

DRAFT SECOND READING SPEECH

HON. WILL HODGMAN MP

Domestic Violence Orders (National Recognition) Bill 2016

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Madam Speaker, I move that the Bill now be read a second time.

This Government is dedicated to addressing the very serious problem of family or domestic violence and I am pleased to introduce the Domestic Violence Orders (National Recognition) Bill 2016.

Madam Speaker, following many months of work and consultation this Bill proposes a new legislative framework which aims to enhance the protection of victims, including children, of family or domestic violence not only in Tasmania but across all Australian states and territories.

In April 2015 the Council of Australian Governments (or COAG) agreed to take urgent collective action in 2015 to address the unacceptable level of violence against women and committed to developing a National Domestic Violence Order Scheme, where domestic violence orders, or DVOs, will be automatically recognised and enforceable in any state or territory of Australia.

A set of model laws were adopted by COAG in December 2015 to hold family and domestic violence perpetrators accountable across Australian jurisdictional borders.

At this December 2015 meeting, this Government and every state and territory committed to introduce laws to give effect to the National Domestic Violence Order Scheme in the first half of 2016.

Tasmania is playing its part in the national effort to protect victims of family and domestic violence throughout the nation. A national recognition scheme will ensure that those people affected by family or domestic violence can access the protection they need and deserve, regardless of where they live in Australia.

Addressing the issue of family violence is a priority for the Government and while today we are here to talk about the legislative framework underpinning the national domestic violence order scheme, I would like to reiterate the important initiatives under the Government's Family Violence Action Plan for 2015-2020 - *Safe Homes, Safe Families*.

Safe Homes, Safe Families is a coordinated, whole of government five year Action Plan to prioritise the safety and wellbeing of those affected by family violence, particularly women and children. Strengthening the legislative framework to address family violence is one element of the Action Plan.

The Safe Homes, Safe Families Implementation Plan was launched in November 2015 and guides the delivery of actions under *Safe Homes, Safe Families* and identifies what the Government will achieve in 2016 for each of the 19 Actions.

Safe Homes, Safe Families provides \$25.57 million for 19 new and direct actions which address family violence in Tasmania. This funding is in addition to the \$16 million in direct funding and \$24 million in indirect funding this Government spends to address family violence each year.

Safe Homes, Safe Families represents the start of a long term commitment to the Tasmanian community.

Last year a first tranche of amendments were made to Tasmania's *Family Violence Act 2004* and this Government is exploring additional measures to further strengthen the legislative frameworks to hold perpetrators of family violence to account and to improve the safety of victims of family violence.

Madam Speaker, all states and territories have similar family or domestic violence order frameworks. DVOs, or as they are known in Tasmania, family violence orders, police family violence orders or interim family violence orders, are a key tool of the justice system to protect victims and children of family violence.

Currently, state and territory legislation provides for DVOs issued by a court in one jurisdiction to be registered and enforced in another jurisdiction. However, the onus is on the victim to apply to the court to have their DVO registered in another jurisdiction.

Under a national recognition scheme, victims of family or domestic violence will no longer need to negotiate the varied cross-jurisdictional mutual recognition processes to register their DVO in a new jurisdiction.

The national recognition scheme will also overcome barriers impeding the protection of victims of family or domestic violence, for instance: where victims were not aware of the need to register an interstate DVO, or they did not do so as they feared that registering the DVO would alert the defendant to their whereabouts.

A National Domestic Violence Order Scheme working group, comprising representatives from justice and police agencies in each jurisdiction drafted national model provisions to provide for a seamless national recognition and enforcement scheme. This Bill is substantially in the form of the model provisions.

The national model provisions were drafted in accordance with the following policy principles that were agreed by each jurisdiction:

- a DVO made anywhere in Australia or a New Zealand DVO registered anywhere in Australia is nationally recognised and enforceable;
- a DVO that is nationally recognised can be amended in any jurisdiction, but only by a court;

- if a DVO made in one jurisdiction is in force, a new order can, if necessary, be made in another jurisdiction, but only by a court; and
- the latest DVO in time prevails.

The model provisions were also considered by the advisory panel on reducing violence against women and their children, chaired by Mr Ken Lay, APM, former Chief Commissioner of Victoria Police, and deputy chairs Ms Rosie Batty and Ms Heather Nancarrow.

The proposed Bill gives effect to the National Domestic Violence Order Scheme model laws in Tasmania and reflects the policy principles to enable the national recognition of DVOs as cited earlier.

I now turn to the provisions of the Bill before the House.

Part 1 of the Bill

The Bill defines the Tasmanian family violence protection orders made by courts and police, domestic violence orders of other jurisdictions and foreign orders recognised under the national recognition scheme. The only foreign orders that are to be recognised under the national recognition scheme are New Zealand DVOs registered in any participating jurisdiction. The proposed Bill is limited to family or domestic violence orders only.

Clause 8 of the Bill clarifies that general violence orders will only be recognised if they address a domestic violence concern and limits the scope of recognition of orders from South Australia and Western Australia to orders that are made to address a domestic violence concern. This clause is necessary because South Australian and Western Australian legislation does not currently differentiate between DVOs and personal violence orders.

The Bill allows registrars and courts in South Australia and Western Australia to declare their respective orders to be those that currently address a domestic violence concern in order for them to be recognised under this new national recognition scheme for DVOs.

I note that Western Australia proposes to introduce legislation to provide for a new and distinct category of protection order for family violence. This Bill will be amended accordingly to incorporate any changes made by Western Australia.

Part 2

This Bill sets out that a recognised DVO in Tasmania means a DVO made here, such as a family violence order, interim family violence order or a police family violence order, a DVO made in another participating jurisdiction which has enacted corresponding laws, or a New Zealand DVO registered in any participating jurisdiction.

Clauses 11 and 12 provide for the circumstances in which variations and revocations are allowable and therefore recognised under the national recognition scheme. These provisions, together with consequential amendments to the *Family Violence Act 2004*, make it clear that a DVO can only be varied or revoked by a court in another jurisdiction and that a police issued

DVO, which is a police family violence order (or a PFVO) in Tasmania, cannot override a court DVO made for the same defendant and protected person.

Clause 14 clarifies that although a person is not prevented from applying for a new DVO in Tasmania, a police officer is not to make a PFVO in Tasmania if that police officer is aware that there is already a recognised DVO made by a court in another jurisdiction for the same defendant and protected person. This is to ensure that the making of a PFVO does not supersede an existing court made order.

Clause 15 gives effect to the principle that a recognised DVO, or a variation to a recognised DVO, is enforceable in Tasmania once the defendant has been properly notified.

In keeping with current notification procedures for Tasmanian protection orders, the Bill at clause 16 defines properly notified in Tasmania as when the defendant is present before the court when the local DVO is made or when a defendant is served personally with the local DVO or a copy of it, or in the case where a PFVO is made, when the order is served on the person to whom it is issued and a copy is sent to the Chief Clerk of Petty Sessions.

For the purposes of the national recognition scheme, jurisdictions agreed to observe the service requirements set out in the local laws as proper notification of interstate DVOs as provided for in subclause (2) of clause 16.

Clause 17 specifies that a contravention of a DVO is recognised in all participating jurisdictions. Therefore, a contravention of a non-local DVO (being an interstate DVO or a foreign DVO) that is a recognised DVO in Tasmania under the national recognition scheme may be enforced in Tasmania as if it were a Tasmanian DVO.

In Tasmania, the maximum penalty for the offence of contravening a local DVO increases when there has been a previous contravention of a local DVO. Clause 18 provides that the penalty for contravening a recognised DVO escalates with further contraventions of a recognised DVO in Tasmania.

Clause 19 prescribes the elements of the enforcement of a non-local DVO to ensure they are treated in the same way that a Tasmanian DVO would be. This means that Tasmania will recognise prohibitions or restrictions imposed by a non-local DVO as if it were made in Tasmania.

Similarly, under clause 20 all existing Tasmanian provisions that restrict the grant of a particular licence or permit, such as a firearms licence, will extend to a person with a DVO from a participating jurisdiction. Therefore, if a person is disqualified from holding a licence for a firearm in another jurisdiction because of a recognised non-local DVO, the person is also disqualified from holding a licence for a firearm under the *Firearms Act 1996*.

Part 3

The Bill provides that a DVO that is recognised can be amended in any jurisdiction, but only by a court.

Clause 26 sets out leave provisions for the variation and revocation of non-local DVOs. A list of matters that a court may consider in deciding whether to hear an application for the variation of a non-local DVO are specified in subclause 2 and include consideration of:

- the jurisdiction in which the defendant and the protected person live and work,
- any difficulty the respondent to the proceedings may have to attend the proceedings,
- whether there is sufficient information available to the court about the DVO,
- whether proceedings are being taken regarding an alleged breach of a DVO,
- the practicality of the applicant applying for a similar DVO in Tasmania, and
- the impact of the application on children who are protected persons under the DVO.

This Bill also specifies at clause 26(5) that a Tasmanian court must refuse to hear an application for a variation or revocation made by a defendant if the defendant would not be entitled to make such an application in the issuing jurisdiction. For example, where there is a time limit on when the defendant can make such an application.

Part 4

Part 4 of this Bill sets out the principles relating to the exchange of information between jurisdictions for the purpose of enforcing DVOs.

The Commonwealth is currently working with Tasmania and other states and territories to develop a comprehensive national DVO technical capability that police and courts will be able to use for evidentiary purposes or to enforce DVOs.

A national system will take several years to fully implement and an interim technical solution for domestic violence orders, leveraging off CrimTrac's existing National Police Reference System capability will provide police and courts with core information related to all DVOs made in states and territories that both police and courts will rely on to check information about interstate DVOs.

Further legislation may be required to provide for the information sharing provisions and it will depend on the outcome of the important work on the technical capability.

Part 5

Clause 31 provides for a certificate to be issued stating that the making of, or the variation to, a DVO has been properly notified in Tasmania or another jurisdiction.

Under clause 34, there are a number of consequential amendments to be made to other Acts. These are set out in Schedule 1 of the Bill and include amendments to the *Bail Act 1994*, *Family Violence Act 2004*, *Firearms Act 1996*, *Justices Act 1959*, *Police Offences Act 1935*, *Residential*

Tenancy Act 1997 and *Sentencing Act 1997*. The consequential amendments will ensure recognised DVOs under the national recognition scheme are also considered in decisions under these Acts.

Part 6

Under clause 37, this Bill will apply prospectively to any Tasmanian DVO made in Tasmania or New Zealand DVO registered in Tasmania on or after the commencement date.

That is necessary to ensure that all the required information sharing systems are in place and that the parties to the DVOs are properly notified that the DVO can now be nationally enforced.

This Bill however also provides for DVOs made before the commencement of the scheme to be recognised nationally through a declaration process. Division 4 of Part 6 of this Bill provides the process by which a declaration can be made.

It requires a person to apply to a clerk of petty sessions to have their DVO declared to be a recognised DVO under the national recognition scheme. The declaration mechanism is based on the existing manual process for registering external DVOs in Tasmania.

Finally, this Bill specifies that a DVO can be declared to be 'recognised' in Tasmania even if the DVO was made in a jurisdiction that is not a participating jurisdiction. Notice of a declaration is not to be served on the defendant unless the person who made the application for the declaration consents to service.

Madam Speaker, this Bill was developed and endorsed through the Law, Crime and Community Safety Council and COAG. The Tasmanian Department of Justice led the work to develop these model laws including:

- negotiating across all Australian jurisdictions and police portfolios;
- liaising with the Department of Prime Minister and Cabinet and CrimTrac; and
- instructing the Parliamentary Counsel's Committee.

The result of this work was the development of a model bill that has formed the basis of the Bill before the Parliament today.

In addition to this work, the Bill has undergone considerable consultation across a broad range of stakeholders including: Women's Legal Service, Legal Aid Commission of Tasmania, Law Society of Tasmania, Tasmanian Bar, Community Legal Centres Tasmania, Sexual Assault Support Services, Laurel House, Hobart Women's Shelter, Launceston Women's Shelter, Warrabee Women's Shelter, Support, Help and Empowerment, Tasmanian Aboriginal Community Legal Service and Civil Liberties Australia.

Consultation was undertaken across government through Safe at Home, Interdepartmental Committee on Family Violence, Magistrates Court of Tasmania, Supreme Court of Tasmania,

Safe Families Coordination Unit, Director of Public Prosecutions, Departments of Police, Fire and Emergency Management, Premier and Cabinet, and Health and Human Services.

Family violence is a very serious issue and a priority of this Government.

This Bill forms part of a number of initiatives by this Government to address family violence and its provisions aim to provide increased protections for victims of family or domestic violence across Australia.

I commend the Bill to the House.