LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Legislation Scrutiny Committee

Inquiry into the Justice Legislation Amendment (Domestic and Family Violence) Bill 2019

March 2020

Contents

Chair's Preface

This report details the Committee's findings regarding its examination of the Justice Legislation Amendment (Domestic and Family Violence) Bill 2019. Amending the *Bail Act 1992,* the *Criminal Code Act 1983*, the *Domestic and Family Violence Act 2007,* and the *Sentencing Act 1995,* this Bill seeks to enhance responses to domestic and family violence in the Northern Territory and improve the safety of victims, increase the accountability of defendants, and provide greater impetus for defendants to change their behaviour.

The Committee received eight submission to its inquiry, all of which supported the policy intent of the proposed legislation. One of the primary concerns raised by submitters was that the proposed amendments to section 23 of the *Domestic and Family Violence Act 2007* will have limited effect in the absence of consequential amendments to the *Residential Tenancies Act 1999*. Concerns were also raised regarding the implementation of Part 2.11A 'Rehabilitation programs'.

The Committee has recommended that the Assembly pass the Bill with the proposed amendment set out in recommendation 4. To ensure the Bill is unambiguous and drafted in a sufficiently clear and precise manner, it is recommended that section 85B of the *Domestic and Family Violence Act 2007* include a definition of 'violent offences'.

The Committee has also made four recommendations for the Government's consideration. Recommendations 2 and 5 propose that, as part of the Government's review of the *Domestic and Family Violence Act 2007* and subsequent development of further amendments to the *Residential Tenancies Act 1999*, consideration be given to the scope and operation of sections 22 and 23 of the *Domestic and Family Violence Act 2007* taking into account issues raised by stakeholders to this inquiry.

In light of stakeholder concerns, recommendation 3 proposes that the Government review the operation of proposed Part 2.11A "Rehabilitation programs' and present a report to the Legislative Assembly as soon as practicable after the end of its first year of operation. Recommendation 6 proposes that the Government's current review of the victims of crime financial assistance scheme consider including the new offence of 'Choking, strangling or suffocating in a domestic relationship' as a compensable violent act within Schedule 1 of the Victims of Crime Assistance Regulations 2007.

On behalf of the Committee, I would like to thank all those who made submissions or appeared before the Committee. The Committee also thanks Professor Aughterson and the Department of the Attorney-General and Justice for their advice. I also thank my fellow Committee members for their bipartisan commitment to the legislative review process.

Mr Tony Sievers MLA
Chair

Committee Members

	**Mr Tony Sievers** Member for Brennan	
	Party:	Territory Labor
	Committee Membership	
	Standing:	House, Public Accounts
	Sessional:	Legislation Scrutiny Committee
	Chair:	Legislation Scrutiny Committee
	**Ms Sandra Nelson MLA** Member for Katherine	
	Party:	Territory Labor
	Parliamentary Position	Acting Deputy Speaker
	Committee Membership	
	Sessional:	Legislation Scrutiny
	Deputy Chair:	Legislation Scrutiny
	**Mr Joel Bowden MLA** Member for Johnston	
	Party:	Territory Labor
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	Party:	Country Liberals
	Parliamentary Position:	Leader of the Opposition
	Committee Membership	
	Standing:	Privileges
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	**Mrs Robyn Lambley MLA** Member for Araluen	
	Party:	Independent
	Parliamentary Position:	Acting Deputy Speaker
	Committee Membership	
	Standing:	Standing Orders and Members' Interests
	Sessional:	Legislation Scrutiny

Note: Pursuant to Standing Order 181, on Tuesday 10 March Member for Karama, Ms Ngaree Ah Kit was discharged from the Committee and replaced by Member for Johnston, Mr Joel Bowden.

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Acknowledgements

The Committee acknowledges the individuals and organisations that provided written submissions or oral evidence at public hearings.

Terms of Reference

Sessional Order 13

Establishment of Legislation Scrutiny Committee

(1) Standing Order 178 is suspended.

(2) The Assembly appoints a Legislation Scrutiny Committee.

(3) The ordinary membership of the scrutiny committee will comprise three Government Members, one Opposition Member nominated to the Speaker in writing by the respective Whip and one non-party aligned Member to be appointed by motion.

The Committee's membership will be supplemented by alternate members who may be nominated to participate at meetings and undertake a role on the committee in the place of ordinary committee members. The nomination of alternate committee members will be in writing by the ordinary member to the committee chair.

Alternate Committee members must be from the same category of Members of the Assembly as the ordinary member nominating them such as the same political party or a non-party aligned Member.

(4) The functions of the scrutiny committee shall be to inquire and report on:

(a) any matter referred to it:

(i) by the Assembly;

(ii) by a Minister; or

(iii) on its own motion.

(b) any bill referred to it by the Assembly;

(c) in relation to any bill referred by the Assembly:

(i) whether the Assembly should pass the bill;

(ii) whether the Assembly should amend the bill;

(iii) whether the bill has sufficient regard to the rights and liberties of individuals, including whether the bill:

(A) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and

(B) is consistent with principles of natural justice; and

(C) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and

(D) does not reverse the onus of proof in criminal proceedings without adequate justification; and

(E) confers powers to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and

(F) provides appropriate protection against self-incrimination; and

(G) does not adversely affect rights and liberties, or impose obligations, retrospectively; and

(H) does not confer immunity from proceeding or prosecution without adequate justification; and

(I) provides for the compulsory acquisition of property only with fair compensation; and

(J) has sufficient regard to Aboriginal tradition; and

(K) is unambiguous and drafted in a sufficiently clear and precise way.

(iv) whether the bill has sufficient regard to the institution of Parliament, including whether the bill:

(A) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and

(B) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and

(C) authorises the amendment of an Act only by another Act.

(5) The Committee will elect a Government Member as Chair.

(6) The Committee will provide an annual report on its activities to the Assembly.

Adopted 27 November 2019

Recommendations

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Justice Legislation Amendment (Domestic and Family Violence) Bill 2019 with the proposed amendment set out in recommendation 4.

Recommendation 2

The Committee recommends that the Government consider the scope, wording and operation of section 23 (Order regarding tenancy agreement) of the *Domestic and Family Violence Act 2007* as part of its review of that Act, including the intersection with the second tranche of amendments to the *Residential Tenancies Act 1999* which will consider domestic violence related tenancy issues, taking into account issues raised by stakeholders during this inquiry.

Recommendation 3

The Committee recommends that the Government review the operation of proposed Part 2.11A of the *Domestic and Family Violence Act 2007* and present a report to the Legislative Assembly as soon as practicable after the end of its first year of operation.

Recommendation 4

The Committee recommends that proposed section 85B of the *Domestic and Family Violence Act 2007* be amended to include reference to, or a definition of, 'violent offences' as provided for in section 78C of the *Sentencing Act 1995.*

Recommendation 5

The Committee recommends that the Government's review of the *Domestic and Family Violence Act 2007* consider the scope and operation of section 22 (Premises access order) of the Act, taking into account the issues raised by the North Australian Aboriginal Family Legal Service during this inquiry.

Recommendation 6

The Committee recommends that the Government's review of the victims of crime financial assistance scheme consider including the offence of 'choking, strangling or suffocating in a domestic relationship' as a compensable violent act within Schedule 1 of the Victims of Crime Assistance Regulations 2007.

1 Introduction

Introduction of the Bill

1.1 The Justice Legislation Amendment (Domestic and Family Violence) Bill 2019 (the Bill) was introduced into the Legislative Assembly by the Treasurer, the Hon Nicole Manison MLA, on behalf of the Attorney-General and Minister for Justice, the Hon Natasha Fyles MLA, on 28 November 2019. The Assembly subsequently referred the Bill to the Legislation Scrutiny Committee for inquiry and report by 24 March 2020.[1]

Conduct of the Inquiry

1.2 On 28 November 2019 the Committee called for submissions by 29 January 2020. The call for submissions was advertised via the Legislative Assembly website, Facebook, Twitter feed and email subscription service. In addition, the Committee directly contacted a number of individuals and organisations.

1.3 The Bill, associated *Explanatory Statement,* and *Statement of Compatibility with Human Rights* was also forwarded to Professor Ned Aughterson for review of fundamental legislative principles under Sessional Order 13(4)(c).

1.4 As noted in Appendix 1, the Committee received eight submissions to its inquiry. The Committee held a public briefing with the Department of the Attorney-General and Justice on 9 December 2019 and public hearings with eight witnesses in Darwin on 2 March 2020.

Outcome of Committee's Consideration

1.5 Sessional order 13(4)(c) requires that the Committee after examining the Bill determine:

(i) whether the Assembly should pass the bill;

(ii) whether the Assembly should amend the bill;

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

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

1.6 Following examination of the Bill, and consideration of the evidence received, the Committee is of the view that the Legislative Assembly should pass the Bill with the proposed amendment set out in recommendation 4.

[1] Hon Nicole Manison MLA, Treasurer, *Draft Daily Hansard – Thursday 28 November 2019,* p. 5, https://www.territorystories.nt.gov.au/jspui/handle/10070/755088

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Justice Legislation Amendment (Domestic and Family Violence) Bill 2019 with the proposed amendment set out in recommendation 4.

Report Structure

1.7 Chapter 2 provides an overview of the policy objectives of the Bill and the purpose of the Bill as contained in the Explanatory Statement.

1.8 Chapter 3 considers the main issues raised in evidence received.

2 Overview of the Bill

Background to the Bill

2.1 In accordance with the Government's *Domestic, Family & Sexual Violence Reduction Framework 2018-2028* and associated *Action Plan 1: Changing Attitudes, Intervening Earlier and Responding Better (2018-2021)*[2], Minister Manison advised the Assembly that:

> the amendments in this Bill are part of the Government's efforts to improve the safety of victims of domestic and family violence and increase the impetus for offenders to take responsibility for their conduct and to change their behaviour.[3]

2.2 As such, the Assembly heard that the Bill seeks to facilitate the implementation of a Specialist Approach to Domestic Violence at the Alice Springs Local Court; acknowledge that domestic violence in which a perpetrator chokes, strangles or suffocates their partner is a high risk factor for serious harm and subsequent lethal outcomes in domestic violence situations through the creation of a new offence; and ensure safe living arrangements for parties involved in a domestic and family violence case by clarifying provisions under the Domestic and Family Violence Act 2007 regarding court orders in relation to tenancy agreements.[4]

Purpose of the Bill

2.3 Amending the *Bail Act 1992*, the *Criminal Code Act 1983*, the *Domestic and Family Violence Act 2007* and the *Sentencing Act 1995,* this Bill seeks to improve responses to domestic and family violence by:

- removing a disincentive for defendants in domestic violence proceedings to attend rehabilitation programs by providing that the completion of a program is an exceptional circumstance for the purpose of mandatory sentencing;
- creating a new offence of choking, suffocation and strangulation in a domestic relationship in recognition of the seriousness of this conduct; and
- clarifying that, as part of a domestic violence order, a tenancy agreement can be terminated without being replaced and that the permanent breakdown of a relationship is not required.[5]

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[2] Territory Families, *The Northern Territory's Domestic, Family & Sexual Violence Reduction Framework 2018-2028 Safe, Respected and Free from Violence*, https://territoryfamilies.nt.gov.au/dfv/domestic-and-family-violence-reduction-strategy; Territory Families, *The Northern Territory's Domestic, Family & Sexual Violence Reduction Framework 2018-2028 Safe, Respected and Free from Violence, Action Plan 1: Changing Attitudes, Intervening Earlier and Responding Better (2018-2021),* https://territoryfamilies.nt.gov.au/dfv/domestic-and-family-violence-reduction-strategy

[3] Hon Nicole Manison MLA, Treasurer, *Draft Daily Hansard – Thursday 28 November 2019,* https://www.territorystories.nt.gov.au/jspui/handle/10070/755088, p.5

[4] Hon Nicole Manison MLA, Treasurer, *Draft Daily Hansard – Thursday 28 November 2019,* https://www.territorystories.nt.gov.au/jspui/handle/10070/755088, pp.1-5

[5] Explanatory Statement, *Justice Legislation Amendment (Domestic and Family Violence) Bill 2019,* https://parliament.nt.gov.au/committees/LSC/113-2019, p.1

3 Examination of the Bill

Introduction

3.1 All of the submissions received supported the policy intent of the proposed legislation. However, clarification was sought regarding the intended operation of a number of the proposed amendments. One of the primary concerns raised by submitters was that the proposed amendments to section 23 (Order regarding tenancy agreement) of the *Domestic and Family Violence Act 2007* will have limited effect in the absence of consequential amendments to the *Residential Tenancies Act 1999*. Concerns were also raised regarding the implementation of Part 2.11A 'Rehabilitation programs'.

3.2 The following discussion considers the main issues raised by submitters, the legal advice provided by Professor Aughterson, and the subsequent advice provided by the Department of the Attorney-General and Justice (the Department).

Amendment of Criminal Code

3.3 Clause 6 of the Bill amends Part VI, Division 4 of the *Criminal Code Act 1983* by inserting proposed section 186AA to provide for an offence of intentionally choking, strangling or suffocating a person in a domestic relationship where the other person does not consent to such and the person is reckless in relation to that circumstance. The offence carries a maximum penalty of 5 years imprisonment.

3.4 Similar to section 27(1) of the *Crimes Act 1900* (ACT), proposed section 186AA(4) provides that chokes, strangles or suffocates a person includes the following:

(a) applies pressure, to any extent, to the person's neck;

(b) obstructs, to any extent, any part of the person's:

(i) respiratory system; or

(ii) accessory systems of respiration;

(c) interferes, to any extent, with the operation of the person's:

(i) respiratory system; or

(ii) accessory systems of respiration;

(d) impedes, to any extent, the person's respiration.

3.5 As discussed below, while submitters welcomed the introduction of the proposed offence, concerns were raised regarding the drafting and intended operation of this new provision.

Operation of Proposed Section 186AA in the Context of Mandatory Sentencing

3.6 Proposed section 186AA of the *Criminal Code Act 1983* is drafted in a similar manner to section 315A of the *Criminal Code 1899* (Qld) and incorporates similar definitions of the terms choking, strangulation and suffocation as that provided for in section 27 of the *Crimes Act 1900 (ACT)*. However, unlike these jurisdictions, the offence

provision in the Bill is subject to mandatory imprisonment provisions under the *Sentencing Act 1995* (NT).

3.7 As Professor Aughterson pointed out, while there is no need to establish any harm or impact, clause 16 of the Bill amends the *Sentencing Act 1995* to provide that:

> s 186AA is a level 3 offence. By s 78CA and 78D of the *Sentencing Act,* a conviction can in the circumstances specified carry a mandatory term of imprisonment. For example, where the victim is a female and the defendant a male, or the victim is a child and the defendant is an adult, there will be a mandatory term of imprisonment where the person affected suffers 'physical harm': see ss 78CA(3) and 78DC of the *Sentencing Act.* By s 78C of the *Sentencing Act* 'physical harm' means 'a physical injury that interferes with the person's health'. Accordingly, mandatory imprisonment might arise where the interference with the person's health is relatively minor.[6]

3.8 In light of Professor Aughterson's comments, the Committee sought clarification from the Department regarding the intended operation of the proposed offence provision in the context of mandatory sentencing. The Department subsequently advised the Committee that:

> It is intended that Part 3 division 6A of the *Sentencing Act 1995* (Mandatory Sentencing for Violent Offences) apply to section 186AA. To ensure consistency across the *Criminal Code* the proposed offence will be subject to mandatory sentencing along with other comparable violent offences.
>
> Clause 16 of the Bill amends section 78CA(1)(b) of the *Sentencing Act 1995* to provide for the level of the offence for the purposes of mandatory sentencing. The proposed choking offence is subject to mandatory sentencing at the same level as section 188(2) assault with aggravating features. It is a level 5 offence if it involves an offensive weapon or the victim suffers physical harm. Level 5 offences have a mandatory minimum sentence of three months actual imprisonment for the first offence and 12 months for second or subsequent offences.
>
> Otherwise, the new offence is a level 3 offence, and a term of actual imprisonment must be imposed for a first offence and there is a three month mandatory minimum for a section or subsequent offence. The Department of the Attorney-General and Justice's view is this is an appropriate level for this offence, given the nature of the harm and potential consequences that can flow from this type of offending.
>
> The interference that may be caused to a person's health may appear to be relatively minor in the sense that there may not be visible signs of injury (indeed this is one of the reasons for proposing the introduction of a separate choking offence). However, choking is often used to control and intimidate women and make them fear for their lives often without visible signs of injury. It is a known risk factor for escalating harm in domestic violence cases and subsequent lethal outcomes. The proposed new offence will play an important role in sanctioning and drawing attention to conduct, that has often not received a proportionate response from police, prosecutors and courts.[7]

[6] Professor Ned Aughterson., *Legal Advice on the Justice Legislation Amendment (Domestic and Family Violence) Bill 2019,* (unpublished), 28 January 2020, p.1

[7] Department of the Attorney-General and Justice, *Responses to Written Questions,* 25 February 2020, https://parliament.nt.gov.au/committees/LSC/113-2019, p.1

Committee's Comments

3.9 The Committee is satisfied with the Department's response.

Application of Proposed Section 186AA

3.10 The Northern Territory Women's Legal Services (NTWLS) raised concern regarding the limited application of the new offence, and suggested that the requirement in proposed section 186AA(1)(a) that the offence occur within the confines of a domestic relationship should be removed:

> It is understood that the intent of creating such an offence in the NT is to acknowledge the severity of such offending and to ensure greater recognition of this conduct in the investigation and prosecution of domestic violence related offending. However, the NTWLS hold concern in respect of limiting the offence to only those circumstances involving a domestic relationship. A comparative review of strangulation offences across Australia shows that offences requiring a specific pre-condition (such as the strangulation being committed in order to commit another offence) or a specific outcome (rendering a person unconscious, insensible or incapable of resistance) are inherently more complex, and therefore more difficult to prove, than offences prohibiting a person from strangling another person without consent.[8]

3.11 While a comparable offence exists in the Australian Capital Territory, New South Wales, Queensland and South Australia, and is currently under consideration in Western Australia, it is noted that the requirement that the offence occur within the confines of a domestic relationship or domestic setting only exists in Queensland and South Australia.[9]

3.12 In response to the Committee's questions on this matter, the Department noted that:

> It is acknowledged that strangulation may affect women outside of a domestic relationship, including from strangers, acquaintances, or work colleagues. This is egregious conduct but it is not the conduct that this offence was intended to target. The purpose of this offence is to ensure greater recognition of this particular form of domestic violence because of its increased risk of serious harm and lethal outcomes …
>
> Choking that occurs outside a domestic relationship may occur in the context of sexual offending and is adequately dealt with by existing offences (for example, section 192 of the *Criminal Code,* Sexual Intercourse without Consent). It may also occur in the context of an aggravated assault and may be dealt with under section 188(2) of the *Criminal Code*.
>
> The Department notes that the ACT, NSW and WA have choking offences of generic application rather than requiring a domestic relationship. However, the Department is of the view that to broaden the offence may detract and distract from the primary purpose of its introduction, that is, to draw attention to a serious form of domestic violence that is a high risk factor and has historically not received a proportionate response.
>
> If the Committee is so minded to recommend a broadening of this offence beyond a domestic relationship, it is recommended that a separate offence be created that mirrors the proposed section 186AA except for the requirement that there be

[8] Northern Territory Women's Legal Services, Submission 7, p.4

[9] *Crimes Act 1900* (ACT), ss.27 & 28; *Crimes Act 1900* (NSW), s37; *Criminal Code 1899* (Qld), s.315A; *Criminal Law Consolidation Act 1935* (SA), s.20A; Family Violence Legislation Reform Bill 2019 (WA), clause 6

> a domestic relationship. In this way the domestic violence related objectives for introducing the offence will not be diluted.[10]

Committee's Comments

3.13 Given that choking, strangling or suffocating outside of a domestic relationship is adequately dealt with by existing offences under the *Criminal Code Act 1983* (NT), the Committee considers that broadening the offence or introducing a separate offence that mirrors the proposed offence except for the requirement that there be a domestic relationship, is unnecessary.

Penalty Provisions

3.14 As indicated previously, proposed section 186AA(1) provides for a maximum penalty of 5 years. However, the Committee notes that equivalent offence provisions in other jurisdictions are subject to higher penalties. In New South Wales and the ACT, for example, the penalty ranges from 5 – 10 years depending on whether a person intentionally chokes, suffocates or strangles another person without their consent, or intentionally chokes, suffocates or strangles another person so as to render them unconscious, insensible or incapable of resistance and is reckless in relation to that circumstance.[11] The maximum penalty in Queensland and South Australia is 7 years imprisonment.[12] In Western Australia the Family Violence Legislation Reform Bill 2019 proposes a maximum penalty of 7 years imprisonment if the offence is committed in circumstances of aggravation or 5 years imprisonment in any other case.[13]

3.15 The Department subsequently advised the Committee that:

> Consideration was given to penalties for choking offences in other jurisdictions. A seven year penalty along the lines of the Queensland offence (section 315A of the Queensland Criminal Code) was considered. … as noted by the Northern Territory Legal Aid Commission (NTLAC) in its submission to the Committee, the Queensland offence is a narrower offence than the one proposed in the Bill, targeting the more serious end of the proscribed conduct. In *R v AJB* [2019] QDC 169, the court held that 'the relevant element contained … in section 315A of the Criminal Code, was constituted by … a stopping of breath, not a restriction in the ability to breathe' (at [22]). In contrast, the offence proposed in the Bill includes applying pressure or obstructing or impeding respiration 'to any extent'. Like aggravated assault (section 188(2) Criminal Code), the proposed offence covers a wide range of conduct which, in the Department's view, is adequately criminalised by a maximum penalty of five years imprisonment. …
>
> The Department also sought the opinion of the Director of Public Prosecutions who advised that a maximum penalty of five years imprisonment allows sufficient scope for sentencing, noting that the Criminal Code provides a range of more serious offences a defendant could be charged with should the offending be more serious, including disabling to commit an indictable offence (section 175), serious harm (section 181), or attempted murder (section 165).

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[10] Department of the Attorney-General and Justice, *Responses to Written Questions,* 25 February 2020, https://parliament.nt.gov.au/committees/LSC/113-2019, pp.2-3
[11] *Crimes Act 1900* (NSW), s. 37; *Crimes Act 1900* (ACT), ss.27 & 28
[12] *Criminal Code 1899* (Qld), s.315A; *Criminal Law Consolidation Act 1935* (SA), s.20A
[13] Family Violence Legislation Reform Bill 2019, clause 6 - proposed s.298

> In addition, the choking offence is unlikely to occur in isolation but rather during the course of other offending, such as aggravated assault. If the circumstances merited it, a court could impose a partly cumulative sentence to reflect the overall criminality of the conduct.[14]

Committee's Comments

3.16 The Committee is satisfied with the Department's response.

Amendment of Domestic and Family Violence Act 2007

3.17 The Bill amends section 23 of the *Domestic and Family Violence Act 2007* to clarify that, as part of a Domestic Violence Order (DVO), a tenancy agreement can be terminated without being replaced and no longer requires evidence of the permanent breakdown of the relationship. The Bill also amends section 24 regarding court orders for rehabilitation programs and inserts a new Part 2.11A to provide for the declaration of rehabilitation programs. This Part also seeks to remove the disincentive for defendants in domestic violence proceedings to attend rehabilitation programs by providing that the completion of a program is an exceptional circumstance for the purpose of mandatory sentencing. While all submitters welcomed the policy intent of the proposed amendments, as discussed below, a number of concerns were raised regarding the drafting of the provisions.

Proposed Section 23: Order regarding tenancy agreement

3.18 As provided for in section 23(1)(a), the Darwin Community Legal Service (DCLS) raised concern that this section only applies if 'the defendant and protected person live together or previously lived together in premises', noting that:

> this clause does not contemplate the protection of a tenant that has never resided with the perpetrator. Protected persons in this situation need an avenue to terminate their tenancy where the defendant knows where they live and they are at risk of being stalked or harmed by the defendant. The removal of subsection 23(1)(a) would allow courts to terminate the protected person's tenancy in these situations in order for them to move to a safe location unknown to the defendant.[15]

3.19 Clarification was sought from the Department regarding the avenues available to the protected person in these instances and the extent to which it would impact on the operation of the proposed legislation if section 23(1)(a) was removed as suggested by DCLS. The Department subsequently advised the Committee that:

> In the Department's view it is beyond the scope of the current Bill to cover circumstances in which domestic violence is perpetrated by a defendant who has never lived with the protected person but may be a risk to her safety.
>
> In these circumstances, the protected person can apply to terminate the lease under section 99 of the *Residential Tenancies Act 1999* and the application would be heard by the Northern Territory Civil and Administrative Tribunal (NTCAT). It is noted that NTCAT has terminated tenancies under section 99 where there have

[14] Department of the Attorney-General and Justice, *Responses to Written Questions,* 25 February 2020, https://parliament.nt.gov.au/committees/LSC/113-2019, p.4

[15] Darwin Community Legal Service, Submission 3, p.2

> been instances of domestic violence and the perpetrator did not reside at the premises. The hardship provision may extend to non-victim tenants as well.
>
> If the suggested amendment to section 23(1)(a) was recommended by the Committee, it would potentially assist a wider class of victims who had not resided with the defendant, enabling them to terminate a tenancy agreement as part of a domestic violence order (DVO) rather than applying to NTCAT. …
>
> However, it is preferable to consider the scope and wording of section 23 as part of the review of the *Domestic and Family Violence Act 2007,* including the intersection with second tranche of amendments to the *Residential Tenancies Act 1999* which will consider domestic violence related tenancy issues.[16]

3.20 The North Australian Aboriginal Family Legal Service (NAAFLS) expressed concern regarding the requirement in section 23(2) for a DVO as a pre-requisite to a victim changing their tenancy arrangements, noting that:

> In the NT, especially in Katherine and remote locations this would preclude many victims from accessing this provision where the service of DVO's and DV applications is already difficult and as a consequence, proceedings can be protracted.[17]

3.21 To overcome this issue, it was suggested that consideration be given to the approach taken in section 71AB(2) of the *Residential Tenancies Act 1987* (WA) which provides that alternate documentary evidence can be provided in place of a DVO (either for a final or interim order) to alter or replace a tenancy agreement.[18] Under the WA legislation, alternate documentary evidence includes a Family Court injunction or an application for a Family Court injunction; a copy of a prosecution notice or indictment containing a charge relating to violence against the tenant or a court record of a conviction of the charge; or a report of family violence in a form approved by the Commissioner.[19]

3.22 However, as the Department pointed out:

> The *Domestic and Family violence Act 2007* achieves its objectives by providing for the making of DVO's to protect people from domestic violence and to encourage people committing it to change their behaviour (section 3(2)(a)). The Department's view is that provisions to terminate or replace a lease under this Act should require a DVO to be in place. It is difficult to see how the Western Australian provisions could be effectively incorporated into the *Domestic and Family Violence Act 2007* which is based around DVO's.
>
> To terminate a lease without a DVO the provisions are better situated in the *Residential Tenancies Act 1999* as they are in Western Australia. … It is noted that the Western Australia provision operates to enable the tenant to give notice of the termination of the tenancy agreement unilaterally on the grounds of family violence. This does not give the landlord the opportunity to be heard without a Court or Tribunal considering the matter.[20]

3.23 As noted previously, the Department further advised that it was of the view that it would be preferable for the scope, wording and operation of section 23 to be

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[16] Department of the Attorney-General and Justice, *Responses to Written Questions,* 25 February 2020, https://parliament.nt.gov.au/committees/LSC/113-2019, pp. 5-6
[17] North Australian Aboriginal Family Legal Service, Submission 8, p.4
[18] North Australian Aboriginal Family Legal Service, Submission 8, p.4
[19] *Residential Tenancies Act 1987* (WA), s. 71AB(2)
[20] Department of the Attorney-General and Justice, *Responses to Written Questions,* 25 February 2020, https://parliament.nt.gov.au/committees/LSC/113-2019, pp. 7-8

considered as part of the Government's review of the *Domestic and Family Violence Act 2007* and development of further amendments to the *Residential Tenancies Act 1999* regarding domestic violence related tenancy issues.[21]

3.24 DCLS questioned the restriction in section 23(3)(b) which provides that a court order terminating or replacing a tenancy agreement must not be made unless 'the landlord consents to the order or, if the landlord refuses consent, the Court is satisfied the refusal is unreasonable.' As DCLS pointed out:

> This is inconsistent with the approach of other jurisdictions, such as New South Wales and Western Australia. It is our submission that the safety of tenants subject to victimisation and violence should on balance be preferred to the financial interests of the landlord. The requirements in section 23(4) may also result in proceedings being adjourned, increasing the financial burden on the protected person and, if they do not have other accommodation options, putting their safety at risk.[22]

3.25 Clarification was sought from the Department regarding the circumstances under which the Court might determine that a landlord's refusal to consent to the order was reasonable. Where this is the case, the Committee also sought advice from the Department as to what mechanisms are in place to ensure the safety of the protected person. The Department subsequently advised the Committee that:

> Under proposed section 23(3)(b) the Court would determine whether the landlord's refusal to consent to the order was reasonable or not on the totality of the evidence before it. Refusal to consent may be considered reasonable, for example, if it is proposed to replace the tenancy agreement but there is evidence that the proposed tenant has no means to pay the rent or there is evidence that the proposed tenant is likely to damage the property. However, that is a matter for the Court to determine.
>
> If the landlord refuses consent and the Court finds this was reasonable, there are limited options. For example:
>
> - The defendant and the protected person may continue to reside together in the property with any children because they cannot afford to live separately. This, however, may be unsafe as domestic violence may continue. The only protection may be an interim DVO with conditions requiring the defendant not to use violence against the protected person and not to use alcohol for example.
> - The protected person may make an application under section 99 of the *Residential Tenancies Act 1999* for NTCAT to terminate the lease. That application may or may not have a different outcome. It is possible that the protected person may become homeless. In addition to safety considerations, the costs to the protected person is likely to be an issue (for example, meeting the costs of alternative accommodation, delays in the matter being resolved, fees for a private lawyer).
>
> If the Committee was minded to recommend the removal of section 23(3)(b), the landlord would still have an opportunity to be heard under section 23(4). Section 23(4) provides that 'the landlord and anyone else having an interest in the premises are entitle to appear and be heard in relation to the matters. If there was a recommendation that section 23(3)(b) be removed it is important that section 23(4) be retained.

[21] Department of the Attorney-General and Justice, *Responses to Written Questions,* 25 February 2020, https://parliament.nt.gov.au/committees/LSC/113-2019, p.8

[22] Darwin Community Legal Service, Submission 3, p.2

> The landlord has a significant interest in the proceedings and it is important for landlords to be heard before the Court reaches a decision about the tenancy order (as outlined above in case the tenant can't pay the rent or the property is likely to be damaged etc.). It is not helpful to any of the parties if the Court orders a replacement agreement that cannot be complied with.[23]

3.26 Here again, the Department expressed the view that this matter should be considered in the Government's review of the Domestic and Family Violence Act 2007 and the second tranche of associated amendments to the *Residential Tenancies Act 1999* regarding domestic violence related tenancy issues.[24]

3.27 With regards to the latter, DCLS, NAAFLS and NTWLS expressed the view that consequential amendments ought to be pursued with regards to the *Residential Tenancies Act 1999* to mirror the proposed amendments to section 23 'Order regarding tenancy agreement.'[25] As DCLS advised the Committee:

> The Bill is limited in application. Amendments to the *Residential Tenancies Act* (RTA) should also be pursued in order to advance the purpose of the Bill and provide appropriate relief for victims. … Currently, the only way to get an order terminating a tenancy on the basis of domestic violence is through the successful grant of a Domestic Violence Order (DVO). The current process requires a victim to apply to the Local Court for DVO and also seek to obtain an order for the termination of their tenancy.
>
> Clients of our service often do not wish to initiate or follow through with DVO proceedings because doing so may aggravate the perpetrator (causing further violence) in a confrontational and adversarial jurisdiction. … Further, but importantly, the Local Court does not have the power to terminate a victim's tenancy where the defendant has made an undertaking in lieu of a DVO being imposed. There is also the issue of costs of proceedings in the local court and a level of formality that may require legal assistance.
>
> A separate process via application to the Northern Territory Civil and Administrative Tribunal is required for other tenancy issues such as damage to the property to domestic violence, personal items left at a property, or the property not left clean due to the victim having left in a hurry.
>
> Introducing protections for domestic violence in the RTA would give NTCAT [Northern Territory Civil and Administrative Tribunal] the power to terminate a tenancy regardless of whether there is a DVO, whilst enabling all tenancy related issues to be addressed in the one jurisdiction, minimising the impact on the victim.
>
> It is also a low cost jurisdiction, does not require legal representation and matters are not required to be dealt within in the presence of an adversary.[26]

3.28 NTWLS expressed a similar view noting that, in their experience:

> many women would prefer to undertake corresponding termination of tenancy processes under residential tenancy legislation, if available, rather than that available under the DFVA [*Domestic and Family Violence Act 2007*], where cycles of violence and issues of control can often equate to a tenant not wishing to apply for a domestic violence order.[27]

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[23] Department of the Attorney-General and Justice, *Responses to Written Questions,* 25 February 2020, https://parliament.nt.gov.au/committees/LSC/113-2019, p.7

[24] Department of the Attorney-General and Justice, *Responses to Written Questions,* 25 February 2020, https://parliament.nt.gov.au/committees/LSC/113-2019, p.7

[25] Darwin Community Legal Service, Submission 3, pp.2-3; North Australian Aboriginal Family Legal Service, Submission 8, p.4.

[26] Darwin Community Legal Service, Submission 3, pp. 2-3

[27] Northern Territory Women's Legal Services, Submission 7, p.5

3.29 NAAFLS also pointed out that:

> Currently there is no such provision in the RTA [*Residential Tenancies Act 1999*] in which DFV [Domestic and Family Violence] is a ground to terminate/replace a lease. Having such mirror provisions in the RTA provides clarity and contains the rights and responsibilities of a landlord/tenant in one single piece of legislation, rather than leaving it open for the victim of DFV to have to argue their rights to alter the tenancy agreement based on the provisions in the DFV Act [*Domestic and Family Violence Act 2007*]. This adds a layer of burden on the victim and assumes that landlords/agents are familiar with not only the RTA but the DFV Act in so far as it relates to a residential tenancy agreement.
>
> Further, it also enables the NT Civil and Administrative Tribunal (NTCAT) as the jurisdiction assigned to determine tenancy disputes to consider and deal with these issues where a DVO is not in place but alternate evidence is available to establish a DFV relationship and safety concerns are present.[28]

Committee's Comments

3.30 As highlighted in the Committee's December 2019 report, *Inquiry into the Residential Tenancies Legislation Amendment Bill 2019,* the majority of submitters to that inquiry also expressed concern that the Bill did not include amendments relating to domestic violence. Noting that the Bill was the first tranche of a reform program aimed at modernising the *Residential Tenancies Act 1999,* the Committee subsequently recommended that:

> in the next tranche of reforms to the *Residential Tenancies Act 1999* (NT) the Government give further consideration to the inclusion of amendments to address the impact of domestic violence on tenants, taking into account issues raised by stakeholders during this inquiry and examples of best practice in this area, such as the New South Wales *Residential Tenancies Act 2010.*[29]

3.31 In responding to the Committee's report, the Attorney-General and Minister for Justice, the Hon Natasha Fyles MLA, advised the Assembly that the Government accepted the Committee's recommendation and noted that:

> Once the Bill has passed, the Department of the Attorney-General and Justice will re-engage with stakeholders, including in relation to the identified areas by the Committee to develop further tranches of legislative reform.[30]

3.32 With regards to the concerns raised by submitters to this inquiry, the Committee is of the view that, as noted by the Department, they should be considered as part of the Government's review of the *Domestic and Family Violence Act 2007* and subsequent development of the second tranche of amendments to the *Residential Tenancies Act 1999* regarding domestic violence related tenancy issues.

Recommendation 2

The Committee recommends that the Government consider the scope, wording and operation of proposed section 23 (Order regarding tenancy agreement) of the *Domestic and Family Violence Act 2007* as part of its review of that Act,

[28] North Australian Aboriginal Family Legal Service, Submission 8, p.4
[29] Legislation Scrutiny Committee, *Inquiry into the Residential Tenancies Legislation Amendment Bill 2019,* https://parliament.nt.gov.au/committees/EPSC/112-2019, pp.32-4
[30] Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Draft Daily Hansard – Tuesday 18 February 2020,* https://www.territorystories.nt.gov.au/jspui/handle/10070/756094, p.18

including the intersection with the second tranche of amendments to the *Residential Tenancies Act 1999* which will consider domestic violence related tenancy issues, taking into account issues raised by stakeholders during this inquiry.

Proposed Section 24: Order for rehabilitation program

3.33 Proposed section 24(1A) provides that, in deciding whether to include an order requiring the defendant to take part in a rehabilitation program when making or varying a DVO, the safety and protection of the protected person must be the paramount consideration. NAAFLS recommended that this section be amended to ensure that:

> the best interest of children who may be exposed to the DFV, and not just children of the relationship or to the parties, to take into account kinship care arrangements or other children present in the household at the time, as a factor to be considered by the Court when making such an order for rehabilitation under subsection (1.)[31]

3.34 The Department advised that, in their view, the amendment proposed by NAAFLS was unnecessary given that:

> the safety of children is already provided for. If children are at risk they should be named as a protected person on the DVO alongside any adult protected person. Section 24(1A) will apply to all protected persons both adults and children, so it is not necessary to specifically identify children in the provision.
>
> The Department notes that section 18(2) specifically provides that the issuing authority may make a DVO if satisfied there are reasonable grounds to fear that a child will be exposed to domestic violence. This ensures that any children who experience or witness domestic violence can be included as a protected person.
>
> The proposed section 24(1A) itself is strictly speaking unnecessary as it is already an overarching requirement under section 19(1) of the Act that in deciding whether to make a DVO 'the issuing authority must consider the safety and protection of the protected person to be of paramount importance.' A rehabilitation order made under section 24 is one of the specific orders that can be included as part of a DVO. The proposed section 24(1A) was included in the Bill to avoid any doubt that in making a rehabilitation order under section 24 that the safety and protection of the protected person must be the paramount consideration. It gives added emphasis to what is already required under section 19(1).
>
> Although it is not necessary in the Department's view, if the committee is minded to make a recommendation to name children in this provision, a very simple amendment would suffice, for example, the addition of the words 'including children,' after protected person. An amendment of this kind would ensure that the safety and protection of children are taken into account where they are protected persons.
>
> The Department agrees with NAAFLS that it is important for the safety of children to be taken into account. However, the Department notes:
>
> - There can only be one paramount consideration which should remain the safety and protection of protected persons (meaning both children and adults who are protected persons).

[31] North Australian Aboriginal Family Legal Service, Submission 8, p.7

- It is difficult for a Court to identify or assess any potential impact of a rehabilitation order on the safety and protection of unnamed persons who are not 'protected persons.'[32]

Committee's Comments

3.35 While acknowledging the concern raised by NAAFLS, the Committee agrees with the Department that, given the provisions in sections 18(2) and 19(1) of the *Domestic and Family Violence Act 2007,* the proposed amendment is unnecessary.

Part 2.11A: Rehabilitation Programs

3.36 Clause 14 of the Bill inserts a new Part 2.11A in the *Domestic and Family Violence Act 2007* to provide for rehabilitation programs and facilitate implementation of the Specialist Approach to Domestic Violence. Submitters sought clarification regarding the intended operation of proposed sections 85A 'Declaration of rehabilitation program' and 85B 'Satisfactory competition of rehabilitation program' in particular.

3.37 As detailed below, while the Committee is satisfied with the Department's responses to the specific concerns raised by submitters regarding these two sections, it was evident during the public hearing that although key stakeholders supported the inclusion of Part 2.11A, there were some reservations regarding the implementation of this part.

3.38 For example, as Ms Caitlin Weatherby-Fell (Senior Solicitor: Top End Women's Legal Service) pointed out, the calibre and appropriateness of declared rehabilitation programs will be critical to the outcomes of the Specialist Approach to Domestic Violence. Concerns were also raised regarding the monitoring of defendants while they are participating in a rehabilitation programs.[33] Ms Sophie Hantz (Solicitor: North Australian Aboriginal Family Legal Service) also questioned the extent to which perpetrators in remote communities would be able to access declared rehabilitation programs.[34]

3.39 Evaluating the effectiveness of declared rehabilitation programs was also raised as an issue. As Ms Penny Drysdale (Senior Policy Officer and Lawyer: Policy Coordination, Department of the Attorney-General and Justice) acknowledged:

> 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. … They are emerging programs in terms of people saying we need to 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 recidivism 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

[32] Department of the Attorney-General and Justice, *Responses to Written Questions,* 25 February 2020, https://parliament.nt.gov.au/committees/LSC/113-2019, pp. 9-10
[33] Committee Transcript, Public Hearing, 2 March 2020, pp.7-8
[34] Committee Transcript, Public Hearing, 2 March 2020, p.10

> 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.[35]

Committee's Comments

3.40 As highlighted by the Hon Nicole Manison MLA in introducing the Bill, the proposed amendments to the *Domestic and Family Violence Act 2007* as provided for under Part 2.11A are:

> important for the implementation of the Specialist Approach to Domestic Violence at the Alice Springs Local Court. They remove the disincentive for offenders to participate in rehabilitation programs and they better regulate rehabilitation orders under the *Domestic and Family Violence Act 2007*.
>
> If this approach is successful in Alice Springs, rehabilitation programs in other locations may be declared by the Minister. This is an important measure the Government is undertaking to help domestic violence offenders to change and to make women and children safer.[36]

3.41 Given that Part 2.11A is integral to the implementation of the Specialist Approach to Domestic Violence, and in light of stakeholder concerns, the Committee considers that it would be prudent for the Government to review the operation of this Part as soon as practicable after the end of its first year of operation and present a report to the Legislative Assembly.

Recommendation 3

The Committee recommends that the Government review the operation of proposed Part 2.11A of the *Domestic and Family Violence Act 2007* and present a report to the Legislative Assembly as soon as practicable after the end of its first year of operation.

Proposed Section 85A: Declaration of rehabilitation program

3.42 Proposed section 85A provides that the Minister may declare a program to be a rehabilitation program by *Gazette* notice and the notice must specify the requirements of the program. The note to this section includes the following examples of program requirements:

1. That the defendant attend 16 weekly group sessions during a 5 month period.
2. That the defendant attend individual meetings with the program facilitator on request.
3. That the defendant agree to independent checks on the safety of the protected person while the defendant is participating in the program.

3.43 While acknowledging that these examples are only a guide, NAAFLS raised concern regarding example 3 noting that:

> It should not be a requirement that the defendant has to agree in order for this to occur. By eliminating this, it would enable a 'check in' on the wellbeing of the

[35] Committee Transcript, Public Hearing, 2 March 2020, p.15
[36] Hon Nicole Manison MLA, Treasurer, Draft Daily Hansard – Thursday 28 November 2019, https://www.territorystories.nt.gov.au/jspui/handle/10070/755088, pp.3-4

> protected person and might also address the pressures by family or community members upon the protected person.[37]

3.44 By way of clarification, the Department advised that:

> It is recognised best practice in Domestic Violence Men's Behaviour Change Programs (which includes voluntary and court-ordered participants) that the participants in the program consent to provide contact details of their partners or ex-partners. This demonstrates that they are taking responsibility for their conduct (rather than blaming the victim) and enables them to accept that information and support needs to be provided to the victim. Best practice dictates that the Men's Behaviour Change Program has arrangements in place with a service for victims (often a women's specific service) who independently contacts the victim to provide information about the program, to offer support, referral and assistance and to conduct independent checks on her safety. This is called the 'Partner Contact Service'. During this process the safety of any children in the family is also considered, but the primary client is the partner or ex-partner (with her consent).
>
> The program currently operating in Alice Springs by Tangentyere Council, has arrangements in place with Women's Safety Services of Central Australia (WOSSCA, formerly the Alice Springs Women's Shelter) to provide partner contact services. As this is a vital component of these kinds of programs, it was considered useful to include it as an example for the purposes of section 85A(2).[38]

3.45 During the public hearing, Ms Penny Drysdale (Senior Policy Officer and Lawyer: Policy Coordination, Department of the Attorney-General and Justice) also noted that the inclusion of example 3 does not mean that checks will only be undertaken if the defendant provides their consent. It was further noted that this part of the Bill does not supersede the victim's right to not to be contacted by the Partner Contact Service.[39] However, Ms Drysdale also pointed out that:

> 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.[40]

3.46 LSNT suggested that the Bill be amended to include:

> an express provision … 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*).[41]

However, as the Department pointed out:

> By definition a rehabilitation order made under section 24 of the *Domestic and Family Violence Act 2007* can only be made as part of a DVO. The proposed section 24(1) states that 'The Court may include in a DVO an order requiring the defendant to take part in a rehabilitation program when making or varying a DVO.' A DVO must therefore be in place and the Court will determine the specific orders to be included in the DVO. The Department's view is that the amendment recommended by the Law Society Northern Territory that a section 24 rehabilitation order can only be made as a condition of a DVO is unnecessary.[42]

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[37] North Australian Aboriginal Family Legal Service, Submission 8, p.7
[38] Department of the Attorney-General and Justice, *Responses to Written Questions,* 25 February 2020, https://parliament.nt.gov.au/committees/LSC/113-2019, p.11
[39] Committee Transcript, Public Hearing, 2 March 2020, p.17
[40] Committee Transcript, Public Hearing, 2 March 2020, p.17
[41] Law Society NT, Submission 4, p.2
[42] Department of the Attorney-General and Justice, *Responses to Written Questions,* 25 February 2020, https://parliament.nt.gov.au/committees/LSC/113-2019, p.10

3.47 NAAFLS also expressed concern that:

> the proposed Bill is silent on the application of this provision in relation to repeat offenders or those who have attended multiple rehabilitation programs seemingly unsuccessfully. Is there a threshold test to say enough is enough – (for example) where the defendant did not participate in or meaningfully engage with the program?[43]

3.48 In response to the Committee's question as to why the Bill does not include any criteria or guidance regarding a defendant's eligibility or suitability to participate in a declared rehabilitation program, the Department advised that:

> There are a range of factors for the Court in considering whether a rehabilitation order under section 24 is appropriate. The Bill makes it clear in proposed section 24(1A) that the safety and protection of the protected person must be the paramount consideration.
>
> There may be many signs that a rehabilitation order may not be safe, including repeat offending or past attempts at rehabilitation that have been unsuccessful. Recidivism is sadly a common feature in domestic violence matters.
>
> The Department's view is that trying to prescribe strict criteria in legislation may impede the Court in effectively considering whether an order is in the interests of safety. The Department's view is that it is preferable to have an overarching legislative requirement that the safety and protection of the protected person is the paramount consideration and allow the Court to weigh up the range of circumstances in each individual case.[44]

Committee's Comments

3.49 The Committee is satisfied with the Department's responses to the issues raised in relation to proposed section 85A 'Declaration of rehabilitation program'.

Proposed Section 85B: Satisfactory completion of rehabilitation program

3.50 Proposed section 85B(1) provides that a defendant who is ordered to attend a rehabilitation program is considered to have satisfactorily completed the program if certain matters are established, including that the person has not committed any further domestic violence and has not committed any further violent offences.

3.51 Professor Aughterson raised concern that the term 'violent offences' in proposed section 85B(1)(c) is not defined in the Bill and sought clarification as to whether it is "intended to refer to 'violent offences' as defined in s 78C of the *Sentencing Act.*"[45] The Department subsequently advised the Committee that:

> The definition in section 78C and Schedule 2 of the *Sentencing Act 1995* provides an appropriate definition for 'violent offences' in this context as it is intended to aid the Court in sentencing decisions.
>
> As this definition is provided for in section 78C of the *Sentencing Act 1995* the Department and the Office of the Parliamentary Counsel are of the view that the

[43] North Australian Aboriginal Family Legal Service, Submission 8, p.8
[44] Department of the Attorney-General and Justice, *Responses to Written Questions,* 25 February 2020, https://parliament.nt.gov.au/committees/LSC/113-2019, pp.11-12
[45] Professor Ned Aughterson., *Legal Advice on the Justice Legislation Amendment (Domestic and Family Violence) Bill 2019,* (unpublished), 28 January 2020, p.2

> definition does not need to be repeated in the *Domestic and Family Violence Act 2007* as well.
>
> However, following consultation with the Office of Parliamentary Counsel, and to avoid any doubt, a definition of violent offences could be inserted in section 85B of the *Domestic and Family Violence Act 2007* as well.[46]

3.52 Despite the criteria set out in section 85B(1), proposed section 85B(2) provides that 'the Court has discretion to find that the defendant satisfactorily completed the program if the Court is of the opinion that to find the defendant did not satisfactorily complete the program would be unjust in the circumstances.' NTWLS raised concern regarding the discretion available to the Court under this section:

> specifically, that there is no requirement for the Court to seek the view of the relevant protected person upon making a finding that the defendant did satisfactorily complete a rehabilitation program. Noting the prescriptive nature of other proposed amendments and additions to the DFVA [*Domestic and Family Violence Act 2007*] under the Bill, the NTWLS recommend that specific provision is made for the Court to consider the view of the protected person where the defendant has done/committed any of the acts referred to in the proposed section 85B(1) of the DFVA.[47]

3.53 In response, the Department advised the Committee that it:

> respectfully disagrees with the view of NTWLS that it would be in the interests of the protected person to express a public view in Court about whether the Defendant had satisfactorily completed the program.
>
> At the Alice Springs Local court where the Specialist Approach to Domestic Violence is being trialled (and where these provisions will first be utilised) the following arrangements will be put in place to ensure that the safety of the protected person is properly considered and prioritised by the program facilitators and the Court.
>
> - Both the defendant and the protected person will be assessed by separate risk assessors prior to the rehabilitation order being considered by the Court. This is a detailed process being undertaken by experts.
> - Under draft practice directions currently in development the protected person or the protected person's independent risk assessor will be able to provide information to the Court about whether a rehabilitation order is appropriate in the circumstances. …
> - If the defendant is ordered to attend the Men's Behaviour Change Program operating in Alice Springs, the program has an arrangement with Women's Safety Services of Central Australia (WPSSCA, formerly the Alice Springs Women's Shelter) to make contact with partners and ex-partners, provide them with information about the program, provide them with support, and check on their safety. Any safety concerns from the protected person's point of view will be conveyed to program facilitators.
> - Program facilitators are required, under the proposed legislation, to report any domestic violence or contravention of a DVO to the Court and the Police in writing (proposed section 85D(1)) and to provide a non-compliance notice if the defendant fails to comply with a requirement of the program (proposed section 85D(3)(b)).

[46] Department of the Attorney-General and Justice, *Responses to Written Questions,* 25 February 2020, https://parliament.nt.gov.au/committees/LSC/113-2019, p.12

[47] Northern Territory Women's Legal Services, Submission 7, p.3

> This ensures that the protected person's interests and safety are properly considered, without her being placed at increased risk or pressure from the defendant and the defendant's family.
>
> The Department's strong view is that the inclusion of a requirement that the Court seek the views of the protected person to determine if the program has been satisfactorily completed is unsafe for the protected person and potentially puts too much responsibility on the protected person to be the arbiter of the defendant's behaviour.[48]

Committee's Comments

3.54 The Committee concurs with the advice provided by the Department that requiring the Court to seek the views of the protected person could put them at risk. The Committee is satisfied that the protected person will have an opportunity to raise any safety concerns or other issues regarding the defendant's participation in the Men's Behaviour Change Program with program facilitators, and that program facilitators will, in turn, be able to raise such with the Court.

3.55 In relation to Professor Aughterson's concern regarding the absence of a definition of violent offences in proposed section 85B(1)(c), the Committee notes the Department's advice that, to avoid any doubt, a definition consistent with section 78C of the *Sentencing Act 1995* could be included in section 85B.

Recommendation 4

The Committee recommends that proposed section 85B of the *Domestic and Family Violence Act 2007* be amended to include reference to, or a definition of, 'violent offences' as provided for in section 78C of the *Sentencing Act 1995.*

Additional Issues

3.56 As discussed below, in addition to the aforementioned comments on amendments proposed under the Bill, submitters suggested that consideration also be given to clarifying the operation of section 22(2) 'Premises access orders' of the *Domestic and Family Violence Act 2007*, and amending Victims of Crime Assistance legislation regarding compensation for the proposed offence of choking, strangling or suffocating in a domestic relationship.

Premises Access Orders

3.57 NAAFLS suggested that section 22(2) of the *Domestic and Family Violence Act 2007* requires clarification. Section 22(1) provides that a DVO may include a 'premises access order' requiring the defendant to vacate the stated premises where the defendant and protected person live together or previously lived together, or restraining the defendant from entering such premises except on stated conditions. Section 22(2) then provides that 'before making a premises access order, the issuing

[48] Department of the Attorney-General and Justice, *Responses to Written Questions,* 25 February 2020, https://parliament.nt.gov.au/committees/LSC/113-2019, pp.12-13

authority must consider the effect of making the order on the accommodation of the persons affected by it.'

> Our clients reside in remote communities where, by and large, public housing is the only housing available (unless their housing is provided through their employment). In most remote communities, there is a shortage of public housing with long application wait times (upwards of 4 years in many areas). In NAAFL's experience, the public housing authority is reluctant to intervene without an order from the Court (a full non-contact DVO or a DVO including a premises access order). We consider this may be due to the lack of alternate housing available in remote communities. In our view, the protected person's right to live free from violence and harm out trump the Defendant's right to remain residing with the protected person. It would be helpful if this were made clear in the legislation. Further, where this situation arises, all possible accommodation options for the Defendant, including living with other family members, or moving outside of community, ought to be considered when the Court is weighing up the competing interests.[49]

3.58 Given the above, the Committee sought the Department's advice as to how it would impact on the operation of the legislation if section 22(2) was amended to clarify that before making a premises access order, the issuing authority must also consider the safety of the protected person and any children in their care. In response, the Department noted that:

> In making any DVO, including a premises access order, the Court is required to consider the safety and protection of the protected person to be of paramount importance (section 19(1)). This is an overarching provision for DVO's and applies to all orders that can be included as part of a DVO, including premises access orders, tenancy access orders and rehabilitation orders etc.
>
> An amendment to section 22(2) as suggested would affirm that the safety and protection of the protected person is the paramount consideration in making premises access orders and is unlikely to have an adverse effect on the operation of the Act. It may enable more protected persons and their children to remain in their own homes. However, this can be difficult in remote communities where victims may not feel safe enough to remain in their homes, notwithstanding a premises access order being put in place.
>
> There may be a case to be made for an amendment to section 22 as suggested, but this is beyond the scope of the current amendments and should be fully considered in the review of the *Domestic and Family Violence Act 2007.*[50]

Committee's Comments

3.59 While the Committee acknowledges that this issue is beyond the scope of the current amendments to the *Domestic and Family Violence Act 2007* as proposed in the Bill, it agrees with the Department that this matter should be considered as part of the Government's review of the Act.

Recommendation 5

The Committee recommends that the Government's review of the *Domestic and Family Violence Act 2007* consider the scope and operation of section 22

[49] North Australian Aboriginal Family Legal Service, Submission 8, pp.5-6
[50] Department of the Attorney-General and Justice, *Responses to Written Questions,* 25 February 2020, https://parliament.nt.gov.au/committees/LSC/113-2019, p.15

(Premises access order) of the Act, taking into account the issues raised by the North Australian Aboriginal Family Legal Service during this inquiry.

Consequential Amendment of Victims of Crime Legislation

3.60 In line with the introduction of the offence of 'choking, strangling and suffocation in a domestic relationship', NTWLS recommended that consideration be given to:

> corresponding amendments to the Victims of Crime Compensation Assistance legislation such that a strangulation offence is recognised as a compensable violent act under Schedule 3, *Victims of Crime Assistance Regulations 2007* (NT).[51]

3.61 The Department advised that:

> 'Compensable violent acts' are set out in Schedule 1 of the Victims of Crime Assistance Regulations 2007. Schedule 3 contains a list of injuries (physical and psychological) that are considered to be 'compensable' under the victims of crime assistance scheme. The difference between the two is:
>
> - For a 'compensable violent act', the sum of assistance is based on the commission of the violent act itself, rather than the nature of the injuries suffered by the victim.
> - For a 'compensable injury' the sum of assistance is based on the nature of the victim's injuries, rather than the nature of the offence that caused those injuries.
>
> The Department assumes that the NTWLS intended to suggest that the proposed offence of choking, strangling or suffocating in a domestic relationship be included as a 'compensable violent act' within Schedule 1 of the Regulations.
>
> Currently, all 'compensable violent acts' in Schedule 1 are offences of a sexual nature. They range in objective seriousness from, for example, an indecent assault on a child under 16 where the child suffers harm to, for example, sexual intercourse with, or gross indecency on, a child under 16 if a factor of aggravation applies to the offence. Given that the proposed offence of choking, strangling or suffocating in a domestic relationship is not a sexual offence, the Department's view is that it would be inappropriate to include it as a 'compensable violent act' in Schedule 1.
>
> The victims of crime financial assistance scheme is currently under review. In 2019 the Department conducted a public consultation process as part of that review and the results of that process are still under consideration. Depending on the outcome of that review, there may be scope to include the proposed offence more explicitly within the victims of crime financial assistance scheme, rather than as incidental to the current amendments.
>
> Under the current victims of crime assistance legislation, a victim of the proposed offence could be eligible for assistance on the basis of the particular injuries they suffer as a result of the offence (up to a maximum of $40,000). Alternatively, if the offence formed part of a 'pattern of abuse', the victim could receive assistance for 'domestic violence injuries (which is a payment of between $7,500 and $10,000). The victim would receive the most beneficial payment for which they are eligible.[52]

[51] Northern Territory Women's Legal Services, Submission 7, p.5
[52] Department of the Attorney-General and Justice, *Responses to Written Questions,* 25 February 2020, https://parliament.nt.gov.au/committees/LSC/113-2019, p.14

Committee's Comments

3.62 The Committee agrees with the Department that this issue should be considered as part of the Government's current review of the victims of crime financial assistance scheme.

Recommendation 6

The Committee recommends that the Government's review of the victims of crime financial assistance scheme consider including the offence of 'choking, strangling or suffocating in a domestic relationship' as a compensable violent act within Schedule 1 of the Victims of Crime Assistance Regulations 2007.

Appendix 1: Submissions Received

Submissions Received

1. Northern Territory Legal Aid Commission
2. Centre for Aboriginal Economic Policy Research
3. Darwin Community Legal Service
4. Law Society NT
5. Central Australian Aboriginal Family Legal Unit
6. Northern Territory Council of Social Service
7. Northern Territory Women's Legal Services
8. North Australian Aboriginal Family Legal Service

Note

Copies of submissions are available at: https://parliament.nt.gov.au/committees/LSC/113-2019

Appendix 2: Public Briefing and Public Hearings

Public Briefing – 9 December 2019

Department of the Attorney-General and Justice
Jenni Daniel-Yee: Director, Legal Policy
Penny Drysdale: Senior Policy Officer and Lawyer, Policy Coordination/Legal Policy

Public Hearing – Monday 2 March 2020

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

Note

Copies of hearing transcripts and tabled papers are available at: https://parliament.nt.gov.au/committees/LSC/113-2019

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Criminal Code Act 1899 (Qld)

Criminal Code Act 1983 (NT)

Criminal Code Act Compilation Act 1913 (WA)

Criminal Law Consolidation Act 1935 (SA)

Department of the Attorney-General and Justice, *Responses to Written Questions,* 25 February 2020, https://parliament.nt.gov.au/committees/LSC/113-2019

Domestic and Family Violence Act 2007 (NT)

Explanatory Statement, *Justice Legislation Amendment (Domestic and Family Violence) Bill 2019,* https://parliament.nt.gov.au/committees/LSC/113-2019

Family Violence Legislation Reform Bill 2019 (WA)

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Hon Nicole Manison MLA, Treasurer, *Draft Daily Hansard – Thursday 28 November 2019,* https://www.territorystories.nt.gov.au/jspui/handle/10070/755088

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Territory Families, *The Northern Territory's Domestic, Family & Sexual Violence Reduction Framework 2018-2028 Safe, Respected and Free from Violence*, https://territoryfamilies.nt.gov.au/dfv/domestic-and-family-violence-reduction-strategy

Territory Families, *The Northern Territory's Domestic, Family & Sexual Violence Reduction Framework 2018-2028 Safe, Respected and Free from Violence, Action Plan 1: Changing Attitudes, Intervening Earlier and Responding Better (2018-2021),* https://territoryfamilies.nt.gov.au/dfv/domestic-and-family-violence-reduction-strategy

Victims of Crime Assistance Act 2006 (NT)

Victims of Crime Assistance Regulations 2007 (NT)