

**IN THE MATTER OF THE ROYAL COMMISSION  
INTO FAMILY VIOLENCE**

**STATEMENT OF MARISA DE CICCO**

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I, MARISA DE CICCO, Deputy Secretary, Department of Justice and Regulation, SAY AS FOLLOWS:

1. I am a Deputy Secretary of the Department of Justice and Regulation (**Department**). As Deputy Secretary, I have responsibility for the Criminal Justice Division of the Department. I have held this position since the Division was established in March 2014, following a restructure within the Department.
2. Prior to my current position, I held the position of Executive Director, Strategic Policy and Legislation Division within the Department since 2011. Strategic Policy and Legislation Division was responsible for criminal and civil policy, including courts policy, and was replaced by separate Civil Justice and Criminal Justice Divisions.
3. The Criminal Justice Division provides policy support and advice to, and prepares legislation for, both the Attorney-General and the Minister for Police on criminal justice system and police-related matters. The Division is also responsible for the delivery of services in relation to victims of crime, support for Victoria's honorary justices, the Working with Children Check and community crime prevention programs, along with policy development on family violence and sexual assault matters and diversity issues. It also oversees the delivery of Victoria's infringements and road-safety camera systems, asset confiscation and the Sheriff's Office.
4. I make this statement in my capacity as Deputy Secretary.

## SCOPE OF STATEMENT

5. I have received a notice from the Royal Commission into Family Violence pursuant to s 17(1)(d) of the *Inquiries Act 2014* (Vic.) requiring me to attend to give evidence at the Royal Commission and to provide a written witness statement.
6. In this statement I respond to a request by the Royal Commission for information regarding Module 10 (Perpetrator Interventions). While perpetrator interventions can occur at any stage of the family violence response, I understand that the Royal Commission is interested in, among other things, the way in which a Men's Behaviour Change Program (**MBCP**) may be mandated by a court.
7. I am aware that Deputy Commissioner Andrew Reaper of Corrections Victoria has made a statement about MBCPs and offender behaviour programs made available by Corrections Victoria for offenders. I refer the Royal Commission to Deputy Commissioner Reaper's statement for information regarding those programs.
8. My statement is confined to the history of the introduction of court-mandated MBCPs, the court process for requiring attendance, and the evaluation of the original pilot for court-mandated MBCPs.

## USE OF MEN'S BEHAVIOUR CHANGE PROGRAMS IN VICTORIA

9. In Victoria, there are several ways in which a man may undertake a MBCP.
10. There are voluntary programs, to which a man may be referred (for example, by any Magistrates' Court, men's referral service or general practitioner) or to which a man may self refer. These programs are administered by the Department of Health and Human Services.
11. As I refer to at paragraph 7 above, MBCPs are also delivered in corrections settings.
12. The third way a man may undertake a MBCP is when a 'relevant court' (which I describe further in paragraph 25) requires him to do so by making a counselling order under Part 5 of the *Family Violence Protection Act 2008* (Vic.) (**Act**).

## HISTORY OF COURT-MANDATED MEN'S BEHAVIOUR CHANGE PROGRAMS

### *Ballarat, Heidelberg, Moorabbin and Frankston Magistrates' Courts*

13. Presently there are four courts empowered to make a counselling order and hence require attendance at a MBCP when a final family violence intervention order is made.
14. These four courts are:
  - 14.1 Ballarat Magistrates' Court;
  - 14.2 Heidelberg Magistrates' Court
  - 14.3 Moorabbin Magistrates' Court; and
  - 14.4 Frankston Magistrates' Court.
15. I provide a brief chronology of the history of the introduction of court-mandated MBCPs in Victoria immediately below.

### *Establishing the Family Violence Court Division and creating counselling orders*

16. The then Department of Justice was responsible for the development of a pilot for court-mandated MBCPs. This pilot was supported by legislative amendment in 2004, when the *Magistrates' Court (Family Violence) Act 2004* (Vic.) amended the *Magistrates' Court Act 1989* (Vic.) to establish the Family Violence Court Division.
17. At the same time, the *Crimes (Family Violence) Act 1987* (Vic.) was amended to enable the Family Violence Court Division to make an order requiring a respondent to a final family violence intervention order to attend counselling. The counselling order provisions were included on a trial basis and were subject to a sunset clause, which was subsequently extended and finally repealed in 2013 (see paragraph 24.1 below). The counselling order provisions essentially enabled the Family Violence Court Division to mandate attendance at a MBCP.
18. The purpose of the 2004 legislative amendments was to:
  - 18.1 simplify access to the justice system for persons affected by family violence and promote the safety of those persons;

- 4 -

- 18.2 increase the accountability of persons who have used violence against family members and encourage them to change their behaviour; and
- 18.3 increase the protection of children exposed to family violence.

***Ballarat and Heidelberg Magistrates' Courts commence mandating MBCPs***

- 19. In 2005, the Family Violence Court Division commenced operation at the Ballarat and Heidelberg Magistrates' Courts.
- 20. Courts sitting as a Family Violence Court Division have specialist staff such as applicant and respondent support workers, specially assigned and trained Magistrates, family violence outreach workers, specialist family violence Registrars, additional legal services and dedicated prosecutors. These courts can also hear family violence cases across multiple jurisdictions, including applications for family violence intervention orders, civil personal injury claims, family law parenting orders and child support matters, criminal proceedings, and compensation and restitution cases.
- 21. The Family Violence Court Intervention Program was also established to support the counselling orders scheme. The function of the Family Violence Court Intervention Program was, and is, to ensure that men are directed to undertake a MBCP (as well as to provide for support programs and services for affected family members).

***The Act commences operation***

- 22. On 8 December 2008, the Act commenced operation. The Act repealed the *Crimes (Family Violence) Act 1987* (Vic.) and aspects of the *Magistrates' Court Act 1989* (Vic.). It also expanded the definition of family violence to include non-physical forms of violence, such as emotional and economic abuse. It also introduced a broad definition of family member. Among other things, counselling order provisions enabling court-mandated MBCPs were now set out in the Act.
- 23. The then Department of Justice played a role in developing the counselling order program and establishing the contractual arrangements for the MBCPs. In 2010, the responsibility for oversight of administration and funding for court-mandated MBCPs was transitioned from the then Department of Justice to the Magistrates' Court of Victoria.

***Moorabbin and Frankston Magistrates' Courts commence mandating MBCPs***

24. On 4 February 2013, amendments to the Act, which were introduced by the *Justice Legislation Amendment (Family Violence and Other Matters) Act 2012* (Vic.), came into operation. Among other things, these amendments:
  - 24.1 repealed the expiry of the counselling order provisions that underpinned the court-mandated MBCPs, thereby making those provisions permanent; and
  - 24.2 created a mechanism to enable additional venues of the Magistrates' Court to be empowered to make counselling orders, by permitting the Minister administering the Act to specify additional venues by notice in the Government Gazette.
25. Part 5 of the Act, which relates to counselling orders, was amended so that it applied to a 'relevant court'. The definition of the term 'relevant court' was inserted in s 126 of the Act. The term was defined to mean the Magistrates' Court sitting at a venue of the Court specified by the Minister by notice published in the Government Gazette. The term was also defined to mean the Family Violence Court Division.
26. In October 2013, the Moorabbin and Frankston Magistrates' Courts were specified as 'relevant courts' by notice published in the Government Gazette. This enabled both of these courts to make counselling orders to mandate attendance at MBCPs. These courts, however, do not have the other extended jurisdiction of Ballarat and Heidelberg Family Violence Court Divisions. For example, and as noted at paragraph 20 above, the Ballarat and Heidelberg Family Violence Court Divisions have the ability to hear family violence cases across multiple jurisdictions.
27. The Moorabbin and Frankston Magistrates' Courts are staffed with applicant and respondent support workers and family violence registrars. From July 2014, they commenced issuing counselling orders for MBCPs. The Family Violence Counselling Order Program was established to support the expansion of mandated MBCP at Frankston and Moorabbin. Through this program, these courts can make a counselling order directing eligible men to attend a MBCP. Like the Family Violence Court Intervention Program, this program focuses on enhancing the safety of women and children who have experienced family violence, as well as encouraging the accountability of perpetrators of family violence for their actions.
28. The Magistrates' Court of Victoria is also responsible for oversight of administration and funding of these court-mandated MBCPs.

## **MEN'S BEHAVIOUR CHANGE PROGRAMS**

### ***Program content***

29. The content delivered in each MBCP varies between program providers. However, there are similarities with all MBCPs, particularly as a result of adherence to No to Violence minimum standards (to which I also refer at paragraph 34 below). These similarities are that MBCPs must:
  - 29.1 run for a minimum of 12 sessions;
  - 29.2 have a partner contact element;
  - 29.3 have at least one level-three facilitator, namely a facilitator with a relevant qualification who has had at least 100 hours' experience conducting MBCPs;
  - 29.4 contain individual intake sessions to determine the participant's desire and capacity to participate (including the participant acknowledging that they have a problem, or at least demonstrating a willingness to consider the possibility of acknowledging their violent behaviour); and
  - 29.5 focus on violence and control as primary themes.
30. The MBCP utilised by the Family Violence Court Division of the Ballarat and Heidelberg Magistrates' Courts includes an intake assessment interview, facilitated men's behaviour change group counselling and, where required, individual counselling. These MBCPs are accompanied by a partner contact service.
31. MBCPs utilised by the Moorabbin and Frankston Magistrates' Courts pursuant to the Family Violence Counselling Order Program are similar in content to the MBCPs utilised by the Ballarat and Heidelberg Magistrates' Courts

### ***Purpose of counselling orders under the Act***

32. Section 127 of the Act provides that the purpose of requiring a respondent to attend counselling is:
  - 32.1 to increase the respondent's accountability for the violence the respondent has used against a family member; and
  - 32.2 to encourage the respondent to change the respondent's behaviour.

33. As noted in the Judicial College of Victoria's Family Violence Bench Book (at [3.6.1]):

Behaviour change programs are designed to address particular attitudes that support family violence. They are not designed as traditional anger management or alcohol abuse courses, as research indicates that these are separate problems that are often used by perpetrators to deny responsibility for their conduct.

***Minimum standards, qualifications of providers and quality assurance***

34. As I observe at paragraph 29 above, No to Violence publishes minimum standards for MBCPs in Victoria. These standards were published in 2006 and apply to all MBCPs. All providers must meet these standards to receive funding from the government to deliver MBCPs. This applies equally to court-mandated MBCPs.

35. Aside from the No to Violence minimum standards, s 133 of the Act gives the Secretary of the Department the power to approve in writing:

35.1 persons who the Secretary considers have appropriate experience and qualifications to conduct interviews and prepare reports for the purposes of orders relating to assessment of eligibility to attend counselling (see s 129); and

35.2 counselling appropriate to address family violence to be provided by particular persons or bodies for the purposes of orders relating to attendance at such counselling (see s 130).

***Court process for mandating attendance at a MBCP***

36. The four Victorian Magistrates' Courts with power to mandate attendance at a MBCP do so by making a counselling order under Part 5 of the Act. Each of these courts is a 'relevant court' for the purposes of Part 5.

37. Magistrates' Courts that do not have the power to make a counselling order may nevertheless refer a man to contact a relevant MBCP provider. However, unlike the 'relevant courts', these courts lack the explicit power to mandate attendance and punish non-attendance under Part 5 of the Act.

38. The counselling order provisions in Part 5 apply to respondents for whom a relevant court makes a final family violence intervention order if:

- 38.1 the respondent is an adult; and
  - 38.2 the respondent's place of residence when the relevant family violence was committed is within a specified postcode area published in the Government Gazette (see s 128 of the Act).
39. It is important to note that a counselling order is not a condition of a final family violence intervention order. It is a separate order of the court. The separation of these orders serves a number of purposes. Among other things, it sends a message to the respondent that the court is ordering him, and not the affected family member, to attend the MBCP. It is also likely that, if attendance at a MBCP were a condition of a family violence intervention order, fewer respondents would consent to an intervention order being made. This could lead to more contested intervention order applications, causing delays in finalising matters and placing a burden on victims and the system.
40. The making of a court-mandated counselling order is a two-stage process:
- 40.1 first, the respondent is ordered by the court to attend an eligibility assessment with an approved person (in practice, this is a respondent support worker located at the court); and
  - 40.2 second, and if the respondent is found eligible to attend counselling, the respondent is ordered by the court to attend approved counselling.

*Stage one: eligibility assessment*

41. Pursuant to s 129(1) of the Act, a relevant court is obliged to make an eligibility assessment order in relation to a respondent to a final family violence intervention order, unless:
- 41.1 an order requiring the respondent to attend an eligibility assessment or counselling is already in force (see s 129(2)(a) of the Act); or
  - 41.2 the relevant court is satisfied (see s 129(2)(b) of the Act) that:
    - (a) there is no counselling approved by the Secretary under s 133 of the Act (see paragraph 35 above) that it is reasonably practicable for the respondent to attend; or



- (b) in all the circumstances of the case, it is not appropriate to make the order.

- 42. In accordance with s 129(1) of the Act, an eligibility assessment order requires:
  - 42.1 an approved person to give a report to the relevant court on whether the respondent is eligible to attend approved counselling to address the violence that is the subject of the final family violence intervention order; and
  - 42.2 the respondent to attend an interview with the approved person for the purposes of preparing the report.
- 43. Section 129(3) of the Act provides that the report must assess the respondent as eligible to undergo counselling, unless the approved person considers that the respondent does not have the ability or capacity to participate in counselling because of one or more of the following:
  - 43.1 the respondent's character, personal history or language skills;
  - 43.2 any disabilities of the respondent;
  - 43.3 any severe psychiatric or psychological conditions of the respondent;
  - 43.4 any alcohol or other drug problems of the respondent;
  - 43.5 any other matters the approved person considers relevant.

*Stage two: counselling order*

- 44. Pursuant to s 130(1) of the Act, the relevant court is obliged to make an order requiring the respondent to attend counselling if the court is given a report under s 129 and is satisfied that the respondent is eligible to attend counselling.
- 45. As with eligibility assessment orders, the relevant court is not required to make a counselling order if there is already such an order in force in respect of the respondent. Further, the relevant court is not required to make such an order if it is satisfied that:
  - 45.1 there is no counselling approved by the Secretary under s 133 of the Act that it is reasonably practicable for the respondent to attend (see s 130(2)(b)(i)); or

- 45.2 in all the circumstances of the case, it is not appropriate to make the order (see s 130(2)(b)(ii)).

*Consequences for failing to attend assessment or counselling*

46. If a respondent fails to attend the assessment interview or counselling, the assessor or the counselling provider that is contracted to deliver the program may give the relevant court a certificate setting out the details of the respondent's failure to attend (see s 139(2) of the Act). In the absence of evidence to the contrary, the certificate is proof of the facts contained in it (see s 139(3)).
47. It is an offence for a respondent to contravene an eligibility assessment order or a counselling order by failing to attend without reasonable excuse (see ss 129(5) and 130(4)). The maximum penalty for these offences is 10 penalty units (from 1 July 2015, the value of a penalty unit is \$151.67).

***Effectiveness of MBCPs***

48. MBCPs seek to address the underlying attitudinal causes of violence against women by working with men to confront their attitudes to gender, power and control.
49. Unlike anger management programs MBCPs address the underlying causes of family violence by looking at control and power more broadly than just their manifestation in anger-related behaviours.
50. International literature suggests that MBCPs as part of the criminal justice response are most effective when a court orders the perpetrator to attend the program at an early stage, the court monitors the perpetrator's attendance and the court responds to non-compliance (I refer to receptiveness to undertake a MBCP at paragraph 57 below).
51. The primary aim of mandated MBCPs is to strongly encourage men to start the process of behaviour change.
52. While men are participating in a court-mandated MBCP, partner contact also occurs to ensure women benefit as well. A benefit of MBCPs for women is that they are provided with space and time to assess their safety needs and develop a safety plan, they are linked into relevant support and advocacy services, and they receive ongoing risk assessment and risk management.

53. Another beneficial consequence is that some women may come to the realisation, while the program is being undertaken, that their partner or ex-partner will not change.
54. The fact that attendance at MBCPs is legally enforced encourages and validates men's participation in the program and holds them accountable for taking action to change their behaviour. There is the real prospect that men may be more mindful of their behaviour while they are subject to a counselling order.

### ***Evaluating MBCPs***

55. Despite evaluations of MBCPs having been conducted in other jurisdictions around the world, there has been no substantial well supported evidence of widespread program success. The complex and individuated experience of family violence, small sample sizes, inadequate program data, geographic specificity and lack of control groups lead to methodological problems for evaluations, and notions of program success are themselves contested.
56. Longer-term studies and evaluations of both perpetrator experiences and recidivism rates as well as victims' perceptions of ongoing safety may provide a clearer picture of the impact of programs if they can overcome the problems of past studies.
57. Having said that, what the evaluations do indicate is that eligibility criteria that ensure the perpetrator is well matched to the program significantly influences program success. Early intervention with perpetrators whose offending has not yet become entrenched, who do not have significant contributing factors (such as drug and mental health issues) and who are receptive to behaviour change are all important eligibility criteria, as is the cultural appropriateness of the program to the perpetrator's background. Where perpetrators are placed in programs that are not well suited to their circumstances, the likelihood of success is significantly reduced and participation in the program may in fact have an adverse impact on the perpetrator's behaviour.
58. In 2012, the Department funded an external evaluation of the Family Violence Court Intervention Program (in relation to the Ballarat and Heidelberg Magistrates' Courts). The evaluation was conducted by Effective Change and was finalised in 2013. I attach the evaluation report of Effective Change (**Evaluation Report**) at **Attachment MD-1**.

- 12 -

59. The Evaluation Report did not make definitive findings about the effectiveness of MBCPs offered as part of the Family Violence Court Intervention Program. Limited and inadequate program data was one of the biggest challenges to evaluating the Family Violence Court Intervention Program and answering questions about program efficacy.
60. The Evaluation Report noted, however, that MBCPs are:
  - 60.1 not suited to extremely violent men;
  - 60.2 not suited to men with deviant or psychopathic tendencies (as assessed by an appropriate health professional); and
  - 60.3 suited to those men most likely to benefit or change their behaviour, broadly speaking younger offenders (under 50 years of age) who are a low risk of general reoffending.
61. However, the Evaluation Report also contained a number of important findings about improving future delivery of the Family Violence Court Intervention Program, namely that:
  - 61.1 women who engaged with the program felt supported, valued the support provided to their children and also gained access to relevant information;
  - 61.2 the majority of men who engaged with the program were positive about their experience with the MBCP;
  - 61.3 on balance, most members of the judiciary who were interviewed expressed confidence in the program; and
  - 61.4 greater clarity emerged about the men most likely to be receptive to counselling, namely men under 50 years old who do not have a history of violent crime, especially crime involving family violence.

***Expanding court-mandated MBCPs***

62. As observed at paragraph 25 above, the Minister by notice published in the Government Gazette may specify additional venues of the Magistrates' Court as 'relevant courts', thus enabling those venues to make counselling orders under Part 5 of the Act in order to mandate attendance at MBCPs.

- 13 -

63. Before this could occur, there would need to be consultation with the Magistrates' Court of Victoria in order to address the resourcing implications (including the essential role of the respondent support workers who undertake eligibility assessments) of any expansion of the counselling order regime to include more venues of the Magistrates' Court. There would also be a need for consultation with key stakeholders, including MBCP providers, to ensure that there will be sufficient programs available in the event of increased demand for MBCPs.

Signed by **Marisa De Cicco**

at Melbourne

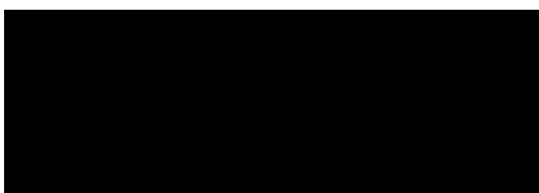
this 21<sup>st</sup> day of July 2015

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Before me



An Australian legal practitioner  
within the meaning of the  
Legal Profession Uniform Law (Victoria)