



Royal Commission
into Family Violence

WITNESS STATEMENT OF HELEN LOUISE MATTHEWS

I, Helen Louise Matthews, Principal Lawyer of Women's Legal Service Victoria and Family Law Legal Service, 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. I adopt the contents of the document entitled '*Women's Legal Service Victoria – Improving the Family Violence Legal System - Royal Commission into Family Violence*' dated 19 June 2015 (as amended) which is attached to this statement and marked '**HM 1**'.
4. I adopt the contents of the document entitled '*Women's Legal Service Victoria – Economic Abuse and Economic Recovery of Family Violence Victims - Royal Commission into Family Violence*' dated 19 June 2015 which is attached to this statement and marked '**HM 2**'.
5. I adopt the contents of the document entitled '*Women's Legal Service Victoria – Multi-Jurisdictional Issues - Royal Commission into Family Violence*' dated 19 June 2015 which is attached to this statement and marked '**HM 3**'.

Current role

6. I am the Principal Lawyer at Women's Legal Service Victoria (**WLSV**) and have been in this role for three and a half years. **WLSV** is a specialist community legal centre providing legal services to women across Victoria for matters arising out of violence against women and their children and relationship breakdown. Those services are broadly described at page 15 in the attachment **HM 1** referred to above. I am also the Principal Lawyer of an associated organisation, Family Law Legal Service (**FLLS**), a non-gender specific duty lawyer service.

7. In my role as Principal Lawyer **WLSV** and **FLLS** I am responsible for the overall legal practice and supervise the provision of direct client services which include the ongoing representation of clients in family violence, family law and Victims of Crime Tribunal applications, duty lawyer and advice services. I participate in a range of advice and duty lawyer activities, representing clients at court and in legally assisted family dispute resolution (**LAFDR**).
8. I also contribute to the delivery by **WLSV** of legal education, training and professional development to a range of organisations and professional groups.

Background and qualifications

9. I have practised in family law since 1987 and am a Family Law Accredited Specialist through the Law Institute of Victoria. I have previously worked for Victoria Legal Aid (**VLA**) as well as in private practice. I commenced working in family law at Grace and Macgregor predominantly in matters referred from women's refuges usually with funding from **VLA**. Over the period from 1992 to 2002 I worked as family lawyer at three other private law firms and at the Dandenong regional office of **VLA**. My most recent private practice experience was as a senior family lawyer with Moores Legal from 2008 until 2011. I then commenced my current role at **WLSV** in January 2012. I have also worked in academia and assisted with practical legal training at the University of Queensland (from 2004 to 2006) and **VLA** (from 2007 to 2008).
10. As I have been practising in family law over 27 years (inclusive of periods of family leave), I have had experience with a number of versions and amendments of the *Family Law Act 1975* (Cth) (**FLA**), including the amendments arising from the *Family Law (Shared Parental Responsibility) Amendment Act 2006* (Cth), the *Family Law Amendment (De facto Financial Matters and other Measures) Act 2008* (Cth) and the *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth).

Family Law and Family Violence at WLSV

11. One of the special things about the **WLSV** is that our legal practice, in our provision of duty lawyers and ongoing full representation of clients, covers both specific family violence matters and family law. We run a duty lawyer service at the Melbourne Magistrates' Court providing advice and representation to women in the Family Violence

Intervention Order list. In addition to assisting in the intervention order proceedings and subject to the time constraints inherent in duty lawyer settings, we are also able to identify and alert clients to their family law needs which will need to be addressed by them elsewhere.

12. We also staff the second family law duty lawyer service at the Family Court of Australia and Federal Circuit Court at Melbourne through **FLLS** where we provide advice and representation to both men and women.
13. At **WLSV** and in our duty lawyer services we ensure that our clients are getting the benefit of lawyers who are experienced in dealing with not only family law, but also family violence. We operate within a feminist framework and understand the gendered nature of family violence. Our experience and understanding of family violence enables us to recognise and respond to the issue in the context of family law disputes. This includes having parties acknowledge the family violence, which may take various forms, presenting it appropriately to the court and adopting a safe and practical outcomes focus.
14. There is significant intersection between family violence and family law. We observe that family violence is likely to escalate at times when women become pregnant, give birth and when they leave relationships. They are then likely to enter the family law system to sort out parenting arrangements. Economic abuse is recognised as family violence and included in the definition of family violence in the **FLA**. It is the basis for an intervention order but redress about economic issues following relationship breakdown is done through the family law system.
15. While many family lawyers would have been exposed to stories of family violence from their clients, understanding family violence is not part of their formal professional development. This is a problem given the intersection between family law and family violence. As duty lawyers we frequently see women who have lawyers representing them in their family law matters but who are not assisted by their lawyers in their applications for intervention orders against their former partners.

Mediation

16. At **WLSV** we have become strong advocates for using legally assisted mediation, or family dispute resolution ("**FDR**"), in family law matters where there has been a history of

family violence. Standard **FDR** takes place where the mediation intake process has determined that the parties are suitable for mediation. This would be unlikely where family violence was a factor. The parties participate with the mediator or **FDR** practitioner maintaining a neutral role. Although the law does contemplate that family violence cases may not be suitable for mediation, we find that the lawyer assisted **FDR** is in many cases much preferable to victims of family violence being sent off into the court process.

17. In lawyer assisted **FDR** the parties are supported and assisted by their lawyers, addressing any power imbalance which might have existed if the woman who had experienced family violence were mediating alone with the perpetrator of that violence. The parties are often not in the same room as each other but instead spend time with their lawyer who advises them and the **FDR** practitioner moves between each group. The process still allows the parties to speak for themselves to the mediator while lawyers are able to ensure that any agreement reached is genuine, covers the needs of their client and their children and provides for safe and workable arrangements.
18. **WLSV** provides legal representation in **FDR** through both the **VLA** Family Dispute Resolution Service as well as through its partnerships with the Melbourne Family Relationship Centre and FMC Mediation and Counselling Service.

Change in practice over time

19. Family violence has become a prominent issue in family law. I have noticed that family violence is often a factor raised in matters requiring decisions by the family law courts. In the past there was a reluctance to raise family violence for fear that it was difficult to prove and might result in the victim of family violence being disbelieved and deemed an “unfriendly parent”. The unfriendly parent was a parent who was not promoting the relationship of a child with the other parent. Amendment of the **FLA** repealed the provision requiring the court to consider the willingness to promote the parent/child relationship in 2012. The view that a woman may allege family violence has occurred for a strategic advantage is still expressed by some lawyers working in family law. This is of concern to me.
20. Earlier in my practice in family law there was a tendency to look at family violence very narrowly. For example, it was not uncommon for the argument to be made and accepted that a man who was violent to his partner should not have that behaviour taken into

account in deciding parenting arrangements if he did not hit his children. It is now understood that children observing the aftermath of family violence are themselves experiencing family violence. This is reflected in the current definition of 'family violence' in the **FLA**.

21. The current definition of 'family violence' in the **FLA** is appropriate.
22. At the commencement of family law cases, one party (the applicant) files an application and an affidavit in support of the orders they are seeking. Respondents file a response and affidavit supporting the orders they seek. Any other witness evidence or updated evidence of the parties is also filed in affidavit form. All parties and the courts are aware of the evidence being relied upon from the commencement of the application.
23. For affidavits to be effective in describing family violence specificity is required. Often women who have been subjected to ongoing violence and abuse find it difficult to recall sufficient detail such as dates and have sought to keep the incidence secret from friends and family. Sometimes they do not want to include family violence for fear of reprisal by the perpetrator. When a woman is commencing family law proceedings without the assistance of a family lawyer it is likely that she will not adequately describe the family violence she has experienced so her evidence in this regard does not properly inform the judge or the family consultant preparing a report for the judge. Lawyers also frequently fail to adequately describe family violence in affidavits they draft on behalf of their clients.
24. Early in my family law practice I was cautious about filing the Notice of Risk which was required when there was a risk of abuse to a child identified in the evidence of a party. The notice triggers the Department of Health and Human Services checking its records with respect to the child and parents. There was concern that the child would be referred straight to child protection and be at risk of being removed from the parent. This failure to file the notice, however, could result in protective concerns not being brought to the attention of the court so I changed my practice some time ago. Now we are required to do a Notice of Risk in each application for parenting orders that is made. This is an improved practice focussing on child safety.

Issues identified by WLSV

Economic issues

25. The submission at '**HM 2**' identifies the systemic barriers faced by women experiencing economic abuse in the context of relationship breakdown, both within and external to the legal system. Systemic barriers are identified in relation to family violence intervention orders, police responses to family violence and issues faced by victims of family violence in dealing with banks and utility providers.
26. Women often are burdened with debt after leaving violent relationships, sometimes incurred jointly throughout the relationship but also quite often accrued solely in their name but to the benefit of their financially abusive partner. To overcome the effects of these financial consequences women need to apply for family law orders. This is a difficult system to negotiate without a lawyer. **VLA** has not funded litigation in this area for some time but is reviewing its guidelines. Private practitioners would not recommend taking on a matter unless the client was likely to gain a property settlement (non-superannuation) of not less than \$50,000. Many women are seeking the apportionment of debt rather than assets.
27. As detailed in the submission at '**HM 2**', victims of family violence can also face barriers when dealing with banks, credit providers and utility companies. Research indicates that victims of family violence face difficult issues ranging from meeting repayments, being left solely responsible for joint loans following relationship breakdown, to being expected to deal with bills and debts incurred by an abusive partner.
28. While economic abuse is recognised in family violence legislation, there is a need for stronger legal and practical recognition of economic abuse. This is particularly evident with respect to family violence intervention orders issued under the *Family Violence Protection Act (2008)* which may provide for the collection of property, police response to economic abuse and victims of crime compensation schemes.

Police involvement

29. At **WLSV** we see matters where family violence occurs and the police tell the victim to go to court themselves to make an application for an intervention order. Other times, the police will make the application on the spot. Their approach can be very inconsistent.

30. As outlined in the submission at '**HM 1**', one of the current challenges for the police is in promoting consistency in the response to family violence reports and incidences across stations and regions. It is still the experience for many women that the responses from police will vary depending on the police station and the police officer that attends the incident. This has resulted in a number of gaps and problems that undermine women's safety and places additional pressure on the intervention order system.
31. As outlined in '**HM 2**', one of our recommendations in this area could include the Victorian Government funding Victoria Police and **WLSV** to design and deliver training for police on family violence intervention orders and in particular economic abuse. The training would include: identifying economic abuse, the significance of family violence on the financial hardship and homelessness women experience and applying the code of conduct to deal with economic abuse when applying for and enforcing family violence intervention orders.

Legal information and advice

32. As detailed in the submission at '**HM 1**', there are several gaps for victims in obtaining legal advice and assistance in the current system. In particular, there is a lack of access to timely legal information and advice. Timely legal information and advice may be at an early stage – at the time that a victim is making an application for an intervention order or police complaint or some time after the incident.
33. Early access to legal advice can prevent further violence as women understand their legal rights in relation to the violence, their rights and responsibilities in relation to their children and their financial entitlements and liabilities. With this understanding, women are able to take the steps necessary to protect themselves and ensure their children's welfare.
34. On average, the Intervention Order list at the Melbourne Magistrates' Court can have up to 40 people per day but may increase on the day and can vary from day to day. We rely on the court registry staff to refer women involved in intervention order proceedings to us. We probably get about 8 – 12 referrals a day, sometimes more. If every party has legal representation, the system works much better and the applicant is more likely to get a better outcome.

At court

35. Magistrates can exercise powers under the **FLA**. In particular, they are able to suspend existing family court parenting orders when they consider there is a risk to children. The current provisions empowering the magistrates to order the suspension allows for a single 21 day period of suspension only. This does not adequately address the problem which arises when family law parenting orders are at odds with the safety concerns sought to be addressed by intervention orders.
36. As detailed in the submission in '**HM 3**', the primary issue of concern in the application of **FLA** provisions is a lack of consistency in how magistrates deal with family law issues in family violence proceedings. The reluctance to address family law issues amongst some magistrates and practitioners, particularly those who do not have a background in family law, is an issue that has been raised in previous inquiries. It certainly helps when we have magistrates who specialise in the area of family violence, such as Magistrate Broughton and Magistrate Hawkins.
37. There are often cases where intervention order applications are not consented to because of a respondent's concern about spending time with children. In those cases some magistrates encourage parties to agree on a parenting plan there and then so that the intervention order can be made. As detailed in the submission at '**HM 3**', I believe it is not appropriate for parties to be pressured into negotiating a parenting agreement at court during an intervention order proceeding. The stress, trauma and power imbalance that can occur in this setting can lead to women being pressured into agreeing to arrangements that put their safety, and that of their children, at risk. While a parenting plan is not legally enforceable, its impact in subsequent family law proceedings is significant. In family law proceedings a court is required to give effect to an existing parenting plan if possible. A party needs to satisfy the court why a court order should be made overriding an agreed parenting plan.

Family law at the Federal Circuit Court

38. As detailed in the submission at '**HM 3**', there are a growing number of women who are victims of family violence and falling through the cracks of the legal aid system. Women find themselves unable to access legal aid for their family law matters due to the narrowing of the **VLA** family law guidelines and without the financial means to pay the fees of private family practitioners.

39. Over the last two decades, statistics suggest that roughly one third of litigants in the family law courts appear without a lawyer. The demographic dimensions of unrepresented litigants have not been more closely examined than to reveal that slightly more are male than female, that a disproportionate number come from a lower socio economic backgrounds and that the majority are Australian born.
40. As explained in the submission at 'HM 3', under the **FLA**, the court can stop a witness from answering a question that is regarded as offensive, abusive or humiliating. However, if the court believes that it is 'in the interests of justice', the question must be answered. The court is bound by its obligation to provide procedural fairness to both parties in a trial which makes it difficult to deny a party the right to cross-examine.
41. In family law proceedings, a perpetrator of family violence can directly cross-examine a victim. The **FLA** does not contain any specific protections for victims of family violence. As such, it is important that the **FLA** include specific protections for vulnerable witnesses to stop direct cross-examination by an abusive ex-partner in a family law proceeding.
42. Another problem that we see often is that family lawyers are not trained in the area of family violence and as such, they are not able to bring all of the relevant information to the court's attention in Federal Circuit Court matters.
43. There is also a substantial lack of funding for matters which are at the final hearing stage in the Federal Circuit Court which can influence whether our clients want to pursue their matter which is unfortunate. **VLA** has recently decided to change its policy and revert to funding final hearings in matters where they have granted assistance for litigation.

Legal practitioners

44. There continue to be gaps in understanding and knowledge of legal practitioners (both solicitors and barristers) that represent clients in family violence proceedings in the Magistrates' Court and in family law proceedings in the Federal Circuit Court.
45. A lack of an understanding of family violence dynamics and their approach to safety and risk issues, particularly where children are involved, can result in poor practice and outdated attitudes by some legal practitioners. The consequences of this include poor

advice being provided to perpetrators, unnecessarily protracted proceedings and the furtherance of trauma to the victim of family violence.

46. There is considerable scope for legal practitioners (solicitors and barristers) to be trained in family violence and to adopt best practice in managing cases that involve allegations of family violence.

Independent children's lawyers

47. Independent children's lawyers (**ICLs**) are usually funded by **VLA**. They are frequently appointed in complex parenting matters involving allegations of family violence. Some are **VLA** employees and some are private practitioners. While some do an excellent job, the level of commitment by private practitioners varies. Some will ensure they contact, for example, children's schools and childcare and subpoena all relevant agencies. Some will delegate the work to more junior lawyers.

Family consultants/family report writers

48. As explained in the submission at '**HM 3**', family consultants (also known as family report writers) provide expert evidence in family law proceedings, formulating recommendations for the court with respect to children; for example providing recommendations on where a child should live, how decision-making about the child should occur and how much time a child spends with each parent. In my experience, the quality of family consultants can vary.
49. Family consultants are ordinarily social workers or psychologists. Their recommendations carry significant weight in court and inform court decision making with respect to children's arrangement.
50. Despite the critical role that family consultants play in assessing risk to children, there is no formal process of accreditation, training or monitoring of family consultants.
51. In my experience, a lack of training in domestic violence and child abuse has led to the following issues in family law cases:
- 51.1. Inappropriate processes, practices and procedures: family consultants are not required to follow a particular format for interviewing children who have witnessed or been the victims of domestic violence. This can lead to increased trauma for

children and limited disclosure of abuse. We have cases of family consultants requesting both parents attend an interview at their offices at the same time despite the existence of an intervention order, illustrating a lack of risk assessment and safety planning in high risk cases.

- 51.2. Minimising or not believing a domestic violence victim's story: without a sound understanding of domestic violence, there is a risk that allegations of domestic violence may be dismissed or doubted. In some instances, victims' concerns have been described as being paranoid, an over-reaction or malicious. This can lead to unsafe decisions about contact and parenting arrangements.
52. Another issue brought to my attention is that family consultants sometimes put couples in the same waiting room when they are waiting to see them. Some family consultants have no understanding of how inappropriate this is, especially in circumstances where there is a history of family violence.
53. When the family consultant prepares an initial family report under section 11 (f) of the **FLA**, arrangements are suggested which if adopted by the court may be difficult for the parties to shift. That initial short report does not offer a proper exploration of the issues at the heart of the matter, including family violence. By the time the more substantial report is prepared, it is often a long way down the track, especially if it is a court-funded report.
54. There does not really appear to be monitoring, a complaints mechanism or oversight of family consultants which is concerning. The family consultant can be subject to cross examination if the party has a legal representative. Aside from this court process, there is no way to challenge the family report or have it reviewed. It concerns me that there is no one to whom complaints regarding a family consultant can be made. There should be an outside review process.
55. The Australian Association of Social Workers has released a publication confirming that there is no independent complaints process for social workers who act as family consultants.
56. I believe there is considerable scope for an accreditation scheme to be introduced to oversee training and specialisation of family consultant, as well as undertaking ongoing monitoring and evaluation and managing a formal complaints process.

Hub Courts

57. As detailed in the submission at 'HM 3', I support the development of a court model piloted in the Magistrates' Court that is based on a 'one family, one court' model.
58. In the establishment of a one court model, it is essential that there be clear objectives that are legislated, similar to the objectives of the *Family Violence Protection Act 2008* (Vic). The objectives of the model should be primarily to consider and determine multi-jurisdictional legal issues within a family violence framework – where risk to and safety of victims and their children are the primary consideration.
59. For the women that I see, tenancy and public housing are an important consideration at the time of a family violence incident. Victims identify concerns regarding breaking of a lease or fear of consequences in the public housing system. This can be a key consideration for victims in decision-making regarding an intervention order and more broadly, whether to leave a violent relationship.
60. A subset consideration with respect to family law matters is which family law issues should be determined in a one court model. The family law issues that may arise in a particular matter may include divorce, division of the property pool, spousal maintenance, children's arrangements and paternity issues.
61. We would support a court model that also allows for determination of small property pool claims (where the property pool is, for example, less than \$50,000). The reason for enabling a one court model to determine small property pool claims is that for women that experience significant disadvantage, the cost of pursuing a family law case for a car or access to a bank account with a small pool of savings or a share of their former partner's superannuation is simply not realistic. Yet, access to a small amount of money or a car or superannuation may well be critical to their recovery (particularly their financial recovery) from family violence.
62. I think that it is important that a one court model provides access to lawyers. This should not be a duty lawyer service but a legally aided scheme that links parties with lawyers that are experts in family violence, child protection and family law.
63. In a one court model, it is important that the magistrate be satisfied that a parenting agreement has been reached without undue pressure being placed on a party. This could be achieved through a certification process with the mediator.

A handwritten signature in black ink, appearing to read 'Helen Louise Matthews', is written over a horizontal dotted line. The signature is fluid and cursive.

Helen Louise Matthews

Dated: 5 August 2015