Royal Commission into Family Violence

WITNESS STATEMENT OF DR CHRIS ATMORE

I, Dr Chris Atmore, Senior Policy Adviser at the Federation of Community Legal Centres (the **Federation**), in the State of Victoria, say as follows:

1. I am authorised by the Federation to make this statement on its behalf.

2. I make this statement on the basis of my own knowledge, save where otherwise stated. Where I make statements based on information provided by others, I believe such information to be true.

3. The Federation made a submission to the Royal Commission into Family Violence in June. I refer to and adopt that submission. Attached to this statement and marked **CA 1** is a copy of that submission.

Current role

4. I am a Senior Policy Adviser at the Federation, a position I have held since 2007.

5. In my role as Senior Policy Adviser I am responsible for developing policy frameworks as well as advocating for policy and law reform, based on the experiences of the Federation's member Community Legal Centres (**CLCs**) and their clients.

6. Many CLCs provide legal assistance to victims, and sometimes alleged perpetrators, of family violence in Victoria. Family violence is our top legal problem type and more than 1 in every 3 new cases are about family violence. CLCs also assist with other family violence-related legal matters, such as family law, child protection, debts, fines, homelessness and tenancy, victims of crime compensation, and, where possible, in coronial investigations and inquests where there has been a family violence-related homicide.

7. The bulk of my policy and law reform work focuses on family violence-related areas of law and policy. Indeed, for around the last 10 – 12 years, the Federation has identified family violence as a priority matter and we continue to see that this is an area that needs urgent reform attention.

Background and qualifications

8. I am an Australian lawyer and have a Bachelor of Science, a PhD in sociology, and a Bachelor of Laws with Honours. I have been involved in matters involving violence against women and children for around 30 years, beginning in New Zealand where I was involved in grass roots feminist movements. I was also in a government role where I undertook research and training work involving child abuse and its prevention, between 1984 and 1985. From 1992 to 1998 I was employed as a social science academic at Monash University, researching cultural contexts over the meaning of violence against women and children, and particularly how this violence is represented in the media.

9. In 2000 I began law studies and also a variety of part-time positions in paralegal and community legal sector voluntary and paid work. These included writer and editor with the Domestic Violence and Incest Resource Centre between 2000 and 2001. Between 2003 and 2005 I worked as a policy researcher with the Communications Law Centre. I then had a temporary position in 2005 as Policy Officer with the Federation of Community Legal Centres. In 2007 I was re-employed by the Federation and also completed my law degree and was admitted as a legal practitioner in 2009. In 2010 to 2011 I was seconded to Victoria Legal Aid, as a mental health duty lawyer.

10. I was a board member for the St Kilda Legal Service from 2002 to 2011.

11. Currently, I represent the Federation as a key member of the No More Deaths Alliance, which is comprised of the peak organisations and state-wide agencies in the Victorian family violence sector.

12. I also represent the Federation as leader of the Australian Inquest Alliance, which seeks reform of coronial systems so that social justice can be effectively pursued for those who have died in circumstances where their death may have been prevented. An important part of this work concerns family violence homicides.

13. In my private capacity I am a Director of the Luke Batty Foundation and currently interim co-Chairperson.

The role of the Federation

14. The Federation is an independent non-profit organisation and has 50 independent member CLCs. It is the peak body for CLCs in Victoria. These CLCs provide free legal services and advice to members of the community, and integrate this assistance with community legal education, community development and law reform projects.

15. The Federation itself does not provide legal advice but provides information and referrals to people seeking legal help. The Federation works to build a stronger and more effective community legal sector and to support its member CLCs to provide services and meet legal needs. The Federation also brings together the knowledge of its member CLCs that has been gained by working with clients and communities. The Federation uses this knowledge in its policy and law reform work to assist and represent its members, and to advocate for a fairer legal system that better responds to the needs of disadvantaged people.

16. In contrast to services such as Victoria Legal Aid (**VLA**), the Federation is able to provide a more fearless type of systemic advocacy, including, in family violence, particularly on behalf of victims and survivors. This is because the Federation and its members are independent of government and commercial interests. CLCs are committed to collaboration with government, VLA, the private legal profession and community partners to ensure the best outcomes for our clients and the justice system in Australia. But our community relationship distinguishes us from other legal providers and enables us to respond effectively to the needs of our communities as they arise and change.

17. It is also important to note that unlike VLA, CLCs generally do not apply a means test to potential clients such as applicants for intervention orders. This allows our members to assist all women who are in desperate need of legal assistance. This would include for example a woman who has fled a high risk domestic situation with nothing but the clothes she is wearing who happens to have a property in her name, though she has no immediate access to cash. It is important to note though that at present the resource capacity of CLCs often limits what assistance may be provided to such a woman.

18. For many women in family violence situations, their first interaction with the legal system is through contacting a CLC or seeing a CLC duty lawyer at a Magistrates'

Court. It is for this reason that the value of CLCs cannot be underestimated, nor the role of specialist lawyers.

19. Currently around 35 CLCs provide legal advice and information, and sometimes casework, for family violence-related matters. 19 of those CLCs provide a duty lawyer assistance program at 29 Magistrates' Courts across Victoria.

20. CLC lawyers are often the sole source of assistance for victims applying for an intervention order under the Family Violence Protection Act (**the Act**). Demand for these services is constantly increasing. For example, the number of new family violence cases opened by community legal centres increased by 85% between 2008/09 and 2013/14.

21. Because of this high demand, the work that duty lawyers are able to do is usually limited to the immediate needs of the client, with those clients being referred back to a CLC for further help with other legal issues that are part of the abuse, such as family law matters like child contact, or victims of crime compensation. However, CLC services outside the duty lawyer programs are also very stretched. A rough preliminary estimate from our CLCs is that to genuinely meet the legal needs of family violence victims for duty lawyer services across Victoria, including filling current gaps in court duty lawyer provision around the State, a further $1.8 million per year is needed. To meet all of the associated legal needs of those victims, the conservative partial estimate is well over $5 million annually. So women can miss out on access to justice, especially when it comes to those ancillary legal issues.

22. It is the experience of our member CLCs and my policy work in this area that has informed my knowledge of the intervention order process and associated monitoring and enforcement issues. The Federation believes that many gaps exist and that reform is needed in this space to ensure that women and children are better served and protected by the Victorian system.

The intervention order application process

23. One of the major issues that the Federation has identified is the gap that currently exists at the application stage. Duty lawyers are funded to focus on the point at which the application is listed for mention, not at earlier stages when the affected family member (the victim) needs to fill out the application and seeks an interim intervention order. This means that unless the victim seeks legal assistance before she comes

to the Magistrates' Court, she will not get legal help to make her application. Even if she does seek that earlier help, CLCs are also not funded to assist with applications as part of their core work. If victims were able to access legal assistance at an earlier stage, not only would there be better legal outcomes but the court system would also become more efficient.

24. In line with this thinking, the Federation and our member CLCs have been considering establishing specialist family violence clinics where women can get assistance to fill out their intervention order application, or increasing our duty lawyer capacity at the courts to assist with the application.

25. Both the victim and the alleged perpetrator need greater access to legal services at the preliminary stage. For example, perpetrators may make cross applications against the victim even though in the vast majority of cases cross applications are not warranted. Indeed, as we document in our submission, cross applications have a number of vexed issues associated with them as well as being time consuming for the court. It is in these types of scenarios where, had there been legal advice provided at an earlier stage, unmeritorious claims may have been filtered out and thereby reduced the burden on the court.

26. From a victim's perspective, greater legal advice at an earlier stage would improve the quality of the application and reduce the necessity at a later stage for further and better particulars to be ordered by the Court and therefore the matter being adjourned. Our CLCs are also aware of situations where sometimes women represented by private lawyers are persuaded by them to consent to a final order that is not adequately tailored to their needs because they had no access to advice at the application stage. In providing greater and earlier access to specialist lawyers at CLCs and at court, the system would be safer and more efficient overall.

27. There is also an issue in the way that the police engage with victims in terms of the intervention order, although this has improved since the Victoria Police Code of Practice for the Investigation of Family Violence was introduced. However, we still often hear stories where a woman has gone to a police station and the police tell her to get an intervention order rather than making the application on her behalf. Or police may make the initial application but then they don't assist the victim after that, for example if she wants to vary or revoke the order. This leaves the victim without any support and so she must then go and seek out a lawyer or another service to provide that assistance. This contributes to her experience of a disjointed response

to family violence and increases the risk that a woman will "give up" and not take out a much needed intervention order.

28. Where police place the onus on the woman to apply for the order, and she then gets an order herself, we know that in some cases this seems to facilitate an attitude that now she's got the order, the woman herself bears much of the responsibility for her own safety. This is contrary to the intention of the Act and in some cases we are aware of, this scenario has ended in family homicides.

29. In addition, there are gaps when the intervention order application moves to the directions hearing and contest hearing stages. At these stages of the legal process, women often fall through the cracks because duty lawyers are not funded to assist them any longer. The alternative is that they have to get help to try to cobble together funding from various different sources which might at best only help them to afford a basic level of legal representation.

30. Other family violence-related legal matters that might arise should also ideally be managed by or through the same service to provide a holistic solution to the victim. Ideally there should be a holistic wraparound service that victims can access to address all of their needs. This would mean that a woman would have the same lawyer, and perhaps a community worker, with them throughout the entire legal journey. That would mean that even if all of the services required by a woman weren't provided by the same organisation, there would be one key individual or service that would at least provide the navigation, and so the victim would experience more continuity and consistency. We are hearing such requests from the clients at our CLCs. Our member CLC, the Justice Connect Homeless Law service provides a really good example of where this is already being done well on a small scale.

The importance of specialisation

31. In addition, the Federation strongly believes that a specialist approach to providing legal and other services is the preferable approach. In this scenario, where practical (for example, where there is not a conflict of interest), CLCs provide services to the affected family member (the victim) and VLA provides services to the respondent (the alleged perpetrator), either via its own lawyers or via legal aid provision to private practitioners.

32. This approach fits with the reality that criminal law assistance more broadly is one of VLA's specialisations, whereas criminal legal representation is not a large area of

CLC practice. So it makes sense that if a respondent may be charged with criminal offences, that VLA has carriage of all related matters for that client. Similarly, it would allow CLCs, who are often the first point of contact the victim has with the legal system, to guide the victim through the intervention order process and to provide access to a more holistic service offering to help with other family violence-related legal problems. We know that there are already some CLCs that would like to be able to provide a more holistic service to victims, if there was sufficient resourcing for this.

33. We think that the specialist approach serves the best interests of both the affected family member and the respondent. It is also essential that affected family members have genuine access to independent legal advice when they are not the applicant for the intervention order. As we detail in our submission, when Police make applications, it is not always the case that victims also receive independent legal advice. Courts around the State need to be resourced so that duty lawyer help is available for all of those who cannot afford private assistance, even when there is a conflict of interest which may cut out one or more duty lawyer from providing advice or representation.

34. The Federation also believes that all magistrates hearing family violence matters should have specialist Family Violence capabilities in terms of training, knowledge and experience, together with the power to mandate attendance at men's behaviour change (**MBC**) programs and the ability to comprehensively judicially monitor perpetrators. At present, specialist magistrates are formally limited to the six court sites of the two Family Violence Court Division Courts (**FVCD**) in Ballarat and Heidelberg, and the four Specialist Family Violence Service Court locations (Melbourne, Frankston, Sunshine and Werribee), although there are a few other magistrates who have a 'de facto' specialist status in terms of their knowledge and practice. MBC program attendance can only be mandated at the FVCD courts, and more recently also at Frankston and Moorabbin Magistrates' Courts. Judicial monitoring is routinely undertaken only in the FVCD courts, due to its association with those courts' practice of hearing related criminal matters.

35. We know from the regular contact that we have with specialist magistrates that they have a very fine tuned understanding of the Act, including of the full extent of their powers under the Act. This understanding combined with their specialist experience means that, for example, these magistrates aren't intimidated by the way in which the Act interfaces with the family law provisions. Specialist magistrates are rigorous in

their attention to the Act's purposes of maximising safety for victims, preventing and reducing family violence, and promoting the accountability of perpetrators. They also embed risk assessment and risk management in their decision making.

36. For example, a specialist family violence magistrate approach ensures that court decision making concerning child contact where there has been family violence considers all of the relevant mandatory considerations in the Act and runs through a checklist in order to include all of the appropriate conditions in the intervention order. In contrast, the Federation is aware of decision making by non-specialist magistrates where children's safety has not been sufficiently considered.

37. Magistrate Spencer has written a paper, 'Applying Risk Assessment and Management Principles in Matters Involving Family Violence' (November 2010) which outlines the way in which risk assessment and risk management are woven into the various tests under the Act that magistrates are required to apply. What is especially important about this analysis is that it shows that risk assessment and management do not need to be specially 'added on' in court decision making – they are already intrinsic to correct interpretation and application of the current Act. As Magistrate Spencer consequently argues, magistrates should be using these risk assessment and management strategies in their decision making more fully and frequently. We know that specialist magistrates also believe that best practice duty lawyer advocacy should also refer to mandatory and risk-related considerations under the Act.

38. The Family Violence Bench Book provides information about the application of the Act, as well as providing insight into the social context of family violence, but it needs updating. If all magistrates and lawyers use a continually updated Bench Book to supplement their specialist training, within a culture that formally encourages and rewards specialisation, it will greatly assist decision making.

39. As we discuss in our submission, a specialist magistrate approach needs to be complemented by enhanced court powers and services, and with duty lawyers and a range of support workers being available for both parties at all court locations. For this reason we recommend that the model of the FVCD be rolled out statewide. This approach has the potential to provide a one stop shop to victims and perpetrators, and delivers on the idea of holistic service provision. For example, it would allow both parties to be put in touch with the appropriate services then and there, which we know makes it far more likely that victims in particular will access them. This

approach is also more efficient and serves the purposes of the Act more directly, in that it provides more direct and complete accountability for perpetrators and provides greater and more enduring safety for women.

Monitoring and enforcement following an intervention order

40. It is not enough, however, to only reform the process leading up to a victim of family violence gaining a final intervention order. Judicial monitoring is an important aspect of ensuring the safety of victims as well as accountability for perpetrators.

41. The Ballarat Magistrates' Court is well known for its application of judicial monitoring, in particular under Magistrate Toohey. As part of this process, Magistrate Toohey will ask perpetrators questions, for example after they have begun participation in drug or alcohol treatment programs, and give them credit for their efforts or verbally reprimand them if they have not complied or being seen to make an effort, telling them to "pull up their socks". It allows the magistrate to question the perpetrator more closely about what they are doing and to get a sense about whether avenues like MBC programs are likely to be effective. And of course magistrates then have the backup of more punitive options if the perpetrator fails to comply or make an effort to change.

42. Magistrate Toohey (and many other magistrates) will also ask perpetrators about their children and if they understand the impact that the family violence is having on them. Many perpetrators don't realise the damage that their behaviour is having on their children, or at least the extent of the harm that they are doing, especially when the main target of the violence is the children's mother. For example, perpetrators often are not aware that the Act defines a child witnessing family violence as itself family violence towards the child. You can see, after being asked those types of questions and being given information about the impacts on their children, that it really affects some perpetrators. The value of having that interaction with the magistrate should not be underestimated.

43. It is important for perpetrators to know that someone of authority is keeping an eye on them - that the court is watching them. Therefore, when police follow up on perpetrators it isn't enough to simply tell them when the order is made or changed. Instead, the better approach is to re-engage with the perpetrators and bring them back to stand in front of the magistrate. This allows the magistrate to speak with the perpetrator and get a sense of them and 'where they are at' - but more importantly, it

reminds the perpetrator that they are being watched by the magistrate. There has been research conducted in the US which suggests that judicial monitoring of defendants in specialist domestic violence courts (domestic violence being in the criminal jurisdiction there) may be a key factor in defendant compliance.

44. Unfortunately though, the use of this approach in Victoria is very restricted at the moment. As I have previously stated, judicial monitoring is currently limited to the FVCD courts in the context of family violence-related criminal offending. In those other courts that are able to mandate attendance at MBC programs, there is nothing formal in place that allows magistrates to follow up on the success or otherwise of that attendance.

45. In addition, I think there is sometimes an attitude on the part of policy makers that if a respondent fails to turn up to court and an intervention order is made in his absence, that just saves the system time and the woman is now sufficiently protected in any case. Magistrates' Court data for 2013/14 shows that respondents attended court in answer to an application for an intervention order in about 44% of cases. We don't know enough about the other 56% and what outcomes resulted for women and children further down the track. The Act empowers magistrates and others to require respondents to attend, and if courts were sufficiently resourced this could be employed more often which, as discussed above, may have additional benefits in terms of perpetrator compliance with intervention orders and behaviour change.

46. Once an intervention order has been made, the current standard practice is that nothing more is done to check in with the victim or perpetrator unless one of the parties brings a matter to the attention of the police or the court. This is one of the reasons why the public often say that an intervention order is just a piece of paper, that it doesn't really protect anyone as nothing is done until something has gone wrong, which at present places a huge burden on the victim. We have to develop some way to reliably and strongly support women to have their orders enforced when they need it.

47. Our submission details problems that women have experienced with delays in service of interim orders, sometimes to such an extent that they had a false sense of safety because they assumed the order was enforceable when it still wasn't, because it had somehow got lost in the system or the police couldn't find the perpetrator.

48. Even more significantly, we are aware of glaring examples of breaches of intervention orders where despite strenuous efforts on the part of the victim, police did not take the breach seriously or even respond at all. In extreme cases women have been killed after failing to get police to act. As one bereaved family member told me recently, 'If there had been consequences for the perpetrator, I don't think our family member would have died. The fact that nothing happened when he breached the order gave him the go ahead.'

49. So again, a piece of paper is a flimsy thing to rely on for your safety, unless you can be confident that it will be enforced. Therefore, although various technologies that protect women may have merit, we should not lose sight of the fact that ultimately the most sophisticated devices in the world rely on human beings to respond promptly and appropriately, and there is a lot of work still to be done there.

A patchy system

50. On the whole, the current family violence legal response is a patchwork quilt across the state which is also incredibly threadbare in many places. There are effectively four tiers of service that you get in the current system. At the top there are the two FVCD court sites, then next the four SFVS locations, and then two tiers underneath: headquarter courts with designated family violence lists, appropriate resources and personnel, and then the small satellite courts. It's a real postcode sort of justice, and it's generally the worst in the small rural areas.

51. In most parts of Victoria, it's also a response that varies according to the social characteristic of the victim and perpetrator. So for example, men from CALD backgrounds are far less likely to be referred to a MBC program because there simply aren't the appropriate places. We also know that far more has to be done to genuinely support victims from diverse backgrounds. Our submission makes recommendations concerning interpreters, for example, and many organisations share the concerns in our submission about the need for culturally safe support for Aboriginal women and children. The family violence justice system also cannot be said to provide genuinely holistic services until resources are available to support women with a mental illness or cognitive disability to obtain genuine access to justice. This has to include thorough and consistent training of all personnel who interface with them. The most disadvantaged victims are the litmus test for any claim to a world class family violence response.

52. The need for training of the various personnel in the legal response is underscored by the fact that at present the system is also patchy in terms of the consistency of response amongst the different services - the system is still very personality dependent. Indeed, there can be a patchiness even in the best courts, depending on the particular magistrate or the police that are there that day. What we should be aiming for is having a system that delivers consistent best practice regardless of what court a woman is in, who she is, or what personnel are actually in the roles at any given time. For that we need to constantly inculcate and coordinate shared understandings within and across all service sectors in the family violence justice system.

The need for consistent risk assessment and risk management

53. A really crucial part of establishing consistent best practice is implementing an improved risk assessment and risk management framework across the whole system. Other witnesses with the expertise will give evidence about this in some detail. Our submission recommends a range of safety and security strategies to address the current vulnerability of victims entering, remaining in, and exiting court spaces. In addition, we believe that the understanding of 'safety at court', including the forthcoming Victorian Government safety audit of courts, needs to go further than this.

54. First, safety needs to be considered in the context of all relevant courts and tribunals where family violence victims/survivors may present, not only magistrates' courts.

55. Second, a revised and expanded Common Risk Assessment Framework (CRAF) should be embedded in the daily practice of all of the personnel working in these courts and tribunals. I emphasised earlier the importance of magistrates and lawyers actively assessing and managing risk as part of interpreting and applying the Act, including in tailoring intervention orders. We would also like to see as standard practice each service operating at court that has contact with the victim, children, or perpetrator to have appropriately tailored risk management practices based on a shared understanding of the 'red flags' in the CRAF.

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Dr Chris Atmore

Dated: 3 August 2015