

**IN THE MATTER OF
THE ROYAL COMMISSION
INTO FAMILY VIOLENCE**

STATEMENT OF ALICE KATHERINE COONEY

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I, ALICE KATHERINE COONEY, Parole Coordinator, Victoria Police, SAY AS FOLLOWS:

1. I am the Parole Coordinator of Victoria Police. I have held this position since 12 March 2015.
2. Prior to my current role, I worked in the Civil Advocacy Unit (**CAU**) of Victoria Police. I commenced with Victoria Police as a Legal Support Officer on 26 February 2013, while completing my practical legal training. I became a Civil Advocate in June 2013 and remained in that role until I commenced my current position. I worked at the Melbourne Magistrates', Melbourne Children's and Melbourne County Courts.
3. I assist in delivering a module of the Victoria Police Prosecutor Training Course relating to family violence. This training is delivered across three modules throughout the year and includes moot court scenarios. I am directly involved in teaching concerning family violence in Modules 1 and 3, which are delivered twice a year.
4. In 2012 I completed my study to achieve a Bachelor of Laws (Honours) and a Bachelor of Arts, with a major in Psychology. I have also completed my Graduate Diploma in Legal Practice and was admitted as an Australian Lawyer on 11 December 2013.
5. To further my own professional development and to assist with the training and delivery requirements of my role, I am completing a Certificate IV in Training and Assessment. As part of my studies during my law degree, I completed units in Family Law. I also attended an exchange program at San Francisco State University

as part of my Bachelor of Arts. As part of this exchange program, I studied family violence related subjects, namely 'Women in Prison' and 'Families and Society'. These subjects had main components on how family violence impacts on the likelihood of female offending and how it affects the family dynamic.

6. When I commenced my employment with Victoria Police, I was given private training by a Police Prosecutor on how the *Family Violence Protection Act 2008 (the Act)* is applied by the Civil Advocates in practice. During this training I also accompanied a Civil Advocate at court and was supervised in the initial stages of my appearance work.

SCOPE OF STATEMENT

7. I have received a notice from the Royal Commission into Family Violence requiring me to attend to give evidence at the Royal Commission and to provide a written witness statement prior to attending.
8. I understand that the Royal Commission has sought my evidence regarding matters the subject of the public hearing for Module 12: Intervention Orders – Applications and Order Making Phase. In particular, I understand that the Royal Commission would like me to give evidence on the role of a Civil Advocate in the Family Violence Intervention Order (IVO) court process.

CIVIL ADVOCACY UNIT (CAU)

9. The CAU was established in July 2011 and is responsible for prosecuting family violence and personal safety IVO applications on behalf of the Prosecutions Division of Victoria Police. The establishment of the CAU came at a time when family violence matters became an integral part of the work of the Magistrates' Court, following the introduction of the Act. The CAU was also part of the Victoria Police response to the increasing demand for specialised family violence resources within the courts. It was envisaged that the introduction of specialist Civil Advocates would increase victim and community confidence in the prosecution service, increase organisational productivity and allow sworn prosecutors to focus their expertise on criminal matters.
10. The CAU is supervised by Ms Irene Chrisopoulidis, who is currently working at the same office as I am. I regularly speak with Ms Chrisopoulidis regarding the

development of CAU initiatives and projects and maintain my interest in the area of family violence work.

11. It is intended that I will eventually assist in the coordination and planning of the Specialist Family Violence session for all new Police Lawyers (which, as I explain below, is the new title for Civil Advocates). For this reason and for the purpose of preparing this statement I have sought updates regarding the developments of the CAU services and staffing models.
12. Since commencing in my role with the CAU, the training and professional development opportunities have increased. The organisational structure of the CAU and allocation of management portfolios have all been reviewed and there is a focus on ensuring that the specialised skills and knowledge of the Civil Advocates remain current and continue to develop in the area of family violence.
13. CAU Professional Development Days commenced around March 2014 and are held on each non court sitting day, which is about 5 times throughout the year. The schedule for these days is arranged by CAU management staff. Guest speakers attend from internal departments and external agencies to deliver training and seminars to Civil Advocates specific to the family violence practice area.
14. Another area of focus for the CAU management team is the mental health and wellbeing of Civil Advocates. I am aware that recent CAU Professional Development Days have included workshops and training with a focus on physical and psychological resilience and mental health wellbeing.
15. The position descriptions for Civil Advocates have recently been reviewed and, as I mention above, their title has changed. The Civil Advocates are now referred to as Police Lawyers, Senior Police Lawyers and Supervising Lawyers. A copy of each of the position descriptions with the CAU is attached as **Attachment AC-1**.
16. The CAU services the metropolitan courts at Melbourne, Ringwood, Dandenong, Frankston, Broadmeadows, Heidelberg, Sunshine and Werribee Magistrates' Courts as well as the Melbourne Children's Court. At present, the CAU also services the Geelong Magistrates' Court.
17. The CAU is focused on expansion to regional areas as it has become apparent that there is an increased demand for specialist family violence services in those areas.

18. The CAU is presently staffed by 13 unsworn members, including Legal Support Officers, Police Lawyers, Senior Police Lawyers and Supervising Lawyers. There are presently 4 vacancies within the CAU, which are being recruited. A copy of a diagram of the structure of the metropolitan CAU is attached as **Attachment AC-2**, which shows the number of CAU staff at the different locations.
19. In the remainder of my statement, I will generally refer to Civil Advocates rather than Police Lawyers for the purpose of consistency.
20. Civil Advocates are unsworn, legally qualified employees of Victoria Police. They represent police members in applications for IVOs under the Act where the police members are parties to the proceedings in their professional capacity. In addition to IVO applications, Civil Advocates also appear in other related civil matters including personal safety intervention order matters and applications under the *Firearms Act 1996*, and from relatively recently, in the area of confiscations.
21. When I first commenced in my role as a Civil Advocate it was common for Civil Advocates to only appear in the family violence mention list and directions hearings. However, Civil Advocates now also appear at contested hearings and in all appeals related to IVOs in the County Court. Given that there is a right to an appeal of a decision made pursuant to the Act, the number of appeals being listed has increased.
22. Civil Advocates predominantly practice in the area of family violence and engage in training specific to family violence. They are highly skilled and specialised practitioners. Civil Advocates develop skills and have experience in areas such as family law, child protection and criminal law. They have a solid understanding of the relationship between IVOs, Family Law orders (including property and parenting orders) and Child Protection orders. This knowledge is important as quite often we see a crossover of these orders in IVO applications.
23. Civil Advocates do not appear in criminal matters related to IVOs. Where there are IVO applications with associated criminal charges, police prosecutors are briefed to appear in relation to the criminal charges. A Civil Advocate will usually appear with a prosecutor in relation to IVO applications that have associated criminal charges.
24. Civil Advocates continue to provide advice and appear in the majority of IVO matters where the associated criminal charges are dealt with in a higher court by the Office of Public Prosecutions. Police prosecutors also appear in IVO matters heard in the County Court.

25. Civil Advocates are assisted in their work by Family Violence Court Liaison Officers (**FV Court Liaison Officers**) and Legal Support Officers (**LSOs**), who are part of the Civil Advocacy Unit.

FV Court Liaison Officers

26. The FV Court Liaison Officer is a uniformed member who acts on behalf of the police informant in police-initiated IVO applications. The primary duties of the FV Court Liaison Officer are to:

- 26.1 assist the police informant in all police-initiated IVO applications, whilst enabling efficient negotiations at Court and the provision of detailed instructions to the Civil Advocate;
- 26.2 assist the Civil Advocates by liaising with relevant stakeholders to ensure that Intervention Order briefs have been prepared, submitted and available for court hearings;
- 26.3 support affected family members and respondents whilst liaising with parties through the entire court process;
- 26.4 assist in the court process to ensure matters are dealt with in a timely and effective manner with successful and workable court outcomes;
- 26.5 facilitate referrals to support agencies as required; and
- 26.6 monitor processes and outcomes of civil and criminal applications.

27. At court, the FV Court Liaison Officer is able to provide updated instructions to the Civil Advocate whilst liaising with the police informant, the affected family member(s) and the respondents. The FV Court Liaison Officer is able to progress the resolution of a matter while the Civil Advocate is appearing in another matter in court. As a uniformed member, the FV Court Liaison Officer plays a valuable role in facilitating communication between the Civil Advocate and the informant and is also a reassuring presence for all parties at court. Further, the FV Court Liaison Officer relieves the need for the informant to attend court at the earlier stages of the IVO application process.

28. The FV Court Liaison Officer role is usually allocated to operational members. It is not a position attached to the Prosecutions Division. The member allocated to the FV

Court Liaison Officer duties is often provided from a local police station and is allocated for a certain period of time. The member may be called back to their operational duties at any time as operational requirements demand. As a result, the member receives only limited training and the consistency of service delivery can be interrupted by the availability of a member. CAU senior management are currently reviewing the professional requirements and developmental needs for members allocated to the FV Court Liaison Officer role.

LSOs

29. The LSOs assist Civil Advocates in the preparation of briefs for hearing, ensuring we have up to date instructions and completed briefs to properly prosecute police-initiated IVO applications. They also attend court on occasions to assist with co-ordination between the parties and the Registrar at court. The LSO also provides research and administrative support. Most of the LSO employees within the CAU are legally qualified and the duties they perform assist in their professional development and training as they mostly seek promotion into the Civil Advocate roles.

THE ROLE OF CIVIL ADVOCATES

30. A Civil Advocate's primary duty is to represent the informant in police-initiated family violence and personal safety IVO applications as they progress through the court system. The primary responsibilities of Civil Advocates are to:
- 30.1 represent Victoria Police in civil matters pertaining to IVO applications, personal safety intervention order applications and *Firearms Act* applications in the Magistrates' Court, Children's Court and the County Court (and/or other relevant Courts and Tribunals);
 - 30.2 provide a specialist legal advisory service to Victoria Police departments and operational units in relation to civil matters, namely, family violence related investigation;
 - 30.3 liaise with the FV Court Liaison Officer and police applicants to obtain instructions on behalf of Victoria Police in civil matters;
 - 30.4 conduct thorough and appropriate case management of civil related matters with a focus on high risk and complex police-initiated IVO matters;

- 30.5 liaise with internal and external stakeholders to appropriately and professionally represent the interests of Victoria Police;
 - 30.6 contribute to business planning whilst maintaining a high level of awareness of contemporary developments in family violence and civil law related field; and
 - 30.7 deliver specialist training to Family Violence Units and/or other internal stakeholders in family violence legislation and other related fields.
31. The CAU management team, together with the senior management of the Prosecutions Division, has recently reviewed all the training material, resources and procedures used by Civil Advocates in the course of their role. A recent evaluation of the CAU recommended the need to codify the standard operating procedures of the unit. This recommendation was followed and a copy of the new Standard Operating Procedures for the CAU, which now forms part of the induction process for all CAU staff, is **Attachment AC-2A**.
32. Civil Advocates are also guided in their work by the *Victoria Police Prosecutions Division Standard Operating Procedures (Attachment AC-3)*. Chapter 8 of that document relates to the Civil Advocacy Unit. Further, Civil Advocates have access to the Code of Practice for the Investigation of Family Violence and the Victoria Police Manual Policy Rules and Victoria Police Manual Procedures and Guidelines in relation to Family Violence.
33. The recent review also looked at the induction process for Civil Advocates. The current induction process involves:
- 33.1 a Senior Police Lawyer or Supervising Lawyer inducting the Civil Advocate on their first day. This meeting will also include the Senior Sergeant of the Prosecutions Office at which the new Civil Advocate will be based;
 - 33.2 accompanying a Police Lawyer at court to observe the processes and requirements of the role engaged in by the CAU;
 - 33.3 performing and assisting case management duties on matters allocated to Senior Police Lawyers; and
 - 33.4 participation in LEAP training and the Victoria Police new employees program.

34. The intention for the future development of the induction program will be to include a specialised training session on the topic of family violence and other civil related matters. The induction program will also focus on the professional development needs of the Civil Advocates as well as their resilience and wellbeing. In July 2015, the CAU produced an induction package, which is attached as **Attachment AC-3A**.

THE RELATIONSHIP BETWEEN THE CIVIL ADVOCATE AND THE INFORMANT

35. As the Civil Advocate is employed by Victoria Police in their capacity as a solicitor, the relationship between the police member who initiates an application for an IVO (**informant**) and the Civil Advocate is a client/lawyer relationship. The Civil Advocate appears on behalf of the informant. Instructions are received from the informant in a brief. The Civil Advocate then provides legal advice and representation based on the information contained in the brief. The qualification to the standard lawyer/client relationship is that deference is given to instructions of a senior Victoria Police member where appropriate, especially in relation to potential withdrawals of an IVO application and other settlement instructions.
36. Where the application for an IVO proceeds to a contested hearing, the Civil Advocate will likely call the police informant as a witness to give evidence.

THE RELATIONSHIP BETWEEN THE AFFECTED FAMILY MEMBER AND THE CIVIL ADVOCATE

37. The affected family member (**AFM**) is the person for whose benefit the police are making the application for an IVO. If an IVO is made, the AFM becomes a Protected Person.
38. In my experience, most AFMs are pleased to know that the police are making the application for an IVO. However, it is important that the AFMs understand that the Civil Advocate is not their lawyer, but is rather acting on behalf of and taking their instructions from the informant. These instructions normally accord with what the AFM is seeking. However, sometimes police seek IVOs against the wishes of the AFM and AFMs do not always understand why the police are doing so.
39. The Civil Advocate will attempt to speak to the AFM or their lawyer directly, or may be assisted by the FV Court Liaison Officer who can speak to the AFM and facilitate communication between the AFM and the Civil Advocate. The Civil Advocate will always explain to the AFM that they are the lawyer for the police, not the AFM, and

will ask the AFM if they wish to speak with a legal service at court. The Civil Advocate will explain that the AFM is not required to have independent advice or representation if they do not want it.

40. If the AFM does not wish to have independent representation, the Civil Advocate will explain the procedure to the AFM and what the police are seeking in their application, but must be mindful not to provide legal advice to the AFM. They will explain that, although they are not acting as their lawyer, the Civil Advocate can assist them to make sure that the Magistrate is aware what the AFM is seeking, even where this conflicts with what the police are seeking. This includes informing the court that the AFM is not supportive of an IVO if that is their wish.
41. As the legislation allows for the police to seek an IVO independently from the wishes of the AFM, it is always desirable for an AFM to be represented independently. Independent representation for all parties ensures that there is no confusion as to the position of the police applicant and the Civil Advocate, especially where this position contradicts that of the AFM.
42. Where the AFM has an independent lawyer this can help to clarify the situation, particularly where the police are seeking an IVO against the wishes of the AFM. If the AFM has an independent lawyer, the lawyer will sometimes appear in court for the AFM, and at other times will confine their assistance to taking instructions, providing advice, and communicating with the other parties on behalf of the AFM. When an application proceeds to a contested hearing and the AFM is supportive of an IVO, the AFM's lawyer, the civil advocate and the informant often work closely together in tasks such as the production of further and better particulars, and in determining who will question witnesses in the hearing.
43. Where needed, interpreters are provided by the court for both the AFM and the respondent. Civil Advocates receive training in working with interpreters and in understanding cultural differences. Referrals are made to appropriate cultural organisations where appropriate.
44. Civil Advocates do not act in a matter listed for a contested hearing in which a police member is a respondent or AFM, due to issues of impartiality and the preservation of the appearance of justice. Civil advocates of all levels and Senior Police members will often appear in mention hearings or directions hearing where a police member is involved as a respondent or AFM. If a matter is adjourned to a contested hearing

following a directions hearing, the matter will be briefed to the Victorian Government Solicitor's Office or to external counsel.

COMMUNICATIONS WITH RESPONDENTS

45. The Civil Advocate also communicates with the respondent or the respondent's representative in order to try to resolve the application for the IVO. It is always preferable for a respondent to be represented. The Civil Advocate is limited in what they can say to a respondent and this can impact on the respondent's understanding of the order, the capacity for referral and the likelihood of a breach. It also helps to calm the respondent's emotions when they are able to speak with someone who is there to take instructions from them and represent them.

ROLE OF CIVIL ADVOCATES AT COURT

Mention list

46. At Melbourne Magistrates' Court, IVO applications are heard every day of the week.
47. During the time I appeared as a Civil Advocate at Melbourne Magistrates' Court, on a typical listing day, I would usually have received a list of matters from the Court the day before and would have prepared the matters in the list with the assistance of the LSO.
48. I would have received the brief for most of the applications. The brief generally contains:
- 48.1 the Intervention Order Brief Head (Victoria Police Form 957) (**Attachment AC-4**). This form provides a summary of information relevant to the application such as the details of all parties, identification of high risk issues and the status of any related criminal proceedings;
 - 48.2 a Family Violence Risk Assessment and Risk Management Report (Form L17) (**Attachment AC-5**) which indicates relevant risk factors and indicators, any history of violence and the AFM's description of their level of fear and vulnerability;
 - 48.3 the application for the IVO (**Attachment AC-6**) and the Family Violence Safety Notice (**Attachment AC-7**), if applicable. A Family Violence Safety

Notice is a notice issued by police that contains conditions similar to an intervention order and operates for 120 hours;

- 48.4 Incident Field Report;
 - 48.5 witness list;
 - 48.6 witness statements;
 - 48.7 exhibits;
 - 48.8 LEAP reports of past family violence incidents;
 - 48.9 any previous IVOs;
 - 48.10 any prior criminal history; and
 - 48.11 a certificate of service.
49. On the day of the mention hearing, I would check my list of IVO applications against the Magistrates' Court Registrar's list. If I was missing any applications, I would obtain relevant paperwork from the Registrar. Sometimes there were matters where a Family Violence Safety Notice was issued overnight or where the CAU had not received the brief from the police informant.
50. There could be anywhere up to 60 police initiated family violence and personal safety IVO applications listed on one day. Civil Advocates are also sometimes asked by magistrates to assist in matters where police are not yet involved in the application.
51. At the beginning of the day at the Melbourne Magistrates' Court, the Family Violence Court Registrar conducts a meeting with the Civil Advocates, the FV Court Liaison Officer, the Applicant and Respondent Support Workers, Victoria Legal Aid, the Women's Legal Service, and a Koori Support worker. In these meetings the attendees are able to discuss who will assist the different parties, identify any conflicts of interest, determine any need for interpreters, and so on. Each court has a similar system of identifying these factors. Whether that is from the Registrar briefing each party or just in a general meeting differs from court to court.
52. The different matters can be prosecuted either by the Civil Advocate, or by the police prosecutors. While there are no strict procedures in place, generally:

- 52.1 a police prosecutor will appear in an IVO application where the offender is in the custody court for criminal offences, as intervention orders tend to be listed quickly and at a time close to the remand application;
- 52.2 a police prosecutor will also appear in an IVO application where the respondent is not in custody but has associated criminal charges. In these circumstances, the IVO application is usually adjourned to a date on which both the application and associated criminal matters may be heard together; and
- 52.3 otherwise, Civil Advocates take all the remaining applications.
53. I would triage the matters in my list, according to whether the parties were present and wanted to see a lawyer and whether the respondent was consenting to the application or not.
54. AFMs were seen by either the FV Court Liaison Officer or by the Civil Advocate, generally in the order in which they arrived at court. Sometimes other factors intervened and some parties needed to be seen earlier, for instance, where there were interpreters involved, children present or high-risk factors.
55. Where either the AFM or the respondent was present and wanted legal advice, they would be referred by the Court Registrar to see the duty solicitor. The Civil Advocate would speak to the AFM's lawyer once they had seen the AFM. If the AFM did not have a lawyer and did not wish to speak to the duty solicitor, the Civil Advocate or FV Court Liaison Officer would liaise directly with the AFM.
56. I would notify the Registrar when I had any matters ready to proceed before the magistrate.

When both respondent and AFM attend court

57. When both parties attend court, attempts are made to resolve the matter.
58. At the first mention stage the respondent most often does not have a lawyer representing them and will usually speak with the duty solicitor at court. The duty solicitor provides advice to the respondent and assists in determining whether the matter can be resolved on the day. The duty solicitor often does not represent the respondent in court but will provide an information sheet for the court file that will indicate to the court the respondent's position. After the respondent has seen the

duty solicitor, negotiations can then take place between the Civil Advocate or the FV Court Liaison Officer and the respondent.

59. Where a privately engaged lawyer is representing the respondent, the Civil Advocate will attempt to resolve the matter in discussions with the lawyer. The lawyer will generally represent the respondent in court.
60. If the respondent does not want any assistance from a lawyer then the Civil Advocate or the FV Court Liaison Officer will communicate with them directly.
61. Often a respondent will choose to consent to the IVO on the basis that they do not admit the allegations that form the basis of the application. In this situation an IVO will be made by consent, without admissions of the allegations contained in the complaint. The majority of matters are resolved by consent at the first mention hearing.
62. Occasionally a Civil Advocate may withdraw an application for an IVO if the AFM has been assessed to no longer require the protection of such an order.
63. If the respondent is present and does not consent to the order being sought, an interim IVO is sought and the matter is adjourned for a directions hearing.

When the AFM is not supportive of an order

64. Section 75 of the Act gives the Court the power to make a final IVO, where the applicant is a police officer, even if the AFM does not consent.
65. Where both parties attend court and the AFM indicates that they are not supportive of an IVO, I would first advise the AFM to seek independent legal advice and to speak to the applicant support worker. If the AFM maintained their opposition to an IVO, and it was my assessment that an IVO was needed, I could proceed to ask for a limited IVO from the court. A limited IVO is one that contains conditions that prohibit the respondent from committing family violence against the AFM, but does not prohibit the respondent from contacting the AFM. I explain this in more detail below (under the heading "Conditions of orders").

When the Respondent does not attend court and the AFM is supportive of an order

66. In matters where the respondent does not attend but has been served and the AFM does attend and is supportive of the application, we will seek a final order in the

absence of the respondent. If a final order is not granted, an interim order will be sought and the matter will be adjourned to another date to allow the respondent a further opportunity to attend court.

67. It is rare that the matter would be adjourned to allow a respondent to attend where service has been satisfied.

When the AFM does not attend court

68. When the respondent attends court but the AFM does not, the Civil Advocate will normally seek an interim order and a short adjournment to a further mention. In these circumstances, the Civil Advocate or the FV Court Liaison Officer would attempt to contact the AFM. If the AFM cannot be contacted, this can result in difficulties in obtaining an interim order.

When neither the AFM nor the respondent attends court

69. If neither party appears the Civil Advocate will generally seek an interim order and adjourn the matter. Attempts would be made to contact the AFM on the day. If those attempts are unsuccessful, the informant and the relevant family violence team would be requested to contact the AFM before the next court date.
70. If the AFM has not attended court but the Civil Advocate has had contact with them and obtained their consent to an order, the Civil Advocate will still generally apply for an interim IVO and adjourn the matter in order to try to have the AFM attend court. In limited circumstances the Civil Advocate may apply for a final order where the AFM is not present but has indicated their consent. This is generally when there is a very serious offence and there is enough information to warrant this course of action.
71. Where both parties do not attend court and the AFM indicates that they are not supportive of an order, the Civil Advocate would make an assessment and obtain instructions about whether to seek a final order. If family violence is evidenced as having occurred in the police narrative and the risk assessment indicates a likelihood that this will happen again, then the Civil Advocate will seek a final limited order.

Directions hearings

72. When a matter does not resolve at the first mention, it is normally adjourned to a directions hearing. Often there is a long delay, up to 2-3 months, between the first mention date and then the directions hearing. This can create difficulties, including

for the currency of the evidence that will be given in a contested hearing. It can also create difficulties in establishing at a final hearing that family violence is likely to occur again, when a significant amount of time has passed since the incident that led to the IVO application.

73. Matters listed for a directions hearing run in a similar way as I have outlined above for the mention stage. Often by this stage the parties have their own legal representation. Again, attempts are made to resolve the matter. The Magistrate can be very helpful in resolving the matter at this stage, in particular, by exploring the issues in dispute and providing an indication of how a matter may resolve if it went to a contested hearing. Often the respondent will consent to an order at this stage. In my experience, the majority of the matters listed for directions hearings resolve on the day.
74. If the matter does not resolve then the Magistrate will set a timetable for the matter to be prepared for a contest hearing and the matter will be adjourned. The Magistrate may make orders including that further and better particulars of the circumstances warranting the IVO be supplied to the respondent and that the parties provide a list of witnesses and an outline of their evidence.

Contested hearings

75. Contested hearings are normally listed around a month after a directions hearing. Depending on the number of witnesses that will be called, they are usually set down for a duration of one day. In my experience, they most often resolve on the day of the hearing and the contest does not proceed.
76. In preparation for a contest, the CAU ensures that there are suitable arrangements for the AFM to give evidence. The respondent is not allowed to cross-examine the AFM so they need to be represented by a lawyer in order to do this. Often at Melbourne Magistrates' Court a screen is used to separate the AFM from the view of the respondent. There are similar facilities, including remote witness facilities, at other courts.

Conditions of orders

77. The Court has power under section 81(1) of the Act to include in an IVO any conditions that appear to it to be necessary or desirable in the circumstances. Section 81(2) sets out a list of standard conditions.

78. Documents have been created by the CAU that set out the standard conditions that can be attached an IVO. The documents are matched to the standard conditions that are issued on an IVO from the court. Sometimes it is difficult for AFMs and respondents to fully understand the conditions on an IVO. These documents assist in explaining the conditions to the parties. Sometimes parties have difficulty in identifying what family violence is in their situation. These documents also assist in explaining this. However, it is important that the parties are given a face to face explanation of what family violence is. The Civil Advocate or the duty lawyer will usually explain this to a respondent before court. The Magistrate will also explain this to a respondent at the time of making the order, but sometimes time constraints limit their ability to do this. The applicant and respondent support workers are also very valuable in helping parties to understand the different forms of family violence.
79. A copy of the document outlining the standard IVO conditions is attached as **(Attachment AC-8)**. Those conditions prohibit the respondent from:
- 79.1 committing family violence against the protected person(s);
 - 79.2 intentionally damaging any property of the protected person(s) or threatening to do so;
 - 79.3 attempting to locate, follow the protected person(s) or keep them under surveillance;
 - 79.4 publishing on the internet, by email or other electronic communication any material about the protected person(s);
 - 79.5 contacting or communicating with a protected person by any means;
 - 79.6 approaching or remaining within 5 metres of a protected person;
 - 79.7 going to or remaining within 200 metres of any places where a protected person lives, works or attends school or childcare; and
 - 79.8 getting another person to do anything the respondent must not do under this order.
80. A 'limited order' generally refers to an order that contains the first, second, and eighth conditions only. It does not prohibit the respondent from having contact with the protected person or persons. A 'full order' contains all of the standard conditions and

prohibits the respondent from having any contact with the protected person or persons. The conditions can be altered to suit the particular circumstances of the parties.

81. Civil Advocates rely heavily on the application documents completed by the informant, discussions with AFMs and support workers and their own judgement to determine what IVO conditions are appropriate in each situation. Civil Advocates' risk assessments are based on the elements identified in the Form L17. Training of Civil Advocates in the Common Risk Assessment Framework (CRAF) has been delivered internally and focuses on what Civil Advocates should look for when speaking to AFMs at court.
82. A full order will only be sought where the AFM has given clear consent to do so or where the AFM is a child and the circumstances of the allegations made in the application warrant such an order.
83. A limited order will be sought where the AFM has indicated that these are the only conditions they want. A limited order may also be sought without the consent of the AFM. In such cases, section 75(2) of the Act limits the conditions that can be included in an IVO to those normally contained in a limited order except where:
 - 83.1 the AFM is a child and there is either no adult AFM included in the application or the adult AFM included consents to the making of the order;
 - 83.2 the AFM has a guardian and the guardian consents to the application; or
 - 83.3 the AFM is cognitively impaired.
84. A limited order will be sought without the consent of the AFM where it is considered appropriate, taking into account the information in the L17 form, the narrative in the application, the history of IVOs and family violence incidents and prior offences, the allegations are serious or the respondent is known to police as a recidivist offender.
85. In some cases, though not very often, situations arise where the AFM wants more conditions than the evidence or circumstances would warrant. Police are hesitant to make this assessment and the AFM would be supported to have independent legal representation if the instructions of police and the wishes of the AFM diverged in this way.

86. Other conditions may be attached to an IVO that allow the respondent to contact the protected person in relation to child arrangements, or to communicate through a lawyer or mediator, or to attend counseling or mediation. The order may contain conditions to arrange for the return of personal property under safe conditions. The order may require the respondent to attend an assessment for eligibility to attend counseling sessions, or the court may seek and note the respondent's agreement to contact the Men's Referral Service for advice and information about services that may assist him. A copy of these orders is attached as **(Attachment AC-9)**.
87. The length of time of the order granted by the court has developed to be commonly set as twelve months. There is no legislative direction that the order should last for that length of time. Civil Advocates will make an assessment and act on instructions regarding seeking orders of a longer or shorter length. Civil Advocates will seek orders with indefinite duration in appropriate circumstances.
88. The Court may also attach conditions in relation to the suspension of *Family Law Act 1975* orders, or orders in relation to the suspension of any firearms or weapons authority of the respondent, and an order that the respondent hand in any firearms or weapons to the police. A copy of these orders is attached as **(Attachment AC-10)**.

Overlap with Family Court orders

89. Section 90 of the Act allows for the court to vary, suspend or discharge orders made under the *Family Law Act 1975* so that they are not inconsistent with the conditions of an IVO. However, access to Family Court orders is not readily available. In my experience, this power is generally only used by Magistrates to suspend Family Court orders for a period, for 21 days as legislated, to allow the AFM some time to seek further advice and initiate an application under the *Family Law Act 1975*, if necessary.
90. Often where there are children involved the Court will order an exception to the conditions of the IVO that allows for contact to occur between the AFM and the respondent to determine conditions about arrangements for contact with the children.

Undertakings

91. Civil Advocates and police prosecutors do not readily accept undertakings from respondents and they will not be accepted at first mention. An undertaking will only be accepted with the full consent of the Protected Person and in line with the Victoria

Police *Code of Practice for the Investigation of Family Violence* on withdrawals of IVO applications.

Cross applications

92. Generally, police do not make cross applications for IVOs in circumstances of family violence. One issue with cross applications is that the police are in a conflict scenario where they may have to protect and make a cross application against the same person. In these circumstances police members should refer to the Code of Practice and are encouraged to conduct a further risk assessment to decide which application is the most appropriate to proceed with. Section 3.1 of the *Victoria Police Code of Practice for the Investigation of Family Violence* refers to identifying the primary aggressor.
93. During the time I was in my role with the CAU, it was not uncommon for a cross application to be made. There were some matters where the circumstances surrounding the incident attended to by police made it extremely difficult to identify who the primary aggressor was at the time of the police assessment.
94. In circumstances where a cross application is made, a Civil Advocate would be required to conduct a further risk assessment on the basis of instructions from each party or their legal representative at court. This would require the Civil Advocate to conduct interviews with each party or their legal representative to determine whether the primary aggressor or the person for whom the police should be seeking to provide protection by applying for an IVO could be identified. A Civil Advocate would then refer this further information together with further legal advice to the informant in order to obtain instructions as to how to progress the application.

BENEFITS OF THE CIVIL ADVOCATE ROLE

95. The role of the Civil Advocate provides many benefits for the IVO court process. These include:
- 95.1 As qualified lawyers, Civil Advocates provide legal advice and guidance to operational members on family violence evidentiary matters, procedures, investigation and policy.
- 95.2 Due to their legal qualifications, Civil Advocates can manage a matter in its entirety, including mentions, directions hearings, contested hearings and

county court applications. The ability to manage a case through all likely court proceedings ensures reduced costs in seeking external legal counsel.

- 95.3 The legal expertise of Civil Advocates allows them to provide a more specialised service to victims of family violence and establish relationships with other legal practitioners and support agencies.
- 95.4 Civil Advocates provide a consistent point of contact for other legal practitioners and support agencies, and improve communication between civil advocates, other legal practitioners and support agencies.
- 95.5 As Civil Advocates prosecute IVOs on a daily basis, they are able to provide a more consistent service for all parties involved because they are familiar with relevant legislation, court processes and how various courts operate under each Magistrate. Under the previous model, police prosecutors did not exclusively deal with these matters and there was no consistency of prosecution staff at each court.
- 95.6 The sensitive and serious nature of family violence matters requires a significant level of engagement with AFMs and support services to determine the best outcome for each case. The Civil Advocate improves accessibility to the court system for AFMs and increases the resolution of matters on the best possible terms for AFMs because of the specialised case management role of the Civil Advocate.
96. A number of these benefits are highlighted in a review of the CAU that was conducted by Ernst & Young in 2015. A copy of the draft report of Ernst & Young dated May 2015 is attached as **Attachment AC-11**.

OTHER ISSUES

Financial abuse

97. I have made IVO applications where economic abuse has been a factor in the alleged violence. The examples I have seen are of economic violence by way of only small amounts of money being given to the AFM or money being withheld. If I am informed that an AFM is on an "allowance" or if there is any reference to a difficulty with money, I would make a note of this and make further inquiries with the AFM. In my experience, economic abuse issues are not commonly mentioned in IVO

applications and I have only ever seen such issues identified in addition to other aspects of more commonly understood forms of violence, such as physical violence. I have not seen economic abuse raised as a specific issue at a contest or appeal, nor have I seen it as the overall focus of an application.

Support services

98. The applicant support workers at court assist to identify matters that are high risk. Where the Civil Advocate considers that there are high risk factors they will refer an AFM to the applicant support worker who can help them focus on broader strategies and 'exit strategies' such as changing locks and financial planning. The relationship between the CAU and the support workers is an important one. While the Civil Advocate has the capacity to refer parties to programs to assist them, the caseworkers have specialist knowledge in these areas. Civil Advocates cannot assist with strategies for ongoing protection in the way that the support services can.
99. There was no designated respondent support worker employed at Melbourne Magistrates' Court during the time of my role in the CAU. This role would have been beneficial on many occasions, particularly where homelessness or drug and alcohol issues were present. When required we had the assistance of a case manager from the Court Integrated Services Program to help work with a respondent. At Heidelberg and Dandenong Magistrates' Courts there is a respondent support worker who provides valuable support.
100. Koori court support workers were employed at Melbourne Magistrates' Court for temporary periods when I worked as a Civil Advocate. When the program was in full operation there was a female and a male Koori court support worker who worked face to face with respondents and AFMs. They assisted AFMs to provide instructions to Civil Advocates and to give referrals to culturally appropriate support services.
101. Referral to the Koori court support worker usually occurred where the Koori court support workers would identify a name they recognised from the mention list and approach us or where an AFM or respondent identified to the Civil Advocate as being of Aboriginal or Torres Strait Islander descent.
102. Apart from the referral to the Koori court support workers, the fact that someone identified as Aboriginal or of Torres Strait Islander descent had little impact on the way that Civil Advocates would perform their role.

103. On some occasions a representative from the Victorian Aboriginal Legal Service would appear for a respondent.
104. The lawyers from Victoria Legal Aid, the Women's Legal Service and other community legal services are also very good at referring parties for more support. In my experience, the roles of the various support workers and lawyers are very important to the efficient and effective running of court procedures.

Experience for victims

105. In my experience, there can sometimes be difficulties in separating AFMs and respondents in some courts. I have witnessed physical and verbal altercations between AFMs and respondents when they are required to wait in the same area. When there are designated and separate applicant areas in the court, it can assist to avoid these kinds of situations and the remote witness facilities for AFMs can also be helpful in this regard. Court Network volunteers also assist at times to keep AFMs and Respondents separate.
106. There is a concern for the safety of AFMs and their likelihood of supporting an order when the respondent has been sitting across from them in the court foyer for a period of time.
107. In my opinion, staggered listing times may provide a more efficient and less stressful experience for parties. It would reduce the strain on trying to deal with all listed matters at once and allow for more opportunities to have the issues in dispute identified in detail at the outset of the application process. It would be most beneficial at the directions hearing stage.
108. It may also be beneficial to increase the number of listing days at each court in order to reduce the number of matters in the list on any one day.
109. Applications can be listed at court within hours of a family violence incident. In my view, this is too soon. At this stage, parties are often still very emotionally driven, finding it difficult to comprehend how they have arrived at that stage. Parties are unlikely to have capacity to make decisions that will, in most cases, affect them for the next 12 months. On the other hand, where there is some delay between the incident and the court appearance, there is potential for the respondent to have contacted the AFM and/or the AFM to lose confidence in continuing with the process. A number of AFMs will change their instructions if there is a significant delay in

resolving the application to a final order. For these reasons, it is my view that matters should be listed at court sooner rather than later, but not on the day of or the day after an incident.

- 110. Delayed outcomes in IVO applications are a real issue for AFMs where an application has been appealed. As the Act has a relatively open right to appeal any decision, an AFM can be required to attend numerous court appearances prior to final resolution of an IVO matters. I have witnessed AFMs who have had matters run for over 18 months which has caused much anguish and concern for those AFMs.

Signed by)
ALICE KATHERINE COONEY)
 at Melbourne)
 this 30th day of July 2015)

Alice Katherine Cooney

an Australian legal practitioner within
 the meaning of the Legal Profession
 Uniform Law (Victoria)

Before me

An Australian legal practitioner
 within the meaning of the
 Legal Profession Uniform Law (Victoria)