



## ATTORNEY GENERAL

Our Ref: 44-00238

The Hon Brian Ellis MLC  
Chair  
Standing Committee on Environment and Public Affairs  
Parliament House  
PERTH WA 6000

Dear Mr Ellis *Brian*

### **Petition 161 – Review of Laws Pertaining to Domestic Violence**

Thank you for the opportunity to provide comments on *Petition 161 – Review of Laws Pertaining to Domestic Violence* which was tabled in the Legislative Council on 16 May 2012 by the Hon Sue Ellery MLC.

The State Government acknowledges that family and domestic violence is a serious issue with significant ramifications which can affect the entire community.

A key tool in protecting victims of family and domestic violence is the use of the restraining order under the *Restraining Orders Act 1997*. Since its introduction in 1997, the Act has been regularly reviewed to ensure that it remains a powerful tool for protecting victims in line with contemporary community expectations. For instance, on 4 May 2012, the *Restraining Orders Amendment Act 2011* was proclaimed. The amendments were in response to a review of the legislation to improve the Act to afford better protection for victims of family and domestic violence.

The new s.61A gives effect to the Government's commitment to better protect victims and holding offenders accountable. The section provides that when a person is convicted of a third breach of a relevant restraining order, there is a presumption of imprisonment and the court must impose a term of imprisonment unless it would be clearly unjust to do so in the circumstances. Furthermore, if a term of imprisonment is not applied the court must provide written reasons for this.

To assist in addressing the issue of family violence there are six specialist Family Violence Courts in Joondalup, Rockingham, Fremantle, Perth, Midland and Armadale. In recognition of the particular issues faced by Aboriginal communities, there is also Aboriginal-specific Family Violence Court, known as the Barndimalgu Court, in Geraldton.

In relation to the concern raised about the availability of an appropriate legislative response for cases involving family and domestic violence, I note that s.221 *Criminal Code* provides that the fact the offender is in a family and domestic relationship with the victim is a 'circumstance of aggravation'. This means that the offender may be liable to greater penalties such as a higher maximum term of imprisonment for a

range of offences including assault and stalking. Similarly, in recognition of the particular harms caused by family and domestic violence, where the offending behaviour constitutes a breach of a restraining order, this may be regarded as a 'circumstance of aggravation' for the purposes of escalating penalties under the *Criminal Code*.

In relation to the concern expressed about the appropriateness of using s.281 *Criminal Code* in particular cases, I note that the investigation of criminal matters and laying of criminal charges is a matter for the WA Police. Accordingly, I have forwarded your correspondence to the Minister for Police, Hon Liza Harvey MLA for her consideration.

I thank you again for the opportunity to provide comment on issues raised in the petition, and trust this information will be of use to you.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Michael Mischin', with a large, stylized initial 'M'.

Hon. Michael Mischin MLC  
**ATTORNEY GENERAL**

26 JUL 2012

**PUBLIC**