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21 May, 2007

Review of SA Domestic Violence Laws
c/- Justice Strategy, Policy, Planning and Legislation Division
Attorney-General's Department
GPO Box 464
ADELAIDE SA 5001

Dear Attorney-General,

Thank you for inviting the YWCA of Adelaide to present a written submission in response to the **Domestic Violence Laws Discussion and Options for Reform Paper**.

Our organisation commends the government for its commitment to women's safety, for reviewing sexual violence laws, and for now re-visiting its domestic violence legislation.

The YWCA of Adelaide is a not for profit organisation that influences government and community attitudes on issues facing young women, empowers young women through leadership development and supports young women in need.

We have been advocating on behalf of young women in South Australia for 127 years, and are guided by National and International YWCA charters with a vision of a fully inclusive world where peace, justice, freedom, human dignity, reconciliation and diversity are promoted and sustained through women's leadership.

Violence against women is a key policy and program area of YWCA's around the world. We believe fundamentally in early intervention, education, and prevention of violence, along with advocating for programs, policies and laws which will end violence against women and girls.

Australian society has made great progress in supporting women who experience domestic violence when it is considered the issue has only received public attention for less than forty years. But there is greater progress to be made, and legal reform is one strategy to achieve it. The YWCA of Adelaide believes strongly that the effective implementation and enforcement of the law is as important as the law itself.

The YWCA of Adelaide recognises that the Tasmanian *Family Violence Act (2004)* is considered a 'best practice' benchmark in Australia. We believe that the successful Tasmanian model should be strongly reflected in South Australia's review of domestic violence laws.

It is of particular note that the Tasmanian legislation has been effective due to the sweeping cultural change that has occurred within the police force. The police have been trained to understand that domestic violence is not about an incident, but about a relationship. Seventy five per cent of the police force has been retrained in domestic violence, and 100 police officers have been trained as specialists to deal with domestic violence. A RAST (Risk Assessment Screening Tool) has also been implemented as one of a number of tools for police to rate the seriousness of a situation, removing discretion. High ranking police officials were involved from the outset of the reform, helping to implement and lead the changes.

In Tasmania, the response to domestic violence is entirely a criminal justice response. In the case where a victim does not want to pursue a perpetrator, if the police and courts have sufficient evidence, they continue with a prosecution regardless of the victim's wishes. While the Tasmanian approach is lauded as successful in increasing awareness of domestic violence, increasing prosecutions and making women and children safer, the YWCA of Adelaide supports this approach with a note of caution.

We believe that women have fought hard and continue to fight for choice, and that there needs to be a balance between the criminal justice system and respecting women's choice. In a case where a victim does not want a perpetrator prosecuted, the victim should have access to case-appropriate counselling and support.

The YWCA of Adelaide believes it is important to highlight the connection between domestic violence and pregnancy, particularly for young women. The 2002 World Report on Violence and Health (WHO) pointed out that women who live with violent partners have difficulty protecting themselves from unwanted pregnancy or disease. Further, the Australian Longitudinal Study on Women's Health: Health and Experiences of

Violence among Young Australian Women reports that in 1996, 24 per cent of young Australian women had already experienced some violence. This study, which involved more than 10,000 women aged 18 to 23, surveyed in 1996 and again in 2000, also found partner violence is strongly associated with early pregnancy. There was a much higher proportion of pregnancies for women who had a violent partner, and increased adverse pregnancy outcomes such as abortion, miscarriage and stillbirth for women who had violent partners. It is also paramount to recognise that women previously or currently abused by partners are four to five times as likely to report depression as women free from violence. Anxiety disorder, self harm and suicidal thoughts are also significantly associated with women who have violent partners.

The YWCA of Adelaide questions the effectiveness and suitability of written statements by victims of domestic violence to the police. This process can be emotionally upsetting, especially when children are present or involved, and therefore the YWCA of Adelaide proposes that the following reforms are taken in to consideration:

- That audio visual statements can be made by victims thereby reducing the time that a victim has to physically be with Police. Audiovisual statements would provide a greater reflection of the emotional and physical effects on the victim, who is also then seen as a real person, not a 'fact' in a black and white typed affidavit.
- That social workers be trained in taking DVRO's and be able to advocate in person in the Court on the victim's behalf.

The impact of domestic violence is devastating and far reaching and has consequences that can impact on the physical and mental health of a victim for a life time. It is with a sense of urgency that new laws need to be reviewed, implemented and acted on.

The YWCA of Adelaide submission outlines its opinions around several of the questions and options for reform in the Paper. We have given particular consideration to the areas of law reform we believe to be paramount to the work we do and the people we support. The YWCA of Adelaide has paid particular attention to: the definition of domestic violence; broadening the definition of relationships covered by the Act; keeping women and children in their homes; and the importance of education and awareness programs.

The YWCA of Adelaide is a feminist organisation that recognises that violence against women is linked to the practice of patriarchy, male power, privilege and control. Given this and the fact that it is women who

are usually the victims of domestic violence our submission tends to refer to women as victims. We do recognise that men are also victims of domestic violence and require the same access to legal remedies and community based support.

The YWCA of Adelaide looks forward to the outcomes of this legal reform and welcomes the opportunity to inform the community of changes to the law through education campaigns.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Gail Jackson', with a long, sweeping underline.

Gail Jackson
Chief Executive

SOUTH AUSTRALIAN
DOMESTIC VIOLENCE LAWS
DISCUSSION AND
OPTIONS FOR REFORM

Maurine Pyke QC

9 February 2007

CHAPTER 1

Whether the Domestic Violence Act 1994 (“The Act”) should contain a Preamble of Guiding Principles, and if so, what they should be.

QUESTIONS

1. Should the Act contain objects and principles clauses?

Yes, the YWCA of Adelaide supports a preamble of guiding principles that underpins the values and intention of the legislation. The YWCA of Adelaide supports the listed Objects and Principles in points 6 and 7 of the Paper.

The YWCA of Adelaide believes that the Preamble should include a statement that violence is unacceptable, that the law acknowledges the diversity of cultures in Australia, but that despite cultural differences, violence remains unacceptable.

CHAPTER 2

The Grounds for making Restraining Orders

QUESTIONS

10. Should the Act be amended to include emotional and psychological abuse as conduct constituting domestic violence?
13. Should the Act be amended to include economic abuse as conduct constituting domestic violence?

The YWCA of Adelaide feels strongly that emotional, psychological and economic abuse should be included in the definition of domestic violence. The Report states that it is difficult to prove these forms of abuses and that it would be costly and timely for police and courts to act on these definitions. As at May 10, 2007 in Tasmania, there have been no successful prosecutions based solely on emotional abuse, and two successful prosecutions on economic abuse (Researcher, Domestic Violence Clearing House), but it is to the Tasmanian experience that the YWCA of Adelaide looks to validate their inclusion.

Following a media and awareness campaign after the introduction of the **Family Violence Act 2004 (Tas)**, there was a 40 per cent increase in the reporting of family violence. This level has sustained for two and a half years.

Elizabeth Little, Principal Consultant Department of Justice in Tasmania, says that the inclusion of emotional and economic abuses in the definition of domestic violence has had a dramatic effect in Tasmania. She says it has added to the whole picture of family violence, that it has raised awareness about what constitutes domestic violence, that attitudes have shifted, and that it has made police, courts and service providers view domestic violence in an holistic way.

Rather than looking only for evidence of physical abuse, police are now looking at all signs of control and abuse in a domestic relationship. Elizabeth says: "It puts all forms of domestic violence in to the picture, in to perspective, and in to the public minds and attitudes. People now know that economic and emotional abuse is not acceptable."

One example Ms Little cited, which is pertinent to young women, is the use of SMS text messaging as a form of stalking, harassment and control.

The YWCA of Adelaide believes that a change to the legislation would ensure that the community acknowledges and understands that domestic violence occurs in many different forms, and raise awareness about the ways in which people are controlled, manipulated and abused in relationships.

The *Women's Safety Australia* study (Australian Bureau of Statistics [ABS] 1996) reports that women who experienced physical or sexual violence by a partner were significantly more likely to experience emotional abuse (manipulation, isolation or intimidation) than those who had not experienced violence.

The YWCA of Adelaide believes that the impact on the victim compared to the intent of the perpetrator should be considered as a model of assessing emotional abuse.

The YWCA of Adelaide recommends that emotional, psychological and economic abuse be included in the definition of domestic violence.

CHAPTER 3

Whether there is a need to broaden the relationships to which the Act applies

QUESTIONS

21. Should the definition of the defendant's family or family member be extended to include persons who are or have been in an intimate personal relationship with the defendant? If so, should intimate personal relationship be defined?

The YWCA of Adelaide believes that there is a need to broaden the relationships to which the Act applies. We believe the Act should incorporate a definition and description of 'family' and/or 'domestic relationship' which is sufficiently broad to cover:

- spousal relationships (past and present)
- intimate personal relationships (past and present, including dating relationships, same sex relationships, non-sexual intimate personal relationships, domiciled and non domiciled relationships)
- family relationships (with a broad definition of relative which also reflects the extent of kinship and family relationships within indigenous and CALD communities), and
- persons who are ordinarily members of a household

We believe that the definition of 'family' and 'spouse' need to be extended to protect people in a relationship who are not living together. This is particularly relevant to young women who are victims of domestic violence, but not living with their partners.

The *Women's Safety Australia* study [ABS] 1996 reports that younger women were more at risk of domestic violence than older women, with 7.3% of women aged 18-24 years having experienced one or more incidents of violence from a current partner in the previous 12 month period as compared to 1.2% of women aged 55 and over.

The following statements are taken from a report of May 3, 2007 in *The Advertiser*, providing an insight to the alleged violence occurring in the relationships of young people.

Police prosecutors yesterday said violent letters Kym Michael McGuinness wrote to June Clayton would be used in a new case that has yet to be filed.

It comes more than a year after Ms Clayton was hit and killed by McGuinness' car at Goodwood - and eight months after murder charges were dropped because there was "no reasonable chance" of a conviction.

McGuinness, 21, of Prospect, stood trial in the Adelaide Magistrates Court yesterday for failing to provide a writing sample to police.

Ms Clayton (aged 20) died in March, 2006, hours after she was hit by McGuinness' car.

The court heard a number of "letters and poems" were found, one claiming McGuinness gave his "true love" a "black eye and bruises".

CHAPTER 5

Whether the Act should give greater emphasis to the removal of the alleged perpetrator or defendant rather than the victim from the victim's usual place of residence.

The YWCA of Adelaide believes that greater emphasis should be placed on the removal of the perpetrator from the home, rather than the victim. Robyn Edwards' *Staying Home Leaving Violence* study, which is cited in the Report, outlines many of the reasons why women and children benefit from staying in their own home.

The YWCA of Adelaide believes that:

- the accommodation needs of the victim should be a priority over the accommodation needs of the perpetrator
- the Act should give powers to police to remove the perpetrator from the home for a prescribed period of time

- South Australia should adopt the Tasmanian model of the dual Orders system: a Police Family Violence Order can be issued on the spot by Police and is effective for up to 12 months, and the Family Violence Order which is issued by the Courts and can be in perpetuity
- the Police or DV service providers should have the responsibility to 'harden homes' by changing locks, increasing security, cutting down trees etc
- the courts should be given powers to change the lease and the bond in to the victims name in a rental situation
- where the perpetrator is removed, there must be an obligation for them to participate in counselling and rehabilitation

In Tasmania, since the introduction of the **Family Violence Act 2004** there has been an increase in the numbers of women and children staying at home, a decrease in the number of women and children needing emergency accommodation at women's shelters, and those who are attending shelters are staying for shorter periods of time.

The YWCA of Adelaide would be concerned that under any new law, if the perpetrator is removed from the home and needed temporary accommodation, that this may mean another area of service and education would have its funding reduced. We believe that to achieve sweeping legal and cultural changes and to reduce and prevent domestic violence, the funding for domestic violence responses would need to be increased across all areas. Rather than using the existing pool of funding to achieve any changes, the pool would need to be increased.

The YWCA of Adelaide believes that greater emphasis should be placed on the removal of the perpetrator from the home, rather than the victim.

CHAPTER 9

Whether the Act provides an appropriate range of penalties to ensure that the perpetrator takes sufficient responsibility for the consequences of and prevention of their domestic violence.

Whether the sentencing principles and penalties that apply to offenders who contravene domestic violence restraining orders are appropriate and give sufficient weight to the offender's past history of domestic violence.

OPTIONS FOR REFORM

Whether the Act should be amended as follows:

111. That there be a term of imprisonment for any breach of a domestic violence order which involves violence.

The YWCA of Adelaide is concerned about this question, and the perceived assumption placed in the term 'violence'. What constitutes the 'violence'? Does it have to be

physical violence? We recommend that the imprisonment should result following a breach of any of the actions of domestic violence - physical, emotional, psychological or economic.

CHAPTER 11

Whether there is a need for a community based public awareness program on domestic violence laws.

QUESTIONS

124. Should there be a community education program, if so, what should the aims strategies and underlying principles of such programs be?

The YWCA of Adelaide believes that there should be a wide ranging community education program around new domestic violence legislation with the aims of awareness, education, reducing and ultimately eradicating violence against women totally.

OPTIONS FOR REFORM

- 125. Whether a community education program (including programs working with young people in schools) should be undertaken with the aim of educating the community that violence is not acceptable and whether such education programs should be designed to change attitudes, awareness, behaviours or values with respect to domestic violence.**

The YWCA of Adelaide believes that community education programs should be far reaching, long term, well resourced and have broad aims and objectives.

The first change needed is to change attitudes around violence against women, to convey that it is not acceptable and that society - from authorities to service providers to neighbours - will not tolerate it.

The causes of violence are complex, however accumulated evidence from around the world suggests that cultural, social and economic factors play a particular part. A significant underlying factor is the unequal distribution of power and resources between men and women (WHO 2002; OWP 2002). The Health Costs of Violence, VicHealth 2004

We believe that education should address several key issues associated with domestic violence at the heart of the issue, including:

- inequalities that exist between men and women

- community perception of sex as a commodity and the act of sex used as a weapon
- a man's perceived power and control over a woman in an intimate relationship, and
- the connection between children witnessing or being victim's of domestic violence and growing up to become violent

The YWCA of Adelaide believes that an education campaign should:

- Inform people about the new legislation, its parameters and powers
- Inform women of their rights in domestic violence situations
- Assert that violence against women is not acceptable

We believe that education needs to target perpetrators, victims, children and authorities.

We believe that education should begin at primary school level. We propose that programs designed to reduce and eliminate domestic violence should be included in school curriculums or conducted by non government organisations which come in to a school setting for a period of time. While it would also be ideal for teachers to receive specialist training to cope with and identify children who are living in a home where domestic violence occurs, we understand the existing pressures on teachers and would not propose they be burdened further with such responsibility.

The YWCA of Adelaide also believes that this education should include amongst its objectives, the aim to dispel myths about domestic violence and to break down the stereotypes of what a 'victim' and 'offender' look like, highlighting that domestic violence occurs in all socio-economic environments and is perpetrated by people from all sectors in the community.

The YWCA of Adelaide believes that all members of SAPOL should be retrained in dealing with domestic violence to achieve cultural change within the police force, whereby domestic violence is viewed as serious and a crime that deserves resources, time, energy, and to be pursued.

We believe that all professions who come in contact with victims should receive education and training to identify and respond appropriately including GP's and hospital staff.

The YWCA of Adelaide would like South Australia to be a leader in domestic violence education, informing the entire community that domestic violence is a public issue that affects everybody, that is costly both socially and financially to the government and community.

We believe that it is worthy to consider a two-tiered education and awareness campaign – one that is a combined Federal and State Government initiative.

It is possible that a long term Federal campaign could educate the Australian community about the big picture issues, disseminating the fundamental messages of violence being unacceptable. The YWCA of Adelaide is concerned about the current Federal Government campaign: 'To violence against women, Australia says no', in respect of its use of the term 'sexual assault'. It would appear that the campaign is fearful of using the word rape. This is one example where language and appropriate naming of a crime can make a real difference.

The State could then harness its resources and energies and focus on state appropriate messages and education.

If we start with awareness, we can lead to a change in attitudes, which leads to a change in actions.

November 25 every year is the International Day for the Elimination of Violence Against Women. This is one opportunity to raise awareness and launch campaigns around domestic violence.

In the third full week of October every year, it is the World YWCA Week Without Violence. The vision of the global movement of YWCAs is a world without violence - every day of every week in every year. YWCAs around the world use the YWCA Week Without Violence as a platform to promote the cause, to raise awareness, to shift attitudes and to launch campaigns. The YWCA of Adelaide participates in this week at a local level and looks forward to continuing its campaign to eradicate violence against women and girls.