



Review of the
Family Violence Act 2004

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1. Executive summary

Anglicare Tasmania welcomes the opportunity to contribute to this review of the *Family Violence Act 2004*, which occurs against the background of a housing crisis characterised by a severe and growing shortage of affordable housing. This housing shortage affects both perpetrators (who can be excluded from the family home) and victims (who can find themselves in financial hardship following the removal of the perpetrator). While this is not an issue with the legislation, if the legislation is to work as intended the housing crisis needs to be considered as critical background.

Anglicare's response is based on our experience as a service provider across a range of program areas. In particular, we are contracted to provide brokered accommodation to perpetrators of family violence who are excluded from their home under the legislation, and we also offer a specialist, non-crisis support service for people affected by family violence in the north-west.

Anglicare recommends broadening the definition of 'family relationship' and 'family violence' currently included in the Act to ensure violence perpetrated between family members who are not in a spousal relationship is included. Violence perpetrated by children under the age of 18 against family members should be incorporated into the *Family Violence Act*, but with sentencing and penalties still managed under the provisions of the *Youth Justice Act 1997*. Additional safeguards will also be required for victims with disabilities or elderly victims who have been abused by their care provider to ensure that their support is not compromised by any action taken under the Act.

The experience of Anglicare workers is that many people in the community do not necessarily understand Tasmania's family violence legislation or the full consequences of reporting an incident to police. This has led in some cases to people later breaching the Police Family Violence Order (PFVO) because the outcome was not what they wanted and they were unaware of or reluctant to engage with the processes by which a PFVO can be amended. Often these people then disengage from the support service because they do not want to disclose to the worker that they have breached the PFVO. One possibility is to amend the PFVO process by requiring police to make an interim PFVO, which applies for a limited time only, after which the victim can choose to convert it into a full PFVO or to allow it to lapse. The process for doing either would need to be accessible and simple, and the victim would need to be provided with appropriate support to ensure that they were not pressured into the second option by the perpetrator.

Anglicare has experienced a number of operational issues with the exclusion of perpetrators from their homes under the Act. There have been difficulties when the perpetrator was not immediately referred for brokered accommodation, due to the inflexibility of the guidelines attached to the brokerage funding. A draft service agreement has been negotiated which may address some of these issues. Due to the housing crisis, it is not always possible to find brokered accommodation for clients, including perpetrators, which can lead to homelessness. It is also important to ensure that the victim remaining in the family home is able to sustain that accommodation as often there are no alternatives available. The stresses associated with housing can lead to broken PFVOs as couples reunite for financial reasons.

Finally, Anglicare is opposed to the introduction of mandatory reporting (s.38) for offences involving adults (although we do support mandatory reporting for situations where children are affected, as laid out in the *Children, Young Persons and Their Families Act*). While NGOs are not explicitly listed in the legislation, a number of Anglicare workers are registered psychologists and could have obligations under s.38 if it was enacted. Anglicare believes that a mandatory reporting regime has the potential to deter clients from seeking support from services or from disclosing to workers that family violence is an issue, could jeopardise the relationship between client and support worker by undermining the client's trust in the worker, and takes away from people their right as adults to choose when they report an incident or decide to leave a relationship. Anglicare's preferred approach would be to support a victim to make that decision for themselves when they were ready.

2. About Anglicare Tasmania

Anglicare Tasmania welcomes the opportunity to contribute to the review of the *Family Violence Act 2004* (the Act), and also looks forward to the opportunity to contribute to the review of the Safe at Home program later in the year. However, while Anglicare is aware that many of the issues relating to the on-the-ground operation of the Act will be addressed in the program review rather than in the legislative review, we have raised some of them in this submission. No piece of legislation stands in isolation. If there are contextual reasons why a piece of legislation cannot operate as intended, then those contextual reasons need to be taken into account in any review of the legislative provisions.

Anglicare is one of Tasmania's largest community organisations, offering a range of services to the Tasmanian community including accommodation support, counselling and family support, disability and acquired injury support, mental health and employment services, a Registered Training Organisation, a social enterprise and a social policy, advocacy and research centre. A number of Anglicare services have clients affected by family violence, and some of these services have been closely involved with the implementation of the Act and the Safe at Home reforms. In particular, Anglicare holds the contract to provide brokered emergency accommodation to perpetrators of family violence who are excluded from their homes by police, and we also offer a specialist relationship violence support service in the north west.

- Brokered emergency accommodation for perpetrators is provided through the **ACCESS** program. ACCESS also provides assistance to families and individuals who are homeless or at risk of homelessness, through supporting them to stabilise their existing housing or find alternative long-term housing, brokering crisis accommodation and providing case management, and therefore has also supported people who are victims of family violence and who are unable to stay in their homes.
- Accommodation brokerage for perpetrators is supported by the **Emergency Accommodation Service** (EASe), an after-hours 1800 number which can be called by anyone who needs emergency accommodation outside working hours. EASe is then able to broker accommodation in hostels, pubs, caravan parks or hotels, or support clients to access community tenancies or crisis shelters. The service can also refer people to longer-term support.
- **RAIN** is a SAAP-funded support service for women, men and children experiencing or affected by domestic violence or abuse. It provides long-term counselling and support, information and referral, practical and financial assistance to people leaving a violent situation and community education about relationship violence. RAIN does not provide services for people who are primarily perpetrators of violence, but will act as a referral centre for people who are perpetrators but also victims of relationship violence.

3. Context for the review: the importance of stable housing

This review occurs against the background of a critical shortage of affordable housing (Flanagan, K. 2007). While victims of family violence receive additional allocation points under Tasmania's public housing allocation system, the supply of public and community housing is minimal, and the public housing system in particular lacks the funding to provide adequate support to tenants with complex needs. Many low income earners are forced to rely on the private rental market, struggling with limited availability, unaffordable rents, insecure tenure, discrimination and social exclusion. In addition, Tasmania's affordable housing stock, particularly in the private rental market, is of very poor quality, and many low income earners can only find affordable housing in areas that are isolated, poorly-serviced and characterised by disadvantage.

The Tasmanian Government's response to the housing crisis has been to focus on the capacity of the new affordable housing organisation, Tasmanian Affordable Housing Limited (TAHL), to provide up to 700 properties over four years, head-leased by TAHL on behalf of low income earners. The Tasmanian community sector sees TAHL as one response to the crisis, but TAHL's rents will be out of reach for the lowest income earners and it will not deliver the increase in housing supply required (Flanagan, K. 2007). Premier Paul Lennon has indicated that the housing crisis will be one of his priorities for 2008, but his statements have been contradictory, with the Premier announcing on 29 January that he would be addressing the public housing shortage (Lennon 2007), but then linking the provision of a "better level of

public housing” with the approach of the housing authority in South Australia, which is one of significantly reducing the supply of public housing stock due to financial constraints (Mercury 2007).

The reason Anglicare has emphasised these issues in our submission is that the housing crisis directly impacts upon both perpetrators and victims. Perpetrators are frequently excluded from their homes under Police Family Violence Orders (PFVOs) and must find alternative housing, and victims can find it difficult to maintain rental payments on the family home once the perpetrator’s income is no longer contributing but be unable to find a more affordable alternative. Appropriate, stable, secure housing, particularly public housing, is strongly linked to wellbeing, including psychological wellbeing (see Phibbs and Young 2005, Hulse and Burke 2000, Lewis 2006), and is critical if people affected by family violence are to rebuild their lives. Policy settings that promote the provision of affordable housing, and particularly sufficient public housing, are therefore vital if the object of the Act described in s.3 is to be achieved.

4. Comments on the *Family Violence Act 2004*

Anglicare Tasmania supports the intent of the *Family Violence Act 2004* to promote the safety and wellbeing of people affected by family violence, and in our experience, the legislation is working reasonably well in achieving this objective. The comments below reflect our views on how some aspects of the legislation could be improved to ensure that all family members have access to the protection of the Act and that victims of family violence are empowered by the provisions of the Act.

4.1. Definition of ‘family’

4.1.1. Extending the definition

Violence in the home is not confined to violence between couples, yet s.7 of the Act defines ‘family violence’ as conduct “committed by a person ... against that person’s spouse or partner”. The definition of ‘spouse or partner’ given in s.4 makes it clear that family violence within the meaning of the Act refers only to violence between couples who are married or in a de facto relationship. This is a very narrow definition of what constitutes ‘family’, and excludes, among others, children, grandparents, other close relatives and the kinship arrangements that exist in Aboriginal communities. Many culturally and linguistically diverse communities also have different conceptions of ‘family’, with the composition and definition of the family determined by cultural factors that differ from those of mainstream of Australia. For refugee families which have been torn apart or almost destroyed by trauma and war, relatives considered relatively distant in mainstream Australian culture often become part of the same household because they are all people have left (Flanagan, J. 2007).

The 2003 options paper that originally proposed the Safe at Home model proposed that ‘family’ be defined as including not just relationships between couples – both cohabiting and dating – but also relationships between relatives (using a broad definition of a relative) and informal care relationships, where one person was dependent upon another for support with personal care due to a disability, illness or impairment (DJIR 2003). Many informal carers are also the spouses, children or relatives of the people for whom they provide care (see section 4.1.3. below). During the parliamentary debate that accompanied the passing of the *Family Violence Bill 2004*, the then Attorney-General, Judy Jackson, indicated that the legislation was only “at this stage” limited to violence between spouses and partners (Jackson 2004), while the Leader of Government Business in the Upper House, Doug Parkinson, indicated that the Government may consider future amendments to extend the coverage of the Act to violence in the wider family (Parkinson 2004a).

A review of Victoria’s family violence laws by the Victorian Law Reform Commission recommended continuing with the state’s current approach, which is to include couples, relatives, children and household members in the definition of a ‘family member’, but also extending the definition of ‘family member’ to include people considered relatives according to the traditions or contemporary social practices of Aboriginal and other communities and people in relationships involving dependence or partial dependence on another for paid or unpaid care (VLRC 2006). Adopting in legislation a broader understanding of ‘family’ would ensure that all

members of a family were provided with the protection of legislation promoting safety for victims of family violence.

RECOMMENDATION

The *Family Violence Act* should be amended to cover all violence perpetrated within families, including

- violence perpetrated by children,
- violence perpetrated within the extended family (including siblings, aunts, uncles, cousins and grandparents),
- violence perpetrated within the kinship networks established by the traditions and contemporary social practices of Aboriginal people and other culturally and linguistically diverse communities, and
- violence perpetrated within relationships where one person is dependent or partially dependent upon another for the provision of essential support with the activities of daily life.

4.1.2. Violence perpetrated by children

It is clear from the parliamentary debates that the Government's intention was that violence directed at a child be kept within the scope of the *Children, Young Persons and their Families Act* (Jackson 2004, Parkinson 2004b). Anglicare supports this, and also supports the provisions in the *Family Violence Act* that separately acknowledge the impact of family violence on children. However, there is a case for expanding the coverage of the *Family Violence Act* to incorporate, for example, violence perpetrated by children against adults, or violence perpetrated by a child against a sibling, beyond the provisions that already exist for violence perpetrated by 16-18 year olds against their partners. The impact of violence and abuse against other family members by children can be devastating, with parents reporting significant feelings of guilt, conflicted loyalty and shame (SHE 2003, Paterson et al 2002, Bobic 2004).

There is a limited research base on adolescent violence towards parents, with little known about the extent of the problem, rates of violence or the profile of victims and perpetrators (Paterson et al 2002). While there are varied theories about the cause of adolescent violence, most of the theories link the violence to the family environment or parenting styles (Paterson et al 2002, Bobic 2004), which has obscured other factors, such as school bullying, depictions of violence in popular culture, social understandings of masculinity and peer pressure, and which can therefore lead to simplistic interventions (Bobic 2004). The lack of information and attention reinforces the shame and inadequacy families affected by this kind of violence feel, and contributes to their reluctance to report the problem (Bobic 2002). Even though parents have greater social and economic power than the abusive child, the violence is still used to assert power and control (Paterson et al 2002).

At present, parents with violent children can contact the police, who can intervene. However, if the perpetrator child is under 18, the incident or incidents will be dealt with under the *Youth Justice Act 1997*, which means that arrest and detention will be used as a last resort, and will only take place for serious offences where the arresting officer believes that arrest is needed to prevent the offence occurring again or that the young person is unlikely to appear before the court in response to a summons (s.24). Excluding the young person from the family home can be done using a restraint order under the *Justices Act 1959* (part XA), but while a decision to prevent a young person from returning home depends on the circumstances of the case, under the *Youth Justice Act*, so far as possible family relationships are to be preserved and the young person's home life, employment, education and sense of racial, ethnic or cultural identity should not be impaired (s.5). A judge making an ordinary restraint order must also consider the impact the order will have on the person's accommodation, among other matters (*Justices Act 1959*, part XA).

The *Youth Justice Act* was introduced in part in recognition of the damage that can be caused to children by contact with the criminal justice system. The youth justice approach seeks to provide for alternative sanctions that promote a sense of personal responsibility and support rehabilitation. Anglicare supports the intent of the *Youth Justice Act* and is not suggesting that child perpetrators of family violence be exposed to the adult criminal justice system. However, the limited research on violence perpetrated by children against their parents indicates that the involvement of the authorities can support victims by making it clear the violence will not be tolerated, setting boundaries in relation to the child's behaviour and reinforcing the rights of the victim (Paterson et al 2002). In one case in which Anglicare was involved, in which a young man (aged

over 18) was violent towards his mother, the involvement of a third party (in this case the victim's landlord and the police) also meant that the victim did not have to confront the perpetrator directly.

Obviously, resolution of this form of family violence can be complicated by the fact that the parent has a responsibility to parent, so walking away from the relationship is less of an option (Paterson et al 2002). The Victorian Law Reform Commission in its report expressed concern about the capacity for conventional responses such as excluding the child perpetrator from the family home to lead to homelessness, early school leaving or entry into the wider criminal justice system, even though they may in some instances be appropriate (VLRC 2003). As safeguards, the Commission recommended that any application for an intervention (restraint) order against a young person be heard in the Victorian Children's Court, and if the order is to include exclusion from the family home, that the court be empowered to refer the case to the Victorian Department of Human Services for a report on the alternative care and support arrangements in place, with a legislative obligation placed upon the Department to act. A similar approach was suggested in the original Safe at Home options paper (DJIR 2003).

RECOMMENDATION

Violence perpetrated by children under the age of 18 against family members should be incorporated into the *Family Violence Act*, but with sentencing and penalties still managed under the provisions of the *Youth Justice Act*. Where a child is to be subject to a PFVO or Family Violence Order (FVO) or restraint order that excludes them from the family home, there must be a legislative obligation placed upon the police, the Courts and Department of Health and Human Services (Child and Family Services) to ensure that appropriate and adequate arrangements for the care and support needs of the child, including for accommodation, are in place prior to the order coming into effect.

4.1.3. Violence perpetrated against disabled or elderly family members

Anglicare has recommended that relationships involving dependence on another person for the provision of essential care be included in the definition of 'family'. Around 22,100 adults of working age in Tasmania have a disability that restricts their capacity for self-care, communication or mobility to the point where they sometimes or always need assistance with these activities (Hinton 2006). This can include assistance with getting up and going to bed, washing, toileting and bowel care and preparing food and eating, as well as shopping, home maintenance and cleaning, washing clothes, banking, transport and social support. The majority of this care is provided by informal carers, usually family or friends. The nature of the care to be provided, such as assistance with toileting, requires a degree of trust and skill which can be exploited, and can increase vulnerability to abuse (VLRC 2006).

People over working age living in the community who require help with self-care, communication or mobility are also dependent on family and friends to meet the majority of their support needs. Eighty-three per cent of older Australians who need care receive some or all of their support from informal carers, and informal carers are predominantly either female partners, daughters or daughters-in-law (with the exception of carers providing assistance with property maintenance) (AIHW 2007). A consultation with Home and Community Care program consumers in 2005-06 found that many of those consulted reported feeling increasingly vulnerable, partly because of their physical, financial and psychological dependence on formal and informal carers, with some people experiencing mistreatment as a result of their vulnerability (Marsh 2007).

The issues of disability, age and experience of violence interconnect, leading to added complexities. For example, there is confusion between understandings of domestic violence and understandings of 'elder abuse' (the physical, sexual, financial or emotional abuse or mistreatment of an older person), with many aged care services struggling to deal with domestic violence issues and many domestic violence services struggling to respond appropriately to elderly victims (Hazzlewood and Orpin 2007). A Tasmanian study of the enabling factors for women who want to leave a violent situation found that victims with a disability faced greater opposition from their families, more difficulty in accessing support and had a higher level of fear about being able to manage alone than non-disabled victims, in addition to the particular challenges imposed by the disability (Patton 2003). People with disabilities often find it difficult to get other people to recognise and believe that they are being abused, with disclosure of the abuse being interpreted as

'challenging behaviour' or a symptom of the disability. This is particularly the case if the disability includes a cognitive impairment (VLRC 2003).

Anglicare has argued in section 4.1.1. that abuse or violence within care-based relationships should be included in the definition of 'family violence', but there are particular safeguards that must apply when responding to this form of family violence through the Act and the Safe at Home program. For example, the provision of an independent advocacy service to protect the rights of people with disabilities, including the right to actively participate in decisions about their lives, is included in the service standards contained in the *Disability Services Act 1992* (schedule 3, standard 12), and there are four advocacy services in Tasmania, Advocacy Tasmania, the Association for Children with Disability, Citizen Advocacy and Speak Out that can provide this support. The role of an advocate is to assist people who are marginalised or powerless to assert their own interests and make their own decisions. Advocates have a duty of care not to cause significant harm or disadvantage to their client or to other people in the client group (DHHS 2007). Although some aspects of the *Family Violence Act* purposefully place the decision-making power following a family violence incident with the police or Courts, it is important that people with disabilities who are either victims or perpetrators do not lose any of the rights or choices they do have as part of this process. Ensuring that advocacy services are involved as soon as possible following an incident would help avoid this.

RECOMMENDATION

Where the victim or perpetrator of family violence has a disability or impairment, access to advocacy services should be proactively provided to ensure that their rights are protected.

Another example of where safeguards are required is when the victim of the violence relies on the perpetrator for the provision of essential care, and the perpetrator is to be excluded from the home to promote the victim's safety. For some people, their home has been especially customised for them and their needs (VLRC 2003), and the supply of alternative accommodation that is accessible and appropriate for people with disabilities in Tasmania is very limited (Hinton 2006, Flanagan, K. 2007). A victim with a disability has the same rights as other victims to remain in his or her own home, particularly as the alternative could well be institutional care. In these circumstances it is essential that alternative community care arrangements are established as soon as possible, such as support from formal services. However, Tasmania's disability services system is under-funded and overstretched, and there is no clear pathway into the service system or single source of information about entitlements (Hinton 2006). To ensure that people can remain in their own home with minimal disruption, it may be necessary to include in the legislation a requirement that the police, on imposing a PFVO, contact Disability Services to arrange for alternative care to be provided and a requirement that Disability Services is mandated to act within 24 hours. Realistically, placing this obligation upon Disability Services will require additional funding and resources to be made available.

RECOMMENDATION

If the perpetrator is to be excluded from the family home under a PFVO and the victim depends on the perpetrator for essential care and support, there should be a legislated obligation upon the police to refer the case immediately to the Department of Health and Human Services (Disability Services) so that alternative care arrangements can be put in place. There should be a legislative obligation upon Disability Services to ensure that care arrangements are put in place within 24 hours.

4.2. Awareness of the Act

4.2.1. The consequences of calling the police

The experience of Anglicare's services, particularly our RAIN service, is that many people in the community do not necessarily understand the legislation or the full consequences of reporting an incident to police. Workers describe cases where victims have wanted the perpetrator removed for a short period directly following the incident, but have found that the PFVO excludes the person for a much longer length of time than they had expected or wanted, causing the family significant stress and sometimes financial hardship. Workers report that often the victim and perpetrator reunite despite the PFVO, but because the victim is aware that they are in breach, they disengage from the service or conceal their living arrangements from the

worker. The difficulties with managing finances and accommodation that can be caused by splitting the household are also incentives to breach a PFVO.

The former Attorney-General, Judy Jackson, the original sponsor of the *Family Violence Act*, argued that domestic violence should not be treated any differently to any other crime; people who have other crimes committed against them, such as burglaries, are not given a choice about how the criminal justice system responds (Jackson 2004). However, during the parliamentary debate surrounding the introduction of the Act, it was indicated that PFVOs were intended to be tailor-made to meet the circumstances of the couple involved (Parkinson 2004b), and service providers report that consultation with the victim can lead to a PFVO that ranges from basic 'keep the peace' provisions through to eviction of the perpetrator from the family home and a ban on contact (WESNET 2006). But from the experiences reported by Anglicare's services, it seems that in reality, many victims feel they have little choice over or input into the provisions contained in a PFVO, and little understanding of the process involved in varying a PFVO.

There is a strong argument for placing the responsibility for what happens to the perpetrator at the point of crisis into the hands of police due to the stress and distress that is likely to be affecting the victim at that time (VLRC 2003). This proactive intervention by the criminal justice system, starting with the police, is part of the core philosophy of the Safe at Home program (Wilcox 2006). It is about the community taking responsibility for the violence rather than leaving the victim to deal with it alone (Jackson 2004). However, the Victorian Law Reform Commission has argued that following the initial action by police, the ongoing response must be to support the victim in a way that shows genuine understanding and respect for their situation, including if the victim decides to return to the perpetrator. For this reason, the Commission recommended that the original police-obtained intervention order should be an interim order that applies for two weeks, giving the victim time to consider the situation with support from specialist services and decide whether to proceed with a final order.¹ There should also be a flexible and responsive system for obtaining, varying and renewing intervention orders that can cater for the changing needs of the victim (VLRC 2003). Research by Patton (2002) into the enabling factors for women seeking to leave violent relationships identified good practice as being action-focussed during a crisis but non-directive at all other times, and respectful and understanding of the victim's choices and feelings, including of a decision to return to the perpetrator.

While it can be frustrating for police, the courts and other agencies when someone who originally sought their support to leave a violent partner decides to return, it is important to understand that returning, perhaps more than once, is part of the dynamic of family violence rather than a personal failing of the victim (VLRC 2003). The nature of family violence, and particularly the emotional, practical and financial complications involved in leaving can affect a person's behaviour, including their reactions to the police and legal system and their adherence to the requirements imposed by intervention orders (Peirce 2005). Some victims lack any other source of family or community support apart from the perpetrator.

In balancing a proactive and interventionist approach to victim safety with the rights of the victim to make their own choices about their life and about their own safety, Anglicare feels there is a case for introducing a provision like that suggested by the VLRC – a two stage PFVO process incorporating an interim and a final order. It will be important to ensure that the process involved is easy and accessible, regardless of whether the victim is seeking a final order or not, and that there are safeguards in place to ensure that the victim is not pressured by the perpetrator into undertaking a particular course of action.

RECOMMENDATION

That Part 3 the *Family Violence Act* be amended to allow for the issuing of an interim PFVO by police without the consent of the victim. An interim PFVO should last for no more than 2 weeks, and during that time, the victim should be provided with support from specialist family violence support services. The victim should then be able to choose whether or not a final PFVO is issued by the police and, if a final PFVO is issued, have input into the conditions of that PFVO (unless the victim is for some reason unable to make that decision).

¹ The VLRC's final recommendation is that "Police should not be able to apply for a final order without the consent of the protected person unless the person is a child or has a cognitive impairment" (VLRC 2003: 152).

4.2.2. The principle of dual accountability

Under current arrangements, a PFVO or FVO is binding on all parties, including the victim, and a breach of the PFVO by the victim can result in the victim being charged under s.73 of the *Justices Act 1959*, which provides for the charging of anyone who enables, aids, abets or instigates the committing of an offence by another person (Wilcox 2006). Anglicare workers report that many victims are unaware that this can happen, as they believe that because the PFVO or FVO has been taken out on their behalf, they have the right to choose whether or not they comply with it. Other victims are aware that they can be charged, and therefore either conceal from their support worker that they are in breach of the order, or disengage from the service. The Victorian Law Reform Commission acknowledged this issue, which also exists in Victoria, and recommended, along the lines of a New South Wales Law Reform Commission recommendation, that aiding and abetting should not be an offence for the person or persons protected by an intervention order (VLRC 2003). McFerran (2007) reports that the dual accountability provisions of Tasmania's Act have been contentious, with stakeholders reporting that they disempower victims.

Section 14 (7) of the *Family Violence Act* allows for the variation of a PFVO in certain circumstances – where both victim and perpetrator have consented and where the safety and interests of the victim or any affected children will not be compromised, and under s.14 (9), a court may vary a PFVO on the application of the police, the victim, the perpetrator or any other person to whom leave is granted. However, it appears that these mechanisms for varying a PFVO are not being taken up by victims. There may be a number of reasons why people are reluctant to seek a variation of a PFVO, particularly in court. People can find it embarrassing to discuss such personal experiences in the public, formal environment of a courtroom (Peirce 2005). Literacy issues can also contribute to people's reluctance to engage with formal processes and procedures; according to an ABS study, only half of the Australian population aged 15-74 is considered capable of coping with the literacy demands of everyday life (McLennan 1996). Language and cultural barriers might affect culturally and linguistically diverse communities, and for some refugee communities, past experiences may have created a deep mistrust of police and authorities (Flanagan, J. 2007). Anecdotal evidence also suggests that the response of the police to a variation of a PFVO that allows a perpetrator to return home is not always objective.

Anglicare is concerned about the workability of simply exempting victims from a charge under s.73 of the *Justices Act*, as this would not address the reasons victims are breaching PFVOs: their lack of financial and practical support to remain on their own or a divergence between the provisions of the PFVO and what the victim originally intended or wanted – or now intends or wants. It also means that further intervention from the police would still occur as the perpetrator could still potentially be charged with breaching the PFVO, with a penalty of up to 12 months imprisonment imposed for a first offence (s.35). Anglicare suggests instead ensuring that victims are provided with clear, written information that is appropriate to their level of literacy, communication needs or cultural and linguistic background about the processes involved in varying a PFVO if that is their choice, and that all police are fully cognisant of the nature and dynamics of domestic violence and respond appropriately and supportively to requests for a variation. Anglicare notes that there is currently nothing in the legislation to mandate that a victim be provided with such information, or indeed with a copy of the PFVO itself.

Anglicare does support the emphasis on the safety of the victim and any affected children in s.14 (7) (b), and considers that this consideration should still apply to any decision to vary a PFVO – that is, the police officer granting the variation must have regard to the safety of the victim and any children when deciding whether to grant a request for a variation.

4.2.3. Culturally and linguistically diverse communities

For people who have come to Australia with different cultural understandings and expectations around family and family relationships, there can be particular difficulties in understanding the Act. Some people have come from places where family violence is tolerated by or even acceptable to the authorities and the justice system. For others, family violence is managed through a mix of state and tribal justice systems and extended family and community intervention, rather than as a purely criminal matter (VLRC 2003). People who have come from societies where violence and atrocities have been perpetrated by the police or government can be fearful of the consequences of involving the police (Flanagan, J. 2007). Some people

simply have poor English and little access to interpretation. The reliance on community networks outside the family home can mean that the removal of a perpetrator under the Act has ramifications for the entire community and the relationships within it (Colony 47 2006).

Family violence is unacceptable in any household, regardless of the household's cultural and linguistic background, and perpetrators should not be treated more leniently because of their background. However, it is important to ensure that intervention in family violence incidents in culturally and linguistically diverse communities is undertaken in a culturally-sensitive and appropriate way that supports both the rights of the victim and the rights of the perpetrator and acknowledges the impact the intervention will have on the family's community. Anglicare supports a previous recommendation made by Colony 47 (2006) to the State Government, that culturally and linguistically diverse communities be provided with appropriate, responsive information and support and targeted community education programs to ensure that people understand the Act and receive assistance to navigate and participate in any proceedings related to the system.

4.3. Accommodation issues specific to Safe at Home

Anglicare supports the exclusion of perpetrators from the family home if needed to ensure the safety of the victim and any affected children. No one should have to leave their home because of someone else's violent behaviour. The loss of the family home has been identified as a significant barrier for women who want to leave a violent relationship (Patton 2003). Being able to stay in place, even if not permanently due to financial constraints, allows a victim time to think and plan for the future (McFerran 2007).

The issues outlined below relate to the implementation of the Act rather than the legislation itself. But they provide important context for any assessment of the workability of the Act under present conditions.

4.3.1. Accommodating perpetrators

Addressing the accommodation and support needs of the perpetrator has been recognised as being beneficial for the victim and the children due to the concern and anxiety that victims can feel for their partner if they become homeless (McFerran 2007). Anglicare is the contracted provider of brokered accommodation for perpetrators excluded from the family home under Safe at Home, and has access to specially designated funding for this purpose. However, there have been some problems with the implementation of this aspect of the Act, and the allocated funding has been significantly underspent to date.

Part of the problem has been the guidelines applying to the brokerage funding – it could only be used upon referral from a police officer and within three days of the offence occurring. In practice, what occurred was that perpetrators who were not taken into custody would often find temporary accommodation with family members or friends immediately following the offence, and only approach EASE or ACCESS for help after this alternative had fallen apart. Because the contact with the service took place without a police referral and outside the three day limit, Anglicare was not able to use the allocated brokerage funding to accommodate the perpetrator, and instead had to rely on other resources, which are limited. Anglicare has since negotiated a new, draft service agreement which allows for referrals from defence lawyers and others as well as the police, and allows for the money to be accessible for up to six weeks after the offence has taken place. It is hoped that this agreement will address some of the earlier problems.

There are always occasions when accommodation cannot be brokered, such as at times of high tourist demand or when the person is known to and barred by the accommodation provider because they have caused problems in the past. If this occurs there are very few alternatives for the perpetrator and homelessness may result. McFerran (2007) points out that relying on brokered accommodation may not always be appropriate if it leaves the perpetrator isolated and without support; there is a need for more integrated responses that combine accommodation and counselling needs.

4.3.2. Accommodating victims

Anglicare is rarely called upon to find emergency accommodation for victims of family violence as this is usually handled by specialist crisis services. However, Anglicare workers have become involved in situations

where the victim is struggling to maintain existing housing following the removal of a perpetrator. Workers have supported people to ensure they are receiving the correct Centrelink entitlements following the departure of their partner (for example, they may move from Parenting Payment Partnered to Parenting Payment Single), which can help to restore affordability, explored options such as taking in another tenant to share rental costs or supported people to find more appropriate accommodation. Anglicare's Private Rental Support Service in the north and north west and Colony 47's CASH service in the south are able to provide financial assistance to cover the costs of rent arrears. Despite this, there have been occasions where victims have become homeless as a result of a PFVO.

Tasmanian women's shelters are experiencing sustained demand, especially from women with children (McFerran 2007, Shelter Tasmania 2006, WESNET 2006). Some women need to be accommodated while security upgrades can be completed on their homes or until the perpetrator of the violence is apprehended (McFerran 2007). Bethlehem House, the southern men's shelter, turned away an average of 43 men per month during 2006-07 due to no crisis bed being available (Bethlehem House 2008). Patton (2002), writing prior to the implementation of the Safe at Home reforms, recommended that laws be enacted to enable women to remain in their homes as sole occupants, and on a review of laws, practices and attitudes that prevented this. The 2003 Safe at Home options paper recommended that Tasmania adopt provisions like those in the New Zealand *Domestic Violence Act 1995*, which bestow upon Courts the power to order the offender to provide financial maintenance to the victim and children (DJIR 2003). Patton (2002) also emphasised the need to improve the availability and standard of emergency accommodation and affordable private rental housing, and the ongoing prioritising of domestic violence issues by Housing Tasmania in its public housing allocation system. Anglicare supports the call for additional funding for an accommodation safety net to sit under Safe at Home to ensure that no one is rendered homeless as a result of the legislation.

4.4. Mandatory reporting

One of the questions explicitly canvassed in this review is whether or not s.38 of the Act should be enacted. This section would require people prescribed by the Act to report any reasonable belief or suspicion relating to serious family violence to the police or risk being fined. The list of prescribed persons originally included workers in a range of non-government and government services, along the lines of the provision in the *Children, Young Persons and Their Families Act* (s.14), but the provision was dropped after last-minute lobbying by sexual assault and domestic violence support workers (Jackson 2004). There had been concerns expressed by workers that mandated reporting would act to prevent women from seeking support from services or disclosing accurate information about family violence (Putt 2004).

Anglicare notes that under the *Children, Young Persons and Their Families Act*, non-government workers, including Anglicare employees and volunteers, are mandated to report any suspicions in relation to possible child abuse, and that this includes when a child is an 'affected child' within the meaning of the *Family Violence Act*. Anglicare strongly supports this provision as exposure to family violence can cause significant harm to a child and should be considered as child abuse.

However, Anglicare is opposed to the introduction of mandatory reporting under s.38 for offences involving adults. Although non-government organisations have been removed from the legislation, a number of Anglicare workers are registered psychologists and could have obligations under s.38 if it was enacted.² Clients would not be expected to know the difference and there is the potential for the mandatory reporting obligations to be activated through internal supervision processes. Winter (2006) reviewed the arguments for and against mandatory reporting and concluded that there was not enough research evidence either way, including on the impact of mandatory reporting on the behaviour of perpetrators or on the safety of victims.

² A registered psychologist working for a non-government organisation with clients experiencing family violence would be covered by the legislation, according to former Attorney-General Judy Jackson (Jackson 2004). The example given was that of a registered psychologist working for the Sexual Assault Support Service as a support worker.

Anglicare believes that mandatory reporting does have the potential to deter clients from disclosing information to workers. This not only inhibits the provision of support and assistance to the client, but it can lead to clients disengaging from the service, or not seeking support in the first place. These concerns could apply to either a victim or a perpetrator seeking support to change their behaviour. A mandatory reporting regime also has the potential to jeopardise the relationship between the client and the support worker by undermining the client's trust in the worker. Therapeutic relationships are built on trust. Mandated reporting would undermine this trust and compromise the support being provided to the client. In a family violence situation, Anglicare's preferred approach would be for the worker to support and empower the client in a safe environment to report the violence to the police themselves. Anglicare workers are also required to be mindful of their duty of care obligations and in the event of a serious or imminent threat to life or safety do take appropriate action. Finally, Anglicare is concerned that mandatory reporting takes away from people their right as adults to choose when they report an incident or decide to leave a relationship. Anglicare is committed to empowering our clients and treating them, their situations and their choices with respect, even if these choices are not the choices that the worker might make in the same situation.

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