# Submission – Australia Country Visit by the United Nations Special Rapporteur on violence against women, its causes and consequences

Dear Dr Šimonović

Thank you for your invitation to Victoria Legal Aid to provide a submission in relation to your upcoming Australia country visit.

Our letter raises the following issues:

The need for an improved legal response to family violence, especially for women whose matters cross legal jurisdictions. This includes:

Better information sharing between courts;

Reform to prevent direct cross-examination in Commonwealth family law proceedings; and

Ongoing commitments to adequate funding of family violence legal assistance.

The impacts of family violence on women prisoners and women’s incarceration rate.

The child protection consequences of family violence. Greater support for women experiencing family violence, and compliance with Department of Health and Human Services Aboriginal Child Placement Principle and cultural support planning obligations, would reduce the negative consequences for mothers who disclose family violence.

Family violence discrimination: The need for “being a victim of family violence or stalking” to be a protected attribute, and the need for an obligation on employers to make reasonable adjustments an employee requires as a victim of family violence or stalking.

We attach to our letter more detailed submissions we have made to other consultations about some of these issues. We would welcome an opportunity to meet with you during your visit to Australia in February 2017 to discuss these issues further.

## Victoria Legal Aid

Victoria Legal Aid (VLA) is a major provider of legal advocacy, advice and assistance to socially and economically disadvantaged Victorians. Our organisation works to improve access to justice and pursues innovative ways of providing assistance to reduce the prevalence of legal problems in the community. We assist people with their legal problems at Courts, Tribunals, prisons and designated mental health services as well as in our 14 offices across Victoria. We also deliver early intervention programs, including community legal education, and assist more than 100,000 people each year through Legal Help, our free telephone advice service. We also deliver non-legal advocacy services to people receiving compulsory treatment under the *Mental Health Act 2010* (Vic) and a family dispute resolution service for disadvantaged separated families.

“More effective responses to gender inequality including sex discrimination and family violence” is one of VLA’s strategic advocacy priorities. Our work in this area is collated on our website.[[1]](#footnote-1)

## Our specialist practice expertise

We are committed to contributing to both individual and system-wide change that promotes gender equality and reduces the incidence of family violence and sex discrimination. We do so primarily through the provision of family violence and discrimination law services and strategic advocacy.

VLA plays a leading role in the coordination of family violence legal services in Victoria. We provide information, advice and legal representation to women, men and children who are affected by family violence in the State and Commonwealth civil, criminal and family law systems. We provide these services through our network of offices across the state. We also fund private practitioners and community legal centres to deliver family violence legal services. People who have experienced, are experiencing, or are at risk of experiencing family violence are priority clients for Victoria Legal Aid and we are committed to the elimination of family violence in the community.

Our dedicated Equality Law Program provides advice and representation to people experiencing discrimination, harassment and victimisation in all areas, including employment. We assist people with complaints in various jurisdictions, using state and federal anti-discrimination legislation, including the *Fair Work Act 2009* (Cth) and the *Equal Opportunity Act 2010* (Vic). Services provided by the Equality Law program include phone advice, duty lawyer services, weekly clinic advice sessions and ongoing case work and representation. In 2015-16 VLA provided legal advice in 1,362 discrimination matters. About one-third of our Equality Law program legal advices related to sexual harassment, sex discrimination, pregnancy discrimination or parental status discrimination.

## 1. Legal response to family violence

There has been positive progress in recent years in Australia and particularly Victoria to provide an appropriate legal and justice system response to family violence. However, there remain several key ways in which the legal response to family violence could be improved.

In our submissions to the Family Law Council’s recent terms of reference inquiry relating to families with complex needs, we focussed on the way that our most vulnerable clients – clients whose matters cross family violence, child protection and parenting disputes jurisdictions – could be better served by the legal system.[[2]](#footnote-2) Our recommendations included:

Better information sharing between courts:
As a federated Commonwealth, Australia has different legal jurisdictions and different courts to deal with family violence, family law and child protection matters, some at the national (Commonwealth) level and others at the state level. Our submission focussed on the way Australia’s different legal jurisdictions could work together better. The submission focused on children in those families, suggesting that a 'one court principle' that identifies the appropriate forum early in court proceedings for families who present with complex issues, and better information sharing between courts, could improve outcomes for family violence survivors and their families.

Reform to prevent direct cross-examination in the family law courts:
Where a party in a Commonwealth family law court proceeding is not represented by a lawyer, they are able and expected to cross-examine the other party directly. Cross-examination of family violence survivors by perpetrators in Commonwealth family law proceedings is a recognised problem. This practice allows perpetrators of family violence to interrogate their victim, and expects victims to have to directly face the perpetrator and question them effectively, with the tacit approval of the justice system and the court. This is unacceptable and the time has come to change the law to remove direct cross-examination from our family law system.

Ongoing commitments to adequate funding of legal assistance for people affected by family violence:
As family violence reporting rates increase, and more family violence matters are heard in courts, funding for legal assistance needs to at least keep pace with those increases. If services are to innovate and become more responsive, additional funding will be required.[[3]](#footnote-3)

The recent Victorian Royal Commission into Family Violence also examined these issues and recommended improved information sharing between courts (Recs 67, 134, 136) and the expansion of resourcing for legal services (Rec 69).[[4]](#footnote-4)

## 2. Impacts of family violence on women prisoners and women’s incarceration rate

The rate of women’s incarceration in Victoria is growing faster than that of men. The Victorian Ombudsman’s 2015 investigation into the rehabilitation and reintegration of prisoners noted that the number of women imprisoned in Victoria increased by 58 per cent between 2008 and 2013, a rate which is more than double that of male prisoners.[[5]](#footnote-5) This is borne out by VLA’s practice experience in criminal law, which indicates that the number of female clients is increasing.

A disproportionately high number of women in prison have experienced family violence, compared with women in the rest of the community. According to a 2015 Department of Justice and Regulation survey of Victorian prisoners, two thirds of women in prison are victims of family violence.[[6]](#footnote-6)

The Victorian Royal Commission into Family Violence also found that women in prison have experienced family violence at much higher rates than women in the rest of the community, and that family violence can be a contributing factor to criminal offending by women.[[7]](#footnote-7) The Royal Commission recommended that the processes for identifying victims of family violence in prison be improved, that therapeutic interventions be made available to all women in prison who have experienced family violence, and that post-release support and referrals to family violence services be strengthened. Victoria Legal Aid supports these recommendations.

## 3. Child protection consequences of family violence – particularly for Aboriginal women

Greater support for women experiencing family violence, and compliance with Department of Health and Human Services Aboriginal Child Placement Principle and cultural support planning obligations, would reduce the negative consequences for mothers who disclose family violence and their children.

Given the significant impact of family violence on children who witness it, family violence can understandably lead to child protection involvement. In our recent submission to the Commission for Children and Young People’s Child Protection Permanency Amendments Inquiry, VLA expressed our concerns about the lack of access to support services for families involved with child protection.[[8]](#footnote-8)

Aboriginal women are disproportionately affected by family violence. Further, the child protection system’s response to Aboriginal children is widely recognised as lacking.[[9]](#footnote-9) These factors combine to make worse the consequences of family violence for Aboriginal women and children. Better compliance with Department of Health and Human Services Aboriginal Child Placement Principle and cultural support planning obligations would reduce the negative consequences for mothers who disclose family violence and their children.

The more confidence mothers can have in the support they and their children will receive if they disclose family violence, the more likely mothers are to seek help. Our submission to the Commission for Children and Young People (mentioned above, and attached to this letter), sets out various recommendations for improving the child protection system’s support to children and families.

## 4. Family violence discrimination

There is a strong link between sex discrimination and family violence. The causes of family violence are deeply embedded in community attitudes about power and the role of women in our society. To stop family violence, we also need to address the gendered attitudes that lead to sex discrimination.

In Australia, one in five women has been stalked, one in three women has experienced physical violence, one in five has experienced sexual violence, and one in four has experienced emotional abuse from a partner.[[10]](#footnote-10) Two thirds of women affected by family violence are in paid employment.[[11]](#footnote-11) Discrimination against victims of family violence, particularly in the workplace, could be simply addressed by amending legislation to prohibit such conduct.

Our discrimination lawyers and family law practitioners have reported a number of instances of clients being discriminated against (directly and indirectly) at work because of circumstances outside of their control caused by family violence. For example, our clients have reported being dismissed by their employer because:

* their estranged partner telephoned them constantly at work;
* they had to take time off work to report property damage and stalking to the police, attend intervention order proceedings or take immediate steps to ensure their child’s safety;
* the employer refused to alter work arrangements to enable compliance with a family violence intervention order; and
* the abuse caused temporary absenteeism and impeded performance.

Our clients have reported a reluctance to report family violence to their employers for fear of embarrassment or being treated differently.

Victims of family violence are at extreme risk of poverty and social exclusion. Employment plays an important role in reducing the impact of family violence by affording victims a measure of financial security, independence and confidence. These elements are essential to enable victims to leave violent relationships. Workplaces therefore have the potential to play a key role in supporting and protecting the safety of people experiencing family violence.

Given that more than 1.6 million Australians now have access to family violence leave through negotiated workplace agreements,[[12]](#footnote-12) many businesses are already well-placed to provide flexible work arrangements for victims of family violence.

Discrimination against victims of family violence could be simply addressed by amending the Victorian *Equal Opportunity Act* to prohibit such conduct. This is necessary to ensure that there is clear legal protection against family violence discrimination and because it will usually be difficult to argue that such treatment constitutes sex or disability discrimination.

Section 65 of the Commonwealth *Fair Work Act* provides some legal precedent for the proposed protection, as it affords employees experiencing family violence the right to request flexible working arrangements. However, there is no requirement for an employer to agree to a request for flexible working arrangements made pursuant to this provision. An employer can refuse a request based on reasonable business grounds and there is no mechanism to enforce an employer to accommodate a request, even if the refusal is unreasonable.

We recommend that “being a victim of family violence or stalking” be included as a protected attribute in section 6 of the *Equal Opportunity Act* and an explicit obligation imposed on employers to make reasonable adjustments at work that an employee may require because they are a victim of family violence or stalking.

Thank you again for the opportunity to provide this submission to you ahead of your Australia country visit. If you have any questions about the content of this letter, or to arrange a meeting to discuss these issues further, please feel free to contact Hannah Northover, Senior Policy and Projects Officer, Family Youth and Children’s Law Program, hannah.northover@vla.vic.gov.au or (03) 9280 3723.

Yours faithfully

**BEVAN WARNER**
Managing Director

Enclosures: Victoria Legal Aid, Submission to the Victorian Royal Commission into Family Violence (June 2015)

Victoria Legal Aid, ‘Families with complex needs’ Submission to the Family Law Council’s Terms of Reference (April 2015)

Victoria Legal Aid, Submission to the Commission for Children and Young People’s Child Protection Permanency Amendments Inquiry (November 2016)

Victoria Legal Aid, Gender Equality Strategy: Submission to the Women and Royal Commission Branch, Department of Premier and Cabinet (18 March 2016)

1. <http://www.legalaid.vic.gov.au/about-us/strategic-advocacy-and-law-reform/more-effective-responses-to-gender-inequality-including-sex-discrimination-and-family-violence>. [↑](#footnote-ref-1)
2. <http://www.legalaid.vic.gov.au/about-us/strategic-advocacy-and-law-reform/more-effective-responses-to-gender-inequality-including-sex-discrimination-and-family-violence/families-with-complex-needs>. [↑](#footnote-ref-2)
3. See for example VLA’s pilot bringing family law assistance to family violence courts: <http://www.legalaid.vic.gov.au/about-us/news/family-law-pilot-so-vulnerable-families-dont-fall-through-cracks> and new national services bringing family violence support workers to Family Court: <http://www.legalaid.vic.gov.au/about-us/news/new-integrated-family-law-court-services-coming-to-dandenong-and-melbourne>. [↑](#footnote-ref-3)
4. Royal Commission into Family Violence, March 2016, <http://www.rcfv.com.au/Report-Recommendations>. VLA’s submission to the Royal Commission is available at <http://www.legalaid.vic.gov.au/about-us/strategic-advocacy-and-law-reform/more-effective-responses-to-family-violence/royal-commission-into-family-violence> and is appended to this letter. [↑](#footnote-ref-4)
5. <https://www.ombudsman.vic.gov.au/getattachment/5188692a-35b6-411f-907e-3e7704f45e17> at paragraph 584. [↑](#footnote-ref-5)
6. *Family Violence Prisoner Survey 2015 – Summary Report*, Department of Justice and Regulation, Victoria, Australia, November 2016. [↑](#footnote-ref-6)
7. Chapter 34: Women in Prison, volume V page 237 onwards. [↑](#footnote-ref-7)
8. <http://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/submission-to-the-child-protection-permanency-amendments-inquiry.docx>. [↑](#footnote-ref-8)
9. Commission for Children and Young People “Taskforce 1000 investigation reveals shocking failures across systems to care for Koori kids – media release” 26 October 2016 <http://www.ccyp.vic.gov.au/aboutus/news/taskforce-1000-mr.htm>. [↑](#footnote-ref-9)
10. Australian Bureau of Statistics, Personal Safety Survey, Catalogue No 4906.0 (2012), 2013b. [↑](#footnote-ref-10)
11. Australian Bureau of Statistics, Personal Safety Survey, Catalogue No 4906.0 (2005), 11, 34. [↑](#footnote-ref-11)
12. Lily Partland, ‘Telstra’s introduction of domestic violence leave welcomed by ACTU’ *ABC News,* (14 January 2015), available at:<http://www.abc.net.au/news/2015-01-14/actu-welcomes-telstradomestic-violence-leave/6016212>. [↑](#footnote-ref-12)