



Royal Commission
into Family Violence

WITNESS STATEMENT OF PROFESSOR LEIGH SUZANNE GOODMARK

I, Professor Leigh S Goodmark, Academic Professor, of the University of Maryland Francis King Carey School of Law, 500 West Baltimore Street, Baltimore, in the State of Maryland in the United States of America, say as follows:

1. I make this statement on the basis of my own knowledge, save where otherwise stated. Where I make statements based on information provided by others, I believe such information to be true.
2. I am the author of a number of publications which are relevant to the work of the Royal Commission into Family Violence. These publications form my submission to the Royal Commission. I refer to and adopt these publications.

Current role

3. I am currently employed as Professor of Law at the University of Maryland Francis King Carey School of Law.
4. I also direct the Gender Violence Clinic, which provides direct representation in matters involving intimate partner abuse, sexual assault, trafficking, and other cases involving gender violence.

Background and qualifications

5. I have the following qualifications:
 - 5.1. In 1994, I obtained a Juris Doctor with distinction from Stanford Law School; and
 - 5.2. In 1991, I obtained a Bachelor of Arts with highest honours from Yale University.
 - 5.3. I am a member of the Maryland, District of Columbia and California bars.
6. After graduating from Stanford Law School, I clerked for the Honourable Robert G. Doumar of the United States District Court, Eastern District of Virginia.
7. Between 1999 and 2000 I taught at the 'Families and the Law' clinic at the Catholic University of America within the Columbus School of Law.

8. Between 1996 and 1999, I practiced family law within the District of Columbia at 'Bread for the City' and 'Zacchaeus Free Clinic', a holistic neighbourhood service centre, and was the recipient of a Skadden Arps Fellowship. During that time, I represented women and children suffering family violence in the District of Columbia in custody, visitation, child support, restraining order, and other civil matters.
9. Between 2000 and 2003, I was the Director of the 'Children and Domestic Violence Project' at the American Bar Association Centre on Children and the Law.
10. Between 2003 and 2011, I was on the faculty at the University of Baltimore School of Law as Director of Clinical Education and Co-director of the Centre on Applied Feminism.
11. I am a former president of CLEA, the Clinical Legal Education Association, and former president of the Board of Directors of the Women's Law Centre of Maryland. Additionally, I am a member of the Editorial Board of Violence Against Women and serve on the Advisory Board for NVRDC, the Network for Victim Recovery in the District of Columbia,, which is a victim service organisation.

Publications and research

12. My publications on family violence have appeared in numerous journals and law reviews, including Violence Against Women, the Harvard Civil Rights-Civil Liberties Law Review, and the Yale Journal on Law and Feminism. I have published widely on issues related to family violence in the context of the criminal, legal and judicial systems, including systemic responses to families experiencing family violence. I have authored research articles which consider the possibilities of restorative justice and community-based justice forums. Additionally, my publications explore issues of accountability within the Child Protection System, as well as the interaction between transgender people suffering from family violence and the legal system response. My earlier work investigated the potential for gender bias within the legal system.

Criminal Law and Family Justice – the United States perspective

13. In general terms, within the U.S. approach to family violence, the policies and laws of the states are substantially similar to those in Victoria. It is intended that this statement provide relevant comparisons between the U.S. and Victorian approach.
14. The definition of family violence within a U.S. context differs from that in Victoria, in that violence against children is considered separate from violence against an intimate

partner. Additionally, the definition does not usually extend to psychological, emotional and financial abuse.

15. In terms of a criminal justice response, processes regarding the charge, breach and application without consent of family violence intervention orders are almost identical between the two jurisdictions. Additionally, children can be protected by family violence intervention orders but there is sometimes a lack of willingness on the part of the judiciary to make these orders.

Criminal justice response and intervention in the United States

16. In terms of the criminal justice response to incidents of family violence, some states have a generalist 'family violence offence', yet most do not. The issues within the U.S. system are procedural more than substantive in that the state can intervene and enforce no drop prosecution and mandatory arrest, both of which are problematic. No drop or pro-prosecution policies prevent prosecutors from dismissing charges at the victim's request. Prosecutors explain to victims that the decision making around family violence cases is made by the government, not the victim survivor.
17. Mandatory arrest laws were designed to deprive police of discretion when determining whether to make arrests when responding to family violence calls (if there is probable cause for them to do so). There is an academic debate, but less so a policymaker's debate, on the effectiveness or appropriateness of the mandatory arrest law measure. Research is unclear on whether mandatory arrests are effective as a general or specific deterrent. There is also a growing concern with over-incarceration more generally, with what is referred to as 'hyper-criminalisation' problems.
18. There is the sense in many quarters that separating the parties is sufficient to stop family violence, which demonstrably it is not. In a sense, the U.S. family violence system is both over and under-intrusive, in that intervention is mandatory, yet ineffective, as women and children are not being provided with adequate support.
19. There is an increased burden on women, and a widespread misunderstanding of why some women do not leave the relationship immediately. There are complicating factors around why some women don't leave, including wanting to keep the family unit together (especially in the case of children), as well as the lack of accommodation options available for the women and their children.
20. There should be more time and more resources allocated to allow women to have the agency to make the most appropriate decision for their circumstances. Currently, there

are no alternatives to women who do not want state intervention and would prefer a restorative justice approach.

21. Women who require assistance from the family violence system need to be informed and given sufficient information about their options and correlating consequences. It is extremely difficult to make decisions during times of great trauma, and some women need time to assess all appropriate avenues for support. The focus should be on empowering victim survivors rather than placing a greater burden on them by pressing for a decision when there is a vacuum of information.

Domestic Violence and the Legal System

22. The legal regime in the United States designed to combat domestic violence is deeply flawed in ways that prevent it from assisting many women subjected to abuse.

- 22.1. The current legal response to domestic violence is excessively focused on physical violence; and this narrow definition of abuse fails to provide protection from behaviours that are profoundly damaging, including psychological, economic, and reproductive abuse.

- 22.2. The system uses mandatory policies that deny women subjected to abuse autonomy and agency, substituting the state's priorities for women's goals. In my book, 'A Troubled Marriage: Domestic Violence and the Legal System'¹, I explore how the legal system's response to domestic violence was developed, why that response is flawed, and how it may be improved. I argue for an anti-essentialist system, which would define abuse and allocate power in a manner respective of the experiences, goals, needs and priorities of individual women.

23. To improve the current framework of family violence services, we must examine the family violence laws and policies as implemented in the 1970s and 80s. The policies implemented historically reflected the desperation for any kind of protection for women and children experiencing family violence, including ensuring a police and a criminal justice response. This led to mandatory arrest wherever probable cause existed, as well as bans on mediating family violence cases. These policies are marked by their denial of decision making, agency and autonomy for women affected by family violence. My article, 'Autonomy Feminism: An Anti-Essentialist Critique of Mandatory

¹ Goodmark, Leigh S., "A Troubled Marriage: Domestic Violence and the Legal System" (2012). *Book Gallery*. Book 74.

27. There are innovative new strategies across child welfare and family violence agencies, which will enhance cross-system understanding and interaction between agencies and communities. We require new protocols which will institutionalise change and ensure the family violence sector workers benefit from the knowledge learned from their predecessors and colleagues. To the extent they have been successful, practices and policies developed to date must move from localised to be adopted more broadly, with the resources to ensure long term change. All newly implemented policies and practices must emphasise new roles for men in assisting to support prevention of family violence.
28. A primary goal within the family violence sector is to improve collaboration between systems and engage new community partners in keeping families safe. Biases based upon race, ethnicity and gender continue to plague the systems that work to keep families safe.
29. Further strategies should be strengthened to ensure a collaborative approach to positive change within the family violence sector, as follows:
 - 29.1. Collaborative learning and practice within the service systems and the broader community;
 - 29.2. New strategies to address race, culture and gender;
 - 29.3. Provision of appropriate support services to mothers and children, with the responses to families based upon the specificity of need and the potential risk; and
 - 29.4. Greater accountability for perpetrators of family violence, as well as a more meaningful engagement of men as allies to protect children.
30. **Attached** to this statement and marked [LG-3] is a copy of my article that I co-authored with Ann Rosewater, 'Steps Toward Safety: Improving Systemic and Community Responses for Families Experiencing Domestic Violence'⁴ which expands upon the collaborative approach of community to create positive change.

Legal Response

⁴ Goodmark, Leigh S. and Rosewater, Ann, "Steps Toward Safety: Improving Systemic and Community Responses for Families Experiencing Domestic Violence" (2007). Book Gallery. Book 78.

Interventions in Domestic Violence Cases² argues that we must view family violence law through an anti-essentialist lens, which will expose how problematic mandatory policies can be, and allow us to craft family violence laws and policies that prioritise and empower women. **Attached** to this statement and marked [LG-1] is a copy of the above article.

24. The cohort of women who suffer from family violence is broad and varied, and requires a response which reflects the complexities of the individual women, rather than reducing them to their lowest common denominator, which is their shared experience of family violence. We need to reinvent family violence law and policy, which should guide the reconsideration of policy, legislation and systematic reform. Principles to assist in the transformation of family violence law and policy include the following:
 - 24.1. Acknowledge the complexity of women who have experienced family violence and the diversity of their needs;
 - 24.2. Formulate policy around the experiences of marginalised women;
 - 24.3. Stop demonising men who are the perpetrators of family violence, and improve men's behavioural change programs;
 - 24.4. Eliminate mandatory policies within family violence law; and
 - 24.5. Relegate the legal system to a more limited role.
25. **Attached** to this statement and marked [LG-2] is a copy of my article 'Reframing Domestic Violence Law and Policy: An Anti-Essentialist Proposal³', which speaks to these proposals in more depth.

Systemic and community response – a collaborative approach

26. Family violence was once a hidden problem, and now the subject of open discussion and widespread reform. There is broad agreement that the family violence system has historically failed women and their children, and that although we have achieved a tremendous amounts, more needs to be done to protect and support vulnerable women and children.

² Autonomy Feminism: An Anti-Essentialist Critique of Mandatory Interventions in Domestic Violence Cases, 37 Florida State University Law Review 1 (2009).

³ Reframing Domestic Violence Law and Policy: An Anti-Essentialist Proposal. 31 Washington University Journal of Law and Policy 39 (2009).

31. There are myriad issues facing lawyers who represent or advise women who have experienced family violence. **Attached** to this statement and marked **[LG-4]** is a copy of my article 'Law Is the Answer? Do We Know that for Sure?: Questioning the Efficacy of Legal Interventions for Battered Women'⁵ which addresses a number of these issues, as briefly set out below.
32. There are unintended consequences of subjecting women to the legal system after an incident of family violence. For example, when there is an instance of family violence where children are involved, the perpetrator can continually litigate on issues of child protection and use the legal system to continue the cycle of abuse.
33. There is a zealous application of mandatory arrest and no-drop policies, which, if a woman attempts to subvert the policies being implemented, can lead to dual arrests. Problems with dual arrest do not end in incarceration, it may mean her children are removed by child protective services, and the potential of having her conviction history used against her in future custody proceedings.
34. There are also complexities with laying charges when the abuse is not physical, but is emotional, psychological or financial in nature. The reality is that there is not the necessary legislative framework to support victim survivors who suffer from non-physical abuse.
35. Lawyers advising women who wish to flee relationships are often unaware of the legal and non-legal complexities involved in her choosing to do so. **Attached** to this statement and marked **[LG-5]** is a copy of my article 'Going Underground: The Ethics of Advising a Battered Woman Fleeing an Abusive Relationship'⁶, which explores at length issues lawyers face when advising women on the most appropriate legal avenues to ensure long term safety and security if she chooses to leave and no longer have contact with the perpetrator.
36. Lawyers need to look outside of the legal system for answers to individual needs of victim survivors, such as to avenues of client counselling and support. This can provide a sense of dignity and agency to ensure that a woman is able to make her own decisions.

Judicial Response

⁵ Law Is the Answer? Do We Know that for Sure?: Questioning the Efficacy of Legal Interventions for Battered Women, 23 Saint Louis University Public Law Review 7 (2004).

⁶ Going Underground: The Ethics of Advising a Battered Woman Fleeing an Abusive Relationship, 75 UMKC Law Review 999 (2007).

37. There are studies which have argued that family courts have failed to support or respond appropriately to family violence cases. **Attached** to this statement and marked [LG-6] is a copy of my article 'Telling Stories, Saving Lives: The Battered Mothers' Testimony Project, Women's Narratives, and Court Reform'⁷, which speaks more broadly to the failure of the court and judicial system. The article outlines that there is a failure on the part of the courts to protect women and children from abuse, which often allows the perpetrator to continue the abuse by way of the court system. The article also states that the court and judicial system discriminate and degrade women and children, and fail to respect their economic rights.
38. Judges face tremendous responsibility in cases involving family violence. They must be concerned with the safety of the children, establishing the safety of adult victims, holding the perpetrator accountable for their actions, and monitor the support agencies removal of children or reunification of children (where appropriate). Ensuring that reasonable efforts have been made in domestic violence cases is paramount in ensuring the best outcomes for families experiencing family violence.
39. There is a suggested checklist for judges presiding over family violence matters. **Attached** to this statement and marked [LG-7] is a copy of my article 'Reasonable Efforts Checklist for Dependency Cases Involving Domestic Violence'⁸, which outlines the recommendations that are designed to assist judges in making appropriate determinations in cases involving family violence. The checklist is set out briefly below as follows:
- 39.1. Why judges need to understand family violence when handling family violence cases;
 - 39.2. How family violence affects parenting, and the interrelationships between drug and alcohol abuse and family violence;
 - 39.3. Legal framework for making reasonable findings;
 - 39.4. Reasonable efforts which ought to be undertaken in cases involving domestic violence; and
 - 39.5. Suggestions to assist judges improve the availability and quality of services for families experiencing family violence in their communities.

⁷ Telling Stories, Saving Lives: The Battered Mothers' Testimony Project, Women's Narratives, and Court Reform, 37 Arizona State Law Journal 709 (2005).

⁸ Reasonable Efforts Checklist for Dependency Cases Involving Domestic Violence (2008).

Restorative justice

40. Since its passage in 1994, the Violence Against Women Act (**VAWA**) has promoted a criminal justice approach to addressing intimate partner abuse. Yet the VAWA has done little to provide people subjected to abuse with alternative avenues for seeking justice. Restorative justice is one option that future versions of VAWA might explore. **Attached** to this statement and marked **[LG-8]** is a copy of my article 'Stalled at 20: VAWA, the Criminal Justice System, and the Possibilities of Restorative Justice'⁹, which posits that restorative justice can be an appropriate method in addressing intimate partner abuse.
41. In some jurisdictions, women subjected to abuse are forced to testify against their partners, which can be detrimental and even dangerous depending upon the circumstances of the relationship. Restorative justice emphasises repairing harms, rather than punishing crimes. This gives the victim survivors and offenders the opportunity to engage in a dialogue around the harm, assess the impact on the victim, and take steps to ensure offender accountability in meeting victim survivor needs.
42. Restorative justice places a great deal of power in the hands of the victim survivor, including the power to decide whether restorative processes are appropriate, to confront their partners, and to have their partners admit responsibility and to seek reparations.
43. There is also an alternative model of a broader community based restorative justice approach which may be appropriate in some circumstances of family violence. **Attached** to this statement and marked **[LG-9]** is a copy of my article 'Law and Justice are not Always the Same: Creating Community-Based Justice Forums for People Subjected to Intimate Partner Abuse'¹⁰, which considers the crucial questions that this type of justice provision raises, such as the role of the state; the problems of gendered justice; the existence of community; and the provision of adequate resources.

Additional research

44. Understanding that the topics below will be covered in other modules by the Royal Commission, I briefly set out some relevant publications for the topics of transgender and same sex relationships experiencing family violence, as well as child protection, children's rights and the law, for the Commissioners' reference.

⁹ 1. Stalled at 20: VAWA, the Criminal Justice System, and the Possibilities of Restorative Justice, CUNY Law Review, Dec. 16, 2014

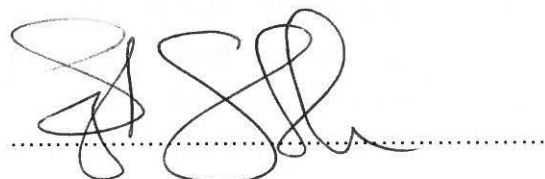
¹⁰ 'Law and Justice are not Always the Same: Creating Community-Based Justice Forums for People Subjected to Intimate Partner Abuse' 41 Florida State University Law Review (2014).

Family violence within transgender and same sex relationships.

45. In some states, same-sex or transgender couples are not able to obtain intervention orders as their relationship is not formally recognised. Some transgendered people or those in same-sex relationships are unwilling to engage with the state due to negative interactions with the police or the state in the past. There may have been mistreatment at the hands of the police, or the threat that if they seek support services or assistance, they may be outed by these services. There is also a paucity of alternative options designed specifically to meet the needs of transgender or same-sex people who have experienced family violence. **Attached** to this statement and marked [LG-10] is a copy of my article 'Transgender People, Intimate Partner Abuse, and the Legal System'¹¹, which explores the issues specific to transgender people within the context of family violence.

Children's Rights, Child Protection and the Law

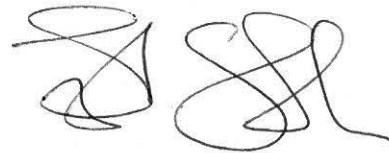
46. **Attached** to this statement and marked [LG-11] is my publication 'Keeping Kids Out of the System: Creative Legal Practice as a Community Child Protection Strategy'¹², which examines the interaction between child protective services and legal service providers who work on preventing unnecessary intervention and removal of children within family violence incidents.
47. As the child welfare system's focus on potential damage to the child from exposure to family violence has intensified, responsibility for this exposure has been placed squarely on the shoulders of abused mothers. Child welfare systems often hold victim survivors at fault during instances of family violence as the mothers were unable or unwilling to leave family violence situations. **Attached** to this statement and marked [LG-12] is a copy of my article 'Achieving Batterer Accountability in the Child Protection System'¹³, which posits that child protection can protect children by offering their mothers appropriate services and protection.



¹¹ Transgender People, Intimate Partner Abuse, and the Legal System', 48 Harvard Civil Rights-Civil Liberties Review 51 (2013).

¹² Goodmark, Leigh S., "Keeping Kids Out of the System: Creative Legal Practice as a Community Child Protection Strategy" (2001). Book Gallery. Book 92.

¹³ Achieving Batterer Accountability in the Child Protection System, 93 Kentucky Law Journal 613 (2004-2005).

A handwritten signature in black ink, consisting of stylized, overlapping loops and curves, likely representing the initials 'LSG'.

Professor Leigh Suzanne Goodmark

Dated: 30 July 2015