

30 January 2020

Committee Secretary  
Legislation Scrutiny Committee  
Legislative Assembly of the Northern Territory  
GPO Box 3721  
Darwin NT 0801

*By email to [LSC@nt.gov.au](mailto:LSC@nt.gov.au)*

Dear Madam or Sir,

**Submission of the Northern Territory Women's Legal Services – Justice Legislation Amendment (Domestic and Family Violence) Bill 2019**

The Northern Territory Women's Legal Services (**NTWLS**) welcome the opportunity to make a submission to the Justice Legislation Amendment (Domestic and Family Violence) Bill 2019 (**the Bill**).

Our submission will be focused on our experience of and expertise in assisting women across the Northern Territory (**NT**), including Aboriginal and Torres Strait Islander women, and women from culturally and linguistically diverse backgrounds. As a coalition of women's legal services, we hold particular expertise in relation to domestic and family violence matters, as well as injuries incurred by women outside of domestic and familial relationships.

About NTWLS

The NTWLS comprise the three women's legal services in the NT; the Central Australian Women's Legal Service (**CAWLS**), the Katherine Women's Legal Service (**KWILS**), and the Top End Women's Legal Service (**TEWLS**). Our shared vision is a community within which women enjoy and are entitled to legal and social justice.

The NTWLS are part of a national network of community legal centres specialising in women's legal issues and focused on the advancement of women's rights. Our services provide free and confidential legal information, advice, representation and advocacy to women across the Central Australian, Barkly, Katherine and Top End regions. We primarily deliver services to women experiencing or at risk of experiencing domestic and family violence, with corresponding legal issues including family law, housing and tenancy, consumer law, credit and debt, sexual assault, discrimination, compensation for victims of crime, and child protection. Almost all women we assist experience financial disadvantage.

## Our submission

### **I In principle support for the Bill**

We commend the Bill to the Legislation Scrutiny Committee and confirm that the NTWLS give in principle support for this proposed piece of legislation, subject to the below response.

### **II Response to the Bill**

In reviewing the Bill, we provide response as follows -

#### *A Proposed amendments to the Sentencing Act 1995 (NT) – incentive for defendants to domestic and family violence proceedings to attend rehabilitation programs*

The Bill proposes to make amendments to the *Sentencing Act 1995* (NT) to provide an incentive for defendants in domestic and family violence proceedings to attend rehabilitation programs in respect of mandatory sentencing provisions.<sup>1</sup> In reviewing the proposed amendments, the NTWLS note the objects of the *Domestic and Family Violence Act 2007* (NT) (DFVA), where the DFVA legislation is to “ensure the safety and protection of all persons... who experience or are exposed to domestic and family violence”,<sup>2</sup> as well as “to ensure [that] people who commit domestic violence accept responsibility for their conduct”.<sup>3</sup> In our view, any amendments purporting to relate to offences under the DFVA must be consistent with section 3 of the DFVA. The Bill attempts to meet the above noted DFVA objects, where the proposed amendment sub-section 24(1A) of the DFVA provides that the paramount consideration for making an order to attend a rehabilitation program is the safety and protection of the protected person (to the relevant domestic violence order / application for domestic violence order).

In spite of this, NTWLS remains concerned in respect of the ambiguity of the proposed “rehabilitation programs”, where arguably, minimal supervision-based programs may stand in opposition to the above-noted objects of the DFVA.

Regarding the proposed addition of section 85A to the DFVA, the NTWLS notes that the examples provided for sub-section 85A(2) seemingly capture only offenders residing in regional centres with available rehabilitation programs. While rehabilitation programs such as alcohol and other drug services currently cater to residential and non-residential clients, it is unclear as to whether “rehabilitation programs” for the purpose of amendments to the DFVA would be available in a similar capacity, and if not, what services would be available to capture this need. Further, the NTWLS express concern that the proposed addition will facilitate men’s participation in current alcohol and other drug services only, as opposed to participating in targeted behaviour change programs regarding domestic and family violence. Should this be the outcome of the legislation, it is our submission that the Bill would act in opposition to section 3 of the DFVA, where there would be no safe guards for the women and children impacted by

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<sup>1</sup> Explanatory Statement, Justice Legislation Amendment (Domestic and Family Violence) Bill 2019, Serial No. 113, 1.

<sup>2</sup> *Domestic and Family Violence Act 2007* (NT), s 3(1)(a).

<sup>3</sup> Above n 2, s 3(1)(c).

domestic and family violence as a consequence of the respective man failing to change their behaviour.

Regarding the proposed addition of section 85B to the DFVA, the NTWLS express concern in relation to the discretion available to the Court under section 85B(2); specifically, that there is no requirement for the Court to seek the view of the relevant protected person upon making a finding that the defendant did satisfactorily complete a rehabilitation program. Noting the prescriptive nature of other proposed amendments and additions to the DFVA under the Bill, the NTWLS recommend that specific provision is made for the Court to consider the view of the protected person where the defendant has done / committed any of the acts referred to in the proposed section 85B(1) of the DFVA.

With respect to the concept of men's behaviour change programs, NTWLS notes and recommends the most recent research report released from ANROWS, "Evaluation readiness, program quality and outcomes in men's behaviour change programs". For the Committee's information, we have **enclosed** a copy of this report to our submission. We particularly commend the report's recommendations to the Committee,<sup>4</sup> where the NTWLS supports the establishment and use of evidence-based programs that work to enhance and prioritise the safety of women and children, rather than being a secondary target. Further, the NTWLS commends the most recent ANROWS research report, "Engaging men who use violence: Invitational narrative approaches",<sup>5</sup> to the Committee for additional reading, where a recent study in Adelaide, South Australia was undertaken in respect of invitational narrative approaches in engaging men to take the first steps towards attitudinal and behavioural change.

In addition, the NTWLS note the existing inadequate funding arrangements for women and children support services, such as women's shelters and women's legal services. Noting that the proposed amendments to the DFVA appear to provide that women and children would be linked in with a relevant support service, we reiterate our previous calls for increased funding to the sector to ensure the safety of same.

*B Proposed amendment to the Criminal Code Act 1983 (NT) – introduction of a new offence of choking, suffocation or strangulation in a domestic relationship*

In principle, the NTWLS supports the introduction of a specific strangulation offence, however, we advocate for amendments to the proposed offence to remove the requirement that the offence occur within the confines of a "domestic relationship".

Evidence indicates that non-fatal strangulation is a risk factor for domestic femicide resulting from any form of violence and is often not viewed as an offence with a level of severity reflective of a predictive factor of femicide.<sup>6</sup> In a direct comparison of documented cases of domestic

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<sup>4</sup> Day, A., Vlasis, R., Chung, D., & Green, D. J. (2019), Evaluation readiness, program quality and outcomes in men's behaviour change programs (Research report, 01/2019), Sydney, NSW: ANROWS, 93 – 95.

<sup>5</sup> Wendt, S., Seymour, K., Buchanan, F., Dolman, C., & Greenland, N. (2019). Engaging men who use violence: Invitational narrative approaches (Research report, 05/2019). Sydney, NSW: ANROWS.

<sup>6</sup> Tom Gotsis, 'NSW's strangulation offence: Time for further reform?' (Research Paper No 3, Parliamentary Library, NSW Parliament, 2018) 3.

homicide or attempted domestic homicide against a control group of abused-only victims, it was found that a prior experience of non-fatal strangulation increased six-fold the chances of becoming a victim of attempted domestic homicide, and seven-fold the chances of becoming a victim of domestic homicide.<sup>7</sup> However, perpetrators of non-fatal strangulation are not always held to account for the severity of this behaviour.

It is understood that the intent in creating such an offence in the NT is to acknowledge the severity of such offending and to ensure greater recognition of this conduct in the investigation and prosecution of domestic violence related offending.<sup>8</sup> However, the NTWLS hold concern in respect of limiting the offence to only those circumstances involving a domestic relationship. A comparative review of strangulation offences across Australia shows that offences requiring a specific pre-condition (such as the strangulation being committed in order to commit another offence) or a specific outcome (rendering a person unconscious, insensible or incapable of resistance) are inherently more complex, and therefore more difficult to prove, than offences prohibiting a person from strangling another person without consent.<sup>9</sup> Notably, the proposed section 186AA of the *Criminal Code Act 1983* (NT) appears to be based upon comparative legislation in Queensland, as opposed to the New South Wales offence.

As noted in response of the Department of the Attorney-General and Justice to the question of consultation taken on notice from the Committee, legal services and organisations were afforded the opportunity to make comment to an initial iteration of the proposed offence.<sup>10</sup> At this time, TEWLS requested clarification as to why the proposed offence was comparable to the Queensland approach rather than that in New South Wales, which relevantly post-dates and reviews the former. The NTWLS notes that the health impacts of non-fatal strangulation are equally applicable to those within and outside a domestic relationship and the same protection should be afforded to all,

In New Zealand, the introduction of the offence of strangulation was expected to shift the justice sector response to strangulation towards a focus on the prevention of future serious harm.<sup>11</sup> The Law Commission of New Zealand supported the introduction of a new offence of strangulation with general application, meaning not limiting the offence to instances of domestic and family violence and/or an offence within a domestic relationship.<sup>12</sup> Additionally, and of note, was the Law Commission of New Zealand's additional recommended changes to Police family violence incident reports and the Police National Intelligence Application to increase the visibility of strangulation. By undertaking to do something similar in the Northern Territory, a generalised strangulation offence could still provide valuable intel in relation to domestic violence situations.

Should the Committee agree with the proposal of the NTWLS, we would advocate for the proposed sub-section 186AA(3) of the *Criminal Code Act 1983* (NT) to remain, such that a

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<sup>7</sup> Ibid.

<sup>8</sup> Above n 1, 12.

<sup>9</sup> Above n 6, 2.

<sup>10</sup> Response by the Department of the Attorney-General and Justice to a question on notice from the Committee, Justice Legislation Amendment (Domestic and Family Violence) Bill 2019, Serial No. 113, 2.

<sup>11</sup> New Zealand, A modern and victim-focused Act, Cabinet Paper (2015).

<sup>12</sup> New Zealand, Prosecuting family violence, Cabinet Paper 3 of 3 (2015) 17.

strangulation offence occurring within a domestic relationship would be recognised as an act of domestic and family violence. Further, and in line with the proposed amendment, the NTWLS advocates for the Committee to consider and recommend corresponding amendments to the Victims of Crime Compensation Assistance legislation such that a strangulation offence is recognised as a compensable violent act under Schedule 3, *Victims of Crime Assistance Regulations 2007* (NT).

*C Proposed amendment to the DFVA – orders to terminate a tenancy agreement in domestic violence situations*

The NTWLS commend the proposed amendments to section 23 of the DFVA to the Committee, clarifying the current operation of the DFVA in respect of tenancy agreement terminations in domestic violence order proceedings.

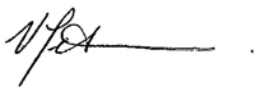
Further to the proposed amendment, the NTWLS reiterate our position that an outstanding priority for legislative reform is domestic and family violence provisions within the *Residential Tenancies Act 1999* (NT).<sup>13</sup> In our experience, many women would prefer to undertake corresponding termination of tenancy processes under residential tenancy legislation, if available, rather than that available under DFVA, where cycles of violence and issues of control can often equate to a tenant not wishing to apply for a domestic violence order. We await long-awaited reform in respect of this issue and advocate for the Committee to reiterate its recommendation in the report tabled in respect of the Inquiry into the Residential Tenancies Legislation Bill 2019.<sup>14</sup>

Conclusion

We appreciate the opportunity to make this submission and to support ongoing policy and legal development for women in the NT. Should you wish to discuss this submission further, please contact TEWLS by phone on (08) 8982 3000 or email to admin@tewls.org.au.

Yours faithfully,

**NORTHERN TERRITORY WOMEN'S LEGAL SERVICES**



**Vanessa Lethlean, Managing Solicitor, TEWLS**

On behalf of the NTWLS

**Enclosed** ANROWS, "Evaluation readiness, program quality and outcomes in men's behaviour change programs"

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<sup>13</sup> Residential Tenancies Legislation Amendment Bill 2019, Submission No. 5 – TEWLS; Residential Tenancies Legislation Amendment Bill 2019, Submission No. 8 – Darwin Community Legal Service (endorsed by CAWLS).

<sup>14</sup> Legislation Scrutiny Committee, Parliament of the Northern Territory, Inquiry into the Residential Tenancies Legislation Bill 2019 (2019) 34.