



Submission to the Communities, Disability Services and Domestic and Family Violence Prevention Committee

Centacare Brisbane welcomes the Queensland Government's commitment to the acceptance and implementation of all the recommendations of the Special Taskforce on Domestic and Family Violence (the Taskforce), *Not Now, Not Ever: Putting an End to Domestic Violence in Queensland (Taskforce Report)*. The Taskforce Report recognises that the majority of people who are victims of domestic and family violence are women¹ (and their children), and recommends that a response model should be based on understanding the gendered nature of domestic and family violence and the insidious effects of its key strategies of power and control. This understanding informs Centacare's service models.

We also welcome and support the legislative changes that the Queensland Government is amending in both the Criminal Code and the Coroners Act in order to achieve the government's objectives of:

1. increased accountability of perpetrators of domestic and family violence; and
2. increased protection for victims of domestic and family violence.

Centacare Brisbane has provided social services on behalf of the Catholic Archdiocese of Brisbane across the geographic region of South East Queensland for nearly 60 years. We are community based, employing in excess of 3,000 staff with a primary objective of assisting vulnerable and disadvantaged people. We have four service directorates, all of which deal with various aspects of domestic and family violence in their work:

- Centacare Community Services – Disability and Aged Care services
- Family and Relationship Services – counselling, family therapy, child counselling, family mediation, domestic and family violence responses and prevention, relationship education, community development programs and various parenting, individual and children's group programs including, Moving On for Women who have experienced Domestic Violence
- Pastoral Ministries – a diverse range of services including psychiatric pastoral care and supports for prisoners
- ChildCare - providing long day care, kindergartens and outside school hours care for 23,000 children

Centacare Family and Relationship Services, in particular, has 20 years experience and expertise in delivering domestic and family violence response and prevention services across the region including the large Sunshine Coast Regional Program – SCOPE. Our domestic and family violence services include large court support programs for victims and perpetrators, counselling, domestic and family violence responses, women's groups, perpetrator groups, safety upgrades program, sexual abuse service as well as a range of schools based healthy relationship programs. We also provide Court Support at the Beenleigh Magistrates Court, as well as Men's Information and Referral in five Sunshine Coast Courts as well as the Southport and Coolangatta Courts, and a Gold Coast Perpetrator Intervention Program. We are currently involved with the Southport Domestic Violence Court Trial through the delivery of additional Perpetrator Intervention Program for the Court.

¹ Not Now, Not Ever: Putting an End to Domestic Violence in Queensland. p.7

Centacare Brisbane would like to provide comment on the *Criminal Law (Domestic Violence) Amendment Act 2015* with particular reference to Part 6, *Amendment of Penalties and Sentences Act 1992* Clause 18 *Convictions for domestic violence offences*.

1. **Clause 17: New 'domestic violence offence'**

Centacare Brisbane supports the insertion of a new offence 'domestic violence offence' in the Criminal Code. We concur with the Taskforce Report statement and many other studies, that 'acts of domestic and family violence are also criminal acts'², because it;

- a. puts the focus on the perpetrator instead of the victim
- b. holds perpetrators of violence accountable for their conduct
- c. indicates that appropriate consequences will apply as for similar acts of violence not committed within a domestic and family violence context
- d. supports important messages about the critical need for societal and attitudinal change

Issue - Clause 17

Dedicated Offence

We note that in the amendment, the new offence appears to be placed into the legislation as a 'dedicated offence' rather than 'in the context of domestic and family violence'³ as discussed by the Task Force Report and as in the Bill's Explanatory Note (p.3)⁴. Along with the Taskforce Report Centacare Brisbane prefers this notation. The Taskforce Report took the view that the issue was to do with the gaps that were found in a number of police and court processes (p.15) that impacted negatively on 'the effective use of existing Criminal Code provisions', rather the provisions themselves. Failure to adequately prosecute a domestic violence case due to the many problems caused by the evidentiary and procedural complexities of such cases (some of which are discussed by Holder, 2001 p.26⁵ and the Taskforce Report⁶, can compromise the safety of victims and children if a failed prosecution results in a violent and vengeful perpetrator being free to continue the abuse.

Recommendation 1

That the notation 'in the context of domestic and family violence' is appropriate and should heighten concern about risk, rather than the current diminishing - and that attention is given to ensuring that existing Criminal Code provisions, are followed to ensure that cases are prosecuted adequately. This may require some review of the existing provisions given the high levels of risk of harm inherent in domestic and family violence cases.

Clause 18 – 12A Convictions for domestic violence offences

Clause 18 allows for the recording of an offence as a domestic violence offence (under certain conditions). We support this in general as it;

- a) aligns domestic violence offences with acts of criminal violence
- b) sends a strong message of social disapprobation from society to offenders and supports victims
- c) makes domestic violence offences visible and allows criminal history records to be part of future decision making and sentencing

Issues - Clause 18

Escalation of harm: One of the key reasons many victims commonly fail to report, under-report or withdraw complaints is fear caused by threats, intimidation, previous experience and actual harm in the relationship. This is recognised in decades of studies and in the danger female victims face at the point of departure from an abusive relationship.

² Not Now, Not Ever: Putting an End to Domestic Violence in Queensland. p.15

³ Not Now, Not Ever: Putting an End to Domestic Violence in Queensland. p.15

⁴ CriminalLawwDVAmdb15E

⁵ Australian Domestic & Family Violence Clearing House Issues Paper 3 2001, Domestic and Family Violence: Criminal Justice Interventions, Robyn Holder

⁶ Not Now, Not Ever: Putting an End to Domestic Violence in Queensland. p.15

In our own domestic and family violence services, immediately following the recent homicides and attacks in Sth East Queensland in early September 2015, our clinical staff reported an increase in appointments being cancelled, an increase in women withdrawing domestic violence order applications and an increase in fearfulness being expressed by women accessing the service. Some women told us (and also reported to us by other DV services) that they had been threatened with e.g. 'the same thing will happen to you...' Conversely, and hearteningly, when the additional Qld Government funding and the fast tracking of legislation was announced, staff reported a spike in the number of domestic violence order applications and in the number of calls from women seeking support,

Recommendation 2

That police and court processes are highly cognisant of the escalated dangers to victims and their children at the time of separation and in the period immediately after. This would include serious attention to what victims are saying, to the fears they express, along with appropriate risk assessment and safety procedures, including non-bail provisions for alleged perpetrators.

There are several further issues relevant to the effects of Clauses 17-18

1. **Standard of Proof** - The Taskforce Report raised the issue of the standard of proof⁷ shifting from the 'balance of probabilities' to 'beyond a reasonable doubt'. There is much that could be said on this but a concern Centacare Brisbane has, is that there is a possibility our services could be used to build or strengthen a case that comes before the court. This could arise out of genuine fear or a desire to manipulate evidence.

We provide services both under Queensland Government domestic and family violence funding as well as with Australian Government Family Law Services funding for a range of post-separation services. Our records are subject to subpoena, including those covered by inadmissibility provisions under the Family Law Act 1975⁸ where risk of harm outweighs confidentiality. There is a possibility that we could experience an increase in subpoena requests, heightened by the dangerous interface between domestic violence occurrences and post separation parental arrangements. We notice increases in subpoena requests when there are changes to the Family Law Act whilst the legal sector is adjusting to the changes. Our records could be used to support false allegations (e.g. to strengthen evidence, the confusion about the primary victim, the making of retaliatory arrests).

2. **Primary victim and reciprocal DVOs** - these issues are addressed comprehensively in the Taskforce Report⁹ and elsewhere e.g.¹⁰ with evidence indicating increases in these unintended consequences of criminalising domestic and family violence occurrences under a pro-arrest model. This model is consistent with recording a domestic violence notation on the criminal history.

Centacare Brisbane supports the model contained in the amendments as it has primary goals of victim safety, perpetrator accountability and reducing recidivism. However, our experience, particularly in our Family Dispute Resolution Services has been that there are very high levels of reciprocal Domestic

⁷ Not Now, Not Ever: Putting an End to Domestic Violence in Queensland. p.257

⁸ Family Law Act 1975 (ss 10D/E and 10J/H)

⁹ Not Now, Not Ever: Putting an End to Domestic Violence in Queensland. p.301

¹⁰ Arresting policies: implications of pro and mandatory arrest policies for victims of domestic and family violence, Dr Rochelle Braaf, Australian Domestic & Family Violence Clearinghouse

Violence Orders (approx. 80% of cases). This impacts on our service and staff capacity due to additional assessment, case management, supervisory and administrative requirements.

3. **Criminalisation** – there is a potential for ‘natural justice’ or due process to be compromised in situations where fear or ill-intent affect evidence gathering and reporting. Further criminalisation may lead to under reporting due either (a) to fear of retribution or (b) reluctance of victims to risk the imprisonment of a partner¹¹ when she may just want the abuse to stop.

4. **Training** - The Taskforce Report makes a number of strong recommendations in Chapter 8¹² for significant training and professional development for police, judicial officers and lawyers. Appropriate training is fundamental to successful and safe policing and court processes. Reported incidents in Queensland have increased by 14% from 2012 to 2014¹³, a statistic which is supported by our service experience. The amendments resulting in a shift from largely civil responses to criminal responses, coupled with an increase in incidents being reported will place greater pressure on all police, legal and judicial agencies to be properly trained.

Magistrates report mixed views about their views of training needed and received to make informed decisions¹⁴ but generally believe they are adequately trained to deal with the dynamics and nuances of domestic and family violence cases that come before them. There are counterviews that suggest this is not so¹⁵, and similar issues which also emerged during the Taskforce review¹⁶ hence a well developed professional development framework is necessary to ensure adequate responses in the changed legislative environment. The specialist domestic and family violence sector is well placed to provide training support but it should be recognised that there will be increased demands both by victims and for training resources on this sector.

Recommendation 3

That resourcing of requisite, adequate and ongoing training systems and frameworks are put into place promptly upon the implementation of these amendments to ensure police, judicial officers and the specialist domestic and family violence sector are well prepared for the changed domestic and family violence reporting and legislative environment, including the issues noted in points 1 - 4 above.

Centacare Brisbane thanks the Committee for the opportunity to make a submission.

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¹¹ Not Now, Not Ever: Putting an End to Domestic Violence in Queensland. p.275

¹² Not Now, Not Ever: Putting an End to Domestic Violence in Queensland. p.249 ff

¹³ Not Now, Not Ever: Putting an End to Domestic Violence in Queensland. p.1

¹⁴ Judicial education for domestic and family violence: State of knowledge paper. ANROWS pp.29-31

¹⁵ Issues relating to Queensland Magistrates Understandings of Domestic Violence Conference Paper 17-19 June 2003, Field and Carpenter, School of Justice Studies QUT, p.6

¹⁶ Not Now, Not Ever: Putting an End to Domestic Violence in Queensland. p.268