



Engender
Equality

Submission to the Department of Justice on the Criminal Code Amendment (Bullying) Bill 2019

1 February 2019

About Engender Equality

Established in 1989, Engender Equality is the leading non-government agency in Tasmania supporting people who have experienced family violence. Engender Equality is a dynamic, evolving, professional organisation, founding our philosophies, practice and resources on current research. Engender Equality has a high level of skill, knowledge and experience working with women, children and families impacted by family violence and abuse.

Engender Equality's core work provides therapeutic counselling to people who are currently or have previously experienced family violence, abuse and other violations. Engender Equality provides training on family violence and gender inequality. Engender Equality also plays an active role in Tasmania in advocating for systemic change to gender inequality and reduce violence against women and their children.

Given Engender Equality's specialisation in working with women and families who have experienced family violence, this submission is primarily focused on their specific experiences. People who have experienced abuse are often significantly disempowered, and may not be able to identify the impact of bullying behaviour as it generally occurs alongside other forms of domestic abuse. Furthermore, for family violence victims who are required to engage in court processes, intimate partner bullying may be difficult to distinguish from an otherwise formal, authoritative and alienating process.

Introduction

Engender Equality commends the Tasmanian Government's initiative to improve the legal provisions to address and reduce levels of family violence. Historically and academically there has been very little exploration of the connection between bullying and family violence (Corvo K., deLara E, 2009), thus it is appreciated that "bullying" will be included in the Family Violence Act. This amendment will help to further describe the range of subtle and persistent tactics used by family violence perpetrators and people who use abusive behaviours.

As a specialist service we support people who have experienced family violence and are intimately aware of the adverse effects and long-term suffering that can result from bullying within intimate

relationships and following separation. We are very much interested in raising the profile of coercive control and the range of actions and interactions that cause harm and humiliation to the people who access our services.

Our accumulated experience informs our understanding of the complex and interactive factors that contribute to Tasmania's present levels of family violence. This includes the more obvious forms of family violence that are easily recognised and responded to, *as well as* the more subtle and pervasive tactics of abuse of where bullying is likely to be present.

It is our desire to raise awareness of these discrete behaviours that prompts this submission. This is done by highlighting a bullying strategy that may not be easily covered under the proposed amendments to the *Criminal Code Act 1924*, which we are calling *Third Party Bullying*.

Third party bullying

Third party bullying is when family violence perpetrators and people who use abusive behaviours engage an intermediary mechanism to cause harm, intimidation or install fear or humiliation. This might be via compelling a friend or associate to inflict abuse upon a target; a tactic that is frequently used to continue to harass an estranged partner and avoid breaches to a Family Violence Order or a Police Family Violence Order. Another example is drawing-in known trolls into social media comments with the purpose of instilling fear and intimidation.

Third party bullying not only includes using other people to instigate intimidation, it also includes engaging public process, services and legal systems.

“My partner presented as a really nice man. He had a way of making people like him. The thing that was so frustrating, whatever evidence I gave them, even to the DV unit, they would interpret it as if the history of abuse didn't exist, which re-enforced the thoughts that the abuse made you believe – that violence is a normal experience within the bounds of a healthy relationship and that you're just over reacting.”
Phoebe (Engender Client)

Legal bullying

A particular and prevalent example of third party bullying that we would like to highlight is that which occurs within the structure of the courts (also called legal abuse).

Legal bullying occurs when someone using abusive behaviour manipulates the mechanisms of a court to continue to perpetrate fear and intimidation in the targeted person. For the people who access Engender Equality services this form of bullying or abuse is inevitably within the context of a systemic and chronic family violence relationship, leading to devastating emotional and psychological trauma.

This form of abuse frequently goes unnoticed under the “impartial” view of the court as the behaviour that is being perpetrated does not contravene the court process. Some examples of this strategy are;

- Stalling proceedings by appealing decisions even when there is no chance of success, or failing to provide necessary documents (creating adjourned hearings),
- Representing themselves when there is no reason to. In the past this has enabled family violence perpetrators to cross-examine the victim it continues, however, to create unnecessary legal bills for the other person and further delays procedures,
- Making threats regarding attendance in court and court outcomes and attempting to create doubt in the victim regarding their decision to work with the legal process including the police, courts or police,
- Using their presence in court as an opportunity to use bullying tactics to create fear such as staring or giving particular ‘looks’ that may appear menial to others and
- Subpoenaing personal papers such as counselling case notes.

“I probably should have gone to court around property and the girls but he was really upping the abuse at the time and made it difficult to get to court”. Bianca (Engender Client)

There are many ways people who use abusive behaviour can manipulate the system and the process. For most people targeted by legal bullying there is no recognition of its occurrence or

impact. The very nature of family law, in particular, makes it difficult to deal with legal bullying. There are many reasons that may appear legitimate to return to court to deal with changes in family circumstances that could require a variation to custody, access or support in the pre-existing orders.

“Abusive men, sexually abusive men use the legal system to uphold their own rights over the safety of women and children. At the time I didn’t have faith that my story of violence would be enough because everyone thought he was a good dad. And until that changes the support services can’t really support women and children in a way that makes them safe.” Krystie (Engender Client)

It is important to highlight that people who experience third party bullying through the legal process have been experiencing various forms of control, intimidation and humiliation through patterned behaviours over a course of time by the same person. It is essential that bullying tactics are not minimised as the impact of bullying behaviours, regardless of how seemingly insignificant they may appear to an ‘outsider’, can be profoundly impacting for someone whose lived experience of the person using bullying tactics has been conditioned to fear. The person experiencing being bullied has often not yet known any limits to the extent of the control of their perpetrating ex-partner and, therefore, control by bullying tactics can be easily accessed.

*“I really felt constrained by what the system considers reasonable, which is to ignore non-life threatening abuse, and I still feel like they minimise that for women.”
Steph (Engender Client)*

Post Separation Services

Courts are not the only tool that can be used to continue abusive behaviour in the public sphere. Other post separation services such as Relationship Counselling, Contact Centre, Child Safety Services and Family Dispute Resolution services can all be used as opportunities to prolong a climate of oppression, fear, intimidation and humiliation. In these settings people who use abusive behaviour can present as calm and charismatic while the person subject to abuse is depicted as being unstable and emotional (which, of itself, is an abusive tactic). Again, in this example, bullying can be hard to recognise and difficult to articulately describe.

Conclusion

Any law reform that aims to improve outcomes for people who experience family and domestic violence must consider coercive control and other insidious but subtle forms of abuse. Bullying can be used to describe many of these behaviours and as such Engender Equality advocates that *Criminal Code Amendment Bill 2019* recognise diverse bullying tactics including those described here as *third-party bullying*.

Engender Equality asserts that the law should be used as a guide for behaviour and a tool for changing community attitudes towards gender inequality and family violence. The law can, through both direct and indirect enforcement mechanisms, govern and guide the behaviour of individuals in our community (Forji, 2010). We firmly believe that family violence and abuse is behaviour that should not be accepted in Tasmania. Therefore, the law must be used to its full influential capacity to challenge community attitudes regarding power dynamics and family violence.

Bibliography

Australian Bureau of Statistics. (2017). *Personal safety, Australia, 2016*. Canberra, ACT: Author. Retrieved from: <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0>

Australian Law Reform Commission (ALRC), (2012). *Family violence and Commonwealth laws: Improving legal frameworks. Final report*. ALRC Report No. 117. ALRC: Sydney. https://www.alrc.gov.au/sites/default/files/pdfs/publications/whole_alrc_117.pdf

Campo, M. (2015). *Key Issues and Responses: Children's Exposure to Domestic and Family Violence*. Canberra, Australia: Australian Institute for Family Studies, CFCA Paper, 36.

Corvo K., deLara E (2009). *Towards an integrated theory of relational violence: Is bullying a risk factor for domestic violence?* Aggression and Violence, Behaviour Syracuse University USA

Courtois, C.A., Ford, J. D., & Cloitre, M. (2009). Best practices in psychotherapy for adults. In C.A

Forji, A.G., (2010). *The Correlation between Law and Behaviour as Pillar of Human Society*. International Journal of Punishment and Sentencing, 6(3) 84-96.

Morgan, A. & Chadwick, H. (2009). [*Key Issues In Domestic Violence*](#). Australian Institute of

Criminology. Australian Government: Canberra.

Roberts, D, Chamberlain, P & Delfabbro, P. (2015) *Women's experiences of the processes associated with the family court of Australia in the context of domestic violence: A thematic analysis*. *Psychiatry, Psychology and Law*, 22(4), 599–615.

World Health Organization (2010). *Preventing Intimate Partner and Sexual Violence Against Women: Taking Action and Generating evidence*. Geneva. Author.