

---

## **Family Violence Amendment Bill 2017**

## **Sexual Assault Support Service Inc. (SASS) Submission**

**August 2017**

---



Sexual  
Assault  
Support  
Service

**For further information please contact:**

**Jill Maxwell, CEO – Sexual Assault Support Service  
Inc. (SASS)**

**Phone:** (03) 6231 0044

**Email:** [jill.maxwell@sass.org.au](mailto:jill.maxwell@sass.org.au)

**Postal:** PO Box 217, North Hobart, Tasmania, 7002

## **Family Violence Amendment Bill 2017**

### ***SASS Submission***

#### **Contents**

Introduction .....	1
Issue 1: Breaches of protection orders by protected persons .....	2
Issue 2: Effects of tendering no evidence in family violence cases .....	2
Issue 3: Recording of family violence offences.....	3
Issue 4: Electronic monitoring of perpetrators.....	3
Law of self-defence in the context of family violence.....	3
Persistent contraventions of family violence orders .....	4
Consequences of a persistent perpetrator of family violence declaration .....	5

#### **Introduction**

Sexual Assault Support Service (SASS) is a free and confidential service for people of all ages who have been affected by any form of sexual violence, including intimate partner sexual violence. We also provide counselling to children and young people who are displaying problem sexual behaviour (PSB) or sexually abusive behaviour (SAB), along with support and information for their family members and/or carers.

The range of support options available at SASS includes counselling, case management (including safety planning), and advocacy. We also provide information and support to professionals, and deliver training workshops and community education activities in a range of settings including schools and colleges.

SASS welcomes the opportunity to respond to the *Family Violence Amendment Bill 2017*. In our response we draw heavily on our previous submission to the Tasmanian Government regarding the *Family Violence: Strengthening Our Legal Responses Consultation Paper* (February 2017).

Family violence is a significant issue for both adult and child/adolescent clients at SASS. Our service statistics show that of all new referrals in the last half of 2016, approximately 40% of adult female clients and 18% of child/adolescent clients had experienced or were currently experiencing family violence. These numbers only reflect clients who self-identified at the intake stage as having experienced family violence and therefore the actual statistics may be much higher, as through their engagement with SASS clients are likely to become more informed about the pervasive nature of family violence and be able to recognise their own experience.

We outline the following points regarding intimate partner sexual violence (IPSV), and note that these provide valuable contextual information in implementing legal responses to family violence:

- Approximately 40-45% of women who suffer physical abuse from an intimate partner are also forced into sexual activities by them.<sup>1</sup>
- Between 5-12% of Australian women experience sexual violence from a partner within their lifetime.<sup>2</sup>
- The presence of sexual violence within a relationship often correlates with the perpetration of more severe physical violence, including lethal violence.<sup>3</sup>
- Women who have experienced IPSV are significantly more likely to have experienced childhood sexual abuse than those who experience physical family violence only.<sup>4</sup>
- Women who experience IPSV often experience more severe negative impacts than those who experience physical family violence alone, including decreased self-esteem and coping skills, increased fear and anxiety problems and high levels of self-blame.<sup>5</sup>
- Women are far less likely to report IPSV than they are to report other forms of family violence, and service providers are generally less likely to specifically ask about it.<sup>6</sup>
- Women who have experienced both sexual and physical family violence have been found to present at support services with lower levels of wellbeing and coping than women who have experienced only physical family violence.<sup>7</sup>

We address the specifics of the Bill below.

### **Issue 1: Breaches of protection orders by protected persons**

A person protected by a protection order cannot be charged with an offence of instigating, abetting or aiding the breach of a protection order unless the relevant conduct resulted in another protected person named in the order, such as an affected child, being placed at risk.

SASS understands that the purpose of a family violence protection order is to protect the victims of family violence. Charging a victim with a contravention of a protection order does not serve this purpose, but instead may put an already vulnerable person at further disadvantage. Whilst we appreciate that the law as it currently stands is designed to deter abuse of court processes, we are concerned that it does not support a victim-focused approach. SASS therefore supports the insertion of the proposed new section 13C (1) and (2).

### **Issue 2: Effects of tendering no evidence in family violence cases**

Where, prior to the hearing commencing, the prosecution informs the court it will not proceed, the matter is discharged but the evidence relevant to the matter may be admissible as relationship, tendency or coincidence evidence in relation to another family violence charge.

SASS supports amendment to the law in this area to enable the court to understand the full context and extent of an offender's behaviour. Family violence offenders normally display a pattern of controlling, dominating or coercive behaviour over their victims, and it is critical that they be sentenced on this basis. As Eastaer notes, "Any one 'incident' is in actuality just

a small part of a complex pattern of control and cannot be adequately understood nor its gravity measured in isolation from that background.”<sup>8</sup>

### **Issue 3: Recording of family violence offences**

A judge may direct an indictable offence to be recorded as a family violence offence on a perpetrator’s criminal record.

SASS fully supports this proposal.

### **Issue 4: Electronic monitoring of perpetrators**

As part of an electronic monitoring trial of family violence perpetrators, the court may impose electronic monitoring as a condition of a family violence order where the person against whom the order is to be made has a prior history of family violence offences, or has been charged with a family violence offence.

SASS fully supports this proposal.

In addition to our comments on the draft Bill, we also raise the following issues that were considered within the consultation paper *Strengthening our Legal Responses to Family Violence* released by the Department of Justice in October 2016. We feel that these issues are important to consider in reforming family violence laws in Tasmania.

### **Law of self-defence in the context of family violence**

SASS supports amending the Criminal Code to provide that a person may have an honest belief that they are acting in self-defence and that their conduct may be regarded as a reasonable response in the circumstances as the person perceives them to be even if the person is responding to a harm that is not immediate or that appears to be trivial. As raised within the *Strengthening our Legal Responses to Family Violence* Consultation Paper, and also within the Tasmanian Law Reform Institute’s Final Report into the law relating to self-defence, the historical interpretation and application of this defence has largely excluded claims from (predominantly female) defendants who kill in response to prolonged family violence.

SASS strongly recommends reform to the criminal law in Tasmania to specify that imminence is not necessary where self-defence is raised in the context of family violence. It is crucial that this reform clarifies that actions may be considered to be in self-defence where the threat is not immediate, but instead ongoing or more remote in time. This approach is significantly more consistent with the nature of family violence, which, as the Tasmanian Law Reform Institute indicates, ‘is a cumulative and complex experience with the threat of violence ever present’.<sup>9</sup> Specifically, we recommend the adoption of a provision into the Tasmanian *Criminal Code 1924* similar to s322M (1) (a) in the *Crimes Act 1958* (Vic) that explicitly states that the harm responded to by the accused does not need to be immediate. In recommending this, we agree with authors Hopkins and Easteal that the Victorian reforms, including sections 322M and 322J, go furthest in terms of ensuring engagement with the experiences of abused women.<sup>10</sup>

Furthermore, SASS recommends that reforms be made to the criminal law in Tasmania to provide for jury direction where self-defence is raised in the context of family violence. We feel that this is a critical aspect of the potential reforms. Gross community misconceptions regarding family violence still exist in Australia. Findings from the 2013 National Community Attitudes towards Violence against Women Survey (NCAS) indicate that within the Australian community;

- 51% of respondents agree that most women could leave a violent relationship if they really wanted to;
- 78% agree that it is hard to understand why women stay in a violent relationship; and
- 9% agree that it is a woman's duty to stay in a violent relationship.<sup>11</sup>

These perceptions are highly likely to influence jury attitudes around the experience and dynamics of family violence. They are likely to lead jurors to raise questions such as why the accused did not leave the situation of family violence or seek help to escape the threat – in short, why the accused resorted to lethal violence when other options could have been available. As Hopkins and Eastaugh highlight,

Viewed from the perspective of the average judge or juror, uninformed about the dynamics and effects of domestic violence, the killing may appear entirely unreasonable; as either irrational or retaliatory. However, from a battered woman's perspective — having lived with serious abuse under the constant threat of violence, having developed a heightened capacity to perceive danger from her batterer, for whom escape has failed or is not a realistic option — there may have been no other reasonable alternative...to determine whether a woman's actions were justified in self-defence requires a holistic appreciation of her predicament.

Jury directions are therefore crucial in attempting to counter the myths and lack of understanding surrounding family violence prevalent in the Australia community, and in enabling a jury to understand why an accused may have acted in self-defence.

SASS specifically recommends that Tasmania adopt similar provisions to those set out in the *Jury Directions Act 2015* (Vic) sections 59-60.

### **Persistent contraventions of family violence orders**

SASS supports the creation of legislative provisions to provide for a court to declare at the time of sentencing a repeat family violence perpetrator to be a persistent perpetrator of family violence. We also support the approach proposed in the *Strengthening our Legal Responses to Family Violence* Consultation Paper that when declaring a person to be a persistent perpetrator of family violence, the court must take into consideration the particulars of the individual perpetrator. Similarly, the Sentencing Advisory Council of Tasmania suggests that “the nature of the conduct giving rise to the breach should also be a factor in fashioning an appropriate response to the persistent rate of breaches of protection orders.”<sup>12</sup>

SASS suggests that the commission of indictable offences, and any escalation in behaviour for non-indictable offences, should warrant an offender being declared to be a persistent perpetrator of family violence.

### **Consequences of a persistent perpetrator of family violence declaration**

SASS supports the establishment of a persistent perpetrator of family violence register, with information on the register available to police officers and particular members of the public. A similar nationwide scheme in the UK, called 'Clare's Law', was used by more than 4000 women within a year of its establishment, 1300 of whom received a disclosure about their partner's violent history.

We suggest that this register should contain information about family violence offences only, and include the date of the offence and the sentence imposed. To ensure that the system is not abused, certain access requirements would need to be established. These could include:

- that the person applying prove they are in a relationship with the individual whose record they are accessing; and
- that they agree to keep the information contained in the register confidential.

The implementation of a register would also need to come with clear criteria as to which types of offences would warrant recording; guidance to victims on how to use the information; and support to victims following their access to the register.

SASS suggests that before implementing such a scheme, the Tasmanian Government review the evaluation of the NSW Domestic Violence Disclosure Scheme (evaluation forthcoming in 2017).

SASS also supports the proposal contained within the *Strengthening our Legal Responses to Family Violence* Consultation Paper that a police officer of the rank of inspector or above or authorised by the Commissioner of Police, should have the power to refuse bail in the case of a persistent perpetrator of family violence for a minimum mandatory period. SASS recommends that this time period be a minimum of 24 hours, to enable sufficient time to organise supports for the victim whilst the offender is detained in custody. This would not necessarily need to apply for all breaches, but for particularly serious ones involving a persistent perpetrator.

---

<sup>1</sup> Wall, L. (2012). *Asking women about intimate partner sexual violence*. ACSSA Resource Sheet. Australian Centre for the Study of Sexual Assault, p.1.

<sup>2</sup> Mouzos, J. and Makkai, T. (2004). *Women's Experiences of Male Violence. Findings from the Australian Component of the International Violence Against Women Survey (IVAWS)*. Research and Public Policy Series, No. 56. Australian Institute of Criminology, p.46.

<sup>3</sup> Wall, L. (2012). *The many facets of shame in intimate partner sexual violence*. ACSSA Research Summary. Australian Centre for the Study of Sexual Assault, p.7; Heenan, M. (2004). *Just "keeping the peace" A reluctance to respond to male partner sexual violence*. Issues, No. 1, March. Australian Centre for the Study of Sexual Assault, p.19; Cole, J., Logan, TK., and Shannon, L. (2005). "Intimate Sexual Victimization Among Women with Protective Orders: Types and Associations of Physical and Mental Health Problems". *Violence and Victims*. Vol. 20, No. 6 (December 2005), p.697.

- 
- <sup>3</sup> Australian Law Reform Commission (ALRC) and NSW Law Reform Commission (NSWLRC). (2010). *Family Violence - A National Legal Response. Final Report, Volume 1*. ALRC Report 114, NSWLRC Report 128. Commonwealth Government, p.1106.
- <sup>4</sup> Cole et al (2005), "Intimate Sexual Victimization"; and Howard et al. (2003). "Counseling Services for Battered Women: A Comparison of Outcomes for Physical and Sexual Assault Survivors". *Journal of Interpersonal Violence*. Vol. 18, No. 1. (July 2003), p.719.
- <sup>5</sup> See Wall (2012), *The many facets of shame*, p.3; Howard et al (2003), "Counseling Services"; and Cole et al, (2005), "Intimate Sexual Victimization".
- <sup>6</sup> Wall (2012), *The many facets of shame*, p.1.
- <sup>7</sup> Howard et al (2003), "Counseling Services", p.727.
- <sup>8</sup> Easteal (2010), cited by the Australian Law Reform Commission (2010), p.832.
- <sup>9</sup> Tasmanian Law Reform Institute. (2014). *Review of the Law Relating to Self-defence*, Issues Paper No. 20, p.26.
- <sup>10</sup> Hopkins and Easteal, cited by the Australian Law Reform Commission (2010), p.646.
- <sup>11</sup> Webster et al. (2014). *Australians' attitudes to violence against women: Full technical report, Findings from the 2013 National Community Attitudes towards Violence Against Women Survey (NCAS)*. Victorian Health Promotion Foundation, Melbourne, Australia, p.112.
- <sup>12</sup> Sentencing Advisory Council of Tasmania. (2015). *Sentencing of Adult Family Violence Offenders*. Final Report No. 5, p.17.