

## Submission: Proposed Workplace Protection Order Scheme for Tasmania

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### 1. Overview

COTA Tasmania supports, in principle, the introduction of a workplace protection order scheme that provides a timely and preventative response to serious, persistent or escalating violence, threats, intimidation, stalking, harassment and property damage connected with a workplace.

Violence and aggression towards workers are unacceptable.

Older Tasmanians may be affected as:

- employees, including people remaining in or returning to the workforce later in life;
- small business owners and operators;
- volunteers and board or committee members;
- workers in health, aged care, community services, retail, hospitality and government services; and
- customers, patients, residents or visitors who may be present when an incident occurs.

The consultation paper appropriately recognises that a workplace protection order could protect not only an individual employee but also employers, other employees, and people present at the workplace. It could also allow the employer to carry the administrative and emotional burden of seeking an order rather than requiring an affected employee to act alone.

COTA Tasmania nevertheless considers that the scheme will need careful safeguards to ensure that it is accessible, proportionate and does not unintentionally prevent vulnerable people from obtaining essential health, care, housing or government services.

### 2. About COTA Tasmania

Council on the Ageing Tasmania (COTA Tasmania) is the leading advocacy organisation for older Tasmanians. We work to advance the rights, interests and wellbeing of people as they age and to ensure that public policy reflects the diversity of older people's experiences.

COTA Tasmania undertakes policy, advocacy, consultation and community engagement across issues including health and aged care, housing, transport, employment, digital inclusion, social connection, safety and access to government and community services.

Our interest in the proposed workplace protection order scheme reflects the many ways in which older Tasmanians participate in workplaces and community life. Older people may be employees, employers, business owners, volunteers, board or committee members, customers, patients, residents, or service users.

They may therefore be affected by workplace violence, both as people requiring protection and as people whose access to essential services could be restricted by an order.

COTA Tasmania supports measures that protect workers and the public from serious or escalating violence while ensuring that legal responses are proportionate, accessible and attentive to the circumstances of vulnerable people.

### **3. Why this matters**

Older Tasmanians are increasingly remaining in or returning to the workforce later in life. Many also operate small businesses, provide unpaid care, serve on boards and committees, and contribute substantial time as volunteers in community, sporting, cultural and service organisations. A workplace protection order scheme must therefore recognise that workplaces extend well beyond conventional employer–employee arrangements.

Older workers and volunteers may be particularly affected by threatening, aggressive, or violent conduct. Some may have health conditions, reduced mobility, or other circumstances that make it more difficult to leave an unsafe situation quickly or recover from an incident. Volunteers and people working in small organisations may also have limited access to human resources, security, legal advice or formal workplace support.

The scheme also has implications for older people as customers, patients, residents and service users. Many services essential to an older person’s independence and wellbeing are delivered through workplaces, including hospitals, medical practices, pharmacies, aged care services, housing providers, government service centres and community organisations. An order excluding a person from a workplace may therefore also restrict access to health care, medication, housing assistance, income support or other essential services.

This does not diminish the right of workers, volunteers and members of the public to be safe. Violence, threats, intimidation and harassment must be addressed promptly and effectively. It does mean, however, that the scheme should enable courts and service providers to manage risk in ways that protect workers while preserving safe and reasonable access to essential services wherever practicable.

For COTA Tasmania, the central issue is therefore one of balance: ensuring that the scheme provides an effective preventative response to serious or escalating conduct without becoming overly punitive, inaccessible to small organisations, or a substitute for appropriate health, disability, mental health, or social support.

### **4. Summary of Recommendations**

COTA Tasmania recommends that the Tasmanian Government:

- introduce a dedicated and clearly identifiable workplace protection order scheme;
- allow applications by a broader range of appropriate persons and organisations than employers alone;
- adopt a broad, contemporary definition of “workplace” that includes mobile, remote, home-based, and community service settings;

- require courts and service providers to consider safe and reasonable alternative access arrangements where an order would otherwise restrict access to an essential service;
- ensure that volunteers and people working in unpaid governance or community roles are covered;
- provide strong safeguards where an order may restrict access to an essential service;
- allow flexible and proportionate conditions, including firearms-related conditions where justified;
- provide an accessible and affordable application process, including interim orders where there is an immediate risk;
- accompany the legislation with information, training, legal assistance and practical guidance, particularly for small businesses and community organisations; and
- require monitoring, public reporting and a statutory review of the scheme.

## **5. Detailed comments**

### **5.1 Who should be able to apply?**

The proposed core model would permit an employer to apply to the Magistrates Court where a person has engaged in personal violence relating to a workplace and may engage in further personal violence if an order is not made.

COTA Tasmania supports employer applications but considers that limiting standing to the employer may leave significant gaps.

Tasmania has many small businesses, sole traders, incorporated associations, volunteer-run organisations, and community services without a conventional employer–employee structure. In some workplaces, the employer may be absent, reluctant to act, or themselves the person most directly affected.

Standing should therefore extend to:

- owners and lawful occupiers of workplace premises;
- authorised senior officers of an organisation;
- work health and safety representatives;
- registered unions or employee organisations, with the consent of affected workers where appropriate;
- organisations engaging or coordinating volunteers;
- Tasmania Police; and
- another person granted leave by the Court where it is in the interests of affected workers or others at the workplace.

Tasmania Police should be able to apply for, or join, an application where there is a serious or continuing risk. Police involvement should not, however, be mandatory in every matter, as some affected workers or organisations may be reluctant to pursue a criminal complaint but still need preventative protection.

## **5.2 Definition of workplace**

COTA Tasmania recommends a broad and functional definition of workplace, rather than one limited to a fixed commercial premises.

The definition should include any place where work, services or work-related activities are undertaken, including:

- retail and hospitality premises;
- health services, hospitals, pharmacies and medical practices;
- residential aged care facilities;
- community care and support services;
- government offices and Service Tasmania outlets;
- courts, schools, prisons and detention facilities;
- community halls and premises operated by incorporated associations;
- vehicles used for work;
- outdoor and mobile workplaces;
- an employee's home when work is undertaken remotely; and
- a client's home where care, maintenance, health or other services are provided.

The definition should also be sufficiently flexible to cover temporary and changing work locations, including outreach activities, community events, home visits and services delivered in public places.

It should also cover work-related conduct occurring away from the physical workplace, including online harassment, telephone contact, social media abuse and following a worker to or from work.

The legislation should expressly include volunteers. Many Tasmanian organisations depend heavily on older volunteers, who should receive equivalent protection when performing duties on behalf of an organisation.

## **5.3 Essential services and vulnerable people**

Workplace violence cannot be excused because a person is experiencing distress, illness, disability, cognitive impairment, substance dependence or disadvantage. Workers and other people present at a workplace must be protected.

At the same time, an order prohibiting a person from attending a workplace could have serious consequences where the workplace is also the location through which that person receives essential services. This may include a hospital, medical practice, pharmacy, aged care service, housing provider, Centrelink office or community support service.

Factors that should be taken into consideration include:

- whether the workplace provides an essential service to the respondent;
- whether exclusion would create a risk to the respondent's health, safety or wellbeing;
- whether the service can reasonably be delivered at another location or in another manner;

- whether supervised, appointment-only or remote access would adequately manage the risk; and
- the safety and wellbeing of workers, customers and other service users.

Where an exclusion condition affects access to an essential service, the relevant service provider should be required, where reasonably practicable, to establish a safe alternative means of access. This might include attendance at another location, telephone or online service delivery, a nominated contact person, security arrangements or supervised appointments.

A workplace protection order should not become a substitute for appropriate clinical care, disability support, mental health intervention or case management. Nor should it be used simply to manage inconvenient, demanding or verbally critical behaviour that does not meet the statutory threshold for personal violence.

Particular care will be needed to distinguish conduct that meets the statutory threshold from behaviour arising from communication difficulties, cognitive impairment, distress or frustration. These circumstances do not excuse violence or threats, but they may affect the most appropriate and effective response.

#### **5.4 Conditions available to the Court**

COTA Tasmania supports the Court having flexible powers to impose conditions proportionate to the identified risk.

Conditions could include:

- prohibiting violence, abuse, threats, intimidation, harassment or stalking;
- prohibiting direct or indirect contact with specified workers or other people;
- prohibiting entry to a workplace or requiring the respondent to remain a specified distance away;
- restricting attendance to nominated times, purposes or conditions;
- prohibiting online or telephone contact;
- prohibiting the respondent from encouraging another person to engage in prohibited conduct;
- requiring contact to occur through a nominated representative;
- permitting supervised or appointment-only access where necessary to receive an essential service; and
- any other condition reasonably necessary to protect people connected with the workplace.

The order should be expressed as clearly and specifically as possible so that the respondent, the protected persons, the employer and police understand what conduct is prohibited.

#### **5.5 Firearms**

The Court should be able to order the suspension or cancellation of a firearms licence and the surrender or seizure of firearms where this is necessary to protect affected people.

This power should not operate automatically in every case. It should be based on an assessment of risk, the nature of the alleged conduct and the respondent's access to firearms.

Information-sharing arrangements between the Magistrates Court, Tasmania Police and firearms licensing authorities will be necessary to ensure that conditions are implemented promptly.

## **5.6 Interim orders and procedural fairness**

The scheme should provide for interim orders where the Court is satisfied that there is an urgent or immediate risk.

An interim order may occasionally need to be made before the respondent has been heard. Such orders should be time limited and brought back before the Court promptly.

The respondent must receive clear information about:

- the allegations;
- the conditions imposed;
- the consequences of breach;
- how to respond or seek variation; and
- available legal and support services.

Information should be available in plain English and accessible formats. Interpreters and communication assistance should be provided where required.

## **5.7 Duration and review**

A default duration of 12 months would provide a useful starting point, consistent with the period for which Tasmanian restraint orders are commonly made.

The Court should nevertheless retain discretion to make a shorter or longer order according to the circumstances. Orders should not continue for longer than necessary.

There should be straightforward mechanisms to vary, revoke or extend an order where circumstances change. Longer orders should be subject to periodic review, particularly where they affect access to essential services.

## **5.8 Penalties for breach**

Breaching a workplace protection order should be a criminal offence. The maximum penalty must be sufficient to provide a meaningful deterrent and to reflect the seriousness of deliberate or repeated breaches.

Tasmania should avoid relying on imprisonment as the only meaningful sanction. The Court should have access to a range of responses, taking into account:

- the seriousness of the breach;
- whether violence or a weapon was involved;
- whether the breach was deliberate or repeated;
- the harm or fear caused;
- the respondent's capacity to understand the order; and
- whether treatment, supervision or other interventions are appropriate.

Higher penalties should be available for aggravated breaches involving violence, credible threats, weapons, repeated offending or serious harm.

## **5.9 Accessibility and implementation**

The effectiveness of the scheme will depend on whether employers and community organisations can use it in practice. The consultation paper acknowledges the need for the scheme to integrate efficiently with Magistrates Court processes.

The Government should provide:

- simple application forms and plain-English guidance;
- telephone and face-to-face assistance;
- clear information about evidence requirements;
- fee waivers or exemptions where appropriate;
- access to legal advice and representation;
- guidance for small businesses, volunteer organisations and not-for-profit bodies;
- information for workers and health and safety representatives;
- training for police, court staff and service providers; and
- accessible information for respondents.

The process should not be so complex or expensive that it is available in practice only to large employers with legal and human resources capacity.

The Government should also consider creating a central advice service to help employers assess whether a workplace protection order, restraint order, trespass notice, police response or work health and safety process is the most appropriate course of action.

## **5.10 Interaction with other laws and responsibilities**

A workplace protection order should complement, rather than replace:

- criminal law and police powers;
- restraint orders;
- work health and safety duties;
- workers compensation and workplace support;
- anti-discrimination obligations;
- disability and mental health services; and
- employers' responsibilities to prevent and respond to workplace violence.

Obtaining an order should not be treated as sufficient compliance with an employer's broader duty to provide a safe workplace. Employers should still be expected to adopt appropriate staffing, security, training, reporting and support arrangements.

Workers affected by violence should have access to trauma-informed support, leave arrangements and assistance to participate in court proceedings.

## **5.11 Monitoring and review**

The legislation should require collection and publication of de-identified information about:

- the number and type of applications;

- applicants and workplaces involved;
- interim and final orders;
- conditions imposed;
- applications involving children;
- breaches and enforcement outcomes;
- processing times;
- the extent to which respondents' access to essential services is affected;
- the number of applications made by or on behalf of small businesses, community organisations and volunteer bodies; and
- the number of orders involving health, aged care, housing or other essential service providers..

A statutory review should be undertaken after three years of operation. The review should include consultation with workers, employers, unions, community organisations, legal services, disability advocates, older people's organisations and people who have been subject to orders.

## **Conclusion**

COTA Tasmania supports a workplace protection order scheme as an additional preventative mechanism for addressing serious, persistent or escalating workplace violence.

The scheme should protect employees, employers, volunteers, customers and others present at workplaces while maintaining procedural fairness and ensuring that vulnerable people are not unnecessarily excluded from health care, housing, aged care, or other essential services.

A broad workplace definition, appropriate standing for organisations and police, flexible conditions, accessible court processes and careful implementation will be central to achieving a fair and effective scheme.