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Dear Madam Secretary

Justice Legislation Amendment (Domestic and Family Violence) Bill 2019

We refer to your correspondence inviting the Law Society Northern Territory (Society) to make a submission on the *Justice Legislation Amendment (Domestic and Family Violence) Bill 2019* (Bill).

The Society has consulted with its Family Law and Social Justice Committees (Committees). The Society and its Committees commend the government on the introduction of this legislation, particularly the introduction of the strangulation offence provisions, and generally supports the Bill, with some recommendations about amendments to the Bill in respect of certain provisions.

Strangulation offences are prevalent in domestic violence incidents. The use of strangulation in this context is a recognised indicator of the risk of further harm to victims of domestic violence, including homicide. Law that is unresponsive to primary domestic violence 'red flags' engenders injustice for victims and calls into question the quality and effectiveness of domestic violence victim protection in the courts¹. Territory criminal law can be ill-equipped to properly recognise and criminalise this dangerous behaviour. It can be hard to prove either intent to kill or cause serious harm and hard to prove the level of injury, often because there is no visible sign of injury needed to establish grievous bodily harm. For this reason there has been significant law reform in other jurisdictions. For example, similar offence provisions were introduced in Queensland and in the first two years of its operation 287 people were sentenced for a strangulation offence². However, concerns have been raised because imprisonment is often not the best way to rehabilitate an offender and the Society supports programs that work intensively with perpetrators to support behavioural change.

The Society welcomes the greater incentive for defendants to attend rehabilitation. The application of these provisions in respect of repeat offenders will be important. The Society

¹ Judith Buckingham, 'Romance and "Real Life" Relationships in Criminal Law: Reconstructing Red Flags for Dangerousness/Lethality' [2010] *New Zealand Law Review* 93.

² Sentencing spotlight on choking, suffocation or strangulation in a domestic setting Queensland Sentencing Advisory Council

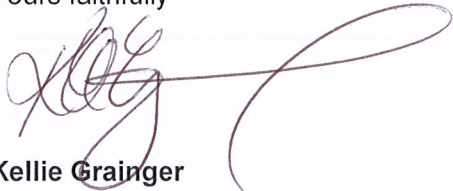
considers that there are significant benefits to approaching the prevalence of and damage caused by domestic violence within our community by encouraging rehabilitation of perpetrators, but that this must be balanced with maintaining the safety of victims. It will be important for the Court to turn its mind to the benefit of further rehabilitation in cases where the perpetrator has previously utilised the opportunity presented by these provisions, potentially on more than one occasion, and yet finds themselves before the Court again.

The Society provides the following recommendations to the Committee:

1. Amend clause 6 of the Bill so that section 186AA (1) (b) of the Criminal Code includes after 'the person' the words '*by any means whatsoever*' to avoid any doubt about the inclusion of the use of objects such as a rope or wire.
2. The Society suggests an express provision be inserted to the effect that persons can only be ordered by the Court to participate in a s.85A rehabilitation program as a condition of a Domestic Violence Order (as defined in the *Family and Domestic Violence Act 2007*).

Should you have any queries, please do not hesitate to contact me.

Yours faithfully

A handwritten signature in dark ink, appearing to read 'Kellie Grainger', with a long, sweeping horizontal flourish extending to the right.

Kellie Grainger

Chief Executive Officer

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