Family Violence:

Strengthening Our Legal Responses

CONSULTATION PAPER

OCTOBER 2016

Department of Justice

Tasmanian Government

Contents

Foreword

Everyone has the right to live their life free from violence, particularly in their own homes.

Family violence is a serious issue affecting too many Tasmanians. The protection and safety of victims and children of family violence is paramount.

Family violence is when someone intentionally uses violence, threats, force or intimidation to control or manipulate a partner, former partner or the children of partners.

Family violence happens regardless of a persons' background or status. Women experience family violence at greater rates than men, and women and children often live in fear as a result of the abuse used by the perpetrator to maintain control over their partners and families.

The impact of family violence is particularly devastating: it damages the physical and mental health of the people who experience it and it has significant short and long term negative impacts on those who witness it, particularly children.

Levels of family violence continue to be disturbingly high. The elimination of family violence is a high priority of the Tasmanian Government.

The Hodgman Government committed an additional $25.57 million to new and direct actions over four years under the Safe Homes, Safe Families: Tasmania's Family Violence Action Plan 2015-2020. This plan includes funding to get tough on perpetrators and better support adult and child victims. In particular, the plan's action 12 focuses on strengthening our legislative frameworks to address family violence. The Government is also committed to consulting on sentencing options for serious and repeat family violence perpetrators.

This paper is to help design strategies to improve the legal frameworks to address the prevalence of family violence in Tasmania and to improve the way our justice system deals with family violence perpetrators.

A number of potential responses are suggested to strengthen the existing legal framework.

I invite written comments on this paper to contribute to the Government's efforts to improve how Tasmania's justice system addresses family violence.

Dr Vanessa Goodwin MLC

Attorney-General

Minister for Justice

October 2016

Introduction

Improving how Tasmania's justice system deals with family violence is a priority for the Government. In August 2015 the Government released Safe Homes, Safe Families: Tasmania's Family Violence Action Plan 2015-2020 (the Family Violence Action Plan) a coordinated, whole-of-government response to family violence.

The Family Violence Action Plan identifies key priority areas for action to address family violence in Tasmania. Strengthening Tasmania's legal responses is a priority area for action, with a focus on those who have committed, or are at risk of committing, family violence and intervening to change their behaviour. Specifically:

- ensuring victims of family violence are well supported and have access to legal advice and representation;
- holding perpetrators to account and making sure there are adequate and appropriate consequences for their behaviour; and
- interventions to stop people at risk of offending or re-offending.

In September 2015 the Attorney-General announced the exploration of a range of measures to better manage high-risk family violence perpetrators in order to keep the community safe, including:

- developing a mechanism to flag family violence related offences on a person's criminal record;
- developing a family violence bench book to assist Magistrates and Judges in trials and sentencing of family violence perpetrators;
- making sure that there are appropriate processes in place to identify high-risk family violence perpetrators with multiple victims;
- consideration of whether reform of Tasmania's bail provisions in the family violence context is required to improve community safety;
- analysis of whether there are adequate supervision and intervention strategies in place to manage high-risk family violence perpetrators; and
- consideration of the Tasmania Law Reform Institute's report into possible reform of the law of self-defence in family violence cases.

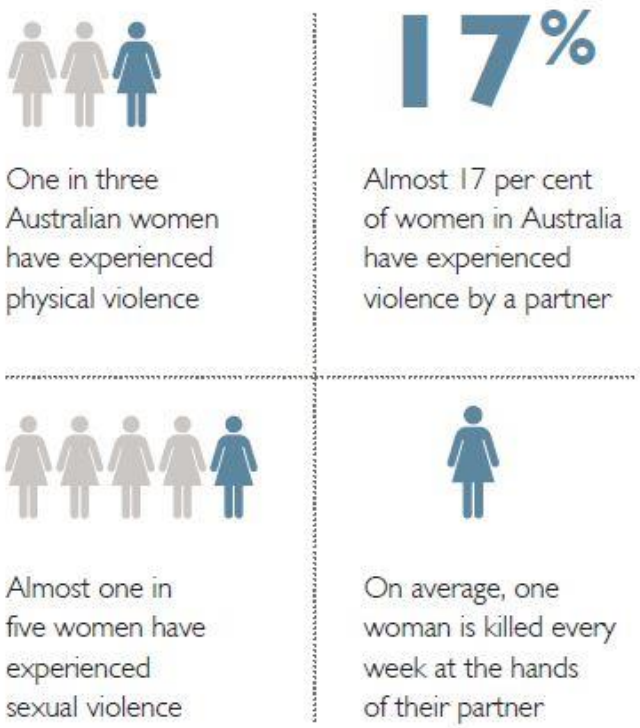
The Tasmanian Government is taking strong action to reduce family violence. The Family Violence Action Plan is the Tasmanian Government’s coordinated, whole of government action plan to respond to family violence and builds on existing family violence responses such as Safe at Home.

The Safe Families Coordination Unit was established in 2016 which comprises several government agencies working collaboratively to provide a cohesive response to address family violence in Tasmania and to encourage reporting by victims of family violence.

The purpose of this paper is to ask readers to consider a range of matters for reform and to provide their feedback.

There are seven topics included for consideration: breaches of protection orders by protected persons; mandatory reporting; definition of 'family relationship'; self-defence in the context of family violence; tendering no evidence in family violence cases; persistent perpetrator declarations and associated consequences.

The release of this paper coincides with consultation on proposed amendments in the Family Violence Reform Bill 2016 to amend the *Corrections Act 1997*, *Evidence (Children and Special Witnesses) Act 2001*, *Family Violence Act 2004* and the *Police Offences Act 1935*.



(Courtesy of Tasmania's Family Violence Action Plan 2015–2020)

If you or someone you know is impacted by family violence, call the Safe at Home Family Violence Response and Referral Line on 1800 633 937 or visit 1800respect.org.au. In an emergency, call 000.

Call the Men's Referral Service on 1300 766 491 for anonymous and confidential telephone counselling, information and referrals to help men stop using violence and controlling behaviour. This service is available 24 hours a day, seven days a week.

How to Provide Comments

The Department of Justice invites your feedback outlining the issues and solutions from your perspective on the seven topics in this paper to strengthen legal responses to address family violence.

All submissions will be treated in strict confidence.

Mail:

You can mail your written submission to:

Department of Justice

Office of Strategic Legislation and Development

GPO Box 825

HOBART TAS 7001

Email:

You can email your written submission to:

legislation.development@justice.tas.gov.au

Please include "Family Violence: Strengthening Our Legal Responses" as the email subject line.

Closing date for comments:

The closing date for comments is **5pm Monday, 6th February 2017**.

Where to get more information

For more information on Safe Homes, Safe Families: Tasmania's Family Violence Action Plan 2015-2020 please contact or call Service Tasmania on 1300 135 513 or http://www.dpac.tas.gov.au/safehomessafefamilies

Tasmanian legislation, including the *Family Violence Act 2004*, is available from http://www.thelaw.tas.gov.au.

Family Violence in Tasmania

The *Family Violence Act 2004* (the Act) commenced in 2005 and emphasised not only the criminal nature of family violence but the importance of tailored support services and information to assist and improve the safety of victims and children exposed to family violence. The legislation also operationalised Safe at Home, Tasmania's integrated criminal justice response to the problem of family violence in our community.

Under the Act, the safety, mental wellbeing and interests of people affected by family violence are the most important considerations.

Family violence is any of the following types of conduct committed by a person, directly or indirectly against that person's spouse or partner:

- assault (including sexual assault);
- threats;
- coercion;
- intimidation;
- verbal abuse;
- abduction;
- stalking; or
- an attempt to do any of those things.

It also includes:

- economic abuse;
- emotional abuse;
- intimidation;
- property damage; and
- breaching any existing orders relating to family violence.

In their basic form, Family Violence Orders (FVO) and Police Family Violence Orders (PFVO) prohibit an alleged perpetrator from threatening, abusing or assaulting a victim of family violence. Further restrictive orders preventing an alleged perpetrator from approaching or contacting a victim may also be included in an order.

Family violence orders from other states or territories or New Zealand can be registered in Tasmania to be enforced here as if the order had been made in Tasmania. Of note, the Tasmanian Parliament passed the Domestic Violence Orders (National Recognition) Bill 2016 in August 2016 which provides a framework for the automatic recognition and

enforcement of all family or domestic violence orders (DVOs) made in Australia, including any New Zealand DVOs that are registered in Australia. This legislation is yet to commence.

Safe at Home

Safe at Home is the Tasmanian Government's integrated criminal justice response to family violence. The Safe at Home service system is underpinned by the Act. Operated in partnership by the Departments of Police, Fire and Emergency Management, Justice, Health and Human Services, Education and Premier and Cabinet, it aims to:

- improve the safety and security for adult and child victims of family violence in the short and long term;
- ensure that perpetrators are held accountable for family violence as a public crime (and change their offending behaviour);
- reduce the incidence and severity of family violence in the longer term; and
- minimise the negative impacts of contact with the criminal justice system on adult and child victims.

Safe at Home is founded on the principle of the 'primacy of the safety of the victim' and uses a pro-arrest, pro-prosecution strategy to realise this principle.

The following services have been established or extended under Safe at Home in order to meet the identified needs of adult and child victims and perpetrators and create critical systems linkages:

Department of Police, Fire and Emergency Management

- Family Violence Response and Referral Line
- Victim Safety Response Teams
- Police Prosecutions (Specialist Family Violence Prosecutors)
- Police Safe at Home Coordinator

Department of Justice

- Safe at Home Coordination Unit
- Court Support and Liaison Service
- Legal Aid Commission of Tasmania (Specialist Family Violence Lawyers)
- Community Corrections including Family Violence Offender Intervention Program

Department of Health and Human Services

- Family Violence Counselling and Support Service (Adult and Children's Programs)
- Defendant Health Liaison Service

Department of Education

- Specialist psychologists and social workers to work in government schools and Child and Family Centres with children affected by family violence

In addition, Safe at Home works closely with operational Police, Child Safety Services, the Magistrates Court, Community Corrections, Legal Aid Commission of Tasmania, Housing Tasmania, the Departments of Premier and Cabinet and Education.

In 2015-2016 there were 3,174 family violence incidents recorded in Tasmania and 1,954 family arguments attended by Tasmania Police.

Issues for Tasmania's Family Violence Legislation

The following issues have been identified for discussion as options to strengthen legislative frameworks to hold perpetrators of family violence to account and to improve the safety of victims of family violence.

The legislative options explored below should be considered in line with the current work being undertaken for the Government's Family Violence Action Plan and the observations arising from the Sentencing Advisory Council report 'Sentencing of Adult Family Violence Offenders'.

Issue 1: Breaches of protection orders by protected persons

While obtaining a family violence order is a civil matter, it is a criminal offence to breach a protection order. Breaching a family violence order is a serious criminal matter.

Currently, section 73 of the *Justices Act 1959* provides that it is an offence to instigate or assist a breach of a family violence order. A victim of family violence, who has obtained a protection order, can be charged with contravening the protection order if they are deemed complicit in the breach, with instigating or aiding or abetting a breach.

Section 73. Accessories

(1) Subject to any contrary intention in the Act creating the offence, where a simple offence is committed, each of the following persons is deemed to be a party to, and to be guilty of, the offence, and may be charged with actually committing it, namely:

(a) a person who actually commits the offence;

(b) a person who does any act or makes any omission for the purpose of enabling or aiding another person to commit the offence;

(c) a person who abets another person in committing the offence;

(d) a person who instigates another person to commit the offence.

(2) A person who instigates another person to do an act or make an omission of such a nature that, if he had himself done the act or made the omission, the act or omission would have constituted a simple offence on his part, is guilty of the same offence as if he had himself done the act or made the omission, and may be charged with himself committing the offence.

(3) A person who is alleged to have instigated, aided, or abetted the commission of a simple offence may be convicted upon a complaint charging him with having committed the offence, or upon a complaint charging him with having instigated, aided, or abetted, as the case may be, the commission thereof.

Contravention of a FVO, interim FVO or a PFVO is a summary offence and an accessory may be charged with actually committing the offence.

Research shows that since the *Family Violence Act 2004* commenced in March 2005 there have been 279 convictions for aiding, abetting or instigating a family violence offence. Of the 279 people convicted, 254 were women.[1]

The benefits of charging a victim of family violence for breaching a condition(s) of a protection order have been questioned. There are compelling arguments for and against changing Tasmania's legislation.

Section 73 of the *Justices Act 1959* currently provides an enforcement mechanism to ensure the rule of law is upheld in relation to parties to offences to ensure all persons subject to the protection order must comply with it.

It has been expressed that prosecutions for instigating, aiding and abetting offences are commenced essentially to deter abuse of court processes. The protection order is made to assist a person and it may be considered unjust that the person who is protected by the order should be able to facilitate a breach of the order and in doing so cause another person to commit an offence. If inciting a breach, a victim of family violence is not taking protective action on behalf of themselves or affected children.

Protection orders are designed to help people in trouble and one of the potential risks in changing the legal response is that this may create situations where one party has significant power over another party to an order. Other unintended consequences from such an amendment may include orders being taken out against protected persons which may prevent a person from working in child-related employment.

Commentators have observed that the practice of charging or threatening to charge a protected person with instigating a breach may discourage them from reporting a family violence offence to police in the future; it may undermine a victim's confidence in the legal system; and fails to take into account the vulnerability of victims of family violence.

By removing the ability to charge a protected person it may be argued by some that this will be open to abuse.

It has also been commented that the consequences of charging a victim with inciting a breach does not fit under the objects of Tasmania's family violence legislation. It may further victimise protected persons and fails to take into account the vulnerability of family violence victims and the dynamic of power and control that exists in relationships dominated by family violence.[2]

1. Should the current legislation be amended to provide that a person protected by a family violence order cannot be charged with an offence of instigating, abetting, or aiding the breach of a protection order?

[1] Sentencing Advisory Council, Sentencing of Adult Family Violence Offenders, Final Report October 2015.
[2] Women's Legal Service, 'Their Stories, Our Stories; Tasmanian Women's Experiences within Family Violence Orders' June 2015.

Other jurisdictions

South Australia's family violence legislation provides that a person will not be charged with aiding or abetting a contravention of an intervention order if the person is protected by the intervention order (i.e. a protected person) and their conduct in contravening the order did not result in contravention in respect of any other person who is protected by the order (or any other intervention order) in force against the defendant.[3] Family violence orders in South Australia may name children as protected persons on the same order protecting the victim. For instance, if an adult victim instigates a breach of a protection order and in doing so puts a protected child named on an order in harm because of that action, then a charge can be placed.

New South Wales' family violence legislation provides that a person is not guilty of an offence of aiding, abetting, counselling or procuring the commission of an offence if the person is a protected person.[4]

Victorian family violence legislation provides that a 'protected person' is not guilty as an abettor and is not punishable as a principal perpetrator, because the protected person encourages, permits or authorises conduct by the respondent that contravenes the family violence intervention order or family violence safety notice.[5] That Act provides, for example, that a protected person is not guilty of abetting a breach because she or he invites or allows the respondent to have access to the residence or another place in contravention of the family violence intervention order or family violence safety notice. The Victorian Act also contains a note stating that, if a victim is dissatisfied with the terms of a protection order, the victim or the police may apply to have the order varied or revoked.

[3] *Intervention Orders (Prevention of Abuse) Act 2009* section 31(3).
[4] *Crimes (Domestic and Personal Violence) Act 2007* section 14(7).
[5] *Family Violence Protection Act 2008* section 125.

Issue 2: Mandatory reporting of family violence

Tasmania's *Family Violence Act 2004* contains an unproclaimed section which would have made mandatory reporting compulsory for certain employment groups.

The section, if it were proclaimed would compel 'prescribed persons', usually professionals involved in family violence cases to report family violence, to inform a police officer where they suspect that family violence involving the use of a weapon, sexual or physical violence, or where a child is affected, has occurred or is likely to occur.

A wide range of professionals who are likely to become aware of cases of family violence through their work and prescribed persons may include: doctors; nurses; dentists; police officers; correctional and probation officers; teachers; and child care workers. The uncommenced provision also included a defence for those who honestly and reasonably believe that a police officer has already been informed. The offence is punishable by a fine.

Section 38 of the *Family Violence Act 2004* was never enacted as it was found that the time and resource imposts would be unreasonable.

The issue of mandatory reporting family violence has most recently been raised in the coronial findings[6] relating to the tragic death of Ms Jessica Kupsch.[7] Ms Kupsch was murdered whilst under the protection of a FVO. The coronial findings noted the circumstances in which Ms Kupsch was killed, including the lengthy and serious history of family violence, to which she had been subject. The Coroner also noted that by reason of the family violence order her killer ought not to have even been in her presence.

In his recommendations the Coroner commented:

> *In this case it is doubtful that anything could have been done to prevent the tragic death of Ms Kupsch. …Ms Kupsch was in receipt of a high level of targeted support from various government instrumentalities none of which was ultimately able to protect her from Mr Tunks.*
>
> *However, timely intervention by authorities in relation to domestic violence is plainly critical to prevent more deaths occurring in the future. The appropriate authorities, in particular police, cannot intervene and take action unless they are aware that domestic violence is being, or has been, perpetrated. Making authorities aware of the perpetration of domestic violence is a societal responsibility. In my view it is important to emphasise that obligation by statutory amendment to impose a positive duty upon persons and entities that are aware, or become aware, of domestic violence, to report that to police.*
>
> *I note that the evidence was that at least one employee of Anglicare, directly involved in dealing with Ms Kupsch and Mr Tunks, was uncertain with respect to her duties or obligations so far as reporting apparent breaches of a family violence order were concerned.*

[6] Kupsch 2016 TASCD 217 http://www.magistratescourt.tas.gov.au/__data/assets/pdf_file/0011/352010/Kupsch,_Jessica_Ann_.pdf

[7] Kupsch 2016 TASCD 217.

> *I comment that the original Family Violence Bill contained a section, section 38, which had it commenced, would have imposed a positive obligation to report domestic violence. It is unclear why the section did not commence. In my view consideration should be given to an amendment of the Family Violence Act 2004 to include a provision imposing a positive statutory obligation to report.*

There are compelling arguments for and against mandatory reporting.

Family violence is mostly carried out in private and the victims are often afraid or ashamed to speak out. Mandatory reporting provisions would impose a duty on certain people to report safety concerns, similar to the requirements to report concerns about abuse and neglect of children that occurs in the privacy of the home. Supporters of mandatory reporting of family violence argue that family violence is a responsibility of the entire community.

There is however strong opposition to mandatory reporting of family violence. Concerns have been voiced as to possible unintended consequences of mandatory reporting provisions, including the potential to make victims more reticent to disclose violence. It has been commented that mandatory reporting provisions may drive the problem of family violence underground and potentially increases the potential for harm. The potential for mandatory reporting to discourage a victim from seeking help, care or treatment as they know that the police would have to be informed has been raised as an argument against mandatory reporting.

However, researchers have further noted challenges associated with mandatory reporting. For example, as the introduction of mandatory reporting requirements within a jurisdiction tends to increase reporters' and the community's awareness of child abuse and neglect, it can result in a substantial increase in the number of reports being made to child protection departments.

Resource concerns have also been raised. Any mandatory reporting regime would have to be supported by a comprehensive system to investigate and respond to reports. If there are inadequate resources available to the responsible Government agency or to non-government organisations to respond to the increased demand, then the increasing number of reports may result in services being overwhelmed with cases to investigate and lacking sufficient staffing to do so. It is important that mandated reporters receive training and accurate information to ensure they know what cases they have to report, and what cases they should not report.

Since non-mandated reporters make up a large proportion of all reports, it is also important for the public to be made aware of the appropriate extent of their responsibility. It is also essential that child and family support services be adequately resourced to respond to children and families in need of protection and assistance.

Importantly, children who experience family violence are nonetheless subject to mandatory reporting provisions. Tasmania's *Children, Young Persons and Their Families Act 1997* includes mandatory reporting provisions in relation to a child that has been or is being abused or neglected or is an affected child within the meaning of the *Family Violence Act 2004*.

It is noted that section 39 of the *Family Violence Act 2004* also protects any person who reports, in good faith, to a police officer, their suspicions that family violence involving the use of a weapon, sexual violence or physical violence, or where a child is affected, has occurred or is likely to occur. The person cannot, by virtue of doing so, be held to have breached any code of professional etiquette or ethics, or to have departed from any accepted form of professional conduct. Further, insofar as he or she has acted in good faith, incurs no civil or criminal liability in respect of informing a police officer, or, the provision of further information.

2. *Should Tasmania's family violence legislation include provisions for mandatory*

Existing mandatory reporting legislation

In the Northern Territory section 124A of the *Domestic and Family Violence Act* imposes a duty to report some types of family violence. The Northern Territory family violence legislation provides that an adult commits an offence if he or she fails to report to a police officer his or her belief, based on reasonable grounds, that:

(a) another person has caused, or is likely to cause, harm to someone else (the victim) with whom the other person is in a domestic relationship;

(b) the life or safety of another person (also the victim) is under serious or imminent threat because domestic violence has been, is being or is about to be committed.

Failure to make a report is a criminal offence, and can therefore result in a wide range of persons—including professionals and family members who have not themselves committed family violence—entering into the criminal justice system.

Harm under the *Domestic and Family Violence Act* means 'physical harm that is serious harm' and serious harm is defined in the *Criminal Code* to mean any harm, including the cumulative effect of more than one harm:

(a) that endangers, or is likely to endanger, a person's life; or

(b) that is or is likely to be significant and longstanding.

There are defences in the *Domestic and Family Violence Act* for 'reasonable excuse'. Reasonable excuses for not reporting the violence include that the person reasonably believed someone else had reported the violence; the person was planning for the removal of the victim and intended to make his or her report soon after the removal; or that if the person reported the violence as soon as practicable, the report would have resulted in a serious or imminent threat to the life or safety of any person.

The *Domestic and Family Violence Act* family violence legislation also provides that a person acting in good faith is not civilly or criminally liable, or in breach of any professional code of conduct, for making a report or for disclosing any information in the report.

Issue 3: Definition of 'family relationship'

In order for a person to obtain a protection order under Tasmania's family violence legislation, that person needs to be in a defined relationship with the person engaging in violence.

Since the commencement of Tasmania's family violence laws and Safe at Home program there have been calls to amend the legislation to extend the types of family relationships captured to provide protection to a broader number of family members who are victims of family violence.

This issue has been raised by a number of Parliamentarians and stakeholders.

Tasmania's family violence legislation is limited to spouses or partners within a significant relationship or marriage (includes ex-spouses/partners). The scope of relationships covered by Tasmania's family violence legislation is the narrowest of the states and territories.

Section 4. Interpretation

family relationship means a marriage or a significant relationship within the meaning of the *Relationships Act 2003*, and includes a relationship in which one or both of the parties is between the ages of 16 and 18 and would, but for that fact, be a significant relationship within the meaning of that Act;

spouse or partner of a person means another person with whom the person is, or has been, in a family relationship.

It is noted that any change to expand the definition of family violence would require the introduction of additional appropriate services to respond to and assist the larger and varied number of people who may be affected by family violence. There would also be costs and resource implications for justice, health and human service and police agencies as well as the non-government sector that provide support services and deliver programs.

What relationships are not covered by the Family Violence Act 2004?

The types of violence perpetrated in families which are not covered by the *Family Violence Act 2004* are:

- *Elder abuse*

Abuse of older people (or elder abuse) is a single or repeated act occurring within a relationship where there is an implication of trust, which causes harm to an older person.

Protecting Older Tasmanians from Abuse, Tasmania's Elder Abuse Prevention Action Plan 2015-18 is the Tasmanian Government's elder abuse policy. The plan aims to prevent elder abuse in Tasmania and a number of initiatives have been implemented in its first stage, such as the establishment of an elder abuse helpline, service provider education and training and World Elder Abuse Awareness Day forums. More information can be found at www.dhhs.tas.gov.au/elderabuse.

- *Child Abuse*

The child abuse response in Tasmania is delivered by Child Protection Services, Department of Health and Human Services. The role of Child Protection Services is to protect children and young people who are at risk of abuse or neglect. In Tasmania, the protection of children and young people is covered by the *Children, Young Persons and their Families Act 1997*. Family violence is considered child abuse in Tasmania and is covered in section 4 of the *Children, Young Persons and their Families Act 1997*:

> ***Section 4. Meaning of "at risk"***
>
> (1) For the purposes of this Act, a child is at risk if–
>
> (a) the child has been, is being, or is likely to be, abused or neglected; or
> (b) any person with whom the child resides or who has frequent contact with the child (whether the person is or is not a guardian of the child)–
> (i) has threatened to kill or abuse or neglect the child and there is a reasonable likelihood of the threat being carried out; or
> (ii) has killed or abused or neglected some other child or an adult and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person; or
>
> (ba) the child is an affected child within the meaning of the F*amily Violence Act 2004* ...

Reporting child abuse is mandatory in Tasmania.

- *Violence/abuse between family members such as:*
  - Child to parent
  - Sibling to sibling
  - Relationships which are not considered 'significant'

These types of familial violence are covered through:

- *Children, Young Persons and Their Families Act 1997;*
- *Youth Justice Act 1997;*
- *Justices Act 1959;*
- *Magistrates Court (Children's Division) Act 1998;*
- *Justices (Restraint Orders) Rules 2013*.

Of note, there are relationships that would be captured by the *Justices Act 1959* where protection can be obtained by way of a restraint order, such as a carer relationships (paid or unpaid).

3. Should the definition of 'family relationship' in the Family Violence Act 2004 be extended to a broader number of family members who are victims of family violence?

Other jurisdictions

The relationships covered by family and domestic violence legislation vary across the states and territories. Other jurisdictions recognise meaningful personal relationships between people outside conventional definitions and they also have different programs and government responses to family violence (including larger budgets to support these services and initiatives).

For example, in Victoria an affected family member can apply for an intervention order and 'family members' include:

- people who share an intimate personal relationship (married, de facto or domestic partners);
- parents and children, including children of an intimate partner;
- relatives by birth, marriage or adoption; and
- people that a person treats like a family member, for example: a carer, guardian or person who is related within cultural family structures.

Similarly, Queensland's domestic violence legislation covers relationships including:

- an intimate personal relationship (de-facto, registered relationship, married, former spouse, parent of a child of the respondent);
- a family relationship (a relative of a person is someone who is ordinarily understood to be or to have been connected to the person by blood or marriage); and
- an informal care relationship - where one person is dependent on another for help in their daily living activities (does not exist between a child and a parent or where a commercial arrangement exists).

Issue 4: Law of self-defence in the context of family violence

Each Australian jurisdiction has different laws in relation to the offences of murder and manslaughter and different defences to those offences. The most relevant defence to homicides committed in a family violence context is self-defence. In Tasmania self-defence is a complete defence to criminal liability and entitles the accused to an acquittal.

In most jurisdictions, self-defence is established where the accused believed the use of force was necessary for the purpose of defence and such conduct was a reasonable response in the circumstances as perceived by the accused.

The Tasmania Law Reform Institute (the Institute) report *Review of the Law Relating to Self-defence* (released in October 2015) notes that for many years, the operation of the law of self-defence in the context of those who kill (particularly women who kill) in response to family violence has been a key area of critique.

While the law of self-defence in Tasmania is theoretically capable of accommodating the claims of those who use violence in response to family violence, its operation in this context remains largely untested.

The Institute's report observes that stereotypes and misconceptions continue to exist in relation to family violence and the operation of the law of self-defence, in particular in circumstances where women kill in response to family violence. The report notes that the argument has been that the law is not sufficiently receptive to their self-defence claims and that it is out of step with contemporary understandings of the nature and dynamics of family violence.

Commentators note research that men:

> *typically kill their intimate partners as an attempt to exert power over them, to prevent them from leaving or as a result of jealousy where in contrast, the motivation for women killing their partners is predominantly self-preservation as there is typically either a history of violence and/or a physical attach immediately before the killing.*[8]

Research indicates that family violence is a gendered phenomenon where women are more likely to be the victim of family violence than men. The gendered nature of family violence is reflected in homicide statistics.[9] From 2002–12, of the 2,631 homicide incidents documented nationally, 654 (24.9%) were classified as intimate partner homicide, and in this context, women are much more likely than men to be killed than to kill. Women were victims in 75% of intimate partner homicide cases and perpetrators in 23% of cases.[10]

Research also shows that men are much less likely to be afraid of their partners and that women are more likely to suffer worse outcomes as a consequence of family violence, including physical injury, homelessness, fear of their partners and fear for their own safety.

---

[8] See J Morgan, 'Who Kills Whom and Why? Looking Beyond Legal Categories' (Occasional Paper, VLRC, 2002) cited Tasmania Law Reform Institute report Review of the Law Relating to Self-defence October 2015.
[9] Tasmania Law Reform Institute report Review of the Law Relating to Self-defence October 2015. http://www.utas.edu.au/__data/assets/pdf_file/0009/786483/Self-defence-Final-Report-No-20.pdf
[10] Ibid.

Where self-defence is raised in the context of family violence, imminence of danger is one of the factors relevant to the assessment of whether the accused's use of force was reasonable in the circumstances as the accused believed them to be.

Although imminence is not a legal requirement for the defence of self-defence and the law does recognise that a person may resort to pre-emptive violence and does not need to wait until an attack by the perpetrator is actually underway, the continued focus of self-defence is on the attack or threat that is in close temporal proximity to the accused's responsive use of force. This focus has been identified as a barrier to reliance on self-defence by women who kill in response to family violence in non-confrontational situations.

Reviews of family violence dynamics and the nature of assaults have shown that women responding to long-term violence by their partner do not usually respond during the actual attack - this is often because they are smaller than and not as strong as the attacker.[11] Further, it is noted by the Institute that a focus on imminence does not acknowledge the reality that the experience of family violence is not a list of discrete and disconnected acts of violence that have a defined beginning and end, rather is a cumulative and complex experience with the threat of violence ever present.

In relation to family violence, the Institute's report recommends that consideration be given to legislative reform in areas beyond the scope of the report into self-defence, such as:

- the introduction of a provision based on the Victorian model clarifying that a person may believe that their conduct is necessary in self-defence and that the conduct may be a reasonable response in the circumstances as the person perceives them, even if the harm is not imminent;

- the introduction of a requirement that the trial judge give a direction in relation to family violence when requested by an accused except if there are good reasons not to do so, modelled on Part 6 of the *Jury Directions Act 2015* (Vic); and

- procedural changes (such as amendments to the *Evidence Act 2001* to provide greater use of relationship history and pattern of behaviour evidence in family violence matters) to allow the current defence to more accurately and thoroughly recognise the circumstances of those who use violence in response to prolonged family violence.

In Tasmania there is no express requirement for immediate threat in relation to the operation of self-defence which recognises the legitimacy of pre-emptive attack. However, the Victorian approach to self-defence provisions in the *Crimes Act 1958* (Vic) supports the potential relevance of evidence of family violence to cases of murder, defensive homicide and manslaughter. Victoria's legislation specifies that a person may believe that their conduct is necessary in self-defence and that the conduct may be a reasonable response in the circumstances as the person perceives them, even if the harm is not imminent.

Such a provision would focus the jury deliberations on the cumulative threat faced by the victim rather than on the abuser's conduct immediately before the use of violence.

[11] See above n 8.

It is relevant to note that Tasmania has enacted legislative reform to address community misconceptions and myths previously. For example, a statutory requirement for judicial direction was introduced to the *Evidence Act 2001* to counter the community misconception that genuine sexual assault complainants will report and make a complaint in relation to a sexual crime without delay.

Of the legislative reform options detailed above, an option is to amend the *Criminal Code* to provide that a person may have an honest belief that they are acting in self-defence and that their conduct may be regarded as a reasonable response in the circumstances as the person perceives them to be even if the person is responding to a harm that is not immediate or that appears to be trivial (based on the Victorian model in the *Crimes Act 1958*).

4. Should the Criminal Code Act 1924 be amended to provide that a person may have an honest belief that they are acting in self-defence and that their conduct may be regarded as a reasonable response in the circumstances as the person perceives them to be even if the person is responding to a harm that is not immediate or that appears to be trivial?

Other jurisdictions

In its 2004 report the Victorian Law Reform Commission recommended that legislation should expressly refer to the fact that actions may be carried out in self-defence, where the threat is not immediate, but may be more remote in time.[12]

The VLRC notes that there may be circumstances in which an accused's belief in the need to take action is reasonably held where the danger is not immediate, but is inevitable. For example, the case of a person who is subjected to family violence who kills, believing it is only a matter of time before he or she is seriously injured and believing there is no other way to protect himself or herself.[13]

Victoria's *Crimes Act 1958* expressly provides that in circumstances where family violence is alleged, a person may be acting in self-defence:

> Section 322M(1):
>
> … for the purposes of an offence in circumstances where self-defence in the context of family violence is in issue, a person may believe that the person's conduct is necessary in self-defence, and the conduct may be a reasonable response in the circumstances as the person perceives them, even if -
>
> (a) the person is responding to a harm that is not immediate; or
>
> (b) the response involves the use of force in excess of the force involved in the harm or threatened harm.

Victoria's provision allows for an accused to rely on self-defence, even if the threat is not immediate and even if the response is disproportionate to the harm. This places emphasis

[12] Victorian Law Reform Commission, *Defences to Homicide*, Final Report, 2004.
[13] Ibid.

on the necessity of the accused using violence rather than on the imminence or immediacy of the threat in assessing the accused's conduct.

Western Australia has also made legislative reform to the defence of self-defence contained in the *Criminal Code* s248 to provide that a person acts in self-defence if he or she believes that his or her act is necessary to defend himself or herself or another person 'from a harmful act, including a harmful act that is not imminent'.

This means that imminence is no longer a decisive factor in the operation of self-defence in Western Australia. It is noted that, unlike the Victorian provision, this provision applies generally and is not restricted to circumstances of family violence.

Issue 5: Effects of tendering no evidence in family violence

Tendency and coincidence evidence of an accused's character, conduct or reputation or about similar acts by the accused may be important evidence in a criminal trial but is also evidence that is prejudicial to the accused.

In criminal proceedings, tendency or coincidence evidence about a defendant that is adduced by the prosecution cannot be used against the defendant unless the probative value of the evidence substantially outweighs any prejudicial effect.[14] Essentially, the use of evidence of prior conduct that creates undue suspicion against an accused undermines the presumption of innocence, and where a jury may assume that patterns of past behaviour are an accurate guide to contemporary conduct may not be admissible in a criminal trial if the court determines that those prejudicial effects are not substantially outweighed by the probative value of the evidence.

The admissibility of tendency or coincidence evidence in family violence cases may substantially affect the chances of a successful prosecution against a high-risk, persistent family violence perpetrator.

Family violence victims may make a report to police but change their mind about pursuing charges against a partner by recanting the account reported to police or refusing to give evidence and failing to attend court to give evidence. In circumstances where there is no corroborating evidence, a victim's refusal to participate in the justice process may be fatal to the continuation of a prosecution.

Where an accused has been charged with the indictable offence of assault under the Tasmanian *Criminal Code* instead of a summary offence of common assault under the *Police Offences Act 1935*, the matter could be discontinued without dismissal of the charges or an acquittal being entered. In such circumstances, the accused could be recharged for the indictable offence of assault or the evidence used in other proceedings as relationship, tendency or coincidence evidence.

However, many family violence offences are dealt with summarily. The prosecution may tender no evidence on a matter where the complainant is unwilling. As noted above, this may often be the case in proceedings for family violence offences. The 'tendering of no evidence' equates to an entry of an acquittal and creates a bar not only to the further prosecution of that offence but evidence of the assault is also inadmissible as relationship, tendency or coincidence evidence in any subsequent criminal prosecutions.

The Tasmanian case of *Finnegan*[15] demonstrates how the courts deal with acquittals for offences from earlier proceedings and the acquitted defendant's entitlement to the full benefit of that acquittal in subsequent criminal proceedings. In that case, police had tendered no evidence regarding a series of minor assaults by a perpetrator against a partner. At a later date when the partner alleged a very serious assault, the true violent nature of the relationship between the accused and the complainant was not made known to the jury.

[14] *Evidence Act 2001* section 101(2).
[15] [2011] TASSC 74.

5. Should the law be amended to provide, where a matter is discontinued without hearing and an acquittal is entered as a result of no evidence being tendered, that the evidence may be admissible as relationship, tendency or coincidence evidence in the family violence context?

It is not proposed to alter the rules concerning finality of acquittals where a matter has been heard on its merits and determined.

Issue 6: Persistent contraventions of family violence orders

The Government has committed to taking further action on high risk family violence perpetrators. Recidivism amongst family violence perpetrators and patterns of escalating family violence offending over time are well recognised.

Research indicates that the rate at which perpetrators are breaching protection orders is increasing. The annual breach rate climbed to 14.2% in 2008-09 from a low of 5.5% in 2005-06 when the integrated family violence response, Safe at Home, commenced.[16] Perpetrators of family violence may have repeatedly contravened protection orders made by either police or the courts across multiple family relationships, including with whom the perpetrator is, or has been in a relationship with.

In developing strategies to reduce family violence incidents by repeat perpetrators the views of the community and key family violence stakeholders are sought as to whether there should be the ability for the courts to impose a declaration that a person is a repeat family violence perpetrator.

6. Should there be the creation of legislative provisions to provide for a court to declare at the time of sentencing a repeat family violence perpetrator to be a persistent perpetrator of family violence?

This proposal would target perpetrators who continually ignore protection orders. Such a declaration would be an order made on sentencing a repeat family violence perpetrator for the contravention of a protection order (FVO, interim FVO or police FVO) to be persistent family violence perpetrators and the declaration would consist of conditions outlined in Issue 7.

6A. If so, what conditions should the court consider in making a declaration?

For example, a declaration by a court may be based on consideration of the following, but not limited to:

- the conduct engaged in by the accused that constitutes the contravention of a protection order under the *Family Violence Act 2004*. A broad range of behaviours may result in the contravention of protection orders, for example contravening a no-contact or not approach an affected person or child condition, or a requirement to surrender any firearm or weapon, on a protection order. It is noted that the nature of a contravention will be dependent on the particular terms of a protection order.

- the frequency of conduct engaged in by the accused, for example, that on at least two occasions in a period of four weeks immediately prior to an offence against section 35 of the *Family Violence Act 2004* the accused engaged in conduct that constitutes a contravention of a protection order.

- that the conduct engaged in against section 35 occurred in relation to a protected person (with whom the accused is, or has been in a family relationship as defined in

[16] Sentencing Advisory Council, Sentencing of Adult Family Violence Offenders, Final Report October 2015.

section 4 of the *Family Violence Act 2004*). An element such as this has the potential to show that a perpetrator of family violence may have a lengthy history of offending with past partners/spouses and it is these high risk and persistent perpetrators that should be targeted.

- on each occasion where the accused engaged in conduct that the accused knew or ought to have known that the conduct constituted a contravention of a FVO, police FVO or interim FVO.

By providing the power to declare a repeat perpetrator to be a persistent perpetrator of family violence the courts will need to deliberate on the features and dynamics of repeated ongoing and persistent behaviour resulting in contraventions of protection orders and family violence offending broadly.

The imposition of a declaration raises the issue of a perpetrator having a right to appeal a declaration. Given the effect on rights of an individual it is noted that a right to appeal a declaration is a necessary consideration in designing this type of response.

6B. Should there be provision for a persistent perpetrator of family violence declaration to be removed and if so how should this occur?

For example, by applying to the court to have the declaration removed following a period of three (3) years in which the perpetrator has not been convicted for any family violence offences or contravened a protection order. There could also be a requirement that the court be satisfied that the applicant has successfully satisfied any conditions imposed at the time of sentence, such as successful completion of rehabilitative/treatment programs.

Given the impact on individual rights, if a discharge application is refused it may be appealed.

Other jurisdictions

Under Victoria's *Family Violence Protection Act 2008* it is an offence to persistently contravene a family violence intervention order or a safety notice.[17] A 'persistent contravention' requires that three contraventions of the order occur within 28 days. Victoria's provision is to reflect that the persistent nature of the contraventions over a short period of time that demonstrates a disregard for the law.

The recent Victorian Royal Commission into Family Violence Report referred to research by the Crimes Statistics Agency on recidivist perpetrators of family violence which found that for perpetrators who had more than one family violence incident, the median number of days between the initial incident and the second incident was 275; for those who had a third incident, the median number of days between the second and third incidents was 156; and for those who had a fourth incident, the median number of days between the third and fourth incident was 109. Of note, the Crimes Statistics Agency research suggests that there will be a cohort of perpetrators who repeatedly contravene a family violence intervention order, but whose contraventions do not occur within the 28-day period specified by the persistent breach offence.[18]

[17] *Family Violence Protection Act 2008* section 125A.
[18] Royal Commission into Family Violence: Report and recommendations 2016.

Issue 7: Consequences of a persistent perpetrator of family

If the ability for a court to impose a persistent perpetrator of family violence declaration is to be included as a mechanism to address persistent family violence perpetrators, this raises questions as to what the orders or penalties associated with such a declaration should be.

7. What orders should be available to courts following a perpetrator being declared as a persistent perpetrator of family violence?

The following examples of outcomes arising from a declaration being made are provided for consideration.

Family Violence Perpetrator Register

Placing a repeat family violence perpetrator declared to be a persistent perpetrator of family violence on a family violence perpetrator register may provide a deterrent to reduce the likelihood that they will reoffend, assist in ongoing monitoring and management of a persistent perpetrator of family violence and assist in investigations for family violence offences committed by a persistent perpetrator of family violence.

7A. Should there be a persistent perpetrator of family violence register and should information about persons on the register be publicly available or available only for limited purposes ?

In determining whether a family violence perpetrator register should be introduced in Tasmania requires a number of issues to be considered, for example but not limited to:

- should a register, in addition to providing monitoring and investigatory information, be available to the public for people who may be at risk of family violence to find out if their current (or former) partner has a history of violent criminal offences?

  If so:

  - once information from the register has been disclosed, what supports are necessary to the person receiving the information?
  - what information should be disclosed? Should the register relate to family violence offences only or should convictions for other offences be available? Should there be any limits to the details disclosed? For example, the date of the offence, sentence imposed or facts?
  - what safeguards should be in place to ensure the person receiving the information from the register does not misuse or share the information?
  - should a third party be entitled to seek information from the register?

- how to be removed from the register? For example, when applying to discharge a declaration?

- what should be considered in making a determination to disclose information on the register?

- should the subject of the information disclosed on the register be informed?

In March 2015 the NSW Government announced it would pilot a Domestic Violence Disclosure Scheme (DVDS). A DVDS pilot was rolled out on 13 April 2016 in four NSW Police Force Local Area Commands (Sutherland, St George, Oxley and Shoalhaven). The NSW DVDS will be evaluated over two years.

Under the NSW DVDS, NSW Police will receive and review all applications made by a person who is concerned about their partner, or a concerned third party, to find out if their partner has a history of domestic violence. The NSW DVDS provides that a third party includes someone who has some form of contact with the primary person, for example, family, friends or legal guardians. It also includes professionals working with a member of the family.

On receipt of an application, NSW Police will check whether a relevant conviction exists that leads to a disclosure being made to the primary person. A conviction will be disclosed where the person who is the subject of the application has a relevant offence in their criminal history. Relevant offences include personal violence offences committed in a domestic relationship and certain specific personal violence offences committed outside of a domestic relationship. Breaches of apprehended violence orders will also be disclosed as they constitute a criminal offence. Offences and orders that will not be disclosed under the NSW scheme include spent convictions and apprehended domestic violence orders.

The DVDS requires a disclosure to be made in person at a police station or other agreed safe place and the person receiving the information will be required to sign an undertaking that they will not misuse any information disclosed. Also present at the time of disclosure will be an expert from a domestic and family violence support service to provide support and help plan for the person's safety. Support services will be present regardless of whether a disclosure is made or where a primary person is advised that no relevant conviction exists. This ensures that the primary person will have immediate access to the necessary support that is required when making a decision about their safety. The NSW Government also announced that it was investing $2.3 million to assist non-government organisations provide specialist services in the four local command areas.

Court Mandated Conditions

One option for consideration is to be given to compliance with any conditions ordered as the court thinks fit at sentencing, which may require ongoing supervision. For example, a court may mandate post release interventions which require ongoing supervision or require a persistent perpetrator to undertake targeted treatment to address offending behaviour.

Another option for consideration is that a set of standard conditions apply on being placed on the register and then a set of optional conditions, similar to the structure of community based orders in the *Sentencing Act 1997*, noting that a declaration is not a sentencing order.

Any conditions applied by the court when declaring a person to be a persistent perpetrator of family violence ought to be tailored according to the requirements and tendencies of the individual perpetrator.

A sentencing officer may also have regard to the nature and circumstances of the protection order contraventions and/or family violence offences, perpetrator's antecedents or character, medical or other opinions or any other matters that are considered relevant.

7B. What conditions should a court impose on persistent perpetrators of family violence at sentencing?

Refusal of bail for persistent perpetrators

Currently section 12 of the *Family Violence Act 2004* provides a presumption against bail for perpetrators charged with a family violence offence. Existing family violence bail provisions require the perpetrator to establish why they should be granted bail, rather than placing the onus on police to prove why they should not.

The presumption against bail signifies the seriousness of family violence offending and is designed to make it easier for police and courts to hold perpetrators to account. For bail to be granted, a judicial officer or police officer must be satisfied that the safety, wellbeing and interests of the victim(s) (both adults and children) are not likely to be adversely affected.

Tasmania's family violence bail provisions have been the subject of criticism by the courts, stakeholders and the community. Commentators have noted that the presumption against bail compromises the rights of the family violence perpetrator or may be a disincentive for a victim to make a complaint as they do not want to see their partner detained. There may also be criticism that imposing further restrictions on an accused's access to bail does not provide a fair legal process.

For consideration as an option to strengthen bail provisions in the family violence context, an ability to refuse bail for a minimum mandatory period following arrest for persistent perpetrators of family violence who breach protection orders or commit family violence offences may alleviate the risk of a perpetrator committing further family violence.

For example, having being granted bail a perpetrator returns home and commits further family violence offences in a short period of time regardless of protective bail conditions (such as prohibiting the accused from returning to the family home) or a protection order being in place.

Under this example, following a period where bail has been refused for a minimum mandatory period, a persistent perpetrator of family violence would be brought before a court to determine if bail should be granted. It is not envisaged to provide for a police officer to admit a persistent perpetrator of family violence to bail following a minimum mandatory period where bail has been refused.

This incorporates some discretion in deciding to automatically remand for the contravention of a FVO or PFVO in that the breach must be more than something trifling in the circumstances.

The protection and safety of victims and children of family violence is paramount and Tasmania's current presumption against bail recognises the need to reduce the risk of danger to the victim. It is possible that providing the police with additional leverage to refuse bail for a minimum mandatory period repeat family violence perpetrators will improve both the safety of victims and the community.

It is noted that refusing bail for a minimum mandatory period for a persistent perpetrator of family violence will have significant resource and cost implications and present holding and transporting challenges particularly in isolated locations around the state.

In Tasmania, the *Family Violence Act 2004* provides that a police officer may arrest, without a warrant, a person reasonably suspected of committing family violence and detain that person for a period reasonably required to determine charges, carry out a risk screening or safety audit, implement measures identified by a safety audit or issue a PFVO or apply for a FVO.

A person taken into custody must also be brought before a court 'as soon practicable' and the *Criminal Law Detention and Interrogation Act 1995* (section 4) applies. Following the completion of a period where bail is refused for a minimum mandatory period as detailed above the perpetrator must be brought before a court for bail to be considered.

7C. Should a police officer of the rank of inspector or above or authorised by the Commissioner of Police, have the power to refuse bail in the case of a persistent perpetrator of family violence for a minimum mandatory period?

7D. If so, how long should this period be following arrest for an offence that constitutes family violence, or following contravention a protection order?

Other jurisdictions

The powers to enable police to detain people (or holding powers) who have committed family violence offences essentially but not solely for purposes associated with applying and making of protection orders or securing the safety of a victim vary across Australian jurisdictions. For example, in Victoria, direction and detention powers provide that where a person is directed to remain in a designated place and fails to do so, then the person may be detained by police. The maximum period which a person may be detained is six (6) hours on the authority of police and if considered necessary for the detention to exceed six hours, an order can be extended to a maximum of ten (10) hours by order of a court.

Sentencing Advisory Council Report

The Sentencing Advisory Council notes in its report that Tasmania's family violence bail provisions are "punitive and while such initiatives may be justified in the interests of short term victim safety, the legislative framework does not promote the long term goals the community expects it to secure, i.e. to stop violence in the home and to prevent the intergenerational transmission of family violence".[19]

An immediate or flash detention mechanism for persons declared to be persistent family violence perpetrators may still result in negative impacts on the victim.

Minimum Mandatory Penalty

The *Family Violence Act 2004* currently provides for a hierarchy of penalties for contraventions of protection orders. Currently, the maximum penalty for contravening a FVO, PFVO or interim FVO in the case of a fourth or subsequent offence, is a term of imprisonment for a maximum of five years.

[19] Sentencing Advisory Council, Sentencing of Adult Family Violence Offenders, Final Report October 2015.

Behaviour that results in repeat and ongoing breaches of protection orders made to save from harm victims of family violence is unacceptable.

A further option to impose on persistent family violence perpetrators is a minimum mandatory sentence which may provide greater deterrence for perpetrators and reinforce that family violence is not acceptable and will not be tolerated in the Tasmanian community.

The availability of services and programs to manage and monitor persistent perpetrators of family violence is a major component to not only hold perpetrators to account but also to effect a change in the attitudes and behaviours of family violence perpetrators and the attitudes in the community more broadly. It is noted that further work would be needed to identify programs and resourcing.

Of note, the Sentencing Advisory Council in its family violence sentencing report remark that current funding levels cannot deliver the number and range of rehabilitative programs required to further the behavioural change component of Safe at Home. The delivery of the Family Violence Offender Intervention Program (FVOIP), a cognitive-behavioural program targeted at male perpetrators who are assessed as having a high risk of re-offending or escalating violence, is the only rehabilitative program available for high risk perpetrators.

Research shows that there are indications of a growing recognition that programs that are tailored to the criminogenic needs of the individual as well as the social and cultural factors that contribute to violence are an improvement on traditional inflexible, one-size fits all approaches. It is also noted that minimum mandatory penalties are contrary to obligations under International Human Rights Treaties.

7E. Should a minimum mandatory sentence of imprisonment be imposed for subsequent contraventions of protection orders for the duration of the declaration?

7F. If so, what mandatory period of imprisonment should be imposed?

Action 15 of the Government's Family Violence Action Plan is to support perpetrator programs for low to medium risk perpetrators.

The Men's Referral Service (MRS) has been contracted to deliver a telephone counselling and referral service for family violence perpetrators. The MRS 1300 766 491 number is staffed by trained counsellors and is available to Tasmanian callers 24 hours a day, 7 days a week.

Relationships Australia (RA) has been contracted to deliver a men's behaviour change program for low-medium risk family violence perpetrators. In addition, RA will deliver training to front-line service providers who may come in contact with family violence perpetrators to ensure those service providers know how to refer family violence perpetrators to appropriate services.

The Defendant Health Liaison Service (DHLS) has also received additional funding to employ an additional Defendant Health Liaison Officer. The DHLS plays a critical role in assessing the criminogenic needs of low-medium risk family violence perpetrators and referring them to appropriate services.

Summary of Questions Posed

Issue 1: Breaches of protection orders by protected persons

1. Should the current legislation be amended to provide that a person protected by a family violence order cannot be charged with an offence of instigating, abetting, or aiding the breach of a protection order?

Issue 2: Mandatory reporting of family violence

2. Should Tasmania's family violence legislation include provisions for mandatory reporting of family violence?

Issue 3: Definition of 'family relationship'

3. Should the definition of 'family relationship' in the *Family Violence Act 2004* be extended to a broader number of family members who are victims of family violence?

3A. If so, what relationships should be covered?

Issue 4: Law of self-defence in the context of family violence

4. Should the *Criminal Code Act 1924* be amended to provide that a person may have an honest belief that they are acting in self-defence and that their conduct may be regarded as a reasonable response in the circumstances as the person perceives them to be even if the person is responding to a harm that is not immediate or that appears to be trivial?

Issue 5: Effects of tendering no evidence in family violence cases

5. Should the law be amended to provide, where a matter is discontinued without hearing and an acquittal is entered as a result of no evidence being tendered, that the evidence may be admissible as relationship, tendency or coincidence evidence in the family violence context?

Issue 6: Persistent contraventions of family violence orders

6. Should there be the creation of legislative provisions to provide for a court to declare at the time of sentencing a repeat family violence perpetrator to be a persistent perpetrator of family violence?

6A. If so, what conditions should the court consider in making a declaration?

6B. Should there be provision for a persistent perpetrator of family violence declaration to be removed and if so how should this occur?

Issue 7: Consequences of a persistent perpetrator of family violence declaration

7. What orders should be available to courts following a perpetrator being declared as a persistent perpetrator of family violence?

7A. Should there be a persistent perpetrator of family violence register and should information about persons on the register be publicly available or available only for limited purposes ?

7B. What conditions should a court impose on persistent perpetrators of family violence at sentencing?

7C. Should a police officer of the rank of inspector or above or authorised by the Commissioner of Police, have the power to refuse bail in the case of a persistent perpetrator of family violence for a minimum mandatory period?

7D. If so, how long should this period be following arrest for an offence that constitutes family violence, or following contravention a protection order?

7E. Should a minimum mandatory sentence of imprisonment be imposed for subsequent contraventions of protection orders for the duration of the declaration?

7F. If so, what mandatory period of imprisonment should be imposed?

Current Initiatives

Safe Homes, Safe Families – Tasmania's Family Violence Act Plan 2015-2020

Priorities for Action

The Tasmanian Government has identified these priorities as key to improving our response to family violence. This is the start of our long term commitment to the Tasmanian community. The Government want to keep listening, learning and acting to address family violence for the long term.

The Tasmanian Government spends $16 million in direct and $24 million in indirect funding to address family violence each year.

To build our response to family violence, we will allocate an additional $25.57 million to new and direct actions over the next four years.

These actions were developed in consultation with stakeholders and the community. They are based on the best available research and evidence.

Establishing Safe Families Tasmania

1. Bring together government agencies in a statewide collaborative unit to coordinate support services for victims and hold perpetrators to account.

Changing attitudes and behaviours that lead to family violence

2. Develop and deliver a Respectful Relationships program in all government schools.
3. Take a lead role in supporting the national campaign to reduce violence against women and their children.
4. Join the national Our Watch organisation.
5. Roll out White Ribbon's Workplace Accreditation Program across all Tasmanian Government agencies.

Supporting families affected by violence

6. Support children affected by family violence in government schools and Child and Family Centres.
7. Support children affected by family violence in non-government schools.
8. Extend counselling services for children and young people experiencing family violence.
9. Provide additional counselling services for adults experiencing family violence.
10. Invest in crisis accommodation.
11. Provide supported housing options.

Strengthening our legal responses

12. Strengthen the legislative framework to address family violence.

13. Extend legal assistance to people experiencing family violence.

14. Appoint more specialist police prosecutors.

15. Support perpetrator programs for low to medium risk perpetrators.

16. Extend forensic medical examination to include victims of family violence.

17. Develop a business case for a Criminal Justice Information Management System.

18. Improve data collection and reporting.

New Action

19. Develop and deliver a Safe Homes, Safe Families training program for front line staff of the Department of Education (including LINC and TasTAFE).

Department of Justice
Office of Strategic Legislation and Policy
GPO Box 825, HOBART TAS 7001
legislation.development@justice.tas.gov.au
www.justice.tas.gov.au