

Women's Legal Service

The Secretary
Communities, Disability Services and
Domestic Violence and Family Violence Committee
Parliament House
George Street QLD 4000

Via email: [cdfsdfvpc@parliament.qld.gov.au](mailto:cdsdfvpc@parliament.qld.gov.au)

24th September 2015

Dear Sir/ Madam,

RE: WOMEN'S LEGAL SERVICE SUBMISSION

The Women's Legal Service (WLS) is a specialist community legal centre that operates a Statewide legal service for Queensland women in the areas of domestic violence and family law. We have been in operation for 31 years and in the last financial year we assisted 3740 women. We provide the following feedback in relation to the *Coroners (Domestic and Family Violence Death Review and Advisory Board) Amendment Bill 2015* and the *Criminal Law (Domestic Violence) Amendment Bill 2015*.

The North Queensland Womens Legal Service has offices in Townsville and Cairns and operates from Sarina, north to Torres Strait and west to Northern Territory border. They have been unable because of resourcing constraints to provide their own submission but endorse the comments contained in our submission.

A very short time frame was provided and within current resources constraints we provide the following comments.

1. Coroners (Domestic and Family Violence Death Review and Advisory Board) Amendment Bill 2015

WLS strongly supports the establishment of a domestic violence and family violence death review advisory board in Queensland. We believe this is an important initiative that, in time will result in the identification of gaps and improvements in service delivery and system's responses to victims and their families.

It is also important to get the legislative foundation right. If that requires more time then we would support this time being taken, rather than rushing changes through and making omissions or mistakes.

We support the Review Board being able to consider deaths that may have occurred before its ultimate establishment.

In relation to the bill itself:



Women's Legal Service Inc. www.wlsq.org.au

Address: 387 Ipswich Road (cnr Ponsonby Street) Annerley Qld 4103 | PO Box 119, Annerley Qld 4103

Administration Line: 07 3392 0644 | Fax: 07 3392 0658

Legal Advice Line: 07 3392 0670 - 1800 677 278 | Email: admin@wlsq.org.au

Purpose Clause

We would recommend that the purpose of the Act should clearly articulate the establishment of the Board is about identifying systemic gaps and achieving systemic reform rather than laying blame at individuals. This purpose could guide the decision-making and investigative approach of the Board. It might also help to achieve buy-in from the government and non-government sector that this Board will rely on for success.

Recommendation 1

That the Act clearly articulate that the DV and Family Violence Review Board's purpose in conducting investigations, research and other activities is to achieve systemic reform and identify gaps rather than blaming individuals.

Protocols need to be established with federal agencies and courts

Protocols need to be considered about how the State based board will deal with federal agencies and federal courts and make them accountable eg. Child support agency, mediation services – family law services which are all federally funded and also may be covered by federal legislation, family courts. Separation is the most dangerous time for women and children escaping domestic violence and many victims interact with these agencies and courts. It is important that their involvement is appropriately considered in any work of the Board.

Recommendation 2

Protocols be established between

- (i) the Queensland and Federal Government concerning federal government department and agencies and**
- (ii) the Queensland Government and the federal courts, in particular the family courts**

regarding their cooperation and support for Domestic Violence and Family Violence Death Review Advisory Board processes and the implementation of any recommendations for change that may be made from time to time that affect these federal department, agencies and courts.

Protocols required in relation to cross border issues

Protocols are required with other states but especially states bordering Queensland, in relation to a deceased's involvement with dual police, dual state agencies or courts.

Recommendation 3

Protocols be established between the Queensland Government and other states regarding the other state's agencies and court cooperation with the processes of the Domestic Violence and Family Violence Death Review Advisory Board and the implementation of any recommendations for change that may be made from time to time that affect these interstate agencies and/ or interstate courts.

Courts and access to court files and documents

Throughout the legislation 'government and non-government entities' are referred to but this term is not defined. Arguably the definition does not cover either the state or federal courts. Prescribed entities are defined in S. 91E but this does not include a court, unless they will be prescribed in regulation. The *Not Now, Not Ever* Report highlighted inadequacies with the legal and justice system's response to domestic violence. It is very important that the role of

the courts is included in any reviews undertaken by the Board. It is also very important that protocols be established for the examination of any relevant court files.

Recommendation 4

That the processes of the Domestic Violence and Family Violence Death Review Advisory Board cover the actions and involvement of state and federal courts and that the board have the power to compel the disclosure of relevant court files for the Board's consideration.

Legislative change could be recommended

It is not clear that the Review Board could also make recommendations about legislative change if they believe certain legislation is exacerbating, escalating or causing domestic violence. At the moment S. 91A states the purpose of the establishment of the Board is to:

- (a) Identify preventative measures to reduce the likelihood of domestic and family violence deaths in Queensland; and
- (b) Increase recognitions of the impact of, and circumstances surrounding, domestic and family violence and gain a greater understanding of the context in which domestic and family violence deaths occur; and
- (c) Make recommendations to the Minister for implementation by government entities and non-government entities to prevent or reduce the likelihood of domestic and family violence deaths.

Arguably legislative change might be a preventative strategy in S. 91A (a). However, to remove any doubt we believe it necessary for it to be clearly stated that its purpose could include a consideration of legislative provisions that may contribute to unsafe outcomes. S. 91E would also require amendment to allow for the Board's functions to include a consideration of any relevant legislation, where necessary.

Recommendation 5

That S. 91A and S. 91E be amended to clearly state that the Board is able to consider legislative issues when conducting their review and recommend changes, if deemed necessary to reduce domestic violence deaths.

Expert make-up of the Board

We would strongly recommend the make-up of the Board include a lawyer with expertise in relation to both domestic violence and family law issues. The issue of the intersection of domestic violence and family law was given special mention in the Not Now, Not Ever Report:

*The intersection of family law and domestic and family violence was raised with the Taskforce as a serious concern. Family law and domestic violence are intertwined and **cannot be considered in isolation**. {Constitutional issues about the separation of state and federal issues} This inevitably adds complexity to already complex areas of law. Separate jurisdictions and separate court locations increase confusion. (see p.269)*

Recommendation 6

The Domestic Violence and Family Violence Death Review Advisory Board include a lawyer with expertise in domestic violence and family law issues and who can provide expert critical analyses to these issues.

Strengthen accountability mechanisms

Central to the success of the Board is its accountability mechanisms. We believe the current approach to accountability could be strengthened by including that the department/ ministers provide reasons in a report back to parliament within a specified time frame for both compliance with and/ or non-compliance with Board recommendations.

Feedback from the operation of death review committees overseas is that often recommendations are not acted upon and the accountability mechanisms are not rigorous enough.

Recommendation 7

That the current accountability provisions be enhanced by requiring not only that the Attorney-General provide a report to the parliament about recommendations but that the relevant minister or government department report back to the parliament within a reasonable time frame their compliance with and/or reason for non-compliance with Board recommendations.

The definition of a domestic and family violence death - Children

The definitions as set out in S. 91(B) (a) do not cover the situation of a child being killed as an act of domestic violence. For example, Luke Batty's case scenario would not be covered under the current definition. Children are also victims of domestic violence and the motivation for killing the child can be to punish the mother or an act of revenge against the mother (who was or currently in a relationship with the perpetrator). The definition should also cover murder /suicides of the perpetrator and children.

Recommendation 8

That the definition of domestic and family violence death in S. 91(B) (a) be amended to specifically include children who are killed in circumstances of domestic violence and needs to specifically cover murder/ suicide.

A process is required to consider objections

The Bill sets out in S. 91Y the board's right to information from prescribed entities and in subsection (5) sets out reasonable excuses for non-compliance. There is no process set out in the legislation if the Board does not accept the entities' excuse. One idea is for a judge to determine the matter using a similar process to a judge hearing an objection to produce subpoenaed materials.

Recommendation 9

That the Bill be amended to include a legislative process for determination by a judge of the reasonableness of an entity not providing information to the Board, if the Board does not accept or questions the 'reasonable excuse' provided by that entity.

2. Criminal Law (Domestic Violence) Amendment Bill 2015

Increased penalties for breaches

WLS supports the increase in maximum penalties for domestic violence breaches but the reality is that the current provisions are not being utilised, so the amendment will have little immediate practical impact. Breach action requires the police to take action and women

commonly complain about the failure of the police to do so. In relation to the criminal aspects of domestic violence and criminal processes generally, women will require support to make these decisions and undertake these processes.

Special Witness provisions

We support the provisions giving dv victims in criminal courts automatic special witness protections. However, there are resourcing implications for courts throughout Queensland to have the infrastructure and technology to make these provisions a reality. Screens don't offer a lot of protection.

Also, this amendment highlights the inconsistent approach in respect of sexual assault victims –who are not given automatic protection.

Identification of domestic violence convictions

WLS also supports the identification of convictions as domestic violence convictions. We would recommend that this notation is done in a way that makes it accessible for the purposes of court annual reports, law reform commission research and other academic research.

If you require further information or clarification please do not hesitate to contact Angela Lynch at the Women's Legal Service.
