

29 May 2015

The Honourable Marcia Neave AO
Commissioner
Royal Commission into Family Violence
PO Box 535
Flinders Lane VIC 8009

By email: enquiries@rcfv.com.au

Dear Commissioner Neave,

SUBMISSION to the Royal Commission into Family Violence

Barwon Community Legal Service (BCLS) provides free legal advice and specialist casework services to people who live in the Geelong, Bellarine Peninsula, Surfcoast and Colac Otway regions. BCLS also provides limited services to people who live in Corrangamite, Moyne, Warrnambool, Glenelg and Southern Grampians shires. Our catchment region consists of over 360,000 people with many pockets of extreme disadvantage.

We also provide community education and training directly to the community and to other community sector staff and government. We run community awareness campaigns and provide education that gives people the knowledge to self manage their situation and assert their rights. We also contribute to policy and law reform work.

Family Violence work carried out by our service

In 2014 BCLS acted in over 500 family violence cases. One in three of our clients seek our assistance in family violence related matters. We have already assisted in over 200 family violence matters this year.

BCLS is funded to provide legal advice and assistance to applicants for a Family Violence Intervention Orders (FVIO). We may give legal advice to a respondent where there is no conflict of interest. Our service is funded to provide a duty lawyer service at the Geelong Magistrates' Court three days a week and on the one weekly sitting day at the Colac Magistrates' Court. The funding is for a half day at Court, in reality the duty lawyer will spend the full day at Court due to the huge increase in need and the complexity of the cases.

In the last three years the Geelong Magistrates' Court has heard almost as many Intervention Order Applications as Melbourne Magistrates' Court. However unlike Geelong, Melbourne has a Specialist Family Violence Court Division with additional resources, a separate list and specially trained Magistrates and Court staff.

In Geelong there has been a staggering 122 percent increase in the number of family violence incidents per 100,000 in the last five years. Worse still is the Colac area with a 340 percent increase in family violence incidents. This is compared to a 72 percent increase across Victoria. This reflects the huge issue our region is faced with.

Since 2012 the number of Intervention Orders BCLS has assisted with per year has increased by 39 percent. Despite the huge increase in family violence matters in our region, our service has received no increase in funding, other than indexation which has been less than CPI.

The duty lawyer role is extremely limited. There is no capacity to assist with ongoing casework, follow up from Court or to prepare for the next hearing. This limitation creates unease in the applicant to the FVIO and is a frustration to the lawyers and the Court, as it is recognised that assistance throughout the entire process would provide a better legal response.

Geelong along with many regions is said to have an 'Ice epidemic', which is a contributor to the frequency and severity of family violence incidents, further increasing demand for services.

This submission is informed by the evidence and understandings gained from our direct service provision of legal advice and assistance in family violence matters and interrelated legal issues. We will focus on two key areas identified in the issues paper, the legal response to family violence; and prevention of family violence.

Part 1 – The legal response

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

1. Lack of assistance in ongoing matters.

A victim of family violence can have representation at Court from the duty lawyer at the first mention. When the Magistrate orders written detail of the application from the applicant, in

the form of further and better particulars they have to do this on their own, as the duty lawyer from the Community Legal Centre (CLC) is not funded and does not have the capacity to prepare this important Court document. The only time the victim will have a lawyer prepare for the Court hearing is if it is a contested hearing and there is a grant of legal aid to for a lawyer to represent in this hearing, or where the victim is able to pay for a private lawyer to represent them, thereby incurring a significant financial cost in trying to protect the safety of themselves and their children.

Recommendation:

- 1.1 Adequate funding to Community Legal Centres to assist applicants for FVIOs at each stage of the process, including preparation and representation at contested hearings. This would be a major change from current duty lawyer services.

2. Issues at regional and remote Courts

A woman attends Court to make an application for a FVIO with no support person. She has to give details to the Registrar, over the counter with other people overhearing. There is limited privacy when making an application which is a sensitive and personal matter. In regional and remote settings often the person making the application will know someone else there. Not all relevant information will be put on the application as the person may be embarrassed. It has often taken the women a long time to get to this point. Applicants have mentioned that they decided not to apply sooner, often years earlier because they were seen near the police station or Court and this would get back to the Respondent.

Women applying for Intervention Orders at the Geelong Magistrates' Courts have said that they have significant safety concerns upon entering and leaving the Court. There are no security escorts and there are very limited safe waiting areas at Court.¹ There is also no security for staff at the Court assisting in these matters, such as the support workers, Court network staff and duty lawyers from CLCs and Legal Aid.

At Colac the situation is even worse. There is no security at all, a lack of office space and a tiny waiting area where applicants are often sitting across from the perpetrator for hours as the Court deals with all the Magistrates' Court listings in one day. Recently the Colac Police station significantly reduced operating hours and is often closed when assistance is needed.

Parents bring their children to Court as child care is too costly and there often is no one else to take care of the children. There are no child care facilities at Court and the Magistrates

¹ Report - Women's experiences of surviving family violence and accessing the Magistrates' Court in Geelong, Victoria, Deakin Centre for Rural and Regional Law and Justice.

generally direct that children be removed from the Courtroom as they should not be exposed to the Court proceedings and there is literally no one to watch the children.

Being in a rural setting there is an increased likelihood of conflicts of interest for the duty lawyer resulting in the lawyer being unable to represent the applicant. This creates a service gap as the applicant for the FVIO does not obtain any legal advice and is unrepresented in the hearing.

There is difficulty getting interpreters at regional Courts that are not known to either party. Geelong has one of the highest new arrival populations in Victoria.

The applicant for a FVIO usually has a number of legal issues associated with leaving the relationship beyond the immediate safety concern. The other issues such as tenancy issues, family law and victims of crime compensation are not able to be dealt with in the Magistrates' Court but mean more time, money and stress for the victim in accessing each different Court or tribunal to address each issue. In reality the victim may not deal with these issues at all as it is all too hard.

Recommendations:

- 2.1. Establish Family Violence Specialist Courts throughout Victoria. Specifically in Geelong and Colac to address the regional and remote issues. Court to include:
 - a. A specific list for family violence applications and breach proceedings;
 - b. Specially trained Magistrates;
 - c. Applicant and Respondent workers;
 - d. Private/closed hearings with the use of video link up from safe rooms and from remote locations;
 - e. Safe separate waiting areas for applicants and respondents;
 - f. Safe entry and exits;
 - g. Private interview rooms.

- 2.2. Establish a specialist Family Violence Court service as a minimum at all Magistrates' Courts in Victoria.

3. Inconsistency of decisions by Magistrates, lack of accountability by perpetrators/non enforcement of breaches, low penalties given for breaches.

Currently there may be a different approach to the FVIO and the applicant giving evidence depending on which Magistrate is hearing the Intervention Order list. An applicant at Geelong Court said that she would not have applied had she known what it would be like

giving evidence before the Magistrate. She was re-victimised by the way she was treated in the witness stand. It is important for the Magistrates to also take into account the different approach needed for younger applicants as they are becoming increasingly common.

Applicants have also suggested that some justice personnel do not always recognise, validate or understand the occurrence or impacts of non physical violence.² The seriousness of technology facilitated abuse is not often recognised or responded to by police or Magistrates.

Case study – *An inappropriate Order was made by a Magistrate allowing the Respondent to attend at the protected person’s house daily for purported work reasons. There was also an insistence that a parenting plan be negotiated at Court, with the majority of the negotiations occurring at the bar table. Pressure was put on the applicant who had appeared for a FVIO only, to agree to parenting arrangements with a hostile respondent. The Respondent then utilised the exception which allowed him to attend the protected person’s home to intimidate the victim. This exception to the Intervention Order was of concern to support services assisting the protected person. Breaches were followed up by the police which lead to the Respondent consenting to the Intervention Order at the next stage, however there was a lack of accountability by the Respondent. The protected person was intimidated even though she had the protection of an Intervention Order due to the inappropriate exception being added to the Order.*

Recommendations:

- 3.1. Appoint Magistrates who are specifically trained for Family Violence Court matters. The experience at the Ballarat Specialist Court is that– ‘specialisation would diminish inconsistencies in interpretation and implementation of legislation by different Magistrates’
- 3.2 Police having power to issue fines for small breaches of Intervention Order to ensure that smaller breaches of FVIOs still have a penalty, instead of being unenforced. This would reduce delays and issues of Court lists

4. Applicants unaware of Court process.

Applicants for FVIOs find the Court process confusing. There is generally an expectation that the Intervention Order application will be heard and determined at the first Court hearing. Applicants have expressed their distress at the intimidating and extended Court

² Report - Landscapes of Violence: Women Surviving Family Violence in Regional and Rural Victoria, Deakin Centre for Rural and Regional Law and Justice.

process and have said there is limited opportunity for their voices to be heard. There are a number of applicants for FVIOs not obtaining legal advice at all and going before the Magistrate in person. This is a missed opportunity to have a lawyer identify additional legal issues beyond immediate family violence issues, such as tenancy, victims of crime assistance, family law, Centrelink and child support matters.

Recommendation:

- 4.1 Automatic referral to Community Legal Centres (CLCs) from the FVIO Court application – significant funding is needed to resource this as CLCs are underfunded in this area.
- 4.2 Greater funding be provided to CLCs to respond to family violence and to generate community legal education materials on: family violence, planning and preparing for a day in Court, understanding FVIOs varying FVIOs. Recommendation supported by Deakin report

5. Applications brought with little merit, particularly retaliatory applications.

Increasingly Respondents are making cross applications against the protected person at Court on the day of the hearing. This is extremely distressing for the protected person to then have to defend an application which has typically been brought with little merit. It is often suggested to the protected person that they consent to mutual Orders, despite the implications in the family law jurisdiction and the fact that there is significantly more merit to their own application.

Recommendation:

- 5.1 Applications are made before a Family Violence registrar who assesses the merit of the application before it is filed.

A typical day at a regional Court for Family Violence Intervention Order Applicant

Jenna attends Court alone, distressed at not knowing what is going to happen today. Her ex-partner glared at her and mouthed off when she arrived at Court. Last time at Court Jenna had to give evidence, it was a horrible experience, the Courtroom was packed and she was so nervous she couldn't explain to the Magistrate what had happened. The more difficulty Jenna had giving evidence the more aggravated the Magistrate had become.

Jenna is fifth in line to see the duty lawyer. She is worried she will have to go into Court alone again. She had called lawyers before her hearing, but there were no appointments available at the community legal centre, legal aid had a conflict and the private lawyers

wouldn't represent her as it was not a contested hearing. Jenna speaks to the duty lawyer and is given the options for today's hearing. It is very overwhelming and she does not have much time to make her decision. The Court is doing a call over at 12pm and if the matter is not resolved she will have to come back and go through all this again.

The Respondent refused to consent to the Intervention Order despite a significant act of violence being alleged against him. The matter is adjourned and Jenna has to go through the whole process again in four weeks time. She has to provide more written details to her ex partner of her allegations against him, she has no idea how to set this out, and with the pressures of work, looking after her children and the stress of further Court hearings it is all becoming a bit much for Jenna.

She leaves Court with an Interim Intervention Order. This time she had to give evidence in front of her ex partner to get the temporary protection of an Intervention Order as he would not consent.

Unfortunately, this story is not the exception, it is the experience of most of the 500 applicants for an Intervention Order that we assist each year at BCLS. Workers involved at each service through the Court system are doing what they can for the applicants and respondents and the children involved. However the system has many flaws which have been raised above. An increase in funding is needed to address the huge increase in family violence Intervention Order applications in order for applicants to have access to legal advice and assistance at each stage of the Court process.

Part 2 - Prevention

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

BCLS has run a number of effective family violence awareness and prevention campaigns in our region as follows:

1. Elephant in your room? – Phase 1

In 2012 as part of the G21 Month of Action to stop violence against women we started a family violence awareness campaign called 'Elephant in Your Room?'

We built on the work of the *Hume Riverina Community Legal Service* who had run a community art project for a group of women who had survived living with family violence.

A large fibreglass elephant was beautifully decorated in two halves; one side black and white depicting the devastation abuse causes to peoples lives; the other side is colourful and depicts the joy of recovery, of building trust and respectful, strong relationships.

The elephant was displayed in nine locations in our catchment area from our partner agencies to the local shopping centre, in order to start discussions and raise awareness of family violence. We also ran community education sessions and had the local media report on the project. A volunteer graphic designer produced a range of eye catching promotional material, which continue to be utilised in family violence prevention programs. BCLS also produced a project factsheet which has been translated into a range of community languages.

2. Elephant in your room? – Phase 2

Building on the 2012 project, BCLS along with a number of partner agencies in our region ran a campaign in which we distributed over 70,000 'Elephant in Your Room?' drink coasters to 141 venues in our region. One side of the coaster has the question 'Is there an elephant in your room?' on the other, we display the shocking statistic that 1 in 3 Australian women experience violence and include information on where people can get help.

3. You the Man

In 2014 in partnership with Deakin University we hosted a play entitled '*You the Man*' written by Cathy Plourde and directed by Suzanne Chaundy, addressing dating violence and bystander intervention and prevention.

'You the Man' is an engaging, entertaining, and results-based educational program that uses live theatre to empower students and community members —both male and female— to step out of the bystander role and practice safe peer intervention. This comprehensive dating violence prevention program is unique as it promotes a model of empathetic male voices and shows the incredible power of bystander support and action.

Following the play, the audience (made up of community members and university students) engaged in a panel discussion with members from the Centre Against Sexual Assault, Deakin University Law School, Victoria Police and BCLS and moderated by Deakin University School of Nursing and Midwifery.

As reported in the Geelong Advertiser following the panel discussion, FVIO cases now make up 30 percent of cases in Geelong, up from 15 percent of cases previously noted. BCLS is advocating for a specialist family violence Court to be developed as a way to improve the response to family violence in Geelong by providing a holistic approach and linking clients in with additional support services that would be present at such a Court.

This type of specialist Court would also allow Magistrates to order a Respondent / Perpetrator to participate in a behavioural change program.

4. Purple Pom-Poms - Community Art Works

BCLS supported the fantastic work of Reclaim the Night Geelong's 'Purple November' initiative. Purple November is a campaign where shop fronts across the region were decorated with purple pom poms and bunting as a symbol to raise awareness of violence against women.

5. Seniors Movie Days

As a part of Geelong Seniors Festival and World Elder Abuse Day BCLS has organised two free special screening of 'The Best Exotic Marigold Hotel' and 'The One Hundred Foot Journey' to engage with older members of the community and provide helpful information about Elder Abuse in an informal but enjoyable setting. Over 100 people attended the first event.

6. Mothers and Daughters Sessions

To celebrate White Ribbon Day and Human Rights Day, Mothers and daughters attended six sessions at The fOrT to celebrate being women. The fOrT is a centre for young people to come and hang out, socialise and pick up new skills in art, cooking, music and sport. (12-25 Years old). A range of organization including the fOrT, BCLS, CatholicCare, Police, Diverstiat, Zena, Headspace organised sessions that incorporated arts, cooking, henna, yoga, mindfulness meditation and informal conversations that generating information sharing and awareness raising. One of the arts activities lead by BCLS involved a Clothesline display of t-shirts where participants could express themselves through art on issues of safety and women's rights.

7. Sisters Day Out

BCLS was delighted to be involved in the Sisters Day Out in our region in 2014. BCLS supports the continued running of the Sisters Day Out. It is a great family violence prevention workshop for the Indigenous Community, which also aims to reduce social isolation, raise awareness of family violence and its underlying cause and impacts, and provides information and tools to promote community safety.

8. Community Legal Education to Cultural and Linguistically Diverse Community

We were involved in Community Legal education sessions to community leaders which raised awareness of what is family violence and the services available to assist.

9. Networking

BCLS actively participates in a number of local and state networks family violence including: Barwon Area Integrated Family Violence Network, Together Against Family Violence, Month of Action to Stop Violence Against Women and Children, Community Legal Centre Federation Family Violence prevention working group.

Prevention recommendation

Adequate funding of innovative community education programs including:

1. Healthy relationship education in schools from 8 years of age.
2. Peer education project, focusing on various groups in community that are hard to reach such as CALD youth and older people.
3. Extend the 'Elephant in Your Room' projects.
4. Extend the Men's Behaviour Change program – more funding needed to cut waiting lists.
5. Rolling out the 'You the Man' program.
6. Cooking up Justice program in refuges as a way to engage with survivors of family violence in a creative and informal manner.

Summary

Improving the Court response will not resolve the issue of family violence, however it would significantly improve the traumatic process and cost many victims of family violence experience in attempting to protect their safety. "In the long run, the efficiency gains through specialisation may produce better outcomes that result in substantial savings elsewhere in the system."³

The Deakin report into Women's Experiences of Family Violence and the Geelong Magistrates' Court confirms that "the key to preventing intergenerational violence and abuse more generally is, many survivors suggested, engagement with and education of children and the issues of respect and family violence and the concepts of gender and healthy relationships."⁴ We recommend that in addition to increased funding for improvements to the legal response, adequate funding is provided to prevention programs such as those highlighted in this submission.

We would welcome the opportunity to discuss this submission in more detail with the Royal Commission. Please contact Mikala McIntyre of our service on (03) 5221 4744 if you have any queries about the content of this submission.

³ Australian Law Reform Commission Report - *Family Violence—A National Legal Response (2011)*

⁴ Women's experiences of surviving family violence and accessing the Magistrates' Court in Geelong, Victoria, Deakin Centre for Rural and Regional Law and Justice.