



Tasmanian Council of Social Service Inc.

Submission to the Tasmanian Department of Justice: Response to Consultation on the Family Violence Reforms Bill 2018



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Justice on Family Violence Reforms Bill 2018
August 2018*



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About TasCOSS

TasCOSS is the peak body for the community services sector in Tasmania. Our membership includes individuals and organisations active in the provision of community services to low income Tasmanians who often live in vulnerable and disadvantaged circumstances. TasCOSS represents the interests of its members and their clients to government, regulators, the media and the public. Through our advocacy and policy development, we draw attention to the causes of poverty and disadvantage, and promote the adoption of effective solutions to address these issues.

Please direct any enquiries about this submission to:

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CEO



Introduction

TasCOSS welcomes the Tasmanian Government's ongoing commitment to addressing the problem of family violence in Tasmania. We value a multi-dimensional response to this issue; the recognition of the criminal nature of family violence, the investment in specialist support services, the efforts to integrate the community and service responses to family violence and the efforts to educate the community about the scale and harm of these types of behaviours.

In preparing this response to the Family Violence Reforms Bill 2018, TasCOSS has consulted with member organisations who are providing services to people affected by or perpetrating family violence. These services range from crisis support, to therapeutic, advocacy and legal services. TasCOSS has also included references recent literature regarding legal responses to family violence in Tasmania and other jurisdictions.

Generally, TasCOSS supports the Family Violence Reforms Bill 2018. The proposed amendments to the *Criminal Code* and to the *Evidence (Children and Special Witnesses) Act 2001* are a step toward ensuring more appropriate legal responses to assist people experiencing family violence and sexual abuse. Notwithstanding broad support for the Bill, TasCOSS members have raised some concerns and made recommendations for further law reforms aimed at strengthening Tasmania's legal response to family violence. These concerns and recommendations are outlined in the following section.

Summary of Member Feedback

Broadening the Definition of Family Violence

While TasCOSS members are broadly supportive of the proposed changes, there are concerns that this Bill as a standalone legislative reform is piecemeal and that reforms relating to family violence laws in Tasmania should go further. Members consulted suggested that further strengthening of Tasmania's legal response to family violence requires a review of the definition of family violence in the *Family Violence Act 2004*. Members recommended expanding the definition beyond spouse or partner to include 'family member' as well as to include threats, coercion, control, economic abuse and the exposure of children to family violence. TasCOSS therefore recommends that alongside this Bill, the Government also consider broadening the definition of family violence in a way that is consistent with the Victorian *Family Violence Protection Act 2008*. TasCOSS notes that the Victorian legislation is viewed as the 'model' definition as it is consistent with both the recommendations of the Australian Law Reform Commission (ALRC) and the Victorian Royal Commission into Family Violence.¹

¹ See further the Australian Law Reform Commission and New South Wales Law Reform Commission (2010) *Family Violence – A National Legal Response*, Volume 1. Commonwealth of Australia, Canberra) and also the Royal Commission into Family Violence (2016) *Report and Recommendations*, Royal Commission into Family Violence, Victoria.

Creating a new offence of 'persistent' family violence

In relation to the proposal to amend the *Criminal Code* by inserting a new offence of persistent family violence, members consulted were supportive of the creation of a new offence of persistent family violence. Notwithstanding that support, members wanted further details about the guidelines and threshold required to make out a charge of 'persistent' family violence. To that end, members did raise some concerns about the potential impact this offence may have on perpetuating the criminalisation of victims and perpetrators in family violence matters, particularly if breaches of orders formed part of the guidelines for the new offence.

Parallel Investments in Therapeutic and Restorative Sentencing Options

Members noted that while a strong legal response to family violence is important, there is a need to continue investments in flexible and responsive frontline services that support people experiencing violence and prosocial and behaviour change programs for perpetrators.² Members also urged the Government to invest in therapeutic and restorative sentencing options in family violence matters, noting that these approaches are better placed to address the underlying causes of repeat offending than a term of imprisonment.³

Amending s125A of the Criminal Code

In relation to the proposed amendments to section 125A of the *Criminal Code*, members generally agreed that the reforms to S125A were appropriate. Members did caution against using the same discretionary threshold used to determine the charge for 'maintaining' a sexual relationship with a young person as the threshold for the proposed new offence of persistent family violence. As stated above, TasCOSS recommends that clear and consistent guidelines be developed in relation to the threshold for a charge of 'persistent' family violence.

Preventing Cross-Examination of alleged victims of family violence by self-represented defendants

Members generally supported an amendment to the *Evidence (Children and Special Witnesses) Act 2001* to ensure a self-represented defendant cannot cross-examine a witness who is the alleged victim of family violence during an application under parts 3 or 4 of the *Family Violence Act 2004* or bail application. Members did however raise concerns about funding for legal assistance for self-represented family violence perpetrators, calling on the government to ensure that additional resources be allocated to legal assistance providers to assist self-represented defendants in these matters.

² See further for example the findings in the University of Tasmania and Salvation Army report co-authored by Dr. Peter Lucas, Dr. Romy Winter, Dr. Clarissa Hughes, Prof. Kenneth Walsh, 'Increasing Men's Awareness of the Effects on Children Exposed to Family and Domestic Violence', Family Violence Men's Education Project Final Report, March 2016.

³ See further the Tasmanian Sentencing Advisory Council (SAC) Sentencing of Adult Family Violence Offenders Final Report No.5 October 2015 and also note the Victorian Sentencing Advisory Council, Exploring the Relationship between Community-Based Order Conditions and Reoffending (2014) 5.

Members suggested there was an opportunity to better utilise the pre-recording provisions within Section 6 of the *Evidence (Children and Special Witnesses) Act 2001* for witnesses in family violence matters. Some members also indicated support for the use of intermediaries/communication assistants recommended by the Tasmania Law Reform Institute in Final Report No. 23⁴ for witnesses in family violence matters.

Options for further reform

In our consultations TasCOSS heard that there are other areas in which reforms could be considered.⁵ TasCOSS agrees and suggests that, given that Tasmania is four years into its Family Violence Strategy, it is timely to conduct a comprehensive review of the relevant legislation to ensure that it incorporates evidence-based best practice in this area. This will ensure that Tasmania offers the best possible protections, and continues to improve the outcomes, for those experiencing family violence. TasCOSS would welcome the opportunity to work with the Tasmanian Government on such a review.

⁴ See further Tasmania Law Reform Institute Final Report No. 23, 'Facilitating Equal Access to Justice: An Intermediary/Communication Assistant Scheme for Tasmania?', January 2018.

⁵ TasCOSS notes for example that there are a range of recommendations for reforms that intersect with family violence laws in recent reports by the Tasmania Law Reform Institute including the Review of the Law Relating to Self Defence (Final Report No. 20) and Consensual Assault (Final Report No. 25) that could also be included in this Bill.