Legislative Scrutiny Committee
GPO Box 3721 DARWIN NT 0801

Friday 4 April 2025

Via email: LA.Committees@nt.gov.au

Dear Committee Members,

Re: The Domestic and Family Violence and Victims Legislation Amendment Bill 2025

I submit for your consideration my opinions on the proposed Bill.

(i) whether the Assembly should pass the Bill;

It shouldn't – or, at least, shouldn't in full. Clause 5 should not become law.

(ii) whether the Assembly should amend the Bill;

It should – if by 'amend' is meant 'abolish certain provisions of'. Clause 5 should be abolished.

(iii) whether the Bill has sufficient regard to the rights and liberties of individuals; and

It does not. More women and men will be incarcerated, especially on remand.

(iv) whether the Bill has sufficient regard to the institution of Parliament.

N/A.

More detailed answers are given below.

Clause 5 of the Bill introduces a new s 122 into the *Domestic and Family Violence Act 2007* requiring a term of 'actual imprisonment' be imposed following a finding of guilt for breaching a Domestic Violence Order (DVO) where there has been a prior breach of a DVO, where there are three or more breaches of a DVO occurring in a 28-day period, or where harm or a threat to commit harm is involved. In other words, cl 5 introduces a mandatory sentencing requirement for certain breaches of DVOs.

What complicates matters considerably is that 'actual imprisonment' doesn't seem to mean 'actual imprisonment'. Per *Sentencing Act 1995* s 78CB, when a court is required to impose a term of 'actual imprisonment', the court may suspend the sentence in whole or in part under s 40, or may make an 'intensive community correction order'.

According to the departmental briefing on 1 April 2025, even 'alternatives to custody' might be ordered under this mandatory sentencing provision:

> **Ms CLEE:** In terms of the mandatory sentencing provisions, it allows for intensive community correction order to be made which allows the court to impose conditions, including attending alternatives to custody and other arrangements through that order.

If it is the case that alternatives to custody can still be ordered, one wonders why one would bother to introduce the cl 5 mandatory sentencing provision at all. The answer is that cl 5 deprives the court of the discretion not to record a conviction against the defendant. Under *Sentencing Act* s 78CB, where the court is required to impose a term of actual imprisonment, the court 'must…record a conviction against the offender'.

Removing the discretion of judges not to record a conviction is wrong for one principal reason: a vicious circle of incarceration is thereby exacerbated. What happens when a conviction is recorded for a breach of DVO? It makes future bail less likely, because the judge will decide whether bail should be granted by reference to the defendant's prior criminal record. Suppose that bail is not granted but the case against the defendant is weak. The defendant faces the prospects of months, or even up to a whole year, on remand waiting for the court to have an available date for a hearing to fight the charges. Criminal lawyers tell us that in these circumstances many people prefer to plead guilty to 'get it over and done with'. Pleading guilty under the cl 5 provisions this Bill would introduce means a conviction is recorded against the defendant's name. More convictions means future bail is even *less* likely, meaning the incentive to plead guilty is even greater, to avoid lengthy periods languishing on remand.

People who are technically innocent are going to be pre-emptively criminalised through cl 5 of this Bill, given how the NT criminal justice system currently operates. Ultimately, cl 5 will see more women and men incarcerated, more often, in a prison system whose conditions are so inhumane that complaints have been made to the United Nations. How will that result in a reduction of violence against women long-term? Clause 5 certainly has no regard for the rights and liberties of individuals.

'Jail is a blunt and ineffective instrument in addressing the complex drivers of domestic and family violence,' said Clara Mills from the Katherine Women's Legal Service. Noteworthy is that there was no consultation with the domestic and family violence sector before the reforms proposed in this Bill were put to the Parliament. The departmental briefing makes this clear:

> **Ms HANIGAN:** With respect to consultation, the department was not able to consult during the drafting phase of the Bill, but that is why we welcome the scrutiny and submission process. It was for operational and timing reasons we were not able to engage with our relevant stakeholders, but this process will certainly allow for our stakeholders to contribute to this next phase.

Undoubtedly, the Department was 'not able to consult' because the relevant Minister imposed an arbitrary and rushed deadline – note the euphemistic 'operational and timing reasons' – in a frenzy to appear 'tough on crime'. Had the domestic and family violence sector, and those with lived or direct experience of gender-based violence, been asked to draft the Bill, the proposal would have looked very different.

I encourage the Committee to reject cl 5.

Kind regards,

Stephen W. Enciso
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