

Susie Smith & Belinda Halliday
Co-Chairs
Embolden Executive Committee
21 August 2020

Deputy Premier
Attorney-General
The Hon Vickie Chapman MP
GPO Box 464
Adelaide SA 5001

LLPSubmissions@sa.gov.au

Dear Attorney-General,

Re: Statutes Amendment (Provocation, Self Defence and Sentencing) Bill 2020

Thank you for the opportunity to provide this submission on the draft Statutes Amendment (Provocation, Self Defence and Sentencing) Bill ('the Bill').

Embolden is the statewide peak body for domestic, family and sexual violence services in South Australia, representing 30 organisations from metro, regional and rural South Australia.

Firstly, we wish to commend the SA Government on the consultative framework put in place regarding the draft amendments of the Bill, particularly in commissioning the South Australia Law Reform Institute (SALRI) reports *The Provoking Operation of Provocation: Stages 1 and 2* that inform these draft amendments. Embolden warmly endorses SALRI's commitment to closely consulting with key stakeholders, particularly those with lived experience of family and domestic violence, LGBTIQ+, and culturally and linguistically diverse communities in the development of these reports and attending recommendations.

Embolden also commends and supports the Attorney-General, and the SA Government more broadly, in the inclusion of domestic and family violence considerations into undertaking this crucial piece of legislative work. We particularly support the Government's intent with these amendments to support the safety of those experiencing or at risk of domestic and family violence, including sexual violence, particularly women and their children, and that of the LGBTIQ+ community in South Australia. We understand that other advocacy bodies, including Equality Australia and the South Australian Rainbow Advocacy Alliance, have provided submissions that focus more on the implications for LGBTIQ+ people in the abolition of provocation as a common law defence, particularly gay and bisexual men and trans people, and we welcome their analytical lens and expertise to be duly considered by the Attorney-General in this feedback process.

It is our view that, in this Bill, the SA Government is taking a well-considered approach to achieve the right balance on upholding the rights of domestic and family violence victims, while appropriately dealing with the commission of offences. In particular, we welcome the substance and intent of subsection 14D, in referencing a range of allowable evidence of family violence.

Embolden supports the removal of the common law defence of ‘marital coercion’ in line with other Australian states and international jurisdictions, and in accordance with a broader social and legal acknowledgement of women’s inherent autonomy and personhood independent of their marital or relationship status. However, we submit to the Attorney-General that Embolden would support an evidence-based review to be commissioned from SALRI to investigate the possible introduction of the offence of ‘coercive control’ to be introduced into the South Australian criminal law¹, possibly within a suite of reforms to support women’s access to justice and safety in the context of domestic, family and sexual violence. This could also include a review of legislation relating to the burden of proof in sexual assault cases in South Australia, as a matter of priority for the State Government in 2021-22. Embolden would like to put forward our availability and keen interest in being closely engaged with any consultative measures that result from this request.

We strongly recommend that this current reform is subject to further review as and when the Bill is commenced. We note the opportunity for the Attorney-General’s Department to provide support and guidance as to the mechanisms, intent and intended outcomes of the Bill, particularly for legal practitioners and judiciary, such as a forum or program of events hosted by the Attorney-General to inform and guide practitioners in the practical application of this Bill.

1 As noted by Sarah Moulds (of the Rights Resource Network SA) in her submission to these draft amendments, recent research from the University of South Australia may be of direct relevance here: see *New Findings on Family Violence from University of South Australia Summarized (Coercive Control During Pregnancy, Birthing and Postpartum: Women’s Experiences and Perspectives On Health Practitioners’ Responses)*, 2020, Psychology & Psychiatry Journal, NewsRX LLC, p. 177. See also Harris, Bridget A & Woodlock, Delanie 2019, ‘Digital Coercive Control: Insights From Two Landmark Domestic Violence Studies’, *The British Journal of Criminology*, vol. 59, no. 3, pp. 530–550

We also note that even the most well intentioned and finely crafted legislation is only as effective as those charged with upholding, interpreting and applying it. That is to say, we reiterate the critical necessity of providing support and guidance to practitioners and professionals who will engage with the Bill, and particularly note the ongoing need for family and domestic violence expertise to be appropriately recognised in SA's courts and other legal and judicial systems. In particular, we hold concern that the intent of the Bill may not be realised in cases where there are discrepancies between the Bill's allowances and recognition of evidence of family violence, and the sometimes limited understanding of family violence, and the gendered drivers that underpin it, as held by judiciary and officers of the law, in addition to the broader community, as evidenced by the 2017 National Community Attitudes towards Violence Against Women Survey².

As previously noted, Embolden would like to indicate our availability to participate in any future reviews and/or engagement opportunities regarding the Bill as they arise.

Please contact Embolden's Policy & Communications Manager, Jennifer Kingwell, on 0436 816 208 or jennifer@embolden.org.au should you wish to discuss anything related to this correspondence.

Yours sincerely,

Susie Smith and Belinda Halliday

Embolden Co-Chairs

² Webster, K., Diemer, K., Honey, N., Mannix, S., Mickle, J., Morgan, J., Parkes, A., Politoff, V., Powell, A., Stubbs, J., & Ward, A. (2018). Australians' attitudes to violence against women and gender equality. Findings from the 2017 National Community Attitudes towards Violence against Women Survey (NCAS) (Research report, 03/2018). Sydney, NSW: ANROWS

About Embolden

Embolden is the statewide peak body of non-government organisations working to respond to and eliminate domestic, family and sexual violence in South Australia.

Our members provide services that promote women and their children's safety and wellbeing, and work to prevent and respond to violence against women.

We lobby and advocate for women's rights to respect, safety and self determination, and represent providers of specialist services in the domestic, family and sexual violence and related sectors, including services that work with men who use violence against women and Aboriginal specialist services.

Acknowledgement of Country

Embolden acknowledges and respects Aboriginal peoples as the state's first peoples and nations, and recognises Aboriginal peoples as traditional owners and occupants of land and waters in South Australia. Embolden recognises that their spiritual, social, cultural and economic practices come from their traditional lands and waters, that they maintain their cultural and heritage beliefs, languages and laws which are of ongoing importance, and that they have made and continue to make a unique and irreplaceable contribution to the state.

We acknowledge that Aboriginal peoples have endured, and continue to endure, injustices and dispossession of their traditional lands and waters.

We continue to pay respect to the resilience and strengths of Ancestors and Elders past, present and those emerging.

About this Submission

This submission has been prepared by Embolden with consultation and input from its members and key stakeholders, including women with children who have lived experience with both domestic and family violence, and family law proceedings.

It is submitted on behalf of our member organisations, including:

Bramwell House
Ceduna Regional Domestic Violence and Aboriginal Family Violence Services
Coober Pedy Regional DV & Aboriginal Family Violence Service
Cross Border/APY Lands Aboriginal Family Violence Service
Domestic Violence Crisis Line
Eastern Adelaide DV Service
Fleurieu and KI DV Service
Homelessness Gateway Service
Women's Safety Services SA Integrated Programs
Kornar Winmil Yunti Aboriginal Cooperation
Limestone Coast Domestic Violence Service
Louise Place
Migrant Women's Support Program
Murray Mallee and Adelaide Hills DV Service
Ninko Kurtangga Patpangga
Northern Adelaide DV Service
Nunga Mi:Minar
OARS Community Transitions
Port Augusta Regional DV & Aboriginal Family Violence Service
Relationships Australia (SA)
Riverland DV Service
Southern Adelaide DV Service
Victim Support Service
Vinnie's Women's Crisis Centre
Western Adelaide DV Service
Whyalla Regional Domestic Violence Service
Yarredi Services
Yarrow Place
Yorke and Mid North Domestic Violence Service
Zahra Foundation Australia