



**Royal Commission  
into Family Violence**

**WITNESS STATEMENT OF CHRISTOPHER LEONARD WILLIAM CASEY**

I, Christopher Leonard William Casey, Senior Lawyer, of 54 Mitchell Street Bendigo in the State of Victoria, say as follows:

1. I am authorised by Loddon Campaspe Community Legal Centre (**LCCLC**) 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. I adopt the contents of the document entitled '*Loddon Campaspe Community Legal Centre – Submission to the Royal Commission into Family Violence*' dated 27 May 2015 which is attached to this statement and marked '**CC 1**'.
4. I also adopt the contents of the document entitled '*Goulburn Valley Community legal centre - Submission to the Royal Commission into Family Violence*' dated 29 May 2015 which is attached to this statements and marked '**CC 2**'

**Current role**

5. I am a Senior Lawyer at LCCLC in Bendigo. I began working for LCCLC as a lawyer in October 2006.
6. During my time at LCCLC I have been involved in a variety of projects and legal practice areas including:
  - 6.1. Provision of general legal advice, casework, community legal education (**CLE**) and policy work;
  - 6.2. The setting up and provision of family violence Court outreach services at Bendigo, Maryborough and Echuca Courts, including all the associated networking and relationship building, participation in local family violence Community Legal Education (**CLE**) and community based no to violence initiatives;

- 6.3. Coordination and supervision of the lawyer and student volunteer program and clinical legal education programs;
  - 6.4. Set up and provision of legal advice services for Bendigo Student Association (BSA) student legal service at Bendigo campus of La Trobe University;
  - 6.5. CLC sector mentoring of lawyers new to the family violence area of practice, including via the Women's Legal Service 'Safer Families' mentoring program
  - 6.6. Regular participation and promotion of local community based no to violence against women and children initiatives such as White Ribbon day.
7. I am also a subject coordinator and sessional tutor at the Bendigo campus of La Trobe University Law faculty.

### **Background and qualifications**

8. In 1993 I returned to study as a mature student, completing an Arts/Law double degree at Monash University, graduating in 2001.
9. I completed my articles at HSW Lawson & Co, a regional law firm in Castlemaine Victoria, and was admitted to practice in September 2002.
10. In June 2003 I commenced work with ATSI (formerly ATSI) as a Senior Project worker in the Law and Justice branch on a short term contract.
11. I was then employed by Native Title Services Victoria as a litigant lawyer representing Victorian Indigenous communities in progressing their native title claims.
12. Throughout my professional and personal life I have been involved and made many friends within the Indigenous community throughout Victoria. I have also been privileged to meet and speak with Indigenous elders from many parts of the world. I have strong personal relationships with many Maori, and am privileged to be considered whanau (family).
13. My understanding, respect and appreciation of Indigenous culture has been developed and encouraged through these important connections and influences. Accordingly I pay my respects to Indigenous elders past and present, both in the country I live, around the state and around the world.
14. Finally I would like acknowledge my own elders, family and friends – 'I truly stand on the shoulders of the giants who have come before'.

### **Loddon Campaspe Community Legal Centre**

15. LCCLC was founded in 2005 in response to a period of sustained campaigning by the family violence service EASE (now the Centre for Non-Violence), the Loddon Campaspe Centre Against Sexual Assault and the Advocacy and Rights Centre (now known as ARC Justice). We were government funded and supported by philanthropic funds. The LCCLC sought to provide general free legal assistance to central Victorians and to provide specialised legal assistance to women experiencing family violence.
16. The primary work of the LCCLC can be characterised as identifying and addressing unmet legal need in the Loddon Campaspe region. We provide general legal advice, both by telephone, face-to-face in office appointments and regular outreach advice sessions throughout our region. There is a strong focus on generalist areas including family violence, family law, criminal matters, child protection, infringements, debts and many other matters that are not funded by Victoria Legal Aid (VLA) and/or too expensive to pursue through private legal representation. We are also funded from a variety of sources for many discrete legal projects including a Consumer Affairs legal assistance program, and our Health Justice Alliance with Bendigo Community Health service to name a few.
17. Family violence has historically made up a third of the LCCLC's casework but over the past few years this has increased to almost half of our current workload. At LCCLC, we aim to prioritise victims of family violence, and VLA duty services pick up the rest. As our duty services almost solely focus on victims of family violence we are able to specialise in this area of law, specialise in working with this vulnerable group and also importantly spend time with the women. We make sure that we spend enough time to ensure that they understand what is happening and are able to make informed decisions. We also make sure they are connected in with support – and we are able to do this due to our strong relationships within the sector. We also take a holistic approach to other issues that the woman is facing and either assist in related legal problems or ensure she is appropriately referred.
18. In circumstances where there is a conflict, we assist the respondent and the duty lawyer will assist the applicant. We find that family violence related issues permeate and influence much of the work we do, be it family law related, child protection, incurring infringements or even the ability to retain housing or a job.

19. By way of background, in October 2008, LCCLC produced a report entitled, '*Family Violence Legal Assistance Services: Identifying and Responding to Unmet Need*' which is attached to this statement and marked 'CC 3'. Amongst other things, this report outlined the lack of family violence legal service across the Loddon Campaspe Region and the challenges we faced at that time. We used this report to promote urgent need for family violence funding. It also provided us with a snapshot of the legal needs of all regions we worked in. It became a foundation document for LCCLC. I was involved in the preparation of that document.

#### *Family Violence Outreach Program*

20. The LCCLC introduced a Family Violence Court Outreach Program in February 2007; now known as the Family Violence Legal Service. The development of our Court program was informed by the Bendigo region Court staff and Magistrates, VLA and other solicitors acting as Duty Solicitors, the Court Network staff and the Integrated Family Violence Network. The ultimate aim of our service was to ensure that all unrepresented litigants had the option of accessing free legal advice, representation and support at the Court, and for victims of family violence to have non-legal support and follow up where appropriate after the Court date.
21. At this time, we were advised anecdotally that the duty solicitor services appeared to be prioritising assisting respondents as opposed to applicants. This appeared to be due to a combination of factors including the perception(s) that victims were more likely to be assisted by police in applying for Intervention Orders and that respondents had more to lose in terms of the negative impact on their legal rights. In setting up the Outreach Program, we also spoke to a number of agencies and organisations outside of our region involved in responding to family violence. I visited the Ballarat Family Violence Court where I spoke with the coordinating Magistrate for family violence at the Ballarat Magistrates' Court (Magistrate Toohey), VLA, community legal centres (CLCs) and Applicant and Respondent Support Workers. Our objective was to replicate the Family Violence Division model as far as possible in our Outreach Program, notwithstanding the lack of any equivalent resourcing. We have always relied heavily on the local agencies to fill this void wherever possible.
22. We commenced the Family Violence Outreach Program at the Bendigo Magistrates' Court in January 2007. Our role was to provide legal advice and representation, prioritising assisting victims in family violence intervention order proceedings, during their attendances at the Court.

23. In June/July 2007 the LCCLC entered into an informal (and unfunded) arrangement with the Integrated Family Violence Network to provide non-legal support for women and children who were victims of family violence. In real terms this meant that EASE (now Centre for Non-Violence – **CNV**) and Annie North (family violence refuge services based in Bendigo) developed a roster between them to ensure a worker from either organisation was available at Bendigo Court each week. Since the incorporation of this partnership into our program the Family Violence Service has been able to ensure appropriate emotional/ non-legal support is available for victims as well as an excellent support for the solicitors in being able to obtain instructions from often highly distressed victims.
24. We have had similar non-legal support program(s) in place for our fortnightly Maryborough and Echuca Court outreach since their inception. It has also often been the case that the non-legal support worker has attended Court on alternate weeks that LCCLC do not have a presence. In some instances the non-legal support worker has been able to arrange for matter to be adjourned to a date when the LCCLC attend to ensure ongoing advice and assistance. Referrals to our service for future assistance are also regularly made because of this partnership.
25. As a direct consequence of this program CNV have had to reallocate their staff and resources to provide these Court support services. Currently this support is provided at Maryborough, Echuca, Kyneton, Castlemaine and Bendigo Courts sittings. As far as I am aware CNV have received no funding to support this reallocation of resources.
26. LCCLC obtain the consent of our clients to work collaboratively with CNV in supporting them through the legal process. It has also meant that disclosures made to the CNV worker can be shared with the LCCLC lawyer assisting, ensuring the advice and assistance can be truly targeted to the individual client's needs. LCCLC would generally only assist the client at the interim stages of their matter – after which they would be referred to a private or legally aided solicitor for ongoing assistance.
27. The program also sought to provide advice/ assistance to protected persons (that is, people who were the subject of an application made by police) as well. We found at some locations prosecutors were more receptive to this than others. We were able to provide advice and referrals for many related issues such as family law – outside of the remit of prosecutors. We also found that in many of the satellite courts a single prosecutor would be responsible for the large criminal mentions list as well as the family violence. We were often able to obtain instructions to tailor orders specific to the protected person needs and feed this information back to the prosecutor – who would then apply for the orders sought. A high demand soon emerged for these services.

28. We also made it part of our priority to build family violence networks in each of our outreach locations. Bendigo was comparatively 'easy' because we already had extensive relationship and networks arising from the establishment of our generalist service.
29. Over the years, we have been quite successful with building and maintaining these relationships. However it has varied over time as we have had to change our focus due to resourcing and other priority needs. Like any good relationship ongoing participation and commitment is required. Unfortunately the common theme for many organisations involved in these family violence networks was the lack of any financial resources to fund participation in these essential preventive networks.
30. The Outreach Program currently operates at Bendigo (January 2007), Maryborough (February 2008) and Echuca (September 2009).
31. Since 2007 we've also developed a clinical legal education program with La Trobe University Bendigo campus, where Bendigo based law students assist in our Outreach Programs in 2nd semester each year. We also have a strong student volunteer program, also exposing students to Outreach experiences where ever possible. Over the years since its inception the students have quickly established themselves as an essential part of the Outreach 'team' – often serving as eyes and ears for the solicitors as well as an extra layer of support and safety for the clients we assist.
32. A general observation arising out of my Outreach Program experiences is that often it appears that perpetrators of family violence are rarely held to account for their actions outside of the placement of an intervention order against them, unless there are also associated criminal charges.
33. Section 1(c) of the *Family Violence Protection Act 2008* states the third purpose of the legislation is to '*promote the accountability of perpetrators of family violence for their actions*'. We have tried to do this as much as possible in the family violence area, however generally those considerations are difficult to implement, particular in an environment where respondents often consent to an order without admitting to any of the allegations. This outcome ensures victims are not put through the stress and potential trauma of a contested hearing, and alleviates pressures on the court systems. The balance of accountability and promoting safety is difficult, however I believe greater emphasis on this needs to be given.

34. The initial Bendigo Court Outreach Program was set up through a small grant of philanthropic funding provided by the Ian Potter and William Buckland Foundations. It is my understanding that this funding was for the analysis and set up phase only.
35. From the period of 2007 until 2012 the Outreach program was supported solely through our generalist legal services. VLA provided funding for an extra lawyer in 2008 for general services, in recognition of the substantial unmet generalist legal need within the Loddon Campaspe region. We made numerous submissions and representations to VLA and Government during 2008 and 2009, highlighting the huge increases in the numbers of women accessing our family violence Court outreaches and the significant unmet family violence related legal need in our region. Unfortunately LCCLC was told that it had already been provided with an extra generalist lawyer and that this needed to also cover family violence. Lack of appropriate funding has meant our services have been more 'triage' than holistic.
36. In 2011 we successfully applied for family violence project funding through the Legal Services Board for a 3 year research project titled 'Will Somebody Listen to Me?'. The project funding commenced July 2012.
37. The only family violence related funding LCCLC has received since 2005 has been through philanthropic funding.

*'Will Somebody Listen to Me?'*

38. The 'Will Somebody Listen to Me?' Project (**WSLM**) is a family violence project of LCCLC, funded by the Legal Services Board, which commenced in 2012. The project was originally titled 'Why Didn't You Ask?' WSLM was a three-year project aimed to give a voice to women who had experienced family violence and increase legal solutions that supported outcomes preferred by women. A copy of the report is attached to the submission at 'CC 1'.
39. The Project employed a social worker/ project worker and a family violence solicitor. We extended family violence legal services to Swan Hill, Kyneton, Maryborough, Castlemaine and Kerang. The Project delivered community legal education sessions on family violence and legal protections for those at risk of family violence to service providers, particularly in the health industry. Through this project we substantially expanded and further developed really positive relationships with specialist family violence organisations, regional agencies and regional health providers.

40. The Program has been evaluated by Dr Liz Curran, Senior Lecturer at Australian National University. This evaluation is attached to the submission at 'CC 1'.
41. As at 31 July this year our funding for WSLM lapsed and we will only be able to provide services as before the grant. We will be restricted to providing advice and representation for interim matters only. I am very concerned about this because the Program has been so effective since it was implemented, providing legal advice and representation as well as substantial community legal education, awareness and relationship building – giving confidence to our smaller regional communities around continuity of access to safe and reliable family violence services.
42. Our partner agencies in locations such as Kyneton are genuinely devastated that LCCLC will be no longer able to provide a service. LCCLC will be returned to the situation that we had in 2007 – 2012 of very limited Court based interim services restricted to Maryborough, Echuca and Bendigo.
43. For this Program, we have done a significant amount of research about various communities and what they need. We have built strong relationships over time and done a great deal of work in maintaining and expanding these across the region. I think the key takeaway is that all funding given for family violence programs such as this one must be recurrent and long term. That hasn't happened in our case; to date our strong advocacy for continuation of funding has been unsuccessful.
44. LCCLC has applied for funding from the state government in their recent family violence specific funding round. Whilst we are supportive of the state government in prioritising family violence services, we do not know if we will be successful in our application. We are disappointed that the funding in this grant is not adequate to address need and that there will not be continuous services.
45. I also note the contributions of Carolyn Nielson (project worker/ researcher) and Bonnie Renou (family violence lawyer and project coordinator) in driving and delivering this valuable program. These two remarkable and highly skilled women are unfortunately no longer with our service. In an ideal world Carolyn would have ongoing employment to further develop, present upon and implement the recommendations arising out of the research. Bonnie would still be engaged in the outreach, networking and community development and education initiatives she instigated whilst employed with this project.



## Indigenous communities

46. Around 2008, after the Outreach Program came into effect, we were alerted to the problems faced by the Echuca Indigenous community with regard to family violence. We recognised the need to extend outreach to this community.
47. We were advised that culturally appropriate organisations such as the Victorian Aboriginal Family Violence Prevention Legal Service had been unable to extend outreach to the Loddon Campaspe region due to their own funding and resource constraints. The Victorian Aboriginal legal service (**VALS**) has a regular presence at Echuca Court, however this was usually limited to criminal matters. We therefore extended our Court Outreach program in 2009, aligned with our fortnightly generalist advice service outreach to Echuca.
48. At the time we were setting up our Echuca Court Outreach we also spoke to members of the local Aboriginal co-op & health service – Njernda. We further met with the Loddon Mallee Southern Region Indigenous Family Violence Regional Action Group (**IFVRAG**), a program funded by the Department of Health and Human Services.
49. As a result of these meetings LCCLC was invited to become an ‘Associate Member’ of the IFVRAG – the impact being that as an organisation we were invited to attend regular meetings and be involved (in a supporting role) in discussions and planning around community based initiatives for reducing family violence, promotion of safety and healthy relationships in the IFVRAG’s region.
50. Throughout these organisations there was a strong emphasis on addressing family violence through education, accountability, transparency with police and assurance of legal advice and assistance for both applicants and respondents.
51. I was also invited to be involved in the Wollithica men’s group in Echuca, speaking and presenting on several occasions around family violence and the impact on families and communities.
52. I feel there are compelling and important reasons for being part of these types of men’s groups. It reinforces the message that something needs to be done about men’s behaviour and that men should take a lead role in implementing this change. We challenge men to get help to address their behaviour and hold them accountable as a community when they hurt those they purport to love.

53. Another important way of responding to family violence in Indigenous communities is to get elders involved in prevention and community awareness programs. The value of creating opportunities for the voice of the elders to be heard in speaking out against violence cannot be understated, and is fully supported by the IFVRAG.
54. Court safety was identified as a major concern, and heavily influenced our decision to set up our Court outreach program. In my experience, facilities at the Echuca Magistrates' Court were and are not safe to attend for Indigenous women for a variety of reasons, including the fact perpetrators and their families often congregate outside the court and women would feel unable to go in to the building. This is true for Indigenous and non-Indigenous victims of family violence.
55. I recently attended a meeting with Echuca based members of the IFVRAG and Njernda family support workers to reflect on what changes if any have taken place since 2009. Their combined feedback and reflections indicated there are still serious concerns for Indigenous women experiencing violence around accessing the courts.
56. Indigenous community members also told me that police have often responded inadequately to victim complaints. I've heard of far too many instances and anecdotes of where Indigenous women have called the police and police have not attended. For example, a few years ago a Njernda support worker described an occasion where one of her clients had called the police during an incident. After 10 – 15 minutes the Police hadn't attended so the woman rang the case worker for help. The case worker then rang the police directly and they told the worker to go and attend to the incident herself if she was so concerned.
57. On another occasion, an Indigenous woman who had suffered a violent assault by her partner attended the police station to get help. The officer at the counter told her to 'go to Court [to get an intervention order] because it is open'. When she then approached me as the duty lawyer I told her to go back to police as there was an allegation of serious criminal conduct which should have been investigated by police. It also should have been a police application for an intervention order give the seriousness of the allegations. Examples of police inaction such as these have entrenched the serious concerns within the Indigenous community with regard to access to justice and courts.
58. After my recent meeting with Njernda it appears that the workers and elders' views are that very little has changed. There have been positive recent meetings with the

police at Divisional and Superintendent level that have been well received by the community, however the discussions around appropriate police responses have yet to take effect at the local level. Another more recent example was given where a woman was stabbed by her partner. Police were called and did not attend. Again a worker attended to the victim and transported her to hospital for treatment. The strong view by the workers and community members present at our meeting was that there was no police accountability for their lack of appropriate responses. Importantly there was a strong view that it would only be a matter of time before someone was killed at the hands of her partner due to a lack of police response.

59. It is noteworthy that recent police data reflects that the Campaspe region (including Echuca) has the highest rates of family violence per capita in the state.

### **Nature of proceedings and Magistrates**

60. More broadly, I have a concern about the strong adversarial nature of family violence proceedings. Often the focus on safety seems to be lost. In my view, this should be a therapeutic jurisdiction.
61. For example I have had many occasion where a respondent has been 'hovering' or following my client around the Court precinct. When I have raised this with opposing counsel the responses can be anything from 'there is no order in place stopping him from approaching', through to the inference that my client is making it up to bolster the case. Fortunately these scenarios are the exception rather than rule, however when they do arise they highlight just how far we as a legal profession still need to go.
62. The different approaches taken by magistrates can also be disconcerting. Some magistrates understand the 'new' legislation and its purpose, but others still enforce the ideas entrenched in the old legislation, by seeking to apportion blame to both parties to the relationship and query why parents don't 'grow up and move on'.
63. I think that it is very important that magistrates receive extensive training on family violence including the experience of women who go through the Court.
64. Occasionally I hear suggestions that the current legislation should be changed, but there are already a range of powers available to magistrates to promote safety for victims, preventative measure and accountability for respondents. The problem is that these powers can be applied inconsistently by different judicial officers. It isn't a

matter of changing the legislation but of extending resources to properly implement legislation.

65. Extensive recommendations for courts, lawyers and magistrates were made by the women in the WSLM report. A copy of the report is attached to the submission at 'CC 1'.

### **Safety and security at the courts**

66. Safety is a serious concern at our regional courts as noted by the women in the WSLM report.
67. At the Bendigo Magistrates' Court there is a separate new Criminal mentions / Bail Court opened this year. The new court has airport – style security, the older building with the four other courts still does not. Also none of the satellite courts in our region have appropriate airport security.
68. As an example of how potentially dangerous this can be, several years ago I witnessed a litigant bring an electric bike into the Court network area to recharge it. This person was known to Court Network. Shortly afterwards, a Court Networker noticed a kitchen knife sitting in the basket of the bike. Police attended and removed the knife. This wouldn't have happened if there had been airport security in place.
69. This is the realm that we operate in as lawyers and that's the unsafe environment women are exposed to in seeking intervention orders. The courts should be a place of safety, the reality is this isn't the case. I've had applicants tell me that they won't access the court in fear of the respondent showing up and confronting them at court. I've watched respondents continually approach the victims, keep them under surveillance and follow them around the court. On one occasion the respondent stood at the top of the walkway outside of the Bendigo Court and barred exit for the applicant and our student volunteer. Police were called, but ultimately the respondent was not held accountable for his behaviour.
70. Another issue is that family violence matters are often not prioritised in any of the satellite courts. Magistrates often encounter huge lists of criminal mentions, child protection matters and family violence applications. Often the criminal and child protection matters will be given priority by the magistrate. It is not unusual to see non-appearances and drink driving licence restorations being dealt with before family violence matters. This can send an unintended message to litigants about how

serious family violence matters are considered. It also means applicants are left exposed to respondents within the court precinct for unnecessarily longer periods of time.

### **Advantages and disadvantages of the duty lawyer service**

71. The issues regarding the duty lawyer service are comprehensively addressed at [20] of the submission at 'CC 1'.
72. The 'triage' style environment is far from optimal. Sometimes you can have 40-50 people waiting around at court for a variety of matters at the one time and a significant number of them are waiting to see a duty lawyer. It is similar in Maryborough, Echuca and Kyneton, but it can vary. There is simply not enough time for the duty lawyers to understand each client's story.

### **Alternative models for assisting applicants**

73. In 2010 I attended a Clinical legal Education conference in the UK where attendees spoke about the McKenzie Friend program run by the National Centre for Domestic Violence, a scheme that assists victims in applying for the UK equivalent of an intervention order. One example discussed was where matters are heard in chambers. Judicial officers speak to the applicants. Interim relief is provided and the matter is referred to the Family Court after four weeks. There is a volunteer pool of lawyers and legal students right across the country.
74. To my mind the benefit of this type model is that a pool of lawyers and legal students are utilised across the country in rural and regional areas not otherwise serviced by family violence type practices. Importantly law students were exposed to the significance of family violence issues in the community, developing an awareness and nuanced understanding that would hopefully carry over into their professional careers.
75. This type of model could potentially be adapted and implemented at a local level. Properly trained advocates (not necessarily from a legal background/ law students) could also be used as 'McKenzie Friends' where required – noting that s.65 *Family Violence Protection Act* allows that the '*Court may inform itself in any way it thinks fit, despite any rules of evidence to the contrary.*'

76. I feel we should be expansive in our thinking when it comes to exploring models such as the one mentioned above. Any alternative models should also be properly resourced.

### **Undertakings**

77. Undertakings should play a very limited role in my view. As far as victims of family violence are concerned, we're advocating for the wrong thing when we use undertakings. A 'promise' to not engage in prohibited behaviour is pretty hollow in the context of the dynamics of many family violence relationships, where the perpetrator has often apologised and 'promised' not to hurt the victim again, only to go on and abuse and assault her again and again. There is a massive disconnect between the intention of the legislation and these written 'promises'. In my experience, and for the most part, undertakings are only of any use in minor matters.

### **Cross applications**

78. We still occasionally see cross applications being brought by respondents. They are often used as a negotiation tool – where respondents say, 'I'll agree to your application, if you agree to mine'.
79. There are existing powers for a magistrate to stay or strike out proceedings that are scandalous, frivolous or vexatious under the *Magistrates' Court (Family Violence Protection) Rules 2008*. This is a useful way of dealing with frivolous cross applications.
80. I have also read recommendations that special leave should be granted before allowing the filing and service of a cross application. I think that is a great idea. Of course there needs to be safeguards in place around that, because sometimes the aggressor 'gets in first'. Ultimately this will always be a matter for the magistrate to assess.

### **Civil and criminal proceedings**

81. An intervention order is a civil order, and a breach is criminal, and sometimes these related proceedings can run completely separately which is inefficient. In Bendigo there are four local magistrates and regular visiting magistrates. The civil and criminal matters get listed on different days in front of different magistrates. I have been involved in matters where the criminal and civil matters have been dealt with separately. The accused may plead guilty to a family violence related offence but

refuse to consent to an intervention order. This means that the victim may have to give evidence twice. This is huge waste of court time and resources and is extremely distressing to the victims.

82. In theory, the family violence legislation allows for evidence to be given by way of affidavits, rather than having to put the victim back on the witness stand. There should certainly be more scope for evidence to be given in this way.
83. Under s.74 of the *Family Violence Protection Act 2008*, a court can make a final order if satisfied that the respondent has committed family violence *and is likely to continue to do so or do so again*. There are often contested hearings run about the second limb – and it can be hard to prove the likelihood of future conduct. This may be an area that requires further legislative direction.

#### *Intervention orders and responses to breaches*

84. The response of police is a significant concern for the women in the WSLM report. A copy of the report is attached to the submission at 'CC 1'.
85. In the time I have been working in the family violence area I have noticed a lot of positive changes to the way police generally deal with family violence incidents and in particular breaches. For example the setup of the family violence teams at headquarter stations is to be complemented.
86. However we are still regularly encountering a variety of approaches taken to breaches by police. At a regional level we have been advised on many occasions that police implement a zero tolerance approach – that there is no such thing as a 'technical' breach. In practice we still hear of far too many occasions where an affected family member (AFM) reports that a respondent has approached her, has rung and abused her, or has even sent a letter or text message saying 'I'm sorry' or 'I still love you' and is told by an informant that it is a 'technical breach'.
87. There is also the 'it's your word against his' excuse given by some police officers. We regularly encourage our clients to report these issues to the family violence unit where they are properly dealt with.
88. The above approaches are clearly inconsistent with any 'zero tolerance' approach. Although a conviction may not be secured it is a way to hold respondents' accountable and promote compliance with the order, rather than devaluing the

intervention order and its safety intent. Ultimately it is for the court to decide whether it's a breach, not the police.

89. We have been noticing there appears to be an increase in the severity of the penalties where breach charges are laid, consistent with the greater emphasis and understanding of the impact of family violence on our community.
90. Sometimes we have clients ring up to follow up on whether an intervention order breach has been followed up by police. This is quite distressing for our clients as they are unaware whether the respondent is going to be held to account, or if any further action is to be taken. It is also an essential part of any ongoing safety planning; if a respondent has been interviewed or charged there may be a risk of 'payback' against the victim. Better communication process between police informants and the victims is essential.
91. Enforcement of orders is an ongoing issue. I have heard some negative stories from colleagues and clients in this space. For example, I have been told of clients who have spoken to police, saying that their partner has breached their intervention order and the police have told them that they won't approach the partner because he's too dangerous. One of my clients disclosed that her local police officer (small rural community) rang her and told her to bring the children to the police station so the respondent could see them. When she refused the officer said it was preferable for the police to supervise the visit rather than waiting for him to go and kill the kids.
92. Another example is where the officer was a friend of the respondent and attempted to 'mediate' family law contact whilst off duty – notwithstanding the intervention order in place. These are actual experiences shared with myself and my colleagues.
93. Ultimately, the order making process by police depends on the availability of the police to do so. Their response is usually great when we refer matters in Bendigo but our clients experience varied responses across our region, ranging from excellent to poor/ dangerous.

### **Family Violence in the Magistrates' Court**

94. In setting up our family violence outreach programs across our region we have relied heavily on the good will and support of the registry staff and coordinators. The ongoing success of our programs has been in no small part to the collaborative approach taken by the different registries – in allowing us access to extremely limited



- space and resources wherever possible, and discussing protocols and practices particular to each court location to maximise safety and access to legal services.
95. All of us involved in working regularly at the courts around our region are well aware of the inadequacies of each court and how to attempt to work within those limitations.
96. For me it is hard to comment on what the court can do, and how they can better monitor compliance and respond to breaches. Clients have given feedback about the process that suggests there are many barriers. There are cases where the respondents have continued to breach the intervention order yet no action has been taken by the courts. The research done by the WSLM Project is really good on this point.
97. I think the process of making an application for an intervention order can be manifestly unsafe and fraught with danger for victims of family violence, particularly in a rural/ regional context. The court environment itself can also increase the danger level. I've also seen inappropriate responses from the court, lawyers, police and registry staff over the years that can increase danger for victims and act as a huge disincentive to accessing the courts for protection.
98. I have also seen many instances of how the court, registry, lawyers and supports can work brilliantly in promoting safety and accountability in the most trying of environments. The difference in the two extremes can be as simple as a change in personnel or a different magistrate. It goes without saying that the distance between the two extremes needs to be reduced in favour of promoting safety and accountability. Over the past 8 years the change has been noticeably towards the latter, however work still needs to be done.
99. One surveyed applicant in the WSLM project said that the magistrate had told the respondent during an intervention order proceeding, 'that's family violence'. For the respondent this was the first time his behaviour had been called for what it was and it had sunk in. I think this is great because in this instance, the applicant appreciated that the magistrate was making it about the respondent's behaviour and making him accountable.
100. One of the stated purposes of the legislation is to promote the accountability of perpetrators of family violence for their actions. It has been suggested that in keeping with that purpose, individual respondents should be assigned to particular:

magistrates to monitor compliance. Although this may be resource intensive and difficult to implement the idea still has its merits.

101. I am also in favour of the specialist Family Violence Division being rolled out state-wide. The beauty of a specialist family violence court is they can address all matters that are relevant. It's a one stop shop. The type of specialist program that allows for review is good. The assigned magistrate would be able to follow up on men's behavioural change program participation. The process needs to involve a more genuine therapeutic lens. This wouldn't be for all cases but the point is, if we're serious about therapeutic jurisprudence, we need to explore what does that look like?

### **Court Network**

102. I want to acknowledge the exceptional role that Court Network Services have played in Bendigo and Echuca. Their role cannot be overemphasised, especially when you have respondents refusing to speak to a lawyer and insisting on appearing in person.
103. The typical day at Bendigo for me involves a court list meeting with the family violence registrar, the duty solicitor and the family violence liaison officer (if available) to work out conflicts and identify any safety concerns. The duty solicitor and I then go to the Court Network area to see what clients are requiring advice and representation.
104. All applicants and respondents are referred to Court Network. If there is a conflict, they are separated physically to different parts of the court building. Court Network staff quieten down people and reassure them. They play a brilliant role in mediating first contact with the court. They constantly check in with the client. They approach us and our student volunteer with any problems. Court Network is an essential extension of eyes and ears that we don't have. They liaise with police and keep babies amused, they track down lawyers to act as 'friend of the Court' when the existing lawyers are conflicted – they play a lead role in attempting to make an unsafe environment into a safe one.
105. In Echuca my experiences have been very similar. We have tried unsuccessfully to advocate to extend these services to Maryborough. Court Network needs to be more extensively resourced. They are an extension of the community - they have a real, human and impartial presence which is essential in this type of work.

### **Reflections on my role and its impact**

106. There are some clear but perhaps unavoidable challenges I face in my role. I regularly speak about the gendered nature of family violence in training, community education and no to violence initiatives such as White Ribbon day. In light of this I'm occasionally confronted with an assumption that I am biased or unable to perform my duties as an officer of the court and in my client's best interest.
107. In practice, the approach is not significantly different whether you're acting for the applicant or the respondent. You explain the legislation, the consequences and the process and then act upon your clients instructions. If anything my experiences ensure there is no accidental 'collusion' when acting for respondents, that I can provide the full range of therapeutic options available if they identify issues they need to address, and how to avoid breaching the order (if any) and associated criminal consequences. If there is no merit/ grounds for the application then the advice and assistance is directed towards contesting the application.
108. In terms of managing the personal impacts of this type of work our organisation is strong on encouraging mentoring roles and supports. The Safer Families mentoring program run by Women's Legal Service is a great example of this. The program provides training for new lawyers in the family violence area and then links each participant with a mentor working in the family violence area. As a mentor in this program I have also had training around unpacking and debriefing with mentees, as well as how to guide and encourage. I've also learnt a lot from those I have mentored.
109. LCCLC also has formal reflective practice program with an external mediator and counsellor every four to six weeks. This is part of our organisation's commitment to emotional health and I believe that the value of programs like this cannot be understated.

#### **A 'blue sky' plan for responding to family violence**

110. Ideally, women and victims of family violence in general should feel that they are supported when reporting family violence. They should feel that they can front up, explain their family violence situation and ask for help.
111. With the appropriate resources, there would ideally be an ordered approach where women are referred and where we have targeted responses specific to that person, including health, accommodation, legal support, and a team who assists that person through the whole process. That would also allow the person to tell their story only

- once. Re-traumatisation can occur when the person has to continually repeat their story.
112. A current proposal gaining momentum is around identifying and fully resourcing locally based regional and rural community agencies, health services, and other not for profits to be access points for courts via video and other alternative technologies. For example in Kyneton, COBAW community health service could be resourced to provide a safe access point for women experiencing family violence. Court link video conferencing could be used for applicants to access a central Magistrates Court service on an as needs basis. An interim order could be made ex parte and the matter then listed for further mention to the next sitting of the Kyneton Court. On the next occasion the applicant could again access Kyneton Court from the safety of COBAW offices. Importantly the client could also access other existing programs and services at COBAW, including, family and child related services, housing, and counselling. The client could access legal advice services in the same manner. With this approach the community organisation is rightly acknowledged and fully resourced to be an effective and integrated support for the specific needs of each client attending.
113. We also need to address the needs of men who use violence against their partner(s). The simple response often appears to be Men's Behaviour change programs, however there needs to be so much more. The Drug Court's model is an excellent example of a more targeted and therapeutic response, properly resourced and with appropriate judicial review to ensure compliance as well as promote progress. Punishment should never be the sole objective, rehabilitation should also be at the forefront.
114. Finally, I think family violence should be available as a specialisation for lawyers. As a starting point it incorporates knowledge of family law, child protection and criminal proceedings. It can intersect areas around elder financial abuse, employment law, contract law, property law, common law equity principles and the like. It can encapsulate therapeutic jurisprudence and associated restorative justice and community development principles. And all too often these complex legal issues are dismissed as 'just a domestic'. This needs to change.

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**Christopher Leonard William Casey**

Dated: 31<sup>st</sup> July 2015