



## VICTORIAN WOMEN'S TRUST

Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Secretary,

Thank you for the opportunity to submit to the Senate Legal and Constitutional Affairs Committee on the *Family Law Amendments (Family Violence and Other Measures) Bill 2017*.

Since 1985 the Victorian Women's Trust has been making grants, writing policy submissions, campaigning and commissioning research to ensure one of our key focus areas; women's health and safety, is encouraged, supported and maintained.

Our current and former project initiatives such as *Be The Hero!*, *Rosie* and *Club Respect* as well as previous community grants have focused on teaching young Australians to respect those around them; assist men and boys to minimise and eliminated violent attitudes and behaviours towards women and girls; and help women and girls build resilience.

In our submission, we discuss the scourge that domestic violence constitutes in our society and the legislative and policy intervention vacuum that has persisted in Australia since federation which has ensure the deeply embedded, systemic and wicked nature of this problem.

Against this historic family violence policy and legislative context, many of the proposed amendments to the *Bill* are welcomed as they ensure that the courts are prioritising the needs of the victim-survivors and their children, sending strong messages to perpetrators and the wider community that violence is unacceptable and that perpetrators will be held responsible for their decision to use violence.

Thirdly, in writing this submission we consulted with safe steps Family Violence Response Centre and endorse their opinion that these legislative amendments need to be supported by adequate resourcing of courts, legal centres as well as training of judicial officers to ensure the intention of these legislative amendments are being achieved in practice.

We welcome all further legislative and practical steps to maintain the momentum needed to eventually free our society of the scourge of family violence.

Regards,

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## **1. The scourge of family violence**

There is no doubt that family violence remains the most urgent law and order emergency occurring in our state and the most unspeakable crime unfolding across our nation, as categorised by Victorian Premier Daniel Andrews in 2014.<sup>i</sup> It is alarming in its prevalence, persistence, and the human toll it takes on individuals and families across every demographic of Australian society.

A century or more ago, Australian suffrage campaigners agitated for the vote not so much out of enthusiasm for their democratic rights but as a political weapon to see an end to violence against women in their homes and on the streets.

Despite this strong campaigning by the women's movement and individuals, 'historically...policy responses have tended to trivialise, dismiss and misunderstand family violence and in the criminal justice system this view has sometimes been manifest in a reluctance to charge or prosecute family violence-related offences and in the imposition of inadequate, inconsistent or ineffective sentences', as pointed out in the Victorian Government's Royal Commission into Family Violence.<sup>ii</sup>

Every year we continue to see women dying, becoming permanently disabled, falling into poverty and committing suicide due to the violence they have suffered. We continue to see children and adolescents traumatised by witnessing the violence around them, being abducted and kidnapped by perpetrators of violence as well as re-enacting the violence they have experienced on others around them. We continue to see perpetrators unashamedly use violence against those considered their loved ones, repeatedly defy judicial orders to stop the violence and having inadequate access to holistic restorative justice pathways to change and stop their violence.

Thus, many of the amendments outlined in the *Bill* are welcomed. We will highlight three of those below.

## **2. Welcomed amendments**

### **Item 27 and 28**

#### *Amending Section 68C of the Family Law Act 1975 and New Section 114AA*

It is pleasing to see that this amendment implements the 2010 recommendations by the Australian and New South Wales Law Reform Commissions and partially implements recommendation 131 of the Victorian Royal Commission into Family Violence, to provide that a breach of an injunction for personal protection is a criminal offence.

Given that Crime Statistics Agency analysis has shown that a relatively small number of recidivist perpetrators account for a disproportionate number of family violence incidents attended by the Victoria Police,<sup>iii</sup> this amendment has the potential to decrease the number of recidivist perpetrators and therefore the number of family violence incidents attended to by police. It also increases the efficacy of personal injunctions in their ability to deter the perpetrator from breaching an injunction.

Making the breach of an injunction an offence across all states and territories also ensures operational and legislative consistency enabling police and courts to proactively train for and enforce personal protection injunctions regardless of where the perpetrator is in Australia.

Though not alone in deterring perpetrators of violence, the message sent by this amendment, that family violence is not a private matter but it is criminal behaviour, is an important one for the community and victim-survivors of family to hear.

#### *Subsections 68C (2) and 68C (3) of the Family Law Act*

Given that alcohol consumption is a common feature of family violence incidents where perpetrators choose to use violence, non-consideration of defence of self-induced intoxication in breaches of personal injunction is a welcomed amendment to the *Family Law Act 1975*. This provision plays a crucial role in communicating to perpetrators that their alcohol-consumption is not an excuse and that they, 'will be held accountable for their actions.'<sup>iv</sup>

Given that in Victoria domestic homicides spike on weekends with the most likely time for a family violence homicide occurring on Sunday nights, a time of the week that coincides with culturally-endorsed alcohol consumption, this amendment may be the first step in reducing the spike in weekend domestic homicides.<sup>v</sup>

This is a welcomed change from the prevailing culture that it was acceptable for men to use family violence while they were intoxicated and constitutes a powerful message to both men who use violence, and the community more generally that this is no longer acceptable behaviour.

### **Item 30**

#### *Repeal subsection 114(2) of the Family Law Act 1975*

Repealing subsection 114(2) as it relates to the performance of marital duties or rendering conjugal rights is an important clarification to align the *Family Law Act 1975* with current societal understandings of the institution of marriage. The Victorian Women's Trust agrees wholeheartedly that these concepts, 'do not reflect current law, and are repugnant to modern principles of autonomy and equality within relationships.'<sup>vi</sup>

Autonomy and equality of relationships within marriage, supported by this amendment, are a vital part of the ongoing conversation to promote non-violence not only towards women but all members of our community.

### **3. safesteps Family Violence Response Centre response to the *Bill***

In writing this submission we consulted with Victoria's primary family violence response service safesteps Family Violence Response Centre.

safesteps advise that the legislative amendments in the *Bill* need to be supported by:

- increased funding to state and territory courts to ensure they have the capacity to cope with increased demand stemming from the expansion in their jurisdiction to include family law matters;
- increased funding to community legal services (including Legal Aid and community legal centres) to meet increasing demand and reduce the number of self-represented female litigants in family law matters. Many women are unable to afford independent legal representation and/or unable to obtain Legal Aid and are clearly disadvantaged in family law disputes as a result of this; and
- comprehensive and ongoing training for judicial officers from family law courts and state and territory courts that preside over matters involving family violence.<sup>vii</sup> This will ensure the intention of the legislative amendments is being achieved. In particular, to better protect victim-survivors of family violence from vexatious legal action by perpetrators who attempt to use the system as a tool of continued victimisation by improved ability of judges to recognise perpetrator abuse of the family law system.

Effective outcomes for people experiencing family violence relies on a holistic response across judicial, police, government, service providers and the wider community and needs to be resourced adequately now and into the future.

### **4. The need for paid domestic violence leave in Australia**

While many of the amendments contained in the *Bill* support women and children to better navigate the family law system to ensure their safety, victim/survivors need access to paid domestic violence leave to navigate the domestic violence system, especially as self-litigants, while retaining their ability to be in paid employment.

We know that two thirds of Australian women experiencing family violence are in paid employment.<sup>viii</sup> Also that economic factors are the largest predictor of whether a woman remains, escapes or returns to an abusive relationship.<sup>ix</sup>

The workplace has an important role to play in supporting women who are experiencing domestic and family violence. Moo Baulch, the chief executive of Domestic Violence NSW told the *New York Times* in July 2017 that by implementing workplace domestic violence leave, 'You actually create a culture in the workplace to understand the dynamics of domestic violence and recognising it impacts almost every family in Australia in some shape or form.'<sup>x</sup>

The VWT welcomes proposals by the Labor Party to legislate to provide for 10 days paid domestic and family violence leave in the National Employment Standards if elected in the next Federal election;<sup>xi</sup> and urges other political parties to come together in bipartisan support of this proposal.

Family violence should not mean that a woman loses her job and becomes financially insecure while trying to ensure herself and her family's safety.

## 5. Endnotes

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<sup>i</sup> Victorian Premier 2014, Premier Announces Royal Commission into Family Violence, Media Release, 23 December, Melbourne: Victorian Government, viewed February 2 2018, <http://www.premier.vic.gov.au/premier-announces-royal-commission-into-family-violence/>

<sup>ii</sup> State of Victoria, Royal Commission into Family Violence: Summary and recommendations, Parl Paper No 132 (2014–16), 27.

<sup>iii</sup> Crime Statistics Agency 2016, *An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009-10 to 2013-14*, Table 42: Number and proportion of incidents recorded for perpetrators who committed 1,2, 3 and 4 or more incidents between 2004-5 and 2013-14, 106, provided to the Royal Commission into Family Violence, 8 January 2016.

<sup>iv</sup> Senate Constitutional and Legal Affairs Committee 2017, *Family Law Amendment (Family Violence and Other Measures) Bill 2017: Explanatory Memorandum*, Canberra: Australian Government, 27.

<sup>v</sup> Bryant, W., & Cussen, T., 2015, *Homicide in Australia: 2010–11 to 2011–12: National Homicide Monitoring Program report no. 23*, Canberra: Australian Government Institute of Criminology, 8, 11.

<sup>vi</sup> *Family Law Amendment (Family Violence and Other Measures) Bill 2017: Explanatory Memorandum*, 36.

<sup>vii</sup> See recommendations 27 and 28 of the *Parliamentary inquiry into a better family law system to support and protect those affected by family violence*, Australian Government, available [https://www.aph.gov.au/Parliamentary\\_Business/Committees/House/Social\\_Policy\\_and\\_Legal\\_Affairs/FVlawreform/Report/section?id=committees%2freportrep%2f024109%2f25158](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/FVlawreform/Report/section?id=committees%2freportrep%2f024109%2f25158)

<sup>viii</sup> Australian Bureau of Statistics 2005, *Personal Safety Survey*, Catalogue No 4906.0, 11, 34.

<sup>ix</sup> Male Champions of Change 2015, 'Playing our part: workplace responses to domestic and family violence', Media Release, viewed online 20 June 2016, <<http://malechampionsofchange.com/wp-content/uploads/2015/11/Playing-Our-Part-Male-Champions-of-Change-Letter.pdf>>

<sup>x</sup> Baidawi A & Kwai I 2017, 'Domestic Violence Leave to Be Recognised-But Only Unpaid', *New York Times*, 4 July, viewed 19 July 2017, [https://www.nytimes.com/2017/07/04/world/australia/kenneth-elliott-trump-bali-indonesia.html?utm\\_source=To+Her+Door&utm\\_campaign=5cb18dec93-](https://www.nytimes.com/2017/07/04/world/australia/kenneth-elliott-trump-bali-indonesia.html?utm_source=To+Her+Door&utm_campaign=5cb18dec93-EMAIL_CAMPAIGN_2017_07_05&utm_medium=email&utm_term=0_e46ab3f3da-5cb18dec93-59641819)

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<sup>xi</sup> Patty, A 2017, 'NSW Labor commits to extending paid domestic violence leave to 10 days', *Sydney Morning Herald*, 6 December, viewed online 5 February 2018, <<http://www.smh.com.au/business/workplace-relations/nsw-labor-commits-to-extending-paid-domestic-violence-leave-to-10-days-20171205-gzz7xh.html>>