



Women's Health Tasmania

Brooke Craven
Director
Strategic Legislation and Policy
Department of Justice
GPO Box 825 Hobart TAS 7001

Email: haveyoursay@justice.tas.gov.au

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Dear Sir/Madam

Submission to the consultation on the Family Violence Reforms Bill 2018

Women's Health Tasmania (WHT) is a not-for-profit health promotion service for Tasmanian women. In addition to providing health services and health promotion activities we also provide policy advice on issues affecting women.

Family Violence is a significant issue affecting women accessing our services – many women identify mental health issues, particularly anxiety and depression, as the reason for their contact with our service and it emerges that Family Violence is a current or past issue in their lives. We are also seeing many instances where it is an issue affecting the housing status of women who use our services.

What we see is just one part of the significant social and economic impact that family and domestic violence has on the Tasmanian community, and the disproportionate impact that this has on women and children. Australian Sex Discrimination Commissioner Elizabeth Broderick described family violence as a 'pressing, and often silent and invisible, human rights crisis within Australia.'¹

WHT congratulates the Government on its ongoing commitment to reducing levels of family violence in this state, and to improving the way the Tasmanian justice system responds to both the perpetrators and victims of family violence.

Throughout this submission we have made reference to appropriate human rights legislation, noting the 2012 comments of the UN Special Rapporteur on Violence Against Women, who said 'the failure to articulate violence against women as a human rights issue is a key concern in Australia', noting that 'where governments fail to address the issue in human rights terms it can lead to an

¹ Commission on Human Rights 2003, 59th session, cited in Australian Human Rights Commission, 2012, *Australian study tour report – Visit of the UN Special rapporteur on violence against women*, <https://www.humanrights.gov.au/our-work/sex-discrimination/publications/australian-study-tour-report-visit-un-special-rapporteur>

inappropriate and inadequate response by government and state agencies with long term social and economic consequences'.²

We believe the policy intent of two of the proposed reforms – *Changes to the Evidence (Children and Special Witnesses) Act 2001* and the amendments to section 125A of the *Criminal Code* are consistent with the United Nations *Convention on the Elimination of All Forms of Discrimination against Women*. This Convention requires states parties to take appropriate action to eliminate discrimination against women, and to ensure that women gain access to justice on an equal basis to men.³

Further, we believe the policy intent is also consistent with the recommendations of the UN Committee on the Rights of the Child, which has 'called on governments to provide comprehensive and integrated protective measures to address violence against children, including measures for prevention, identification, reporting, referral, investigation, treatment, follow-up, and judicial involvement.'⁴

We do not comment on the proposal to introduce a new offence of persistent family violence. Instead, we seek more information.

Changes to the Evidence (Children and Special Witnesses) Act 2001

This change removes the right of self-represented defendants to 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.

The right of self-represented defendants to personally cross-examine witnesses reintroduces in the courtroom the power dynamic that is typical of family violence. It is potentially re-traumatising for victims and could affect their ability to give clear evidence.

It is our understanding that there will be other options available to the defendants to enable cross-examination of witnesses to happen.

This proposed reform will empower victims of family violence to participate more fully in the legal process and will therefore help promote gender equality.

We believe that questioning through intermediaries will provide procedural fairness for all parties and, given that cross-examination of evidence will still occur, the Courts will be able to make informed decisions.

² Australian Human Rights Commission, 2012, *ibid*

³ Committee on the Elimination of Discrimination Against Women, General recommendation on women's access to justice https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_33_7767_E.pdf [accessed 30 August 2018]

⁴ UN Committee on the Rights of the Child (CRC), *General comment No. 13 (2011): The right of the child to freedom from all forms of violence*, 18 April 2011, CRC/C/GC/13, available at: <http://www.refworld.org/docid/4e6da4922.html> [accessed 30 August 2018]

Changes to section 125A of the Criminal Code

The crime of maintaining an unlawful sexual relationship with a young person contrary to s 125A of the Criminal Code requires proof of an unlawful sexual act on at least three occasions. This crime was introduced to reflect the difficulty of establishing the exact dates on which unlawful sexual acts were committed, or the exact circumstances under which they were committed – the policy intent was to provide a mechanism to address the secretive and ongoing dynamics of child sexual abuse which often makes it difficult for victims to specify the dates and circumstances of particular offences.

The policy direction of the proposed changes is clearly in line with this original intention, as it is with the UN Committee on the Rights of the Child's recommendations on promoting children's rights to freedom from all forms of violence.

Note: Women's Health Tasmania is also of the view that it is inappropriate to describe child sexual abuse as a 'sexual relationship' and recommends that this offence be renamed 'sexual abuse of a young person'.

Changes to the Criminal Code to insert a new offence of persistent family violence

Under the proposed changes an accused person will be guilty of having committed the offence of persistent family violence if the accused person committed an unlawful family violence act in relation to his or her spouse or partner on at least three occasions.

We are well aware of the persistent nature of family violence offending and the evidence that indicates that family violence offending escalates over time. We are also aware of the escalating rate at which perpetrators are breaching protection orders.

However, we are not able to comment on this proposal until the following are clarified:

- Are the three occasions across multiple family relationships?
- What prior convictions will be included? (eg offenders may have been charged in the past with common assault, with no indication of the circumstances on which the assault occurred)
- Does Tasmania have a database of prior offences which will provide a complete record of prior family violence convictions and protection orders imposed?
- Is there a time frame to the three occasions?
- What is the evidence to support the decision to exclude other personal violence offences when they might indicate a pattern of violent behaviour?
- Would this charge be an indictable offence? If so, what steps would be taken to ensure that the matter is heard swiftly? (We are aware that indictable offences are heard in the Supreme Court and that there are more likely to be delays in the matter being heard. This is of concern as it adds to the trauma of the victims.)
- What conditions would be imposed on a persistent perpetrator of family violence, if found guilty?

Once we have received clarification of these questions, our response will be measured against one criterion – will this change assist to stop family violence and protect women and children? The answer to that question probably lies with the funding available to programs required to deliver the individual behavioural change, and the social and cultural change required. It has been noted elsewhere that current funding levels cannot deliver the number and range of rehabilitative programs required to further the behavioural change component of Safe at Home.⁵ We would urge the Government to address this issue.

Thank you for the opportunity to comment.



Jo Flanagan
CEO

⁵ Sentencing Advisory Council, Sentencing of Adult Family Violence Offenders, Final Report No. 5, October 2015, https://www.sentencingcouncil.tas.gov.au/__data/assets/pdf_file/0018/333324/SAC_-_family_violence_report_-_corrected_accessible_version_for_web.pdf