

## Family Violence Amendment Bill 2024

### 2<sup>nd</sup> Reading Speech

- Thank you Honourable Speaker
- I rise today to introduce two simple, uncontroversial amendments to the Family Violence Act 2004.
- The amendments address two issues that Tasmania Legal Aid and other organisation 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.
- Speaker, before I get on to the substantive details, I want to give some context which will be familiar to many of you but merits stating
- 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 3 statistics to remind us of the scale of the issue-
  - 2 in 5 women have experienced violence since the age of 15
  - On average, one woman is killed every 9 nine days by a current or former partner
  - Research shows that around 1 in 4 men in Australia aged 18 to 45 say they have used physical and/or sexual violence against an intimate partner
- Speaker, we know the impacts of this spreads far beyond the perpetrator and victim survivor alone
  - Domestic or family violence is a leading driver of homelessness, so it is putting pressure on an already over stretched 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, presenteeism, absenteeism and morale, and undermines productivity
  - And 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 victims themselves in future
- Despite how devastatingly common it is, it is often underreported, hidden behind closed doors, and not always addressed as urgently as it should be.
- I’m pleased to say the Tasmanian Government, with the support of everyone in this and the other place, acknowledge the seriousness of the issue and in recent years in particular 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 we do whatever we can now to change the systems and processes that inflict more harm on victim survivors
- Speaker, That is why I am introducing these amendments to the Family Violence Act - because there is low hanging fruit that we can address now while we wait for the outcome of the broader review of the Act I'm pleased to say is currently being undertaken by the Department of Justice.
- So, to my amendments.
  
- The first amendment addresses the unnecessarily complex process of seeking an extension for a FVO. Orders typically are in place for 12 months. To be granted an extension of the 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 – it did its job!
- Or, just because no breach has been reported or substantiated, does not mean there hasn't been one. There are all sorts of reasons why this can occur – fear, and manipulation of the process, being two common ones.
- So at the 12 month mark - just when family court proceedings are often under way, tensions are high and women in particular are at high risk of harm – it's 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.
- Speaker, to put this in perspective in some Australian jurisdictions, Qld and Victoria for example, orders are made for a minimum of 5 years or do not have an end date, and 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 puts women in grave danger; knowing there has to have been a substantial change or breach of an order, many women will wait for the next incident so they have something more recent to persuade the court. But as well know when we watch the news all too often, that one last incident might be the last.
  
- To address this, my Bill proposes to allow the extension of a FVO without a substantive 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.
- Speaker, the second issue my Bill addresses the awarding of costs in order to address abuse of the FVO 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 FVO process as a means of extending their coercive control.
  - For example, by making vexatious or frivolous applications to vary a FVO, or 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 retraumatizing 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 just when they need the opposite.
- But worse, the current practice of awarding costs has a chilling effect on victim survivors who, unable to afford costs don't continue with or withdraw a FVO application – Tasmanian Legal Aid say this is as much as 50% of women
  - While even more – about 2/3 – don't pursue extensions to an FVO (unless brought on by police, where the party doesn't bear costs)
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- 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 the Bill and the Clause Notes:
  - Whether the liable party has made, objected to or withdrawn the application
    - to control, intimidate, cause harm or fear to another party to the application;
  - for a malicious, vexatious, frivolous or bad faith purpose;
  - in a way that has an unreasonable impact on the other party (this is based on an existing provision in Tasmania Section 45 of the *Magistrates Court (Administrative Appeals Division) Act 2001*;
  - whether the liable party is unreasonably prolonging proceedings;
  - whether exceptional circumstances exist.

- Now a note about Section 34 (2) (iii), I'll clarify what is meant by the term 'unreasonable impact' because I've had some queries about its possible breadth. 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 1,000's of pages of single sided hard copy documents when those documents had been provided to others in PDF format); or
  - the liable party may wait months to withdraw the application which may have resulted in another party paying unnecessary legal costs, even though the liable party had told other people 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. But proposed new section 34(2)(a)(iii) allows the court to make an order for costs without having to make a definitive decision as to whether the actions are malicious, frivolous, vexatious or in bad faith.
- It's 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 any conditions of an order, that may result from the application. In other words, it applies to the process of how an application is made, not the substance of the order.
- 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 FVO process.
- I said earlier 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 day out to support them, that the FVO process provides some protections but is in desperate need of an overhaul.
- I'll have more to say on that shortly.
- The Bill was drafted at the request of Tasmania Legal Aid, based on their unique and experienced insights into the operation of FVOs.
- I want to thank the Office of Parliamentary Counsel for their drafting of the Bill which was done with the input of Tasmania Legal Aid. I thank Katherine Woodward and TLA Director Kristen Wylie for their work with me to ensure this Bill achieves its purpose.

- I have consulted with many people in the family violence sector and there's widespread support for this Bill, 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 FVO system, this is a two-decade old Act that has seen only incremental reform in that time, and it's in desperate need of the overhaul that's underway now.
- To flag only a couple of areas I'm hoping that review will address –
  - In the 20 years since it was enacted we now know so much more about family violence – including now recognising that it is not just intimate partners but children and other family members who can be perpetrators. So expanding the definition of family violence is an important reform that's urgently needed.
  - 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. So 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 loophole they can to inflict harm on victim survivors so we need legal and policy settings that reflect this.
- I could go on with the work that still needs doing – not all of it legislative, mind you: we know there are changes to policing practices and practices of court officers that are needed, and of course so much more needs to be done on the prevention side of things – but today I want to focus on these two simple, uncontroversial changes that we can enact today, so that victim survivors have a safer tomorrow.
- I commend the Bill to the House.