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AGAINST  
VIOLENCE

Mr Bruce Gardner PSM  
Acting Chair  
Victorian Law Reform Commission  
GPO Box 4637  
Melbourne, Victoria 3001

*Initially via email [law.reform@lawreform.vic.gov.au](mailto:law.reform@lawreform.vic.gov.au)*

27 June 2019

Dear Mr Gardner,

### **Submission to the Contempt of Court Consultation Paper**

Domestic Violence Victoria (DV Vic) welcomes the opportunity to contribute to the Victorian Law Reform Commission's review of the law of contempt of court and to comment on the consultation paper.

DV Vic is the peak body for specialist family violence services for women and children in Victoria, representing over 80 organisations across the state. Since our establishment in 2002, DV Vic has been a leader in driving innovative policy to strengthen sectoral and system response to family violence, as well as building workforce capacity and representing the family violence sector at all levels of government. DV Vic provides policy advice and advocacy to the Victorian Government about family violence response and systems reform and drives best practice through specialist practice programs.

We make this submission based on our specialist and in-depth understanding of the nature, dynamics and impacts of family violence and the needs of victim survivors when they engage with the courts and justice system more broadly. Consequently, we will provide comment on question 42 of the consultation paper as we are well placed to contextualise how such measures could impact on victim survivors. We submit that the introduction of an automatic protection as the one proposed:

1. Could have unintended consequences with potential to compound trauma and silence victims;
2. Is inconsistent with recent law reform in this area which seeks to reinforce the principles of open and transparent justice; and
3. Requires further exploration and investigation to establish an evidence base for consideration.

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#### **Domestic Violence Victoria**

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## 1. Unintended consequences

Although the introduction of an automatic protection such as the statutory prohibition proposed seems based on the premise that it will protect victims who “cannot be expected to be sufficiently well informed nor...be assertive and seek an order themselves”<sup>1</sup>, we submit that any mechanism that limits a victim survivors control over decision making could have the opposite effect and compound the trauma they may be experiencing, and silence victims who want to tell their story. Further, as noted in the *Vincent Review* and in the *Victorian Parliament*<sup>2</sup>, laws that restrict publication can conceal a perpetrators identity which can lead to family violence remaining hidden and private.

Supporting victim survivors of family violence requires a trauma-informed approach, as this approach understands the effects of family violence on victim survivors and the role the justice system can play in exacerbating their safety, risks and trauma. A trauma-informed approach creates opportunities for survivors to rebuild a sense of control and empowerment<sup>3</sup>, which in the court context, respects a victim survivor’s dignity, autonomy and need for physical, psychological and emotional safety. Further, it involves supporting informed decision making so that victim survivors can gain control over their lives.

We submit that the introduction of something that restricts a victim’s ‘choice’ and ‘agency’ deprives them of control over decision making in relation to their privacy which could further compound the impacts of family violence they have experienced. Whether to disclose family violence, to whom and in what circumstances, is a deeply personal choice for each victim survivor. Whether a victim chooses to speak publicly or not should be a choice for them to make and caution should be taken in the introduction of any measure that limits or restricts this choice.

## 2. Principles of open and transparent justice

The introduction of a statutory prohibition that restricts the publication of sensitive information in relation to alleged sexual and family violence criminal matters, seems inconsistent with recent law reform in this area which seeks to reinforce the principles of open and transparent justice that allows victims to “tell their stories publicly, without fear of prosecution”<sup>4</sup>. Recent legislative amendments<sup>5</sup> resulting from recommendations made in the Vincent Review of the Open Courts Act, reinforce these principles and the importance of law reform in this area promoting the rights of victims to speak about their experience if they choose to do so. As noted above, the introduction of an automatic restriction on publication could silence victims who want to speak about their experience.

## 3. A need for further exploration and investigation

The basis of the recommendation to introduce automatic suppression orders is limited. Whilst in no way diminishing the distressing consequences of not having a suppression order in place in that case<sup>6</sup>, one example would not seem to demonstrate that the issue is systemic or widespread. Further, although

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<sup>1</sup> Frank Vincent, Open Courts Act Review (2017) <<https://engage.vic.gov.au/open-courts-act-review>>

<sup>2</sup> Parliament of Victoria, Open Courts and Other Acts Amendment Bill 2019, Second Reading, 20 February 2019

<sup>3</sup> Hopper, E., Bassuk, E., & Olivet, J. (2010). Shelter from the storm: Trauma-informed care in homelessness services settings. *The Open Health Services and Policy Journal*, 3, 80-100.

<sup>4</sup> Attorney-General’s Department (VIC), ‘First Stage of Suppression Order Overhaul Begins’ (Media Release, 19 February 2019) <<https://www.premier.vic.gov.au/first-stage-of-suppression-order-overhaul-begins/>>

<sup>5</sup> Open Courts and Other Acts Amendment Act 2019

<sup>6</sup> Frank Vincent, Open Courts Act Review (2017) <<https://engage.vic.gov.au/open-courts-act-review>>, p133

limitations in the current system which have resulted in victims being inadequately informed about legal processes and procedures, particularly in relation to suppression orders was raised<sup>7</sup>, limited analysis was undertaken to whether improvements in this area would resolve the issue.

Before introducing any mandatory restriction which potentially limits a victim's right to choose and control over decision making, it would seem prudent to undertake further research to see if the issue is widespread. If this does prove to be the case, further consideration should be given to how this can be addressed and resolved and whether providing victims with better information about publication and suppression orders at the early stages of legal proceedings would address this issue.

Such an approach would be consistent with a trauma-informed response. It would promote the rights of victims by providing them with better information at an early stage of proceedings so they can make an informed decision about whether they want their identity suppressed, rather than taking the choice out of their hands automatically.

Careful consideration also needs to be given to whether a victim should be required to make an application through the court to lift the ban on publishing a victim's identity as this may present a barrier for some victims pursuing this option. This was noted in the second reading, Open Courts and Other Acts Amendment Bill 2019<sup>8</sup>, as an issue in need of further consideration.

Thank you for this opportunity to comment on the consultation paper. If you require any further information, please contact me.

Warm regards,



**Alison Macdonald**

Chief Executive Officer (Acting)

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<sup>7</sup> *ibid*, the DPP acknowledged that most victims lacked prior knowledge about statutory prohibitions on publication and suppression orders, and that information was provided to victims by the Office of Public Prosecutions ('OPP') only on a case by case basis (p133).

<sup>8</sup> Parliament of Victoria, Open Courts and Other Acts Amendment Bill 2019, Second Reading, 20 February 2019