

**Royal Commission
into Family Violence**

WITNESS STATEMENT OF MELINDA WALKER

I, Melinda Joanne Walker, Accredited Criminal Law Specialist, of 1 Edward Street, Brunswick in the State of Victoria, say as follows:

1. 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.

Current role

2. I am an Accredited Criminal Law Specialist and have been in sole practice for the past 12 years.

Background and qualifications

3. I have been a practising criminal lawyer for 15 years and I have been actively involved in the legal industry for the past 24 years. I am current member of the Executive Council for the Criminal Law Section of the Law Institute of Victoria.
4. I am a survivor of family violence. I was subject to family violence between the ages of 15 and 23, had both of my children during this time and became a single mother at the age of 23. My children were then seven and three years of age.
5. Just prior to leaving the violent relationship, I returned to school to complete my Higher School Certificate which I completed over a two year period. At 25 years of age, I commenced a Bachelor of Arts degree at La Trobe University and later transferred into a Bachelor of Laws degree, graduating in 1999. I was admitted to the Supreme Court of Victoria and the High Court of Australia in 2000 at 34 years of age.
6. I engaged in voluntary work with the Council for Single Mothers and their Children both before and during university. This is a community based organisation which aims to provide advice and support to single mothers and their children in Victoria.

7. In 1991, as part of my work with this organisation, I was a Member of a delegation to make submissions to the Victorian Community Council Against Violence on family violence, the systematic response to family violence and the inquiry into services for those effected by family violence.
8. I also volunteered with the Fitzroy Legal Service between 1991 and 1994. During that time I initiated a project designed to liaise with a range of organisations to create a 'one stop shop' for victims of family violence. The concept was to provide for women the first point of call to services such as police, refuges, lawyers and specialist counselling, as there was nothing holistic available for women who had become isolated, disempowered and disconnected from family. This idea was borne out of my experience as a survivor of family violence as during this period there were no services available to address the urgency of what was required. Unfortunately, the project was shelved, notwithstanding tremendous interest and support from all the relevant stakeholders such as the Victoria Police and Refuge services.
9. In 1995 I was invited to write an article and was published in the Australian Feminist Law Journal¹, which explored the limitations of statistical analysis of intervention order (IVO) applications as an indicator of an increase in violence perpetrated by women.
10. I became a criminal lawyer for several reasons, including the hardship I experienced in my personal life. I was exposed to criminal law through my volunteer work at Fitzroy Legal Service and when I later studied criminal law at university I found it was the subject that interested me and inspired me the most. I wanted to represent those who could not afford legal representation and assist those who did not have a voice. I believe that there is always a story behind someone's offending, whether that be, for example, generational violence, cultural violence or economic violence and I wanted to explore these stories.
11. Between 1995 – and mid 2003, I was employed as a law clerk, then Articles and post admission, at a criminal law firm situated in Collingwood. In 2003, I launched my business in Brunswick as a Sole Practitioner practicing exclusively in criminal law throughout metropolitan Melbourne and regional Victoria, across all jurisdictions.

¹"Interpreting the figures: Increase in Women's Violence or Just More Masculinist Legal Tactics" - 5 Australian Feminist Legal Journal 123 (1995)

12. I am a member of the Victoria Legal Aid Indictable Crime Panel and the Summary Crime Panel which authorises me to fund case work in all indictable and summary criminal matters. IVO proceedings often flow from criminal charges where family violence is alleged and are addressed simultaneously in proceedings before the court. Advice and representation for clients who present before the court for an IVO hearing is paramount and often undertaken by me on a pro bono basis, as I am yet to apply for inclusion on the Family Violence Panel with Victoria Legal Aid.
13. Many of my clients are from lower socio-economic backgrounds, often uneducated, struggle with mental health issues, are drug and or alcohol addicted and or homeless. Often violence is a normal occurrence in their daily lives, as many are exposed from a very young age within the home, institutional care or have learned behaviour from a long line of generational violence. Generally, these clients do not possess the skills needed to understand the overarching consequences of violence.
14. It is difficult for me to give a percentage estimate of the number of matters in which I act where the charges are filed in a family violence context. However, I can say that a substantial proportion of the matters in which I act are violence or family violence related.

My experience of family violence

15. As stated above, I was subjected to family violence between the ages of 15 – 23.
16. When I was experiencing family violence, I did not know of any formal support structures with which I could engage. I did not seek protection from the courts as I simply did not have the strength to do so. After a number of failed attempts and with the support of my family to assist me, I left the home I shared with my ex-partner. I was fortunate to have family support as many women do not. This was a difficult decision as I felt I was exposing them to the consequences of me leaving the relationship.
17. After I had left the relationship, the threats of violence and abuse continued and it was not until my ex partner threatened me with a firearm that I believed I had no choice but to obtain an IVO to protect myself and my children. At that time, the police did not have power to obtain an IVO on behalf of a victim, so I was required to make application myself. I found this experience harrowing and extremely confronting and I applaud the changes which have allowed police to take out IVOs on behalf of victims.

18. On the occasions that I did seek the assistance of the police I found their response to be guarded. When police were called to an incident at my house they would not cross the threshold or challenge the abuser. There was a perception that violence in the home was a private issue and the police response reflected this perception. I think the efforts of the police to deal with family violence presently has progressed and I applaud the changes in policy that see police now take a more proactive approach.
19. When in the midst of my own experience, I did not think what was happening to me was serious because I did not end up in hospital. I 'normalised' what happened to me and I think this is common amongst family violence survivors. I remember attending a mothers group when I was about 25 years of age. I posed the question to the group, "what do you think domestic violence is?" All of the women thought that it was only physical violence. None of them considered economic or emotional violence, curtailing a woman's freedom of movement, or isolating her from her family to constitute violence. There was a lot of work to do at that time in relation to educating people about family violence. Unfortunately, I think there is still a lot of work to be done in this area.
20. When the Royal Commission into Family Violence was announced, I actively began to speak to various people about the issue of family violence in our community. I lost count of the number of times people said words to the effect of, "I just don't understand why women stay in violent relationships." There remains a lack of awareness and understanding of the terror that exists for women experiencing family violence and the detrimental effects this has on their mental health.
21. Family violence has been an issue for our society for a long time and now that our community is talking about it more publicly, and tackling the issue in a much more holistic way, cultural change may be possible.

The criminal justice system's response to men charged with family violence related offences

22. I have observed that for most of my clients, breaches of IVOs result in charges for those breaches being filed more often than not. This is particularly so since the *Justice Legislation Amendment (Family Violence and Other Matters) Act 2012 (Vic)*

created the new offence of persistent contravention of notices and orders which are indictable charges carrying a greater penalty.²

23. I do believe that the criminal justice system's response could be far more balanced and a more holistic, therapeutic jurisprudence approach needs to develop to have any realistic impact. Since the abolition of suspended sentences Corrections Victoria has been overwhelmed, and the ability of a court to tailor a sentence which gives real meaning to condemnation, but which in turn promotes rehabilitation and mandatory participation in behaviour change programs, is severely restricted.
24. When offenders are remanded in custody any release on bail would ideally include the requirement for specific supports to be in place. This is something for which I have advocated for quite some time. Ideally, more people would have access to programs similar to the Court Integrated Services Program (CISP) or the Court Referral and Evaluation for Drug Intervention & Treatment (CREDIT) Bail Support Program.
25. CISP is a program that was originally established by the Department of Justice and the Magistrates' Court of Victoria. It aims to reduce the rate of re-offending and provides accused persons with supports such as case management services and referrals to other services such as drug and alcohol treatment, acquired brain injury services, accommodation services, disability support and mental health care.
26. CREDIT is a similar program, with a greater focus on successful completion of bail by an accused who would otherwise be remanded in custody. CREDIT may provide clients with a range of services while they are on bail, such as case management, referrals to community support and treatment services and development of a treatment and support plan.
27. Both programs were initially implemented to close the gap for persons who lacked accommodation options and struggled with drug and alcohol addiction. These programs are absolutely stretched and are not always able to facilitate good outcomes for their clients.
28. A recent client of mine facing allegations of family violence and violence against police was released on bail, supervised by CISP, after a lengthy period of remand. He presented with mental health issues, drug and alcohol issues and a propensity

² *Family Violence Protection Act 2008* (Vic) s 125A

for violence. As a condition of the bail support program he was referred to a men's behavioural change program. He was directed to attend the initial assessment for the program and told that he needed to pay thirty dollars to be admitted into the program. At that point, he just left because he did not have thirty dollars. When we met with his CISP support worker, my client was criticised for not attending the assessment, which is in effect a breach of the bail requirement to follow all lawful directions. I enquired whether CISP would pay for the program, but it would not.

29. This man was on bail for a serious family violence matter and he was living in the same house as the complainant. The CISP clinician correctly referred him to a program but because he could not afford it, he was unable to access these services. The man was released on bail with an expectation that he would receive treatment. Better resourcing of these programs is desperately required and the current policy of outsourcing programs which are directed by the justice system is untenable. For an offender to be on a waiting list for three months or more to attend a behaviour change program is unacceptable and increases the risk to victims during this period of time.
30. Given how stretched these programs are at present, I think they would crash if they were also required to incorporate a family violence program. However, I believe a similar dedicated program could be utilised successfully for offenders who are on bail for family violence offences. The Family Violence Court Intervention Program enshrined in the *Family Violence Protection Act 2008 (Vic)*, where a relevant court can order counselling after assessment³, is only currently available in the Family Violence Division Courts (Specialist FV Courts – Heidelberg & Ballarat) and orders are made at the time the IVO is granted. The ability of the court to mandate behaviour change programs at the first contact needs to be extended to all courts who hear IVO applications or alternatively expand the operation of the FV Specialist courts.
31. The justice response of remanding offenders in custody when before the court for allegations of family violence results in men being held in inherently violent conditions. Violence and entrenched gender bias is perpetuated in custodial settings and remains a counterintuitive response on its own. Those on remand are restricted in their access to programs as many are often reserved for sentenced

³ *Family Violence Protection Act 2008 (Vic)* s 130

prisoners only. This is also compounded by the current problem of overcrowding in Victorian prisons.

32. A better response to men charged with family violence offences is to release them on bail with appropriate supports where they can be given the tools they need to address the contributing factors to their offending. Those men can be monitored while they are on bail and risk assessments through Forensicare or outsourced psychiatric services, can be incorporated into their bail conditions during this period. That is preferable to keeping them on remand in what are very violent and overcrowded prisons.
33. I believe that the suggestion of introducing an amendment to the Magistrates' Court Act for "the Magistrates' Court to be given power to issue a warrant to remand a respondent to a family violence intervention order in custody who has been arrested under the application and warrant process"⁴ is inherently problematic. A person should never be held in custody in the absence of a criminal charge properly investigated and initiated. envisage serious complications with this recommendation if implemented, and claims of false imprisonment to be made. Where there are allegations of violence against an offender, charges can and should be laid to allow the court to adjudicate upon them and place that person on remand if deemed absolutely necessary.

Opportunities for bail and sentencing hearings to contribute to rehabilitation

34. As part of the criminal justice system's response to family violence, it is important to consider the role that sentencing can play in rehabilitation, and to examine some of the ways sentencing is currently done well and done badly.
35. I have heard of examples where an accused is advised not to apply for bail and instead to serve a short period of time in jail on remand. The person is then released for time served but without any supports or monitoring arrangements in place. In my view, it is irresponsible for practitioners to give this advice to their clients, but this does occur and it is unhelpful for offenders and victims alike.
36. One example is a client who came to me and sought assistance with an appeal. He had previously been represented by a duty lawyer. The case was his first

⁴ Recommendation 27 – Magistrates' Court and Children's Court submission to the Royal Commission into Family Violence – 2015.

experience of the criminal justice system. He had been charged with two charges of unlawful assault and two charges of breaching an IVO: one breach was because of the assault. The second was breach related to a 200 metre exclusion on the IVO. No injury charges were filed. The Magistrate sentenced him to 14 days imprisonment. He appealed, was granted appeal bail, and came to me.

37. I facilitated a psychological assessment for my client. The psychologist found that my client was experiencing a number of mental health issues such as depression, inability to cope with separation, and poor coping mechanisms in general. My client did not have any problems with drugs or alcohol. The psychologist recommended that my client be provided with supervision, support and ongoing counselling.
38. At the appeal hearing before the County Court, I advocated for my client to receive a 12 month community corrections order that would require him to undergo supervision, receive regular counselling and to see a psychiatrist. My client conceded the fact that he needed assistance and did not want to repeat the behaviours that led to the criminal charges being filed. Although he acknowledged that 14 days in jail was only a short period, his preference was to engage with programs and be supervised for 12 months in order to get the help he needed.
39. Unfortunately, my submission was entirely rejected. My client went to gaol for 14 days. He is still not involved in any behaviour change programs.
40. I think stories like this serve as examples of situations where the court has the perfect opportunity to redirect the attitudes of men who think violence is acceptable, or those who are contrite, but need assistance to make better choices in the future.
41. On the other hand, I have appeared before a number of Magistrates who are more proactive in this area and have utilised programs like CISP and CREDIT as a 'stepping stone' into community corrections. For example, offenders who are released with community corrections orders are also set up with a short CISP program which gets them into a routine with counselling and makes them feel that they can confidently continue the regime. I have no doubt that this works to reduce recidivism and to change attitudes. I have had several clients who have told me how much they learned from men's behavioural change programs. They can also assist offenders to prove to Magistrates that they are serious about rehabilitation and inform the court, after risk assessments are undertaken similar to the current

CRAF tool utilised by the courts, of the status of an offender when assessing release on bail for family violence related offending.

42. If offenders do not abide by the terms of a CISP or CREDIT program, that should be reported back to the supervising Magistrate, who could then put the person back into custody.
43. Rather than simply locking offenders up, which may have severe ramifications such as job loss and homelessness, it would be better for some offenders to be very strictly monitored through a comprehensive parole supervision. However, the changes to parole following recent independent reviews have impacted on opportunities for offenders to receive support, supervision and continued education upon leaving prison. There is little initiative to undertake programs when a sentence is imposed as the waiting periods are to such an unacceptable level and a sentence may be completed prior to commencing any form of program. Parole is routinely refused until an offender completes a lengthy program which has extensive waiting periods. I have had clients who have been refused parole as they had not completed a program which did not commence until after their sentence expired. Offenders are often released without the rehabilitative or preventative measures which could have been in place had they been released on parole. This can place family members and the community at an increased risk.
44. There would be significant benefit in exploring alternative sentencing dispositions, similar to that of a Drug Treatment Order⁵, where the court have a better level of supervision and the power to impose consequence based sanctions should the participant fail to comply.

Magistrates' responses to family violence order respondents

45. There is a lot of room for Magistrates to have a positive impact on offenders, even when their court experience is very brief.
46. I have seen some Magistrates deal with respondents to IVOs very well. They clearly explain what the order of the court means. They explain that the order is in place for a specific period of time, but that that does not mean that the respondent cannot come back to court and apply for a variation of the order if their situation

⁵ See <https://www.magistratescourt.vic.gov.au/jurisdictions/specialist-jurisdictions/drug-court/sentencing-drug-court>

changes. They explain that counselling and mediation is available. In circumstances where a respondent has consented to an order, they affirm the respondent's motives. For example, I have seen Magistrates affirm that by consenting to an order, the respondent prevented his children from having to appear in court as a witness.

47. I think this is a sensible approach which results in respondents having a positive experience of the intervention order system and are more likely to comply.
48. On the other hand, I have seen Magistrates respond very poorly to respondents. Recently, one of my clients consented to an IVO. The Magistrate was extremely aggressive and was almost yelling at my client. I do not think that this is the way to enforce authority. There is no benefit in enforcing an order of the court with aggression, while at the same time telling an offender not to be aggressive. It is a contradictory message. I support specialist and continual training for Magistrates in the area of family violence.

Police

49. As I have said, I have observed an increase in police charges for breach of IVOs. However, although the police lay the charges, they often do not properly investigate and gather evidence sufficient for a prosecution. This is more obvious since the introduction of the *Criminal Procedure Act 2009 (Vic)*⁶ and its requirement for the preparation of a preliminary brief. Police may lay 35 charges of breach in relation to 35 text messages, for instance, but they don't collect the evidence of the text messages. I have had many cases where charges end up being withdrawn because police informants fail to gather evidence in an admissible form. In those cases where the defendant has been in custody and then released after the withdrawal of the charges for want of prosecution there is a realistic risk that the accused will blame his victim for what happened.
50. This has implications for the Magistrates' Court's attempt to fast track criminal matters. If briefs of evidence are not prepared, lawyers will not be able to advise their clients and there will be delays or pleas of guilty. This has significant consequences for an accused who has been remanded in custody and may force

⁶ *Criminal Procedure Act 2009 (Vic)* ss35-47

an accused to resolve a case prematurely as the result may change his custodial status. This is not desirable when considering the proper administration of justice.

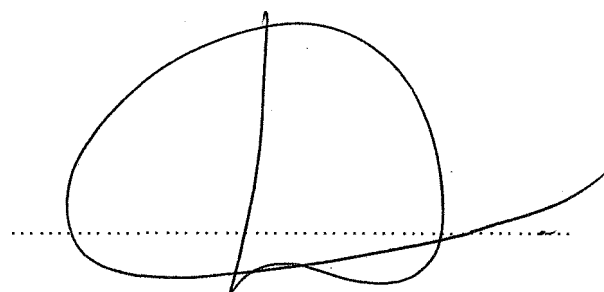
Proposed new offence of 'commit family violence'

51. I understand that some submissions received by the Royal Commission into Family Violence have proposed a new summary offence of 'commit family violence'. The benefit of such an offence would be that it would capture family violence behaviour that is not currently regarded as criminal. For example, persistent belittling or cruel and degrading behaviour, such as making a woman shower outside or crawl on the ground, do not fall within the meaning of unlawful assault or common law assault.
52. However, any new offence would need to be sufficiently capable of being proved by the police to have any value. I think that it would be difficult to conceptualise the elements of an offence given the wide scope of behaviour that may constitute this type of family violence. This type of offending will be very difficult to prove in the absence of any independent witnessing of such offending, other than with an admission. Further issues arise particularly in the absence of incident based offending due to the absence of reporting at the time the behaviour starts, which may be due to a lack of understanding that the behaviour constitutes family violence.

Female offenders who have experienced family violence

53. There is a cohort of women in prison who would not be there if they had not experienced family violence. This is particularly prevalent as their vulnerability is increased when drug addicted and trapped in an abusive drug reliant relationship. Many of my clients have been forced to rely upon prostitution as a means to supply their and their abusive partner's drug addiction or become co-accused in very serious indictable crime resulting in significant terms of imprisonment. Often, an offender's exposure to family violence only comes to light at a plea in mitigation hearing, as it may be the first time that they have had the opportunity away from their abuser to tell their story.
54. Some of the problems faced by these women arise while they are in prison, and others arise after they are released.

55. Often women who are incarcerated have children who are in departmental care. This means that the women regularly attend the Children's Court which constantly reconnects them with their violent partners.
56. In my experience women have significant difficulty finding housing when they are released and this makes them extremely vulnerable. If they do not have somewhere to stay, they often return to violent relationships.
57. I believe the response of the courts when taking into account a female offender's background as a victim of family violence as a precursor to her criminal offending, is inconsistent and a greater understanding of the impact of family violence which leads women to commit crime is required.
58. It is crucial that the criminal justice system ensures that there are programs for women on remand and that they receive sufficient post-release support after undergoing sentence. Such responses from the criminal justice system will hopefully reduce the rate of women who return to violent relationships and help women to break the cycle of violence.

A handwritten signature in black ink, consisting of a large, stylized loop with a vertical line through it and a long horizontal tail extending to the right. The signature is written over a horizontal dotted line.

Melinda Joanne Walker

Dated: 31 July 2015