



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

Mr Peter Cain MLA (Chair), Dr Marisa Paterson (Deputy Chair), Mr Andrew Braddock MLA

Submission Cover Sheet

Inquiry into Sexual, Family and Personal Violence Legislation Amendment Bill 2023

Submission Number: 002

Date Authorised for Publication: 06 December 2023

29 November 2023

Standing Committee on Justice and Community Safety
ACT Legislative Assembly
GPO Box 1020
Canberra ACT 2601

By email: lacommitteejcs@parliament.act.gov.au

Dear Committee,

RE: Inquiry into the Sexual, Family and Personal Violence Amendment Bill 2023

Thank you for the opportunity to provide feedback on the provisions of the Bill. In general, the Domestic Violence Crisis Service (DVCS) supports the amendments in the Bill and commends the ACT Government for its ongoing focus on improving responses to domestic and family violence and holding perpetrators of violence accountable.

DVCS is the only specialist Domestic and Family Violence frontline service in the ACT. Integrating principles of empowerment, self-determination, respect and equality, DVCS works to promote a society where interpersonal relationships are free from violence. The priority of DVCS is safety for all people affected by domestic, family and intimate partner violence, and the encouragement of self-responsibility and accountability by people who use violent and abusive behaviour.

A team of DVCS staff are located at the Magistrates Court to support people through the Family Violence Order (FVO) application process, provide advocacy at court and support to give evidence. This experience informs our feedback on the Bill.

Aiding and abetting changes

DVCS particularly welcomes the abolition of the crime of aiding and abetting breaches of family violence orders for people protected under the order. FVOs apply to people using violence, not the person subjected to it. Charging victim survivors of family violence with aiding and abetting can be further traumatising, deter people from reporting future violence, and be used as a threat

by people using violence. We note that this change brings the ACT into line with most other Australian jurisdictions.

There are situations where aiding and abetting charges have been laid against perpetrators of violence. This is often when the person subject to violence is misidentified as the primary aggressor, and an FVO is granted against them. The primary aggressor then tries to encourage the person subject to violence to breach the order. But these situations can be addressed through other legal means, directed towards abuse of the criminal justice system. Training for police and court staff around identifying the primary aggressor would help prevent them from arising at all.

Preliminary conferences

S46 states that a preliminary conference must be held unless the court is satisfied that it would create an unacceptable risk of a person's safety or would be unlikely to achieve its objects. While we support this amendment, additional clarification around the definition of "unacceptable risk to a person's safety" should be provided. There are differing levels of understanding and expertise within the courts around family violence risk assessment and safety. There are also situations where the preliminary conference itself can contribute to the lack of safety. For example, some DVCS clients will move interstate to a location unknown to the person using violence. Returning to the ACT for a preliminary conference means the respondent will be aware of their location, creating a risk to their safety. Aligning the definition of "unacceptable risk to a person's safety" with and providing consistent training around the ACT Domestic and Family Violence Risk Assessment and Management Framework would ensure everyone in the ACT system is using a common approach to assessing and managing family violence risk.

The preliminary conference was introduced to reduce delays and resolve matters earlier. It will be important to monitor the number of cases where a preliminary conference is not held, and any impacts this has on court delays.

There are also several welcome safety measures in place in preliminary conferences, including the applicant and respondent being in different physical spaces. These measures do not extend to the Pre-Hearing Mention phase. We would welcome consideration of how additional safety measures could be applied at Pre-Hearing Mentions, including separate physical spaces for the applicant and respondent.

FVOs when protected people become adults

It makes sense that a protected person who is a child when the order is made continue to be protected when they become an adult. It would be good to make clear how young people recently turned 18 can seek to have the provisions of the order that are relevant to them changed. For example, where there are parenting orders in place that cease when the young person turns 18, the choices and agency of the young adult should be heard, respected and promoted about what contact, if any, they want with their parent. This may require changes to the FVO, but it is not clear to DVCS how the young person would seek to make those changes.

Interim order clarifications

The amendment to Subdivision 3.3.1A clarifies that a person can seek an interim order if there has been a change in circumstance, including where an interim order was previously refused, or an application for a final order has been made. We are aware that this has been an area where there have been inconsistent approaches and application by the court and welcome the clarity of the amendments. Safety and risk can change rapidly and unexpectedly, and this clarification recognises that situations change and evolve during the court process.

The change at s29(2) that an interim order is extended until the final order is served, or (if unable to be served) for the period it would have been in force is positive. We are aware of circumstances where a final order has not been served, and the status of the interim order is unclear. This amendment will provide clarity and certainty in these circumstances.

However, similar uncertainty can arise where a final order is extended, but the extension has not yet been served on the respondent. This leaves the applicant unprotected until the extension to the final order is served. The Government should consider ways that the protection of the final order can be extended until the extension has been served.

Further comments

The court system remains a source of trauma and abuse for many people who have been subjected to family violence. Delays, complicated processes, having to repeatedly return to court for hearings and conferences, being cross-examined and physically present with the person who used violence against them can all contribute to the negative experiences people have with the legal system. People subjected to family violence can also be misidentified as perpetrators, or be subjected to legal system abuse by perpetrators of violence seeking to extend their control.

In addition to the reforms in the Bill, there is more work to be done in making sure that court processes are trauma-informed, and court staff are trained in trauma-informed practice.

While the clarifications in the Bill are important and will provide additional certainty for many people, the systemic problem in several of these scenarios is actually delays in the service of documents. By under-resourcing the Service and Processing team, people's safety is put at risk, and the ability of the court to deliver timely and just outcomes is limited. Many of our clients experience delays of weeks or even months in the service of their orders. During this time, they lack protection, face the ever-present threat of escalating violence, and frustration with not knowing how their matter is progressing. Significant additional investment is needed so documents can be served more quickly.

Some court practices can escalate risk for people subject to violence. For example, when the court refuses an interim order, the person using violence is still notified that the order was sought. This can escalate the risk or severity of violence against the victim survivor. As no interim order was granted, it is unclear why there is a need to notify the person using violence that it was sought at all.

This Bill is a commendable step forward in the legal protections offered to Canberrans who experience family and domestic violence. We would welcome the opportunity to speak with you about the Bill and opportunities for further reform.

For more information, or to discuss the contents of this submission, please contact:

Sue Webeck
Chief Executive Officer

Brooke McKail
Policy, Research and Reform Manager