



Top End Women's Legal Service Inc.

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Ms Fiona Hardy
Legal Policy
Department of the Attorney General and Justice
GPO Box 1722
Darwin NT 0801

Via email: fiona.hardy@nt.govt.au

Dear Fiona,

Sex Offender and Child Homicide Offender Public Website (Daniel's Law) Bill 2015

The Top End Women's Legal Service Inc. ('TEWLS') welcomes the opportunity to make a submission in relation to the *Sex Offender and Child Homicide Offender Public Website (Daniel's Law) Bill 2015* ('Daniel's Law').

TEWLS supports an increased focus on sexual offending and child homicide in the Northern Territory ('NT'). This submission will place particular emphasis on sexual offending. We also advocate for public policy informed by evidence-based outcomes and efficiently allocated resources.

Who we are

TEWLS is a community legal centre focused on the advancement of the rights of all women. We are funded by the Commonwealth Attorney General's Department and the Department of Prime Minister and Cabinet to provide legal advice, casework and community legal education to women living in the Top End of the NT. We provide advice, information and assistance to women in a number of areas of law including family law, domestic and family violence, housing and tenancy, debts, sexual assault, discrimination and compensation for victims of crime. We also provide outreach services for culturally and linguistically diverse women, Aboriginal women in the town communities surrounding Darwin and women in prison.

Our Submission

Efficacy of Daniel's Law

TEWLS is concerned about the efficacy of Daniel's Law. We believe there are other, more effective means to address sexual offending, as well as support people who may be victims of sexual offending, including providing resources to existing service providers. We encourage a holistic approach to this issue for victims, offenders and their families.

There is little or no evidence to suggest that Daniel's Law would assist to reduce recidivism rates. Of concern, a register may detract from rehabilitation of offenders rather than achieve the principle goals to safeguard minors and the community.

The NT has a highly mobile population where movement between both urban centers and smaller communities is frequent. TEWLS is concerned that the intended efficacy of a publically available register could be compromised by these movements, leading to difficulties, added workload and expenses in maintaining an accurate register. Further, TEWLS is supportive of providing guidance to communities to galvanize protective measures, particularly in the form of oversight from appropriate adult supervision for children, educative measures and plans of action.

A key priority for TEWLS is the outcome for victims and their families by way of a holistic approach to best influence positive change. This can also be implemented through evidence based appropriate programs for sex offenders, as well as Throughcare. These would be delivered prior to the release from prison to recondition offenders back into the community, a course of action likely to improve outcomes and reduce recidivism. Of note, the availability of appropriate support programs is key to an individual's granting of parole, as well as reducing rates of recidivism.

Issues in reporting and implementation

TEWLS notes potential adverse implications to the reporting of incidents of sexual offending to Police, should a register become publically available online. TEWLS believes that the reporting of sexual offending within the family may be a strong deterrent to families wishing to report. With the publicity of names and photographs, there are possible repercussions of embarrassment and shame for the victim, given that a significant proportion of sexual offending occurs within the family.

Family pressures and prejudice associated with offending may reduce reporting rates, and thereby exacerbate existing barriers to reporting sexual offences to police. In this respect, TEWLS endorses the sentiments of Felicity Gerry QC, Vice Chair of the Criminal Lawyer Association of the NT, that 'victims will be deterred from reporting if they think they'll be linked to some public website that's out there

forever'.¹ This is especially the case given the nature of the NT encompassing small communities where there are many links, leading to stigma attached with being associated with an offender. Legislation that could operate to limit instances of reporting is not one that TEWLS would support.

In addition, the proposed system of victims having the possibility to make submissions to exclude certain sex offenders from the register may re-trigger psychological trauma and enliven complex family dynamics relationships, assuming the victim has the capacity to make the submission or can gain access to a services to make a submission on their behalf. TEWLS supports NT Victims of Crime manager Mike Campbell on this point who state there is a 'risk that the child victim will be re-traumatized'.²

Recidivism and rehabilitation

TEWLS is concerned the proposed legislation will not reduce offending and there are better ways for funding to be spent to achieve greater results for the community. TEWLS suggests appropriate sex offender programs both within the Darwin Correctional Precinct and with Throughcare. These programs would be aimed at preparing prisoners for their reintegration into the community and supporting them in their transition to life outside of prison. The principle purpose of those programs is aimed at reducing recidivism and increasing public safety.

TEWLS endorses the sentiments of Russell Goldflam, President of the Criminal Lawyers Association of the NT and Principal Legal Officer at the NT Legal Aid Commission, Alice Springs, who stated 'the evidence is in that [registers] do not reduce the incidence of sexual offending, the type of offending or recidivism. It instead provokes alarm, ramping up paranoia about and hatred towards sex offenders'.³ This is particularly pertinent when the offender is found to be a relative to the victim. Contextually, in Australia, more than 40% of sexually abused minors are assaulted by a family member.⁴ TEWLS advocates an evidence-based approach to ongoing work with victims and offenders, particularly within families, in creating safe behaviour and environments as a more effective use of time and resources.

¹ Adam Steer, 'Daniel's Law: Concerns raised over impact proposed NT public sex offender registry will have for victims', *ABC News (Online)*, 24 November 2015 <<http://www.abc.net.au/news/2015-11-24/daniels-law-nt-sex-offender-registry-concern-for-victims/6968514>>.

² *Ibid.*

³ Russell Goldflam, '10 Reasons why Daniel's Law is bad for victims', *Alice Springs News (Online)*, 12 November 2015 <<http://www.alicespringsnews.com.au/2015/11/12/10-reasons-why-daniels-law-is-bad-for-victims/>>

⁴ Cindy Tarczon and Antonia Quadara, 'The nature and extent of sexual assault and abuse in Australia' (2012) *Australian Centre for the Study of Sexual Assault*, Resource Sheet, <<http://www3.aifs.gov.au/acssa/pubs/sheets/rs5/rs5.pdf>>.

Megan's Law, the model for Daniel's Law in the US entails a public register as well as community notification. There has been significant criticism of this law and doubts as to its efficacy. It was found by the UK's National Society for the Prevention of Cruelty to Children that there is 'still insufficient evidence that Megan's Law reduces the number of assaults by strangers against children'.⁵ The more likely result would be the offender retracting from the community, further debilitating their recovery and reintegration. Attention should be given first and foremost to reduce the instances and occurrences of ongoing and current sexual offending and domestic violence issues in the NT rather than a public register. Of note, there is already an existing system of a private register, which means that those registered have limitations put on the jobs accessible to them, for example, working with children. TEWLS feels that strategies such as these should be built on and strengthened.

Community Behaviour

A publically available register such as proposed by Daniel's Law invokes potential issues of vigilante behaviour in the community. In 2012 Ivan Oliver was found guilty of the murder of Michael A. Dodele and convicted of using Megan's Law to carry out the felony.⁶ In 2006 Joseph Gray and William Elliot were murdered by an offender who found their names and address on the online database. Also of relevance, Elliot was put on the register for having consensual sex with his girlfriend, three weeks before she turned the age of consent.⁷ Whilst TEWLS does not support Daniel's Law, should the legislation be passed, circumstances such as Elliot's would not be appropriate for the register. We believe that there would need to be a distinction between types of offending when they are registered. TEWLS questions whether there will be discretion or a threshold that would be enacted on the types and severity of offending warranting registration on the public register.

We highlight there are already reporting requirements of offenders to police and restrictions placed on their activities, meaning that a register may serve little constructive purpose. Furthermore, in terms of community behaviour there is a possibility for cases of mistaken identity. A misidentification could lead to significant stigmatization of the family and ostracism.

Broader issues

The systemic issue needing to be addressed is the sexual offending and child homicide. We are also concerned that this is not in step with other Governments are

⁵ Kate Fitch, *Megan's Law: Does it Protect Children?* (National Society for the Prevention of Cruelty to Children, 2006), p. 36.

⁶ Jeremy Walsh, 'Ivan Oliver Sentenced to 32 years to life', *Willits News* (online), 29 August 2012, <<http://www.willitsnews.com/article/ZZ/20120829/NEWS/120829051>>.

⁷ Amy Clark, 'Sex Offender murder Suspect Kills Self', *CBS News* (Online), 17 April 2006, <<http://www.cbsnews.com/news/sex-offender-murder-suspect-kills-self/>>.

Australia, particularly as this Bill was rejected at the Council of Australian Governments Meeting⁸.

The following are also some issues that TEWLS has with the proposed Bill:

- The administration and update of such a register is costly and time consuming and may divert funding and effort away from more pragmatic and solution based projects.
- At issue is the determination of the level of offending to be included on the register. Building on this, TEWLS questions if there would there be a note detailing where the offender sat on the range of offending. This is to attempt to differentiate between low and high level offenders.
- TEWLS questions whether *Daniel's Law* will create a precedent and pave way for the introduction of other registers to be made concerning other criminal offences. Furthermore, if there is deemed no efficient need for registers in other areas, then it is difficult to reconcile the need in this area.

Conclusion

In conclusion, TEWLS does not support the proposed Bill for reasons outlined above as the administration and update of such a register will be costly and time consuming and may divert funding and effort away from more effective and solution based projects.

TEWLS appreciates the opportunity to make this submission on Daniel's Law. We support ongoing improvements to services and responses targeting sexual offending and child homicide in the NT and would be glad to be consulted regarding any proposed changes.

Yours faithfully,

TOP END WOMEN'S LEGAL SERVICE INC.



Vanessa Lethlean
Managing Solicitor

⁸ 'Federal Government resisting internal pressure to create national sex offenders register', ABC News (online), 15 October 2014, <<http://www.abc.net.au/news/2014-10-16/government-resists-pressure-for-national-sex-offender-register/5817112>>.

