



THIRTY-EIGHTH PARLIAMENT

REPORT 27

**STANDING COMMITTEE ON ENVIRONMENT AND
PUBLIC AFFAIRS**

**PETITION NUMBER 161: REVIEW OF THE LAWS
PERTAINING TO DOMESTIC VIOLENCE**

Presented by Hon Kate Doust MLC (Deputy Chair)

September 2012

STANDING COMMITTEE ON ENVIRONMENT AND PUBLIC AFFAIRS

Date first appointed:

17 August 2005

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

“1. Environment and Public Affairs Committee

- 1.1 An *Environment and Public Affairs Committee* is established.
- 1.2 The Committee consists of 5 members.
- 1.3 The functions of the Committee are to inquire into and report on –
 - (a) any public or private policy, practice, scheme, arrangement, or project whose implementation, or intended implementation, within the limits of the State is affecting, or may affect, the environment;
 - (b) any bill referred by the House; and
 - (c) petitions.
- 1.4 The Committee, where relevant and appropriate, is to assess the merit of matters or issues arising from an inquiry in accordance with the principles of ecologically sustainable development and the minimisation of harm to the environment.
- 1.5 The Committee may refer a petition to another committee where the subject matter of the petition is within the competence of that committee.
- 1.6 In this order “**environment**” has the meaning assigned to it under section 3(1), (2) of the *Environmental Protection Act 1986*.”

Members as at the time of this petition:

Hon Brian Ellis MLC (Chair)

Hon Kate Doust MLC (Deputy Chair)

Hon Phil Edman MLC

Hon Colin Holt MLC

Hon Lynn MacLaren MLC

Staff as at the time of this petition:

Denise Wong (Advisory Officer (Legal))

Amanda Gillingham (Research Officer)

Mark Warner (Committee Clerk)

Address:

Parliament House, Perth WA 6000, Telephone (08) 9222 7222

lcco@parliament.wa.gov.au

Website: <http://www.parliament.wa.gov.au>

ISBN 978-1-922047-11-3

Government Response

This Report is subject to Standing Order 191(1):

Where a report recommends action by, or seeks a response from, the Government, the responsible Minister or Leader of the House shall provide its response to the Council within not more than 2 months or at the earliest opportunity after that time if the Council is adjourned or in recess.

The two-month period commences on the date of tabling.

CONTENTS

GOVERNMENT RESPONSE	
1	REFERENCE..... 1
2	CONTEXT 1
3	CONCLUSION 2
APPENDIX 1 PETITION NUMBER 161 5	
APPENDIX 2 SUBMISSION FROM PRINCIPAL PETITIONER 7	
APPENDIX 3 NEWSPAPER ARTICLE REPORTING VIEWS OF FORMER	
ATTORNEYS GENERAL 11	

REPORT OF THE STANDING COMMITTEE ON ENVIRONMENT AND PUBLIC AFFAIRS

IN RELATION TO

PETITION NUMBER 161: REVIEW OF THE LAWS PERTAINING TO DOMESTIC VIOLENCE

1 REFERENCE

- 1.1 Petition number 161 (**Appendix 1**) was tabled in the Legislative Council on 16 May 2012.¹ The petition requests that the House urge the Attorney General to review the laws pertaining to domestic violence with the goal of ensuring that there is an appropriate legislative framework for dealing with cases involving a history of violence and abuse.
- 1.2 The petition was referred to the Standing Committee on Environment and Public Affairs (**Committee**) pursuant to the Legislative Council's Standing Order 101(6).

2 CONTEXT

- 2.1 The motivation for the petition appears to have been a series of family and domestic violence incidents which resulted in the victims' deaths and for which their alleged perpetrators were charged with 'unlawful assault causing death'. The principal petitioner's submission (**Appendix 2**) provides a summary of four of these incidents.²
- 2.2 The offence of 'unlawful assault causing death' (section 281 of *The Criminal Code*) was introduced on 1 August 2008 and carries a maximum penalty of 10 years imprisonment. The purpose of introducing this offence was to address the difficulties in prosecuting so-called 'one-punch homicides':

An example of these types of cases is when a person who is punched falls to the ground and suffers a blow to the head from hitting the ground and dies. Western Australia will be the first state in Australia to introduce legislation that creates an offence to deal specifically with this issue. As the law currently applies, offenders who are charged with manslaughter in such cases are often acquitted on the basis that the death was an accident. A death will be an accident when it was not reasonably foreseeable that death would result as a consequence of the punch. Under the new provision, it will be

¹ Hon Sue Ellery MLC, Parliament of Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 16 May 2012, p2575.

² Submission from Ms Angela Hartwig, 15 June 2012, Attachment 2.

*irrelevant whether the death was foreseen or foreseeable, and it will also be irrelevant that the death was unintended. The offence will be committed when a person unlawfully assaults another person who dies as a direct or indirect result of the assault. This new offence reinforces community expectations that violent attacks, such as a blow to the head, are not acceptable behaviour and will ensure that people are held accountable for the full consequences of their violent behaviour.*³

- 2.3 Among other things, the principal petitioner contends that the section 281 offence is not appropriate for deaths resulting from family and domestic violence incidents due to the tendency for such incidents to be preceded by a history of recurrent violence and abuse:

*In particular we believe that the charge of 'unlawful assault causing death' should not apply in cases where it can be established that there has been a history of physical violence and abuse. The nature of the charge implies that a one-off momentary act of violence has caused the death, and does not appropriately reflect the history and circumstances of the crime.*⁴

- 2.4 The Committee noted that the immediate former Attorney General had been reported in the media as having formed the view that, in one of the cases cited by the principal petitioner, the convicted perpetrator should have been charged with a different, more appropriate, offence. The article also provides the Director of Public Prosecution's explanation for pursuing the 'unlawful assault causing death' charge in that case and his assertion that "*The DPP will always argue the most serious charge if the charge is open.*" In the same article, another previous Attorney General was reported as stating that the offence was never intended to apply to domestic violence cases.⁵

3 CONCLUSION

- 3.1 The Committee agreed with the tenor of the petition and makes the following recommendation:

³ Hon Jim McGinty MLA, Attorney General, Parliament of Western Australia, Legislative Assembly, *Parliamentary Debates (Hansard)*, 19 March 2008, p1210.

⁴ Submission from Ms Angela Hartwig, 15 June 2012, p1.

⁵ D Emerson, 'Former A-Gs question charge for wife killer', *The West Australian*, 6 August 2012, p1 (**Appendix 3**).

Recommendation 1: The Committee recommends that the Government urgently review the legislative framework for addressing family and domestic violence incidents to ensure that it appropriately acknowledges and reflects any history of violence and abuse associated with such incidents.



Hon Kate Doust MLC
Deputy Chair
13 September 2012

APPENDIX 1

PETITION NUMBER 161

I, **Angela Hartwig**, in the State of Western Australia, am the promoter
this petition which contains signatures.

2696 2666
PETITION IN RELATION TO THE LAYING OF CHARGES IN CASES OF DEATHS RESULTING FROM
DOMESTIC VIOLENCE

To the President and Members of the Legislative Council of the Parliament of Western Australia in
Parliament assembled.

We the undersigned residents of Western Australia believe that the charge of 'unlawful assault
causing death' should not apply in cases where it can be established that there has been a history of
physical violence and abuse. The nature of this charge implies that a one-off momentary act of
violence has caused the death, and does not appropriately reflect the history and circumstances of
the crime. These charges have been laid in cases that concern the violent deaths of women and
children by reason of domestic and family violence.

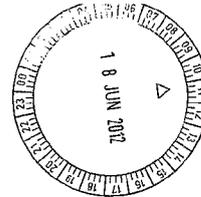
Your petitioners therefore respectfully request the Legislative Council to urge the Attorney General
that he review the laws pertaining to domestic violence, and in particular parts of the s 281 Criminal
Code (WA) 1913 to ensure that there is an appropriate legislative framework for cases involving a
history of violence and abuse. And your petitioners as in duty bound, will ever pray.

NAME	ADDRESS	SIGNATURE
------	---------	-----------

APPENDIX 2

SUBMISSION FROM PRINCIPAL PETITIONER

Angela Hartwig



15 June, 2012

Hon Brian Ellis MLC
Chair
Standing Committee on Environment and Public Affairs
Parliament House Perth
Western Australia WA 6000

Dear Mr Ellis

Petition No 161 – Review laws Pertaining to Domestic Violence

Thank you for receiving the petitions signed by over 2,600 concerned and outraged residents of Western Australia. We are seeking Members of the Legislative Council to urge the Attorney General that he review the laws pertaining to domestic and family violence, and particular parts of the s281 Criminal Code (WA) 1913 to ensure that there is an appropriate legislative framework for cases involving a history of violence and abuse.

In particular we believe that the charge of 'unlawful assault causing death' should not apply in cases where it can be established that there has been a history of physical violence and abuse. The nature of the charge implies that a one-off momentary act of violence has caused the death, and does not appropriately reflect the history and circumstances of the crime. These charges have been laid in cases that concern violent deaths of women and children by reasons of domestic violence abuse.

The maximum penalty for unlawful assault causing death is 10 years. However convictions to date in cases involving domestic violence have resulted in sentences of two to five years.

To date, this issue has not been taken up with the Parliamentary Commissioner for Administrative Investigations.

Yours Sincerely

Angela Hartwig

Attachments 1. Specific Cases where charges of 'Unlawful Assault Causing Death' have been used resulting in lenient sentences for the perpetrator

PUBLIC

PETITION NO. 161 - Review Laws Pertaining to Domestic Violence

2,600 concerned and outraged residents of Western Australia are seeking Members of the Legislative Council to urge the Attorney General that he reviews the laws pertaining to domestic and family violence, and in particular sections of the s281 Criminal Code (WA) 1913 to ensure there is an appropriate legislative framework for cases involving a history of violence and abuse.

The charge of 'unlawful assault causing death' should not apply in cases where it can be established that there has been a history of physical violence and abuse.

'Unlawful assault causing death' implies that a one-off momentary act of violence has caused the death. This charge does not appropriately reflect the history and circumstances of crimes with a history of domestic violence.

Contrary to the intent of this law, charges have been laid in cases that concern insidious violent deaths of women and children by reason of domestic violence abuse.

Changing community attitudes towards family and domestic violence, assisting victims to realise their legal rights and provide access to the justice system are supported by:

- o The WA Strategic Plan for Family and Domestic Violence 2009-2013
- o National Plan to Reduce Violence Against Women and their Children

DYNAMICS OF DOMESTIC AND FAMILY VIOLENCE

Domestic and family violence can be described as a pattern of coercive behaviour that uses violence to gain and then maintain power and control over the behaviour of an intimate partner or a person in a "domestic" or "familial" relationship with the abuser.

Family and domestic violence can manifest in physical, psychological, emotional, social and financial forms of abuse.

Research has shown us that:

- DFV is a gendered crime with 87% of victims being female and 98% of offenders being male and there are gendered differences in motivation, frequency, severity and outcomes
- DFV knows no boundaries and affects women from all socio-demographic backgrounds, however there are particular implications for certain vulnerable groups:
 - o Aboriginal and Torres Strait Islander women face higher levels of physical violence and serious injury
 - o Women with disabilities are more vulnerable, have additional barriers to accessing support and therefore receive less support

- Young women experience higher levels of sexual assault
 - Immigrant and refugee women experience higher levels of murder
- Violence experienced by women in abusive relationships is often cyclic with distinct stages and patterns.
 - This cycle is repetitive, increases in frequency and increases in severity.
 - Due to the nature of DFV (i.e. relationship between abuser and victim, involvement of children, economic dependence, potential of victim to be coerced, etc), it is an often under-reported crime
 - From 1 April 2008 – 17 March 2009 in WA, there were 20 deaths as a result of DFV; during this time, police attended 30,933 FDV related incidents of which 12,329 were linked to criminal offences.
 - Between 2000 and 2009, 180 domestic homicides were perpetrated in Western Australia. (an average of 18 per year)
 - Domestic and Family Violence continues to be the most common form of violence experienced by women throughout the world.
 - Children have on occasions witnessed the violent deaths of their Mothers.
 - Women and children exposed to family and domestic violence have suffered a breach of basic human rights (refer Human Rights Law Centre Briefing Paper: <http://www.womenscouncil.com.au/campaignsevents.html>)
 - Domestic and Family violence differs from street crime in the sense that victims know the perpetrator personally and is usually in a relationship with the perpetrator. This means it is likely that:
 - feelings and emotions will be heightened;
 - the victim may be economically dependent on the offender;
 - the victim and the perpetrator may be parents of the same children;
 - there is a high chance that the crime will go unreported;
 - an act of DFV will be repeated; and
 - Safety of the victim and her children has a high likelihood to be compromised.

It is important that these characteristic of DFV are taken into account when developing responses to DFV, including the operation of bail and parole conditions, to prevent further victimisation of women and children. It is critical that policy initiatives are coupled with funding for implementation, including professional development, to avoid a yawning gap between legislative intent and the reality on the ground.

PETITION NO. 161 – Review Laws Pertaining to Domestic Violence

Specific cases where ‘Unlawful Assault Causing Death’ has been used resulting lenient sentencing.

- **Ms Saori Jones aged 31 (Perth) on 23 December 2010**

(Saori’s body in perpetrator’s home for 10 days badly decomposed)

Perpetrator: Mr Bradley Wayne Jones aged 35 received a five year jail sentence, eligible for parole December 2013. Assault witnessed by their two children.

On 24 January 2011, Bradley Wayne Jones was charged with Manslaughter (which carries a maximum penalty of 20 years imprisonment) after a review of post mortem results and in consultation with the Director of Public Prosecutions, to then be later downgraded to ‘Unlawful Assault Causing Death’ by the DPP.

Request for an Appeal was denied by the Director of Public Prosecutions.

- **Woman aged 37 (Kununurra) The State of WA versus Warra on 22 November 2009**

(Woman was repeatedly assaulted over a 3 day period) Post mortem examination revealed that she died from a head injury caused by repeated assaults over three days. She had a closed left eye and swelling to her eyelid and mouth. One witness stated that Warra kicked the woman out of the chair like a football. This particular act of violence was the result of the victim asking if she could use his mobile phone to ring her family in Derby.

Perpetrator: Mr Lincoln Warra aged 37 received a 5 year jail sentence with no parole

Woman (defacto) The State of WA vs Zyrucha 127 Of 2009 Supreme Court of WA

Deceased woman had been in a car accident with her children the day prior to her death. The Ambulance Officers returned her home to the perpetrator and that evening on two separate occasions Zyrucha assaulted the woman. The extent of the assaults not admitted to by Zyrucha, to victim that evening, was evident in severity, number and distribution of injuries. These acts of violence were repeated and separate attacks on defenceless victim who had been involved in serious traffic accident. The accused claims he awoke to find the woman deceased “blue”

Sentence: 3 years 6 months

- **Woman (defacto) The State of WA versus Indich 211 Of 2009 in Supreme Court WA**

Injuries that resulted from this savage assault included two broken ribs and lacerated spleen which caused bleeding in abdominal cavity. Perpetrator Mr Indich aged 42 had prior criminal record for previous conviction on the same woman.

Sentence: 2 years 10 months

PUBLIC

APPENDIX 3

NEWSPAPER ARTICLE REPORTING VIEWS OF FORMER ATTORNEYS GENERAL



West Australian
Monday 6/8/2012
Page: 1
Section: General News
Region: Perth Circulation: 203,180
Type: Capital City Daily
Size: 623.50 sq.cms.
Frequency: MTWTF--

Brief: PARLWA-YCC
Page 1 of 2
LIBRARY
Copy provided by the Parliamentary
Library in accordance with section 48A
of the Copyright Act 1968.

Former A-Gs question charge for wife killer

EXCLUSIVE
■ Daniel Emerson

Two former attorneys-general have claimed the Director of Public Prosecutions charged wife killer Bradley Wayne Jones with the wrong offence, a decision which allowed him to receive a soft sentence.

Christian Porter and his predecessor Jim McGinty have added their voices to the chorus questioning the DPP's decision to charge Jones with unlawful assault occasioning death.

Jones admitted felling his wife Saori Jones in December 2010 with a "full-on punch".

Despite Mrs Jones vomiting, bleeding and lying unconscious on the ground, he failed to call an ambulance and when she died he left her decomposing for 11 days until police arrested him.

Jones was charged with manslaughter but the DPP downgraded the charge on the grounds that the cause of death could not be established. He pleaded guilty in Sep-

tember to unlawful assault occasioning death.

His five-year sentence with parole eligibility after three years sparked public outrage which flared again in December after he sought access to his two children, one of whom witnessed the attack.

Mr Porter said he sought a briefing from the DPP after Jones' sentencing and concluded he should have been charged with a different offence but declined to reveal which one.

"I had my own view as to what the more appropriate charge may have been," Mr Porter, a former senior DPP lawyer, said.

"But ultimately my view was irrelevant because the DPP is an independent charging body and the attorney-general is statutorily prevented from giving any kind of direction on individual matters."

Mr McGinty said he introduced the charge of unlawful assault occa-

sioning death after a series of one-punch deaths in 2007 and 2008, but it was never intended to be laid in domestic violence cases.

He said the charge was intended as an alternative verdict should a jury be unable to support a murder or manslaughter charge.

"It was only ever envisaged that it would be used for the classic one-punch killing, and that's often a stranger, almost invariably young men out on too much alcohol, maybe too much drugs — someone lashes out and it results in death," Mr McGinty said.

"The domestic violence situation is quite different. It would be extremely rare to have a classic one-punch in a domestic violence situation. It's almost always surrounded by ongoing violence."

► CONTINUED P4



West Australian
Monday 6/8/2012
Page: 1
Section: General News
Region: Perth Circulation: 203,180
Type: Capital City Daily
Size: 623.50 sq.cms.
Frequency: MTWTF--

Brief: PARLWA-YCC

Page 2 of 2

PARLIAMENTARY LIBRARY

Copy provided by the Parliamentary Library in accordance with section 46A of the Copyright Act 1968.



Porter questions charge for wife killer

◀ FROM P1

Mr McGinty said Jones should have been charged with manslaughter, which can result in a life sentence.

"The police and DPP should always charge in domestic violence situations at the higher offence and then leave it up to the jury," he said.

"The police and DPP shouldn't take an easy option when dealing with domestic violence."

DPP Joe McGrath said the purpose of the one-punch charge was to make an offender accountable for a death linked to an assault but not reasonably foreseeable. There was no policy reason it could not be used after domestic violence.

Mr McGrath said the Government should consider doubling the penalty for one-punch assaults.

"In the Jones case we could not prove either the immediate cause of death or that death was reasonably foreseeable from the assault," he said. "It was considered that there was no reasonable prospect of conviction for manslaughter."

He said domestic violence offenders would be pursued vigorously.

"The DPP will always argue the most serious charge if the charge is open," he added.