

## RCFV - ANONYMOUS

## SUBMISSION TO VICTORIAN ROYAL COMMISSION INTO FAMILY VIOLENCE

Many thanks for the opportunity to comment on this important enquiry.

Please accept this submission on an anonymous basis removing any identification before publishing.

I would start by making 100% clear nothing in this submission diminished the impact and horrendous nature of real domestic violence. It is abhorrent and must be stopped. We must however respect the rights of all citizens and as we don't indiscriminately bomb nations not indiscriminately attack innocent men with an assumption of guilt.

Why do I raise this? Early in [REDACTED], I was simply a loving father and a gentle family man happy in a secure job and lovely home (indeed the value of my home arguably led in part to this sorry affair). other than a speeding fine, I had no history of anything even vaguely related to the police, certainly not violence, mental health or any similar issues whatsoever.

In the early part of the year I arrive home one night to my former wife, her father and sister quite literally threatening to get me a criminal record by lying to police. The following day she filed a false police report suggesting I was suicidal, but didn't actually raise an AVO. One week later less than an hour after she was told lawyers had become involved she again lied to police and requested they raise an urgent order.

The Stolen generation complain of the horror of Police in days gone by turning up and taking their children. In [REDACTED] with no investigation or evidence whatsoever... not even talking to me or even looking at their own systems the Police blocked me from my children and my home. [REDACTED] years and [REDACTED] days after this I had paid over \$[REDACTED] in legal fees to try and reverse the effects, lost my career and only then the Police finally looked at phone records and other evidence and formally put on the record that

- (i) they had made no attempt to investigate (being a civil issue I am told they have no obligation to),
- (ii) they had made an error and it should never have been raised
- (iii) my former wife had now provably lied to them in 2 separate statements and
- (iv) she had also lied to a magistrate in order to raise an ADVO.

My former wife has stated on the record that her lawyer suggested she raise an ADVO - she has admitted no being at all scared, is herself also a solicitor and has stated her motivation 'one of us had to leave and it wasn't going to be me' as well as her comfort in lying to the police 'the truth doesn't matter it's what the magistrate believed' 'the police never prosecute perjury anyway'.

*Issue 1 – these order can be raised far too easily (categorising separating couples having even a single simple arguments with wife killers). Often men are simply assumed to be guilty and, even if proof is available it is neither sought nor taken seriously.*

#### *Suggested Resolution 1*

*– honour the right to the assumption of innocence and security of person – have the police perform their role and investigate.*

*- introduce a 'buffer' ADVO whereby an order can be put in place for 3 day whilst the police investigate the facts – I note in my own case absolute evidence was available (phone records etc.) and by doing this the police could have save court time, many hours since spent assisting me in undoing this and actually protect the victims.*

*- bring some facts into the discussion. I recently challenge a domestic violence focused woman's group to tell me the race, location, age etc of victims such that services could be focused. They had absolutely no idea where the issues occurred or by who and reverted to the normal catch cry of 'men are evil' '2*

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women a week'. I am not willing to be 'cluster bombed' by a justice system that has destroyed my life simply based on gender based (now proven completely wrong) assumptions. We should remove the concept of 'women' as victims and men as abusers and focus on good policy that will naturally protect both in the ratios they are victims - if you could replace a gender with a religious group, or race maybe you should be quoting it.

## CHECKS AND BALANCES APPEAR COMPLETELY INEFFECTIVE

Even furnished with a letter from the Attorney General's department suggesting the police investigate her for perjury and full acknowledgement that she filed false / misleading reports and awareness of the impact, the Police have advised that not only are they not willing to charge her with anything relating to these proven to be false claims, they are also no longer willing to investigate the genuine intimidation used to get me out of my home and literally landing me in an emergency ward. She has used an AVO based on false statements to conceal a crime. I am advised that were an ADVO a criminal matter it (i) would have been investigated up front and (ii) she would now be investigated for criminal charges. Having an ADVO placed against you whilst going through family law is devastating and the ramifications for false claims should recognise this.

During the past ■ years my former wife lived in a large home rent free for over a years, has taken my children and stated there's nothing I can do about her action as she will simply say the relationship is high conflict and take more of my children's time. 'I'm blackmailing you using your children'. She is quite literally using criminal activities committed under the state system to gain benefit in the Federal Family law system

Women's groups will tell you there is no evidence of such occurrences. I am happy for any of the facts outlined above to be independently verified. Senators, District Court Judges, Family Court Judges, academics, the police and those suffering from this echo the same issues. Please refer to the end of this document for further related quotes – there are many more out there. Lawyers and unscrupulous people going through the family court are with no fear of any retribution causing horrific injury to innocent people, wasting the family courts time, wasting millions on policing that could be protecting real victims. This issue is completely trivialized. It quite literally could have killed me.

*Issue2 – family law layers are well aware of the tactical benefits for their clients and can without risk to themselves or their clients simply ask clients 'have you got your AVO yet'.*

*Suggested Resolution 2*

– Lawyers - track the number of clients each firm and individual has with 'family court' ADVOs and 'mystery shop' them to see if they are recommending vexatious claims. Systematically actually charge lawyers who encourage this (noting the effect on an innocent victim of this strategy's life can be so extreme in some cases it can lead to his suicide).

– Individuals – introduce recognition of poor parenting of people raising false claims and a standard penalty (1 year in jail) for people found to have made material and provably false statements to the police. There is no point in having 'perjury' style laws when they are not enforced.

*Simply charging those blatantly abusing the system for personal gain will free capacity to help real victims.*

**Question One**

Yes the very real issue of waste and injury relating to family violence orders sought for tactical or collateral reasons to do with family law disputes including unethical lawyers suggesting individuals apply for restraining orders to gain possession of homes, children and assets as well as an upper hand during the court proceedings.

I note that in theory rules against perjury, misleading police exist and the family court has powers to refer matters to the federal police and lawyers to the OLSC. In reality I am aware of many proven false claims and yet no prosecutions of either lawyers or those raising them.



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## Question Two

False claims need to be eradicated. Sadly the federal family law reforms appear to have actually encouraged / rewarded them. The state and federal systems seem to look at family law overall, highlight theoretical check and balances that are never actually enforced and blame the other level of government for the half of the problem they don't control. We are humans and the governments need to work together to assess outcomes on humans.

I understand the theoretical checks and balances. They are not working. Lawyers are committing what is in effect child abuse to make millions and many Fathers are suffering incredible trauma.

## Question Three

Their system is broken – it in effect groups and labels innocent people with murders, often assumes guilt is related to gender. It doesn't follow that because sadly in extreme cases women are killed that the women who wants a divorce to go to the gym more (not flippant but the reason my ex gave her counsellor) must be the victim of (non-existent) abusive text messages. Investigation is needed.

## Question Four

N/A

## Question Five

Walk into a Relationships Australia centre as a male victim of domestic violence and you find a wall of support that is not available to you because of your gender and a small section that assumes you need help managing your (non-existent) violence – in the court you'll then find women's officers. I recently broke down in a police station at a poster of a child crouched upset in the corner. A careless 23 year old police woman did this to my children by taking their father with no evidence or investigation (and as they've now agreed) no crime!. We need to support all.

## Question Six

Don't reward false claims. If you want tension a great way to create it is to remove a man's home and children when he has (as now acknowledged in my case by the police after [REDACTED] years of pain) done nothing! False claims drive very expensive family court proceedings that are no in the interests of the kids or the innocent party. Many of these seem to be funded by legal aid wasting yet more public funds that could be spent on a real solution

## Question Seven

Thorough investigation of facts.

## Question Eight

The state DV and federal family law systems don't consider each other well enough and how easy it is for unethical lawyers to play this. Neither system actually enforces theoretical penalties for false claims so they might as well not be there. Ultimately, if you ignore this, I suspect every single contested divorce will end up with an associated AVO.

## Question Nine

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In my case the police didn't even look on their own system to see what she was saying directly contradicted another misleading police report she'd made a week beforehand. Premier and Prime Ministers departments in effect point to each other and put forward the theoretical crimes a false claimant has committed – the issue occurs as both lawyers and their unscrupulous clients know no one will ever be charged.

## Question Ten

State and Federal systems simply point their fingers at each other, with the states saying 'family law outcomes are not my problem' Federal then saying DV legislations out of my hands. Australians are destroyed as they fall between the gaps. We are creating a stolen generation, stolen by unethical people with fake horrible claims. This puts the kids in the hands of the bad parent for ■■■ odd months whilst a family law date is sought. I have now been found 100% innocent yet will never get my career, my home or this time with my kids back.

## Question Eleven

Yes... lawyers have describe the way to be classed as the victim as the 'race to the police station' if there's been some sort of argument it's the first to talk to a family lawyer and race to the station to get their ADVO. If you are the genuine victim having been abused the state then joins in takes your home and clobbers what's left of your life. This is not only my view but one expressed by several lawyers I've spoken to.

## Question Twelve

N/A

## Question Thirteen

N/A

## Question Fourteen

Prior to committing what the police called 'criminal intimidation' and filing two false police reports, my ex was in counselling for '30 years of mental health issues' and was abusive over an extended period – I literally ended up in an emergency room. The current laws have not only provided absolute immunity from any real chance of being prosecuted but actually rewarded her handsomely for this behaviour (having used a crime to take the home and children family lawyers advising if she was charged (and the police initially wanted to investigate) the family court would say it was high conflict and perversely give her full custody of the kids). A very simple quick verification of the facts at the time she raised it could have identified that she was in fact the aggressor and this was a pre-mediated action designed to pervert a family law outcome.

Lawyers seem to be following this as a near formulaic approach... false ADVO, take home, secure custody, seek high cash settlement based on custody achieved through perjury, seek maintenance payments – waste public funds, put real victims at risk and trivialise what they go through, benefit from criminal activity!

## Question Fifteen

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N/A

### Question Sixteen

N/A

### Question Seventeen

This is a key question that could move us to intelligent solutions rather than the generic gender based finger pointing some groups seem determine to propagate.

In a world of big data (or even basic data analysis) not differentiating minor arguments versus murder, and blaming half of the population for being abusive is intellectual sloth. It wouldn't be tolerated if aimed at a race or religion and should be tolerated given the epidemic of false claims. 1,800 Australians hang themselves annually, others kill themselves in desperation through other means, and kids are still being taken from good fathers. Let's not make an obsession with one issue drive another or risk the shame of another stolen generation, round three based on gender!

### Question Eighteen

Gender focus

### Question Nineteen

Focus on great policy not gender bashing.

Make sure a victim of abuse doesn't become a victim of the state.

### Question Twenty

- 1) Clearly differentiate an argument versus domestic violence. For organisations such as White Ribbon to suggest checking a partners text message (whilst wrong) happens based on gender and puts people effectively in the same bucket as murdered is unhelpful and insulting to the memory of real victims.
- 2) Introduce a short term safety buffer (3 day ADVO) and during this time establish the facts... putting an ADVO in place is a very serious matter for anyone going through a separation. It gives default access to the home and children. In many ways it is like the police turning up and with no question based on lies simply taking all you have. I lived in a \$█ house with my kids one day and, based on what they admit was my wife lying to take possession, they made me homeless. I was literally in shock showering in a surf clubs public toilet the next. The Police have admitted I did nothing, They spent 3 hours taking her statement, wrote an affidavit, attended court, accompanied me to my home many times, in the following year offered to investigate twice and 2 years later ran through a full complaint and put n the record they'd got it wrong. 20 mins of good policing at the time could have identified it was false ... I have spent over \$█k on lawyers trying to reverse the effects – I have lost everything,

### Question Twenty-one

#### Short Term

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Short term Interim ADVO to provide safety and find the facts  
Prosecution of at least one or two high profile blatant false claims  
Mystery shopping of Family lawyers whose clients have many ADVOs to establish facts  
Separation of real thematic violence and simple one off arguments  
Encouragement in all approaches to focus on good policy and good policing NOT just gender – if you couldn't replace the gender with a religion or race you are being sexist and making assumptions that will hurt innocent people

### *Longer Term*

Identification of real problem areas (data driven) and focused programs to stop them  
Work as one Australia to ensure family law works and is not encouraging false claims  
Real penalties for (i) real culprits (ii) those abusing the system.

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...DESPITE WIDESPREAD ACKNOWLEDGEMENT THAT IT EXISTS - Senators, District Court Judges, Family Court Judges, academics, the police and those suffering from this echo the same issues this is a small subset:

Senator Christensen, "... none were more reckless, more damaging to Australian families than the Family Law, family violence amendment bill 2011. That law redefined family violence to mean just about anything and encouraged parents to make fraudulent claims to remove other parents from their families".

Senator John Madigan also addressed the Senate on the use of intervention and family violence orders based upon false allegations to deny a parent contact with a child

Retiring Family Court Justice Collier, "false claims are the new court weapon". Orders have now become a "major weapon" in the war between parents who wish to secure sole custody of their children.... He describes it as "a horrible weapon...the continued use of false claims is undoubtedly fueling the crisis in our Family Law system.

District Court judge Paul Conlon says that AVOs have become weapons in Family Court battles. "On two occasions I can recall the court being advised that the original reason why the AVO was sought against the male was because the female's family lawyers told her it might look better for her in the Family Law proceedings when custody was debated,".

Professor Patrick Parkinson (Law School, The University of Sydney), stated 'There is now a very widespread view in the community that some family violence orders are sought for tactical or collateral reasons to do with family law disputes'.

Augusto Zimmermann LLB, LLM, PhD (Monash) <sup>1</sup> "A common example is that, after individuals initiate custody proceedings at the Family Court for divorce and child custody, unethical lawyers instruct those individuals to apply for restraining orders so that they might obtain an upper hand during the court proceedings."

Magistrates across the country (using NSW as an example... others were also surveyed) "... a survey of 68 magistrates from New South Wales indicated that 90 per cent of them agreed with the statement that restraining orders are often sought as tactical devices to aid applicants with family law disputes, including depriving the former partners of any contact with their children"

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<sup>1</sup> Augusto Zimmermann LLB, LLM, PhD (Monash), Chair in Legal Theory and Constitutional Law, Murdoch University School of Law; Law Reform Commissioner, Law Reform Commission of Western Australia; President, Western Australian Legal Theory Association (WALTA); Fellow at the International Academic for the Study of the Jurisprudence of the Family (IASJF).