

3 October 2019

The Honourable Kevin Andrews MP
Chair
Joint Select Committee on Australia's Family Law System
PO Box 6100
Parliament House
Canberra ACT 2600

By email: familylaw.sen@aph.gov.au

Dear Chair,

Re: Joint Select Committee on Australia's Family Law System

Introduction

1. Rape & Domestic Violence Services Australia welcome the opportunity to contribute to the Joint Select Committee's Inquiry of the Australian Family Law System ('the Inquiry'); and when submissions formally open, we intend to contribute more substantially.
2. By way of background, Rape & Domestic Violence Services Australia is a non-government organisation that provides a range of specialist trauma counselling services to people who have been impacted by sexual, domestic or family violence¹ and their supporters. Our services include NSW Rape Crisis counselling service for people in NSW who have been impacted by sexual violence and their professional or non-professional supporters; Sexual Assault Counselling Australia for people accessing the Redress Scheme resulting from the Royal Commission into Institutional Responses to Child Sexual Abuse; and the Domestic and Family Violence Counselling Service for Commonwealth Bank of Australia customers and staff who are seeking to escape domestic or family violence. Our services operate from NSW; however, they are available for individuals around Australia who may have experienced sexual, domestic or family violence.

¹ Generally, Rape & Domestic Violence Services Australia prefer the term *people who have experienced sexual assault and/or domestic and family violence* to describe individuals who have suffered this type of violence, rather than the terms survivors or victims. This is in acknowledgement that, although experiences of sexual assault and/or domestic and family violence are very significant in a person's life, they nevertheless do not define that person. However, in this submission, Rape & Domestic Violence Services Australia will sometimes use the term victims as this accords with the language used in the legislation.

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Counselling Services

24/7 NSW Rape Crisis 1800 424 017

CBA Domestic &

Family Violence Line 1800 222 387

Sexual Assault

Counselling Australia 1800 211 028

rape-dvservices.org.au

Concerns as to comments made in the media regarding “false accusations of domestic violence”²

3. Rape & Domestic Violence Services Australia is concerned as to the comments made by Members of Parliament who are likely to be Committee Members of this Inquiry; specifically, in relation to allegations of domestic and family violence.
4. It is unfortunate that commentary in the media from these Committee Members suggests that women are making “false accusations of domestic violence to stop men having access to children.”³ Rape & Domestic Violence Services Australia state that this bias position at the outset of this Inquiry is incorrect and unhelpful, especially in circumstances where these Committee Members have not been able to provide an evidence base for this position.
5. Comments of this nature are of no benefit to this Inquiry. Any inquiry into the Family Court must consider those who have experienced sexual, domestic or family violence. Government statistics in relation to incidences of domestic and family violence and the gendered nature of the crime cannot be ignored.
6. Based on the statistics from the most recent Personal Safety Survey 2016 conducted by the Australian Bureau of Statistics, one in six women reported to have experienced physical or sexual violence perpetrated by a current or previous partner; with one in four women reporting that they had experienced emotional abuse, also perpetrated by a current or previous partner. Further, the rates of sexual, domestic and family violence being higher amongst Aboriginal and Torres Strait Islander women and the LGBTIQ+ community.⁴
7. The Australian Law Reform Commission (2019) states:

“Children are not consistently protected from harm, nor are people experiencing family violence.”⁵

It is clear that those who have experienced sexual, domestic and family violence use the Family Court system in the hope that the Court will put the safety of their children first.

8. Further, statistics taken directly from the Australian Law Reform Commission’s Final Report on their review of the Family Law System (2019) show that “family violence, including physical hurt and emotional abuse, is reported by approximately 60% of

² Jade MacMillan, ‘Family law inquiry given green light by Senate as Rosie Batty questions Pauline Hanson’s role,’ *ABC News (Online)*, 19 September 2019 < <https://www.abc.net.au/news/2019-09-18/rosie-batty-family-law-inquiry-pauline-hanson-bias/11523914>>

³ *Ibid.*

⁴ Australian Bureau of Statistics, Personal Safety Survey 2016 cited in the Australian Institute of Health and Welfare, *Family, domestic and sexual violence in Australia: Continuing the national story*, FDV 3, June 2019, vii.

⁵ Australian Law Reform Commission, *Family Law for the Future – An Inquiry into the Family Law System*, Summary Report, ALRC Report 135, March 2019, 23.

*separated parents prior to and during separation.*⁶ To insinuate that all allegations of sexual, domestic and family violence in the Family Court are false is not reflective of the realities of the matters dealt with by this Court on a daily basis.

Family Violence Awareness Training for Members of Parliament

9. Rape & Domestic Violence Services Australia fully support the recommendation of the Law Council of Australia – Family Law Section that all Members of Parliament, and at the very least the Committee Members of this Inquiry undertake family violence awareness training prior to the Inquiry commencing.
10. However, Rape & Domestic Violence Services Australia believes that to achieve these objectives, statutory reform must also be accompanied by more fundamental changes to the family law system. We encourage the Committee Members in conducting this Inquiry consider the extensive recommendations made by the Australian Law Reform Commission in their review of the family law system completed in March 2019; as well as 2017 House of Representatives Standing Committee on Social Policy and Legal Affairs report: *'A better family law system to support and protect those affected by family violence.'*
11. A key recommendation of the Australian Law Reform Commission's review of the family law system (2019) was that:

*"Relevant statutes should be amended to require that future appointments of all federal judicial officers exercising family law jurisdiction include consideration of the person's knowledge, experience, skills, and aptitude relevant to hearing family law cases, including cases involving family violence."*⁷

A further recommendation was also that legal practitioners working in the family law jurisdiction should also undertake annual training in relation to family violence.⁸

12. The attitude, knowledge and skills of family law professionals and judicial officers are vital to ensuring the safety and protection of women and children accessing the family law system. In their Final Report, the Victorian Royal Commission stated that judicial officers' skills and approach in matters involving family violence are *"critical"* to *"the outcome of a hearing, the victim's safety, and a perpetrator's level of accountability."*⁹
13. Judicial officers and legal practitioners engaged in the family law jurisdiction to competently complete their tasks require a comprehensive understanding of family

⁶ Rae Kaspiew et al, *Evaluation of the 2006 Family Law Reforms* (Australian Institute of Family Studies, 2009) cited in Australian Law Reform Commission, *Family Law for the Future – An Inquiry into the Family Law System*, Final Report, ALRC Report 135, March 2019, 103.

⁷ *Ibid*, Recommendation 51.

⁸ *Ibid*, Recommendation 52.

⁹ State of Victoria. (2014-16). *Royal Commission into Family Violence: Report and recommendations*. Vol III, Paper No 132, Ch 40, 210.

violence. Initial and continued training is imperative. In completing its work this Inquiry and Members of Parliament should also undertake training in family violence. This would ensure thorough knowledge of the dynamics, complexities and impacts of sexual, domestic and family violence; assist in identifying family violence risks; and enable trauma informed practice including an understanding of vicarious trauma.

Recommendation 1: That all Members of Parliament undertake domestic and family violence awareness training prior to the current Inquiry commencing, to gain an understanding of the dynamics, complexities and impacts of sexual, domestic and family violence.

Conclusion

14. Rape & Domestic Violence Services Australia will provide a further submission in response to the Terms of Reference in due course.
15. If you have any questions or would like to discuss further, please do not hesitate to contact me on (02) 8585 0333 or by email at karenw@rape-dvservices.org.au.

Yours faithfully,

Rape and Domestic Violence Services Australia

Karen Willis

Executive Officer