

The Hon. Marcia Neave AO
Royal Commission into Family Violence
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via website: www.rcfv.com.au

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Dear Commissioner Neave,

GIPPSLAND COMMUNITY LEGAL SERVICE SUBMISSION TO THE ROYAL COMMISSION INTO FAMILY VIOLENCE

INTRODUCTION

Gippsland Community Legal Service (**GCLS**), a programme of Anglicare Victoria, is a rural, regional, and remote (**RRR**) community legal service. GCLS offers free legal help to people who live, work, or study in Gippsland's six local government areas. Our focus is assisting disadvantaged members of the community, including victims of family violence. GCLS' work in family violence includes providing information, advice, casework, duty solicitor court representation at the intervention order mention stage, and education to Gippsland community members, service providers, and community organisations. We have a particular interest in assisting victims of family violence, who are often women and children. We strongly support the aims of the Royal Commission into Family Violence (**the Royal Commission**), and hope the implementation of its recommendations will lead to systematic improvements including better protection of and support for victims and, wherever possible, prevention of family violence in the first instance.

This submission addresses issues which fall within the Royal Commission's terms of reference and in which GCLS has significant relevant experience. As such, in this submission we respond to selected questions from the Royal Commission's Issues Paper.

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RESPONSES TO ISSUES PAPER QUESTIONS

Question 3: Which of the reforms to the family violence system introduced in the last ten years do you consider most effective? Why? How could they be improved?

There have been many effective reforms to the family violence system in the last ten years. GCLS considers the most effective of these to be the introduction of specialist family violence systems and supports, changes within Victoria Police, Common Risk Assessment Training, and changes to the *Family Law Act 1975* (Cth) (*FLA*).

Specialist family violence systems and supports

The introduction of specialist family violence court lists and support workers have been very positive developments. Listing family violence intervention order (**FVIVO**) matters on specific court dates facilitates co-ordination of support services and communication between family violence practitioners. Furthermore, specialist family violence workers are equipped to provide better support and assistance to victims than generalist workers.

Victoria Police

The introduction of specialist family violence police units within Victoria Police has been a similarly effective reform. Police family violence units now possess staff specifically trained in family violence who GCLS believes are better able to identify and respond to family violence than was the case ten years ago. It appears to GCLS that family violence is now treated as a more serious issue by Victoria Police. In particular, training and codes of practice for the investigation of family violence have improved substantially over the last decade.

GCLS has, however, noted enduring inconsistencies in police responses to family violence, particularly regarding breaches of intervention orders. GCLS recommends specialist family violence training within Victoria Police be reviewed and expanded, with the aim of ensuring police responses reflect the seriousness of family violence and are consistent across the State.

Common Risk Assessment Training (CRAF)

The development, implementation, monitoring, and review of the CRAF model has been an extremely positive development significantly improving the capacity of family violence practitioners and police to help family violence victims. This training teaches practitioners to identify family violence at an early

stage, assist victims to respond to family violence, and assess the risk of family violence, thereby promoting overall consistency through a collaborative approach foregrounding collaboration between government and the private sector. GCLS believes CRAF training (including regular revision of training) should be mandatory for those who work in the field of family violence. Relatedly, GCLS recommends the Royal Commission consider implementing an accreditation programme for family violence practitioners, of which CRAF training may form a part.

Legislation

The 2012 amendments to the *FLA* expanded the definition of family violence, as well as the obligations of advisers, the courts, and parties to proceedings in cases involving concerns about child abuse and family violence. These amendments were laudable in demonstrating awareness of the serious impact of family violence on families. The expansion of police Family Violence Safety Notices powers under the *Family Violence Protection Act 2008* (Vic) (*FVPA*) is also to be commended, as it affords police more powers to protect victims of family violence, particularly in RRR areas. None the less, greater integration between the *FVPA* and the *FLA*, and increased use by magistrates of the discretion conferred on them by the *FVPA*, is required.

Concerns

Although improvements in training, policy implementation, and cross-organisational collaboration, as well as changes to the *FVPA*, have led to increased reporting of family violence, GCLS is concerned family violence services, and specifically the court system, are not equipped to deal sufficiently with this increase. This situation leaves women and children at risk.

Question 4: If you or your organisation have been involved in programmes, campaigns or initiatives about family violence for the general community, tell us what these involved and how they have been evaluated.

Question 5: If you or your organisation have been involved in observing or assessing programmes, campaigns or initiatives of this kind, we are interested in your conclusions about their effectiveness in reducing and preventing family violence.

GCLS is involved in a number of community legal education programmes and networks focussed on family violence.

Community legal education

i. Inspiring Women's Group

Quantum Support Services (**Quantum**) is a family violence support agency with a presence in Gippsland. Among other programme, Quantum operates the 'Inspiring Women's Group' for women who have experienced family violence. GCLS supports this programme by providing community legal education (CLE) to participants about common legal issues which family violence survivors may face. This both supports and empowers participants.

GCLS evaluates these CLE sessions through participant surveys. Of 27 participants surveyed between March and June in 2014, 70% of women rated the sessions as 'very useful' and 22% rated the sessions as 'quite useful'. Additional comments about the sessions included statements such as 'Very useful, especially about children', and 'Presenter very easy to understand, spent good time breaking subjects into 'normal' language'.

ii. Clothesline Project

GCLS also works with Quantum to run the annual 'Clothesline Project' during the Week without Violence in October. Victims of family violence draw pictures on t-shirts, expressing their experiences and feelings about family violence. GCLS then displays these t-shirts on a clothesline in shopping malls and similar locations for the public to view. The Clothesline Project is also promoted through local news to the community, simultaneously empowering victims of family violence and promoting community awareness of the issue and relevant support services.

The Clothesline Project is self-evaluated by noting the number of people who approach the stands and the amount of information disseminated. In 2014, GCLS and partnering services noted close to one

hundred members of the community engaging with displays across Gippsland by stopping to look, taking information, accepting referrals, or discussing the display with workers present. A further 60 people attended an event held in the small community of Orbost. These people participated in a community walk through the town, and many also painted t-shirts with messages against violence.

iii. Sessions for workers and the community

GCLS provides legal education to community workers such as health care professionals, lifeline workers, carers and volunteer mentors. This education is about family violence, intervention orders, and family violence services. These sessions are evaluated through surveys. GCLS receives positive feedback from these sessions, with common comments indicating that, while longer sessions would be welcome, the sessions provide valuable information and recipients will put this information to use in the future.

GCLS has also spoken on the local radio about family violence and the pressing need for attitudinal and behavioural change in the way society treats women.

Networks

GCLS is a member of a Men's Violence Against Woman Regional Steering Committee which discusses ways in which family violence can be prevented. This committee's strategy is evaluated by a group of qualified evaluators at Federation University. GCLS is also a member of subregional family violence networks throughout Gippsland. GCLS has found membership of these networks valuable in facilitating inter-organisational collaborative practice, and allowing participants to identify and address common issues in the community

Effectiveness of legal education and networks in reducing and preventing family violence

Statistical and anecdotal evaluations of the above legal education programmes and networks indicate they are highly effective. However, significant work in these areas is still required. For example, it is the experience of GCLS workers that sections of the Gippsland community continue wrongly to believe family violence is only physical abuse. There is also a lack of understanding about the underlying causes of family violence, with many mistakenly viewing family violence as an issue associated exclusively with low socio-economic status, or drugs and alcohol. This experience is supported by research such as the National Survey on Community Attitudes to Violence Against Women (2009), and the recently published Wyndham Legal Service and Good Shepherd report, *Restoring Financial Safety: Legal Responses to Economic Abuse*. CLE is an essential means of addressing common misconceptions of this

kind. GCLS recommends specific educational programmes or campaigns be implemented to provide education in RRR areas.

Question 6: What circumstances, conditions, situations or events, within relationships, families, institutions and whole communities, are associated with the occurrence or persistence of family violence?

Lack of understanding and awareness of the cyclical nature of violence, and of options available to women, is a systematic problem. There is a need to shift from victim blaming to attitudes which hold perpetrators accountable. Following this change, GCLS would hope to see increased options for victims of family violence and restricted options for the perpetrators.

Furthermore, cultural background can affect the ability of victims of family violence to leave a violent family situation. These victims may be at risk of being socially ostracised from their community if they seek assistance.

There are also a number of lifestyle or personal factors that may increase family violence. These include stress, unemployment, financial hardship, alcohol and drug use, cultural background and expectations, upbringing, and community attitudes.

That said, it is important to be clear that, although these factors may increase the risk of family violence, they do not cause it. The underlying cause of family violence is power imbalances between men and woman, inequitable societal attitudes about gender, and men's sense of entitlement.

Question 8: Tell us about any gaps or deficiencies in current responses to family violence, including legal responses. Tell us about what improvements you would make to overcome these gaps and deficiencies, or otherwise improve current responses.

Although there have been significant improvements to the family violence system in the past ten years, significant gaps and deficiencies remain. These include inconsistent approaches from the magistracy and Victoria Police, the physical layout of courts, practical restrictions on some courts in making certain orders, lack of funding for crucial services, societal attitudes, and a lack of recognition of the widespread effects of family violence.

Magistrates' training

Most magistrates are trained in and sensitive to the nature of family violence. However, GCLS believes there needs to be further family violence training for all magistrates to promote greater consistency in attitudes, and prevent comments from the bench that risk re-victimising people affected by family violence, or trivialising the issue of family violence.

It has been the experience of GCLS staff that, when victims of family violence apply for interim intervention orders for their immediate protection, certain magistrates request the victims to provide personal testimony from the witness stand. GCLS believes this has the potential to inadvertently re-traumatise the victim applicant. Accordingly, magistrates should show more willingness to use their discretion under sections 55 and 65 of the *FVPA* to accept a variety of evidence at the interim stage.

Furthermore, when making intervention orders, GCLS has noticed reluctance among many magistrates to use their powers under section 68R of the *FLA* to revive, vary, discharge, or suspend family law court orders relating to children. GCLS believes more training is needed to ensure magistrates have the confidence to use these and similar powers under the legislation. This will ultimately contribute to children subject to family law proceedings being safer.

Court improvements

Changes to the court layout and court processes would notably improve the current court experience of victims of family violence.

In many courts in Victoria, women waiting for intervention order hearings can be forced to do so in close physical proximity to the perpetrator. In some of the regional courts, there are no interview rooms for clients. In Bairnsdale Magistrates' Court, there is no foyer and all parties must wait outside.

The typical court layout should be revised to provide sufficient protection for victims of family violence. In the meantime, where appropriate, magistrates should be encouraged to use their powers under section 69 of the *FVPA* to order alternative arrangements lessening or eliminating the need for the victim to face the perpetrator in court.

Turning to procedure, victims of family violence may also be re-traumatised when perpetrators of family violence make retaliatory applications for intervention orders against them. Stronger measures are needed to prevent frivolous cross-applications of this kind. For instance, a respondent against whom a FVIVO has been made after a contested hearing may be required to seek the court's leave before applying for an intervention order against the relevant affected family member. In addition, in this same situation, lawyers of represented respondents may be required to certify that the cross-application is brought on a proper basis, similar to Form 4B certification requirements under the *Magistrates' Court General Civil Procedure Rules 2010* (Vic) and section 42 of the *Civil Procedure Act 2010* (Vic).

Moreover, at present only Ballarat, Heidelberg, Frankston, and Moorabbin Magistrates' Courts possess the power to order respondents in family violence intervention order matters be assessed for and, if eligible, attend counselling. GCLS believes conferring this power on all Magistrates' Courts in Victoria would not only reduce the likelihood of family violence recurring, but would be a jurisdictionally consistent and therefore fair approach. Logically, conferring the power to order counselling assessment and attendance upon all Magistrates' Courts should be accompanied by increased funding for counselling services, so these services can deal adequately with increased demand. GCLS notes that, should these recommendations be adopted, the interaction between finalisation conditions and counselling orders will need to be reconsidered by Parliament. This is because finalisation conditions in interim intervention orders cannot be made where a counselling order is possible.

Police training

As noted throughout this submission, police understanding of and responses to family violence have improved, particularly with the establishment of family violence units. However, GCLS believes more police family violence training is required.

Although, as noted, many police take family violence very seriously and understand its nature, some members may not regard victim safety, especially in respect of reported breaches of FVIVOs, as seriously as the legislation requires. One result is a failure on occasion to prosecute reported FVIVO breaches when prosecution is reasonably required, and corresponding inconsistency in prosecution.

Further, members of the Morwell family violence unit of Victoria Police have informed GCLS it is their policy to refuse to accept undertakings from adult respondents in police FVIVO applications. GCLS believes this policy positively demonstrates police are taking family violence matters seriously. However, we understand at the moment this policy is not implemented across Victoria. Consequently, if this policy is maintained it should be reviewed to ensure consistent application.

Police training is also necessary to ensure summaries of allegations in police FVIVO applications are accurate and contain material of probative value which does not place the relevant affected family member at unnecessary risk.

Formal education

Schools are a key site for preventing family violence and improving social attitudes about family violence. One response gap in the current family violence system is the lack of integrated primary prevention through tailored education in schools. Primary and secondary schools should have gender equity programmes integrated across curricula, not delivered as a separate once off module.

GCLS suggests this education focus on gender diversity, gender stereotypes, language, and unconscious biases, and be delivered in everyday school settings. Teachers should be supported to deliver this education.

Funding for more services

GCLS has observed insufficient services for men and woman in situations of family violence.

The insufficiency of places in the Men's Behavioural Change Programme (**MBCP**), and commensurate length of waiting lists, is particularly conspicuous. There is also a pressing need for more women's shelters, in recognition that as matters stand women and children experiencing family violence must often leave their homes and neighbourhoods. GCLS believes genuine accountability would demand that perpetrators of family violence remove themselves or be removed from residences where their behaviour places others in jeopardy. It is neither fair nor reasonable that the burden of relocating and its attendant stress should fall, even temporarily, on victims of family violence.

Speaking more generally, GCLS submits there is a lack of funding and support for programmes and campaigns directed towards positive, broad social change. Innovative state-wide programmes, such as the Foundation to Prevent Violence against Women and their Children, or regional responses, such as the work being done by the Prevention of Men's Violence Against Women Steering Committee, should

be properly resourced. This will require a dramatic increase in the executive's budgetary allocation of relevant funding.

Adequate funding for community legal centres is also vital to redressing and preventing family violence. Legal services play a crucial role in delivering CLE, which increases awareness of family violence and available legal responses among community members who cannot seek assistance elsewhere. Many community legal centres, including our own, also provide some representation in family violence court lists.

Overall, community legal centres are woefully underfunded and therefore unsurprisingly overwhelmed. For example, GCLS serves six local government areas covering a large percentage, both geographically and population-wise, of Victoria. Currently, GCLS has four lawyers. In addition to their other work, these four lawyers provide advice to parties experiencing family violence, CLEs about family violence, and court representation at the mention stage of intervention orders. Advice is dispensed chiefly from GCLS' Morwell office, and representation occurs in La Trobe Valley Magistrates' Court only, which is one of eight Magistrates' Courts in the Gippsland region. Increased funding would allow GCLS to assist more people within its catchment area, and provide representation at more courts and beyond the mention stage. (See also the response to Question 18.)

Recognition of the related effects of family violence

Many other legal issues stem from family violence. These need to be recognised. GCLS believes there needs to be a change by all agencies to recognise the serious effects of family violence, and extend leniency in relation to any other legal issues the victim has encountered as a result of this violence.

For example, we are aware of many instances in which perpetrators of family violence accrue infringements driving the victim's car but, because of fear of retaliation, the victim does not nominate the perpetrator as the driver, either within the stipulated timeframe or at all. Such matters can turn into warrants which may attract criminal penalties. Alternatively, a victim may accrue fines as a result of family violence. For instance, after fleeing the violent relationship, a victim may be forced to sleep in her car, not receive relevant mail, or have funds with which to pay for public transport due to money being withheld by the perpetrator. It is also reasonable to think the trauma of experiencing family violence is, in itself, frequently enough to lead a victim to fail to raise their infringement with an issuing agency or with Civic Compliance, to miss payment deadlines, and so on. It is, therefore, remarkable that, family violence is still not recognised by section 3 of the *Infringements Act 2006* (Vic) as a special circumstance potentially permitting fines to be revoked. This definitional shortcoming, as well as

inflexible and arguably antiquated nomination procedures, both indicate the severity and affect family violence has on victims is yet to be properly acknowledged within the Victorian infringements system.

Legal practitioners are not exempt from criticism. GCLS believes that, in the context of FVIVO proceedings, Victorian lawyers can and do occasionally adopt an excessively adversarial stance out of keeping with their duty as officers of the court. Lawyers practising in family violence lists would benefit from specific training promoting a less adversarial, solution-focused approach, provided this does not compromise the safety of the applicant or affected family member. This is likely to result in more agreements being reached at the mention stage, a development that would save individual parties the emotional stress, financial cost, and time of contesting, as well as alleviate strain on the resources of the court.

GCLS also submits the *Charter of Human Rights and Responsibilities 2006 (Vic)* (**the Charter**) be referred to and used in all areas of law, particularly when magistrates are determining FVIVO applications. Furthermore, reference to section 17 of the Charter, being the right to protection of families and children, should be formally incorporated in the FVPA.

Question 9: Does insufficient integration and co-ordination between the various bodies who come into contact with people affected by family violence hinder the assessment of risk, or the effectiveness or (early intervention, crisis and ongoing) support provided, to people affected by family violence? If so, please provide examples.

It is essential organisations assisting victims of family violence communicate with one another. In GCLS' experience, co-ordination and communication among family violence service providers in Gippsland is typically good. GCLS regularly attends subregional family violence meetings where different services and family violence practitioners, including police, discuss family violence and issues presenting within their agencies. These meetings are a welcome networking opportunity to discuss issues, promote our services, and refer matters to relevant agencies.

Despite this, when several agencies deal with the same client, shared standards and strong communication are important. For example, in circumstances in which risk assessment is largely subjective, two or more family violence workers may form differing assessments. The effectiveness of early intervention and appropriate ongoing support is subsequently jeopardised.

Question 10: What practical changes might improve integration and co-ordination? What barriers to integration and co-ordination exist?

For people affected by family violence, the nature of different services and their relevance to their personal circumstances can be unclear. GCLS recommends the Royal Commission investigate the feasibility of state-wide or even national co-ordination for intake of matters involving family violence. One central organisation with regional support from offices or partner organisations may reduce the likelihood of women missing out on the help they need.

RRR areas do not have enough assistance to prevent and assist with the ramifications of family violence. There must be more funding for services to branch out to isolated areas, and work with other agencies to improve access to help for everyone in the community. Currently, services in RRR areas often have little to no capacity for further outreach, long wait times, and impractical distances to cover.

Question 11: What are some of the most promising and successful ways of supporting the ongoing safety and wellbeing of people affected by violence? Are there gaps or deficiencies in our approach to supporting ongoing safety and wellbeing? How could measures to reduce the impact of family violence be improved?

Increased funding to frontline services, and investment in primary prevention, are the two best improvements that can be made to address family violence and improving safety for women at risk. Increased funding and investment in primary prevention need to be long-term goals, clearly supported by all Victorian political parties.

Question 14: To what extent do current processes encourage and support people to be accountable and change their behaviour? To what extent do they fail to do so? How do we ensure that behaviour change is lasting and sustainable?

GCLS believes two factors central to relevant behavioural change are the interaction between rehabilitation and punishment, and society's and individuals' feeling of accountability.

Rehabilitation or punishment?

Increased penalties for breaching FVIVOs would give courts more options to punish and in that way deter the perpetrators of family violence. However, the criminal justice system is not the best, or at least not the only, answer to preventing family violence. GCLS believes there needs to be greater focus on rehabilitation and accountability than punishment per se.

Criminal punishment may provide short-term safety for victims of family violence. By comparison, increasing evidence-based rehabilitative sentencing options for family violence perpetrators would likely promote long-term accountability..

Accountable behaviour

Family violence creates a power imbalance between parties negotiating parenting arrangements. GCLS seeks to ensure relevant section 60I FLA checks are performed to prevent parties engaging in mediation where family violence makes mediation inappropriate. All the same, GCLS is aware of some instances in which dispute resolution has taken place where it should not have due to the nature of the family violence. Inappropriate over-reliance on alternative dispute resolution in the context of family violence has the potential to discourage accountability and behavioural change.

GCLS is also aware of the importance of services such as the MBCP in lessening further instances of family violence. However, this and similar programmes must be made more accessible to the community in order if they are to foster widespread change.

Question 17: Are there specific cultural, social, economic, geographical or other factors in particular groups and communities in Victoria which tend to make family violence more likely to occur, or to exacerbate its effects? If so, what are they?

Different cultures in Australia perceive and define family violence in different ways. In certain cultures, certain actions may be less likely to be identified as family violence by members of the victim's community, or acted upon when properly identified. Victims in these circumstances may perceive family violence as normal, or believe there is little to be gained and much to be risked by seeking help. As the cycle of family violence continues, it is easy for the victim to become even more isolated.

Additionally, women in RRR areas have less access to support services and face increased stigma and difficulty in seeking help from small communities. This can also be true of women from culturally and linguistically diverse communities, or Aboriginal and Torres Strait Islander backgrounds who, among other things, may also have little economic support to make choices.

Other members of society who are particularly vulnerable to family violence include people with a physical or cognitive disability or mental illness. These people may face further challenges in identifying or seeking to redress family violence, especially when the perpetrator is their purported carer.

Question 18: What barriers prevent people in particular groups and communities in Victoria from engaging with or benefiting from family violence services? How can the family violence system be improved to reflect the diversity of people's experiences?

GCLS is aware of several barriers which, individually or in combination, tend to prevent people from accessing family violence services. These include:

- inadequate funding, leading to inadequate responses;
- social attitudes stemming from inadequate education, entrenching behaviours which perpetuate family violence;
- geographic isolation from essential services; and
- cultural expectations and the repercussions of accessing services.

Possible ways to break down these barriers include more funding, more services in RRR areas closer to the need, audio-visual technology to offer services to remote victims, better early integrated education, and due diligence in the investigation of breaches of intervention orders, and prosecution/rehabilitation to address such breaches.

Inadequate funding means not enough services reach remote areas. This makes people experiencing family violence in these locations especially vulnerable. Funding must be bolstered to enable outreach services to reach areas with unmet need.

GCLS is the sole community legal centre in Gippsland, assigned the task of meeting the needs of people across six local government areas. GCLS has engaged a lawyer on a 12 month contract to provide outreach services in remote areas of Gippsland. Nonetheless, this role is limited by a lack of funding for transport to and accommodation in remote areas. GCLS believes more funding should be allocated to allow workers to have a physical presence in remote communities.

Question 19: How can responses to family violence in these groups and communities be improved? What approaches have been shown to be most effective?

GCLS believes the most effective responses to family violence involve education and accountability. GCLS has worked with Quantum to educate victims about the cycle of family violence, and their legal rights in relation to issues stemming from family violence.

This education has empowered victims to identify family violence, taught them not to blame themselves, and feel more able to act.

Holding the perpetrator of family violence to account for his behaviour, and increasing the opportunity for involvement in MBCP and analogous services, will encourage perpetrators to take responsibility for their actions, and engage willingly in relevant, lasting behavioural change.

CONCLUSION

Question 21: The Royal Commission will be considering both short term and longer term responses to family violence. Tell us about the changes which you think could produce the greatest impact in the short and longer term.

GCLS believes short-term and long-term responses to family violence must include significantly increased funding to frontline services enabling access to even the most remote, isolated, and disadvantaged members of our community. Furthermore, GCLS believes investment in holistic and far-reaching primary prevention and education programmes for schools and workplaces is essential to create awareness and change attitudes. GCLS believes the CRAF model ought to be better valued and promulgated, which may include offering a stand-alone qualification to support workers in the field of family violence.

Finally, perpetrators must be held accountable for their behaviour. Aside from the criminal justice system, there need to be more programmes directed towards changing men's behaviour.

