

Introduction

Misidentification of the predominant aggressor is known to have many significant harmful consequences for a victim of family violence¹. I will focus here on just one consequence of misidentification relevant to the Tasmanian situation: the potential for police systems abuse in an intimate partner relationship.

In this submission I will tell my story, then explain why PFVOs need to be replaced with interim orders. I will also describe important roles for specialist family violence services, and an amendment to the Firearms Amnesty in Tasmania that could protect adult and children who are victims of family violence. For background, all of my previous encounters with police have been positive. I acknowledge the efforts and bravery of officers who seek to do the right thing.

Background

I sit alone at the kitchen bench. I've rung the police and I'm waiting for them to arrive. Nearby, there is a hole in the wall that I made when I reacted in fright and anger to the family violence incident. Now I'm dazed and quiet. The police arrive quickly. "I did that" – I point to the wall. An officer inspects the damage, says "A bit of spakfilla will fix that" and knocks on the bedroom door. They go out with my partner to the back verandah. Again, I wait at the kitchen bench. Maybe 10 minutes later they come inside and I am keen to tell my side – to explain why I made the hole in the wall and to describe the incident in detail. "Would you like to hear my side?". An officer seems angry with me: "We've already heard you. I've determined you are the aggressor." They had not heard me. They serve me with a 12-month Police Family Violence Order (PFVO). My partner is not served with any order.

After this I quickly contacted several services in Hobart, some of whom informed me I had likely been misidentified as the predominant aggressor. I am grateful that they listened to me and helped me escape the relationship.

My ex tried twice unsuccessfully to have the order against me revoked. I made thorough investigations about the process of revocation, encountering numerous barriers. Eventually, a lawyer told me that PFVOs are designed not to be revoked. One social worker told me they had only heard of one revocation. I found the PFVO system to be unclear. A friendly police officer told me that in any incident involving myself and my ex, police would assume I was the perpetrator, but I would not be assumed to be guilty in other matters (as I have a clean police record apart from the PFVO). Some officers seemed aware that a mistake may have been made, and were sympathetic (one even apologised) but were unable to point me towards a review process.

Recommendation 1: PFVOs must be replaced with Family Violence Safety Notices (FVSNs)

This is in line with *Observation 1* from the 2015 report by the Tasmanian Advisory Council² and should allow for immediate police protection with prompt judicial review:

*Consideration could be given to adopting a FVSN system where a PFVO is considered an application for an FVO. This would result in greater court supervision of the process.*²

Victoria has a FVSN system³. The proposed amendment would affect *Family Violence Act 2004* Part 3, section 14, subsection (6)⁴:

Currently:

*Unless sooner revoked, varied or extended, a **PFVO** operates from the date of service for such period, not exceeding **12 months**, as may be specified in the **PFVO**.*

Amended to:

*Unless sooner revoked, varied or extended, a **FVSN** operates from the date of service for such period, not exceeding **[to be determined]**, as may be specified in the **FVSN**.*

Misidentifications will continue, but I believe this amendment will reduce harm by providing an opportunity for review and rectification. It is important to be realistic:

*Despite decades of legislative, policy and procedural reform to address unintended consequences of DFV law in Australia, the problem of women being wrongly treated as perpetrators persists.*⁵

Legal Reasoning

Unlike police in other Australian jurisdictions, police in Tasmania are able to make the decision to issue final family violence orders, sometimes in the heat of the moment, without the legal requirement to reasonably interview the relevant parties to the incident.

Judicial review provides the formal opportunity for both (or all) sides to be heard. I believe family violence can be complex and highly varied in its modes and impacts, and that it is important to inquire and hear both sides in complex cases.

In the PFVO system police are effectively judging and punishing in lieu of the courts. I believe this can reasonably be described as “trial by police”. This violates the principle of the separation of powers in the Westminster system of democratic government⁶. As I understand it, the practice sets a misidentification in stone when the respondent is given a permanent listing in police databases as a perpetrator of family violence.

Reasoning from First Principles

I’m concerned that there are misidentified victims currently living with partners who are misusing PFVOs and the police against them. This is a subset of what I call police systems abuse, with the potential for significant foreseeable harm. I believe some of these victims are trapped.

A PFVO served on a victim is a **double win** for a perpetrator. Not only do they evade accountability and a sense of personal responsibility, but they can now coercively control a victim using the PFVO and police. The victim faces a dual threat – a dangerous partner and the police who are protecting the perpetrator.

“The most effective strategy for a perpetrator is to get the victim named as the perpetrator.”¹

It is a tall order to expect an individual with strong abusive tendencies to refrain from misusing an incorrectly issued PFVO. The misidentification, and connected incident of violence, could either establish or continue a coercive pattern of dominance⁷, based on understandings, sometimes unspoken, between perpetrator and victim. These could include:

- *The police won’t protect you*
- *The police won’t believe you*
- *I can get the police to punish you*
- *I can show others the PFVO so that they think you are a perpetrator*
- *If you leave I can continue to use the PFVO and your permanent police record against you.*

A PFVO is therefore easily misused to intimidate, control and isolate a victim. It is possible that some perpetrators may have a high regard for the police and gratitude for their assistance. Very few people consider themselves evil.

Misidentification can weaken a victim socially and economically, damaging their credibility and reputation, causing them to lose their employment, and creating more barriers for leaving the relationship. The perpetrator also has an advantage over the victim in other systems such as the Family Court.

If there are large numbers of misidentified family violence victims in Tasmania, and I believe there are, then a lack of revocations and correcting of police records not only represents a grave injustice but also a situation of great danger for an untold number of adults and children. Fear would keep many victims silent. Silence does not mean the system is working well.

Misidentifications and consequent failures to identify perpetrators in police databases could result in unsafe individuals retaining the ability to work with vulnerable people. My father terrorised and controlled my family. He cultivated a respectable reputation outside of the home, as a religious leader. He was employed at one stage working with autistic children. I have autism.

Recommendation 2: More funding for specialist support services

In addition to judicial review, a “safety net” for misidentified victims has been suggested by Dr Ellen Reeves of Monash University⁸. This could utilise specialist services who understand family violence and coercive control. These services could also provide training to the courts and the police to recognise systems manipulations by perpetrators. Services like these are currently underfunded in Tasmania. A homeless survivor of family violence recently told me she was having to wait six months for her first appointment with a well-known specialist counselling service in Hobart.

Recommendation 3: Police should enquire about firearms when attending family violence incidents

I recommend Tasmania adopt similar legislation to NSW that requires police officers to enquire about firearms when attending family violence incidents:

A police officer who so enters a dwelling must inquire as to the presence of any firearms in the dwelling and, if informed that there is or are a firearm or firearms, must take all such action as is reasonably practicable to search for and to seize and detain the firearm or firearms⁹.

Advantages would be:

- An opportunity to remove firearms at a time of danger
- No need for a search warrant
- An opportunity to inspect gun storage facilities
- An opportunity to remove illegal firearms before they can be hidden from police
- Relief of the need for victims of family violence to surrender illegal firearms themselves, which could be dangerous and difficult.

Penalties for illegal firearms could backfire on victims for various reasons, so the aim should be removal, not punishment. This is in the spirit of the Firearms Amnesty in Tasmania. The burden of removing firearms in situations involving family violence must rest on police, not victims.

References

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