

Victim Support Service

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The Honourable Vickie Chapman MP
Attorney-General
Attorney-General's Department
GPO Box 464
ADELAIDE SA 5001

And via email: kellie.tilbrook@sa.gov.au

Dear Ms. Attorney-General,

Statutes Amendment (Domestic Violence) Bill 2018 Consultation

We are writing in response to the request for comment on the Statutes Amendment (Domestic Violence) Bill 2018 which will amend the *Criminal Consolidation Act 1935* (SA) ("CLC Act"), the Evidence Act 1929 (SA) ("Evidence Act") and the *Intervention Orders (Prevention of Abuse) Act 2009* (SA) ("IOPA Act").

Victim Support Service appreciates your consideration of the issues. We respond as follows.

Introduction

Victim Support Service supports change to South Australian legislation that demonstrates a commitment to eliminating domestic or family violence and abuse (DFVA) in this State. As our criminal justice system remains the primary response for victims of DFVA, the experience of victims within this system must strive for continuing improvement.

Our position is that legal reform should balance the social reprehensibility of DFVA with the needs of victims as vulnerable witnesses, whose human rights and wellbeing must be protected throughout the legal process. As a trauma informed service that provides counselling and other support to victims of crime including DVFA, our experience is that law reform that contemplates the potential effects for victims is most beneficial to the victim's recovery.

It is critical that the safety and protection of victims is central to any law reform. The proposed *Statutes Amendment (Domestic Violence) Bill 2018 (SA)* contains important amendments that will contribute positively to the existing South Australian framework, to address the challenges for improving the response to DFVA in South Australia.

Victims of DFVA should be empowered with regard to their participation in the proceedings and should have choices regarding decisions that will affect their lives beyond the court room. While we consider that law reform is an important part of increasing safety for victims of DFVA, we note that there is a need for change at a systemic level, which will assist victims of DFVA to access protection from harm, redress and justice.

We note that there is a list of recommendations that follows these comments, included as Appendix 1.

1. New offence – non-fatal strangulation (Part 3 Division 7AA CLC Act – Choking etc in a domestic Setting)

1.1 Victim Support Service commends the introduction of the non-fatal strangulation offence to the CLC Act. Currently there is no legislation in South Australia that refers specifically to strangulation, suffocation or choking, although it is noted that sections 29(1)-(3) of the CLC Act include endangerment offences that may be capable of capturing such conduct, as well as under assault and attempted murder/grievous bodily harm provisions. However, we note that these provisions require a subjective element of knowledge that may be difficult to satisfy.

We note that the creation of the new offence of non-fatal strangulation will increase perpetrator accountability in two significant contexts.

- Firstly, the creation of a major indictable offence for an act of non-fatal strangulation will have an educative function, emphasising the particular context and “seriousness of strangulation to police and the wider community.”¹ There is also likely to be value in deterrence by labelling the conduct and, therefore, highlighting to perpetrators the consequences of engaging in these sorts of behaviours.
- Secondly, the creation of an aggravated offence where there is a domestic relationship will ensure that the nature of that offending will be apparent in any future bail hearing or other legal matter. In this sense, it would alert the Court and any other related agencies/services that where the offence appears on the criminal record of an offender, of the dangerous levels of the offender’s DFVA history.

1.2 As victims’ advocates and providers of services that support individuals who are at risk of, or experiencing DFVA, we have direct experience of the incidence and seriousness of non-fatal strangulation. The South Australian *Domestic Violence Risk Assessment Tool*, used by our Victims of Crime Counselling and

¹ QLD Parliamentary Committee, Report No. 23, 55th Parliament, Legal Affairs and Safety Committee, March 2016, “Criminal Law (Domestic Violence) Amendment Bill (No. 2) 2015” <https://www.parliament.qld.gov.au/documents/committees/LACSC/2015/13-CriminalLawDVAB215/13-rpt-023-07Mar2016.pdf> (last accessed 17 August 2018).

Staying Home Staying Safe programs, asks a person accessing our service if the perpetrator has choked or strangled the victim. Where a woman confirms this has occurred it is allocated as a rating 5 risk, which is the highest level of risk assigned as an indicator of risk of future serious violence.

1.3 Evidence suggests that the occurrence of non-fatal strangulation in DVFA situations is a serious act of violence which frequently results in physical harm, which may not manifest in obvious symptoms.² Significantly in the context of DFVA, strangulation can be understood as a form of coercive and controlling violence, “that can have devastating psychological long-term effects on its victims in addition to a potentially fatal outcome”.³

1.4 These harms extend to intangibles that society has an interest in protecting, such as personal autonomy and emotional safety. Amenity is a reasonable expectation held by ordinary people in their relationships, and our society is wronged where the conduct of an individual injures those interests.

1.5 Research shows non-fatal strangulation as an indication of increased severity of DFVA and that it is often a significant risk factor for future homicide.⁴ In one study, the risk of homicide increased by 800 percent for women who had previously experienced strangulation by a partner.⁵

1.6 We approve of the elements of the offence that South Australia has drafted, which are similar to those of s 315A of the *Criminal Code 1899* (QLD). These require the prosecution to prove:

- “1. The defendant unlawfully choked/ suffocated/ strangled the complainant.
2. The choking/ suffocation/ strangulation was unlawful.
3. The complainant did not consent.
4. The defendant and the complainant were in a domestic relationship with each other.”⁶

1.7 Given that non-fatal strangulation is proposed to be an offence in its own right, it appears likely to be easier to prosecute and obtain a conviction, where the elements are able to be established. We believe that the clear articulation of non-fatal strangulation in a domestic relationship as a separate offence will assist SA Police to lay a charge. Furthermore, the criminalisation of such conduct would increase access

² Douglas, H & Fitzgerald, R 2014, ‘Strangulation, Domestic Violence and the Legal Response’, *Sydney Law Review*, vol. 36, pp 231 – 254 Pritchard, AJ, Reckdenwald, A, Nordham, C & Holton, J 2016, ‘Improving Identification of Strangulation Injuries in Domestic Violence: Pilot Data from a Researcher-Practitioner Collaboration’ *Feminist Criminology*, June 2016, pp 1 – 22.

³ Douglas, H. and Fitzgerald, R., ‘Strangulation, Domestic Violence and the Legal Response’, *Sydney Law Review* Vol:36: 231, 234.

⁴ Strack, GB & Gwinn, C 2011, ‘On the Edge of Homicide: Strangulation as a Prelude’, *Criminal Justice*, vol. 26, no. 3, (last accessed 31 July 2018).

<http://dhss.alaska.gov/ocs/Documents/childrensjustice/strangulation/1.%20On%20the%20Edge%20of%20Homicide-%20Strangulation%20as%20a%20Prelude-%20Strack%20and%20Gwinn%202011.pdf> .

⁵ Nancy Glass et al, ‘Non-fatal Strangulation Is an Important Risk Factor for Homicide of Women’ (2008) 35 *Journal of Emergency Medicine* 329; Lee Wilbur et al, ‘Survey Results of Women Who Have Been Strangled while in an Abusive Relationship’ (2001) 21 *Journal of Emergency Medicine* 297, 301.

⁶ Benchbook QLD - https://www.courts.qld.gov.au/__data/assets/pdf_file/0004/517405/sd-bb-full-copy.pdf.

to justice for victims who might otherwise have to rely on an intervention order for protection from DFVA, which may not be sufficient where there is conduct precursory to more serious and violent offending.

- 1.8** We note that since the introduction of the offence in Queensland on 1 May 2016, there have been 815 charges. We have observed from the QLD Courts data that strangulation related offences are lodged in the Magistrates Courts, but as these are major indictable offences they can only be finalised in the Supreme or District Courts, as would be the case in this jurisdiction.⁷
- 1.9** This raises a concern about the time such matters are likely to take to be finalised. The implication of a lengthy term of imprisonment will be referral to the Office of the Department of Public Prosecution and to a higher Court. This suggests that the length of time for these matters to be dealt with may impact on victims, unless further reform is contemplated to Criminal Procedures legislation and Major Indictable Reform processes and procedures.
- 1.10** It is our position that the time required for a matter to go to trial and be heard, can be an important factor in the recovery of vulnerable witnesses.⁸ Experiences of trial, and the criminal legal system more generally, have the potential to cause secondary traumatisation for victims of crime. Preparing for, and involvement in, trials will often cause exposure to the re-experiencing of trauma and can have psychological impacts on victims of crime. For some, a matter resolved quickly in court could assist to address the impact of trauma.
- 1.11** Where this offence is carried out between individuals in a relationship, those circumstances become an element of an aggravated offence and automatically increase the maximum penalty if a conviction is entered. This results in the person's criminal record disclosing the specific circumstances of domestic abuse, which is supported by Victim Support Service, as it will result in greater transparency and therefore safety for people who may be at risk of DFVA.
- 1.12** Victim Support Service recommends that there be greater availability of data around these convictions so that the State Government will be able to determine where funding should best be allocated to support victims of DFVA, and recognises the need for charges such as these to be recorded in a manner that identifies the nature of that offending and can inform both quantitative and qualitative research in this area.

⁷ Queensland Courts, Queensland Courts' domestic and family violence (DFV) statistics, accessed 1 August 2018, <https://www.courts.qld.gov.au/court-users/researchers-and-public/stats>

⁸Sally Rafferty, "Domestic violence advocates want video evidence used instead of victim's testimony", ABC News website, 27 May 2018, last accessed 1 August 2018. "... the expense and time taken in court proceedings can have a huge toll on victims of domestic violence. "Sometimes it takes so long to get anything into the justice system or into the court or into the criminal system, and if the woman has successfully moved on then to ask her to risk her family again, we are really talking about disrupting these families for such long periods of time and that's not justice," she said."

2. Expanding the Definition of Domestic Relationships (s 5AA (1) (g) CLC Act – Aggravated Offences)

- 2.1** The expansion of the definition of domestic relationships to accord with those of the *Intervention Order (Prevention of Abuse) Act 2009* (SA) is supported, as frequently abuse reported under that legislation mentions conduct of this nature. This will be consistent with the s 8(8) definition and will ensure that where an act of abuse is identified, that there is an appropriate criminal penalty.
- 2.2** This expanded definition will capture grandparents and grandchildren, siblings, cases where the parties were otherwise related through blood, marriage, domestic partnership or adoption, parties related through Aboriginal and/or Torres Strait Islander kinship rules, by membership of some other culturally recognised family group and carer relationships.
- 2.3** We note that the Australian Law Reform Commission has previously stated that “the creation of aggravated offences within a family violence context is a more feasible and practical option for the criminal law to recognise family violence than the creation of an umbrella offence of family violence—although it would not preclude the creation of such an offence.”⁹ As such we support the recommendation that this be the effect of this amendment.
- 2.4** We note that there is a risk that the requirement that non-fatal strangulation occur within a domestic relationship may exclude victims who are in dating relationships. Through our Counselling and Staying Home Staying Safe programs, there are frequent examples of victims in dating relationships who may not meet this definition, and this will result in an additional burden for police and prosecutors to show that these victims were in a domestic relationship. We would argue that non-fatal strangulation is a serious wrong, regardless of the nature of the relationship between the parties.

3. Video Evidence (Amendment of the *Evidence Act 1929* (SA), insertion of section 13BB)

- 3.1** A persistent issue in the prosecution of domestic violence offences is a lack of evidence, often due to the fear of a victim about testifying in Court against a perpetrator because of concerns of further victimisation.
- 3.2** A potential benefit of video evidence may be that the quality of the evidence in domestic violence proceedings is improved. Better quality evidence may improve justice outcomes for victims, whereas documented evidence is often found to be incomplete and unreliable. Victim Support Service considers it is appropriate for victims to be able to choose to give evidence via video or audio recording, where the Court permits. The proposed amendments to the *Evidence Act 1929* (SA) appear to balance the

⁹ ALRC, *Family Violence – Improving Legal Frameworks*, Recognising Family Violence in Criminal Law: Aggravated offences occurring in a family violence context, ALRC Report 117 (2011) <https://www.alrc.gov.au/publications/7-recognising-family-violence-criminal-law/aggravated-offences-occurring-family-violenc> (last accessed 10 August 2018).

requirements of justice with the needs of vulnerable witnesses, by requiring a “prescribed recording” to be made “as soon as practicable”.

3.3 “As soon as practicable” suggests that some discretion may exist as to the capacity of the victim to record a statement. We understand the need for police to collect evidence of a crime scene, but ask that victims have the opportunity to make a complaint and provide a statement in a reasonable time and in a supportive environment. In this context we would see our role expanded and would be pleased to offer support and training as to what constitutes a trauma informed approach to recording complaints and providing statements.

3.4 Generally we support the use of body-worn cameras by a police officer to make an audio recording or a video and audio recording of a statement made by a complainant when the complainant is questioned by that police officer in connection with a domestic violence incident. This would capture any physical, psychological or emotional harm that affects a victim at the time the offence is committed. Any delay may result in loss of evidence, or the victim deciding not to make a complaint. However, there may be unforeseen consequences for a victim of DFVA where that person consents to the use of video evidence collected at the scene.

3.5 Research recently undertaken by Women’s Legal Service Victoria showed that of 500 cases reviewed, one in eight police applications for intervention orders were made against the wrong person.¹⁰ This is largely due to the nature of family violence, which often reflects a pattern of behaviour by a perpetrator, such that a single incident may appear a certain way when taken out of context. A video that captures a victim at a time when that person is affected by trauma may be prejudicial to the legal interests of that victim.

3.6 As per our submission in 2016, we have concerns about such evidence being used to discredit victims. For example, such footage may show the protected person presenting with distress that may be used as an opportunity for victim-blaming or to minimise the domestic violence and abuse. To reduce the chance of this occurring, VSS would like to see mandatory training and education for the judiciary, police and prosecutors regarding domestic violence and abuse victimisation and trauma-informed responses to victims of DFVA.

3.7 We hold the view that a recording must only be made by a police officer where there is informed consent, which includes a caution that such a recording may be prejudicial to the victim’s own legal interests, and that the victim may be required to testify at trial. The victim should be advised that a recording risks diminished witness credibility where there are inconsistencies between the recording and the testimony. We also note that the a victim should be advised that if the victim later decides not to proceed with a

¹⁰ Emma Younger, “When police misjudge domestic violence, victims are slapped with intervention order applications”, ABC News, 15 August 2018, <http://www.abc.net.au/news/2018-08-15/domestic-violence-victims-mistaken-for-perpetrators/10120240> (last accessed 15 August 2018).

matter and seeks to deny making a statement, the consent of that victim may not be required to play that recording in Court.

3.8 Since the Victorian Royal Commission into Family Violence, the Victorian government have established a *Family Violence Centre for Learning* which provides training to Police Officers to assist them in identifying the perpetrator. This training is intended to improve the skills of officers in identifying factor such as “which person is more fearful, whether either person has defensive injuries or if there is a history of coercion, intimidation and violence”.¹¹ Victim Support Service encourages the South Australian government to consider implementing a similarly targeted training program for SA Police.

3.9 Victim Support Service would also recommend that police responders be provided training in providing support to victims, which is ongoing from the date of the offence to the matter going to trial. We recommend that police are able to initiate a network of support for victims which include assistance with safety planning, accommodation and counselling support. Such supports are more likely to result in a victim participating in a successful prosecution.

3.10 We also recognise the conduct of the interviewer and the quality of a recorded interview as factors that can be considered by the Court in determining whether admission of the video recording as evidence would interfere with the proper administration of justice, and recommend that SA Police be resourced and educated to reduce the risk of recorded evidence being inadmissible. We highlight a recent case where a poor quality recording resulted in evidence being excluded.¹²

3.11 Where evidence is found to be inadmissible and a re-recording is required, there is a risk that a witness may not wish to make a further statement, which may result in a complaint being withdrawn. Such an outcome is unacceptable and we are aware anecdotally of a recent case where a poor quality video recording resulted in a vulnerable person deciding not to pursue a matter further.

3.12 There is a risk that where the emotive nature of video testimony will be considered as prejudicial to the defendant, even where there may be a warning to a jury not to draw any adverse inferences against the defendant. Where the video evidence is found to be prejudicial to the interests of that defendant, it may not be admitted.

3.13 There is a well understood risk of re-traumatisation of a victim of DFVA where photographs and video evidence are shown in Court. As such court processes should avoid any process that may inadvertently

¹¹ Ibid; Victoria Police, “Victoria Police establish a Family Violence Centre of Learning, https://www.vic.gov.au/familyviolence/recommendations/recommendation-details.html?recommendation_id=215 (last accessed 12 August 2018).

¹² Dowdell, A., “SA Police warned over video recordings as court quashes child sex convictions”, *The Advertiser* <https://www.adelaidenow.com.au/news/south-australia/sa-police-warned-over-video-recordings-as-court-quashes-child-sex-convictions/news-story/7c23dedaa121d1a75720e6777fbc5fee> Noting in the context of vulnerable witnesses that “...victims may choose not to pursue the allegations again” (last accessed 17 August 2018).

contribute to the negativity of a victim's experience. Video evidence is particularly powerful, and likely to have a very real effect on a victim. As such we would recommend that victims have a safe place to view this evidence before it is played to the Court.

3.14 It will be important to note that where a defendant pleads not guilty, a victim may still be cross examined. There is a risk that videotaped testimony may be perceived to be more truthful than the human victim giving evidence in Court, and may discount the voice of a victim in the Court. This may also result in an argument about a prior inconsistent statement where the testimony is perceived as contradictory to the video evidence.

3.15 Similar legislation was introduced in NSW in 2015 under the *Criminal Procedure Amendment (Domestic Violence Complaints) Act 2014* that allows police officers to take statements from complainants shortly after a domestic violence dispute and play the recording at trial. We have noted that "[ca]pturing video evidence from victims at the scene of a domestic violence incident has had little impact on guilty pleas or conviction rates in New South Wales, statistics have revealed¹³ However, ultimately video evidence in NSW is noted to reduce trauma for victims and therefore we support its introduction in SA, subject to our recommendations.

3.16 We would conclude by supporting the Courts in seeking that all regional and circuit Courts be appropriately equipped to use video evidence to ensure equity for all victims state-wide.

4. Intervention Orders: Penalties for Repeated Breaches (Amendment of s 31 IOPA Act)

4.1 Victim Support Service considers that it is appropriate for our legal system to penalise repeat domestic violence offenders. This sends a strong message to the community that breaches of intervention orders are not acceptable.

4.2 Victim Support Service supports the amendment of the *Intervention Orders (Prevention of Abuse Act) Act 2009* (SA) ("IO Act") to increase penalties for people who repeatedly breach an order. It creates a minor indictable offence with a maximum term of imprisonment, can be given effect in a lower court and can be done responsively.

4.3 We note that, in our experience, protected persons frequently feel as though they will not be believed when they report breaches or that a report may provoke retaliation by the perpetrator, and where they do report breaches to SA Police, these are not always enforced. As such, we recommend that this change in the law be supported by greater public education of what constitutes a breach of an order.

¹³ Jessica Kidd, "Domestic violence crime scene videos 'fail to impact conviction rates' in NSW, ABC News, 26 October 2017, <http://www.abc.net.au/news/2017-10-26/domestic-violence-victim-recordings-not-impacting-convictions/9087158> (last accessed 12 August 2018).

4.4 We recommend that an online resource be available to all people about what may be a breach of an order, and how to report. We also advocate that legal services be funded to assist victims who are experiencing difficulty in enforcing a breach and provide information and advice to victims who are reporting a breach, in accordance with these legislative amendments.

5. Additional proposed acts of abuse (Amendment of s 8 IOPA Act)

5.1 Forced Marriage

5.1.1 Victim Support Service supports an amendment to the IOPA Act to include forced marriage. We believe that Australia, as a signatory to various international human rights treaties and conventions, has an obligation to enact domestic legislation that protects vulnerable people from slavery-like practices in order to end exploitation and abuse.

5.1.2 Forced marriage is described as, “a slavery-like practice, a form of gender-based violence and an abuse of human rights. Forced marriage is not limited to any particular cultural group, religion or ethnicity, and there are reports of forced marriage from all over the world. Anyone can be a victim of forced marriage, regardless of their age, gender or sexual orientation. While men and boys can be victims of forced marriage, most reported victims are young women and girls.”¹⁴

5.1.3 As part of the National Action Plan to Combat Trafficking and Slavery¹⁵, it has been recommended that measurable and funded steps are taken to facilitate a more co-ordinated response to forced marriage. We note that currently, under the *Criminal Code Act 1995* (Cth), such offences are difficult to identify and prosecute.

5.1.4 From our research, we understand that the “AFP received 49 forced marriage referrals between July 1, 2017, and April 30 [2018]” and there were 70 referrals in 2016-17 and 69 referrals in 2014-15. We note that of these referrals, the Australian Federal Police has briefed the Commonwealth Director of Public Prosecutions over five cases, but only two have reached the courts. To date, we understand that there have been no convictions recorded, since forced marriage was criminalised in 2013.¹⁶

5.1.5 Victim Support Service supports Legal Aid NSW’s proposal for one federal court system that would assist those at risk of forced marriage in both family law and care and protection matters. As Legal Aid NSW’s proposal is a long-term goal, we would advocate for interim legislation. At a federal level, this

¹⁴Department of Home Affairs, Australian Government, Forced Marriage, <https://www.homeaffairs.gov.au/about/crime/human-trafficking/forced-marriage> (last accessed 17 August 2018).

¹⁵ Commonwealth of Australia, *National Action Plan to Combat Human Trafficking and Slavery 2015-19* (2014), 8, available at: <https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/Trafficking-NationalActionPlanToCombatHumanTraffickingAndSlavery2015-19.pdf>.

¹⁶ Mark Schliebs, “Forced marriage law rarely used”, *The Australian*, 4 June 2018, <https://www.theaustralian.com.au/news/nation/forced-marriage-law-rarely-used/news-story/83fff660d12c43a8b4b4d9e6bc00841d> (last accessed 17 August 2018).

would include the issuing of Forced Marriage Protection Orders and to enable Children's Courts to make airport watch list orders."¹⁷We note that as of June 2018 there is a proposed model for a Commonwealth Forced Marriage Protection Order Scheme.¹⁸

5.1.6 It is our understanding that "[u]nder the filing procedures of a Commonwealth Forced Marriage Protection Order, a third party, such as the Australian Federal Police could apply, removing both the burden from the victim applying (as in intervention orders) and removing any question of the applicant's legal standing. Furthermore, it would not mandate mediation with the family. This would also overcome the impediment that the Children's Court do not have jurisdiction to apply for the airport watch list and remove the age restriction that those on the list must be under eighteen."¹⁹

5.1.7 The *Without Choice* report made recommendations that Australia expand its focus from only criminal legislative responses and include, among others, civil mechanisms.

5.1.8 As part of this interim protection scheme, Victim Support Service considers that the civil protection scheme in South Australia is the appropriate context for a person to seek an order which is available to any person. In such a context the Court may also be able to identify other related issues, and make appropriate orders as proposed above.

5.1.9 We would also support the recommendation that the South Australian Government consider funding of supported accommodation for any person who requires protection from forced marriage. Additionally, resourcing for schools and communities to promote awareness of forced marriage, utilising a community engagement approach drawing upon pre-existing networks and relationships with communities at a local level is also supported.²⁰

5.1.10 With regard to interim legislation, such as the amendments proposed here, this raises an issue of how a child might access legal information, advice and representation in South Australia when making an application for an intervention order in these circumstances. We note that most legal services in South Australia are currently only funded to provide services to adult women seeking an order and would not be able to assist those aged under eighteen, who are identified as at risk of forced marriage.

5.1.11 We would recommend that the state government consult with key stakeholders and provide supplementary funding to build South Australia's capacity to efficiently identify and appropriately respond to disclosures of early and forced marriage. Our counselling and DVFA prevention programs work within vulnerable communities and would be well placed to assist in this area, through mandatory reporting to

¹⁷RMIT and The Salvation Army Freedom Partnership, *Without Choice – Examining Forced Marriage in Australia*, 2017, <https://endslavery.salvos.org.au/wp-content/uploads/2018/05/Social-Forced-Marriage-Report-SINGLES-min-1.pdf> <last accessed 17 August 2018>.

¹⁸Hon Alex Hawke MP, Assistant Minister for Home Affairs, 15 June 2018, "Strengthening Australia's response to forced marriage", <https://minister.homeaffairs.gov.au/alexhawke/Pages/forced-marriage.aspx>. (last accessed 17 August 2018).

¹⁹Above n.17.

²⁰Ibid.

relevant agencies where young people are involved and providing clear pathways for assistance for adults who are at risk.

5.2 Preventing access to a person's place of residence

5.2.1 Victim Support Service believes that this clause may have a role in preventing DFVA and elder abuse, where a partner in a relationship or child of an older person prevents access of a person to their home. We know that factors such as "impatient inheritance" are increasingly impacting older persons, which may involve middle aged children moving into the home of the elderly parent and preventing that person from living there. We believe that the Court should have a role in preventing this type of behaviour which creates a risk of serious physical, psychological and emotional harm.

5.2.2 Given that such legislation will reduce risk of homelessness for vulnerable persons, we wholly support this amendment.

5.2.3 However we suggest that this clause might benefit from clarification as to what will constitute "preventing a person from entering the person's place of residence". We are concerned that it may be capable of interpretation against a person who should be protected such as a victim of abuse who prevents a perpetrator from entering the family home. While we would expect a reasonable interpretation by the Court we feel that there is a risk it may be argued by a defendant in an intervention order matter.

5.3 Taking an Invasive Image

5.3.1 As suggested by the creation of the Office of the e-safety Commissioner at the Commonwealth level, image based abuse is becoming increasingly problematic. Victim Support Service supports the introduction of a protection for a person who is at risk of, or experiencing, image based abuse, noting its prevalence in the domestic or family violence and abuse context.

5.3.2 We note that the IOPA Act will refer to the definition of an "invasive image" as contained in the Summary Offences Act 1953 (SA) ("SO Act"). According to the Legal Services Commission, an *invasive image* is defined as,

"..one in which the person is shown a place other than a public place and engaged in a private act, or alternatively, in a state of undress such that their bare genital or anal region can be seen. For females the definition also includes where bare breasts are visible. The definition excludes images that fall within the standards of morality, decency and propriety generally accepted by reasonable adults in the community (e.g. parents sending innocent pictures of their baby to family and friends)."

5.3.3 Sections 26B, 26C, 26D and 26DA of the SO Act create offences where invasive images are offences where they involve "humiliating or degrading filming", "distribution of an invasive image of another person

knowing or having reason to believe that the other person does not consent to the distribution of that image”, “engaging in indecent filming” and “distributing an image obtained by indecent filming”. It is also an offence to ‘threaten to distribute an invasive image of a person’.

5.3.4 While reviewing these proposed amendments, we suggest that a review of the language of the SO Act might be considered, or that a separate definition be included in the IOPA Act for the purpose of this section.

5.3.5 We suggest that the term “intimate image” might be preferred to the term “invasive image”. Such a definition might be expanded to capture images of victims who are partially clothed irrespective of whether the bare genital, anal or in the case of female victims, the bare breasts are visible. Furthermore, intimacy connotes trust and a breach of trust should be capable of protection within this civil context because it refers to the right of an individual’s right to amenity.

5.3.6 Furthermore the term “intimate” corresponds to the language used at the federal level by the e-safety Commissioner and would reduce confusion for victims seeking to obtain advice and assistance where they are experiencing image abuse.

5.3.7 Victim Support Service also suggests broadening the term “female” to include a transgender person or intersex persons who identifies as female, or doing away with gender in this context all together. It would be preferable that that any person, irrespective of gender, be protected against the use of any image that violates personal autonomy.

Thank you for providing us with the opportunity to respond, as we seek to advocate for victims of DFVA. Please do not hesitate to contact us should you wish to discuss any aspect of Victim Support Service’s response.

Yours sincerely,



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Chief Executive
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Appendix 1: Victim Support Service Recommendations

1. Non-Fatal Strangulation

Victim Support Service supports:

- 1.1 The introduction of a non-fatal strangulation offence in South Australia.
- 1.2 Aggravation where the offence is against a family member.

Victim Support Service recommends:

- 1.3 Further reform to Criminal Procedures legislation and Major Indictable Reform processes to ensure the timely resolution of these matters where referred to higher Courts.

2. Expansion of the Definition of Domestic Relationships

Victim Support Services supports:

- 2.1 The expansion of the definition of a domestic relationship in accordance with the IOPA Act.

Victim Support Service recommends:

- 2.2 Further consideration as to whether some relationships may be excluded by the definition, such as dating relationships, and whether the nature of the relationship is relevant, given that non-fatal strangulation is a serious wrong.

3. Video Evidence

Victim Support Service supports:

- 3.1 In principle, the right of a victim of DFVA to choose to provide a statement in the form of a video recording.

Victim Support Service recommends:

- 3.2 That a statement of the victim of DFVA be recorded "as soon as practicable" but with regard to the trauma experienced by the victim and its potential impact on the victims credibility as a witness at trial.
- 3.3 That the fully informed consent of a victim of DFVA be required before a video statement is recorded, and that SA Police explain the implications of video evidence for a witness and that the consent of the victim may not be required to use that evidence at trial.
- 3.4 That training is provided to all SA Police Officers in obtaining video evidence, ensuring that they are aware of the impact of DFVA on a victim and can identify which party is more fearful, has defensive injuries or the DFVA occurs in the context a pattern of coercion, intimidation and violence.

- 3.5 That SA Police Officers are able to initiate a network of support for victims of DFVA that will include safety planning, accommodation and counselling support.
- 3.6 That SA Police Officers are training and resourced with appropriate equipment to ensure the quality of video and audio recording equipment is capable of meeting the standards required by the Courts.
- 3.7 That the Courts have appropriate processes for ensuring that a victim of DFVA can view the video evidence prior to being played to the Court to reduce the risk of re-traumatisation.
- 3.8 That video evidence facilities be available for all Regional and Circuit Courts to ensure equity for all victims of DFVA across South Australia.

In summary, we would recommend mandatory training of the judiciary, prosecutors and police officers regarding DFVA, victimisation and risks of re-victimisation, as well as trauma-informed responses to victims of DFVA.

4. Penalties for Repeated Breaches of Intervention Orders

Victim Support Service supports:

- 4.1 Penalties for repeat DFVA offenders so that there is a strong message that breaches of intervention orders are not acceptable.
- 4.2 An appropriate penalty that can be given effect in a lower court and prioritises the safety of the victim.

Victim Support Service recommends:

- 4.3 Greater education of the public as to what constitutes a breach of an intervention order.
- 4.4 The creation of an online resource which explains what may be a breach of an intervention order and how to report it. We would advocate for legal services to be appropriately funded to support victims to report breaches and provide information and advice.

5. Additional Proposed Acts of Abuse

5.1 Forced Marriage

Victim Support Service supports:

- 5.1.1 That the IOPA Act includes forced marriage as an act of abuse, in light of our obligation to enact legislation that protects vulnerable people from slavery-like practices.
- 5.1.2 That while it may be more appropriate for the Federal Courts to deal with forced marriage, this legislation is an appropriate civil mechanism to provide an interim response at the State level.

Victim Support Service Recommends:

- 5.1.3 That funding for supported accommodation be available for assistance to any person identified as at risk of forced marriage.
- 5.1.4 That resourced and education in schools be funded so that young people at risk of forced marriage can be better informed about their rights and how they can be supported at a local level.
- 5.1.5 That funding be available for legal information, advice and representation for children and young people who are at risk of forced marriage.

5.2 Preventing Access to a person’s place of residence

Victim Support Service supports:

- 5.2.1 Preventing Access to a person’s place of residence be included in the IOPA Act as an act of abuse.

Victim Support Service recommends:

- 5.2.2 That funding for services for older persons be made available, so that those at risk of elder abuse can obtain information, advice and representation where a need is identified.
- 5.2.3 That there be clarification around what will not constitute this conduct. There is a risk with this legislation, as currently worded, that a perpetrator who has left the family home may argue that this form of abuse applies. While we would expect a reasonable interpretation by the Courts, we suggest clarification in the wording might also be considered.

5.3 Taking an invasive image

Victim Support Service supports:

- 5.3.1 Taking an invasive image be included in the IOPA Act as an act of abuse.

Victim Support Service recommends:

- 5.3.2 That the definition of an invasive image be replaced by a definition of an intimate image in the IOPA Act, which would capture a broader range of images and connote a breach of amenity, capable of protection within this civil context.
- 5.3.3 That the term “intimate image” is also preferable because it corresponds to the language used by the e-safety Commissioner and prevents confusion for victims seeking assistance.
- 5.3.4 That the term “female” have a broader meaning inclusive of transgender and intersex persons who identify as female, or that gender be removed altogether in this definition.