

The Hon. Robert Clark, MP
Attorney-General
Minister for Finance
Level 26, 121 Exhibition Street
Melbourne
Victoria, 3000

9 September 2011

Dear Attorney-General

Re: Submission to the Victorian Government in response to the discussion paper on the proposed 'Failure to Protect' legislation

I am writing as chair of the North West Metropolitan Region Integrated Family Violence Forum (NWMRIFVF) to express our opposition to the proposed 'failure to protect' legislation.

The NWMR IFVF is the regional voice for identified key priorities arising from the integrated family violence reforms as impacting on the Northern Integrated Family Violence Network and the Western Integrated Family Violence Committee. Membership includes key representatives from the sub-regional governance structures, the regional Men's Integrated Family Violence Partnership, the Western and the Northern Integrated Women's and Children's Family Violence Partnerships, the Aboriginal and Torres Strait Islander Regional Action Group, Victoria Police Family Violence Advisors, Think Child and representatives of child protection, sexual assault, family services, housing and community programs.

As such, we have significant experience in the provision of integrated family violence services for men as perpetrators of family violence, services for women and their children escaping family violence, services acting to prevent family violence, and child protection and family support services and authorities working to strengthen systems and networks that respond to violence against women and children.

The regional group are clear that rates of child abuse in Victoria are unacceptably high and that more needs to be done to protect vulnerable children. However, we strongly oppose the introduction of the proposed laws as they will increase women's vulnerability to family violence without protecting children from violence and abuse.

Evidence shows that the overwhelming majority of abuse and violence is perpetrated by men against women.¹ The largest single risk factor for becoming a victim of sexual assault and/or domestic violence is, simply, being female.² As a result, the greatest measures to protect children from violence and abuse are to strengthen women's ability to protect their children, and to hold perpetrators of violence against children accountable for their actions. To do this, the government requires a whole-of-government commitment to prevention of violence against women and their children; a greater investment in services, systems and networks that support and protect women and children at risk of violence, and hold men accountable for their violence; and recognition that the Children, Youth and

Families Act 2005 already includes a 'failure to protect' offence that could be invoked by Victoria Police.

Child abuse occurs in families where domestic violence is a factor

Evidence clearly demonstrates the co-occurrence of child abuse with family violence and the impact of violence on the developmental needs and safety of children and young people.³ For instance:

- Family violence is a factor in over half of substantiated child protection cases in Victoria⁴
- Of the 16 child death cases reviewed in the 2010 Annual Report of Inquiries into the Deaths of Children known to Child Protection, family violence was a factor in 10 cases (62%).
- In more than 35% of 'family violence incidents' recorded by police in each of the years 1999/00 to 2007/08, at least one child was present⁵

The Australian Domestic and Family Violence Clearinghouse state that 'it is estimated that in 30 to 60 per cent of families where domestic violence is a factor, child abuse is also occurring'.⁶ In cases where the failure to protect laws are likely to be considered, there is a very strong likelihood that there will be a history of family violence perpetrated against the mother of the child.

'Failure to protect' laws could increase the vulnerability of some groups of women and children

While violence against women and their children affects all communities, evidence shows that certain groups of women are particularly vulnerable to violence. Women with disabilities, young women, Aboriginal and Torres Strait Islander women, women in communities affected by socio-economic disadvantage, women from culturally and linguistically diverse backgrounds and women who are newly-arrived migrants or refugees are all at higher risk of being subject to violence.⁷

Each of these groups of women faces powerful barriers in leaving a violent or abusive partner, such as affordable and accessible housing, and access to employment, services and culturally-appropriate supports. These are the same groups of women who are likely to face prosecution under the proposed laws for allegedly failing to protect their children from violence that they are unable to protect themselves from.

While the proposed legislation assumes that adults are able to take reasonable steps to protect a child, such as intervening to prevent the abuse, removing the child from the abusive environment and reporting the abuse to the relevant authorities, in situations where a non-abusive parent is also a victim of family violence, these 'reasonable' steps are unrealistic. Family violence undermines a mother's parenting ability, reduces her confidence, her capacity to act and her judgment. Leaving a situation of family violence also places women at greater risk of homicide than remaining with a violence partner.⁸ Preventing family violence, reducing barriers to leaving a violent situation, providing a range of support systems and networks that protect and strengthen a woman's capacity to act are

again keys to protecting children. This approach presents a major opportunity for the Baillieu Government to act decisively to reduce and prevent the significant social, economic, emotional and health impacts attributable to violence against women and their children.

The NWMR IFVF endorses the joint submission prepared by the Women's Legal Service Victoria, Federation of Community Legal Centres, No To Violence, Domestic Violence Resource Centre Victoria, Women with Disabilities Victoria and Domestic Violence Victoria, and reiterate their six main concerns.

1: Premature

A coordinated approach to child protection reforms is essential. Any decision about enacting the proposed 'failure to protect' laws should await the outcome of the government's 'Protecting Victoria's Vulnerable Children Inquiry', due November 2011.

2: No justification

There is currently no evidence that the proposed laws are necessary or effective in either protecting children from violence and abuse, or increasing reporting of abuse. Further, existing legislation already includes a provision for 'failure to protect' as an offence. A review of child death and serious harm cases in Victoria is recommended to establish whether 'failure to protect' laws would have been appropriate in any of those circumstances. If changes are desirable to meet the shortcomings exposed in those cases, it is likely that far narrower legislative intervention would suffice.

3: Unintended consequences

'Failure to protect' laws have the potential to unintentionally cause more harm to children. It undermines child protection practices aimed at strengthening the mother-child relationship and working with non-abusive parents to support and protect their children. It could inadvertently result in increased 'revenge killings' (where a father kills the child to punish the mother, leaving her open to prosecution for 'failure to protect') or children being left in the care of the perpetrator or the state after the mother is incarcerated for 'failure to protect'.

4: Too simplistic

'Failure to protect' laws do not adequately recognise the dynamics and complexities of family violence and are detrimental to women and their children experiencing family violence. In particular, the legislation fails to take account of the powerful barriers to a woman leaving an abusive relationship or reporting that abuse.

5: Discrimination

'Failure to protect' laws will have a disproportionate and discriminatory impact on women who are themselves the victims of family violence. The discriminatory effect of the proposed laws is likely to be exacerbated by well-established gender stereotyping and bias. It will be further heightened for women

with disabilities, Indigenous women and women from culturally and linguistically diverse (CALD) communities, who face additional barriers to reporting.

6: Incorrect allocation of responsibility

'Failure to protect' laws will have a negative impact on recent family violence reforms, and their particular emphasis on ensuring that the perpetrator, not the victim, bears the responsibility for violence. Importantly, they are inconsistent with Victoria Police's Code of Practice for the Investigation of Family Violence. Legislation needs to be directed at the offender, not the victim. In order to protect children, the focus should instead be on greater investment in the services, systems and networks that support and work with protective parents. These must be significantly resourced and strengthened to ensure vulnerable women and children are properly protected when they are at risk.

The NWMR IFVF urge the government *not* to enact the proposed laws and, instead, to commit to a greater investment in the prevention of family violence, and in supporting the systems and networks that respond to violence against women and children, and strengthen and support protective parents. I trust that these points will be taken into consideration and ask that you respond to this letter outlining the ways in which you have incorporated the concerns raised.

Please do not hesitate to contact me on (03)9689 9588 or by email on robyng@whwest.org.au if you require any further information.

Yours faithfully



Dr Robyn Gregory
Chair
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¹ National Council (2009) *A Time for Action: The National Council's Plan to Reduce Violence Against Australian Women and Children 2009-2012*, Canberra.

² Ibid, p. 26

³ S Holt et al, "The impact of exposure to domestic violence on children and young people: A review of the literature", *Child Abuse and Neglect* 32 (2008) 797–810).

⁴ See www.health.vic.gov.au/childrenatrisk/parents.htm

⁵ Department of Justice Victoria, *Victorian Family Violence Database Volume 4 Nine year trend analysis* (1999-2008). The figure ranges, to almost 50% for the years 2003/04 and 2004/05.

⁶ 'Australian Domestic and Family Violence Clearing House Topic Paper', *Australian Statistics on Domestic Violence* (2003), 7.

⁷ It is widely held that fewer than 20 percent of incidents are reported to police (OWP 2002; VicHealth 2004)

⁸ Victorian Law Reform Commission, *Review of Family Violence Laws* (2006), 32