
From: Jonathan King
Sent: 07 February 2020 08:38
To: LegCo Members
Subject: Domestic Abuse Bill - evidence of Space 4 Action
Attachments: amendments.docx

Circulated at the request of Mrs Lord-Brennan

From: Lord-Brennan, Kate (MLC)
Sent: 05 February 2020 11:03
To: Jonathan King
Subject: FW: DA Bill comments and concerns

Dear Jonathan,

Below / attached for the committee.

I have indicated Legislative Council would be seeking to focus on the specifics of the legislation and don't wish to receive everything the department has already looked at.

Best wishes,
Kate

From: Tamasin Wedgwood
Sent: 05 February 2020 09:47
To: Lord-Brennan, Kate (MLC)
Subject: DA Bill comments and concerns

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That all sounds like good news!

If you have the 2019 responses you should have John Trott's comments and I'm sure he would be willing to have his brain picked further if wished. There will be other UK specialists/experts I can put you in touch with if wished – from various coercive control conferences and the Welsh DA Conference I attended last year. I also have a contact (not yet followed up I'm afraid! With a woman who trains in strangulation etc)

I will hunt through my conference notes and email contacts and try to send you helpful stuff.

Meantime, here is the document around Amendments which Ann Corlett had asked me for, but then due to the "rushing" of the bill through Tynwald we lost that opportunity to try for amendments. This document was comments and queries for questions around

certain clauses and suggested amendments. Clause 35 was and is a very concerning one as you will see in this document.

If you want it (!!) Jess and I also sent in a 22 page document of comments on the draft Bill, to be fair they did listen to a surprising amount of what we said and many changes were made but not the framework/strategy/oversight, nor the aggravating factors except children/pregnancy. If I get chance I will just pull out the extracts of that 22 pages that are still not addressed rather than sending you a mass of paperwork!

Tam

Sincerely,

Tamasin Wedgwood
Domestic Abuse Trainer & Advocate



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From: Lord-Brennan, Kate (MLC)

Sent: 04 February 2020 15:42

To: Tam - Space4Action

Subject: RE: possible change of date? RE: Business & domesticabuse,launchevent/speaking engagement

Dear Tam,

I hope you are well. At the Legislative Council sitting this morning, and after a good debate, which you can hear online, it was resolved that LegCo take evidence on the bill prior to the consideration of clauses, which was scheduled for next week.

This is absolutely with a view seeking to improve the bill and ensure it is fit for purpose, rather than to delay matters.

In any case, it was clarified by the mover of the bill today, that the legislation would need Guidance (which would need to be drafted and the DHA said would be consulted upon) before it comes into effect, which is some time off, so this process is not actually holding anything up, but will potentially inform guidance.

Part of something we can examine would be the workability / effect of the cross examination clauses, as these were not

We plan to hopefully hear from experts next Tuesday.

If you can please send me your thoughts / concerns re the specific clauses, as our enquiries must pertain to the specifics of the legislation, I will share them as evidence with the rest of the Legislative Council (as part of the Committee).

From: Tam - Space4Action
Sent: 03 February 2020 21:38
To: Lord-Brennan, Kate (MLC)
Subject: RE: possible change of date? RE: Business & domestic abuse, launch event/speaking engagement

Thanks Kate, will pull out my notes and be in touch asap. I agree re stalking also and did try to get that in as well as strangulation – again, the links are not being seen and he risk or significance. John Trott emphasised that DA needs to include stalking, not stalking seen as a separate offence. For some reason they didn't listen!

Tam

Tam, Space4Action

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To: [Tam - Space4Action](#)

Subject: RE: possible change of date? RE: Business & domestic abuse, launch event/speaking engagement

Hi Tam,

Apologies for the delay, I did mean to reply yesterday.

The opportunity has not been missed, the bill is still with the Legislative Council (second reading tomorrow).

It is very disappointing that it sounds like the department have indicated that there is no cost to the bill (I am not privy to those workings of DHA and not sure if that came out in Keys?), especially after the visit from John Trott and all the consultation responses that likely emphasised training.

I am disappointed that there is no Domestic Abuse Strategy yet and also that the consultation responses from 2018 were never published as that would be helpful to us now. These issues were raised at Legislative Council first reading.

The funding and training elements aside, (these will have to be dealt with via the Domestic Abuse Strategy, which has not yet surfaced and will probably also require separate funding requirements which DHA have apparently not dealt with – not sure if you saw the Tynwald Q some time ago on that? It's on Paul Moulton, you should look at it).

Right onto the legislation: which is the only thing I can attempt to influence or fix at present – if you can pull out your notes and specific queries and concerns re the bill in its present form that would be very helpful for Legislative Council, as separate to government and House of Keys, to see. So a summary on those specific clauses of concern, or missing elements that I can share with other Members at your earliest convenience.

Re strangulation, I agree and not sure why they are making such a song and dance of having an entirely separate bill – I will press on this. If current criminal code non-fatal strangulation is attempted murder, then I can't see why this can't be added as an aggravating factor.

I am also concerned about stalking, as this has been pointed out to me as a missing element and I don't see why this can't be added in to the DA bill, even though stalking isn't just related to DA. I spoke to an expert about this on Friday.

The DHA have gone from saying they will introduce a whole separate stalking bill to keys (the other day) to saying (today) they will add in to new Justice Bill. I will press on this.

I think elements of this have been difficult for Keys members as they were also dealing with Sexual Offences around the same time.

I would very very much like LegCo to take a detailed second look to see if the bill can be improved or flag up other matters for guidance.

When we first were seriously talking and consulting on domestic abuse legislation, much was made of the Scottish Gold Standard approach.

I am still trying to ascertain where this has gone awry! What are your views on how this measures up to Scottish Legislation? I need to examine / compare as well.

Please send me specifically what you can as to your concerns on the bill, in a format I can share at your earliest convenience.

Clauses is next week - which means that amendments need to be next week really -unless I can sort something out to have more of a focused look at this, which is what I would wish to do. I feel there is too much to consider and needs more time and examination in the scrutiny process.

If we don't get this as good as we can, it won't be revisited in legislative terms for a long time.

I think Legislative Council needs to hear your concerns on the specifics of the legislation, directly and in person if necessary, and establish does it reflect views conveyed via the consultation etc.

Remember when the abortion bill was going through - the advocacy group was chiming in constantly with support or otherwise, usually support in relation to specific clauses / provisions.

What I am saying is – is the work of Safe, Strong and Secure and your advocacy really done yet? There is more than one way to put your views and concerns across.

Kind wishes,

Kate

From: Tam - Space4Action

Sent: 02 February 2020 09:31

To: Lord-Brennan, Kate (MLC)

Subject: RE: possible change of date? RE: Business & domestic abuse,launchevent/speaking engagement

Caution: This email is from an external sender. Please take care before opening any attachments or following any links.

Hi Kate,

Really sorry, I only just got this message – [REDACTED]

I am free to talk this evening if that works. [REDACTED]

Big issues that we feel remain with the Bill are: lack of budget (still insisting this is a no cost Bill and will require no additional personnel etc – how can that be??! And lack of commitment to training. This simply cannot work if the police and Courts are not trained both in Coercive Control and risk, and in the actual Law itself. I Supposedly the police and social services are putting together an in house training package. My take on that, from personal, current experience, is that the police "high ups" have very poor understanding and recognition of coercive control and continue to "victim blame". So how can they train others?

I'll have to pull out my notes on the Bill to refresh my memory – I know there was one clause we had a lot of questions and concerns about but off the top of my head cant remember which. Also wanted desperately to have non-fatal strangulation included as an aggravating factor. So many cases on IoM include it and no one is recognising it as the danger and high-risk indicator that it is, or the traumatic effect on the victim. Time and time again men who have strangled till their partner turned blue are getting a suspended sentence and fine! We did manage to get it listed in the intro, but didn't get its own clause. (On the other hand I did also ask for presence of children to be an aggravating factor and that was heard and does get its own clause so very happy about that).

I have an article on non-fatal strangulation that I sent to Dr Allinson if you'd like a read. I also made contact with a woman in the UK who has lots of research on non-fatal strangulation and gives training in it, but was going to follow up with her and haven't yet.

Dr A has told me that they did agree with us on strangulation but felt it so important and also so "overlapping" with the sexual assault Bill, that it needs legislation of its own and will be looked at separately. That is good, but means pressure will need to be kept up ensure this happens! And I (with no legislative expertise or understanding whatsoever!) still question why it cant be included in the DA Bill as well anyway, as it is such an important, common and high risk aspect of DA.

Ann Corlett says she has discovered that under the current criminal code non-fatal strangulation is attempted murder. So another angle to pursue is why in that case are the police, AG and Courts not charging or treating it as such?

Jess and I feel the Bill still relies far too heavily on Notices and Orders – and what is going to be put in place or work with the victim during the duration of the order? There seems to be an assumption that an Order solves everything and all will be hunky dory after – rather than working to protect and support the victim and continuing to protect her after an Order expires.

and we also question the electronic tagging? Who will supervise it? Will it even work on the IoM (blackspots for mobile phones etc so will there be blackspots where the signal doesn't work?) In addition to the implications for victim safety if tagging has black spots, it will also impact on prosecutions as how could it be proved whether someone had tampered with the tracker or it had just gone into a black spot? And how can there possibly not be a cost attached????

Having said all that the Bill is immeasurably better than the first draft was, and much better to have a Law in place than no law at all. So we don't want to derail anything or even delay it – but this was an opportunity for the IoM to lead the way in unique, cutting edge legislation, and they missed it!!

Tam

Kind regards

Tam, Space4Action

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From: [Lord-Brennan, Kate \(MLC\)](#)

Sent: 31 January 2020 07:23

To: [Tam - Space4Action](#)

Subject: Re: possible change of date? RE: Business & domestic abuse,launchevent/speaking engagement

Great! Can you speak today?

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From: Tam - Space4Action
Sent: Friday, January 31, 2020 6:30 am
To: Lord-Brennan, Kate (MLC)
Subject: RE: possible change of date? RE: Business & domestic abuse, launchevent/speaking engagement

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Hi,

Thanks so much, apparently at the JSF meeting they weren't keen on April 3rd due to school hols but we are looking at other dates in April. I will confirm as soon as date is settled.

More than happy to have brain picked. There were a few aspects of the Bill I had some concerns/questions about!

Tam

Kind regards
Tam, Space4Action

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From: [Lord-Brennan, Kate \(MLC\)](#)
Sent: 28 January 2020 20:41
To: [Tamasin Wedgwood](#)
Subject: Re: possible change of date? RE: Business & domestic abuse, launchevent/speaking engagement

Ok! Happy to help.

Might need to pick your brains about some aspects of domestic abuse bill, will follow up.

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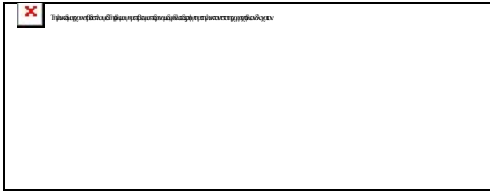
On Tue, Jan 28, 2020 at 8:31 PM +0000, "Tamasin Wedgwood" wrote:

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Please pencil us in!! We hope to confirm this date tomorrow and I will let you know asap – thank you so much!

Tam

Tamasin Wedgwood
Domestic Abuse Trainer & Advocate



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From: Lord-Brennan, Kate (MLC)
Sent: 28 January 2020 18:32
To: Tam - Space4Action
Subject: Re: possible change of date? RE: Business & domestic abuse, launch event/speaking engagement

Hi Tam,

Yes I could do April 3rd - let me know.

Kind wishes,

Kate

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From: Tam - Space4Action
Sent: Tuesday, January 28, 2020 4:22 pm
To: Lord-Brennan, Kate (MLC)
Subject: possible change of date? RE: Business & domestic abuse, launch event/speaking engagement

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Hi Kate, thanks for responding so quickly – a quick question, if we changed the date to April 3rd would you be able to make it?

We seem to be having a lot of issues with March 13th and will discuss at tomorrow's meeting whether to rethink the date...

Many thanks,
Tam, Space4Action

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From: [Lord-Brennan, Kate \(MLC\)](#)

Sent: 28 January 2020 14:35

To: [Tam - Space4Action](#)

Cc: 'Jessica Welch'

Subject: RE: Business & domestic abuse, launch event/speaking engagement

Dear Tam,

Thank you so much for thinking of me.

I would have been very happy to participate and to speak, however unfortunately I am already committed on that date.

Please let me know if I can assist in the future.

Best wishes,
Kate

From: Tam - Space4Action

Sent: 28 January 2020 09:01

To: Lord-Brennan, Kate (MLC)

Cc: 'Jessica Welch'

Subject: Business & domestic abuse, launch event/speaking engagement

Caution: This email is from an external sender. Please take care before opening any attachments or following any links.

Hi Kate,

As you know I and my colleague Jess Welch are piloting workplace domestic abuse training to create "workplace champions" for employees suffering DA and also to improve workplace safety and encourage businesses to have a DA Policy.

Our launch event, hosted by the Joanna Simpson Foundation, is on 13th March from 4pm-8pm.

We wondered if you would be willing to give a short address on the importance of tackling DA and why you (hopefully!!) support this project, especially with your "business hat" on as well as political. If you wanted also to mention personal experience as well that would of course be entirely up to you. But we are seeking a local speaker with knowledge and passion who understands both DA and business!

Our other key note speaker is Hetti Nanton who helped found the Employer's Initiative on Domestic Abuse in the UK, and also instigated Vodafone's work on DA, leading to the Bright Sky App.

The event will be introduced by Di Parkes of the Joanna Simpson foundation, and after the speakers, Jess and I will give a presentation about Space4Action and our proposed "Ask and Act" initiative. www.space4action.info

If you would speak we would be delighted, but we would also appreciate knowing asap just so we can get arrangements finalised and/or seek another local speaker if you are not available!

Hope you are well, and hope to hear from you soon!

All best wishes,

Tam

Tam, Space4Action

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RAAUE: S'preevaadjagh yn çhaghteraght post-l shoh chammah's coadanyn erbee currit marish as ta shoh coadit ec y leigh. Cha nhegin diu coipal ny cur eh da peiagh erbee elley ny ymmydey yn chooid t'ayn er aght erbee dyn kied leayr veih'n choyrtagh. Mannagh nee shiu yn enmyssagh kiarit jeh'n phost-l shoh, doll-shiu magh eh, my sailliu, as cur-shiu fys da'n choyrtagh cha leah as oddys shiu.

Cha nel kied currit da failleydagh ny jantagh erbee conaant y yannoo rish peiagh ny possan erbee lesh post-l er son Rheyynn ny Boayrd Slatyssagh erbee jeh Reiltys Ellan Vannin dyn co-niartaghey scruit leayr veih Reireyder y Rheyynn ny Boayrd Slatyssagh t'eh bentyn rish.

Amendments and/or Clarifications:

Clause 8: 1 (a) **may not contact** the person for whose protection the notice is given – should be amended to *“may not contact, whether directly, indirectly, or by third parties”*

Clause 20: 3(a) any risk that, if the order is not made immediately, P will **cause significant harm** to the person for whose protection the order would be made – should be amended to *“significant harm, whether physical or psychological”*

Clause 22: Clarity on not interfering workplace/education – what happens when victim attends same workplace/college?

Clause 31: Variation and Discharge of Orders: (4) The Court must hear from... *(c) this should read “the person for whose protection it was made”* - ie in all situations, not only in the circumstance that they themselves are asking to remove or reduce the order – victim should be at centre of all, the variation or discharge directly affects the victim and they should be able to address the Court or write to the Court highlighting any fears they may have if the order is lifted.

Clause 35: in 35 (1) and 35(3) the standard is **“ought to know”** and **“reasonable person”**. However in 35 (4) the standard becomes “beyond reasonable doubt.”

The wording around the Coercive Control offence should be more similar to that around the Domestic Abuse Offence – ie should mention psychological harm:

35 (1) – should add in (e) *“or A is reckless as to whether the coercive behaviour causes B psychological harm”*

35 (2) A’s behaviour has a serious effect on B if: this section is currently inadequate: add in

c) it regulates, monitors, or restricts B’s freedom of action in a way that impacts on B’s usual daily activities

d) it isolates B from B’s usual social contacts, daily activities, family or sources of support

(e) it restricts B’s access to appropriate health care or similar essential services

Also in Clause 35: the Coercive Control offence is given a defence – that P believed that he was acting in B’s best interests: CLAUSE 35 IS NOT FIT FOR PURPOSE BECAUSE:

- (a) It is worded such that P’s defence that he controlled B “in their best interests” is considered to be accepted unless the prosecution can prove otherwise “beyond reasonable doubt”. This would be very hard to prove and also seems to contradict the “reasonable person ought to know” standard. And the balance seems too far in P’s favour.
- (b) The Domestic Abuse Offence has no such defence (that P believed the abuse was in the victim’s “best interests”). Why then is this a defence for the Coercive Control Offence?

- (c) Having such a defence for CC sends the message that there is no excuse for physical violence (DA) whether or not the abuser thought it in the victim's best interests - whereas there can be an excuse for coercion and manipulation etc. (Similarly, 35 (6) states this defence is not available if B has been put in fear of physical violence). This seems to imply that the physical abuse is more serious or has greater impact than the Coercive Control offence – this is incorrect. Coercive Control is often more damaging and more invidious and furthermore, Coercive Control underpins all other forms of Domestic Abuse. There should be no circumstances where the coercive control of another human being is legal or acceptable. This defence is inappropriate in both Offences.
- (d) Abusive people are pandered to by such a defence – it feeds the abusers sense of entitlement that they can do what they like to another person and they know best. Abusers claim their victims are unwell/mentally ill/ incompetent etc and this is part of the psychological abuse. If this becomes legitimised as part of an abuser's defence the Courts (and this Law) will be colluding in this abuse and revictimising B in Court.
- (e) Under the Human Rights Act people have a right to a private life and to choices and freedoms. (eg. rights to freedom from inhumane or degrading treatment, freedom of thought, freedom of assembly/association, right to liberty and security). It should not therefore be acceptable to say that someone is entitled to remove or restrict someone's basic freedoms if they think it was in the person's "best interests". **Coercive control needs to be understood as a liberty crime, that attacks a person's basic human rights**, and this Bill cannot offer a defence or justification for that.
- (f) Under capacity law (UK) and the IoM DHSC definition of Capacity a person is deemed to have capacity to make their own decisions unless there is a specific legal ruling or diagnosis saying they do not. **To allow this defence flies in the face of Capacity law as well as Human Rights Law – the victim – B – has the right to make their own choices, even if those are risky or unwise choices, and irrespective of whether P agrees with those choices**. It cannot be a defence for P to claim that he restricted those choices and freedoms and controlled/manipulated B's because he felt he knew best- "in their own best interests" is simply not acceptable.
- ALL IN ALL CLAUSE 35 NEEDS SUBSTANTIAL REWORDING OR PREFERABLY THE TOTAL REMOVAL OF THIS DEFENCE.**

CLAUSE ON ASPHYXIATION/STRANGULATION AS AN AGGRAVATING FACTOR – to be added after Clause 40:

41:AGGRAVATION OF OFFENCE WHERE ASPHYXYATION IS INVOLVED:

- (1) *The charge of the Domestic Abuse Offence or the Controlling or Coercive Behaviour Offence against A may include the allegation that the offence is aggravated by reason of the use of asphyxiation:***
- (2) *For the purposes of this section, "asphyxiation" means the actual or attempted deprivation of oxygen that can result in unconsciousness and often death, produced by any serious interference with normal respiration.***

(3) For the purposes of this section, the domestic abuse or controlling and coercive behaviour offence is aggravated by reason of asphyxiation if:

At any time in the commission of the offence, A's behaviour towards B includes:

- (a) choking*
- (b) placing hands around the throat or strangulation whether manually or by ligature*
- (c) smothering or suffocation*
- (d) holding B's head under water*
- (e) restraint that restricts or constricts airways*
- (f) any other deliberate act of constricting airways or compromising B's ability to breathe.*

(4) The Court must –

- (a) state on conviction that the offence is aggravated by reason of asphyxiation.*
- (b) Record the conviction in a way that shows that the offence is so aggravated*
- (c) In determining the appropriate sentence, treat the fact that the offence is so aggravated as a factor that increases the seriousness of the offence and,*
- (d) In imposing sentence, explain how the fact that the offence is so aggravated affects the sentence imposed.*

(5) If the charge –

- (a) Is not proved as respects the allegation of aggravation but*
 - (b) Is otherwise proved,*
- A may be convicted of the charge without the allegation of aggravation.*

IDEALLY NEED A SIMILAR CLAUSE COVERING STALKING AS AN AGGRAVATING (and high risk) FACTOR IN DA. THIS IS BEING OVERLOOKED BY CURRENT BILL.

Clause 43: - will the Department be making funds available for the purchase and monitoring of electronic tagging equipment?

Page 44 of 44 –either remove reference to stalking. This Bill does not cover stalking. Unless a clause is added to cover stalking within DA.