

23rd November 2018

Committee Secretary
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane QLD 4000

LACSC@parliament.qld.gov.au

Dear Committee Secretary,

RE: HUMAN RIGHTS BILL 2018

Introduction

The Women's Legal Service Queensland (WLSQ) is a specialist community legal centre, established in 1984, that provides free legal and social work services and support to Queensland women. We provide the sexual assault counselling privilege service (Counselling Notes Protect) in partnership with Legal Aid QLD, for the purpose of upholding a victims rights to resist their counselling records being made available in a criminal and domestic violence proceeding. We assist women in the areas of family law, domestic violence, child protection and sexual violence. WLS provides State-wide assistance through our legal Domestic Violence Helpline, and we have a designated Rural, Regional and Remote telephone line to increase women's access to our service in non-metropolitan regions. In the last financial year we assisted 16 000 women with 45% of clients from outside the Brisbane.

We undertake outreach work at the Brisbane Women's Correctional Centre and at Family Relationship Centres in Brisbane. We also conduct duty lawyer services at three Courts: Holland Park, Caboolture and Ipswich. Our specialist domestic violence units in Brisbane, Southport and Caboolture provide intensive case work and court representation for our most vulnerable clients. As part of the Caboolture office we employ a First Nation's cultural liaison support worker to assist First Nation's women's access to WLSQ. We conduct Health Justice Partnerships with a domestic violence solicitor visiting weekly the Gold Coast, Logan, Redlands, RBH hospital and being on call to the PA and QE2 hospitals and soon to be established Caboolture and Redcliffe hospitals.

Our focus

Our particular focus in responding to the Human Rights Bill is to protect the rights of women who are victims of sexual and domestic violence, who already face multiple structural barriers in their interactions with the criminal justice system and which manifests in low reporting and conviction rates for these crimes. According to the



findings of the 2016 Personal Safety Survey (PSS) conducted by the Australian Bureau of Statistics, the majority of women who experience sexual violence (nine out of ten) did not contact police (87 per cent or 553,900). Furthermore, results from the Australian Institute of Family Studies 2005, Law and Sexual Offences Against Adults Australia, reveal that of those incidents of sexual violence that are reported to the Police, only 10% result in convictions.

We thank the Parliamentary Committee for the opportunity to provide this submission.

Government to be commended

We commend the Palaszczuk government on the historic occasion of the tabling of a Human Rights Bill in Queensland. For many vulnerable Queenslanders and many of our clients it will provide an avenue of redress that otherwise does not currently exist such as for women who are incarcerated and for First Nation's women in relation to the protection of their cultural rights. We also acknowledge the many years of hard work and lobbying by our colleagues in the community legal centres and others for the introduction of a Human Rights Act in Queensland.

Victims also have rights to a fair criminal trial and processes

Women's Legal Service Queensland is concerned however that the rights of victims of crime have not been appropriately acknowledged in the bill, while the rights of criminal defendants in criminal trials are explicitly upheld. We acknowledge that the right to a fair trial is a fundamental right in our society, as it should be – however, this right to fairness should also be extended to victims, particularly in relation to their interactions with government bodies, agencies and the police service.

We are concerned that the bill does not give recognition to the many circumstances in justice proceedings where people are not treated with dignity, are not treated with equality, and are not afforded equal protection. Furthermore, we are concerned that the proposed Bill does not recognise that a victim's right to dignity, privacy and reputation is routinely ignored or abrogated in a criminal proceeding. For example, where women report a sexual assault to the police and they do not receive follow up phone calls or are not told where the investigation is up to, if it has concluded and the outcome. This is a very standard experience of sexual violence complainants who seek advice from WLSQ.

One of our client's, whose first language is not English, had the experience where her complainant of sexual assault was not prosecuted because the QPS spelt the accused's name incorrectly. Only after the complainant returned to the Police station at least five times to follow up the matter over many years was the mistake eventually identified and the accused was located and charged. It is clear this only occurred because of the persistent advocacy of our client who eventually was able to get an officer appointed to review the matter who understood the language and picked up on the factual error. This matter is finally in court, however, the first report of the sexual assault was over a decade ago.

This sort of lack of transparency and accountability in public authorities is very common in circumstances of sexual violence and domestic violence.

We have clients who do not speak English or do not speak English well and want to report a sexual assault but an interpreter is not offered or arranged. Or women who are cross examined when English is not their first language and it is at least questionable whether an interpreter should have been required in a formal court environment where the complainant is under huge emotional stress when giving their evidence.

WLS client routinely report being in court for domestic violence protection orders, and no interpreter being offered or available, where they are expected to understand what is occurring in Court, or there is an implied assumption that because the order is being taken out by the QPS, then she does not really need to understand the conditions sought, and the details of the order. Although we acknowledge this circumstance may be covered by Section 31 “the right to a fair hearing in a civil proceedings”.

The current protections are inadequate

The current protection for victims in Queensland contained in the “*The Victim’s Charter of Rights*” has no legal implication or consequence what so ever, having no legal enforceability. At best, it is aspirational, providing mere guidance on what should be standard practice. It does not have the same complaints process, level of protections or avenues for redress as provided by this new bill.

If this bill is passed as currently drafted, a defendant’s right to fairness in criminal trials will be legislatively elevated as a human right over and above those of victims.

The bill in its current form will have far reaching and deleterious consequences for victims of domestic and sexual violence in Queensland particularly because:-

- The Bill requires every new Bill introduced into the Queensland Parliament to be scrutinised for consistency with the rights as set out in this Bill and each Minister will need to prepare a statement of compatibility of Human Rights for each new piece of legislation. (Section 38).
- All legislation will need to be interpreted by judges and decision makers in a way compatible with the bill. (Section 48).

A counterbalance is required

Without a counterbalance to the rights of a fair trial for criminal defendants by also recognising the rights of victims, it may become more difficult in Queensland to pass victim sensitive legislation in the future or for legislation to be interpreted in a victim sensitive way. For example, it may make recent suggested amendments to the criminal justice system by the Royal Commission into Institutional Child Sexual Abuse more difficult to achieve.

Suggested Amendments

We therefore seek the following amendments:

- Section 31 (1) currently sets out that a person charged with a criminal offence has a right to a fair hearing. This should be amended to expressly recognise the rights of crime victims *as participant* in criminal proceedings also having a right to a fair hearing.
- An amendment to Section 32 is required that particularises victim's rights in the criminal process. For example, a victim reporting a criminal offence and throughout the criminal process has a right to:
 - To treated with courtesy, compassion, respect and dignity, taking into account the victim's needs.
 - Be provided with information about the criminal process in a reasonable and timely manner,
 - to privacy and confidentiality of information and for personal information to not be released unless authorised by law,
 - to safety from the perpetrator,
 - to an interpreter if the person does not speak English
 - to have free assistance of specialised communication tools and technology and assistants, if a person has communication or speech difficulties that require assistance.
 - to obtain legal information about the process.
 - to be informed at the earliest practicable opportunity about services and remedies available to the victim
 - to be informed in a reasonable and timely manner if there is any material change in the criminal process involving them including for example, the types of charges, bail conditions, the matter not proceeding or if charges are dropped.
 - to have the matter proceed without unreasonable delay (including the investigation)

Child victims

The Women's Legal Service recognises the lifelong impacts on the social and mental health of women who have been sexually abused as children. There are also specific amendments required regarding the rights of child complainants in criminal trials and we have set out these out below:

- S32(3) be amended to refer to *any child* charged with or a victim of a criminal offence has the right to a procedure that takes account of the child's age and the desirability of promoting the child's rehabilitation, both child accused and child victim.

- S33 (2) be amended that ‘a child accused of and a child victimised by a criminal offence must have trial proceedings brought as quickly as possible.’
- S33 (3) be amended that ‘a child who has been convicted of an offence and a child victimised by a criminal offence must be treated in a way that is appropriate for the child’s age.’

Advocacy groups should be given opportunity to intervene

We note the Bill provides for possible intervention by the Attorney General and/or the Human Rights Commission but we believe this should be extended to advocacy groups, with leave. We therefore also seek an amendment to section 50 and 51:

That advocacy groups with the specialised skills and expertise also have the ability with leave to intervene in matters concerning Human Rights.

Additional rights?

We are also supportive of a general right to freedom from violence, abuse and neglect and that the current economic, social and cultural rights that recognise the right to education and health be extended to legal assistance.

Section 59 – drafting

This section details the types of legal proceedings that can be brought if there is a breach of Human Rights. With respect, it is almost impossible to understand and we would recommend redrafting.

If you have any queries or seek further information please do not hesitate to contact me.

Yours faithfully,



Angela Lynch
CEO
Women’s Legal Service Queensland