

30 June 2020

Ms Margery Nicoll
Acting Chief Executive Officer
Law Council of Australia
19 Torrens Street
BRADDON ACT 2612

By email: alexandra.wormald@lawcouncil.asn.au

Dear Ms Nicoll

INQUIRY INTO FAMILY, DOMESTIC AND SEXUAL VIOLENCE

Thank you for the memorandum dated 9 June 2020 inviting the Law Society of Western Australia to provide input for a Law Council submission to the above inquiry.

The National Plan to Reduce Violence against Women and their Children 2010-2022

The Law Society notes that issues related to family and domestic violence have been the subject of a number of inquiries, reviews and recommendations in recent years.

In particular, many of the recommendations in the Senate Finance and Public Administration References Committee's 2015 report titled *Domestic Violence in Australia*¹ have been implemented through the delivery of the *National Plan to Reduce Violence against Women and their Children 2010-2022*.²

However, there is still work to do on a national level to coordinate and encourage the states and territories to achieve full implementation of the recommendations. The Law Society considers that more action must be taken and resources directed to implementing these recommendations.

Inquiry into domestic, family and sexual abuse

The Law Society recommends that the Inquiry be into domestic, family and sexual abuse, rather than violence. The term abuse captures violence, but also other forms of abuse, such as coercive control, emotional, financial and verbal abuse. This recommendation is made because in some of the most extreme abusive relationships, actual physical violence is not present. This would further clarify that the Inquiry treats all forms of abuse as serious and not just those which leave a physical mark.

¹ Finance and Public Administration References Committee, Parliament of Australia, *Domestic Violence in Australia* (Final Report, August 2015) <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Domestic_Violence/Report>.

² Australian Government, *National Plan to Reduce Violence against Women and their Children* (Webpage) <<https://plan4womenssafety.dss.gov.au/>>.

Uniformity between the states and territories

There should also be consideration of the interjurisdictional legislative frameworks which set out vastly different approaches for each state and territory in implementing family violence policies.³

There is a lack of uniformity in Australian statutes as to critical issues concerning family violence. For example, definitions are vastly different from state to state in respect to who is classed as a 'victim' and what conduct constitutes family violence. There are also differences in conditions of restraining orders and police powers. For example, police in South Australia, Western Australia, Tasmania and the Northern Territory can issue 'police orders' or 'protection orders' as an interim risk mitigation or control measure in circumstances of family violence, but not all state and territory police have this capacity and these orders vary.

The LGBT community, violence against men and mutual domestic violence

The inquiry into family, domestic and sexual violence seeks to address the scourge of intimate partner abuse. However, by using gendered and heteronormative language in its terms of reference, which frames the sole victims as female and the sole perpetrators as male, the inquiry excludes a significant proportion of domestic violence perpetration in our society including violence in the LGBT community, violence against men and mutual domestic violence.

In reference to the LGBT community, the comprehensive *National Intimate Partner and Sexual Violence Survey*⁴ found that:

- The lifetime prevalence of rape, physical violence, and/or stalking by an intimate partner was highest for bisexual women (61%) and men (37%).
- When contrasting heterosexual and homosexual relationships, the prevalence among lesbians (44%) was higher than among heterosexual women (35%). For men, the reverse was true with prevalence among gay men (26%) being lower than the prevalence among heterosexual men (29%).

While it is undeniable that most victims of domestic violence are female, male victims in heterosexual relationships are the second largest group. According to the Australian Bureau of Statistics, one third of all domestic violence victims are male and 23% of current intimate partner abuse victims are men.⁵ When it comes to emotional abuse by a current partner, the numbers rise to near parity with males representing nearly half (47.7%) of all victims.⁶ Homicide statistics from the Australian Institute of Criminology indicate that 25% of victims of intimate partner homicide were male.⁷

³ This issue would fall within paragraph (l) of the Terms of Reference of the current inquiry ("any other related matters").

⁴ Mikel L Walters, Jieru Chen and Matthew J Brieding 'The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Findings on Victimization by Sexual Orientation' (National Center for Injury Prevention and Control Centers for Disease Control and Prevention, January 2013) <https://www.cdc.gov/violenceprevention/pdf/nisvs_sofindings.pdf>.

⁵ Australian Bureau of Statistics, *Personal Safety, Australia, 2016* (Catalogue No 4906.0, 8 November 2017) <<https://www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0>>.

⁶ Ibid.

⁷ Australian Bureau of Statistics, *Recorded Crime - Victims, Australia, 2017* (Catalogue No 4510.0, 28 June 2018)

<<https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4510.0~2017~Main%20Features~Key%20findings~1>>; Tracy Cussen and Willow Bryant, 'Domestic/Family Homicide in Australia' (Research in Practice No 38, Australian Institute of Criminology, May 2015) Table 3 <<https://aic.gov.au/publications/rip/rip38>>.

The above is noted to acknowledge that women's violence is real. However, it is important to state that the 'gender symmetry' of domestic abuse, as suggested by the statistics when seen in isolation, is an incomplete picture. When these statistics are put in context, including the information gathered by police, hospitals and emergency shelters, it is clear that domestic, family and sexual abuse committed by men is more frequent, severe, escalates over time and is rarely equal to violence used by their partners.⁸ Therefore although domestic, family and sexual abuse occurs across all sociodemographic groups, it is important to keep in mind that women are overwhelmingly the victims of these types of violence.⁹

Finally, there is the issue of mutual or bidirectional violence which is underexplored in the Australian context. A study of 13,601 university students by Professor Murray Straus (the creator of the widely used *Conflict Tactics Scale*) found that the most frequent pattern of domestic violence was bidirectional, accounting for over two thirds of cases (68.6%).¹⁰ The study also concluded that only a small percentage of female violence was in self-defence.¹¹

None of this diminishes in any way the importance of addressing violence against women, which make up the largest victim group. That said, having terms of reference that bind the inquiry to female victims and male perpetrators ignores the complexity of family, domestic and sexual violence and fails the LGBT community and male victims who suffer from this same scourge.

The Law Society supports an inquiry that seeks to address this wrong without discriminating on the basis of sex and sexual orientation.

The Law Society requests that the above issues be addressed in the Law Council's submission to the inquiry into family, domestic and sexual violence.

If you have any queries please contact Mary Woodford, General Manager Advocacy on (08) 9324 8646 or mwoodford@lawsocietywa.asn.au

Yours sincerely

A handwritten signature in blue ink, appearing to read 'N. van Hattem', with a long horizontal line extending to the right.

Nicholas van Hattem
President

⁸ Australian Institute of Health and Welfare, *Family, domestic and sexual violence in Australia: continuing the national story* (2019) 8 <<https://www.aihw.gov.au/getmedia/b0037b2d-a651-4abf-9f7b-00a85e3de528/aihw-fdv3-FDSV-in-Australia-2019.pdf.aspx?inline=true>>

⁹ Australian Institute of Health and Welfare, *Family, domestic and sexual violence in Australia*, (2018) <<https://www.aihw.gov.au/getmedia/d1a8d479-a39a-48c1-bbe2-4b27c7a321e0/aihw-fdv-02.pdf.aspx?inline=true>>

¹⁰ Murray A Straus, 'Dominance and Symmetry in Partner Violence by Male and Female University Students in 32 Nations' (2008) 30(3) *Children and Youth Services Review* 252–275 <<http://citeseerx.ist.psu.edu/viewdoc/download;jsessionid=BDA410D5D8A9D536D0872206761C71BA?doi=10.1.1.486.6099&rep=rep1&type=pdf>>.

¹¹ *Ibid.*