



SUBMISSION

Family Violence Reforms Bill 2021

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women's
legal
service
tasmania

INTRODUCTION

Women's Legal Service Tasmania (WLST) is a not-for-profit organisation providing free and confidential legal advice and representation to women in all areas of Tasmania.

WLST provides clients with information about their legal and non-legal options, including referral to other legal services and law firms, or to appropriate support services.

WLST represents women from low socio-economic backgrounds, those who are unable to afford legal assistance and those who do not qualify for a grant of legal aid. The majority of our casework is in family law, often with a focus on family violence.

In the north west and northern Tasmania, we are funded to run two Domestic Violence Units (DVUs) with offices in Burnie and Launceston. From these offices we provide outreach and also offer financial counselling and access to a social worker.

WLST is committed to making the legal system more accessible and responsive to the issues affecting women in Tasmania.

We wish to provide you with a submission from our service drawing on our experiences assisting women in Tasmania.



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Women's Legal Service Tasmania (WLST) are grateful that the State Government introduced the crime of persistent family violence in 2018 with the introduction of s170A of the Criminal Code (Tas).¹ We can see from the Supreme Courts Comments on Passing Sentence that this is leading some change in the legal sector in terms of sentencing severity and in viewing family violence as a course of conduct intended to coerce and control. In Justice Estcourt's first application of the crime His Honour noted the necessity to impose a substantial period of imprisonment.²

We are of the view the proposed suite of reforms, described in the Family Violence Reforms Bill 2021, will further build on the Government's improvements to the law as it relates to family violence. We note the proposed reforms comprise of changes to the *Community Protection (Offender Reporting) Act 2005*, *Corrections Act 1997*, *Criminal Code 1924*, *Evidence Act 2001*, *Evidence (Children and Special Witnesses) Act 2001*, *Firearms Act 1996* and *Sentencing Act 1997*. The cornerstone of the proposed reforms is the creation of a Declaration of serial family violence perpetrator, declared by the courts.³

We are of the view that the law has a crucial role in leading the culture around what is and is not acceptable. A Declaration of serial family violence imposed on family violence perpetrators will assist with the messaging that family violence is a serious crime in all its varied forms on each and every occasion it occurs. Moving away from the characterisation of family violence as single incidents, and instead viewing perpetration as patterns of behaviour designed to coerce and control, is fundamental to accurately recognising and identifying family violence. The need for ongoing review of the law to ensure that it reflects contemporary understandings of family violence is necessary on an ongoing basis.

In conclusion, WLST supports the Government's initiative to create Declarations recognising serial family violence. We are happy to discuss this further should the opportunity arise.

Our comments on the Family Violence Reforms Bill 2021 follow.

1. Support an extended definition of harassing

We support the extension and clarification of the definition of *harassing* as proposed. In particular we acknowledge this clarifies that unwelcome contact either directly or through third parties will now clearly be covered within the definition of harassing. In our experience, the use of third parties to communicate messages is a commonly used tool of harassment designed to further intimidate and control a victim/survivor, and has the effect of wearing them down.

2. Rehabilitation program and meaning

We hold some concerns over the use of the word *rehabilitation programs* and the attributed meaning used in the Bill.⁴ Our understanding is that one of the main benefits of men's behavioural change programs is they provide an opportunity for victims/survivors to safely leave, while the

¹ See Criminal Code (Tas) s170A and Second Reading Speech – Family Violence Reforms Bill 2018 www.parliament.tas.gov.au

² State of Tasmania v AEP, Comments on passing Sentence, Estcourt J, 31 July 2019.

³ Family Violence Reforms Bill 2021, see part 2, clause 10, Part 4A sections 29A-29D.

⁴ See Family Violence Reforms Bill 2021, clause 4(c)

perpetrator remains under observation.⁵ We are not aware of any conclusive evidence base that establishes behavioural change programs reduce the likelihood of a person committing family violence, or that they effectively and permanently result in an attitudinal change in perpetrator. We support further investment by Government in longitudinal studies to measure this as an outcome.

3. Extended definition of family violence

We support the expansion of the definition of family violence as proposed.

Additionally, we are of the view this review of the definition of family violence, provides an opportunity for the Government to extend the definition of family violence to cover reproductive coercion in all its forms, including stealthing (the non-consensual removal of a condom during sex). We note that the ACT has recently announced this nation leading reform initiative.⁶

The revision of the family violence definition and framework also provides the Government with an opportunity to introduce non-fatal strangulation as a stand-alone offence. We note the Premier committing his Government to this law reform initiative earlier this year as part of his Government's re-election commitment to women experiencing this form of violence.⁷

We also support extending the definition of family violence beyond intimate partners. In particular, children need to be seen and viewed by the law as victim/survivors in their own right. Currently, young people must rely on restraint orders for protection.

4. Support for rehabilitation programs/men's behavioural change as a sentencing factor not a mandatory sentencing factor

We are not of the view that engagement with a rehabilitation program should be a mandatory factor taken into account during a sentencing hearing for family violence perpetrators. It should be a consideration, and only in appropriate situations, taken into account by the decision maker in the exercise of their absolute discretion. Accordingly, we seek the revision of section 13 to reflect this.

5. Pregnancy, presence of children and declaration as mandatory sentencing factors

We support the Judge being **required** to consider the presence of a child, pregnancy and/or the fact the perpetrator is a serial family violence perpetrator for sentencing purposes. This should not in our view be a discretionary matter but should be a mandatory factor that the Judge must take into account in determining an appropriate sentence. This allows the impact of the offending on the community, specifically women who are pregnant and children witnessing and impacted by the abuse, to be taken into account on each and every occasion when sentences are imposed. Risk of family violence escalates with pregnancy and when children are young. Strong messaging about the impact of being in a household where violence and abuse is perpetrated must be recognised in the legislative framework. Sentences must be imposed which appropriately acknowledge and reflect this impact. This cultural change needs to be led from the top. Judges must be seen to see pregnancy, the presence of children, and ongoing abusive conduct as aggravating factors for sentencing purposes.

⁵ See ntv.org.au

⁶ See Crimes (Stealthing) Amendment Act 2021 (ACT)

⁷ The Examiner, Premier debate in Launceston, April 22 2021.

6. Support introduction of declarations of serial family violence perpetrator

WLST welcomes the introduction of declarations of serial family violence perpetrators. Our only concern is where the predominant perpetrator has been misidentified. We would want the court to take into account the cycle of abuse as described by both parties and an active acknowledgment that the law will not simply focus on incident-based offences. Patterns of behaviour, and power and control, must be taken into account. Significant investment in police training and accountability around who is in-fact a predominant perpetrator needs to be supported to ensure that this provision is applied against a working knowledge of the gendered drivers of family violence.

Training for the entire justice system, and all those involved, needs to be incorporated as part of these revisions and to ensure that the serial family violence offence is understood throughout the justice system. This approach was adopted in the UK as coercive control was operationalised and has increased the safety of women and children accordingly. Contrary to some initial concerns this legislative approach in the UK has not disproportionately affected women. In-fact male perpetrators have made up 106 of 107 convictions for coercive control offences to date in England and Wales.⁸

7. WLST support extending protection to all forms of family violence.

We are concerned that perhaps an unintended consequence of section 29A(3)(b)(i) and (ii) may well be that a hierarchy of offending is legislatively entrenched, whereby indictable and more likely Criminal Code violations of rape, assault, grievous bodily harm and attempted murder are construed as more serious than are financial and emotional abuse where coercive control is exercised. Many victims/survivors describe coercive control and non-physical forms of abuse as more damaging long term than being assaulted.⁹ All forms of family violence must be understood as unacceptable.

We are also concerned this erodes the strong public campaign to get the community to recognise all forms of family violence as equally damaging and impactful for victims/survivors.

8. Support ongoing transparency of reporting around electronic monitoring

WLST support ongoing transparency around the experience and use of electronic monitoring applied in Tasmania. Accordingly, we do not support the repeal of section 39A. It is important that information around the success or otherwise of electronic monitoring is accessible and remains in the public domain to inform public debate and public discourse around the use of this technology.

⁸ see: Paul McGorery and Mariyln McMahon, 'Prosecuting controlling or coercive behaviour in England and Wales: Media reports of a novel offence' (2019) (00(0) *Criminology & Criminal Justice*, 1, 6.

⁹ see Amanda Robinson, Andy Myhill and Julia Wire, 'Practitioner (mis)understandings of coercive control in England and Wales' (2018) 18(1) *Criminology & Criminal Justice*, 29, 44 – 45.