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Attention: Royal Commission

29 May 2015

Submission by Phil Cleary, supported by Donna Cleary and Elizabeth Cleary, all siblings of the late Vicki Cleary, murdered on 26 August 1987 by her ex boyfriend, who was subsequently granted a provocation defence and found not guilty of murder.

In our submission we wish to focus on the place of the courts and the public narratives in the society's understanding of violence against women. Whilst not diminishing the importance of examining violence against children, we believe that it should be understood as an act of violence against a woman.

It is our belief that if we properly understand the historical and cultural context of the epidemic of violence against women we will be better able to address the terms of reference of the Royal Commission vis a vis 'best practices for the prevention of violence...better systemic responses by police, legal and family violence support services...etc'.

To that extent our submission should be seen as consistent with the final point in section 4 of the Terms of Reference, ie 'inquire and report on any other matters reasonably incidental to those set out in paragraphs 1-4 above.'

### A Crisis of Modernity

It is our view that the underlying reason for an increase in violence against women is the resistance of an underbelly of men to changed social relations since the rise of feminism. If we ignore this reason and instead focus on the supposed role of drugs and alcohol we risk engaging in practices that ignore the real source of the violence. That would potentially not only compromise educational and cultural strategies designed to prevent the violence but also lead to responses in the courts that are equally flawed.

To date no government agency or research centre has provided sufficiently extensive empirical data on the trajectory of violence against women over the past 40 years and its treatment by the justice system. The evidence is clear in indicating that women are most at risk of being killed when they leave or threaten to leave a relationship. But have more women been murdered post feminism than pre feminism and the social changes – equal pay, no fault divorce, and greater economic independence – of the past 40 years?

We do not suggest that such questions should be the pre-eminent questions for the Royal Commission, only that they must be addressed if we are to properly understand the violence and develop appropriate responses.

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**Independent Member**  
Australian Parliament  
(1992-1996)

**Independent Delegate**  
Constitutional Convention  
1998

**Author:** Cleary Independent (1998)  
Just Another Little Murder (2002)  
Getting Away With Murder (2005)

## The Justice System

Over the past 25 years the examination of the criminal justice system's response to violence against women has intensified, leading to substantial reforms. In 2005 the Provocation Defence was abolished in Victoria and replaced by Defensive Homicide, which in turn was abolished following a string of not guilty verdicts for men who had killed a wife, estranged partner or a woman with whom they had been intimate.

When Defensive Homicide was abolished, as had been the case with Provocation, there was little if any examination of whether the law's failure was a product of external cultural factors. Researchers and critics are unequivocal in arguing that traditionally the dominant courtroom narratives in 'wife killing' cases deserve to be categorised as at worst misogynist and at best prejudiced against women. This was the reason the previous Victorian Liberal Government enacted changes to the Evidence Act 'to empower a court to refuse to admit evidence if its probative value is substantially outweighed by the danger that the evidence might unnecessarily demean the deceased in a criminal proceeding for a homicide offence.' The Attorney General's office claimed the changes were designed to 'reduce unjustifiable attacks on the character and reputation of the deceased during homicide proceedings' and put an end to the "Victim blaming" which it claimed had 'been a significant problem in the past, and can cause significant distress and trauma for the victim's family and friends.'

How can we move on and 'establish a culture of non-violence and gender equality and share appropriate attitudes towards women and children' (Terms of Reference Point 5) if we don't first acknowledge the failings of the past? This is surely one key purpose of the current Royal Commission into Institutional Child Sexual Abuse. In a recent meeting with Philip Cummins, in relation to the Law Reform Commission's Reference into the role of victims of crime in the criminal trial process, I put the view that there must be an apology from government for the institutionalised failings of the justice system in trials involving intimate partner murder. As a former Supreme Court judge, Philip Cummins well knows - as my research confirms - that overwhelmingly, cases involving a male defendant accused of murdering a female partner, current or former have resulted in manslaughter verdicts and courtroom narratives at odds with the avowed rights of women.

An apology, along with a detailed and comprehensive account of why it is now accepted that the system has historically failed women is entirely consistent with Question One of the Royal Commission's brief, in that we cannot develop a 'systemic response to family violence, particularly in the legal system and by police....' unless we identify how we have failed, historically, to affirm the rights of women.

A public acknowledgment by government as to the systemic failings of the legal system will not only assist those families afflicted by the failed provocation and defensive homicide laws but also mark a watershed moment in the evolution of the campaign to stop 'family violence.' As per Question Two, by identifying the systemic failings we can better examine the progress of recent reforms, not least the changes to the Evidence Act, more stringent responses to breaches of Intervention Orders and tightened police protocols.

As per Question Three, we believe the most significant reform in the last ten years to have been the abolition of the provocation and defensive homicide defences. Not because these changes saved women, but because they amounted to an official acknowledgment of the failings of the courts and the prejudices faced by women. These changes were the catalyst for an increased public awareness of the nature of the problem, which in turn led to changed police protocols on dealing with family violence and the tightening of the policing of AVOs.

## In Summary

Twenty-one years ago the Women's Coalition against Family Violence launched its groundbreaking book *Blood on Whose Hands?* The book identified all the questions raised by the current Royal Commission and one more, the role of the media. We've come a long way since headlines such as 'Love Pulls the Trigger' accounted for why a man might shoot dead his estranged wife. In this case the woman was shot dead in front of her two children, with the man subsequently found not guilty of murder due to provocation. Yet, while the headlines have changed the blaming of women has not.

It's one thing to undertake a Royal Commission; it's another to acknowledge that our society has been riddled with institutionalised shortcomings in the way it has addressed violence against women. It's for this reason we ask that the Royal Commission:

- Delivers a preamble, which acknowledges the historic wrongs in relation to the response of institutions – courts, police, and government agencies – in dealing with violence against women.
- Addresses the question of whether, as we argue, the violence is emblematic of resistance by an underbelly of men, to the increased independence of women post feminism and the social and economic changes of the 1970s.
- Addresses the question of why we have not eradicated courtroom narratives that demonise women – *R v Ramage et al* – and whether changes to the Evidence Act have had the desired result.
- Makes the funding and resourcing of Community Health Centres - given their well established connection with women – a major priority so that they can take a frontline role in assisting women escaping violence, especially in relation to police and legal support.
- Explores how local sporting clubs can be funded - I have outlined such strategies for various Councils and organisations - to take a major role in bringing about cultural change that marginalises those men resistant to the progress of women's rights.
- Supports the ACTU's claim for paid domestic violence leave, not simply because such a move will reduce the pressure on women attempting to escape violent men, but will legitimise the position of women in the violence cycle and further engage unions – many of them male dominated - in the campaign to marginalise violent men.
- Supports programs designed to educate key parties – media, police, government, sporting – as to the appropriate language when dealing with incidents of violence against women. The AFL's decision to allow Tom Jones to sing *Delilah*, an ode to a so-called crime of passion, is a telling example
- Supports educational strategies, both in schools and in the media – designed to counter the myths about violence against women. Dr Adrian Howe's '*Othello on Trial*' is an example of a piece of theatre that can be used in schools to counter the provocation myth.

Yours Sincerely

Phil Cleary

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