

CONTACT US

T 1800 595 162

E tals@tals.net.au

Aboriginal Corporation of
Tasmania Legal Services -
ICN 9283 - ABN 84 832 275 866

LAUNCESTON

Level 1, Office 1A,
67-69 Brisbane Street
(PO Box 161)
Launceston TAS 7250

BURNIE

17 Cattley Street
Burnie TAS 7320
PO Box 644
(9am - 1pm)

HOBART

Level 4,
152 Macquarie Street
(GPO Box 38)
Hobart TAS 7000



TASMANIAN ABORIGINAL
LEGAL SERVICE

Tasmanian Aboriginal Legal Service (“TALS”) Written Submission:

Consultation on Family Violence Amendment Bill – February 2025

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Introduction:

The Tasmanian Aboriginal Legal Service (TALS) welcomes the opportunity to provide feedback on the *Family Violence Amendment Bill 2024*.

TALS is a member-based, independent, not-for-profit Aboriginal and Torres Strait Islander legal service that specialises in the provision of criminal, civil and family law legal services, as well as justice programs, such as community legal education. TALS also operates a dedicated Family Violence and Prevention Legal Service, *SiS Tasmania*, to provide legal and non-legal support to victim survivors of family violence and sexual abuse.

We are an Aboriginal community-controlled organisation incorporated under the Office of the *Registrar of Aboriginal Corporations*. In this submission, any reference to Aboriginal peoples is understood to also encompass Torres Strait Islander peoples.

TALS provides culturally safe, holistic and appropriate services that are inclusive and open to all Aboriginal Tasmanians.

TALS acknowledge that Aboriginal and Torres Strait Islander peoples experience greater unmet legal need than any other group in the community. TALS also advocate for law reform and for justice, equality and human rights for all Aboriginal Peoples in Tasmania.

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Response

Family violence in Aboriginal and Torres Strait Islander communities cannot be addressed without recognising the impact of colonisation, intergenerational trauma, and systemic discrimination. Many Aboriginal peoples face additional barriers when seeking protection, including a deep-seated mistrust of the legal system due to historical and ongoing injustices. This must be considered when designing and implementing family violence legislation to ensure that it does not inadvertently deter Aboriginal victim survivors from seeking help.

TALS will support legislation that improves the circumstances of victim survivors of family violence. TALS acknowledges the area of family violence law is a growing jurisdiction and requires legislation to be fit for purpose and responsive to evolving needs. Additionally, TALS recognises that proposed legislative changes in the family violence space require significant consultation and consideration from a variety of stakeholders, due their potential impact on the victim survivor community in Tasmania

The Magistrates Court of Tasmania reported an increase of 11% in Family Violence Order ('FVO') applications in the 2023-2024 financial year, with 1,921 applications lodged in court. Further to this, from the financial years of 2018-2019 to 2023-2024, there was a 41.1% increase in applications overall, which was described in the *Magistrate Court's annual report* as a 'rapidly growing division' of law.¹ The reference to increased FVO applications suggests that victim survivors (or Police on their behalf) are becoming more likely to seek protective measures. As such any changes or alterations to legislation that governs family violence requires scrutiny to ensure there are no adverse impacts in relation to the safety and wellbeing of victim survivors or their willingness to access protection.

Despite this increase in access to protective measures, the fact remains that violence perpetrated against First Nations women is far more likely to remain unreported. And further to this, First Nations people are also less likely to seek FVOs, with one of the most common reasons sighted being a lack of understanding of the relevant legislation and their subsequent legal rights.²

In addition, Aboriginal victim survivors often experience unique cultural and systemic barriers when engaging with the legal system. These barriers may include fear of child removal, shame within the community, concerns about being isolated from cultural and family connections, and experiences of racial discrimination by police and the courts. The Tasmanian Government must ensure that legislative changes do not reinforce these barriers but instead actively address them through culturally safe legal pathways and wraparound support services.

¹ Department of Justice, *Magistrates Court of Tasmania Annual Report (2024)* p.27 https://www.magistratescourt.tas.gov.au/_data/assets/pdf_file/0010/791731/Magistrates-Court-of-Tasmania-Annual-Report-2023-24.pdf

² Australian Institute of Health and Welfare, *Family, Domestic and Sexual Violence: Population groups (2024)* <https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/aboriginal-and-torres-strait-islander-people>

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To address this, TALS strongly encourages the Tasmanian Government to ensure communities are provided with legal education and that Tasmania Police are appropriately trained in addressing family violence matters, with a particular focus on engaging with Aboriginal peoples. This training should be developed in consultation with Tasmanian Aboriginal communities and Elders to ensure it reflects the lived experiences and specific needs of Aboriginal victim survivors. We further encourage the Tasmanian Government to recognise and engage with our SiS program staff who work directly with Aboriginal peoples impacted by family violence in Tasmania.

Specific legislative feedback

Section 20 – Substantial change in circumstances:

As stated, TALS is supportive of legislation amendments that aim to improve the circumstances and outcomes for victim survivors of family violence. We acknowledge the difficulties faced by victim survivors who are seeking FVOs, and measures to better facilitate this process are welcomed. TALS acknowledges that in instances where there has been no ‘substantial change’ there may still be a risk to the victim survivor, and their families, which is currently being curtailed by Section 20.

However, TALS have concerns in situations where a FVO may have been issued erroneously due to occurrences where the primary aggressor has been misidentified. This legislation amendment may allow an extension of such an order.

The risk of misidentification occurs when police respond a family violence incident and misinterpret the nuances of the situation (i.e. who is acting as the aggressor and who is retaliating/resisting).³ This can result in the true family violence perpetrator being misidentified and subsequently, a FVO or PFVO being imposed on the victim survivor.⁴

For Aboriginal women in particular, misidentification is further compounded by systemic biases within the justice system. The intersection of gender and race often leads to assumptions that Aboriginal women are aggressive or non-compliant, increasing the likelihood of wrongful FVOs being issued against them. These biases must be acknowledged and actively addressed through rigorous cultural competency training for police, judicial officers, and legal practitioners.

Additionally, *Engender Equality*, a Tasmanian organisation who work with and on behalf of people affected by family violence, state that misidentification continues to be an issue as perpetrators seek to maintain control by committing systems abuse.⁵ TALS encourages the reviewers of this document to familiarise themselves with this research if they have not done so already:

³ Engender Equality, *Misidentification of the Predominant Aggressor in Tasmania: Practitioner perspectives from Engender Equality* (2022) <https://engenderequality.org.au/wp-content/uploads/2023/07/Engender-Equality-Misidentification-of-the-Predominant-Aggression-Research-Discussion-Paper-2023.pdf>

⁴ Ibid.

⁵ Ibid.

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<https://engenderequality.org.au/wp-content/uploads/2023/07/Engender-Equality-Misidentification-of-the-Predominant-Aggression-Research-Discussion-Paper-2023.pdf>

Further highlighting misidentification as an issue is an article written by the Australian Broadcasting Company sighting the following information retrieved from the Tasmanian Magistrates Court:

“Data obtained by ABC News earlier this year showed police issue PFVOs against female respondents at more than triple the rate of courts, raising questions about whether officers are always picking the right perpetrator. Now, new figures reveal the number of applications to revoke PFVOs increased 102 per cent in the six years to June 2023, with applications by female respondents jumping 154 per cent.”⁶

Ascertaining the true cause of misidentification can be difficult due to lack of recording mechanisms in place.⁷ However, data collated by the New South Wales Bureau of Crime Statistics and Research (BOCSAR) indicates that 64% of women brought before the courts on domestic violence matters during the 2022-23 financial year were previously known to be victims. For Aboriginal women, this figure jumps to 85%.⁸ Whilst not telling the full story, these figures are alarming and suggest that ‘police may be frequently criminalizing women they know to be victim-survivors’.⁹

TALS acknowledges that responding to a domestic violence situation is difficult on all parties. However, this only strengthens the case for police to be appropriately trained to respond effectively and to mitigate the risk of misidentification.¹⁰ Additionally, consideration should be given to the role of Aboriginal community leaders, Elders, and legal advocates in assisting police responses to family violence incidents involving Aboriginal peoples. Creating culturally safe response mechanisms will help ensure that Aboriginal victim survivors are protected while minimising the risk of wrongful FVOs. These training measures have already been introduced in Victorian and New South Wales jurisdictions as it is acknowledged that despite the lack of statistical data on misidentification, the issue is problematic. This specialised training is a proactive move that seeks to not only address misidentification at the point of response but also reduce the ongoing consequences on those misidentified and ensure that the correct person is made subject to court orders.¹¹

The consequences of being made subject to a FVO are not insignificant and can include:

- Financial implications due to loss off employment or access to government support payments.
- Homelessness/transience as they may need to vacate a property.

⁶ Gleeson, H *Tasmania Police are still mistaking family violence victims for abusers. For too many women, correcting the record is impossible* (2023) Australian Broadcasting Company <https://www.abc.net.au/news/2023-11-19/tasmania-police-misidentifying-family-violence-victims-abusers/103102134>

⁷ ABC News, *What is misidentification? How the justice system fails victims of domestic violence* (14 December 2024).

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

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- Impacts on children, including housing stability, Child Safety Service intervention and the ability to have a meaningful relationship with their parent(s).
- Mental and physical health issues.
- Further criminalisation if an imposed order is breached inadvertently.¹²

Due to the potential consequences, if an order is to be extended without any change in circumstance there must be safeguards in place to ensure that the right perpetrator has been identified accurately in the original FVO. Community legal education is integral to this occurring as well as police receiving ongoing, rigorous training in responding to family violence incidents.

Section 34 – Costs

TALS is generally supportive of this provision and acknowledges the benefits of stepping out the judicial decision-making process in relation to cost applications in private FVO matters. However, TALS have some concerns in relation to 2(a)(iii) and the definition of ‘unreasonable impact’.

There are instances where the FVO application process is manipulated of by perpetrators of systems abuse and, at times, will include the mechanism of a cost application. As such there are concerns in relation to what would constitute ‘unreasonable impact’ and whether such broad terminology could be exploited in instances where cost applications are being made in instances of systems abuse.

For Aboriginal victim survivors, financial barriers already play a significant role in limiting access to justice. The potential for cost applications to be misused by perpetrators may further discourage Aboriginal peoples from seeking protection through the legal system. The government must consider whether safeguards can be implemented to prevent the use of cost applications as a tool of coercion, particularly against vulnerable groups such as Aboriginal women.

There is further concern that with such vague use of language it could be difficult for legal representatives to provide appropriate advice in relation to a likely procedural outcome, and consequently, this may lead to hesitation from victim survivors in making a genuine FVO application on their own behalf.

Conclusion

TALS is generally supportive of the amendment bill; however, there are some concerns that may see the legislation result in unforeseen negative consequences. TALS encourages the drafters of this bill to consider these potential consequences and develop measures to mitigate them.

¹² State Government of Victoria, *Misidentification is a significant issue that has enormous consequences for the victim survivor* (2021) <https://www.fvrim.vic.gov.au/monitoring-victorias-family-violence-reforms-accurate-identification-predominant-aggressor/misidentification-significant-issue-enormous-consequences-victim-survivor>

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TALS further encourages the government to interact with our family violence service, SiS as well as our community legal education team to ensure Aboriginal families are supported and aware of their legal rights, and the legal processes, in relation to family violence matters. We also strongly advocate for greater engagement with Aboriginal community leaders and Elders in shaping family violence policies to ensure they are culturally safe, effective, and accessible for all Aboriginal peoples.

Warmest regards,



Jake Smith (He/Him)

Chief Executive Officer

P: 1800 595 162 | M: 0492 857 491 | E: jsmith@tals.net.au

Level 1, Office 1A, 67-69 Brisbane Street, Launceston