

**Prevention Policy and Practice: Preventing Violence Against Women
VicHealth Conference 14-15 July 2015**

Kate Jenkins, Victorian Equal Opportunity and Human Rights Commissioner

“Can the law change culture?”

1. INTRODUCTION

- I acknowledge the traditional owners of the land on which we meet, the people of the Kulin nation, and pay my respects to their elders past and present. I also pay my respects to every Victorian who has been impacted by the experiences of family violence and especially the children whose lives will be scarred by this trauma forever.
- Violence against women (including family violence and sexual assault) is globally recognised as one of the most systemic, widespread and pervasive human rights violations.
- The recent Royal Commission into Family Violence has provided us all with the opportunity to both reflect and to recommend the action that needs to be taken, to address this extraordinarily serious, complex and multilayered issue.
- It is fair to say that family violence is increasingly recognised not as an ‘individual’ or ‘private’ issue, but rather a systemic issue that arises from a complex interplay of social, cultural, economic and gender factors.
- Accordingly, the response to family violence needs to be dealt with as a broader community issue that encompasses both the private and public sphere.
- So in answer to the question posed in the topic of my talk: “can the law change culture?” experience has taught us that it is not the law that changes culture it is people that change culture. Those same people that advocate for changed laws. To achieve real change we need the involvement of our whole community. Using Professor Catford’s words “Every person, every group, every organisation has a role to play in changing this culture”.
- The laws we have reflect our intentions and expectations and are one of the levers, but history shows us laws are not enough alone.
- When looking at family violence as a systemic issue, I am of the opinion that the law can make a difference in changing culture. Of course, legislative reform on its own is not enough to change such a deep-seated, complex phenomenon.
- It is people who change culture.

2. THE ROLE OF THE COMMISSION

- The experience of equal opportunity in Victoria reflects this view of the role of law in social change. In Victoria we have had equal opportunity laws since 1977. The EOA made it against the law to discriminate on the basis of sex and marital status and created a mechanism to bring complaints.
- I remember clearly the newspaper reporting of the plight of Deborah Wardley, a young woman who was consistently refused the opportunity to be admitted into Ansett's pilot training because she was a woman. Deborah was one of the first women to exercise her rights under the Equal Opportunity Act. I was 11 when the High Court of Australia determined that such discrimination was unlawful. In my young mind the time for such blatant discrimination was over ensuring a bright future for women of my generation.
- Fast forward to 2015 and we are still far from gender equality. The law alone was not sufficient to achieve the goals it clearly reflected.
- In fact the equal opportunity laws have evolved significantly over the almost 40 years since they were first introduced. The Equal Opportunity Act now prohibits discrimination on 18 prohibited grounds, including race, age, disability, religion, sexual orientation, pregnancy and more. We now have the Racial and Religious Tolerance Act and the Charter of Human Rights and Responsibilities, recognising 20 human rights.
- The functions of the Commission have broadly expanded: you might say we now have carrots and well as sticks: our functions include conducting education, providing information, undertaking research, intervening in legal cases, making legal and policy submissions as well as resolving disputes. Our functions also include a role "to encourage the identification and elimination of systemic causes of discrimination, sexual harassment and victimisation."
- Given the range of statutory functions the Commission now has, our role is reflected in our vision for "a community where every person understands, values and respects equal opportunity and human rights."
- When I started in 2013 as Commissioner I did wonder on the issue of Family Violence, in a crowded space with deep expertise and commitment, what is our role? In particular I acknowledge the important role played by a range of Victorian leaders, including police, community legal centres, women's health centres, Domestic Violence Victoria, VicHealth, Our Watch and advocates like Rosie Batty and many, many more.
- But then of course I realised that our vision reflects our role in prevention of family violence. As identified by VicHealth in their world leading thinking, the primary driver of family violence is gender inequality. And the pursuit of equality is our core business.

3. GENDER EQUALITY INITIATIVES AT THE COMMISSION

- However our experience since 1977 is that laws are not enough to achieve equality, there needs to be a range of mutually reinforcing strategies (such as direct education programs in

sport and education settings, social marketing campaigns, community strengthening initiatives, leadership strategies taken on gender equity).

- And these initiatives need to take place across a broad range of settings where social norms and attitudes are shaped and reinforced. Workplaces, sport, schools, media, local government are some examples of these key areas. They are also key settings in the primary prevention of violence against women.¹ They can also be settings where violence in itself can take place (such as sexual harassment, stalking, or assault).
- Workplaces, sporting clubs, local government and education institutions that are safe, inclusive of women and encourage the participation and leadership of women at all levels - reinforce social norms of respect, non violence and equity.²
- Prevention of violence against women requires changes to the social conditions that excuse, justify or even promote violence. The most effective sites to do this – and where it has the biggest impact – are the media, education, sports, and workplaces. Here are four examples of the kinds of proactive work the Commission is involved in to improve gender equality for all Victorians.

3.1. Male Champions of Change

- In the workplace, this means focusing on addressing the structures that support gender inequality, such as the drivers of the gender pay gap and the under-representation of women at senior levels, as well as addressing individual attitudes and beliefs.
- This is why we are currently working with the Male Champions of Change – which works with men in positions of power who have committed to take action towards gender equality.
- The men in the Victorian-based group are from a range of industries and they are all working to address stereotypes. The representatives are selected both for their leadership, commitment, scale of employees and community reach.
- We have heard many stories about the culture of workplaces, even well regarded workplaces, which show that women do not experience workplaces as equals to men. There is still both obvious discrimination and also subtle treatment often arising from long held gender stereotypes about the role of men and women at work and in the home, and the stereotype of leadership as aligning with more masculine characteristics. Examples that we have heard of regarding women:
 - Disregarded in meetings
 - Regularly questioned about intentions to have children
 - Excluded from bonding activities
 - Asked to do menial tasks, pour coffee, take minutes

¹ State of Victoria, 'Victoria's Action Plan to Address Violence Against Women and Children: Everyone has a responsibility to act: 2012-2015'. (October 2014)

² Ibid.

- Doing the leg work but not given credit for the work in a meeting
- We know that more gender equal societies are known to have lower prevalence of family violence and all employers have an important role in supporting women's equality, independence and safety.

3.2. Independent Police Review

- Of direct relevance, and of particular importance in terms of the progress towards a more gender equal community, we are engaged in significant work with Victoria Police to undertake an independent review into sex discrimination, sexual harassment and predatory behaviour within the organisation.
- The work draws on the learning from the ADF Review undertaken by the Australian Human Rights Commission on the Treatment of Women, as well as the significant evidence base on the drivers of violence against women.
- While the ADF work has proceeded with good will and commitment, it was established under ministerial directive. In contrast, Victoria Police have been on the front foot in seeking out assistance to ensure that their workplace is safe and respectful for women, and that those values are prioritised inside and outside the organisation, and influence community attitudes.
- They have opened up their organisation to review, including giving us unprecedented access to significant data, interviews, a whole of organisation survey with huge uptake (one of the largest of its kind ever done in Australia), allowing my staff in for observations and site visits across the organisation and a commitment to public reporting and auditing over a several years.
- This piece of work has the power to be transformative for the organisation, and has been fully supported by both Ken Lay and Graham Ashton, and by the many employees of Victoria Police who are proud of the organisation and want it to be the best it can be.
- We know that to create a workplace that is safe and respectful, the importance of drawing the links between gender equality, sex discrimination and violence against women, of which sexual harassment is a type, is crucial. Unless you commit to understanding the harm and impact of structures, processes and practices that are potentially hostile to women, and to understanding prevalence, you can't effectively and strategically take action to ensure you create an environment where gender equity is the norm.

3.3. Bystander toolkits

- As experts in discrimination law the Commission is often engaged to provide expert advice. One example of this is "Stepping In" a bystander action toolkit to support equality and respect at work.

- In 2014 VicHealth asked the Commission to prepare a toolkit for state sporting associations to help them strengthen the participation of women and girls by building fair, inclusive and respectful sporting environments.
- This toolkit has been designed to support State Sporting Associations as workplace role models. A key aspect of creating a safe and inclusive workplace is to equip all staff to step in when they see or hear about sexist language, sex discrimination or sexual harassment taking place at work.
- Stepping in at work can take many forms, and is often referred to as bystander action. It can include speaking up against sexist or disparaging language or jokes, or identifying and changing workplace practices and policies that discriminate against women.

3.4. Media

- We are partnering with the Centre for Advancing Journalism, Domestic Violence Victoria and VicHealth on some research to investigate how media coverage influences community attitudes towards violence against women. We look forward to the lessons such research can bring for changing community attitudes

4. CHANGING THE LAW: VEOHRC SUBMISSION TO ROYAL COMMISSION INTO FAMILY VIOLENCE

- Moving on from initiatives within the current laws, in our own public submission to the Royal Commission into Family Violence our primary focus was on legislative and broader cultural change.
- We considered where we could best use our expertise and our legislative mandate as a regulator, to not only support survivors of family violence but to also focus on the drivers of violence against women more broadly.
- With this in mind, we were firstly keen to ensure that family violence (and violence against women more broadly) was characterised as the human rights abuse that it is internationally recognised as being.
- The Commission believes the adoption of a rights based approach could strongly assist finding working solutions to the challenges facing the current system.
- In addition, the Commission's current legislative mandate includes undertaking projects and activities to eliminate systemic discrimination and promote equality. As many in this room are aware the recognised drivers of violence against women include *unequal power relations between men and women, adherence to rigid gender stereotypes and broader cultures of violence*.³

³ Victorian Health Promotion Foundation, 'Preventing violence before it occurs: A framework and background paper to guide the primary prevention of violence against women in Victoria' (2007).

- We identified 3 key actions for the Royal Commission to consider:

4.1. Victorian Law – new attribute

- Both the Equal Opportunity Act and the Charter of Human Rights and Responsibilities aim to eliminate sex discrimination and promote the right to equality for all Victorians. All duty holders and public authorities are obliged to comply with these standards.
- Therefore, it is the Commission’s view that all prevention of family violence efforts can be supported by the principles of non-discrimination and gender equality that are enshrined in Victorian Law.
- However, there are some clear gaps in the current legislative toolkit to address family violence. I am not intending to cover them all.
- From where the Commission is placed, one clear gap is that in the *Equal Opportunity Act 2010* there is no protected attribute of “status of victim/survivor of family violence”.
- Currently, the Equal Opportunity Act prohibits discrimination in an area of public life (for example work) due to one of 18 personal attributes (such as sex).⁴
- The Commission recommended that the Equal Opportunity Act be amended to insert a new protected attribute of victim/ survivor of family/ domestic violence.
- Why? The Commission is of the view that there is the potential for victim/ survivors of family violence to experience discrimination across the spectrum of public life that is covered by the Equal Opportunity Act and they may also experience intersectional discrimination (that is, discrimination on more than one ground).
- Our submission focused on two pertinent areas of public life – *employment and accommodation/ housing*. This focus is based on the very real, practical impacts that discrimination in these areas can have on a victim/survivor’s ability to stay safe or to leave a violent relationship.
- Employment is a crucial protective factor for victims (primarily women) of family violence. Paid employment plays an important role in promoting women’s independence and wellbeing upon exit from violent relationships.⁵

⁴ *Equal Opportunity Act 2010* (Vic) s6.

⁵ R Braaf & I Barrett-Meyering. ‘*Seeking security: promoting women’s economic wellbeing following domestic violence*’, Australian Domestic and Family Violence Clearing House (March 2011).

- The key benefits of employment on victim/ survivors should not be understated, with some of the critical advantages including:
 - financial independence,
 - social support network,
 - a sense of belonging and self-confidence and
 - in some workplaces, access to additional practical supports (such as counseling services).
- Despite the key benefits that employment can provide, victims/survivors of family violence can experience discrimination in the workplace (or in job applications) because of their status as victim/survivor. This can often compound and exacerbate the initial experience of violence.
- Victims/ survivors may be reluctant to disclose family violence for a myriad of reasons, including:
 - Fear that disclosure will jeopardise their job or career,
 - Concern that they will be stigmatised, or
 - Fear that their employer will not be responsive.⁶
- These fears are not unjustified, as discrimination does and can manifest in a number of ways. Primarily this is likely to be direct discrimination, where the employee or prospective employee is treated unfavourably because they are a victim/survivor of family violence, or because of characteristics associated with or assumed to be held by a victim/survivor of family violence.
- Some examples that may constitute direct discrimination in employment on the basis of victim/survivor of family violence may include:
 - Being dismissed for not attending work due to being hospitalised by a family violence incident or having to attend the police station or court to seek an intervention order.
 - Being dismissed or subjected to disciplinary action after the employee's violent partner attends the workplace and causes a disruption or threatens other staff members.⁷
- Another important factor in escaping family violence is access to and the ability to obtain safe, secure and affordable housing.

⁶ Ibid

⁷ Case study included in Alana Heffernan and Lee Matahaere *Domestic violence discrimination in the workplace: Is statutory protection necessary?* Our Work, Our Lives Conference 2010, Queensland Working Women's Service, p4.

- In spite of this, survivors of family violence frequently face considerable upheaval, disruption and social and economic disadvantage, impacting on their ability to secure adequate housing. This creates the very real threat of homelessness.
- In 2012 the Australian Institute of Health and Welfare collected data from specialist homeless services for 2011-12, it found that one-third of clients had experienced domestic or family violence.
- However, securing accommodation is another key area where victims/survivors of family violence report experiencing discrimination.
- In a study conducted by Partnerships Against Domestic Violence 'Home Safe Home', it found discrimination against victims in the private rental market.⁸ The study cited evidence that sole parent families experienced the highest level of refusals and discrimination when attempting to access the private rental market when compared with other household types.⁹
- In a 2011 Australian Domestic and Family Violence Clearinghouse Financial Security project, also found that victims continue to face discrimination in housing due to prejudice and negative assumptions by landlords and real estate agents. The study reported that many women felt that they were discriminated against because they were single mothers or they had pets. Some had ended up lying about their relationship status in order to secure a rental property.
- Additional difficulties were encountered by women who had not previously rented or who had only lived in rental properties in their ex-partners' name. They felt disadvantaged because they were unable to supply real estate agents with a rental history.¹⁰
- Financial abuse and control is often one of the behaviours that perpetrators of family violence exert over family members in an attempt to maintain power and control. Consequently, it would not be uncommon for victim/survivors to not have leases and other financial records/ bills in their own names.

4.2. Charter of Human Rights and Responsibilities

- Prior to concluding my address today, I also want to talk about the importance that the Charter of Human Rights and Responsibilities can also have on cultural change.
- The Charter is the primary legislative vehicle for human rights protection in Victoria.

⁸ Donna Chung et al, *Home safe home: the link between domestic and family violence and women's homelessness* (Social Policy Research Group, University of South Australia, November 2000).

⁹ Ibid, 23.

¹⁰ Ibid.

- The Charter sets out the human rights that underpin our systems response to family violence, and also provides a strong basis to address the drivers of violence against women. The Charter mandates that public authorities comply with these internationally accepted rights, and can also guide improvements to the system.
- Charter rights to violence against women include:
 - Recognition and equality before the law
 - Right to life
 - Protection from cruel, inhuman and degrading treatment
 - Privacy and reputation including arbitrary interference with family life
 - Protection of families
 - Protection of children
- In order to promote the protection of these human rights, the Commission recommended to the Royal Commission, that all Victorian public authorities be required to complete a Human Rights Impact Assessment Statement for new policies and practices relating to family violence (and its drivers i.e. gender inequality) prior to their introduction.
- This assessment process would be a practical measure to ensure that decision-makers turn their minds to the rights outlined in the Charter as they affect victim/survivors of family violence, document this process, and ensure that any new policies and practices are compatible with human rights.
- It would also be important that existing policies and practices are audited to ensure compliance every 2 years.
- The Commission could work with public authorities to assist them with the initial development and implementation of the Human Rights Impact Assessment Statements.
- Again, this recommendation is a practical measure that the Commission has recommended to the Royal Commission in an attempt to use the law to enact cultural change.

4.3. Miscellaneous Leave

Finally we submitted that the Victorian Public Service should introduce additional leave for use because of activity relating to family violence: getting medical attention, seeking new accommodation, court attendances etc. There are now some good examples in the private sector and across the country of model clauses in enterprise agreements that introduce this new entitlement to staff.

CONCLUSION



In short, the law is important as a lever for change. But gender equality will only be achieved with the active involvement of all parts of our community, recognising that the social stereotypes that have existed for many years do not serve any of us well for a healthy safe community for all.