



## **Submission to the Joint Select Committee on Australia's Family Law System**

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## Statement of Recognition

The Salvation Army acknowledges the Traditional Custodians of the lands and waters throughout Australia. We pay our respect to Elders, past, present and emerging, acknowledging their continuing relationship to this land and the ongoing living cultures of Aboriginal and Torres Strait Islander peoples across Australia.



## Introduction

The Salvation Army feels compelled to provide evidence to this inquiry into Australia's Family Law System. We provide extensive services to victim-survivors of family and domestic violence, helping more than 7,000 individuals each year. It is based on this experience, and the stories of the people we serve (predominantly women and children) that we make this submission.

There have been several recent reviews into how the family law system could be improved. Those reviews demonstrate the need to address how the fragmented nature of the current system impacts on the health and wellbeing of victim-survivors of family and domestic violence who interact with it. What is clear, from these reviews and from the evidence on the ground, is that action is needed.

As there has been a recent review which considers so much data and evidence, we do not wish to repeat already available information. There are three points we would specifically ask the Committee to consider in conducting the current review:

- Family and domestic violence is real and a widespread problem in Australia;
- The family law system does not do enough to protect victim-survivors of family and domestic violence;
- The drivers of family and domestic violence are societal, and our leaders must behave in a way that emphatically condemns, and in no way minimises or excuses, acts of family and domestic violence.

The Salvation Army is not providing recommendations in this submission. Instead, we endorse the recommendations made by the Australian Law Reform Commission in March 2019 in their report *Family Law for the Future – An Inquiry into the Family Law System*.<sup>1</sup>

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<sup>1</sup> Australian Law Reform Commission, Summary Report No 135 (2019) accessed at <https://www.alrc.gov.au/inquiry/review-of-the-family-law-system/>



### **Maria's Story\***

Maria approached The Salvation Army after she left a violent marriage, where she experienced sexual, physical, emotional, and psychological abuse. Maria was in Australia on a partner visa, and this was frequently used to control Maria; her partner often threatened to separate Maria and her daughter by sending her back to her home country.

Maria and her daughter were able to escape to small rural town. However, Maria was socially isolated and lived in fear, always fearful that her ex-husband would find them and kill her and or take her daughter away.

Maria's ex-husband was granted access to their daughter by the court. Maria was required to travel one hour by train to a police station where the handover took place. However, her ex-husband used this as an opportunity to further manipulate and control Maria. He would frequently cancel the handovers or change the pick-up time. He would often fail to turn up for handover without letting Maria know.

Sometime later Maria started a healthy relationship with a supportive man. She planned to move to the town where he and some of her family members lived. Maria was hopeful about the future. She started making plans for an exciting, safe and new life with her daughter and new partner and enrolled into a new course.

Without her consent, Maria's own lawyer put in a request to a judge that required Maria to stay in her current town. This caused Maria much distress. Maria was required to stay in a town where she is away from her new partner, she has minimal social support, and her ex-husband knows where she is residing.

Maria lives in constant fear. She is hyper-vigilant when leaving her house because she is afraid her ex-husband will track her down. Maria is on medication to treat anxiety, stress and depression but still experiences daily suicidal ideation. She feels betrayed by people who were supposed to help her. This has taken away her independence and safety and prevented her from moving on with her life.

\*All names and other identifying facts have been changed.

## Family and Domestic Violence is Widespread

### Incidence in Australia

Family and Domestic Violence (FDV) is a complex and persistent issue within Australia. Everyone deserves to feel safe and free from harm. Yet many people, particularly women, are not safe in their own homes and relationships.

FDV is a significant health and welfare issue. It occurs across all cultures, ages and socio-economic spheres. However, it predominately impacts women and their children. According to the Personal Safety Survey, conducted by the Australian Bureau of Statistics (ABS), 1 in 6 (17%) women and 1 in 16 (6.1%) men have experienced **physical and/or sexual violence** by a current or previous partner since the age of 15.<sup>2</sup> Almost 1 in 4 (23%) women and 1 in 6 (16%) men have experienced **emotional abuse** from a current or previous partner since the age of 15.<sup>3</sup>

The impacts of FDV are extensive. It can lead to serious and long-term negative health consequences. It impacts an individual's wellbeing, their education, housing outcomes and relationships.<sup>4</sup> For women aged 25-44, it is responsible for more illness, disability and deaths than any other risk factor.<sup>5</sup> Aboriginal and Torres Strait Islander women are at significant risk of family violence; between 2014–15 Indigenous Australians experienced hospitalisation at 32 times the rate of non-indigenous women.<sup>6</sup>

FDV accounts for more than 1 in 3 murders recorded by police. In 2017, 126 victims of FDV homicide and related offences were recorded. This data includes 75 murders and 41 attempted murders.<sup>7</sup>

For women and their children, FDV is the leading cause of homelessness in Australia.<sup>8</sup> In 2016-17 roughly 72,000 women, 34,000 children and 9,000 men reported that FDV contributed to or caused their homelessness.<sup>9</sup>

It is estimated that the financial burden of violence against women and their children in Australia is \$22 billion.<sup>10</sup>

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<sup>2</sup> ABS 2017b. Personal Safety Survey 2016. ABS cat. no. 4906.0. Canberra: ABS.

<sup>3</sup> Ibid

<sup>4</sup> Family, domestic and sexual violence in Australia: continuing the national story 2019

<sup>5</sup> <https://www.aihw.gov.au/reports/domestic-violence/family-domestic-sexual-violence-in-australia-2018/contents/table-of-contents>

<sup>6</sup> SCRGSP (Steering Committee for the Review of Government Service Provision) 2016. Overcoming Indigenous disadvantage: key indicators 2016. Canberra: Productivity Commission.

<sup>7</sup> ABS 2018b. Recorded crime—victims, Australia, 2017. ABS cat. no. 4510.0. Canberra: ABS.

<sup>8</sup> AIHW 2017d. Specialist Homelessness Services 2016–17. Canberra: AIHW. Viewed 19 December 2019, <<https://www.aihw.gov.au/reports/homelessness-services/specialist-homelessness-services-2016-17/contents/contents>>.

<sup>9</sup> Ibid

<sup>10</sup> KPMG 2016. The cost of violence against women and their children in Australia. Sydney: Department of Social Services.

## The Salvation Army Services

Across Australia over 150 Salvation Army staff deliver FDV Programs in every state and territory, assisting more than 7,000 women and children experiencing FDV every year. The Salvation Army offers a range of specialist FDV services including crisis and emergency accommodation, transitional housing, and housing support.

Case management is provided for victim-survivors of FDV in refuge, transitional and outreach services. Additionally, The Salvation provides therapeutic recovery models, offering trauma and recovery counselling and financial counselling models of care.

The Salvation Army also provides services which hold men to account through men's family violence prevention programs, servicing over 1, 000 men nationally.

Additionally, The Salvation Army is the largest provider of homelessness services in Australia. It is our experience that many clients experiencing FDV access assistance through our homelessness services.

Our services are informed by consumer participation. We value the voices of women and children experiencing family and domestic violence and acknowledge them as being the 'experts' in their experiences and needs. The Salvation Army prides itself on providing services that are evidence based, collaborative and inclusive. Our staff are valued, skilled and supported to provide the best possible care and support for victim-survivors of family and domestic violence.



## Support for Victim-Survivors in the System

The recent review by the Australian Law Reform Commission (ALRC review) identified that family violence and abuse is a sustained and growing issue for the family courts.<sup>11</sup> The Salvation Army does not provide specialised services within the court system. However, we often come alongside victim-survivors as they interact with the system.

The ALRC made several recommendations that would directly assist victim-survivors of FDV. Key relevant recommendations include in relation to reconciling the state and Commonwealth systems, amending the consideration of the best interests of the child to include arrangements that best promote the safety of the child and the child's carers, creating a statutory tort of FDV and ensuring that legal practitioners and judicial officers have training in dealing with matters involving FDV.<sup>12</sup>

In support of those recommendations, The Salvation Army can illustrate some of the common issue we see when supporting victim-survivors of FDV.

### Delays

Delays impact all participants in the family law system but for victim-survivors delay can mean that they settle for outcomes that are not safe or satisfactory. Some of the people we support have expressed that they feel they cannot move away or start their healing process because they are in 'limbo' and required to stay in their current location. We have instances where our clients have cancelled the process of obtaining a Violence Restraining Order (VRO) because of the exhaustion and stress of waiting and so that they can move on with their lives.

### Issues around Legal Aid

Often the power imbalance within a relationship where FDV is present means that perpetrators control the finances of the victim-survivor. Consequently, when a victim-survivor interacts with the family law system there is significant financial disparity. Many of the people who we serve rely on Legal Aid for assistance. While we have many examples of Legal Aid lawyers doing an exceptional job, we also have examples where Legal Aid provided an inadequate or even inappropriate service to their clients.

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<sup>11</sup> Australian Law Reform Commission, Summary Report No 135 (2019) accessed at <https://www.alrc.gov.au/inquiry/review-of-the-family-law-system/> p.80.

<sup>12</sup> *Ibid* at pp.15-23.



Some of the examples gathered for this submission included:

- Legal Aid lawyers not presenting all options or even pressuring clients into courses of action that require fewer resources rather than options that are in the best interests of their client(s). For example, we have had multiple lawyers persuade their client(s) to agree to undertaking a misconduct agreement order instead of a VRO.
- Depending on the Legal Aid lawyer our client gets, property settlement matters may, or may not be, supported. We have had some lawyers suggest that property settlement is not within the scope of the Legal Aid grant. However, we have had other lawyers provide this support.
- One instant was raised of a Legal Aid lawyer sharing confidential paperwork with their client's estranged partner's lawyer. This paperwork contained the address The Salvation Army refuge their client was staying at.

In other instances, well-meaning but chronically overworked Legal Aid lawyers were not able to present the evidence in a way that could withstand privately funded lawyers casting aspersions on the truth of claims of FDV.

### Rowena's Story\*

Rowena survived several traumatic weeks of trial in Family Court. During this time her disclosures of domestic and family violence were consistently doubted. Rowena was eligible for legal aid, but her partner had access to high quality lawyers. Despite allegations of sexual abuse, her partner was given 50% care of their child.

Rowena was left highly distraught by the experience and is still struggling with the outcome.

\*All names and other identifying facts have been changed.

### Ongoing Support

There are issues around the support offered while a person is interacting with the Family Law system which have been thoroughly explored in the ALRC report.<sup>13</sup> Additionally, there are issues with the lack of support once a victim-survivor has an outcome. For most of the people we work with, the journey through the family law system is distressing and sometimes traumatising yet there is little ongoing support provided. Services such as ours do provide support, but we are concerned that many women who do not access formal FDV supports will experience an abrupt end to assistance once their engagement with the Family Law system has ceased.

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<sup>13</sup> *Ibid* at Chapter 12.

### **Patricia's Story\***

Two weeks after court, Patricia was told she was required to provide her ex-partner access to her daughter before any contact centre meetings could be arranged. Fearing for her wellbeing and safety, and seeking to reduce contact with her ex-partner, Patricia has arranged for a friend to take her daughter to access visits.

\*All names and other identifying facts have been changed.

## Societal Drivers of Family and Domestic Violence

The Salvation Army asks the Committee to recognise and consider that public statements around FDV have an impact on both the likelihood of FDV occurring and how victim-survivors of FDV are treated. We do not doubt the sincerity and goodwill of anyone involved in the Committee process but given the gravity of FDV we wish to raise the importance of public statements on this subject.

There are many factors that contribute to violence against women but a chief factor is attitudes towards women and FDV more generally.<sup>14</sup>

The National Community Attitudes towards Violence against Women Survey (NCAS) is funded by the Commonwealth Government's Department of Social Services. It is the world's longest-running survey of community attitudes towards violence against women.<sup>15</sup> The most recent results of the NCAS identified several concerning trends including that:-

*There has been an ongoing decline in awareness that men are more likely to commit domestic violence and that women are more likely to suffer physical harm from domestic violence.*<sup>16</sup>

Overall the NCAS identified several areas where the community's beliefs do not match the evidence. These areas include evidence around who is more likely to commit domestic violence, who is more likely to suffer physical harm from domestic violence and who is more likely to experience fear from domestic violence.<sup>17</sup>

Importantly, the NCAS highlights that 'violence supportive attitudes' such as excusing perpetrators, minimising violence against women and mistrusting women's reports of violence can influence social norms and expectations. Critically:-

*[W]hen such attitudes are expressed by influential individuals or are held by a large number of people, they can contribute to a culture in which violence is at best not clearly condemned, or at worst, is actively condoned or encouraged.*<sup>18</sup>

Given how very influential a committee of parliament, and individual parliamentarians, can be in our society, we ask that the impact on victim-survivors be front of mind in all communications of the Committee.

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<sup>14</sup> Webster, K., Diemer, K., Honey, N., Mannix, S., Mickle, J., Morgan, J., Parkes, A., Politoff, V., Powell, A., Stubbs, J., & Ward, A. (2018). *Australians' attitudes to violence against women and gender equality. Findings from the 2017 National Community Attitudes towards Violence against Women Survey (NCAS)* (Research report, 03/2018). Sydney, NSW: ANROWS-25

<sup>15</sup> Are we there yet? Australians' attitudes towards violence against women & gender equality: Summary findings from the 2017 National Community Attitudes towards Violence against Women Survey (NCAS) at p.1 accessed at [https://ncas.anrows.org.au/wp-content/uploads/2019/04/300419\\_NCAS\\_Summary\\_Report.pdf](https://ncas.anrows.org.au/wp-content/uploads/2019/04/300419_NCAS_Summary_Report.pdf)

<sup>16</sup> *Ibid* at p.6

<sup>17</sup> *Ibid* at p.7

<sup>18</sup> *Ibid* at p.8

### Rachel's Story\*

Rachel had been in an abusive relationship for nine years when she was referred to The Salvation Army.

Rachel felt trapped in her relationship – her partner frequently threatened to kill her and their seven-year-old son, Archie\* if she left. Rachel found the courage to flee the relationship when her son started became increasingly withdrawn and disclosed that his father has been coming into his room at night. With nothing but each other and the clothes they were wearing, Rachel and her son were placed in a safe house.

Rachel's caseworker reported that she was very withdrawn, and it took several days before she felt comfortable sharing her story of family and domestic violence. Rachel was advised to get an apprehended violence order and a lawyer involved immediately to protect her and Archie. The Salvation Army arranged for the local police to meet with Rachel and take her statement.

Unfortunately, this proved to be a very distressing experience for Rachel. The police officer who took her statement questioned Rachel's motives and pressured her to remain with her partner for the sake of Archie. Her caseworker reported hearing the police officer say, *"Why would take your child away from his father? What you are describing sounds like a normal relationship to me. You need to take him back and work on your relationship"*.

The caseworker immediately stopped the police officer from continuing the interview. Distraught, Rachel was escorted from the room. It had taken much courage from Rachel to leave the abusive relationship, and even more strength to share her experience of years of violence. Instead of being a safe person for a victim-survivor of family violence, the police officer insinuated that she was lying about the abuse and was a bad mother. It was a devastating experience for Rachel and the impact of this will stay with her forever.

The police officer was asked to leave, and Salvation Army staff immediately placed a call and a written complaint to the local police station. A senior police officer from the station responded within 24 hours apologising and offered to retake Rachel's statement. Rachel took some convincing to meet with the police again as she was quite traumatised by her first experience. The Sergeant came to the family and domestic violence service, took Rachel's statement in a safe manner and apologised for the actions of the original police officer. They advised that the original police officer would receive additional-training on appropriate interview technique for victim-survivors of family violence.

Rachel was able to write a statement to the original police officer, explaining how the experience had made her feel. This was a very powerful tool for her to detail what it felt like to be thought of as a liar, and how the interview had impacted her.

\*All names and other identifying facts have been changed.



## About The Salvation Army

The Salvation Army is an international Christian movement with a presence in 131 countries. Operating in Australia since 1880, The Salvation Army is one of the largest providers of social services and programs for people experiencing hardship, injustice and social exclusion.

The Salvation Army Australia has a national operating budget of over \$700 million and provides more than 1,000 social programs and activities through networks of social support services, community centres and churches across the country. Programs include:

- Financial inclusion, including emergency relief.
- Homelessness services.
- Youth services.
- Family and domestic violence services.
- Alcohol, drugs and other addictions.
- Chaplaincy.
- Emergency and disaster response.
- Aged care.
- Employment services.

As a mission driven organisation, The Salvation Army seeks to reduce social disadvantage and create a fair and harmonious society through holistic and person-centred approaches that reflect our mission to share the love of Jesus by:

- Caring for people.
- Creating faith pathways.
- Building healthy communities.
- Working for justice.

We commit ourselves in prayer and practice to this land of Australia and its people, seeking reconciliation, unity and equity.

### Further Information

The Salvation Army would welcome the opportunity to discuss the content of this submission should any further information be of assistance. Further information can be sought from Major Brad Halse, National Head of Government Relations,

