



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 convener of the Women's Health Association of Victorian (WHAV), the peak association for Victorian women's health services, to submit the response of our members to this proposed law.

WHAV comprises rural, regional and state wide organisations with significant experience in advocating for and acting to improve women's health and safety outcomes. This includes ensuring that services are accessible and responsive to the diversity of women across Victoria. Each of the women's health organisations works across multiple local government areas, with our staff dealing with the complexity of large and diverse regions. A number of the organisations provide a service to women and their children escaping family violence, and each is involved in a continuum of work to prevent violence before it occurs.

WHAV members 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.

This submission provides evidence of the reasons for that opposition and outlines an alternative to the implementation of an ineffective law.

Preventing family violence will protect vulnerable children

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 recognition that the Children, Youth and Families Act 2005 already includes a 'failure to protect' offence that could be invoked by Victoria Police.

While widespread under-reporting means that the available data cannot capture the true extent of violence perpetrated against women¹ the reported incidence alone constitutes significant cause for alarm. Research shows that:

- Over one in three Australian women have experienced physical violence since the age of fifteen³
- Nearly one in five Australian women have experienced sexual violence since the age of fifteen⁴
- One in ten Australian women will be raped by their partner⁵
- A significant proportion of Australian women – 16 per cent – have experienced violence at the hands of a current or previous partner⁶
- Police reports of family violence increased by 21.6 per cent in the 2010-2011 financial year, despite the total number of crime offences reported in Victoria dropping by 2.4 per cent

It is no wonder that the Minister for Crime Prevention, Andrew McIntosh, recently described prevention of family violence as *the* priority crime prevention issue facing Victoria.⁷

Women face powerful barriers in leaving a violent or abusive partner

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.⁸ For example:

- Women from immigrant and refugee communities constitute 32 per cent of the Victorian population, yet made up 42 per cent of women using women's refuges in 2009.⁹
- Indigenous women are 35 times more likely to be admitted to hospital as a result of intimate partner violence than non-Indigenous women.¹⁰
- Women with disabilities are victims of assault, rape and abuse at a rate twice that of women without disabilities, regardless of age, race, ethnicity, sexual orientation or class.¹¹

It is also known that pregnant women are particularly vulnerable to violence. A recent Australian Women's Safety Survey found that 42 percent of women who reported being a victim of intimate partner violence were pregnant at the time they were abused.¹²

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.

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.¹³ For instance:

- Family violence is a factor in over half of substantiated child protection cases in Victoria¹⁴
- 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 present¹⁵

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'.¹⁶ 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.

The proposed law victimises victims of family violence

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.¹⁷ Preventing family violence, reducing barriers to leaving a violent situation and strengthening a woman's capacity to act are again keys to protecting children.

Violence against women and their children *is* preventable

While there is no single cause of violence against women and their children,¹⁸ a range of consistent determinants have been identified. Many of these relate to ongoing social inequalities between women and children, and men. As the well established VicHealth evidence demonstrates, the key determinants of family violence include:

- Unequal power relations between men and women
- Adherence to gender stereotypes
- Broader cultures of violence

'Primary prevention' initiatives are those that aim to stop violence from occurring in the first place. Policy and practice frameworks such as that devised by VicHealth – *Preventing Violence Before it Occurs* – recommends that the primary prevention of family violence be guided by three intersecting components:

- Promoting equal and respectful relationships between men and women
- Promoting non-violent social norms and reducing the effects of prior exposure to violence
- Improving access to resources and systems of support.

It is now widely recognised that a health promotion response to family violence has significant potential to reduce violence, as well as in providing a framework for further understanding the causes and impacts of this violence.

A coordinated and multidisciplinary approach is essential to protecting children

To protect vulnerable children, a whole-of-government approach to prevention necessarily sits alongside response. A key prevention tool is to incorporate violence against women and their children as a statewide health promotion priority, leading to prevention programs, research, policy and legislative reform and other strategic actions. 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. Strategic positioning of primary prevention of violence in the health portfolio would align it with other prevention policy initiatives. Women's health services are well placed to progress primary prevention initiatives alongside key partners, tailored to the specific characteristics of their region.

WHAV also 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.

Along with those peak bodies, we 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 strengthen and support protective parents.

Please do not hesitate to contact me if you require any further information.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Robyn Gregory', with a large, sweeping flourish at the end.

Dr Robyn Gregory
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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 Australian Bureau of Statistics (2006) Personal Safety Survey, Cat. No. 4906.0, Canberra.

⁴ Ibid

⁵ D. Parkinson (2008) *Raped by a Partner: A Research Report*, Women's Health Goulburn North East, Wangaratta.

⁶ Australian Bureau of Statistics (2006), op cit

⁷ Andrew McIntosh, Minister for Crime Prevention, Speech to mark Victoria's commitment to the *National Plan to Reduce Violence against Women and their Children 2010-2022*, Monday 5 September 2011.

⁸ It is widely held that fewer than 20 percent of incidents are reported to police (OWP 2002; VicHealth 2004)

⁹ Women's Domestic Violence Crisis Service Annual Report 2008-09. Retrieved 23 June 2010 from <http://www.wdvcs.org.au/files/D1125154123.pdf>

¹⁰ Al-Yaman F, Van Doeland M, Wallis M. (2006) Family violence among Aboriginal and Torres Strait Islander peoples. Canberra: Australian Institute of Health and Welfare. Available from: <http://www.aihw.gov.au/publications/ihw/fvaatsip/fvaatsip.pdf>

¹¹ Healey L, Howe K, Humphreys C, Jennings C, Julian F. (2008) Building the evidence: a report on the status of policy and practice in responding to violence against women with disabilities in Victoria, Melbourne: Victorian Women with Disabilities Network Advocacy Information Service. Available from <http://www.whv.org.au/vwdn/documents/BTE%20Final%20Report.pdf>

¹² VicHealth (2004) *The health costs of violence: Measuring the burden of disease caused by intimate partner violence*. Victorian Health Promotion Foundation, Melbourne.

¹³ 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).

¹⁴ See www.health.vic.gov.au/childrenatrisk/parents.htm

¹⁵ 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.

¹⁶ 'Australian Domestic and Family Violence Clearing House Topic Paper', *Australian Statistics on Domestic Violence* (2003), 7.

¹⁷ Victorian Law Reform Commission, *Review of Family Violence Laws* (2006), 32

¹⁸ World Health Organisation (1996) *Violence: A Public Health Approach. WHO Global Consultation on Violence and Health*, Geneva.