



5 October 2017

Senate Finance and Public Administration Committees
PO Box 6100
Parliament House
Canberra ACT 2600

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

Dear Committee Secretary,

The delivery of National Outcome 4 of the National Plan to Reduce Violence Against Women and Their Children 2010-2022, 'Services meet the needs of women and their children experiencing violence,' insofar as that Outcome is given effect by the 1800 RESPECT Domestic and Sexual Violence National Counselling Service

1. Women's Legal Service NSW (WLS NSW) thanks the Committee for the opportunity to comment on the 1800 RESPECT Counselling Service. We write to express our sincere regret that this service will no longer continue to be provided by Rape and Domestic Violence Services Australia (RDVSA), as circumstances currently stand.
2. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims support, care and protection, human rights and access to justice.
3. For over 30 years we have known and worked with Rape and Domestic Violence Services Australia (RDVSA) on responding to the legal needs of women who have experienced sexual assault and on systemic advocacy. Our collaborations have included:



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Women's Legal Service NSW

- working to reform the law to establish the Sexual Assault Communications Privilege in 1997 to protect the confidentiality of sexual assault counselling records. Later, our two services collaborated on an extensive and effective project to improve the privilege which led to changes in the NSW *Criminal Procedure Act* and the establishment of the Sexual Assault Communications Privilege Unit at Legal Aid NSW
 - during 2004 and 2005 representatives from our services were members of the NSW Criminal Justice Sexual Offences Taskforce and worked collaboratively to contribute to the Taskforce Report ¹ and recommendations which led to significant improvements to sexual assault criminal justice. The law in relation to consent was modernised along with other important reforms
 - more recently we have supported the work of Rape and Domestic Violence Services Australia in their 'Hey Sis, we've got your back' project which supports Aboriginal women who are working in their communities against sexual assault.
4. Providing a high quality, evidence based, best practice counselling service is fundamental to the work of Rape and Domestic Violence Services Australia. We have great confidence in the service provided by RDVSA. Their highly skilled and trained trauma specialist counsellors provide a uniquely valuable service to our clients who experience sexual assault and domestic violence.
 5. We were concerned when we learned that women seeking to access this service would first have to speak to staff of Medibank Health Solutions, instead of getting straight through to a qualified trauma specialist counsellor. We are further and more deeply concerned that from the end of October 2017, RDVSA will no longer be providing the service at all.
 6. We understand that the reason RDVSA will cease to provide the service is that the terms on which it was asked to operate were unacceptable to RDVSA. In particular, the requirement that the counselling records held by RDVSA be provided to Medibank Health Solutions (MHS) is highly problematic in our view.²
 7. WLSNSW has considerable experience in the protection of the confidentiality of counselling records of victims-survivors of sexual assault. We have advocated for law

¹ Attorney Generals Department NSW, *Responding to sexual assault: the way forward* (2006)

² Rape and Domestic Violence Services Australia Announcement regarding 1800 RESPECT Service, 30 August 2017, <http://www.rape-dvservices.org.au/1800RESPECT>

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reform, provided assistance in courts, and published guides to the protection of counsellor's confidentiality since 1997, as outlined above. (The current version of this, the *Subpoena Survival* Guide was published by Legal Aid NSW in 2016). We also work on the protection of confidentiality in the family law jurisdiction. Our discussion paper on the issue, *Sense and Sensitivity*, can be accessed here: <http://www.wlsnsw.org.au/law-reform/sense-and-sensitivity-2016/>

8. It is essential to the relationship of trust that underpins therapeutic counselling for victims-survivors of trauma that they can express themselves secure in the knowledge that their information will be protected. The abuse of an intimate relationship creates a great range of anxieties and self-doubts that make disclosure difficult. This disclosure is foundational to the healing process. If the client cannot be assured about exactly who could and could not see the notes taken, she is much less likely to seek and obtain the help she needs to recover.
9. We understand that at the time of receiving the service from RDVSA counsellors in 1800 RESPECT, the caller was assured of the confidentiality of the records. Were these records now to be passed to another entity, MHS, the informed consent of the caller would be required.
10. We submit that the 1800 RESPECT telephone counselling service should be adequately funded to take all calls without requiring a third-party triage agency and that the evidence based high quality service continue. Further we submit that it is essential that the counselling records held by RDVSA remain confidential.

If you would like to discuss any aspect of this submission, please contact me or Liz Snell, Law Reform and Policy Coordinator on 02 8745 6900.

Yours faithfully,

Women's Legal Service NSW

Janet Loughman
Principal Solicitor