



**Royal Commission**  
into Family Violence

**WITNESS STATEMENT OF LEANNE KATHRYN SINCLAIR**

I, Leanne Kathryn Sinclair, Lawyer, of 350 Queen Street, Melbourne in the State of Victoria, say as follows:

1. I am authorised by Victoria Legal Aid (VLA) 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 '*Victoria Legal Aid – Submission to the Royal Commission into Family Violence – June 2015*' which is attached to this statement and marked '**LS 1**'.

**Current role**

4. Since November 2011, I have been the Family Violence Program Manager at VLA. Attached to this statement and marked '**LS 2**' is a copy of my position description.
5. The objective of the Family Violence Program is to contribute to the safety of adults and children impacted by family violence, and to assist in reducing incidence of family violence, by providing legal services and by actively contributing to public debate about the policies and practices of courts and governments.
6. As Program Manager of the Family Violence Program I am responsible for the delivery of family violence legal services including duty lawyer services by lawyers across the organisation and at different locations across the State. The cross-organisational reach of the services delivered by the Family Violence Program sets it apart from other programs at VLA.
7. I have also continued to provide family violence duty lawyer services at the Melbourne and Dandenong Magistrates' Courts and I visit other Magistrates' Court locations to observe and provide assistance to VLA duty lawyers. As a result, I have significant experience providing assistance to applicants and respondents to family violence intervention orders.

8. In my experience, family violence duty lawyer services can make a real difference to the legal outcomes and the intervention orders that applicants and respondent receive. This motivates me to continue to improve VLA's services and work towards better outcomes in a dynamic and challenging area of law.
9. An important part of the work of the Family Violence Program is the delivery of community legal education. In particular, I have managed the development and delivery of 'Settled and Safe' which is a collaborative project that aims to prevent family violence in new and emerging communities by providing legal information about the laws relating to families including family law, family violence and child protection. I also managed the development of specialist family violence training that was delivered to VLA family violence duty lawyers in 2013. This training focused on the special role that duty lawyers can play in family violence matters to help to prevent further family violence. This training, that was co-delivered with 'No to Violence', included content on working with respondents in a way that does not collude with or condone violence supporting attitudes.
10. In addition to the direct work we do with individual clients, the Family Violence Program also contributes our practice experience and ideas to stakeholder consultation forums and to policy and law reform processes. This provides an opportunity to build on our experience by providing assistance to individual clients to improve processes and laws and maximise the impact of our work.

### **Background and qualifications**

11. I have a strong background in family law gained in the community sector and private practice. Immediately prior to my appointment to the role of Program Manager at VLA I worked at Women's Legal Service Victoria for five years where I held the roles of Senior Lawyer and Principal Lawyer. In this role, I delivered duty lawyer services at the Magistrates' Court at Melbourne, the Federal Magistrates' Court (now Federal Circuit Court) and the Family Court of Australia, as well as working on the family violence legislative changes to create the *Family Violence Protection Act 2008 (FVP Act)*. Prior to that I spent three years working as a family lawyer in a busy suburban private practice.

12. From 2007 until 2012 I was a board member of the Women's Domestic Violence Crisis Service, a state wide service that coordinates a crisis response to victims of family violence.
13. I was admitted to the Supreme Court of Victoria as Barrister and Solicitor in 2005 and I hold a Bachelor of Arts and Bachelor of Laws degree from Deakin University.

#### **About VLA**

14. VLA is a statutory agency established by the *Legal Aid Act 1978 (Vic)* (**Legal Aid Act**). The objectives, functions and powers of VLA are set out in the Legal Aid Act and we provide services in accordance with the framework established by the Legal Aid Act.
15. VLA plays a leading role in the delivery of family violence legal services in Victoria.
16. VLA provides information, advice and legal representation to women, men and children who are affected by family violence in the State and Commonwealth civil, criminal and family law systems. We provide these services through our network of offices across the state. We also fund private practitioners and community legal centres (**CLCs**) to deliver family violence legal services.
17. People who have experienced, are experiencing, or are at risk of experiencing family violence are priority clients for VLA.
18. VLA is committed to the provision of legal services that promote victim safety and safer outcomes for families. We provide court-based legal services to applicants and respondents in family violence intervention order matters in the Magistrates' Court. We also provide assistance to women, men and children with parenting dispute matters in the Commonwealth family law courts and child protection matters in the Family Division of the Children's Court of Victoria.
19. VLA is also committed to procedural fairness and to upholding the rights of an accused in criminal justice processes. This ranges from the provision of duty lawyer services to respondents who breach family violence intervention orders in the Magistrates' Court, to trial representation in the County and Supreme Courts for serious indictable offences committed in a family violence context.

20. VLA extends the reach of our services through the provision of legal information and community legal education

### **Family Violence Legal Services provided by VLA**

21. VLA provides legal information, legal advice, duty lawyer services and grants of legal assistance to both applicants and respondents in family violence intervention orders matters. This is a key focus of the work of the Family Violence Program.
22. In addition to the direct delivery of family violence duty lawyer services, VLA also coordinates the delivery of duty lawyer services by CLCs and private legal practitioners across the state.
23. Family violence legal services are also delivered by other parts of the organisation. VLA provides services in relation to a range of legal issues with a family violence dimension, including:
- 23.1. Family, Youth & Children's Law (parenting disputes, child protection, family dispute resolution service, child support, independent children's lawyers);
  - 23.2. criminal offending in the context of family violence; and
  - 23.3. broader legal issues with a family violence dimension (such as victims of crime compensation, migration issues, commonwealth entitlements and infringement issues).

### **Family Violence Duty Lawyer Services**

24. There are no specific eligibility requirements for either applicants, affected family members or respondents for our family violence duty lawyer services on the first return date at Court. This duty lawyer service is not means or merits tested.
25. Where matters cannot be resolved on the first return date and are set down for a Directions Hearing, assistance will only be provided to that respondent in the form of in-court advocacy or legal advice if they are eligible for a grant of aid. For respondents who do not qualify for a grant of aid, legal information may be provided in the form of written publications. Applicants are able to receive assistance from a duty lawyer at the Directions Hearing without any restriction. Respondents who did not receive a duty

lawyer service on the first return date and who have a matter set down for Directions Hearings may still receive legal advice and in-court advocacy from our duty lawyers.

26. In some Magistrates' Courts, community legal centres provide an alternate duty lawyer service. It is my belief that safer outcomes can be achieved where both parties have access to legal advice.
27. VLA has various resources and manuals to assist lawyers and Legal Help staff to deliver efficient and effective services when providing assistance in applications under the FVP Act. These resources are available on VLA's intranet and can be accessed by all VLA staff. The duty lawyer checklist was designed as a tool to assist VLA lawyers; it is not mandatory to complete this checklist. A copy of the manuals are attached to this statement and marked '**LS 4**'. A copy of the duty lawyer checklist is attached to this statement and marked '**LS 5**'.
28. VLA lawyers are available to provide advice to both applicants and respondents to family violence intervention orders in most courts in Victoria. In some locations, a CLC provides an alternate duty lawyer service. In some regional court locations, for example Mildura, legal advice is provided by private practitioners who are funded by VLA.
29. The VLA family violence duty lawyer service is available to help applicants and respondents in the following ways or in a combination of the following ways:
  - 29.1. Legal information: By providing information in writing to help an applicant or respondent to understand the legal matter that they face, the process to be followed, how to represent themselves in court and where to access services.
  - 29.2. Legal advice: By a lawyer providing advice to either an applicant or respondent but not representing that person in court. This can include negotiation with the other party and referral for further legal assistance. The lawyer will also refer clients to appropriate non-legal services.
  - 29.3. In-court advocacy: By a lawyer providing advice to an applicant or respondent, negotiating with the other party and also representing that person in court on the day.

30. Most of our work is done on the first date the matter is listed at court after the application is filed and served upon the respondent. In my experience, many matters resolve at this first mention date with the respondent consenting to the intervention order without admitting the allegations.
31. For matters that cannot be resolved by consent and where ongoing legal assistance is required for a contested hearing, a person will generally need to apply for a grant of legal assistance or seek to be represented by a private practitioner. Where a person is not eligible for a grant of legal assistance, legal information may be provided in the form of written publications or a referral may be made to another legal service.
32. For example, a Family Violence Intervention Order Fact Sheet for Affected Family Members is one of the publications we have available. A copy of that fact sheet is attached to this statement and marked 'LS 3'. Our legal information and community legal education material is generally available to the public on our website. This is one way we aim to extend the reach of our services.
33. VLA also operates a telephone service called 'Legal Help'. This provides legal information (and advice in some cases) on a range of legal issues, including FVP Act matters. This is available to all members of the public.

### **The Benefits of the Duty Lawyer Service**

34. The benefits of duty lawyer services for both applicants and respondents include:
  - 34.1. Accessibility: duty lawyer services make the legal system more accessible by helping applicants and respondents understand their legal rights and responsibilities, the court process, and the nature of family violence intervention orders.
  - 34.2. Suitability: orders are more likely to be suitable to respond to the individual circumstances of applicants and respondents from both a safety and practical perspective.
  - 34.3. Accountability and compliance: helping respondents understand the nature and terms of the order and the consequences for breaching the order. Where a perpetrator does not understand the law, legal advice is more likely to increase understanding and encourage conduct that is compatible with compliance.

- 34.4. Identification of interrelated issues: identification and referrals to legal assistance providers for related legal issues, such as family law and child protection, may assist to diffuse the crisis in families who experience family violence.
- 34.5. Referrals: access to legal and non-legal support services through timely and effective referrals supports better outcomes for applicants and respondents by helping to address the surrounding and interrelated issues.

### **Grants of Legal Assistance in FVP Act Matters**

35. Grants of legal assistance are also available for FVP Act matters. Grants of assistance pay for a lawyer to act for the client in the matter in an ongoing manner, often referred to as legal casework or ongoing representation.
36. Guidelines for eligibility for grants of assistance are set by the VLA Board under the Legal Aid Act. Our eligibility guidelines are publicly available in the VLA Handbook for Lawyers.
37. Subject to meeting the eligibility requirements and satisfying the means test, grants of assistance are available to applicants and respondents to family violence intervention orders where a matter is listed for a contested hearing.
38. An adult applicant will be eligible for a grant of assistance where the matter is listed for a contested hearing and the applicant is more likely than not to succeed in obtaining a family violence protection order.
39. A respondent will be eligible for assistance where the respondent is more likely than not to succeed in contesting the making of the family violence protection order in the terms sought by the applicant. In addition, one of the following must also apply:
- 39.1. the respondent is under 18 years of age; or
- 39.2. the order would deprive the respondent of an important right (for example, it would exclude the respondent from their home); or
- 39.3. the respondent is in custody as a result of the alleged family violence.

40. Unfortunately, we have finite resources and are not able to provide grants of assistance to all people who may benefit from our services. While duty lawyer services are available to all people, we need to prioritise access to grants of assistance where a person will receive a more intensive service.
41. For example, where an application has been brought by Victoria Police, VLA may not give a grant of legal assistance to an affected family member as they will have the support of the Victoria Police prosecutor or civil advocate. However, where the instructions of that affected family member conflict with the intervention order being sought by police, a grant of assistance may be available to provide ongoing representation.

#### **Court Ordered Representation under the FVP Act**

42. VLA may also be ordered to provide representation under the FVP Act. Section 70 of the FVP Act introduced limitations on the ability of an unrepresented respondent to cross-examine protected witnesses. Essentially, if a respondent wishes to cross-examine a protected witness then the respondent must do so through a legal representative. This is to minimise any additional trauma for victims of family violence and to guard against the misuse of the court process by respondents.
43. If the respondent does not obtain legal representation for cross-examining a protected witness after being given a reasonable opportunity to do so, the court must order VLA to offer the respondent legal representation for that purpose. Usually this order is made at the Directions Hearing.
44. Similarly, section 72 of the FVP Act provides that where an applicant is not a police officer and is not legally represented, the court must order VLA to provide legal representation to the applicant for the purpose of cross-examination unless they object.
45. These orders override our merits and means tests, however VLA may still apply all or any of the conditions under section 27 of the Legal Aid Act, for example to impose a requirement for the client to pay a financial contribution towards the cost of their assistance. If a respondent refuses legal representation, they face evidentiary burdens



during the contested hearing including restrictions on their ability to cross examine the applicant or affected family member.

### **Demand for Family Violence Legal Services**

46. The level of demand in the system impacts the effectiveness of the legal response to family violence. This is a significant issue for VLA and our partners in the legal assistance sector and unfortunately, many people are missing out on court based legal services or are receiving an abbreviated time restricted service. The VLA family violence duty lawyer service is at saturation point with the number of people who would benefit from legal advice outnumbering the number of clients our lawyers can assist in a single day. Until the level of demand is met with sufficient resources, the full potential of the court based intervention to achieve broader legal and therapeutic outcomes will not be realised.
47. Not all people attending court require legal advice from the duty lawyer service. Some people may be privately represented by a lawyer, they may have previously obtained legal advice and be aware of their legal options or they may be familiar with the Court process and capable of representing themselves in Court.
48. VLA duty lawyers advise a lot of clients each day in busy intervention order lists, however due to the level of demand, VLA lawyers may not get an opportunity to advise all people who require and would benefit from legal advice. Our lawyers will see all clients who are referred to them by the court, however as the number of clients that are referred for assistance increases, the amount of time that can be spent with individual clients decreases. This means that our lawyers may not be able to provide a complete all-encompassing service that takes into account the many complex legal needs that a client may have. Given the potential benefits of receiving legal advice, I think it is important for applicants and respondents who require legal advice to have access to a family violence duty lawyer.
49. Sometimes we may not advise someone before they appear before the magistrate, this is because the Registrar may not have referred them to the duty lawyer, or they may have refused legal advice. Depending on the magistrate, there may be a decision reached that that person needs legal advice. In that instance, the person is often

referred back to the duty lawyer to receive legal advice. Magistrates are generally pretty good at referring matters to the duty lawyer when it is clear that someone is struggling to understand the process. This means that clients who may not have been referred to the duty lawyer initially, but who still require assistance, can receive this help.

50. In my experience, access to legal advice for both the affected family member and respondent is important even where an application is brought by Victoria Police. Victoria Police cannot provide legal advice and frequently the parties benefit from advice on family law or other legal issues that Victoria Police do not provide. This can include advice on process such as the ability to vary orders and the impact their intervention order may have on other court orders.
51. In my experience, many people do not receive legal advice before a matter is first listed at court. This is a product of the speed with which some matters come to court through Family Violence Safety Notices and parties not being referred to legal services at the time police attend family violence incidents. In my experience, this may mean that there are a lot of complex legal issues to navigate or information to gather on the first return date.
52. In my view, both applicants and respondents would benefit from an early referral to Legal Help for legal information before the first return date at court. This will assist in the identification of family law or other legal issues that require attention, as well as give the person time to consider their legal options outside of the Court environment. In my opinion, this can help to defuse some of the complexity of the first return date. In this way, the first return date can be used to make decisions, spend time tailoring the order to meet the client's needs, linking the client to other services that can assist and negotiating with the other party. Even though early advice is beneficial, it is not a substitute for legal assistance at court. Often it is not until the parties are at court that information is available on the types of orders that are being sought and the parties' positions. It is only once this information is available that negotiations and resolution can commence.

### **The Role of the Duty Lawyer at Court**

53. The delivery of duty lawyer services is dynamic and challenging. A typical day for a duty lawyer is accurately set out in the submission at 'LS 1' which, at page 6, provides

a snapshot of a morning with a VLA family violence duty lawyer. My experience as a duty lawyer accords with this example. The days are demanding, and move at a rapid pace.

54. Not all courts operate in the same way across Victoria. The way in which family violence matters are dealt with by duty lawyers, including the way in which matters are referred for assistance, varies depending upon the resources available at the court. For example, whether there are duty lawyers available from both VLA and a CLC, whether the court has Applicant and/or Respondent Support Workers and whether there is a specialised family violence list.
55. Generally, in courts where there are both VLA and CLC services available, when I arrive at court, the registry will provide a list of names of people who have requested to see a duty lawyer. These people will have been allocated to see either VLA or the CLC service by the Registrar who has taken their appearance in the morning. The list is usually quite substantial and names are frequently added to the list throughout the day. I will often meet with the CLC lawyer to identify any matters where we are both involved, or to identify any known conflicts of interest and make alternative arrangements as appropriate. I will also speak to the registry staff to identify any matters that may be able to be resolved quickly, for example where the other party has not attended court or the intervention order has not been served by police. Registry staff will also tell me if any matters should be prioritised, for example where a client is assisted by an interpreter or they have special needs.
56. At some court locations the day will commence with a morning coordination meeting. The morning coordination meeting is usually attended by duty lawyers from VLA and the CLC, Applicant and/or Respondent Support Workers and registry staff or other specialist services working at the court. The purpose of the meeting is to receive information from the court about matters that may require priority, for example where the parties have special needs or where high risk matters have been identified and there may be elevated security concerns. In these meetings, we also identify things such as matters that have not been served or where there have been requests for adjournments.
57. Duty lawyers generally see people on the list in the order they have arrived at the court, however to ensure that matters are dealt with efficiently and effectively we do

undertake some informal service prioritisation. For example, where an interpreter is required and has limited availability, or where one party has not attended court.

58. There are a number of important issues that duty lawyers need to consider when advising either affected family members, applicants or respondents. When I am giving advice to an affected family member, I believe that it is important for them to understand why and how the police have made the application on their behalf and what their legal options are. I advise affected family members that I can assist them if they are agreeing or disagreeing with the type of order that the police are seeking, and that I can negotiate with the police and the respondent's lawyer to seek an intervention order with the conditions they support.
59. I advise all clients about the definition of family violence and the wide ranging types of behaviours that are included within the definition, for example controlling or intimidating behaviour. I advise clients on the elements that the court needs to be satisfied for the intervention order to be granted. Many clients, especially affected family members, do not understand what an intervention order is. I usually explain this by telling them that an intervention order is an order that is made by the court that can make what is normally legal behaviour become criminal behaviour. I usually do this by providing an example, I explain that it is not against the law for the respondent to send an SMS text message to them. However, if the respondent is bound by an intervention order that doesn't allow them to contact or communicate with you, that the respondent can face criminal penalties if the respondent were to send an SMS text message and this is reported to police. I have found that many clients find this example useful, and it reinforces that breaches need to be reported to police, that the order itself does not provide the protection.
60. I advise all clients about the ability to tailor the conditions of intervention orders to suit their personal circumstances, and that intervention orders need not be a 'one size fits all' order. I advise that the intervention order can be tailored to meet their needs and safety concerns, for example they may want to be able to communicate with the respondent, but they may not want the respondent to return to live at the house. I explain that it is my role to then negotiate with the other parties including the police to seek those orders. I then seek instructions from the client and depending on the circumstances make recommendations about the types of conditions that should be included or removed from the intervention order.

61. I advise applicants and respondents of the ways in which the intervention order can be resolved. I explain in detail the legal options including orders being made 'by consent without admissions', undertakings or that the intervention order may be contested and decided upon by the court.
62. I advise applicants of the need to report any breaches to the police and I provide suggestions of the ways that applicants can gather evidence of breaches, for example by keeping copies of SMS text messages or emails.
63. It is important that respondents who will be bound by an intervention order are aware of the serious nature of breaches and the criminal penalties for breaches. I spend a lot of time with respondents ensuring that they understand what restrictions the intervention order places on them. I also emphasise that the applicant cannot give them permission to breach the intervention order and use the example that they would be in breach to attend at the applicant's house even if they were invited, if this condition is included on the intervention order. I explain that the intervention order is an order of the court that can only be changed by the court.
64. I advise all clients about the ability to seek variations to orders if circumstances change and that this application needs to be made to the court. I advise applicants about how they can seek to have the order extended if they feel that they still need protection.
65. It is important to build a rapport with the client, however this can sometimes be difficult when you are limited by the amount of time that you can spend with them in busy lists. Applicants and respondents need to feel that they can trust you, so that they can tell you very personal information and they need to have confidence that you will be acting in their best interests.
66. In situations where I am seeing either applicants or respondents who are parents, I have found that their main concerns are usually arrangements for children. In these circumstances I advise about what impact the intervention order can have on parenting arrangements, how future parenting arrangements can be made or negotiated. There is often not enough time to provide proper family law advice so I will provide a suitable referral.
67. After taking instructions from my client I will try and negotiate with either the CLC duty lawyer, police or private practitioner who is representing the other party to see if the

matter can be resolved. I will then have to convey the outcome of the negotiations to my client. There is often a lot of 'back and forth' between my client and the other party as the conditions of the orders and any related matters are resolved. While waiting for the other party to get instructions from their clients, I will see other clients who need assistance.

68. Some matters result in 'limited intervention orders' or 'safe contact orders'. When these orders are made it is very important to advise applicants of their ability to return to court and if necessary call the police if they need an intervention order that places more restrictions on the respondent. Where there is an Applicant or Respondent Worker at court I will refer the client to see them. In most cases, the magistrate will want to be satisfied that suitable referrals have been made for the client where a safe contact order is to be put in place.
69. Before saying goodbye to my client, I will provide referrals to legal and other services that may assist them, for example, I refer respondents to 'Men's Referral Service'. I will also provide a copy of VLA's 'Safe at Home' or 'Responding to an Intervention Order' publications. I find that these publications are useful for clients as there is a lot of information that they are given at court that is contained within the publications that they can refer back to later, for example, how to vary orders. The publications also contain the contact details for the services that I have referred them to.
70. Once the matter is resolved (or not resolved) I will often appear in court to have the order made or adjourned to a contested hearing. In my experience, many matters settle by consent without admissions on the first return date or at the directions hearing.
71. Very little of what goes on during a typical morning will go before a magistrate. The magistrates often just see the end result of lengthy negotiations.
72. In my experience, most magistrates try to work through matters in court if they think that they can be resolved without a contested hearing. In some cases respondents are willing to agree to an order once they have heard what was told to them by their lawyer confirmed by the magistrate. For example a respondent may be advised that it is unlikely that their children's names would be removed from the order because the children were present at the time of a family violence incident. A magistrate who confirms that the law requires them to consider the children as having experienced

family violence can have a big impact on the respondent. Often these matters are then stood down so that the respondent can again receive advice from the duty lawyer to see if the matter can be resolved.

73. In my experience, some magistrates and police want duty lawyers to resolve parenting disputes and have parties enter into Parenting Plans on the first return date. This practice was more common after the introduction of the FVP Act and occurs less frequently now. I think this desire for duty lawyers to negotiate parenting matters is because magistrates and police believe they are assisting the victim by resolving the parenting issue. In most cases I do not think it is appropriate to negotiate parenting disputes with the intervention order. Matters involving children are complex and both the applicant and respondent should not be rushed to make arrangements for children without proper family law advice and a consideration of their safety needs. As many matters come before the court quickly, the parties may still not have come to terms with the family to separate or where they will live in the future, it can be a very confusing time for them. Being under pressure to make decisions quickly without proper advice can lead to unsafe outcomes, especially where applicants feel under pressure to agree to parenting arrangements so that they can resolve the intervention order.
74. Similarly, without proper family law legal advice, respondents may have unrealistic expectations about what the future parenting arrangements for the children will be. Without the time to properly advise them and take full instructions from the client, entering into discussions about long term arrangements can detract from and inflame the negotiations with respect to the intervention order.

### **Undertakings**

75. There has been a long standing practice that an offer of an undertaking to the court that the respondent will not engage in family violence in the future can be a suitable outcome to resolve some intervention orders. An undertaking must be agreed to by the applicant and if agreed they withdraw their application with a right of reinstatement. A breach of an undertaking is not generally actionable by the police unless it involves a crime being committed.
76. There are generally no undertakings entered into in police initiated matters. The police do not consent to accept undertakings and will usually insist on the matter proceeding

as an application for an intervention order. The only undertakings in police matters that I have seen are where the applicant does not support the making of an order and the police, following their risk assessment are not insisting upon an order. Some applicants, after receiving legal advice and assistance from family violence services, are willing to agree to accept undertakings. After being advised of all of their options, assessing their safety concerns and receiving advice about the likelihood of whether they would receive an intervention order from the court, they may not want to continue with their application for an intervention order, or their application may not satisfy the requirements to receive an order. There are many varied reasons why an applicant may accept an undertaking, including situations where they want the family violence to stop and to send a clear message to the respondent that their behaviour is not acceptable. I have seen this occur between parents who have experienced family violence from adult children. Undertakings can be a less safe alternative to an intervention order, it is important that applicants who want to agree to an undertaking receive legal advice on the lack of enforceability of the undertaking and their ability to return to court to seek an intervention order.

### **Cross applications**

77. In my experience, when a cross application goes before the court, a likely outcome is where both parties consent to an order against them. I believe that caution must be exercised to ensure that the intervention order process is not being used to perpetrate further abuse when making mutual orders. Many people who identify as the victim (but an order is sought against them) feel under pressure to agree to an order against them so that they can receive their own order, they do this despite their fear that the other party will use the order as a form of further violence, by making false allegations of breach against them.

### **Breaches of Family Violence Intervention Orders**

78. In my experience, access to legal advice and assistance can assist a person to understand the nature and conditions of an order and the consequences for non-compliance. I have seen many instances where respondents do not understand intervention orders when they are served on them and their first response is to immediately telephone the applicant to find out what's going on. This would then constitute a breach of the order. It is in the interests of both applicants and



respondents that orders are properly understood. There can be wasted resources down the track if orders are not understood from the outset.

79. Ultimately, there needs to be a consistent response to breaches of family violence intervention orders. Victoria Police should work with legal and non-legal services to develop a decision-making tool to support a consistent response to breaches, including the making of referrals to services and the consideration of civil options such as adding or removing (where appropriate) conditions of the intervention order if criminal charges are not being pursued.

### **Safety Planning**

80. Safety is an important consideration when we provide advice in family violence intervention order matters. While there are many elements of the role of the lawyer that support victim safety and assist to interrupt the cycle of violence, lawyers are not generally able (due to a lack of time) to undertake a comprehensive risk assessment such as the Common Risk Assessment Framework (**CRAF**) or work through proper safety planning, other than to ensure that the tailoring of the intervention order meets the client's needs. My practice is to refer clients to a family violence service and the Applicant Support Worker who can assist with non-legal safety planning.
81. In my experience, a key function of the role of the family violence duty lawyer is to ensure that the conditions of any intervention order support victim safety and are appropriate to the circumstances of their lives. This task would be further assisted if we had access to the information and materials generated by Applicant Support Workers and the court registry where risk has been assessed. This would avoid duplication of questions and provide more information to the duty lawyer about relevant risk factors that the applicant has disclosed. Even in matters that resolve, it would be useful for the applicant's lawyer to be able to view the court's risk assessment.
82. For example, in instances where there is an intervention order matter that settles by consent because the parties want to stay together, there may still be some risk factors at play such as drugs or alcohol abuse by the respondent. It would be helpful if this material was made available to family violence duty lawyers so that we can ensure that the orders can deal effectively with these circumstances, for example, we could

provide referrals for programs to our client that would assist the respondent. This promotes victim safety, particularly where the respondent remains in the home.

### **Risk Assessment**

83. We do not currently use the CRAF as part of our duty lawyer interview or client intake process for matters under the FVP Act. Most of our family violence clients are seen as part of our family violence duty lawyer service. Unfortunately, the demand placed on duty lawyers means that there is insufficient time available to properly complete the CRAF. Notwithstanding this, I think that it is important that family violence duty lawyers have a strong awareness of safety risk factors. VLA has recently commenced a two year project that will feature training for VLA lawyers on family violence risk factors and the development of a Safety Risk Identification Tool that can be used when advising clients.

### **Court Infrastructure**

84. The issue of court infrastructure and its impact on victim safety is not a new one, but an important one. Lawyers at the Kyneton Court for example, are providing legal services to parties outside, in front of the court building. At the Broadmeadows Magistrates' Court there are multiple duty lawyers providing advice in the one room. As a result, confidentiality is difficult to maintain. At the Dandenong Magistrates' Court, the waiting area is cramped and busy, creating a frenetic environment where applicants and respondents must sit in the same area. These are just a few examples. Addressing inadequate court facilities is essential to minimising system trauma. It is also important as the current facilities may be a deterrent for applicants considering pursuing a family violence intervention order if they believe they will not be safe while attending court.

### **Neighbourhood Justice Centre**

85. There are a lot of advantages to the Neighbourhood Justice Centre model. We value holistic service delivery and this is something that can be achieved at the Neighbourhood Justice Centre. Where a person can access a range of relevant services at the one venue they are more likely to engage with these service. Where are person is sent away to receive assistance there is more likely to be a failure to take up the referrals or subsequent attrition from the support services. There is the ability to

send someone down the hallway rather than sending them away. This way, the matter can be monitored more closely.

### **Court Network Services and Applicant and Respondent Support Workers**

86. Court Network Services and Applicant and Respondent Workers are a valued compliment to the work that is done by duty lawyers to promote safer outcomes. Applicant and Respondent Workers play an amazing role in ensuring that clients are well linked into support services and programs.
87. Applicant and Respondent Workers are often well linked to local agencies and have great knowledge of ways that clients can be assisted. The availability of these workers means that duty lawyers can focus more on the legal needs of the clients. I have found working collaboratively with support workers to be very successful.
88. Similarly, the presence of Court Networkers assists greatly in the chaotic Court environment. Court Networkers will talk to clients who are waiting and offer them support and assistance. It is often Court Networkers who will identify clients who have not been referred to legal advice, but who are worried and in need of legal assistance. The Court Networkers then play a valuable role in helping clients to connect with duty lawyers and support workers.


### **Family Law and Family Violence**

89. Family law issues can operate as a roadblock to victim safety. This is why the intersection between family law and family violence needs close attention. In my experience, lawyers, including family lawyers, are getting much better at understanding the dynamics of family violence, especially how it impacts children. However, there is more that can be done including more professional development for lawyers.

### **Looking Ahead**

90. In my experience, the legal response to family violence can achieve more than legal resolution in individual matters. The legal processes can support a response that can deal efficiently and effectively with the multiple and complex legal and non-legal needs of people and families who experience family violence. Ultimately, this will lead to safer futures for these families. To realise this potential, however, the system needs to be

relieved of the demand and pressures that limit the effectiveness of the current intervention.



A handwritten signature in blue ink, consisting of several overlapping loops and a trailing flourish, positioned above a horizontal dotted line.

**Leanne Kathryn Sinclair**

Dated: 3 August 2015