



Hon Simone McGurk MLA
Minister for Child Protection; Women's Interests;
Prevention of Family and Domestic Violence; Community Services

Our ref: 74-04720/6

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Dear Dr Talbot

Thank you for your correspondence dated 18 October 2018 regarding the Legislative Council's referral of the Residential Tenancies Legislation Amendment (Family Violence) Bill 2018 to Committee for inquiry.

The State Government is strongly committed to reducing family and domestic violence within the Western Australian community and is grateful for the opportunity to provide submissions to the Committee about the importance of this Bill.

Please see attached a submission for your consideration. The submission includes information about the:

- prevalence and impacts of family and domestic violence in the Western Australian community;
- the issues seeking to be resolved by the Bill; and
- the benefits of the Bill for adult and child victims, and the Western Australian community.

Yours sincerely

HON SIMONE MCGURK MLA
MINISTER FOR CHILD PROTECTION; WOMEN'S INTERESTS;
PREVENTION OF FAMILY AND DOMESTIC VIOLENCE; COMMUNITY SERVICES

29 OCT 2018

Residential Tenancies Legislation Amendment (Family Violence) Bill 2018

Outlined below is the submission to the Standing Committee on Legislation regarding the Residential Tenancies Legislation Amendment (Family Violence) Bill 2018 (the Bill).

Per the Standing Committee's terms of reference, the submission provides information about the policy justification for the Bill. This includes information about:

- the prevalence and impacts of family and domestic violence in the Western Australian community;
- the issues seeking to be resolved by the Bill; and the
- benefits of the Bill for adult and child victims, and the Western Australian community.

Family and domestic violence

Prevalence

Family and domestic violence is a prevalent and destructive issue affecting many people in the Western Australian community.

As many as one in three Australian women have experienced family and domestic violence (ABS 2017; Mouzos & Makkai, 2004). For Aboriginal women the number is much higher with as many as one in two experiencing violence and abuse in an intimate or family relationship (ABS 2008; AIHW 2006).

The 2012 and 2016 Personal Safety Surveys (ABS 2012; 2017) both found that, in the preceding 12 months, Western Australia had the second highest rate of reported physical and sexual violence against women, second only to the Northern Territory.

Western Australia police respond to an incident of family and domestic violence every 10 minutes, over 54,000 incidents, in 2016-17 and 46,000 in 2017-18 (Department for Child Protection and Family Support 2017; Department of Communities 2018). The rate of reporting has steadily increased over the last eight years, from 32,827 incidents in 2008-09 (Department for Child Protection 2014). Note that the reduction in Family Violence Incident Reports recorded by the Western Australia Police Force in 2017-18 is due to a recording practice change. Over 69,000 calls for assistance related to family violence were recorded by WAPOL in their Computer Aided Dispatch system in 2017.

It is likely that reporting will continue to increase as awareness about family and domestic violence is raised across the Western Australian community. The Personal Safety Survey (2017) estimates that as few as 20 per cent of victims of family and domestic violence currently contact the police for assistance.

Impacts on adult and child victims

Family and domestic violence significantly affects the health, safety and wellbeing of (predominantly) women and children. For women it is the leading cause of:

- homelessness;
- mental health issues including anxiety and depressive disorders;
- substance misuse;
- poverty and economic disadvantage;
- injury, illness, suicide and self-inflicted injuries, and homicide; and
- reproductive ill-health including early pregnancy loss (Ayre et al., 2016; Cortis & Bullen, 2013; Tully et al., 2008).

For children and young people, exposure to family and domestic violence:

- undermines attachment to the primary care-giver;
- causes negative health, social and educational outcomes;
- causes significant emotional harm and increases the risk of child neglect and physical abuse. It is also one of the main reasons that children are brought into out of home care;
- is the leading cause of homelessness; and
- increases the risk that the child or young person will experience or perpetrate family and domestic violence in their peer and intimate relationships in later life (Department of Communities, 2017; Dominick, 2018; Kaspiew et al., 2017).

Young women are also particularly vulnerable to experiences of violence and abuse. The highest rates of reported physical and sexual violence, and sexual harassment is among 18-24 year old women (ABS, 2017).

Cost to the Community

KPMG (2016) estimated that family and domestic violence costs the Western Australian economy \$2.82 billion dollars per annum, including costs associated with loss of productivity in the work place, impacts on adult and child victims, and increased demands on health, welfare, housing, crisis, legal and statutory services. Of the \$2.82 billion, KPMG estimated that \$302 million is spent on service delivery.

The Residential Tenancies Legislation Amendment (Family Violence) Bill 2018

The issues seeking to be resolved

People at risk of, or experiencing family and domestic violence who are residing in a rental property or long stay park, currently have limited autonomy or choice to change their tenancy agreement in the interests of their safety. This includes the inability to:

- remove themselves from a tenancy agreement without risk of financial penalty; or
- remove a perpetrator from the tenancy agreement, even in circumstances where they may have a Family Violence Restraining Order excluding the perpetrator from accessing the property.

Regarding the former, it is currently the case that victims of family violence who are party to a fixed-term residential tenancy agreement and need to leave the property at short notice, continue to be liable for the rent at those premises until either a new tenant is found or the tenancy period expires. This is at a time when they are trying to locate affordable alternative accommodation and find the funds needed to relocate. As a result, many victims are forced to bear a significant cost which forces many into homelessness.

Background to the reforms

Family and domestic violence focused amendments to the *Residential Tenancies Act 1987* initially arose via the 2014 Law Reform Commission (the Commission) of Western Australia report *Enhancing Family and Domestic Violence Laws (Project No. 104)*.

During the review process, the Commission received a number of submissions supporting family violence reforms to the *Residential Tenancies Act 1987* including from Gosnells Community Legal Centre, Aboriginal Social Workers Association of WA, Path of Hope, Anglicare WA, Relationships Australia WA, Women's Law Centre, Geraldton Resource Centre, the Women's Council for Domestic and Family Violence Services, the Domestic Violence Legal Workers Network, Legal Aid WA, Aboriginal Family Law Service and Tenancy WA.

The Commission summarised that there should be power for a victim of family violence to remove themselves from a residential tenancy agreement, or power to have a perpetrator removed. As a result, the Commission included recommendation 33, proposing that:

"the Department of Commerce undertake a review of the interaction of the Residential Tenancies Act 1987 (WA) and family and domestic violence protection orders to consider whether any reforms are necessary or appropriate to accommodate the circumstances of tenants who may be subject to or protected by a family and domestic violence protection order".

Priority of Government

The McGowan Government is committed to addressing family and domestic violence in the Western Australian community. This is signalled by the appointment of Western Australia's first Minister for the Prevention of Family and Domestic Violence and through the Stopping Family and Domestic Violence policy which sets out 21 initiatives, and an allocation of more than \$21 million over four years to:

- hold violent perpetrators to account and keep victims safe;
- create a responsive justice system;

- prevent violence against women; and
- respond to elder abuse.

The Stopping Family and Domestic Violence policy includes a commitment to address all outstanding recommendations from the Commission report Enhancing Family and Domestic Violence Laws, and specifically mentions the introduction of family violence provisions to the *Residential Tenancies Act 1987*.

Benefits of the Bill for people at risk of, or experiencing family and domestic violence

Victim and safety-first approach

Family and domestic violence is typified by coercive control (Day & Bowen 2015). Perpetrators use a range of abusive and violent tactics to reduce and remove victim's options and decision making autonomy. This often includes limiting access to income/funds, sabotaging employment, isolating them from friends and family, making them fearful for their and their children's physical safety, and systematically eroding their dignity, self-esteem and self-worth (Day & Bowen 2015).

The proposed amendments to the *Residential Tenancies Act 1987* are unashamedly victim focused. The amendments prioritise the safety and dignity of victims by providing them with options and the autonomy to choose a course of action that is safest and most suitable for them and their children, including:

- to remove themselves from the home and residential tenancy agreement;
- to choose from a range of evidence options in 71AB which enables them to control who finds out what, and when, and to assist them to maintain their privacy and manage risk;
- to apply to Magistrates Court to have the perpetrator removed; and
- to change the locks, or install security provisions, without the permission of the landlord.

Preventing pathways to homelessness

A significant barrier to safety for many women and children experiencing family and domestic violence is uncertainty about where they will go, and the risk of homelessness. Forty four per cent of all people accessing specialist homelessness services in Western Australia in 2016-17 did so as a result of family and domestic violence (AIHW 2017).

The amendment Bill will help prevent pathways to homelessness by providing victims with the choice to:

- remove themselves from a tenancy agreement without risk of financial penalty, which will enable them to move on and re-establish themselves elsewhere;
- apply to the Magistrates Court to have the perpetrator removed; and
- support victims to stay safe at home by enabling them to change locks or install security provisions without the prior permission of the landlord.

Minimising financial burden

One of the leading causes of poverty for women and children is family and domestic violence (Ayre et al., 2016). This is due to:

- perpetrators controlling access to income, and sabotaging or denying access to training or employment; and the
- financial sacrifices that victims make to limit contact, and further opportunities for abuse, after separation from the perpetrator. This can commonly include forfeiting child support payments, assuming sole responsibility for accrued debt, and continuing to pay rent for a property that they have been forced to leave as they can no longer safely stay there (Cortis & Bullen 2015).

The Bill will assist victims to limit some of the financial impact and burden of seeking safety from family and domestic violence by:

- enabling victim interest to be severed within seven days after they have made an application to leave the tenancy; and by
- enabling victims to apply to court to assign liability for damage to the premises to the perpetrator of violence.

Providing options for people beyond the justice system

The people in our community most likely to experience family and domestic violence, and suffer injuries, illness and death as a result, are also the least likely to engage in the justice system as part of the solution. Aboriginal women and children, women and children from culturally and linguistically diverse communities and people with disability face a range of deterrents and barriers to engaging in the justice system, including civil processes (Judicial Council on Cultural Diversity, 2016). These include, but are not limited to, systemic prejudice and racism, communication barriers and cultural security (Judicial Council on Cultural Diversity, 2016).

A key component of this Bill is that it provides a safe choice for some of the most vulnerable members of our community to remove themselves from a residential tenancy agreement to escape family violence, without having to go to court.

Prioritising the safety and wellbeing of children

It is well established that children exposed to family and domestic violence suffer a range of trauma related responses that affect their social and emotional wellbeing, cognitive and behavioural development. In 2016, the *Children and Community Services Act 2004* was amended to explicitly recognise that exposing a child to family and domestic violence is a form of child abuse. This is similarly recognised in the Commonwealth *Family Law Act 1975* and Western Australia's *Family Court Act 1997*.

A guiding principle of the Bill is 'the need to protect the wellbeing of children by preventing them from being subjected or exposed to further family violence'. Accordingly, the Bill privileges the safety of children by providing adult and child victims with the choice to maintain or sever their interest in the residential tenancy. This means that in circumstances where the victim chooses to remain in the home, and makes an application to court to have the perpetrators interest terminated, they can maintain a stable and familiar environment for the child. Or in circumstances where the victim feels it is too unsafe to stay in the home, or there are too many reminders of the traumas that have occurred there, they can choose to sever their own interest and leave. In either scenario, the Bill provides mothers and caregivers with the ability to choose what is in the best interests of their child's physical and emotional safety.

Improving the physical safety of adult and child victims

More than 70 per cent of perpetrators of family violence continue to stalk, harass and abuse the victim after separation or relationship breakdown (ABS 2017; Humphreys & Thiara 2003). In many cases the level and intensity of violent and abusive tactics increases, as the perpetrator attempts to regain control by destroying or sabotaging victim's attempts to escape and re-establish themselves (ABS 2017; Humphreys & Thiara 2003).

The Bill enables victims to change locks and install security provisions without the consent of the landlord.

These provisions are not exhaustive, nor do they alone provide a solution to family and domestic violence in absence of other interventions however, they are an important component of safety planning, and for restoring some of the confidence of victims in the safety of their home.

Whole of community approach

On 10 February 2018, the Real Estate Institute of Western Australia released a statement that says "we all know domestic violence is a problem in our society and we all have a responsibility to help eradicate it and minimise its impact on victims".

Meaningful and sustained reductions in family and domestic violence require a whole of community approach. As family and domestic violence arises from, and is related to social and structural settings in the community that marginalise 'minority groups', condone gender inequality or promote or reinforce violence supportive attitudes, then the solutions must seek to identify and redress these social, cultural and institutional settings.

Practices related to residential tenancies, is one example of this.

Family and domestic violence is occurring now in private and public housing across the State. It is managed by many property managers and landlords on a case by case basis. There is no clear legal framework to support this work and therefore no certainty for either the victim or property owner.

The Bill provides a clear framework for responding to family and domestic violence in a way that benefits victims, and does not disadvantage the landlord, or unfairly punish the perpetrator (for example, by prohibiting them from being listed on a residential tenancy database).

But most importantly it removes an unintended legacy barrier to victim safety, arising from the principle of 'joint and several liability'

This Bill is important for protecting the housing rights and safety of adult and child victims, and for sending a strong message to the community, that our most vulnerable members will be supported and protected.

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