

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with the Thirteenth Assembly Sessional Orders (part 12.3) as adopted on 24 August 2017.

### **Justice Legislation Amendment (Domestic and Family Violence) Bill 2019**

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

#### **Overview of the Bill**

This Bill makes amendments in three key areas to improve responses to domestic and family violence in the Northern Territory. Together they aim to improve the safety of victims and increase the accountability of defendants and provide greater impetus for defendants to change their behaviour.

#### Completion of a rehabilitation program may constitute exceptional circumstances for mandatory sentencing

The Bill amends the *Sentencing Act 1995* to make clear that for the purpose of mandatory sentencing for violent offences it may be an exceptional circumstance if the defendant has successfully completed a rehabilitation program ordered as part of a Domestic Violence Order.

This will provide an incentive for offenders to agree to undertake a rehabilitation program to change their behaviour. If the offender pleads guilty and takes responsibility for his conduct the Court may order attendance at a rehabilitation program, place the offender on bail to undertake the program, and defer sentencing for a period of time to allow the program to be completed. If the program is satisfactorily completed the Court may take this into account in sentencing and is not required to impose the mandatory minimum sentences for violence offences that would otherwise be required under Part 3 Division 6A of the *Sentencing Act 1995*. A term of actual imprisonment is still required but the Court will determine the appropriate sentence in the circumstances of the case.

Associated amendments have also been made to:

- the *Domestic and Family Violence Act 2007* to provide that the paramount consideration for making an order to attend a rehabilitation program is the safety of the protected person and to provide for the creation of a new Part of the Act to provide for rehabilitation program orders; and
- the *Bail Act 1982* to provide that rehabilitation programs declared by Minister under *Domestic and Family Violence Act 2007* are included amongst the programs that can rebut the presumption against bail that applies for certain offences.

This amendment is important for the implementation of the Specialist Approach to Domestic Violence at the Alice Springs Local Court and will remove a disincentive for offenders to consent to participate in rehabilitation programs.

#### New criminal offence of choking, suffocation or strangulation in a domestic relationship

The Bill amends the *Criminal Code Act 1983* so that it is an offence with a maximum penalty of five years imprisonment for a person to choke, strangle or suffocate a person with whom they are in a domestic relationship.

Choking, suffocation and strangulation have been identified as high risk factors for serious harm and lethal outcomes in domestic violence situations but it has often not been taken seriously enough. The creation of a new offence will ensure greater recognition of this conduct in the investigation and prosecution of domestic violence related offending.

#### Orders to terminate a tenancy agreement in domestic violence situations

The Bill amends the powers in the *Domestic and Family Violence Act 2007* in relation to tenancy agreements so that:

- a relationship doesn't have to be permanently broken down for the Court to make an order to terminate or replace a tenancy agreement; and
- it is clear that the Court has power to an order a tenancy agreement to be terminated without a replacement tenancy agreement being made.

## Human rights implications

This Bill engages several of the applicable rights or freedoms.

- The Bill engages Article 3 of the Convention on the Elimination of All Forms of Discrimination against Women because protection from domestic and family violence is necessary for women to exercise and enjoy human rights and fundamental freedoms on an equal basis with men. By providing greater impetus for offenders to consent to rehabilitation programs it is hoped to reduce the high rate of domestic violence offending in the NT. The recognition given to choking as an offence in domestic settings aims to prevent further serious harm and death to women by violent partners. It is noted that Article 6 of the International Covenant on Civil and Political Rights (ICCPR) provides that 'Every human being has the inherent right to life.'
- The Bill engages with Articles 3 and 19 of the Convention of the Rights of the Child which requires Governments and Courts to take measures necessary for the care and protection of children and have their best interests as a primary consideration. Article 19 requires states to protect children from all forms of physical or mental violence, injury, abuse or neglect. By providing greater incentives for offenders to attend rehabilitation programs it is intended to reduce the exposure of children of violence. By enabling Courts to terminate a tenancy agreement as part of a domestic violence order even if a replacement agreement cannot be made, the Bill enables families to secure safer living arrangements and prevents children from being exposed to domestic violence. Although the right of landlords is impinged upon by potentially leaving them without an agreement, this property right is outweighed by safety considerations for families. In some circumstances there is no replacement agreement that can safely be made by the Court. There is a fundamental need to ensure that protected persons and their children are not forced to remain in unsafe living arrangements because a tenancy agreement cannot be terminated as part of a domestic violence order.

- The Bill engages with Articles 9, 10 and 14 of the ICCPR. Everyone has a right to liberty except as required by law and to be treated with humanity if incarcerated. The Bill provides a framework within which domestic violence offenders are provided with greater incentive to engage in rehabilitation programs to help them stop offending and reduce incarceration. However, the safety of the victim remains the paramount consideration in making an order for an offender to attend a rehabilitation program.
- The Bill engages with the Convention on the Elimination of all Forms of Racial Discrimination by providing an option for offenders to participate in rehabilitation in the community, if it is safe for them to do so. High rates of incarceration prevent Aboriginal Territorians from enjoying human rights and fundamental freedoms on an equal basis with other Territorians. The Bill may help Aboriginal offenders to change their behaviour and reduce the incarceration of Aboriginal people in the NT. In this respect the amendments align with the objectives of the Draft Northern Territory Aboriginal Justice Agreement released for consultation in 2019.

## **Conclusion**

This Bill is compatible with human rights as it enables offenders to be treated fairly in accordance with the law and to have greater incentives to undertake rehabilitation in the community to change their violent and controlling behaviour, but only where that is compatible with the safety and wellbeing of protected persons and their children. The right of victims/protected persons to live safely and free of violence is the paramount consideration in making a domestic violence order and any order to attend rehabilitation.