

Angela Hartwig

15 June, 2012

Hon Brian Ellis MLC
Chair
Standing Committee on Environment and Public Affairs
Parliament House Perth
Western Australia WA 6000

Dear Mr Ellis

Petition No 161 – Review laws Pertaining to Domestic Violence

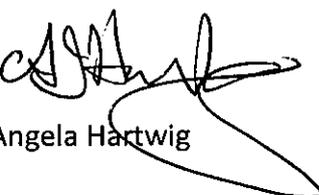
Thank you for receiving the petitions signed by over 2,600 concerned and outraged residents of Western Australia. We are seeking Members of the Legislative Council to urge the Attorney General that he review the laws pertaining to domestic and family violence, and particular parts of the s281 Criminal Code (WA) 1913 to ensure that there is an appropriate legislative framework for cases involving a history of violence and abuse.

In particular we believe that the charge of 'unlawful assault causing death' should not apply in cases where it can be established that there has been a history of physical violence and abuse. The nature of the charge implies that a one-off momentary act of violence has caused the death, and does not appropriately reflect the history and circumstances of the crime. These charges have been laid in cases that concern violent deaths of women and children by reasons of domestic violence abuse.

The maximum penalty for unlawful assault causing death is 10 years. However convictions to date in cases involving domestic violence have resulted in sentences of two to five years.

To date, this issue has not been taken up with the Parliamentary Commissioner for Administrative Investigations.

Yours Sincerely



Angela Hartwig

Attachments 1. Specific Cases where charges of 'Unlawful Assault Causing Death' have been used resulting in lenient sentences for the perpetrator

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PETITION NO. 161 - Review Laws Pertaining to Domestic Violence

2,600 concerned and outraged residents of Western Australia are seeking Members of the Legislative Council to urge the Attorney General that he reviews the laws pertaining to domestic and family violence, and in particular sections of the s281 Criminal Code (WA) 1913 to ensure there is an appropriate legislative framework for cases involving a history of violence and abuse.

The charge of 'unlawful assault causing death' should not apply in cases where it can be established that there has been a history of physical violence and abuse.

'Unlawful assault causing death' implies that a one-off momentary act of violence has caused the death. This charge does not appropriately reflect the history and circumstances of crimes with a history of domestic violence.

Contrary to the intent of this law, charges have been laid in cases that concern insidious violent deaths of women and children by reason of domestic violence abuse.

Changing community attitudes towards family and domestic violence, assisting victims to realise their legal rights and provide access to the justice system are supported by:

- The WA Strategic Plan for Family and Domestic Violence 2009-2013
- National Plan to Reduce Violence Against Women and their Children

DYNAMICS OF DOMESTIC AND FAMILY VIOLENCE

Domestic and family violence can be described as a pattern of coercive behaviour that uses violence to gain and then maintain power and control over the behaviour of an intimate partner or a person in a "domestic" or "familial" relationship with the abuser.

Family and domestic violence can manifest in physical, psychological, emotional, social and financial forms of abuse.

Research has shown us that:

- DFV is a gendered crime with 87% of victims being female and 98% of offenders being male and there are gendered differences in motivation, frequency, severity and outcomes
- DFV knows no boundaries and affects women from all socio-demographic backgrounds, however there are particular implications for certain vulnerable groups:
 - Aboriginal and Torres Strait Islander women face higher levels of physical violence and serious injury
 - Women with disabilities are more vulnerable, have additional barriers to accessing support and therefore receive less support

- Young women experience higher levels of sexual assault
 - Immigrant and refugee women experience higher levels of murder
- Violence experienced by women in abusive relationships is often cyclic with distinct stages and patterns.
 - This cycle is repetitive, increases in frequency and increases in severity.
 - Due to the nature of DFV (i.e. relationship between abuser and victim, involvement of children, economic dependence, potential of victim to be coerced, etc), it is an often under-reported crime
 - From 1 April 2008 – 17 March 2009 in WA, there were 20 deaths as a result of DFV; during this time, police attended 30,933 FDV related incidents of which 12,329 were linked to criminal offences.
 - Between 2000 and 2009, 180 domestic homicides were perpetrated in Western Australia. (an average of 18 per year)
 - Domestic and Family Violence continues to be the most common form of violence experienced by women throughout the world.
 - Children have on occasions witnessed the violent deaths of their Mothers.
 - Women and children exposed to family and domestic violence have suffered a breach of basic human rights (refer Human Rights Law Centre Briefing Paper: <http://www.womenscouncil.com.au/campaignsevents.html>)
 - Domestic and Family violence differs from street crime in the sense that victims know the perpetrator personally and is usually in a relationship with the perpetrator. This means it is likely that:
 - feelings and emotions will be heightened;
 - the victim may be economically dependent on the offender;
 - the victim and the perpetrator may be parents of the same children;
 - there is a high chance that the crime will go unreported;
 - an act of DFV will be repeated; and
 - Safety of the victim and her children has a high likeliness to be compromised.

It is important that these characteristic of DFV are taken into account when developing responses to DFV, including the operation of bail and parole conditions, to prevent further victimisation of women and children. It is critical that policy initiatives are coupled with funding for implementation, including professional development, to avoid a yawning gap between legislative intent and the reality on the ground.

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Specific cases where 'Unlawful Assault Causing Death' has been used resulting lenient sentencing.

- **Ms Saori Jones aged 31 (Perth) on 23 December 2010**

(Saori's body in perpetrator's home for 10 days badly decomposed)

Perpetrator: Mr Bradley Wayne Jones aged 35 received a five year jail sentence, eligible for parole December 2013. Assault witnessed by their two children.

On 24 January 2011, Bradley Wayne Jones was charged with Manslaughter (which carries a maximum penalty of 20 years imprisonment) after a review of post mortem results and in consultation with the Director of Public Prosecutions, to then be later downgraded to 'Unlawful Assault Causing Death' by the DPP.

Request for an Appeal was denied by the Director of Public Prosecutions.

- **Woman aged 37 (Kununurra) The State of WA versus Warra on 22 November 2009**

(Woman was repeatedly assaulted over a 3 day period) Post mortem examination revealed that she died from a head injury caused by repeated assaults over three days. She had a closed left eye and swelling to her eyelid and mouth. One witness stated that Warra kicked the woman out of the chair like a football. This particular act of violence was the result of the victim asking if she could use his mobile phone to ring her family in Derby.

Perpetrator: Mr Lincoln Warra aged 37 received a 5 year jail sentence with no parole

Woman (defacto) The State of WA vs Zyrucha 127 Of 2009 Supreme Court of WA

Deceased woman had been in a car accident with her children the day prior to her death. The Ambulance Officers returned her home to the perpetrator and that evening on two separate occasions Zyrucha assaulted the woman. The extent of the assaults not admitted to by Zyrucha, to victim that evening, was evident in severity, number and distribution of injuries. These acts of violence were repeated and separate attacks on defenceless victim who had been involved in serious traffic accident. The accused claims he awoke to find the woman deceased "blue"

Sentence: 3 years 6 months

- **Woman (defacto) The State of WA versus Indich 211 Of 2009 in Supreme Court WA**

Injuries that resulted from this savage assault included two broken ribs and lacerated spleen which caused bleeding in abdominal cavity. Perpetrator Mr Indich aged 42 had prior criminal record for previous conviction on the same woman.

Sentence: 2 years 10 months

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