

Family Violence Reforms Bill 2021

Submission to the Tasmanian Government's
Department of Justice, Office of Strategic Legislation
and Policy

7 October 2021

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal of the Eora Nation.

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to provide a submission to the Tasmanian Government's Department of Justice on the Family Violence Reforms Bill 2021 ('the Bill'). The ALA holds grave concerns about the Bill. The chief concerns are set out below.

What is an "offence"?

2. The ALA notes that neither the *Family Violence Act 2004* (Tas) ('*Family Violence Act*') nor the Bill provide a definition for the term "offence". This means that any three breaches of a Family Violence Order would come within the term "offence". The ALA submits that the term "offence" requires a specific definition. This could be done by way of a provision that defines "offence" as being those set out in a schedule to the Act.

Clause 4(b)(j) – 'unwelcome contact'

3. In Clause 4(b)(j) of the Bill, "harassing" is defined as 'making unwelcome contact, directly or indirectly, with the person'. The ALA submits that the word 'unwelcome' is extraordinarily broad. Receiving a letter or phone call from a service provider threatening to cut off the service, if a bill is not paid, could be regarded as unwelcome. In addition, correspondence from lawyers threatening to institute proceedings may be regarded as harassment.
4. In the context of a personal relationship, one party contacting the other might be 'unwelcome' in the sense the other party does not want to hear from the person that day, or because they are avoiding the person so as not to have to discuss financial or other matters. It is a term that is subjective and difficult to define in objective terms without a clear objective test.

Clause 7 and Clause 10 – "serial family violence perpetrator"

5. The ALA notes that the Bill creates a category of offenders in Clause 7 (which amends section 13A of the *Family Violence Act*) and Clause 10 (which inserts Part 4A into the *Family Violence Act*), namely "serial family violence perpetrator". The ALA is not aware of any evidence that the creation of such a category will deter offenders and does not consider that the creation of such a category of offenders will result in a reduction of the incidence of family violence.

Clause 17 – amendment to the *Corrections Act 1997* section 72(4)

6. Clause 17 amends the *Corrections Act 1997* (Tas) to allow the Parole Board to take into account that a person is serving a sentence for family violence. The ALA submits that this creates a disincentive to rehabilitate. Further, there are few, if any, consistent rehabilitation programs for domestic violence offenders in prison.

Restorative justice for victim survivors of family violence

7. The Bill represents a missed opportunity to introduce restorative justice for victims of family violence. We note that the Victorian Royal Commission into Family Violence (‘The Commission’) has recommended restorative justice be trialled in that jurisdiction. The Commission stated:

The Commission agrees that restorative justice processes have the potential to assist victims to recover from the impact of the abuse they have suffered, and to mitigate the limitations of the justice system by providing them with greater scope to meet their needs for participation, voice, validation, offender accountability and restoration. The versatility of restorative justice processes means that they can be adapted to address the complexity and diversity associated with the experience of family violence. They may be of particular benefit for parents of adolescents or adult children who have used violence, who wish to preserve family relationships or avoid a criminal justice response.²

8. Recently published results of a qualitative survey of victims of gendered violence has found that:

In line with the previous RJ [restorative justice] literature, our interviews strongly suggest that IPDFV/SV victims need a system of justice that extends them empowerment and control, where offenders are held to account, acknowledge their wrongdoing, and do not re-offend. Victims want reassurances of future safety for themselves and others. They need a justice system that does not exacerbate their isolation and trauma. Victims do not want to be blamed, silenced, or have their experiences trivialised. Further, justice environments should protect safety by not

² *Royal Commission into Family Violence: Report and Recommendations* (Report, March 2016) vol 4, 143. The Commission’s Recommendation 122 addressed this issue.

re-victimising or re-traumatising victims. Most participants in our study viewed conventional justice systems as failing victims in many, if not all, of these needs. For this reason, RJ presented as a better alternative.³

9. The ALA submits that the Tasmanian Government should consider implementing a framework to facilitate restorative justice conversations for victim survivors of family violence similar to the Family Violence Restorative Justice Service within the Victorian Government's Department of Justice and Community Safety.⁴

Conclusion

10. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input into the Family Violence Reforms Bill 2021. The ALA is available to provide further assistance to the Tasmanian Government's Department of Justice on the issues raised in this submission.



Rowena Macdonald
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³ Samantha Jeffries, William R. Wood and Tristan Russell, 'Adult Restorative Justice and Gendered Violence: Practitioner and Service Provider Viewpoints from Queensland, Australia' (2021) 10(1) *Laws*1, 23 <<https://www.mdpi.com/2075-471X/10/1/13>>.

⁴ [Victoria State Government, Restorative justice for victim survivors of family violence \(Web Page, 2021\)](https://www.justice.vic.gov.au/fvrjservice) <<https://www.justice.vic.gov.au/fvrjservice>>.