

13 December 2021

Attn: Cate Allingham
Senior Director

Criminal Law Team, Child Abuse Royal Commission: Criminal Justice Reform Tea,

By email: Cate.Allingham@act.gov.au Stephanie.Johns@act.gov.au

Dear Colleagues

RE: Family Violence Legislation Amendment Bill

Thank you for the opportunity to comment on these important law reforms. The Women's Legal Centre ACT ('the Centre') welcome the ACT Government's ongoing focus on improving responses to domestic and family violence in the Territory.

The Centre supports the proposed measures to implement some of the reforms recommended by the recent review of the *Family Violence Act 2016*. These measures recognise the complexity, seriousness, and long-term impacts of family violence. We support measures to expand the definition of family violence to encompass technology facilitated abuse and adopting trauma-informed approaches to cross examination.

The Centre remains concerned about the unintended consequences of changes related to sentencing in family violence matters. We are concerned an aggravated offence scheme for family violence offences, may have negative and disproportionate effects particularly for Aboriginal & Torres Strait Islander women.

The Centre's views and concerns are addressed below.

About Us

The Women's Legal Centre is a specialist community legal centre. Our main legal practice areas are sexual harassment, family violence, victims of crime, family law, migration law, early intervention Care and Protection work, employment, and discrimination.



The Centre provides legal assistance across the spectrum of need, including legal information and referral, legal advice and representation and litigation. The Centre provides legal services within a multi-disciplinary and trauma-informed practice model that incorporates social work, cultural supports, and collaborates with external services and pro bono partners to provide wrap-around support to the most vulnerable and at-risk clients.

The Centre has a specialist program for Aboriginal & Torres Strait Islander women– the Mulleun Mura Access to Justice Program. This program provides holistic and culturally-safe services to promote effective engagement with the legal system with a focus on early-intervention and trauma-informed support to reduce preventable legal issues from arising and escalating.

The Centre also provides community legal education and input on law and policy development to build government and community capacity to work towards deeper legal and cultural change to redress power imbalances and address violence and gender inequality.

Submission – supporting better responses to trauma in the justice system

The Centre is regularly contacted by women where the criminal justice system has failed them. The reasons for these failures include evidentiary issues, inappropriate police responses, the lack of trauma-informed approaches from the courts and legal profession, and victim-blaming biases.

The Centre supports the proposed amendments designed to reduce trauma within the criminal justice system through limiting cross-examination on Victim Impact Statements and extending the existing protections for counselling communications in sexual offence proceedings to family violence offence proceedings.

Submission – aggravated offence scheme

The Centre appreciates the proposed amendments to introduce an aggravated offence scheme are 'phase two' of a series of amendments to recognise family violence offences as standalone offences with more severe sentencing regimes. The Centre supports aggravated offences for sexual offences to recognise the seriousness and inter-generational impact of these crimes.

However, the Centre remains concerned about the potential application of an aggravated offence scheme to introduce higher maximum penalties **for offences against the person** when committed in the context of family violence on the basis it may discriminate against Aboriginal & Torres Strait Islander women. We again refer to the research indicating



Aboriginal & Torres Strait Islander women who have been incarcerated are most likely victims of assault and sexual assault, and 78% of Aboriginal women in prison have been victims of violence as adults.¹

In our experience, the separation between ‘victim’ and ‘offender’ when women are charged with violent offences against men is not always clear, particularly when there has been a long history of family violence perpetrated by the male partner towards the woman. Australia’s National Research Organisation for Women’s Safety (ANROWS) has found women—especially Aboriginal and Torres Strait Islander women—are being misidentified as perpetrators in the context of domestic and family violence.²

Often, the Centre and our Aboriginal Women’s Program, Mulleun Mura, works with women who have been wrongly accused of being the perpetrator of violence. In many of these circumstances upon the police arriving, the woman, demonstrating signs of trauma and heightened behaviours, is often charged, whereas the male partner has remained calm and cooperative with police. Our colleagues at the Women’s Legal Service in Victoria have quantified this misidentification rate in the context of Family Violence Intervention Orders and suggest the misidentification rate could be up to one in ten in that jurisdiction.³ As both ANROWS and the Victorian Women’s Legal Service have noted, misidentification has significant adverse outcomes and legal consequences for the victim.⁴

We submit a systems approach to family violence reform is required if the ACT is genuine in their mission to reduce rates of domestic and family violence in the Territory, not just the implementation of new offences.

This includes trauma-informed judicial and police training, to ensure police and the judiciary are able to avoid a focus on single incidents of visible or physical violence and recognise patterns of violence and control and reduce the risks of male perpetrators furthering their abuse through the criminal legal system.

The Centre also submits better access to legal services for victim-survivors is critical, including specialist services for First Nation’s women to ensure they are able access and engage with the support they need.

¹ Australian Human Rights Commission (2006), *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities – Key issues*, See “[e. Indigenous women and imprisonment and post-release programs.](#)”

² Australia’s National Research Organisation for Women’s Safety. (2020). Accurately identifying the “person most in need of protection” in domestic and family violence law: Key findings and future directions (Research to policy and practice, 23/2020). Sydney: ANROWS

³ Women’s Legal Service Victoria (2018), *Policy Paper 1 “Officer she’s psychotic and I need protection”: Police misidentification of the ‘primary aggressor’ in family violence incidents in Victoria*

⁴ See ANROWS and Women’s Legal Service Victoria above.



More in-depth and holistic mental health community supports and increased accessibility to long-term housing for victim-survivors so they can leave violent relationships and so victim-survivors are not misidentified as perpetrators are also required to support the intention of the proposed changes.

Whilst the increased criminalisation of family violence offences may reflect community attitudes, without a stronger systems response to ensure these proposed laws work as intended, victim-survivors will still lack confidence in the criminal-justice system's ability to hold perpetrators to account.

Thank you for the opportunity to raise these issues with you again. We would be happy to discuss these issues further if it would assist your consideration.

Yours Sincerely,



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