LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

13th Assembly

LEGISLATION SCRUTINY COMMITTEE

Public Hearing Transcript

Justice Legislation Amendment (Domestic and Family Violence) Bill 2019

8.30 am – 10.00 am, Monday 2 March 2020

Litchfield Room, Level 3 Parliament House

Members:

Ms Ngaree Ah Kit MLA, Chair, Member for Karama
Ms Sandra Nelson MLA, Deputy Chair, Member for Katherine
Mrs Lia Finocchiaro MLA, Member for Spillett
Mr Tony Sievers MLA, Member for Brennan

Alternate Member:

Mr Jeff Collins MLA, Member for Fong Lim, in place of Mrs Robyn Lambley MLA, Member for Araluen

Witnesses:

Darwin Community Legal Service
Linda Weatherhead, Executive Director
Tamara Spence, Managing Solicitor, Tenants' Advice Service
Caroline Deane, Solicitor, Tenants' Advice Service

Northern Territory Women's Legal Services
Caitlin Weatherby-Fell, Senior Solicitor, Top End Women's Legal Service

North Australian Aboriginal Family Legal Service
Melisa Coveney: Acting Principal Lawyer
Sophie Hantz: Solicitor

Department of the Attorney-General and Justice
Robert Bradshaw: Director, Policy Coordination
Penny Drysdale: Senior Policy Officer and Lawyer

Darwin Community Legal Service

Madam CHAIR: Good morning, everyone. Thank you for joining us. I am Ngaree Ah Kit, the Member for Karama and Chair of the Legislation Scrutiny Committee. On behalf of the committee, I welcome everyone to this public hearing on the Justice Legislation Amendment (Domestic and Family Violence) Bill 2019.

I acknowledge this public hearing is being held on the land of the Larrakia people and pay my respect to Larrakia elders past, present and emerging.

I acknowledge my fellow committee members in attendance today. We have the Member for Fong Lim, Jeff Collins; the Member for Brennan, Tony Sievers; the Member for Spillett, Lia Finocchiaro; and the Member for Katherine, Sandra Nelson.

From the Darwin Community Legal Service, I welcome Linda Weatherhead, Executive Director; Tamara Spence, Managing Solicitor, Tenants' Advice Service; and Caroline Deane, Solicitor, Tenants' Advice Service. Thank you for coming before the committee to give evidence. We appreciate you taking the time to speak to the committee and look forward to hearing from you this morning.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing which is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website.

If, at any time during the hearing, you are concerned that what you say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

Could you each please state your name and the capacity in which you appear before I invite you to make a brief opening statement then we will proceed to the committee's questions.

Ms WEATHERHEAD: Linda Weatherhead, Executive Director, Darwin Community Legal Service.

Ms SPENCE: Tamara Spence, Managing Solicitor of the Tenants' Advice Service at Darwin Community Legal Service.

Ms DEANE: Caroline Deane, Solicitor, Tenant's Advice Service, Darwin Community Legal Service.

Madam CHAIR: The committee has decided not to proceed with opening statements due to the large amount of information we have to get through. We have gone through your submission, so I will proceed to the committee, if they have any questions for you. Does the committee want to open or should I invite the guests to give a bit of an overview and a recap of their submission?

Mr SIEVERS: Yes, I am thinking if you go through the main points you have set in your brief and any other concerns you have, it would be great.

Ms SPENCE: We can do that. Thank you very much for the opportunity and invitation to come along to speak to you today. As you know from our service, it is the sole Tenants' Advice Service for the Northern Territory. We are really only here to speak to a discrete aspect of the legislation proposed in relation to the termination of tenancies.

It is our opinion that the current law, despite these changes, still provides inadequate support to victims of domestic violence. In making it the only option that a victim must take out a domestic violence order against their perpetrator, they are basically forcing them, in a way, to interact—and they may not want to—with the other party and the Local Court. They are exposing themselves then to, potentially, an examination of their situation and credibility.

We all know many reasons why a person does not want to take out a domestic violence order. We thank the Women's Legal Service for its contribution in which they recognised that point and that it is quite a harrowing situation. Their recommendation is that there should be changes within the *Residential Tenancies Act* to deal with these.

We thank the committee for their questions they sent to the department and we feel that the points that have been returned, asking questions about our submission, certainly support our position which

is; that there should be a raft of changes within the *Residential Tenancies Act* to allow victims of domestic violence to have dealings in the *Residential Tenancies Act* and not solely the Local Court through the *Domestic and Family Violence Act*.

We also note that we get to see clients in a really difference space. We have colleagues that work closely in this area in domestic and family violence in the Women's Legal Services and the Domestic and Family Violence Legal Service. I am sure they will address their points separately. I saw that legal aid have provided a submission.

We see the clients in the overflow, the clients that do not wish to engage in this space. We also see clients that are in a co-tenancy space where they do not actually view themselves as being in a domestic relationship. We feel that it is really important that the committee follow on with those recommendations that the *Residential Tenancies Act* is the right jurisdiction for dealing with these matters.

I am happy to pass on to my colleague, Caroline Deane, to deal with some specifics in relation to the Act and then we would like to do some case studies, if that is okay?

Mr COLLINS: Yes, we can do that. Recommendation 1, pointed to an error in the submissions, to remove just at the end of a fixed term tenancy.

Ms SPENCE: Yes, we just recognised that.

Ms AH KIT: Tamara, your submission raised a couple of things for me. Do you think the provisions that are in place to terminate a lease due to the risk of a defendant knowing where a protected person lives is adequate; that goes to the point if a complainant and defendant are not living together?

I understand if they are living together, it is a much easier process to validate that they do live together and the lease needs to be broken due to a domestic violence situation. But if a protected person does not live with that other person and the other person, the defendant, knows where they live, it would be harder to prove they are at risk.

How does that function at the moment in the way things are set up for that person to be able to break a lease because of the potential danger of that person knowing where they are?

Ms SPENCE: Yes, that is the particular issue and the issue with the majority of these sorts of cases is that the majority of the clients we see are looking to get out of their tenancy agreement so that they can flee, either the jurisdiction or move to somewhere where the perpetrator cannot find them.

This is all about that issue in itself and our recommendation that the *Domestic and Family Violence Act* does not adequately deal with that at the moment, we do see as a problem.

Ms WEATHERHEAD: We also believe that the *Residential Tenancies Act* and the hardship provisions do not appropriately deal with this issue. It is not a specific provision—Tamara might be able to give more information about that. Actually getting a termination via the hardship provisions is not all that easy.

Ms SPENCE: In our experience, the way that the hardship provisions is written and in the case law that we see, with which there is very little published, we identify this is an issue in this space. In our experience they tribunal has to balance the rights of the landlord, as well as the rights of the tenant and-or co-tenants, and we have seen that reflected—Caroline if you would like to speak to some of those issues.

Ms DEANE: NTCAT does not have the power to create a replacement agreement, like the Local Court. As Tamara said, they have to balance the rights of co-tenants. We have found they are reluctant to do so, where there is the probability by terminating the tenancy, which is all they have the power to do, that the other co-tenants may be at risk of homelessness.. They are reluctant to do it for that reason. NTCAT often refers to the Domestic and Family Violence Act and the ability for a person seeking a termination to apply for a DVO. They do not really see that as their role and that is not the role of the hardship provision.

The problems with referring them to take out a DVO to deal with this issue are that there are a lot of people who are reluctant to take out domestic violence orders for a number of reasons. Also we have

seen a few cases recently where the domestic violence order has been negotiated down to an undertaking and that is not a court order. The local court does not have any power to make these provisions under section 23, if there is an undertaking.

Some examples of where an undertaking is appropriate or where it has been agreed upon is where the defendant is on a visa and having a DVO against their name would have broader consequences for them. Also a recent example was where the perpetrator of the violence was the victim's son and because having a domestic violence order can have effects on your employment, your ability to obtain an ochre card and those sorts of consequences. It is often negotiated down to an undertaking where perhaps the victims seeking that protection but they do not want to have those flow on adverse effects to the perpetrator.

The violence is the primary issue. Then the tenancy follows. We sometimes get clients who have already been through the local court process. That does not mean that if they had a DVO out that you cannot apply for a variation to get that order under section 23 but it does mean that if an undertaking has been taken out, you cannot go back and ask for that to be changed to a DVO to have that section 23 order.

Hardship is really not accessible for a lot of people. As Tamara said, a lot of people in co-tenancy arrangements who do not really see themselves in domestic relationships, that is not something that they automatically consider. One example that we have is where there was a woman and her children, and she was unable to afford to rent a house on her own so she lived in a share house. She and her children were exposed to some concerning behaviour. There was some domestic violence as well; as a few of them had domestic violence orders or reciprocal domestic violence orders out. They are exposed to that domestic violence but it was not necessarily a situation where the violence was directed at her or her children.

Madam CHAIR: It is still occurring in the household and they are exposed to it.

Ms DEANE: Yes. In those situations, it needs to be in the *Residential Tenancies Act*. If she was able to terminate her tenancy, there would be no need for a domestic violence order. We get put in the position where we are advising people that their only option to get out of this tenancy is to take out a domestic violence order, which obviously has a huge imposition on the defendant but that order would not be necessary if it not for the tenancy. There is no fear that these co-tenants who are showing violent behaviour are going to follow them after they move out. If they were able to terminate the tenancy, there would be no need for a domestic violence order.

Ms SPENCE: In that particular case, they are otherwise unrelated. It is not like a traditional relationship where there might be that threat of relocation and then search. It is a situation where there should be no need for a domestic family violence order.

The other concern we have within this space is because we have such limited options and that reluctance, we are, in effect, seeing clients who are basically stopping paying the rent, waiting for a breach notice to be issued on them by the landlord and then having a tenancy terminated through the NTCAT process because they have the ability to do that, through non-payment of rent, which has flow-on ramifications in relation to then, the potential for being placed on a residential tenancy database, reiterating, of course, that in our legislation we do not have an ability for a person not to be placed on a residential tenancy database by way of domestic and family violence.

The infographic we submitted with our submission shows the different jurisdictions and different options they have, and that they have seen this as a priority and have taken appropriate action.

We are the only jurisdiction—sorry, I should say short of Queensland—that is headed in this way, whereby we do not have any provisions specifically to allow a domestic and family violence victim to take action in the tribunal, which is also a jurisdiction which it is supposed to be—friendlier and, I guess, more …

Ms WEATHERHEAD: Accessible.

Ms SPENCE: Accessible and representative of a self-representation jurisdiction. One of the other issues we want to address is the …

Mrs FINOCCHIARO: Do you mind if I interrupt you? I want to ask a question on that. Does DCLS have any data on how many domestic violence victims are going down the road of not paying rent in order to get to that point where the tenancy ends?

Ms SPENCE: No, our data does not extend to that. I suspect that what we see is just a process that happens in the background. They are just allowing that to happen as a natural progression and not coming and getting advice on that.

Ms DEANE: One example where that occurred was a woman who was subject to violence and police took out a section 41 domestic violence order and she moved into a safe house. She was told that police would pursue an order under section 23 to have the tenancy terminated or her taken off the tenancy. She waited. That was adjourned a number of times. Obviously, the requirements of section 23 is service of the perpetrator but also to get the landlord's views.

In that case, the court did not make the order under section 23 because the police, who were the people making the application, had not sought the views of the co-tenant and the landlord. We submit that is a burden on police, who already have pretty scarce resources and their primary objective is to deal with the violence. So, that means they are having to chase landlords, which we submit would be a burden on them.

In that case, because the order was not made—it was delayed and delayed—she accrued rent for a longer time than she would have otherwise had to. She had stopped paying rent because she had moved out and eventually the landlord applied for termination for rental arrears. She hoped to have that terminated a lot sooner, which would have meant she would have had a lower debt.

Ms SPENCE: We are finding in those examples—and I can think of two clients we have had where they have fled the jurisdiction and moved interstate. They are then having difficulty getting a new rental because of all of these issues in the background, particularly where, of course, the first question a new applicant for a tenancy is asked, 'Give us some references from your previous tenancy'. There is an embarrassment factor in the background. Potentially it invites or prompts disclosure of the reasons for leaving the tenancy, particularly if they are concerned.

The only way to get around this, in our view, is that they disclose as most information as possible to give reasons for justification, particularly where there has been rental arrears, which should not be a burden on a victim of domestic family violence.

Ms NELSON: I agree. We are making some changes to our legislation in regards to domestic and family violence so we are more supportive through our laws and our court proceedings of the domestic and family violence victims—they can give testimony by video and that sort of thing. We are trying to mitigate confronting the perpetrator and the whole trauma of having to retell their story.

I have spoken about in parliament many times. I wish these laws were in place when I had to flee domestic violence. Every time I moved, I had to retell my story over-and-over.

Recommendation 3 is a good one. I have seen it recently in Katherine, where my office deals with a lot of domestic and family violence victims. My office supports quite a number, for numerous reasons. The only thing I am concerned about with this recommendation is the capacity of NTCAT to do that.

Ms SPENCE: We recognise that potential burden, but other jurisdictions are doing it. South Australia—a lot bigger than us—have security guards and they are affecting service taking that obligation away. I recognise that whilst that may be an extra burden, only the NTCAT can say how many cases we are talking about. They do not disclose that level of minutia. Ultimately, we would like to see some additional options so there is no requirement for contact between those parties.

Ms NELSON: Is that something than can be done through a duty lawyer or someone appointed in the court system?

Ms SPENCE: Yes potentially. We have made an offer for a duty solicitor at NTCAT and have not had engagement on that. We would like to see that option taken up.

Ms NELSON: I know that KWILS, Katherine Women's Information and Legal Service, in general is a huge expense; they pay for a security guard or someone to serve people.

Ms SPENCE: Last week I visited the registrar at the Local Court in Katherine. He recognised that this is an ongoing issue for them. The only concern I would put on that, in terms of having a legal service effect service—it is not completely unknown to happen—is that we are talking about a perpetrator of domestic violence.

We, as lawyers, are not necessarily skilled to be able to effect that, whereas a Sheriff in a Local Court is effectively skilled, recognising that there is the potential. All these processes have a potential to escalate and you would hate to see that happen against a person effecting service, but recognise that it is an issue.

Madam CHAIR: Thank you on behalf of the committee for appearing before us this morning and expanding on your submission.

Ms WEATHERHEAD: There is bipartisan support for the changes to the *Residential Tenancies Act*, we see them as priority changes. It is unfortunate that it has been taken in a piece-meal approach. It illustrates some of our concerns about this approach in relation to a significant policy area. We have seen it in the *Residential Tenancies Act*, it might tick a box but it does not solve the problem.

We say, 'Bring on the changes to the *Residential Tenancies Act'*.

The predecessor of this committee—the Economic Policy Scrutiny Committee, or it might have been Social Justice Scrutiny Committee that came in before—was supportive of these changes as well. Let us get the *Residential Tenancies Act* changes in place as well because there is no reason to delay on it given that everyone is supportive of moving in this direction. I appreciate the time of the committee, thanks.

The committee suspended.

Northern Territory Women's Legal Services

Madam CHAIR: Good morning, everyone and thank you for joining us. I am Ngaree Ah Kit, the Member for Karama and Chair of the Legislation Scrutiny Committee. On behalf of the committee, I welcome everyone to this public hearing on the Justice Legislation Amendment (Domestic and Family Violence) Bill 2019.

I also acknowledge my fellow committee members in attendance today, the members for Fong Lim, Brennan, Spillett and Katherine.

I welcome to the table to give evidence to the committee from the Northern Territory Women's Legal Services, Caitlin Weatherby-Fell, Senior Solicitor, Top End Women's Legal Service. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

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I will get you to state your name and the capacity in which you appear before opening up to the committee for any questions.

Ms WEATHERBY-FELL: Thank you, committee, for having the Northern Territory Women's Legal Services. My name is Caitlin Weatherby-Fell. I am a Senior Solicitor at the Top End Women's Legal Service. This morning, I appear in the capacity as representative of the Northern Territory Women's Legal Services, which is the coalition of the Top End Women's Legal Service, as well as the Katherine Women's Legal Service in Katherine, and the Central Australian Women's Legal Service which covers the Alice Springs and Barkly regions.

Madam CHAIR: Thank you. I will now open up to the committee for any questions.

Mrs FINOCCHIARO: The Bill is proposing a different diversionary framework. Can you talk to any concerns you have around the looseness of that arrangement as set out in the Bill?

Ms WEATHERBY-FELL: Sure. In response to the Bill as a whole, the Northern Territory Women's Legal Services give in-principle support but in our submission we raised a number of concerns.

With respect to the proposed amendments to both the *Sentencing Act* and the *Domestic and Family Violence Act*, we raised issue in the first instance in ensuring any legislation accords with the objects of the Domestic and Family Violence legislation which is to ensure the safety and protection of all persons who experience or are exposed to domestic and family violence.

For our services, we are a bit unclear about the examples provided in the proposed legislation in sub-section 85(a) (2) with respect to rehabilitation programs. For our services, we expressed concerns that the proposed addition would facilitate men's—predominantly men because, to be frank when we speak about perpetrators of domestic and family violence, we know that men are primarily those perpetrators—participation in current alcohol and drug services only as opposed to men's behaviour change programs which is what this legislation is geared towards.

For the committee's reference, we attached the most recent ANROWS report regarding *Engaging men who use violence: Invitational narrative approaches.* We also referred the committee to ANROWS' *Evaluation readiness, program quality and outcomes in men's behaviour change programs*. It is quite a lengthy report. It is over 100 pages in length. I appreciate that the committee has a lot on its hands, but we submit that it is in this committee's best interests to read that report. There is a lot to be said about implementing correct evidence-based men's behaviour change programs, as opposed to rushing through a piece of legislation that does not have that evidential basis.

Mrs FINOCCHIARO: Were Top End women and all of the stakeholders you represent today consulted on this specific part of the Bill?

Ms WEATHERBY-FELL: Yes, we were. The Attorney-General noted, I believe, in the submission, that the legal services were consulted in advance of the legislation being released for comment. We gave the same comments at that stage, which we have reiterated …

Mrs FINOCCHIARO: So your concerns have not been reflected in the final form of the Bill?

Ms WEATHERBY-FELL: No, unfortunately not.

Madam CHAIR: Caitlin, in the submission there is a reference to proposed section 85B(2). It was talking about—I am just trying to make sense of it. Was it to ask if the courts could advise the complainant if the offender completed a rehabilitation program?

Ms WEATHERBY-FELL: Yes, that is right. Section 85B(2) was about the court having discretion to find that the defendant satisfactorily completed a program, even though they may have received a report from the program facilitator that perhaps they did not attend the session, or they had committed a breach of DVO during that time, or whatever it may be.

Particularly, the Central Australian Women's Legal Service, which has a domestic violence legal service subsumed within their service, raised issue in respect of a victim being consulted as part of that process. We have taken note of the department's response in relation to that issue about victim safety and not putting them before the court. However, there is a balance to be struck here which is about a court having the capacity to request—or a victim having the opportunity to give—their view in that instance, as opposed to 'must' take that view into consideration.

There is discretion for that balance to be put into place that would mean that, yes, while the court has that discretion to find that, they should also be referring back to the victim should she wish that to occur, to seek her view on, 'He did a 12-week program, he attended five out of 12 of those sessions, he breached the DVO three times, but he is a good bloke, maybe we should give him a chance.'

For her to be able to put her view to the court during that time—it may be that those breaches had more of an effect on her and perhaps her children than the court may otherwise know, should she not have the opportunity to put that before the court at that time.

Madam CHAIR: Has the Top End Women's Legal Service had the opportunity to provide input into the development of the men's behavioural change programs?

Ms WEATHERBY-FELL: The Top End Women's Legal Service knows, because a lot of these new amendments are happening in the Central Australian region, in Alice Springs, the Central Australian Women's Legal Service has been pivotal in giving recommendations on that addition to this space.

Ms NELSON: Do you want to have input?

Ms WEATHERBY-FELL: We would love to have input. Ideally, we would love this idea to be carried through across the Northern Territory—across the Barkly, up to Katherine, up to Darwin—so that everyone has the opportunity for this change to occur, because we know that again, back to an evidence-based model, this is the type of change that may work, as opposed to domestic violence orders which we keep seeing. The first one will be 12 months, the second one will be two years, the third one will be five years—and just on and on.

Our service has carriage of an enormous amount of victims of crime compensation applications, victims' register applications, considering variations to domestic violence orders where there has been breaches or where there has been a release from incarceration—something needs to change.

Mrs FINOCCHIARO: So, you are not opposed to the concept of perpetrators being diverted, essentially, to a program, it is the calibre of the program and the monitoring of the person whilst on that program?

Ms WEATHERBY-FELL: That is right. The appropriateness of that program will be critical to its effect.

Mrs FINOCCHIARO: Also the evaluation then of the person's participation in that program? Correct me if I am wrong, but currently there is wide-ranging discretion the way the Bill is drafted that a person's mandatory sentence can be waived, even if they do not successfully complete or even attend the program?

Ms WEATHERBY-FELL: There is, but we would agree with the department's view that it is appropriate that the court does hold that discretion, they are the decision-maker in that instance.

The court has a unique stance, in that they are the neutral party in those proceedings. They have not had a relationship with the defendant in their participation in that program and they are receiving reports from numerous places; from police in respect of any breaches; from the program in respect of the defendant's attendance. That is their role to make that decision as to whether or not it is appropriate.

In our submission, it would be appropriate for the court to also seek the view of the victim, should she wish to give it, to inform that decision-making.

Madam CHAIR: On a side note, Caitlin, I think it would be important with a lot of the children, who are also the victims, to understand that if dad has done the wrong thing, he is able to take the right steps to change his behaviour. My fear is that we have a whole community of young kids who are growing up in these households. In my personal experience, a lot of girls go out and find men who are abusers and a lot of boys end up growing to be those abusers.

If we get a men's behavioural change program going and the support services in place for the children and the wonderful work that organisations do for the women, I think there is that way forward as well.

Ms WEATHERBY-FELL: Absolutely, having that generational change happening would be the most important thing to stop this behaviour, or at least mitigate this behaviour in the best way we know how and that is available to our jurisdiction.

Mrs FINOCCHIARO: Do you have any views on what should be required in terms of monitoring?

Ms WEATHERBY-FELL: Not at this time. I think the Central Australian Women's Legal Service—I give my apologies on behalf of their principal legal officer, Janet Taylor who is unable to attend. She would be able to speak to that in a more expansive way, given that the program has been trialled and developed in Central Australia. I would be happy to take that on notice, should the committee wish, and refer to Janet.

Mrs FINOCCHIARO: That would be great thank you.

Madam CHAIR: Does the committee have any final questions?

Ms WEATHERBY-FELL: Apologies, if I may before we wrap up—in respect to the strangulation offences, which we have not had the opportunity to discuss this morning, it was the submission of the Northern Territory Women's Legal Services that the offence be made into a generalised offence to ensure that whilst we know that strangulation is a key pre-cursor to femicide, and of course it is critical in domestic and family violence to have this offence in place, it does not only occur in respect of domestic and family violence relationships.

The New South Wales parliament recently considered these offences and I endorse that consideration to this committee, which was in 2018. They considered their legislation, which is a generalist legislation as well, and have carried through with that approach. I note that the proposal in respect of maximum sentence periods corresponds with the New South Wales provisions.

I also note the department's response to this issue, where we agree this is a domestic and family violence issue in the first instance. However, we would hate for particularly women, who experience this crime, not to be captured by this new piece of legislation. We note the department's proposal that should the committee wish for there to be a generalist offence that a corresponding offence be created in line with this new proposal of section 186AA, such that both those instances would be captured.

Mr COLLINS: (Inaudible) normal assault. It covers a broad range of attacks on women?

Ms WEATHERBY-FELL: It does.

Mr COLLINS: Why is it that those particular things stand out? Apart from the fact we are talking about indicators towards femicide, but in terms of legally, under the criminal code, how does it improve the situation?

Ms WEATHERBY-FELL: You are right, there are instances currently where that strangulation matters are captured under assault or aggravated assault. However, it is important for data collection. It is critically important in police acknowledging what has occurred. We have had multiple clients where police have attended, she gives instructions as to strangulation, and they say, 'Oh, it is just a scratch, nothing has happened there'.

If there is a specific offence, then we would hope that, particularly general duties officers, would be more on notice as to what this issue or offence is and taking appropriate action as a result.

Mrs FINOCCHIARO: Is there any view about whether or not this exemption—not exemption, but repeat offending? If someone is a repeat offender, should they be able to access this diversion?

Ms WEATHERBY-FELL: We are back to the diversion. I was going to say, 'With respect to strangulation?'

Mrs FINOCCHIARO: Sorry, no, no.

Ms WEATHERBY-FELL: No, my apologies.

Mrs FINOCCHIARO: Rehabilitation programs et cetera. Sorry, my mind stayed there.

Ms WEATHERBY-FELL: Fair enough, too. You are considering, it is ticking over.

It would be up to the circumstances, I submit at this time, as to what that repeat offending was and particularly what programs were available to that offender at the time—so that the offending happened in the first instance. If we are talking about a repeat offender over a decade, that repeat offending being made known to police is one year and then six years later, then we submit that this type of referral program would be appropriate because nothing existed in that first instance.

However, when you are looking at if someone has already completed—or supposed to have completed satisfactorily—a rehabilitation program and then there is subsequent breaches or offences—multitudes—then, of course, the domestic and family violence legislation would kick in, as with the *Criminal Code Act* with respect to mandatory sentencing and escalated consequences. However, it would be a matter for the court at that time. To my mind, there would be scope for repeat offenders to be eligible for this type of program. However, on the flip side, there would also not. I am sorry, but that is quite a yes, no answer.

The committee suspended.

North Australian Aboriginal Family Legal Service

Madam CHAIR: Thank you for joining us. I am Ngaree Ah Kit, I am the Member for Karama and Chair of the Legislation Scrutiny Committee. On behalf of the committee, I welcome everyone to this public briefing on the Justice Legislation Amendment (Domestic and Family Violence) Bill 2019.

I acknowledge my fellow committee members in attendance today, the Members for Fong Lim, Brennan, Spillett and Katherine.

I welcome to the table to give evidence to the committee from the North Australian Aboriginal Family Legal Service: Melissa Coveney, Acting Principal Lawyer and Sophie Hantz, Solicitor. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

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I will invite you both to state your name and the capacity in which you appear before opening to the committee for any questions.

Ms COVENEY: Melissa Coveney. I am Acting Principal Lawyer at North Australian Aboriginal Family Legal Service.

Ms HANTZ: My name is Sophie Hantz. I am a Solicitor at the North Australian Aboriginal Family Legal Service.

Madam CHAIR: Thank you very much, ladies. Committee, let us open for questions.

Ms NELSON: I want to follow on from the evidence and submission from the Top End Women's Legal Service about the diversion aspect, and what they stated.

The Member for Spillett and I just talked about it. In regard to the court's discretion: if a perpetrator has been charged and he has been ordered to attend a program and he does three sessions of a 12-step program, it is up to the court now to say, yes, that is a sufficient show for us that you have made attempts. It almost sounds to us like it is eroding the mandatory—diminishing a bit the mandatory aspect of rehabilitation and diversion.

Mrs FINOCCHIARO: The severity of the offending.

Ms NELSON: Exactly. I want to get your views on that. Do you also agree that we need to look at that quite diligently and implement parts of that into the legislation?

Ms HANTZ: With regard to the rehabilitation programs, the amendment does not necessarily define clearly what the rehabilitation program will entail and what will be required in terms of participation in the rehabilitation program for that to be considered to be satisfied which was one of our…

Mrs FINOCCHIARO: Do you have an issue with that? That in itself is concerning. Do you share that concern?

Ms HANTZ: That is a concern for us. We do.

In the nature of our work, we assist remote clients. A major issue for our clients is access to resources. Many of the perpetrators in our matters probably would struggle to access those rehabilitation programs because of by virtue of where they live. I imagine that rehabilitation programs would be Darwin focused, and so there would be an access issue for many of our clients as well.

Ms NELSON: However, if they are sentenced to serve time in jail, then access would not be an issue because they would be doing it in…

Ms HANTZ: The rehabilitation would be part of their sentence.

Another issue that we took with the bit about the rehabilitation programs was that it seems that the bill allows for authorities to check in on the protected person as part of an examination of how well the defendant is doing in their rehabilitation program. However, they require the defendant's permission to be able to check in on the protected person which again …

Ms NELSON: It erodes the victim's rights.

Ms HANTZ: Yes, it raises concerns for us.

Madam CHAIR: You also mentioned in your submission about—we were talking with DCLS about the tenancy concerns—in remote communities, if there is a co-tenancy, if there was to be a breaking of a tenancy agreement, the defendant often does not have another place. You mentioned the lack of housing in remote communities as a big stickler for that point; in that way they cannot break their lease agreement because the powers-that-be look at whether the defendant would be made homeless. In a lot of those scenarios, if I'm not mistaken, that is what you experience through your services. If there is no appropriate place for that perpetrator to go to, then the lease agreement stays in place. Is that right?

Ms HANTZ: Yes. In the past, when we have sought orders in the domestic violence list to have a perpetrator removed from the house, particularly when they are on the lease, there is a bit of a clash because the courts seem to be reluctant to do it without input from the Department of Housing. Most of the houses in remote communities are through the Department of Housing. Then the Department of Housing does not want to remove somebody from the lease unless they have an order from the court. However, in most remote communities, there is very few, if any, spare houses.

There is normally a wait list of several years to get into a new house. While the defendant may have family in other houses where they could move into, they are often overcrowded, so nobody want to force them to move into a house that is already overcrowded. It results in a situation where we are unable to get the defendant removed from the house …

Ms NELSON: So, one or the other of them has to be removed from the community, which we see all the time in Katherine—all the time.

Ms HANTZ: Yes, and it is really tricky and it often results in our clients—the victims, the applicants for the domestic violence orders—fleeing to safe houses. The safe houses in remote communities are often not greatly resources, so then when things get really bad they come into Darwin to the safe houses, but then they are away from family support and the like, and away from country …

Ms NELSON: So, what do you do in that case? What is your suggestion, your recommendation?

Ms HANTZ: Our recommendation was that the legislation should make it clear that the applicant's right to be free from violence should take precedence over the defendant's right to that house. While the defendant's accommodation, obviously, must be considered, there should be a hierarchy in which the applicant's right to be free from violence is a priority.

Ms NELSON: Thank you for putting that on record; I agree.

Mrs FINOCCHIARO: I am interested in monitoring requirements if a perpetrator is able to access a program. How is safety for the victim ensured? What does that look like? Should there be an electronic monitoring requirement? How does NAAFLS feel about victims during the participation of these programs by the perpetrator?

Ms HANTZ: There is again the issue of the remote location of our clients. If there will be monitoring, post-incarceration, post-release back into the community. It is an issue of resourcing. I am aware that remote police are struggling in their capacity often, so there would be an issue of how well it could be monitored. Many of our clients report that something happens in the middle of the night and they call 000—police are unable to get there until the afternoon of the next day or the day after that. So …

Ms NELSON: That is a concern Australia-wide, whether you are in a remote community in the Northern Territory or in a very well-populated urban area in Sydney or Queensland, for example. This has been made very evident with the recent death of Hannah Clarke and her three children. Monitoring is inadequate, in my opinion, anywhere you are in Australia.

It makes it even more challenging in jurisdictions like the Norther Territory, of course, and in communities like Ngukurr, Milingimbi or even Darwin. That is an interesting, yes …

Ms HANTZ: We also experience—and again, this is broader problem, it is not just with the remote Aboriginal communities—that our clients feel immense pressure not to report …

Ms NELSON: Absolutely.

Ms HANTZ: … so that would be a major struggle for any effective monitoring.

Ms NELSON: We found that quite a bit, as well, in Katherine where they are reluctant to report because of many diverse reasons—family, relationships, community stigma, all of those sorts of things. They also do not want to lose their accommodation, their house or their job—that sort of things. The underlying message I am getting from you guys also is the diminished capacity in a lot of the resources. I wonder if you could elaborate a bit more on that.

I read in the submission from the Top End Women's Legal Services that they again pushed for review of the funding resources and that definitely needs to increase—which those of us in the sector know. I go back to the duty lawyer, the duty solicitor, and maybe having one within NTCAT. Do you support that?

Ms COVENEY: In relation to the tenancy?

Ms NELSON: In relation to the tenancy specifically?

Ms COVENEY: I think that is a very good idea.

Ms NELSON: You would be supportive of that? Resources are a big thing.

Ms COVENEY: Absolutely.

Madam CHAIR: I wanted to touch on a complainant's right to share their story and the concerns about not being able to identify the defendant. Sorry, I am looking at the wrong one, I am jumping ahead. Thank you, I was wondering why Julia was looking at me really funny.

One question in regards to this Bill submission, was about rehabilitation, are these working? Do we have enough support services in place for our kids in remote communities and what do we do to address that?

We have heard about safe houses for the women. Looking at the solutions, if a defendant is a male and they were removed from the lease and cannot go to another person's house, are there any safe houses or resources for them; were the safe houses originally set up for women and children escaping domestic violence in remote communities?

Ms COVENEY: The majority of the safe houses are set up for women. I do not believe there are a lot of services available for men. We as a service act for both men and women, we do not act for defendants. Sophie, when you are travelling do you know if there are any services available for men?

Ms HANTZ: No, not really. A lot of the communities have weekly men's groups which are run through Catholic Care and Anglicare and I have heard they are popular. Aside from that, I believe the Men's Behaviour Change programs and Family Violence Behaviour programs go out infrequently. I am not aware of any support services specifically for men and men who are defendants.

Ms COVENEY: In relation to the children, a big issue we see is that Territory Families can become involved when there have been incidences of domestic violence. It comes back to the tenancy issue, in that if the perpetrator and the victim are still living together, Territory Families would raise concern about domestic violence in that household and remove the children. They then have another lot of proceedings to deal with in relation to child protection.

Madam CHAIR: :It is easier and makes more sense to keep the mother and her children in the property to reduce that trauma and have the perpetrator or the defendant out of that place and going through rehabilitation to get on the right path?

Ms COVENEY: Often it is easier to stay with the perpetrator because finding alternative housing for either party is difficult. You then have the child protection concerns on top of that.

Mr SIEVERS: I read your brief and your concerns about repeat offenders. In your opinion, what works for men? Have you a case scenario that has worked?

Ms COVENEY: I feel there needs to be stronger penalties and punishments for breeches of DVOs.

Ms HANTZ: In my experience, in the communities I visit, I find it is a frequent occurrence when a full non-contact domestic violence order is in place and there is a breech, where the defendant has assaulted the victim, they will often be charged with aggravated assault and breech of DVO.

I have seen it happen many times where the aggravated assault charge is dropped and there is urgency plea on the breach of DVO. It is my understanding is what ends up happening is there is often a suspended sentence with conditions for the breach of DVO because that aggravated assault charge is no longer there, which would have necessitated a more severe …

Ms NELSON: More severe punishment.

Ms HANTZ: Absolutely.

Ms NELSON: We see it all the time.

Ms HANTZ: We have some repeat clients and it happens over and over where there is just suspended sentence after suspended sentence. In those very severe cases, a more severe punishment would perhaps be effective.

Mr SIEVERS: Or longer-term programs?

Ms HANTZ: Or longer, yes.

Mr SIEVERS: Yes. So, not six weeks, three months, six months …

Ms COVENEY: It is not enough.

Mr SIEVERS: … ongoing. And checks and balances.

Madam CHAIR: We have pretty much gone over—but I want to quickly see if you could recap the Case Study A that you provided in your submission—the significant delays about the defendant not being to be served.

Ms COVENEY: We have an issue, particularly in Katherine, not so much in the communities which Darwin services—we can usually get the police to serve DVO applications or interim orders on the defendants. However, in Katherine the police refuse to serve documents in community, which has led to a big issue because the order is not in force until the defendant is served. We can get an interim order made because of the urgency of the situation. However, it is not protecting our clients until the defendant is served and we have no one to serve those documents on the defendant. Usually she is left with no protection whatsoever.

Ms HANTZ: There are private process servers, but it would cost.

Ms NELSON: If it costs $80 within the Katherine township, you can only imagine the cost to go out to a remote …

Ms COVENEY: You can image. And for remote we do not have the funding to cover that cost as much as we would like to.

Ms NELSON: It is really important that you guys put that on public record because people do not seem to be very aware of the challenges—to put it politely.

Ms COVENEY: Usually the court will only give us an interim order if it is a very severe case where the victim needs protection immediately. It is not helpful when we cannot get the documents served on the defendant, so there is nothing—it is not in force.

Madam CHAIR: Thank you very much for that. It is really helpful, as someone who does not have a DV and family violence background to be able to read those case studies, like Sandra said, to paint a picture about the challenges you face. Thank you very much for appearing for us this morning and for the important work that you do.

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The committee suspended.

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Department of the Attorney-General and Justice

Madam CHAIR: Good morning, everyone. Thank you for joining us. I am Ngaree Ah Kit, the Member for Karama and Chair of the Legislation Scrutiny Committee. On behalf of the committee, I welcome everyone to this public hearing on the Justice Legislation Amendment (Domestic and Family Violence) Bill 2019.

I also acknowledge my fellow committee members in attendance today, at the table right now, the Members for Fong Lim and Katherine.

I welcome to the table to give evidence to the committee from the Department of the Attorney-General and Justice, Robert Bradshaw, Director, Policy Coordination; and Penny Drysdale, Senior Policy Officer and Lawyer. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing which is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website.

If, at any time during the hearing, you are concerned that what you say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

Could you each please state your name and the capacity in which you are appearing? Then we may proceed to the committee's questions.

Mr BRADSHAW: Robert Bradshaw, Director, Policy Coordination, Department of the Attorney-General and Justice.

Ms DRYSDALE: Penny Drysdale, Senior Policy Officer and Lawyer, Policy Coordination, Department of the Attorney-General and Justice.

Madam CHAIR: Thank you. I ask the committee first if they have any questions.

Mr SIEVERS: I suppose you have heard this morning's proceedings and you have probably been thinking about some responses for the concerns. It would be great if you could go through those concerns.

Mr BRADSHAW: We acknowledge a lot of valid points that have been made in both the submissions and in the legal advice this morning. The general point I would like to make is that this legislation is very narrow in scope. It was designed to deal with issues arising in Alice Springs in relation to the implementation of the project down there with the domestic violence court.

The focus of the Bill is dealing with matters that take place in courts regarding the exercise of criminal jurisdiction or the civil domestic violence order jurisdiction. That is relevant to the very detailed consultation that Penny and others did last year with all of the various sectors involved in domestic violence type issues. To a certain extent, we did not really consult with, for example, the Northern Territory Civil and Administrative Tribunal or with landlords, particularly with *Residential Tenancies Act* being part of the issue that has been discussed in great detail today. To that extent, we have not consulted with all relevant people to deal with more general tenancy matters.

They are the general points that I make. I hand over to Penny.

Ms DRYSDALE: Given some of the comments about the proposals in relation to rehabilitation orders and programs, it might be helpful to provide a bit more information about how that proposed process is intended to work in Alice Springs in the first instance because that is what the amendments are particularly related to.

One of the key things in Alice Springs is going to be having assessment workers in place to support the operation of the amendments in the legislation. They would be assessing defendants who might be suitable and interested in attending a rehabilitation program and also doing a risk assessment for the protected person to make sure that it is an appropriate case for a rehabilitation order to be made because it certainly will not be appropriate in all cases. There is a strong recognition of that. That assessment would occur and then, in appropriate matters, a rehabilitation order might be put in place.

There is an existing program in Alice Springs that has been in operation since 2012 that meets some minimum standards that Victoria has in place for those kinds of programs. One really important safety feature is to make sure that there is a partner support service. The men's behaviour change program has a relationship or an agreement with a women's service that checks on the partner and children, and makes sure that the violence is not escalating, even while the man is attending the program. That is an important mechanism for information to be fed back to the program facilitators who then, under these legislative amendments, have an obligation to notify the court, using certain standard forms, about any further offending or any breaches of DVOs or any non-compliance. In that way information is made available to the court.

The legislation has the capacity for there to be reviews and so the court could set a matter down to have a review and consider matters relating to the participation of the defendant.

Mr SIEVERS: How long is that program?

Ms DRYSDALE: The program in Alice Springs is weekly for 16 weeks. It does not mean it needs to be concluded in 16 weeks, for example if there is a reason why someone cannot attend one week, they still have to do the 16 weeks. They can miss one and continue on with the program if circumstances warrant.

Madam CHAIR: Is that the Men's Behaviour Change program or is it a different program in Alice Springs?

Ms DRYSDALE: It is the Men's Behaviour Change program run by Tangentyere Council in Alice Springs.

Madam CHAIR: They do 16 weeks but in Darwin we have a 26-week program.

Ms DRYSDALE: I am not sure of the duration of the one in Darwin, I know it is longer than the 16 weeks.
The program in Darwin has more recently commenced.

Madam CHAIR: A year ago in February.

Ms DRYSDALE: Yes, that is right. That program has been developing the way it operates over around a year. It has a different timeframe.

Madam CHAIR: Penny, did you say that the men's behaviour program in Alice Springs has been up-and-running since 2012?

Ms DRYSDALE: I am not sure if it started in 2012, but that certainly is when it was first mooted and it has been operating for some years.

Madam CHAIR: A lot longer than I thought. Do we have results from that, does it work, are people being rehabilitated?

Ms DRYSDALE: Yes. As some of the submissions noted, evaluation is an issue in these areas because it is hard to get really strong data that shows whether the program is working or not. The people who run the program certainly see really positive benefits in terms of the families and the people who attend those programs. I do not have any hard data to put forward today.

Madam CHAIR: We provide the funding for those programs but data collection and outcomes are hard to report? What do we do about rectifying anecdotal, I do not understand. Would it be correlating recurrences of offending? How do we know if something we are funding is actually working to keep women and children safe in the first instance?

Ms DRYSDALE: People talk about the importance of these programs really providing a space for change, where it is appropriate for offenders and they are motivated to change. These offenders have pleaded guilty, consented and want to change. It gives them a chance to work through all the issues that have been going on for them.

They are emerging programs in terms of people saying we need to do more than putting offenders in gaol, releasing them and then they might continue to do the same offending when they are released. We know there is a high recidivist rate for domestic violence. I think there is a lot more work to do across the country and internationally to look at the effectiveness of those programs. There is some data from overseas that shows good results from some programs, but it is hard to correlate that across all of our programs and we need more data and evaluation in this area.

Mr COLLINS: I would like to take a step back to Tony's question about comments on the other submissions. Robert, I know what you said about the Bill being targeted at Alice Springs, but the amendments do not make that clear. Therefore the act is going to apply more broadly. Given that, what do you have to say about the submissions that have been made earlier?

Ms DRYSDALE: In relation to tenancy issues?

Mr COLLINS: Tenancy issues; you were talking about the women's shelter and the rehabilitation programs that have been set up and reporting processes about the Alice Springs project, but this is going to apply more broadly. What do we do? If it is going to apply more broadly, we will need to consider how those provisions will apply in Alice, Tennant, here.

Ms DRYSDALE: My view in relation to the tenancy provisions is, aside from the amendments that are already in the Bill, the government has indicated it is looking at a second tranche of amendments to the *Residential Tenancies Act* which is to include specific consideration about domestic violence. In my view it would be worthwhile allowing that process to occur and to make those changes, and then look in relation to those changes and domestic violence issues more generally as to what changes to

the *Residential Tenancies Act* might be warranted. That, therefore, gives a chance to consult further with landlords and other interested parties and to make sure those changes are considered fully.

Ms NELSON: We are introducing this Bill and these amendments, but aside from the tenancy stuff in these amendments, the majority of it really is focused on Central Australia, the DV courts and the programs that have been run there—all of those sorts of things.

Ms DRYSDALE: Yes.

Ms NELSON: In Central Australia though.

Ms DRYSDALE: Well, the choking offence applies across the Territory—that is clear. The amendments in relation to rehabilitation orders emerged from all the work that has been done with stakeholders in Alice Springs. That is how they came about, with people saying, 'We do not want to just put offenders in and out of gaol and see no change. We want to more proactively help these offenders to change their conduct.'

Ms NELSON: While they are in gaol, yes.

Ms DRYSDALE: So, these amendments were really designed to enable that to occur. That is not to say at some future point programs could be declared in other locations and people attend. Certainly, if the Alice Springs' specialist approach to domestic violence at the Alice Springs Local Court is effective, then we would imagine consideration would be given to declaring programs in other locations. But, we want to first see how that works as part of the specialist approach in Alice Springs because there are a lot of stakeholders working together there and conducting these assessments and other things that we know will, hopefully, help have a more holistic view that improves victims' safety and holds those offenders to account for their conduct and helps them to change.

So, that is where it started, if you like. The process for deciding which programs would be a declared program under these amendments enables there to be some rigour about which programs are declared. You cannot just set up any minor program and say, 'This is a program and we want the court to send offenders here'. There will have to be a process. The amendments mean the requirements of the program have to be specified in the declaration in the *Gazette*. That means that people will know, 'Okay, this is the program, this is the requirement, this is how many weeks'.

If they do that and they satisfactorily complete the program and there is no further offending then that can be taken into account in their sentencing.

Another thing I will mention that was raised in the submissions earlier, is that it was said that the Bill requires the defendant to give consent and provide the contact details of the victims. That is not actually the case in relation to the Bill. We have used an example where we have said one of the requirements of the program is for the defendant to consent to giving the details of the victims or partner to the program so that their safety can be checked.

That is a procedure that is currently in place and is recognised best practice, because it means that the defendant is acknowledging that it is appropriate for that victim to be contacted and checked. Then the partner contract service would contact that victim and offer them support, explain how the program works and give them that connection point. That is important. We have put it there as an example because we think it is good practice, but it is not actually saying we will only check if there is consent. It is a requirement of the program that the person doing the program consent to that.

Ms NELSON: That requirement, in that part of the Bill, does not supersede the victim's right to say, 'do not ever contact me, I do not want to have anything to do with you'?

Ms DRYSDALE: It is entirely up to her and she can say, 'I do not ever want to see you again', or make that call. Interestingly, I recently heard a presentation with the Darwin program and they found that nearly all the victims wanted that contact and were finding it beneficial.

Ms NELSON: From the program that the defendant or perpetrator was participating in?

Ms DRYSDALE: The presentation was given by the facilitator of the men's program, who was a man, but also the person who provided the partner-contact service and who was the one involved in contacting the women. She confirmed that.

Ms NELSON: I am not sure I would want that.

Ms DRYSDALE: That is right. I suppose that goes to the other question, which was raised earlier, about whether victims should be providing information to the court to inform the decision about whether the program has been satisfactorily completed. Our view, as per our written submission, was that it actually puts, in some circumstances, a lot of pressure on that victim and makes her still responsible or the arbiter of his behaviour and can result in further bullying and pressure on her.

Rather than her making a public statement in court about that view, this process of her having a trusting relationship with the partner-contact service, and feeling free to privately express the views, means that they can be then expressed to the program facilitator. They can take it into account in how they run the program and the program facilitator's obligation is to inform the court about exactly what is the case. We think that it is a way of taking that information properly into account, but without subjecting her to any further risk.

Ms NELSON: I am going to declare a conflict of interest. As someone who has survived domestic violence, I am reticent to take into consideration the perpetrator or offender; I do not care what they go through.

My concern, when looking at these pieces of legislation and the amendments, and at the forefront of my mind is always the victim—speaking from experience. I am concerned we are putting this stuff into legislation where there is the option for the victim or the offender's program facilitator to be in contact with the victim.

I want to be reassured that the victim has complete and absolute control over what is said or done that involves the victim. That nothing supersedes their right to say, 'I do not want to have anything to do with that person'.

Ms DRYSDALE: Any contact with the victim would entirely be with her or his consent. For that reason, we make sure that there is a separate worker, from a separate organisation, that assesses the victim and a separate person who assesses the defendant and that the partner-contact service is provided by a different service. In Alice Springs, for example, it is Women's Safety Services of Central Australia—which used to be the Women's Shelter. It is to make sure, for those very reasons, so she has entire right to not be involved.

We are hoping to make sure the whole process is a safer space for victims to engage with and that more victims will feel confident to engage with the system. That is one of the objectives of the specialist approach to domestic violence that we are setting up at the Alice Springs Local Court.

The committee concluded
