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3 March 2016

Ms Yvette D'Ath MP
Attorney-General and Minister for Justice
Minister for Training and Skills
GPO Box 149 Brisbane
QUEENSLAND 4001

By email: attorney@ministerial.qld.gov.au

Dear Attorney-General,

Not Now, Not Ever Recommendations

Thank you for the opportunity to provide comments in relation to recommendations 67, 68 and 69 of the report of the Special Taskforce on Domestic and Family Violence in Queensland (Taskforce), *Not now, not ever: putting an end to domestic and family violence in Queensland* (Report).

Free TV Australia (Free TV) is the peak industry body representing Australia's commercial free-to-air television broadcasting licensees. At no cost to the public, our members provide fifteen channels of content across a broad range of genres, as well as rich online and mobile offerings. On any given day, free-to-air television is watched by more than 13.5 million Australians.

We very much value the opportunity to contribute to your Government's consideration of these very important issues.

Amendments to civil and criminal legislation

As noted in your letter, the Report states that "*Journalists and the media generally need support, guidance and appropriate legal protection to be able to confidently report on incidents of domestic violence in a way that promotes cultural change, protects victims and provides support where needed.*"

Free TV agrees with this sentiment. Free TV notes that while the recommendations in the Report relate specifically to publishing domestic and family violence support services information, in our view, the key issue for the media in Queensland is that a number of legislative barriers impede broadcasters reporting on incidents of domestic violence at all.

We acknowledge that in many instances such restrictions are justified in order to protect children and other victims/survivors of domestic violence. However in some instances the current provisions go beyond what is necessary, and unduly impede reporting of this important social issue.

We therefore recommend a review of current relevant civil and criminal legislation to identify and amend legislation that may impede the media from reporting on domestic violence matters more broadly (beyond support services information). We outline the key pieces of legislation that are of concern to broadcasters below.

Domestic and Family Violence Protection Act 2012

The following provisions in the Act limit the ability of the media to report domestic and family violence cases brought before a court:

- Section 158

This provision requires a court hearing an application under the Act not to be open to the public. This severely restricts the reporting of matters involving domestic violence in Queensland and is inconsistent with the principles of open justice and freedom of communication. It appears to have been carried over from the previous Act, the *Domestic and Family Violence Protection Act 1989*. In light of the Queensland Government's strategy on domestic violence, Free TV is of the view that this position should be reconsidered. There should be a presumption in favour of open court proceedings. This would be consistent with other Australian jurisdictions, which generally require proceedings to be in open court unless either the court orders otherwise or unless certain circumstances exist.¹

- Section 159

This provision provides a prohibition on publication of certain information in relation to a proceeding under this Act. While s 159(2) provides for exemptions, including in circumstances where the court expressly authorises the information to be published, Free TV does not consider this to sufficiently balance the need to facilitate open and accountable court processes with the need to effectively protect individuals from the publication of highly sensitive information. In Free TV's view, the balance would be better struck if the presumption was reversed, that is; if there was a presumption in favour of publication, with the court having the power to make non-publication and suppression orders on a case-by-case basis.

Alternatively, the exemption at s 159(2)(b) which requires the consent of 'each person to whom the information relates',² should be amended so that it only requires the consent of the complainant. Additional protection to prevent identification of the child could be incorporated by including a provision allowing the court to make an order that the child not be identified in certain circumstances.

Free TV notes that while Regulation 3 of the *Domestic and Family Violence Protection Regulation 2012* allows information prohibited under s 159 to be published in certain limited circumstances, those circumstances are limited to circumstances where the respondent has either been convicted of an offence related to the domestic violence order or has caused the death of the aggrieved person.³ In practice, because of the time lag between charges being laid and conviction for an offence, it means that Regulation 3 rarely applies.

- Section 160

This provision prohibits people obtaining copies of documents for proceedings if they are not involved in the proceedings, unless expressly authorised by a court. It acts as

¹ For example, see *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s 41; *Family Violence Protection Act 2008* (Vic) s 68; *Restraining Orders Act 1997* (WA) s 27; *Domestic Violence and Protection Orders Regulation 2009* (ACT) regs 14, 15; *Domestic and Family Violence Act 2007* (NT) s 106.

² *Domestic and Family Violence Protection Act 2012*, s 159(2)(b)

³ *Domestic and Family Violence Protection Regulation 2010*, ss 3(2) & (3).

an impediment for journalists reporting on domestic violence matters. As with s 159, Free TV would support a presumption that copies of proceedings are be available to persons who are not involved in the proceedings, with the court having a reserve power to deny access on a case-by-case basis.

Child Protection Act 1999

Free TV recommends the repeal of section 189(2) of the *Child Protection Act*.

Section 189(2) prohibits publication of information that identifies, or is likely to lead to the identification of a child who:

- has been harmed or allegedly harmed by a parent or step-parent of the child or another member of the child's family; or
- is, or allegedly is, at risk of harm being caused by a parent or step-parent of the child or another member of the child's family.

The scope of the provision is unclear and unduly broad and overlaps significantly with:

- s 189(1) (which prohibits the publication of information of a child in the context of an investigation or order under the Child Protection Act); and
- s 194 (which prohibits the publication of information identifying child victims).

While ss 189(1) and 194 cover a comprehensive range of circumstances, those circumstances are relatively clear. Section 189(2) however, appears to largely overlap with ss 189(1) and 194 but also creates significant uncertainty in relation to the types of situations that are intended to be covered.

In broadcasters' experience, s 189(2) has been used to prevent reporting in a range of circumstances involving domestic violence where a child is present, including reporting where the child is not named and no images of the child are shown. This interpretation of the provision means that in practice, it acts more as a shield for perpetrators of domestic violence than a protection measure for children.

Proposed amendment to the Defamation Act 2005

Free TV is committed to fair and ethical reporting of domestic violence issues and is supportive of reforms that facilitate appropriate reporting of domestic violence incidents.

As noted above however, Free TV's view is that reforms to existing laws which impede reporting on domestic violence matters, such as those outlined above, are key to achieving this.

While Free TV is supportive of ensuring that the media has appropriate defences to defamation for publishing information that is in the public interest, a defence such as the one suggested would have limited value in practice in circumstances where:

- the existing defence of fair report of proceedings of public concern would apply in a broad range of circumstances where domestic violence charges have been laid, including in court, tribunal and parliamentary proceedings across all jurisdictions;⁴ and

⁴ Uniform Defamation Laws, s 29.

- there are a number of provisions in existing acts (as outlined above) that would limit the ability of the media to report on domestic and family violence cases, regardless of any defences to defamation.

If a defence such as the one outlined in Recommendation 67 is pursued however, Free TV also supports Recommendation 68. Any defences to defamation should be uniform and available across all jurisdictions. This is critical for the media when publishing nationally available content.

Contact

If you have any queries or wish to discuss any of the matters raised in this letter, please contact me on (02) 8968 7100.

We look forward to engaging further with you on these issues and are happy to discuss with you or your representatives at your convenience.

Yours sincerely,



Julie Flynn
Chief Executive Officer