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6 February, 2017

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Dear Attorney

Re: Family Violence: Strengthening Our Legal Responses, Consultation Paper

TasCOSS would like to congratulate the Tasmanian Government for its continued focus on addressing the problem of family violence in Tasmania. We value the multi-dimensional response to this problem; the recognition of the criminal nature of family violence, the investment in specialist support services, the efforts to integrate the community and service responses to family violence and the efforts to educate the community about the scale and harm of these types of behaviours.

In preparing this response to the consultation paper, TasCOSS has consulted with member organisations who are providing services to people affected by or perpetrating family violence. These services range from crisis support, to therapeutic, advocacy and legal services. There are varied views across the community services sector about the reforms proposed in the consultation paper.

In view of this TasCOSS will not address some specifics in the consultation paper. As peak body for the community services sector, we will focus on the human rights implications of key proposals in the paper.

A human rights focus is particularly important when dealing with the issue of family violence. The United Nations Commission on Human Rights has noted that violence against women constitutes a violation of the human rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms.¹ It is the view of the Australian Sex Discrimination Commissioner that family violence in Australia is a 'pressing, and often silent and invisible, human rights crisis within Australia'.² The UN Special Rapporteur on Violence Against Women, visiting Australia in 2012, noted that the failure to articulate violence against women as a human rights issue is a key

¹ Commission on Human Rights 2003, 59th session, cited in *Australian study tour report – Visit of the UN Special rapporteur on violence against women* <https://www.humanrights.gov.au/our-work/family-and-domestic-violence/publications/australian-study-tour-report-visit-un-special>

² Australian Human Rights Commission, 2012, *Australian study tour report – Visit of the UN Special rapporteur on violence against women*, Foreword by Elizabeth Broderick, Australian Sex Discrimination Commissioner

concern in Australia.³ Further, she noted, that ‘where governments fail to address the issue in human rights terms it can lead to an inappropriate and inadequate response by government and state agencies with long-term social and economic consequences’.⁴

Should Tasmania’s family violence legislation include provisions for mandatory reporting of family violence?

The right to self-determination

This proposal suggests the extension of mandatory reporting to adults in family violence situations. It is important to note that the protection of children who may be caught in family violence situations is already covered by the *Children, Young Persons and their Families Act 1997* which acknowledges exposure to family violence as a form of child abuse which requires mandatory reporting. The Act requires any adults who know about child abuse or neglect to take steps to prevent such abuse (3.13), and imposes mandatory reporting requirements on persons prescribed by the Act to report abuse or neglect to Child Protection Services (3.14). TasCOSS does not support the proposal to extend mandatory reporting beyond the care and protection of children to include adult victims. It is our view that this removes the fundamental rights of those adults to choose when and to whom they disclose their experiences.

Self-determination is the process by which people make decisions about their own lives, without compulsion or undue influence. The right to self-determination is a cornerstone human right; the freedom to make decisions about one’s own life is the basis on which people pursue their economic, social and cultural development.⁵

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 1, International Covenant on Civil and Political Rights

Article 1, International Covenant on Economic, Social and Cultural Rights

It is considered so important, that the right to self-determination, as codified in the statement above, forms Article 1 of the International Covenant on Civil and Political Rights, ratified by Australia in 1980, and Article 1 the International Covenant on Economic, Social and Cultural Rights, ratified by Australia in 1975.⁶ Both covenants state that the right to self-determination is universal and call upon States to promote the realisation of that right, and to respect it.

Abandoning the right to self-determination in the hopes of helping people who are the victims of family violence would mean abandoning an important principle, presumably in the expectation that it will

³ Ibid, Executive Summary

⁴ Ibid, Executive Summary

⁵ Office of the High Commissioner for Human Rights, *Fact Sheet No 2. The International Bill of Human Rights*, <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf>

⁶ Australian Human Rights Commission, *Chart of Australian Treaty Ratification as of May 2012*, www.humanrights.gov.au

increase the safety of people affected by family violence or improve service responses to such. However, the evidence on which best practice is based demonstrates that it would not do so. The key components of quality responses to family violence victims include supporting people to make their own decisions about available support and service options (as well as addressing safety concerns and providing access to appropriate health care).

Self-determination is important to everyone, but it is particularly important to people who have been subjected to the abuses of power which characterise family violence. The potential negative consequences of such legislation could be:

- victims in family violence situations withholding information as disclosure might result in placing them in greater danger
- victims in family violence situations being placed at risk
- professionals ignoring their mandatory reporting requirements as it would breach patient/doctor confidentiality or place a client at risk
- individuals being denied the right of giving informed consent to interventions.

Informed consent is permission granted in full understanding of the potential consequences. Typically it involves a knowledge of risks and consequences. The pro-arrest policy of the Safe at Home Strategy already means that victims of family violence who contact the police for help may have interventions they did not expect, and face consequences they were unaware of. Mandatory reporting would exacerbate this issue, as victims of violence would not even need to disclose the family violence for a report to be made and an intervention commenced.

Mandatory sentencing

The right to 'a fair and public hearing'

The consultation paper discusses the proposal that persistent perpetrators could be identified and made subject to specific orders by the courts.

TasCOSS does not support the extension of mandatory sentencing. It is our view that mandatory sentencing is a violation of Article 10 of the Universal Declaration of Human Rights.

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 10, Universal Declaration of Human Rights

Imprisonment is an extreme consequence for criminal behaviour. Article 9 of the International Covenant on Civil and Political Rights stresses the steps required to avoid arbitrary decisions which might deprive an individual of their liberty.⁷ Our system of law places confidence in the ability of magistrates to make

⁷ Office of the High Commissioner, *International Covenant on Civil and Political Rights, Article 9*, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

reasonable judgements and stresses the importance of giving them flexibility to respond to individuals' circumstances.

TasCOSS supports the view of both the Law Society of Tasmania⁸ and Australian Law Council that

*there is a lack of persuasive evidence to suggest that the justifications often given for mandatory sentences – retribution, effective deterrence, incapacitation, denunciation and consistency – achieve the intended aim. Instead, mandatory sentencing regimes can produce unjust results with significant economic and social costs without a clear and directly attributable corresponding benefit in crime reduction. Further, mandatory sentencing schemes undermine community confidence in judges to administer justice and deliver appropriate sentences.*⁹

Further, the evidence of mandatory sentencing elsewhere has demonstrated that it impacts disproportionately on vulnerable groups.¹⁰

Other issues raised in the consultation paper

The right to 'necessary social services'

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services.

Article 25, the Universal Declaration of Human Rights

Some of the proposals in the consultation paper, if adopted, would result in more victims of family violence seeking support and assistance. This is particularly true of the proposals to make it mandatory to report family violence, and to extend the definition of 'family relationship' in the *Family Violence Act 2004*. Others, such as the proposal to develop a Family Violence Perpetrator Register, would require extra resources to monitor and manage the persistent perpetrator, and again, to support any person who is in a relationship with that perpetrator, who has used the register and made the decision to leave, to do so. Given that homicide statistics show that leaving a relationship is one of the most dangerous times for women¹¹, without specialist service support the users of the register would be placed at risk.

In this context the restraints on delivering services to the victims and perpetrators of family violence must be noted. The cuts by the Australian Government to community legal centres and the Legal Aid Commission have limited people's access to legal support. Specialist domestic violence services remain

⁸ The Law Society of Tasmania 'Law Society opposes Sentencing Amendment (Assaults on Police Officers) Bill', Media Release – 26 November, 2014 < <http://lst.org.au/media-release-26-november-2014/>>

⁹ Ibid

¹⁰ Law Council of Australia 'The mandatory sentencing debate' < <http://www.lawcouncil.asn.au/lawcouncil/index.php/law-council-media/news/352-mandatory-sentencing-debate>>

¹¹ Australian institute of Criminology, *Domestic-related homicide: keynote papers from the 2008 international conference on homicide*, AIC reports: Research and Public Policy Series, 104, http://www.aic.gov.au/media_library/publications/rpp/104/rpp104.pdf

under-funded for the level of demand that they face, and there is a lack of funding for the whole of population programs which will prevent domestic violence from happening (by tackling the discrimination, disrespect and gender inequalities which are associated with greater acceptance of violence against women). Other supports needed by women include housing services, advocacy, childcare, transport, micro-finance and health services.

This submission began by congratulating the Government on the investments it has made across both government and community service organisations in the last twelve months. We would urge the government to ensure that the implementation of any of these proposed reforms also receive the appropriate investment in the services required.

We thank you for this opportunity to make comment on these proposed reforms.

Yours sincerely,



Kym Goodes

CEO