.

At the 12-month mark, often when Family Court proceedings are underway, tensions are high and women in particular are at high risk of harm, it is more important than ever to ensure victim/survivors are safe, without having to add to a very stressful and anxious time by applying for extensions to orders. To put this in perspective, in some Australian jurisdictions such as

Queensland and Victoria, for example, orders are made for a minimum of five years and do not have an end date. The onus is on the alleged perpetrator to apply for the order to be amended or revoked.

Organisations who work with victim/survivors have told me that the difficulties of being granted an extension put women in grave danger. Knowing there has to be a substantial change or a breach of an order, many women will wait for the next incident so they have something more recent with which to persuade the court. That is tragic. As well, we know when we watch the news that all too often that one last incident might be the last and it might be deadly. To redress this, my proposal is to allow the extension of family violence orders without a substantial change in circumstances since the order was made or last varied. The court will be required to take into account the same risk factors as when the initial order was granted.

The second issue my bill addresses is the awarding of costs in order to address abuse of the family violence order process by perpetrators. Under the current act, there is a presumption that each party will bear their own costs. The problem is, we know that perpetrators of family violence who are subject to family violence orders often manipulate the family violence order process as a means of extending their coercive control, for example, by making vexatious or frivolous applications to vary a family violence order, or by making repeated applications that are then withdrawn, or unnecessarily prolonging proceedings. Victim/survivors are then forced to pay to challenge these manipulative actions.

This can mean victim/survivors are subject to time-consuming and costly court processes, often extending their trauma or retraumatising them in new ways, adding more financial stress when they are often already in a highly precarious financial position and generally adding stress and complexity to their lives when they need the opposite. Worse, the current practise of awarding costs has a chilling effect on victim/survivors, who unable to afford costs, do not continue with or withdraw a family violence order application. Tasmanian Legal Aid say this is as much as 50 per cent of women. Even more, about two-thirds do not pursue extensions to a family violence order unless brought on by police where the party does not bear costs.

As well as bringing an element of fairness to the issue of costs, it is hoped that knowing costs could be awarded against the perpetrator will act as a deterrent for some, at least, who may consider manipulating the family violence order processes. My bill starts to address this issue by legislating the assumption that each party bears their own costs, except in the following circumstances as outlined in section 34 of the bill and the clause notes. The amendment reads:

- (a) whether the liable party has made the application, objected to the application, or withdrawn the application -
  - (i) for the purposes of controlling or intimidating, or causing mental harm to, or apprehension of fear in, another party to the application; or
  - (ii) for a purpose, or in a manner, that is malicious, frivolous, vexatious or in bad faith; or
  - (iii) in a manner that has an unreasonable impact on another party to the application;

I note this has been based on existing provisions in section 45 of the *Magistrates Court Administrative Appeals Division Act of 2001*.

- (b) whether the liable party has been responsible for prolonging unreasonably the time taken to complete the proceedings;
- (c) whether exceptional circumstances exist.

As to the section 34(2)(a)(iii) amendment reference to 'unreasonable impact', after discussions with the Attorney-General and his department yesterday, I note their concerns regarding this so I acknowledge the Attorney-General may speak to that later. I will explain why it was included originally on advice from the Office of Parliamentary Counsel. It is intended to cover actions that may fall short of a legal definition of malicious, frivolous, vexatious or in bad faith, but may still have an unreasonable impact on another party. For example, the liable party may have provided documents in connection with the application in a format that creates an unnecessary burden on another party. Think thousands upon thousands of pages of single-sided, hard copy documents when those had been provided to others in PDF format.

Perhaps the liable party may wait months to withdraw an application, which may result in another party paying unnecessary legal costs, even though the liable party had told the other party that they were never going to proceed with the application. In some cases, the court may consider such actions to be malicious, frivolous, vexatious or in bad faith. The proposed new section 34(2)(a)(iii) allows the court to make an order for cost without having to make a definitive decision as to where the actions are malicious, frivolous, vexatious or in bad faith.

It is also important to clarify that proposed new section 34(2)(a)(iii) must be a result of the manner of how the application is made, objected to or withdrawn. It does not relate to an order or a condition of an order that may result from the application. In other words, it applies to the process of how an application is made, not to the substance of the order. I note again the Attorney-General's concern about this and indicate a willingness that, should that concern continue, I would be open to amendments in the other place to address that.

I said earlier that my bill starts to address the issues relating to extensions and costs because, as victim/survivors have said over and over, as have those organisations who work day in and day out to support them, the family violence order process provides some protections but is in desperate need of an overhaul. I will have more to say on that shortly.

The bill was drafted in response to Tasmania Legal Aid (TLA) and other organisations raising issues based on their unique and experienced insights into the operation of family violence orders. I take this opportunity to thank the Office of Parliamentary Counsel for drafting the bill. I thank Katherine Woodward and TLA director Kristen Wylie for their work with me to ensure this bill achieves its purposes. I also recognise my staff, Charlie, Bella and Paul, in this regard.

I have consulted widely on this bill over several weeks and there is universal support for it in the family violence sector. Amongst others, it has support from the Tasmanian Family and Sexual Violence Alliance, especially the Women's Legal Service, Laurel House and Sexual Assault Support Service, organisations that work with both victim/survivors and perpetrators, Relationships Australia and Positive Solutions, and community legal centres.

I circulated the bill to all House of Assembly members at the start of this month and provided a briefing on the bill two weeks later. I thank members for attending that briefing. There has been broad support in this place. Yesterday, I had a productive discussion with the Attorney-General. I believe he and his department support the intent of the bill and, hopefully, he will vote for it today.

I note their intention to consider minor amendments in the other place if needed, after consultation with magistrates in the coming months. I acknowledge their desire to get the bill right, but their concerns could have been addressed in the last month. I will share the words of one organisational leader who works tirelessly in this space, on hearing that there might be a delay, 'I guess it means that women continue to be at greater risk while we continue to wait. I don't mean to sound ungrateful; I'm just disappointed'. I join her in hoping, for the sake of the women and other victim/survivors of gender-based violence - and we are all wearing orange ribbons today - that any delay will be as short as possible. I note the Attorney-General's assurance about that.

I am confident that passing the bill in this place today will still have a significant effect in that it signals to magistrates and other relevant players in the justice system that women, in particular, are in urgent need of greater protection. They do not need to wait for legislation to change their responses in family violence orders.

I say there is wide support for this bill, but it comes with one important caveat. While these two relatively minor changes are absolutely necessary to reduce the further harm to victim/survivors when perpetrators abuse the family violence order system, this is a two-decade old act that has only had incremental reform in that time. It is in desperate need of the overhaul that is now underway.

I will flag a couple of areas I hope the review will address. In the 20 years since it was enacted, we know much more about family violence, including recognising that it is not just intimate partners, but children and other family members who can be perpetrators. Therefore, expanding the definition of family violence is an urgently needed reform.

We also know that perpetrators are cunningly adept at working around each reform, not just to avoid prosecution, but to actively manipulate family violence orders and the family court to continue their harmful coercive behaviours. The act needs to allow authorities to be responsive to these changing behaviours. Without trying to make light of a very dark issue, it is like playing a game of whack-a-mole. Perpetrators find whatever loopholes they can to inflict harm on victim/survivors. We need legal and policy settings that reflect this.

I could go on with the work that still needs doing, not all of which is legislative. We know changes to policing practices and perhaps the court offices are needed. Much more needs to be done on the prevention side of things as well. However, today I will focus on these two very simple, hopefully uncontroversial changes we can enact today so that victim/survivors have a safer tomorrow. I commend the bill to the House.