



Royal Commission
into Family Violence

WITNESS STATEMENT OF EMMA MARGARET SMALLWOOD

I, Emma Margaret Smallwood, Lawyer and Economic Well-being Project Research Co-ordinator, of Level 10, 277 William Street, Melbourne in the State of Victoria, say as follows:

- 1 I am authorised by Women's Legal Service Victoria (**WLSV**) 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 WLSV made three submissions to the Royal Commission into Family Violence on 19 June 2015. The submission titled 'Economic Abuse and Economic Recovery of Family Violence Victims' is the most relevant submission for the purposes of this statement. Attached to this statement and marked **EM-1** is a copy of this submission titled 'Economic Abuse and Economic Recovery of Family Violence Victims' and dated 19 June 2015. I refer to and adopt that submission (**Submission**).
- 4 I have been asked to comment on several matters, some of which have also been canvassed in the Statement.

Current role

- 5 I was admitted as a lawyer in 2012. I commenced work with WLSV shortly after my admission. My practice since then has been primarily family law.
- 6 I am currently employed as a lawyer and the Economic Well-being Project Research Co-ordinator at WLSV. In my current role, I do a combination of legal and research work.
- 7 In respect to the legal work, I do predominantly duty lawyer services in the Melbourne Magistrates' Court and in the Family Court of Australia.
- 8 In respect to the research work, I am co-ordinating a research project looking at economic abuse, the financial impacts of family violence and the different legal and financial barriers women encounter. As part of that research I have carried

out in-depth interviews of 30 women. I am currently analysing the data obtained from those interviews. We will also be conducting a survey amongst our community organisation partners to look at the prevalence of the different issues that emerged through the interviews. A report will be published in September 2015. The research and the subsequent report will enable WLSV to give financial institutions, service providers and law makers the tools to make evidence-based reform and help more victims of family violence recover financially.

9 I have the following qualifications:

9.1 Diploma of Legal Practice;

9.2 Bachelor of Laws (Hons); and

9.3 Bachelor of Arts.

10 I have a current Victorian Local Practising Certificate (2015-16 practising year).

Co-location of financial counsellors with lawyers

11 Some of the women that I have interviewed have been referred to me through their involvement in the Stepping Stones Project. The Stepping Stones Project delivers integrated legal and financial counselling services to women who are experiencing financial hardship in the context of family violence. The first year (June 2014 – June 2015) of the Stepping Stones Project has been highly successful, with WLSV assisting over 140 vulnerable women.

12 Most of the women who have come through the Stepping Stones Project wouldn't otherwise have had access to a financial counsellor. We see them at a really relevant time; often when they are seeking legal advice it is because they are in crisis. There is also benefit in that it is also one less service that women have to juggle. Women going through the system have to juggle many government agencies, jurisdictions and professionals and the burden is entirely on the woman to manage this themselves.

13 In practical terms, the model of a co-located financial counsellor and lawyer means that the person doesn't have to tell their story more than once, only has to come to one place and remember one phone number. It also gives several different solutions and perspectives on the same issue. The co-location model means that the immediate crisis having been dealt with, the woman can have access to advice both on her legal options and on her financial options.

- 14 There is traditionally limited understanding of financial counsellors amongst family lawyers, and vice versa. The two professions assisting women experiencing family violence have not, in the past, worked together. This understanding of each other's views and services is crucial.
- 15 For example, in some circumstances, a financial counsellor who is pursuing a waiver or a reduction of debts might have an adverse impact on the woman's longer term financial circumstances. In carrying out a property settlement, the court will look at each person's debts and assets. If a financial counsellor negotiates a reduction or waiver of the woman's debts prior to the settlement occurring, these debts won't be taken into account in the settlement, even though the woman has carried the burden of that debt for some time. Her partner's debts will be taken into account, resulting in a situation where the woman appears to be financially better off than him and might receive a lower split of superannuation or other assets. It might be that waiting until after the property settlement to deal with debts will result in a more equitable outcome for victims of family violence.
- 16 Overall, the co-location model has, in my view, been extremely successful and should be applied across the state.

Themes that emerged from the research interviews

- 17 The interviews I conducted as part of the research project explored ways in which family violence intersected with women's financial circumstances.
- 18 The common themes that emerged from the interviews included:
- 18.1 issues with the police response in terms of being able to deal with economic abuse as a form of family violence;
 - 18.2 women's experiences of intervention orders being unhelpful in many circumstances;
 - 18.3 experiences of housing issues and often having to flee the home and the resulting financial implications; and
 - 18.4 interactions with different service providers (such as energy retailers, banks, and credit providers).
- 19 Overall, debt emerged as the big issue. And in particular, joint debt – what to do when you have a joint debt with the perpetrator of violence? Women might leave a relationship but the debt follows them. This is an issue particularly when the

perpetrator uses that debt to continue to perpetrate violence against the woman and there is no legal recourse to sever the joint liability (whether that be a utility account debt that she can't sever, or a credit card debt, or shortfall on a mortgage).

- 20 Although there are some available legal mechanisms, they are not being used. I think there is some potential to make better use of intervention orders in dealing with some of the debt, small property and liability issues that arise. I also think there are some mechanisms in the family law jurisdiction that possibly could assist women but that are not used - mainly because that system is so inaccessible to our clients.

Intervention orders as a means of addressing economic abuse

- 21 I think interventions orders (**IVOs**) might be useful as a means of addressing economic abuse in some circumstances, although I don't think this mechanism is appropriate for all issues. From my perspective, IVOs might be able to assist with:

- 21.1 the return of small property;
- 21.2 ensuring women are able to safely remain in their homes;
- 21.3 preventing a perpetrator from draining a bank account or accumulating debt in their name; and
- 21.4 providing direction to utility service providers in terms of how to deal with joint account issues.

- 22 For example, it ought to be possible for there to be a specific condition on an IVO directing that the perpetrator make no further withdrawals from his partner's joint bank account, or that he provide her with reasonable access to documentary records, or that he return to her specific property that will enable her to survive day-to-day; the washing machine, her jewellery, the children's clothes or the children's bikes.

- 23 The problem with using IVOs in this sense is primarily one of enforcement. Police are often of the view that they do not want to become involved in property disputes. However, if the orders are framed in a specific way, this issue can be avoided. Failure to adhere to the order will then be a clear criminal breach.

- 24 In my own practice, I have had success with IVOs being used to address economic abuse. However, there are some magistrates who do not feel it is the

role of the Magistrates' Court to make orders of this kind. Accordingly, the role of IVOs in relation to economic abuse does need to be clarified. Economic abuse is defined in the *Family Violence Protection Act 2008* (Vic). However, there is no direction about how economic abuse can be addressed using IVOs.

- 25 I think some direction from the Magistrates' Court would be very useful. In addition, it needs to be accompanied by training of duty lawyers and particularly, police advocates. The standard clauses used in making IVOs (for example, that the perpetrator return property within two days or not destroy property) are general and do not translate well in the economic abuse space. As I stated earlier, the order must be quite specific in order for it to be enforceable by the police.
- 26 We need to think about the required training in the context of the majority of IVOs being made by the police with the woman there as the protected person who, depending on the court, may or may not have access to her own legal representation. It is really important that the police are trained in relation to what economic abuse is, what it looks like, how to seek clauses of this type and measures to deal with it. There are also some potential standard clauses that could be crafted for inclusion in IVOs.
- 27 The Submission sets out the WLSV's specific recommendations in relation to this issue.

IVOs and financial hardship policies

- 28 As is outlined in the Submission, and as has become clear through our research, women feel really broadly dismissed when they present their experiences of family violence to, for example, a utility company or a bank. IVOs that specifically address economic abuse can assist in this space. Where there is specifically addressed economic abuse, it legitimises the abuse so that women feel confident, validated and supported to raise the issue of economic abuse with the relevant service provider. They also have more practical success in dealing with organisations when there is an IVO in place.
- 29 The use of an IVO in this way also needs to be coupled with good policy by utility providers and organisations; policy that says when there is an IVO in place, particularly one with a specific clause relating to the relevant economic abuse, the organisation will recognise that abuse and respond appropriately.
- 30 In saying that, I think the existence of an IVO should be only one way in which the application of hardship policies should be triggered. I would hope that the family

violence hardship policies would be flexible enough to include cases where there is no IVO in place, because there are many cases and many reasons why there might not be an IVO in place.

- 31 There are cases where women don't go down the path of seeking an IVO because they have been so discouraged by previous interactions with police regarding the family violence. They might also want to get as far away from the perpetrator as possible, and not have to engage him in this process. Where there is no IVO, it is hard to find any documentation that can serve as evidence of the circumstances. The financial counsellor located at WLSV often has difficulty convincing hardship departments that there has been family violence.
- 32 As a result, there will always need to be a way in which the formal system can recognise the women as victims without them having to jump through any particular hurdle, whether that be an IVO or some other hurdle. I would like to see organisations, like utility companies, start from the position of believing women when they disclose family violence, and treating that disclosure with the respect it deserves (in terms of the woman being able to speak with the same person within the organisation, or at least the same department, and not having to disclose the family violence over and over again). There also some methods that are used in relation to financial hardship (like a letter from a lawyer, support agency or financial counsellor) that could easily be applied in family violence cases and may be useful to some women.
- 33 From my experience, I think in many instances women would be open to disclosing family violence to a utility provider or a bank. I have spoken with many women who would like to have been able to explain their circumstances but didn't feel there was an avenue to do so. I think people would speak out, if there was space for that to occur.

Identification of family violence by organisations

- 34 In addition to some reforms around financial hardship policies, I think that banks and other organisations should be proactively screening for situations of family violence that might result in their clients being subject to unconscionable conduct. Banks, for example, are generally on high alert when dealing with elderly clients and their children, and are conscious of any signs that the elderly person is being taken advantage of. Banks and other organisations need to be on notice about other forms of power imbalance that might be relevant. Just like the sort of consciousness that occurs when dealing with the elderly, I think better screening

for the sort of pressure that might be applied in the family violence context needs to occur.

- 35 For example, the WLSV recently had a case where a client had taken out a car loan. This woman had no licence and could not speak any English. She signed a contract for a loan for a car registered in her partner's name that she had no ability to drive. She later applied for a second loan for a second car registered in his name. She was solely responsible for two loans that she was deriving no benefit from. There were clear signs that she was in an abusive relationship and I feel it should have been obvious to that lender.
- 36 In another example, a woman we were working with had applied for a personal loan under pressure from an abusive partner who spent the money on drugs. She went back three times within a two week period to extend that loan. She was heavily pregnant, her understanding of the loan terms was extremely limited and she was under immense pressure and subject to physical violence at home. If there had been some sort of screening process in place prior to the loan being approved, she may have had a totally different outcome.
- 37 I really think the impacts of economic abuse, and financial disadvantage as a result of family violence generally, should not be underestimated. Further, returning to violence (as a result of financial pressures) also has real implications for physical safety.
- 38 There is both legislative recognition and a broad understanding that family violence includes economic abuse. As a result, from the very beginning, there ought to be an opportunity for people to put economic abuse on the application form for their IVO. Even where there is also physical abuse present, applicants should ask the court to exercise the full range of powers possible. In my view, applicants should be seeking specific orders that relate directly to the abuse, however it manifests. If there is a way it can be remedied through the order, it should be sought. I hope this is the next wave of change in this space.

Inaccessibility of family law remedies

- 39 I have suggested, and I believe, that more targeted use of IVOs, reforms to industry policy, and better screening in financial transactions are important. However, they are interim solutions and in my view, paper over the crucial issue; that the family law system, where these issues should properly be dealt with, is so inaccessible. The issue of the accessibility of the family law system is extremely problematic and relates directly to economic abuse.

- 40 Currently, the process in the Family Court and the Federal Circuit Court is excessively legalistic and onerous. The kinds of documents that women have to fill out, paying the required fees, making arguments in the required format, the length of proceedings – the process is prohibitive. How would an ordinary layperson understand how to draft an Initiating Application, Affidavit and Financial Statement in the appropriate form to commence proceedings? How would the ordinary layperson know how to frame the particular orders they are seeking, particularly in relation to debt and property issues?
- 41 Even where there are appropriate mechanisms that could be used (such as splitting super and dividing debt), women cannot access the court to make use of those mechanisms. Most women, even women WLSV has assisted, will tell you how lengthy and onerous the process is. Even if an order is made, the enforceability of family law orders is another issue again, especially for women who have limited access to funds (which is then used to further harass, abuse and control them).
- 42 In short, in most cases, there is no way a victim of family violence could commence and run a family law proceeding, to obtain access to property of a relationship, on her own. However, there is also very little pro bono assistance available. Victoria Legal Aid does not currently provide funding for this type of matter and Justice Connect is generally unable to find family lawyers able to provide pro bono assistance. Whilst community lawyers often give family law advice to their clients, particularly those they are assisting with family violence matters, there would be very few community legal centres that would have the resources to run contested family law litigation because of the onerous nature of these matters.
- 43 There are a multitude of ways in which family law could be made more accessible. In the short term, the Family Court and Federal Circuit Court should be less reliant on long complicated forms and less reliant on affidavits as the means by which facts are proven. In the longer term, there could be a one court model at the state level, there could be a tribunal model and there could be a special list dedicated to small property matters in the Federal Circuit Court run by a Registrar in a less legalistic manner. Matters should be dealt with in a pragmatic and informal way whilst recognising and addressing family violence and the power imbalance it creates. The system needs to be much more user-friendly.
- 44 Family law already contains mechanisms which deal with many of the economic issues victims of family violence encounter. Ensuring family law is accessible,

including to those who can't afford legal representation, would be invaluable in assisting victims of family violence to achieve better financial outcomes and limit the effects of economic abuse. In turn, there would be many broader benefits to people experiencing family violence. It would assist in preventing the entrapment of victims in a cycle of poverty, result in greater physical safety and in greater confidence and empowerment.



Emma Margaret Smallwood

Dated: 10 July 2015