



Royal Commission
into Family Violence

WITNESS STATEMENT OF DENIS JOHN NELTHORPE

I, Denis John Nelthorpe AM, Chief Executive Officer, of Level 1, 8 Watton Street, Werribee, in the State of Victoria, say as follows:

1. I am authorised by the Western Community Legal Centre Ltd 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 purpose of this statement is to set out a proposal I have for the establishment of specific processes and entry points within industry and government to deal with family violence in the form of economic abuse.

Current role

4. I am currently employed as the Chief Executive Officer of the Western Community Legal Centre Ltd. Until 1 July 2015 I was the manager of both the Footscray and Wyndham Community Legal Centres, which have now merged with the Western Suburbs Community Legal Centre to form the Western Community Legal Centre Ltd (**Centre**).
5. The role of the CEO is to lead the new organisation in delivering strategic outcomes for the new Centre. In particular the role is to focus on leadership in service delivery and advocacy functions and to ensure the new Centre is a strong, sustainable and influential organisation.

Background and qualifications

6. I hold a Bachelor of Laws from Monash University.
7. I have approximately 30 years' experience working in consumer law.
8. Between 1986 and 1992, I was the director of the Consumer Credit Legal Service in Melbourne.
9. Between 1992 and 1993, I was the director of the State Insurance Office Consumer Appeals Centre in Melbourne.
10. Between 1993 and 1998, I was the director of the Consumer Law Centre in Melbourne.
11. Between 1998 and 2005 I worked as a consultant both within Australia and overseas. I worked on projects for the World Bank on energy regulation in India and Sri Lanka, and for AusAid and the South African Government on projects related to consumer law, and debt counselling. I also worked on projects within Australia on Customer Charters and Industry Codes of Practice in the banking, energy, insurance and telecommunication industries.
12. In March 2006, I took up a part time position as Special Projects Manager at West Heidelberg Community Legal Service (**West Heidelberg CLS**). I worked on a number of innovative debt projects initially related to uninsured debtors and the insurance industry and later on national broad based debt waiver program. I initiated a project which created a novel approach to resolving debt cases through 'bulk negotiation', known as the Bulk Debt Project. I discuss the Bulk Debt Project in detail below.
13. In March 2009 I agreed to be seconded from my position at West Heidelberg to Victoria Legal Aid (**VLA**) to be a member of the Bushfire Insurance Response Unit that was created to assist the members of the public impacted by the 2009 bushfires. I worked with the unit until December 2009 and have since worked with VLA to establish and maintain a permanent Legal Disaster Response team in Victoria.

14. In December 2006, I also agreed to take a part time position as the managing solicitor at the Footscray Community Legal Centre (**Footscray CLC**), a free legal service.
15. In February 2011, in partnership with the Federation of Community Legal Centres, I helped establish the Taxi Driver Legal Service as a new service operating out of the Footscray Community Legal Centre on a part time basis. The service:
 - 15.1. assisted taxi drivers, particularly with insurance related problems;
 - 15.2. produced a report in June 2012 (In the Driver's Seat – Achieving Justice for Taxi Drivers in Victoria) on the problems of drivers within the taxi industry; and
 - 15.3. made a number of detailed submissions to the Fells Inquiry into the Taxi Industry.
16. In October 2014 the laws relating to the insurance of taxis in Victoria were amended in accordance with our recommendations.
17. In June 2011 I was made a Member of the Order of Australia for service to social justice and advocacy for consumer rights, to the development of national credit legislation and to the provision of legal services to the disadvantaged through a range of community organisations.
18. On or around 1 July 2011 I was appointed to the position of part time manager at the Wyndham Legal Service.
19. In January 2012 I was appointed as an Adjunct Professor of Law with the Victoria University Law School with a specific brief to assist with the development of clinical education programs for students of the faculty. I resigned from the position at West Heidelberg in December 2012 to concentrate on managing the Footscray and Wyndham Community Legal Centres.
20. I have experience in co-ordinating and teaching consumer law subjects at La Trobe University, Leo Cussen Institute and Kangan TAFE (a course for community based financial counsellors).

21. Over the past 25 years I have been a consumer representative on various boards and committees and have provided input to government and industry policy development processes. Those roles included the following:
- 21.1. from 1993 to 1995, I was a board member of the first Insurance industry External Dispute Resolution (**EDR**) scheme, the Insurance Industry Complaints Council, which governed both the Insurance and Investment Complaints Schemes prior to the establishment of the Insurance Inquiries and Complaints Scheme and the Financial Investments Complaints Scheme;
 - 21.2. from 1998 to 2006, I was a board member of the General Insurance EDR scheme, the Insurance Enquiries and Complaints Limited;
 - 21.3. from 2000 to 2009, I was a member of the Code Compliance Committee of the Insurance Council of Australia operating out of the Insurance Ombudsman Service;
 - 21.4. from 1 June 2009 to May 2015, I was a member of the board of the Financial Ombudsman Service Limited created through the merger of the then banking, insurance and investment schemes;
 - 21.5. from 1995 to 2005 I was a board member of the Energy and Water Ombudsman Victoria. I assisted with the drafting of the Constitution and Terms of Reference of the Scheme and was foundation member of the Board;
 - 21.6. from 1993 to 1998, I was the Chairperson of the Consumers Federation of Australia;
 - 21.7. from 2000 to 2008, I was Chairman of the board of the Victorian Consumer Credit Fund;
 - 21.8. from 2001 to 2006, I was a member of the National Advocacy Panel of the National Electricity Code Administrator;
 - 21.9. in May 2006, I was appointed Chairman of the board of the Code Compliance Committee of the Victorian LPG Industry; I completed my term

as Chair in September 2012 but have continued to serve as a board member to this date; and

21.10. between September 2008 and September 2011, I was a member of the board of the Essendon Community Legal Centre.

Background to my proposals for family violence reform - the Bulk Debt Project

22. As I set out above, I spent some time overseas between 1998 and 2005. On my return, I commenced work at the West Heidelberg CLS and later at the Footscray CLC. At this time, I reflected on the common practices of community legal centres in dealing with client debt issues.
23. There were many clients who sought legal advice from us who had debts they were unable to pay off. These clients were generally receiving Centrelink benefits as their only income and had no capacity to pay off the debt. Our historical practice, and that of many other community legal centres, was to either dispute the debt by denying liability, or enter into a repayment plan of \$20 or \$30 per week which would take years and years to pay off.
24. These solutions were time-consuming, expensive and ultimately not very helpful for the client or the creditor. I decided that an alternative approach was needed. I came up with what I call the “bugger off” letter. This letter admits liability, admits quantum, and asks the organisation to waive the debt on the basis that the client has no capacity to pay. This letter proved to be very successful. At the Footscray CLC, we were able to assist approximately 300 clients between 2010 and 2014 with waivers of approximately \$3 million of debt.
25. The Bulk Debt Project grew from this idea. In 2010, West Heidelberg CLS received funding from the Victoria Law Foundation to conduct a project titled *Bulk Debt Negotiation for disadvantaged people: Protecting basic income* (**Bulk Debt Project**).
26. Based on the approach I have already described in this statement, the Bulk Debt Project aimed at assisting judgment-proof debtors, who had debts with financial institutions that they were struggling to repay. The term “judgment-proof debtor” describes people who have no assets and low incomes. They are “judgment proof” in the sense that there is little point in a creditor pursuing legal action against them, as there is no real likelihood that the debtor can pay – they need all

their income just to pay food, rent and utilities. In addition, in Victoria, people in this category have legislative protection from being ordered to make instalment payments without consent. Section 12 of the *Judgment Debt Recovery Act 1984* (Vic) provides that where a debtor's only income is derived from a pension or other government benefit, that income is protected and an instalment order can only be made with the debtor's consent.

27. Client cases were collected from legal aid offices, legal centres and financial counselling agencies throughout Australia. Usually these agencies would have contacted financial institutions separately for each client, attempting to negotiate a hardship arrangement, occasionally asking for a debt waiver. As I said above, because of the one-off nature of this assistance, these approaches are extremely time-consuming. There is also strong anecdotal evidence that outcomes vary considerably and may depend on the ability of the advocate, rather than on any objective assessment of the debtor's circumstances.
28. The project assisted 410 debtors. Instead of negotiations taking place for each client separately, they were bundled together into a "bulk negotiation". All cases involved clients on a low income, with most receiving some form of Social Security payment. Many clients had multiple debts. Most clients also had other significant indicators of disadvantage, such as mental illness, disability, ill health or full-time caring responsibilities.
29. Six major financial institutions were included in the project, with bulk negotiations conducted with each creditor. Individual creditors were given collated information about all of the clients who had debts with them. This information included the client's name, debts owed and personal circumstances. Income and expenditure statements were not provided.
30. Approximately one year after it commenced, the Bulk Debt Project had successfully negotiated waivers of approximately \$3.2 million of debt for the debtors. Generally, creditors accepted the basic premise of the project – that the debtors permanently lacked the capacity to pay their debts. Across the five completed negotiations between 2010 and 2011, approximately 85% of matters were resolved by waiver of the debt.
31. Given that these debtors clearly could not pay their debts, the actions by the financial institutions in waiving most debts was sensible. The Bulk Debt Project

identified the futility and injustice in pursuing judgment-proof debtors, whose life circumstances are already extremely difficult. Commercially, it is difficult to understand why financial institutions continue to do so. There are significant costs in terms of staff resources and time - for very little gain. There are similar effects on external dispute resolution schemes and financial counselling and legal aid agencies, which are also investing significant time and resources into helping judgment-proof clients.

32. In March 2011 I co-authored a report on the findings of the Bulk Debt Project. Attached to this statement and marked **DN-1** is a copy of a report titled *Bulk Debt Negotiation Project: Client Profiles and Project Outcomes* dated March 2011.
33. In November 2011, Legal Aid NSW and Victoria Legal Aid joined with West Heidelberg Community Legal Service to expand the National Bulk Debt Project. Over a period of three years the second phase of the project negotiated waiver or closure of 2421 debts, totalling \$18,089,978.19. Combined with the first round the project negotiated more than 2700 debts valued in excess of \$21 million with creditors such as major banks, insurance companies, credit providers, debt collectors and utility providers. Attached to this statement and marked **DN-2** is a copy of various summary tables setting out the details of Rounds 2-5 of the Bulk Debt Project.
34. In the second phase of the project, the referring agencies were requested to identify social experience factors which impacted on debtors. One of the factors included in the menu was family violence. The project identified 203 debts where family violence was identified as a factor. Of those debts, 153 (totalling \$1.07 million) were waived. I believe that there were many others as many agencies chose to identify a single cause rather than multiple causes.
35. Importantly, industry has responded to the issue of unrecoverable debt as a result of the project. In November 2013 the Australian Bankers' Association (**ABA**) funded a discussion paper on 'Long Term Financial Hardship' to explore the issues and solutions to unrecoverable debt. The Discussion Paper was presented and discussed at a national forum in March 2014. The forum was attended by a wide range of representatives from industry associations, financial services, utilities and debt collection corporations, regulators and community sector and legal aid organisations. Attached to this statement and marked **DN-3** is a copy of this discussion paper titled '*Long Term Financial Hardship*'.

36. In March 2015 the ABA released an Industry Guideline on Financial Hardship which included an acknowledgement that unrecoverable debts should be waived by their members. On 1 July 2015 the Insurance Council of Australia issued an updated Code of Practice which included a specific reference to waiver of debt. Individual banks such as Westpac have introduced a fast track waiver process based on the bulk debt guidelines and ANZ and NAB have recently announced plans to introduce measures to deal with this issue. In 2013 Insurer Suncorp agreed in writing not to pursue Victorian taxi drivers for motor vehicle accidents due to problems with the insurance of Victorian taxis.
37. Financial service and utility industries have responded to financial hardship through the introduction of Codes and Guidelines to assist member companies deal with this issue fairly and efficiently. Most service providers now have financial hardship teams, with single entry points and specific protocols for dealing with the community sector and their clients.
38. In this context it should be noted that the Bulk Debt Project was not funded on a recurrent basis. The project was conducted over a four year period to seek systemic change in the treatment of unrecoverable debt. The project has been finalised in the belief that systemic change has been achieved and that low income debtors with unrecoverable debt are able to seek appropriate relief.
39. However, regardless of changes within government and industry processes, agencies such as CLCs and financial counsellors must play a key role in monitoring practices. For example, while hardship processes within industries have improved significantly over the years, the fact that the experience of financial counsellors is reported publicly in a report "Rank the Banks" drives improvements and guards against industry simply paying "lip service". Recently, government funding agreements of some organisations have sought to severely restrict the work of some agencies to individual casework. Ensuring that lessons learnt from casework can be used to achieve and maintain improvements in industry and government practices should be recognised as a vital role of these services.

Economic abuse as a form of family violence

40. In respect of economic abuse as a form of family violence, I refer to and adopt the report recently released by Wyndham Legal Service and Good Shepherd Australia New Zealand titled *Restoring Financial Safety: Legal Responses to Economic Abuse (Report)*. The Report also formed a submission from the Wyndham Legal

Service made to the Royal Commission into Family Violence. Attached to this statement and marked **DN-4** is a copy of the Report.

41. We found in the Report that while many people recognise that financial issues can be a *consequence* of experiencing family violence, they rarely identify economic abuse as a *form* of family violence.
42. We also found that economic abuse can be experienced and perpetrated in a range of ways, from not being allowed to work or having restricted access to household finances, to being coerced to sign for loans or debts or being denied access to phones or vehicles.

Application of the Bulk Debt Project principles to family violence issues

43. One of the main aims of the Bulk Debt Project was to identify systemic solutions for the early resolution of financial hardship cases.
44. I think the principles underlying the Bulk Debt Project can be applied in the family violence space, to assist women who have been the subject of economic abuse.
45. I believe that the service industries, such as banking, finance, the energy industry and telecommunications, have a role to play by recognising in their processes both that family violence is an everyday part of life and that economic abuse is a real and serious issue. The same applies to government departments which levy fines or otherwise impose financial obligations on people who may be victims of economic abuse.
46. Given that there are such common features to the experiences of many victims of family violence, there are clear opportunities to create a model which will work to solve those common financial problems experienced by victims in the aftermath of a violent relationship.
47. The Report was funded by philanthropic organisations. I have applied for further philanthropic funding through Wyndham Community Legal Service for a proposed project to reduce the impact of economic abuse on women. Attached to this statement and marked **DN-5** is a copy of the application dated 30 April 2015.
48. My proposal is to establish industry pathways (i.e. a set of criteria and specific requirements to establish that participants are eligible to receive assistance) and

entry points (i.e. a focused point of assistance) for victims of family violence and, more particularly, economic abuse.

49. The long-term outcome of establishing such specific processes and entry points will be that new and effective pathways for all victims of family violence are created to resolve issues involving economic abuse. There will be a systematic approach to common issues that arise as a result of economic abuse.
50. There are a number of recommendations in the Report that form part of, and complement, this proposal.

Example – waiver of credit card debt

51. To illustrate the proposal by way of example, I refer to an issue I frequently see in practice involving credit card debt. A common scenario is where a woman's partner has a poor credit rating and is unable to apply for a credit card. On being pressured to do so by her partner, the woman will apply for and be granted a credit card, which is then used by her partner. During the relationship, the woman's partner will pay for the debt he accumulates on the card. Post-separation, the woman's partner will continue to use the credit card but won't contribute any money towards it. The woman is left with the debt for a credit card for which she is gaining no benefit. She is unable to pay the debt and is concerned that it will impact on her credit history.
52. Currently, it is very difficult for women to obtain a positive outcome in this scenario. In most cases there is no particular contact point at the bank and there is no particular policy dealing with hardship caused by family violence.
53. My proposal is that first, there should be a clear contact point at the relevant bank for the woman's community lawyer or financial counsellor. This would involve the bank establishing a family violence team, or nominating someone in the financial hardship team to be the family violence officer.
54. Second, there should be a clear, agreed set of criteria that the applicant would be required to satisfy. This criteria might involve, for example, the woman being in possession of an intervention order against the person whom she is alleging incurred the debt, being a low-income earner or Centrelink recipient and the debt being under \$10,000.

55. The criteria, if satisfied, would mean that she is eligible for certain outcomes, including removal of her name, release from liability and/or the ability to sever relationship debts from contracts for unsecured debts.
56. As with the Bulk Debt Project, the work involved in agencies contacting financial institutions separately for each client, attempting to negotiate a hardship arrangement and possibly asking for a debt waiver are extremely time-consuming. In this instance, the situation is also unfair given the woman only obtained the credit card because she felt forced to do so by her partner and is receiving no benefit from the use of the credit card. If there was a systemic approach to this issue, it would enable these issues to be dealt with efficiently and fairly.

Example – necessity of direct access to family violence contact point

57. An example which demonstrates the necessity for an agreed entry point can be found in the case study of a client who was recently assisted by the Wyndham Legal Service and a community agency funded to assist victims of family violence.
58. The client, a victim of family violence at the hands of her partner, relocated to a home unknown to her perpetrator and requested that in order to remain hidden, her phone number be kept silent and her details not be published in any way.
59. Notwithstanding her request, her name, number and address were listed in the White Pages. When this was brought to the telecommunication provider's attention, it took approximately seven days for these contact details to be removed. Once they were removed, the client was encouraged by the Complaints Case Manager with whom she had been dealing to close the complaint, as the issue had been resolved.
60. The client requested support from her support worker and Wyndham Legal Service as she felt the case manager did not appreciate the severity of her situation. Her support worker contacted the telecommunications provider with the client present. They were shuffled between four or five different call centre staff, all of whom were asking for the support worker to provide her own personal details in order for them to be able to speak to her.
61. After requesting to speak with a supervisor, the support worker explained her situation and briefly explained Victorian legislation in relation to family violence (as

the call centre was offshore) and was then able to leave a message requesting a call back from the client's case manager.

62. The case manager called the support worker on two different occasions over a one week period, each time leaving a voice message that he would call back another time, but never leaving a return number for the support worker to return his call.
63. The support worker subsequently received a call from a member of the Escalated Complaints Team. This person understood the severity of the situation caused to the client and is taking steps to assess the possible relocation of the client at the telecommunication provider's cost. This is a positive outcome. However, it took two months before some sort of action was taken.
64. Had there been an established family violence contact point, the problem would probably not have arisen in the first place. Even if the problem did arise, the resolution process and outcome would have been much more timely.
65. A similar problem with a bank illustrates this issue with banking services. A woman sought assistance from a support worker to establish a new separate, secret, bank account to enable her to leave an abusive relationship in the knowledge that she would be able to access savings and receive Centrelink.
66. The support worker and the client approached her bank and provided the necessary proof to open a new account. However the client was still living with her partner and was unable to provide an address for the new account. The bank, not understanding the risk, forwarded correspondence and details of the new account to her home address where her partner opened the mail and discovered the account.
67. The bank has agreed to pay compensation but when requested to provide a new account to replace the now discovered account advised that the client would have to again present at the bank to provide proof of identity.
68. This type of case indicates the need for more training of bank staff, for agreed protocols and a single entry point for lawyers and support workers assisting victims of family violence.

69. I am also aware of several cases where an abusive partner contacted energy companies and obtained the current address of their former partner. I am also aware that current insurance law will not protect a victim of family violence where the former partner, whilst named on the insurance policy, damages the family home after being ordered to leave by the court.
70. Since the release of the Report I have been approached by a number of representatives from the banking, energy, insurance and telecommunications industry seeking to explore the establishment of protocols and agreed entry points.
71. There are also government agencies that could do far more to assist women with family violence orders. One scenario is common among clients of legal centres and legal aid organisations. It is common for male perpetrators to drive a vehicle that is registered in the name of their partner. It is common to find that after the woman has left the relationship, and obtained an order for her protection, she will receive a letter from Civic Compliance seeking payment for unpaid fines. In outer urban areas in particular, due to toll offences, these fines can total thousands of dollars.
72. The correspondence from Civic Compliance will set out the standard practice in this situation. The woman can avoid liability by nominating her partner, requesting the partner to acknowledge responsibility for the fine or fines and advising the partner that Civic Compliance will pursue him for the fines. Not surprisingly, in family violence situations, very few women choose to nominate their former partner.
73. I would advocate that where a woman has a family violence order Civic Compliance should allow the woman to nominate their partner and waive the requirement to seek the signature or consent of their partner. Further, serious consideration should be given to a policy that Civic Compliance accept the nomination and abandon attempts to recover fines in this situation. This would ensure the safety of the woman but may also save money by avoiding further incidents with the perpetrator which could have significant long term financial consequences for the State.
74. A second common example involving a government agency would be VicRoads. For instance, Wyndham Community Legal Service has represented a women who paid \$2000 for a cheap vehicle for personal use. Her partner had insisted that the

registration be in his name. After the woman left the relationship and obtained a family violence order, the former partner refused to transfer the vehicle into her name and threatened to refuse to pay the registration when it fell due or to provide the registration details to allow the woman to make the payment.

75. Lawyers, and VicRoads, advised this woman that she needed a property order from the Family Court to transfer the vehicle into her name. Such an order would cost, if the woman were legally represented, more than the cost of the car, and would take time to obtain especially if the former partner contested the application. The former partner had a much more expensive vehicle and had no need for the cheaper vehicle driven by his former wife. It should be possible to create a protocol which would enable a solution without forcing a woman in this situation to issue expensive family law proceedings, or more practically, to pay for a replacement vehicle.
76. I believe that there are a number of State and Federal Government agencies that should consider the need for protocols for dealing with women that recognise the significance of a family violence order.

Role of government and industry service providers in addressing family violence

77. Scenarios similar to those set out above can arise in and be applied across a range of organisations, including utility and telecommunications companies, banks, and government agencies such as VicRoads and Civic Compliance Victoria.
78. These organisations are often able to identify the first signs of economic abuse and have a key role to play, and a stake in, developing responses to these issues.
79. The basic premise is that we would engage with government and industry to set up specific entry points and pathways for women experiencing family violence, to allow the women and their support services to more easily access outcomes for family-violence related problems. Some of the specific recommendations made in the Report that tie into this particular question include the following.
- 79.1. VicRoads to review its policy and processes to include family violence and hence economic abuse as a reason for transferral of car ownership between spouses and to enable women who are using a car in their partner's name to receive notification when registration payments are due.

- 79.2. Establish family violence teams in businesses that provide essential services - modelled on the financial hardship teams model - to minimise the impacts of economic abuse on customers' access to services.
 - 79.3. Access to essential goods and services to be considered separately to the debt that is attached to the service so survivors of economic abuse can still access these services while property matters are being settled.
 - 79.4. Add a regulation requirement for providers of utilities to amend contract details for joint account holders upon evidence of a family violence protection order.
 - 79.5. Add a regulation requirement for energy, water and telecommunication providers to include evidence of family violence and economic abuse as a trigger for the application of financial hardship provisions.
80. In my view, we need service providers, both government and private sector, to recognise that:
- 80.1. family violence exists;
 - 80.2. economic abuse is a form of family violence; and
 - 80.3. they have a role to play in combating it.
81. I think the public view is that it is legitimate for service providers to have regard to the effect of family violence. It will require a cultural shift but I think it is time these government agencies and industries recognise that this is the appropriate, moral and equitable approach.
82. Further, not only is it right and equitable but in many scenarios it makes economic sense. As with the Bulk Debt Project, pursuing a woman who has very little or no capacity to pay requires expending a significant amount of resources for very little, if any, return. Removing her name from a joint contract where the partner remains liable will not seriously disadvantage the service provider. As I said above, there are similar effects on external dispute resolution schemes, financial counselling and legal aid agencies, which are also investing significant time and resources into helping these clients.

- 83. I think we can all agree that a person who is receiving Centrelink benefits, or is a low-income earner, should spend their limited income on food, rent and energy. To allow women to do so, we need to ensure that there are adequate mechanisms in place to respond to the financial hardships caused by their experiences of family violence.

- 84. This would require recognition by industry and government of the prevalence of family violence, and recognition of economic abuse as a form of family violence. I am hopeful that we are now in a position where this is possible.



.....

Denis John Nelthorpe

Dated: 7 July 2015