

# COMMUNITY LEGAL CENTRES TASMANIA

7 February 2017

Department of Justice  
Office of Strategic Legislation and Policy  
GPO Box 825  
Hobart TAS 7001  
Attn: Georgina Hay

**via email:** [legislation.development@justice.tas.gov.au](mailto:legislation.development@justice.tas.gov.au)

Dear Georgina,

**Re: Family Violence – Strengthening Our Legal Responses Consultation Paper**

Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to provide comment on the *Family Violence – Strengthening Our Legal Responses Consultation Paper*.<sup>1</sup>

CLC Tas is the peak body representing the interests of eight community legal centres (CLCs) located throughout Tasmania. We are a member-based, independent, not-for-profit and incorporated organisation that advocates for law reform on a range of public interest matters aimed at improving access to justice, reducing discrimination and protecting and promoting human rights.

We strongly support many of the reforms outlined in the consultation paper including that family violence victims not be prosecuted for breaches of a protected family violence order; the removal of imminence from self-defence in circumstances in which family violence is proved; the ability of the courts to declare a person a 'persistent perpetrator of family violence' and finally; the use of sentences that focus on the underlying causes of the offender's behavior rather than the offence committed. We also strongly recommend that the Government consider a number of reforms to the *Residential Tenancy Act 1997* (Tas) that currently have unfair and unjust outcomes for victims of family violence.

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<sup>1</sup> CLC Tas would like to acknowledge Alexander Davidson who assisted in the preparation of this response.

**Issue 1:** *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?*

We are very concerned that protected persons continue to be prosecuted for breaches of aiding or abetting a breach of a protected family violence order (PFVO). We strongly believe that the focus of family violence legislation should be on ensuring that the perpetrator adheres to any and all conditions imposed as part of a PFVO and not that the protected person ensure that it is not breached. In other words, the onus should be the offender rather than the protected person. We are also concerned that some protected persons may feel uncomfortable about reporting breaches because it may lead to them also being charged. As the Women's Legal Service has previously noted:<sup>2</sup>

In our experience, charging a victim or threatening to charge a victim with instigating a breach undermines their confidence in the legal system and results in the victim being less likely to report any future breaches. It further victimises them and fails to take into account the vulnerability of family violence victims and the dynamic of power and control that exists in relationships dominated by family violence.

We are also concerned that prosecuting protected persons also disadvantages persons from non-English speaking backgrounds as well as those who may not fully understand the conditions of the order or the ramifications of breaching the order.<sup>3</sup> This may lead to protected persons receiving a conviction and possible imprisonment.

In our opinion, the continued prosecution of protected persons is contrary to the objects of the *Family Violence Act 2004* (Tas) which states that the safety, psychological wellbeing and interests of persons affected by family violence are the paramount considerations.

We strongly support the amendment of section 73 of the *Justices Act 1959* (Tas) so that victims of family violence, who have obtained a protection order, cannot be charged with instigating or aiding or abetting a breach. In our opinion such a reform is in keeping with the long established common law principle that a person cannot be convicted of aiding and abetting the commission of an offence in which they are the victim.<sup>4</sup> Finally, reform will ensure that resources are directed at the prosecution of offenders rather than the protected person.

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<sup>2</sup> Women's Legal Service, *Their Stories, Our Stories; Tasmanian Women's Experiences with Family Violence Orders* (June 2015) at 24.

<sup>3</sup> For example see 'Sally's Story' in which the police interpretation of the PFVO was different to that of either the lawyers or the courts. As found in Women's Legal Service, *Their Stories, Our Stories; Tasmanian Women's Experiences with Family Violence Orders* (June 2015) at 31.

<sup>4</sup> *Tyrell* [1894] 1 QB 710.

***Issue 2: Should Tasmania's family violence legislation include provisions for mandatory reporting of family violence?***

With data continuing to demonstrate that family violence is underreported we recognise that mandatory reporting has the potential to bring offending behavior to the attention of authorities that may not otherwise be reported.<sup>5</sup> We also acknowledge that mandatory reporting aligns with community expectations that serious offences be reported to the authorities.

However, in our opinion the disadvantages of mandatory reporting of family violence outweigh the benefits. First, there is no evidence that mandatory reporting of family violence improves the safety of victims.<sup>6</sup> We are also concerned that some victims may not seek medical attention for injuries incurred through family violence. Finally, we are concerned that victims lose their autonomy, potentially resulting in increased risk of harm. As the National President of the Australian Association of Social Workers, Professor Bob Lonne has previously observed:<sup>7</sup>

... a victim of family violence doesn't always want the police to come round, as it doesn't always lead to a resolution and can sometimes make the problem worse. Removing the power of the victim to decide when the police are notified makes the victim even more powerless in what is already a powerless family situation.

In summary, we do not support the introduction of mandatory reporting for family violence.

***Issue 3: 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? If so, who should be covered.***

We do not support the broadening of 'family relationship' in the *Family Violence Act 2004* (Tas) to include either child or elder abuse as we believe that legislative protections are either already in existence or should be treated as a distinct area of law.

*- child abuse*

The inclusion of child abuse in the Acts definition of 'family relationship' is unnecessary because there is already appropriate protection in existing

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<sup>5</sup> According to the Australian Bureau of Statistics 64 per cent of family violence physical assaults and 81 per cent of family violence sexual assaults are underreported: Australian Bureau of Statistics, *Australian Bureau of Statistics (ABS) Personal Safety Survey* (2005).

<sup>6</sup> Australian Law Reform Commission, *Family Violence — A National Legal Response* (October 2010) at 362.

<sup>7</sup> Australian Law Reform Commission, *Family Violence — A National Legal Response* (October 2010) at 362.

legislation.<sup>8</sup> We believe that violence against children should be treated as a distinct area of law with its own specialist services, procedures and practitioners. We are also concerned that there may be a blurring of lines when acting on behalf of a child victim in relation to an act of family violence given the differences in the court's treatment of adults and children.

- *elder abuse*

Whilst elder abuse continues to be underreported, the available data outlined in Lacey's article *Neglectful to the Point of Cruelty? Elder Abuse and the Rights of Older Persons in Australia* indicates that between two and five per cent of Australians over the age of 65 years have experienced abuse, that up to 80 per cent of perpetrators are family members of the victims, that financial and psychological abuse are the most common forms of abuse, and that women are twice as likely to be victims of abuse.<sup>9</sup>

Nevertheless, despite introducing an *Elder Abuse Prevention Action Plan 2015-2018* and implementing measures such as a well-publicized advertisement and an elder abuse helpline, the Tasmanian Government has not introduced any law reform specifically relating to elder abuse. The lack of law reform is particularly worrying given that statistics provided from the Tasmanian Elder Abuse Helpline demonstrate that in 2014/15 there were 259 people who contacted the helpline alleging elder abuse.<sup>10</sup>

Despite the large number of cases that could potentially be dealt with through the introduction of any legislative reform, including reform of the *Family Violence Act 2004* (Tas) we believe that elder abuse is best dealt with through stand-alone legislation such as that adopted in Scotland.<sup>11</sup> In Lacey's article *Neglectful to the Point of Cruelty? Elder Abuse and the Rights of Older Persons in Australia*, the author summarises its important features:<sup>12</sup>

- *The Act addresses 'harm' as opposed to 'abuse', and is aimed at safeguarding all 'adults at risk' of harm (people who are unable to safeguard their own wellbeing, property, rights or other interests, are at risk of harm, and, because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than adults who are not so affected).*
- *The Act confers powers on councils to conduct inquiries, investigations and visits and to seek formal assessment, removal, banning and protection orders from the courts.*

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<sup>8</sup> *Children, Young Persons and Their Families Act 1997* (Tas); *Youth Justice Act 1997* (Tas); *Justices Act 1959* (Tas); *Magistrates Court (Children's Division) Act 1998* (Tas); *Justices (Restraint Orders) Rules 2013* (Tas).

<sup>9</sup> Wendy Lacey, *Neglectful to the Point of Cruelty? Elder Abuse and the Rights of Older Persons in Australia* (2014) 36(1) *Sydney Law Review* 99 at 100-101.

<sup>10</sup> Advocacy Tasmania, *Annual Report 2014-15* at 12.

<sup>11</sup> *Adult Support and Protection Act 2007* (Scotland).

<sup>12</sup> Wendy Lacey, *Neglectful to the Point of Cruelty? Elder Abuse and the Rights of Older Persons in Australia* (2014) 36(1) *Sydney Law Review* 99 at 121.

- *Intervention can only be carried out where it will provide benefit to the adult and must involve an approach which is the least restrictive option to the adult's freedom.*
- *Certain bodies and office holders must, so far as is consistent with the proper exercise of their functions, cooperate with a council conducting inquiries. If a public body or office-holder believes that a person is an adult at risk of harm and that action needs to be taken under Part I of the Act, then the facts and circumstances of the case must be reported to the council for the area in which it considers the person to be located.*
- *The Act is accompanied by a Code of Practice for Local Authorities and Practitioners Exercising Functions under Part I of the Act, which provides practical guidance for implementation of the Act.*

Elder abuse unlike family violence is not carried out exclusively in a family or domestic setting with some elderly people abused psychologically, economically or physically by their carer, acquaintances or other persons in positions of trust.<sup>13</sup> As well, most elder abuse is economic and psychological rather than of a violent nature with recent data provided by the Tasmanian Elder Abuse Helpline observing that 88 per cent of cases involved psychological/emotional abuse, financial/material abuse amounted to 68 per cent of all elder abuse cases and physical abuse amounted to 32 per cent of elder abuse cases.<sup>14</sup>

In our opinion, broadening family violence to include elder abuse is a crude mechanism that is more easily dealt with through stand-alone legislation. Existing family violence legislation will not effectively deal with elder abuse, which often focuses on preventing the alleged abuser from continuing to physically abuse the victim. In our opinion, elder abuse legislation needs to address the fact that most elder abuse is abuse of already vulnerable adults and that most abuse is financial and psychological/emotional and may not be easily solved through the imposition of a PFVO.

***Issue 4:*** *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?*

In March 2015 we provided a response to the Tasmanian Law Reform Institute's *Review of the Law relating to Self-Defence*.<sup>15</sup> Our response strongly supported amendments to the *Criminal Code Act 1924* (Tas) that would make it easier for victims of family violence to argue self-defence. We argued that imminence

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<sup>13</sup> Freda Vrantisidis, Briony Dow, Melanie Joosten, Mandy Walmsley & Jenny Blakey, *The Older Person's Experience: Outcomes of Interventions into Elder Abuse*, Lord Mayor's Charitable Foundation, 2016.

<sup>14</sup> Advocacy Tasmania, Annual Report 2014-15 at 12.

<sup>15</sup> Tasmanian Law Reform Institute, *Review of the Law relating to Self-Defence*, Report No. 20 (October 2015).

should not be an essential element of self-defence in circumstances in which family violence could be proved. Our submission, which remains relevant to this day noted:

In a Victorian Law Reform Commission report published in 2004 it was observed that victims of domestic violence will rarely respond to immediate threats but rather will wait until the abusive partner is either asleep or intoxicated.<sup>16</sup> The VLRC report went on to acknowledge that this has traditionally been an impediment to claims that the victim of family violence was acting in self-defence given the wide-spread perception that the defence applies to 'one-off' spontaneous encounters in which generally men of relatively equal strength are involved in a fight. This perception may adversely influence a jury's assessment of self-defence because of their belief that the threat lacked immediacy, the threat appeared to be of a minor nature or that the accused should have escaped or sought help. These perceptions can be remedied through express legislative reform specifying that imminence is not necessary where self-defence is raised in the context of family violence. Specifically, we recommend adoption of the Victorian model which makes it clear that self-defence can be raised even if 'responding to a harm that is not immediate...'.<sup>17</sup>

We strongly recommend amendments to Tasmania's criminal law that will facilitate the reception of evidence of family violence in relation to the defence of self-defence. Sections 322J and 322M of Victoria's *Crimes Act 1958* provide a good model that should be considered for adoption in Tasmanian law.

If the Victorian model were the preferred option, we endorse the recommendation of the Women's Legal Service that a broad inclusive definition of violence be adopted, rather than being limited. This may be rectified as easily as removing 'violence means' and replacing it with 'violence includes...'

Almost eighteen months after the TLRI's Final Report was published we strongly support the implementation of its recommendations including specifically that imminence should not be an essential element of self-defence in circumstances in which family violence could be proved.<sup>18</sup>

*Issue 5: Should the law be amended to provide, where a matter is discontinued without hearing and an acquittal is entered because of no evidence being tendered, that the evidence may be admissible as relationship, tendency or coincidence evidence in the family violence context?*

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<sup>16</sup> Victorian Law Reform Commission, *Defences to Homicide: Final Report (2004)* at [3.11].

<sup>17</sup> Sections 9AH and 322M of the *Crimes Act 1958* (Vic). The Victorian provisions were also recommended in Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence – A National Legal Response*, ALRC Final Report 114; NSWLRC Final Report 128 (2010) at [14.5]-[14.38].

<sup>18</sup> Tasmanian Law Reform Institute, *Review of the Law relating to Self-Defence*, Report No. 20 (October 2015) at viii.

We do not believe that evidence should be admitted where a matter is discontinued without hearing and an acquittal is entered because of no evidence being tendered. In our opinion, such reform would remove key principles of natural justice including the presumption of innocence and that the onus of proof rests on the prosecution. We believe that the proposed reforms would not allow tendency and coincidence evidence into criminal proceeding but rather would allow the prosecution to adduce evidence of a previous criminal proceeding in which no finding of guilt was made. It is likely that the admission of such evidence would be highly prejudicial to the defendant. Such admissions would also have the effect of allowing the court to make a finding of guilt because of a previous legal proceeding which prosecution chose not to prosecute. Further, we note that there are a number of reasons that prosecution choose not to proceed, including the defendant's innocence or that subsequent investigations do not support a finding of guilty.

***Issue 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?*

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

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

We support the ability of Tasmania's courts to declare a person a 'persistent perpetrator of family violence'. In our opinion, such reform is likely to have a number of advantages. One advantage is that declaring an offender a PPFV will allow for expeditious identification as well as acting as a red flag in family violence and other legal proceedings. Another advantage is that the proposed reform does not appear to be a compulsory declaration that the court must make if there is a finding of guilt for a family violence offence (such as breach of FVO). Rather, the court would have the ability to assess a set of criteria and make a judgment of that basis. However, we also support the notion that there should be a mechanism for the removal of the declaration particularly where there has not been a transgression for a number of years and a rehabilitation program has been successfully completed.

***Issue 7:*** *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?*

The advantage of introducing a persistent perpetrator of family violence register is that it gives individuals information that may help them to make a more informed choice about their relationship. Such disclosures may highlight a long history of family violence that may discourage the continuation of the relationship or encourage reporting of future incidents of family violence.

However, the proposed register also raises a number of concerns including the potential for abuse and that applicants may be given a false sense of security

given the significant underreporting of family violence. Finally, we would note that adequate funding of specialist family violence support services would need to be assured both during and following the disclosure process, including where there is a refusal to disclose.

In NSW where a pilot has been in place since March 2015, a domestic partner or concerned third party can request information about previous convictions for family violence. Relevant offences include personal violence offences committed in a domestic relationship, breaches and certain specific personal violence offences committed outside of a domestic relationship.<sup>19</sup> Importantly, the pilot is subject to the *Privacy and Personal Information Protection Act 1998* (NSW), which provides certain safeguards about the disclosure of information. These safeguards would have to be a part of any Tasmanian scheme.

As it stands, the consultation paper notes that only a declared persistent perpetrator of family violence would appear on the scheme. In other words, not every perpetrator of family violence would be declared and therefore not all offenders of family violence would appear on the register. This would mean that low level offending such as breaching a Family Violence Order through electronic communication may not be recorded, and/or family violence offending that is not of a persistent nature. The consultation paper also does not address whether interstate priors would be available for disclosure.

We believe that more information is needed before any decision can be made concerning the introduction of a family violence register.

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

We are broadly supportive of any sentence that focuses on the underlying causes of the offender's behavior rather than the offence committed. Currently, the Family Violence Offender Intervention Program (FVOIP) is the only state government run family violence intervention program. We are concerned as the Women's Legal Service has previously observed that Magistrates are hesitant to refer offenders to the program, that the Government has not evaluated the program and that it is extremely under resourced.<sup>20</sup> In 2013-14 for example, 47 offenders commenced the program with 39 offenders completing the program.<sup>21</sup> Unfortunately, as the Sentencing Advisory Council has noted "the numbers represent only a very small proportion of the total number of offenders",<sup>22</sup>

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<sup>19</sup> Offences and orders that will not be disclosed under the NSW scheme include spent convictions and apprehended domestic violence orders.

<sup>20</sup> Women's Legal Service, *Processes for family violence matters in the Magistrates Court: review and recommendations* (December 2014) at 19.

<sup>21</sup> Sentencing Advisory Council, *Sentencing of Adult Family Violence Offenders* (Final Report No. 5: October 2015) at 42.

<sup>22</sup> Sentencing Advisory Council, *Sentencing of Adult Family Violence Offenders* (Final Report No. 5: October 2015) at 42.



We believe that there should be a broadening of the eligibility criteria for the FVOIP so that it includes women and more than just those offenders at high-risk of re-offending. Other rehabilitative programs that should be considered include alcohol and other drug treatment,<sup>23</sup> anger management, mental health, and appropriate relationship, financial and personal counselling. In short, all perpetrators of family violence deemed suitable should be able to access a rehabilitative program including the FVOIP that addresses their underlying behavior. In facilitating access to these rehabilitation programs we would recommend the use of deferred sentences. However, as we have previously observed:<sup>24</sup>

It must also be noted that if the principle of equality before the law is to be upheld there must be appropriate funding provided for deferred sentences and in particular the provision of assessment and participation in a reintegration program. It is essential that these services are available to all offenders and not just those with financial means. It would be extremely concerning if a paucity of funding resulted in the wealthy having the means to access assessment or participation in a reintegration program and thereby avoid imprisonment while the financially disadvantaged were sentenced to imprisonment due to their impecuniosity.

***Issue 7C:*** *Should a police officer of the rank of inspector or above or 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?*

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

We do not support the tightening of conditions around family violence bail. The imposition of a mandatory term of imprisonment where the defendant has not been subject to a finding of guilty is against the principle of natural justice. It also removes from the court its discretion to exercise judgment on a case-by-case basis. It is also important to note that the *Family Violence Act 2004* (Tas) already invites the Magistrate to judge the defendant's demeanor as well as the likelihood of the defendant committing another family violence offence.<sup>25</sup> In our opinion, the discretion already available to the Magistrate strikes the right balance between the defendant's right to individual freedom and community protection.

***Issue 7E:*** *Should a minimum mandatory sentence of imprisonment be imposed for subsequent contraventions of protection orders for the duration of the declaration?* and ***Issue 7F:*** *If so, what mandatory period of imprisonment should be imposed?*

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<sup>23</sup> Currently, eligibility to the Court Mandated Diversion program is excluded for many family violence offenders: section 27B(1)(a)(ii) of the *Sentencing Act 1997* (Tas).

<sup>24</sup> Community Legal Centres Tasmania, Submission to the *Sentencing Legislation Amendment Bill 2016* (Tas) (September 2016). As found at <http://www.clctas.org.au/what/reform/> (Accessed 31 January 2017).

<sup>25</sup> Section 12 of the *Family Violence Act 2004* (Tas).

We are opposed to mandatory sentencing. We have consistently expressed our opposition to mandatory sentencing<sup>26</sup> and in an earlier response to a Government review we listed our reasons as follows:<sup>27</sup>

First, there is no reliable evidence to suggest that mandatory minimum sentences reduce the incidence of crime.<sup>28</sup> For example, the Victorian Sentencing Advisory Council has previously found that whilst imprisonment has a small general deterrent effect, there is no conclusive evidence to suggest harsher sentences such as a mandatory minimum sentence reduces crime. Rather, the evidence suggests that it is the certainty of apprehension and punishment that acts as a greater deterrent.<sup>29</sup>

Secondly, mandatory sentencing limits the individual's right to a fair trial as it imposes an arbitrary sentence, which ignores the unique characteristics of the offence and the offender. Inevitably, such sentences lead to disproportionate terms of imprisonment in light of the particular circumstances of the offender and the offence.

Finally, mandatory sentencing is likely to result in a redistribution of discretion from the courts to the police and prosecuting authorities in order to circumvent mandatory sentencing laws.<sup>30</sup> Whilst this may mitigate potential injustices, police and prosecutors do not have the same sentencing expertise as the judiciary. Prosecutorial discretion also creates a non-transparent sentencing process.<sup>31</sup>

### **Other reforms**

As well as providing responses to the above questions we are hopeful that consideration could also be given to reforms around residential tenancies and family violence.

### **Residential Tenancies and Family Violence**

A residential tenancy agreement may be terminated due to family violence.<sup>32</sup> However, the order to terminate can only be sought where there is a Family Violence Order in place and both the perpetrator and victim are listed on the agreement. In practice, the making of such an order will often mean that the victim is forced to pay all of the rent and continue to live in a property known to

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<sup>26</sup> See for example, Consultation on the *Sentencing Amendment (Assaults on Frontline Workers) Bill 2016* (Tas) (October 2016); Comment on the *Firearms (Miscellaneous Amendments) Bill 2015* (April 2015); Consultation on the *Workplace (Protection from Protesters) Bill 2014* (November 2014); Consultation into *Sex Offence Sentencing* (June 2013); Consultation into *Sentencing of Assaults against Emergency Service Workers* (August 2012).

<sup>27</sup> Community Legal Centres Tasmania, Comment on the *Firearms (Miscellaneous Amendments) Bill 2015* (April 2015). As found at <http://www.clctas.org.au/what/reform/> (Accessed 31 January 2017).

<sup>28</sup> Dato' Param Kumaraswamy, *Mandatory sentencing: the individual and social costs* (2011) 7(2) *Australian Journal of Human Rights*.

<sup>29</sup> Sentencing Advisory Council, *Does Imprisonment Deter? A Review of the Evidence*, (April 2011: Melbourne, 14, 16.

<sup>30</sup> Queensland Law Society, 'Mandatory sentencing laws policy position' (2014) 1.

<sup>31</sup> Queensland Law Society, 'Mandatory sentencing laws policy position' (2014) 1.

<sup>32</sup> Section 17 of the *Family Violence Act 2004* (Tas).

the perpetrator. In our experience, some victims are worried for their safety and want to relocate. There may also be occasions where the victim wants to relocate but the perpetrator wants to remain in the property due to work or other commitments.

We strongly recommend that the *Family Violence Act 2004* (Tas) is amended so that the court is provided with broader powers including the ability to terminate the agreement or; terminate the agreement and establish a new agreement for the benefit of the victim or; terminate the agreement and establish a new agreement for the benefit of the perpetrator. This would bring the Act into line with other jurisdictions including New South Wales.<sup>33</sup>

### **Tenant Blacklists**

The *Residential Tenancy Act 1997* (Tas) allows landlords to keep a residential tenancy database (i.e. a blacklist) of tenants who have breached the terms of their lease agreement. Tenants can only be blacklisted for breaches that still require the repayment of monies (unpaid rent or damage to property) or for evictions from an immediate termination.<sup>34</sup>

In practice, this means that many family violence victims continue to be punished for a perpetrator's actions. If a victim of family violence applies for a family violence order and the perpetrator is subsequently removed from the agreement, the victim will often be required to pay all of the rent. This may lead to financial hardship and the risk that the victim will fall into rental arrears. If the victim is subsequently evicted due to rental arrears the landlord may blacklist the victim making it difficult to find alternative accommodation. As well, where a victim is evicted from their property due to the perpetrator's ongoing damage of the property, or where damage has been done to the property by the perpetrator the landlord can have the victim blacklisted.

We strongly recommend that Part 4C of the *Residential Tenancy Act 1997* (Tas) is amended to prohibit landlords and real estate agents from blacklisting tenants for actions arising from the actions of the perpetrator including damage to property and unpaid rent.

### **Liability for Actions of Others**

The *Residential Tenancy Act 1997* (Tas) provides that a tenant is liable for any act or omission of persons lawfully on the premises.<sup>35</sup> We strongly recommend that the automatic liability of tenants for the acts or omissions of others should be removed in circumstances where tenants can prove that the damage arose from family violence.<sup>36</sup>

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<sup>33</sup> Section 102 of the *Residential Tenancies Act 2010* (NSW). See also section 44 of the *Residential Tenancies Act 1997* (ACT).

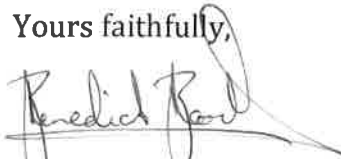
<sup>34</sup> Section 41 of the *Residential Tenancy Act 1997* (Tas).

<sup>35</sup> Section 59 of the *Residential Tenancy Act 1997* (Tas).

<sup>36</sup> This would bring Tasmania into line with other jurisdictions including section 233C of the *Residential Tenancies Act 1997* (Vic) and section 89A(11) of the *Residential Tenancies Act 1995* (SA). The New South Wales Government has also recently recommended that a like provision be introduced, see Lucy Cormack, 'Domestic violence victims given the power to terminate rental

If you have any queries or we can be of any further assistance, please do not hesitate to contact us.

Yours faithfully,



Benedict Bartl

Policy Officer

**Community Legal Centres Tasmania**

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contracts early', *Sydney Morning Herald*, 5 July 2016. As found at <http://www.smh.com.au/business/consumer-affairs/domestic-violence-victims-given-the-power-to-terminate-rental-contracts-early-20160704-gpy1ky.html> (Accessed 30 January 2017).