

24 September 2015

Ms Leanne Donaldson MP
Chair Communities, Disability Services and Domestic and Family Violence Prevention
Committee
Parliament House
George Street
BRISBANE QLD 4000

Email: [cgsdfvpc@parliament.qld.gov.au](mailto:cdsdfvpc@parliament.qld.gov.au)

Your ref: 11.1.05

Dear Ms Donaldson

Criminal Law (Domestic Violence) Amendment Bill 2015

On behalf of Queensland Law Society I thank you for the opportunity to comment on this vital legislation. The Society supports the Government's prompt actions in addressing the tragedy of domestic violence in Queensland.

I note that given the short time frame for the making of submissions, the Society has been unable to consult with its committees in preparing this response. However, the Society recognises the urgency of the situation and understands that the short timeframes in this case were unavoidable.

In relation to the Bill, the society notes the following:

1. Part 4 – amendment of *Evidence Act 1977*

The Society supports affording the victims and alleged victims of domestic violence, the status of special witness under the *Evidence Act*. However, member feedback over several years would indicate that many courthouses – particularly those in regional areas – lack the facilities to provide all of the options available to a special witness when giving evidence. It is the Society's view that upgrades to courthouses without special witness facilities should be fast-tracked in order to accommodate the provisions of Part 5 of the Bill (NB: the Society does *not* suggest that the commencement of the Bill should be delayed until those upgrades are made; the comment is made to ensure that the Government is alive to this issue).

2. Part 6 – amendment of *Penalties and Sentencing Act 1992*

The Society reiterates comments made at the briefing on this Bill on 23 September 2015, to the effect that the retrospective nature of clause 18 of this part raises some concerns.

Allowing the court to retrospectively classify prior convictions as domestic violence offences is fraught with danger in that the context in which the earlier offence occurred may not have been explored at the time of the conviction. That is, whether or not the previous offence occurred within a domestic relationship will not have been explored if that issue is not material at the time of the earlier offence; this is especially likely in convictions following the entering of a guilty plea rather than a trial.

Given the mandatory nature of the provisions in the proposed section 12A(6), the Society suggests that consideration be given to amending the provision to ensure that it can only apply to convictions which occur following the commencement of the amendments. Alternatively, if the amendments are to apply to offences which occurred prior to the commencement of same, the Society suggests a more robust process around the prosecutions application – including things which the court must take into account and mandating the material which the prosecution must provide – should be built into the amendments.

The Society applauds the Government's commitment to rapid action on the domestic violence and has not sought an extension of time to comment on this Bill so as not to delay its timely passage. However, the issues raised above are of concern and I note that should you wish to discuss them further the Society will makes its representatives available. This can be arranged by contacting me or Shane Budden, the Society's Senior Policy Advisor [REDACTED]

Yours faithfully

[REDACTED]
Michael Fitzgerald
President