



Honorary President: **Rohan Webb** General Secretary: **Ros McLennan** Assistant General Secretary: **Michael Clifford**

23 August 2017

Ms. Emily Booth,
Acting Committee Secretary
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Ms. Booth

**Re: Penalties and Sentences (Drug and Alcohol Treatment Orders) and
Other Legislation Amendment Bill 2017**

This brief submission is made in support of that aspect of the abovenamed Bill that is concerned with amendments to the *Evidence Act 1977*.

The Queensland union movement remains a staunch advocate for the elimination of domestic and family violence (DFV). Accordingly, the Queensland Council of Unions (QCU) supported the amendments contained in the *Domestic and Family Violence Protection and Other Legislation Amendment Bill 2016*. The QCU provided a lengthy submission in relation to the 2016 Bill that we would rely upon for this submission to support amendments to the *Evidence Act 1977*. A copy of that 2016 submission is attached for the information of the Legal Affairs and Community Safety Committee.

The proposed amendment extends the meaning of protected witness and would prevent a self-represented accused perpetrator from directly cross examining a protected witness, in circumstances of allegations of choking, suffocation or strangulation in a domestic setting.

Providing protection to a vulnerable witness is essential to further fight against DFV in Queensland.

Yours sincerely

Ros McLennan
General Secretary
Queensland Council of Unions

Introduction

The Queensland union movement remains a staunch advocate for the elimination of domestic and family violence (DFV). Accordingly, the Queensland Council of Unions welcomes the amendments contained in the *Domestic and Family Violence Protection and Other Legislation Amendment Bill 2016* (the Bill) and the opportunity to provide this submission.

The union movement has a legitimate role to play in relation to combatting DFV for several reasons. DFV has become an industrial issue over recent years by virtue of a recognition of the need to protect survivors of DFV and ensure their ongoing financial security. Secondly, it is union members who will be professionally required to implement policy to combat DFV. In addition, it is recognised that DFV is largely a gendered issue and the union movement has been at the forefront of promoting respectful treatment of women for decades. The union movement has been advocating the community taking DFV seriously and ensuring that it is everybody's concern, as is being recognised by the introduction of this Bill.

The union movement welcomed the release of *Not Now Not Ever: Putting an End to Domestic and Family Violence* (the Report) in February 2015. This Taskforce Report was a seminal moment in the ongoing campaign against DFV. The Report recommendations included three key themes: increasing awareness of DFV; preventing DFV through building respectful relationships, and; supporting victims of DFV.

On 13 May 2015, the QCU made specific representations to the Hon Shannon Fentiman the Minister for Communities, Women and Youth, Minister for Child Safety and Minister for the Prevention of Domestic and Family Violence in light of the Report. The submission of the QCU set out a range of key issues, a number of which are worth repeating for the purpose of this submission.

QCU Submission to Minister Fentiman

The following passages include some of the relevant aspects of the QCU submission to Minister Fentiman.

1. Scope of the domestic violence problem

It's clear that there is a domestic violence crisis in our state and our country.

In Queensland, reported occurrences of domestic and family violence have increased:

- In 2010-2011 there were 52,889 occurrences, a 7.0% increase on the previous year;
- In 2013-2014 there were 66,016 occurrences, a 2.7% increase on the previous year;

- This means, on average, 181 incidents of domestic and family violence were reported to police every day in Queensland in 2013-2014.

[Source: Not Now, Not Ever, Putting an End to Domestic and Family Violence in Queensland, Qld Govt, 2015.]

During the period 2006 –2012 there was an average of 23 deaths a year in Queensland linked to domestic and family violence. This figure equalled 44% of the state's homicides for that period.

[Source: stats on homicides in QLD from DV Connect online <http://www.dvconnect.org/education-resources/public-awareness-campaigns/>]

We welcome a new approach to addressing domestic violence in Queensland and look forward to seeing outcomes from a state government. The Newman Government merely paid lip service to this critical issue. In less than three years, the Newman Liberal National Party (LNP) Government: voted down legislation in Parliament which aimed to increase penalties for offenders; cut funding for essential programs to assist victims such as Legal Aid, and; ignored inclusion of rights and protections for workers experiencing domestic violence in Award Modernisation discussions.

Community support services, such as DFV services as a first point of call and referred services such as accessible Legal Aid, are essential and need further state government funding to do the job which they are there to do. In addition, the most practical support for people experiencing domestic violence is support in the workplace: often their only safe haven and only opportunity for the financial independence to leave. It is hard to pick up and leave with your children and even harder if you can get no leave and are under threat of losing your job.

2. Why it's union business

Domestic violence can impact on the workplace and the employment relationship through increased absenteeism due to injury, sickness, stress, court attendance and other factors. It can limit a worker's ability to perform effectively, which may result in performance management issues, terminations and forced resignations.

The following real-life scenarios depict the effects domestic violence can have on a worker:

Anne

Anne was employed at a regional hotel for twelve months as a casual food and beverage attendant. The employer had, via the organisation's counsellor (who had spoken with Anne), been made aware that Anne was living with an abusive partner and was subject to domestic violence. The employer offered Anne a transfer to another location for work, on the condition that she left her abusive partner. The employer advised Anne that should she fail to provide a written statement advising that she would leave her partner, the transfer offer would be withdrawn.

Jane

Jane was a casual employee who had taken out a Domestic Violence Order against her ex-husband and had been working regular and systematic hours for eight months in the retail sector. On Christmas Eve, her ex-husband came into work and started yelling at her. After the incident, her employer advised her to take three weeks of unpaid leave. When Jane attempted to return to work, her employer advised that he had terminated her employment, stating that he owed the clients of the business a duty of care.

[Note: the above scenarios are from the Queensland Working Women's Service's paper, Domestic violence discrimination in the workplace: is statutory protection necessary? presented at Our Work, Our Lives Conference 2010 www.qwws.org.au]

The workplace may be the only place a survivor of domestic violence can spend a significant proportion of time away from the perpetrator. The workplace is a place in which those experiencing domestic violence can gain support, find out about family violence support services, obtain financial security and plot a path free from domestic violence.

As a community, we should care about and assist those who are marginalised and live in fear.

The union movement in Australia recognises that domestic violence is also an industrial issue. The domestic violence clause will help bring about cultural and attitude change. There are currently no statutory provisions assisting and protecting survivors of domestic violence, causing them to be vulnerable in the workplace.

This is about creating a workplace where people can disclose that they are experiencing domestic violence without fear of discrimination. It is also about allowing people who have experienced domestic violence to attend to issues related to the violence without exhausting their existing leave.

Domestic violence is union business because:

- 58% of working women rely on the minimum wage;
- 55% of all casual workers are women;
- women are 50 % of workforce;
- 60% of households have both parents in paid work;
- almost half of union members in Australia are now female.

3. The economic imperative - and why employers should care

65% of people who experience domestic violence are in the workforce (Broderick, 2011). It is important for a workplace to ensure the impacts (including workplace health and safety, productivity and attendance of staff) of domestic violence are minimised, in order to reduce disruption to the workplace. This can only happen in workplaces where people who are experiencing domestic violence are comfortable disclosing this information, and are then able to work collaboratively with the workplace to reduce the impacts.

Now more than ever, employers have social responsibilities. Providing a supportive workplace for employees who experience domestic violence is one way to meet these responsibilities and set an example for future generations:

"The effects of domestic violence are all-pervasive. Women suffer silently and business continues losing money, unaware. Business should address it not just because of the bottom line, but because it will take all sectors of society to eliminate this blight on our nation" (Broderick 2011).

Recently, the Productivity Commission noted the yearly cost of domestic violence to be \$13.6 billion – and that the cost of hiring and training a new worker far outweighed the costs of providing DV leave and supports.

Business is becoming increasingly aware of the importance of supporting mentally healthy workplaces to reduce absenteeism, 'presentism' and productivity. DV safeguards and supports are an obvious part of investment in employee engagement, productivity, retention and commitment.

4. Societal effects of domestic violence

The significance of the intergenerational impacts of domestic violence was explored, including the following points:

- Children who witness violence against their mothers, and who are abused themselves, are challenged in establishing relationships that are equal and loving, in the absence of healthy modelling as to how this should be done.
- Children raised in homes where there is domestic violence are often the subject of violence themselves. In some cases, this may play out in their interactions with pets or other children with less power than themselves.
- Pets are often used as a psychological weapon against women and children in the household by the perpetrator. This sometimes interferes with the ability of children to form relationships with their animals – or creates mental anguish when the pets are hurt or killed.
- Children who are raised in violent homes may develop mental health issues as a result of the violence they have witnessed and experienced. These mental health issues may prevent the child from reaching their full potential in education, work, relationships, parenting – and indeed, in life. These survivors may struggle with depression or anxiety into adulthood. Other impacts such as suicide, drug and alcohol addiction also present in higher rates amongst this group.
- This in turn places pressure on the education system, as teachers and school staff pick up the pieces for many children traumatised by violence at home. Community service and child safety professionals, medical staff, professional staff in schools such as counsellors, all contribute to supporting children with too little in resources and support.

5. Harnessing the national momentum for change

The prominence of Rosie Batty as a past Australian of the Year is indicative of the momentum for change at this time.

In addition, the Report was handed over to the Queensland Premier Anastacia Palaszczuk on 28 February 2015 by the Honourable Quentin Bryce AD CVO, chair of the Special Taskforce on Domestic and Family Violence. The report contained 140 recommendations. We share the concerns raised by the domestic violence taskforce headed by former Governor-General Dame Quentin Bryce and support the 140 recommendations.

The Palaszczuk Government should be commended for its \$200 million commitment announced in the 2015-16 Budget to addressing domestic and family violence since accepting all 140 recommendations of the Report.

The Prime Minister's national review also presents an opportunity for advancement on this issue.

6. Community sector support and funding

The following are recommendations regarding funding and regulation of community sector initiatives and/or organisations for which the Queensland Government plays a key role.

Policy and standards set within the Queensland public sector by the Palaszczuk Labor government will also inform the standards for the private sector and community at large to follow.

These recommendations may be implemented, in consultation with key stakeholder organisations, unions and community groups.

- **Queensland Police Service (QPS)**
Dedicated and trained Domestic Violence Liaison Officers (DVLO) at police stations (both metropolitan and regional) as part of the police force. These officers would be fully trained in the TAFE Certificate IV qualification - or equivalent from an RTO approved to deliver the course. (NSW has dedicated DVLOs at all police stations and a process of rolling them out to all police stations in the future, starting with those in metro and regional locations with the highest rate of reported DFV incidents).
- **Community sector**
Increased funding for the community sector, with funding model and priorities established in consultation with the sector in the areas of:
 - (i) **Domestic Violence support services**
As the first point of contact for women who find the courage to leave, which have overall initial support and referral functions;
 - (ii) **Refuges**
These would be either dedicated to, or with separate areas dedicated to, women experiencing DV and their children in order to circumvent cases where refuges don't accept children (often as a function of the fact they house women from all circumstances and the conditions are not always sufficiently safe for children). This can result in children and mothers being separated, mothers going back to perpetrators so children have physical refuge/leaving children with relatives in places known to the perpetrator/other less than ideal outcomes for sustainable exit from DV situation.
 - (iii) **Legal aid**
This is increased funding for dedicated specialist women's lawyers to assist women in a DV situation in the immediate term and longer term, with the typical processes following it including custody and accommodation entitlements.
 - (iv) **Other organisations, such as RizeUp, which have developed and worked for effective outcomes for DV survivors, at a time when government pulled funding from the community sector so they could not adequately meet the need for services. We now have the opportunity to change that.**

7. Legislative change

The Queensland government now has the power to make real change on behalf of people, statistically who are overwhelmingly women, experiencing domestic violence at a state level - and lobby for change where it will make a difference at a federal level.

Some such mechanisms may include:

- **Strengthening penalties for offenders**
- **Removing the income threshold barrier to legal aid, which also prevents women from receiving it in a DV situation, with the sufficient documentation to qualify (eg an AVO from police). Note that this is essentially tied to the Industrial Relations provisions for women in a DV situation as:**

- (i) When in a DV situation a woman needs financial independence to leave the situation. The lack of financial independence is the proven factor as to why women return.
 - (ii) When leaving an established home, there are essential expenses to meet and it may be impossible for a woman to meet both these and the expenses attached to legal assistance. It is a fact that if the woman is not working she would meet the income threshold but the ideal situation is that the woman retains her job, or career, accesses the DV rights and provisions to make that possible, and accesses legal aid free of charge to assist her in the transition to freedom from the situation.
- Lobbying Federal Government to change Family Law Act to add more weight to the safety of the child vs the 'right of the child to know the father'. This has been demonstrated as an unacceptable risk versus balance approach. For example in the case of Luke Batty and other children being killed by parents previously established as perpetrators of DV by police. The suggestion is that the weighting of each is particularly relevant to a DV situation where there is a history of violence, substance abuse and or threats to safety of any person in the household; and where in these cases history has shown itself to repeat sometimes in detrimental circumstances for both the partner and/or children of the perpetrator with 80 – 100 women dying at the hands of their partner in Australia each year (statistics from DV Connect).
 - Expedite the process of mutual recognition of DV Orders across state borders.

A specialised domestic violence court and a new criminal offence of non-lethal strangulation are among the 140 recommendations handed down.

A significant aspect of the 2015 submission to Minister Fentiman was the existing industrial relations legislation and the need for further amendment to recognise the industrial aspects of DFV. Coincidentally, the Hon Minister Grace, Minister for Employment and Industrial Relations Minister for Racing and Minister for Multicultural Affairs has introduced a Bill (*Industrial Relations Bill 2016*) into the Queensland Parliament that goes some way to addressing those industrial matters raised by the QCU and we will take the opportunity to respond to the *Industrial Relations Bill 2016* in due course. We particularly support the domestic violence leave recommendations made in the Report and urge that these are incorporated into legislation as soon as possible.

The Bill

The policy responses advocated by the “Not Now Not Ever” Report included several key themes. Primary amongst those themes is the necessity of the legal system to ensure that perpetrators are held to account for their actions. Closely linked to holding perpetrators accountable is the response from courts and the police. The Report found that the response of legal the system was not always as good as it could be and to ensure the safety of women and children in particular. The Report calls for empathetic and timely responses that focus on victim safety.

The policy objectives announced in the Bill appears to be largely consistent with the policy responses advocated by the Report. To that extent the QCU welcomes the Bill and its contents. It is said of the Bill that it is intended to “provide victims of domestic and family violence with access to earlier and

more tailored protection". Clause 7, in particular, deals with tailoring conditions in DVOs by enabling a court to impose the conditions necessary for the protection of the aggrieved. This aspect of the Bill appears to be entirely consistent with a key recommendation of the Report. A range of measures, such as no contact, ouster and return provisions contained in clause 26 also give effect to this important policy objective.

As previously stated the QCU submission and the Report have both centred on the need of the justice system to be supportive and protective of DFV victims. Amendments contained in the Bill to "ensure victim safety is at the forefront of the justice response to domestic and family violence" are welcomed. Clause 17 broadens the court's discretion concerning duration of protection orders. Several of the legislative amendments provide the courts with guidance as to how matters should be determined to ensure the safety of the aggrieved and other persons which is entirely consistent with the recommendations of the Report. It is hoped that courts will exercise discretion in favour of safety and the elimination of DFV in light of these proposed legislative changes.

Amendments contained in the Bill are intended to "require police to consider how immediate and effective protection can be provided to victims pending a court's consideration of an application for a domestic violence order (DVO)". It had been acknowledged in the report that there was the capacity for improvement in police responses. The Bill removes impediments to police being able to take the reasonable and necessary steps required to protect DFV victims. Clause 40 expands current police powers to direct a person to remain or be removed which is consistent with the Report's recommendations. A range of other proposed amendments enable and provide guidance to police officers in the performance of their duties in relation DFV and they appear drafted to ensure appropriate police responses.

Another aspect of the Bill is to "provide for the automatic mutual recognition of DVOs made in other Australian jurisdictions through the National Domestic Violence Order Scheme (NDVOS)". This amendment is consistent with previous QCU submissions and the Report. It is supported by the QCU as a positive step against DFV. It is demonstrative of the broader approach that is necessary to combat DFV. The new Part 5A deals with information sharing and these new provisions are consistent with the Report and QCU submissions.

The QCU welcomes amendments that "hold perpetrators of violence more accountable and encourage them to change their behaviour". It is an unfortunate truth that further and more penal provisions are in order to dissuade perpetrators. It is also unfortunate that the alarming statistics surrounding DFV justify these steps being taken.

From our investigation of the Bill we have been unable to ascertain whether a number of the Report's recommendations or the QCU submissions have been adopted. For example, there does not appear to be any amendment to eligibility for legal aid and the removal of income thresholds in the case of DFV. Likewise, the recommendation concerning specialist courts does not appear in the Bill.

As the QCU has previously submitted, adequate training and funding are fundamental to the fight against DFV. We accept that such matters do not necessarily belong as part of this Bill but we take the opportunity to remind government and policy makers of the importance of well-trained compassionate and empathetic staff within the justice system. In addition, the recent de-funding that occurred during the Newman LNP Government needs to be reversed.

Conclusion

The QCU supports the Bill as a positive step move forward towards the elimination of domestic and family violence. There are however a range of measures that have been proposed either by the Report or in QCU submissions that do not appear to readily apparent in the Bill. In particular amendment to legal eligibility, specific training for personnel within the justice system and specialist courts and police officers appear to have been overlooked. The QCU submits that these crucial reforms should be considered and included either in this Bill or other legislative changes.