

31 August 2018

Dear Secretary,

I am writing in my capacity as Director of the Tasmania Law Reform Institute to comment on the Family Violence Reforms Bill 2018.

I agree in principle with the proposed reforms but have queries about technical issues in their implementation.

New Persistent Family Violence Offence and Reform of s 125A

It would appear that the foundation for this reform is the desire to make proof of numerous offences of family violence easier by creating a 'role-up' offence which will then have an impact on sentencing. This would appear to be the case, because essentially the legislation obviates the need for particularisation of the precise dates and circumstances of the offences and for the jury to agree on the precise offences that constitute the global offence. The aim of the reform is thus protective where victims are concerned. The general objection to this kind of offence is one that applies equally to s 125A: it makes defending the charge more difficult than might otherwise be the case. The accused is in the position where he is not genuinely able to challenge the offences on grounds like alibi for example. The result is that these provisions may not be compliant with fair trial principles.

Where sentencing is concerned, the problem is that, the sentencing judge is not required to relate sentencing remarks or sentences with any specificity to particular conduct. He or she may take a general view of the character of the conduct that could be encompassed in the jury decision and sentence on that basis. Nevertheless, applying general sentencing principles, he or she would necessarily take a view of the character of the accused's conduct that is most favourable to him. This may to some extent diminish the protective quality of these offences. This should be taken into account when considering whether the current reform is actually going to achieve its protective legislative intent.

The main problem with the current Bill is that it does not go far enough in extending protection to victims of family violence. Currently the Act only applies to 'spouses' within the meaning of the Act. The Act does not apply to other family members either as perpetrators or victims. Accordingly, children and those in other family relationships are not covered by the Act. This means that the protection afforded by the Act is relatively narrow. I would recommend that the Government consider reforming the definition of 'family violence' so that it extends to all familial relationships. A good precedent in this regard is to be found in s 5 of the Victorian *Domestic and Family Violence Protection Act 2012*.

I would also recommend that the opportunity be taken while reform of the Act is being considered, to undertake a comprehensive review of its provisions and to assess the merits of reforming the Act in line with recommendations made in earlier reviews, including that undertaken by URBIS in 2008.

Yours faithfully,

Associate Professor Terese Henning

Director, Tasmania Law Reform Institute