



# WIRRINGA BAIYA

## ABORIGINAL WOMEN'S LEGAL CENTRE INC.

Wiringa Baiya provides free legal advice to Aboriginal and Torres Strait Islander women, children and youth who are or have been victims of violence.

1 May 2015

### **Sentencing Council**

**By email: [sentencingcouncil@agd.nsw.gov.au](mailto:sentencingcouncil@agd.nsw.gov.au)**

**Dear Council members**

### **RE: AMENDMENTS TO THE CRIMES (SENTENCING PROCEDURE) ACT 1999**

We refer to the above matter and seek to make some limited submissions to the above terms of reference.

### **Wiringa Baiya Aboriginal Women's Legal Centre**

Wiringa Baiya Aboriginal Women's Legal Centre (Wiringa Baiya) is a New South Wales based state-wide community legal centre for Aboriginal women, children and youth. The focus of our service is to assist victims of violence, primarily domestic violence, sexual assault and child sexual assault and although our work is at the periphery of the criminal law, we are not criminal lawyers. Over our 18 years of operation we have assisted many Aboriginal women whom have experienced domestic violence, which involved serious physical violence. Our clients' experiences inform this brief submission.

We are not cognisant of all the issues raised by the Terms of Reference and the potential impact of these in relation to sentencing. As such, we defer to our colleagues with more experience of the operation of these laws within the legal profession and note that the criminal lawyers at Legal Aid and the Aboriginal Legal Service are likely to have more relevant experience in this field.

*Whether a mandatory aggravating factor should be introduced to section 21A of the Crimes (Sentencing Procedure) Act 1990 that applies where the offence involved violence because the offender was taking, inhaling or being affected by a narcotic drug, alcohol or any other intoxicating substance.*

The Thomas Kelly Youth Foundation has made recommendations in order to 'achieve cultural change and reduce alcohol and drug fuelled violence in the community.'

However in line with the aims of the Thomas Kelly Foundation, it seeks to address crime in a public capacity only:

'Our vision is to foster a more responsible drinking culture and ultimately a safer and healthier community, so that everyone can enjoy

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Wiringa Baiya is a non-profit organisation managed by Aboriginal women.

ABN: 60 382 206 441

*our streets without fear or intimidation of a violent and often unprovoked attack.*<sup>1</sup>

The recommendations, though worthy and noble in aim, are silent on domestic violence related assaults.

The reality for most women, and certainly most of our clients is that physical violence occurs within the home, and where consumption of alcohol and drugs by an offender is only sometimes a feature of the violent behaviour perpetrated by offenders. We know that for some of our clients:

- alcohol and drugs were always consumed by their offender when violent;
- alcohol and drugs were never consumed by their offender when violent; and
- sometimes the offender was affected by alcohol and drugs and at other times not when violence was committed.

It is not clear to us why the consumption of alcohol or drugs by an offender committing acts of domestic violence offences should result in a more severe sentence than those where it was not a factor. This seems illogical and unfair for victims of domestic violence.

We submit that alcohol and drug use should not be a mitigating factor, nor should it be an aggravating factor. Victims of domestic violence commonly suffer systematic non-alcohol or non-drug related assaults. This does not diminish the crime inflicted upon them, and sentencing laws should be commensurate.

As domestic related assaults are increasing and alcohol fuelled public related assaults are decreasing, it is illogical and harmful to community expectations to prioritise law reform in this area.

Law reform should focus on achieving cultural change to reduce violence in the community where it is statistically viable. To do otherwise is a misallocation of focus and funds.

Non-domestic alcohol related assaults in NSW have been declining since 2008 and are the lowest since 2002 with 184.8 assaults per 100,000.<sup>2</sup> Conversely domestic violence related assaults resulting in grievous bodily harm have increased by 2.5% from 2012 to 2014.<sup>3</sup>

We note a 2012 BOCSAR study that found less than 50% of victims reported domestic violence to police. Some of the reasons for under reporting were; community attitudes, the victim blaming themselves and a lack of awareness of services available.<sup>4</sup>

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<sup>1</sup> 'About us,' Directors and Advisers, Thomas Kelly Youth Foundation website. <http://thomaskellyyouthfoundation.org.au/directors/> current as of 22/04/15.

<sup>2</sup> Bureau of Crime Statistics and Research 2014

<sup>3</sup> Bureau of Crime Statistics and Research 2014

<sup>4</sup> Bureau of Crime Statistics and Research 2014, from 'The Law Handbook'.



It is our fear introducing the aggravating factor being proposed will have a greater impact on Aboriginal communities where already there is gross over-representation of Aboriginal people in our prison system. Our fear is that the prospect of different sentence outcomes where offenders have consumed alcohol and drugs will result in further pressure being placed on women, especially Aboriginal women, not to report domestic violence where alcohol or drugs were involved.

Since the year 2000 'king hit punches' have killed seven individuals each year,<sup>5</sup> while domestic violent homicides have accounted for around seventy deaths a year. This year alone has seen 33 victims of domestic violent related homicides<sup>6</sup>.

Emphasis on punishing alcohol fuelled violence whilst ignoring the more common acts of domestic violence may decrease the visibility of sentencing for victims of domestic violence. As a result public confidence in sentencing for domestic violence related claims may be diminished.

The reform does not seek to achieve cultural change in the sphere of domestic violence and is therefore not a true representation of the NSW community. Prioritisation of alcohol fuelled violence does not holistically address the community's concerns and adversely impacts victims of domestic violence.

*Whether the concept of "vulnerability" in s 21A(2)(1) of the Crimes (Sentencing Procedure) Act 1999 should be expanded to include the victim being unable or unlikely to defend themselves because of youth, age, sex, disability, physical constraints, inability to escape, lack of knowledge of attack, abused trust or emotional impediment as well as because of the victim's occupational vulnerability (such as a taxi driver, a bus driver, a public transport worker, a bank teller, a service station attendant or a cashier) or because of the victim being homeless.*

While we think this suggestion may have more relevance to the experiences of women whom have experienced domestic violence, unfortunately time does not permit us to comment on this suggestion at length, nor comprehensively.

If you have any questions about this brief submission please email Rachael Martin, principal solicitor: [REDACTED] or call our office on [REDACTED].

Yours faithfully,

**Wirringa Baiya Aboriginal Women's Legal Centre**



Rachael Martin

Principal Solicitor

On behalf of the staff and volunteers of Wirringa Baiya Aboriginal Women's Legal Centre whom have contributed to this submission.

<sup>5</sup> Hill, J 'The Monthly' Australian Politics, Society and Culture.

<sup>6</sup> Counting Dead Women, Destroy the Joint.