

SUBMISSION

IMPROVING THE FAMILY VIOLENCE LEGAL SYSTEM

ROYAL COMMISSION INTO FAMILY VIOLENCE

Prepared by Women's Legal Service Victoria

19 June 2015

“If you’re outside in a serious car accident, the police would come, the ambulance would come, the fire engine, you’d be taken to a first-class hospital, there’d be surgeons, doctors, nurses, rehab... by the time you were put on the street, you would’ve been seen by so many support people.

I liken my [family violence] case to something similar... I was in a serious road accident, so to speak, but what happened to my children and I... and yes, the police were involved, but as soon as they saw they couldn’t do anything, that’s it, I’m left on the road, bleeding, mentally scarred, and there’s nobody around.

Nobody.

And I tried so many things to get help, and there was nothing.

So their father was allowed to go ahead and continue to commit these horrendous crimes against my children.

So that’s what I’m saying.”

Anita

February 2015

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SUMMARY OF RECOMMENDATIONS

HIGH LEVEL RECOMMENDATIONS

Governance

1. The State Government create a governance structure that places responsibility for addressing and eliminating family violence across multiple Departments and Ministerial Portfolios.
2. The State Government develop protocols and processes that strengthen communication, collaboration and accountability across Departments and Ministerial portfolios.
3. The State Government and Federal Government share a dedicated and secure recurrent funding stream to address and eliminate family violence.

Creating equitable access to justice

4. The Victorian Equal Opportunity and Human Rights Commission (VEOHRC) work closely with specialist agencies and Victoria Police to
 - a. undertake an audit of police practice, protocols and policies that create barriers to victims from high risk groups and
 - b. develop operational tools, protocols, policies and training that improve police response to women from high risk groups.
5. The Victorian Equal Opportunity and Human Rights Commission (VEOHRC) work closely with specialist agencies and the Magistrates' Court to
 - a. undertake an audit of accessibility and issues that create barriers to victims from high risk groups in the court system, having particular regard to policies, practices, physical spaces, knowledge and understanding of staff and Magistrates.
 - b. develop policies, frameworks, strategies and training to address and remove barriers for women in high risk groups.

Strengthening victim/survivor participation in influencing change

6. The State Government build a strong and effective advocacy network led by women who have experienced family violence by funding the establishment of a peak advocacy organisation led by victim/survivors.
7. The State Government, Victoria Police and the court system formalise the participation of women who are victims of family violence in the development of reforms. This could be achieved through an advisory group structure.

Building specialisation

8. The State Government develops minimum standards of practice and an accreditation framework for Government funded agencies and services to promote excellence in family violence practice.
9. The State Government commission a review and update of the Common Risk Assessment Framework in particular:
 - a. strengthening risk assessment for children
 - b. targeted risk assessment of perpetrators
 - c. developing stronger risk managements process and
 - d. developing a range of usable tools to assist in implementation across the system.
10. The State Government establish a data collection and evaluation framework that can assist departments, courts, police, services and programs monitor and measure their success and impact in addressing and responding to family violence.

STRENGTHENING THE FAMILY VIOLENCE LEGAL SYSTEM

11. The State Government and Magistrates' Court build on existing elements of the family violence intervention order system to strengthen the focus on intervening early, reducing ongoing risk to victims and preventing future incidences of family violence.
12. The Magistrates' Court Family Violence Divisions are established in all Victorian court regions.

Improving the quality of information available to the court at an early stage

13. The Magistrates' Court and Victoria Police review and update safety notices and applications forms to facilitate a more effective collection of relevant case information. More tailored questions and an improved structure for safety notices and applications forms will assist in drawing out the necessary information. It may be of assistance for family violence experts to support this review.
14. The Magistrates' Court addresses current software limitations and develop protocols to provide the full application and all relevant material to parties and legal representatives at the first mention hearing.
15. Specialised training is provided to police and registrars to strengthen their skills and capacity to collect case relevant information. Such training could be developed and delivered in collaboration with family violence specialists. The training may incorporate interview techniques, red flagging and information recording techniques.

16. The Department of Justice and Regulation investigate current good practice in criminal proceedings with respect to briefs of evidence, including the preliminary brief process and its value in the intervention order jurisdiction.
17. The Magistrates' Court roll out the online application process across Victoria. This could be based on the Neighbourhood Justice Centre application process that is accessible on a smartphone, tablet or computer.
18. The State Government fund the expansion of the CLC family violence duty lawyer program to provide additional legal advice and assistance to victims at the time of first making an intervention order application or at the time of a police application.
19. Once family violence duty lawyer programs are expanded to provide early legal advice and information, a referral pathway be established between the police, courts and local community legal centres to link in with victims at an early stage in the process.

Developing a court-based case assessment and case management process

20. The Department of Justice and Regulation and the Magistrates' Court develop a case assessment and case management model for the family violence intervention order court. It will be important that there be broad consultation with stakeholders, in particular users of the court system and organisations that work within the court system, for example CLCs, police and family violence agencies.
21. Family violence case assessment and case management expertise be strengthened in the Magistrates' Court. Consideration be given to achieving this by expanding the role of the applicant support worker or by employing a pool of specialist family violence workers to work alongside court staff and Magistrates.
22. The Magistrates' Court, in the interim, works with family violence duty lawyers and police prosecutors/civil advocates to develop strategies to improve risk identification and case coordination.

One example of an interim measure is the morning meeting at the Magistrates' Court between duty lawyers, the registrar, police and support workers to go through the daily family violence list. This occurs in some courts and not others. Morning meetings are a good way to share information regarding cases and to red flag particular issues in cases.

Improving court forms, notices and information

23. The Magistrates' Court engage external experts to undertake a comprehensive accessibility audit of its family violence court forms, notices, orders and information.
24. The Magistrates' Court re-draft forms, notices, orders and information in plain English.
25. The Court should work with specialist family violence agencies, disability quality advisors, learning experts and users of the court system improving these resources.

26. The Magistrates' Court develop resources to support parties from diverse backgrounds to navigate the family violence court system.
27. The Court should work with specialist family violence agencies, disability quality advisors, learning experts and users of the court system to develop resources that can be available at court and online. This information should be available in a range of different formats and languages accessible to people with disabilities.
28. The Magistrates' Court translates standard court notices, court information and court orders to be available in a range of different languages for use by people with limited English skills.

Improving access to interpreters

29. Funding for Magistrates' Court interpreters includes a specific allocation of funding for family violence interpreters.
30. The Magistrate's Court engages specialist family violence trainers to train all court-based interpreters working in the family violence jurisdiction.
31. The Magistrates' Court develops guidelines to assist court staff in booking family violence interpreters. Guidelines to include:
 - procedure at intake to check whether a party requires an interpreter
 - a practice of booking two interpreters if both parties require an interpreter
 - a presumption that a female interpreter will be booked for a female party.
 - a practice of booking interpreters for a full day.

Strengthening support and safety for victims in the intervention order process

32. The State Government allocate funding to the Magistrates' Court to employ court-based culturally-competent family violence support workers.

These workers could be based in court regions where there is a high CALD population.
33. The State Government allocate funding for courts to employ a disability quality advisor to improve accessibility of courts for people with disabilities.
34. The State Government allocate funding for the expansion of the Koori family violence pilot program to all Victorian regions.
35. The State Government report publicly on its safety audit of courts and invest in creating safe spaces in high to medium risk courts.
36. The State Government ensure that safe spaces that are created in courts, are built to be "child friendly" spaces supported by child care workers.

37. The Department of Justice and Regulation investigate and consult on expanding current provisions with respect to recorded statements to enable family violence victims to give evidence via recorded statement.
38. The Magistrates' Court evaluate and report on the family violence video-conferencing pilot.
39. The Magistrates' Court develops protocols to enable video-conferencing to be offered to victims of family violence on the day of their hearing.
40. The Magistrates' Court roll out the evaluated family violence video-conferencing pilot program to all court regions.
41. The State Government identify and establish off-site locations in each court region for victims to attend on the day of their hearing to access video-conferencing and support services.

Building family violence expertise in the legal system

42. The State Government fund the Magistrates' Court to work collaboratively with family violence specialists to develop a family violence training program for all court staff delivered on a regular basis.

The training could have different levels depending on whether the staff member works directly with family violence victims. Such training could incorporate elements of experiential learning and cover issues of unconscious bias and cultural competency.

43. The Judicial College of Victoria work with family violence specialists to develop and deliver a comprehensive professional development program to Magistrates and County Court and Supreme Court Judges across Victoria.

We acknowledge the positive initiatives currently on foot with respect to Magistrates professional development however believe that this could be strengthened, particularly with a focus on improving "court craft" skills and using more innovative learning techniques such as peer reviewing and experiential learning.

44. The State Government fund training programs such as Safer Families, to strengthen the skills of family violence duty lawyers in:
 - the nature and dynamics of family violence
 - the implications of family violence for particular client groups
 - the FVPA and its intersections with the Family Law Act and the Children Youth & Families Act
 - negotiation, advocacy and other court skills

Ensuring victims' voices are heard in the intervention order process

45. The Department of Justice and Regulation develops and pilots a therapeutic court model to manage family violence cases where either party presents with complex needs.

The Department of Justice and Regulation consider current therapeutic approaches in other courts across Victoria and how best practice from those courts could inform the development of a therapeutic model in the family violence jurisdiction.

46. The Department of Justice and Regulation investigates the role, if any, for victim impact statements in the family violence intervention order system.

47. The Centre for Innovative Justice develops a draft framework for restorative justice approaches to family violence in intervention order proceedings and criminal proceedings.

The framework should be piloted and evaluated to determine whether, and in what circumstances, restorative justice approaches can promote, at both an individual and societal level:

- victims' rights to live free from violence and
- perpetrators' accountability for their use of violence

48. Subject to the evaluation of the pilot the Centre for Innovative Justice revise the draft framework and the Department of Justice and Regulation make restorative justice approaches available in each court region

49. Specialist agencies such as InTouch and AFVPLS are funded by the State Government to expand existing programs to provide specialist support to victims from high risk groups.

50. The Magistrates' Court develops a "warm referral process" with specialist agencies for applications where victims require specialist support services to link in with before the hearing date.

51. Policies are developed in the Magistrates' Court to ensure that matters are not listed within 48 hours of the family violence incidence.

52. Guidelines and tools are provided to Magistrates to improve "court craft" around engagement with victims.

53. The Magistrates' Court hears ex parte interim orders in closed court rooms as a matter of practice.

Reducing court delay and multiple adjournments

54. The Magistrates' Court and Victoria Police develop a protocol to contact victims to notify them if an application has not been served and to adjourn the case "on the papers" so that victims do not have to attend court multiple times.

55. The Magistrates' Court and Victoria Police develop a protocol to gather information from the victim regarding alternative addresses for service as part of the initial application/safety notice process.
56. Victoria Police enable civil advocates and police prosecutors to make final decisions to withdraw an application on the day of the hearing.
57. Victoria Police Liaison Officers at court have the power to take complaints from parties where allegations have been raised and not investigated and issue applications on their behalf.

Exercising power and control through the court system – cross-applications, re-hearings

58. The Magistrates' Court strengthen cross-application and re-hearing processes to identify cases with little or no merit or cases where there is a history of the perpetrator applying for re-hearings, cross-applications and appeals.

This could be achieved by introducing an application for leave process for cross-applications. Additionally stronger guidelines and training could be developed to assist registrars and Magistrates to identify “systems abuse cases”.

59. Research is commissioned into “systems abuse” as a form of family violence that identifies the mechanisms and patterns of behavior of a perpetrator engaging in such abuse.
60. Development of resources to improve the identification and understanding of “systems abuse”.

Holding men responsible and accountable for their violence

61. The State Government invest in evidence-based specialist responses to men who use violence.
62. The Magistrates' Court develops “early intervention” strategies and potentially an “early intervention” court list for first time offenders with no history of family violence.
63. The State Government fund the expansion of the Court Integrated Services Program to be accessible to family violence perpetrators with complex needs.
64. Perpetrators that are assessed as high to medium risk are intensively case-managed and monitored. This should include the court, police, victims, lawyers and support workers actively participating in identifying and managing risk.
65. The State Government fund culturally appropriate programs and services to work with men from diverse cultural and linguistic backgrounds and Aboriginal and Torres Strait Islander Communities.

66. The Department of Justice investigate a broader range of penalties for breaching an intervention order such as:
- a. an automatic extension of the intervention order
 - b. a compulsory requirement to attend court within 7 days of a perpetrator being charged with a breach

PROMOTING ACCESS TO THE VICTIMS OF CRIME ASSISTANCE TRIBUNAL

67. The Department of Justice undertake a comprehensive review of the Victims of Crime Assistance jurisdiction having particular regard to the experience of victims of family violence.
68. Upon completion of the review, the VOCA jurisdiction is reformed to improve access to it by victims of family violence.
69. The Family Violence Protection Act be amended to enable a Magistrate hearing a family violence intervention order case to grant leave for a VOCA application.
70. The Victims Support Agency and the Magistrates' Court develop information and resources to assist family violence victims to access the VOCA jurisdiction.

IMPROVING VICTORIA POLICE RESPONSE TO FAMILY VIOLENCE

71. Victoria Police expand the civil advocates program to all Magistrates' Courts.
72. Victoria Police expand the family violence liaison program to all Magistrates' Courts.
73. Victoria Police undertake a comprehensive review of its current Code of Practice and an audit of police compliance with the Code. This audit should be open to public consultation and input.
74. Victoria Police update its Code of Practice to ensure that it reflects best practice in responding to family violence.
75. Victoria Police strengthen family violence response teams to include social workers that can attend an incident and provide victims with support at the time of an incident.
76. The State Government fund a comprehensive family violence training program rolled out across Victoria for all new and existing police members, every twelve months that includes external experts and women experiencing family violence in developing and delivering the training.

Given the examples of inadequate responses to Aboriginal and Torres Strait Islander women, women from culturally and linguistically diverse backgrounds and women with

disabilities, it is essential that training includes modules on cultural sensitivity, unconscious bias and disability.

77. Accountability in Victoria Police strengthened through a streamlined complaints and feedback process in family violence incidences.
78. Greater focus within Victoria Police on improving police responses in regional, rural and remote communities where family violence has occurred.
79. Victoria Police develop protocols and provide training to police members to improve police responses to children in family violence incidences.

STRENGTHENING THE ROLE OF CLC'S IN THE FAMILY VIOLENCE SYSTEM

80. The future funding for CLCs include ongoing funding for programs, such as the LINK program at WLSV, that use technology to provide access to justice for women facing geographic, cultural, economic and other barriers to accessing legal services, with a particular focus on access for women from rural and regional areas.
81. The future funding of CLCs include ongoing funding to provide family violence workers with tools and training to identify and respond appropriately to legal problems. WLSV's critical legal issues map and training could be used as a foundation.
82. The State Government increase funding to Victoria Legal Aid to be made available to victims of family violence in contested hearings

RECENT LEGISLATIVE AMENDMENTS THAT ARE BARRIERS TO ACCESSING JUSTICE

83. The State Government amend section 327 of the Crimes Act 1958 as follows

Failure by a person in authority to disclose a sexual offence committed against a child under the age of 16.

~~...a person of or over the age of 18 years (whether in Victoria or elsewhere)~~ in authority in a relevant organisation who has information that leads the person to form a reasonable belief that a sexual offence has been committed in Victoria against a child under the age of 16 years by another person of or over the age of 18 years must disclose that information to a member of the police force of Victoria as soon as it is practicable to do so, unless the person has a reasonable excuse for not doing so.

84. The State Government repeal amendments made to the FVPA with respect to finalisation conditions in interim orders.

INTRODUCTION

We welcome the Royal Commission's Inquiry into the Victorian family violence system. The Commission has a unique opportunity to bear witness to and document the experiences of victims of family violence as well contribute to positive, long term change through investigation of systemic gaps and the development of recommendations.

Our submission specifically addresses the Commission's term of reference:

(2) investigate the means of having systemic responses to family violence, particularly in the legal system and by police, corrections, child protection, legal and family violence support services, including reducing reoffending and changing violent and controlling behaviours

Our submission will focus on the following areas of the legal system:

- Strengthening the family violence intervention order court system.
- Creating access to the Victims of Crime Assistance Tribunal.
- Improving Victoria Police response to family violence.
- Strengthening the role of CLCs in the family violence system.
- Recent legislative amendments that create unjust outcomes for family violence victims.

Our objective, in our submission, is to communicate the experience of the women that we work with as well as our experience as lawyers representing women in the family violence, victims of crime and family law jurisdictions. Our client group consists of women from a range of different cultural, ethnic and religious backgrounds. The women we assist are low income earners and are often at high risk of domestic violence as result of disability, age, visa status or cultural or ethnic background.

Our submission includes case studies, some of which are individual client cases and some of which are examples of types of cases that we commonly see. All individual client case studies are de-identified and provided with the consent of the client.

We note that we have three separate submissions to the Commission covering three separate issues – the family violence legal system, multi-jurisdictional issues and economic empowerment. As a member of the No More Deaths Alliance we have also provided the Commission with a joint, high level submission.

Explanation of terms

There is no one term that adequately describes the diverse group of individuals that have experienced family violence. In our submission we use the term "victim" for ease of reference though we recognise the importance of "survivor" as an associated term. We also refer to "women" more broadly as we are gender specific service.

WOMEN'S LEGAL SERVICE VICTORIA

Women's Legal Service Victoria (WLSV) is a statewide community legal centre (CLC) promoting the human rights of women and their children to live free from violence. We have over 30 years of experience working on legal issues arising from relationship breakdown and violence against women. Our current services and programs include:

- A legal advice line and face-to-face legal advice clinic - a free and confidential service for women in Victoria who need legal advice, information or referral.
- Legal representation at the Melbourne Magistrates' Court - a duty lawyer service where our lawyers provide legal advice, representation and referrals for women who have intervention order matters in court that day.
- Ongoing legal representation - for women facing significant barriers to accessing justice in the areas of family law, family violence law and victims of crime compensation.
- Policy and law reform - we work closely with law and policy makers to highlight systemic barriers in the legal system that stop women and their children from obtaining safe, just and equal outcomes.
- Legal education - delivering legal education, training and professional development to a range of organisations and professional groups.
- Link project - we partner with family violence agencies across the state to enable women who have experienced family violence to access legal advice via internet video conferencing. This program overcomes geographic, cultural, economic and other barriers to accessing legal services, whilst ensuring private and safe connections with lawyers.
- Stepping Stones project - we provide a multi-disciplinary service with an in-house financial counsellor working closely with our lawyers to provide free help to women experiencing economic hardship and poverty after relationship breakdown and family violence.

Through our associated service, Family Law Legal Service, WLSV operates a daily duty lawyer service at the Family Law Courts and provides legal advice and representation to participants in Victoria Legal Aid Family Dispute Resolution Service (VLA FDRS) and clients of the Melbourne Family Relationship Centre.

We are funded by the Indigenous Justice and Legal Assistance Division, Attorney General's Department, Canberra and Victoria Legal Aid (VLA).

FUNDAMENTAL PRINCIPLES FOR REFORM

In developing recommendations for reform in the legal system, the Royal Commission should be guided by the following principles:

Access to Justice

Access to justice is fundamental to the rule of law. It is also essential for the enjoyment of basic human rights, social inclusion and the effective functioning of any democracy.

A good justice system must be accessible in all aspects. Accessibility means it must be fair, simple, affordable and easy to understand and navigate. The system must be free of barriers for all individuals, regardless of their racial, cultural, religious or social-economic background, age or level of education. It must also have pathways for early intervention to prevent further disadvantage.

Human Rights

A human rights based approach to addressing and eliminating family violence recognises the entrenched nature of discrimination for women from high risk groups and that intersectional discrimination further perpetuates the denial of their human rights. The state holds responsibility for addressing entrenched and intersectional discrimination through investment in specific, tailored initiatives that are informed by the women who may benefit from them.

We endorse the recommendations of the Human Rights Law Centre's submission that the Royal Commission, as a "public authority" under the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* should adopt a human rights based framework in its work. Additionally, that the Commission should make recommendations to ensure the state government complies with its due diligence obligations¹.

Therapeutic jurisprudence

Therapeutic jurisprudence focuses on aspects of the legal system that can impact positively or adversely on the well-being of a person. Such an approach can assist in the reform of the legal system by promoting responses tailored to a person's individual circumstances, encourage more active participation by the judicial officer and deliver more holistic support through the court process.

¹ Human Rights Law Centre, *The Victorian Government's human rights obligations to address family violence*, June 2015

EQUALITY IN ACCESS TO JUSTICE

Achieving equal access to justice requires recognition of the diverse experiences of women in the family violence system and their diverse needs. There must also be an acknowledgement that women face greater barriers in the legal system if they belong to specific groups including:

- Aboriginal and Torres Strait Islander women
- women who are newly arrived in Australia and on temporary visas
- women from diverse cultural and linguistic backgrounds
- women in regional and rural communities
- women with disabilities
- older women (particularly in the context of elder abuse) and
- women in prison.

Entrenched and intersectional discrimination within the system must be named and recognised as a primary factor that contributes to placing these women at higher risk of violence and of inequitable legal outcomes.

In our submission, we have used the term “women from high risk groups” to describe women belonging to the groups identified above. We acknowledge that there is no satisfactory term that can capture the diversity of their experiences nor should reforms assume that they are, in any way, a homogenous group.

We recommend that the Royal Commission place the experience of women from high risk groups at the centre of their investigation and recommendations for reform. A system that is easy to access for the most high risk women will be a system that is accessible to all.

In order to promote equality and address entrenched discrimination, it is critical that governments, courts, police and NGOs develop reforms that are informed by:

- the experience of women who are from high risk groups and who are victims of family violence
- the expertise of specialist family violence focused agencies including Aboriginal Family Violence Prevention Legal Service (AFVPLS), InTouch Multicultural Centre Against Family Violence (InTouch), Seniors Rights Victoria (SRV) and Women with Disabilities Victoria
- the existing body of research that documents the experiences of women from high risk groups, for example, Deakin University’s publication, *Landscapes of violence: women surviving family violence in regional and rural Victoria*²

² Amanda George and Bridget Harris, Centre for Rural and Regional Law and Justice (2014).

HIGH LEVEL SYSTEMS WIDE RECOMMENDATIONS

We make the following recommendations regarding high-level systems reforms:

Governance

1. The State Government create a governance structure that places responsibility for addressing and eliminating family violence across multiple Departments and Ministerial Portfolios.
2. The State Government develop protocols and processes that strengthen communication, collaboration and accountability across Departments and Ministerial portfolios.
3. The State Government and Federal Government share a dedicated and secure recurrent funding stream to address and eliminate family violence.

Creating equitable access to justice

4. The Victorian Equal Opportunity and Human Rights Commission (VEOHRC) work closely with specialist agencies and Victoria Police to
 - a. undertake an audit of police practice, protocols and policies that create barriers to victims from high risk groups.
 - b. develop operational tools, protocols, policies and training that improve police response to women from high risk groups.
5. The Victorian Equal Opportunity and Human Rights Commission (VEOHRC) work closely with specialist agencies and the Magistrates' Court to
 - a. undertake an audit of accessibility and issues that create barriers to victims from high risk groups in the court system, having particular regard to policies, practices, physical spaces, knowledge and understanding of staff and Magistrates.
 - b. develop policies, frameworks, strategies and training to address and remove barriers for women in high risk groups.

Strengthening victim/survivor participation in influencing change

6. The State Government build a strong and effective advocacy network led by women who have experienced family violence by funding the establishment of a peak advocacy organisation led by victim/survivors.
7. The State Government, Victoria Police and the court system formalise the participation of women who are victims of family violence in the development of reforms. This could be achieved through an advisory group structure.

Building specialisation

8. The State Government develops minimum standards of practice and an accreditation framework for Government funded agencies and services to promote excellence in family violence practice.
9. The State Government commission a review and update of the Common Risk Assessment Framework in particular:
 - a. strengthening risk assessment for children
 - b. targeted risk assessment of perpetrators
 - c. developing stronger risk managements process
 - d. developing a range of usable tools to assist in implementation across the system
10. The State Government establish a data collection and evaluation framework that can assist departments, courts, police, services and programs monitor and measure their success and impact in addressing and responding to family violence.

STRENGTHENING THE FAMILY VIOLENCE LEGAL SYSTEM

Rethinking the role of the intervention order courts in intervening early and preventing future violence

High level recommendations:

- 1. The State Government and Magistrates' Court build on existing elements of the family violence intervention order system to strengthen the focus on intervening early, reducing ongoing risk to victims and preventing future incidences of family violence.**
- 2. The Magistrates' Court Family Violence Divisions are established in all Victorian court regions.**

Current gaps:

The intervention order court system, in its current form, operates to respond to single incidences of family violence rather than recognising and responding to the ongoing nature and continuum of violence and abuse.

Currently a "one size fits all" court model operates to manage long court lists with small pockets of good practice in different parts of Victoria. This results in a level of "postcode justice" with inconsistent practice and responses across the state. Additionally, opportunities for intervening early and tailoring responses to perpetrators are missed and victims are left disempowered and unsupported in the court system.

The following areas have been identified as gaps in the court system that reduce the effectiveness of intervention orders:

- No meaningful risk assessment and risk management of cases.
- Limited information and evidence available to the court regarding risk and history.
- Elevated risk for victims who attend court due to lack of safe rooms and security.
- Few supports available at court for victims to link in with housing and other services.
- Lack of accessibility to the system for the most marginalised and at risk victims.
- Limited opportunities for victims to be heard in the decision-making process.
- Time pressures and long lists limit the time that parties need to make decisions.
- Lack of free and timely legal assistance at each point in the court process.
- Limited specialisation and expertise to inform decision-making.
- Lack of interventions and management of perpetrators in the system.

Current good practice:

We consider there to be pockets of good practice across Victoria which can be built on and expanded to strengthen the intervention order court system. In particular we support expanding the Family Violence Court Divisions and elements of the Family Violence Specialist Courts across Victoria. Good practice in the current court system includes:

- specialist family violence registrars
- Victoria Police civil advocates
- applicant and respondent support workers
- family violence duty lawyers for both respondents and affected family members.
- the pilot family violence Koori support worker program
- integrated practices (often informal) where Magistrates, duty lawyers, police prosecutors/civil advocates, registrars and support workers work together to manage cases.

Strengthening and building on good practice:

There is, however, considerable scope to build on the current foundations to improve the effectiveness of the court system in intervening early and preventing future violence.

The following elements of practice, procedure and specialisation in the Magistrates' Court would considerably strengthen the effectiveness of intervention orders and work towards reducing family violence. These elements include:

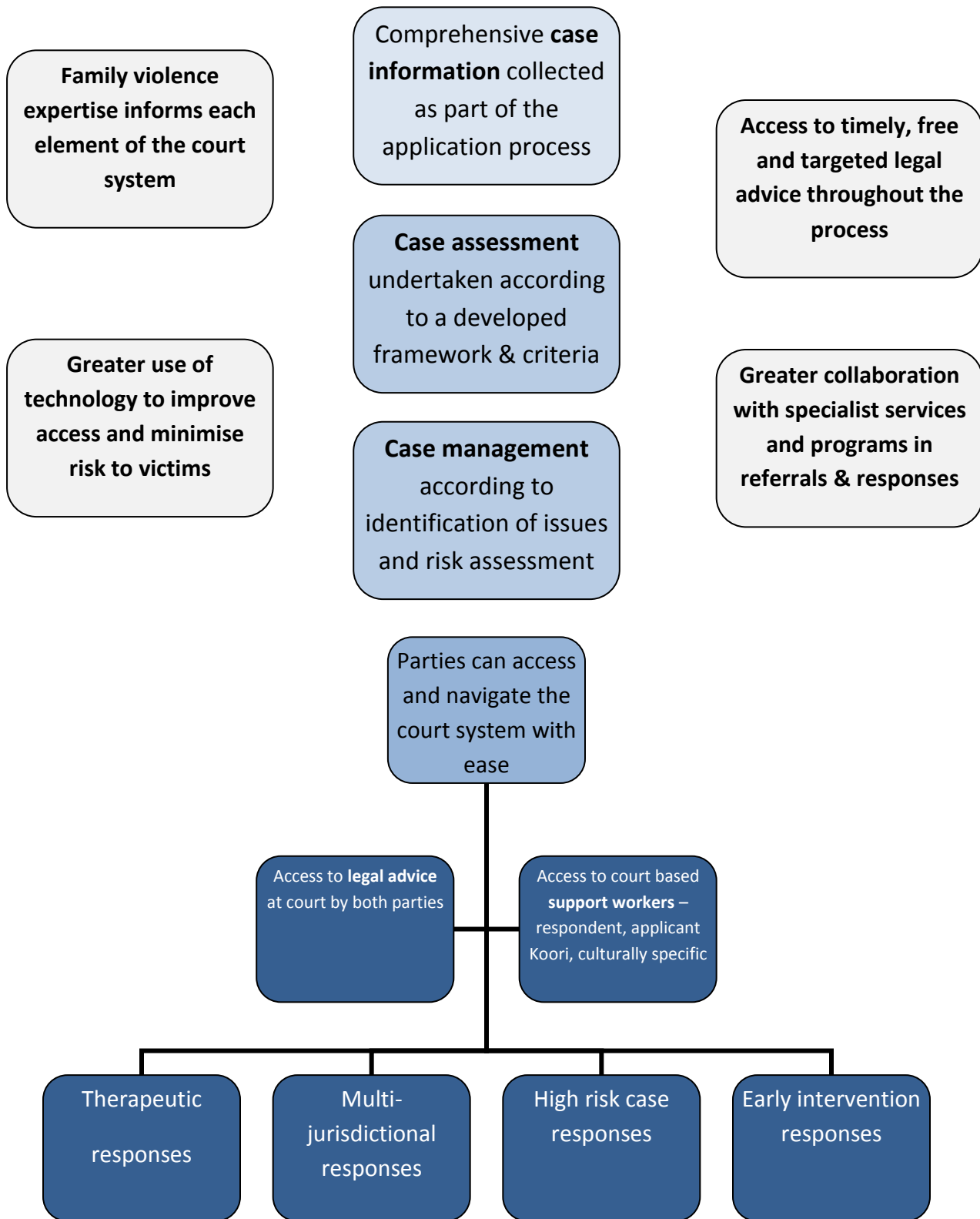
- Comprehensive collection of information available at an early stage.
- A robust case assessment and management process.
- Access to timely, free and targeted legal advice.
- A court system with processes and procedures that are easy to understand and to navigate.
- The availability of a range of court responses and early intervention strategies to minimize future risk and offending.

Benefits:

The benefit of developing and introducing new elements of the intervention order court system are significant. Not only will an effective system reduce and prevent future incidences of family violence but it will also promote the human rights of victims to recover from and live free from violence.

At a systems level, effective practice and procedure in the Magistrates' Court will assist in reducing court delay, managing court lists and, in the longer term, reduce the number of family violence cases that are listed.

Diagram 1: *Strengthening process and tailoring responses in the family violence intervention order court system*



We have discussed in more detail below, elements of the court system that we believe would improve its operation.

Improving the quality of information available to the court at an early stage

Improving the availability of information at court is an important element of an effective court response to family violence. Our recommendations below, look at ways in which information collection and availability can be improved at an *early stage* in an intervention order proceeding. We emphasise the need for this information to be available early on in a proceeding as a first mention hearing is a critical point where parties first receive legal advice, speak to a police prosecutor or civil advocate and appear in court. It is also a point at which matters can resolve via consent without admissions.

Benefits:

We consider there to be multiple benefits in improving the quality of information before the court including:

- Improving risk assessment and risk management undertaken by court staff, duty lawyers and Magistrates.
- Promoting greater information sharing between police and courts.
- Tailoring court responses and assistance according to the profile of the case.
- Reducing the need for victims to give evidence in interim hearings and at mention hearings and as a result minimising the impact and trauma on victims.
- Streamlining court proceedings and reducing adjournments that arise from a lack of information available to police.
- Simplifying final contested hearings and addressing the current difficulties in obtaining further and better particulars from parties where the case is proceeding to a contested hearing.

Current gaps

"I think there's some confusion around police prosecutors having paperwork organised... even when I went back to my partner and they went to the criminal part of the matter about the breaches... the magistrate looked at the prosecution and said 'this is ridiculous' because the paperwork wasn't there and the evidence wasn't there ... I know this happens a lot but each individual case should have all the information there"

- Janice, WLSV client

Application and safety notice provide limited information to the court

One of the challenges in the availability of information is the line and character limitation in the Magistrates' Court software program. The software utilised only allows 26 lines of 76 characters to be entered in. In some instances the critical information in the application is at the end and

left off, or the application is condensed to such an extent that it does not provide essential information.

There are additional issues with family violence safety notices that are handwritten by police officers. Applications may be difficult to read and understand. In some circumstances this is the only information available to legal representatives and parties on the day of the mention hearing – see Attachment A.

Quality of the narrative

While there has been some improvement by police and registrars in the quality of the narrative it continues to fall short of what is required to make assessments regarding risk and to tailor responses appropriately at an early stage in a proceeding.

Potential improvements to the system:

It would be useful for the following information to be provided as a matter of course in applications made to the court, regardless of whether they are “in person” applications or made by the police. We consider the following information to be critical in assessing and managing risk:

- Identification of risk factors using CRAF as a guiding framework.
- More detailed information regarding children and risk to children.
- A more detailed profile and history of the family violence experienced by a victim, not just a description of the incident. This may include other aspects of family violence not immediately evident such as financial control and emotionally abusive behaviour.
- Existing criminal record and any criminal charges.
- All formal risk assessments undertaken by police or other agencies.
- Details of child protection involvement.
- Family court orders.

There may be value in adopting and learning from good practice in criminal proceedings. A police brief is an aspect of a criminal case that provides the court and parties with information that is necessary to the proceeding. There are existing requirements in criminal proceedings for preliminary briefs to be filed and served in some instances in accordance with the *Criminal Procedure Act 2009*. There may be some cases where this would be useful in intervention order proceedings – for example in cases where there is high risk to the victim and/or where criminal charges have been laid.

There is also value in considering what assistance could be provided to a victim that attends court to make an application. Expanding the existing CLC family violence duty lawyer program to provide an additional lawyer to assist victims at the point that they first make an application could be valuable in providing initial legal advice and information and collecting the information required to provide a detailed application at first instance.

Recommended actions:

- 1. The Magistrates' Court and Victoria Police review and update safety notices and applications forms to facilitate a more effective collection of relevant case information.** More tailored questions and an improved structure for safety notices and applications forms will assist in drawing out the necessary information. It may be of assistance for family violence experts to support this review.
- 2. The Magistrates' Court addresses current software limitations and develop protocols to provide the full application and all relevant material to parties and legal representatives at the first mention hearing.**
- 3. Specialised training is provided to police and registrars to strengthen their skills and capacity to collect case relevant information.** Such training could be developed and delivered in collaboration with family violence specialists. The training may incorporate interview techniques, red flagging and information recording techniques.
- 4. The Department of Justice and Regulation investigate current good practice in criminal proceedings with respect to briefs of evidence, including the preliminary brief process and its value in the intervention order jurisdiction.**
- 5. The Magistrates' Court roll out the online application process across Victoria.** This could be based on the Neighbourhood Justice Centre application process that is accessible on a smartphone, tablet or computer.
- 6. The State Government fund the expansion of the CLC family violence duty lawyer program to provide additional legal advice and assistance to victims at the time of first making an intervention order application or at the time of a police application.**
- 7. Once family violence duty lawyer programs are expanded to provide early legal advice and information, a referral pathway be established between the police, courts and local community legal centres to link in with victims at an early stage in the process.**

Developing a court-based case assessment and case management process

A strong case assessment and case management process can assist the court in multiple ways. It can be a process to identify and manage risk, flag and address complex issues such as mental health or drug and alcohol abuse and tailor responses according to the nature of the case.

Case assessment is described in a number of ways, such as “triaging” or “screening”. This process occurs to a limited extent now in the Magistrates’ Court however there is further work required to strengthen and embed good practice in the system.

We acknowledge that developing and implementing a case screening and management process requires greater resourcing in the court system. Investment in this aspect of the court system will have flow on benefits in terms of reducing future family violence, increasing safety and improving the effectiveness of court responses.

Benefits

There are multiple benefits in developing a robust case assessment and management process that is embedded in the Magistrates’ Court, for example, it can assist with:

- Providing a more systematic process of intake, assessment and management of cases
- Identifying high risk cases at an early stage in the court process.
- Providing more tailored responses based on the issues and the history of family violence and intersectional legal issues.
- Identify information that will be relevant to safety planning, bail arrangements and perpetrator interventions.
- Providing an entry point for case-management.
- Identifying and flagging issues for decision-makers, support workers and lawyers.
- Identifying therapeutic approaches as and when necessary.

Current gaps:

Screening is limited to “in person” applications

Case screening and case assessment is currently limited in the family violence jurisdiction. From our understanding of the process, a registrar, when receiving an “in person” application, will ask questions according to the intervention order application form. The registrar will make a determination as to whether the person needs immediate protection. If there is an immediate need, the application is referred to the Magistrate to be heard as an ex parte application. In court, the Magistrate may ask the victim to give evidence in the stand. In some instances, at Melbourne Magistrates’ Court, the person will also be referred to the applicant support worker.

With respect to police applications, there is no case screening or assessment process as applications will come directly to the court from the police and be listed as a police application.

Information on risk currently not shared

As duty lawyers, we are regularly the first worker to interview a victim at court. Our lawyers undertake an informal risk assessment process by interviewing clients and obtaining instructions. As lawyers, we will only disclose relevant information to the court or to police with the consent of our clients. Through this process our lawyers will attempt to identify:

- whether clients feel safe and have a safety plan
- any concerns clients may have for their children's safety and well-being
- any child protection involvement
- any family court orders
- previous history of family violence, and
- associated issues of mental illness, drug and alcohol abuse, gambling and homelessness.

Case management

Case management entails an active process by which the court oversees particular cases and outcomes. Currently the only process by which this occurs is the mention and directions hearings. In order to develop a more tailored response to cases a more active case management process is required.

Potential improvements to the system:

Comparative models of case assessment and case management already exist in the Magistrates' Court, for example the Drug Court. There may be elements of screening and assessment that could be adapted and streamlined to be effective in the family violence jurisdiction.

For example, in its current form, the screening and assessment process in the Drug Court is undertaken with the offender to assess suitability. There may be a more streamlined option for court staff and registrars to screen and assess cases "on the papers". Criteria could be developed based on the CRAF and other intersectional issues. As part of the assessment process, a online tool could be developed to assist court staff to "red flag" issues.

Clearly if the quality of information provided to the court on a particular case is improved, then this case assessment process becomes easier. Our first set of recommendations above, are critical to the success of an effective case assessment and management process.

There may also be value in considering how family violence expertise may be brought into the court system to support court staff and registrars to undertake case assessment, particular the risk identification and risk management process. This may be achieved by involving applicant support workers in the process or alternatively employing a pool of family violence specialists that could support the Magistrates' Court and build capacity within the court system.

Case management processes and strategies should be built into any such model and should include:

- Identification of high risk cases and cases where parties have complex needs.
- Strong communication channels established between court staff, Magistrates, police, duty lawyers and support workers regarding cases.
- Information sharing within a strong ethical framework between agencies and courts.
- Targeted strategies developed for cases that adopt a range of approaches.
- Monitoring and oversight of perpetrators.³

There is value in being able to consult broadly on developing a model and as such as we would recommend that the Department of Justice and Regulation work with the Magistrates' Court and other stakeholders in the system to develop a model.

Recommended actions:

- 1. The Department of Justice and Regulation and the Magistrates' Court develop a case assessment and case management model for the family violence intervention order court.** It will be important that there be broad consultation with stakeholders, in particular users of the court system and organisations that work within the court system, for example CLCs, police and family violence agencies.
- 2. Family violence case assessment and case management expertise be strengthened in the Magistrates' Court.** Consideration be given to achieving this by expanding the role of the applicant support worker or by employing a pool of specialist family violence workers to work alongside court staff and Magistrates.
- 3. The Magistrates' Court, in the interim, works with family violence duty lawyers and police prosecutors/civil advocates to develop strategies to improve risk identification and case coordination.**

One example of an interim measure is the morning meeting at the Magistrates' Court between duty lawyers, the registrar, police and support workers to go through the daily family violence list. This occurs in some courts and not others. Morning meetings are a good way to share information regarding cases and to red flag particular issues in cases.

³ Jason Payne, [Specialty courts : current issues and future prospects](#), Trends & issues in crime and criminal justice no. 317, Australian Institute of Criminology, June 2006

Improving court forms, notices and information

There is considerable scope to improve the experience of victims attending court and navigating the system. In interviews with WLSV's duty lawyers and clients, navigating the court process, particularly "in court" experiences were identified as difficult and challenging.

"No, I still grapple with the fact... what a mention is, what a directions is, what all those different stages are and how those things can change.

You're just told to be at court at 9, and that's it. So I think most people don't understand that you could be there all day. They definitely don't know that you could be there all day. That's a certainty. And I have been my last... four of my five encounters I've been at court the entire day."

- Greta, WLSV client

In our recommendations we have focused on mechanisms that will increase understanding and knowledge for parties navigating the court system. In developing any resource or service to assist parties in the court system there must be:

- Engagement of experts – for example learning experts and linguists for court information, notices and forms.
- Consultation with users of the court system and consultation with stakeholders with relevant expertise – particularly organisations that work with high risk groups.

Benefits

The benefits in improving the knowledge and understanding of parties of the court process are significant. It can:

- Promote greater access to justice and equality before the law.
- Increase participation in the court process.
- Improve decision-making by the parties.
- Reduce delay caused by adjournments and non-attendance.
- Improves accountability by perpetrators.
- Empower victims to understand and navigate the court process.

Current gaps:

"There's a real lack of clarity for clients about what will happen at the next stage. For example they don't understand they have to go into court or that they might have to give evidence on the stand."

- WLSV lawyer

We have attached a copy of a Notice of Hearing (Appendix B) to illustrate how unclear court notices are. In this example, the notice states that 5 minutes has been allocated for the hearing. It does not provide any information regarding who may be at court that may assist them in the

case – for example a duty lawyer or applicant or respondent worker. There is also limited information at court on the day of the hearing as to what to expect. Parties are not aware that they may have to go into court and give evidence. Registrars and court staff are often time pressured and unable to provide the information that parties need.

Potential improvements to the system:

There is a range of information that would be of use to parties in the court process. It's important that any information provided to parties are available in formats that are accessible and take into account the needs of people with disabilities such as a hearing or visual impairment or a person who has limited English skills. Useful information may include:

- The nature and elements of family violence.
- Explanation of what an intervention order is.
- What to expect at court on the day that they have to attend.
- What supports are available at court.
- Explanation of court terminology in plain English.
- What is the process for giving evidence?
- Keeping safe whilst attending court and information on remote witness facilities.

Recommended actions:

1. The Magistrates' Court engage external experts to undertake a comprehensive accessibility audit of its family violence court forms, notices, orders and information.

2. The Magistrates' Court re-draft forms, notices, orders and information in plain English.

The Court should work with specialist family violence agencies, disability quality advisors, learning experts and users of the court system improving these resources.

3. The Magistrates' Court develop resources to support parties from diverse backgrounds to navigate the family violence court system.

The Court should work with specialist family violence agencies, disability quality advisors, learning experts and users of the court system to develop resources that can be available at court and online. This information should be available in a range of different formats and languages accessible to people with disabilities.

4. The Magistrates' Court translates standard court notices, court information and court orders to be available in a range of different languages for use by people with limited English skills.

Improving access to interpreters

Access to interpreters is a critical aspect of improving access to justice for victims in high risk groups such as women who are newly arrived and on temporary visas. As duty lawyers, we recognize the importance of well qualified, professional interpreters that are available to parties as and when needed. Unfortunately there are significant challenges in the current system that must be addressed as a matter of priority.

Current gaps:

The lack of available interpreters in the Magistrates' Court is a significant barrier for some of the most marginalised and vulnerable women experiencing family violence. The following issues have arisen in our experience as duty lawyers at Melbourne Magistrates' Court:

- A single interpreter is available for both parties in an intervention order case: We consider there to be serious conflict of interest issues in having a single interpreter interpret in the same case on the same day for opposing parties. There is no code of ethics for NAATI accredited interpreters and interpreters are not bound by conflict of interest obligations as lawyers are.
- Interpreters are booked for half a day and are not available after 1pm: When court lists are forty to fifty people a day and duty lawyers have multiple clients, the time restrictions on the availability of interpreters is a serious barrier to resolving a matter that requires time and negotiation. If an interpreter leaves at 1pm, it is court practice to either adjourn the case – leading to delay and further court congestion – or attempt to resolve it without the use of an interpreter.

Parties require time to understand the issues before them and to be able to make well-informed decisions. Limiting the availability of interpreters perpetuates entrenched discrimination in the system.

- Interpreters are booked for other matters at court on the say day (for example in the criminal list): Interpreters are in some instances called into other matters or arrive late which again narrows the window of access for parties in family violence cases.
- Male interpreters are required to interpret for female victims: We have had a number of clients express concern about the gender of the interpreter. In a jurisdiction such as family violence, where there are sensitive disclosures being made regarding sexual assault, rape and other forms of abuse, it is essential that gender specific interpreters be available.

Recommended actions:

- 1. Funding for Magistrates' Court interpreters includes a specific allocation of funding for family violence interpreters.**
- 2. The Magistrate's Court engages specialist family violence trainers to train all court-based interpreters working in the family violence jurisdiction.**
- 3. The Magistrates' Court develops guidelines to assist court staff in booking family violence interpreters.** Guidelines to include:
 - procedure at intake to check whether a party requires an interpreter
 - a practice of booking two interpreters if both parties require an interpreter
 - a presumption that a female interpreter will be booked for a female party.
 - a practice of booking interpreters for a full day.

Strengthening support and safety for victims in the intervention order process

There is broad acknowledgement that a more integrated approach is required in the family violence system to support victims. Victims face multiple and complex issues when experiencing family violence and they require access to a range of services to prevent homelessness and poverty, to support physical and emotional well-being and to rebuild their lives free from violence.

The roll out of applicant support workers at headquarter courts across Victoria is a positive step towards a more integrated approach. In strengthening the system and shifting the burden from the shoulders of victims, we believe that there is scope to build on current initiatives in the system to provide greater opportunities for victims to access the services that they need and want.

The Royal Commission will also receive extensive evidence regarding the lack of safety across courts in Victoria. We consider attendance at court for an intervention order proceeding to be a time when women are at elevated risk of harm and this risk is currently not being managed effectively in most courts in Victoria.

Our recommendations have been formulated with the view that a better alternative to victims attending court is to strengthen video-conferencing arrangements and provide an alternative model where victims can attend a safe off-site location that includes access to a range of support services. This is a more therapeutic response that recognises that attending court can be detrimental to the well-being of victims and their children.

Current gaps:

“... you like to think that there were systems in place where women could be represented and not have to go [to court]. It is incredibly hard. For me, the stress is getting here, so organizing my children, physically getting here and all that, and then the emotions that go with being here, so there is so much to that, whereas a lot of the time the men just have to roll out of bed and rock up.

For me to just turn up here today is a very big deal. So it'd be nice to not have to be here because it is very hard, but if my presence, I guess, underlines the case and stamps it harder then you understand why you have to be here. But I'd love to just be represented by somebody in my case rather than be here. But you have to see it through.”

Greta, WLSV client

Case study:

Angie is 23 years old and has a five month old baby. During her pregnancy her boyfriend, Sam, was verbally abusive and threatening towards her. Since her baby arrived, his behaviour had escalated and he had started pushing her and threatening to choke her. On Sunday, Sam pushed her into a cupboard door and she called the police. Angie was taken to hospital with broken ribs and bruising. The police removed Sam from the house and Angie's mum came over to look after the baby. A police officer visited Angie in hospital (she was still there at midnight) and was advised that she would have to go to court on Monday because a safety notice had been taken out – the police officer explained they were taking out an intervention order against Sam.

Angie knew very little about intervention orders. She had heard of them but didn't know what it would mean for her and Sam. Even though she had been at hospital until 2am on Monday morning, the police officer had told her and given her a piece of paper that said she had to be at court on Monday at 9.30am. The hearing notice said her hearing would take five minutes. She had mixed feelings about Sam, she was frightened of him and wanted the violence to stop but she also didn't want him to be unable to come home and spend time with their daughter.

She had no way of organising a baby-sitter at such short notice (Angie's mum had to work) so she bundled the baby into the car. She paid for a two hour park in the middle of Melbourne and lined up in the queue at the Magistrates' Court with her pram. It took over twenty minutes for her to get into the building.

Once she found her way up to the family violence registry she realised she was standing behind Sam and his brother in the queue to see the registrar. When his brother saw her he started having a go at her. Sam wanted to hold the baby. She didn't know what to do.

When she finally got to the front of the queue and spoke to the registrar, he asked her “if she would like to see someone”. She didn’t know who that meant so she shook her head. The registrar told her to take a seat and she would be seen by the police.

When Angie sat down she was facing Sam and his brother. His brother came over to her and started abusing her. Sam was staring at her and she felt frightened and intimidated. She eventually got up and moved but so did Sam and his brother so that they were able to keep her within their line of sight.

When Angie finally spoke to the police civil advocate, she was told that she could see a lawyer for free to get some advice. She said yes however she was told that the duty lawyer was in court. When Angie finally got to speak to the duty lawyer it was 12.30pm. Angie had been at court since 9.30am. She was advised that it was unlikely anything would happen in her case until after lunch and she should come back to court at 2pm. Her baby was crying and hungry. She didn’t know what to do.

Lack of integrated support at court

“I know it’s hard to say that government can make one place that you can go and just say ‘help me’, and someone’s gonna help you. They might get an illusion that that’s happening, but it’s not happening.

..somebody might say “oh, you could probably contact this organisation or whatever”, somebody who doesn’t speak English, or doesn’t have the strength, by that second phone call, she’s feeling like no-one gives a crap. Some person’s just beaten her or something and she’s thinking, what is going on here? You need to be able to call one line. Somebody takes your hand, and says come with me, and they take care of everything. That doesn’t exist. I made 50 calls... I can’t tell you how many calls”

-Amber, WLSV client

Applicant support workers are an excellent resource at the Magistrates’ Court however the assistance that they can provide falls well short of what a victim requires after a family violence incident. As described by our client above, the burden falls squarely on the victim to persist in trying to secure different types of assistance in a jigsaw puzzle of issues that arise for her. In particular the assistance that would be of benefit to victims at court include:

- culturally specific support workers
- housing or tenancy advocates that can assist with immediate housing and lease issues
- financial counselling assistance, for information regarding crisis payments
- child care

Court safety

Our duty lawyers have flagged concerns regarding the safety of women on Level 6 of the Melbourne Magistrates' court building. Our lawyers are witness to perpetrators approaching victims. In some instances perpetrators are abusive – verbally and physically and Personal Safety Officers are called to attend. If victims express concerns for their safety they can remain on another level of the building however this waiting area is open – it is not a secure room.

The process of entering court and leaving court from the same entrance and exit is problematic as there is a risk that perpetrators may follow victims to their car, on to public transport or to their home.

The Victorian Government has committed to undertaking a safety audit of all courts in Victoria and there will be steps taken to address safety issues in high risk courts. This is positive however there is an elevated risk for victims simply by attending court at the same time and on the same day as the perpetrator.

Potential improvements to the system:

There is significant trauma attached for women in attending court. We suggest an alternative approach that takes victims out of the physical court setting altogether, which would have more therapeutic benefit to the victim. This may also improve court attendance rates, as they are more assured of their safety on the day of the hearing.

In the recent state budget, the Magistrates' Court received \$14.7million (over two years) to improve mobile video conferencing facilities at the court. Under this plan, a victim and witnesses giving evidence to the court can do so through an internet based video link and do not have to physically attend court.

Video-conferencing

WLSV is currently participating in a pilot project with the Melbourne Magistrates' Court whereby high-risk victims attend at a safe location on their hearing date to receive legal advice and representation from a duty lawyer via video conference. Victims can also appear in court during the hearing, via the video conference facility. Throughout the process, victim is supported by a social worker. This pilot is yet to be evaluated however carries much potential for expansion.

Off-site locations

As noted, the pilot program includes a safe location for the victim to attend. There is scope to consider how an off-site location may be used in court regions for victims where the risk is particularly high or where victims flag that they feel unsafe in the presence of the perpetrator.

An off-site location also offers opportunities for victims to link with a range of support services that could be available on the day, such as a social worker. This has the potential to address the current in-court limitations in the availability of support services.

An off-site location that provides access to the family violence video-conferencing model could either be based in an existing agency (such as family violence service) or be a dedicated space leased by the court for victims to attend. These off-site locations could have workers from local support services. The availability of wrap around services not only provides victims with an opportunity to link in with services it also provides the services themselves with opportunities to work collaboratively. Services that could be available at an off-site location include:

- family violence workers from the local agency
- a financial counsellor
- a housing advocate / tenancy specialist
- specialist support services for Aboriginal and Torres Strait Island women and women from culturally and linguistically diverse backgrounds.
- child care facilities.

Recommended actions:

- 1. The State Government allocate funding to the Magistrates' Court to employ court-based culturally-competent family violence support workers.**

These workers could be based in court regions where there is a high CALD population.

- 2. The State Government allocate funding for courts to employ a disability quality advisor to improve accessibility of courts for people with disabilities.**
- 3. The State Government allocate funding for the expansion of the Koori family violence pilot program to all Victorian regions.**
- 4. The State Government report publicly on its safety audit of courts and invest in creating safe spaces in high to medium risk courts.**
- 5. The State Government ensure that safe spaces that are created in courts, are built to be "child friendly" spaces supported by child care workers.**
- 6. The Department of Justice and Regulation investigate and consult on expanding current provisions with respect to recorded statements to enable family violence victims to give evidence via recorded statement.**
- 7. The Magistrates' Court evaluate and report on the family violence video-conferencing pilot.**
- 8. The Magistrates' Court develops protocols to enable video-conferencing to be offered to victims of family violence on the day of their hearing.**
- 9. The Magistrates' Court roll out the evaluated family violence video-conferencing pilot program to all court regions.**
- 10. The State Government identify and establish off-site locations in each court region for victims to attend on the day of their hearing to access video-conferencing and support services.**

Building family violence expertise in the legal system

There is enormous value in building and strengthening the family violence expertise of court staff, Magistrates, duty lawyers and Victoria police.

Court staff

The first points of interaction for many victims that attend court are Magistrates' Court staff and registrars. Court staff are an important frontline in the system that can make a significant difference to the experience that a victim may have in their interaction with the system. A court staff member that understands the dynamics of family violence, recognises a victim's fear and can respond effectively by providing appropriate referrals and assistance can make a meaningful difference to a victim's experience. There are a number of elements to building the expertise of court staff including skill development in:

- interviewing and engaging with victims of violence
- identifying and making appropriate referrals for assistance
- understanding the nature and dynamics of family violence
- understanding the role of duty lawyers and support workers in the process and
- strengthening collaborative approaches – working more effectively with duty lawyers, applicant support workers and other workers in the court system.

Magistrates

Magistrate interaction with victims can have a real impact on whether victims feel empowered or disempowered in the court process. Consistency in court craft and decision-making varies across the state. At Melbourne Magistrates' Court we have Magistrates that have developed valuable approaches in "court craft" that assist all parties feel that they have been heard as well as holding perpetrators to account. In interviews with clients, there were varying experiences in courts. Some clients felt that they appeared before Magistrates that made a real effort to speak to them and ensure that they be heard. And some did not.

"I went into court... I went in, yeah and I stood up and said can I please talk. And that Magistrate was magnificent. I can't remember who it was. I just remember that they listened to everything and, and it went ahead and they gave me a temporary [order]..."

-Magda, WLSV client

There is value in broadening professional development opportunities for Magistrates to incorporate some of the leading thinking around learning. For example, peer reviewing and experiential learning are not regularly used in the legal profession however could enhance current training. We also believe collaborative training with other workers in the system may be of benefit to Magistrates – for example participating in training with duty lawyers. Currently, WLSV's Safer Families training for CLC duty lawyer invites two Melbourne Magistrates to

participate in a “mock court” session where participants run cases and make submissions. The Magistrates provide feedback to participants to improve their in court skills. We have described this training in more detail below.

CLC duty lawyers

Increased attention on family violence by Victoria Police and state governments over the past 10 years has resulted in an increase in intervention order applications, placing greater demands on CLCs. Over the last four years, the number of new family violence cases opened by CLCs has increased by 84%.⁴ An increasing number of CLCs are also now providing duty lawyer services in family violence matters, with twenty CLCs covering twenty-nine courts.

Safer Families professional development program

Since July 2013, WLSV has been providing a comprehensive professional development program for CLC lawyers, funded by VLA. The program, known as *Safer Families*, builds the capacity of CLC lawyers to deliver quality legal services to survivors of family violence and their children. The program encompasses competency based training, mentoring and ongoing support for CLCs which undertake family violence work.

Lawyers from 26 CLCs have participated in the program. An independent evaluation⁵ found that:

- The training sessions were effective “for enhancing the capacity of lawyers to advise and represent clients with family violence matters” and there was evidence of increased “knowledge, skills and confidence of lawyers who participated.”
- Participants overwhelmingly valued the training, and reported that they use the knowledge and skills in their practice to achieve safe outcomes for their clients.

Magistrates involved in the program have also commended the program for its focus on the actual role and skills required of duty lawyers.

The need for specialist training

Recent research by Deakin University and RMIT supports the need for specialist training, as it harnesses the potential of duty lawyers to greater effect, and provides consistency in the justice system.⁶

⁴ Federation of Community Legal Centres (Victoria) Submission, Productivity Commission Inquiry into Access to Justice Arrangements (July 2014)

⁵ *Safer Families Program Evaluation Report September 2014* Emma Pritchard Evaluation Consultant

⁶ Centre for innovative Justice *Opportunities for early intervention Bringing Perpetrator of Family Violence into View* (RMIT University 2015); Amanda George & Bridget Harris, *Landscape of Violence in Regional & Rural Victoria* (Deakin University 2014); Lucinda Jordan and Lydia Phillips, *Women’s Experiences of Surviving Family Violence and Accessing the Magistrates’ Court in Geelong, Victoria* (Deakin University, 2013)

This type of training is particularly important in rural and regional areas, where CLC lawyers generally have fewer opportunities for continuing professional development, including formal and informal education, networking and support.⁷

Recommended actions:

- 1. The State Government fund the Magistrates' Court to work collaboratively with family violence specialists to develop a family violence training program for all court staff delivered on a regular basis.**

The training could have different levels depending on whether the staff member works directly with family violence victims. Such training could incorporate elements of experiential learning and cover issues of unconscious bias and cultural competency.

- 2. The Judicial College of Victoria work with family violence specialists to develop and deliver a comprehensive professional development program to Magistrates and County Court and Supreme Court Judges across Victoria.**

We acknowledge the positive initiatives currently on foot with respect to Magistrates professional development however believe that this could be strengthened, particularly with a focus on improving “court craft” skills and using more innovative learning techniques such as peer reviewing and experiential learning.

- 3. The State Government fund training programs such as Safer Families, to strengthen the skills of family violence duty lawyers in:**
 - the nature and dynamics of family violence**
 - the implications of family violence for particular client groups**
 - the FVPA and its intersections with the Family Law Act and the Children Youth & Families Act**
 - negotiation, advocacy and other court skills**

⁷ Mary Dracup, *Linking Law Practical Guidelines for Delivering Law to Rural Victoria using E-learning Technologies* (Deakin University 2014)

Ensuring victims' voices are heard in the intervention order process

An ongoing challenge in intervention order proceedings is to strengthen the voices of victims in the court process. The clients that we interviewed expressed concern that being at court was like a "cattle call" providing little time to understand or make decisions regarding an important part of their lives. Some clients reported feeling disempowered by not being able to speak for themselves.

Current gaps:

Privacy in court

Victims who are granted interim intervention orders are, in most instances, required to give evidence in the witness stand. This occurs in open court and as such, often students, police officers and members of the public are listening and watching. This can be a significant barrier for victims who are frightened, nervous and traumatised. They may find it difficult to fully disclose the history of family violence – particularly where this may involve allegations of a sexual nature. It is far more appropriate for victims to give evidence in a closed court setting.

Difficulty in making decisions at court

Case study

Rabeena is 79 years old and has endured many years of violence and abuse from her husband. She has a hearing impairment and was diagnosed with bipolar disorder some years ago. Her husband is her carer and she has no access to her own money. She has never been to court before. Yesterday the police came to her house after the neighbours heard her screaming. Her husband had been trying to choke her.

When she came to court the next day it took her some time to find out, from asking different people and showing them the notice, where she had to go. By the time she got to the family violence registry it was already 10.30am. The registrar asked her if she wanted to see a lawyer and she said yes. The registrar said her case would be heard before lunch time as her husband was already at court and had a lawyer.

When she saw the duty lawyer, the lawyer explained the court process to her but it was difficult for her to hear what she was saying. It was also difficult for her to understand her options and what her husband's options were. She didn't know what to do. She asked the lawyer what she should do and the lawyer explained that it was her decision to make. She started to cry because she was so confused. The lawyer asked her to see the applicant support worker but by this stage Rabeena was so distressed she could barely explain to the support worker what was happening to her.

This is just one example of how difficult it is for victims to have the time and support that they need to make decisions and to have their voices heard in the process. The current process is wholly inadequate for any victim let alone a victim that face additional barriers due to, for example, a disability or being newly arrived in Australia.

Therapeutic justice approaches

There are a number of therapeutic justice models currently operating in Victoria including the Koori Court and the Drug Court which may be helpful in informing the development of therapeutic approaches to complex cases in the family violence jurisdiction.

The key features of therapeutic models include:

- A focus on problem-solving and a move away from the adversarial model.
- Greater focus on meaningful outcomes for victims, offenders and the community.
- Increased judicial monitoring and oversight.
- Collaboration with a range of programs and non governmental organisations that provide interventions and support for offenders and victims⁸.

In translating how this may work in the family violence jurisdiction, it will be important to establish appropriate eligibility criteria. We would argue that access to a therapeutic model should not be reserved only for cases where perpetrators present with complex needs but also where the victims may present with similar issues. There should also be consideration given to a broader range of supports than are currently available to victims – a model could establish relationships with specialist family violence agencies, housing, mental health and drug and alcohol programs.

Restorative justice approaches

In 2005, the Victorian Law Reform Commission recommended that “further research should be conducted before restorative justice practices were considered for use in family violence matters in Victoria.”⁹ The Australian Law Reform Commission reiterated this view in 2010.¹⁰ In 2015, the Centre for Innovative Justice (CIJ) stated its belief that “restorative justice options should remain under consideration.”¹¹ In the short term, the CIJ stated that restorative practices could be best used in addition to existing conventional justice responses.¹²

Chapter 6 of the CIJ’s report to the Royal Commission for consideration provides a reasonable summary of the potential benefits and risks of restorative approaches. However, we recommend

⁸ Berman G & Feinblatt J 2001. Problem-solving courts: a brief primer. *Law and policy* 23(2): 125-140

⁹ Victorian Law Reform Commission’s *Review of Family Violence Laws Report*, 84-85

¹⁰ Australian Law Reform Commission, *Family Violence – a National Legal Response*, 1093-4

¹¹ Centre for Innovative Justice, *Opportunities for Early Intervention: Bringing perpetrators of family violence into view*, 78

¹² *Ibid*, 78

that the Commission undertake further inquiries into the New Zealand model and the effectiveness of its standards for family violence cases, seeking input both from proponents and critics of the model. We also recommend that the Royal Commission considers the research and writing of Professor Leigh Goodmark from the University of Maryland.¹³

In our view, current conventional justice responses to family violence have significant shortcomings in relation to their capacity to intervene early and stop further violence from occurring. 65% of police family violence work is responding to recidivist offenders.¹⁴ Current justice responses are also very limited in their capacity to support a victim to be ‘heard’ in the process.¹⁵ In this context, we believe it is high time to pilot restorative justice approaches (as opposed to continuing with secondary research). We agree with the CIJ that these approaches should be in addition to existing conventional responses.

Approach to pilots

The CIJ should develop a framework for restorative justice approaches. It should then pilot approaches with the lowest level of complexity/risk first and, only subject to the success of those approach/es, move on to trial approaches with greater complexity/risk. For example:

A first approach to trial might be limited to cases where:

- the victim requests the restorative process, *and*
- the parties do not have a continuing relationship, *and*
- the perpetrator has been convicted and sentenced

A slightly more complex approach, might be to extend restorative approaches to cases where:

- the victim requests the process, and
- there is a continuing relationship, or
- the perpetrator has not yet been sentenced.

In addition to the considerations above, we also recommend that consideration be given to developing models that provide appropriate safeguards and supports but are not so resource intensive that they will not be capable of broader roll-out. Our experience is that these “Rolls Royce” services (e.g. the Family Violence Court Division), if they are able to continue at all, tend to contribute to greater inconsistency and inequality in access to justice.

¹³ For example: *Stalled at 20: VAWA, the Criminal Justice System, and the Possibilities of Restorative Justice*, 6 December 2014 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2575646

¹⁴ No to Violence, Holding men who perpetrate family violence accountable: A system nearing crisis point, 1

¹⁵ Rosemary Hunter, *Domestic Violence Law Reform and Women’s Experience in Court* (2008), 81

Recommended actions:

- 1. The Department of Justice and Regulation develops and pilots a therapeutic court model to manage family violence cases where either party presents with complex needs.**

The Department of Justice and Regulation consider current therapeutic approaches in other courts across Victoria and how best practice from those courts could inform the development of a therapeutic model in the family violence jurisdiction.

- 2. The Department of Justice and Regulation investigates the role, if any, for victim impact statements in the family violence intervention order system.**
- 3. The Centre for Innovative Justice develops a *draft* framework for restorative justice approaches to family violence in intervention order proceedings and criminal proceedings.**

The framework should be piloted and evaluated to determine whether, and in what circumstances, restorative justice approaches can promote, at both an individual and societal level:

- victims' rights to live free from violence and
- perpetrators' accountability for their use of violence

- 4. Subject to the evaluation of the pilot the Centre for Innovative Justice revise the draft framework and the Department of Justice and Regulation make restorative justice approaches available in each court region**
- 5. Specialist agencies such as InTouch and AFVPLS are funded by the State Government to expand existing programs to provide specialist support to victims from high risk groups.**
- 6. The Magistrates' Court develops a "warm referral process" with specialist agencies for applications where victims require specialist support services to link in with before the hearing date.**

Interim measures:

- 7. Policies are developed in the Magistrates' Court to ensure that matters are not listed within 48 hours of the family violence incidence.**
- 8. Guidelines and tools are provided to Magistrates to improve "court craft" around engagement with victims.**
- 9. The Magistrates' Court hears ex parte interim orders in closed court rooms as a matter of practice.**

Reducing court delay and multiple adjournments

Addressing the issue of multiple adjournments can effectively reduce court delay and minimise a matter running over the course of six or more months which regularly occurs in family violence matters. Multiple adjournments has a significant impact on victims who are required to come to court on multiple occasions. In many ways because of systems failures, the burden falls on the victim to come to court over and over again to demonstrate the need for an intervention order. Unfortunately there is little that has been done, to date, to address the issue.

Current gaps:

Lack of available interpreters

We have highlighted this as an issue above under the section – *Improving access to interpreters*. In some instances an interpreter has not been booked in a matter or an interpreter is unavailable because they are in another court on another level. For the purposes of procedural fairness the matter is ordinarily adjourned which is an unsatisfactory outcome for the parties.

Difficulty with service

Another contributing factor in delay and multiple adjournments is the difficulty in effecting service on a perpetrator. In some instances, perpetrators will take steps to avoid service. There is a level of danger for a victim in this as an interim order does not take effect until the order has been personally served by police. Victims are not advised that service has not been effected and will attend on the day of the hearing only to be told that the hearing will be adjourned because service has not been effected.

Police delays

There are existing challenges in police practice that can result in multiple adjournments where the police prosecutor or civil advocate is unable to contact the informant. This leaves the court in the position of having to grant an adjournment until further information can be provided. In some instances, on the second mention date (after the adjournment) that information is still not available to the court.

Case study:

Anne comes to court and sees WLSV's duty lawyer. She has been named as the respondent in a police application. When our duty lawyer interviews Anne she describes how her partner tried to suffocate her with a pillow. She scratched his arms and kicked him in the legs to stop him. When the police attended they looked at her partner's injuries (scratches and bruises) and they found that she herself had none. The police said that as it was "her word against his" they could only rely on his injuries and as such took out an application against her. She details a long

history of emotional abuse and financially controlling behaviour and how her partner's physical violence had begun to escalate.

When WLSV's duty lawyer speaks to the police civil advocate, she questions the informant's decision and seeks to negotiate to have the police withdraw the application against Anne. She is advised that no decision can be made without speaking to the informant. The civil advocate attempts to make contact with the informant however the informant is on leave.

The civil advocate seeks an adjournment to follow up with the informant. This means Anne cannot return to her house (as she has been excluded) until the next return date.

On the next return date (two weeks later), the duty lawyer once again asks the civil advocate about the application. She is advised that the informant hasn't returned their call therefore they will proceed with the application for now. The police indicate that they will accept a limited intervention order.

Anne now faces the choice of consenting without admissions to a limited intervention order, simply so that she can return to her home, or continuing to seek an adjournment until such time as the police can investigate further to withdraw the application or seeking that the case be listed for contest.

Recommended actions:

- 1. The Magistrates' Court and Victoria Police develop a protocol to contact victims to notify them if an application has not been served and to adjourn the case "on the papers" so that victims do not have to attend court multiple times.**
- 2. The Magistrates' Court and Victoria Police develop a protocol to gather information from the victim regarding alternative addresses for service as part of the initial application/safety notice process.**
- 3. Victoria Police enable civil advocates and police prosecutors to make final decisions to withdraw an application on the day of the hearing.**
- 4. Victoria Police Liaison Officers at court have the power to take complaints from parties where allegations have been raised and not investigated and issue applications on their behalf.**

Exercising power and control through the court system – cross-applications, re-hearings

Procedural fairness is a key component of the family violence jurisdiction. We recognise that appropriate mechanisms must be available in the intervention order process for perpetrators to challenge allegations of family violence, make cross-applications and seek review of judicial decisions. There is, however, a category of cases where court mechanisms are abused by the perpetrator for the purposes of continuing to exercise power and control over the victim. We describe this as “systems abuse”.

Often these cases fall short of satisfying the high threshold of vexatious litigant protections yet they are cases that absorb an enormous amount of court time including the time and resources of Magistrates, court staff and duty lawyers.

It is difficult to measure the impact this course of action has on victims who are forced to come back to court on multiple occasions to justify the need for an intervention order. It requires them to tell their story multiple times to multiple Magistrates, court staff and duty lawyers. The trauma and feelings of powerlessness to stop abuse perpetrated through the system have a profound effect on the physical and emotional well-being of victims as well as their ability to heal and recover from their experiences.

Current gaps:

There are common characteristics that can assist in identifying cases where perpetrators use the system including:

- failing to appear at mention hearings and directions hearings
- seeking last minute adjournments
- making cross-applications on grounds that are weak and lack merit
- contesting a family violence intervention order and then failing to appear at a contest
- applying for re-hearings in the Magistrates’ Court, and
- appealing decisions at the County Court.

Current gaps

The gaps that we have identified include:

- Cross-applications are relatively easy to make and will be accepted even where there are few family violence grounds identified.
- Re-hearings are granted without a comprehensive history of a family violence case before the decision-maker.

“he contested the intervention order, oh, the amount of times, this is what I couldn’t understand in the system, the amount of times you can contest an intervention order. He contested it because he wanted to feed his fish and he got it. And then I had to fight back because he breached the order specifically. Oh, it was just...oh my God. I was in court on average, at least once a month. It came to a period that I was in court about three times a month. And people at the courts knew me. They actually knew me.

-Meena, WLSV client

Recommended actions:

- 1. The Magistrates’ Court strengthen cross-application and re-hearing processes to identify cases with little or no merit or cases where there is a history of the perpetrator applying for re-hearings, cross-applications and appeals.**

This could be achieved by introducing an application for leave process for cross-applications. Additionally stronger guidelines and training could be developed to assist registrars and Magistrates to identify “systems abuse cases”.

- 2. Research is commissioned into “systems abuse” as a form of family violence that identifies the mechanisms and patterns of behavior of a perpetrator engaging in such abuse.**
- 3. Development of resources to improve the identification and understanding of “systems abuse”.**

Holding men responsible and accountable for their violence

There is an urgent need to expand and strengthen court responses to perpetrators in the family violence intervention order system. Without targeted responses, there is limited benefit in the system.

We recognise that there are a number of specialist agencies, such as No To Violence (NTV) that will provide detailed submissions regarding holding perpetrators responsible and accountable for their behaviour. We also note that the Centre for Innovative Justice released a recent report with a range of strategies that should be further investigated and implemented. Our submission covers a limited number of strategies however we encourage the Commission to make recommendations covering a broad range of possible approaches.

Benefits:

The benefits of improving perpetrator accountability and responsibility are significant. Targeted and consistent strategies can:

- promote safety for victims
- improve understanding of family violence
- reduce recidivism
- reduce men breaching intervention orders
- reduce the number of interventions being taken out and
- reduce the number of criminal breaches of intervention orders

Current gaps:

There are few strategies available to hold men responsible and accountable in the family violence intervention order system. The gaps in the system are at a number of different levels. We have provided a small snapshot of the gaps as they present at Melbourne Magistrates' Court.

Perpetrator responses are not tailored

The current intervention order system operates as a "one size fits all model". The starting point for strengthening perpetrator accountability and responsibility is to recognise that perpetrators are not a homogenous group of men and that they present with a range of complex and intersectional issues.

It is critical that perpetrators from culturally and linguistically diverse communities and who identify as Aboriginal and Torres Strait Island have access to culturally appropriate programs, workers and interventions. Tailored responses are critical to young perpetrators particularly where family violence is being committed against their siblings and their parents.

Additional intersectional issues are currently not addressed at all in the system. Intersectional issues include:

- drug and alcohol misuse
- mental illness
- homelessness
- disability and
- gambling addiction

There is value in considering how perpetrators may access specific interventions to address the intersectional issues. The Court Integrated Services Program is one existing model in the criminal justice system that works effectively to case manage offenders with complex needs. Currently, this program is not available in the family violence jurisdiction.

Orders

Currently intervention orders are not drafted in plain English and there is limited understanding of them, particularly amongst perpetrators who have low levels of literacy or have limited English skills. Conditions of orders are explained to perpetrators by Magistrates however it is difficult to know how much of the order is understood. While there is an option to include a condition that a perpetrator contact the Men's Referral Service, in the paperwork provided by the court this is the final option (see Appendix C for a list of conditions attached to an application). It is often "out of sight and out of mind" of Magistrates, police representatives and duty lawyers.

Lack of accountability

In the context of the intervention order system there is no mechanism in place to hold men accountable to the victim, the court or their community. There is no mechanism to monitor or compel a perpetrator to report back on compliance.

Recognising the impact of their behaviour

Currently the intervention order system provides no meaningful way for perpetrators to recognise and acknowledge their behaviour and its impacts on the victim and on the broader family which includes their children or their siblings or parents.

Potential improvements to the system:

There are a number of ways that perpetrators in the court system may be held more accountable and responsible for their behaviour.

Consideration should be given to "early intervention" strategies for offenders where the offence is the first reported and there is a minimal history of family violence. Strategies may include

support from a respondent worker to engage in men's behaviour change programs as well as other services. A more therapeutic intervention may be required for perpetrators that present with complex and intersectional issues including mental health and drug and alcohol abuse.

Recommended actions:

- 1. The State Government invest in evidence-based specialist responses to men who use violence.**
- 2. The Magistrates' Court develops "early intervention" strategies and potentially an "early intervention" court list for first time offenders with no history of family violence.**
- 3. The State Government fund the expansion of the Court Integrated Services Program to be accessible to family violence perpetrators with complex needs.**
- 4. Perpetrators that are assessed as high to medium risk are intensively case-managed and monitored.** This should include the court, police, victims, lawyers and support workers actively participating in identifying and managing risk.
- 5. The State Government fund culturally appropriate programs and services to work with men from diverse cultural and linguistic backgrounds and Aboriginal and Torres Strait Islander Communities.**
- 6. The Department of Justice investigate a broader range of penalties for breaching an intervention order such as:**
 - a. an automatic extension of the intervention order
 - b. a compulsory requirement to attend court within 7 days of a perpetrator being charged with a breach

PROMOTING ACCESS TO THE VICTIMS OF CRIME ASSISTANCE TRIBUNAL

WLSV currently provides legal assistance and representation for applicants in victims of crime assistance (VOCA) matters where they are victims of family violence. VOCA is a means by which a victim can access interim and final awards for compensation where a criminal offence against the person has occurred. This can assist financially but also act as a validation and recognition of the victim's experiences.

The current scheme does not adequately meet the needs of women who have experienced family violence and is difficult to access for family violence victims. Through our work in this jurisdiction we have identified a number of gaps and issues that we have outlined below.

A comprehensive and up to date review of the VOCA jurisdiction is well overdue. Our high level recommendation is that the jurisdiction be reviewed and that it be informed by the experiences of victims of family violence.

Current gaps:

Any review of the VOCA jurisdiction should take into consideration the following issues and gaps:

- the understanding of family violence by VOCA Magistrates
- the value of Special Financial Assistance Categories
- recognition of family violence as "special circumstances" (s52)
- the exercise of discretion re offender notification
- consistency in awards
- economic abuse as family violence
- streamlining Intervention Orders and VOCA applications
- awareness by family violence victims of the VOCA scheme.

Promoting understanding by VOCA Magistrates of family violence

There is a level of inconsistency in decision-making by VOCA Magistrates in family violence cases. Inconsistent decisions contribute towards a victim being left confused and further traumatised by the legal system. We recommend that any review include professional development opportunities for VOCA Magistrates.

Case study

A Magistrate declined to make an award in favour of a child (as secondary victim) who had witnessed his mother being assaulted by his father. The reason given was that the child was two years old at the time of the offence and was too young to have suffered any effects from the act of violence.

Limitations of Special Financial Assistance¹⁶ categories

The current Special Financial Assistance categories are inadequate for victims of family violence. Currently family violence victims rarely fall within the most serious categories (A or B) of Special Financial Assistance which include rape, indecent assault or murder. The continuum of violence and the impact of a range of acts over a course of time are not recognised as serious. For example, a family violence victim may have been a victim of violence over a prolonged and intense period of time.

Broadening “Special Circumstances” in Section 52¹⁷

One aspect of family violence is that victims may be reluctant to make formal police complaints at the time of the incident. Victims may have even signed a “statement of no complaint” with police, thereby ceasing any criminal action or investigation. Section 52 requires a victim to address prior lack of cooperation with police before being able to make an application unless there are “special circumstances”. There would be benefit in expanding the “special circumstances” in s 52 to recognise family violence.

Notification of the perpetrator

In a review of the VOCA jurisdiction it is important collect information on whether Magistrates will exercise their discretion to notify a perpetrator of the VOCA application and invite them to participate in the proceedings. We flag this as an issue as this process can be re-traumatising for victims.

Consistency in determining awards

A comparative analysis of outcomes from VOCA Tribunal and awards pursuant to an offer determined on the papers (section 33), would be valuable in monitoring consistency in outcomes for family violence victims. The awards offered by determination on the papers should be consistent or as close to as possible to an award made pursuant to a hearing. Such consistency would provide economic benefit to the scheme as well as psychological benefit to an application.

Cross-over between intervention order proceedings and VOCA applications

Consideration should be given to the intersection between the two jurisdictions in any review. It would be some benefit to victims of family violence to streamline determination of VOCA applications at the time of an intervention order so that the same evidence may be relied upon.

¹⁶ Section 8A Victims of Crimes Assistance Act 1996, Victims of Crimes Assistance Regulations 2010

¹⁷ Section 52, Victims of Crimes Assistance Act 1996

Recommended actions:

- 1. The Department of Justice undertake a comprehensive review of the Victims of Crime Assistance jurisdiction having particular regard to the experience of victims of family violence.**
- 2. Upon completion of the review, the VOCA jurisdiction is reformed to improve access to it by victims of family violence.**

Interim measures:

- 3. The Family Violence Protection Act be amended to enable a Magistrate hearing a family violence intervention order case to grant leave for a VOCA application.**
- 4. The Victims Support Agency and the Magistrates' Court develop information and resources to assist family violence victims to access the VOCA jurisdiction.**

IMPROVING VICTORIA POLICE RESPONSE TO FAMILY VIOLENCE

There has been significant improvement in Victoria Police's response to family violence over the last ten years. The leadership and practice of many members of the police force have saved the lives of victims and reduced risk of harm.

Victoria Police continues to move forward in addressing family violence. The recent appointment of a Family Violence Assistant Commissioner and the establishment of a Family Violence Coordination Unit are both positive initiatives that demonstrate commitment and leadership.

In our experience in the family violence jurisdiction, there is growing good practice, both in the court system and in on the ground responses by members.

Strengthening good practice:

In particular the civil advocates program and the uniformed police liaison officers based at Melbourne Magistrates' Court strengthen police responses to family violence.

Civil advocates at Melbourne are non-uniformed, legally qualified representatives running police applications. They have good working relationships with duty lawyers, Magistrates and court staff. Civil advocates are able to work closely with duty lawyers for both parties to secure good outcomes for victims. They act as one of the few information exchange points between the court and police. As duty lawyers, we are able to gain a broader understanding of a family violence case by speaking to the civil advocates.

Police liaison officers are also available at the Melbourne Magistrates' Court and act as the liaison between the informant and the civil advocates.

Recommended actions:

- 1. Victoria Police expand the civil advocates program to all Magistrates' Courts.**
- 2. Victoria Police expand the family violence liaison program to all Magistrates' Courts.**

Current gaps:

The current challenge for Victoria Police is in promoting consistency in the response to family violence reports and incidences across stations and regions. It is still the experience for many women that the responses from police will vary depending on the police station and the police officer that attends the incident. This has resulted in a number of gaps and problems that undermine women's safety and places additional pressure on the intervention order system.

We wish to highlight, in particular, police responses to women in high risk groups. Our client groups include a large number of Indian born women experiencing family violence and they have broadly reported poor experiences with Victoria Police members and poor outcomes as a result.

We have highlighted a small number of the issues that arise but we believe that there is value in the Royal Commission comprehensively investigating the gaps in police responses and with a particular focus on the treatment of women in high risk groups.

Failure to determine “primary aggressor”

Section 3.1 of the Code of Practice sets out how the police are to determine who is a primary aggressor when attending an incident. In our experience however, in some instances, police are adopting poor practices that result in unjust and discriminatory outcomes for women.

Case study

Meena is 30 years old and has a daughter who is 8 years old. She is newly arrived from India and her English is limited. One afternoon her male cousin, Rajiv, came over to her house. While Rajiv and Meena were speaking in the kitchen, Rajiv cornered Meena and began sexually assaulting her. She struggled, screamed and scratched Rajiv’s arm. Her daughter ran into the kitchen and also began screaming when she saw what was happening to her mother. Meena finally broke free of Rajiv and she and her daughter ran out of the house.

Both Meena and Rajiv rang the police. When the police attended, Meena was distraught. Due to her limited English she couldn’t communicate to the police what had happened. No interpreter was offered to her at the time. The police officers went inside to interview Rajiv. Meena was left with her daughter, sitting on the front step of her house.

After some time the police emerged and served Meena with a safety notice. The police and Rajiv then both left. When Meena asked her neighbour to explain the safety notice, her neighbour explained that the police had taken out an intervention order against her. She was named as the respondent (the primary aggressor) and Rajiv was named as the affected family member (the victim). Meena was distraught and couldn’t understand what had happened.

When WLSV’s duty lawyer saw Meena at court the next day, it became apparent from the safety notice, that when the police had interviewed Rajiv (who is fluent in English), he had shown them the scratch marks and alleged that Meena had assaulted him. Based on this alone, the police had determined that Meena was the primary aggressor.

At court, it became clear that VicPol’s civil advocate could not withdraw the application as they were unable to contact the police informant. Meena was terrified that the intervention order would have implications for her visa. Meena was advised to make a formal police complaint about Rajiv however it was clear that due to her isolation and mistrust of the police after this incident, that she was unlikely to go to her local police station to do this. The case was adjourned.

There are clear issues with the way in which the police handled this matter including:

- not interviewing Meena with an interpreter
- not ensuring the safety of Meena and her daughter, at first instance, by removing Rajiv from the house
- not investigating Rajiv's allegations any further
- not having any flexibility to withdraw the complaint at court at the first mention.

Intervention order applications against both parties

The Code of Practice at 3.1 states the following:

“Only one primary aggressor should be identified. Do not make cross applications for intervention orders.”

We have seen a number of police initiated cases listed in the intervention order system where the police have taken applications out against both parties. This stems from a poor understanding and application of the Code of Practice and a failure of the police member attending the incident to take the time to investigate the case appropriately. The result of making a cross application is:

- the primary aggressor is not held to account
- the victim is not safe, and
- it consumes court time and adds to delay and adjournments at court. Duty lawyers (of both parties) and police representatives spend a significant amount of time on the day of the mention hearing establishing what has happened in the case. Regularly the police informant is not available and the police representative is not able to withdraw one of the applications. The matter is usually adjourned.

Failure to act on complaints of family violence and breaches of intervention orders

We consider this to be a systemic issue in police practice and recommend that the Royal Commission conduct further enquiries through its public hearing process to scrutinise police practice, particularly where it has led to victims being placed at risk or harmed due to police inaction.

It is important to recognise that the culture within Victoria Police has shifted significantly in the way family violence incidences are policed. However we have concerns that the lack of consistency in practice results in women not being able to access police protection and the burden falls on women who are at risk, to protect themselves and their children.

I read the application and said to my client, this is really serious. I asked her if she told the police and she said she went to the police station. She told them what had happened. She said the police officer told her to go to the local Magistrates' court to get an intervention order. The police officer wrote down the court address for her. I asked if they took a formal complaint from her. She said no.

- WLSV duty lawyer

In terms of breaches of intervention orders, there continues to be inconsistency in charging for breaches. In our experience as duty lawyers, there are number of reasons:

- police are reluctant to prosecute a breach if there is no corroborating evidence and they only have a complaint made by the victim.
- a distinction made by some police officers between “technical” or “non-serious” breaches and “serious” breaches.

The other area in relation to information sharing it is useful to consider is in the context of criminal prosecutions for breaches of intervention orders. In our experience, there is little communication between the police and women who have had intervention orders breached. A more integrated response that ensures that there is greater communication and information sharing (both with the victim and between civil and criminal jurisdictions) would improve the experience for women and children who have experienced violence.

Recommended actions:

- 1. Victoria Police undertake a comprehensive review of its current Code of Practice and an audit of police compliance with the Code.** This audit should be open to public consultation and input.
- 2. Victoria Police update its Code of Practice to ensure that it reflects best practice in responding to family violence.**
- 3. Victoria Police strengthen family violence response teams to include social workers that can attend an incident and provide victims with support at the time of an incident.**
- 4. The State Government fund a comprehensive family violence training program rolled out across Victoria for all new and existing police members, every twelve months that includes external experts and women experiencing family violence in developing and delivering the training.**

Given the examples of inadequate responses to Aboriginal and Torres Strait Islander women, women from culturally and linguistically diverse backgrounds and women with disabilities, it is essential that training includes modules on cultural sensitivity, unconscious bias and disability.

- 5. Accountability in Victoria Police strengthened through a streamlined complaints and feedback process in family violence incidences.**
- 6. Greater focus within Victoria Police on improving police responses in regional, rural and remote communities where family violence has occurred.**
- 7. Victoria Police develop protocols and provide training to police members to improve police responses to children in family violence incidences.**

STRENGTHENING THE ROLE OF CLCs IN THE FAMILY VIOLENCE SYSTEM

Promoting access to legal information, advice and representation in family violence proceedings

Access to legal information, advice and representation for all parties in family violence intervention order proceedings are a key aspect of promoting access to justice and securing equitable outcomes in the justice system.

The role of our duty lawyers at Melbourne Magistrates Court is to:

- Be available to provide legal advice and representation to women whether they are the victim or the respondent.
- Read and analyse the allegations in the police or “in person” application and test its accuracy with our client.
- Listen to our client’s story and work through what her position is in relation to whether she supports the intervention order application.
- Informally assess risk and safety for both her and her children and refer her to the applicant support worker.
- Explain in plain language what an intervention order is, what the process is on the day of the hearing and what the role is of the police and the Magistrate.
- Explain and explore the options available to her and the options available to the other party. Often our lawyers will go through and explain the conditions of the order.
- Confirm her instructions and then communicate those instructions to Victoria Police and the other party or their legal representative.
- Negotiate with the civil advocate and the other party or their legal presentative to secure an outcome consistent with our client’s instructions.
- Represent our client in court and make submissions on her behalf and respond to the Magistrates’ questions.

Current gaps

Lack of access to timely legal advice and information

There are several gaps in for victims in obtaining legal advice and assistance in the current system. In particular, there is a lack of access to timely legal information and advice. Timely legal information and advice may be at an early stage – at the time that a victim is making an application or police complaint or some time after the incident. Early access to legal advice can prevent further violence as women understand their legal rights in relation to the violence and

their rights and responsibilities in relation to their children and the family's financial situation. With this understanding, women are able to take the steps necessary to protect themselves and ensure their children's welfare.

Timely legal advice also supports long term recovery from violence by ensuring women have safe arrangements in place in relation to the violent partner's contact with the children and that they receive a fair and equitable share of the property from the relationship.

Access to justice for women in regional and remote Victoria

WLSV's Link virtual outreach

Recognising the many barriers women face to accessing legal services, WLSV established its Link virtual outreach service in May 2012. WLSV now partners with 18 agencies across the state to enable women who have experienced family violence to access legal advice via internet video conferencing

Link allows women to overcome geographic, cultural, economic and other barriers to accessing legal services, whilst ensuring private and safe connections with lawyers. It facilitates an interdisciplinary approach between lawyers and social workers to address women's legal and non-legal needs. Link is a cost effective and highly flexible way to provide outreach and respond to changing demographics and legal needs.

The Link model also builds the capacity of workers from the partner agencies to identify legal needs and respond appropriately. Workers:

- receive training on identifying critical legal needs and appropriate legal pathways and referrals. The training is built around a "critical legal issues map" and workers keep the map as a take away tool to support their work.
- can attend the legal advice session, supporting their client, and at the same time increasing their knowledge of legal issues and appropriate responses
- can book "secondary consultations" with WLSV lawyers to discuss legal issues that have arisen in the course of their work

Link is cost effective and highly flexible so it can be used to reach small client groupings, where physical outreach would be inefficient, such as women in high security refuges. The outreach service can readily be relocated or changed as community needs change. This enables us to respond to changing demographics, shifting growth corridors and altering legal need with relative ease and almost no additional cost.

Client case study

One woman who found it difficult to meet new people, as she had low confidence and is self-conscious of a visible medical condition, received timely and important advice through the project regarding proceeds from the sale of her family home. She would not have met face to face with a lawyer due to her anxiety and hence without the project she would not have found out about money owed to her.

“The Skype legal service has enabled rural women to access professional legal advice that “understands family violence”. This particular specialization resonates with women who often find that the legal system can be a “walk in the dark” and difficult to navigate without trustworthy no cost legal advice.”

Evaluation of WLSV’s Link model

An independent evaluation (attached at Appendix D) has found that Link is effectively reaching vulnerable women experiencing a range of disadvantage and providing those women with effective and high quality legal services, which increase their understanding of their rights and options.

“The evaluation found clear evidence that Link helps give women access to justice...It was reported by women, FV workers and Link lawyers that the one hour Link appointments give women simple but critical information that increases their understanding of their rights and options. Overwhelmingly it was reported that the expertise of Link lawyers and their respectful and attentive manner resulted in positive experiences for women.” Evaluation Report February 2015, page 28

“The evaluation also found that the Link model contributes directly to better legal outcomes for those women referred to WLSV for representation. There was also compelling evidence to suggest that it contributes indirectly to better outcomes for other women – those who go on to make decisions about their situation, armed with information received from a Link lawyer about their rights, responsibilities and options.” Evaluation Report February 2015, page 29

93% of women surveyed during the snapshot periods said they were “very satisfied” with the quality of assistance provided. 96% of women reported that they “mostly” or “completely” understood their legal rights and responsibilities after their Link consultation compared to 36% beforehand. Family violence workers “overwhelmingly” reported an increase in clients’ understanding after a Link consultation:

Lack of legal aid funding for intervention order contests

Currently Victoria Legal Aid funding guidelines do not provide legal aid funding in family violence contested hearings. This is a real barrier to accessing justice for women who are victims and who have had to make their own applications without the support of the police.

Victims who are financially disadvantaged (and who are often from high risk groups) are denied access to justice if a perpetrator elects to contest their application. Without the financial means to pay a lawyer to represent them, they are left with few choices, either:

- to attend the contest hearing unrepresented (which is very difficult to do) or
- to withdraw their application.

The legal aid system is a cornerstone of our legal system yet it is not made available to the most disadvantaged women in the family violence justice system.

Recommended actions:

- 1. The future funding for CLCs include ongoing funding for programs, such as the LINK program at WLSV, that use technology to provide access to justice for women facing geographic, cultural, economic and other barriers to accessing legal services, with a particular focus on access for women from rural and regional areas.**
- 2. The future funding of CLCs include ongoing funding to provide family violence workers with tools and training to identify and respond appropriately to legal problems.** WLSV's critical legal issues map and training could be used as a foundation.
- 3. The State Government increase funding to Victoria Legal Aid to be made available to victims of family violence in contested hearings.**

RECENT LEGISLATIVE AMENDMENTS THAT ARE BARRIERS TO ACCESSING JUSTICE

Failure to report child sexual offence

The Crimes Amendment (Protection of Children) Bill 2014 introduced into the *Crimes Act 1958* a new offence of *Failure to disclose a sexual offence committed against a child under the age of 16*. Section 327 provides that:

...a person of or over the age of 18 years (whether in Victoria or elsewhere) who has information that leads the person to form a reasonable belief that a sexual offence has been committed in Victoria against a child under the age of 16 years by another person of or over the age of 18 years must disclose that information to a member of the police force of Victoria as soon as it is practicable to do so, unless the person has a reasonable excuse for not doing so.

The offence is so broad that it criminalises the behaviour of any person in the community who has a belief that a sexual offence has been committed against a child. In the context of a family violence situation, a mother who is a victim of family violence may be charged with this offence, on the basis that she knew of the sexual abuse and failed to disclose the information to police as soon as practicable.

Research clearly demonstrates the co-occurrence of child abuse with family violence. In Victoria, family violence is a factor in over half of substantiated child protection cases. Of the 15 child death cases reviewed in the 2013 Annual Report of Inquiries into the Deaths of Children known to Child Protection, family violence was a factor in 12 cases (80%). Given the co-occurrence of family violence and child abuse, there is therefore a high likelihood that the offence will capture mothers who are themselves victims.

Failure to protect laws do not adequately recognise the dynamics and complexities of family violence. In particular, they fail to take account of the powerful barriers to a woman leaving an abusive relationship or reporting the abuse against her and her children, including a fear of retribution. There is evidence that women face greater scrutiny and higher expectations of their parenting than men. The discriminatory impact is likely to be greater for women with disabilities, Aboriginal women and women from CALD communities, as they face additional barriers to disclosing abuse.

The sections provides a defence if a person fears on 'reasonable grounds' for the safety of any person and the failure to disclose the information to police is a 'reasonable response' in the circumstances. However, this defence will not be adequate to protect vulnerable mothers, particularly given the requirement of 'reasonableness' in relation to their fear and response. 'Reasonableness' is likely to be interpreted in a way that imposes unrealistic or unsafe expectations on such women. This places the onus on those victims to raise a defence in a criminal prosecution. This approach is again inconsistent with the emphasis of Victoria's family

violence reforms on ensuring that the perpetrator, not the victim, bears the responsibility for the violence.

Finalisation conditions

The Family Violence Protection Amendment Bill 2014 introduced a new provision (which is yet to come into effect) into the FVPA that allows a finalisation condition to be included in an interim order.

(1) Subject to section 56C, if the court makes an interim order, the court may include a condition (a finalisation condition) providing that the interim order becomes a final order, with the same conditions as the interim order, 28 days after being served on the respondent, if the court is satisfied that it would be appropriate in all of the circumstances to include the condition.

We do not support the inclusion of finalisation conditions in interim orders. It can act as a deterrent to parties attending court and obtaining legal advice. It can diminish perpetrator accountability if orders are finalised without requiring their attendance at court. For perpetrators who are from a non-English background or who have limited reading and writing skills, there may be issues in understanding the notice.

Recommended actions:

1. The State Government amend section 327 of the *Crimes Act 1958* as follows

Failure by a person in authority to disclose a sexual offence committed against a child under the age of 16.

...~~a person of or over the age of 18 years (whether in Victoria or elsewhere)~~ in authority in a relevant organisation who has information that leads the person to form a reasonable belief that a sexual offence has been committed in Victoria against a child under the age of 16 years by another person of or over the age of 18 years must disclose that information to a member of the police force of Victoria as soon as it is practicable to do so, unless the person has a reasonable excuse for not doing so.

2. The State Government repeal amendments made to the FVPA with respect to finalisation conditions in interim orders.