



Support, Help & Empowerment Inc.

February 2017

Family Violence: Strengthening Our Legal  
Responses

Response to Consultation Paper October 2016

For further information on this submission, please contact:

Torna Pitman, PhD; B.Ed.; BSW (Hons) 0428162216 [torna@she.org.au](mailto:torna@she.org.au)

Alina Thomas CEO 0438788291 [eo@she.org.au](mailto:eo@she.org.au)

## **About Support, Help & Empowerment (SHE)**

Established in 1989, SHE is the leading non-government agency in Tasmania supporting people who have experienced family violence. SHE advocates for an end to all men's violence against women. SHE is a dynamic and evolving professional feminist organisation founding our philosophies, practice and resources on current research. SHE has a high level of skill, knowledge and experience working with women, children and families impacted by violence, delivering community education, producing resources and advocating for systemic change to gender inequity and violence against women.

Services we offer include: Individual face-to-face and/or phone contemporary, trauma informed, evidence-based counselling and support sessions, support groups, community education, information and resources, referral to other services.

The majority of SHE's client are women who have experienced family violence perpetrated by male partners or former partners. In this context, we are using the term 'she' to refer to the person experiencing family violence and 'he' to refer to person using abusive behaviour. However, we acknowledge that family violence occurs in same-sex relationships and that men can experience family violence from a female partner.

## **Preliminary Discussion**

In the context of this submission, we note that our clients frequently seek SHE services to support them through the legal process; assistance that is in addition addressing the experience violence and abuse itself. It is also our experience that the legal response can fail to adequately address the severity of the violence, the impact on children and the ongoing effects of trauma. Our clients often express their inability to create a sense of safe environment in which to live and recover from the effects of a perpetrators coercion, control and violence.

SHE has the expertise and experience to be a key partner in the state's response to family violence and its impact on women.

## Response to questions

### ISSUE 1: BREACHES OF PROTECTION ORDERS BY PROTECTED PERSONS

**Should the current legislation be amended to provide that a person protected by a family violence order cannot be charged with an offence of instigating, abetting, or aiding the breach of a protection order?**

SHE believes that there are several factors to consider in addressing this issue.

1. It is imperative that the police protect the person most at risk of abuse from their partner/former partner and are able to identify coercive and manipulative behaviour that may be masking the abusive behaviour. When police are only required to deal with incidences they are called to, they may not take into consideration the pattern of power and control that the male is perpetrating upon the woman to her detriment. SHE clients frequently report that their partners use breaches in protection orders further perpetrate abuse in a manner that does not result to charges.
2. If the male partner has been charged as the offender, it is traumatic and sometimes highly dangerous for the female partner to resist his efforts to get her to breach the order and allow some type of contact. The danger in resisting or saying 'no' to a perpetrator needs to be clearly understood. SHE clients can describe a myriad of behaviours designed to trick, terrorise or confuse the female partner into instigating, aiding or abetting a breach of the protection order. In this case, a woman should not be charged with an offence (of instigating, abetting or aiding the breach of a protection order), when she has acted in a way that she has deemed best to maximise her safety.
- 3.
4. It is critical to focus on the tactics that perpetrators will use, in an already complex web of abuse, to get their partners to instigate aid or abet a breach of a protection order. A contemporary understanding of family violence has made it clear that the very nature of family violence is a complex pattern of

coercion and domination that a woman may be unable to successfully counter without support and guidance rather than condemnation. Women report that being listened to and believed is essential to them being able to engage with support and services, including justice interventions.

5. SHE would like to see Tasmania's legislation at least on par with other states such as Victoria and NSW, in relation to this issue.

Recommendation 1: It is critical to ascertain who is the offender through attending to the pattern of coercion within the relationship as opposed to an incident that the police are called to. This may entail a follow up assessment after police have attended an incident.

Recommendation 2: It is necessary that justice responses focus on the types of tactics perpetrators will use to coerce women into breaching an order and how they relate to the nature of power and control, coercion and fear in an abusive relationship

## ISSUE 2: MANDATORY REPORTING OF FAMILY VIOLENCE

### **Should Tasmania's family violence legislation include provisions for mandatory reporting of family violence?**

1. Mandatory reporting systems are typically weighed down with very challenging issues relating to under-resourcing, inadequate administration and difficulties in regulation. This needs to be considered foremost when investigating the benefits of introducing mandatory family violence reporting in Tasmania.
2. SHE recognises a shortfall amongst non-specialist family violence responses in the recognition and description as to what type of behaviours actually constitute family violence. Introducing a system of mandatory reporting would assume that the mandated reporters are familiar with the patterns of behaviour that constitutes family violence but are not easily identified under current legal descriptions.

Recent research refers to family violence as having a core of coercive control that may or may not include physical violence (Pitman, 2016; Stark, 2007). Unpacking coercive control means acknowledging that women, children and

young people are being subjected to a pattern of conduct rather than incidents of family violence that can be articulated as physical or sexual violence, or the use of a weapon. Coercive control is complex and refers to the relentless tactics used to keep control, whether by disregarding, obstructing or overwhelming the legitimate needs and rights and boundaries of all members of the family including the children. Our organisation experiences on a daily basis that which has been made clear in the research literature; perpetrators are well able to subjugate and entrap female partners without the use of violence.

In 2012, the UK passed a law recognizing coercive control and making it a prosecutable offense. In most other countries, including Australia, most of the tactics of coercive control are not currently recognized by any laws and aren't targeted for intervention.

Research indicates, that the level of control in a relationship is a better predictor than whether there were prior assaults of future physical or sexual assault as explained by Stark (2012). Kelly and Johnson (2008) also outline the different types of family violence and how they relate to coercive control. More recently, family violence has also been described in the literature as an interpersonal colonising process (Pitman, 2016) which relies on hostage, cult like tactics to dominate and control. There are different types of colonising tactics and procedures used by perpetrators. These more nuanced understandings of family and family violence described in the literature are imperative to understand and respond to the experiences of women and children in Tasmania, and to keep them safe not only pre but post separation.

In light of this, to focus on mandatory reporting of physical or sexual violence or family violence involving the use of a weapon is an understandable but limited approach to detecting family violence.

For the purposes of mandatory reporting, mandatory reporters need to be aware of the range of harms that are cumulative and have significant and longstanding effects because of the pattern of behaviour and coercive control that underpins any incident or episode of physical or sexual violence.

3. SHE advocates for women who are unwilling or unable to seek police intervention. It is estimated that 60% of women who recognise abusive and violent behaviour in their intimate relationship do not seek police involvement (Our Watch, 2015). Therefore, it can be surmised that many women do not want to enter into a system with highly regulated and enforced responses. From our experience within the community, of the threat of investigation from Child Safety Services, we have witnessed the impact of mandatory reporting on women who are unsafe in relationships. In the majority of instances, women see Child Safety Services as an adversary service, to be avoided and not to be trusted. Should family violence services be expected to comply to mandatory reporting for family violence, it is feared that a large number of women will not engage in services, in order to avoid formal scrutiny and involvement from policing and other regulatory services.

In conclusion, SHE does not advocate for the introduction of mandatory reporting for family violence, for the following reasons:

- A system for this purpose will be expensive to administer, in terms of collating notifications, investigating notifications and providing adequate support services.
- Recognising family violence is a nuanced and specialist area that requires in-depth knowledge and sensitivity to the experiences of people subjected to controlling behaviour.
- It is a great concern to SHE that under mandatory reporting many people will not engage with services or not disclose experiences of family violence in order to avoid formal and unwanted interventions

Recommendation 3: Should mandatory reporting be legislated, clarification and training is essential regarding which aspects and levels of family violence are to be reported.

Recommendation 4: Family violence must not be reduced to incidents of physical or sexual harm for the purposes of mandatory reporting as it detracts from the pattern of coercive control that also needs to be understood from the perspective of women and children.

## ISSUE 3: DEFINITION OF 'FAMILY RELATIONSHIP'

### **Should the definition of 'family relationship' in the Family Violence Act 2004 be extended to a broader number of family members who are victims of family violence?**

SHE believes that what constitutes a family relationship needs to extend to include the tactics and dynamics of family violence towards any family member and by any family member, whether living together or not. This includes carers, guardians and relationships in shared accommodation and group homes. The rationale for this is that the dynamics of family violence affect the entire family, as depicted by the Victorian and Queensland definition of family relationship, and can be perpetrated by any member of the family to any other member, including informal care relationship. Extending the definition to be in line with these states gives credibility to the wide range of impacts family violence has and who else may be vulnerable to them within a family circle. It allows for a greater recognition of the use of coercively controlling tactics to gain domination over vulnerable members of the wider family structure. The addition of dating relationships as opposed to spousal relationship is also a critical point, as dating is where the pattern of coercion will often start.

It must be noted that broadening the definition of family violence will immediately increase the demand on services and thus the organisations who form the support response will need to be expanded to meet the demand.

Recommendation 5: That the definition of family violence be expanded to reflect the diversity of family, domestic and intimate relationships that exist in our communities but only to the extent that resources provided to family violence services enable adequate service delivery.

### **3A. If so, what relationships should be covered?**

All relationships of an intimate, familial or domestic nature that allows for the inclusion of;

- same sex relationships,
- relationships between residents in group homes
- dating relationships and other relationships that are built on trust and commitment but may not include intimacy,

- family relationships beyond spouses in order to include non-nuclear families and families from diverse backgrounds that may co-habit (considering CALD and Aboriginal family structures)

## ISSUE 4: LAW OF SELF-DEFENCE IN THE CONTEXT OF FAMILY VIOLENCE

**Should the Criminal Code Act 1924 be amended to provide that a person may have an honest belief that they are acting in self-defence and that their conduct may be regarded as a reasonable response in the circumstances as the person perceives them to be even if the person is responding to a harm that is not immediate or that appears to be trivial?**

SHE supports amendments that allow the admission of evidence of prior family violence when there is an honest belief that they are acting in self-defence and that their conduct may be regarded as a reasonable response in the circumstances. This can take into consideration how the person perceives the circumstances when responding to a harm that is not immediate or that appears to be trivial.

Extreme but common forms of family violence can carry on for many years, often over decades and can involve violence as a punishment, “to teach a lesson”, as revenge for a perceived wrong doing, to humiliate and to physically control. Other psychological tactics of coercive control can include threats to remove children from their mothers, limiting freedom of movement, controlling or reducing access to food, brain washing, insults, put downs, public humiliation and other forms of verbal assault. These examples are listed here as it is necessary to consider the ongoing impact that this level of abuse, violence and torture has on a women's self-esteem and perception of choices and rights. Most women who have lived through these horrific but not uncommon experiences exhibit limited sense of self-agency, hopelessness, helplessness, self-loathing, depression, self-harm and do not feel that they have the same rights a citizen in our community should expect to have.

SHE advocates that these contextual experiences of long term abuse, and the impact on the psychological wellbeing of women are an essential consideration to self-defence (and other protective mechanisms). The law needs to make provision for women who kill their partner when they believe that it is the only option available to them to protect themselves or their children. Furthermore, due to physical strength



disparities between men and women, women often wait for a less confrontational situation such as when their partner is asleep to enact self-preservation mechanisms. "When women kill an intimate partner, they are far more likely to do so in order to protect themselves or their children from their partner's violence" (Polk 1994; Morgan 2002; VLRC 2002 - Domestic Violence Resource Centre Victoria Discussion paper, 2013 p. 5).

Circumstances such as these will also require juries to be informed on the nature and impact of domestic violence and abuse. Juries need to understand that cases involving domestic violence cannot be looked at as a one-off occurrence and the historical experiences of the individual need to be taken into consideration.

Recommendation 6: That legal amendments are enacted that allow the admission of evidence of prior family violence when there is an honest belief that they are acting in self-defence and that their conduct may be regarded as a reasonable response in the circumstances.

## ISSUE 5: EFFECTS OF TENDERING NO EVIDENCE IN FAMILY VIOLENCE CASES

**Should the law be amended to provide, where a matter is discontinued without hearing and an acquittal is entered as a result of no evidence being tendered, that the evidence may be admissible as relationship, tendency or coincidence evidence in the family violence context?**

SHE believes that such an amendment helps to describe a pattern of behaviour, even if violence could not be proven, or the matter is discontinued, that will identify and also deter persistent perpetrators from escalating. It will also provide clues as to the typology of the perpetrator which helps to improve the long term safety of women and children.

Many women will not give evidence because they fear retaliation and may still be hopeful of making the relationship work. The responses of women to abusive relationships are well documented, especially the stages of denial, confusion and fear, so it is important that previous offences are admissible in this context.

## ISSUE 6: PERSISTENT CONTRAVENTIONS OF FAMILY VIOLENCE ORDERS

### **6. Should there be the creation of legislative provisions to provide for a court to declare at the time of sentencing a repeat family violence perpetrator to be a persistent perpetrator of family violence?**

SHE considers that this label is a potentially useful step in identifying a perpetrator likely to cause harm to other women and children apart from the current partner/ex-partner and children he is harming. SHE is aware that perpetrators are frequently repeat offenders.

There is increasing evidence that the effectiveness of criminal justice interventions can be explained to some extent by the characteristics of the perpetrator. A number of researchers (for example Boxall, Rosevear and Payne, 2015; Fowler and Western, 2011; Kelly and Johnson, 2008; McPhedran and Baker, 2012; Pitman, 2016; Wangmann, 2011) have developed typologies of male family violence perpetrators. Holtzworth-Munroe and Stuart (1994) initially identified three descriptive dimensions along which family violence perpetrators varied (a) the severity of the physical violence and related issues such as frequency of the violence and the extent of psychological and sexual abuse, (b) the generality of the violence (i.e. family-only or extra familial violence) and related variables such as criminal behaviour and involvement with the criminal justice system; and (c) the perpetrator's psychopathology or personality disorders. Holtzworth-Munroe and Stuart (1994) used these three descriptive dimensions and proposed three major subtypes of perpetrators; family only, dysphoric/borderline, and generally violent antisocial. Perpetrators from the latter two subtypes are more likely to pose an ongoing risk of future severe assaults on a spouse and are the least likely to be deterred by current criminal justice interventions, even if rigorously pursued. These subtypes are described as already immersed in a criminal subculture, are likely to become increasingly violent if thwarted and are likely to seek out other victims if cut off from their current relationship. To create a more effective legal response, the research indicates that it would be naive and dangerous to believe that it will reduce their offending behaviour. Perpetrators from the family-only group, on the other hand, are regarded as the most likely to be deterred from future violence by a criminal justice response.

Recommendation 7: The persistent perpetrator label be part of an attempt to define the style and risks of the perpetrator for victims in terms of both chargeable and coercive behaviours in order to engender appropriate consequences.

**6A. If so, what conditions should the court consider in making a declaration?**

Conditions on this matter should be left to professional and expert legal practitioners.

**6B. Should there be provision for a persistent perpetrator of family violence declaration to be removed and if so how should this occur?**

Yes, however given the research on types of perpetrators, in the future this type of provision could depend on the type of perpetrator and whether they respond to any form of treatment or rehabilitation. There is an urgent need for evidence based practice to reliably bring about the changes that are needed for a declaration of persistent perpetrator to be removed. Currently, Tasmania, as is the case nationally and internationally, is unable to provide a service that reliably identifies and rehabilitates the different types of perpetrators let alone persistent perpetrators.

Recommendation 8: Available research is consulted and new research conducted on the different types of perpetrators and their response to the legal system from the vantage point of the safety of their victims and the trajectory of reoffending most likely.

## ISSUE 7: CONSEQUENCES OF A PERSISTENT PERPETRATOR OF FAMILY VIOLENCE DECLARATION

**What orders should be available to courts following a perpetrator being declared as a persistent perpetrator of family violence?**

SHE suggests that a possibility is to place the perpetrator on a case management system where he is supervised, referred to and attendance required at an approved rehabilitation program based on evidence based principles and informed by research on perpetrator typologies.

**7A. Should there be a persistent perpetrator of family violence register and should information about persons on the register be publicly available or available only for limited purposes.**

SHE does not support the introduction of a persistent perpetrator of family violence register, beyond being a tool for courts and sentencing.

A perpetrator register will not be an accurate or fair representation of the perpetrator cohort in Tasmania. For example, some perpetrators who use the type of tactics that are chargeable offences and substantiated may end up on the register but the type of perpetrator who is too clever to be caught, or uses less chargeable tactics within their complex web of coercive control will not. Essentially, then, the register will be limited to perpetrators who were successfully charged with physical violence, sexual assault or use physical violence only.

**7B. What conditions should a court impose on persistent perpetrators of family violence at sentencing?**

Courts could consider a period of no bail for a period of time determined by the ability of the woman to secure a safety plan and to continue her life undeterred whilst the court date, including adjournments, arrives. This service notes that women are aware they are on their own and without support or safety in this sometimes very extended period of time.

**7C. Should a police officer of the rank of inspector or above be authorised by the Commissioner of Police, have the power to refuse bail in the case of a persistent perpetrator of family violence for a minimum mandatory period?**

Yes, within well-defined parameters that maximise the human rights of both the perpetrator and the victim. Our service routinely works with women whose partner/ex-partner is out on bail after severely assaulting them and they are reduced to living in fear and feeling as if they have no rights to safety. It is a particularly detrimental position for a woman to be in when she is aware of her partner's/ex partner's capacity for retaliation and vengeful behaviour, and the possibility of a less than favourable court outcome. A high proportion of SHE clients live in fear of retaliation, vindictiveness and revenge. According to the style of his behaviour, no bail may be from a period of 24 hours to one week or longer if security is a risk.

Recommendation 9: National statistics and experience shows a high likelihood of women and children being further traumatised and re victimised by a perpetrator out on bail. Therefore, there are benefits to women's and children's safety if bail be refused for short periods

**7D. If so, how long should this period be following arrest for an offence that constitutes family violence, or following contravention a protection order?**

Bail should be refused until a proven safety plan is in place and approved for those women or children at risk, particularly given the level of their fear and trauma at this time. It is a breach of human rights for women to live in fear of their lives after an assault from a persistent perpetrator.

There needs to be a clear set of protocols to optimise safety which includes subjecting the perpetrator to strict conditions and penalties for breaching. Finally, the time taken to achieve a court date is too long and allows a perpetrator ample time to brood, gather support and take liberties as he is used to doing.

Recommendation 10: That conditions on this matter pertaining to bail should be determined by professional and expert legal practitioners.

**7E. Should a minimum mandatory sentence of imprisonment be imposed for subsequent contraventions of protection orders for the duration of the declaration?**

SHE does not advocate for mandatory imprisonment unless it is the only available option to maximise the rights of the victims

## References

Boxall, H, Rosevear, L & Payne, J 2015, 'Domestic violence typologies: What value to practice?', *Trends and Issues in Crime and Criminal Justice*, vol. 494, pp. 1-9.

Boxall, H, Payne, J & Rosevear, L 2015, 'Prior offending among family violence perpetrators: A Tasmanian sample', *Trends and Issues in Crime and Criminal Justice*, vol. 493, no. March 2015, pp. 1-9.

Fowler K & Westen D. 2011. Subtyping male perpetrators of intimate partner violence. *Journal of Interpersonal Violence* 26(4): 607–639

Holtzworth-Munroe, A. & Stuart, G. L. 1994. Typologies of male batterers: three subtypes and the differences among them. *Psychological Bulletin*, 116, 476-497

Kelly J & Johnson M 2008. Differentiation among types of intimate partner violence: Research update and implications for interventions. *Family Court Review* 46(3): 476–499

McPhedran S & Baker J 2012. Lethal and non-lethal violence against women in Australia: Measurement challenges, conceptual frameworks, and limitations in knowledge. *Violence Against Women* 18(8): 958–972

Pitman, T. 2016. Living with Coercive Control: Trapped within a Complex Web of Double Standards, Double Binds and Boundary Violations, *British Journal of Social Work* (2016) 0, 1–19 doi: 10.1093/bjsw/bcw002

Rathus, Z. 1989, 'When wives kill', *The Bulletin*, 3 October, p. 41.

Stark, E. 2007. *Coercive Control: How Men Entrap Women in Personal Life*, New York, Oxford University Press.

Wangmann, J. M. 2011. *Different Types of Intimate Partner Violence: An Exploration of the Literature*, Sydney, Australian Domestic & Family Violence Clearinghouse, UNS