Rape & Domestic Violence Services Australia
Formerly NSW Rape Crisis Centre

25 October 2021

Department of Justice
Strategic Legislation and Policy
Level 14, 110 Collins St, Hobart, TAS 7000
Attention: Brooke Craven
Via email: haveyoursay@justice.tas.gov.au

Dear Brooke

Family Violence Reforms Bill 2021

Introduction

1. Rape & Domestic Violence Services Australia ("RDVSA") welcomes the invitation to consult on the Family Violence Reforms Bill 2021 ("the Bill").

2. RDVSA is an accredited, nationally focused, not for profit organisation which has been working in the field of sexual, domestic and family violence since 1971. We offer expert and confidential telephone, online and face to face counselling to people of all genders who have experienced sexual, domestic or family violence, and specialist help for their supporters and those experiencing vicarious trauma. We also provide best practice training and professional services to support frontline workers, government, the corporate and not for profit sector.

3. Our counselling services include the Domestic Violence Impact Line, a counselling service and support for people experiencing domestic and family violence across Australia, the Sexual Assault Counselling Australia line for people accessing the Redress Scheme resulting from the Royal Commission into Institutional Responses to Child Sexual Abuse, the LGBTIQ+ violence counselling service and the NSW rape crisis line for those impacted by sexual assault (including friends, families and supporters). In the 2020/21 financial year, RDVSA provided 16,195 occasions of service to 3,984 clients nationally. 84% of callers identified as female and 90% identified as someone who had experienced sexual, domestic and/or family violence.

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ABN 58 023 656 939

Counselling Services

24/7 NSW Rape Crisis:	1800 424 017
Domestic Violence Impact Line:	1800 943 539
Sexual Assault Counselling Australia:	1800 211 028
LGBTIQ+ Violence Service:	1800 497 212

rape-dvservices.org.au

4. Our training and professional services draw on our decades working in the sector. Training programs are evidenced based and co-designed with experts, including those with lived experience of violence. In the 2020/2021 financial year, we trained and supported over 2000 people and linked with 150 organisations across Australia. Underpinned by adult learning principles and delivered by highly experienced and qualified trainers, some of our key programs include:
    a. Wattle Workplace Wellbeing: A tailor made training and support package for workplaces mitigating the risk of compassion fatigue, burnout and vicarious trauma
    b. Responding with Compassion: A practical skills development program to guide participants in responding to disclosures of domestic, family, sexual and workplace violence
    c. Ethical Bystander: Providing participants with an ethical and safe framework to allow them to intervene and prevent violence in their workplace and communities
    d. Leadership in Action: building the capacity of leaders to understand, prevent and better respond to violence and disclosures of violence in the workplace.

5. Finally, RDVSA advocates with governments, the media and the community to prevent and put a full stop to sexual, domestic and family violence.

6. RDVSA generally supports the proposals put forward in the bill including the Serial Family Violence Perpetrator declaration, mandating behavioural change programs and the expansion of the definition of "family violence" in the *Family Violence Act 2004* ("the Act"). In this regard, RDVSA welcomes the Tasmanian Government's leadership on family violence reform.

7. In this submission, we will address specific aspects of the reforms that we consider may need further consideration, investigation or clarification. We will address each reform separately.

8. We endorse and support the submissions of our colleagues in Tasmania in relation to the Bill:

    a. Engender Equality and Yemaya Women's Support Services; and
    b. Women's Legal Service Tasmania (except in relation to the issue of pregnancy being an aggravated factor on sentencing and the mandatory imposition of rehabilitation programs on sentencing, in which we outline our position further below).

Serial Family Violence Perpetrator declaration

9. RDVSA strongly supports the introduction of a serial family violence perpetrator declaration. We note and agree with the comments made by Women's Legal Service Tasmania in their submission that "a declaration of serial family violence imposed on family violence perpetrators will assist with the messaging that family violence is a serious crime in all its varied forms on each and every occasion it occurs."[1]

10. We note however that we have some concerns with the form of the current bill.

11. The proposed s.29A states that a Court or judge "may on the court or the judge's own initiative, or on the application of the prosecution" declare the offender to be a serial family violence perpetrator. We are concerned that both the consideration of *and* the making of the declaration are discretionary unless the prosecution makes an application. We are concerned that if the actual consideration of any declaration is made discretionary rather than mandatory, it risks being under-utilised.

12. We also note that victim-survivors have no standing to make an application if the prosecution decides not to make one. Hearing from victim-survivors is essential to properly understanding and assessing the safety risks that an offender poses. Unfortunately, victim-survivors cannot always rely on the prosecution to fully prosecute their views and interests.

13. We therefore recommend that consideration be given to the following options:

    a. If the threshold requirements in s.29(3)(a) and (b)(i), (ii) or (iii) are met, a Court is required to consider whether the making of a declaration is warranted; or
    b. Victim-survivors be given standing to make an application

14. We note that recommendation (a) still allows a judge or court to decide whether or not a declaration is actually warranted.

15. In the proposed s.29A(4), a non-exhaustive list of factors has been provided for the Court to consider in determining whether to declare an offender a serial family violence perpetrator. We note again that the views of victim-survivors are not mentioned. While we do understand that this is a non-exhaustive list, we think it important the Court's attention is directed to the views of the victim-survivor, if they wish to provide input.

16. We therefore recommend that a new s.29A(4)(c) is introduced before the current s.29A(4)(c) which directs the court's attention to the views of the victim-survivor. A revised s.29A(4)(c) and (d) could read

[1] Women's Legal Service Tasmania, (2021) *Submission to the Family Violence Reform Bill Tas*, 3.

"(c) the views of the affected person for whom the conviction specified in section 29A(2) relates;

(d) any other matter that the court or judge considers relevant"

17. Similarly, we suggest that the proposed s.29D (Review of declaration of serial family violence perpetrator) also be amended so that victim-survivors have similar standing as the DPP to make an application for an extension of the declaration. We submit that victim-survivors should also be notified of any reviews and should be entitled to be separately heard on any review application brought by any party.

18. We recommend therefore that s.29D instead say (our changes in italics)

(1) The DPP may make an application to a court (a review application) for a review of a declaration of an offender as a serial family violence perpetrator.
(2) The affected person or persons for whom the conviction specified in section 29A(2) relates, may make an application to the court (a review application) for a review of a declaration of an offender as a serial family violence perpetrator
(3) An offender may make an application to the court (a review application) for a review of a serial family violence declaration on the grounds that exceptional circumstances apply in relation to the offender.
(4) A review application is to be in writing.
(5) A copy of-
    a. a review application under subsection (1) is to be served on the offender and the victim to whom the declaration relates;
    b. a review application under subsection (2) is to be served on the DPP and the offender to whom the application relates; and
    c. a review application under (3) is to be served on the DPP and the affected person or persons to whom the conviction specified in section 29A(1) relates.

19. In relation to the proposed reforms at paragraphs 11 to 18 above, we know that it is not established practice for victim-survivors to be independently heard during criminal proceedings (apart from giving evidence and victim impact statements). However, in our experience speaking to our counsellors, clients and survivor advocates, we know that victim-survivors feel silenced and ignored in criminal proceedings and seek greater agency and choice in how criminal proceedings are run. As previously flagged, the prosecution does not always follow the direction of the victim-survivor. This is rightly so, given a prosecutor owes her own independent duty to act in the public interest.

20. However, this often means that in practice, victim-survivor voices get marginalised, when arguably they should not. This is especially so in cases where the decision relates directly to victim-survivor safety, rather than the broader issue of whether or not someone is to be found guilty. We consider that victim-survivors are best placed to inform the court of the true risk that the perpetrator poses to their safety as many of them will have been

navigating their own personal safety and that of their children for many months and years. Victim-survivors' experience of the justice system matters, not just because the justice system should be capable of delivering justice for all, but also because the system relies upon the participation of the victim-survivor to report the violence they have experienced and participate in the process. Moreover, the victim-survivor is in a unique position when it comes to assessing the offender's risk profile.

21. It therefore follows, that victim-survivors should have a right to bring their own application for a declaration, if the prosecution fails to do so. They should also have a right to be heard if the perpetrator seeks to argue exceptional circumstances. We think this is so, whether or not a victim-survivor has the knowledge, skills or capacity to actually do this in practice. This is another opportunity for the Tasmania Government to demonstrate leadership in advancing the rights of victim-survivors. In addition, we submit that this is also a situation where fully-funded independent legal representation would be beneficial for victim-survivors.

22. We support the amendment of section 13 of the Act to include the fact that an offender is a serial family violence perpetrator as an aggravating factor on sentencing.

23. We also take this opportunity to draw your attention to the current s.13(a)(iii) which already specifies as an aggravating factor the fact that an offender knew, or was reckless as to whether, the affected person was pregnant. RDVSA is always concerned to ensure that the executive's proper and very valid concern for the safety of pregnant women who experience violence does not swing the pendulum too far in recognising the personhood of unborn children. We suggest that further consideration be given to this provision to ensure that women's rights to bodily integrity are fully protected.

Mandated behavioural change program participation

24. RDVSA supports any legislation or policy which encourages or mandates participation in rehabilitation programs which are designed to reduce the likelihood of a person committing family violence. We encourage the Tasmanian Government to introduce mandatory participation in rehabilitation programs in other parts of the criminal justice system (such as a condition of bail). We understand that the Government has consulted with behaviour change providers in relation to this reform and that the Government has also signed onto the National Outcome Standards for Perpetrator Interventions (NOSPI).

25. While we are highly supportive of these programs, particularly with respect to their functionality in keeping the offender in view of the service system and supporting the affected family members in their safety and wellbeing, we do agree with the concerns raised by Engender Equality in their submission and note that there still remains a lack of research regarding the effectiveness of these programs in generating behaviour change on the part of the offender, though this evidence-base is developing. We also agree that there will be a rise in demand as a result of these reforms, and the Government will need

to ensure that Tasmanian based programs are adequately supported and resourced. It is also important that access to any mandated program is universal, and the programs themselves are trauma-informed and culturally accessible.

26. We consider that regular monitoring and review of behaviour change programs that measure outcomes and effectiveness should be conducted in line with research done by ANROWS between 2018 and 2020.[2] We would strongly support the release of any data relating to any reviews and would also encourage the Tasmanian government to consider adopting similar practice standards to those in NSW, [3] in addition to the NOPSI. For example, it should be a mandated requirement that information be shared by behavioural change programs with police, corrective services, child protection, health and victim-survivor services, and that such behavioural change programs work in a fully integrated way with each of these other agencies with a focus on victim-survivor safety and offender accountability.

27. We note that in the absence of dedicated programs in Tasmania, Tasmania offenders could participate in interstate run programs with the rise of virtual meeting technology. We understand that this may already happening, with the EQUIPS program being run from NSW.

28. Finally, we are also concerned to ensure that participation in a behavioural change program does not result in a reduction in sentencing. In our view, the whole premise of behavioural change programs is that the offender learns to take full responsibility for their behaviour (a crucial element to reducing recidivism). If participation in the programs means that sentences are reduced, then arguably this undermines that principle. It could also encourage superficial participation in the program.

Miscellaneous family and sexual violence reform

Expansion of s.7 of the definition of "family violence" in the *Family Violence Act 2004*

29. We welcome the expansion of the definition of "family violence" to include various forms of sexual violence (including rape), penetrative sexual abuse of a child, young person or a person with a mental impairment.

[2] Australia's National Research Organisation for Women's Safety, (2021) *Interventions for perpetrators of domestic, family and sexual violence in Australia* (ANROWS Insights, 02/2021) https://www.anrows.org.au/publication/interventions-for-perpetrators-of-domestic-family-and-sexual-violence-in-australia/

[3] NSW Department of Justice, (2017) *Practice Standards for Men's Domestic Violence Behaviour Change Programs* http://www.crimeprevention.nsw.gov.au/domesticviolence/PublishingImages/NSW%20Department%20of%20Justice%20-%20Men%27s%20Behaviour%20Change%20Programs%20-%20Practice%20Standards.pdf

30. We endorse the recommendations of Engender Equality in relation to consideration of further clauses to the definition including:
    a. Recognising that witnessing family violence and abuse carries the same risk of harm to children's mental health and learning as being abused directly; and
    b. Animal abuse.

31. We endorse the recommendations of Women's Legal Service Tasmania in relation to consideration of a further clause to the definition to cover reproductive coercion in all its forms, including stealthing (the non-consensual removal of a condom during sex). We also note and agree with their concerns regarding the unintentional hierarchy that might be created by the insertions in terms of privileging indictable violations as more serious than financial and emotional abuse where coercive control is exercised.

32. We note in particular, that s.7 does not reference any conduct committed by a person, directly or indirectly, against that person's children. Nor does it cover violence and abuse in domestic, non-familial relationships.

33. In addition to the reforms flagged above, we would also welcome consideration of the following amendments to the definition (our changes in italics)

family violence means –

(a) any of the following types of conduct committed by a person, directly or indirectly, against *another person with whom the first person is in a domestic relationship* :

(i) assault, including sexual assault;
(ii) threats, coercion, intimidation or verbal abuse;
(iii) abduction;
(iv) stalking and bullying within the meaning of section 192 of the Criminal Code ;
(v) attempting or threatening to commit conduct referred to in subparagraph (i) , (ii) , (iii) or (iv) ; or

(b) any of the following:

(i) economic abuse;
(ii) emotional abuse or intimidation
(ii) behaviour by a person that in any other way controls or dominates the affected person and causes the affected person to feel fear of harm of any kind, including harm to themselves, another person, an animal, or to property;
(iv) behaviour by a person that causes a child to hear or witness, or otherwise be exposed to the effects of, or behaviour referred to in this section;
(v) contravening an external family violence order, an interim FVO, an FVO or a PFVO; or

(c) any damage caused by a person, directly or indirectly, to any property –
(i) jointly owned by that person and his or her spouse or partner; or
(ii) owned by that person's spouse or partner; or

(iii) owned by an affected family member.

34. In relation to the proposed addition in paragraph 33 above, we suggest that the meaning of domestic relationship in the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) be adopted, in addition to the special provisions for carers and their dependants as set out in s5A of that particular Act.

35. We agree with Women's Legal Service Tasmania that the revision of the family violence definition and framework also provides the Government with an opportunity to introduce non-fatal strangulation as a stand-alone offence. The introduction of this specific offence in other Australian jurisdictions has resulted in an increase in charges and prosecutions for this form of life-threatening abuse, and has had a substantiative educational impact. For example in NSW, in the 12 months since their introduction in 2018, NSW Police laid approximately 899 charges under non-fatal strangulation laws.[4]

36. Finally, it is absolutely imperative that laws criminalising family violence adequately recognise and capture the seriousness of coercive control and that legislation avoids unintentionally creating a hierarchy of harm (as flagged above). We would suggest that given the multiple reforms proposed, a review of the wording and structure of the definition of family violence should be considered, to adequately capture all of the concerns raised by RDVSA and our colleagues in the sector.

Removal of s.54 *Criminal Code Act 1924*

37. We warmly welcome the removal of this provision and agree that it does not reflect community attitudes about what constitutes family violence.

Insertion of .194K prohibition of identifying information for persistent family violence offenders

38. We welcome the extension of the s.194K prohibition on publishing identifying information relating to family violence offences. However, we note that the prohibition only relates to sexual offences. We suggest that it should be further expanded to include all persistent family violence offences so long as the consent exception already present in the legislation covers the additional offences.

Repeal of s.39A of the Family Violence Act 2003

39. We understand from the Government that the repeal of this provision is intended to be an administrative formality due to the finalisation of the report referred to in s.39A. However, we understand from our Tasmanian colleagues in the sector that the final report has not been made public and that the report that was tabled in parliament was

[4] Lucy Cormack, "*Nearly 1000 strangulation charges laid within first 12 months of new laws",* (15 December 2019) Sydney Morning Herald, https://www.smh.com.au/national/nsw/nearly-1000-strangulation-charges-laid-within-first-12-months-of-new-laws-20191205-p53h59.html

only an interim report. Further, we are concerned about the general message this is sending that the Government does not intend on conducting any further reviews into the effectiveness of electronic monitoring. We note that the repeal of this section is not supported by our Tasmanian colleagues in the sector. Therefore, we strongly urge the Tasmanian Government to consider a legislative requirement to regularly review the effectiveness of electronic monitoring at least every 2 years, and make the results of those reviews public.

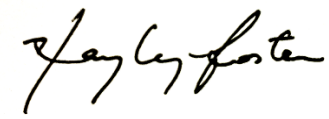
Final comments

40. While we warmly welcome the Tasmanian Government's reforms to family violence laws, we must also emphasise the importance of ensuring that every actor in the system (whether it be police, prosecutors, the judiciary or frontline workers) have the appropriate skills, experience and attributes to properly identify and respond to the whole spectrum of violent behaviours. Proper investment into recruitment, training and professional development is crucial to ensuring that survivors aren't falling through the cracks and that the system is responding appropriately. Furthermore, systematic monitoring and review processes are an integral part of an ever-changing system to ensure that the Government remains publicly accountable for its performance.

41. Finally, any substantial changes to the law in relation to family violence must always be accompanied by a strong investment in community wide public awareness campaigns to ensure the whole community is fully educated on the changes.

42. Thank you again for the opportunity to make a submission. If you have any questions or would like to discuss further, please do not hesitate to contact myself or Laura Henschke on 02 8585 0333 or legal@rape-dvservices.org.au.

Yours faithfully,



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