

13 August 2019

Mr Tom Samuels
Legal Policy Officer
Department of Justice
GPO Box F317
PERTH WA 6841

By email: tom.samuels@justice.wa.gov.au

Dear Mr Samuels

FAMILY VIOLENCE LEGISLATION REFORM BILL – CONSULTATION DRAFT

I refer to the letter to the Law Society from Katalin Kraszlan dated 31 July 2019 seeking comments on the proposed amendments to *The Criminal Code* under the *Family Violence Legislation Reform Bill (Bill)*.

Thank you for providing the Law Society with the opportunity to comment and taking into account the meeting dates for our committees and Council.

The Law Society welcomes the proposed Bill and notes the importance of introducing Family Violence provisions into the *Criminal Code*.

Our preliminary submission is provided below and I note the draft Bill provided to the Law Society is subject to final drafting instructions that are currently with Parliamentary Counsel. The initial comments relate to the Bill however the amendments proposed will have considerable impact to the *Criminal Code*, offenders, victims and the Courts. As such, the Law Society notes that its position is not final and requests from the Department further consultation on the proposed changes once the final draft Bill has been settled.

Strangulation and Suffocation

The Law Society strongly supports the introduction of a strangulation and suffocation provision as individuals are currently charged with aggravated common assault which does not adequately capture the level of criminality involved. However it maintains concern surrounding the statutory provisions under section 304 of *The Criminal Code*. Further, there is some division and apprehension on whether consent should or should not be an element of the offence.

Persistent Family Violence

The Law Society of Western Australia does not support the proposed provision of persistent family violence. Its reluctance is due to the practicality of the draft clause and notes there are adequate provisions which already exist. The Law Society raises concerns regarding the low threshold, proof and evidential point of view that will need to be established under clause 321A of the *Criminal Code*.

New Penalties for Offences Committed in Circumstances of Aggravation

The Law Society generally supports the proposed penalties for offences committed in circumstances of aggravation and does not note any concerns with the draft provision.

Children excluded from 'family relationship' aggravated penalties

The Law Society strongly supports the proposal that children be excluded from any 'family relationship' aggravated penalties.

Sentencing Act 1995: serial family violence offender declaration

The Law Society has concerns regarding the proposed changes to the Sentencing Act 1995 and the introduction of a family violence offender declaration. It has a real concern on the effect the declaration will have on vulnerable offenders such as those with mental health illnesses, and transient Aboriginal and Torres Strait Islanders.

In particular, the concerns are that:

- The threshold of a second offence is too low.
- Vulnerable offenders will be remanded-in-custody for a period of 12 weeks or more for the purpose of the preparation of the required psychological report (if for example, the offender misses the first appointment).
- The potential unexpected discriminatory impact of the GPS requirements considerations could have on Aboriginal people in remote areas. For example, if it becomes the norm that these conditions be imposed, and they cannot be accommodated for in remote areas or for individuals who do not have a fixed residence, then in turn Aboriginal people could find themselves at further disadvantage in securing community based sentencing dispositions and/or parole.
- The presumption against bail will likely increase the rate of Aboriginal people in custody and notes that the presumption is unnecessary as criminal records are already before a Court when bail is considered, and whether an accused is a recidivist offender of family violence is already a factor for consideration in the bail application. It may also have an unintended effect on the reporting of family violence by Aboriginal women, who rarely want their partners incarcerated.

If you would like to discuss any of the above further, please do not hesitate to contact Mary Woodford, General Manager Advocacy at mwoodford@lawsocietywa.asn.au or on (08) 9324 8646.

Yours sincerely



Rebecca Lee

Vice President and Treasurer