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VICTORIAN ROYAL COMMISSION INTO FAMILY VIOLENCE

MELBOURNE

TUESDAY, 4 AUGUST 2015

(12th day of hearing)

BEFORE:

THE HONOURABLE M. NEAVE AO - Commissioner

MS P. FAULKNER AO - Deputy Commissioner

MR T. NICHOLSON - Deputy Commissioner

1 COMMISSIONER NEAVE: Thank you, Mr Moshinsky.

2 MR MOSHINSKY: Thank you, Commissioners. The topic for today's  
3 hearing is family violence intervention order - the  
4 application process. This is the first of two days  
5 devoted to intervention orders. Today we look at the  
6 application process. Tomorrow we will look at the  
7 monitoring and enforcement of intervention orders,  
8 including proceedings for breach. We devote two days to  
9 the subject of intervention orders because they form such  
10 a significant part of the current response to family  
11 violence in Victoria and in other jurisdictions.

12 An intervention order is a civil rather than a  
13 criminal order. It is an order of the court containing a  
14 series of conditions which can be tailored to meet the  
15 circumstances of the particular case. Intervention orders  
16 may, but do not have to, prohibit contact between a  
17 perpetrator and a victim. Some intervention orders may  
18 permit couples to continue living together. Others will  
19 require the perpetrator to leave.

20 The distinction between civil and criminal orders  
21 is important here. While the intervention order is a  
22 civil order, a breach of an intervention order is a  
23 criminal offence. It follows that, if the respondent  
24 breaches the order, that is a criminal offence and the  
25 respondent is liable to be prosecuted.

26 Another aspect of the regime which should be  
27 mentioned is the safety notice provisions of the Act.  
28 These enable the police to issue a safety notice on an  
29 interim basis which can have conditions much like an  
30 intervention order. A safety notice has immediate effect  
31 upon service and can last for up to five days. There are

1 particular criteria applicable to when the police can  
2 issue a safety notice which are set out in the Act. The  
3 effect of a safety notice can be to exclude the respondent  
4 from the home. The safety notice also functions as an  
5 application by the police for an intervention order.

6 As described on the first day of the public  
7 hearings, the number of intervention order applications  
8 has increased significantly in recent years. As detailed  
9 in the Magistrates' Court's submission to this Royal  
10 Commission, the number of finalised applications for  
11 intervention orders nearly doubled between 2000-2001 and  
12 2013-2014. There were 16,889 applications in the  
13 2000-2001 year; in contrast there are 35,135 applications  
14 in the 2013-2014 year.

15 Another significant trend is the increase in the  
16 number of intervention order applications made by police.  
17 Police applications now make up 66 per cent of all  
18 applications in the Magistrates' Court.

19 It is important to note the limitations on the  
20 powers of the Royal Commission set out in section 123 of  
21 the Inquiries Act. This provides that a Royal Commission  
22 cannot inquire into or exercise any powers in relation to  
23 certain bodies or persons. The list set out there  
24 includes a Victorian court. However, subsection (3) of  
25 section 123 provides that nothing in the section prevents  
26 a person or body referred to in the section from giving  
27 evidence or information or providing a document  
28 voluntarily to a Royal Commission.

29 The Magistrates' Court has voluntarily provided a  
30 submission and information to the Royal Commission.  
31 Further, we will today and on coming days hear evidence

1 provided voluntarily by several magistrates. Out of  
2 deference to their position as judicial officers, the  
3 magistrates will not be sworn or make an affirmation.

4 Further, in the questioning of witnesses  
5 generally today and on coming days the Royal Commission  
6 will not be seeking to examine the outcome of any  
7 particular case or the performance of any judicial officer  
8 or a court more generally in light of the limitations in  
9 section 123.

10 Can I now outline some of the questions that will  
11 be looked at in the evidence today. What are the  
12 differing processes by which an intervention order can be  
13 obtained? How are applicants and respondents assisted  
14 during the process, both at court and subsequently? What  
15 are the limitations imposed by time, volume and physical  
16 surroundings on the ability of duty lawyers and court  
17 workers to assist? How are risk assessments conducted and  
18 by whom? How is the resulting assessment shared? What is  
19 the experience of a victim or a perpetrator being at court  
20 for the first time and how could that experience be made  
21 more therapeutic and less traumatic? What opportunities  
22 are there to streamline or alter processes?

23 Can I now outline the witnesses who will give  
24 evidence today. We will start the evidence with a lay  
25 witness whom we have given the pseudonym "Rebecca Smith".  
26 That evidence will be subject to a Restricted Publication  
27 Order and will not be streamed on the internet. She will  
28 give evidence of the different experiences of intervention  
29 order proceedings in two courts, one a specialist court  
30 and one not a specialist court.

31 Then we will have evidence from Karen Field,

1 Abbey Newman and Julie Davies. Their evidence will be  
2 about how intervention order applicants are dealt with by  
3 court staff, the role played by support workers, how the  
4 day at court is managed, the relevance of other supports,  
5 issues associated with current application processes,  
6 including forms and the timing of applications.

7 Then we will have evidence from Leanne Sinclair  
8 and Chris Casey. They will give evidence about duty  
9 lawyer services for applicants and respondents. They will  
10 also deal with resourcing issues and time constraints.

11 Then there will be a panel comprising Alice  
12 Cooney, Paul Rudd and Fiona Calkin. They will speak about  
13 Victoria Police services and responsibilities at court for  
14 intervention order applications.

15 The next set of witnesses comprises Melanie  
16 Heenan and Kerry Walker. They will give evidence about  
17 limitations of the current model and ideas for how to make  
18 the process more accessible and less traumatic, including  
19 lessons from the neighbourhood justice model. They will  
20 make specific comments on court buildings and  
21 infrastructure and on the role of the court network.

22 Then finally today we will hear evidence from  
23 Magistrates Hawkins and Toohey. They will provide their  
24 comments and views on the issues raised for consideration  
25 today.

26 Can I mention some of the possible  
27 recommendations that may flow from the evidence today.  
28 I will mention five possible recommendations: first, to  
29 expand the family violence divisional model to all courts  
30 or all headquarter courts; second, to upgrade court  
31 buildings to promote safety; third, to use alternate

1 processes to ensure the safety of all attending court,  
2 including the use of remote witness facilities; fourth, to  
3 increase the availability of legal assistance at court;  
4 and, fifth, to amend the intervention order application  
5 form and the form of orders.

6 Commissioners, that concludes my opening remarks.  
7 Because the next witness won't be streamed on the internet  
8 would it be possible to have a short adjournment for a  
9 couple of minutes?

10 COMMISSIONER NEAVE: Certainly, Mr Moshinsky.

11 (Short adjournment.)

12 (CONFIDENTIAL SECTION FOLLOWS)

1 MS ELLYARD: Thank you, members of the Commission. The next  
2 witnesses are Ms Davies, Ms Field and Ms Newman. I will  
3 ask that they be sworn in, please.

4 <JULIE ESTELLE DAVIES, sworn and examined:

5 <KAREN ELIZABETH FIELD, sworn and examined:

6 <ABBEY CARA NEWMAN, affirmed and examined:

7 MS ELLYARD: May I begin with you, please, Ms Field. What is  
8 your present occupation?

9 MS FIELD: Currently I'm the Family Violence Registrar at  
10 Sunshine Magistrates' Court.

11 MS ELLYARD: What does the Family Violence Registrar do?

12 MS FIELD: The main role that I have at the Sunshine Court is  
13 basically management of the family violence registry.  
14 Involved in that registry is a grade 3 registrar and also  
15 a trainee. We currently have an applicant support worker  
16 at Sunshine Court and in the process of recruiting a  
17 respondent worker.

18 My role on court days, which is three days a week  
19 for family violence at Sunshine, is mainly a coordination  
20 role at Sunshine, in that the first person they see when  
21 they walk through the door. I'm there at the counter  
22 taking appearances of applicants, respondents, solicitors,  
23 support services, police, applicants, prosecutors, all  
24 involved in the list on that day.

25 MS ELLYARD: You have made a statement to the Royal Commission  
26 that's dated 31 July 2015. Are the contents of that  
27 statement true and correct?

28 MS FIELD: Yes, they are.

29 MS ELLYARD: Can I turn to you, Ms Davies. What's your present  
30 role?

31 MS DAVIES: I am the Respondent Worker at the Ballarat

1 Magistrates' Court.

2 MS ELLYARD: What does the Respondent Worker do?

3 MS DAVIES: The Respondent Worker works with anyone who is  
4 responding to an application for an intervention order.

5 MS ELLYARD: When you say "works with", what kind of things in  
6 summary does the Respondent Worker do?

7 MS DAVIES: My role is a supportive role, so when I interview  
8 them I might find that they don't have accommodation,  
9 there may be drug and alcohol, all sorts of issues that  
10 need to be addressed, but also as part of my role in our  
11 family violence division there's mandated counselling, so  
12 my role is also to do those assessments.

13 MS ELLYARD: You have made a statement to the Commission that's  
14 dated 29 July 2015. Are the contents of that statement  
15 true and correct?

16 MS DAVIES: They are.

17 MS ELLYARD: Can I now turn to you, Ms Newman. What is your  
18 present role?

19 MS NEWMAN: My present role is the Senior Project Officer with  
20 Court Services Victoria, but prior to that I was the  
21 family violence applicant support worker at Sunshine  
22 Magistrates' Court for the past seven and a half years.

23 MS ELLYARD: What does the Applicant Support Worker do?

24 MS NEWMAN: The Applicant Support Worker supports anyone who's  
25 applying for intervention orders, which means I would  
26 approach and do an intake with them and during that intake  
27 I would identify any of their needs. I would do a risk  
28 assessment with them, which is the CRAF risk assessment,  
29 talk to them about safety planning for when they are  
30 coming to court, when they are at court or when they are  
31 leaving court, and explain to them court process and



1 provide some family violence education as well as making  
2 ongoing referrals to other services.

3 MS ELLYARD: You have made a statement to the Commission dated  
4 28 July 2015. Are the contents of that statement true and  
5 correct?

6 MS NEWMAN: Yes, they are.

7 MS ELLYARD: You have also produced to the Commission a copy of  
8 some materials which I understand are materials that you  
9 provide to applicants when you meet with them at court?

10 MS NEWMAN: Yes.

11 MS ELLYARD: Can I turn back to you, Ms Field. Is there a  
12 family violence registry at every Magistrates' Court in  
13 Victoria?

14 MS FIELD: There is a family violence registry within a  
15 courthouse. However, some are set up differently. We are  
16 very fortunate at Sunshine to have a separate registry in  
17 that it is a separate counter. The applicant worker is  
18 located right next door. We have a private interview room  
19 on the other side of the registry. Within this registry  
20 is where obviously I'm located and the grade 3 who is  
21 mainly responsible for the appointments throughout the  
22 registry.

23 So, whilst we can say that there is a family  
24 violence registry in all courts, they are just set up a  
25 little bit differently. Some at other courts are just the  
26 family violence registrar would be sitting at a desk  
27 located within the whole general registry.

28 MS ELLYARD: Ms Newman, what about applicant workers? Are  
29 there applicant workers at all courts in Victoria for  
30 family violence matters?

31 MS NEWMAN: There are not applicant workers at all courts.

1       There are some courts and there's a rollout of applicant  
2       and respondent workers happening at the moment across the  
3       13 headquarter courts. Currently the applicant workers  
4       are located at Heidelberg, Ballarat, Frankston, Moorabbin,  
5       Sunshine and Werribee, Dandenong, and I can't think of the  
6       rest off the top of my head.

7   MS ELLYARD:   What about respondent workers, Ms Davies? From  
8       your understanding, how many of you are there at the  
9       moment around Victoria?

10  MS DAVIES:    I believe there are about six of us.

11  MS ELLYARD:   I understand, Ms Newman, there are plans to expand  
12       the location of applicant and respondent workers; is that  
13       correct?

14  MS NEWMAN:    Yes, that plan is going across the 13 headquarter  
15       courts.

16  MS ELLYARD:   Ms Field, can I start then with you. You  
17       mentioned that you are the first person that people see  
18       when they turn up to court. Would you paint a bit of a  
19       picture for the Commission, please, of what it is like to  
20       be managing that literal queue of people in front of you  
21       and the kind of issues you are called upon to manage at  
22       that front-line level?

23  MS FIELD:     Okay. Perhaps we can start with a typical Monday  
24       morning. Monday mornings or Mondays at Sunshine Court are  
25       predominantly police initiated applications. Going back  
26       to preparing the list on the Friday, the list on the  
27       Friday may include, say, 20 applications. That list will  
28       at least double and maybe double and a half by Monday  
29       through work done by Victoria Police over the weekend in  
30       relation to executing warrants or safety notices and the  
31       return of applications and summonses. So, when the doors

1 open at 5 to 9 on a Monday morning at Sunshine, our list  
2 is generally between 40 and 50 on average, so we know  
3 generally what to expect coming through the door.

4 As I said earlier, we are lucky to have a  
5 separate registry. So, whilst the criminal coordinator's  
6 counter is located directly at the entrance of Sunshine  
7 Court, some people go directly there and are then referred  
8 to our registry counter. My role is to speak to everyone  
9 that presents at the counter that morning. Affected  
10 family members in a police application will come up and  
11 let me know that they are here. Same to respondents.

12 In the way that they present can be quite  
13 different. We have many people in tears as they're  
14 walking through the door. It's the first time they have  
15 ever walked into a courthouse and are totally upset about  
16 being there and, particularly if the incident happened the  
17 previous day, it's all quite raw. I also have angry  
18 people coming to the court and that can be in the form of  
19 an affected family member also who has said, "I don't want  
20 to be here. The police did this. I don't want it.  
21 I want to withdraw."

22 In both cases we have support workers there  
23 obviously on a Monday. The applicant support worker holds  
24 a meeting with other support services that we have on a  
25 Monday, so there will be the applicant support worker,  
26 there will be two other support workers from other family  
27 violence agencies, being Women's Health West and inTouch.  
28 There is also a court network support worker in there and  
29 also a Centrelink person. Abbey set that up and what that  
30 support group does is go through the list and know which  
31 client on the list they will be supporting on that day.

1 That is then fed through to me prior to me even beginning  
2 to talk to applicants.

3 So when they make an appearance to me, I explain  
4 the process. I explain that it's a police initiated  
5 application. There will be a few people that will speak  
6 with them throughout the morning, one obviously being our  
7 police liaison officer who is representing the police in  
8 all the applications, and also a support worker. Whether  
9 it's the applicant worker, whether it's Women's Health  
10 West or inTouch, one of them will speak with her  
11 throughout the morning.

12 MS ELLYARD: Are all of these people arriving at the same time?

13 MS FIELD: Generally, yes. Summonses have a 9.30 date on them.

14 Some of the undertakings of bail have 9. Some of the  
15 safety notices have different times. But generally they  
16 will all come in between 9 and 9.30, so it's not unusual  
17 for the line at the counter to be 20 deep. That only  
18 gives me a short period of time to explain that process to  
19 the applicant, who is typically quite distressed.

20 Sometimes when you talk to them you know that  
21 she's glazing over and not understanding or capturing  
22 anything I say. So we have to say it a few times  
23 generally to get them to understand or to make them  
24 understand what the process of the day would be.

25 MS ELLYARD: Can I take up that issue then of applicants. In  
26 certain cases, although I take it not all, at your court  
27 there will be the opportunity for an applicant to speak to  
28 the applicant support worker?

29 MS FIELD: Definitely.

30 MS ELLYARD: Ms Newman, that until recently was you. I wonder  
31 could you comment for the Commission on the general

1 presentation that you have experienced of applicants who  
2 are sent to see you?

3 MS NEWMAN: Yes. As Karen said, a lot of the information is  
4 going over the applicant's head because they are in a  
5 state of trauma. If they are coming on a Monday, quite  
6 often the incident has happened from Friday onwards.  
7 Things are really fresh. They're coming to a system that  
8 most people haven't had experience with. We talk a very  
9 different language. The setting is pretty unfamiliar to  
10 most people. We are also bringing them in a state of  
11 trauma.

12 So, what they are actually required to do on the  
13 day is to understand our system, understand our language,  
14 to make decisions that's going to affect the rest of their  
15 lives and their children's lives, and make those decisions  
16 pretty quickly with a very short engagement with legal  
17 services, with myself, with the whole court experience.

18 So, I have a lot to do in an interview that  
19 I would typically have with them. Most of the time, even  
20 before we start talking about family violence and what  
21 they are experiencing, they want a breakdown of the legal  
22 system and how that works. I actually lecture at RMIT and  
23 I bring students through to explain this process to them.  
24 It takes them 13 weeks of education plus a few essays to  
25 understand our system before they are able to really  
26 reflect back to me what the choices and what the process  
27 might be.

28 So I'm trying to give an applicant who is  
29 traumatised and who isn't listening and who often have  
30 kids with them that information in about 15 minutes,  
31 because I also have to go through with them their risk

1       assessment, I have to talk to them about plans, about how  
2       we're going to keep you safe while you're at court, what  
3       things you're going to do to keep safe when you leave  
4       court, some referral options for them, trying to explain  
5       to them informed consent so they know what I'm doing with  
6       their information and then that they are going to be  
7       talking to people that are going to ask them for  
8       decisions.

9   MS ELLYARD:   Some of that information that you have to give  
10       them about the court processes, is any of that available  
11       elsewhere so that people might have been able to access it  
12       before they came to court, like on-line, through websites,  
13       anything like that?

14   MS NEWMAN:   There is a current project for on-line engagement  
15       and that's forecast over the next period of time, I'm not  
16       quite sure how long that is, so that people will be able  
17       to access that.   There are some Legal Aid brochures and  
18       there are a few different ways to access some of this  
19       information, but it's probably not common knowledge and in  
20       your weekend where you've had a family violence incident,  
21       you're managing him, the family, your children, and all of  
22       the things that you need to do to stay safe, the  
23       likelihood of someone actually accessing that information  
24       over that period of time is fairly non-existent.

25   MS ELLYARD:   Can I ask you, Ms Davies, from your perspective as  
26       the respondent worker, how would you characterise the way  
27       in which respondents present to the court and the way in  
28       which you would then have to manage that presentation?

29   MS DAVIES:    Our main court days are Tuesday and Wednesday, and  
30       Tuesday is our police application day.   So the way we  
31       structure it at Ballarat is with our court list I'm aware

1 of the respondents who would be eligible to have an  
2 assessment for the counselling before the court. So, we  
3 have our meeting on that Tuesday morning. At that meeting  
4 is the applicant worker, the registrar, the solicitors and  
5 the police, police liaison. So I then know which  
6 solicitor the respondents are able to see and we also talk  
7 about if there are any safety issues.

8 So, before court I try to see whoever appears and  
9 whoever is going to be eligible for the assessment.  
10 I like to be able to explain to them about the  
11 counselling, if there is an order made. So I would see  
12 any respondents that come through, basically talk to them  
13 about the process on the day and also about the possible  
14 eligibility assessment, but also find out what's happening  
15 for them.

16 MS ELLYARD: How do they present? If it's possible to  
17 generalise, how would you describe the emotional state,  
18 for example, of the kinds of respondents you are  
19 approaching at court to meet with?

20 MS DAVIES: Everybody is different. Sometimes they are really  
21 anxious . Sometimes it's, "I'm just going to agree to  
22 everything because everything's about the women," and they  
23 will go off on a tangent. So I then say to them, "Hang on  
24 a minute, I'm here to support you. What's happening for  
25 you?" Most of the men - and I only do see men unless it's  
26 a same-sex relationship - are really quite anxious. A lot  
27 of them it's the first time they have ever been to court.  
28 They don't know how the system works. Some of them  
29 haven't even been into a courtroom.

30 In those instances I will say to them, "All  
31 right, I'll keep talking to you, but let's go for a walk,"

1           and I will take them to the courtroom. Lots of times it's  
2           too early, it's not even sitting, so I will explain who  
3           sits where and what happens and then bring them back to my  
4           office.

5 MS ELLYARD: What impact do you think that information that you  
6           give to respondents has on their ability to then  
7           participate in what's going to happen that day?

8 MS DAVIES: Oftentimes you can almost feel the anxiety drain  
9           because it's just the not knowing. Some of them do have  
10          criminal charges that are coming out of whatever the  
11          incident that's happened. I just see it as vitally  
12          important to make it safer for the women and the AFMs and  
13          the children as well, because if the men are being  
14          supported, a lot of that anxiety is gone, they know what's  
15          going to be happening, I make sure that they're also aware  
16          that they can have legal advice. So, yes, it's about  
17          taking away that pressure and anxiety.

18 MS ELLYARD: Ms Field, there isn't a respondent worker I think  
19          at Sunshine at the moment. Is that a lack, in your view?

20 MS FIELD: It certainly is, and it is not through lack of  
21          trying. We have interviewed one time and we are doing it  
22          again at the end of the week.

23 MS ELLYARD: From your perspective, what's the unmet need,  
24          I suppose, that a respondent worker - - -

25 MS FIELD: It's just what Julie is saying. Currently at  
26          Sunshine the only real support that we have for  
27          respondents currently is legal support. So, when they  
28          present at the counter, and again in a whole range of  
29          different emotions, the only thing that I can really offer  
30          them is to speak to Legal Aid to get some legal advice  
31          about the application at court that day. Again, Court



1 Network sometimes are called upon to sit with respondents  
2 also, so we have that facility. Sometimes respondents are  
3 referred to our CISP program as a result of the  
4 intervention order matter at court. But it is a hole. We  
5 need that dedicated support worker for respondents.

6 MS ELLYARD: Ms Newman, have you worked in a setting where  
7 there is a respondent worker as well as an applicant  
8 worker?

9 MS NEWMAN: I haven't worked in a setting where there's both,  
10 but currently my role is to be writing the guidelines for  
11 the applicant and respondent support workers to  
12 standardise our process across the courts, and what  
13 I would see as the need for Sunshine and how the  
14 respondent worker would work there, in that we don't have  
15 a mandated counselling program and a lot of the courts  
16 aren't going to have a mandated counselling program, but  
17 what I would envisage the role to be is that the  
18 respondent worker would engage with the man and make sure  
19 that they follow their No To Violence standards of  
20 non-collusion when they are having those conversations,  
21 provide him with some basic court process, have a chat to  
22 him about his behaviour and what concerns he has about his  
23 behaviour.

24 Some men are ready to sort of talk about, "I've  
25 got concerns and I want to change." Some men haven't  
26 actually even acknowledged that the behaviour they are  
27 using is family violence, and that's the role of our  
28 respondent worker to maybe start slowly challenging that,  
29 and then talking to them about the options that they have  
30 for engaging with other services, so that they would talk  
31 about primarily men's behaviour change and the difference

1 between that and anger management, which is often  
2 something that men come in and say, "All right, I'll have  
3 some help, but it will be anger management," and there are  
4 some pretty stark differences between the two processes,  
5 and then also start talking to him, especially if he is  
6 going home with his wife and children in some cases, about  
7 what sort of techniques he can use to stay safe.

8 So, if he's becoming angry, what sort of things  
9 might he be able to put in place, what sort of things has  
10 he done that's worked in the past that have kept people  
11 safe and what conversations and with who he needs to have  
12 that about. So that would be the envisaged structure of  
13 the respondent worker. We have the respondent worker with  
14 the non-mandated program just started at Melbourne, so we  
15 are currently shaping that role and what it's going to  
16 look like and how it's going to work.

17 MS ELLYARD: Ms Davies, this issue of collusion, is that an  
18 issue for you in your work, and when I say "collusion"  
19 I mean the risk that through supporting a perpetrator of  
20 violence you might be seen by the perpetrator to be  
21 agreeing with them or supportive of their behaviour. Can  
22 you give the Commission some practical examples about how  
23 you balance those issues in your work?

24 MS DAVIES: Collusion is a big deal. Oftentimes the men will  
25 come into my office and start talking about, "She does  
26 this, she does that, she says this." And I just stop them  
27 and say, "I'm not here to talk about what she does. I'm  
28 here to talk about what you do. Where are you at? What  
29 is it that can change? What needs to change?"

30 One of the biggest challenges I have found over  
31 the years is men who are supported by their mothers - I'm

1 not saying all of the mothers, but lots of the mothers are  
2 their biggest enemy because they're the ones that collude  
3 with their sons and lots of times I just have to ask their  
4 mother to leave, leave the office. That's if there's  
5 - not that there's an assessment being made before it goes  
6 into court. So, yes, collusion can be a really big thing.

7 MS ELLYARD: What are some ways that you have found you have  
8 been able to get past that issue and have perhaps some  
9 really meaningful discussions with men about their  
10 behaviour and whether they are ready to change?

11 MS DAVIES: It's about challenging them on their behaviour.  
12 I'm more interested in where they're at, not the other  
13 party. So I just don't talk about the other party, unless  
14 it's specifically about them with where they're at with  
15 it.

16 MS ELLYARD: Ms Field, can I turn back to you. I take it there  
17 would be a category of people turning up at court in  
18 relation to police initiated applications, and you  
19 mentioned this, who don't want the application to be made  
20 or who might attend with the respondent. Does that happen  
21 and how do you manage that situation?

22 MS FIELD: It's quite common for the couple to present at the  
23 counter together and tell me that, "Everything's fine, it  
24 was an incident over the weekend, we've sorted it out,"  
25 and she will tell me that she doesn't want any order.  
26 They are put on the referral list to the support worker  
27 straight up, with an advice to the police liaison of that  
28 discussion. We sometimes find that she's telling me that  
29 through pressure from the respondent and then we go into  
30 conversations later separately with the affected family  
31 member, either through the support worker or myself, to

1 say, "It's okay to say that the police are insisting this  
2 being in place. Put the blame on the police. Tell the  
3 respondent that they're insisting on even just a limited  
4 order being in place," so it takes the responsibility off  
5 her and he can blame the police until the cows come home,  
6 and that sort of keeps her a little bit safer when they go  
7 home, for her to say, "Look, I told them flat out that  
8 I didn't want it, but the police were insisting."

9 MS ELLYARD: Ms Newman, can you comment on that?

10 MS NEWMAN: A lot of those women, they are automatically  
11 referred to me and my process is a similar process that  
12 I take with standard interviews, but to have someone who  
13 is coming in saying, "I don't want the order, I want to  
14 withdraw the order," what I generally do is I will explain  
15 my role and talk about confidentiality, because one of the  
16 worries they have is if they're telling me anything that  
17 will suggest that there is risk, that then because I'm  
18 part of the court system I'm going to go ahead and make  
19 sure that these orders stay in place and not actually  
20 listen to what they are wanting.

21 So I go through some family violence education.  
22 So I generally talk about the power and control wheel and  
23 just say, "I'd just like to give you some of this  
24 information just so you know. If it never happens again,  
25 that's fine, but just in case it happens again, we need to  
26 sort of talk about almost making a backup plan or a  
27 fallback plan." So, a lot of the time they have come in  
28 and said things like there's some promises been made, he's  
29 going to engage in counselling, all of these things are  
30 going to change, which I can be supportive of, but make  
31 sure that they have the knowledge and also have some risk

1 indicators for themselves to look out for.

2 So I go through some of the things that I have  
3 attached to my statement. One of the things is the power  
4 and control wheel and just discussing the types of  
5 violence that happens that are non-violent, that are the  
6 subtle forms of control, and through this discussion a lot  
7 of women start saying, "Okay, that is happening. I didn't  
8 realise that was violence. These sort of things are  
9 worrying me. I do want them to stop."

10 We talk a little bit about what an equal  
11 relationship would look like and what him changing would  
12 actually look like. What are the indicators that he has  
13 changed. How many times he has promised to change before.  
14 We talk about the cycle of violence, the way in which the  
15 relationship might move when there is violence present and  
16 also how many times she might have been through that cycle  
17 and where she thinks she is up to at the moment.

18 So, a lot of the time women can identify all  
19 this, and he is probably in that remorse or honeymoon  
20 phase where he is actually doing a lot of things "to make  
21 sure that me and the kids are happy" and we talk about the  
22 last time they were there and what indicators started  
23 happening that things were building up and things weren't  
24 going so well and what they are going to do if that starts  
25 happening again.

26 So, I talk to them also about the cycle of  
27 violence, the power and control wheel and pursuit  
28 techniques, so these pursuit techniques about how men do  
29 coerce women back into relationships and generally the  
30 first of that starts with the buyback, in that "I'll give  
31 you presents, I'll keep some promises, I'll do that." The

1 document I have attached to my statement is actually made  
2 from quotes that applicants give me on a regular basis.  
3 So when I provide it to them, they say, "He's said that  
4 and he's said this and it feels like it's been written  
5 from my experience," so that people can start identifying  
6 that, "These are the things that are happening, these are  
7 maybe the ways that I'm being manipulated," and the hard  
8 thing about family violence is this is an emotional issue,  
9 it's not something that has clear logic to it, because if  
10 anyone has ever been in a relationship, you make decisions  
11 because you are in love with someone and you hope that  
12 things are going to change and you want the honeymoon  
13 phase to last forever and you want the promises that he  
14 has given you to be true.

15 So, we start having some of those conversations  
16 about how emotions are manipulated and what sort of things  
17 are okay as humans, because a lot of people feel very  
18 guilty about the back and forth and the promises that  
19 they've believed and been let down and they've told their  
20 family members one time and then gone back. So we start  
21 having conversations about, "This is okay, you are human,  
22 that these are the some of the things that you might  
23 experience, but we need a backup plan."

24 So part of what I do is really make sure that  
25 they have a good relationship with me and with referral  
26 services, so that if things are escalating and things  
27 happen again, that they have people that they can come  
28 back to without that shame of "I've made this decision and  
29 it's happened again and he wasn't telling the truth."

30 They might then give me a lot of information  
31 about risk that they hadn't provided to the police or to

1 the court, and then there's a conversation that I have  
2 with them about informed consent, about what I am going to  
3 do with that information, would they like me to disclose  
4 some of that to the police, that I can advocate if I do  
5 disclose some of this to the police, particularly the  
6 police liaison or to Karen, the family violence  
7 registrars, what they are going to do it.

8 Normally I communicate just in the language of  
9 risk to say they've given me a lot more information. The  
10 risk that is reflected here and the narrative isn't  
11 perhaps the entire story. Through the CRAF risk  
12 indicators, there are 26 risk indicators and they are  
13 scoring at this level which puts them in my opinion at  
14 immediate risk and this is what they would like, how can  
15 we make this process safe so they can get that  
16 information.

17 Sometimes then I might also go into court. It  
18 might have been a referral from the magistrate and maybe  
19 the magistrate may need some of that information about  
20 where the risk is at and what decisions they might need to  
21 be making in regards to that.

22 MS ELLYARD: I'm going to come back and ask more about risk,  
23 but before I do that can I ask you, Ms Davies, from the  
24 opposite end of the scale, you see men who might be  
25 accepting or being directed to go to men's behaviour  
26 change programs with the idea that they will be able to  
27 change their behaviour. Can you tell the Commission a  
28 little bit about how men receive the idea that they should  
29 go to counselling of that kind and your perspective of  
30 whether people that you have seen have found it beneficial  
31 and helpful?

1 MS DAVIES: If a respondent is directed to have an assessment,  
2 that assessment takes about 20 minutes. It covers mental  
3 health issues. It covers disability. It covers drug and  
4 alcohol. I also need to look at if they are working or  
5 what else is going on in their life. Most of the men do  
6 the assessment, that's okay, but then they will let me  
7 know, "I don't want to do this, I'm doing something else,"  
8 until you explain it is a legislated thing within our  
9 court. Some are more than willing to do it. Some of the  
10 men realise that there's stuff going on that they need to  
11 address. Having said that, I've had quite a few men break  
12 down and say, "This is what my father was like. I never  
13 wanted to be like my father and here I am doing exactly  
14 the same stuff."

15 So, some are quite willing to do it. Others  
16 absolute no-no. So I will talk to them about that, how  
17 the program works, and if there's no reason why they can't  
18 do it, then a report is made to the magistrate and she  
19 will make an order. Our rate of the men failing to  
20 complete the program is probably about 40 per cent.

21 MS ELLYARD: 40 per cent don't complete?

22 MS DAVIES: Yes, that will start and not continue. But some of  
23 the men will come back and say that it's been really good,  
24 they've learnt a lot from it. Some come back to do it a  
25 second time. I have had a few of the guys say to me,  
26 "Julie, the first time I did it I so didn't want to do it,  
27 but I'm willing to do it this time." So sometimes that  
28 can be a positive as well.

29 MS ELLYARD: Can I turn then to the question of risk  
30 assessments. Ms Field, do registry staff do risk  
31 assessments?



1 MS FIELD: When a registrar speaks with an applicant upon  
2 filing their application, it's all questions, answers and  
3 information gathering from the applicant. I would like to  
4 think that registrars are well qualified in gathering that  
5 information to put into a narrative of an application.  
6 It's in that narrative that they would identify the risk  
7 factors that have been spoken about at that appointment  
8 time. So we want to give the application and the court  
9 and the magistrates as much information about that  
10 particular client and what's been going on. So we want to  
11 ask them about all the things - the recent incident, other  
12 incidents, what's been the scariest thing that's ever  
13 happened to them and build all that information into the  
14 narrative.

15 MS ELLYARD: So we are talking here about cases other than  
16 police applications where people are attending at the  
17 court to make an application directly?

18 MS FIELD: Correct.

19 MS ELLYARD: There is a very long form that people have to fill  
20 out which includes a narrative section. Can you talk  
21 about how the court staff take that long form and what's  
22 contained in it and put it into the court system and how  
23 you make that assessment about what to include and what  
24 not to include?

25 MS FIELD: Sure. The application form is 12 pages long, which  
26 is one of the things that I believe should be looked at  
27 and reviewed. The main thing - the first thing that  
28 I would do if I was conducting an interview with an  
29 affected family member is work out the relationship  
30 between the applicant and the respondent, ask them whether  
31 the relationship is still - if they are still in the

1 relationship, if they've separated, if they're living  
2 together, if they have children, if there are any other  
3 court orders in place. That's generally the opening to  
4 any discussion.

5 On the application form we would also see, if  
6 they are living separately, obviously whether their  
7 address is to be disclosed or not. That's imperative in  
8 the application. You would then look at the application  
9 form and look at the most recent incident that's written  
10 on the form, talk about that. You will also go on to the  
11 other page and see there's another small section that they  
12 have to fill in about a history of other family violence  
13 incidents.

14 The way people fill in these applications is also  
15 very different. Sometimes we get applications and there's  
16 10 pages attached to it because they can't possibly fit  
17 their life story in that little box that's on the  
18 application form. Other people come in and say, "On this  
19 date this happened," and then it's a matter for the  
20 registrar to speak with that applicant and to get some  
21 more information about what's going on. With that then we  
22 then ask the applicant to wait outside and we have to  
23 process that in our very old Courtlink system.

24 MS ELLYARD: Speaking about the Courtlink system, the  
25 Commissioners heard on the first day of the hearing from  
26 an applicant who had lots of pages attached to her  
27 application because so many things had happened. How much  
28 is there physically room for in the computer generated  
29 version of this form using the court system that the court  
30 has?

31 MS FIELD: There are generally only two paragraphs we can fill

1 out. I don't know the character size, but there are only  
2 two paragraphs that we have to fit that in. Courtlink is  
3 being modified now to I think allow us five screens that  
4 we can add some information into. So, it is deceiving;  
5 sometimes because we would hand back the typed application  
6 to the applicant to read and swear, and on the front page  
7 is details, a little bit of a narrative, on the second  
8 page is the second paragraph and this whole blank bottom  
9 of the page and it gives the impression that we have got  
10 all that room to continue with their application, but we  
11 just haven't. We are limited by that space.

12 MS ELLYARD: If an applicant has filled out an application form  
13 with 10 pages of supporting detail which has been  
14 condensed into two paragraphs on the computer, what  
15 happens to the 10 pages?

16 MS FIELD: With their permission it is kept on their  
17 handwritten application and contained on the court file.

18 MS ELLYARD: Does that mean it is available to any magistrate  
19 that comes to hear the matter?

20 MS FIELD: Yes. With the applicant's permission, of course.

21 MS ELLYARD: So then this question of risk assessment, when you  
22 are taking that initial application from someone, what are  
23 the circumstances where, for example, you might be saying  
24 to this person, "You're at high risk. I think you need an  
25 order immediately," or "I think you need to see the  
26 police"?

27 MS FIELD: If it was an incident that happened that morning,  
28 that night, it depends on the severity of the incident,  
29 whether it's a really serious physical assault, sexual  
30 assault. If police have been called and have attended and  
31 have not done anything, it's a matter then for the

1 registry and myself and my colleague to call that police  
2 station and say, "What's going on here? The police  
3 attended. Why hasn't there been some sort of application  
4 made?" Generally the person answering the phone or the  
5 person who perhaps attended that incident is not on duty.  
6 So it's a matter of speaking with the family violence  
7 liaison officer at that police station to follow it up.

8 If there's going to be a delay in all that  
9 process, of course the registry will process the  
10 application and the applicant will go into court for an  
11 interim application or the registrar will issue a warrant  
12 for that particular application. Again, any application  
13 with severe allegations of assault, sexual assault, kids  
14 in danger, all that sort of thing, we would again refer to  
15 our support services that are within the registry there.  
16 I know Abbey has sent a lot of people off to crisis  
17 accommodation and refuges and things like that in some of  
18 those particular cases.

19 MS ELLYARD: Ms Newman, can I ask you to return to the topic  
20 you were addressing before which was really sharing risk  
21 information. It is apparent from the evidence you have  
22 given that you do do a risk assessment using the Common  
23 Risk Assessment Framework to guide you. What are you able  
24 to do with the information that you obtain? Who are you  
25 able to give it to?

26 MS NEWMAN: The risk assessment that I do, I use it for a  
27 couple of different reasons, because some of the time it's  
28 a really good visual representative for the AFM to say,  
29 "This is where you're at and this is what these risk  
30 indicators mean to me," and using the common risk  
31 assessment it's supposed to have three elements in that

1       you have the risk indicators, you have my professional  
2       judgment and also the AFM's judgment of risk in their own  
3       situation. So, quite often people come to court at a  
4       breaking point that won't mean much in our legal language,  
5       it won't mean much written in a narrative, but it's their  
6       breaking point in that he smashed something that was  
7       particularly valuable and that's something that they are  
8       really focused on.

9               To divert a little bit to talk about filling out  
10       the form, if I'm speaking to women about filling out the  
11       form, identifying family violence using that risk  
12       indicator as some of the actions that they wouldn't have  
13       seen as family violence, we get a whole way through a  
14       conversation, they might have spoken to the registrars and  
15       filled out their form and then they will say, "Oh, there  
16       was that one incident with a knife," or "There were those  
17       few times that he strangled me," or "There's this and  
18       that," and so that is when I will say, "With your  
19       permission can I go and speak to make sure these are added  
20       on the form."

21              So I use the risk indicator to show them a  
22       reflection of their own situation and give them an  
23       indication of where they fit in the realms of risk and  
24       what safety planning we may need to do.

25              If I then make ongoing referrals, the informed  
26       consent that I give them at the end, I get signed consent  
27       for any referral or any conversation that I have with  
28       anyone else. So I will explain to them what informed  
29       consent means to me is that I will be talking to them  
30       about who I am going to be talking to, what information  
31       I'm going to be sharing and exactly what details I'm going

1 to be passing over. So, for instance, for a referral to  
2 Safe Steps, if I identify that, "Actually this needs to be  
3 actioned now and you are not safe to go home, you are not  
4 safe to leave court," then I will be talking to them  
5 about, "This is the information I'm going to give Safe  
6 Steps," and generally I fax my entire form, so it is my  
7 case notes, the risk assessment and also the safety  
8 planning steps that I have with her.

9 The feedback from applicants that I have had  
10 about that is they feel really refreshed that everything's  
11 gone over, that I will also be faxing over their court  
12 documents so that each agency knows where they're up to,  
13 each agency knows when their court dates are coming up and  
14 what sort of steps that we have in place and what sort of  
15 conversations we've had, so they don't have to  
16 continuously have that at every step.

17 If I see people at the interim stage where  
18 they've come to make their application, then some of those  
19 risk indicators - in that risk assessment I have set up  
20 some referral pathways with some local legal services so  
21 I can fax that information, plus my information that may  
22 not be included or may not have space to be included on  
23 Courtlink to those legal services so they can start  
24 preparing people before court, which I actually think  
25 needs to happen on all bases because we are bringing  
26 traumatised people in the height of crisis to court,  
27 trying to get them to understand our system and our  
28 language and make decisions on the day, having that  
29 conversation with legal services on the day, and it's just  
30 not appropriate.

31 If it was a counselling situation and I was

1 talking to someone long-term and therapeutically, the  
2 amount that they disengage or disassociate when they're  
3 coming to court and getting to the counter and seeing  
4 Karen and they're in that state of fear where they can't  
5 be thinking about anything other than "He's here and  
6 I don't know what this means for me going on." If that  
7 was happening in a counselling situation, that  
8 conversation would stop and we would have that a week  
9 later, we would do some grounding techniques to make sure  
10 we manage her anxiety and we couldn't give information to  
11 someone who is in that state.

12 I think I diverted a little bit from risk  
13 assessment and where that was supposed to go - - -

14 MS ELLYARD: But you have made a different but perhaps also an  
15 important point about whether or not the speed with which  
16 people are currently passing through this process is such  
17 that they are not necessarily able to give information  
18 that's relevant and support services help them; is that a  
19 fair summary?

20 MS NEWMAN: Yes.

21 MS ELLYARD: To what extent does the information that you find  
22 out about get shared with the magistrates, for example?  
23 Are you part of the court in that sense or is there a  
24 delineation between what you find out about and what's  
25 available on the court file?

26 MS NEWMAN: At Sunshine I have a very close working  
27 relationship with Magistrate Toohey and there's a lot of  
28 subtle nuances that go on, in that I may help an  
29 applicant - so we might have a conversation about how to  
30 manage her anxiety when she is going into the witness box  
31 and making some plans for, if she has experienced anxiety

1 in the past and if she is likely to have an anxiety  
2 attack, what I can do about it and how I can communicate  
3 that to a magistrate.

4 When there are police applications, I'm having  
5 conversations, with her permission, with police  
6 prosecutors or civil advocates to say, "There is this  
7 level of risk here. We really need to do these things."  
8 Sometimes the civil advocates will identify that I have  
9 been involved in that case and I may then provide some  
10 information to the magistrate, but it's only based around  
11 risk indicators. So I may say, "I have done a risk  
12 assessment with this client. She then was at immediate  
13 risk. We've made some ongoing referrals for her," or  
14 "She's currently being linked with legal services." I may  
15 also say, "I think that until she has legal advice we need  
16 to adjourn this case," or something along those lines.

17 Our practice for applicant and respondent workers  
18 is in the process of being standardised, so that doesn't  
19 happen at each court. The working relationships between  
20 different magistrates are different and the process of  
21 different applicant workers at each court are also  
22 different.

23 MS ELLYARD: Ms Davies, from your perspective, if you have got  
24 information through the course of your work with  
25 respondents that seems to you to be information that needs  
26 to be passed on in the interests of someone's safety or  
27 health, are there pathways for you to be able to do that?

28 MS DAVIES: I can't really say that I've had anything major  
29 happening like that. However, if there's an eligibility  
30 assessment to be done, if the respondent presents with  
31 some fairly serious issues like alcohol issues or



1        whatever, I will do a report to the magistrate asking for  
2        an adjournment to address those issues. But in my role as  
3        far as safety goes, for the short time that I'm  
4        interviewing or talking to this person, that sort of thing  
5        does not come up for me, as in he's not going to say to  
6        me, "Oh, I'm going to go and kill her," or anything like  
7        that. I don't get that sort of stuff. I'm more into  
8        finding out what it is that he needs to address.

9                Sometimes that may present as - if a man breaks  
10       down, I will let him sit with her for a minute and then  
11       I will say to him, "What's going on for you?" Sometimes  
12       he will say he doesn't know why he gets like this, but if  
13       he has a drink or whatever, stuff comes up. So, I will  
14       talk to him about if there's issues, even going way back  
15       into his past, that haven't been addressed, they sit in  
16       the base of your gut, and I will explain to him, "Okay,  
17       you go out and have a few drinks, you start to feel good  
18       but this down here is starting to bubble up and say, 'Hang  
19       on you haven't dealt with us.'"

20               So sometimes I've had some major revelations come  
21       forward to me. I even said to a guy one day, "Have you  
22       ever been suicidal?" He just couldn't talk for five  
23       minutes because he said, "Why did you ask me that, Julie?"  
24       I said, "Well, it's just something that you're saying that  
25       doesn't sit right." He said, "No one has ever asked me  
26       that before." I said, "Should they have?" He said, "I've  
27       made two attempts and no one has even known."

28               So there are things that happen that it gives you  
29       the opportunity to talk to them in a compassionate way.  
30       Like, these men, they could be your next door neighbour.  
31       It doesn't mean to say that they are all demons.

1 Sometimes it's just stuff that's going on in their life.  
2 So it's about trying to unravel that in a very short time  
3 to find out what is happening. Sometimes they'll say it's  
4 the worst day, "This is the worst day. I never, ever  
5 thought I would end up here." And I will say, "Hang on,  
6 let's turn it round and make it the best day. Let's draw  
7 a positive from this. What is it in this relationship or  
8 what's been going on that we can get some assistance for?  
9 What is it that you need to move on from here? Let's make  
10 it a positive thing rather than a negative."

11 MS ELLYARD: Can I ask you all now to comment on the issue of  
12 resources, because it's apparent from what Ms Newman has  
13 described and what Ms Davies has described that there is a  
14 great deal that can be done if you are sitting with  
15 someone in front of you, but it is also apparent that a  
16 lot of people don't get to sit in front of either of you  
17 because the nature of the resourcing is such that,  
18 Ms Newman, I think you would only see a small percentage  
19 of the women at court on any one day; Ms Davies, you  
20 wouldn't see all the men necessarily.

21 So, Ms Field, what happens to all the people who  
22 aren't seeing anybody? What kind of assistance do they  
23 get if they are not fortunate enough to get a referral to  
24 a specific service?

25 MS FIELD: The short answer there is at court they will  
26 probably just see the legal service and no other support  
27 at the court. At the very least, we will try to at least  
28 hand them some information about services, perhaps  
29 pamphlets about family violence agencies in the area, so  
30 we can at least say that they are walking away with some  
31 sort of information and then they can seek help after the

1 court date.

2 Very often it's from most of the applicants when  
3 they come they will tell you straight up that they want to  
4 speak with someone at the court that day. Others, you  
5 would offer them the opportunity to speak to a support  
6 service and they would decline it, but those are the ones  
7 that you would still hand out a brochure or some sort of  
8 information, so they walk away from court that day with  
9 perhaps an intervention order, but some information that  
10 they can take away and have a look and perhaps when  
11 they're ready, too, engage with that service. So I would  
12 like to think that people are still walking away with  
13 information on how to get some help should they want to  
14 seek it.

15 MS ELLYARD: Can I ask all of you to comment to what extent do  
16 people walk away with an understanding of what's happened  
17 at court. Ms Davies, firstly with you, to what extent do  
18 respondents walk away understanding the order that's been  
19 made against them, in your observation?

20 MS DAVIES: If the respondent comes back for an eligibility  
21 assessment, usually I will take them from court before  
22 they're served, their paperwork. So while they're in  
23 interview, one of the registrars will come and serve them.  
24 So, before they leave my office I go through it with them  
25 and say, "Did you understand what it was about?" Some say  
26 they do, but they don't.

27 One of the main issues is whether they can see  
28 their children or not. Their children are on the order  
29 and they think that they are not allowed to see their  
30 children. So I will go through the "But you are permitted  
31 to do," and if that clause that says they are able to have

1 contact through text message, I will explain that to them,  
2 specifically also pointing out the fact that if they text  
3 her and she says "No", don't send back "Don't be a bitch"  
4 or whatever, because you are then breaching, so I will  
5 make sure that I explain all that. So hopefully, yes,  
6 they do know what it's about.

7 MS ELLYARD: Ms Newman, from your perspective to what extent do  
8 people who get interventions orders in their favour leave  
9 court understanding what the order is and what it means?

10 MS NEWMAN: Just before I answer that question, I would like to  
11 give comment about the information about risk being  
12 shared, just to go back, because we are in the process of  
13 standardising the applicant/respondent worker processes  
14 and so the processes where there are applicant and  
15 respondent workers, so at Frankston and Moorabbin, when  
16 the respondent worker is having conversations with a guy  
17 and he or she is noticing that there are indicators or  
18 behavioural indicators where it may be a worry for him  
19 going home or even just him obeying this order and a sense  
20 of entitlement, all those sort of things, or a disregard  
21 for the law, then we are making some standard processes  
22 for the respondent worker to have conversations with the  
23 applicant worker and say, "We really need you to make sure  
24 you are talking to her. There is a risk here and we may  
25 need to make sure there are some safety things in place  
26 for her," so that that is happening.

27 MS ELLYARD: That's in train.

28 MS NEWMAN: It is definitely happening. For the understanding  
29 of the intervention order conditions, I said before we  
30 speak a whole different language. Legal language, even  
31 when I came to the court with English as my first

1 language, as a social worker with some years of experience  
2 in the field, it threw me. I find that now I'm speaking  
3 that language and I can throw other professionals that I'm  
4 talking to with some of the jargon that we use. I have an  
5 applicant who thanked me for being a really great bogan  
6 interpreter because she wanted it broken down to being  
7 bogan language instead of some of the things we say.

8 Applicants are in a state of crisis and trauma,  
9 which I have said the whole way through, and we are then  
10 talking in a different language to them about the things  
11 that he can and can't do, and also her understanding her  
12 position with this order, how it works. We are asking  
13 people to be lawyers, to understand legal language and  
14 also understand how it is, what actually happens when you  
15 breach, when there's breaches, what constitutes a breach,  
16 what police should be listening to, how to report  
17 breaches. Some of the information that I give is the  
18 Women's Health West and VPol collaboration of some  
19 information for women about what to do if the order is  
20 being breached. This is a lot of information that I give  
21 to women in a 45-minute session in complete crisis.

22 To pick up on the amount of women that don't see  
23 me, we have that coordination meeting in the morning to  
24 make sure that all the services that are there know who we  
25 are seeing because it's not just the list of 50 that we  
26 might be dealing with of police applications, but it's  
27 also the fresh interim applications that are coming  
28 through, so there's possibly up to 10 appointments on top  
29 of that list of 50.

30 My 45-minute session, plus my case notes, plus my  
31 referral processes if I'm required in court, tends to blow

1 out. I might have the capacity to see four to possibly  
2 five of these applicants, so it's not a huge amount of  
3 people. Women's Health West who are there have about the  
4 same capacity, as do inTouch. The only difference is with  
5 these services they get to have ongoing case management,  
6 where I'm just a first one-stop shop, although because of  
7 the overcrowding in these services and the limited  
8 capacity they have to provide some of these services,  
9 clients do come back because they know where I am and they  
10 how to knock on the door and get some information. I'm  
11 not sure if I answered your initial question.

12 MS ELLYARD: You did, and can I just direct the last question  
13 on you, Ms Field, and it is on the topic of language but  
14 languages other than English. What is available both in  
15 terms of written documentation and oral support for people  
16 who don't speak English or can't speak English  
17 sufficiently to participate in the court processes?

18 MS FIELD: I'm glad you asked, because it is also an answer to  
19 the previous question of how many people walk away  
20 understanding what's happened. Out in Sunshine we have  
21 such a diverse community and it is not uncommon to have up  
22 to six different interpreter languages at the court that  
23 day. The interpreters are certainly used in discussions  
24 with support workers, police, legal services and then used  
25 in court when the matter is to be heard, for them only to  
26 come out for me to then give them an intervention order in  
27 English and that's what they walk away with. So, whilst  
28 it's interpreted to them throughout the day and certainly  
29 by the magistrate in the court and then interpreted again  
30 in front of me with the interpreter, they are going to  
31 walk away with an order in English.

1                   To your question about how many things are in  
2                   different languages, not that many. Certainly the  
3                   application form is in English and most of the other  
4                   publications that we have at the court are only provided  
5                   in English. InTouch is a support service for clients from  
6                   different backgrounds, so they provide some information in  
7                   other languages. Also we have some information from  
8                   Women's Health West in relation to family violence cards  
9                   and services and they are provided in many, many different  
10                  languages, so we are able to give those out.

11                  But I go back to the point. They are only going  
12                  to walk away with an intervention order in English and  
13                  what do they do with it?

14 MS ELLYARD: Do the Commissioners have any questions for the  
15                  witnesses?

16 DEPUTY COMMISSIONER FAULKNER: Mine are very short questions  
17                  for Ms Newman. You mentioned at the morning meeting that  
18                  you have in relation to coordination that you will work  
19                  out whether Women's Health West, inTouch or Centrelink  
20                  might help people. You haven't mentioned much about  
21                  Centrelink and it is leading me to ask the question are  
22                  these all substitutable services? Do Centrelink send  
23                  social workers who act on behalf of people and manage the  
24                  whole family violence process for them?

25 MS NEWMAN: What's actually happening at Sunshine, we have two  
26                  programs that are unique to Sunshine. We have the  
27                  Centrelink social worker who outreaches, that we had a  
28                  discussion to bring someone from Centrelink because the  
29                  process beforehand was that we were trying to get  
30                  Centrelink social workers on the phone, we were trying to  
31                  send women in crisis down to Centrelink to start getting

1 things like crisis payments which have a seven-day window  
2 that they have to apply for a crisis payment within, so  
3 I really need to get them to Centrelink so they can get  
4 that crisis payment to change locks, to update their  
5 safety or to even move. We also have McAuley who offer a  
6 children's play worker service, so they are also involved  
7 in the morning meeting as well.

8 Centrelink, what happens is that any of the  
9 services that will be seeing affected family members know  
10 that Centrelink are outreaching from court, so we can send  
11 women - I can walk a woman from my office and my interview  
12 straight up to the end of the corridor to get her starting  
13 the process for crisis payments, starting to make sure  
14 that her payments and who has access to see her details is  
15 secured and locked down straight away, that things like  
16 special benefits, that process can be started from court,  
17 and that they have also then got a connection with  
18 Centrelink so they're not feeling as overwhelmed as going  
19 into an office and standing with everyone else and waiting  
20 for an appointment or even trying to make an appointment,  
21 and they start to know their entitlements, which means we  
22 can make some safety plans because they start having an  
23 understanding of, "I'm going from a parenting payment to a  
24 single parenting payment. This is what my financial  
25 options are going to look like from here," and then I can  
26 start talking to her about, "Where is your housing going  
27 to be at, can we move, can we fix your car to get you out  
28 of here, what sort of options does this give us now we  
29 know where your financial standing is going to be?"

30 DEPUTY COMMISSIONER FAULKNER: So they are not a substitution,  
31 they are an addendum to the services that other people



1 would provide. Then, I suppose you have talked a lot in  
2 your evidence about getting things done early and you have  
3 mentioned today more things that can be done early. You  
4 said if you find out early, you will refer them to a legal  
5 service early.

6 I suppose I'm interested in, if they are referred  
7 to a legal service early, is there someone at the other  
8 end to do something with them and is this legal service a  
9 public one or are you also referring people to private  
10 practitioners who might be able to assist if the woman is  
11 in a position to pay?

12 MS NEWMAN: I will start with - I have a relationship at the  
13 moment in Sunshine in the west with the Brimbank Legal  
14 Service who have a strong family violence focus. My  
15 referral process with them is that I will send my whole  
16 form, all of the information, their application, their  
17 interim orders, any sort of stage where the legal process  
18 is up to, fax that. They then ring her and make an  
19 appointment for her to come in, and my understanding is  
20 that they are talking to her about what the court process  
21 will be, what her options will be, what some of the  
22 conditions mean for her and the kids and how that's  
23 actually going to work in reality and whether or not  
24 that's something they will be interested in, and then they  
25 also do come and represent clients at court. So we have  
26 that continuum, they have confidence in who they have told  
27 their story to, they are not going to have to tell it  
28 again when they come to court. That's the process we have  
29 at the moment.

30 There are some restrictions in me referring to  
31 private legal services. Private legal services and

1 funding and money, especially when it comes to talking  
2 about family law and getting some of that family law help  
3 immediately started, it's an ongoing struggle. It's a  
4 really big, ongoing struggle. I have applicants coming  
5 back saying, "I can't afford this. I don't know how to  
6 get Legal Aid funding. I don't know where my process is  
7 up to. I thought this one was free. I've gone half an  
8 hour through and it's going to be \$2,000 for the next  
9 conversation. I don't have this money."

10 In the west I find a lot of my clients have very  
11 mortgaged houses and due to that it sort of excludes them  
12 from a lot of funding. They end up settling houses with  
13 no financial outcome for them. It's high stress. They  
14 end up forgoing their houses in the battle in Family Court  
15 and the money that it costs there. There is also no  
16 support service that really supports them through that  
17 process because a lot of our family violence services are  
18 crisis and so that's your six weeks, that's your get safe  
19 quickly, and there's no one to support through that Family  
20 Court which a lot of the time escalates his behaviour and  
21 escalates her risks going through that process.

22 DEPUTY COMMISSIONER FAULKNER: Thank you very much.

23 COMMISSIONER NEAVE: I just had one question for Ms Field. You  
24 are at the counter. You have a queue of 40 people in  
25 front of the counter. I understand with the police  
26 initiated applications you can to some extent rely on the  
27 police, they are making the application, and you can rely  
28 on the liaison officer who is there to make connection  
29 with the affected family member. But on an average day,  
30 how many people would you have applying for orders  
31 themselves and how do you handle that? Do you take them

1           into your office and then somebody else leaps into the  
2           front of the queue to handle it? How do you actually do  
3           it?

4 MS FIELD: We have an appointment system at Sunshine, so we can  
5           have up to 10 appointments every half an hour for people  
6           to come in and make their own applications. That is not  
7           my role within the registry. I have another grade 3  
8           registrar who is in charge of processing those  
9           applications. Certainly I do all the initial - have a  
10          look at the application to see if it is filled in  
11          correctly and then would hand it off to my grade 3  
12          registrar. She would then have a look at it and then call  
13          up the applicant and meet with her in the private  
14          interview room of the registry. That's that registrar's  
15          primary role.

16 COMMISSIONER NEAVE: So if the person can't fill out the  
17          application, for example, because of their limited  
18          literacy or English skills, you have that other registrar  
19          who would help do that.

20 MS FIELD: To assist with that, yes. We also call upon Court  
21          Network a lot to help and sit down with the applicant and  
22          help them fill in the application form, so we call on them  
23          quite a bit.

24 COMMISSIONER NEAVE: I see. So you are relying on putting  
25          together various bits in order to assist a person to make  
26          an application on their own behalf?

27 MS FIELD: Absolutely. Where we identify that they would need  
28          an interpreter, obviously an interpreter is booked and  
29          would be at court on that day for the initial filing of  
30          the application. They would meet with the registrar. The  
31          registrar, after speaking with the applicant, can also

1 refer that client on to the support worker then and there  
2 to get some initial support at the interim application  
3 stage, if that's what she's wanting to do, and also it  
4 would give the applicant some information about what  
5 services will be available on the next return date, legal  
6 services and support services. Again, we would give them  
7 the information on the Community Legal Centre that's going  
8 to be available on that day should she not engage her own  
9 solicitor.

10 COMMISSIONER NEAVE: Thank you very much.

11 MS ELLYARD: May I ask that the witnesses be excused and invite  
12 the Commission just to take a 10-minute break.

13 COMMISSIONER NEAVE: Thank you very much indeed for your  
14 evidence.

15 <(THE WITNESSES WITHDREW)

16 (Short adjournment.)

17 MR MOSHINSKY: Commissioners, the next two witnesses are  
18 Mr Casey and Ms Sinclair. If they could please be sworn.

19 <LEANNE KATHERINE SINCLAIR, affirmed and examined:

20 <CHRISTOPHER LEONARD WILLIAM CASEY, affirmed and examined:

21 MR MOSHINSKY: Can I start with you, Ms Sinclair. You hold the  
22 position of Family Violence Program Manager at Victoria  
23 Legal Aid?

24 MS SINCLAIR: Yes, I do.

25 MR MOSHINSKY: And Victoria Legal Aid provides a duty lawyer  
26 service at Dandenong and Melbourne Magistrates' Court?

27 MS SINCLAIR: Victoria Legal Aid delivers family violence duty  
28 lawyer services at nearly all Victorian Magistrates'  
29 Courts. That's delivered either through our in-house  
30 practice or in some areas through private practitioners  
31 funded by Victoria Legal Aid.

1 MR MOSHINSKY: You, yourself, have from time to time acted as a  
2 duty lawyer at Melbourne and Dandenong?  
3 MS SINCLAIR: That's correct. I would have otherwise attended  
4 to assist staff and observe lists at other courts across  
5 Victoria.  
6 MR MOSHINSKY: Have you prepared a witness statement for the  
7 Royal Commission?  
8 MS SINCLAIR: Yes, I have.  
9 MR MOSHINSKY: Are the contents of your statement true and  
10 correct?  
11 MS SINCLAIR: Yes.  
12 MR MOSHINSKY: Mr Casey, you hold the position of Senior Lawyer  
13 at the Loddon Campaspe Community Legal Centre?  
14 MR CASEY: That's correct.  
15 MR MOSHINSKY: And the centre provides free legal services at  
16 the Magistrates' Court in Bendigo, Maryborough and Echuca?  
17 MR CASEY: Currently, and we also have the Goulburn Valley  
18 Community Legal Service that provides some services, some  
19 duty solicitor services around Moira Shire, Greater  
20 Shepparton area and a few other courts over on that side  
21 of town.  
22 MR MOSHINSKY: Have you prepared a witness statement for the  
23 Royal Commission?  
24 MR CASEY: I have.  
25 MR MOSHINSKY: Are the contents of your statement true and  
26 correct?  
27 MR CASEY: They are.  
28 MR MOSHINSKY: I want to ask you both first of all to comment  
29 on issues relating to court infrastructure. From your  
30 perspectives, and perhaps I can start with you, Mr Casey,  
31 what observations would you make about the state of court

1 infrastructure, the safety issues surrounding court  
2 infrastructure, based on your observations and experience?

3 MR CASEY: If I can characterise that on twofold. There's my  
4 personal experiences and very much the experiences of the  
5 women who were involved in our "Why didn't you ask"  
6 research. So our submission has been very much informed  
7 by their experiences and also mine as a legal practitioner  
8 trying to work in those sort of environments.

9 There's probably two examples that best  
10 characterise the type of infrastructure that we have  
11 around our regions. There's the Bendigo court complex,  
12 which I can talk briefly to, and then there's also the  
13 Kyneton court and the Cobram courts which are very much on  
14 par. The Kyneton court has been discussed extensively in  
15 the Magistrates' Court and Children's Court submission.  
16 I think that is very much our experience as well.

17 COMMISSIONER NEAVE: I should just tell you that we have  
18 actually visited the Kyneton court briefly as well.

19 MR CASEY: Thank you. If you could apply the same lens  
20 thinking in terms of Cobram, you would be very much on  
21 par. Bendigo is our blue sky court in terms of  
22 infrastructure. The irony is that we still don't have  
23 basics like airport security. We don't have separate  
24 areas for applicants and respondents. We have a whole  
25 range of different organisations, and registrars of courts  
26 are at pains to try and maximise safety with very limited  
27 resources.

28 MR MOSHINSKY: Can you give some examples of the sort of safety  
29 issues that arise?

30 MR CASEY: The standout example for me is in my witness  
31 statement about a few years back where a respondent

1 brought his electric bike into the Court Network area and  
2 looked for a power point to plug it in. That was there  
3 for a good hour or so. When Court Network and myself  
4 noticed it, there was a knife in the basket. Police  
5 attended, removed the knife, and the explanation was that  
6 it was to cut his apple. Implicit within that is all the  
7 different safety concerns around that.

8           There's constant - Bendigo Court is on several  
9 levels. It's not unusual to feel eyes burning into the  
10 back of your head and look up and then on the next level  
11 is a respondent staring at you and the victim.  
12 Unfortunately we have had scenarios where solicitors on  
13 the other side have had their respondent hovering back and  
14 forth keeping our clients under surveillance and, when  
15 that's been addressed with them, sometimes treat it like a  
16 tactic or trying to reinforce that we are arguing for our  
17 client rather than trying to promote safety. They are  
18 real issues just in the Bendigo court.

19           Once you go out to the satellite courts, then  
20 there's a whole plethora of issues, including around  
21 physically being able to walk into a court building,  
22 actually lining up in a registry that's not as wide as  
23 this, with the respondent standing a couple of people  
24 behind you waiting to also register for the appearance.  
25 You can only imagine the impact that has on the victim in  
26 terms of their sense of safety and their willingness to  
27 proceed. Importantly, quite often there aren't any sort  
28 of supports available to try and guide them through that  
29 process.

30 MR MOSHINSKY: Ms Sinclair?

31 MS SINCLAIR: Certainly I would agree with some of the things

1       that have been raised there, but just to point out that  
2       I think that not all of the courts are created equally.  
3       We see the infrastructure in courts such as Ballarat and  
4       Heidelberg where we have separate areas where we can place  
5       applicants and we can place respondents. We have clear,  
6       visible interview rooms that emphasise the safety of our  
7       lawyers, but also the clients who can be seen by security.

8               On the other hand, there are courts that don't  
9       have that infrastructure available. So, for example, in  
10      Broadmeadows our duty lawyers will be assisting  
11      respondents within a very small duty lawyer office which  
12      is shared with our criminal lawyers, so there may be three  
13      people getting interviewed in separate matters within the  
14      same environment. That obviously poses difficulties for  
15      client confidentiality. We will be trying to build a  
16      rapport with our clients, they are speaking about very  
17      personal issues, but in such close confines.

18             Even in the courtrooms in themselves often we  
19      will have to enter and exit the courtroom walking directly  
20      past the other person to the dispute. Interview rooms are  
21      not available at all courts for our lawyers to be able to  
22      see somebody privately. So, there's big discrepancies  
23      between different courts and especially between some of  
24      our metro courts and our regional courts.

25   MR MOSHINSKY: What about the Melbourne Magistrates' Court?

26             One might make assumptions about the facilities there, but  
27      do you have any comments about the infrastructure at the  
28      Melbourne Magistrates' Court?

29   MS SINCLAIR: At Melbourne we have the benefit that we do have  
30      separate duty lawyer offices. They are placed on opposite  
31      sides of a big level, so there can be some sort of



1 allocation where we can have respondents sitting towards  
2 one side of the floor and then the applicant sitting over  
3 near the Women's Legal Service duty lawyer office. That's  
4 probably one of the better courts, I think. It is still a  
5 very frenetic environment. There is a lot of people and  
6 it's obviously quite difficult to still keep people  
7 separate.

8 Then you could look at, say, the Dandenong court  
9 environment, a much smaller area. There's often two  
10 courts operating. It's very difficult to then separate  
11 applicants and respondents, no seats for everybody to be  
12 able to sit down, so often we will have respondents,  
13 sitting very close to where the applicants are sitting.

14 MR MOSHINSKY: Can I ask you about the use of remote access  
15 facilities for witnesses to give evidence. Based on each  
16 of your experiences, how often are those facilities  
17 utilised and could they be utilised more?

18 MS SINCLAIR: Again, not all of the courts are equal in that  
19 regard, so at Melbourne we do have remote witness  
20 facilities that are available. We can have applicants and  
21 affected family members that are on another location  
22 within the court area where they can appear by screens.  
23 They are utilised, but I wouldn't say very regularly,  
24 whereas other courts don't have the ability to have  
25 somebody screened in from a remote location and they will  
26 effectively be separated at court by the use of screens in  
27 the middle of the courtroom.

28 MR MOSHINSKY: Mr Casey?

29 MR CASEY: We certainly have some capacity for that in our  
30 region, Bendigo, and I have seen that utilised on many  
31 occasions. It's not unusual to have, say, Swan Hill

1 beamed into the Bendigo court as well.

2 On that particular point, though, what I would  
3 say is that there is a strong argument and a good argument  
4 to say that there should be a greater reliance on  
5 videoconferencing technology to reduce the size of the  
6 state. The only qualifier I would put on that is that it  
7 should never be at the cost of increasing the facilities  
8 at those regional or smaller courts as well.

9 One other thought on the videoconferencing  
10 technology is that it's usually court to court or police  
11 cells to court. I think there's a really strong argument  
12 for properly resourcing, properly empowering local  
13 community organisations to be able to access the courts,  
14 and I think there's a lot of creative thinking that can be  
15 done around that area, particularly around the idea of ex  
16 parte interim orders, particularly agency to agency, so in  
17 as much as, say, a community health service, we have the  
18 Njernda Aboriginal Health Service and Co-op in Echuca  
19 area. There is no reason why they shouldn't be able to  
20 access the courts and access legal services such as  
21 ourselves or the Aboriginal Family Violence Prevention  
22 Legal Service in that supportive sort of environment so  
23 you can get culturally appropriate, specialist sort of  
24 assistance for all the associated issues as well as just  
25 the intervention order process as well.

26 So I think there's a lot of merit in the idea of  
27 properly resourcing, properly staffing those sort of  
28 things, and again the qualifier that it should never come  
29 at the expense of properly resourcing the courts which are  
30 arguably community hubs in their own right.

31 An average day at, say, the Kyneton court might

1 be 30 to 40 matters covering family violence, child  
2 protection, criminal list, the whole gamut, and I think  
3 sometimes we can forget that they are actually dealing  
4 with the whole gamut of legal issues and a very important  
5 link to those communities as a result.

6 MR MOSHINSKY: Can I ask you now some questions about the duty  
7 lawyer system, perhaps starting with you, Ms Sinclair.  
8 Can you explain very briefly how the duty lawyer system  
9 works and in practice how many people they see and how  
10 much time they have to see people?

11 MS SINCLAIR: Certainly. I will probably start by saying that  
12 courts operate slightly differently depending on the size  
13 of the lists, the volume and what support services would  
14 be available at court on that day. But generally for a  
15 duty lawyer we would arrive in the morning and we would  
16 receive a list of clients who we are to see on that day.  
17 Some courts will hold a morning coordination meeting and  
18 that's an opportunity to sit down with the registrar, the  
19 CLC lawyer if they are present, applicant and respondent  
20 workers or court networkers or other family violence  
21 services if they are available. We will be taken through  
22 the list of the clients that we are to see and we might be  
23 able to identify matters where people should be referred  
24 to other services or where there might be elevated safety  
25 or security concerns or clients who have special needs  
26 such as interpreters. Also, the lawyers will identify if  
27 there is any conflict of interest where the clients need  
28 to be swapped or prioritised.

29 The lists can be really long of the number of  
30 clients that we will need to see in that day, and then we  
31 will start as duty lawyers working through that list.

1 Usually we will see the first person who is on the list,  
2 unless we need to prioritise that matter because of, say,  
3 an interpreter or special needs. Then we will start  
4 seeing our clients.

5 The amount of time that we can spend with a  
6 client varies greatly, depending on how many clients we  
7 will need to see that day. Obviously as the number of  
8 clients goes up that we need to see, our services can  
9 become much more abbreviated where we may not be able to  
10 go through all of the legal issues that may be confronting  
11 that client on that day.

12 MR MOSHINSKY: And the clients that the VLA duty lawyers are  
13 seeing, they are mainly respondents?

14 MS SINCLAIR: They are mainly respondents, especially where we  
15 do have a CLC present because the CLC will generally be  
16 seeing the affected family members or the applicants.  
17 Sometimes there will be swapping of clients. That may be  
18 because Victoria Legal Aid has an existing relationship  
19 with that client or the CLC may have an existing  
20 relationship with the client, so there is some swapping.  
21 But generally where there is a CLC present we will be  
22 seeing the respondents and the CLC the applicants.

23 MR MOSHINSKY: In a busy court, and we heard earlier about  
24 Sunshine might have 40 to 50 intervention order matters in  
25 a day, would there be one duty lawyer from VLA and, if so,  
26 how long would they typically get with each respondent?

27 MS SINCLAIR: That would vary, and that's depending on how many  
28 clients are actually referred to the service. So we could  
29 have duty lawyers who in one day may see 17 clients in a  
30 day, especially that's common at Broadmeadows. How long  
31 we spend with that client depends on a number of things.

1 For example, clients who are assisted by interpreters,  
2 that will generally take a lot longer. We see some  
3 clients who have come to court who have some basic  
4 knowledge of the court process. They may have contacted  
5 our telephone advice line service or legal help prior, so  
6 they have some information about what's going to happen or  
7 what their options are.

8 We may see other clients who have multiple and  
9 complex needs. They may have drug or alcohol concerns.  
10 They may have criminal matters which are coinciding with  
11 their intervention order matter or family law matters. So  
12 it is really hard to put a time on how long we would spend  
13 with a client because it is dependent on so many other  
14 different factors.

15 MR MOSHINSKY: Mr Casey, in terms of the duty lawyer from a CLC  
16 who I think would mainly work with an applicant, can you  
17 describe briefly the process there and how long there  
18 would be available to work with someone?

19 MR CASEY: Once again characterising, each court has a  
20 particular model or a particular relationship that we have  
21 established when setting up those services. I will talk  
22 to Bendigo and I will also talk to Maryborough.  
23 Maryborough previously had - we have been there since  
24 I think 2008 now. Previously the police did most, if not  
25 all, of the applications for intervention orders. We  
26 identified that there were potentially some issues around  
27 access to the courts. If the police at the time were of  
28 the view that there was no merit in your application,  
29 they'd generally say, "Go away," or send you down to the  
30 court to make your own application.

31 In response to that and in consultation with the

1 police we set up a duty solicitor service there where we  
2 obviously prioritised assisting applicants, but very early  
3 on in the piece put in a process where we would attend the  
4 police station and make ourselves available to police  
5 initiated applications as well. We also developed a  
6 relationship with the then EASE, now Centre for  
7 Non-Violence, to provide some non-legal support, basically  
8 trying to mirror as much as possible the Ballarat Family  
9 Court model, so trying to give some support to victims of  
10 family violence and referral pathways for respondents if  
11 possible.

12 So the duty solicitor model there, on a normal  
13 day we would actually stop in at the police station as a  
14 starting point. The registry provides us with a court  
15 list the night before. We go through and do our conflict  
16 checks, we identify who we can assist. We would normally  
17 meet with the CNV worker and the family violence officer  
18 at the Maryborough Police Station, which is 100 yards up  
19 the road from the court, go through the list, see if there  
20 was any particular issues that they identified. We then  
21 attend the registry, speak with the registrar, advise them  
22 of any conflicts we may have and any clients that are  
23 already present waiting for assistance. The registry  
24 provides us with copies of the applications and then we go  
25 to work.

26 I think it's the Ballarat VLA office has a duty  
27 solicitor present at Maryborough. As previously  
28 indicated, they will be dealing with the child protection,  
29 the family violence and the criminal matters. So their  
30 sheer volume of work is huge, and I have to acknowledge  
31 that. It's basically then into getting instructions if

1 possible, wherever possible, and then negotiations,  
2 representation. It would depend on how many matters VLA  
3 have, the view of the prosecutions. Some of the matters  
4 we actually just provide the prosecutor a tailored order  
5 saying, "This is the wishes of the client," and they  
6 proceed to prosecute that. So, there's Maryborough.

7 Bendigo is a lot more organised in  
8 comparison - organised is not quite the right word. We  
9 have more resources available to do things differently.  
10 In Bendigo there's a designated family violence day, so  
11 that already takes some of the pressure off. The list  
12 might be between 20 to 40 on average. A fair proportion  
13 of those are police initiated applications. We have a  
14 court meeting first up with VLA, often with the prosecutor  
15 and the family violence registrar and where possible the  
16 Centre for Non-Violence support worker. We will go  
17 through the list, allocate, identify any safety concerns,  
18 once again replicating the model that we first encountered  
19 at Ballarat back in 2007, so trying to replicate that as  
20 much as possible.

21 Just by way of indication, we keep a rough count  
22 of our busiest days. Our busiest was 19 applications  
23 between 9.30 and 1 o'clock on one particular family  
24 violence day. There were a few cross-applications within  
25 that. That was a lawyer, a volunteer student from the  
26 CLC, and I must commend our volunteer program. They  
27 actually add huge capacity to our ability to do work. But  
28 that's our high watermark. On average it could be between  
29 five and 10 matters and they are often completed by  
30 lunchtime. Once you do the number crunching on that, you  
31 quickly realise how little time you have to allocate to

1 each particular matter.

2 MR MOSHINSKY: The duty lawyers are both meeting with  
3 the client and appearing in the court?

4 MR CASEY: That's correct. Depending on their lists, their  
5 capacity, VLA will appear in some matters. Other matters  
6 they will inform the court of what's happening with it.  
7 We quite often get self-represented litigants where  
8 they've refused to take the advice of the VLA solicitor.  
9 That's another dynamic that we often and the courts often  
10 have to deal with in our region.

11 MR MOSHINSKY: And part of the role of the duty lawyer is also  
12 negotiating with the other side?

13 MR CASEY: Yes. So we will be negotiating with the other duty  
14 solicitors. We can be negotiating with private  
15 practitioners. There are a fair whack of those where they  
16 will try and bring in family law and they will try and  
17 bring in all sorts of associated proceedings and try and  
18 do the one-stop shop. Obviously it would be  
19 unprofessional of us to try and actually accommodate all  
20 those when you are given a 10, 15-minute snapshot of time  
21 to get instructions and formulate a plan for assistance.

22 MR MOSHINSKY: In the Loddon Campaspe submission at paragraphs  
23 20.11 and 20.12, the centre makes some observations about  
24 the duty lawyer scheme, including the duty lawyer services  
25 being operated on a first-in basis and also no  
26 representation at directions hearings. Would you be able  
27 to speak briefly to those points?

28 MR CASEY: I think this is a particularly good example of how  
29 the best intentions of VLA policy makers can have a real  
30 detrimental effect or detrimental impact on regional and  
31 rural communities. The VLA funding guidelines allow for



1 funding for directions hearings for eligible applicants if  
2 the matter has been set down for a contested hearing. The  
3 local magistrates in our region have a right practice  
4 where they don't list matters for a contested hearing  
5 until the directions hearing. Prior to that, there was a  
6 lot of contested hearing dates that were set down that  
7 were ultimately vacated because they were a result of a  
8 directions hearing.

9 So, the impact is that we assist on an interim  
10 basis. We will then generally refer our clients off to  
11 VLA funded or private solicitors for directions in  
12 contested hearings. There is a huge proportion that are  
13 unable to get any assistance for the directions hearings  
14 because of that policy issue around that.

15 To our mind, you would hope that's a reasonably  
16 easy sort of fix to engage consistent representation right  
17 from the directions hearing through to the contested  
18 hearing. Unfortunately, that's not a resource that's  
19 available for people in our community.

20 MR MOSHINSKY: Ms Sinclair, do you wish to comment on that  
21 issue?

22 MS SINCLAIR: That was certainly an issue that I saw raised in  
23 that submission. We do fund directions hearings where the  
24 matter is set down for a contested hearing and it is  
25 common practice in many other courts that on the first  
26 return date when a matter is going to be contested, so it  
27 can't be resolved on that first return date, that the  
28 matter would be set down for both a directions hearing and  
29 also the contested hearing date, in which case that would  
30 mean that that person - if all other things are satisfied  
31 in terms of their means and their merits - would be

1 eligible for representation and that continuity of  
2 representation at both the directions hearing and also the  
3 contested hearing.

4 I read that it's obviously the way in which some  
5 of those matters are being listed that that's not  
6 occurring. However, we also do have duty lawyers which  
7 are available on that day and if a person at the  
8 directions hearing hasn't received advice and  
9 representation from one of our VLA duty lawyers on the  
10 first time it's called to court, then obviously we are  
11 able to provide that assistance at court as well. We are  
12 also available as duty lawyers to be able to provide a  
13 duty lawyer service to applicants at either the first  
14 return date or the directions hearing.

15 MR CASEY: If I may just add one further point, too. The VLA,  
16 once again we are trying to replicate a model where both  
17 parties are represented all the way through. One of the  
18 strong recommendations coming out of our "Will somebody  
19 listen to me" report was around, where possible, ensure  
20 applicants have the same lawyer throughout the legal  
21 process or the lawyer that's assisting is made aware of  
22 the previous history of the matter. That particular issue  
23 is consistent with what the women who were involved in our  
24 research were telling us, the importance of having one  
25 person involved as far as possible throughout the process.

26 I also need to acknowledge that's specific to VLA  
27 grants and then there's another whole lot of clients who  
28 would need to access private representation and on  
29 occasion we prioritise certain clients to assist at that  
30 directions hearing.

31 MR MOSHINSKY: Can I ask you each to comment on the number of

1 consent orders that are made in intervention order  
2 matters. How common are consent orders and what's the  
3 process when the matter goes before the magistrate? Is  
4 something said? Is there a general approach that is taken  
5 in terms of how much time is spent in court in a consent  
6 order matter?

7 MS SINCLAIR: I don't have data on the number of matters which  
8 resolve by consent, but I could say from my experience  
9 that the greater majority of the matters in which duty  
10 lawyers assist would resolve by consent without  
11 admissions. That's usually after there's been quite a lot  
12 of negotiation between the legal services to be able to  
13 appropriately tailor the intervention order to meet the  
14 circumstances so that victims can feel that the orders  
15 that they need to feel safe have been included and that  
16 respondents are aware of what they can and can't do under  
17 those orders.

18 Then the matter will go into court, where it's  
19 indicated to the magistrate that the matter is resolving.  
20 We would highlight any variations to any interim orders  
21 that might be required. For example, it might be to  
22 either insert another condition or to maybe alter, say, a  
23 distance provision from remaining 100 metres from the home  
24 to remaining 50 metres from the home.

25 The length of time that the magistrate is able to  
26 spend then with the duty lawyers and the parties present  
27 depends on the size of the court list. So, often  
28 magistrates are very good in being able to go through  
29 ensuring that the respondents understand the intervention  
30 order, that they have had legal advice that they know  
31 what's set out and that applicants feel like the order is

1           being made and it suits their circumstances so that they  
2           can feel safe.

3                       Again, I guess, as we move into much busier lists  
4           with many more matters, the time that is available to be  
5           able to spend to be able to have that accountability and  
6           check of the safety concerns reduces.

7   MR MOSHINSKY:   In your experience are there many cases where  
8           consent orders are presented to the court and the  
9           magistrate may vary the consent order, not make the  
10          consent order the parties have agreed?

11   MS SINCLAIR:   Yes, that does happen, or there may be other  
12          matters which the magistrates are being mindful of that  
13          they wish for the parties to think about more.   For  
14          example, where there's children, the magistrates may want  
15          to know that there's been a proper consideration of at  
16          least the first steps of what will happen in parenting  
17          matters or make referrals to, say, men's behaviour change  
18          courses.

19                       Sometimes that will happen in the base of the  
20          court with us quickly turning around to our clients,  
21          giving them some further advice, seeking their  
22          instructions, or on other occasions the magistrates may  
23          stand the matter down for more complex matters so that we  
24          can go back, take our clients outside, provide them with  
25          further legal advice and then come back into court to  
26          present to the court again.

27   MR MOSHINSKY:   Mr Casey, what's your experience?

28   MR CASEY:   Two issues or two particular aspects.   In terms of  
29          consent orders, there is quite a high uptake of those,  
30          which is great to see and obviously make the duty  
31          solicitor services and the court functioning a lot easier.

1 But then the flip side is the adversarial nature of these  
2 type of proceedings can ignite a whole range of different  
3 issues and they can be things like whether a child is  
4 listed on an order, it can be the difference between five  
5 metres and 50 metres.

6 Often with self-represented litigants that can be  
7 a real difficulty, actually them not accessing legal  
8 advice and being able to provide instructions and tailor  
9 those orders accordingly. That's quite often where, in my  
10 personal view probably rightly so, you would be reluctant  
11 for a respondent to be committing to an intervention order  
12 without actually understanding the full consequences of  
13 that. An order made without that requisite knowledge and  
14 accountability doesn't promote safety in any way, shape or  
15 form.

16 In terms of the magistrates' responses, we have  
17 very much been informed by the experiences of the women  
18 that formed part of our research. If I can just picture a  
19 blue sky type scenario coming out of that is a scenario  
20 where the magistrate has the time to properly read the  
21 application, to properly explore all the issues, a consent  
22 order comes up in front, being able to screen whether that  
23 actually promotes safety or not, read through every one of  
24 the clauses and acknowledge from the respondent that he  
25 understands those - and with the gendered nature of family  
26 violence we know it's overwhelmingly men who will have the  
27 orders made against them - the impacts of the breach, so  
28 the consequences for that breach.

29 Then also, importantly, exploring that they  
30 understand the implication for that, and the really  
31 measured approaches that you come across are really

1 helpful. Not a, "You're a bad person. Don't do it  
2 again." Not the, "Everyone in town has one of these.  
3 You're just another person." But that one that says,  
4 "You've actually consented without admissions to the  
5 making of the order. There are no findings of fact. What  
6 you need to be aware of ..."

7 So certainly in an ideal world that might be half  
8 an hour of a magistrate's time to go through that  
9 properly, to properly explore the issues. That currently  
10 isn't going to happen or, if it does, it will be the  
11 exception rather than the rule.

12 MR MOSHINSKY: In practice now, how much time is available in a  
13 consent order scenario?

14 MR CASEY: Mr Casey: "Your Honour, the matter has resolved by  
15 way of consent without admissions. It is a 12-month  
16 order." "Anything I need to know?" "No, Your Honour, it  
17 is as per the interim intervention order." "Thank you,  
18 Mr Casey. The parties are excused."

19 MR MOSHINSKY: A matter of minutes.

20 MR CASEY: That's certainly my experience with a lot of consent  
21 orders.

22 MR MOSHINSKY: Is that your experience, Ms Sinclair?

23 MS SINCLAIR: I would say that it varies greatly, especially if  
24 we look at some of our specialist courts. I think a lot  
25 more time is spent by the magistrate reading through the  
26 terms of the order, especially where there are children  
27 involved. Some magistrates will comment that children  
28 need to be raised in a safe environment, that some of this  
29 behaviour complained of is characterising what is family  
30 violence, that family violence has a very broad  
31 definition, and will go through the accountability, stress

1 the importance of compliance with the orders, setting out  
2 the penalties and the criminal repercussions for breach of  
3 an intervention order. Some magistrates will talk about  
4 variations to orders and how that's to take place.

5 In cases where there are safe contact orders  
6 which are being made, so the parties may be resuming a  
7 relationship, some magistrates will then talk about  
8 referrals to services and the like. But most certainly  
9 I do agree that in some courts it is a very abbreviated  
10 service which is being received.

11 MR CASEY: If I may qualify that quick scenario. That's an  
12 example of how quickly you can deal with an intervention  
13 order matter by consent. Certainly in fairness to our  
14 local judiciary, they do things a lot differently than  
15 that. Back in the Crimes (Family Violence) Act days that  
16 was certainly the type of thing that you would encounter  
17 quite regularly.

18 MR MOSHINSKY: Can I ask you both then to comment on the  
19 Victoria Police proposal that the police have expanded  
20 powers and including the power to issue intervention  
21 orders in the field for a period of time and the parties  
22 would then come back to court only if they wished to vary  
23 those orders. Do you wish to comment on that proposal?

24 MS SINCLAIR: We see that that day at court and the ability to  
25 access services as so important for increasing victim  
26 safety and also accountability for the respondent. What  
27 we are able to do in terms of tailoring the intervention  
28 orders, if I could speak from the respondent's perspective  
29 firstly, in ensuring that they understand the order,  
30 understanding can be compatible with compliance. If they  
31 know what the order says, they understand what it means,

1        what they can and what they can't do, if they understand  
2        how they may be able to negotiate children's matters into  
3        the future and what the limitations are on their  
4        behaviour, then they are more likely to comply with the  
5        intervention order, which is obviously going to promote  
6        victim safety.

7                I would have concerns that by removing that  
8        ability for respondents to access legal services, that it  
9        would be putting efficiency over effectiveness. They  
10       might be given orders which they don't understand which  
11       they then go on to breach straight away, which then  
12       escalates the violence, it escalates the trauma that the  
13       victims would experience. So I think being able to come  
14       to court and to be able to access services, legal services  
15       as well as family support services, by doing that we are  
16       increasing that victim safety and the accountability and  
17       the visiblensness of the respondent. This is a legal  
18       process which people are embarking on, so for a legal  
19       process it's really important that legal advice is  
20       received.

21               So, it might end up just causing further problems  
22       down the track which will impact on other areas, so we  
23       might see a lot more respondents who are then breaching  
24       intervention orders; applicants and respondents who then  
25       need to return to court to vary the intervention order  
26       because they weren't aware of how the order could be  
27       tailored to meet their needs at the time.

28    MR MOSHINSKY: Mr Casey, do you wish to comment?

29    MR CASEY: I certainly echo Leanne's comments in respect to  
30       that. One brief thing. The police response and the  
31       safety notices should always be seen as the whole package



1 of an approach rather than reducing it down to one aspect  
2 where there's a direct link. I think the family violence  
3 intervention order process creates opportunities for  
4 genuine rehabilitation to promote accountability and also  
5 to link the victims of family violence into essential  
6 locally based services. You may not actually get that if  
7 you just had a police response as the only response. They  
8 are the only observations around that.

9 MR MOSHINSKY: Mr Casey, can I ask you to comment on a  
10 different topic, which is the differences you see between  
11 rural and regional courts and the services that are  
12 provided compared with the metropolitan courts?

13 MR CASEY: It's apparent, or hopefully apparent to you now, the  
14 experiences of the women that we have interviewed in our  
15 research, but also in our submissions, that there are  
16 fundamental failures in access to justice in rural and  
17 regional areas. Sometimes that. That can get lost in  
18 terms of being on a highlight "how many numbers of people  
19 go through your courts", "how many people are there in  
20 that community", which is at the cost of considerations  
21 around things like the extremely high level of family  
22 violence in our rural and regional communities.

23 Per capita analysis, Echuca has the highest rates  
24 of family violence in that particular region. The court  
25 is manifestly unsafe. The feedback that we have had from  
26 the Indigenous community locally is there is real issues  
27 around access to the police and the courts. So they  
28 should be the determining factors rather than populations  
29 and all that sort of stuff.

30 We have a real patchwork approach that is highly  
31 dependent on what resources, what agencies are available

1 on the ground in that particular town. A great example is  
2 the Maryborough region where they have a really strong  
3 commitment and they have had successful funding grants  
4 around putting in place all sorts of programs.

5 If we contrast that with, say, hypothetically  
6 Cobram, I'm not immediately sure of what immediate  
7 resources are available there, but there's certainly high  
8 incidences of family violence in that very small  
9 community. So, they are the kind of things that can get  
10 lost in the wash-up when we are talking about these  
11 issues.

12 I was particularly impressed with the Sunshine  
13 Court model, the different locally based programs that  
14 they have implemented as part of their services. I was  
15 really impressed. My strong view is that that's almost  
16 like your low watermark in terms of local based responses  
17 to family violence support services using the court as a  
18 hub for those type of things to happen, and I think that  
19 should be implemented right across the state rather than  
20 being restricted to city or suburban sort of courts or  
21 specialist courts such as the Ballarat Family Violence  
22 Court.

23 At the time that we set up our outreach, we had  
24 similar numbers of incidents and applications of family  
25 violence in the Bendigo region. The main difference  
26 appeared to be that we had an old court and, to an  
27 outsider looking in, Ballarat was ideally placed with the  
28 new court building that was fully set up for family  
29 violence type issues. I think that's a really important  
30 consideration for the Commission in all these discussions.

31 Sorry, one further point is the absolutely

1 essential component of empowering resourcing, health  
2 services, Aboriginal co-ops, those types of organisations  
3 within those rural and regional communities because they  
4 are the community hubs. They are the ones that have a  
5 strong idea of what's going on in their community,  
6 appropriate referral pathways, properly trained,  
7 resourced. They then become the really strong  
8 preventative aspect within those communities and I think  
9 that's something that, with the legal lens on, that we  
10 quite often forget.

11 MR MOSHINSKY: Could I just ask you, under some time  
12 constraints, just one final question, Ms Sinclair. In the  
13 VLA submission, recommendation 12 deals with interim  
14 intervention orders having finalisation conditions so  
15 that, if the respondent doesn't turn up to court at the  
16 later hearing, it's automatically finalised. Could you  
17 just briefly explain the VLA's position on that issue?

18 MS SINCLAIR: Certainly. I think it's quite a similar position  
19 to the police being able to issue intervention orders in  
20 the field, is that we would see that that's a missed  
21 opportunity to be able to provide advice and assistance to  
22 that respondent. It would mean that many respondents  
23 receiving intervention orders may not understand what the  
24 criminal repercussions of breach are. They may not  
25 understand what they can and they can't do under that  
26 intervention order. They may not know how to be able to  
27 access services. They may not even be able to read the  
28 English or the intervention order. They may have drug and  
29 alcohol concerns.

30 By effectively giving that intervention order to  
31 them when they are served and then having no ability to

1       come to court, we don't have the ability to tailor the  
2       order to be able to suit their circumstances, ensure that  
3       the respondent understands the intervention order, that  
4       they know what they can and can't do, to be able to refer  
5       them to other services where they are able to seek  
6       assistance.

7               So, again I think that's a missed opportunity for  
8       that respondent to be visible, to be made accountable and  
9       to go before the court. It's when the respondent is able  
10      to have that awareness that we are able to promote safer  
11      outcomes for the applicants in those matters and we can  
12      work towards having an order that works for the safety of  
13      that family. Obviously then our legal services need to be  
14      resourced to be able to provide that all-encompassing  
15      service when it gets to court.

16   MR MOSHINSKY: I don't know whether the Commissioners have any  
17      questions for the witnesses?

18   DEPUTY COMMISSIONER FAULKNER: I do, yes. I would like to just  
19      understand a little bit more about what you said earlier,  
20      that you don't have data about how many people see a duty  
21      lawyer or a community legal centre lawyer. Is that  
22      because it's not counted or you just don't have it here  
23      today?

24   MS SINCLAIR: Sorry, no, my response was in relation to how  
25      many of the clients that we would see would resolve by  
26      consent without admissions.

27   DEPUTY COMMISSIONER FAULKNER: Do you have data then on how  
28      many people you see each day and do you keep some account  
29      of how much time you spend with them? Just in accounting  
30      for your funding, I suppose I'm interested in knowing  
31      that.

1 MS SINCLAIR: Certainly we collect data on the number of  
2 clients who we see and the number of services that we may  
3 provide. We don't collect data on a breakdown of how much  
4 individual time we would spend with a client.

5 DEPUTY COMMISSIONER FAULKNER: Thank you very much.

6 MR CASEY: We have a similar recording system where we know how  
7 many clients we have serviced in IVO matters in particular  
8 courts and that type of thing. I just don't have that to  
9 hand today.

10 DEPUTY COMMISSIONER FAULKNER: So it would follow then that if  
11 you knew what the list size was you could work out how  
12 many clients are actually being seen of the ones that are  
13 appearing for the list?

14 MS SINCLAIR: That's correct. You could compare the  
15 Magistrates' Court data with the number of clients that  
16 our services then assisted. What that often doesn't show  
17 is that some people may have not attended at court or  
18 there could be people who were assisted with private  
19 practitioners, so that wouldn't be reflected.

20 DEPUTY COMMISSIONER FAULKNER: Thank you.

21 COMMISSIONER NEAVE: I have two questions. A pessimistic view  
22 would be that the duty lawyer process is simply propping  
23 up a court process which is burdened to bursting point, so  
24 what people get is some sort of nominal legal  
25 representation, not really appropriate legal  
26 representation. I would like you both to comment on that  
27 question.

28 MS SINCLAIR: I would say that I think that the duty lawyer  
29 system, it's not broken, it just needs an investment of  
30 resources so that we are able to provide - spend more time  
31 with clients. In courts that have smaller lists where we

1 may only be advising five or six clients, we are able to  
2 spend more time with that client, ensure that we are  
3 providing advice, referrals, assistance, looking at other  
4 co-related matters. It's when those lists get bigger that  
5 we are just buckling under the demand of the day.

6 So what happens is there's often a more  
7 abbreviated service, which means rather than addressing  
8 issues at the time we might just be referring back to,  
9 say, Victoria Legal Aid's in-house practice or to private  
10 practitioners. In an ideal world, if we were properly  
11 resourced, we would be able to see more clients who might  
12 benefit from a legal service, but also be able to address  
13 more of the specific issues, legal and other, that are  
14 experienced by that client at that opportunity at court.

15 MR CASEY: I would absolutely agree with your comments. The  
16 feedback that we have had from the research is that you  
17 have a process that's very much tailored towards  
18 expediency, that's tailored towards trying to get huge  
19 churn through the courts, with very little resources, and  
20 a proper holistic approach would be a step back from that.  
21 As lawyers we have a huge conceit about the importance of  
22 our role within that. A proper holistic sort of role  
23 would tailor each individual scenario to the needs of that  
24 individual victim, and we heard some very graphic examples  
25 earlier on today about the failures to deal with those  
26 specific circumstances.

27 So, yes, it's very much propping up an outdated  
28 system that is probably historic, a consequence of the old  
29 Crimes (Family Violence) Act. The legislation itself -  
30 and Ms Sinclair and I were having a discussion earlier.  
31 We both use the analogy about a vehicle. It's a 2008

1 model vehicle that's actually suitable for purpose, but  
2 it's not being resourced, it hasn't got fuel in it, it has  
3 bald tyres, it's crashing and burning, so it's unsafe.

4 So we are certainly propping up, doing our best,  
5 and I really need to commend all the different players in  
6 that environment doing their absolute best. The intent,  
7 and particularly the personal relationships we have  
8 developed around regional and rural, or around our  
9 regions, without them it would crash and burn. You just  
10 change one of the players in that particular scenario and  
11 suddenly a safe-ish environment turns unsafe. So  
12 I absolutely agree.

13 COMMISSIONER NEAVE: Can I just follow on from that. I think  
14 the analysis is to have more of a Rolls Royce model at the  
15 moment, but I'm wondering whether you start again with a  
16 different car, have a very different system. What would  
17 that look like? Because no matter how many resources are  
18 poured into the system, you probably won't be able to have  
19 the Rolls Royce model at every court in Victoria or  
20 perhaps even at all the headquarter courts. So what do  
21 you do instead? If you were going to re-design, how would  
22 you do it?

23 MR CASEY: Probably deck out a Kombi van, and away you go.

24 I think properly engaging the community agencies, being  
25 really creative - when I say creative, not in inverted  
26 commas, but actually looking at what opportunities are  
27 there for promoting safety, actually properly  
28 acknowledging the voices of the women that are involved in  
29 experiencing these sort of things.

30 I noted an observation in the Magistrates' Court  
31 submission, I forget the key word, but it was actually

1 having an independent person available to speak to the  
2 court on behalf of a client, rather than a legal  
3 representative. So almost like an extension of the  
4 McKenzie friend type concept. I thought that was  
5 interesting and that certainly potentially has application  
6 in other satellite sort of regions.

7           There's a very strong program in the UK involving  
8 volunteer law students, that they are properly trained up,  
9 they become the advocates and the points of contact for  
10 women experiencing family violence over there. I think  
11 that we need to pay proper respect to the health service  
12 worker, the counsellors, all those community agencies that  
13 have a huge amount of in-house knowledge around family  
14 violence, but aren't potentially acknowledged  
15 appropriately by the court. Legislation itself says that  
16 the court can inform itself any way it deems appropriate.  
17 There is nothing stopping, to my mind, a family violence  
18 support worker being able to beam into a central court  
19 location with the applicant, having had the time to  
20 actually work thoroughly with that particular person to  
21 identify what all their particular needs are.

22           I think the therapeutic jurisprudence has a huge  
23 role to play. The areas around health advocacy alliances  
24 around the world are gaining momentum where you are  
25 looking at the whole of patient or the whole of person  
26 approach. I think they are really positive sort of ways  
27 of reframing the whole area.

28           So my ideal vehicle would have cool tunes, big  
29 speakers, but also be truly representative of community  
30 driven initiatives to deal with family violence. That  
31 doesn't have to be hugely resourced. It's like the



1 building bridges type environment where you actually put  
2 the infrastructure in place and then you provide some  
3 ongoing resources to the already existing agencies to be  
4 able to do that stuff. That includes the CLC sector, that  
5 includes VLA as the legal boffins, but also then the other  
6 agencies that are doing great work on shoestrings or with  
7 no budget at the moment. They are just a few musings.

8 COMMISSIONER NEAVE: Did you want to comment on that,  
9 Ms Sinclair, or not?

10 MS SINCLAIR: Just quickly. I would say that I still think  
11 that the legislation that we have in Victoria is close to  
12 best practice; that a lot of things that were included in  
13 the 2008 amendments were best practice and that Victoria  
14 is often seen as having a much better justice response to  
15 family violence, our broadened definition of "family  
16 violence". I would probably stick by that I don't think  
17 the legislation itself is broken; it just needs to be  
18 properly resourced so that we are able to engage  
19 effectively with people to promote safer outcomes and so  
20 that respondents are accountable.

21 COMMISSIONER NEAVE: Thank you very much.

22 MR MOSHINSKY: If these witnesses could please be excused and  
23 we will call the next witnesses.

24 COMMISSIONER NEAVE: Thank you very much indeed.

25 <(THE WITNESSES WITHDREW)

26 MR MOSHINSKY: We may just start for a few minutes with these  
27 witnesses, if that's acceptable.

28 COMMISSIONER NEAVE: Yes.

29 MR MOSHINSKY: And then we will break for lunch. The next  
30 witnesses are Acting Inspector Rudd, Alice Cooney and  
31 Fiona Calkin.

1 <ALICE KATHERINE COONEY, sworn and examined:

2 <PAUL DANIEL RUDD, sworn and examined:

3 <FIONA LOUISE CALKIN, sworn and examined:

4 MR MOSHINSKY: Can I start with you, Acting Inspector Rudd.

5 Can you just briefly state what your current position is  
6 and what your professional background is?

7 ACTING INSPECTOR RUDD: Certainly. I'm currently performing an  
8 upgraded role as the inspector in charge of education and  
9 front-line support on behalf of prosecutions division. In  
10 relation to my background in family violence I can provide  
11 a unique position, I suppose, for the Commission in that  
12 I have been prosecuting family violence matters as early  
13 as 2004. So I can talk about the experience on behalf of  
14 the AFM and from the prosecution perspective before the  
15 Code of Practice and before the 2008 amendments to the  
16 Act.

17 I also have experience having prosecuted  
18 intervention order matters at Dandenong, Melbourne and  
19 Frankston prosecutions unit as well as the Neighbourhood  
20 Justice and Moorabbin Justice Centres. So can I speak  
21 about the differences in infrastructure, the differences  
22 between a specialist magistrate and a non-specialist  
23 magistrate.

24 I also was involved in the training of over 100  
25 prosecutors as manager of the prosecutor training course.  
26 So I can talk about the training the prosecutors and the  
27 civil advocates are provided. I can also talk about the  
28 difference between managing our unit, which I now do, that  
29 has police lawyers working with the civil advocacy unit  
30 against having general prosecutors. So I can talk about  
31 that.

1                   In relation to my current role, I don't appear in  
2                   a lot of matters anymore. I do, however, appear when  
3                   police members are involved as either a respondent or an  
4                   affected family member. I appear in the subsequent  
5                   section 189 firearms applications and I appear on behalf  
6                   of the Chief Commissioner in relation to applications  
7                   generally by the media in relation to restriction on  
8                   publication of proceedings pursuant to section 166 of the  
9                   Act.

10 MR MOSHINSKY: Have you prepared a statement for the Royal  
11                   Commission.

12 ACTING INSPECTOR RUDD: I have.

13 MR MOSHINSKY: Are the contents of your statement true and  
14                   correct.

15 ACTING INSPECTOR RUDD: Yes, they are.

16 MR MOSHINSKY: Can I turn to you, Ms Cooney. You previously  
17                   held the position of civil advocate.

18 MS COONEY: That's correct.

19 MR MOSHINSKY: Can you briefly outline what a civil advocate  
20                   is.

21 MS COONEY: Yes, I can. A civil advocate is an unsworn,  
22                   legally qualified, admitted to practice lawyer that's  
23                   employed by Victoria Police within the prosecutions  
24                   division. A civil advocate is - the unit was designed to  
25                   become a specialist service in relation to family violence  
26                   applications and to represent the police applicant in  
27                   relation to all proceedings under the Family Violence  
28                   Protection Act.

29 MR MOSHINSKY: When there is an application for an intervention  
30                   order by the police, the civil advocate would act on  
31                   behalf of the police informant.

1 MS COONEY: That's correct, yes.

2 MR MOSHINSKY: How is it decided whether it will be a civil  
3 advocate or a police prosecutor who acts in that scenario?

4 MS COONEY: At this stage the civil advocates really take the  
5 primary role in appearing for all of those matters. It  
6 was intended that the unit would be able to address the  
7 applications of family violence in, as it's been stated, a  
8 highly specialised way to take that off the requirement of  
9 the police prosecutors, who are required to appear in a  
10 number of different areas within the criminal law. So the  
11 best practice is that the civil advocate would appear in  
12 all matters.

13 The reality is that the police prosecutors  
14 continue to appear in the applications to increase and  
15 improve their training in the area as it progresses, but  
16 also where it's related to other criminal applications  
17 where a respondent may have associated criminal matters  
18 and it will be dealt with in the same court.

19 MR MOSHINSKY: Have you prepared a witness statement for the  
20 Royal Commission?

21 MS COONEY: I have.

22 MR MOSHINSKY: Are the contents of your statement true and  
23 correct.

24 MS COONEY: They are.

25 MR MOSHINSKY: Can I turn to you, Ms Calkin. Could you please  
26 explain what your current position is.

27 MS CALKIN: I'm currently the family violence court liaison  
28 officer at the Ringwood Magistrates' Court. I have been  
29 in that role since October 2012 and have experience at the  
30 court for some years before that as a police prosecutor.

31 In my role as the court liaison officer I manage

1 the police initiated applications that come through the  
2 Ringwood Magistrates' Court. I act on behalf of the  
3 informant, which relieves the need for them to come to  
4 court at the first mention. When I say "informant",  
5 I mean the police applicant to the order. I liaise with  
6 all the parties at court, being the affected family  
7 member, the respondent or their legal representatives, the  
8 court registrar, the civil advocate or the police  
9 prosecutor and ensure that the affected family member is  
10 referred to the appropriate referral services available at  
11 court, and I do a lot of liaising with those referral  
12 agencies who work at the court as well.

13 MR MOSHINSKY: Have you prepared a witness statement for the  
14 Royal Commission.

15 MS CALKIN: Yes, I have.

16 MR MOSHINSKY: Are the contents of your statement true and  
17 correct.

18 MS CALKIN: Yes.

19 MR MOSHINSKY: We will just spend a couple of minutes. Can  
20 I have you explain just what a day in the life looks like?  
21 We have heard from the applicant and respondent workers.  
22 We have heard from duty lawyers acting for applicants and  
23 respondents. At what point does either the police  
24 prosecutor or the civil advocate or the liaison officer  
25 get involved?

26 MS CALKIN: I will probably commence because I'm the one that  
27 becomes aware of the police applications usually before  
28 the civil advocate or the prosecutor. When police take  
29 out an application for an order, whether it be by way of a  
30 safety notice, an application and warrant or an  
31 application and summons, they prepare an intervention

1 order brief and they have that forwarded to myself or the  
2 prosecutions office prior to it being listed at court.

3 So at Ringwood court we have two sitting days,  
4 Tuesdays and Fridays, for the family violence  
5 applications. So I prepare the list the day before court  
6 and receive those briefs and ensure that I have those  
7 briefs the day before court. So I become aware and  
8 prepare the application, go through the police brief,  
9 liaise with the court to ensure they have all the  
10 appropriate paperwork and that I have also all the  
11 appropriate paperwork that has been listed before the  
12 court.

13 Sorry, do you want me to go into detail into my  
14 whole proceedings?

15 MR MOSHINSKY: In advance of the day in court do you speak to  
16 any of the relevant people?

17 MS CALKIN: Once I receive the brief I do an assessment. I go  
18 through the risk assessment that's already been conducted  
19 by the police informant in the application. I liaise with  
20 the informant if I need to if there is any specific need  
21 to speak to him about his perceived risk to the affected  
22 family member. I then attempt to contact the affected  
23 family member to ensure that she's aware to come to court.  
24 I will speak with her about what to expect when she gets  
25 to court, explain the process to her, the options to her  
26 in relation to the conditions, that the conditions are  
27 open to have full exclusion conditions and, if they are  
28 not supportive of that, there's still the options for less  
29 conditions in a limited capacity. I then prepare the  
30 list, ensure that I have all the applications and prepare  
31 the list for the court day.

1 MR MOSHINSKY: I see the time. Would that be a convenient time  
2 to adjourn until 2 o'clock?

3 COMMISSIONER NEAVE: Thank you, Mr Moshinsky. Yes, 2 o'clock.

4 LUNCHEON ADJOURNMENT

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1 UPON RESUMING AT 2.00 PM:

2 MR MOSHINSKY: Can I take up the question now with you,

3 Ms Cooney. Are you able to give a brief overview of what  
4 does a day in the life of a civil advocate look like?

5 MS COONEY: Sure. I will just supplement what Fiona said to  
6 say that some of the duties and tasks that the family  
7 violence court liaison officer undertakes would also be  
8 assisted by the civil advocate or our legal support  
9 officers. But, in terms of the role that the civil  
10 advocate would really take as a specialty, really  
11 commences at the start of the mention list on a typical  
12 sitting day in any court.

13 We typically, and this isn't the case across all  
14 courts, would have a meeting with the other services that  
15 are represented on that day, address matters in relation  
16 to actually triaging the list, so which matters need to be  
17 dealt with as a matter of priority. That may be a  
18 priority due to the high risk that's identified in the  
19 narrative, a priority due to the fact that children have  
20 already come to court or that there are interpreters  
21 involved and we have time limits in relation to those  
22 matters.

23 Then the civil advocate would take that mention  
24 list and look through the files and start to ascertain  
25 which parties are there and whether they have elected to  
26 seek independent legal advice or whether they are just  
27 wishing to speak to the police representative. We also go  
28 through and simply identify which matters do not involve  
29 police and also look at whether they are different  
30 applications in relation to - they could be variations,  
31 revocations, those sorts of matters. So we have a very



1 bird's eye perspective at the start of the day about what  
2 we anticipate we will be dealing with.

3 The civil advocate, the role that we undertake  
4 primarily is to do the advocacy role in court and appear  
5 before the magistrates to identify each of the matters.  
6 I have skipped ahead some of the stages, I suppose, but  
7 some of that evidence was given earlier by what the  
8 registrars do, and the civil advocates really work very  
9 closely through that process to actually negotiate a  
10 matter to be ready to be determined in court.

11 That can be with the assistance of having already  
12 prepared a matter in an ideal situation. In other  
13 situations it's very much we have received the paperwork  
14 that morning, we open the file, we read that narrative,  
15 read the accompanying information that we hope to have in  
16 that brief, including any relevant prior incidents of  
17 family violence, any priors that would be relevant to that  
18 particular matter, and then liaise with whoever wishes to  
19 speak with us.

20 So, the civil advocate is really required to be  
21 able to speak to all parties in relation to the matters.  
22 We might speak with the AFM and the respondent in the same  
23 matter. We obviously separate those parties before we  
24 speak to them, or we might only have to speak to one party  
25 or we may be only speaking with lawyers in relation to  
26 those matters.

27 MR MOSHINSKY: In the course of a day, would the civil advocate  
28 be dealing with both interim intervention orders and final  
29 intervention orders?

30 MS COONEY: Yes, that's correct. The majority of the matters  
31 on a daily list would be by way of safety notices that

1 have come to court, particularly since the change in the  
2 legislation that allowed those to be issued without time  
3 restriction. That allows for - the legislation allows for  
4 the finalisation of that matter on that day if we are able  
5 to do that. Either the respondent consents or the  
6 respondent is not there and we have instructions, or it  
7 will prompt us to make an application for an interim  
8 order, and the legislation is very prescriptive in terms  
9 of what's to be considered by the magistrate in that  
10 circumstance and that there must be circumstances that  
11 justify discontinuing the protection that's already been  
12 afforded.

13 MR MOSHINSKY: Are many of the matters that are dealt with  
14 resolved by way of consent?

15 MS COONEY: Yes, they are. Again, I don't have the statistics  
16 but, yes, the jurisdiction is heavily reliant on the  
17 consent without admission framework, including both to an  
18 interim order and a final order. So, a safety notice  
19 comes to court. That doesn't automatically grant you an  
20 interim order. It is an application. So that requires us  
21 to negotiate whether we have consent to a final order or  
22 if we simply have consent without admission to an interim.  
23 So there is a two-phase process sometimes.

24 MR MOSHINSKY: Thank you for that description. Acting  
25 Inspector Rudd, are there differences with the role of the  
26 police prosecutor if they are involved in a civil  
27 intervention order?

28 ACTING INSPECTOR RUDD: I suppose the main difference would be  
29 prosecutors would appear and fulfil both of those roles if  
30 neither party was there. So there would always be a  
31 police prosecutor in every court, so therefore that's

1 where members of my staff would attend. At the moment the  
2 civil advocacy unit only has 17 police lawyers, of which  
3 four positions are unfilled, so therefore there are only  
4 13 people on the ground at the moment that have capacity  
5 to respond to the 35,000 police initiated intervention  
6 orders. So, for the remainder, so at the moment we have  
7 prosecutors appearing at the Moorabbin Justice Centre and  
8 all regional centres besides Geelong have a police  
9 prosecutor performing the role that Alice just detailed.

10 Metro-wise, the only time a prosecutor will be  
11 there if a civil advocate is present is if there is  
12 accompanying criminal charges because the civil advocacy  
13 unit and the police lawyers don't have standing to appear  
14 in relation to criminal matters. So therefore a member of  
15 my staff or a police prosecutor will prosecute the  
16 intervention order and also the accompanying criminal  
17 matters which will generally be a person in custody.

18 MR MOSHINSKY: Can I ask you, and perhaps you can see who is  
19 most appropriate to answer this, how do you manage the  
20 relationship with the AFM? So the police are making the  
21 application for an intervention order. The AFM, affected  
22 family member, if they are there, how does their view of  
23 what should happen come into it? We have heard the  
24 evidence earlier today from Ms Field talking about couples  
25 who come to the counter saying, "We've reconciled. We  
26 don't want any order." What does the civil advocate or  
27 the police prosecutor do?

28 ACTING INSPECTOR RUDD: I might just start, then throw to  
29 Alice. The most important thing that affected family  
30 members always need to appreciate is that, whether it be  
31 the police lawyer, civil advocate or the police

1 prosecutor, we have instructions to act on behalf of the  
2 applicant themselves, which is the police member. While  
3 the majority of the time our instruction will closely  
4 follow what it is that the AFM is seeking, we are not  
5 necessarily bound by their instructions.

6 MS COONEY: That's a really important point to make. Along  
7 with the police prosecutors, obviously the civil advocates  
8 are admitted to practice and we have obligations both  
9 within our employment and also our roles as Australian  
10 lawyers. So we have to in practice walk that line very  
11 carefully and really be able to understand ourselves  
12 exactly who we are there to represent and why.

13 In terms of communicating that to an affected  
14 family member, it can be really difficult because part of  
15 the process is to be able to build rapport with them so  
16 they will talk to you so you can ascertain a little bit  
17 more about the context of their relationship with the  
18 respondent, but you also have to make them aware that you  
19 might be seeking an order protecting them where they have  
20 explicitly told you they don't want that.

21 One of the strategies that I use in practice is  
22 to really clearly outline who I am and why I'm there.  
23 I also offer, in addition to the Registrar offering, the  
24 opportunity to speak to a lawyer and I indicate that they  
25 can have that opportunity and exercise it at any point.  
26 So if there does come a time where they no longer wish to  
27 communicate with myself directly or a civil advocate, they  
28 can elect to take up that option of having that  
29 independent advice.

30 Part of it as well is to actually talk to them  
31 about what the legislative power is for the police to ask

1 for that order and make that really clear. We are simply  
2 asking for the order. Just because we ask for it doesn't  
3 mean there isn't then the independent exercise of the  
4 judicial officer to ascertain whether that order should be  
5 granted. I think allowing the AFM to know there are a  
6 number of structures in place, that might mean that they  
7 are heard.

8 I also make it clear to them that, whilst I'm not  
9 there to represent them, I will make their wishes clear as  
10 a friend of the court. So if an AFM has told me they  
11 don't wish to support the order, I won't leave the  
12 magistrate in doubt of that particular position.

13 MR MOSHINSKY: Are there certain conditions in the intervention  
14 order that cannot be made without the AFM's consent?

15 MS COONEY: Yes, there are. It was referenced earlier that we  
16 speak a lot in jargon. One of the ways that the police  
17 lawyers and civil advocates really speak is in numbers, so  
18 the numbers correlate to what we would understand to be a  
19 limited order. It's written in the legislation that  
20 police can only ask for orders where it's essentially a  
21 safe contact order. We cannot prevent an AFM from having  
22 contact with a respondent, and the respondent having  
23 contact with the AFM.

24 So also outlining that limitation, that they have  
25 the power to exercise exactly how they want that order to  
26 look whilst we put that basic framework. I will just go  
27 back, that it is not to commit family violence, not to  
28 intentionally damage or threaten to damage property, which  
29 is often understood as a part of family violence  
30 nonetheless, and also not to have anyone else do those  
31 things on behalf of the respondent. So that is what we

1           would commonly refer to as a limited order or an order 1,  
2           2 and 8 order.

3 MR MOSHINSKY: So the limited order can be made regardless of  
4           the AFM's view.

5 MS COONEY: That's correct.

6 MR MOSHINSKY: But beyond those conditions, the conditions  
7           can't be imposed unless the AFM consents.

8 MS COONEY: That's correct. There are some small exceptions to  
9           that and that's in relation to where there is a child and  
10          there's particular concern for the safety of the child.  
11          We have exercised that power, particularly where I have  
12          practised in the Melbourne Children's Court, where there's  
13          been a little bit more understanding of the family  
14          dynamic, and also in relation to where the AFM has a  
15          guardian or there is a cognitive impairment which really  
16          are exercised much less frequently.

17 MR MOSHINSKY: Can I ask you about the complexity of the orders  
18          and conditions. Are you able to comment, based on your  
19          dealings with both AFMs who may be there but also your  
20          dealings with respondents who you may have to deal with,  
21          are there issues around the complexity of the order that  
22          you come across?

23 ACTING INSPECTOR RUDD: Yes, there are. I think everyone  
24          agrees probably in this room that it would be a lot more  
25          beneficial and a lot less orders would be breached if the  
26          language was more easily and more readily understood. A  
27          lot of the times you will think you have negotiated a 1, 2  
28          or an 8 or an agreed position in relation to conditions,  
29          only for that to be vetoed in the court or outside of the  
30          court, and then you have to sit down and explain. Because  
31          we have a busy day and magistrates only have a couple of

1 minutes to spend with each person, you spend a lot of time  
2 both before and afterwards trying to explain the language  
3 of the order. So clearer, more easily and readily  
4 understood conditions would certainly be of benefit, not  
5 only to people charged with prosecuting, but also the AFMs  
6 and the respondents.

7 MS COONEY: I have also found just with respondents that a  
8 common point that is fed back to me - I haven't worked  
9 personally with a respondent support worker, so that role  
10 has been something that I would really be in support of  
11 because of the position that it's placed upon us as civil  
12 advocates, but often the comments I get back are, "Well,  
13 I can't do anything. If I say anything wrong or if  
14 I disagree, then I'm committing family violence."

15 That is a difficult line to cross when you are  
16 not trying to give advice, you are not able to articulate  
17 exactly what - you don't work in specific examples for  
18 them because you simply don't have time to do that. But  
19 you do want them to have an awareness of what it means to  
20 commit family violence and how that's understood by the  
21 courts.

22 MR MOSHINSKY: Just taking up one of the points that was just  
23 mentioned about how long the magistrates have available to  
24 deal with matters. Can you comment, given the high number  
25 of matters that are resolved by consent, possibly as a  
26 result of negotiation, in your experience when the matters  
27 go before the magistrates in a consent context, what is  
28 the process?

29 ACTING INSPECTOR RUDD: Firstly what I can say and from units  
30 that I have managed over the last couple of years, the by  
31 consent without admissions on a first mention is around

1 about 50 per cent, give or take 10 per cent depending on  
2 magistrates, and give or take the practitioners. If it is  
3 a matter by consent without admissions for 12 months,  
4 generally it would take between two and five minutes for  
5 that matter to finalise in court would be my experience.

6 MR MOSHINSKY: Does the magistrate typically explain or give  
7 some sort of talk to the perpetrator or the respondent to  
8 the application?

9 ACTING INSPECTOR RUDD: Yes, absolutely. Different magistrates  
10 do that to different degrees, which we have already  
11 referenced today, but there is mandated legislation that  
12 talks about consequences of breach and things of that  
13 nature. Some of them will engage in what family violence  
14 is and explain that it's not simply physical violence, it  
15 has a number of meanings under the definition under  
16 section 5. So there will be some magistrates that will  
17 more actively involve themselves in the negotiations, the  
18 description of the order, the contravention and what that  
19 means for them moving forward, but other magistrates are  
20 simply looking at their list, they have 45 matters to deal  
21 with still and it is lunchtime already, and will take some  
22 shortcuts around that, absolutely.

23 MS COONEY: One of the benefits of civil advocates, I suppose,  
24 and the reason we are really looking to have civil  
25 advocates in as many courts as possible is that you are  
26 able to be identifiable as a person who has practised in  
27 the area and is aware of some of the nuances around family  
28 violence. So, whilst there might only be a couple of  
29 minutes spent on a particular matter, we do find that we  
30 are able to communicate to magistrates through some of our  
31 comments that a particular matter may require a little bit



1 more time and we can indicate that there has been a  
2 difficulty, particularly where the parties are not legally  
3 represented, that there's been a difficulty with the  
4 respondent maybe appreciating the full context,  
5 particularly where they will come to you and say, "Yeah,  
6 I'll agree to anything. Just do whatever you want to do,"  
7 which can be a common response that we receive.

8 So we can make the magistrate aware. Whilst  
9 I would agree that only a couple of minutes is generally  
10 spent on consent without admissions, we will identify  
11 those matters for the magistrate and make it clear that  
12 they might need to invest some more time there.

13 MR MOSHINSKY: Are there many cases that you come across in  
14 practice where the magistrate will vary the consent orders  
15 or not make the consent orders in the form put forward?

16 ACTING INSPECTOR RUDD: I wouldn't say it's a common  
17 occurrence, but it does occur. Just to follow on from  
18 Alice's point a little earlier, the concerns and the  
19 issues where we ask the court to slow down a little bit is  
20 when you have people that came in and their only  
21 requirement or their only concern seems to be "What is the  
22 quickest way I can get out of here?" And they will come  
23 to me and we will indicate that a by consent without  
24 admissions would more than likely resolve the matter today  
25 and therefore you won't have to re-attend and they will  
26 say, "Well, I'll take that" and simply walk towards the  
27 counter.

28 In those circumstances, clearly the court needs  
29 some time to fully ventilate the issues to ensure that's  
30 an appropriate course. So I would be very reluctant to  
31 move through those types of matters quickly. But if it is

1 a situation where all parties are represented, all parties  
2 are fully aware of what they are agreeing to, then the two  
3 to five minutes is entirely appropriate.

4 MR MOSHINSKY: You referred earlier to safety notices being a  
5 very common vehicle by which the matter gets to court. So  
6 the police have attended at a home, let's say, they have  
7 issued a safety notice which will have conditions attached  
8 to it which apply for up to five days. The matter comes  
9 before the court and the safety notice is an application  
10 for an intervention order. In that context, are there  
11 many cases where there's discussion or negotiation around  
12 the conditions that will apply?

13 MS COONEY: Yes, I think I can comment and also Fiona in her  
14 experience would be very able to comment on this. Yes,  
15 absolutely. The safety notice conditions don't actually  
16 correlate to the same conditions as an interim or a final  
17 intervention order. The numbers do slightly match up and  
18 they embody the same principles in terms of safety and  
19 protection, but the exact wording is not the same.

20 So you would have a circumstance where you may  
21 have full conditions on a safety notice, there's  
22 approximately six from memory, and then there would be  
23 eight on a final interim intervention order where they  
24 maybe expand a little bit more on those. So there is a  
25 lot of negotiation at court.

26 It's also sometimes the case where there hasn't  
27 been an opportunity to really identify any family law  
28 matters, any child protection matters or how their  
29 involvement will work. So by the time the safety notice  
30 has reached court, it is appropriate to consider the  
31 section 92 exceptions, which will then be negotiated into

1 an order.

2 MR MOSHINSKY: Can I ask you next about what information is  
3 available to each of your roles about other related  
4 matters such as whether there are criminal proceedings in  
5 train or previous intervention orders. So what data is  
6 available to the civil advocate, police prosecutor or  
7 liaison officer?

8 MS CALKIN: That information should be contained within the  
9 police brief where members are required to submit a brief  
10 head, the L17, which is a risk assessment, which goes into  
11 details what previous involvements police have had and how  
12 many incidents of family violence have occurred in the  
13 past. It has statements and other relevant information in  
14 relation to where the criminal matters have been pursued,  
15 whether the respondent is on bail and when he's on bail  
16 till and any previous criminal history would be attached  
17 to the police brief as well. So all that information  
18 should be contained in the brief.

19 I, myself, do checks on LEAP prior to the court  
20 date as well, to have a look myself as to what previous  
21 matters there are, just in case not all that relevant  
22 information is available.

23 MR MOSHINSKY: If the police have attended a home, they have  
24 issued a safety notice, but they also assess that there is  
25 criminal conduct, would charges have been laid by the time  
26 the safety notice first comes to court?

27 MS CALKIN: It depends if the respondent has been charged and  
28 bailed, usually bailed to another date, not to the same  
29 date as the safety notice, unless he's been remanded in  
30 custody. If it's proceeded by way of a summons, the  
31 charges wouldn't have been laid, but I would be able to

1           see if there are charges pending by the information  
2           contained within the police brief on the brief head.

3   MR MOSHINSKY:   So might it be the case, though, that charges  
4           have not yet been laid from the same incident?

5   MS CALKIN:   That's correct.   There would be an investigation  
6           pending but no charges at that stage have been laid, which  
7           is most commonly the case I find with matters coming to  
8           court within that five business days, the charges are  
9           pending and haven't yet been laid.

10   MR MOSHINSKY:   If charges have been laid, does the court know  
11           that charges have been laid?   You refer to the different  
12           dates.

13   MS CALKIN:   If the respondent has been bailed, sometimes that  
14           bail may not be at court at the same time as the  
15           intervention order application is being listed.   The  
16           intervention order applications are brought before the  
17           court a lot earlier and bail is faxed as a matter of  
18           priority, if it is a complaint and warrant application.  
19           But if there are charges pending for a different date,  
20           they may not yet have reached the court.   So our checks on  
21           our LEAP database will be able to tell us when the  
22           respondent has been bailed to.

23   MR MOSHINSKY:   So is the normal process that the criminal  
24           charges, if there are such charges, will come back before  
25           the court on a different date and possibly before a  
26           different magistrate?

27   ACTING INSPECTOR RUDD:   That is generally the case, because the  
28           five-day turnaround in relation to a safety notice, for  
29           example, is quite short.   If a person is remanded, then  
30           the criminal charges and the safety notice will be heard  
31           together.   If it's a situation where a person is charged

1 on summons, that mention date may be in eight, 12,  
2 14 weeks time depending in which Magistrates' Court you  
3 are listing the charges at. Dandenong has an expedited  
4 family violence model that I know Luke is going to talk  
5 about tomorrow morning, so that may well be the case. But  
6 from experience generally if there are charges pending,  
7 either the informant will include that as part of their  
8 narrative and/or we will be notified by the FVCLC, who has  
9 done a check on LEAP to make sure the court is aware there  
10 are charges pending and the nature and number of same.

11 MS COONEY: I agree with all those comments. I suppose the  
12 third option is that a policy lawyer or a court liaison  
13 officer would look through the narrative and identify,  
14 using their professional judgment, whether in that  
15 circumstance there is very likely to be a criminal charge  
16 and then we can actually make enquiries by contacting the  
17 station and speaking to them directly and saying, "What is  
18 the status of this investigation and where is it at," and  
19 we will actively do that, time permitting.

20 MR MOSHINSKY: Can I ask you about orders by courts that the  
21 respondent also undergo a men's behavioural change  
22 program. What's the process for that occurring and how  
23 frequently does that occur?

24 ACTING INSPECTOR RUDD: Across the five different courtrooms  
25 that I have worked at, Moorabbin Justice Centre was the  
26 only one that had the capacity to refer people. During my  
27 time there, it was a situation where the matter would be  
28 effectively triaged by prosecutions, respondent workers  
29 and the court, and appropriate matters were found and then  
30 we would have to try and obviously negotiate through the  
31 funding aspect as to whether or not there would be a

1 position available. I know at Moorabbin the number of  
2 matters that we thought were appropriate and we tried to  
3 refer, very few of those were successful due to the  
4 limited space and capacity of the men's behaviour change  
5 program.

6 MR MOSHINSKY: So otherwise the person was eligible, but it was  
7 too long a waiting list?

8 ACTING INSPECTOR RUDD: Yes, there wasn't capacity for that  
9 person to be afforded an opportunity.

10 MR MOSHINSKY: What about at other places? Even though they  
11 don't have the power to make a counselling order, is a  
12 men's behavioural change program sometimes in effect built  
13 into the order?

14 MS COONEY: Yes, it is.

15 MR MOSHINSKY: How does that happen?

16 MS COONEY: Where police will exercise their right to apply for  
17 an order without the consent of the AFM, we will  
18 particularly talk with the respondent about obtaining  
19 their consent that they contact the men's referral  
20 service. That is the extent to which we can ask them to  
21 do anything in relation to those matters, and it will  
22 become part of the order itself, so it will be printed  
23 with an indication that the respondent agrees to contact  
24 the men's referral service. The contact number will be on  
25 the order.

26 In terms of enforceability of that, it is very  
27 little. We can't follow up in our role to be able to  
28 ascertain whether they have complied with that. The  
29 circumstance of whether it should be a criminal offence  
30 for failing to make that phone call obviously has its  
31 other issues. In fact, we have had circumstances where

1 people have advised us they haven't made that phone call  
2 and other than comprise notes about it and reinforce our  
3 belief that violence may occur again, there's little that  
4 we can do with that information in the places that I have  
5 worked.

6 MR MOSHINSKY: Can I ask you - I believe you have some comments  
7 you wish to make about systems abuse, people abusing the  
8 legal system?

9 MS COONEY: Yes. I have two instances in particular that  
10 I think highlight some of the issues in relation to the  
11 system as it currently stands. As a lawyer I'm very  
12 supportive of the right to be able to exercise any right  
13 within the legal system and none of my comments go against  
14 that. But, in relation to appeals in particular, one  
15 instance I had was where we had a contested hearing for an  
16 application to vary that had been initiated by police. On  
17 the morning of the contest the affected family member  
18 withdrew her support for that variation, so the limitation  
19 in what police can apply for was enlivened and we had to  
20 withdraw our application to vary to increase conditions.

21 The respondent appealed that decision because the  
22 power in the legislation is that a party to a proceeding  
23 may appeal any relevant decision. That resulted in I had  
24 five days worth of appearance work in the County Court to  
25 be able to get to a point, despite my attempts at both  
26 pre-appeal mention, the beginning of the appeal process  
27 and the finalisation was in conjunction with some sentence  
28 and appeal hearings, but I tried to identify that to the  
29 judge, that in fact there was no relevant decision made  
30 for that particular respondent to be appealing, that the  
31 decision that was made was in his favour and that wasn't

1 able to be ascertained until the very end of those five  
2 days, and that resulted in the police having to compile  
3 copies of the transcript, notes and a lot of resources  
4 allocated to the fact that there was no check on that  
5 capacity to simply lodge an appeal.

6 My second example was in relation to a family  
7 violence incident where the respondent and affected family  
8 member had been in a relationship for six weeks. They had  
9 met on-line. They had no acquaintances in common, no  
10 children, no property. The process remained within the  
11 court system for just under 18 months. That was because  
12 there was full utilisation of the options afforded to the  
13 respondent in relation to being able to contest the  
14 original application.

15 He failed to appear at the directions hearing. A  
16 final order was granted. He then lodged an application  
17 for a rehearing and then lodged an application for appeal.  
18 The whole court process meant that my affected family  
19 member continued to come and on the morning of the appeal  
20 he withdrew that application. So, she got to the point  
21 where she was finally able to give evidence and then was  
22 not able to do so.

23 Within that as well he had an awareness that she  
24 was a victim of childhood sexual assault and made an  
25 application against her, indicating that she had sexually  
26 assaulted him, and then failed to appear to continue that  
27 application. So, because there was no capacity for her to  
28 be able to contest that until it went through the system,  
29 she also had an application against her whilst we were  
30 trying to deal with that, and the obvious limitations with  
31 the fact that I couldn't be her lawyer in that proceeding



1           meant that it was further complicated.

2                       So my comment really relates to the fact that a  
3           respondent has to seek leave to vary or revoke an  
4           intervention order at the Magistrates' Court stage. They  
5           are not required to do that to lodge an appeal. They  
6           simply can go to the counter and lodge that appeal and  
7           continue the process.

8   MR MOSHINSKY: Can I ask you about the issue of respondents not  
9           appearing or not turning up to court. Is that a practical  
10          issue and does that impede the process?

11   MS COONEY: From the police perspective, in a situation where  
12          we have an affected family member who wishes to seek a  
13          final order and a police applicant that supports that  
14          position, no, it doesn't impede the process because the  
15          application can be made in their absence and we finalise  
16          it quite swiftly.

17                       The concern that I have is obviously what's been  
18          echoed before is the understanding of that order then  
19          having been made. But in terms of us being able to  
20          actually exercise our instructions, it's quite commonly  
21          the best scenario for the applicant because you are not  
22          required to then negotiate or work through. It's just  
23          what is accepted by the magistrate.

24   MR MOSHINSKY: I want to ask you also about court  
25          facilities and - - -

26   COMMISSIONER NEAVE: Before you do that, Mr Moshinsky, can  
27          I just clarify that last issue. So, the scenario is you  
28          have had a first mention, no appearance?

29   MS COONEY: For the respondent failing to appear, yes.

30   COMMISSIONER NEAVE: And then proceeding to final order, no  
31          appearance again. Is that a common scenario?

1 MS COONEY: It is a common scenario. We obviously then are  
2 required to satisfy service of whatever the application  
3 is. But if that is clarified, then we will often seek a  
4 final order.

5 COMMISSIONER NEAVE: What about the issues of service? Is that  
6 a problem that people avoid service consistently in these  
7 situations?

8 MS COONEY: Yes, but I think that maybe Paul Rudd is better  
9 placed to speak on that.

10 ACTING INSPECTOR RUDD: We do have a number of issues around  
11 service and the limitations as to how service has to be  
12 catered for, and I heard Mr Cornelius speak about that  
13 yesterday. The availability or the broader options to  
14 utilise social media, things of that nature are certainly  
15 supported by the prosecution division. It can be the one  
16 thing that holds up the process and causes a further  
17 adjournment or a further delay, which obviously causes  
18 greater distress to the AFM. If service was more easily  
19 satisfied, then it would certainly be something I think  
20 that would assist AFMs and more broadly by prosecutions.

21 COMMISSIONER NEAVE: So the approach that the police favour is  
22 more liberal use of the substituted service provisions.

23 ACTING INSPECTOR RUDD: Yes.

24 COMMISSIONER NEAVE: I presume that quite a lot of police time  
25 is spent on following up people and trying to serve them  
26 with proceedings.

27 ACTING INSPECTOR RUDD: Yes.

28 COMMISSIONER NEAVE: Given that these are - they are civil  
29 proceedings.

30 ACTING INSPECTOR RUDD: Yes.

31 COMMISSIONER NEAVE: Has any thought been given to the

1 possibility of not using the police, using PSOs or some  
2 other people to execute the service?

3 ACTING INSPECTOR RUDD: Not that I'm aware of. But the one  
4 benefit we do have as police members is we are a 24/7  
5 service. So, bearing in mind the AFM is obviously quite  
6 anxious about the outcome and the court has made a certain  
7 order in a certain set of terms and conditions to protect  
8 the AFM, Victoria Police's position is that that order  
9 should be served as soon as possible to enable that  
10 protection for the AFM to take place as soon as we can.

11 COMMISSIONER NEAVE: But is it a frequent problem that it takes  
12 a long time to do that, just because you can't find the  
13 respondent?

14 ACTING INSPECTOR RUDD: Yes, it is, and in particular people  
15 who are aware, who may be utilising the system to their  
16 benefit, who are aware we are trying to serve them and  
17 make positive steps to make service more difficult.

18 COMMISSIONER NEAVE: Thank you.

19 MR MOSHINSKY: Can I ask you about the court facilities,  
20 infrastructure. Are you able to comment on how  
21 satisfactory they are?

22 ACTING INSPECTOR RUDD: I feel quite qualified, bearing in mind  
23 my experience across a number of different locations.  
24 I've already heard about Dandenong today. I saw that  
25 Dandenong was pictured in the Magistrates' Court  
26 submission to the Commission. We are at pains to protect  
27 witnesses and victims at the initial outset by undergoing  
28 the family violence safety notice process and then we ask  
29 them to attend a courtroom through the same entrance,  
30 stand in the same line as the person who we are attempting  
31 to protect them from.

1 I think that absolutely must re-victimise the  
2 AFM. I think that the use of remote witness facilities at  
3 a different location should be encouraged. From my  
4 experience it's very difficult to utilise, for whatever  
5 reason, the remote facilities at metropolitan courts.  
6 They are available and they are utilised on a very rare  
7 basis. I think best practice would be to have an AFM  
8 attend at a different location, give evidence remotely.

9 Practically what we do at Melbourne is we have  
10 the benefit that it is a big building and we can hide  
11 people on different levels, for example, and only bring  
12 them up to level 6 if they are required to give evidence.  
13 That's an ad hoc situation we have. We have already heard  
14 about Kyneton and places like that. We don't have the  
15 facilities of distance.

16 So, I think the utilisation of remote witness  
17 facilities, the utilisation of separate entrances,  
18 separate counters. From my experience what I have heard  
19 from AFMs is that the process of obtaining an intervention  
20 order in the same building is something that's very, very  
21 concerning for them, they feel re-victimised and it's not  
22 something they are very comfortable with. If we could  
23 make it as comfortable as we could, therefore we are not  
24 encouraging or promoting family violence.

25 MR MOSHINSKY: Do either of the other witnesses wish to  
26 comment?

27 MS CALKIN: I work at Ringwood Magistrates' Court which has a  
28 specific protected persons space. This is a space which  
29 was originally a space where it was a sheriff's office and  
30 when the sheriff's office relocated it was determined it  
31 would be a good place for our victims of family violence

1 to wait in. This room is equipped with bathroom  
2 facilities and kitchen facilities, as well as two separate  
3 officers where our support workers work out of, the court  
4 applicant worker and EDVOS worker, who is our eastern  
5 regional domestic violence support service.

6 The difference to AFMs knowing that that space is  
7 available to them at court can often be the difference  
8 between them coming to court or not. By me contacting  
9 them the day before court to let them know that this space  
10 is available encourages them to attend knowing that they  
11 are not going to have to be in the same space as the  
12 respondent. It's very unique.

13 MR MOSHINSKY: Thank you. Commissioners, those are my  
14 questions. If the witnesses could be excused, please.

15 COMMISSIONER NEAVE: Thank you very much indeed.

16 <(THE WITNESSES WITHDREW)

17 MS ELLYARD: Commissioners, the next witnesses are Dr Heenan  
18 and Ms Walker. I ask that they come into the witness box  
19 and be sworn, please.

20 <KERRY GENEVIEVE MARY WALKER, sworn and examined:

21 <MELANIE JANE HEENAN, affirmed and examined:

22 MS ELLYARD: May I begin with you, please, Dr Heenan. Where do  
23 you work at present?

24 DR HEENAN: I'm the Executive Director at Court Network.

25 MS ELLYARD: What is Court Network?

26 DR HEENAN: Court Network is a not-for-profit organisation that  
27 provides court support to people coming to court, anybody  
28 that comes to court. We operate in 25 courts throughout  
29 Victoria, 18 of them Magistrates' Courts, and we also have  
30 a service operating in Brisbane, Cairns and Townsville.

31 MS ELLYARD: Can you summarise, please, for the Commission what

1           your professional background was prior to you taking up  
2           your present role at Court Network?

3   DR HEENAN:   I guess in summary it's about 20 years of  
4           experience in the violence against women sector primarily.  
5           Immediately prior to Court Network I was the manager of  
6           the Preventing Violence Against Women program at  
7           Vic Health and before that the first manager at the  
8           Australian Football League implementing the Respect and  
9           Responsibility program.

10   MS ELLYARD:   You have made a statement to the Royal Commission  
11           that's dated 3 August 2015.   Are the contents of that  
12           statement true and correct?

13   DR HEENAN:   They are.

14   MS ELLYARD:   You have attached to the statement a copy of the  
15           submission made on behalf of Court Network to the Royal  
16           Commission?

17   DR HEENAN:   Yes.

18   MS ELLYARD:   Can I turn to you, Ms Walker.   Where do you work  
19           at present?

20   MS WALKER:   I'm the Director of the Neighbourhood Justice  
21           Centre.

22   MS ELLYARD:   What is the Neighbourhood Justice Centre?

23   MS WALKER:   The Neighbourhood Justice Centre is a unique  
24           setting which operates a community justice model and it  
25           comprises a range of services and activities as well as  
26           having a multi-jurisdictional court in a place based  
27           setting in the City of Yarra.

28   MS ELLYARD:   What is your professional background prior to your  
29           present role?

30   MS WALKER:   I'm a qualified social welfare worker and a  
31           qualified lawyer.

1 MS ELLYARD: In what kind of settings have you worked prior to  
2 the Neighbourhood Justice Centre?

3 MS WALKER: I have worked in both government and non-government  
4 settings, in child protection, youth justice and in the  
5 last 20 years probably primarily in program design work.

6 MS ELLYARD: You have made a statement to the Royal Commission  
7 dated 3 August 2015. Are the contents of that statement  
8 true and correct?

9 MS WALKER: Yes.

10 MS ELLYARD: You have attached to your statement a number of  
11 extracts from the submission that the Neighbourhood  
12 Justice Centre made to the Royal Commission?

13 MS WALKER: Yes.

14 MS ELLYARD: Dr Heenan, can I turn back to you. We have heard  
15 a little bit through the evidence today about court  
16 networkers. Could you in summary for the Commission set  
17 out who are the court networkers and what is it that they  
18 do, for example, in a suburban Magistrates' Court in a  
19 family violence list?

20 DR HEENAN: Sure. The court networkers are our volunteer  
21 workforce and they are principally responsible for the  
22 front-line service delivery for our organisation. In  
23 terms of painting a picture, I guess, in relation to  
24 Magistrates' Courts in particular, the ways in which we  
25 come into contact with court users would be two primary  
26 avenues, I guess. One would be by referral, so it may be  
27 that a service contacts us and has a client that is coming  
28 into the court. They are not able to follow their client  
29 or extend their services to provide in-court support on  
30 that day, so they might contact our duty system, our  
31 telephone referral service that operates during the week

1 and is staffed by paid professionals, make a referral for  
2 their client to come to court. In the family violence  
3 context that often happens, so it may be family violence  
4 services that are community based. They don't or can't  
5 come into courts and they are very keen for their service  
6 user or client to have some court support.

7 The other manner in which we often come into  
8 contact with court users is via outreach. So we are  
9 probably one of the only services, I think, in the  
10 Victorian courts at least, which is walking the floor. So  
11 we provide outreach by approaching court users, very  
12 clearly identifying that we are volunteers, it is a  
13 volunteer service, and respectfully enquiring about  
14 whether or not they would like to have access to support  
15 or anything that we can do to assist them that day.

16 MS ELLYARD: And what kind of things can be done by the court  
17 networkers using that outreach model through the day?

18 DR HEENAN: There's pre-court support that we can offer for  
19 people who perhaps have come through the referral avenue.  
20 So we might take them into a courtroom, spend some time  
21 with a court user going through the court process, what it  
22 involves, what to call the magistrate or the judicial  
23 officer, the way in which the day is likely to go  
24 depending on the reason they are there. We would provide  
25 in-court support, so that would go for people who have  
26 come to our service via referral or through the outreach  
27 function, we could follow court users into court, and  
28 that's a function that is also often beyond the capability  
29 of the services that are indeed co-located at the court,  
30 so just can't spend that time following a service user  
31 into court. So we are often sitting with people for the



1 duration of their evidence or because they just might need  
2 us to sit beside them for that period of time. So that's  
3 the in-court support component.

4 Then there would be the post-court support  
5 component, which would be just checking the referral  
6 situation, I guess. Is this person connected with the  
7 services that are at the court or in the local area? Is  
8 there another referral that we can make for them into  
9 another court appearance that they might have or be  
10 heading into another - a VCAT appearance or another court  
11 that we can link them up with our other teams.

12 MS ELLYARD: What kind of training do Court Network volunteers  
13 receive?

14 DR HEENAN: It is quite extensive. They go through a  
15 recruitment process of selection, interviews, before they  
16 get to the training program. They have to go through a  
17 police check and a Working With Children check or have a  
18 Working With Children card. They go through seven weeks  
19 of training, two days a week, so 14 days of what we call  
20 theory training, I guess. That often includes  
21 stakeholders and others that come to develop the  
22 volunteers, so talk about the various services that might  
23 exist and what the requirements or expectations in them  
24 might be.

25 They also have a mentoring program. So, once  
26 they get through the theory, they would then be allocated  
27 to an experienced networker and be expected to come in to  
28 mentor. It won't be providing any court support or  
29 front-line service in that time, but be mentored through  
30 that particular court to which they have been allocated.

31 MS ELLYARD: If you are able to say, from what section of the

1 community are court networkers predominantly drawn, or  
2 can't you say?

3 DR HEENAN: No, I think I can. We undertook a survey 18 months  
4 or so ago. They are disproportionately in a demographic  
5 sense in an older age category, I guess, because we have  
6 pretty high expectations of them. We ask them to  
7 volunteer a day a week. So they tend to be allocated to a  
8 particular day, it might be Monday at the Sunshine  
9 Magistrates' Court, and that would apply across the board.

10 We have expectations that they attend continuous  
11 education or professional development on 10 days  
12 throughout the year. They have to attend team meetings.  
13 So you can hear there's I guess a fair expectation in  
14 them. So they are drawn disproportionately, I think, from  
15 people who are moving into retirement or into part-time  
16 work. It's an issue that we face, I guess, as an  
17 organisation. We really want to diversify our volunteer  
18 workforce. They are disproportionately women. I think  
19 it's about 84 per cent women. We want to increase the  
20 number of male volunteers.

21 We have been attracting, I guess more recently,  
22 the baby boomers, if I can put it in that sense, and  
23 that's fabulous because they want to give back and we want  
24 them in our organisation. So that's meant a slightly  
25 younger demographic coming through who have often been  
26 professionals and had strong working lives and are very  
27 keen to get into what's called complex volunteering in our  
28 situation.

29 MS ELLYARD: Can I turn to you, Ms Walker. You mentioned that  
30 the Neighbourhood Justice Centre is set up on the  
31 community justice model. Could you summarise how you

1 distinguish that model perhaps from the more traditional  
2 court model that the Commission has already been hearing a  
3 bit about today?

4 MS WALKER: The community justice model is predicated on the  
5 basis that the court is not the central piece of the  
6 activity, that it is the community, and that the role of  
7 justice is to show leadership and also assistance in  
8 attempting really to enhance the collective efficacy of  
9 the community so that the community can resolve many of  
10 its own problems and defend itself against the harms that  
11 are driven through crime against it, and to become less  
12 reliant on the traditional legal system.

13 That means that we are very involved in crime  
14 prevention. The notion of using the multi-jurisdictional  
15 features of a court means that people aren't characterised  
16 or judged when they walk into the building. If you only  
17 had a criminal court, then people make certain assumptions  
18 about, "Oh, yes, I knew you'd never be any good; oh, that  
19 family is there again," whereas because of the way the  
20 building is used it's used for a variety of community  
21 groups and activities. It's used by agencies for  
22 professional training. The local primary school used it  
23 to conduct interviews to find a new principal. We have  
24 the Chinese young mothers group that meets there. The  
25 African women's group meets there. We have a self-help  
26 group of adults who had polio as children and have very  
27 particular health problems now as adults. We have road  
28 trauma awareness groups. We have relapse prevention.

29 Now, we run none of those groups. That is the  
30 community deciding that our venue, our place, is a good  
31 place to hold those groups. We see that very much as a

1           role of again welcome and being good neighbours as well as  
2           showing a lead role in being able to enhance stewardship  
3           and care within the community.

4   MS ELLYARD:   If we think about family violence, how does the  
5           issue of family violence perhaps get considered or acted  
6           upon differently through a community justice setting as  
7           opposed to the more traditional setting?

8   MS WALKER:   One of the ways that we approach family violence  
9           is, for instance, when we first arrived in the City of  
10          Yarra in 2007 the family violence network of workers, that  
11          group had essentially dissipated and so we brought people  
12          together again to facilitate the rebirthing of that group.  
13          To this day we still facilitate that group. We thought we  
14          would be able to get away from that role, but we haven't.

15                We have also helped fund a variety of programs.  
16          One was the Living in Harmony program, which was about  
17          teaching residents how to be people of good conversation  
18          and good information about family violence resources, but  
19          also about conflict resolution in relationships, as well  
20          as we have negotiated, for instance, with Merri Community  
21          Health through DHHS where the contract sat, that because  
22          the City of Yarra is part of their catchment, that in fact  
23          as part of that contract it was renegotiated so that they  
24          would work with us to provide counselling for victims of  
25          family violence. Another way has been with Berry Street,  
26          doing much the same and also extending their role.

27                We also have a double triage system where we  
28          triage the cases the week before, as well as on the Monday  
29          morning after the weekend. That triage involves the court  
30          networkers, client services and registry principally, as  
31          well as the lawyers and the police prosecutor where

1       needed. That really coordinates the day. So it is there  
2       principally to ensure that the support that needs to drive  
3       the day, everyone understands their roles and understands  
4       who they need to work with.

5               Security is also briefed around particular cases  
6       where we think there will be a higher risk, and we also  
7       have a separate waiting area and separate entrance and  
8       exit should we need.

9   MS ELLYARD: May I now ask each of you about a number of  
10       topics, I suppose, that come under the general heading of  
11       the experiences of court users, where court users for the  
12       purpose of my question means litigants. I know court  
13       users doesn't always mean that.

14              The first issue is the question of physical  
15       environment and the previous witnesses spoke a bit about  
16       this. Can I invite you, Dr Heenan, to speak particularly  
17       about the example of Melbourne Magistrates' Court, which  
18       I suppose has before referred to today as being perhaps  
19       better than some of the other courts. But, from your  
20       experience, what are some of the issues associated for  
21       family violence victims with attending court, even perhaps  
22       better quality physical courts like Melbourne?

23   DR HEENAN: I think Melbourne Magistrates' Court for most  
24       members of the community is an incredibly difficult  
25       infrastructure to access still. Apart from some of the  
26       characteristics that others have talked about, so lining  
27       up in the same line, being terrified of being seen by the  
28       respondent for the applicant, making their way through  
29       security, trying to navigate a multi-levelled building and  
30       not knowing as we do it's level 6, I think the general  
31       community would draw breath to come out of the lift and

1 see the space in which we are asking people to come and  
2 seek an order to protect them against violence.

3 I think on the days that I have been - and I have  
4 been more recently too to see if there's any change or  
5 variation in that - I have seen a sense of kind of  
6 organised chaos, I guess. There are women sitting on the  
7 floor with prams by their side trying to find an alcove or  
8 a spot where they may not be in the direct line of sight  
9 of the respondent. It's true there is an alcove in the  
10 Melbourne Magistrates' Court where family violence is the  
11 repository, I guess, of that area and applicants are able  
12 to sit in that part of the alcove where there are services  
13 available. So Women's Legal Service is there, I think  
14 Women's Health West are there now, Court Network is there  
15 or at least being physically present in that space. The  
16 respondents tend to be sat at the other end of that  
17 alcove, but there is a direct line of sight in that line  
18 of that side of the floor.

19 That, for applicants, is just an extraordinary,  
20 bewildering moment for them to realise that that's where  
21 they are going to have to wait. Then they are told or  
22 then they start to become aware that the 9.30 time that  
23 they thought they were going to be seen - and they do  
24 think of it like a medical appointment, I guess, that they  
25 will be seen, they may have a little wait, but they will  
26 be seen shortly. I think the idea of them having to be  
27 there for what whole day only dawns on them perhaps as the  
28 morning heads away from them. If they've got toddlers or  
29 babies with them, then that becomes a practical pressure  
30 on them as well as the other fears or anxieties that they  
31 may be having to manage at that time.

1 MS ELLYARD: Can I just ask you to tease that out a bit.

2 Everyone arrives at 9.30 because that's when they've been  
3 told to arrive?

4 DR HEENAN: Then tend to. As Karen was saying as Sunshine  
5 Registrar, it ranges between 9, 9.15 and 9.30, but in that  
6 very early part of the day, that's right.

7 MS ELLYARD: From your court networkers' experience, many  
8 people arrive not realising how long they might be there?

9 DR HEENAN: Exactly.

10 MS ELLYARD: And not having planned perhaps to be there that  
11 long.

12 DR HEENAN: That's correct. They have practical considerations  
13 if they have kids, but even their own practical lives,  
14 I guess, that they are trying to manage. I think the  
15 other aspect for them is that they are working through a  
16 very complex set of emotions and reactions to what they  
17 are doing. If it's the first time they've been in court,  
18 the waiting time you can see dawns on them as time passes.  
19 "Is this the right thing for me to do? Maybe I could  
20 manage it differently. Do I really have to do this?  
21 Maybe by virtue of just being here and him seeing me here,  
22 he sees that I mean business. Maybe it's not that bad."  
23 You can just see - certainly our workers talk to us about  
24 that, watching it wash over women.

25 I think some of the most disturbing examples of  
26 that could be where some workers have reported seeing  
27 almost the cycle of violence play itself out. So where  
28 you have a respondent at the other end of the room, he can  
29 start with anger and absolute indignation that he's been  
30 called to account perhaps for the first time for his  
31 behaviour in a system that's about the law. He would work

1 on her throughout the day. So, it might go from anger to  
2 "I just want to negotiate something, I just want to talk  
3 to you, can't I see the kids, can't we work this out," to  
4 the point where, and I'm fast forwarding, they are walking  
5 out hand in hand at lunchtime or by the end of the day  
6 with her not having an order. That would be perhaps the  
7 most disturbing example I've heard of what waiting can  
8 produce for her.

9 MS ELLYARD: How does the Neighbourhood Justice Centre, which  
10 does hear and determine applications for intervention  
11 orders, deal with these two issues of physical safety and  
12 I suppose time allocation and warnings to people about the  
13 time that they might need to be present at court?

14 MS WALKER: I would have to say we are much in the same boat as  
15 any other court, in the sense that although we think we  
16 are a work in progress, but what we do is okay. The  
17 problem for courts is that there is no granularity of  
18 time. So, yes, when you go to see the dentist or the  
19 doctor or whoever it is and they have blocks of 15-minute  
20 appointments and, yes, you can book a double appointment  
21 or they have an 80/20 rule so they book 80 per cent of the  
22 day and they leave 20 per cent for emergencies. With  
23 courts, really who knows how long it will take and who  
24 knows who will be on first and who knows when that  
25 emergency will arise?

26 This is more than a listings issue. It is more  
27 than a time issue. It is probably a systems dynamics  
28 analysis issue, and courts have struggled, I think, over a  
29 long time internally around trying to manipulate the list,  
30 try and make them better. I think we have all been  
31 through the staggered listing which drives everyone nuts



1 and that doesn't work either. No one quite understands  
2 why it doesn't work, but it just doesn't work. Everyone  
3 hates it. At the end of the day, the person who is  
4 attempting to penetrate this fairly dense system still is  
5 none the wiser about any of those efforts because really  
6 there's no difference.

7 For us, we have a single courtroom which means  
8 that we don't have as much play as a multi-room  
9 courthouse. What we do again through that coordination,  
10 what we are trying to do is to prioritise so that the most  
11 complex cases can be attended to and worked through and  
12 the least complex cases can get on. But we also know that  
13 lawyers love to batch. So this is where, if I have five  
14 cases, I will attend to all five cases before I hit the  
15 courtroom. So the poor bugger who got there early is  
16 really penalised in that they have to wait until the  
17 person who might have only turned up two minutes before  
18 they got seen does get seen and then, right, we're all  
19 ready to go.

20 That is problematic, too, because again it is  
21 that kind of "for office use" approach as opposed to the  
22 sensitivity around what the woman is going through. The  
23 greater issue in a sense, though, is around if legislators  
24 are going to say, "This is now a societal priority, family  
25 violence," what has to give within the court system in  
26 terms of the types of offences it hears in order to make  
27 that room? So all this discussion today has been really  
28 about how you move the deck chairs on the Titanic.

29 I sense that if people knew that two years in a  
30 row it's been reported in the Magistrates' Court of  
31 Victoria annual report that the second largest volume of

1 offences for each of those years, and that's last year and  
2 the year before, has been driving without an e-tag or not  
3 having money on your e-tag, I suspect people would go,  
4 "Yeah, I'm thinking I'd rather have those dealt elsewhere  
5 or in some other way and have the resources tuned towards  
6 family violence."

7 The Magistrates' Court of Victoria last year  
8 issued 1.8 million enforcement warrants. That's a lot for  
9 a population of 4.5, 5 million. So you would have to say  
10 there's a bit of a breakage in that little system there.  
11 Why don't we do something about that? Again, do we want  
12 that to take priority over family violence? Where do we  
13 actually want to swing our resources?

14 That is a conversation which now, through the  
15 establishment of Court Services Victoria, might in fact be  
16 able to be had with government; I don't know. Maybe a  
17 reference from the Attorney-General to the Law Reform  
18 Commission or the Sentencing Advisory Council; I don't  
19 know. It is beyond me. But what I do know is that people  
20 are horrified to think that we are still sitting here  
21 today saying, "If only I had more resources it would  
22 work." It's not the answer. What are we going to use the  
23 resources for? More crush, more - there are only so many  
24 hours in the day. Courts still persist in sitting five  
25 hours a day. That's been the same for over 100 years. Is  
26 that a change that needs to occur?

27 MS ELLYARD: Can I take up one aspect of what you talked about,  
28 which is - I'm paraphrasing - but the extent to which  
29 current court processes everywhere, perhaps to some extent  
30 including the Neighbourhood Justice Centre, operate in a  
31 way that is the most efficient for those operating the

1 system, rather than operating in a way that's of the most  
2 assistance to the end users of the system.

3 Dr Heenan, at the end of your statement you talk  
4 a little bit about this idea of treating a woman as a  
5 whole woman rather than merely a case. I wonder if you  
6 could speak a little to the Commission about your thoughts  
7 on that topic?

8 DR HEENAN: Yes, I do make that point at the end of the  
9 statement in particular. It goes to Kerry's point.  
10 I think there was such a predictability about the  
11 avalanche of family violence coming to courts and the  
12 promise of the concept of integration was so fiercely  
13 advocated at that time. So we had family violence  
14 protection as it's been referred to for 2008, broadening a  
15 definition, promising integrated systems reform, coupled  
16 with enormous goodwill and high-level command directives  
17 from Victoria Police saying, "We can do better." So those  
18 two structural reforms were a fantastic, I guess,  
19 juggernaut to be able to say we are going to be able to  
20 make incredibly important, significant inroads, structural  
21 inroads into how we treat family violence.

22 The promise of integration was that in large part  
23 women, who are disproportionately affected, would be  
24 treated as a whole person. So the idea of integration is  
25 to wrap around the problem of family violence. That  
26 includes children, if there are children in the mix, and  
27 it includes respondents or perpetrators or men who use  
28 violence.

29 What we get now, I guess, is a patchwork. That  
30 word was used before I think by Chris Casey. I think it's  
31 a really good word to describe what ultimately we went to

1 with very limited resources. So with a juggernaut like  
2 that, 35 million was what we were going to use to buy that  
3 systems reform. What it got was a whole stack of  
4 different ways in which people tried to respond in  
5 operations.

6 We have heard Blue Ribbon approaches through  
7 Sunshine Court, for example, where the local  
8 personalities, highly committed workers, have done what  
9 they can to innovate, to bring integration into that  
10 space. But there's still difficulties with that. It's  
11 still not, I guess, attending to victims of family  
12 violence - again disproportionately women - in terms of  
13 their whole need.

14 So the final comment that I make in my statement  
15 is that if we were genuinely going to offer some kind of  
16 structural reform in moving forward wouldn't we look at  
17 some kind of way in which we can position her at the  
18 standpoint, at the door of a court and justice process  
19 that could attend broadly to her needs or family violence  
20 victims' needs. That would include a justice response but  
21 it would also include other ways of being able to wrap  
22 around what is more than likely going to be her need.

23 Family Court is one of those. If you sit in a  
24 Magistrates' Court and watch the matters go up you will  
25 almost invariably hear children as part of that package;  
26 and yet we ask her to go and make or a victim of family  
27 violence to go and make a separate set of applications, a  
28 separate administrative process that she doesn't get and  
29 feels entirely alienated from in all likelihood, but we  
30 ask her to go and be a separate case in that context. If  
31 there are residential issues or tenancy issues we ask her

1 or the victim of family violence to go and deal with that  
2 separately again.

3 There may be other issues relevant to family  
4 violence that she's then got to deal with in a justice  
5 system sense quite separately. So all of the different  
6 courts involved and appeals were being spoken of before,  
7 she is then a separate kind of person again case to the  
8 County Court. So she is fractured. The experience of  
9 family violence is quite fractured; and yet the promise of  
10 integrated systems reform was that we would bring that  
11 wraparound service, justice services and beyond, to the  
12 table of what we know about the dynamics of family  
13 violence, and we just haven't been able to do that.

14 MS ELLYARD: Ms Walker, does the community justice model offer  
15 at least a potential solution to that idea?

16 MS WALKER: We certainly have the integration. The different  
17 way in which we operate is the services we have are  
18 services that are from the local community. What we do is  
19 we have a contract with each service which we believe is  
20 relevant and we pay for the salary of that worker. That  
21 means that the worker can navigate their own system.

22 Intake is done at the court face. So it's not  
23 the same as the CISP system where those workers are  
24 employed by the court. I understand the basis for that is  
25 so that the court can rely on the advice that is given in  
26 a more confident way.

27 I reject that as a reasonable argument to have a  
28 very traditional style of case management to the court  
29 that really the demand and the modern needs, certainly for  
30 family violence as for criminal matters and housing  
31 matters, has really outstripped what that model can

1 provide.

2 MS ELLYARD: How many services are available at the  
3 Neighbourhood Justice Centre to be potentially of  
4 assistance to someone in a family violence - - -

5 MS WALKER: We have some 16 to 18 agencies that work in the  
6 building. So we cover housing; we cover mental health; we  
7 cover drug and alcohol counselling; Berry Street as our  
8 family violence specialists; we have Merri Health; we have  
9 Neami to deal with complex cases and multiple  
10 presentations; the Salvation Army to deal with material  
11 aid and chaplaincy; the Dispute Settlement Centre of  
12 Victoria to deal with mediation. We also at the moment  
13 have on secondment a worker from DHHS, and we are  
14 exploring looking at using restorative practices in some  
15 family violence cases. We are actually holding a  
16 restorative meeting next week as our first foray into  
17 that.

18 There will be people I have forgotten. Financial  
19 counselling is a huge part of this that really gets  
20 overlooked. We have a family law clinic. Family law  
21 issues arise. So we believe we have covered the field.  
22 But we also try and stay agile so that we can change those  
23 agencies where needed or add on, subtract, whatever,  
24 depending on what the needs are at the time.

25 But the other part that changes is that we have  
26 added value to those agencies. We have added on to them.  
27 I better say this because Tony is here. We also have the  
28 Brotherhood of St Laurence for employment and training.  
29 So we add on. We don't try and take away their services  
30 or drain them. We pay fairly for what they offer. But we  
31 insist that those workers go back to their agencies once a

1 week or once a fortnight; that they are a part of the  
2 professional development, as they are ours as well; that  
3 they receive clinical supervision so that they still are  
4 recognised within their own agency and can use it.

5 The other part of that is that we also meet with  
6 agencies on a quarterly basis. It means they start to buy  
7 into the business of justice and have a far better  
8 understanding as an agency about what is happening at the  
9 court face, what is happening for their clients.

10 We find that there has been a lot more  
11 accompaniment of clients by workers because they feel they  
12 have a piece of the action. They can recognise their  
13 colleagues who are here at the NJC. We also have a  
14 problem solving mechanism which again is a bit like a mini  
15 case conference but the person who is before the court is  
16 actually involved in that. So again it's yet another  
17 mechanism to bring local agencies into the business of  
18 justice.

19 MS ELLYARD: Why isn't that the system everywhere, do you  
20 think?

21 MS WALKER: We were set up as a pilot and it was a bit of the  
22 brave new world. I think it's fair to say that the courts  
23 have seen us as the Rolls Royce and believe that we are  
24 funded much more than we actually are. On paper, yes, we  
25 are very generously funded. Between the administrative  
26 overheads and costs that go back into now Magistrates'  
27 Court of Victoria and what they take out to help offset  
28 their structural deficit, we lose a third of our budget  
29 every year. So we actually, I think, have a fairly  
30 judicious spend.

31 We also host a number of agencies, local

1 agencies, who work with particularly the African community  
2 who couldn't afford to pay rents in the inner-city area.  
3 So, really, for giving them a computer, a desk, a  
4 telephone and making them feel welcome we really get a lot  
5 of intelligence and they have become very important  
6 colleagues to the process.

7 MS ELLYARD: From your perspective you said it was set up as a  
8 pilot. What would be some of the issues involved in  
9 scaling it up, if I can use that expression, so that this  
10 community justice model was a model made more widely  
11 available in Victoria?

12 MS WALKER: I think it's mind set. It has been shown by KPMG  
13 in unfortunately a Cabinet in confidence report but it was  
14 to Treasury, to advise Treasury about whether or not we  
15 should be able to secure permanent funding. It showed  
16 that our client services model is cheaper than that of  
17 CISP. The Australian Institute of Criminology has also  
18 done an evaluation which is about to be published, and  
19 that shows that our client services model is cheaper than  
20 CISP.

21 So it just really is, I believe, Magistrates'  
22 Court of Victoria is wedded to the CISP system. It seems  
23 it as what it recognises and understands and that we are  
24 still - although administratively we have been a part of  
25 Magistrates' Court of Victoria now for two years,  
26 I wouldn't say that the understanding and knowledge of the  
27 community justice model has grown in that time.

28 MS ELLYARD: I should note of course that the question of CISP  
29 is going to be dealt with in some detail in the evidence  
30 tomorrow. We will have some CISP workers coming to give  
31 evidence.



1                   Can I turn to a more targeted issue, and that's  
2                   the question of the application form that applicants for  
3                   family violence orders need to fill out. Dr Heenan, you  
4                   have identified some difficulties associated with the  
5                   application form itself.

6 DR HEENAN: Yes.

7 MS ELLYARD: We have heard a little bit from other witnesses.

8                   Would you expand on your concerns about the form and the  
9                   limitations of it?

10 DR HEENAN: Yes. The concerns echo certainly some of the  
11                   comments that have been made earlier today. I think it is  
12                   again bewildering for applicants to know that they have to  
13                   complete a 12-page information form, that that's actually  
14                   not the application form. We often refer to it as the  
15                   application form, but it is the information form that then  
16                   forms the basis of the application which is the two or  
17                   three paragraphs, again I think Karen Field referred to.  
18                   So that's a very difficult prospect for an applicant or an  
19                   affected family member to come to terms with.

20                   It's just compounded out of sight where somebody  
21                   is semi-literate, illiterate or not comfortable expressing  
22                   themselves or articulating themselves in the written word.  
23                   So court networkers certainly do assist with that process  
24                   as much as we can because it is obviously really important  
25                   that the narrative or the commentary comes from the court  
26                   user, from the affected family member herself. But we  
27                   certainly endeavour to try and assist them as much as we  
28                   can, because this is the opportunity to articulate  
29                   everything they can that can substantiate or give strength  
30                   or value to their experience.

31                   I think magistrates differ or vary in terms of

1 the ways in which they might then interface with that  
2 form. Some won't have recourse to the 12-page form. Some  
3 do as a matter of course. But otherwise they are faced  
4 with just the two or three paragraphs often before them,  
5 and I think that's really complex.

6 I think it's very, very difficult for people from  
7 culturally diverse backgrounds or who are otherwise not  
8 proficient or confident with English, and I think the  
9 whole issue around interpreters in courts is quite varied.  
10 Again we are kind of back in the weeds of the operations  
11 again, but it is so diverse. It would depend very much on  
12 what court you were in as to how the arrangements are  
13 generally made.

14 If somebody has come on the day - and there  
15 certainly are applicants that will come just to court on  
16 the day, having been advised to do so - we often pick up  
17 those clients or court users because they may well not  
18 have come through any other mechanism, as Abbey Newman was  
19 describing; they might have come through the services in a  
20 different way. So we may pick them up. There will be no  
21 interpreter available necessarily on the spot, as you can  
22 imagine. So we may then draw on other options, and it  
23 could be that there is an interpreter that could speak the  
24 language that's needed but has inappropriately already  
25 been used for the respondent. So you can't just kind of  
26 ask them to turn their attention to the applicant.

27 It could be that an interpreter has been booked  
28 and that they are there to service, say, three clients but  
29 they might need to leave at lunchtime. So it is all very  
30 hurried through so that those cases can get on and  
31 obviously not very efficient for the person in question or

1 for the person who is making the order.

2 So it's a very complex process, 12 pages. We do  
3 grapple with it across the service sector in that we don't  
4 want to unduly say, "Just cut it in half or make it two  
5 pages", because I think there would be other problems,  
6 unintended consequences of that. But there certainly has  
7 to be something that's more constructively able to present  
8 the story of the affected family member than the current  
9 system.

10 MS ELLYARD: The Neighbourhood Justice Centre has done some  
11 work on an on-line application form for intervention  
12 orders. I wonder could you tell the Commission about the  
13 reasoning behind that project and the way you have gone  
14 about constructing the on-line version of the form.

15 MS WALKER: We have been trying to develop some expertise in  
16 what's called user centred design work. We looked at the  
17 form and we talked with users and we talked with agencies  
18 who worked with women for whom English was not their first  
19 language. We also tried to fill out the form ourselves,  
20 and most of us have got law degrees and most of us had  
21 trouble and found that it's a cold form in a sense that  
22 you get that feeling it's for office use as you go through  
23 it.

24 MS ELLYARD: Do you mean it's not intuitive?

25 MS WALKER: It's not intuitive. So what we did was we changed  
26 the emotional logic of it. We changed the language. We  
27 made it so that a woman can apply on-line.

28 So what happens at the moment is you might be  
29 able to see the application on-line. You have to print  
30 that off. You can fill it in. You can take it to a  
31 court, and then you will be sat with a registrar who will

1 go through that. If you haven't filled it in they will  
2 help you fill it in or they will help you review how you  
3 filled it in. They go away and they write a summary of  
4 what you have written in that form and then they go and  
5 type that into the Courtlink database.

6 What this does is a woman is able to go into that  
7 form on-line; is able to take a month to fill it in. She  
8 can fill it in wherever she feels safest: on phone, tablet  
9 or computer, at the library, at work, over at a mate's  
10 place, wherever; come in and out of it by PIN number. It  
11 will find the court it needs to find by the woman putting  
12 in her postcode because, luckily, courts are done on  
13 regional boundaries. That's very nice.

14 It pre-populates things. Once you have typed in  
15 your partner's name it then populates it throughout. "So  
16 what did Rob do next? What happened then between you and  
17 Rob?" We have the Common Risk Assessment Framework built  
18 into it. By what you answer to those questions, it will  
19 auto-summarise, one, into a narrative of the whole form  
20 but then into flags to show the magistrate and registry  
21 the severity and the urgency of the risk and will show the  
22 behaviours that have set off that classification. So  
23 whether it's you are pregnant, your partner knows you are  
24 trying to leave, or there is a firearm and a two-year-old  
25 witnessed the violence, that will sit there and be told.

26 So what we were being told by senior magistrates  
27 in the family violence area was that they had difficulty  
28 identifying exactly what the risk was under the current  
29 system. So what this will do, we believe, will, one, take  
30 a lot of the variation out about whether or not the  
31 registrar is good at identifying risk when they do their

1 written summary; that it's based on a Common Risk  
2 Assessment Framework; and the form is - what we have built  
3 is scaleable. If, for instance, arising from this  
4 Commission there are changes to that risk assessment  
5 framework we would be able to change that quite easily and  
6 for the integrity of that process still to be there.

7 MS ELLYARD: You talked about the form kind of  
8 auto-summarising. Is that because it's designed to  
9 interface with the court system that will only let you  
10 write two paragraphs?

11 MS WALKER: Yes. It will fit into the Courtlink box, and I can  
12 tell you it was a testing time being able to get it to fit  
13 into that box, yes.

14 MS ELLYARD: Do the Commissioners have any questions for the  
15 panel?

16 COMMISSIONER NEAVE: Yes, I have one question. Let's assume  
17 that the Rolls Royce model won't be implemented in the  
18 short term. How do we move beyond bandaids? If you were  
19 able to re-design the system I would like to ask each of  
20 you how you would do it. You have both identified the  
21 problems with the existing system, but what would be the  
22 elements of a better system which might ultimately move  
23 towards a Neighbourhood Justice Centre approach?

24 DR HEENAN: If we are putting the Rolls Royce version to one  
25 side, and I think the NJC does offer a fantastic  
26 opportunity for real innovation around hubs - - -

27 COMMISSIONER NEAVE: That shouldn't be taken as a view. I'm  
28 just asking you the hypothetical question.

29 DR HEENAN: I think one of the principal things we need to do  
30 is build the blueprint, build the master plan, and that's  
31 what was absent following such significant structural

1 reform through the legislation and through the police, et  
2 cetera, as I said before.

3 What we didn't then do is look at what is the  
4 master plan, what is the blueprint to drive integration,  
5 and what would it look like in each of the systems that we  
6 wanted to integrate, and what would be the outcome of  
7 integration, if we were properly and fully integrated what  
8 would it look like.

9 I think we do have some of those elements now.  
10 I think we have evolved and there has been a patchwork of  
11 really wonderful examples of how you can do better in a  
12 justice context in relation to integration. So we would  
13 take the best of those elements and then look at how we  
14 link that system with systems that currently aren't  
15 talking to each other or are only having very fleeting  
16 conversations about how we connect with the other  
17 underlying causes of violence against women or of family  
18 violence.

19 COMMISSIONER NEAVE: If you could have your top three  
20 suggestions what would they be? I understand what you are  
21 trying to get to. I understand you are trying to get to  
22 an integrated system. But it's really the "how do you get  
23 there" question that I'm interested in. So can you  
24 address that?

25 DR HEENAN: I hope so. I do see one of them as the blueprint.  
26 I think that is an activity and outcome in itself that has  
27 to be really clearly defined so that everyone is working  
28 from the same set of standards.

29 If I had to again get more operational about the  
30 top three I would say workforce capability is huge. We  
31 have heard today, and I'm sure on other days but

1 particularly today, that there are very small pockets of  
2 capability in some areas such as respondent workers, for  
3 example. There is not currently a team. I know that is  
4 planned for roll out. But even the standards for the ways  
5 in which those two key workers in courts operate are just  
6 being looked at now. So for me workforce capability, and  
7 I have given an example of the courts. But workforce  
8 capability issues are everywhere.

9           Given we now understand or have over the last  
10 recent years understood all of the systems engagement with  
11 family violence, if you are working in social services,  
12 family violence will be a big part of the work you do,  
13 then workforce capability and setting benchmarks around  
14 what workforce capability ought to look like is a second  
15 critical area, in my view.

16           A third critical area, I think we should be  
17 trying the Rolls Royce version. I appreciate there are  
18 going to be limits on resources that are available. But  
19 even if we were to try some new ways of looking at  
20 integration that had a physicality to it, had a spatial  
21 relationship to integration, I think that would be a third  
22 really important area for us to try.

23           Can I add one more perhaps that should have been  
24 my third; the monitoring and compliance or monitoring and  
25 adherence to compliance issues that needs to be observed.  
26 One of the reasons I think we are often vulnerable in the  
27 family violence sectors in all the different ways in which  
28 we engage in that sector is because it does come in and  
29 out of policy interest and we lose so much incredible  
30 ground when that happens.

31           This is a particularly unique time for Victoria.

1 But to have things in place, and that means ministerial  
2 leadership, cross-departmental engagement, that we don't  
3 lose a foothold in because of cycles of policy or  
4 political interest, that's my fourth area. I'm not sure  
5 exactly what that looks like.

6 COMMISSIONER NEAVE: I wondered whether that was part of your  
7 blueprint, your governance arrangements; is that right?

8 DR HEENAN: Thank you, Commissioner. Yes, it would be.

9 MS WALKER: I would lessen the role of the courts, I would  
10 reduce it, because at the end of the day - it has a  
11 choice. Either we apply therapeutic jurisprudence which,  
12 as Chris Casey was saying earlier, is actually about  
13 opening up the stage to who we call legal actors, and if  
14 the court has the power to inform itself as it sees fit  
15 then we could in fact be I think much smarter about using  
16 the virtual counter that NICTA has invented and designed  
17 and have that sitting in centres, workplaces where there  
18 are expert family violence workers and support workers.

19 The problem of what that piece of paper  
20 represents without the court having the accountability of  
21 the police about how they are going to enforce that order,  
22 there's little bit in having it. Most women that we hear  
23 complaining about what the order means, it is about the  
24 absence of what happens afterwards and the uncertainty.  
25 So to go through all that at the court face to get a piece  
26 of paper that is trying to enforce a behaviour of someone  
27 who may not even have turned up I would think is not a  
28 safe application.

29 To reduce the role of the court would perhaps  
30 give a different perspective then about the causes of  
31 family violence rather than trying to always be putting



1 resources into after the horse has bolted, and to be  
2 looking at cleverer means whereby the sector can engage  
3 with the decision maker. So courts still can be at the  
4 nexus of decision making, but it doesn't have to be in the  
5 physical way within a building space with a physical  
6 registry as we know now. There are already elements that  
7 are designed that could help with that; it's really just a  
8 matter of exploring.

9 I agree with Melanie that this is very new to  
10 public policy and to public law. No wonder we are all  
11 grappling. What's really important is that we put our  
12 intelligence together and to look at how we look above  
13 service integration to really looking at societally how we  
14 see family violence and what it is we are going to do to  
15 prevent it, and so to lessen the reliance on this after  
16 the horse has bolted, which is what we are all on about  
17 today.

18 COMMISSIONER NEAVE: Thank you very much indeed.

19 MS ELLYARD: Thank you. I ask that the witnesses be excused.

20 <(THE WITNESSES WITHDREW)

21 MS ELLYARD: I wonder would the Commissioners give us five  
22 minutes before we have the final witnesses at the table.

23 (Short adjournment.)

24 MR MOSHINSKY: Commissioners, we now have evidence from  
25 Magistrate Hawkins and Magistrate Toohey, who have agreed  
26 to come and speak to the Commission. As I indicated at  
27 the opening today, in deference to their position as  
28 judicial officers we won't be swearing them in. We  
29 welcome their participation in the proceedings.

30 <MAGISTRATE NOREEN TOOHEY:

31 <MAGISTRATE KATE HAWKINS:

1 MR MOSHINSKY: Could I start just with some introductory  
2 questions. Magistrate Hawkins, could you describe which  
3 court you sit in and your background?

4 MAGISTRATE HAWKINS: Certainly. I'm the Joint Supervising  
5 Magistrate for Family Violence together with Deputy Chief  
6 Magistrate Felicity Broughton. I spend the majority of my  
7 time based at Melbourne Magistrates' Court, but as a part  
8 of those supervisory responsibilities I travel to all of  
9 the courts throughout Victoria on a regular basis to see  
10 how our family violence systems are working. I have been  
11 in that supervisory role since 2011 and I was appointed a  
12 magistrate in 2001.

13 MR MOSHINSKY: Thank you. Magistrate Toohey, could you outline  
14 which courts do you sit in and what's your role?

15 MAGISTRATE TOOHEY: First perhaps I can say I have been a  
16 magistrate for nearly 20 years in November. I sit at  
17 Sunshine Court. I'm the Regional Coordinating Magistrate  
18 for the Sunshine/Werribee region and I'm also the Lead  
19 Magistrate at the Ballarat Family Violence Division.

20 MR MOSHINSKY: You have been sitting in the hearing today and  
21 we have heard from applicant workers, respondent workers,  
22 registry, duty lawyers, Court Network, and prosecutors, a  
23 number of different steps that a person who comes to court  
24 may engage with before they ultimately get to the  
25 magistrate. I was wondering if you might be able to  
26 describe perhaps from the magistrate's perspective what a  
27 day might look like in terms of family violence cases?

28 MAGISTRATE HAWKINS: Sure. It depends a little bit at which  
29 court we are sitting, but essentially it follows a similar  
30 theme. People are summonsed to attend court at 9.30. So  
31 they see the various legal services and support services

1 that might be available at court and they are triaged. So  
2 usually there's a bit of a delay in court actually  
3 starting. So on an ideal day court will start at around  
4 10 o'clock.

5 The magistrate won't have seen any of those files  
6 before they sit on the bench. So it's about dealing with  
7 the case as it's called. We are handed an application  
8 which has a narrative. It's been described as two or  
9 three paragraphs, I think it's actually 24 lines long,  
10 which has either been prepared by the police who have  
11 initiated it by way of a safety notice or it's an  
12 application from the applicant themselves.

13 From that I always as a first port of call make  
14 everyone wait for a minute or two while I read that  
15 narrative. That's really important because it assists me  
16 to identify what the relationship between the parties are  
17 and also to identify other mandatory considerations; for  
18 example, if there are children of the parties, whether  
19 it's alleged that weapons are involved.

20 I basically use the CRAF risk indicators that  
21 I think have been referred to in earlier evidence to do a  
22 bit of a risk assessment and see what sort of red flag  
23 indicators about risk present in those 24 lines. That's  
24 fairly obvious if there's been things like a physical  
25 assault or a strangulation or other indicators about  
26 vulnerability and the like. But that gives me a bit of a  
27 heads-up as to how the matter is going to proceed.

28 In a mention court I think the sort of typical  
29 day's workload has been mentioned, but we are generally  
30 presented with a list beforehand that shows that on a  
31 Monday morning there might be 40 matters in the list and

1       you think, "Great, only 40 matters." That doesn't account  
2       for the dribbles and drabs that are coming through from  
3       the weekend's police safety notices and you might end up  
4       with about 60 matters in the list for the day. I think  
5       there's an average of 50 at many of our courts, but  
6       Mondays are particularly bad. So, knowing that, that  
7       equates to something like four, five or six minutes per  
8       application.

9               So in an ideal world to apply all the mandatory  
10       considerations that are necessary probably takes some deal  
11       longer than that. So it's about trying to exercise the  
12       professional skill and attention to all of those mandatory  
13       considerations and also to demonstrate respect to all of  
14       the court users and a degree of empathy to people who  
15       possibly have never been into a courtroom before and  
16       appreciate the stress that they are going through all in  
17       that fairly short space of time. I find that reading that  
18       narrative means that I can hopefully achieve some of those  
19       goals in a relatively efficient way.

20              So in that sort of mention court there's been  
21       discussion that a lot of matters are dealt with by  
22       consent. Certainly they are. I'm presented with often an  
23       information sheet from the duty lawyer. Because of the  
24       number of cases in the list I don't require the duty  
25       lawyer to come and physically represent all the people  
26       that they have seen. Again, as a matter of efficiency,  
27       that's done by way of a sheet which indicates that the  
28       person has had legal advice and what the respondent is  
29       consenting to.

30              So often I have a respondent who either has not  
31       had any legal advice - and certainly first up in the

1 morning I'm seeing those cases where the respondent has  
2 said, "I just want to get out of here." They understand  
3 that seeing the lawyer is going to slow that process down.  
4 So they refuse to get any legal advice. So that's a  
5 challenging situation. I try to encourage them to get  
6 legal advice. But I also know the realities are that the  
7 duty lawyers probably haven't got the capacity to see  
8 them.

9 So that's a real tension as a judicial officer.  
10 I can't give them legal advice. I have an obligation to  
11 explain the process to them, to facilitate the process, to  
12 explain the order, to explain the consequences of breach.  
13 So it's a delicate dance between doing that. I can't  
14 force them to get legal advice. So I have to proceed with  
15 the unrepresented litigant, and that's commonplace  
16 throughout the Magistrates' Court, not just in family  
17 violence.

18 So I make sure that if he is consenting to an  
19 order without admitting the allegations that he  
20 understands what the terms of that order are. From the  
21 narrative I might have identified that he's a tradesman  
22 and he has the tools in the shed at the house that I'm  
23 about to exclude him from. So I look at any obvious  
24 practical difficulties about how that order is going to  
25 work in order to craft the conditions that are going to  
26 work for him. Certainly safety is enhanced if there is an  
27 order that (a) he understands and (b) is workable for his  
28 circumstances.

29 If there are children to be included on the order  
30 I need to explain to him that this order doesn't  
31 necessarily mean he's never going to see his kids again.

1 I need to encourage him to perhaps access some family law  
2 advice once he leaves court, a bit about what the process  
3 is for him to engage in the family law system so that he  
4 can reach some agreement to see his children in a safe  
5 way.

6 I look at the physical, geographical restraint  
7 that he's excluded from. If the order is seeking to  
8 exclude him from being within 200 metres of 222 Exhibition  
9 Street, I might identify that there are significant  
10 buildings that he might need to access for his work across  
11 the road or whatever and make that geographical constraint  
12 appropriate. So there is quite a deal of interaction with  
13 him about what the terms of the order are.

14 When I'm in the process of explaining the order  
15 I'm making to him I'm trying to draw from the allegations  
16 in the narrative about the type of family violence that  
17 he's used to attempt to explain to him what family  
18 violence is. So if the allegations are that as part of  
19 the family violence he's taken her mobile phone and keeps  
20 looking through it and is accusing her of having affairs  
21 and why is she speaking to X, Y and Z, I might talk to him  
22 about controlling behaviour being a type of family  
23 violence and, whilst it's an unproven allegation and he's  
24 consenting to the order, I'm not making findings of fact  
25 but that behaviours of that type in the future would  
26 constitute family violence and be in breach. So it's  
27 about trying to make the order meaningful for him.

28 I try to simplify the language of the order into  
29 plain English that he appears to be understanding.  
30 Sometimes I get him to repeat back to me what it is he  
31 understands he's allowed to do and what it is he

1 understands he's not allowed to do. Particularly if  
2 I have someone from a non-English speaking background  
3 where there are cultural differences and things, getting  
4 him to explain back demonstrates to me that he's got a  
5 level of understanding about what the order I'm sending  
6 him off with is all about.

7 So trying to fit that into four, five or six  
8 minutes is all pretty challenging. Sometimes you do a  
9 really good job of doing that and other times when the  
10 demand is too great you do a less than perfect job of all  
11 that. It's about picking cases that appear to be on their  
12 face more risky than others. Particularly I pay attention  
13 to cases where there are children involved.

14 I have also actually failed to mention that it is  
15 important to engage with the affected family member who is  
16 sitting in court, to acknowledge that she is there, to ask  
17 her for any input that might be relevant. Even if the  
18 police are there sitting in front of her as the applicant  
19 it's important that she is part of the process, if she  
20 wishes to be, and to acknowledge what the effect of family  
21 violence might be having on her and the children.

22 So I do that repeatedly throughout the day. If  
23 all of that fits into five hours we are doing pretty well  
24 and I don't have much voice left by the end of the day.

25 MR MOSHINSKY: Magistrate Toohey, would you like to comment  
26 on - is your practice similar?

27 MAGISTRATE TOOHEY: I have a very similar approach. I ask a  
28 lot of questions. When I go through that narrative I'm  
29 then asking, "Are there family law orders? Is there a  
30 Child Protection order? What else is there? Has there  
31 been a previous incident?" Often if it is a police

1 application I will be saying to the police, "It says that  
2 there have been three previous intervention orders." If  
3 nobody has got one, which rarely they do, I will then ask  
4 my bench clerk to try and find them, try and locate the  
5 application and the order so that I have that. Also often  
6 what do I find is that this particular incident in fact is  
7 a repeat of the last two or three. So I just find it  
8 really important to make sure that I have as much  
9 information about the parties as I possibly can.

10 MR MOSHINSKY: That might be a convenient point to ask you  
11 about the Courtlink system and what information it  
12 provides to magistrates. I think we can bring up the  
13 slide of the Courtlink system. As sitting as a magistrate  
14 is there a computer screen in front of you?

15 MAGISTRATE HAWKINS: There is, but sitting in a civil family  
16 violence case we don't have reference to this Courtlink  
17 system. This is a system which was I think built in 1986  
18 and it's the main system that the court uses to  
19 record - it's the database and it also is the basis for  
20 generating all of our forms.

21 It doesn't have a unique identifier. So, in  
22 terms of what Magistrate Toohey was saying about looking  
23 for previous orders, if we have a Mr McDonald who is the  
24 respondent and we search for "MAC" but his name is spelt  
25 "MC", we don't pick him up. So that's an example of how  
26 limited it is in terms of the information that's  
27 available.

28 That said, it does allow us if we can overcome  
29 those sorts of impediments to have a history of all the  
30 intervention orders that have been made for those parties.  
31 We can get copies of the applications. We can see the



1 narratives that have occurred in the past. We can also  
2 enquire about current criminal cases that might be pending  
3 against him; look for dates that he's coming back to court  
4 so that we can try and link these cases together. But  
5 it's a very manual intensive task and relies on human  
6 intervention where really having a good system would make  
7 the things far more efficient.

8 So, in answer to your question, it doesn't  
9 provide me as a magistrate with any more information than  
10 what's physically handed to me by way of the application  
11 and enquiries that either the registry has made or we as  
12 magistrates have caused to be made and provided to us.  
13 Certainly that information sharing is an area where it  
14 requires our active involvement and enquiry.

15 MR MOSHINSKY: In terms of what's available to you actually as  
16 the magistrate on the bench through that screen is that  
17 something that you would access while you are on the  
18 bench? I think Magistrate Toohey referred to her bench  
19 clerk.

20 MAGISTRATE HAWKINS: The bench clerk does all the data entry of  
21 the orders. So, as magistrates, we are not doing data  
22 entry on the computer while we are sitting.

23 MR MOSHINSKY: Magistrate Toohey, are there any comments you  
24 want to make about the IT aspects?

25 MAGISTRATE TOOHEY: Not very polite. I don't think there is  
26 much I could say, really, other than what is fairly  
27 obvious. It's just a system that really is outmoded. Of  
28 course in court I am relying on my bench clerk to try and  
29 find those criminal cases. That's often what I'm really  
30 keen to do because I think you have already heard today  
31 from the police that where a criminal charge is going to

1 be issued it's often not when I have got that civil  
2 matter, and it's really critical that I know if there's  
3 going to be a criminal charge because it's going to set  
4 out in cases where there is no consent without admission a  
5 matter where someone says, "I'm going to book this matter  
6 in for a contest," then I need to know whether there is  
7 going to be a criminal charge, and that's really important  
8 that I find that out. Sadly at the moment I find it's  
9 very inadequate in terms of the information that I'm  
10 provided with.

11 COMMISSIONER NEAVE: Can I just follow up on that. I just want  
12 to understand. So do you have on the computer before you  
13 Courtlink at all or any aspect of Courtlink?

14 MAGISTRATE TOOHEY: Courtlink is always on that computer in  
15 front of me. But when I'm dealing with that civil  
16 application it's not on Courtlink in front of me. The  
17 only things that are on Courtlink - it's the criminal  
18 system. If my bench clerk prioritises a criminal case, so  
19 if I'm sitting at a court and I have a criminal case as  
20 well as the civil, my bench clerk will prioritise that  
21 case, and then I go into Courtlink, and then that criminal  
22 case is sitting on the screen in front of me.

23 COMMISSIONER NEAVE: But you don't have the history of previous  
24 intervention orders?

25 MAGISTRATE TOOHEY: No, I don't have that history.

26 MAGISTRATE HAWKINS: In terms of IT systems it's also important  
27 to note that we don't have any way of directly accessing  
28 whether there's any family law orders. We also have  
29 difficulty accessing whether there's any relevant Child  
30 Protection orders without making enquiries through the  
31 Children's Court.

1 COMMISSIONER NEAVE: So, in effect, those things have to be  
2 done manually by you asking your bench clerk to go away  
3 and make the appropriate enquiries?

4 MAGISTRATE HAWKINS: Certainly with the Family Court or the  
5 Federal Circuit Court that's quite an ordeal.

6 MR MOSHINSKY: On the page that you have, and in terms of the  
7 slide if we scroll down to the second part of that, what  
8 does this represent, the second part of the first page?

9 MAGISTRATE HAWKINS: This is a screen shot from our criminal  
10 system. I think the point of the illustration was just to  
11 show how antiquated the computer system is rather than the  
12 details on it particularly. There's no drop-down menus.  
13 To operate it you have to use codes that you rely on.  
14 Remember old DOS based computer systems? So that's from  
15 our criminal jurisdiction rather than our family  
16 law - family violence jurisdiction. But it just  
17 illustrates what we see, what the registry sees.

18 MR MOSHINSKY: Can I ask you if you wish to comment on  
19 conditions in orders and the complexity of orders. Do you  
20 have any comments to make on those points?

21 MAGISTRATE HAWKINS: I do. The Chief Magistrate has been  
22 convening a discussion group over the last 18 months or so  
23 comprised by a number of agencies and community groups,  
24 including police, legal services. The purpose has been to  
25 conduct a roots and branch examination of the family  
26 violence system. One of the things that's come out of  
27 that discussion group is a concern - and it's one I hold  
28 dear - about the conditions of the orders not being in  
29 plain English and being difficult to understand and  
30 comprehend, and that in order for the orders to be  
31 effective they need to be understood by the respondents

1 and the affected family members.

2 So we have a project at the moment to try and  
3 redraft those into plain English, into a far more  
4 emotionally - I think Kerry Walker had a great phrase  
5 about the way you order - - -

6 MR MOSHINSKY: Intuitive form?

7 MAGISTRATE HAWKINS: Intuitive form, that's not quite the  
8 phrase I was looking for, but in terms of how you order  
9 things so that people understand them far more clearly.

10 MR MOSHINSKY: Magistrate Toohey, do you have any comments you  
11 wish to make on the complexity?

12 MAGISTRATE TOOHEY: I support what's been said. But certainly  
13 with the existing clauses what we have to endeavour to do  
14 is to really explain to a respondent, and of course you  
15 are also explaining to the affected family member, how it  
16 actually works. So I always take the time to go through  
17 the conditions, go through the exceptions and then often  
18 just use examples and say to them, "For example, you are  
19 in the supermarket. You come across each other in the  
20 supermarket." Often you will see a respondent saying,  
21 "Yes, what does happen?" I just explain how it works; how  
22 the first condition that says "no family violence", how  
23 that will relate to coming into close proximity, because  
24 I think a lot of respondents, as has already been raised,  
25 they think it means they can't do anything. But if you  
26 take them through the orders and explain it and explain  
27 it's all about safety by the end of the hearing  
28 I certainly hope that they do understand exactly what it  
29 is that I'm explaining.

30 MR MOSHINSKY: Can I ask you about the different models that  
31 exist within the court and perhaps just to outline it.

1 There's the family violence court divisions which are in  
2 Ballarat and Heidelberg. There are specialist family  
3 violence services available in a number of different  
4 Magistrates' Courts. Then there are also Magistrates'  
5 Courts which can make the counselling orders. Perhaps a  
6 convenient reference point is an extract from the  
7 Magistrates' Court submission which we will put up as a  
8 slide which indicates the different facilities at each  
9 court. Would you be able to just outline the main  
10 differences between the models?

11 MAGISTRATE TOOHEY: You have the division at Ballarat and  
12 Heidelberg. They were the first divisions - they are the  
13 only division. They were set up with the applicant  
14 support worker; the respondent support worker; a lead  
15 magistrate; Legal Aid lawyers; community legal service  
16 lawyers; police prosecutor; and then other services  
17 depending on where you are that will be support groups,  
18 community groups that are involved particularly with the  
19 affected family member; security at the court; so it was  
20 this package.

21 Of course you have already heard from Julie  
22 today, Julie conducts the eligibility assessments for the  
23 mandated counselling. So that was the other big  
24 distinction. So at both of those courts, Heidelberg and  
25 Ballarat, I have the ability to mandate men to attend  
26 mandatory counselling.

27 Then the next model down was the specialist  
28 services, and that's Sunshine, Werribee, Melbourne,  
29 Frankston. The difference at the time, no mandated  
30 counselling and no respondent worker. You didn't have  
31 essentially a lead magistrate. But what you had was you

1 had all the magistrates that sat at the specialist site  
2 had training, but the magistrates who sat at the  
3 division - Ballarat and Heidelberg - had to be actually  
4 gazetted to sit in the division, which meant that they had  
5 to undergo training and then be selected to actually sit  
6 at the division. That didn't always work incredibly well  
7 in my view. But, overall, you had magistrates - I have  
8 certainly been sitting in Ballarat since 2005 and I always  
9 go up on Tuesdays to deal with the work.

10 So then the latest courts are Moorabbin and  
11 Frankston, and that involves another counselling program.

12 MR MOSHINSKY: So those two courts have the ability to mandate  
13 counselling programs as do the two divisions?

14 MAGISTRATE TOOHEY: That's right.

15 MR MOSHINSKY: With those different models in mind are there  
16 any comments that either of you wish to make about what  
17 direction things could go in or about the different  
18 models?

19 MAGISTRATE HAWKINS: What we have attempted to do is to achieve  
20 best practice but spread that best practice across more  
21 courts, across regional and rural Victoria as well as  
22 suburban courts. We achieved some funding over the last  
23 12 months to take components of the best practice model  
24 from the division sites and spread those more broadly.

25 What that looks like is about specialisation and  
26 having applicants and respondent support workers at all of  
27 our headquarter courts. So we now have specialist  
28 registrars at each of those headquarter courts who play  
29 that really vital role in connecting the community  
30 agencies into the court, providing a central point of  
31 coordination and also providing that level of consistency

1 and specialisation.

2 So what we see as a best practice model going  
3 forward, and to take on board that car analogy, what we  
4 are looking at is a really good model Holden that's got  
5 all of the safety features. So we have the airbags; we  
6 have the ABS brakes; we have good tread on the tyres, and  
7 my car analogy probably falls down at that point.

8 But we have a sustainable model drawing on what  
9 we see really works. But it has to be resourced in a way  
10 that we can manage, because the primary difficulty that we  
11 identify with achieving best practice is just being  
12 overwhelmed by demand. We need to have sufficient  
13 resources using that model so that everyone at court - the  
14 lawyers, the civil advocates, the magistrates, the support  
15 workers - can give enough time to each case to manage it  
16 well and to manage it achieving those best practice  
17 principles.

18 We think that that's quite achievable in a modest  
19 way by rolling out that model supported by expanding our  
20 CISP programs to more courts so that we can start to  
21 address individual needs. I think we are talking more  
22 about that tomorrow, so I won't go into it now.

23 It's also about having more brokerage for men's  
24 behaviour change programs where that's appropriate. It's  
25 limited to five sites at the moment. So we would like to  
26 avoid having this sort of postcode justice kind of  
27 response, to be able to manage the family violence work  
28 with appropriate wraparound services, to have IT systems  
29 so that we can effectively manage cases and combine not  
30 only family violence cases but appropriately where they  
31 intersect with criminal cases, family law cases, Child

1 Protection cases in a far more cohesive way, a specialised  
2 and integrated manner of responding, far more effective.

3 MR MOSHINSKY: Is the model that you are describing rolling out  
4 the division model as it exists in Ballarat and Heidelberg  
5 more widely or rolling out a variant on that?

6 MAGISTRATE HAWKINS: It's an enhanced variant on that. It's  
7 enhanced by having access to CISP, having our CISP workers  
8 trained up in family violence. I think there's some  
9 issues around men's behaviour change programs and how they  
10 are best utilised. I know there's been evidence about  
11 that. That's an expensive component of the model. That's  
12 perhaps a question for government as to the extent that  
13 they are prepared to fund those. But accessibility to  
14 those programs; but also to be able to combine that model  
15 in the way that we organise our work at court, the work  
16 that we do anyway but organise it far better so that we  
17 are coordinating not only the response to family violence  
18 but with holding perpetrators to account through  
19 sentencing and the use of corrections orders and  
20 therapeutic jurisprudential problem solving models that we  
21 perhaps might turn to tomorrow. So it's sort of that  
22 holistic approach, which is very much within the core work  
23 that we already do. It's about having the capacity to  
24 manage that far better.

25 MR MOSHINSKY: One of the labels that I have seen applied to  
26 the Ballarat and Heidelberg model is one judge, one  
27 family. Is that part of the model that you are  
28 envisaging?

29 MAGISTRATE HAWKINS: That's one way that you could describe it.  
30 Whether that's practical has a whole lot of other  
31 considerations. But it's an integrated court model. It



1 might draw on the examples of the New York integrated  
2 domestic violence courts as an example of that as well.

3 MR MOSHINSKY: Could I ask you some questions about the men's  
4 behaviour change programs and the current practice around  
5 either ordering that that take place or making consent  
6 orders that that's part of the equation. What's the  
7 current situation?

8 MAGISTRATE TOOHEY: When a final order is made it doesn't  
9 matter whether it's made by consent without admission or  
10 whether it's by consent. As soon as that final order is  
11 made I will then direct that the respondent attend the  
12 eligibility assessment. Of course at Ballarat Julie will  
13 then conduct that eligibility assessment. She will come  
14 back to me then with a report as to whether somebody is  
15 going to be eligible or not eligible. Ultimately it is up  
16 to me, but if they are eligible I will direct they attend.

17 MR MOSHINSKY: The waiting list resourcing issues, what's the  
18 situation there?

19 MAGISTRATE TOOHEY: Our waiting lists, they are not long  
20 because we have places at CAFS in Ballarat. I might have  
21 someone who is going to attend in seven days time for that  
22 first appointment.

23 MAGISTRATE HAWKINS: But if we are not sitting at Ballarat or  
24 Heidelberg or Moorabbin or Frankston, where there is  
25 effectively brokerage and we have the legislative capacity  
26 to mandate a man to attend a program, it's a case of  
27 recommending that they attend, making a referral to the  
28 men's referral service. There's a lot of really good  
29 initiatives at different courts that have been described  
30 in Bendigo and various places where there might be a  
31 service that's linked into the court that you can make a

1 warm referral and have the man linked up to a referral at  
2 court.

3 But it seems to be the common experience across  
4 Victoria that there's not enough places and the waiting  
5 lists are long. So in the best will in the world the man  
6 consents to contacting the men's referral service and  
7 going along to a men's behaviour change program, but after  
8 he has waited for three or four months on that waiting  
9 list that willingness - we don't know what happens, but  
10 the number of places suggests that the number of promises  
11 don't equal men who have completed those programs.

12 MR MOSHINSKY: As you have heard, there has been evidence both  
13 yesterday and today about the Victoria Police proposal  
14 that the police have powers to issue intervention orders  
15 in the field and the parties could come back to court if  
16 they wished to challenge that or vary that. Is that  
17 something that you wish to comment on?

18 MAGISTRATE HAWKINS: To a degree it's a matter of policy for a  
19 government to determine. However, I think that the  
20 judicial process is really important for oversight, and  
21 having checks and balances is critically important.

22 An intervention order makes criminal behaviours  
23 which are otherwise lawful. It restricts a man from going  
24 back to his house. It restricts him from talking to his  
25 family members. It turns those sorts of ordinary,  
26 everyday activities into criminal behaviours. So where  
27 the consequences are now potentially up to five years gaol  
28 the oversight about the making of those orders that court  
29 event offers I think is critically important.

30 The other observation I will make is that safety  
31 notices are made on the night of crisis. They might be

1 made at 3 o'clock in the morning. To make decisions about  
2 what's going to happen for the next 12 months at that  
3 point of crisis I would think for most people is high on  
4 impossible. There is great benefit in having time to come  
5 back to court and consider with appropriate supports that  
6 are available in the community and at the court what is  
7 the safest outcome for that family.

8 I also think it's really important - and it's  
9 indeed an aim of the Act - the perpetrator accountability  
10 aspect of all of this. Coming to court, being challenged  
11 about inappropriate or unlawful behaviours and being held  
12 to account is a really important part of coming to court.  
13 I think there are real positives that can come out of  
14 actually attending court and suddenly waking up to the  
15 realisation that alcohol is really a problem, his drinking  
16 is really causing his family great harm and that being one  
17 of those light bulb opportunities to make some change.

18 I think the lawyers spoke about the benefits of  
19 having that interaction at court as well. Whilst  
20 I understand that it has great attraction in terms of  
21 efficiency - it would certainly decrease our workload  
22 quite significantly - that's not what we are about. We  
23 are about achieving best practice about safety for  
24 affected family members and perpetrator accountability.

25 MR MOSHINSKY: Can I ask you if you have any comments about  
26 court infrastructure, about the physical facilities that  
27 exist in the Magistrates' Court. Is that something that  
28 you are able to comment on?

29 MAGISTRATE TOOHEY: I sit at Werribee and it would have to be  
30 one of the worst court buildings in the state in terms of  
31 safety. It's also a building that just - there's no

1 separation of the parties. The court staff really try.  
2 They try their level best to do things as well as they can  
3 possibly do it. But it's a building that's just  
4 fraught - you have the police attending, ambulances from  
5 time to time. It's a dangerous building. It's really  
6 difficult to work in.

7 I sat there last Thursday until 20 past 6 to try  
8 and explain - of course it's a very multicultural part of  
9 the west. So we have interpreters. We are trying to  
10 bring interpreters into the court. We are trying to  
11 explain orders. I'm then trying to refer to our applicant  
12 support worker, who is trying to see people throughout the  
13 day. It makes my job just so incredibly difficult, and  
14 everyone else's as well. The lawyers, they have  
15 no - really, they haven't got good facilities; our  
16 applicant support worker doesn't. It applies to  
17 absolutely everyone. I'm sure the police and the police  
18 prosecutors would say the same thing.

19 MAGISTRATE HAWKINS: The average age of our courts is 50 years  
20 old. A lot of them would make really nice museums. They  
21 are not, in the main, purpose built for family violence.  
22 There is a lot of physical work that needs to be  
23 undertaken to make them safer and to pick up on many of  
24 the legitimate concerns that court users, lawyers, police  
25 have raised about the difficulties with coming to court.  
26 I think that's part of the answer.

27 The other part of the answer is to look at ways  
28 that we could have much smarter courts that use  
29 videoconferencing as a matter of routine that allows an  
30 affected family member to come to court and participate in  
31 the court proceeding via videolink from a remote, safe and

1 secure location.

2 We have at the moment these safer waiting areas  
3 at a few courts where the affected family member can sit  
4 separately. Sometimes she chooses to wait in there rather  
5 than to come into court and face the perpetrator. My  
6 concern is, while that's safer, she's not participating in  
7 the court process. There are really important messages  
8 about empowerment that I think are beneficial being in the  
9 court environment. Certainly being able to attend far  
10 more readily via videolink should be just part of daily  
11 courts.

12 I also think that there's a lot of opportunities  
13 to have courts sitting in remote locations via videolink.  
14 We actually don't all have to be in the same courtroom  
15 anymore with modern facilities. It's a matter of  
16 resourcing the technology to enable that to occur and make  
17 it far more accessible. I'm sure there's lots of other  
18 ideas that the IT savvy people would be able to suggest  
19 that really look at the next generation of how we actually  
20 run courts, and this is a perfect opportunity to do that.

21 But you do need the physical infrastructure in  
22 locations. Particularly the growth corridors of  
23 Melbourne, out through Werribee, out to the east, out to  
24 the north, are crying out for physical infrastructure, for  
25 courthouses. This is an opportunity to make purpose built  
26 facilities that are adaptable for the future as well.

27 MR MOSHINSKY: Are there any issues relating to the topic for  
28 today of applications for intervention orders that  
29 I haven't asked you about that you wish to comment on?

30 MAGISTRATE TOOHEY: I think perhaps I really would like to  
31 emphasise that process of keeping the criminal and the

1 civil together. I think that's a really, really important  
2 issue, because ultimately if I'm at court and I don't know  
3 about a criminal matter and someone says, "I'm going to  
4 book in this contest," and the civil is then going to be  
5 booked in and along the way - I actually had a matter very  
6 recently where this happened - that case commences and  
7 then someone says, "Oh, by the way, the respondent has  
8 criminal charges listed in three weeks time," the dilemma  
9 is enormous because the affected family member is giving  
10 evidence about this incident. The respondent is in a  
11 situation where he's going to say, "I don't want to give  
12 evidence now at this civil hearing, because I have the  
13 criminal charges just down the track."

14 It just creates a hideous position for the court.  
15 They should never, ever be separated. They should always  
16 be kept together. That's one of the dilemmas I experience  
17 at the moment. I know I have heard the police today talk  
18 about how everybody seems to be checking and telling the  
19 court when the criminal charges are listed. I don't find  
20 that in my experience at all. I actually find that we  
21 really have to be trying to get that information, and if  
22 I haven't got it by the directions hearing I'm adjourning  
23 a directions hearing waiting to find out when those  
24 criminal charges are going to be actually proceeding.

25 I know of course the Dandenong pilot project goes  
26 a long way towards solving that issue because it's saying  
27 the charges are going to be issued really quickly, so that  
28 then they are married up very quickly. But I often have  
29 the experience of bail, for example, where I'm told,  
30 "There's criminal bail down the track," and it might be in  
31 six or eight weeks; they are inconsistent with the order

1           that I'm making today but haven't been filed yet. I can't  
2           alter that bail until it's actually filed. So I think  
3           quite a lot of work needs to be done in making sure that  
4           the criminal and the civil are kept together as much as  
5           possible.

6   MR MOSHINSKY: Could you just explain? In the earlier example  
7           you gave the civil has been set down and then you find out  
8           three weeks later there's going to be a criminal case  
9           involving the same people in the same incident. What's  
10          the problem if the civil went ahead first?

11   MAGISTRATE TOOHEY: If the civil goes ahead, that AFM is going  
12          to be giving evidence about that incident. She's also  
13          then going to be asked to give evidence about exactly that  
14          same incident in the criminal trial. As far as the  
15          respondent is concerned, he's going to be very reluctant  
16          to be giving any evidence at the civil hearing because he  
17          knows he's at risk with the criminal hearing.

18   MR MOSHINSKY: Is the respondent getting an opportunity to hear  
19          the AFM's evidence at an earlier time before the criminal  
20          charge comes later?

21   MAGISTRATE TOOHEY: That just follows logically. Clearly, if  
22          he says nothing at that hearing, the risk for him is that  
23          an intervention order will be made against him because  
24          he's not going to give any evidence at the hearing. Then  
25          ultimately, when it comes to the criminal hearing, of  
26          course that AFM will have put to her every answer that was  
27          put to her at the civil hearing, which is just totally  
28          inappropriate when you consider this is all an application  
29          about what's actually happened on this one occasion.

30   MR MOSHINSKY: So it is unfair on the AFM because she will have  
31          to give evidence twice and then be cross-examined about

1           any differences that might emerge?

2   MAGISTRATE TOOHEY:   And it's unfair to the respondent to be put  
3           in that position as well at that time.

4   MR MOSHINSKY:   Are there any other matters that either of you  
5           wish to raise?

6   MAGISTRATE HAWKINS:   I just also wanted to pick up on something  
7           somebody raised earlier about consent orders being  
8           effectively - I don't think the words were used - rubber  
9           stamped by the magistrate.   I think that that's not  
10          necessarily the case.

11                 There are often times when I will refuse to make  
12          an order that the parties have agreed by consent because,  
13          for example, they refuse to have the children protected by  
14          the order, even though the narrative describes that the  
15          child has been centrally or in the middle of a physical  
16          assault, for example.   So the magistrate plays a really  
17          important checking role about that.

18                 The other point I just wanted to clarify is that  
19          it's also the magistrate's role to determine what the  
20          appropriate length of the order is.   There's this  
21          mythology about all intervention orders being 12 months.  
22          That's not the case.   It depends on what the circumstances  
23          are.

24   MR MOSHINSKY:   Thank you.   I don't have any further questions,  
25          Commissioners.

26   COMMISSIONER NEAVE:   I just had one further question.  
27          Videoconferencing facilities are now used in sex cases  
28          right across the Magistrates' Court.   I'm just wondering  
29          about if we added to that family violence would there be a  
30          shortage of facilities.   There might be issues about the  
31          adequacy of those facilities, but do most courts now have



1 access to appropriate facilities?

2 MAGISTRATE HAWKINS: We have just had a significant roll-out  
3 and investment by the government in videoconferencing  
4 facilities to ease the problems that we had of prisoners  
5 not being brought to court.

6 COMMISSIONER NEAVE: Yes.

7 MAGISTRATE HAWKINS: That's actually given us an increase in  
8 our videoconferencing capacity. We previously had a  
9 prehistoric videoconferencing facility that only had a  
10 fixed number of lines. I think we are moving to a more  
11 internet based service that will expand that capacity.  
12 But I don't think there are videolinks in every courthouse  
13 at the moment. It's increased, but there is a significant  
14 way to go to make that a regular feature.

15 COMMISSIONER NEAVE: So is the court trying to do some sort of  
16 a demand assessment as to what is needed? I'm very  
17 familiar with the issue about prisoners in the Court of  
18 Appeal because we saw lots of them by videolink, and  
19 sometimes there wasn't a line. So is the court trying to  
20 assess what it might need if, for example, you have people  
21 giving evidence in sex cases, you have prisoners and then  
22 you might add to it videoconferencing for a significant  
23 proportion of applicants in these cases and possibly in  
24 criminal cases as well? Has the court yet been able to  
25 sort of work out roughly what the demand might be?

26 MAGISTRATE HAWKINS: This might be a question more for the  
27 courts administration side of things.

28 COMMISSIONER NEAVE: Yes, it might.

29 MAGISTRATE HAWKINS: But certainly there has been a process of  
30 mapping out what resources would be required to support  
31 various parts of our submission. One of the key

1 components of that is videoconferencing. So certainly the  
2 modelling is being done and can be done about what dollar  
3 figures would be associated with that.

4 COMMISSIONER NEAVE: One possibility of course is to have, as  
5 they have with the child witness service, the affected  
6 family member doesn't have to come to the court; they  
7 could give it from a service.

8 MAGISTRATE HAWKINS: That's exactly - - -

9 COMMISSIONER NEAVE: Presumably the court has no issues about  
10 that?

11 MAGISTRATE HAWKINS: We are running a pilot at the moment from  
12 Melbourne with exactly that model. It's supported by the  
13 Women's Legal Service. It's run through a local agency  
14 with the affected family member giving evidence from that  
15 secure, remote location. There's no problem with that.

16 COMMISSIONER NEAVE: Good. Thank you.

17 MR MOSHINSKY: Commissioners, that concludes the evidence for  
18 today.

19 COMMISSIONER NEAVE: Thank you very much indeed, and we are  
20 very grateful to the court and to you both for  
21 volunteering to come as witnesses to the Royal Commission.

22 MAGISTRATE HAWKINS: It's a pleasure.

23 COMMISSIONER NEAVE: So thank you very much. Tomorrow morning  
24 at 9.30.

25 <(THE WITNESSES WITHDREW)

26 ADJOURNED UNTIL WEDNESDAY, 5 AUGUST 2015 AT 9.30 AM