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The Honourable Robert Clark MP  
Attorney-General  
By email [robert.clark@parliament.vic.gov.au](mailto:robert.clark@parliament.vic.gov.au)

Date 24 May 2012

Dear Attorney General

**Re: Proposed failure to protect laws and the Cummins Inquiry**

We are writing as a group of non-governmental organisations that have previously made submissions in relation to the Government's proposal to introduce a 'failure to protect' law.

On 28 February 2012 the report of the *Protecting Victoria's Vulnerable Children Inquiry* (the Inquiry) was tabled in Parliament. The Inquiry expressed clear concerns about the proposed 'failure to protect' law, identifying a range of risks and adverse consequences that could arise if the law is introduced.

***Inquiry findings***

In particular, the Inquiry expressed serious concerns that the law "might have a dampening effect on help-seeking behaviour and the reporting of abuse". The Inquiry found that the proposed law could undermine the growing recognition of the complex dynamics of family violence and could be inconsistent with the recent reforms to family violence. Importantly, the report suggested that the reforms addressing offender accountability "may be waylaid by placing responsibility for abusive behaviour on a non-abusive parent".

The report also highlighted that between 1 July 2000 and 30 June 2010, there were only 15 alleged offences recorded under section 493 of the *Children, Youth and Families Act 2005*. The report stated that it was important for the Government to consider why section 493 had rarely been enforced.

***Next steps***

In light of the concerns expressed by the Inquiry in relation to the proposed 'failure to protect' law, we would support the Government in stepping away from this particular commitment so that it may focus on its priorities in strengthening the child protection system, investing in early intervention and improving service delivery.

We believe that the Government has demonstrated its clear commitment to protecting vulnerable children and their families by allocating \$336 million in this year's State budget to a range of initiatives. We would encourage the Government to continue to build on these initiatives in particular focussing on greater investment in the services, systems and networks that support and work with protective parents.

As we have stated in our previous submissions on this issue, criminalising the behaviour of a non-offending parent will have serious consequences that will increase the risk to children by driving the issues underground. A

'failure to protect' law will have a disproportionate and discriminatory impact on women (who are often the non-offending parent) who themselves may be the victims of family violence.

### ***Section 493 of the Children, Youth and Families Act***

If the Government wishes to review section 493 with the view to implementing its policy objective, it is important that there be adequate and appropriate research, analysis and consultation before any amendments are made.

In particular, the Government should undertake a review of the 15 alleged offences under section 493 and the circumstances of those cases. It is important that the review identifies whether the offences were ones which resulted in the death or injury of the child, which person with a duty of care was charged with the offence and how many resulted in trials and convictions.

It would also be of benefit to establish an advisory group in order to assist with the review and to provide feedback on the development of any amendments. It would be appropriate for the advisory group to include child welfare and family violence experts.

We also believe that the Government should undertake a review of child deaths in order to identify system failings and whether section 493 or 'failure to protect' laws would have been of assistance in those cases.

### ***A failure to protect offence with family violence considerations***

The Inquiry stated that if a new 'failure to protect' law is enacted, that the prosecution should be required to prove, as an element of the offence, that the accused was not a victim of family violence. We do not support the introduction of such an offence, even with an additional element, as we do not believe that it will provide an adequate safeguard for victims of family violence and that it will still result in unintended consequences of driving the issues underground and deterring the reporting of abuse to child protection authorities.

### ***Conclusion***

We believe that the findings of the Inquiry present an opportunity for the Government to reassess its commitment to introducing a 'failure to protect' law in Victoria. We would consider this to be a positive step in focussing on ways in which the system can intervene early to support vulnerable families and to assist non-offending parents in acting protectively to prevent child abuse.

Yours Sincerely,

*Please see next page for joint signatories*

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