

# Department of Justice, Tasmania

## RESPONSE TO FAMILY VIOLENCE: STRENGTHENING OUR LEGAL RESPONSES - CONSULTATION PAPER, OCT 2016

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### Submission from Shelter Tasmania

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CONTACT: Pattie Chugg, Executive Officer, Shelter Tasmania



### PREAMBLE

Shelter Tasmania is an independent, not-for-profit peak organisation representing the interests of low to moderate income housing consumers, housing providers and homelessness services across Tasmania.

Shelter Tasmania welcomes the initiative of the Department of Justice to improve the legal framework to address the prevalence of family violence in Tasmania and to improve the way the justice system deals with perpetrators. We would also like to compliment the Department on the quality of the paper for its well-presented counter arguments for the changes being considered.

Shelter Tasmania is committed to working towards a fairer and more just housing system. We provide an independent voice on housing rights and a link between governments and the community through consultation, research and policy advice. We seek to improve housing access for all Tasmanians. Shelter Tasmania's vision is that every person has affordable, appropriate, safe and secure housing; our mission is to end homelessness in Tasmania. Shelter Tasmania recognises family and domestic violence as a significant cause of housing disruption and homelessness.

Family and domestic violence is a major cause of homelessness. Half of all people seeking support from homelessness services in Tasmania were experiencing domestic violence (33% of female clients and 17% of all males clients<sup>i</sup>). Many of Shelter Tasmania's members provide specialist services to people who are homeless or at risk of homelessness. These Specialist Homelessness Services (SHS) are non-government organisations that are part or fully funded by government. They provide women's, men's and youth shelters, transitional and longer term housing, and customised client support services (such as counselling, mental health support, life skills development and substance abuse treatment). Their goal is to help their clients stabilise their situation and assist them into suitable long term accommodation.

### HOUSING AFFORDABILITY, HOMELESSNESS AND FAMILY VIOLENCE

People depend on affordable, appropriate, safe and secure housing to sustain their health and well-being and to enable social and economic participation. The Tasmanian community faces a shortage of such housing, with current and forecast need unable to be met.

Tasmania continues to face a housing affordability crisis. The Rental Affordability Index<sup>ii</sup> exposes the myth of cheap housing in Tasmania, showing that Hobart has the least affordable rental properties after Sydney. Tasmanian households are among the poorest in Australia<sup>iii</sup> and as a result, rental affordability here is among the lowest nationally.

In 2011, on Census night, 1,579 people were counted as being homeless in Tasmania (these figures are likely to be conservative)<sup>iv</sup>. Of all Australian States, Tasmania has the highest proportion of people with the greatest risk of homelessness<sup>v</sup>, and pressure on services for people experiencing or at risk of homelessness is increasing.

Data recently released by the AIHW shows<sup>vi</sup>:

- a significant increase in the proportion of people seeking support because of family and domestic violence in 2015/16 - over 25% of people (an increase of more than 400 people in the past year);
- a similar rise in the proportion of children under 9 years of age needing support over this period – 21% of clients are now children under this age (up from 16% in 2014-15); and
- an increase in the proportion of people unable to be assisted because of a lack of accommodation - now almost 19 people a day (compared with 15 in 2014-15).

Violence is a major driver of homelessness for men and women. Research shows that both men and women in Australia experience high levels of violence (partner violence statistics show that 61% of victims are women and 39% are men)<sup>vii</sup>. SHS agencies frequently deal with clients escaping family violence, most commonly women, but also men. Violence in the home is one of the three main reasons that young people (aged 15-24 years) report for accessing SHS services<sup>viii</sup>.

The shortage of suitable housing for people escaping violence is a compounding factor for victims and perpetrators. Demand for homelessness services is so high that SHS agencies are routinely unable to assist families in need - the current system is critically overloaded. Unable to access the services or safe housing they need, the trauma faced by families experiencing violence is exacerbated. As a result, they are exposed to expensive and / or unsuitable accommodation (often in motels, caravan parks, couch surfing, or remaining in a violent situation). The shortage of affordable housing also limits the ability to house the perpetrator away from the family home.

### RESPONSE TO SELECTED QUESTIONS IN THE CONSULTATION PAPER

#### **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?*

Being charged for breaching a Protection Order has significant consequences for maintaining residential tenancies and can lead to the unnecessary termination of a tenancy. Breaches can occur where they are not deliberately intended. Our members see victims in circumstances where they feel the need to breach in order to deal with a compelling situation (e.g. opening the door to prevent the perpetrator from breaking the window). However, members also report frustrations where breaching an order can lead to the need to move tenants from their current housing to protect themselves or to protect others who are also resident there.

**Shelter Tasmania supports retention of the ability to charge the protected person for breaching an order, but with discretion so that a protected person who is not deliberately breaching cannot be charged.**

#### **Issue 2: Mandatory reporting of family violence**

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

Shelter Tasmania's members have mixed views on the difficult question of mandatory reporting:

- Services providing accommodation and support for victims escaping domestic violence are concerned that an unintended consequence of mandatory reporting could be that victims will be less likely to seek help if they know it will be reported. For many men and women wanting to leave a violent situation, the first step is often seeking support and information about their options; some make several attempts before they finally leave. It is important that victims feel safe to seek support knowing that services are not compelled to make a report to police. Staff who work with victims are highly skilled and experienced and capable of sound judgements. Where they are sufficiently concerned, they will exercise their duty of care to report a dangerous situation. Our members also acknowledge that adult victims have the maturity and right to make

decisions about their own safety, unlike children for whom mandatory is appropriate and already a requirement.

- The case in favour of mandatory reporting is based on the need to protect victims who are subjected to continuous violence without effective intervention.

**Shelter Tasmania supports the predominant view of our members that reporting should not be mandatory.** However, should mandatory reporting be introduced, then sufficient resources would need to be allocated by the Tasmanian Government to accommodate the anticipated increase in demand for services.

### **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?*

Shelter Tasmania is strongly of the view that the present definition of ‘family relationship’ is too narrow. It does not capture other abusive relationships, including: informal care relationships (such as disability carer relationships), parent-child relationships, and sibling or other relative relationships.

In considering this question, Shelter Tasmania urges the Department to avoid unintended consequences by identifying and addressing any gaps in the system. In particular, we are concerned about the gap in available housing and support options for a disabled person who is victim to a residential carer. At present the community housing sector is not able to adequately provide the accommodation or support that might be needed by someone in this situation.

**Shelter Tasmania supports an expansion of the definition of ‘family relationship’ and emphasises that sufficient resources be allocated to respond to the increased demand for services and support that would be likely to arise.**

### **Additional Issue: The need for protections in the Residential Tenancies Act 1997**

In addition to the legislation identified in the Consultation Paper there is a need to amend the Residential Tenancies Act, 1997 to enable tenants subject to family and domestic violence to leave a hostile environment or to remove the perpetrator without being exposed to unfair expenses. There are a number of issues for victims under current legislative arrangements, including:

- where the lease is jointly held, not being able to terminate a tenancy without the other lessee (the perpetrator) joining in the request;
- exposure to risk of further action from the perpetrator while waiting for a court order hearing to have their name removed from the lease, even though they are urgently processed;
- the risk of financial hardship with the victim being entirely responsible for all costs associated with the tenancy, including any damage done to the property by the perpetrator.

**Shelter Tasmania recommends amendments to the Residential Tenancy Act 1997 to remove existing obligations that disadvantage lessees experiencing family and domestic violence.** The amendments suggested would also help to reduce the risk of homelessness for victims of family violence. Similar amendments have recently been made to legislation in South Australia<sup>ix</sup>.

In closing, we emphasise that stable housing and appropriate family support is a key component of any solution to family violence in Tasmania. An adequate supply of safe and secure housing, along with appropriate levels of support staff and services, would help families and, importantly, their children to stabilise and rebuild their lives more quickly.

Increasing the supply of crisis, transitional and affordable housing and related support services would remove the current blockages in the system that would otherwise see victims safely housed, and would remove the compounding trauma to victims needing to continuously move because suitable housing is not available.

Thank you again for the opportunity to contribute to this important Inquiry. We would welcome the opportunity to discuss our submission with you.

Yours sincerely,



Pattie Chugg  
Executive Officer  
Shelter Tasmania

## Endnotes

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<sup>i</sup> AIHW-SHS Data 2015-16-sup-tables\_TAS/Tas Clients 2 and 13

<sup>ii</sup> SGS Economics and Planning (2016). *Rental Affordability Index. June 2016 Release*. Prepared in association with National Shelter and Community Sector Banking.

<sup>iii</sup> Shelter Tas (2016) Submission to the State Government Budget Process 2016-2017 accessed 9/6/16 at: <https://www.google.com.au/?client=firefox-b#q=Submission+to+the+State+Government+Budget+Process+shelter>

<sup>iv</sup> Data from the 2016 Census is yet to be released

<sup>v</sup> NATSEM (2013). *Geographical Analysis of the Risk of Homelessness*. p52. Risks include: low education levels, poverty, housing stress, overcrowding, domestic violence.

<sup>vi</sup> AIHW-SHS Data 2015-16-sup-tables\_TAS analysed by Shelter; and

<http://www.aihw.gov.au/homelessness/specialist-homelessness-services-2015-16/domestic-violence/>

<sup>vii</sup> Research findings from the 2012 ABS Personal Safety Survey and Australian Institute of Criminology cited in: *Violence Against Women: Key Statistics*, produced by Australia's National Research Organisation for Women's Safety. Accessed on 16/6/16 at: <http://anrows.org.au/publications/fast-facts/violence-against-women-key-statistics>

*Male Victims of Family Violence: Key Statistics*, produced by the One in Three Campaign. Accessed 16/6/16 at: <http://www.oneinthree.com.au/overview/>

<sup>viii</sup> Mission Australia (2016). *Home & Away. Child and Youth Homelessness Report*. February. Sydney. P. 10 Accessed 2/6/16 at: <https://www.google.com.au/?client=firefox-b#q=home+and+away+mission+australia>

<sup>ix</sup> <https://www.sa.gov.au/topics/housing/resolving-problems-and-disputes/domestic-violence-protections-for-renters> (accessed 11/1/17)