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VICTORIAN ROYAL COMMISSION INTO FAMILY VIOLENCE

MELBOURNE

WEDNESDAY, 5 AUGUST 2015

(13th day of hearing)

BEFORE:

THE HONOURABLE M. NEAVE AO - Commissioner

MS P. FAULKNER AO - Deputy Commissioner

MR T. NICHOLSON - Deputy Commissioner

1 COMMISSIONER NEAVE: I just should say that, as I have said on  
2 a couple of occasions previously, the Inquiries Act  
3 permits me to determine from time to time that the  
4 functions of the Commission can be performed by one or  
5 more Commissioners separately. Today myself and Deputy  
6 Commissioner Nicholson will be present at this public  
7 hearing as Deputy Commissioner Faulkner can't be present.

8 MR MOSHINSKY: Thank you, Commissioners. Given that I made an  
9 opening yesterday morning of the general topic of  
10 intervention orders, I won't be doing a full opening this  
11 morning, but can I just briefly outline the evidence to be  
12 called today.

13 First, we will hear evidence by videoconference  
14 from Judge Eugene Hyman from California. He will deal  
15 with the approach in California to the monitoring of  
16 family violence offenders, including the use of probation,  
17 judicial monitoring and immediate response to breaches.

18 Then we will have evidence from Glenn Rutter and  
19 Joanne de Lacy about the Court Integrated Services  
20 Program, known as CISP, in Magistrates' Courts, its role,  
21 purpose and implications for broader use in family  
22 violence matters.

23 Then we will have evidence from Dr Chris Atmore.  
24 She will give evidence about the Community Legal Centre  
25 perspective on monitoring and enforcement of orders.

26 Then we will hear evidence from Magistrates  
27 Hawkins and Broughton. They will speak of the perspective  
28 of presiding magistrates on enforcement and monitoring.  
29 In that context I refer back to the comments I made at the  
30 beginning of yesterday's hearing about the way in which  
31 the evidence from magistrates will be given and that we

1 will not be swearing them in and they won't be making an  
2 affirmation.

3 I refer next to a statement which we will be  
4 tendering from Professor Donna Chung, a professor of  
5 social work. She won't be called to give oral evidence  
6 but her statement is tendered. It deals with the value of  
7 a case managed system of risk assessment, support and  
8 supervision for perpetrators following service of an  
9 intervention order, including learnings from a Gold Coast  
10 initiative.

11 After lunch we will have evidence from Melinda  
12 Walker. She is a criminal defence lawyer who will give  
13 her perspective on current and preferred practices for  
14 dealing with breaches of intervention orders and family  
15 violence matters generally.

16 Then we will hear from Sergeant Deryn Ricardo  
17 about a zero tolerance approach to family violence  
18 breaches that has been adopted in the Morwell region.  
19 Then we will have evidence from Senior Sergeant Fiona  
20 Alexander about Taskforce Alexis, which is a police  
21 initiative which includes a social worker as part of the  
22 police response to family violence.

23 Then finally we will have a panel comprising  
24 Assistant Commissioner Cornelius and Acting Inspector  
25 Rudd, both of whom have already given evidence earlier in  
26 the public hearings. They will deal with pro-arrest  
27 policies, prosecution approaches and other aspects of the  
28 Victoria Police role in monitoring and enforcement of  
29 intervention orders.

30 So that's an outline of the evidence today.

31 I understand that Judge Hyman is now on the

1 videoconference and able to be sworn in.

2 <EUGENE MICHAEL HYMAN, (via videolink) sworn and examined:

3 MR MOSHINSKY: Judge Hyman, you have prepared a statement of  
4 your evidence dated today. Are the contents of your  
5 statement true and correct?

6 JUDGE HYMAN: To the best of my knowledge, yes.

7 MR MOSHINSKY: Thank you. Could you please provide the Royal  
8 Commission with a brief outline of your judicial career  
9 and the type of work that you did insofar as it relates to  
10 family violence?

11 JUDGE HYMAN: Thank you. I was a police officer from the years  
12 of 1972 to 1977, and during some of that time period  
13 I attended law school; upon graduating from law school and  
14 passing the bar, the criminal defence, workers  
15 compensation, personal injury. I became a judge of the  
16 then Municipal Court in 1990 where I did a lot of summary  
17 domestic violence offences. Then in 1996 I was elected to  
18 the Superior Court and took office in 1997. Since that  
19 time I did adult domestic violence. I started with the  
20 Probation Department in 1999, the Juvenile Domestic  
21 Violence Court, and I did domestic violence in the family  
22 law division, the probate division and general criminal  
23 cases, many of which were indictable domestic violence  
24 related cases, but that was not an exclusive caseload.

25 I was on the court for a little bit over  
26 20 years. Since that time of my retirement I have done a  
27 lot of trainings in pro bono work in the area of domestic  
28 violence.

29 MR MOSHINSKY: Thank you. As you have indicated in your  
30 statement, you have lectured widely, including  
31 internationally, on matters relating to domestic violence?

1 JUDGE HYMAN: Yes. I have been privileged to have taught  
2 police officers, probation officers, judges and others  
3 involved in the criminal justice system, family law area  
4 in Germany, United States, Canada, Australia and in New  
5 Zealand.

6 MR MOSHINSKY: Can I just take you to the topic that you deal  
7 with at paragraph 11 of your statement, which is some of  
8 the difference in terminology between Australia and  
9 California. Can you just explain what some of the  
10 different terms are?

11 JUDGE HYMAN: Sure, of course. Thank you. An emergency  
12 protection order is a situation that occurs when law  
13 enforcement attends a domestic violence related criminal  
14 event and wants a protection order issued immediately. A  
15 duty judge is contacted, and there are people available  
16 24 hours a day, seven days a week. The judge and the  
17 police officer engage in about a five-minute conversation  
18 to ascertain that there were threats of violence or actual  
19 violence between people of a special relationship and that  
20 there needs to be a temporary order issued. The orders  
21 are good for seven days.

22 The standard order is there's to be no contact to  
23 the protected person by the restrained person of 300 yards  
24 of the person, business, home, car, children if there are  
25 any, and the offender is served with a copy of the order,  
26 the protected person is given a copy of the order and then  
27 the original order is turned in ultimately to the court.

28 During that seven-day period it is hoped that the  
29 victim, protected person, will ultimately get a protection  
30 order from the Family Court, which is civil in nature.  
31 There are free advocates which you would refer to as

1 family violence workers that assist in terms of filling  
2 out the paperwork. There's no filing fee for the request,  
3 and there's also no service fee; that is, the Sheriffs  
4 Department serves the defendant for free.

5 Then temporary orders are issued if appropriate.  
6 In most cases they are. There's a hearing within 21 days  
7 to determine whether or not a permanent order should  
8 issue. If there is a criminal case pending at the  
9 arraignment or first appearance, the criminal law judge  
10 will issue an order that's referred to as a protection  
11 order that's very similar to the civil restraining order.  
12 Under California law criminal orders take preference over  
13 all other orders in the event of conflicts.

14 That order will remain in effect at least during  
15 the time of the criminal offence and in certain cases can  
16 last even after the criminal case is over. But that  
17 depends upon the nature of the charge.

18 MR MOSHINSKY: Just to summarise, there's three different types  
19 of orders. There's the emergency protection order, which  
20 is the up to seven days order; then there's civil  
21 restraining orders; and then the third is criminal  
22 protection orders. Can you just briefly explain what's  
23 the difference between a civil restraining order and a  
24 criminal protection order?

25 JUDGE HYMAN: Yes. A civil restraining order has the potential  
26 at the first issuance to last up to a maximum of five  
27 years. If the protected person comes back to court for  
28 renewal prior to the expiration it can be renewed for  
29 either a period of five years or for life. Those are the  
30 options that the judge has in terms of renewal, whereas a  
31 criminal order is usually good during the pendency of the

1 criminal action. So depending upon the charge usually  
2 once the person is off probation, assuming they were  
3 granted probation, the criminal protection order is  
4 usually dissolved by operation of law. If the person is  
5 sent to prison it usually dissolves. There are some  
6 exceptions in terms of duration, which again are charge  
7 specific.

8 MR MOSHINSKY: So is that why, even if there is a criminal  
9 protection order in place, a person may be well advised to  
10 also seek a civil restraining order?

11 JUDGE HYMAN: The criminal judges usually will suggest that.  
12 The police, when they attend, will usually suggest that,  
13 and family violence workers, advocates, will suggest that.

14 MR MOSHINSKY: In paragraph 19 you explain that there's two  
15 different types of - or two types of civil restraining  
16 orders. Can you just explain briefly what the two  
17 different types are?

18 JUDGE HYMAN: Yes. This also is applicable to the criminal  
19 orders as well. Peaceful contact or no contact, stay  
20 away. Most of the restraining orders that are civil in  
21 nature are of the no contact variety. The other important  
22 thing to emphasise is that the civil orders are driven by  
23 the survivor/victim.

24 The criminal order is really driven by the court.  
25 If a person is granted probation the court is required to  
26 grant a protection order. The judge has a discretion  
27 whether it's contact or no contact - whether peaceful  
28 contact. Peaceful contact means that the restrained  
29 person will basically act in good behaviour. They are  
30 allowed to live in the home. They are allowed to have  
31 access to children, things of that nature. But if they

1 literally disturb the peace of the protected person, if  
2 that's the order, the protected person can contact the  
3 police and say, "This person is disturbing my peace.  
4 I want him to leave the home," and if he doesn't he would  
5 be arrested for violation of the order.

6 Obviously a no contact order, whether criminal or  
7 civil, means that the person is restrained from having  
8 anything to do with the protected person and the children,  
9 assuming that they are included.

10 MR MOSHINSKY: I want to next move to the topic of probation,  
11 which you deal with at paragraph 30 and following of your  
12 statement. We don't have a similar regime in Australia.  
13 So I was just wondering if you could, please, explain to  
14 the Commission what is probation; how does it work?

15 JUDGE HYMAN: Yes, thank you. Probation is a department  
16 separate from the court, but they are the court's  
17 officers, they are the court's experts with respect to  
18 recommendations which the judge is free to adopt as  
19 conditions of probation or not.

20 Under California law if probation is granted in a  
21 domestic violence related offence, many conditions of  
22 probation are required. I have given the Commission staff  
23 the code section, 1203.097 of the penal code. Probation  
24 does more than just make recommendations, however. If it  
25 is formal probation they supervise.

26 MR MOSHINSKY: Can I just interrupt you with that point.

27 JUDGE HYMAN: Yes.

28 MR MOSHINSKY: So when we are dealing with probation are we  
29 dealing with a situation where a criminal offence has been  
30 committed and the person has been found guilty of  
31 committing a criminal offence?



1 JUDGE HYMAN: Yes, either by admission or by trial.

2 MR MOSHINSKY: Yes. Then is the probation an alternative to  
3 sentencing someone in prison or an adjunct to that or  
4 something else?

5 JUDGE HYMAN: Yes, you are correct. Probation is a grant of  
6 leniency. The person technically has not actually been  
7 sentenced. Sentencing is suspended. In position of  
8 sentences suspended the person is placed on a period of  
9 probation. For summary it's usually three years. For  
10 indictable it's five years under certain terms and  
11 conditions, and Probation supervises summarily, if the  
12 county has that kind of supervision available to it, and  
13 we do in my county, and to make sure that the person  
14 complies with all the conditions and especially to make  
15 sure that they don't have contact with the victim if  
16 there's a no contact order in place, whether it be civil,  
17 criminal or both.

18 MR MOSHINSKY: So there's a series of conditions imposed as  
19 part of the grant of leniency which is probation. Can you  
20 outline what are some of the typical conditions that might  
21 be imposed?

22 JUDGE HYMAN: Sure. To pay child support, if ordered. They  
23 are to obey all laws. They are to seek gainful  
24 employment. They are to do the intervention program,  
25 which in California is 52 weeks long. They are to abide  
26 by the conditions of the intervention program. They are  
27 to attend substance abuse counselling, psychological  
28 counselling if deemed appropriate by the probation  
29 officer. They are to attend meetings with the probation  
30 officer. They are to pay the associated fees that are  
31 ordered, and if they are ordered to do county gaol they

1 are to complete that. Usually for summary offences that  
2 may be done on weekends, unless it's a more serious  
3 commitment. For an indictable it would be a longer period  
4 of time in the county gaol. The way California and most  
5 states break it down, a community commitment is less than  
6 a year; whereas prison is traditionally for domestic  
7 violence related offence longer than a year.

8 MR MOSHINSKY: So is it the case that in addition to all of the  
9 conditions there will typically be some period of  
10 incarceration as well?

11 JUDGE HYMAN: Usually. Depending upon what the person did, and  
12 depending upon their prior history and depending upon  
13 whether the victim needed medical treatment, has ongoing  
14 problems. It's very case specific. But, generally  
15 speaking, by way of example, if the person slapped the  
16 person with an open hand and if they don't have a prior  
17 history, they may have already done two or three days of  
18 custody prior to being released and in that circumstance  
19 that might be all the custody time that they have to do at  
20 that occasion.

21 If, on the other hand, they have a prior for  
22 domestic violence, and assuming it wasn't filed  
23 indictment, they might be doing 30 days straight time in  
24 the county gaol or they might be doing a series of  
25 weekends. It really is dependent upon their personal  
26 history.

27 MR MOSHINSKY: So a person has committed a domestic violence  
28 offence. They have either been found guilty or pleaded  
29 guilty, and they are put on probation with a series of  
30 conditions such as the ones you have outlined. What  
31 happens next in terms of monitoring the conditions?

1 JUDGE HYMAN: Assuming that they are on formal probation, which  
2 is again the most common, assuming your county has that  
3 capability, the person is going to have to report to the  
4 probation officer probably once a month or if they are  
5 deemed to be at risk, then more frequent. The probation  
6 officers can also be checking in with the victim at least  
7 once a month to see how things are going from the victim's  
8 perspective.

9 Then the probation officer is going to also be  
10 talking to the intervention program and any other programs  
11 that the person has been ordered to do to make sure that,  
12 one, they are showing up, or registered and showing up;  
13 two, that they are actually participating and not just  
14 sitting there, see how they are doing. If the probation  
15 officer finds that the person on probation is not  
16 complying with conditions, the probation officer has  
17 several options open to them. One, they can make an  
18 immediate arrest for violation of probation, and that  
19 happens if they view the situation to be extremely  
20 dangerous. Let's say that the defendant made some kind of  
21 an involved threat with respect to the victim and the  
22 probation officer is concerned that that might be carried  
23 out.

24 Two, if a new crime has been committed, let's say  
25 that the defendant hit the person but the police weren't  
26 called to attend, in which case a new crime has been  
27 committed, a new crime of domestic violence has been  
28 committed in addition to a probation violation, so the  
29 probation officer could make an arrest for that.

30 If the person isn't going to the program, if the  
31 person violates the no contact order, the probation

1 officer can handle it in a couple of different ways. One  
2 is an immediate arrest; the other is to take the person to  
3 court; and the other is to deal with it at the next review  
4 and to bring it to the court's attention at that time and  
5 invite the court to take some action.

6 MR MOSHINSKY: Can you tell us now about the court review  
7 process? How does that work? How frequent is it? What  
8 happens?

9 JUDGE HYMAN: What I'm going to talk about is assuming that the  
10 court has the availability of formal probation for summary  
11 offences, because if you don't you are going to be having  
12 more frequent reviews because that's the only - because  
13 basically you are supervising the person if you don't have  
14 probation to supervise them. If you want to make sure  
15 that your orders are followed, then you have to have them  
16 come in frequently.

17 So assuming that the person - No. 1, that you  
18 have formal probation, that you have officers, the person  
19 is going to come in, depending upon the judge, for the  
20 first review two to four weeks after sentencing . At that  
21 time the judge wants to know that the person has complied  
22 with the order to go to probation and meet with the  
23 probation officer and, second, to make sure that the  
24 person has complied with the order to register for an  
25 intervention program. Depending upon the backlog, they  
26 may not have been able to have begun the program, but they  
27 at least should have registered for it.

28 Then the court is also concerned if the defendant  
29 is complying with the no contact order, assuming that  
30 that's in place at that time. It's a short review. It  
31 takes about five minutes. Assuming that everything is in

1 compliance, then another date is set, maybe a month, maybe  
2 a month and a half, where the court is hoping for the  
3 first review from the Batterers' Intervention Program in  
4 terms of how the person is doing.

5 MR MOSHINSKY: What happens if at the first or a subsequent  
6 review the person has not complied with the conditions?  
7 What does the judge do then?

8 JUDGE HYMAN: Hypothetically, let's say the person comes back  
9 after two weeks and they either, or maybe both, haven't  
10 gone to Probation and haven't registered, because at the  
11 time of sentencing they are given a list of programs that  
12 are available in the geographical area of the county where  
13 they live, and if they live out of county, then Probation  
14 will assist them in registering in a certified program  
15 where they do live.

16 So hypothetically if they haven't done one or  
17 both of those things, the court could arraign them for an  
18 order of violation at that time. More likely the court  
19 can say, "Hey, look, the court instructed you in terms of  
20 what you had to do when you were here two weeks ago and  
21 you haven't done it. The court is very concerned about  
22 you not complying with the conditions of probation. The  
23 court is going to give you one final chance to comply. If  
24 you come back in two weeks and if you haven't complied  
25 with both of these conditions as well as the other  
26 conditions of probation in terms of no contact, et cetera,  
27 the court will place you into custody, set bail and  
28 appoint the public defender or your own lawyer, and there  
29 will be proceedings. This is not acceptable, and do you  
30 understand? Do you have any questions?"

31 MR MOSHINSKY: What would happen the next time? Let's suppose

1 the person comes back the following week and they still  
2 haven't complied, what might the judge do then?

3 JUDGE HYMAN: At that time 99 per cent of the time the person  
4 is going to be remanded into custody, bail is going to be  
5 set for a violation of probation, the public defender is  
6 going to be appointed to represent that person. The court  
7 will explain what the court's intention is in terms of an  
8 indicated consequence for violation, being very clear to  
9 indicate that the person has the right to a contested  
10 hearing on the violation of probation. The person is  
11 remanded for safety reasons, not to coerce an admission to  
12 the violation. It's viewed that if they are not complying  
13 this early on then they are dangerous and therefore the  
14 court needs to take action.

15 Most of the defendants ask for an indicated  
16 resolution for the violation. The court indicates  
17 something in terms of a few days to a week, depending  
18 again what the attitude is and what they have done, and  
19 gives them the indication if they are asking for - again,  
20 being very careful not to coerce an admission, because  
21 they are entitled to a full-blown hearing and they are  
22 entitled to counsel at court expense if they don't have  
23 counsel, and most people resolve it for the indicated  
24 resolution. They admit the violation. The court imposes  
25 the additional consequence and then places them back on  
26 probation under the new and old conditions of probation.

27 MR MOSHINSKY: So the example might be the person comes back on  
28 the second occasion, they still haven't enrolled in the  
29 batterers' program and the judge gives an indication of  
30 five days imprisonment?

31 JUDGE HYMAN: Right.

1 MR MOSHINSKY: The person accepts that, and the matter is  
2 resolved by them doing five days in prison there and then.  
3 JUDGE HYMAN: There and then, and then they are given another  
4 date to come back. When they come back 99 per cent of the  
5 time they have complied.  
6 MR MOSHINSKY: Can you give us some other examples of breaches  
7 that might occur of the probation conditions and how they  
8 might be dealt with?  
9 JUDGE HYMAN: Sure. Most commonly, besides not registering  
10 with Probation, not registering with the program, the next  
11 most common would be a violation of the protection order  
12 or the restraining order where the police again have not  
13 been called. In most of these cases, and I'm willing to  
14 guess this is probably true in Australia as well, the  
15 police are not always called for violations of  
16 intervention orders. So we find out about it when the  
17 person is coming to court or when the Batterers'  
18 Intervention Program calls or when Probation calls the  
19 victim we find out. So the person shows up for review,  
20 Probation has given the court notice that there was a  
21 breach of the order, the court advises the defendant - if  
22 they have private counsel there's an attorney there. But  
23 most of them don't. Most of them have the public  
24 defender, and the public defender doesn't normally  
25 represent them for reviews.  
26 Again, the court admonishes that the court has  
27 been informed that a violation of the protection order  
28 occurred. The court will tell the individual what the  
29 allegation is. The court instructs the person to please  
30 not say anything since there's a court reporter or an  
31 electronic recording going on; that the court is concerned

1 about the violation; the court is going to remand the  
2 person into custody; set bail; appoint the public  
3 defender, if they don't have an attorney; set another date  
4 for review and ask again the person if they want an  
5 indicated sentence or if they would prefer to talk to  
6 counsel first.

7 In most cases they ask for an indicated.  
8 Depending upon what the violation was - was it a telephone  
9 call, was it a text, was it an email, what was the  
10 violation - it will be a couple of days of custody. If  
11 they showed up that is of huge concern, and that we are  
12 talking probably in the area of 30 days. Showing up is  
13 extremely scary because if they show up it can be a  
14 slippery slope and the next thing you know you have a new  
15 physical event. So that has to be communicated that that  
16 is serious and that's not to happen.

17 MR MOSHINSKY: When you refer to showing up, do you mean that  
18 the perpetrator has turned up at the victim's home in  
19 breach of a no contact order?

20 JUDGE HYMAN: Yes, or at their work. Some place that they are  
21 not supposed to go.

22 MR MOSHINSKY: In terms of those number of days that the person  
23 would then be imprisoned, two or three days perhaps in a  
24 minor case, 30 days in the more extreme situation that you  
25 have just referred to, does that all happen immediately?

26 JUDGE HYMAN: If they admit the violation, then yes. But again  
27 you ask them if that's what they want to do. They have  
28 the right to come back. They have the right to a hearing.  
29 They have a right to counsel. But most of them just want  
30 it taken care of.

31 MR MOSHINSKY: They are remanded into custody immediately as



1 part of the process that you have outlined?

2 JUDGE HYMAN: Yes. You don't have to. In theory a judge could  
3 say, "Look, I think this is worth 30 days. I will allow  
4 you to do it on the weekends," which you might do for  
5 minor kinds of breaches but usually not for one where the  
6 defendant has gone to the home of the victim or the work  
7 of the victim, or if there's been a number of these  
8 telephone calls or emails or texts or something like that.  
9 Sometimes there can be 30, 60, 90 of these things. If  
10 that happens, then there's going to be a more serious  
11 consequence, which might be straight custody time.

12 MR MOSHINSKY: I'm wondering if you can comment from your  
13 observation of the importance of being able to deal with  
14 these matters quickly, including the very quick  
15 imprisonment and the process that you have outlined?

16 JUDGE HYMAN: Yes, thank you. In my view it's extremely,  
17 extremely important especially in domestic violence cases,  
18 family violence cases, that the consequences to the extent  
19 that there are consequences need to be imposed as quickly  
20 as possible, one, for safety reasons, to communicate how  
21 important this is, and, two, because if it's not imposed  
22 then this allows the offender potentially to perpetrate  
23 additional violations on the theory that it's not serious,  
24 that the court isn't taking it seriously, Probation isn't  
25 taking it seriously and then the perpetrator is able to  
26 say to the victim, "See, you made a complaint and nothing  
27 happened," or it's going to happen down the road, "I'm  
28 free. It's not serious. You might as well not contact  
29 anyone in the future."

30 MR MOSHINSKY: I wonder if you can comment - you deal with this  
31 at paragraph 46 of your statement - about the evidentiary

1 standard of proof that applies when one is dealing with  
2 breach of probation conditions?

3 JUDGE HYMAN: Yes, thank you. Technically if you are on  
4 probation our case law has supported the legislative  
5 intent that this grant of leniency, you are still in a  
6 form of custody in a very, very loose way, because one of  
7 the other conditions of probation is going to be what's  
8 referred to as search and seizure, that is a law  
9 enforcement officer or a probation officer is allowed to  
10 search you, your home, looking for weapons without  
11 probable cause, because that's a condition of your  
12 probation and you are out of custody on this grant of  
13 leniency.

14 So with respect to probation violations the  
15 standard of proof is a preponderance, so it is not beyond  
16 a reasonable doubt, which is the Australian standard of  
17 proof, as I understand it.

18 Furthermore, in the United States you are not  
19 entitled, on violations of probation, to jury trials. As  
20 you and the Commissioners may be aware in the  
21 United States almost everything of a criminal nature is  
22 tried before a jury. It's extremely rare to have a court  
23 trial in the United States if you have the possibility of  
24 a jury trial.

25 MR MOSHINSKY: In terms of the volume of business that the  
26 court is dealing with, you have described the review  
27 process and I think you have indicated that a person on  
28 probation will come back regularly for review by the  
29 court. Can you give us a sense of how many cases a court  
30 is dealing with on any day, because we are conscious of  
31 the resource implications that that system may have?

1 JUDGE HYMAN: Of course. Let there be no doubt it is resource  
2 intensive. When I was doing the domestic violence  
3 calendar I had reviews three afternoons a week and I was  
4 doing somewhere between 40 and 50 reviews every afternoon.  
5 These reviews can take - if the person is complying and  
6 doing well, it can take as little as five minutes.

7 But then I always viewed this was an opportunity  
8 to almost do a Batterers' Intervention Program on a  
9 smaller scale. I believe it's very important to engage  
10 the batterer, ask how things are going, ask how they are  
11 doing, because if I have a report I go over it with them  
12 because the programs are supposed to give them copies of  
13 the reports and go over it with them and explain it to  
14 them, and most of the time they haven't done that or some  
15 of the times the defendants don't understand because of  
16 reading ability or for some other reason don't understand  
17 what's going on.

18 I think it's extremely important that they  
19 understand everything. So I will go over the report. If  
20 it's a good report, I will tell them it's a good report  
21 and try to encourage them, and then a longer review length  
22 if it's a good report. If it's a bad report, then they  
23 come back more frequently. If it's a bad report I explain  
24 it's a bad report. I explain why it's a bad report.  
25 I explain why it's a concern. I ask them to engage with  
26 me if they agree with the report or if they disagree.  
27 I encourage them if they - whether they agree or disagree,  
28 to talk to the person who wrote the report at the program  
29 to make sure that they understand.

30 One of my concerns - and I think it should be  
31 everyone's concern - is that everyone should feel that

1 they are treated fairly. If they think that the report  
2 writer didn't do them justice, then I want to give them  
3 another chance to engage that person and have them write a  
4 supplemental. Either they will agree that there should be  
5 some changes or they disagree. But at least the person  
6 should feel at the end of the day that they were listened  
7 to, because if they are not listened to then they are  
8 going to be angry, and who are they going to take that out  
9 on? The victim and the children.

10 The bad reviews obviously take longer than the  
11 good reviews. The other thing that I do is I front-load  
12 the bad reviews, because part of this is theatre. So if  
13 I have a person who I know is going into custody based  
14 upon information that I have received ahead of time,  
15 I have that person go first. I engage them, I explain the  
16 violation, et cetera, they go into custody in front of the  
17 room, and what happens is done in front of everyone, so  
18 that all these other people understand that this is  
19 serious stuff. So depending upon - probably on a daily  
20 basis you know that two to five people are going into  
21 custody, so you try and have those cases heard first.

22 MR MOSHINSKY: Just picking up that theme of the role of the  
23 judge and dealing in court with perpetrators, can we ask  
24 you about the earlier point in time when the civil  
25 restraining order is made in the first place. What  
26 process do you adopt or did you adopt in that situation?

27 JUDGE HYMAN: In the Family Court, I think it's extremely  
28 important to read a script. I'm a big believer of  
29 judicial scripts for sentencing, for intervention orders,  
30 for lots of repetitive things so you have consistency and  
31 so that things are explained. Unfortunately, a lot of

1 times things aren't explained and a person can actually be  
2 confused. So law enforcement needs to consistent,  
3 Probation needs to be consistent, the court needs to be  
4 consistent.

5 So you have a copy of a script that's commonly  
6 used where the judge reads it at the beginning of the  
7 calendar - this is not true for the criminal; that's a  
8 different story, that has to be done individually - but  
9 the judge reads the script to the entire room and then  
10 during the granting of the order process it's reinforced.  
11 "Did you hear the speech that the judge gave at the  
12 beginning of the calendar?" "Yes." "Just to quickly  
13 review it, this is the court's order, not the victim's  
14 order, so only a judge can modify the order. Do you  
15 understand that? Do you understand that this order  
16 prohibits you from any contact, that this order prohibits  
17 you from going to the school?" Whatever the order is,  
18 I go over it with them line by line to make sure that they  
19 understand what the order is.

20 This is important, one, because I want the person  
21 to understand; two, I want them to comply; and in the  
22 event that they violate the order then the prosecution,  
23 knowing what my style was, would get the transcript of the  
24 hearing so if the person later said during the criminal  
25 trial of the violation of the civil restraining order that  
26 they didn't understand, then they would have the  
27 transcript in terms of what was explained and the fact  
28 that the defendant indicated to the court that he did  
29 understand these various things. So it resolves a lot of  
30 cases that way, should they become criminal cases, when  
31 you go over everything, and it's the right thing to do.

1 MR MOSHINSKY: Judge Hyman, can I take you to paragraph 49 of  
2 your statement, where you make some observations in the  
3 middle of the paragraph about the importance of each part  
4 of the system being committed and working together. I was  
5 wondering if you could expand on those comments for the  
6 Commission?

7 JUDGE HYMAN: Yes, please. Thank you. It's extremely  
8 important that everyone be consistent. It's extremely  
9 important that everyone make it clear that they are agents  
10 of the court in the case of the police and Probation, the  
11 intervention programs, the substance abuse programs,  
12 whatever program the person is attending, and that in the  
13 event that the person is not complying there will be  
14 immediate consequences.

15 That is not done in a threatening way. That is  
16 done just as an explanation and further, "Look, I don't  
17 want you to get into trouble. I don't want you to get  
18 arrested. I don't want you to fail. I want you to  
19 succeed. These are common ways in which people have  
20 problems, and I don't want you to have a problem." I tell  
21 them when the conditions are being imposed that, "If the  
22 police don't do their job they are accountable to me. If  
23 Probation doesn't do their job, then I want to know why.  
24 So don't expect breaks from these people because they have  
25 to be accountable to me. Everyone's accountable. I'm  
26 accountable too. I'm accountable to the system. If I'm  
27 not doing what I should be doing, then there are ways for  
28 me to be held accountable as well."

29 MR MOSHINSKY: Can I ask you also to comment - in paragraph 50  
30 you refer to the significance of the local legal culture.  
31 I was wondering if you could expand on those comments?

1 JUDGE HYMAN: Yes. I think this is true throughout the world.  
2 Judges are representatives of the community in which they  
3 serve or where they serve. You can have a law, any law,  
4 and it's going to be enforced a little bit differently in  
5 the geographical area depending upon where you are and  
6 depending upon how the community feels. Let me give you  
7 an example.

8 In my county, fish and game violations are taken  
9 more seriously in the rural areas of my county. You can  
10 have San Jose, which is a million people. Then you can go  
11 an hour south and you will be in a rural area of a town of  
12 maybe 25,000 that has hunting and fishing. If you were to  
13 hunt or fish out of season and you are arrested and  
14 brought before a judge in that area, you are going to do  
15 gaol time for that fish and game violation. If you do it  
16 in San Jose, you are going to pay a fine.

17 The same thing is true, regrettably, with respect  
18 to matters of domestic violence depending upon how  
19 seriously the community takes it, how seriously the  
20 collateral - or your collaborative, rather, not  
21 collateral, partners in terms of the police - the police,  
22 my experience has been, frequently take their lead from  
23 the court. If they perceive the court as not taking  
24 domestic violence seriously, or if they perceive that the  
25 court is not taking violations of probation or violations  
26 of intervention orders seriously, then there's a chance  
27 that they may not either; whereas if the court  
28 communicates that the court wants the conditions of  
29 probation and the conditions of intervention orders  
30 followed to the letter, then they are more apt to follow  
31 it to the letter. The same thing with probation, and the

1 same thing with the programs.

2 One of the things that I did - and we do more of  
3 this outreach in the States than you do in Australia, and  
4 one of the reasons is because we are elected. Because we  
5 are elected, or potentially face elections, we want to go  
6 out in the communities as much as possible to let people  
7 know that we are available. Obviously we have ethical  
8 constraints in terms of some of the things that we can do  
9 and some of the things that we can say. But in terms of  
10 speaking to community groups about certain subjects we  
11 say, "Look, we take this seriously. These are important  
12 laws. Domestic violence is a serious social ill, and we  
13 are all involved in this together." That kind of thing.  
14 So that's a constant education thing.

15 Frankly, there might be some judges that don't  
16 feel as strongly, and when that happens the message goes  
17 out very quickly that Judge X is going to be a light  
18 sentencer on this particular issue, and sometimes if you  
19 have a choice between me or Judge X you try and steer your  
20 case, if you can, to Judge X. Of course, if you are me  
21 you try and do everything you can to prevent that. So  
22 that's reality. I think that's true of every culture. We  
23 try and prevent it. We try and communicate it's serious,  
24 and you hope for the best. But it's a constant struggle.

25 The other problem in the United States that  
26 fortunately you don't, and that's guns. If you have an  
27 intervention order, civil or criminal, you can't have a  
28 firearm. If you are convicted of certain offences that  
29 are domestic violence, you lose under federal law the  
30 privilege of owning a firearm for the rest of your life.  
31 For some people that's extremely serious and they fight,



1           they do what they can so as not to receive that  
2           consequence. To some people their gun is more important  
3           than seeing their children.

4 MR MOSHINSKY: Judge Hyman, those are the questions that I had.

5           I'm not sure whether the Commissioners have any questions?

6 COMMISSIONER NEAVE: No, we don't have any questions. Thank  
7           you, Mr Moshinsky.

8 MR MOSHINSKY: Judge Hyman, thank you very much for your time  
9           and participation in the Royal Commission.

10 COMMISSIONER NEAVE: Thank you very much, Judge Hyman. I don't  
11           think you can see me, but thank you very much indeed.

12 JUDGE HYMAN: Thank you so much for inviting me. It's been an  
13           honour.

14 <(THE WITNESS WITHDREW)

15 MS ELLYARD: Commissioners, the next witnesses are Joanne de  
16           Lacy and Glenn Rutter. I will ask them to come into the  
17           witness box and be sworn.

18 <JOANNE CATHERINE DE LACY, affirmed and examined:

19 <GLENN OWEN RUTTER, affirmed and examined:

20 MS ELLYARD: May I begin with you, please, Mr Rutter. What is  
21           your present role?

22 MR RUTTER: Currently I'm the Manager of Court Support and  
23           Diversion Services with the Magistrates' Court of  
24           Victoria.

25 MS ELLYARD: What - if you could perhaps list them - are the  
26           particular support services or arrangements that you are  
27           responsible for under that heading?

28 MR RUTTER: It's a portfolio of services we run. So one of the  
29           programs is the CISP program, which operates at three of  
30           our courts. Another program that I manage is the  
31           CREDIT/Bail Support Program, which is similar to CISP,

1           which operates at eight of our courts. I also manage the  
2           assessment referral court list, the ARC list, which  
3           operates at Melbourne Magistrates' Court. I also manage  
4           the criminal justice diversion program, which is a  
5           statewide program, and the enforcement review program,  
6           special circumstances list, which is statewide but sits at  
7           Melbourne in the Neighbourhood Justice Centre.

8 MS ELLYARD: What is your professional background?

9 MR RUTTER: I'm a social worker.

10 MS ELLYARD: In what areas have you worked particularly  
11           throughout your career prior to taking up your present  
12           role?

13 MR RUTTER: Prior to coming in to work for the Department of  
14           Justice and then the court I primarily worked in mental  
15           health and community health.

16 MS ELLYARD: May I turn to you, please, Ms De Lacy. What is  
17           your present role?

18 MS DE LACY: I'm currently the team leader at Sunshine CISP.

19 MS ELLYARD: How long have you performed that role?

20 MS DE LACY: I have been in that role since 2012.

21 MS ELLYARD: Prior to that what's your professional background  
22           been?

23 MS DE LACY: I started out in disability services not long  
24           after I started school, and over the years I have worked  
25           in disability services, gaining qualifications in welfare  
26           and counselling, and moved across to mental health  
27           services and have also worked in drug and alcohol  
28           services.

29 MS ELLYARD: The two of you have made a joint statement, which  
30           each of you has signed. It is dated 27 July 2015. From  
31           each of your separate perspectives, are the contents of

1           that statement true and correct?

2   MR RUTTER:   Yes.

3   MS DE LACY:   Yes.

4   MS ELLYARD:   May I turn first to you, please, Mr Rutter.  We  
5           have heard a little bit already about CISP.  Could you  
6           summarise, please, for the Commission what is the CISP?

7   MR RUTTER:   The CISP is a program operated by the Magistrates'  
8           Court that currently operates at Melbourne, Sunshine and  
9           Latrobe Valley courts.  When I'm talking about CISP,  
10          I suppose I'm also talking about our CREDIT/Bail Support  
11          Program, which is an older program which operates in a  
12          similar way to CISP but at eight other courts, and  
13          essentially in terms of the operational aspects it's  
14          largely the same program.

15                So the CISP program works with people who are on  
16          bail.  Currently it works with people who are on bail for  
17          criminal charges.  Its core work is to work with people in  
18          a case management function.  So what we do is we meet  
19          people and do an assessment - usually most commonly that's  
20          in custody, whilst they are on remand - ascertain their  
21          needs, provide a report to the court about what we think  
22          their needs are and what we could possibly do to support  
23          the person.  If they are accepted by the magistrate under  
24          the program, and if they are on remand, if they are  
25          bailed, then we case manage them for a period of normally  
26          about four months.

27                Our model of case management is that, having  
28          assessed their needs, we try and find services to address  
29          those needs in the community.  So some of our expertise is  
30          around assessment and some of our expertise is around  
31          navigating the service system with the person, making

1           nuanced referrals in terms of the right referral for that  
2           person based on the geography, based on all the sort of  
3           various categories of eligibility.

4                       Throughout that process often those people  
5           participating in the program are part heard before a  
6           magistrate, so there is a regular judicial review, and we  
7           provide updates to magistrates at that time.

8   MS ELLYARD:   Can I just stop you there.  You have indicated  
9           that the program is for people who have been charged with  
10          criminal offences?

11  MR RUTTER:    Yes.

12  MS ELLYARD:   And it's largely a bail program, so it's a program  
13          into which people are admitted as part of their being  
14          released on bail by the court; is that correct?

15  MR RUTTER:    That's its core function.  It does have the  
16          capability to do one-off assistance with basically any  
17          party to a legal proceeding, and we do do that.  At  
18          Melbourne, for instance, we have a dedicated staff member  
19          who just does - like, he performs a roving welfare  
20          function within the court.  So we have a capability to do  
21          once-offs, but for someone to do case management they  
22          currently have to be before the court on a charge.

23  MS ELLYARD:   Are there any limitations on the kind of charges  
24          that people face and whether that limits their ability to  
25          be part of the CISP program?

26  MR RUTTER:    There aren't.  There's no limits around the charges  
27          they are facing.  They need to be on bail, and I will add  
28          a second part to my answer around that.  But they need to  
29          be on bail and willing to participate in the program.  We  
30          take that pretty seriously.  If the person is not working  
31          with us, we go back to the magistrate and say, "This isn't

1 working" - - -

2 MS ELLYARD: So in practical terms is the program available for  
3 people who would otherwise perhaps not get bail?

4 MR RUTTER: I think you would probably have to talk to the  
5 magistrates when they are giving their evidence around the  
6 role of CISP in the bail decision. Our understanding is  
7 that we are able to provide some information to the  
8 magistrate around how some of the risks that that person  
9 may pose in the community can be addressed, and addressed  
10 in a meaningful real-time sort of manner. So we are not a  
11 bail - we become a bail condition if the magistrate so  
12 decides, but primarily what we are doing is in a way  
13 possibly changing the balance of the possibilities for  
14 that person.

15 So it's not as though if they don't get CISP they  
16 don't get bail. But sometimes having the opportunity for  
17 a CISP case management episode may influence the bail  
18 decision. But, yes, I have to emphasise you would have to  
19 talk to the magistrates around how they see that.

20 If I could just add I said a second part to my  
21 answer. We are also running a pilot program at the moment  
22 for the remand prisons funded by Corrections Victoria. So  
23 we have a component of CISP that currently operates for  
24 people on remand, and in a way what we are doing with that  
25 program is trying to identify people who, with appropriate  
26 supports, could stand the chance of getting bail. So  
27 generally our main program is on bail, but we do have this  
28 new program that's working in the remand prisons.

29 MS ELLYARD: Can I turn to you, please, Ms De Lacy. Mr Rutter  
30 has mentioned that this is a case management approach.  
31 How would you characterise I guess the flavour of the case

1 management and the purpose of the work that you and those  
2 who you supervise do with those who are on the program?

3 MS DE LACY: It is very individual. So each assessment is  
4 based as an individual, so talking to the person about  
5 what are the issues that have brought them here, what are  
6 the issues perhaps that they have been dealing with over a  
7 number of years, and sometimes a great many years. Some  
8 of the people we see might well have been before the court  
9 many times. Some, this might be their first time. So  
10 it's around finding - talking to them about how they found  
11 themselves here today, and what are the issues that have  
12 led them to where they are today. A lot of the times  
13 that's around issues with mental health and drug and  
14 alcohol. But it could be a range of issues. It could be  
15 homelessness. It could be family breakdowns.

16 So our role in the case management is to build  
17 that individual treatment plan, to talk to the person  
18 maybe about what they have done before that's worked, what  
19 hasn't worked - that's equally as important - what they  
20 might have done a million times before and just go,  
21 "I can't do that again." So actually really getting them  
22 involved in what it is that they want to do and what might  
23 actually help them move forward.

24 MS ELLYARD: When you talk about what are the issues that's  
25 brought them to where they are, you are identifying then  
26 what they identify as the issues that are underlying the  
27 criminal offending?

28 MS DE LACY: Yes, that is right.

29 MS ELLYARD: Or the alleged criminal offending?

30 MS DE LACY: So it might be that, for instance, they have a  
31 history of trauma, and we frequently find that. A lot of

1 the people we work with have histories of trauma in one  
2 form or another, whether it is trauma from - as a child or  
3 as a young adult, whether it's family issues, whether it's  
4 assaults within the community, but there's been trauma  
5 related. So we find that a great deal.

6 MS ELLYARD: Why is that relevant? Why is the approach of CISP  
7 an approach based on identifying underlying issues?

8 MS DE LACY: Because people don't choose to end up in gaol.  
9 They don't choose to end up - they don't set that out as  
10 their - "That's going to be my life goal, to end up on  
11 remand". They just find themselves there because they  
12 have tried to cope, they have tried to cope, they have  
13 tried to cope, and generally speaking on their own. They  
14 might have tried some things, maybe given it one or two  
15 goes but then given up easily because it's not fixed it  
16 straight away.

17 Often people are looking for a quick fix and, as  
18 you would and I would know, that doesn't happen. So they  
19 try something for a little while, it doesn't work, it  
20 doesn't fix it straight away, so they leave it, thinking  
21 that that's never going to work.

22 MS ELLYARD: So from your perspective what's the relevance of  
23 looking at those underlying issues as part of a criminal  
24 justice program like CISP? Why is addressing underlying  
25 issues a useful thing for someone who's facing criminal  
26 charges to be - - -

27 MS DE LACY: Because if we can address the underlying issues  
28 and get those remedied, get the people - getting them into  
29 treatment, getting their mental health sorted, getting  
30 them into drug and alcohol services where they are either  
31 reducing or abstaining, there is no reason for the

1           offending. We are reducing the risks of reoffending.

2 MS ELLYARD: So how does it work in practical terms? I know  
3           you are a manager at the moment, but say you were a case  
4           worker. How many people would you have on your books at  
5           any one time?

6 MS DE LACY: We try and keep it to a maximum of around 20.  
7           Sometimes it goes a little over, depending on what  
8           court - - -

9 MS ELLYARD: How frequently are they coming in to meet with  
10          you, and what kind of things are being discussed when they  
11          do meet with you?

12 MS DE LACY: In the initial stages, so that first month, we  
13          would want to see them weekly because it takes some time  
14          to get treatment up and running. We don't want to leave  
15          people just sort of hanging in the breeze. So they will  
16          be coming in weekly to see us.

17 MS ELLYARD: For what period of time will they be seeing you?

18 MS DE LACY: That can range anywhere from - depending, really,  
19          how the person is presenting, anywhere from half an hour  
20          to an hour. It depends on how willing they are to talk,  
21          how quickly they are able to build that rapport I guess  
22          with the case manager.

23 MS ELLYARD: Mr Rutter, then what's the balance between the  
24          work that's done directly by the case manager and what's  
25          done by way of referrals? How are those decisions made?

26 MR RUTTER: Yes, and that's a continual tension that we have,  
27          is we have a very skilled workforce in the CISP program  
28          and one that the court is really proud of. So they have  
29          some capability to provide some counselling interventions  
30          and things like that.

31                   Our general approach is that we try and refer



1 particularly to have specialist needs met and keep the  
2 role of the case manager primarily around motivation. So  
3 keeping people motivated to make changes in their life is  
4 really important, a big part of what a case manager does,  
5 doing crisis interventions because this group of people  
6 don't just sail into the sunset happily. They come back  
7 and say, "I have just become homeless," or "I have just  
8 done this. Can you help me?"

9 So whilst there might be the weekly appointments,  
10 we have many people who turn up randomly and they might  
11 take three hours because they have just become homeless  
12 and we need to resource the housing. So it's dealing with  
13 the crises.

14 It's doing some harm minimisation around things  
15 like drug and alcohol. It's talking to people about the  
16 consequences of their offending. But generally treatment  
17 as in medical treatment, full psychological interventions,  
18 violence prevention programs, those types of things we  
19 send out.

20 MS ELLYARD: Do you fund those referrals that you make?

21 MR RUTTER: It's a mixture. We would go broke if we funded  
22 everything. We have a significant funding arrangement  
23 around drug and alcohol that we contribute, alongside  
24 Corrections Victoria, to the COATS scheme, which is a  
25 forensic drug and alcohol treatment scheme that operates  
26 in Victoria. We also fund a certain amount of housing,  
27 and things like - one of the things we can do is readily  
28 fund a week's emergency accommodation for someone. We can  
29 fund their pharmacotherapy, their methadone, for a couple  
30 of weeks, things like that, pay their dispensing scripts  
31 for their anti-depressants for a month. Things like that

1 we can do and we do do that routinely.

2 We expend considerable funding on specialist  
3 assessments. So neuro-psychologist assessments is  
4 something we - we buy about 100 of those a year. We are  
5 probably one of the biggest purchasers of them in the  
6 state, I suspect, but also send people off to  
7 psychologists for specialist assessments, forensic  
8 psychiatrists. We are funding a lot of that sort of  
9 stuff. We don't tend to fund the treatment and the  
10 support. So what we try and do is sometimes firm up a  
11 diagnosis so we know which service sector the person  
12 really belongs in, and then we try and get the person into  
13 those programs and do some advocacy. Part of our role is  
14 advocacy with those services.

15 MS ELLYARD: One of the witnesses the Commission will hear from  
16 later today who is a criminal lawyer gives evidence of an  
17 experience one of her clients had who was on the CISP  
18 program, had to go to men's behaviour change, couldn't  
19 afford the upfront fee and so didn't do the course and  
20 then found himself in trouble with the CISP program. It  
21 was a fairly small amount of money that in that particular  
22 person's experience was a barrier to them accessing the  
23 program. Are there opportunities within the CISP program  
24 for that kind of thing to be funded, where people haven't  
25 got resources?

26 MR RUTTER: For the men's behaviour change, we don't fund the  
27 cost of the men's behaviour change program itself. That's  
28 funded by the Department of Human Services or with the  
29 division the court has some funding arrangements. A  
30 number of the programs charge a small gap fee, which  
31 I understand they use for things like victim support

1 programs and things like that. So they cross-subsidise  
2 other programs.

3 We have the capability to fund that, and it's an  
4 interesting one, that particular situation. Some of the  
5 providers of the men's behaviour change programs don't  
6 want us funding it. They think the person should be  
7 making a financial contribution. That is part of their  
8 motivation and their commitment, so we step back at that  
9 point. For others we actually think the person - we would  
10 agree with that, that the person should be funding it  
11 themselves, so we don't fund. But in some other  
12 situations we will fund that \$10 a session sort of a cost.

13 MS ELLYARD: Can I turn back to you, Ms De Lacy. From your  
14 perspective, are people charged with family violence  
15 related offences a reasonable cohort within the group of  
16 people that you encounter? Are they common?

17 MS DE LACY: Yes, they are.

18 MS ELLYARD: To the extent that you can generalise about them,  
19 is there any difference between the kind of complexity of  
20 issues that those offenders present in comparison with  
21 people who have committed other kinds of offences, whether  
22 it be stranger violence offences, drug offences?

23 MS DE LACY: They are presenting with the same sorts of  
24 treatment issues from our point of view. So they are  
25 presenting with drug issues. They are presenting with  
26 alcohol issues. They are presenting with mental health  
27 issues. So they are still presenting with the same sorts  
28 of issues that we would see in our other client group.

29 MS ELLYARD: Is there any difference, then, in the way in which  
30 people charged with family violence offences are treated  
31 by you in terms of how frequently you monitor them or the

1 approach that's taken to their supervision?

2 MS DE LACY: And again that's very individualistic. We treat  
3 the person as they are presenting. For instance, if  
4 family violence has been something that's recurring,  
5 that's something that we want to be keeping a close eye  
6 on. So we will be more inclined to see those people more  
7 frequently. If it's per chance the first time for a  
8 breach before the court, we will take that as they go, so  
9 to speak. So if they are showing up for their  
10 appointments, if they are engaging in treatment, then that  
11 person will be seen as we would normally. But if it looks  
12 like, for instance, that they are not showing up, that  
13 they are missing appointments, we will pull the lead in,  
14 we will pull the rope in on that person and just sort of  
15 get them coming in more frequently.

16 MS ELLYARD: What are the reporting lines? You mentioned  
17 earlier, Mr Rutter, that many people who are on your  
18 program are in effect part heard before a magistrate, who  
19 has some ongoing role in sentencing the person or dealing  
20 with the criminal charges. What's the line of  
21 communication that exists back from the CISP workers to  
22 the magistrate about whether someone is doing well or  
23 doing poorly perhaps with the program?

24 MR RUTTER: The day-to-day line would be when they come back to  
25 court to appear before the magistrate we will provide a  
26 written report, and if we are capable we will go into  
27 court and talk to that report. We also have a strong  
28 commitment that when someone stops showing up to us and  
29 turning up to appointments, which means they are usually  
30 in breach of their condition to comply with the CISP  
31 program, we will notify the informant. So we have

1           that - - -

2   MS ELLYARD:   When you say you notify the informant, you will  
3           notify the police officer who laid the underlying criminal  
4           charges?

5   MR RUTTER:   Yes, yes, or the prosecutor, saying, "This person  
6           has become non-compliant.  You may want to consider  
7           following this person up.  You may want to consider  
8           seeking a warrant to revoke the bail."  That's -  
9           particularly with the family violence matter, I think we  
10          have been really emphasising that with the case managers,  
11          that that's something they have to keep an eye on.

12                 Jo talked about the leash.  If the leash is  
13          starting to be pulled on, then we need to say, "This is a  
14          volunteer therapeutic program.  If the person is not  
15          willing to work with us, then it has to go back before the  
16          court."

17   MS ELLYARD:   Can I ask you to comment - you mentioned the  
18          therapeutic nature of this program.  Obviously court  
19          supervision schemes or supervision schemes exist on a  
20          continuum, where therapeutic is at one end and pure  
21          supervision is at the other end.  Where would you place  
22          the CISP program on that continuum?

23   MR RUTTER:   I think we are somewhere in the middle.  We have a  
24          therapeutic focus in terms of we are trying to change  
25          those underpinnings of offending.  But we are not care  
26          bears.  In a way we are neutral parties in this in terms  
27          of we are employees of the court.  Our accountability is  
28          very clearly to the magistrates.  So in a way we don't  
29          take sides in the legal - in what's going on legally for  
30          the person.  What we consider as our obligation is to help  
31          assist the person at the point at which they are not

1 wanting our - indicating they are not wanting our  
2 assistance by not turning up. Then we go back and we put  
3 it back to the police informant, saying, "They have pulled  
4 out." In that way we are keeping - we do have a  
5 supervisory function, but that's not our be-all and  
6 end-all. We also try and assist the person, which is why  
7 I would say we sit somewhere in the middle.

8 MS ELLYARD: Ms de Lacy, would you agree with that?

9 MS DE LACY: Yes, I would. We like to say we like to use the  
10 carrot or the stick depending on the situation we are  
11 presented with. I think we are quite adept at doing that.

12 MS ELLYARD: Can I ask you about something that you raise in  
13 your witness statement, which is the cohort of offenders  
14 who come through the CISP program who aren't there because  
15 of family violence offences committed by them but who  
16 might well be there because part of their back story is an  
17 experience of victimhood. Can I ask you to talk a bit  
18 about that cohort?

19 MS DE LACY: Yes. That's becoming more prevalent within our  
20 program. It's certainly something we've noticed over -  
21 that's increased over the years. It's not - when we first  
22 assess somebody in custody it's not necessarily what we  
23 find out straight away. We might find out in subsequent  
24 appointments. Once they are bailed, once they have  
25 started on our program it comes out that they are in fact  
26 dealing with currently family violence in their lives or  
27 that there's been a significant issue of this. It's not  
28 something that these predominantly women talk about  
29 easily. It's something that comes out with time.

30 It's difficult to manage that because we are  
31 dealing with women who are either currently dealing with

1 significant trauma on a daily basis or have a long history  
2 of trauma, and how they are then able to do a program like  
3 ours whilst dealing with that is particularly difficult.

4 MS ELLYARD: So if we take a practical example of a woman who  
5 might be charged with serious drug offences, she's placed  
6 on your program and as part of her work with you reveals  
7 that her home life is characterised by family violence,  
8 and that's having a practical impact on her ability to  
9 comply with her conditions of bail, how can that situation  
10 be managed? What do you do?

11 MS DE LACY: Yes, what do we do? That's our never-ending  
12 question. As an example, we have recently had a woman  
13 who's been dealing with exactly that. We found out within  
14 one or two appointments that there's been extreme trauma.  
15 She's been the victim of a lot of violence within her  
16 home; and how do we then manage that, how do we support  
17 her in her court obligations whilst also managing the  
18 risks of what's happening for her at home? Particularly  
19 if that person is still in her life, might be attending  
20 court with her, the person doesn't really have an open  
21 opportunity to talk about that easily. So what we have to  
22 do is try and refer somebody like that to services that  
23 don't pose a greater risk to her.

24 For instance, the person I'm thinking of, we had  
25 the service come to the court. They came a little bit  
26 earlier. They weren't apparent. They met in our offices.  
27 Then the client attended as a normal appointment but was  
28 in fact seeing a woman support service. So we have to get  
29 a little bit, I guess, sneaky about some of the things  
30 that we do.

31 MR RUTTER: If I could add to that particular story because

1 some of that story, if it's the person I'm thinking of,  
2 some of the story came to me from Jo, we have our own  
3 processes around risk management, and there was a  
4 significant amount of safety planning done with that  
5 person, including, in terms of some of the discretionary  
6 funds we hold, making sure that she had a taxi voucher  
7 that she could keep hidden so that she could then access  
8 as an escape pathway. My understanding is there was also  
9 a phone provided, one of those off-the-shelf mobile  
10 phones, so that she could then ring the taxi. So there  
11 was a significant amount of safety planning done with that  
12 person, who is actually in the court on criminal charges  
13 but we are able to do a whole lot of victim support work  
14 and link her with the very effective victim support  
15 agencies.

16 MS ELLYARD: So it would appear, then, amongst the cohort of  
17 people who come through CISP we have people committing  
18 family violence offences where the underlying  
19 circumstances relate to perhaps mental health, drug and  
20 alcohol; you also have people committing other kinds of  
21 offences where the underlying issue is family violence?

22 MS DE LACY: That's right, yes.

23 MS ELLYARD: Can I turn then to the implications of a program  
24 like yours for broader use. There are a number of  
25 submissions that have been made to the Commission that  
26 suggest that a program such as yours might have the  
27 potential to be more broadly used in cases of family  
28 violence offending, either for all respondents to  
29 intervention orders or at least for all people charged  
30 with a breach. As a matter of philosophy first, can  
31 I invite you to comment on the applicability of a



1 therapeutic model like yours for a broad cohort of, say,  
2 for example, everyone who is charged with a breach of an  
3 intervention order?

4 MR RUTTER: I suppose even broader from the actual question you  
5 have asked is the way the CISP program is structured is  
6 it's a flexible model. We respond to what's going on. So  
7 five years ago we weren't dealing with ice. We are now  
8 dealing with ice day to day. A recent snapshot survey we  
9 did within the program found 53 per cent of our  
10 participants are using ice. So that's now part of what we  
11 are working with. So we modify, we review our practices.  
12 So we have this ongoing continuing evolution of the  
13 program. So it's a flexible model, not fixed on one  
14 particular thing. One of the reasons we can keep it  
15 flexible is we have an in-house highly skilled staff group  
16 which we can then embed some more training in.

17 For family violence there's nothing in the way  
18 the program is set up other than it has current guidelines  
19 that would stop it moving in to, say, working in the civil  
20 space, so working at the point of an intervention order as  
21 opposed to waiting as someone's charged with a criminal  
22 offence.

23 Similarly, we are already working with victims.  
24 So, again, it might be a bit of skilling up for some of  
25 our staff around having a case management process for  
26 victims, at least until we can then link them to  
27 appropriate support services, which would be I think the  
28 focus that we would aim at.

29 But for us, as we have mentioned in our  
30 statement, I think what CISP does really well is deal with  
31 those underpinnings of offending. So there may be some

1 people in the family who commit acts of family violence  
2 who don't have underpinnings of offending, they are  
3 misogynists, and we are not quite sure that they would be  
4 suitable for our program. But there are many people who  
5 commit acts of family violence whose offending risk can be  
6 reduced - maybe not completely mitigated but can be  
7 reduced - by addressing those underpinnings.

8 MS ELLYARD: Ms De Lacy, do you agree with that?

9 MS DE LACY: Yes, I do.

10 MS ELLYARD: So let's turn then to I guess the success of the  
11 CISP program. Have there been any evaluations of whether  
12 the kind of intensive therapeutic based intervention that  
13 CISP offers impacts on people's rates of reoffending?

14 MR RUTTER: Yes, we did an external evaluation a number of  
15 years ago. We are currently refreshing that data. The  
16 evaluation, which was looking at - CISP is now nine years  
17 old. This was looking at the first three or four years of  
18 its operations - suggests that looking at a two-year out,  
19 which is our window, we look two years post the program,  
20 that we do actually influence offending patterns, both  
21 reductions of offending but also drops in severity of  
22 offending. It's sort of interesting that a four-month  
23 program can have an impact two years out. We have some  
24 strong evidence, and a fairly robust methodology that has  
25 been externally reviewed itself by the Auditor-General  
26 that it - it's held up.

27 MS ELLYARD: One of the things that you say in your statement  
28 is that sometimes it doesn't work straight away, people  
29 come back a couple of times?

30 MR RUTTER: Yes.

31 MS ELLYARD: And someone might say, "They have come back. Your

1 program must have failed." What would your response,  
2 Ms De Lacy, be to the suggestion that people are coming  
3 back and doing it multiple times?

4 MS DE LACY: No, not at all. What we routinely see is that  
5 people can come back multiple times but each time there  
6 are some small steps in change. It often takes people a  
7 long time to break - people don't fall into chaos in a  
8 short amount of time. We are talking about people who  
9 have been having issues for five, 10, 15, 20 years. It  
10 takes a lot of time to repair that, and it can take  
11 multiple episodes of CISP, for instance, to begin  
12 addressing that. That's what we do see.

13 For instance, we might reassess somebody and say,  
14 "What worked last time? What was happening? What's  
15 different this time? What can we change? What can we do  
16 a bit more of? What's working for you? What worked  
17 really well then, and how do we do a bit more of that?"  
18 They are small steps. They are not big leaps. They are  
19 small steps in change. We know that change can take some  
20 time.

21 MS ELLYARD: But those people who come back, do you see I guess  
22 a trailing away, for example, in the seriousness of their  
23 offending - - -

24 MS DE LACY: Yes, absolutely.

25 MS ELLYARD: Or the seriousness of the intervention that they  
26 need from you?

27 MS DE LACY: Yes. They might start out, for instance, with agg  
28 burs or burglaries, and what we see is they are moving  
29 down into the theft related offences.

30 MS ELLYARD: Then do you see them graduate out, as it were, of  
31 the program?

1 MS DE LACY: Yes, and that's the enjoyable part. They might  
2 come back maybe to support family, but they are not back  
3 at the courts for themselves.

4 MS ELLYARD: Can I ask you then to take up the issue that you  
5 have raised already, Mr Rutter, about the applicability of  
6 your kind of model and the limitations if there is no  
7 underlying therapeutic needs. What other kinds of models  
8 exist in the court at the moment that might be models that  
9 the Commission could look to in terms of the way in which  
10 people might be supervised not just through a pure  
11 therapeutic approach but through other approaches to  
12 addressing behaviour?

13 MR RUTTER: We probably haven't talked enough about it, but a  
14 key part of the way the CISP program works is the role of  
15 the magistrate and the supervisory role. I think there's  
16 some benefit in having people appear back before a  
17 magistrate with or without a support service there  
18 providing additional information to actually have that  
19 connection with the court and the reminder that the person  
20 is before the court, "This is a legal process and you are  
21 expected to comply."

22 MS ELLYARD: From your observation does that return to the  
23 magistrate play some kind of incentive role for  
24 participants?

25 MR RUTTER: I think it's an important ingredient. I don't know  
26 whether you are going to ask me later about the assessment  
27 through a court list, but that's certainly a key part of  
28 the way that particular program works. But I do think  
29 that judicial monitoring, coming back before the same  
30 magistrate and there being an accountability to the person  
31 of the magistrate in the court is a really important

1 process. So that straight supervision can work quite  
2 well. Then when you add the layers of different programs  
3 on to that and particularly the objective information that  
4 can also be provided to the magistrate from those  
5 programs, I think that's quite powerful.

6 MS ELLYARD: Ms De Lacy, from your perspective does the  
7 knowledge that there's a magistrate as part of the CISP  
8 process add something to the process?

9 MS DE LACY: Absolutely. I'm a strong believer in the  
10 monitoring because I have been with this program now for  
11 six and a half years and what I have seen is the value of  
12 people showing up in court visibly. They are not just an  
13 unknown offender before the court being dealt with. When  
14 you have judicial monitoring that person starts showing  
15 up. They are being heard. Somebody gets to see how they  
16 are, how they are progressing. They know their name.  
17 They know a bit of their back story. They know how they  
18 are going on whatever program or order that they are on.

19 There's immense value in that in showing up in a  
20 system, because a lot of the people that we deal with are  
21 used to being invisible. They live on the fringes or they  
22 remain invisible within whatever sphere that they are in.  
23 They don't show up. So to show up suddenly in a system  
24 like CISP or with judicial monitoring has a real powerful  
25 effect on somebody. You are not just a nobody anymore.

26 MS ELLYARD: May I ask you then more generally about the  
27 problem solving approach that I think you mentioned  
28 earlier, Mr Rutter. A problem solving approach is a  
29 particular approach to court processes, and there are a  
30 couple of lists I think within the Magistrates' Court,  
31 including one under your supervision which explicitly

1 adopt this problem solving model. How does that work?

2 MR RUTTER: If you take the CISP program, the CISP program  
3 operates in a mainstream court setting with the magistrate  
4 sitting maybe with - there's basically people waiting to  
5 be heard, so it's a busy place. The magistrate is on the  
6 bench. The person is there in the body of the court or in  
7 the box. There's a certain amount of conversation that  
8 can happen between a magistrate and an accused in that  
9 setting, but it's not very intimate and it's very public.

10 What we have done in some of the problem solving  
11 courts - so drug court is one, the Drug Court of Victoria  
12 which is based in Dandenong and the assessment referral  
13 court list, the ARC list, at Melbourne - is basically  
14 change the environment. So, first of all, we change the  
15 physical environment so we have a more intimate setting.  
16 In the ARC list the magistrate sits at the Bar table  
17 opposite the accused, so they are a metre away, which is  
18 particularly hard for the magistrates to sit for a day and  
19 make eye contact. It's hard work.

20 MS ELLYARD: Can I just stop you there. Let's just set out  
21 what the ARC list is. That's the assessment and referral  
22 court list, and that's a list specifically designed for  
23 people who have mental health issues underpinning their  
24 alleged offending.

25 MR RUTTER: Mental health or cognitive impairment. It works  
26 with mental illness, intellectual disability, brain  
27 injury, neurological conditions.

28 MS ELLYARD: In those cases if they are referred to that list  
29 the entirety of their experience of the criminal process  
30 takes place through this much more intimate face-to-face  
31 model; is that correct?

1 MR RUTTER: Most of it, yes. It becomes a list within the  
2 court. So they come to the same - rather than being dealt  
3 with in terms of summary case conference, going to plea,  
4 get sentenced, off you go, we hold them in the list and we  
5 hold them in the list for up to 12 months. The average is  
6 about 10 months. They come back on a monthly basis. They  
7 come back into the court list on a monthly basis and talk  
8 to the magistrate.

9 Behind the scenes we have the equivalent of a  
10 CISP program, a case management program, that's working  
11 with all those referrals, talking to the person on a  
12 regular basis and making all the linkages. But in the  
13 courtroom itself we have a very different process where  
14 there's a conversation that happens between the magistrate  
15 and the program participant. We have prosecutors and  
16 Legal Aid or other legal reps at the table. We often have  
17 family members come and sit at the Bar table. I have seen  
18 kids at the Bar table. We have our staff at the Bar  
19 table. It looks and feels like a meeting.

20 But what actually happens is primarily a  
21 conversation between the magistrate and the participant.  
22 Your colleagues who attended as legal reps don't get to  
23 say much, which is an unusual situation for them, because  
24 most of the conversation is this behavioural change  
25 motivational conversation between the magistrate and the  
26 participant. We find that the participants really engage  
27 with their magistrate. We have a number of magistrates  
28 who sit, but the individuals are hooked to one magistrate  
29 and it becomes a very powerful behaviour change.

30 The magistrates, as they talk to the person, get  
31 a handle on what that person's life is, what's going on.

1 So it gets into the nitty-gritty. The conversation  
2 actually is about whether the person is turning up to  
3 appointments, what changes they have made. The legal  
4 stuff, we try and do most of the pleas before they  
5 commence, and then basically what we are doing is delaying  
6 sentencing to the end.

7 MS ELLYARD: So this then becomes a 12-month period of the  
8 person being assisted to change underlying issues and  
9 coming back regularly to talk with the magistrate on how  
10 he or she is progressing?

11 MR RUTTER: Yes.

12 MS ELLYARD: Have there been any assessments of the success of  
13 that program?

14 MR RUTTER: We have had two external evaluations; most recently  
15 one last year. Whilst currently the results are Cabinet  
16 in confidence, what I can probably say is the people  
17 coming into the program have had significant criminal  
18 records: about 100 convictions each; 15 years before the  
19 Magistrates' Court on average; so they are well known to  
20 the court. The reason they are well known is they keep  
21 offending because of their underlying conditions.

22 Recidivism results have been quite outstanding  
23 following that. So we have seen significant drop-offs of  
24 offending. For people who have basically spent their life  
25 coming to court, we are not seeing them. We have had some  
26 really, really good results and some individual stories of  
27 people who have cost the taxpayer millions of dollars in  
28 legal fees and supports and so forth who by just actually  
29 some good diagnosis and some good treatment have actually  
30 then dropped off the radar for everyone. That's a program  
31 that's been designed for a particular cohort, but its core



1 elements are applicable to other groups.

2 MS ELLYARD: So then, against that backdrop of the various  
3 services that are offered, in paragraph 59 of your joint  
4 statement you have identified, I suppose, what might be a  
5 suite of ways in which different approaches could be taken  
6 to family violence matters. I wonder if you, between you,  
7 could just summarise, I suppose, what that suite might  
8 look like, the different approaches that are available for  
9 people at different stages.

10 MR RUTTER: For us I think the CISP program provides a good  
11 workhorse model that can move between people potentially  
12 who are respondents who have come before the court on  
13 intervention orders, something like CISP could kick in at  
14 that point, could work for the person for a period of  
15 time. If they breach it would also work with them at that  
16 point. Potentially once an applicant support worker has  
17 worked with someone who is a victim of family violence and  
18 sees that there is some underlying needs there that can't  
19 be dealt with quickly, then potentially something like  
20 CISP could be used to case manage them for a period of  
21 time and to link them to appropriate services. Again, our  
22 model is not to case manage and hold on forever. We make  
23 sure everything is stable and then we take the hands off  
24 and pick up the next person.

25 For someone with more entrenched issues then  
26 something like the problem solving court type model with  
27 an ARC list could work. The caveat for that is I'm not  
28 quite sure that that model works with people with more of  
29 an antisocial presentation. I don't think that's the  
30 right model. They tend to want to game that and play it  
31 off. I think it works really well with those who are

1 willing to engage in a genuine way. But there's a group  
2 of people we have tried to keep out of the ARC list  
3 because we don't think it's the right model.

4 So I do think there is space for the other models  
5 that are being trialled around the state, the RAMPS and  
6 things like that. I think there's this group of high-risk  
7 repeat offenders who need something that isn't as  
8 therapeutic, who need a high level of supervision and eyes  
9 on what they are doing.

10 MS ELLYARD: If we think about that spectrum who are at the  
11 supervision end rather than the therapy end.

12 MR RUTTER: Yes. But within the therapeutic end, with the  
13 applicant and respondent workers, with maybe some  
14 assistance from our CISP workers around some one-off  
15 referrals, case management for a period for those who need  
16 it and then triaging a deeper, more intensive model for a  
17 period of time for those who would benefit from it.

18 MS ELLYARD: I would probably be stating the obvious, but this  
19 kind of model would be quite resource intensive, wouldn't  
20 it?

21 MS DE LACY: Yes.

22 MS ELLYARD: Can I ask you, Ms de Lacy, to spell out the number  
23 of cases that a case manager in a case management approach  
24 at CISP at the moment might see through in a year?

25 MS DE LACY: I think we wouldn't want to see - is it more than  
26 50?

27 MR RUTTER: It's about 50.

28 MS DE LACY: It's about 50.

29 MS ELLYARD: So 50 per case manager for a year.

30 MR RUTTER: For case management.

31 MS ELLYARD: That involves, I think as you have identified,

1           perhaps at the beginning weekly but then at least monthly  
2           face-to-face meetings?

3 MS DE LACY: No, fortnightly.

4 MS ELLYARD: If that were the model to be rolled out to a  
5           broader category of people we would need to find the money  
6           for it.

7 MS DE LACY: That would be a lot of money.

8 MS ELLYARD: But, from your point of view, what would you say,  
9           I suppose, about whether there is any benefit in investing  
10          the money at that end rather than at any other part of the  
11          process?

12 MS DE LACY: I think there's probably a need for everything,  
13          really. Glenn is probably better to speak to this, but  
14          there's a group that we are best sort of staying with, and  
15          I think we have articulated that today, but it doesn't  
16          mean to say there's not space for other types of models.

17 MS ELLYARD: One of the things that you say at the end of your  
18          statement is that any increase in CISP would require an  
19          increase in the availability of the services on which you  
20          rely that you don't provide yourself, and I wonder if you  
21          could just comment on that.

22 MR RUTTER: CISP, as it currently stands, is able to manipulate  
23          and work within the existing service system. Were it to  
24          get bigger then it might put stresses and strains on the  
25          service system in particular places and there would need  
26          to be a ripple through. But I also suspect that some of  
27          the things that are happening as a result of family  
28          violence is already putting a stress on the service  
29          system.

30                        So I don't think CISP creates a demand for  
31          services. I think the demand is there. It probably

1 brings to the surface an underlying demand. I haven't  
2 been clear in what I have said I don't think.

3 Something like homelessness; we know that family  
4 violence is a key cause of homelessness both for men and  
5 for women. If you look at people who are presenting to  
6 homelessness services, family violence is one of the  
7 reasons. So CISP wouldn't contribute to that, but  
8 certainly by identifying homelessness as an issue and  
9 facilitating referral we might be seen to be increasing  
10 the referral rate, but in reality those people are going  
11 to be homelessness anyhow.

12 MS ELLYARD: You are attempting to solve a problem that already  
13 existed elsewhere.

14 MR RUTTER: Yes. In a way what we are doing is directing  
15 traffic. So we might be able to do it in a more efficient  
16 way than letting the person wander around and become  
17 completely homelessness before they front up to an agency;  
18 whereby spotting that this is an issue and getting on the  
19 front foot we might be able to preserve tenancy, we might  
20 be able to get them into something before they have  
21 actually hit the street.

22 It's an interesting dilemma. Does it create  
23 extra demand or not? In some places like drug and alcohol  
24 treatment it may be trying to push more people into the  
25 service system. For things like homelessness, I think  
26 they are going to be in the service system anyhow and  
27 probably their situation deteriorates to the point where  
28 they are actually going to be more resource intensive to  
29 retrieve.

30 MS ELLYARD: I understand. Do the Commissioners have any  
31 questions for these witnesses?

1 DEPUTY COMMISSIONER NICHOLSON: Yes. I was wondering what's  
2 your budget to spend on average per client.

3 MR RUTTER: For CISP our current costing is around \$5,500 an  
4 episode. That includes staffing, a fairly generous  
5 allocation for drug and alcohol. So drug and alcohol  
6 accounts for \$1,000 of that. Of that breakdown, it would  
7 be about \$1,000 for drug and alcohol, \$500 for other  
8 working brokerage, and then the remaining cost is just our  
9 operating cost, staffing and buildings and things like  
10 that.

11 DEPUTY COMMISSIONER NICHOLSON: Over and above the  
12 practitioners you employ, it's only about \$1,500?

13 MR RUTTER: At the moment for leveraging into the service  
14 system we spend about \$1,500 per person on average.

15 DEPUTY COMMISSIONER NICHOLSON: So when you are referring  
16 clients to alcohol and drug services or mental health  
17 services or homeless services what do you find about their  
18 availability?

19 MR RUTTER: It varies from place to place and from need to  
20 need. I think there's significant issues in the service  
21 system that open up particularly in regional areas. If  
22 you take mental health, for instance, we have been talking  
23 a lot about mental health within our program. For those  
24 people who have a very serious mental illness who meet the  
25 eligibility for an area mental health service they get a  
26 first-rate service.

27 For someone who doesn't meet that particular  
28 criteria - and throw in the fact that most people we work  
29 with have multiple conditions, not just one; they have a  
30 brain injury, they have an addiction and they have, say,  
31 an acute depression, so they are a little bit more

1 difficult to work with - they won't necessarily get over  
2 the line for an area mental health service.

3 But, dropping beneath that, our main option is to  
4 go to a GP and ask them to do a mental health care plan  
5 and send them to a psychologist and private practice. In  
6 some places we have really good community health centres  
7 that we can use. So this is our expertise, is trying to  
8 find an answer for that person. But there's a real gap in  
9 the mental health sector for those people who are complex  
10 but not clinically complex enough to reach the fence line  
11 for the area mental health services.

12 For drug and alcohol, we have had a significant  
13 reform over the last 12 months in Victoria. The service  
14 system is settling down, but we still find some localised  
15 delays. But because we actually buy into that sector we  
16 get reasonably good access.

17 DEPUTY COMMISSIONER NICHOLSON: When you say you buy into it -  
18 - -

19 MR RUTTER: Through the COATS scheme. We are actually funding  
20 places for people. That's one of our big areas of  
21 spending. The homelessness sector - I used to have hair -  
22 that's one of our biggest trouble areas. We have many  
23 people, particularly when they go into remand they lose  
24 their accommodation, trying to find accommodation for them  
25 coming out. We are using places that a few years ago we  
26 wouldn't have wanted to go to: rooming houses, things like  
27 that. So there are some issues in that sector.

28 But you have to analyse sector by sector in terms  
29 of there are some areas that work really, really well, we  
30 get really responsive services, and other areas where the  
31 service response isn't great. I'm not blaming the

1 services. It's just the resourcing hasn't been there.

2 DEPUTY COMMISSIONER NICHOLSON: What typically is the labour  
3 market status of your clients?

4 MR RUTTER: They are typically unemployed. We do a fair bit of  
5 work with Centrelink in terms of trying to make sure they  
6 are connected, reconnected to their benefits. We have had  
7 some success with people who have been more stable at  
8 getting them into training courses and trying to get them  
9 back on a pathway to employment. But generally they are  
10 not working. That's just for the CISP clients and the ARC  
11 clients.

12 DEPUTY COMMISSIONER NICHOLSON: In paragraph 59 where you  
13 speculate about options for a CISP type program for family  
14 violence perpetrators, could you see a greater emphasis on  
15 vocational and employment because you actually work on  
16 fairly low case ratios? In those circumstances you may be  
17 able to have much higher case ratios?

18 MR RUTTER: Yes, case ratios could go up. We are about to lose  
19 them but we have had a very positive experience of having  
20 actually an out-placed employment organisation in the  
21 Melbourne Magistrates. Their funding has changed. So  
22 I think they are in the process of withdrawing. But  
23 having that sort of expertise in our mix.

24 One of the things we try to do is do a bit of a  
25 one-stop shop and have different services come in. We  
26 have had financial counsellors. We bring our  
27 psychologists in. We have had the disability employment  
28 organisation in. That's been a really positive experience  
29 for us in terms of trying to understand how to move people  
30 into the employment sector.

31 The Americans do this stuff a lot better than we

1 do. They bring the employment rehabilitation closer into  
2 the service system. It tends to sit, because it is  
3 Commonwealth funded, outside a lot of organisations. But  
4 I think there is scope for further work.

5 One of the things we have tried to do is move  
6 people who are ready into a pathway that might lead to  
7 employment. So, given that many of them are coming out of  
8 addiction, it's trying to get them at least turning up  
9 regularly to a structured program and doing a TAFE course,  
10 something like that, that is on the pathway for them.

11 Probably with the brief time we see them we don't  
12 see that many move into full-blown employment. ARC has  
13 had some with that 12-month period. But certainly it's an  
14 area for us for further development because ultimately  
15 it's all those things we know about structured daytime,  
16 structured activity, having to get up, go to work, be a  
17 valued member of society, all of those sort of things are  
18 actually protective around further substance use, all of  
19 those sort of factors. I don't know whether you want to  
20 say anything, Jo.

21 MS DE LACY: At a case management level where we really jump in  
22 there is having those conversations with the job network  
23 providers that they are linked to. Often the clients we  
24 are working with have missed appointments or their  
25 Centrelink has been cut off, and that's routine, and often  
26 because the providers just don't know what's happening in  
27 a person's life. So we are able to then have a  
28 conversation, "This person is dealing with these issues,  
29 and these are the sorts of things that we are going to put  
30 in place to support that person," so then getting that  
31 person showing up to their job network provider and



1 talking to them about what are the training options,  
2 depending on what funding stream they are at, what options  
3 they can provide.

4 Sometimes we have also provided some funding for  
5 training. I'm thinking of one in particular where he did  
6 a course at a local community centre. He had been a long  
7 time out of the system. So just in those early stages  
8 getting him back into some retraining and vocational  
9 training through the community neighbourhood centre,  
10 getting them adept at using computers, for instance, doing  
11 some small courses, then they can move on to, say, a TAFE  
12 course. These are the sorts of things that will move a  
13 person towards being job ready.

14 COMMISSIONER NEAVE: I have no questions.

15 MS ELLYARD: I ask that the witnesses be excused and suggest  
16 that we come back just before 11.30.

17 COMMISSIONER NEAVE: Thank you very much indeed.

18 <(THE WITNESSES WITHDREW)

19 (Short adjournment.)

20 MS ELLYARD: Thank you, Commissioners. The next witness is  
21 Dr Chris Atmore. I ask that she be sworn in, please.

22 <CHRISTINE LINDA ATMORE, affirmed and examined:

23 MS ELLYARD: Dr Atmore, what is your present position?

24 DR ATMORE: I'm Senior Policy Adviser with the Federation of  
25 Community Legal Centres.

26 MS ELLYARD: What does your role as senior policy adviser  
27 involve?

28 DR ATMORE: I have all the responsibility for our policy and  
29 law reform work in family violence.

30 MS ELLYARD: Can you summarise briefly for the Commission what  
31 the Federation of Community Legal Centres is, how it is

1 constructed and what it's purpose?

2 DR ATMORE: The Federation of Community Legal Centres is an  
3 independent, non-profit peak organisation. We have 50  
4 member Community Legal Centres around Victoria. The  
5 Federation itself doesn't provide legal assistance, but we  
6 refer to our member centres and other sites and we also  
7 assist our member centres to work for disadvantaged  
8 Victorians via community legal education and development  
9 and policy and law reform and we lead the statewide  
10 initiatives around policy law reform.

11 MS ELLYARD: For example, we heard from Mr Casey yesterday who  
12 is from the Loddon Campaspe Legal Centre. Is that one of  
13 your member organisations?

14 DR ATMORE: That's right.

15 MS ELLYARD: You indicated that you have responsibility for  
16 family violence related policy work on behalf of the  
17 Federation. For how long has family violence been a focus  
18 of the Federation's work?

19 DR ATMORE: In a very significant and substantial way for at  
20 least 10 years.

21 MS ELLYARD: How did that come to be? How was it that family  
22 violence came to be such a strong focus of the  
23 Federation's work?

24 DR ATMORE: As we have heard from numerous witnesses, family  
25 violence is such a common and severe problem around the  
26 state with life-threatening consequences. So it links in  
27 all kinds of ways to other traditional areas of Community  
28 Legal Centre work like family law, child protection, fines  
29 and debts, help with coronial matters where there has been  
30 a family violence homicide. So the kinds of clients who  
31 contact us traditionally are people who can't afford

1 access to private legal help. We have also had, I guess,  
2 a strong feminist stream within the community legal  
3 sector. So we have always had close ties with community  
4 organisations that work in the family violence service  
5 sector. So we have known for many, many years that we  
6 have had a lot of clients contacting us for help in a  
7 family violence situation, primarily victims.

8 MS ELLYARD: One of the things you identify in your statement  
9 at around about paragraphs 19 and 20 is that one of the  
10 key services provided by Community Legal Centres in the  
11 family violence area is duty lawyer services. We heard  
12 from Mr Casey about his particular service. But is it  
13 right that quite a significant percentage of duty lawyer  
14 services provided in family violence matters around  
15 Victoria are provided by Community Legal Centres?

16 DR ATMORE: Yes. We offered help often unfunded for many  
17 years, but beginning from 2005 duty lawyer programs  
18 through Community Legal Centres began to be formally  
19 funded. So currently we have 19 Community Legal Centres  
20 who provide duty lawyer services in I think currently it's  
21 29 Magistrates' Courts, and those centres and another 16  
22 or so provide some form of family violence related legal  
23 assistance back at the centre.

24 MS ELLYARD: Have you done any assessment of whether the  
25 funding that's presently made available for those duty  
26 lawyer services is adequate to meet the demand for those  
27 services?

28 DR ATMORE: Yes, we have. It's patently inadequate. I know  
29 that everyone makes a call for funding, and I certainly  
30 don't want to sell ourselves cheaply, but we are cheap.  
31 Our average lawyers working in this space are not even

1 paid as much as a Legal Aid lawyer. Even allowing for  
2 that, we are grossly underfunded. I actually did a recent  
3 survey of our centres in terms of what they would require  
4 just to meet core duty lawyer needs sufficiently around  
5 Victoria, and \$1.8 million a year is needed urgently on  
6 top of the ongoing money that we currently have.

7 MS ELLYARD: That's the present shortfall really to put  
8 additional bodies on the ground to provide duty lawyer  
9 services.

10 DR ATMORE: Yes, just the very, very core services. When we  
11 are looking at more holistic services which we think is  
12 the ideal model - and again this is a very conservative  
13 and preliminary estimate, but way upwards of 5 million a  
14 year on top of that 1.8 million.

15 MS ELLYARD: In addition to those duty lawyer services, can you  
16 summarise for the Commission the work done by Community  
17 Legal Centres in response to family violence other than  
18 straight duty lawyer services?

19 DR ATMORE: As the Commissioners heard, there's significant  
20 limitations on the day when an AFM turns up to court in  
21 terms of what duty lawyers can do other than immediate  
22 crisis application and intervention order type work. But  
23 often what will happen is the lawyer will then make  
24 referrals back to the centre; otherwise clients will  
25 contact the centre or be referred to the centre  
26 independently of whether they come to court.

27 So the kind of work that's done back at the  
28 centre can be in the area of family law, particularly  
29 around issues of child contact. It can be, as the  
30 Commission has heard, around issues like homelessness with  
31 our member centre homeless law, infringements with a

1 couple of our specialists and more generalist centres, it  
2 can involve child protection, there's a whole raft for  
3 victims. Because we are really the specialists in terms  
4 of assisting victims in the system these are the kinds of  
5 issues that we are desperately trying to plug the gaps.

6 I would give as one example of why there are all  
7 these gaps, Abbey Newman yesterday gave evidence about how  
8 important her referrals are to Brimbank Melton Community  
9 Legal Centre because they do a lot of that extra work  
10 outside the court context. Brimbank Melton is a very good  
11 example of how patchy and temporary a lot of the funding  
12 is for that extra work. So they are essentially, along  
13 with six of our other CLCs, relying heavily on a limited  
14 time funding grant that was made by the previous federal  
15 Attorney-General. That ends in 2017, and at the same time  
16 cuts to federal funding to CLCs will take effect to the  
17 effect of about 30 per cent in 2017. So those kinds of  
18 supposedly ancillary services will be severely  
19 constrained.

20 MS ELLYARD: As part of that suite of services that Community  
21 Legal Centres provide do they then get a kind of a lens on  
22 the aftermath of the intervention order process and the  
23 experiences of victims once they have received their  
24 intervention order through the court?

25 DR ATMORE: Yes, very much so. Of course while we can't meet  
26 all the demand we are having women contacting our centres  
27 and also the Federation for referral all the time with  
28 related needs that go far outside the intervention order  
29 system. They also, apart from the areas I have  
30 identified, may relate to examples of issues that have  
31 arisen for them over breaches of intervention orders and

1 sometimes their inability to get police to pursue those  
2 effectively, and then the downstream consequences of that  
3 which of course as we know in some cases result in death.

4 MS ELLYARD: I should have identified that the statement that  
5 you have made for the Royal Commission is dated 3 August  
6 2015. The contents of that are true and correct?

7 DR ATMORE: Yes, they are.

8 MS ELLYARD: You have attached to your witness statement a copy  
9 of the submission made on behalf of the Federation of  
10 Community Legal Centres. A number of the issues taken up  
11 in your statement and in that submission were ventilated  
12 to some extent in the evidence yesterday, and I understand  
13 that you were present yesterday for the evidence.

14 DR ATMORE: Yes, I was.

15 MS ELLYARD: There was some evidence yesterday, for example,  
16 about difficulties associated with the physical  
17 infrastructure of courts, particularly in some regional  
18 areas; is that something that you would say as well is an  
19 issue arising from the Federation's perspective?

20 DR ATMORE: Yes, most definitely, and we document that quite  
21 extensively in our submission. One point we would want to  
22 add to that because we know that very soon there will be a  
23 government audit of safety and security in the courts, and  
24 our understanding is that that's focusing primarily on the  
25 physical safety building type issues, we agree that that's  
26 very important but our work with clients has also  
27 emphasised to us that there are two ways in which that  
28 approach really needs to be broadened when we are thinking  
29 about how to improve safety for women and their children.

30 The first one is we should really be auditing all  
31 courts where family violence victim/survivors are likely

1 to have to appear as a party or a witness. So of course  
2 that extends to VCAT, other courts, other tribunals, the  
3 Coroners Court and so on.

4 Then the second way that we believe it should be  
5 extended is that the audit really has to be of risk  
6 assessment and risk management processes of all workers at  
7 each court and tribunal, not simply focusing just on  
8 physical safety and security. We would say in support of  
9 that that there's been some excellent work done by  
10 Magistrate Spencer and Magistrate Goldsbrough around  
11 making the argument that the Family Violence Protection  
12 Act actually has embedded in it a risk assessment and risk  
13 management approach and sort of explaining how that works  
14 in terms of the different tests and checklists to assist  
15 magistrate decision making.

16 The problem is not all magistrates take that  
17 approach currently. We would argue that every worker at  
18 court needs to have some kind of role and to making sure  
19 that appropriate level of risk assessment and risk  
20 management is conducted so that, for example, if a  
21 specialist registrar is having a particularly busy day we  
22 know from systems analysis - and again this comes out  
23 through the coronial system - that the best way to avoid a  
24 catastrophic failure is to have more than one entity  
25 responsible for doing the same assessing and managing.

26 So I would use the analogy if you go to hospital  
27 for surgery, for instance, if anyone's experienced that  
28 you get almost tired of how often you are asked what is  
29 the procedure, what leg are they taking off or whatever  
30 the approach is. Of course they do that because in the  
31 past the wrong leg has been taken off. So it is the same

1 attitude, we think, that should be inculcated in the court  
2 environment. It's not simply about women's immediate  
3 safety entering or exiting court or whilst she's at court;  
4 it's the much broader view of the changing nature of risk  
5 and the responsibility of all the workers at court to play  
6 some part in that.

7 MS ELLYARD: Thank you. Can I turn now then to consider a  
8 number of issues that are taken up in your statement and  
9 submission that particularly arise today about what  
10 happens after an intervention order is made. One of the  
11 first issues that has been identified by you is issues  
12 associated with the order coming into practical effect.  
13 It's been made but it can't come into effect until it's  
14 served on the respondent. I wonder could you comment from  
15 the Federation's perspective about what the issues are  
16 there?

17 DR ATMORE: Yes. We certainly know of many clients who have  
18 experienced dangerous situations and uncertainty and fear  
19 around how long an interim or final order has taken to be  
20 served and whether or not it has been served. That's  
21 really one of three or four key police areas that we think  
22 suggests that there's time for - as I think Commissioner  
23 Neave asked a question about a couple of days, there's  
24 time for a high-level cross-sector working group to really  
25 sit down with Victoria Police and start to talk about a  
26 number of those systemic problems and how we might better  
27 address them from our different perspectives in the  
28 system. So service is clearly one of those key areas.

29 MS ELLYARD: So one of the first issues associated with  
30 enforcing the order is serving the order, and from your  
31 perspective there is a gap that exists at the moment



1 certainly for a certain category of victim.

2 DR ATMORE: Yes, that's right. It's important to say, and  
3 I guess this comes across in our submission and also in  
4 practically everything I'm giving in evidence, that we are  
5 really talking about a patchwork system across the state.  
6 So, as we heard yesterday I think, it's patchy in terms of  
7 the degree of specialisation that's there in different  
8 courts. It's patchy in terms of having some really great  
9 magistrates and some really great police, but then  
10 unfortunately the bar's much lower for other personnel  
11 even within the same sector.

12 It's patchy in terms of the fact that it's still  
13 very personality dependent in terms of how well all the  
14 elements work together. A good system works to best  
15 practice regardless of who the incumbent is. So that's a  
16 real problem.

17 Then, lastly, I think it's patchy in terms of the  
18 specific response to victims and perpetrators. So if you  
19 are a particular kind of victim - for example, if you are  
20 Aboriginal or if you have a disability - or if you are a  
21 particular kind of perpetrator - for example, you are from  
22 a CALD background - you will get a different level of  
23 service mostly than others, a lower level.

24 So all that is by way of saying we need to bring  
25 up the bar for all these things. We need to bring it up  
26 for risk assessment. We need to bring it up for responses  
27 to breaches. We need to bring it up for service issues  
28 because we do have the great pockets of best practice, but  
29 they are not consistent.

30 I know there was a lot of talk yesterday using  
31 the metaphor of a car for the system. Perhaps because we

1 have a feminist strand in the community legal sector  
2 I prefer to use the metaphor of a patchwork quilt. So we  
3 have some great squares, but we have some really  
4 threadbare squares that maybe need replacing or they  
5 certainly need a lot of mending, and we need to stitch the  
6 squares together so much better. So we don't throw out  
7 the quilt, we are thrifty, we spend our money wisely, but  
8 we do need to work on improving that patchwork.

9 MS ELLYARD: One of the issues you have mentioned there is the  
10 question of breaches, and that's another specific topic  
11 taken up under that heading of "Enforcement and  
12 monitoring". From the perspective of your member  
13 organisations and the clients they serve, what are some of  
14 the issues associated with the way in which breaches of  
15 intervention orders are or are not currently dealt with  
16 appropriately either by police or by the court?

17 DR ATMORE: Unfortunately again I think it's a huge issue.  
18 I think there are some great pockets of good practice and  
19 there are some passionate police and well-trained police,  
20 but we know of some appalling examples where breaches,  
21 reporting of breaches has happened on multiple occasions  
22 and there either hasn't been a response from police or  
23 there hasn't been an adequate response, and further down  
24 the track there's been no accountability for the  
25 perpetrator.

26 MS ELLYARD: For example, one of the things that was said by  
27 police witnesses earlier this week is that the message  
28 that from their perspective that's sent down to the  
29 members is there is no such thing as a technical breach.  
30 From the perspective of your members and their clients  
31 does the concept of technical breach come up?

1 DR ATMORE: Yes.

2 MS ELLYARD: In what context? As a reason to not prosecute?

3 DR ATMORE: Yes. I was actually struck by Judge Hyman's  
4 evidence this morning because what really came across was  
5 that at least from his perspective there was no such thing  
6 as a technical breach; that the offender is straightaway  
7 given gaol time, even if it is a text message. We don't  
8 get that here. It would never happen. They would never  
9 get gaol simply for text messaging.

10 One of the frustrations that we hear from  
11 clients, and then when we try to pursue this in an  
12 individual advocacy or on a systemic advocacy level, is  
13 that the police Code of Practice is waved at us. The  
14 police Code of Practice is a great document. It's had a  
15 lot of investment from a lot of people. It has some  
16 really good things in it, including about breaches.

17 But a Code of Practice doesn't really mean much  
18 if when there is a breach and it's not responded to  
19 properly and a victim complains about it nothing happens.  
20 There has to be accountability and publicly transparent  
21 complaint processes when what the Code of Practice says  
22 you should not do happens. At the moment that's not our  
23 experience. We have many frustrated clients who say,  
24 "This didn't happen to me. I have tried to pursue it with  
25 police or my advocate tried to pursue it with police. We  
26 got nowhere."

27 MS ELLYARD: One of the interesting issues about an  
28 intervention order is, although it's an order in favour of  
29 a particular person, that person can't charge breaches  
30 themselves, they can only do so through the court process.  
31 The police are effectively the gateway to any form of

1 enforcement action being taken, aren't they?

2 DR ATMORE: Yes.

3 MS ELLYARD: Then if we take it to the next level of the role  
4 of courts perhaps, both before a breach when the  
5 intervention order is made and then the way in which  
6 courts respond, you say some things in your evidence and  
7 in your submission about the potential for the courts  
8 perhaps to play a greater role than currently exists in  
9 keeping an eye on perpetrators. Can you expand on that  
10 for the Commission?

11 DR ATMORE: Yes. I think judicial monitoring - and we heard  
12 from witnesses this morning very in favour of that - is  
13 really critical. Again we have a few very good examples  
14 of at least the limited form of judicial monitoring that's  
15 currently available, and I can mention Magistrate Toohey  
16 in the family violence court division who has a bit of a  
17 legendary status in our sector for her judicial monitoring.  
18 One of the reasons is because, as I think Judge Hyman  
19 said, it's about theatre and there are times when some  
20 good old-fashioned judicial authority - although of course  
21 we usually kind of try to make things more accessible to  
22 the public, but there are times when to actually get that  
23 short, sharp public lecture is really effective.

24 I have sat in court and seen a parade of  
25 respondents who are on charges up before Magistrate  
26 Toohey, and they can vary from someone who turns up in  
27 trackie dacks or is in a suit, but so many of them have  
28 never been called to account publicly for their behaviour.  
29 So they have a very insolent attitude to the role of the  
30 court and why they have been called upon in the first  
31 place. So I think to actually be told how serious their

1 behaviour is, that respect is required both to the court  
2 and to their partner and children can really be a first  
3 step on life-changing behaviour. Of course it has to be  
4 backed up with referrals and coming back again to account  
5 for, "Have they attended programs? Have they undergone  
6 drug and alcohol treatment" whatever it is.

7 MS ELLYARD: One of the points you make in your statement -  
8 it's a phrase that the Commission has heard before - is  
9 this idea of whether or not the intervention order is more  
10 than the piece of paper that it's written on. From your  
11 point of view, what's required to make that intervention  
12 order be more than just a piece of paper?

13 DR ATMORE: I think there are a whole lot of things right from  
14 when women first apply for an intervention order right  
15 through to what happens after she goes away with it. That  
16 really starts with making sure that everyone who engages  
17 with that process supports that woman and works in the  
18 court is a specialist so that intervention orders are  
19 efficiently tailored for her circumstances, so that they  
20 are meaningful and practical for her and of course for the  
21 respondent.

22 It also means that - and this is where the  
23 cross-sector working group with police I think comes up  
24 again - there has to be consistency of response by police  
25 to breaches of orders, there has to be prompt appearance  
26 by perpetrators when they are charged with a breach, and  
27 there has to be a prompt response of some kind, punitive  
28 and rehabilitative, in response to all breaches.

29 MS ELLYARD: To what extent do we have that system now?

30 DR ATMORE: It varies enormously, and I think that does really  
31 contribute to many women - and many of them have said to

1 us - feeling as though, even though it's an order made by  
2 the court and they are told hopefully by all magistrates  
3 in some detail about what the order is and what will  
4 happen if it's breached, they still often come away with a  
5 sense that it's up to them to enforce that, even though  
6 they are told to call the police.

7 We know this requires more funding, but ideally  
8 specialist family violence outreach workers or similar  
9 family violence services would provide a worker who could  
10 continue to liaise with that woman after she has got the  
11 order and be prepared to make a noise and to keep  
12 contacting police and other agencies if breaches are  
13 occurring and nothing is being done.

14 I think that also really does raise issues around  
15 some of the CISP discussion, because at the moment even if  
16 we expanded CISP for family violence offenders I think  
17 there's an assumption that's not always warranted that  
18 those respondents who require that kind of monitoring and  
19 support will sort of automatically end up kind of triaged  
20 into the offender system; so they will be charged with an  
21 offence. The problem is, as we know, that if sometimes  
22 police are the weak link in that we will be having  
23 respondents who don't end up with that judicial monitoring  
24 process.

25 The other huge gap which relates to, I guess,  
26 another interpretation of judicial monitoring is that  
27 Magistrates' Court stats show that only 44 per cent of  
28 respondents actually appear in court at first mention. So  
29 we would strongly advocate for the 56 per cent to be made  
30 to appear and be held accountable through some form of  
31 judicial monitoring or intervention. We don't know enough

1 about what happens with that 56 per cent who never turn up  
2 to court further down the track. Are they the ones that  
3 are more likely to result in severe injury and death to  
4 victims? We just don't know. I think that it's really  
5 dangerous to capitulate to that statistic and just breathe  
6 a sigh of relief because the system is so overburdened  
7 already.

8 MS ELLYARD: Thank you, Dr Atmore. Were there any questions  
9 from the Commissioners for Dr Atmore?

10 COMMISSIONER NEAVE: I have a couple. The first one relates to  
11 the role of duty lawyers. As we discussed yesterday, one  
12 of the issues is the very limited amount of time that duty  
13 lawyers have to deal with each affected family member. We  
14 also know that courts, the specialist courts and the  
15 divisional courts, are putting in place applicant support  
16 workers, respondent support workers, a variety of other  
17 supports for affected family members and for respondents.  
18 I'm wondering if this might be an area where there is a  
19 role for paralegals who might be able to  
20 combine - obviously it would have to be limited - some  
21 support in the legal process but also the other service  
22 provision referrals and so on.

23 DR ATMORE: Yes, I think there is untapped scope for a number  
24 of different personnel to supplement the work of duty  
25 lawyers and others. Paralegals would certainly be one.  
26 I know the Court Network is also interested in perhaps  
27 ramping up their role, and there are perhaps other  
28 possibilities that we haven't even canvassed. Registrars,  
29 for example, might take some of the load off magistrates  
30 in some circumstances. We don't want to replace any of  
31 those critical primary roles, but I think we could be

1 thinking more creatively about how we manage some of the  
2 work so that it frees up the specialist to do more.

3 COMMISSIONER NEAVE: Thank you. My other question is this. We  
4 have heard many times about the inadequacy of the  
5 resources available to assist affected family members.  
6 I think it's fair to say that in the past the family  
7 violence organisations were critical of the notion of  
8 expenditure on perpetrators. If you have a limited pot of  
9 money, that money really needed to go to assist the  
10 affected family members.

11 But we have heard a lot of evidence now about the  
12 fact that family violence might be able to be prevented or  
13 there might be a reduction in recidivism if some  
14 perpetrators - and certainly not all - were provided with  
15 support with drug and alcohol problems, mental illness  
16 problems and so on. I think I detected in your  
17 evidence - and I'm certainly not trying to verbal you on  
18 this - some recognition that we needed to think about  
19 those issues as well, that perhaps one of the most  
20 effective ways of preventing further violence may be to  
21 provide perpetrators with assistance as well as monitoring  
22 at appropriate times. Did I hear what you said  
23 accurately?

24 DR ATMORE: I do think that's an important element of trying to  
25 ensure that perpetrators don't commit further violence.  
26 But I think it's really important to qualify that. A lot  
27 of CISP's current experience is really based on working  
28 with accused who - their alcohol and drug issues and their  
29 mental health issues do fundamentally underline their  
30 offending. We know in family violence that often they may  
31 be contributing disinhibiting factors, but the vast



1 majority of perpetrators don't commit family violence  
2 because they have an alcohol and drug problem or a mental  
3 health problem. While it might assist along with men's  
4 behaviour change and more punitive options, I think that's  
5 an important distinction that we need to retain.

6 COMMISSIONER NEAVE: Thank you.

7 MS ELLYARD: Thank you very much. I ask that Dr Atmore be  
8 excused.

9 COMMISSIONER NEAVE: Thank you very much, Dr Atmore.

10 <(THE WITNESS WITHDREW)

11 MR MOSHINSKY: Commissioners, we now have Magistrates Broughton  
12 and Hawkins.

13 <MAGISTRATE FELICITY BROUGHTON:

14 <MAGISTRATE KATE HAWKINS:

15 MR MOSHINSKY: Thank you very much for coming to appear before  
16 the Royal Commission and, as I indicated earlier, in  
17 deference to your position as judicial officers we won't  
18 be swearing you in or asking you to make an affirmation.

19 MAGISTRATE BROUGHTON: It is our pleasure to be here.

20 MR MOSHINSKY: Magistrate Hawkins, we heard from you yesterday.  
21 Thank you for coming back. Magistrate Broughton, could  
22 you please outline for the Commission what your role is,  
23 the types of cases that you sit on as a magistrate?

24 MAGISTRATE BROUGHTON: I'm Deputy Chief Magistrate of the  
25 Magistrates' Court of Victoria. With Kate, we are the  
26 joint supervising magistrates for the family violence and  
27 family law portfolios of the court. We have jointly been  
28 in that role since 2011. Prior to that, I had  
29 responsibility for the sexual assault portfolio of the  
30 court between 2006 and 2012. I make that point because  
31 there's a considerable overlap in relation to intimate

1 partner violence involving sexual offences as well.  
2 Before that I was the supervising magistrate for the  
3 Victims of Crime Assistance Tribunal, and we have already  
4 touched on the role of victims in this space in the court.  
5 So that's been the background that I have certainly  
6 brought to my work in the court. To the types of cases  
7 that we sit in, there's hardly a jurisdiction I think that  
8 we don't touch where the issues of family violence aren't  
9 evident.

10 MR MOSHINSKY: The topic for today's part of the public hearing  
11 is the monitoring and enforcement of intervention orders,  
12 so breaches of intervention orders and also associated  
13 criminal charges for other offences that may also  
14 constitute a breach of an intervention order. I was  
15 wondering if one of you could perhaps give a pathway of  
16 how matters such as that would come to the Magistrates'  
17 Court and work their way through the Magistrates' Court  
18 and be dealt with.

19 MAGISTRATE BROUGHTON: I might start with that. What we do  
20 know about family violence is that it's not a linear  
21 process, and that's evident with the way that matters come  
22 before our court. Certainly of course it will be  
23 initiated with a contravention of an intervention order  
24 charge, although it might be initiated by a persistent  
25 breach.

26 So the events that form the basis for the charge,  
27 that contravention or the persistent contravention that's  
28 taken place over a period of time, depending on how it's  
29 been prepared and what the nature of the contravention is,  
30 could be a very long time before the charge is brought  
31 before the court.

1                   It's the case that you might be sitting, as I did  
2                   last week, dealing with a charge of persistent breach of  
3                   an intervention order in relation to conduct which took  
4                   place in April and May of last year, and it had been  
5                   wandering its way through the system for some time. It  
6                   came before me, it being sought that there be another  
7                   adjournment. This particular reason was because the  
8                   accused who wanted to plead guilty didn't have his  
9                   psychologist report ready that was going to be used as  
10                  part of his plea in mitigation. In fact of course in  
11                  those circumstances I decided that I was going to have him  
12                  enter his plea of guilty before me then and then adjourn  
13                  it part heard.

14                  But, to my horror, I found that events which had  
15                  taken place in July of last year, which involved  
16                  allegations that he had set fire to his partner's home and  
17                  caused criminal damage to his partner's vehicle and her  
18                  new boyfriend's vehicle, were listed for a plea of guilty  
19                  in the County Court later this year.

20                  So I think that summarises a number of issues in  
21                  terms of the way that matters come before the court and  
22                  the pathways as to when they arrive. It's not linear and  
23                  I think there are a number of themes that we can probably  
24                  develop about what that means in terms of the management  
25                  of these cases.

26 MR MOSHINSKY: What sort of timeframe are we talking about  
27                  between when an event happens and the charge, it being  
28                  listed before the court and then ultimately a trial or a  
29                  plea?

30 MAGISTRATE BROUGHTON: There are different time limits,  
31                  depending on whether you are in the summary stream or

1           whether you are in the committal stream. So if it's a  
2           matter in which Victoria Police and Victoria Police  
3           prosecutors are involved in the summary stream of the  
4           court then we have certain time limits. As in my example  
5           with the matter that is going to the County Court or has  
6           gone to the County Court, that would have been prosecuted  
7           through the Office of Public Prosecutions and had a  
8           completely different track.

9                        So there are certain time limits that are set  
10           within the Criminal Procedure Act as to when things are  
11           required to happen. But of course adjournments are often  
12           the method of the day. You have accused who often don't  
13           turn up to court. So if you have to issue a warrant for  
14           their arrest then there's the question of how long it  
15           might take for that warrant to be executed and come back  
16           before the court. So all of those issues will affect the  
17           question of delay.

18                       I know that you will be wanting to look at the  
19           question of the fast-tracking - - -

20 MR MOSHINSKY: Perhaps before we get to that, if we are dealing  
21           with the situation where it's a summary offence, say, a  
22           breach of an intervention order but not dealing with the  
23           indictable offences for persistent breach, a summary  
24           offence being dealt with by Victoria Police - - -

25 MAGISTRATE BROUGHTON: Or an indictable offence being dealt  
26           with summarily as is my example; it was a summary  
27           prosecution of an indictable offence.

28 MR MOSHINSKY: So, in practice, what sort of timeframes would  
29           one be looking at for it to go from the event happening to  
30           ultimate disposition in the Magistrates' Court?

31 MAGISTRATE BROUGHTON: You are probably not surprised to know

1 that there is a large variability in that. But certainly  
2 it could take many, many months and on occasions a year.  
3 The example that I just gave wasn't particularly unusual.

4 We, as a court, have no control over the time  
5 from essentially when the charges are filed before the  
6 court - that's a matter primarily for police, although in  
7 terms of the summary offences it's usually they are filed  
8 within 12 months, that's the time limit, from the date of  
9 the incident. Then it will depend a bit on the court  
10 lists.

11 We have certainly seen through the fast-tracking  
12 at Dandenong when before that pilot started we were having  
13 to wait six or seven months to get a first mention on a  
14 summons matter. That's now down to four weeks. If it's a  
15 bail matter we were waiting six or seven months. Now  
16 that's seven days. But it does vary across the court and  
17 there's certainly no consistency.

18 If I can just go back a little step. It's only  
19 quite recently that we have been able to identify many  
20 family violence offences within our system. We can  
21 collect data around contraventions of an intervention  
22 order because it has a specific Courtlink code. I think  
23 you saw a picture of Courtlink yesterday and you know it's  
24 a 1980s system. We can pick up some information about  
25 that.

26 But until approximately six weeks ago we really  
27 couldn't tell if there was a recklessly cause serious  
28 injury charge or a criminal damage charge, whether or not  
29 that was a family violence offence or whether it was a  
30 road rage matter, whether it was in a bar. So our  
31 capacity to be able to manage those cases by identifying

1           them in the system was just not there.

2                         We have been working for probably about two years  
3           now with Victoria Police to try to get that data sent  
4           across to us.  It's still a work in progress, but about  
5           six weeks ago we started getting that material.  So we  
6           have a much better capacity now to be able to manage those  
7           cases and start putting some timelines around the way that  
8           we manage those cases.

9  MR MOSHINSKY:  Just following on the pathways, one event that  
10           might happen is it goes to a trial in the Magistrates'  
11           Court and then there is an appeal from that.  Could you  
12           describe what happens in that scenario?

13  MAGISTRATE HAWKINS:  If that was the case in a Magistrates'  
14           Court we would have a first mention after the summons had  
15           been issued.  The accused might turn up in person and  
16           hasn't got a lawyer organised yet.  So it might be  
17           adjourned ordinarily for four weeks to allow that to  
18           happen.  Maybe they still hadn't quite got their act  
19           together.  "Last chance.  You can have another four  
20           weeks."  So we are up to two months after the first  
21           mention by that stage.  Then it might be summary cased  
22           conferenced hopefully at that point.  But maybe there was  
23           some need to get some material.  So that's another month  
24           before it goes to a summary case conference with a  
25           prosecutor.

26                         It would then be determined that it's going to be  
27           listed for a contested hearing.  But there might be a  
28           contest mention in there as well if there's a reason for  
29           that.  So finally it gets to a contested hearing.  So we  
30           could be looking as little as three months from the point  
31           that the charges were laid and it's first before the

1 court; it might be six, it might be nine, it might be  
2 12 months.

3 So there's a contested hearing. He's found  
4 guilty of, let's say, criminal damage and an assault of  
5 some sort. There's an appeal. That then is a de novo  
6 appeal to the County Court. I don't have an accurate idea  
7 about the delay exactly, but it's a considerable delay  
8 between the point that I sentence someone and the point  
9 that I get back any record from the County Court of that  
10 appeal. What would it be? Six months?

11 MAGISTRATE BROUGHTON: You can get the stats from the  
12 County Court.

13 MAGISTRATE HAWKINS: That whole process could be two years,  
14 I would hazard a guess.

15 MR MOSHINSKY: What about appeal bail if there was an appeal  
16 from a conviction in the Magistrates' Court? How is that  
17 dealt with?

18 MAGISTRATE HAWKINS: If I sentence someone to imprisonment they  
19 are entitled to apply for appeal bail, which is ordinarily  
20 granted primarily because, let's say, for example,  
21 I sentence someone to three months imprisonment, if  
22 there's a six-month delay before their appeal being heard  
23 those sorts of factors will come into consideration.

24 MAGISTRATE BROUGHTON: The reality is that not everybody is  
25 going to get an imprisonment term on a finding of guilt.  
26 In family violence proceedings there's a lot of steps that  
27 are taken beforehand. You have obviously had some  
28 discussions today about some of those accountability  
29 mechanisms throughout the process within the court. That  
30 might happen afterwards as well. Even if there was  
31 somebody who was placed on appeal bail, then of course you

1 would be wanting to put some strong accountability  
2 mechanisms in.

3 I can certainly give you an example of where it  
4 might be refused, but it would be very rare that an appeal  
5 bail wouldn't be granted, because ultimately by the time  
6 that it's dealt with in the County Court I think you could  
7 be fairly confident that they would have served more time  
8 on remand than they would get on sentence.

9 MR MOSHINSKY: You referred there, Magistrate Broughton, to  
10 accountability mechanisms at various points through the  
11 system. I was wondering would you like to comment further  
12 on that theme?

13 MAGISTRATE BROUGHTON: The priority is clearly about the safety  
14 of the community and using the authority of the court to  
15 make sure that there's a high level of accountability.  
16 It's not only necessary for the individual safety of the  
17 complainant or the family, but the integrity of the court  
18 system demands it.

19 So if you have a process where people feel - and  
20 I think Judge Hyman gave an example where he said that if  
21 the perpetrator says, "Look, you know, there's this  
22 transgression or this breach that's happened, but I'm  
23 still out and nothing's happened," then that reinforces to  
24 not only the family that there's not accountability and  
25 that they are still at risk, and what we know about their  
26 risk is that it will increase in severity if a timely  
27 intervention is not undertaken, it brings I think our  
28 justice system into disrepute.

29 So if we make an intervention order and we  
30 reinforce with the respondent that he is accountable for  
31 his behaviour, that it is a court ordered intervention



1 order, that these are the restrictions and he breaches and  
2 there's not timely and effective intervention at that  
3 point, then there's an increased risk.

4 If he's charged with a breach - obviously it's  
5 not a matter for me to talk about what happens when the  
6 breach is reported, but at that point if somebody is  
7 charged then there needs to be timely intervention at that  
8 point to make sure that that is going to be dealt with  
9 effectively.

10 So at that point you then go on - if somebody is  
11 charged and they are remanded in custody, they might want  
12 to apply for bail. We can then talk about some of the  
13 accountability there and making sure that if we are going  
14 to bail people that they are accountable for their  
15 behaviour when they are on bail so that we know about  
16 breaches quickly and they are brought back before the  
17 court quickly so that they can be made accountable.

18 Again, if they do well, that should be reflected.  
19 But if they are not doing well that accountability loop  
20 needs to come back before the court to make sure that the  
21 authority of the court is used effectively.

22 If somebody pleads guilty and you might defer  
23 sentence and have them on conditions, whether it be CISP  
24 or something like that, if they are not complying with  
25 their conditions of bail they need to come back before the  
26 court promptly so that that accountability is there. If  
27 they are sentenced and you place them on a community  
28 corrections order and they are not complying with their  
29 order, then even if you haven't judicially monitored them  
30 in that process they need to come back to the court for  
31 that accountability.

1                   I think the importance of that is that we are  
2                   seeing in that process that I have just identified as to  
3                   the various steps you go through in the criminal process  
4                   that all of the supervision we put in place, the various  
5                   programs we put in place are all designed to reduce risk.  
6                   So instead of a trajectory going up, which is what we know  
7                   about family violence, risk will increase, these things  
8                   are put in place to reduce risk. But if there is no  
9                   accountability for it then you are going to see the risk  
10                  increase. So the accountability loop to the court is  
11                  absolutely crucial.

12   MAGISTRATE HAWKINS: If I can just pick up on the timeframe  
13                  I was outlining earlier. Each of these court events are  
14                  rich opportunities for intervention and compliance and  
15                  accountability. Our ability to enrich that opportunity at  
16                  court relies upon being able to have the appropriate  
17                  information before the judicial officer who is presiding  
18                  on that occasion. So to be able to identify that it is a  
19                  family violence related case, to be informed via  
20                  prosecution or another way that there are indeed other  
21                  charges pending of a similar nature, that there might be  
22                  warrants outstanding in relation to that individual if he  
23                  fails to turn up at a court event, these are really,  
24                  really rich and missed opportunities, in my view, at the  
25                  moment because the system doesn't facilitate that level of  
26                  information sharing to be available before the judicial  
27                  officer.

28                  The judicial monitoring does rely on appropriate  
29                  information sharing. So that is certainly a direction  
30                  that the court is looking to improve and it does rely on  
31                  those underlying systems to facilitate that sort of

1 involvement.

2 MR MOSHINSKY: One of the programs that we have already heard  
3 evidence about today, and I believe you have been in the  
4 hearing room and heard it, is from Ms De Lacy and  
5 Mr Rutter about the CISP program. I was wondering whether  
6 you would like to comment from a magistrate's perspective  
7 about the CISP program and also whether there is scope for  
8 it to be expanded in a family violence context.

9 MAGISTRATE BROUGHTON: I would certainly regard it as an  
10 important part of the suite of services to support our  
11 family violence jurisdiction, both in expanding it to the  
12 civil jurisdiction but as it is in the criminal  
13 jurisdiction. If somebody is remanded in custody and they  
14 are seeking bail, clearly if we are going to bail them we  
15 have to identify a number of risks, the risks clearly of  
16 further violence and an appropriate understanding of how  
17 that risk presents and what programs might be available to  
18 address that risk. Engagement in appropriate behaviour  
19 change programs in a timely way is one aspect of it.

20 If there are concurrent perhaps mental health  
21 issues, drug and alcohol issues, homelessness issues, we  
22 often find these families under a lot of financial stress  
23 as well, the suite of services that are available to  
24 support an accused in the context of a proper analysis of  
25 partner support to make sure that the partner can be kept  
26 safe if the person is going to be released on bail is an  
27 important and I think crucial part of the way forward for  
28 the court.

29 We have certainly had some evidence already of  
30 the success of CISP. We see it as an adjunct to our  
31 family violence court division model where we have

1 obviously the applicant support worker, the respondent  
2 support worker and a family violence registrar. So we  
3 have a range of expertise within the court to, I suppose,  
4 support the proper understanding and information that we  
5 can get to ensure in that circumstance, for instance, if  
6 we do bail someone, that it will be safe to do so.

7 I can certainly say that it's something that -  
8 people have been bailed in those circumstances. We have  
9 had some ad hoc arrangements and we have certainly been  
10 doing that. But it's not always in remand situations.  
11 There will often be people who perhaps might plead guilty.  
12 You might be wanting to gaol them, but you also might want  
13 to give them the opportunity to demonstrate that they are  
14 a reduced risk, that the protection of the community can  
15 be served, that their risk of recidivism can be reduced  
16 and that they won't re-offend, clearly. So it's not  
17 unusual even on a finding of guilt that we might bail  
18 somebody on CISP to give them that opportunity.

19 I might also say that you might have some people  
20 who might have had previous engagement in the criminal  
21 justice system and they might have had community  
22 dispositions before, and we have also found that it can be  
23 a good proving ground for some people if you are  
24 considering a community disposition such as a community  
25 corrections order. So that seamless approach is something  
26 that's really important to us and we have seen working,  
27 and it's something we see for the future.

28 MAGISTRATE HAWKINS: We see great application for CISP in the  
29 civil sphere. So ideally a model of early intervention in  
30 the justice system has a place. So many women and men  
31 come to court as affected family members and say, "If only

1 he had stopped drinking, he's a tremendous father, I love  
2 him, we want to keep the family together, everything would  
3 be okay if he stopped drinking, taking ice" or whatever  
4 the habit is. There is a real gap in terms of being able  
5 to do more than strongly encourage someone in that  
6 circumstance to access some sort of service provision.

7 So there's a real role for CISP there to be able  
8 to broker and engage him - and often it's her - in some  
9 form of drug and alcohol counselling, some form of  
10 gambling counselling, usually it's about addiction, so  
11 that we are intervening early before it even reaches the  
12 criminal justice system. I would much prefer to be able  
13 to enable a really positive outcome from that court  
14 intervention without it going on to the ramifications of  
15 criminal charges to the family. That's what a lot of  
16 people are really asking for.

17 I see a role for CISP beyond the current scope,  
18 which at Melbourne I regularly use them to make referrals  
19 and the like and that's great. But the capacity to  
20 monitor that progress has its limitations. So having an  
21 expanded role for CISP at the moment in the criminal  
22 system it's, say, four months, to be able to work with  
23 appropriate it's usually families in that circumstance is  
24 a really opportune time where the perpetrator is really  
25 motivated to make change. He realises that his addictions  
26 are becoming problematic. He's motivated to change to  
27 keep the family together. He's supported to make that  
28 change. So in terms of that behaviour change model that  
29 Glenn spoke about earlier it's ripe.

30 MAGISTRATE BROUGHTON: Can I add one thing. Crucial to this  
31 model is priority access. If you have a system and you

1 want the authority of the court to be effective where you  
2 are saying to an accused or a respondent, "We require you  
3 to engage in this program and you are going to come back  
4 before me in a month and you are going to tell me that you  
5 have engaged and what's going to happen next," if you  
6 can't get into the program then there's no point having  
7 people engaged.

8 Priority access to these programs combined with  
9 the authority of the court is essential because otherwise  
10 it undermines not only the authority of the court but the  
11 safety because ultimately if you can't use that  
12 intervention to make a difference then, then the potential  
13 is for it to be a more dangerous circumstance.

14 We have to be careful when we are considering  
15 these issues not to do more harm. I think for a lot of  
16 victims of family violence that if there is not timely  
17 intervention and the message is that people are told  
18 something but nothing's going to happen, then they are  
19 more unsafe.

20 MR MOSHINSKY: Can I turn now to a few specific issues. One of  
21 these is evidentiary rules. You would have heard earlier  
22 today Judge Hyman talking about the preponderance of  
23 evidence test in the United States and there are different  
24 proposals in the Victoria Police statements for later in  
25 the day. Are there any aspects of the evidentiary rules  
26 that you feel able to comment on?

27 MAGISTRATE BROUGHTON: I won't comment more generally on the  
28 applicability particularly of the rules of evidence in the  
29 context of the criminal justice system, save to say that  
30 if there is a contravention of an intervention order  
31 proceeding under the Family Violence Protection Act then

1 for children to give evidence leave must be sought prior  
2 to there being permission for the child to give evidence.  
3 But if there is a charge of unlawful assault or a criminal  
4 damage or some other charge which is associated with it or  
5 even independently in a family violence circumstance then  
6 that leave is not required.

7 Certainly the structure of the Act importantly  
8 and many of the developments, both legislatively,  
9 administratively and culturally, have been protecting  
10 particularly children. I think further exploration in  
11 that area is certainly warranted to enhance the way that  
12 we can protect particularly children in these  
13 circumstances from a court system which clearly is not  
14 suited to the needs of children.

15 COMMISSIONER NEAVE: Counsel, could I just clarify that. If it  
16 is an ordinary criminal charge then you don't require the  
17 leave. Is the rule different in the context of a breach,  
18 is it?

19 MAGISTRATE BROUGHTON: If the contravention is under the Family  
20 Violence Protection Act then under the Act - - -

21 COMMISSIONER NEAVE: I see. It's a provision in that Act that  
22 requires the leave.

23 MAGISTRATE BROUGHTON: It's the Family Violence Protection Act.

24 COMMISSIONER NEAVE: Thank you. I wasn't aware of that.

25 MR MOSHINSKY: Another particular topic is the process by which  
26 intervention orders are served. You will be aware that  
27 over the last two days there's been reference to proposals  
28 that alternative means of service such as electronic  
29 service might be utilised. Are there any comments you  
30 wish to make about service?

31 MAGISTRATE HAWKINS: Yes. I think it is critically important

1 that a respondent knows if there's an intervention order  
2 made against him. That's best done by the communication  
3 that supports personal service by the police attending and  
4 explaining to him what the order is all about. Given that  
5 this is turning what is ordinary behaviour into criminal  
6 behaviour, I think that's critically important.

7 There is a system of making substituted service  
8 orders where personal service has been attempted but is  
9 unable to be achieved. I think that system could be  
10 improved by various practices. For example, gaining  
11 information about email addresses early in the piece,  
12 that's about information gathering at the time of the  
13 offence. Most people have an active email address now.  
14 The court on the current process, if an application is  
15 made for substituted service and there's evidence that  
16 that's a currently used email address, that might form the  
17 basis for a good avenue for substituted service.

18 I have had enquiries made about the efficacy of  
19 Facebook service. I have yet to be convinced that due to  
20 various aspects of that that that's an appropriate  
21 mechanism. But it may well be that service via various  
22 forms of social media could be utilised. So I think  
23 there's a mechanism there, but it's about gathering the  
24 relevant information about there being an effective method  
25 of alternative service and having that verified. I think  
26 to just have a general presumption that an alternative  
27 means of service, whether it's by old-fashioned mail or  
28 some other form, is probably not the best starting point,  
29 though.

30 MR MOSHINSKY: Can I ask you about the issue of

31 cross-applications. So there is an application for an



1 intervention order but there's also an application by the  
2 respondent for an intervention order against the other  
3 person. Is this something that you see often? Are there  
4 any issues around that that you wish to comment on?

5 MAGISTRATE BROUGHTON: The issue of the primary perpetrator is  
6 clearly something to consider. There's some literature,  
7 training around identifying who the primary perpetrator is  
8 in relation to the violence that's alleged or the cycle of  
9 violence that's taking place. It's a fairly inexact  
10 science. But I don't think there's been any adequate  
11 research in terms of how it's applied within the court  
12 setting and certainly to the initiation of intervention  
13 orders.

14 My observations anecdotally are, though, that we  
15 are seeing an increasing number of people who might be  
16 described as primary perpetrators - if I can express it  
17 this way - getting in first to make applications. I have  
18 certainly had circumstances where a woman has left with  
19 her children and has had the support of a family violence  
20 service and later come to court seeking an intervention  
21 order with the support of that service only to find that  
22 shortly after the event that might have triggered the  
23 separation the other person, the respondent to her  
24 application, has already been to court to seek an  
25 application and obtain an interim order against her that  
26 she knows nothing about.

27 I think it's an area we need to be very cautious  
28 about. It certainly requires a very high level of  
29 understanding and skill in relation to understandings of  
30 family violence. That's probably the only comment that  
31 I would like to make about it.

1 MR MOSHINSKY: Can I ask either of you or both of you about  
2 systems abuse. Do you see issues arising where you feel  
3 someone is abusing the legal system? Is this something  
4 that you wish to comment on?

5 MAGISTRATE HAWKINS: There are certainly examples where use of  
6 the justice system is almost used as a form of stalking  
7 behaviour. It's used to re-engage with the former  
8 partner, particularly where contact has been broken off;  
9 repeated court events used for that opportunity. That's  
10 why it is critically important that the court has physical  
11 structures so that there is choice given to the affected  
12 family member, for example, not to be present in the  
13 courtroom or, better still, to attend from a remote  
14 facility if she does want to be present in the court. So  
15 those are structures around the system.

16 But it certainly exists through our courts but  
17 also on to appeals to the County Court which effectively  
18 start the whole process off again and we do see that.

19 MAGISTRATE BROUGHTON: We also see it in other  
20 cross-jurisdictional contexts. Where there are children  
21 there's obviously not infrequently the involvement of the  
22 family law system. You might have other applications that  
23 are being made there; certainly reports to the Department  
24 of Human Services and the involvement of Child Protection  
25 and the Children's Court in that context.

26 I suppose one of the other issues, not only the  
27 cross-jurisdictional issues, between the civil, the  
28 criminal, perhaps family law, perhaps child protection,  
29 and of course we sit as the Victims of Crime Assistance  
30 Tribunal as well, so we are dealing with those  
31 applications, if there is not good coordination then

1 people fall through the cracks and there are risks between  
2 the various systems.

3 I think this is particularly evident in relation  
4 to the child arrangements. I was reflecting while Judge  
5 Hyman was speaking about the no contact orders. Most of  
6 our so-called no contact orders have got the exception  
7 about family law proceedings or child protection  
8 proceedings, particularly with the family law proceedings  
9 or agreements about child arrangements. They are unclear.  
10 Orders are made in circumstances where the arrangements  
11 are not clear. So the communication is very ineffective  
12 and it provides the opportunity for further abuse.

13 I think those are issues that certainly need a  
14 lot more attention and proper support in a less pressured  
15 environment than perhaps the first return of an  
16 intervention order for people to be able to at least  
17 regularise and plan for the proper interaction in relation  
18 to the children even within a couple of weeks, because  
19 it's a source of enormous stress and danger, particularly  
20 where respondents who want to have contact with their  
21 children and there are not clear boundaries set around  
22 that in an effective way are producing more dangerous  
23 circumstances and probably more breaches.

24 MR MOSHINSKY: One of the points Judge Hyman made towards the  
25 end of his evidence was the importance of all parts of  
26 the system working together and having an expectation that  
27 other parts of the system would work well. Is that a  
28 topic you have any observations or comments about?

29 MAGISTRATE HAWKINS: I think we would entirely agree with that.  
30 It's about having a specialised integrated response from a  
31 system working together. To pick up Chris Atmore's point,

1 it's about the system working at best practice standard  
2 and not relying on individuals to make that system work.  
3 So we are having regular discussions and have got lots of  
4 ideas about how that might look. But I think it's  
5 integral. Did you want to add to that?

6 MAGISTRATE BROUGHTON: Only to agree. But there's a lot more  
7 practical things we can do to effect that. I think it's  
8 been identified that we have a very fragmented system at  
9 the moment. There's a high reliance on, practically  
10 speaking, many manual processes which just don't work  
11 effectively.

12 So, for instance, from the court's perspective we  
13 have a family violence registrar and we will have an  
14 applicant support worker and a respondent support worker,  
15 and hopefully we will have CISP. But we don't have that  
16 at all courts everywhere at the time. Then we have the  
17 brokerage services that come around that. You might have  
18 the drug and alcohol services or the men's behaviour  
19 change programs or the mental health services.

20 If I was sitting in court and if I was in the  
21 integrated domestic violence court in New York there would  
22 be a computer program instead of me getting, for instance,  
23 my handwritten report from CISP, for instance, as to  
24 whether or not somebody's been complying with the  
25 supervision, and then the drug and alcohol service sending  
26 in another handwritten report about what's been happening  
27 with the drug and alcohol. Everybody would upload all of  
28 their reports into a computer system.

29 We would have certainly a privileges access to  
30 the program so that not everybody is going to see  
31 everything else. So obviously there are issues of

1 confidentiality. It's not always appropriate for judicial  
2 officers to be seeing everything at every time, depending  
3 on what sort of court event it is. If it is a contest it  
4 is quite different where you are obviously dealing with  
5 something. But if you are dealing with a case management  
6 matter or a bail matter they are all different sorts of  
7 circumstances. But you at least have all of the material  
8 coming in together so that it can be analysed. You have  
9 the in and out into the system being effective and not  
10 being wasted with these manual processes that are wasting  
11 time.

12 But also it's not the time; it's the risk that  
13 goes with it by not getting the right information in a  
14 timely way. That's one of the reasons that I raised the  
15 issue about being able to manage our cases. Our  
16 interaction with Victoria Police is extremely important in  
17 terms of getting that information so that we can act in a  
18 timely way. It's only relatively recently that in  
19 relation to our intervention orders things would be faxed  
20 to us and we would have somebody sitting there typing away  
21 putting things into our computer system. The hours that  
22 have been lost by highly skilled staff doing these manual  
23 processes in the 21st century is mad. It's just simply  
24 mad. We need for people to be exercising their judgment,  
25 their skill, not these ridiculous process issues which  
26 really impede the effectiveness of the system and, in my  
27 view, contribute to a considerable risk.

28 MAGISTRATE HAWKINS: If I could just pick up on the point and  
29 the question you asked of the last witness, Commissioner,  
30 namely about the use of paralegals. I think this is about  
31 getting machines to do what machines do really well and

1       freeing up these existing highly skilled and trained  
2       particularly court registrars staff but also staff of  
3       other agencies to do what people do best, and that's about  
4       communicating with people, with court users; about doing  
5       the nuanced things that hopefully it's still in the  
6       province of people to do. That goes to addressing risk.  
7       It goes to a lot of the criticisms of the court about the  
8       experience of court users in coming to court.

9               I think the time estimate for a highly skilled  
10       registrar that still stands in front of a fax machine for  
11       20 minutes per application, when that could be freed up to  
12       deal with people if that was all automated, is quite  
13       remarkable. So the efficiency gains that you get from  
14       automating so much of this system would allow us to  
15       efficiently and far better and far more safely deal with  
16       the problem of family violence as it intersects with the  
17       justice system holistically.

18   MR MOSHINSKY: There's one other point that Judge Hyman made  
19       towards the end of his evidence which was about the  
20       significance of local legal culture. I'm wondering  
21       whether either of you have any observations on that topic.

22   MAGISTRATE HAWKINS: I think that leads into an issue which we  
23       have been discussing at a body we have called the Family  
24       Violence Taskforce, which is a group that's been convened  
25       by the Chief Magistrate from throughout the legal  
26       profession. There's representation from the Law  
27       Institute, from the Victorian Bar, but also the community  
28       sector more broadly. It includes police. So it's been a  
29       high-level taskforce convened to look at ways that we can  
30       achieve best practice in family violence in Victoria.

31               One of the issues that has come out of that

1 taskforce is this issue about the siloing of legal  
2 training of professional development. We have criminal  
3 lawyers, we have family lawyers, and never the twain shall  
4 meet. That's been picked up very much by Legal Aid in  
5 particular in terms of cross-training their duty lawyers  
6 so that criminal lawyers do have a good understanding of  
7 family violence and have some understanding of family law;  
8 that the family lawyers appearing in family violence cases  
9 have some understanding about bail and how the criminal  
10 law works.

11 There's a lot of scope to spread that spreading  
12 of expertise and perhaps generalisation throughout the  
13 rest of the legal profession. That's something that we  
14 are taking up with the Law Institute and the Bar. It also  
15 goes back to specialisation amongst magistrates. I think  
16 there's been considerable criticism of the level of  
17 expertise of magistrates in family violence areas.

18 We are committed to making sure that every  
19 magistrate is a specialist family violence magistrate. To  
20 that end we have worked with the Judicial College of  
21 Victoria to really improve the quality of professional  
22 development for all magistrates. That involves at the  
23 moment a two-day program for every magistrate in Victoria  
24 to attend over an 18-month period. The second tranche of  
25 that program is running for the rest of this week.

26 This aspect of that professional development is  
27 about the social context around family violence so that we  
28 can ensure - because it is the core business of our  
29 court - that every magistrate, whether they are sitting in  
30 Ballarat at the division court or they are sitting in  
31 Echuca, a high-volume court in the country, is well

1 equipped to do family violence work at a high capacity.

2 It's hoped and envisaged - we are working with  
3 the Judicial College - to expand that capacity for family  
4 violence professional development not only throughout the  
5 magistracy but throughout the judicial officers at all  
6 levels, and that will be ongoing. I'm aware that  
7 the Judicial College has made a submission to the Royal  
8 Commission about developing their capacity to improve the  
9 quality and understanding throughout the judicial system.

10 MR MOSHINSKY: Magistrates, are there any other aspects that  
11 I haven't asked you about but that relate to today's topic  
12 of monitoring and enforcement of intervention orders that  
13 you wish to comment on?

14 MAGISTRATE BROUGHTON: One other issue that hasn't been  
15 mentioned in the context of making every court event  
16 relevant, when you skill all parts of the system and  
17 certainly within the judicial aspect with the judicial  
18 officers and the staff then you alert people to risk and  
19 to be able to act flexibly and creatively.

20 I was sitting in the Victims of Crime Assistance  
21 Tribunal with an Indigenous woman. She was there in  
22 relation to a very serious physical assault that she was  
23 still bearing the physical scars on her face for. By the  
24 time that I was dealing with it her intervention order had  
25 well and truly expired. Her partner had been gaoled, but  
26 he was due for release on parole. Of course parole  
27 conditions can be imposed. But she was terrified not only  
28 for herself and her child but the pressure that she was  
29 receiving from the family and was concerned that she  
30 didn't have an intervention order. So I closed the  
31 Victims of Crime Assistance Tribunal after she had been to



1 the registry, who helped her fill out her application for  
2 the intervention order, and opened the court and I granted  
3 her an interim order. He was served. Ultimately he  
4 consented and an order was made.

5 We need to think about these court events in  
6 terms of people's circumstances as they come before the  
7 courts. It's not a linear process. People present at  
8 different times and at different parts of their lives. We  
9 need to think more creatively and flexibly using the  
10 authority of the court and the engagement with the other  
11 parts of the system as we do in an integrated system,  
12 which is certainly a good system in Victoria, it just  
13 needs enhancing.

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

16 COMMISSIONER NEAVE: I just wanted to follow up your last point  
17 because there's been no reference or not very much  
18 reference to the family law issues that arise, and we do  
19 have another day in which some of those issues are going  
20 to be raised. But it was the case, I think, that  
21 magistrates used to exercise their jurisdiction under the  
22 Family Law Act - - -

23 MAGISTRATE BROUGHTON: We still do.

24 COMMISSIONER NEAVE: More frequently. My impression is that  
25 that is much less frequently exercised at least in  
26 metropolitan Magistrates' Courts than was the case in the  
27 past.

28 MAGISTRATE BROUGHTON: I can give you a longer or a shorter  
29 answer. Probably shorter would be better.

30 COMMISSIONER NEAVE: Shorter, and we can take it up later.

31 MAGISTRATE BROUGHTON: I think so. Because of course we had

1 the Federal Magistrates Court, which is now the Federal  
2 Circuit Court. So it was expected that that summary  
3 jurisdiction would be taken up by the Federal Magistrates  
4 Court. That wasn't.

5 The reality is we have family law jurisdiction.  
6 We have power to make interim orders, and we do, primarily  
7 in the country because of lack of access to Family Courts,  
8 either the Federal Circuit Court or the Family Courts  
9 because of not a lot of circuits.

10 Clearly in metropolitan Melbourne you have the  
11 Dandenong registry and the Melbourne registry. So people  
12 don't come to the Melbourne Magistrates' Court in  
13 particular for parenting orders, which is the main sort of  
14 orders that are involved. We do get child support matters  
15 coming to our court. But really in this area that's  
16 probably the main reason.

17 Can I also say the court does not get a cent to  
18 exercise its family law jurisdiction, but we recognise  
19 it's incredibly important in this area. So,  
20 notwithstanding that, we do the work where we can. In  
21 fact the Chief Justice of the Family Court has just  
22 launched our on-line family law manual for magistrates  
23 which is a publication that we did in-house to assist us  
24 doing this work.

25 We have done a lot of professional development.  
26 All of our country magistrates regularly do work in the  
27 family law area in terms of their professional  
28 development. We just had a session very recently  
29 internally for all magistrates in relation to our family  
30 law jurisdiction. We regard this as an incredibly  
31 important part, particularly dealing with families who are

1           experiencing family violence, in being able to make  
2           appropriate family law orders to promote their safety. So  
3           we do think it's important, but it's been a very difficult  
4           process; the constitutional issues.

5                         But the practical issues about providing support  
6           to our court, even on a practical level when we were  
7           working to do the family law manual - I ask our registry  
8           to assist, but of course the court doesn't get any  
9           financial support to be able to do it. It's a problem.  
10          But it's an area of jurisdiction that we think is very  
11          important for us to exercise, and we would like to do more  
12          in appropriate cases particularly in the family violence  
13          area.

14   COMMISSIONER NEAVE: Thank you very much. We will explore this  
15          issue further later.

16   MR MOSHINSKY: Thank you very much for your participation,  
17          Magistrates. Commissioners, if we could now adjourn for  
18          lunch until 2 pm.

19   COMMISSIONER NEAVE: Thank you very much indeed.

20   <(THE WITNESSES WITHDREW)

21   LUNCHEON ADJOURNMENT

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1 UPON RESUMING AT 2.00 PM:

2 MS ELLYARD: Thank you, Commissioners. The next witness is  
3 Ms Melinda Walker. She is in the box. I ask that she be  
4 sworn.

5 <MELINDA JOANNE WALKER, affirmed and examined:

6 MS ELLYARD: Ms Walker, what's your profession?

7 MS WALKER: I'm an accredited specialist in criminal law.

8 MS ELLYARD: Where do you practise?

9 MS WALKER: In Brunswick. I have a sole practice. I have been  
10 there for 12 years.

11 MS ELLYARD: Can you summarise for the Commission, please, your  
12 professional background and experience, perhaps reflecting  
13 on how that experience has led to you being in your  
14 present position as a criminal law defence specialist?

15 MS WALKER: As per my statement - I gather that you have my  
16 statement - I am a survivor of family violence. I was  
17 subjected to family violence between the ages of 15  
18 through to 23. I had left school at the age of 15 prior  
19 to completing year 10, and I returned to school to finish  
20 what was then still HSC and went on to university to study  
21 law.

22 It was through my experience of being a then  
23 victim of family violence that I realised that there  
24 needed to be systemic change and, if I wanted to make any  
25 change, that I had to do it from within. That was  
26 primarily the basis upon which I entered into - certainly  
27 into law.

28 In terms of it being into criminal law, again,  
29 I wanted to be involved with systemic change where the  
30 police were involved, where the courts were involved, as a  
31 single parent and supports that were lacking therein, and

1           also to be part of that change in terms of perpetrators.

2 MS ELLYARD: You mentioned your statement. You have made a  
3 statement that's dated 31 July 2015 to the Commission.  
4 Are the contents of that statement true and correct?

5 MS WALKER: Yes, they are.

6 MS ELLYARD: One of the things you mention at the early stage  
7 of your statement is some work that you tried to do when  
8 you were at the Fitzroy Legal Service some time back that  
9 arose out of your own experiences. I wonder would you  
10 summarise that work, please, for the Commission?

11 MS WALKER: That was when I had started at university and  
12 I started to do some volunteer work with the Fitzroy Legal  
13 Service, and as part of being on the implementation group  
14 at that stage I was the head of a project which was to  
15 gather all services involved with family violence, which  
16 included police, housing services, refuge and social work  
17 services, to enable women who were victims of violence,  
18 who found themselves as victims of violence, where they  
19 could have a contact which would provide all of those  
20 services in that one phone call.

21           Certainly through my experience I was  
22 appreciative that sometimes when you are a victim of  
23 domestic violence your window of opportunity to make  
24 contact with a service can be very, very short and very  
25 brief, and that it may be one phone call between - a  
26 number of months before you could get any assistance.  
27 Certainly from my own experience I had no idea who to  
28 call. It certainly wasn't as public as what it is now.  
29 So if you called the police then you had to find your own  
30 lawyer to assist you to get an intervention order, and  
31 I wanted to gather all of those services in together so

1           that there could be some kind of a one-stop shop.

2 MS ELLYARD:   Where did that project go at that time?

3 MS WALKER:    Absolutely nowhere.

4 MS ELLYARD:   Why do you think that was?

5 MS WALKER:    Firstly, because it was a voluntary project of  
6           mine, and I had a number of other students who were  
7           interested and they were doing things like court  
8           observations to see the incidence of intervention order  
9           applications, the attitudes of the court, the attitudes of  
10          police.  Certainly back then we didn't have the ability  
11          for the police to make the application on behalf of the  
12          applicant.  So it was about seeing where those  
13          intervention orders went, because there certainly wasn't  
14          as much protection for women as what there is now.

15 MS ELLYARD:   Can I ask you a little bit about the extent to  
16          which in your criminal practice you encounter cases of  
17          allegations of family violence.  Can you identify what  
18          percentage of your work relates either specifically or  
19          more indirectly to family violence?

20 MS WALKER:    That's a hard question to answer.  In terms of  
21          directly whether or not there - where there's charges  
22          relating to family violence breaches of intervention  
23          orders or violence - for incidents where it is in the  
24          context of family violence, in my own practice I would  
25          probably say around about 30 per cent.  But there is a  
26          great deal of the people who I deal with where there's not  
27          charges with respect to family violence but where there's  
28          perhaps drug offending or violent offending itself which  
29          stems from a background of family violence.  It's quite  
30          pervasive.

31 MS ELLYARD:   So thinking firstly about that cohort of clients

1 who are charged with offences related directly to family  
2 violence, you deal in paragraph 13 of your statement with  
3 I guess some of the characteristics of some of your client  
4 group. Are there general things that you can say about  
5 the cohort of your clients who find themselves facing  
6 those charges?

7 MS WALKER: There's obviously a very significant drug problem  
8 that we have in this state at the moment. So there are a  
9 lot of people who are dealing with drug and alcohol issues  
10 which have been a problem from a very, very early age.  
11 Certainly there's the lack of education. There's a great  
12 deal of what I would describe as generational violence  
13 where it's okay with mum, it's okay with dad, it's okay  
14 with brothers and sisters; and again there's a history of  
15 family violence themselves. Mental health is also  
16 something that is quite common in a lot of these cases.

17 MS ELLYARD: At paragraph 22 and following of your statement  
18 you turn to the specific issue of family violence related  
19 offences and breaches. Over the time that you have been  
20 practising in the criminal law have you observed a change  
21 in the rate at which or the frequency with which  
22 intervention order breach charges are laid?

23 MS WALKER: I think there's been a significant change, and  
24 I think that there's been a significant reaction by the  
25 police to charge people. That's sometimes a good thing  
26 and sometimes it's a bad thing. If I could explain that.  
27 In the criminal practice act - sorry, I have just lost my  
28 train of thought.

29 MS ELLYARD: Paragraph 22 and paragraph 23.

30 MS WALKER: Sorry, I was specifically referring to the process.  
31 In the Criminal Procedure Act the contents of a

1 preliminary brief that the police are required to provide  
2 at the time that a breach is initiated is - if I could  
3 describe it as the bare bones. So what I'm seeing,  
4 because of the preliminary brief requirement, is a lack of  
5 appropriate investigation with respect to particular  
6 breaches. Photographs may not be obtained. Statements  
7 are not taken. This extends the process. Particularly if  
8 the accused who has been charged then wishes to contest a  
9 charge, it then just lengthens the process, which is  
10 certainly not good for the victim and it certainly doesn't  
11 assist the criminal justice process. It brings up all  
12 issues of bail with respect to remand. So certainly what  
13 I would like to see is a change in the provision of  
14 evidence by police to be able to fast-track that process a  
15 little bit better.

16 MS ELLYARD: You began that answer with saying that you felt  
17 that there had been a substantial increase perhaps in the  
18 number of breach charges laid, which was sometimes good  
19 and sometimes bad. From your perspective, one of the bad  
20 aspects is that that increase in charges hasn't  
21 necessarily been accompanied by the necessary standard of  
22 evidence to support the charges that have been laid; is  
23 that your experience?

24 MS WALKER: That's right. I think, as I have put in my  
25 statement, there's now the offence of the persistent  
26 contravention charge, which encompasses a great deal of  
27 behaviour over a period of time. So often you will get a  
28 duplicity in the charges where you will get a charge for  
29 each single breach, and then you will get a persistent  
30 contravention of all of those breaches.

31 So it is difficult then to advise a client or to



1 take the matter any further, where there is insufficient  
2 evidence with respect to each of those breaches, to be  
3 able to advise your client whether or not they should be  
4 pleading guilty to a persistent or whether or not each of  
5 the individual charges can be proved.

6 MS ELLYARD: So thinking about - as I understand it, the  
7 preliminary brief procedure is mandated by legislation.

8 MS WALKER: Yes.

9 MS ELLYARD: What are the circumstances in which police are  
10 meant to be preparing a full brief of evidence? Does that  
11 only happen after there is some indication that the matter  
12 will be contested?

13 MS WALKER: Yes, at contest mention stage.

14 MS ELLYARD: So what in your experience can be some of the  
15 consequences then if the evidence hadn't been gathered at  
16 an early time?

17 MS WALKER: The charges are withdrawn for lack of evidence.

18 COMMISSIONER NEAVE: Can I just have a question, Counsel. Is  
19 this a problem which is peculiar to family violence, or is  
20 this an issue which arises in the context of other  
21 preliminary briefs?

22 MS WALKER: It's across the board.

23 COMMISSIONER NEAVE: I see. So in other situations you will  
24 similarly have a preliminary brief which really makes it a  
25 bit difficult to work out what's going to proceed and  
26 what's not and how to advise your client?

27 MS WALKER: Yes. You simply don't get any statements. The  
28 statements are not taken by police not on all - I can't  
29 say on all occasions, but you will be provided with a list  
30 of witnesses and there's an indication there that no  
31 statements have been taken. So it's not until you take

1 the matter further through a summary case conference to  
2 then get some pressure from the prosecution, to then  
3 contact the informant, to then go and take those  
4 statements, then they are provided to us and then we can  
5 make an assessment and then the matter can be booked in  
6 for a contest mention and then a full brief.

7 COMMISSIONER NEAVE: Suppose it was another  
8 indictable - persistent breach I think is an indictable  
9 offence triable summarily. I think theft is an indictable  
10 offence triable summarily. You would have the same sort  
11 of issues arising?

12 MS WALKER: Yes.

13 COMMISSIONER NEAVE: It is not worse in the area of breach;  
14 it's just a general problem?

15 MS WALKER: It's a general problem.

16 MS ELLYARD: Can I invite you to comment then on what you have  
17 observed as this general perhaps lack of early  
18 preparedness of evidence by the police, how that plays out  
19 in attempts by the court to fast-track matters like, for  
20 example, the process that's in pilot at Dandenong?

21 MS WALKER: If I could say this. There's been certainly a  
22 reaction by the police to make application for more  
23 remands than ordinarily. There has been certainly an  
24 increase in my experience for that. There's a lot more  
25 people who are being remanded with respect to family  
26 violence matters. So certainly if somebody is in remand  
27 there's more urgency to resolving their case. So  
28 particularly if there is only a preliminary brief in  
29 existence and very little evidence in existence at that  
30 time, certainly that person may concede a guilty plea  
31 really without any sufficient evidence if the outcome is

1 to be their release.

2 MS ELLYARD: Can you comment on the desirability or otherwise  
3 of that sort of situation?

4 MS WALKER: It's not desirable in terms of the administration  
5 of justice or even natural justice. I don't necessarily  
6 disagree with the fast-tracking, if I could say that.  
7 However, it has to be across the board. There has to be  
8 sufficient evidence in order to be able to advise your  
9 client appropriately.

10 MS ELLYARD: Can I ask you to comment, if you feel able to, on  
11 I guess in the family violence context the risk that might  
12 flow to the victim or the alleged victim from  
13 circumstances where someone's remanded in respect of  
14 charges that are subsequently discontinued?

15 MS WALKER: Well, they are blamed and certainly - I'm lucky to  
16 say that I haven't had any of my clients take out any  
17 frustrations upon their victims, but certainly they  
18 express it. I think it is dangerous that the complaints  
19 that are made that are followed through by police are then  
20 taken out upon the victims, particularly if somebody is  
21 remanded.

22 MS ELLYARD: Can I invite you to summarise for the Commission  
23 how you approach taking instructions from and advising  
24 someone who is charged with a breach of intervention  
25 order? Let's assume for the sake of the argument that the  
26 evidence is there. What's the process by which you take  
27 instructions or advise clients about what family violence  
28 is, the circumstances where they may not think that what  
29 they have done is family violence?

30 MS WALKER: I think that happens often because I think there's  
31 still a perception that physical violence is the only

1 violence. "I didn't hit her", or there's the "Well, she  
2 pushed me." There's the retribution kind of issue. I do  
3 find that I'm educating them to be able to get them to  
4 understand exactly what the charges are and why they are  
5 there and what the consequences are. I would have to  
6 be - certainly if the evidence was there I would be  
7 advising them what their options are and the risks that  
8 they take if they plead not guilty.

9 MS ELLYARD: Can I turn then to the issue of what happens to  
10 offenders who either are found guilty or plead guilty and  
11 the way in which sentencing dispositions work. At  
12 paragraph 23 of your statement you comment on what might  
13 be the best way for sentencing to have an impact on family  
14 violence offending longer term. Could you tell us a  
15 little bit about the preferred model from your perspective  
16 for sentencing?

17 MS WALKER: I think that there needs to be, as I said in my  
18 statement, a holistic and therapeutic jurisprudence  
19 explored in terms of family violence matters. Community  
20 corrections orders as far as a sentencing option is  
21 probably the only one where there is some form of therapy  
22 offered. However, you may get somebody who has never been  
23 before the courts before may get an opportunity of not  
24 having such an invasive sentence at that point in time.

25 I'm finding also that there's a number of  
26 magistrates who will simply impose a very short, sharp  
27 term of imprisonment, which achieves absolutely nothing  
28 apart from a visit to the police cells for some 14 days or  
29 so. As I have put in my statement, I have had a client  
30 just recently who had never been before the courts before,  
31 found himself in a situation of family violence, was

1 sentenced to 14 days imprisonment. He appealed that and  
2 he appealed it on the basis that he was seeking  
3 assistance, and certainly submissions were made to the  
4 court for a community corrections order to be imposed.  
5 There was psychological material that was provided to the  
6 court, and that was rejected and he served 14 days.

7 MS ELLYARD: What were some of the issues that he had been  
8 seeking assistance with that might have been able to be  
9 addressed if he had been on a community corrections order.

10 MS WALKER: His marriage had broken down. He was not coping  
11 with that. He had become homeless because he had been  
12 ejected from the house. One of his children was only  
13 I think 15 months of age, and he was separated from that  
14 child. He had had no advice or referral to any family  
15 lawyers to try and correct that situation to have contact.  
16 The incident that happened bore out of a situation of  
17 extreme frustration, and he lost his cool and he was  
18 charged.

19 MS ELLYARD: You said ultimately he did serve the 14 days in  
20 gaol?

21 MS WALKER: Yes.

22 MS ELLYARD: Having been released, what was available for him  
23 in terms of follow-up or support or supervision?

24 MS WALKER: Nothing. Nothing in terms of mandatory supervision  
25 or mandatory counselling. Certainly he can seek that  
26 himself if he wants to. That's a whole process in itself,  
27 and there's extensive waiting periods.

28 MS ELLYARD: There was some evidence this morning and you have  
29 dealt in your statement as well with the possibility of a  
30 CISP type model being more readily available in family  
31 violence cases, and I take it you would be supportive of

1           that?

2 MS WALKER: Definitely, but it will only work if there are  
3           better resources in place. I have somebody who at the  
4           moment is subject to the CISP bail. I think I have put it  
5           in my statement as well. Part of the direction from the  
6           CISP clinician was to attend a men's behaviour program.  
7           He couldn't afford \$30 to go to the program. So he hasn't  
8           gone to the program. So there's been nothing else  
9           therapeutic that's been put in place for him. His charges  
10          were really quite serious. His case is actually like a  
11          combination of where there's a number of charges which  
12          have been withdrawn because of the lack of evidence that's  
13          been provided, he ended up being released on bail because  
14          the strength of the prosecution case changed. He has  
15          returned to the house where the complainant lives with the  
16          support of the complainant, but has no form of therapeutic  
17          programs available to him whilst he's on bail. Nothing  
18          has happened, I must say.

19 MS ELLYARD: The Commission heard some evidence this morning  
20          from a former judge in America about an approach in  
21          California which certainly does involve substantial use of  
22          short, sharp periods of imprisonment as an immediate  
23          response to breaches of intervention orders.

24 MS WALKER: Is that the Hope program?

25 MS ELLYARD: No, it's not the Hope program. It was in  
26          California. You, at paragraph 31, comment, I suppose, on  
27          some issues associated with the use of incarceration as a  
28          response to family violence. I wonder could you reflect a  
29          little on the pros and cons, I suppose, of using immediate  
30          imprisonment as a response to family violence offences?

31 MS WALKER: At the sentencing stage or just in general?

1 MS ELLYARD: In general.

2 MS WALKER: Prison is certainly a very violent environment as  
3 well and certainly perpetuates gender biases, as I have  
4 put in my statement as well. However, I am more in favour  
5 of some form of ongoing supervision for offenders who have  
6 been sentenced. The response of - placing somebody onto  
7 say, for example, a community corrections order where that  
8 person may fall into breach, there's quite a process  
9 before the matter - and often a long delay before a matter  
10 is brought before the court for breach proceedings, and  
11 certainly a great deal of offending can happen between  
12 that period.

13 So I think that where - I think the process, say,  
14 for example, with the ARC program and with the drug court,  
15 where there is ongoing supervision and direct  
16 communication with a magistrate speaks volumes. I think  
17 it works really well where the offender feels like they  
18 have got a little bit more input into their own  
19 rehabilitation as well. There has to be some consequence  
20 for not abiding by the opportunity that the court is  
21 giving them.

22 MS ELLYARD: One of the things that you touch on in your  
23 statement at paragraph 43 is the benefit of a  
24 comprehensive parole supervision approach rather than long  
25 periods of incarceration. But you suggest that the parole  
26 system we have at the moment perhaps isn't as well suited  
27 for that task as it might previously have been. Why is  
28 that?

29 MS WALKER: The problem is that people aren't getting parole.  
30 It's not necessarily the parole system itself, but there's  
31 very few prisoners being released on parole. If they are

1 released on parole, it's only for very short periods of  
2 time.

3 There's all of the programs within the prisons  
4 which are on offer for sentenced prisoners only. So  
5 there's very little that anyone can do whilst they are on  
6 remand, and it's not until they are sentenced that they  
7 can then access the more comprehensive programs.

8 I have had clients who have been on waiting  
9 periods for programs and they are told that they can  
10 commence the program, which is probably a nine-month  
11 program but they have only got three months left of their  
12 sentence. It's just a ridiculous situation where they are  
13 really open to doing the programs but there's just not  
14 enough places for them and they don't get access to those  
15 programs in time for them to be considered by parole.

16 MS ELLYARD: Can I now ask you about a slightly different issue  
17 which you deal with at paragraph 53 of your statement,  
18 which is a cohort of clients of yours and people in the  
19 criminal justice system who aren't there because they are  
20 family violence offenders but because they have been the  
21 victims of family violence offending. From your  
22 experience, how do those issues emerge and play out?

23 MS WALKER: They are predominantly women, so the women who are  
24 in custody. It's not always that you will realise that  
25 there has been some form of family violence until they are  
26 in contact with the criminal justice system. They are  
27 generally dealing with drug and alcohol abuse. There is  
28 Department of Health and Human Services involvement with  
29 their children, so there is constant contact with  
30 the perpetrator all the time.

31 There's very little housing for anyone coming out



1 of prison, whether you are male or female. Invariably  
2 women who are released from custody will return to the  
3 perpetrator, or they will arrange housing through the  
4 prison and then the perpetrator who was also homeless will  
5 then join them. That then puts them at risk in terms of  
6 their housing because it's women only sometimes. They  
7 then become homeless, and the cycle continues. It's a  
8 really vicious cycle that a lot of them are in.

9 MS ELLYARD: To what extent, in your experience, is a  
10 background of family violence taken into account by courts  
11 when sentencing offenders such as that, where the  
12 offending is perhaps quite unrelated to family violence  
13 but the context of their offending is family violence?

14 MS WALKER: The context of their offending or their  
15 background - - -

16 MS ELLYARD: Their background.

17 MS WALKER: I suppose it depends on how - the increase in terms  
18 of the seriousness of the offending. You may  
19 have - I think probably the best I can use is examples  
20 where I have had a number of women who are co-accused for  
21 armed robberies, for example, whether they are the driver  
22 of the motor vehicle or they are the look-out or they are  
23 something like that. So their criminal offending is quite  
24 high, and then to take into account family violence, it's  
25 completely unbalanced by that stage, once you get to that  
26 stage of offending.

27 It's taken into account I think in terms of -  
28 well, particularly where there's issues of post-traumatic  
29 stress disorder, Verdins issues will be relevant, and they  
30 will be taken into account at that point. But I don't  
31 think I can say that family violence per se is taken into

1 account as a mitigating factor. It has a flow-on effect  
2 to other issues that then become mitigation.

3 MS ELLYARD: Other than things that we have already touched on,  
4 if you were re-designing the criminal justice system to  
5 respond better to family violence offending, how would you  
6 re-design it?

7 MS WALKER: Education, I think. I think there needs to be more  
8 education within the community itself, and I think I have  
9 put it in - certainly coming from my experience as well,  
10 it's taken me over 30 years now to get to this point where  
11 here I am giving evidence at the Royal Commission.

12 MS ELLYARD: Do the Commissioners have any questions for  
13 Ms Walker?

14 COMMISSIONER NEAVE: I did just want to explore one issue.  
15 That relates to women who offend when they are in a  
16 violent relationship and it's at least arguable that they  
17 offended because they were in that violent relationship  
18 and they really had no choice. I don't recall ever seeing  
19 a case - I have only seen them at appellate level - in  
20 which that sort of argument has been made. Have you had  
21 any cases where that sort of argument was made, that in  
22 effect this was duress, that the woman had no choice but  
23 to participate?

24 MS WALKER: No, I haven't. You can see signs of it, but often  
25 their behaviour is quite violent as well. So it's very  
26 difficult then to separate that out to make that argument.  
27 They are often extremely frightened as well and they won't  
28 place blame upon anybody else and they will take the  
29 blame.

30 COMMISSIONER NEAVE: They will very often both be drug users,  
31 and, as you said, the armed robbery example is a good one.

1 I have seen that on many occasions but I have never seen  
2 it argued, and perhaps it shouldn't have been, that this  
3 was almost a duress situation or was - even if not duress  
4 legally, could have been taken into account at sentence,  
5 and I don't think I have ever seen that.

6 MS WALKER: No. Like I said, I think because of the behaviour  
7 that is presented to the court as well - - -

8 COMMISSIONER NEAVE: Yes, I understand.

9 MS WALKER: It is really hard to try to argue that. It is  
10 risky even to try and engage in that conversation with the  
11 Bench.

12 COMMISSIONER NEAVE: I understand. Thank you.

13 MS ELLYARD: If there are no other questions, I ask that  
14 Ms Walker be excused.

15 COMMISSIONER NEAVE: Thank you very much.

16 <(THE WITNESS WITHDREW)

17 MS ELLYARD: The next witness is Sergeant Deryn Ricardo. I ask  
18 the sergeant to come to the witness box.

19 <DERYN CAROLINE RICARDO, sworn and examined:

20 MS ELLYARD: Sergeant, where are you stationed at present?

21 SERGEANT RICARDO: I am stationed at the Morwell Police  
22 Station. Being the family violence adviser, I have  
23 responsibility over two divisions, divisions 5 and 6, in  
24 eastern region, which covers the entirety of Gippsland.

25 MS ELLYARD: We have heard a bit of evidence about how family  
26 advisers sit within the framework of family violence  
27 responses in Victoria Police. As an adviser, does that  
28 mean that there are a number of family violence teams  
29 under your guidance?

30 SERGEANT RICARDO: There's a family violence team at Latrobe.  
31 There's also a family violence team in Wellington, which

1 is Division 6, and East Gippsland again, which is Division  
2 6. They sit in a PSA sort of - which is a police service  
3 area. Again, my role is in a divisional, so the line  
4 control is not to me.

5 MS ELLYARD: So does that mean that there's the one family  
6 violence team that you have primary responsibility - - -

7 SERGEANT RICARDO: I work alongside them. The Latrobe  
8 inspector, say, for Morwell is their line control.

9 MS ELLYARD: You have made a statement to the Royal Commission  
10 that is dated 27 July 2015. Are the contents of that  
11 statement true and correct?

12 SERGEANT RICARDO: Yes. There's just one amendment in relation  
13 to when I came into my role. That was late 2010, not  
14 2011, as mentioned in there.

15 MS ELLYARD: You mention that I think in paragraph 2. So that  
16 should say 2010?

17 SERGEANT RICARDO: Yes, it was late 2010, yes.

18 MS ELLYARD: I also understand that in relation to the  
19 observations that you make at paragraph 34 of your  
20 statement some statistics have become available to you  
21 since the time you made the statement; is that correct?

22 SERGEANT RICARDO: That's correct.

23 MS ELLYARD: That's in particular in relation to the references  
24 that you make at paragraphs 34.3 and 34.4?

25 SERGEANT RICARDO: Yes.

26 MS ELLYARD: We will come to that shortly. The Commission has  
27 already heard from one of your colleagues about the role  
28 of a family violence adviser, but could I ask you just to  
29 summarise a day in the life of? On an average day what  
30 kinds of things are you doing, and with what other parts  
31 of Victoria Police are you having contact?

1 SERGEANT RICARDO: I particularly look around the compliance  
2 side of things. So an average day for me will be looking  
3 at every sub-instance. Every crime that's recorded onto  
4 our data system I would triage, and this includes missing  
5 persons reports, mental disorder transfers. When I'm  
6 looking at these I look for the link with L17s, with  
7 the family violence reports. So I make sure they are  
8 recorded together. With the mental disorder transfers  
9 I will look to see if there is any link to family  
10 violence, and some are. L17s may not necessarily be done  
11 because members are doing a section 351. So the action  
12 taken, they go to the mental health services, but there is  
13 still an element - as far as an AFM is concerned - of  
14 family violence.

15 So the crime reporting, again with the L17s,  
16 I will read all those, make sure the appropriate referrals  
17 are done, make sure the children are listed, that they  
18 also have referrals, that the intervention order process  
19 is followed properly, that there is a timely submission of  
20 crime reports. Around that, that affects the CI - the  
21 Criminal Investigation Unit's triaging as per their aim,  
22 principles. So if it's late in going in and being linked,  
23 they don't see it until a week or so down the track. So  
24 that needs to be - - -

25 MS ELLYARD: So what's a crime report, and how does that  
26 compare to an L17?

27 SERGEANT RICARDO: So the L17s are done through LEADR, which  
28 you have probably been told about. So a crime report, if  
29 there is an assault, there's a damage, a breach of  
30 intervention order, it is a separate report that gets  
31 faxed off to central data. They load it on, and the crime

1 report should be actually sitting below the L17. So when  
2 you look at the screen there will be a family violence  
3 report and a crime report sitting - if there is crime.

4 MS ELLYARD: That would mean anyone checking that particular  
5 person on your system would be able to see there's been a  
6 family violence incident but a crime report and perhaps  
7 charges are likely to follow as a result?

8 SERGEANT RICARDO: Correct, yes.

9 MS ELLYARD: That's all recorded centrally; is that correct?

10 SERGEANT RICARDO: That's correct.

11 MS ELLYARD: So work is done at an individual station level but  
12 it is faxed through to a central location that is  
13 responsible for uploading all that information?

14 SERGEANT RICARDO: That's the crime reports.

15 MS ELLYARD: One of the things you talk about in your statement  
16 at page 17 is a divisional family violence meeting that's  
17 convened in your division. What's the purpose of that  
18 meeting?

19 SERGEANT RICARDO: That meeting, through I suppose the triaging  
20 process, any trending that we are identifying, any issues  
21 around compliance, any issues at stations that are  
22 significant, we have all the key stakeholders as far as we  
23 are concerned with Vic Pol. So our Latrobe inspector runs  
24 the meeting, chairs the meeting, myself, the family  
25 violence team sergeant, a representative from the SOCIT,  
26 prosecution, CI. So if there needs to be specialist  
27 intervention it's actioned there and then, and the officer  
28 in charge from that unit will then take it away and ensure  
29 that appropriate action has been taken or oversight.

30 MS ELLYARD: So does that mean that specific cases might be  
31 discussed and the need for some kind of input from another

1 part of the division - - -

2 SERGEANT RICARDO: Most definitely, yes.

3 MS ELLYARD: You also then talk in paragraph 18, and you have  
4 touched on this already, that part of your role is to make  
5 sure that family violence is appropriately identified  
6 wherever it has occurred, and I gather that one of the  
7 ways you do that is through receiving the outstanding  
8 family violence reports. What's the work that you do  
9 there?

10 SERGEANT RICARDO: With the outstanding family violence reports  
11 we will have perhaps a crime report that is connected by  
12 way of association between a victim who has been  
13 identified as a family member, the type of offending too,  
14 breach of family violence. Also on sort of the L1s when  
15 they put in crime reports they will tick a nexus to family  
16 violence. I suppose I should explain.

17 When the sub-incident goes onto our data system  
18 there is an area which is called the "method of",  
19 I suppose, and under that it details things such as your  
20 relationship, whether alcohol has been involved in the  
21 nexus. So this report identifies there is no L17s  
22 recorded with that particular incident. It's not to say  
23 they haven't been done. They may have been recorded  
24 separately. A member may have ticked the wrong  
25 relationship box. The nexus box may have been ticked. In  
26 some instance the family violence reports haven't gone on.  
27 So with this report coming out weekly we can identify that  
28 pretty quickly and rectify that.

29 MS ELLYARD: Why is it important? From your perspective, why  
30 is it important to make sure that there is that L17  
31 completed wherever there is a family violence context?

1 SERGEANT RICARDO: A risk assessment is the prime sort of  
2 element of that, ensuring the safety of the AFM and any  
3 children. The referrals need to be done. So the quicker  
4 that supports are in place I think the better outcomes for  
5 the AFMs.

6 MS ELLYARD: Can I ask you quickly about issues of service.  
7 You deal with this at paragraph 24 of your statement. The  
8 Commission has already heard that responsibility for the  
9 service of all intervention orders that aren't served at  
10 court rests with Victoria Police. You describe in your  
11 statement circumstances where it's not possible to find  
12 people and what happens. Is that a substantial issue from  
13 your perspective, the inability to find and serve  
14 respondents with either interim or final orders?

15 SERGEANT RICARDO: I think it is an issue. I haven't got  
16 statistics to reflect that. There's a lot of time  
17 consumed in trying to find people and trying to serve  
18 intervention orders. There's a facility to put "inability  
19 to serve and requires substitute service". But we still  
20 need a way of doing a substitute service.

21 I think it was a number of years ago my station  
22 came into play that highlights sort of intervention orders  
23 weren't served. So when we have returned them to court  
24 they are not necessarily served, and I don't know from the  
25 court's perspective how that's followed up, but a lot of  
26 times they are sitting on our system as unserved.

27 So we have the option - we put in a whereabouts  
28 is one option if we can't seek substitute service. So  
29 that allows - and that file would sit at a 24-hour  
30 station. But that's very much relying on someone either  
31 giving the correct address of where they are or they have



1           been taken into custody. So the system probably could be  
2           improved to save a lot of time.

3 MS ELLYARD: Thank you. Turning then to the question of  
4           enforcement and prosecution of intervention orders, at  
5           paragraph 25 you mention the fact that really police  
6           mainly act on reports from affected family members where  
7           there have been breaches. From your perspective, what are  
8           the kinds of things that police can do and do do to  
9           encourage reporting of breaches?

10 SERGEANT RICARDO: I think from the very sort of first instance  
11           is take AFMs seriously, listen to them, act on initial  
12           reports. So in relation to follow-up it's fairly  
13           standard. Seven to 10 days. Any family violence  
14           incident, the AFM should be followed up with to see how  
15           they are going. That does include ones without  
16           intervention orders but ones with. It's probably a bit of  
17           a fine line to continue to keep following up with someone  
18           as to whether you are being intrusive. So that initial  
19           report - I mean, they can gauge how the AFM feels about  
20           being constantly rung, I suppose. We certainly don't want  
21           to put AFMs in a position where we could fire things up by  
22           constantly being involved, and that's probably more around  
23           the recidivist stuff. But I think it shows the police  
24           actually generally have empathy and care about what's  
25           happening.

26 MS ELLYARD: And are interested in hearing reports of  
27           breaches - - -

28 SERGEANT RICARDO: Yes, most definitely.

29 MS ELLYARD: Then at paragraph 28 of your statement you talk  
30           about some things that you observed and then took action  
31           on after you came into your role in 2010. One of the

1 things that you refer to observing is a practice that  
2 existed at that time of rolling up, if I can use that  
3 expression, a whole lot of breaches of intervention order  
4 into a single charge. You viewed that as not appropriate.  
5 Why?

6 SERGEANT RICARDO: That's correct; because I think it softens  
7 the whole incident. I refer to it as blanket breaches.  
8 It's perhaps appropriate in the sense of for stalking, it  
9 shows a course of conduct. With breaches, it's a breach  
10 of a court document. So it's much like, if someone is  
11 assaulted each day for a week, we wouldn't say between  
12 this date and this date someone was assaulted seven times.  
13 They would have seven charges.

14 So the softening of it by one charge compared to  
15 if someone has 20 charges. But that all has to be within  
16 reason too. Some of our offenders perhaps might ring 200  
17 times in a day. So it would be inappropriate to give them  
18 200 charges. But one per day or per month, depending on  
19 the situation. I think by - we summarise, so summary in  
20 its own nature softens. So we need to show the impact of  
21 actually what's going on.

22 MS ELLYARD: One of the things you also refer to is the nature  
23 of the charges because there have been some recent changes  
24 that have introduced a new indictable offence for  
25 persistent breach. What is the value of that new offence  
26 from your perspective?

27 SERGEANT RICARDO: From my perspective it is a higher penalty.  
28 It is not a summary offence. It is an indictable offence.  
29 So it has considerable value. It gives better sentencing  
30 options, and it shows the seriousness of one incident or  
31 two or three. It needs to be three. That's probably a

1 reflection of our multiple charging to show that it's more  
2 serious than perhaps one.

3 MS ELLYARD: Were you present during the evidence of the  
4 previous witness?

5 SERGEANT RICARDO: Yes.

6 MS ELLYARD: One of the things that she had observed in her own  
7 practice was some issues associated with the laying of  
8 charges but not the collection of the evidence that might  
9 be necessary to sustain that charge if it was contested.  
10 What practices do you have in place or do you advise  
11 people to have in place to collect the evidence that's  
12 going to match the charges?

13 SERGEANT RICARDO: I suppose with any brief of evidence we need  
14 the evidence to have reasonable grounds that that offence  
15 has occurred. I encourage the taking of statements.  
16 Particularly in a family violence incident, the quicker we  
17 take a statement the better, and less likely that you take  
18 a statement two or three months down the track, you  
19 probably may get someone retracting or, "Things have  
20 settled down, so I don't want to stir things up," and the  
21 taking of notes by members. Certainly around remanding  
22 you need the evidence, some sort of evidence there, to  
23 actually go down that line. So, yes.

24 MS ELLYARD: One of the things you note at paragraph 32 of your  
25 statement is that the approach that you have adopted is  
26 ensuring that all potential offences as well as the pure  
27 breach of the intervention order are charged so that if  
28 the conduct is separately criminal you make sure both  
29 offences are charged.

30 SERGEANT RICARDO: Most definitely.

31 MS ELLYARD: Why is that appropriate?

1 SERGEANT RICARDO: Again, it is showing the seriousness of the  
2 offending, to hold them to sort of account for all  
3 the offending. So you have a breach, it may constitute  
4 stalking. I found that there was some confusion around  
5 charging with criminal damage. We had people damaging  
6 jointly owned property, and they weren't being charged and  
7 held accountable for that. I sort of really sort of  
8 impressed upon people you can charge someone with criminal  
9 damage for smashing the window in a jointly owned house.  
10 As I said, they need to be held to account for all  
11 offending.

12 MS ELLYARD: One of the things you then say at paragraph 33 is  
13 that a combination of those various actions, multiple  
14 charges, charging every possible offence, has time  
15 consequences for members but it's been positively  
16 received?

17 SERGEANT RICARDO: Most definitely, yes.

18 MS ELLYARD: It's also, from your perspective, had the support  
19 of other services like the court?

20 SERGEANT RICARDO: Most definitely, yes, from the magistrates.

21 MS ELLYARD: You then go on in paragraph 34 to consider the  
22 benefits of what we might call the zero tolerance approach  
23 that you have taken?

24 SERGEANT RICARDO: Yes.

25 MS ELLYARD: The first thing you say is that this approach  
26 treats breaches of intervention orders no differently than  
27 any other criminal offence. Historically has there been a  
28 difference, do you think, in the way a breach intervention  
29 order was regarded in some parts of the police?

30 SERGEANT RICARDO: I think going way back it's probably hard  
31 sometimes for operational police to get their head around

1 the fact that you may have a victim that doesn't want to  
2 make a statement, and understanding around that. How else  
3 would I answer that? I think on evidence-wise I think  
4 breaches, we didn't have the whole evidence, as I said,  
5 from an uncooperative AFM. Other offending we may have  
6 outside the family, people perhaps are more likely to  
7 stand up and say, "I have been assaulted. This has  
8 happened to me." Within the family home they are less  
9 likely.

10 MS ELLYARD: The next thing you note is that laying charges  
11 that reflect the seriousness of the offending gives more  
12 bail options and more resources, I suppose, to the  
13 prosecutors and the magistrates. From your observation,  
14 what's the benefit, I suppose, in a bail sense of having  
15 that offending more accurately described in the charges?

16 SERGEANT RICARDO: For being able to - it shows you, again, the  
17 seriousness of it and it allows us perhaps - if stalking  
18 is in there, it allows us to have a show cause situation  
19 and basically remand offenders, and with that it has  
20 benefits for the AFM and support agencies.

21 MS ELLYARD: I will then turn to paragraphs 34.3 and 34.4, and  
22 that's where we have now got some data. I think you have  
23 a copy of it in front of you, and I will ask my instructor  
24 to hand it up to the Commissioners. At paragraph 34.3 you  
25 had made the anecdotal observation that rates of reporting  
26 of family violence incidents in ED 5 and 6 had increased.  
27 Has the data that you have now had made available to you  
28 borne that out?

29 SERGEANT RICARDO: Yes.

30 MS ELLYARD: If we look at this first page of the two pages,  
31 what does this tell us?

1 SERGEANT RICARDO: Since around I suppose 2010/11 and 11/12  
2 that there's been quite a significant increase in the  
3 reporting of family violence, up to today - to date it's  
4 increasing, July 2015 to March is an incomplete year, so  
5 I would say it would be very similar to last year, it  
6 wouldn't be much different. Significantly I came into the  
7 role in, as I said, late 2010.

8 MS ELLYARD: Yes. So the difference between the 2010/11  
9 financial year and the 2011/12 financial year is quite  
10 substantial?

11 SERGEANT RICARDO: Yes, and that was all around strict  
12 compliance around the Code of Practice. Mid-2012 also had  
13 implemented with Inspector Mick West, who is now - sorry -  
14 a superintendent, the Latrobe family violence team. So  
15 they were championing the multiple charging of offenders  
16 and the remand side of things too. So you will see a  
17 spike.

18 MS ELLYARD: The increase in family violence incidents  
19 reported, from your perspective is that an increase in  
20 reporting or an increase in underlying incidents?

21 SERGEANT RICARDO: I think it's an increase in reporting and  
22 confidence in reporting. Really, you look at the figures.  
23 They should be looked at in conjunction perhaps with how  
24 serious an incident is. We are getting an increase in  
25 reporting of a breach which may be a phone call, instead  
26 of things waiting till it's a breach with a serious  
27 assault. So it's allowing us early intervention.

28 MS ELLYARD: The second piece of information that you have  
29 provided relates to the rates of remand and imprisonment  
30 for the perpetrators, and that's the single page at the  
31 back there. You had made the observation that rates of

1 remand and imprisonment for perpetrators had increased.

2 Again, what does this table then tell us?

3 SERGEANT RICARDO: You will see again when I came into my role  
4 in 2010/11 through education of members in relation to  
5 family violence, the serious nature of it, and the ability  
6 for us to remand and remove the threat to the AFM and  
7 children, if there are any children that is, that came  
8 into play and people were starting to utilise the Bail  
9 Act, not softening. We are using multiple charging. So  
10 instead of coming up with one charge of breach we may have  
11 had 20 or 30, and that heightens the seriousness of it.

12 MS ELLYARD: From your perspective, over what period of time do  
13 you start to be able to measure whether these kinds of  
14 practices are going to affect recidivism rates?

15 SERGEANT RICARDO: Recidivist rates are hard to gauge. One  
16 thing, we have a transient population. So I look at some  
17 of our recidivist names. One gentleman had committed  
18 five - I think they were breaches or assaults in a  
19 different area to mine, comes into my area, has a domestic  
20 with another AFM, only one in my area, he then becomes one  
21 of my recidivist perpetrators.

22 Also around recidivism, as I said before, we need  
23 to look at the context or the actual event, so whether  
24 there's a de-escalation in actually what's happening. So  
25 we may have people that are classed as recidivists but the  
26 actual L17 will reflect a verbal argument instead of three  
27 or four reports before assaults and threats. I see that  
28 as being successful. We are perhaps not going to actually  
29 stop people from having verbal arguments but we may stop  
30 the level of safety risk.

31 MS ELLYARD: Can I just ask you one further question about this

1 table here. It looks like the high point was 2012/2013,  
2 but it's gone down again since then. Do you have a  
3 perspective on why that is?

4 SERGEANT RICARDO: In 2012 is when the family violence team  
5 came in. So they were targeting the high-risk offenders.  
6 I'm sort of quite aware that a number of our high-risk  
7 offenders were incarcerated during that time.

8 MS ELLYARD: And might still be, and so in 2013 - - -

9 SERGEANT RICARDO: There was probably an overflow from that.  
10 I wouldn't want to see that remand rate continue to be  
11 high. So it's a matter of decreasing, de-escalating our  
12 family violence incidents, and that's what would have  
13 happened there.

14 MS ELLYARD: Thank you, Sergeant. Do the Commissioners have  
15 any questions for Sergeant Ricardo?

16 DEPUTY COMMISSIONER NICHOLSON: I just had one question. It's  
17 almost in passing. In your statement you talk about  
18 perpetrators who are under 18 years of age.

19 SERGEANT RICARDO: Yes.

20 DEPUTY COMMISSIONER NICHOLSON: Could you explain what you do  
21 with those young people?

22 SERGEANT RICARDO: Because the supports for perpetrators under  
23 18 are very limited we have a number of youth resource  
24 officers in our area. There's funding in other areas for  
25 youth support. So the youth resource officers will look  
26 at the incident. If it warrants - - -

27 DEPUTY COMMISSIONER NICHOLSON: They are police officers?

28 SERGEANT RICARDO: Correct, sorry. They are commonly known as  
29 YROs. They will look at an incident. If they think  
30 there's grounds for them to try to engage with the family,  
31 they will talk to the child and the parent. So what it



1 will be about is isolating what are the factors causing  
2 the actual confrontation, take it away from the family  
3 violence situation. So it may be alcohol, it may be  
4 drugs. So then there's other resources there for them to  
5 be referred to from there instead of our formal pathways,  
6 which do not cater for under 18s.

7 COMMISSIONER NEAVE: I have two questions. In your view is  
8 there a career path for police who would like to stay in  
9 the area of family violence?

10 SERGEANT RICARDO: I believe so, yes, and I think career path  
11 with family violence team should be gazetted.

12 COMMISSIONER NEAVE: So the whole team or the leader of the  
13 team or - - -

14 SERGEANT RICARDO: I think the whole team. We need people in  
15 those roles that want to do the job, not be told that they  
16 are doing that. Sometimes with the family violence  
17 liaison officers it's part of a portfolio that they have  
18 along with a number of other things, and people are told  
19 they are doing it. Another aspect of that, we have  
20 rotation through these units. We lose the experience.  
21 They gain experience, they go back out. There is two  
22 schools of thought, that they are taking that experience  
23 back to the uniform. But when we are losing that within  
24 the team it makes it hard because they have networked and  
25 that takes a while to do.

26 COMMISSIONER NEAVE: How does that compare with what's done  
27 with the SOCIT teams? Are they gazetted - - -

28 SERGEANT RICARDO: They are gazetted positions, yes.

29 COMMISSIONER NEAVE: So all the members of the SOCIT team are  
30 gazetted. As I understand it, the investigator comes in  
31 and goes out, is that right, or that used to be the case?

1 SERGEANT RICARDO: No, the SOCITs are a team. Like the  
2 Criminal Investigations Unit they are - - -

3 COMMISSIONER NEAVE: All right. So that's the sort of model  
4 that you think might work better in the area of family  
5 violence?

6 SERGEANT RICARDO: Most definitely, yes, to gain that  
7 experience and understanding.

8 COMMISSIONER NEAVE: Thank you. The other question I have,  
9 just looking at the front page of your stats, am I reading  
10 this correctly, does this mean that, for example, in July  
11 2014 to March 2015 there were 2,957 incidents attended,  
12 and of those only 35.4 per cent resulted in either an IVO  
13 or a family violence safety notice?

14 SERGEANT RICARDO: That would be correct. Not every incident  
15 that we go to has a civil action required.

16 COMMISSIONER NEAVE: So in a majority of cases which the police  
17 attend there is no need for the police to do anything more  
18 than attend and sort it out or speak to the people? Is  
19 that right?

20 SERGEANT RICARDO: No, no, that's not - you have to I suppose  
21 look at stats of breach of IVOs because by the time - you  
22 know, we are coming around to 2014/15. There's been an  
23 awful lot of intervention orders issued already. So to  
24 look at those stats it should be read in conjunction with  
25 how many of the incidents were a breach of intervention  
26 order.

27 COMMISSIONER NEAVE: I see.

28 SERGEANT RICARDO: So it doesn't necessarily say there is no  
29 criminality to it.

30 COMMISSIONER NEAVE: So in the 81 per cent where there was no  
31 IVO - a lot of them could be breaches - - -

1 SERGEANT RICARDO: They could be breaches of IVO, yes.

2 COMMISSIONER NEAVE: So people would go back to the station,  
3 there would be a charge for breach but there would be no  
4 IVO applied for because there is already one in place?

5 SERGEANT RICARDO: Yes, correct.

6 COMMISSIONER NEAVE: I get it. Thank you.

7 SERGEANT RICARDO: There also might be a variance there too  
8 which is not shown on here. They might be someone  
9 requesting an exclusion, which on the stats there is not  
10 necessarily shown.

11 COMMISSIONER NEAVE: So this doesn't include variations?

12 SERGEANT RICARDO: It doesn't look like it.

13 COMMISSIONER NEAVE: Okay. Thank you.

14 MS ELLYARD: Thank you. If there are no other questions, I ask  
15 that the sergeant be excused and that we could take a  
16 five-minute break before the next evidence.

17 COMMISSIONER NEAVE: Thank you very much indeed, Sergeant  
18 Ricardo.

19 <(THE WITNESS WITHDREW)  
20 (Short adjournment.)

21 MR MOSHINSKY: Commissioners, the next witness is Senior  
22 Sergeant Alexander. If she could please be sworn in.  
23 <FIONA SUZANNE ALEXANDER, sworn and examined:

24 MR MOSHINSKY: Senior Sergeant, could you please tell the  
25 Commission what your current position is and give a brief  
26 outline of your professional background?

27 SENIOR SERGEANT ALEXANDER: I'm Senior Sergeant at Taskforce  
28 Alexis, which sits in Southern Metro Division 2, and I sit  
29 over family violence, mental health and proactive  
30 policing.

31 MR MOSHINSKY: And just briefly outline your career.

1 SENIOR SERGEANT ALEXANDER: My career, I have been with  
2 Victoria Police since - for 15 years and in relation to  
3 family violence I have held a number of roles, including  
4 family violence liaison officer, family violence adviser,  
5 the officer in charge of the family violence unit and also  
6 of Taskforce Alexis.

7 MR MOSHINSKY: Senior Sergeant, have you prepared a statement  
8 dated today for the Royal Commission?

9 SENIOR SERGEANT ALEXANDER: Yes, I have.

10 MR MOSHINSKY: Are the contents of your statement true and  
11 correct?

12 SENIOR SERGEANT ALEXANDER: Yes, they are.

13 MR MOSHINSKY: Could you please describe for the Commission  
14 what Taskforce Alexis is?

15 SENIOR SERGEANT ALEXANDER: The overview of Taskforce Alexis is  
16 trying to bring together a collaborative approach to  
17 family violence, mental health and proactive policing. So  
18 in our division - in the division it was about how we can  
19 improve the service delivery in those three areas and how  
20 we could have a more collaborative approach with our  
21 partners.

22 MR MOSHINSKY: One of the elements that you refer to in  
23 paragraph 6 of your statement is that there's a social  
24 worker embedded in the unit. Can you just explain how  
25 that works?

26 SENIOR SERGEANT ALEXANDER: When we were first discussing the  
27 idea of how we could better respond to family violence one  
28 of the key elements that we identified that was missing  
29 was having a social worker embedded in the office and  
30 providing that immediate response that we currently don't  
31 have through the normal interface with our service

1 providers. So by partnering with our agencies we could  
2 offer that immediate response.

3 MR MOSHINSKY: How did it come about, the idea of embedding a  
4 social worker with the police family violence team and the  
5 other teams?

6 SENIOR SERGEANT ALEXANDER: The idea was born from the  
7 Divisional Commander Ross Guenther, our Salvation Army  
8 Family Violence Manager, Alice Coates, and the regional  
9 integrative coordinator, and she represents the governance  
10 group, and they are the agencies that are referred to at  
11 the coordination team meeting and the terms of reference.

12 So their initial discussion was around embedding  
13 the key worker, and then from there Mr Guenther thought it  
14 would best serve the organisation and provide a better  
15 service delivery if we collaborated with a proactive unit,  
16 and they offer crime prevention and youth resource  
17 officers.

18 MR MOSHINSKY: In paragraph 7 you refer to three teams - the  
19 family violence response team, the mental health response  
20 team and the youth crime prevention victimisation response  
21 team, more commonly known as a proactive policing team.  
22 Are there three separate teams, or is there some overlap  
23 between the three of them?

24 SENIOR SERGEANT ALEXANDER: The first two teams, the family  
25 violence team and the mental health team, are basically  
26 the one team in a working sort of environment. The  
27 proactive team are a separate team, and they provide the  
28 wraparound services as well for family violence and mental  
29 health.

30 MR MOSHINSKY: If there's a family violence incident involving  
31 a young person, say an adolescent, would that be the

1 family violence response team or the proactive policing  
2 team?

3 SENIOR SERGEANT ALEXANDER: It would be the family violence  
4 team, but they would work in collaboration with the youth  
5 resource officers, especially if it was a youth  
6 perpetrator. The youth resource officers would get  
7 involved with the ongoing case management of that youth  
8 and see what services they can provide, provide some case  
9 management and then also make sure that they were involved  
10 in the appropriate services.

11 MR MOSHINSKY: We have heard evidence from other members of  
12 Victoria Police about family violence teams. In your  
13 division, in addition to these three teams is there also a  
14 family violence team?

15 SENIOR SERGEANT ALEXANDER: No, we are the divisional response.

16 MR MOSHINSKY: In terms of the embedded social worker, who you  
17 refer to as the key worker, how is that funded?

18 SENIOR SERGEANT ALEXANDER: The funding is auspiced by  
19 Salvation Army. So DHHS provide funding to  
20 Salvation Army. They have residual funding, and they  
21 auspice that funding to fund the key worker for the first  
22 12-month period, plus the RMIT evaluation. So ongoing  
23 funding for the three years we are hoping to make - have  
24 an evaluation of where we currently sit, and hoping that  
25 DHHS will provide the funding for years 2 and 3.

26 MR MOSHINSKY: Can you give us an example of how it works in  
27 practice with the family violence response team, including  
28 the key worker? What sorts of things are done differently  
29 because of the key worker being there?

30 SENIOR SERGEANT ALEXANDER: So the monitoring and the  
31 governance that's provided by Alexis to all L17s that

1 occur in the division, so on a day-to-day basis I'd have a  
2 police member that is rostered to work one on one with the  
3 key worker. They would interrogate our internal databases  
4 to see what incidents have occurred, and the key worker  
5 would go through their database to see if any of our  
6 victims are repeat offenders or repeat victims and see  
7 what services we can put around them to make sure that  
8 they are engaged with counselling, drug and alcohol  
9 counselling, or if they need - if they have mental health  
10 issues or whatever services we need to put around them to  
11 make sure that we can try and stop that offending.

12 The key worker and the police member would get in  
13 contact with either the recidivist - with the offender or  
14 with the victim - and/or the victim and then make contact  
15 with them, offer the support services that are appropriate  
16 and then engage in one-on-one counselling.

17 If the Alexis team have processed the offender  
18 that night or that day, then we would keep carriage of the  
19 entire file, making sure it goes all the way through  
20 court, et cetera. If the police members working the  
21 divisional van are the ones who have attended the scene  
22 and it doesn't fit the criteria for Alexis to take over,  
23 then we just offer the ongoing support and make sure that  
24 the referrals are appropriate.

25 MR MOSHINSKY: Was there a perceived need that this model was  
26 responding to? The idea of embedding a social worker  
27 within the team, was there a perceived need that that was  
28 addressing?

29 SENIOR SERGEANT ALEXANDER: Yes, in consultation with  
30 the Salvation Army, before I came along the Salvation Army  
31 were collecting their own data to see where our greatest

1 need was, and then also with the RAMP model being  
2 introduced we can identify that there is a need for - the  
3 majority of the recidivist families are not being serviced  
4 properly.

5 So the ones who are - the families who are  
6 involved in a verbal argument with nothing else, say two  
7 sisters yelling over a hairbrush, for example, we don't  
8 really need to provide additional services to those  
9 families. The top 10 per cent or five per cent or  
10 two per cent, whatever that may be, that are our highest  
11 risk, we have the RAMP model that will take over the  
12 management - ongoing management of those families. But  
13 that main cohort, which takes up the majority of the  
14 police time, the social workers' time and our service  
15 providers', we really need something that fits in there.  
16 So we offer a holistic approach to the majority of the  
17 clients that need some sort of support.

18 COMMISSIONER NEAVE: Can I just follow up with that, Counsel.

19 So RAMPS takes the very high risk. Do you have a RAMPS in  
20 your area?

21 SENIOR SERGEANT ALEXANDER: Not at this stage.

22 COMMISSIONER NEAVE: But you will have one, presumably. Then  
23 you have the - "trivial" is not the right word, but the  
24 much, much less serious matters, one-offs. So this is  
25 sort of the medium level but nevertheless recidivist and  
26 may later escalate?

27 SENIOR SERGEANT ALEXANDER: Yes.

28 COMMISSIONER NEAVE: That's the group that this is really  
29 targeted at?

30 SENIOR SERGEANT ALEXANDER: Yes. So our criteria is three  
31 incidents or more in a 12-month period, but then we have



1 to apply the risk element or go through all our data to  
2 see what other risks there are. If we perceive it to be a  
3 high risk, then we need to have some sort of involvement.

4 COMMISSIONER NEAVE: You had a rough estimate of what  
5 proportions fell into each group?

6 SENIOR SERGEANT ALEXANDER: Yes, I did.

7 COMMISSIONER NEAVE: Do you have any idea about the size of  
8 this group, that is the sort of middle group?

9 SENIOR SERGEANT ALEXANDER: About a quarter of all the L17s  
10 that go through to the Salvation Army are of a trivial  
11 nature, so the hairbrush sort of argument. The majority  
12 of our work is about 60 per cent falls into the cohort  
13 that we deal with.

14 COMMISSIONER NEAVE: Sixty per cent. Thank you very much.

15 SENIOR SERGEANT ALEXANDER: But, having said that, we can't  
16 obviously manage 60 per cent of all the L17s. So we have  
17 to apply certain procedures to it and some governance to  
18 it to make sure we are having some impact.

19 COMMISSIONER NEAVE: Thank you very much.

20 MR MOSHINSKY: You have outlined that part of the role of the  
21 key worker is, after there has been an incident and the  
22 L17 is reviewed or maybe the case has been referred, to  
23 follow up both with the victim and the perpetrator and  
24 provide a pathway to services. Are there any sort of  
25 difficulties associated with the same social worker both  
26 dealing with the perpetrator and with a victim?

27 SENIOR SERGEANT ALEXANDER: We always obtain consent from both  
28 parties so that they know that we will be dealing with  
29 everybody in the family - that was one of the big issues -  
30 so that they know that we are not trying to do anything  
31 underhanded, and they are aware that we will discuss their

1 case with other services as well. So we try to let  
2 everybody know that we are being transparent and there's  
3 nothing sneaky to try to make sure that we have the  
4 services for the recidivist offender and the services for  
5 the AFM.

6 MR MOSHINSKY: The role of the key worker, are there particular  
7 qualities that are important in the person performing that  
8 role?

9 SENIOR SERGEANT ALEXANDER: Yes. When the Salvation Army and  
10 I were writing that position description and hiring that  
11 person we had to make sure that the person was strong  
12 enough to be able to deal with two organisations, because  
13 effectively that person would be left on their own, is  
14 working in a police environment and being paid by the  
15 Salvation Army. So she in effect has two managers that  
16 she has to respond to on a daily basis and make sure that  
17 she's strong enough to be working in a police environment  
18 and be strong enough to deal with our - generally our  
19 recidivist offenders who are not susceptible to wanting to  
20 be involved in counselling or any other service that we  
21 provide to them. So they need to be strong enough to be  
22 able to stand on their own two feet.

23 MR MOSHINSKY: The take-up of services by recidivists, are you  
24 able to compare what take-up of services existed before  
25 Alexis became involved with them compared with after  
26 Alexis started?

27 SENIOR SERGEANT ALEXANDER: Of the 56 that we manage, that the  
28 key worker manages, 80 per cent of those did not want to  
29 have any involvement with any services prior to Alexis  
30 coming on board. So of those 56 per cent, yes,  
31 80 per cent refused to have any engagement. So we have

1 actually made some really good headway there, and by now  
2 getting them involved in services the amount of L17s  
3 police time has significantly dropped.

4 MR MOSHINSKY: So all 56 are now engaged with services through  
5 Alexis; is that right?

6 SENIOR SERGEANT ALEXANDER: Yes. Whether it be through the key  
7 worker or whether we have just provided that smooth  
8 interface to the current service providers, all of them  
9 are now engaging.

10 MR MOSHINSKY: In terms of the Taskforce Alexis approach, if  
11 one said there was a spectrum from therapeutic responses  
12 at one end through to more monitoring, supervision type of  
13 responses at the other end, where would you sit Taskforce  
14 Alexis on that spectrum?

15 SENIOR SERGEANT ALEXANDER: We offer a holistic approach. So  
16 we can't change recidivism by ourselves. Vic Pol just -  
17 that's just an impossibility. It needs to be an  
18 all-of-community problem and everybody needs to address  
19 it; so by having the holistic approach, having the key  
20 worker involved, having buy-in from all our support  
21 agencies so that they provide that smooth interface, and  
22 then having the enforcement conducted by police, where  
23 I think we are actually achieving some pretty big goals  
24 and making sure that everything that needs to be done is  
25 currently being done.

26 MR MOSHINSKY: So one of the things you mention in your  
27 statement at paragraph 46 is that, "One of the aims of the  
28 taskforce is to ensure that perpetrators are held to  
29 account. One of the ways we do this is to create a sense  
30 of urgency and accountability in relation to breaches of  
31 family violence intervention orders in any of the cases we

1 manage." Does the engagement that Taskforce Alexis has  
2 with the families provide an opportunity to monitor  
3 whether there are breaches and therefore an opportunity to  
4 pick up whether intervention orders are being breached?

5 SENIOR SERGEANT ALEXANDER: Yes, certainly. One of the things  
6 that we quickly identified is that most of the victims out  
7 in the community lose faith with police when they have to  
8 report to multiple people what's occurred. So if they  
9 have one person or one unit that they can contact they are  
10 more susceptible to coming in and reporting breaches.

11 Many of our victims will come in and say, "On a  
12 particular date this has occurred", but then we will  
13 actually extract further breaches from them. So albeit  
14 they have come in about one matter, there may be a number  
15 of matters that they want to report and we will take that  
16 on board and then make sure we gather our evidence and  
17 then charge, remand, et cetera, as appropriate.

18 MR MOSHINSKY: In paragraph 53 of your statement you give some  
19 figures which are that in the 12 months prior to Taskforce  
20 Alexis commencing with the 56 clients there was an average  
21 of 5.3 L17s per individual, and then in the period since  
22 Taskforce Alexis was started, although it's a shorter  
23 period, there's been an average of only two per  
24 individual. Can you comment on that and what other  
25 outcomes you see Taskforce Alexis as having achieved?

26 SENIOR SERGEANT ALEXANDER: Yes. That data is collected  
27 through myself and Salvation Army through the L17s in  
28 itself. We have a database which requires the key worker  
29 to enter data immediately so that we don't lose any sort  
30 of - any of the data by days going over. Many of the  
31 clients who were calling up just really didn't know who

1 else to call or what else to do, and some of their L17s  
2 could be of a trivial nature but others could be of a  
3 more - a higher offending nature.

4 So since we have put people in the right programs  
5 or got them involved with the right counselling programs  
6 or whatever service is required to provide, if we can  
7 provide that service you can see we are having an  
8 immediate impact by the reduction of the L17s that are  
9 coming out from those families.

10 MR MOSHINSKY: In terms of the work of Taskforce Alexis, in  
11 addition to the things we have talked about, is there a  
12 wider prevention aspect of the work of the team?

13 SENIOR SERGEANT ALEXANDER: Yes, certainly. When Mr Guenther  
14 decided that - well, discussed the proactive team and the  
15 family violence team collaborating, the reason behind that  
16 was because the youth resource officers and the crime  
17 prevention officers conduct information sessions on, say,  
18 cyberbullying, sexting, respectful relationships, that  
19 sort of thing, so we are out in the community actually  
20 informing and educating.

21 In relation to our internal processes, we provide  
22 guidance through divisional instruction, attending  
23 training days for the six stations that we monitor in  
24 division 2, and then for the wider community, for our  
25 partners, myself, the sergeants or any of the family  
26 violence team are attending our partners and providing  
27 education to them as to what police can do and building  
28 that relationship so that they can call us if they are  
29 aware of any issues.

30 MR MOSHINSKY: Thank you. Commissioners, those are my  
31 questions for the witness.

1 DEPUTY COMMISSIONER NICHOLSON: I was interested what you might  
2 be able to say about working with a key worker of a  
3 totally different training, a different discipline,  
4 someone from a profession where they most likely have had  
5 different practice standards, different ethical standards.  
6 Can you talk about any of the challenges that might have  
7 arisen in that environment and how you might have overcome  
8 those?

9 SENIOR SERGEANT ALEXANDER: When the Salvation Army manager,  
10 Alice, and I were discussing this we didn't want to  
11 actually take anybody who was currently working in the  
12 Salvation Army because we didn't want a preconceived idea  
13 of what the key worker should be managing. So we are not  
14 just there for the AFM; we are there for the whole of  
15 family, that includes the recidivist offender. So it  
16 meant employing someone new to the organisation so they  
17 are not with that preconceived idea of just looking after  
18 the AFM.

19 Some of the other issues were the key worker  
20 works in my office, and so the relationship that I have  
21 with the Salvation Army manager, there has to be a lot of  
22 trust there because she has no visual sight about what her  
23 employee is basically doing. So she relies on me quite  
24 heavily to make sure that I am passing on information,  
25 that I have the same set of standards that she has so that  
26 the key worker is not being torn in two different  
27 directions. So that relationship is pivotal for making  
28 sure that we have the right person in the job and that we  
29 are both on the same path.

30 DEPUTY COMMISSIONER NICHOLSON: So you see there being no  
31 barriers for that sort of team approach to be replicated?

1 SENIOR SERGEANT ALEXANDER: Provided you have the right people  
2 in the right jobs who can openly communicate with each  
3 other - so we have had problems that have arisen in  
4 relation to media and other things that have arisen, and  
5 it's simply making sure that we communicate. As soon as  
6 something occurs, get on the phone to the other one, draft  
7 an email, whatever it may be, but it's just making sure  
8 that we communicate with each other, and I'm respectful of  
9 her decisions and I'm able to put forward anything that  
10 I think or the reasons why I want to progress something  
11 the way I want to. But I also need to be respectful of  
12 what she would like and how she would like things to  
13 progress. So long as you have that open and transparent  
14 relationship, there wouldn't be a problem with it.

15 COMMISSIONER NEAVE: I have no further questions.

16 MR MOSHINSKY: May the witness be excused, please?

17 COMMISSIONER NEAVE: Thank you very much indeed.

18 <(THE WITNESS WITHDREW)

19 MR MOSHINSKY: Commissioners, the next witnesses are Assistant  
20 Commissioner Cornelius and Acting Inspector Rudd.

21 <THOMAS DONALD LUKE CORNELIUS, recalled:

22 <PAUL DANIEL RUDD, recalled:

23 MR MOSHINSKY: I note that both witnesses have previously given  
24 evidence, so there is no need to swear them in. Could  
25 I start with you, Assistant Commissioner Cornelius. Have  
26 you prepared a witness statement for the Commission  
27 dealing with the topics that we are talking about today?

28 ASSISTANT COMMISSIONER CORNELIUS: Yes, I have.

29 MR MOSHINSKY: Are the contents of your statement true and  
30 correct?

31 ASSISTANT COMMISSIONER CORNELIUS: They are.

1 MR MOSHINSKY: The topic for today is enforcement and  
2 monitoring of intervention orders. I would just like to  
3 start with getting an overview of the charging process and  
4 then prosecutorial process. Perhaps could I start with  
5 you, Assistant Commissioner, to deal with the charging  
6 phase. Could you just give a brief overview of what  
7 happens and who does what between the police attending an  
8 event and charging for breach?

9 ASSISTANT COMMISSIONER CORNELIUS: So a police attendance at an  
10 event most often is triggered by a call to 000, and that  
11 event is allocated through CAD - we discussed that on  
12 Monday - and tasked to a van for a response. The van will  
13 attend the event. We have a requirement that there are  
14 on-air briefings for safety reasons and also to ensure  
15 appropriate supervision is in place. The members will  
16 attend, make an assessment and deal with the incident as  
17 they find it. Some of those incidents, of course, may in  
18 fact be, for want of a better description, a family  
19 argument as opposed to a family violence case. So it  
20 might be resolved ultimately as an "all correct" event  
21 outcome.

22 Of course, there are some matters that in fact  
23 are a family violence incident, and those first responding  
24 or attending members will make an assessment and then,  
25 depending on where they are based and what support  
26 services are available to them, they will call for further  
27 assistance and backup.

28 The number of units initially attending a family  
29 violence call will also be determined in light of the  
30 priority that's allocated to that job. So if based on the  
31 information provided to the call taker it looks like a



1 very serious matter requiring a significant policing  
2 response, then a number of available units will attend and  
3 then an assessment will be made from there as to how many  
4 units need to remain on scene to both deal with the  
5 perpetrator and also with any affected family members who  
6 may be there. There's no hard and fast rule around what  
7 that looks like. It is very much informed by an  
8 assessment of the circumstances as the attending members  
9 find it.

10 The attending members will also - and there's a  
11 very clear expectation of this under the Code of  
12 Practice - assess the scene and look to, one, ensure that  
13 any affected family members who are present are safe and  
14 that anyone who might pose a threat to them has been  
15 appropriately secured, and then they will also look to  
16 gather any evidence which might relate to offences that  
17 have evidently been committed.

18 The first responders may also make an assessment  
19 that there might be a mental health issue in play with the  
20 perpetrator particularly. So they may also call for the  
21 attendance of a PACER unit, a mental health integrated  
22 unit, to come and assist with a mental health assessment.  
23 If it looks like there is a crime scene there from which  
24 might be collected evidence of a serious crime, a serious  
25 assault, significant property damage, then a crime unit  
26 will be called as well to attend. Through the integrated  
27 management of investigations process, we have the AIM  
28 process, an AIM package will be generated to arrange for  
29 that to be handed over to an investigation unit - the  
30 detectives, if you like.

31 MR MOSHINSKY: If I could ask you to focus then on if it goes

1 down a pathway of charges being laid, either for a breach  
2 of an intervention order on its own or that together with  
3 an associated offence, how does that happen? Who makes  
4 that decision, and what are the steps?

5 ASSISTANT COMMISSIONER CORNELIUS: At first instance the  
6 attending constables will make an assessment. They are  
7 responsible for completing the L17 and the risk assessment  
8 components which reflect the CRAF risk assessment tool.  
9 They will pull together the information that's available  
10 to them at the scene. That will be a combination of what  
11 they observe personally. It will of course also entail an  
12 understanding from any victims and witnesses who are  
13 present as to what occurred. That will lead to the  
14 completion of both the L17 and also the other details that  
15 lead to the matter being progressed if offences are being  
16 committed for investigation.

17 MR MOSHINSKY: So would those constables prepare a brief of  
18 evidence if they - is that the next step?

19 ASSISTANT COMMISSIONER CORNELIUS: Yes, ultimately. But it may  
20 not be the attending constables who prepare the brief. If  
21 you are talking about a serious assault and a range of  
22 other serious offences that are being committed, then  
23 ultimately the brief is going to be prepared - it's going  
24 to be investigated and prepared by detectives.

25 MR MOSHINSKY: What sort of timeline, if it's possible to give  
26 a rough indication - I'm talking about for breaches of  
27 intervention orders - between the event happening and when  
28 charges would be laid?

29 ASSISTANT COMMISSIONER CORNELIUS: It depends very much on what  
30 the members find there. If you find a serious matter, of  
31 course the offender is going to be arrested, and again if

1 it's a serious matter we would be looking at a remand  
2 application and we would be looking to put the offender  
3 before a magistrate at the next available opportunity.

4 It's also our practice, though, to also take out  
5 or issue a family safety notice in those cases as well.  
6 In the event that if it's an out-of-hours matter and we  
7 have needed to go to a bail justice, we always like to  
8 have the family safety notice in place in the event that  
9 the offender is released on bail, and that ensures that we  
10 have some appropriate - if you like, an order in place  
11 that is going to mitigate and hold an offender accountable  
12 if they persist in their behaviour.

13 MR MOSHINSKY: If there is an intervention order already in  
14 place and there is a breach of that, would there be  
15 situations where you would still do a safety notice or not  
16 normally?

17 ASSISTANT COMMISSIONER CORNELIUS: It depends on the order.  
18 There are circumstances, for example, where there may be  
19 an order already in existence in relation to another AFM,  
20 and we might find ourselves that this person has moved on  
21 to another partner or may in fact have a number of  
22 partners at the same time, or indeed we might be dealing  
23 with a situation where in fact they are juvenile-affected  
24 family members from a previous relationship and there may  
25 be an IVO in place, an intervention order in place, in  
26 relation to the other family but not for this family.

27 So the assessment around - notwithstanding there  
28 might be an existing intervention order in place, the  
29 assessment at the scene is going to be, "Well, do we have  
30 an order in place to do with these people and to address  
31 all of the risk that we might find extant at that

1 attendance?"

2 MR MOSHINSKY: If we are not talking about an arrest and remand  
3 situation but there is a decision taken to charge for a  
4 breach of an intervention order, what timeline are we  
5 talking about roughly for that decision to be made?

6 ASSISTANT COMMISSIONER CORNELIUS: It depends on where you are,  
7 but the bottom line is when you - by the end of the shift  
8 you have completed an L17, the supervisor is required to  
9 assess the L17 and make an assessment about the response  
10 that we have applied. So if it is not a remand situation  
11 and if the circumstances warrant that it is an arrest and  
12 charge and bail, then obviously we would be looking to see  
13 the bail conditions to line up with any conditions that we  
14 might have specified in a family safety notice or, if  
15 there's an intervention order in place, that the  
16 intervention order also covers the extant risks that are  
17 identified.

18 MR MOSHINSKY: Can I turn to you, Acting Inspector.

19 COMMISSIONER NEAVE: Sorry, Mr Moshinsky, just before you leave  
20 that issue, is it regular practice for those attending to  
21 do things like take photographs or indeed take statements,  
22 or do they wait for the crime unit to follow up later?  
23 What normally happens?

24 ASSISTANT COMMISSIONER CORNELIUS: It is informed by the  
25 circumstances. For my part, I am actually very keen in  
26 all of these circumstances for us to be looking to collect  
27 corroborating evidence. It's my expectation that if we  
28 come upon a scene where clearly there's been some acts of  
29 violence and there's clear evidence of destruction,  
30 I would be wanting to see photographs being taken. If  
31 there's blood on the wall or somewhere, I would be wanting

1 to see that being photographed. I would be wanting to see  
2 a record of a conversation with witnesses or indeed  
3 affected family members who are present around, "Who's  
4 blood is this? How did it get there? What occurred," so  
5 that we get that contemporary record from the people who  
6 are present at the scene as to what occurred.

7 That then allows us, particularly in division 3,  
8 where we have the priority listing pilot running, to  
9 within the course of that ensuing seven days include in  
10 the preliminary brief that contemporaneously collected  
11 material. That's an expectation. But, Commissioner, that  
12 doesn't occur in all situations.

13 COMMISSIONER NEAVE: We have certainly heard that on many  
14 occasions it does not occur.

15 ASSISTANT COMMISSIONER CORNELIUS: I can say to you that for my  
16 part as an Assistant Commissioner every morning I review  
17 the incident fact sheet summaries for my region, I pay  
18 particular attention to matters that might clearly be  
19 family violence matters or might have the look and feel of  
20 a family violence matter, and as was the case this morning  
21 I had a siege situation at a suburb in the Southern Metro  
22 area where a juvenile offender has engaged in acts of  
23 violence against his parents and his brother. They have  
24 barricaded themselves in the room. He has armed himself  
25 with a knife and a frying pan, and sought to tear his way  
26 into that room.

27 We have attended, and in that situation my  
28 questions in response to reading that narrative were,  
29 "What have we done about an intervention order? What have  
30 we done about collection of evidence? Has there been a  
31 detective assigned to conduct an investigation into those

1 matters?" I was asking those questions this morning at  
2 7.20 when I read that material, and that information had  
3 been actually uploaded onto the system as I was asking the  
4 questions. So indeed, yes, it had been allocated to a  
5 detective, yes, evidence had been collected at the scene,  
6 and that appropriate charges and also an appropriate  
7 intervention order was being taken out in relation to the  
8 matter, and that was a matter that occurred in the early  
9 hours of this morning. That's the type of approach that  
10 we are looking for.

11 COMMISSIONER NEAVE: Just compare that with, let's say, a  
12 street assault where the police are called and perhaps the  
13 offender has been caught or the alleged offender has been  
14 caught or has run away but there's some external evidence.  
15 Would it be normal in that case for the van that goes out  
16 to deal with the street assault to do the collection of  
17 evidence on that occasion at that time?

18 ASSISTANT COMMISSIONER CORNELIUS: Again, it depends on how  
19 serious the matter is and how serious the assault is. If  
20 it is, if you like, for want of a better description, a  
21 simple punch which has occasioned a bloody nose and that's  
22 it, the attending van crew will deal with that matter.  
23 But if, if you like, it's a king hit punch and we have had  
24 someone knocked unconscious and you have life-threatening  
25 injuries, that is going to be a matter that will involve  
26 an AIM handover package and the detectives will be engaged  
27 in the conduct of that investigation.

28 COMMISSIONER NEAVE: Thank you.

29 MR MOSHINSKY: Can I turn to you, Acting Inspector. Just to  
30 get the overview of the process, at what point does it  
31 come to the prosecutor?

1 ACTING INSPECTOR RUDD: Sure. As Mr Cornelius detailed, it can  
2 come on a number of different pathways, whether that be by  
3 way of summons, by way of bail or by way of remand. If  
4 it's a remand matter, as Mr Cornelius indicated, it would  
5 be the next sitting day of the court and it would come by  
6 way of a bail remand application with an accompanying  
7 intervention order application in most circumstances, if  
8 not all. On that occasion obviously it would be on the  
9 applicant to provide evidence in support of bail and a  
10 decision would be made by a magistrate. That's the first  
11 step.

12 If it comes by way of a bail application, so a  
13 decision has been made that appropriate conditions can be  
14 put in place to mitigate the risk in relation to the  
15 offender and he or she is released from custody that  
16 night, then there is a delay in relation to bail,  
17 generally somewhere between four and six weeks depending  
18 on where the person is picked up, and we would receive a  
19 brief of evidence four to six weeks down the track.

20 If it is a situation where it is a minor assault  
21 or something where there isn't that immediacy of risk,  
22 then the matter would be summonsed and, depending on which  
23 Magistrates' Court the matter is listed at, there could be  
24 a delay up to and including 12 to 14 weeks. Melbourne,  
25 for example, at the moment has an 11-week delay in  
26 relation to a mention matter; Dandenong, for example, has  
27 14. All different courts have a different delay depending  
28 on their ability to manage their mention lists and the  
29 capacity that they have - the number of magistrates,  
30 number of outstanding matters, et cetera.

31 MR MOSHINSKY: Are those times that you referred to, the 12 or

1 the 14 weeks, that's between the time of charging and the  
2 time of the first listing?

3 ACTING INSPECTOR RUDD: That's correct.

4 MR MOSHINSKY: What's the typical time between the event  
5 occurring and charging?

6 ACTING INSPECTOR RUDD: Difficult to say, to be honest, from my  
7 perspective, bearing in mind my office and my unit isn't  
8 aware of it until it is actually listed before the court.  
9 From experience, it can be as short as a month and it can  
10 be upward to and including, say, six to nine months.  
11 Depending on the nature of the charge - obviously there is  
12 a statute of limitations in relation to summary offences,  
13 of which contravention of an intervention order that  
14 section 127 is, so you couldn't have more than 12 months.

15 It is our preferred course that sooner rather  
16 than later is preferred because we then encounter issues  
17 with reluctance of witnesses to give evidence because the  
18 respondent may well have had the opportunity over time to  
19 wear down the AFM and she be - and I use "she"  
20 deliberately - more likely to not want to give evidence  
21 over a passage of time.

22 One of the great I suppose outcomes of the pilot  
23 being initiated at Dandenong is the strong results shown  
24 around - with the short timeframes, the higher percentage  
25 of matters that are prosecuted and the higher percentage  
26 of matters that are satisfied beyond a reasonable doubt  
27 with affected family members giving viva voce evidence  
28 from the witness box.

29 MR MOSHINSKY: I will come shortly to the Dandenong fast-track  
30 process. But, just to get the overall process timeframes,  
31 we have talked about the time between the event and



1 charging, and then the time between charging and the first  
2 listing in the court.

3 ACTING INSPECTOR RUDD: Yes.

4 MR MOSHINSKY: What's the timeframe after that to get the  
5 matter disposed of, say, in the Magistrates' Court?

6 ACTING INSPECTOR RUDD: The Magistrates' Court now is very  
7 efficiency minded. I think that would be fair to say. To  
8 give you an example of the amount of matters that the  
9 courts deal with, Melbourne Magistrates' Court alone dealt  
10 with 130,000 matters last year. So the court and  
11 everybody involved in the court process is very keen to  
12 try to find efficient ways to deal with the system.

13 The first day and the first mention of a matter  
14 will generally be an administrative type hearing.  
15 Practitioners will generally seek a four-week adjournment  
16 to obtain further materials, as indicated earlier by  
17 Ms Walker, or to effectively obtain funding or whatever  
18 the reason may be.

19 The court will generally grant that application  
20 for an adjournment once without requirement for some  
21 further evidence in support. On the return date the  
22 prosecution division is certainly able and willing to  
23 engage in some meaningful discussions in relation to  
24 resolving the issues in relation to that brief. So that  
25 generally is done by way of a summary case conference.

26 Pursuant to the Act, a summary case conference  
27 can be done as in or out of court event. The prosecution  
28 division are very keen to establish and to continue the  
29 practice which has started for a lot of negotiations to  
30 take place outside of the courtroom. We have position  
31 based email accounts that we encourage practitioners to

1 utilise to come to us and say, "My client is charged with  
2 A, B, C and D. On my reading of the materials, it appears  
3 that A, B and C are satisfied. We take issue with this  
4 particular element in relation to charge D."

5 So a lot of negotiation is taken place outside of  
6 the courtroom, and we find that anywhere between 50 and  
7 60 per cent of matters on a summary case conference  
8 resolve to a plea of guilty. I'm sure we will talk about  
9 the nature of the resolution later on, but that is a large  
10 amount and that allows the court to deal with the sort of  
11 volume we are talking about.

12 If the matter doesn't resolve at a summary case  
13 conference, then the matter will generally be booked in  
14 for a contest mention to try to further narrow the issues  
15 in relation to the brief. It may be a situation where  
16 further evidence is required, further statements, or  
17 waiting on analysis, whether that be by fingerprint or  
18 closed-circuit television, and in a contest mention we sit  
19 down with defence, who are hopefully engaged, and the  
20 court is actively involved in triaging the matter.

21 If it is a situation where the matter does not  
22 resolve at that stage, and the courts are now very willing  
23 to provide sentence indications as well to assist - we  
24 found prior to the sentence indication that a number of  
25 matters were booked off for a contested hearing because  
26 the defendant or the accused was very mindful of what the  
27 outcome would be and with an indication from the court  
28 would readily accept that. They are entitled to and they  
29 do receive a discount for effectively dealing with matters  
30 earlier to not allow or to not compel the affected family  
31 member in this occasion to give evidence. So they do

1 receive a discount for that.

2 If after a sentencing indication and a narrowing  
3 of the issues the matter still does not finalise then it  
4 is booked in for what we call a contested hearing, at  
5 which time the prosecution will call witnesses in support  
6 of the case, and defence have options in relation to that  
7 as well. Effectively it would be a burden for the  
8 prosecution to establish beyond a reasonable doubt that  
9 the contravention in this case has been satisfied.

10 MR MOSHINSKY: Between the point of, say, first listing and a  
11 contest what sort of range are we talking about in times?

12 ACTING INSPECTOR RUDD: Again different courts. Dandenong has  
13 very short turnarounds. Melbourne, which I can give  
14 first-hand experience of, contested mentions are about a  
15 seven to eight-week delay. Contested hearings is a very  
16 short delay. We have quite a bit of capacity in the  
17 contested hearing space. Generally family violence  
18 contravention contests are booked in for a day. You could  
19 get one of those in a matter of weeks.

20 MR MOSHINSKY: Sorry, between the first listing and the  
21 contested hearing?

22 ACTING INSPECTOR RUDD: First listing, if you have one  
23 adjournment for four weeks, an administrative adjournment,  
24 a further four weeks for a summary case conference,  
25 I reckon you would probably generally deal with a matter  
26 between 14 to 20 weeks.

27 MR MOSHINSKY: Can we turn to the Dandenong accelerated  
28 program. Assistant Commissioner, can you explain how that  
29 program works?

30 ASSISTANT COMMISSIONER CORNELIUS: So the program commenced  
31 back in December of last year. It is an initiative of the

1 Magistrates' Court and being piloted in the Dandenong  
2 Court under the leadership of the coordinating magistrate  
3 there, Jack Vandersteen.

4 Really what it provides is that the first mention  
5 is to occur at the next sitting date, and then within  
6 seven days for the offenders charged and released on bail  
7 and at that seven-day point we have to have ready the  
8 preliminary brief, and that's provided to the defence.  
9 Then we are locked into a 28-day cycle. From that first  
10 seven days, second listing to occur at 28 days, and then a  
11 contest mention to occur at 28, and then if any contested  
12 hearing is to occur within 28 days that's to happen  
13 28 days after the contest mention. Of course in between  
14 those 28-day periods is the opportunity to negotiate.

15 MR MOSHINSKY: What effect has that program had?

16 ASSISTANT COMMISSIONER CORNELIUS: I think the key thing is  
17 that reduction in dwell time in court and the number of  
18 attendances required before the court in order to resolve  
19 a matter. So if you think about the calendar for that  
20 fast-tracked process you are looking at having the matter  
21 resolved within three and a half months, to put it simply.

22 The impact of the pilot, we have seen this being  
23 reduced from - typically it used to take 16 weeks to first  
24 mention. Now it's down to one week obviously. That  
25 really does bring the court into play much earlier in  
26 terms of both the affected family members and also the  
27 perpetrator understanding that this is a serious matter  
28 and that the court is engaged.

29 We have also found that because of this reduction  
30 in the dwell time and the reduction in the time it takes  
31 for the parties to appreciate the court's involved, they

1 are there in a week, we have seen dramatic reductions in  
2 the number of withdrawals. We have seen dramatic  
3 reductions in, if you like, those matters where because of  
4 the larger dwell times under the normal system you might,  
5 as Acting Inspector Rudd's indicated, see that the  
6 affected family members see a diminished desire in the  
7 matter proceeding for a whole range of reasons.

8 So we just find that early intervention, that  
9 early track into court really does ramp up accountability,  
10 puts the affected family member in a situation where she  
11 feels supported and we are seeing that significant  
12 reduction in withdrawals. The numbers, and it is in my  
13 statement, at 69.2 - so between January and March 2015 the  
14 percentage of overall withdrawals of family violence  
15 prosecutions reduced from 31 per cent for the same period  
16 in 2014 to 13 per cent. So in relative terms for my  
17 region that's a 58 per cent reduction and a 48 per cent  
18 reduction on the state average for withdrawals. So that,  
19 to my mind, really does highlight significant enhanced  
20 justice outcomes for affected family members and enhanced  
21 accountability for perpetrators.

22 MR MOSHINSKY: As part of this program, as well as the  
23 tightening up all the court times, is there a tighter time  
24 for the period between the event and charging on summons?

25 ASSISTANT COMMISSIONER CORNELIUS: Yes. With charge on summons  
26 it's 28 days.

27 MR MOSHINSKY: But you charge within 28 days of the event; is  
28 that what you mean?

29 ASSISTANT COMMISSIONER CORNELIUS: Yes. All of that is leading  
30 to - although it's about 17 contested hearings since the  
31 pilot commenced, but as at 1 June of those 17 matters we

1 have seen that nine of them commenced during the pilot  
2 period and they were all successful in terms of there  
3 being a finding of guilt, whereas prior to this pilot the  
4 finding of guilt rate was 62.5 per cent. So we have gone  
5 from 62.5 per cent of matters where there is a  
6 determination of guilt to all of the matters that have  
7 been initiated under the pilot resulting in a  
8 determination of guilt.

9 MR MOSHINSKY: Can I just ask you some questions about the  
10 charging and practice. There's data available and I think  
11 you refer to some of it in your statement, Assistant  
12 Commissioner, about the proportion of reported incidents  
13 that result in charges. At paragraph 44 you set out some  
14 percentages and indicate that in the year 2013/14  
15 76.2 per cent of reported breaches resulted in a charge.  
16 Is there data available indicating whether there's  
17 regional differences in those percentages?

18 ASSISTANT COMMISSIONER CORNELIUS: I think you will find those  
19 percentages are relatively constant, and there are a whole  
20 range of factors which influence whether or not a charge  
21 or flow-out out of a reported breach, which I'm happy to  
22 go into. But you will also note that since 2010/11 the  
23 numbers have been fairly constant. They have ranged  
24 between 69 per cent and 76 per cent. Obviously we are  
25 looking to see that increase, and that's certainly  
26 reflected in our performance targets that we have set.

27 I don't know ultimately whether there is an ideal  
28 rate. But the key piece here is that we are expecting our  
29 members to apply their professional judgment, and that  
30 question around charging has to be in keeping with the  
31 prosecutorial guidelines ultimately of the DPP. So we

1 have to be satisfied that there is sufficient evidence and  
2 that a prosecution is in the public interest. They are  
3 considerations that inform the thinking of our members,  
4 our supervisors and ultimately our prosecutors as the  
5 matter works its way through the system.

6 MR MOSHINSKY: Does this percentage include both summary  
7 offences as well as the persistent breach indictable  
8 offences?

9 ASSISTANT COMMISSIONER CORNELIUS: Yes, it does.

10 MR MOSHINSKY: I'm not expecting you to do it now, but is it  
11 possible to obtain data which breaks it down as between  
12 the indictable and the summary?

13 ASSISTANT COMMISSIONER CORNELIUS: Yes, certainly. In fact we  
14 have received some preliminary information about that  
15 today, but there are a couple of questions around the  
16 quality of the data. But we certainly have a process in  
17 place to give you a line of sight on that.

18 MR MOSHINSKY: I understand you were able to hear the evidence  
19 this morning from Judge Hyman from the United States. He  
20 described the probation model that operates in California,  
21 and obviously we don't have an equivalent here. But one  
22 of the features of that model is very quick incarceration  
23 if someone is in that process and breaches the conditions  
24 of their probation. What is your view of the importance  
25 of having speedy consequences such as incarceration  
26 following breaches?

27 ASSISTANT COMMISSIONER CORNELIUS: We have certainly found  
28 again in terms of our practice in Dandenong where we have  
29 a pro-arrest and pro-remand policy for breaches of  
30 intervention orders and family violence offenders, we have  
31 actually found that the salutary impact of an offender

1 spending time in a police cell when they have been  
2 arrested for a breach or for a family violence incident  
3 certainly does appear to have a salutary impact on them  
4 and it does appear to impact their propensity to  
5 re-offend.

6 We introduced that just over 18 months ago. We  
7 saw the rate of recidivism, that is the percentage growth  
8 in repeat offenders re-offending, reduce by a half over  
9 that 12-month period. Then when you add to that the  
10 overlay of the priority listing pilot that commenced  
11 December of last year we have taken our recidivist  
12 offending rates from - 12 months ago it was sitting at  
13 about 13 per cent, annualised increase in the rate of  
14 repeat offending, and now we have got to a point where in  
15 Dandenong that's down to 0.9 of a per cent, so a very  
16 significant reduction in repeat offending. Our repeat  
17 victimisation, that is the repeat victimisation of AFMs,  
18 has followed a similar track. We are now sitting on a  
19 reduction of 6.3 per cent. It's actually a reduction in  
20 the rate of repeat victimisation which is exactly where we  
21 need to be.

22 MR MOSHINSKY: One of the comments that's been made by some of  
23 the lay witnesses and some in the community consultations  
24 is that in their cases the intervention order did nothing.  
25 I want to emphasise this is not all people; this is just  
26 some people. But, for example, on Day 9 of the public  
27 hearing we had a lay witness who was given the pseudonym  
28 Lyndal Ryan and I will just read you a couple of passages  
29 from her evidence.

30 At confidential transcript 62 she indicated that  
31 she initially took out an intervention order just naming



1 the children, and then she said, "It was no surprise that  
2 in his case his behaviour just escalated incredibly and he  
3 breached it the next day." Following that the police took  
4 out an intervention order naming her as an AFM.

5 Then she went on to say, "Yet the intervention  
6 order did nothing. I think it just made him worse.  
7 Little things like you can't walk down a street because he  
8 would follow me. Like, he knew where I was so I couldn't  
9 go to my normal shops." Then she goes on to talk about,  
10 "How he would leave his car at the front so I would see  
11 his car and wouldn't know where he was."

12 So in that case it had no practical impact  
13 because he had breached it. So one of the points that is  
14 made by some is that the intervention order is not worth  
15 the paper it is written on. Can I ask you to comment to  
16 that. How well is our system making the intervention  
17 order an effective remedy?

18 ASSISTANT COMMISSIONER CORNELIUS: While you focus on an  
19 intervention order as an end in itself, I think everyone  
20 would appreciate it's just a piece of paper. Unless the  
21 sanctions and the consequences that flow from a breach of  
22 an intervention order are both reported to us and then  
23 aggressively followed up by us, well, an intervention  
24 order is just a piece of paper.

25 These orders, whether they are family safety  
26 notices or whether they are intervention orders,  
27 fundamentally are effective if both we know that they are  
28 being breached and if our people take effective action in  
29 response to that breach. I already made the point on  
30 Monday that there's no such thing as a technical breach.  
31 A breach of an intervention order is a breach of an

1 intervention order, and my expectation is that breaches  
2 will be charged, will result in a charge and the offender  
3 will be held accountable for that breach.

4 The other observation I would make in relation to  
5 multiple breaches, the repeat breach offences that have  
6 come in recently last year, indictable offences, they  
7 actually strengthen the arm of our people in terms of  
8 holding offenders accountable for that repeat offending  
9 behaviour. But, all of that said, it really does come  
10 back to our approach to the offender and, by our conduct  
11 with respect to him, he appreciating that there are real  
12 consequences that flow from his conduct.

13 Why do we, for example, in Dandenong and in other  
14 places have the pro-arrest and pro-remand policy? It's  
15 the difference between a suspected offender sitting in the  
16 comfort of an interview room or that person spending time  
17 in a police cell alongside a drug dealer and a car thief.  
18 If we do this stuff to car thieves and drug dealers, we  
19 should absolutely be doing it to family violence  
20 offenders. They need to be in the same boat as any other  
21 common suspected criminal.

22 MR MOSHINSKY: Is there any impediment to the pro-arrest policy  
23 being rolled out more widely in Victoria?

24 ASSISTANT COMMISSIONER CORNELIUS: Fundamentally decisions  
25 around arrest and remand are a matter of discretion for  
26 the police officers who are exercising that power. So  
27 I as a mere mortal, humble Assistant Commissioner can only  
28 give advice, guidance, urgent coaching to my members as to  
29 how they might exercise their discretion. But ultimately  
30 it comes down to an individual police officer in the  
31 exercise of his or her independent statutory discretion to

1 choose how they might exercise their power.

2 I must also say that there's got to be some  
3 caution around having a mandatory requirement around the  
4 exercise of discretion because potentially you then open  
5 up a debate about whether or not the arrest was lawful and  
6 whether or not the grounds existed in fact for that  
7 approach to be applied.

8 So it is about being very clear with our members  
9 about the basis for them exercising their power in a  
10 particular way and providing them with guidance and  
11 support about how that might occur. For me, it's as  
12 simple as saying, "Look, if you think that it's  
13 appropriate for a drug dealer or a car thief to be put in  
14 a police cell, and you have been through the calculus to  
15 justify that, surely you can go through exactly the same  
16 calculus that will see a family violence offender being  
17 treated in the same way."

18 MR MOSHINSKY: Can I now turn to some specific issues. One is  
19 a question about when a breach of an intervention order is  
20 reported to police but a decision is taken not to lay  
21 charges. Is some record kept of the fact that that report  
22 was made to police so that there is some record for the  
23 future of the report?

24 ASSISTANT COMMISSIONER CORNELIUS: Yes. If a crime is  
25 reported, you will raise the L17. You will also raise the  
26 crime report. It will lead to the preparation of a brief  
27 for authorisation. We are actually reluctant to not  
28 authorise family violence briefs, but there are a whole  
29 range of reasons and they are in the prosecutorial  
30 guidelines as to why we might not authorise a brief. But  
31 that process around submitting the brief to a supervisor

1 for authorisation is a formal process. The supervisor, if  
2 he or she believes that either there isn't sufficient  
3 evidence or that the proceeding is not in the public  
4 interest, it's open to that supervisor to decide not to  
5 authorise the brief. But, in terms of a formal record,  
6 that's available on the papers that are submitted to the  
7 supervisor.

8 MR MOSHINSKY: The lay witness that I referred to earlier also  
9 gave evidence at confidential pages 67-68 that she  
10 understood that, having reported some breaches to the  
11 police, the police had informed the perpetrator that she  
12 had reported those breaches, which made her hesitant to  
13 report any future breaches. I can't obviously ask you to  
14 comment on that specific case, but in terms of process - -  
15 -

16 ASSISTANT COMMISSIONER CORNELIUS: That sort of conduct is  
17 reprehensible. It is not the business of any police  
18 officer to be telling a suspect or an offender where the  
19 source of a complaint came from. Obviously it's going to  
20 raise a whole range of issues around the complainant's  
21 safety and it's just not on.

22 MR MOSHINSKY: During the course of the community consultations  
23 there were a number of people who reported to the  
24 Commission that they had received text messages on their  
25 phone which were breaches of an intervention order, they  
26 would take them to the police station to show them and  
27 were told things like, "That's not good enough evidence."  
28 Are you able to comment on whether that is the right  
29 response?

30 ASSISTANT COMMISSIONER CORNELIUS: Prima facie it would look to  
31 me - without having seen the text, so I have to speculate,

1 but I would have thought that if there was an intervention  
2 order in place which proscribed contact between the  
3 perpetrator and the offender, sending a text message from  
4 the offender to the AFM would constitute a breach, prima  
5 facie. But of course that depends on the wording of the  
6 order.

7 It might also be an issue around how was the  
8 contact initiated. There are certainly cases where  
9 affected family members will in fact initiate contact for  
10 entirely practical reasons. So there might be issues, for  
11 example, around the care of their children, the need to  
12 pick up or collect a child or to make arrangements  
13 because, for example, the AFM might have other plans.  
14 There are a whole range of circumstances.

15 It might be that in that circumstance, where the  
16 contact has been initiated by the AFM, that a perpetrator  
17 might be able to turn around and say, "I didn't initiate  
18 it. I was just responding to this approach," and the text  
19 message that we are being shown is the response. We don't  
20 know until an investigation has been undertaken.

21 So the key point that I would make is that if  
22 someone wandered into my police station with a text  
23 message saying, "I have an intervention order that  
24 prohibits contact and here I have a text message from a  
25 perpetrator where he has made that contact," prima facie  
26 that's evidence of a breach. That shouldn't be triggering  
27 a fobbing off exercise; that should be triggering a,  
28 "Prima facie, I need to investigate this."

29 MR MOSHINSKY: There was evidence earlier today - I'm not sure  
30 whether either of you were there - from Melinda Walker, a  
31 criminal lawyer. I think you may have seen her witness

1 statement, she deals with this at paragraph 49, and it  
2 concerns the preparation of evidence really by the police.  
3 I will just read to you from her statement. She said,  
4 "However, the police often do not properly investigate and  
5 gather evidence sufficient for a prosecution. This is  
6 more obvious since the introduction of the Criminal  
7 Procedure Act and its requirement for the preparation of a  
8 preliminary brief. Police may lay 35 charges of breach in  
9 relation to 35 text messages for instance, but they don't  
10 collect the evidence of the text messages. I have had  
11 many cases where charges end up being withdrawn because  
12 police informants fail to gather evidence in an admissible  
13 form." In her oral evidence she also referred to the  
14 failure to take statements at the time. Are you able to  
15 comment on that?

16 ACTING INSPECTOR RUDD: Yes, I am. I take issue with that.

17 I am sure there are specific cases where that has  
18 occurred. But, from my experience and certainly through  
19 the statistics that we collect, 98 per cent of matters  
20 that are charged result in a successful outcome at court;  
21 98 matters out of 100 where a person who is charged with  
22 all manner of offences through the Magistrates' Court a  
23 finding of guilt on some level is found. We have  
24 contested hearings and we successfully prosecute  
25 93 per cent of those. So to say routinely matters are  
26 withdrawn I would say is incorrect.

27 There are certainly times when we have provided a  
28 preliminary brief of evidence that requires greater work,  
29 and that would be in this occasion the provision from a  
30 service provider for call charge records or similar, and  
31 that does take some time. We can't simply click our

1 fingers and have Telstra or Vodafone provide records  
2 within a matter of weeks. Sometimes that takes an  
3 extended period. That may be a catalyst for an  
4 adjournment. But I think to say that matters are  
5 routinely withdrawn due to a failure to provide evidence  
6 in a timely manner, I would say that is incorrect.

7 MR MOSHINSKY: There are two other issues which aren't strictly  
8 on today's topic that I wanted to ask you about, Assistant  
9 Commissioner. One was there's been evidence about in some  
10 family violence teams the embedding of a detective. That  
11 seems to have some similarities with the SOCIT model where  
12 there is a detective as part of the team. Would you be  
13 able to comment on whether that is a desirable model?

14 ASSISTANT COMMISSIONER CORNELIUS: I think the first  
15 observation that I would make is that members of SOCIT  
16 teams are detectives. So they are very much part of the  
17 broader investigations profession within Victoria Police.  
18 Family violence units, however, are not typically staffed  
19 by investigators. In fact pretty much all of the family  
20 violence units have been established by drawing front-line  
21 operational police out of local police stations to create  
22 that specialist capacity.

23 We have over the years since the family violence  
24 units have been established been working very hard to then  
25 extend specialised training to those members through the  
26 family violence units that have been established so that  
27 they acquire the requisite skills that allow them to  
28 operate effectively in that space.

29 We do operate on a model where typically the  
30 supervisors will be assigned to those supervisory  
31 positions in those units for upwards of 12 months, and

1 typically the constables, senior constables will be there  
2 for upwards of six months. One of the key reasons for  
3 doing that is fundamentally it's about capacity and making  
4 sure that we maintain a balance between our more  
5 specialised areas, specialised units and our front-line  
6 response. But it's also actually a really good way of  
7 broadening the knowledge base of practice in family  
8 violence by actually seeing front-line members move  
9 through that more specialised area of practice for a  
10 period of six to 12 months so that when they go back into  
11 a front-line operational role they bring that practice  
12 with them.

13 If I was to point to what it is that has allowed  
14 us to broaden out the appreciation of the importance that  
15 we attach to an absolute focus on supporting victims and a  
16 rigorous approach to dealing with breaches by offenders,  
17 it would be the fact that a significant proportion of our  
18 front-line members have been rotated through family  
19 violence units, and that's certainly a piece that we see  
20 as being a key way of continuing to drive that broader  
21 cultural change that we need in our organisation around  
22 just further ramping up our practice in this space.

23 With the detective piece, it is certainly the  
24 case that a number of family violence units have  
25 detectives seconded to them, and that certainly has  
26 significant benefits for us where we have the capacity to  
27 do it. But in high-demand areas, where, for example, we  
28 are facing very high demand across a whole range of crime  
29 outputs as well as family violence, we have actually  
30 found - and this is certainly the case in division 3,  
31 Dandenong and Casey particularly - that we actually get



1 better capacity and capability to apply investigative  
2 skills by allocating those more complex investigations out  
3 of the family violence unit into the local CI.

4 Of course, they maintain a close connection with  
5 the family violence unit members, and that is managed  
6 through our AIM process and the AIM package handover  
7 process, which makes sure that, when those roles do  
8 transition into an investigative unit, appropriate  
9 handover occurs with the affected family members and also  
10 with the perpetrator so that you get that seamless  
11 handover from one area of service delivery in our  
12 front-line op space to the investigation space.

13 But, look, if I had my druthers, I would love to  
14 see detectives located with family violence units. But,  
15 as my colleague Assistant Commissioner McWhirter pointed  
16 out on Monday, this question about the shape and structure  
17 of family violence units is quite rightly up for review  
18 and reconsideration.

19 But it's a moot point, for example, as to what  
20 ought the relationship between family violence units and  
21 SOCITs look like, given that in fact many family violence  
22 unit matters in fact are a SOCIT matter because they  
23 entail a sexual assault. So there's a question around is  
24 the distinction between the work of SOCITs and family  
25 violence units a blurred distinction, and is it time for  
26 us to actually look at integrating those components.

27 If we do that, of course, there are significant  
28 capacity and cost implications for us. It, for example,  
29 costs us a lot more to pay detectives than it does members  
30 who are taken out of station. So members who come out of  
31 stations earn overtime. Members who are detectives

1 receive both a detective's allowance and a commuted  
2 overtime allowance. These are all things that ultimately  
3 will ramp our costs.

4 I don't have any issues with our costs being  
5 ramped other than to say that if we do make decisions  
6 around how we restructure and better engage our  
7 capabilities, if there are cost implications that arise  
8 from that, well, of course, there's a need for those  
9 implications to be funded.

10 MR MOSHINSKY: The other point I wanted to raise not directly  
11 relating to today is the different model that seems to  
12 have been taken up in some places dealing with high-risk  
13 perpetrators. In the evidence from Sergeant Spriggs - he  
14 gave evidence some days ago, but he referred to the  
15 Northern High-Risk Response Conference, and he described  
16 that initiative as one that's chaired by Victoria Police,  
17 run by Victoria Police.

18 In contrast, the RAMPs model is a co-chaired  
19 model which is I think co-chaired by DHHS with Victoria  
20 Police. Do you have a view on whether that type of  
21 approach is preferable or which of those two is  
22 preferable?

23 ASSISTANT COMMISSIONER CORNELIUS: I do have a view, but  
24 I think it's important we understand some context around  
25 why it is that local initiatives evolve and they take on a  
26 particular structure. I think it needs to be remembered  
27 that, yes, of course the RAMPs do stand to significantly  
28 enhance interagency engagement in tackling our highest  
29 risk offenders. But it needs to be remembered that one  
30 RAMP will only be able to deal with 70 high-risk offenders  
31 who are qualified to be dealt with on that program. So

1 they have to be assessed as being appropriate for being  
2 handled by the program, and then the capacity of a single  
3 RAMP as it is presently funded and structured will only  
4 allow us to manage 70 cases a year.

5 Of course, if you take a high-volume family  
6 violence location like, for example, Cranbourne, where in  
7 excess of 320 high-risk perpetrators are located and are  
8 actively managed, well, the RAMP that's proposed for  
9 division 3, which covers Greater Dandenong, Cardinia and  
10 Casey, will only get to 70 of those. So you will see a  
11 significant quantum of residual high-risk matters that  
12 will have to be managed outside of the RAMP process.

13 So one of the things that we are doing right  
14 across regional operations is actually thinking through,  
15 "Well, how are we going to manage that residual risk?" So  
16 we are certainly seeing in many divisions across the state  
17 a piece of thinking which is not just about tooling up to  
18 support our part in the RAMPs, but also it's about  
19 thinking through what local arrangements and relationships  
20 do we have to build to allow us to manage residual risk,  
21 the matters that aren't going to be accommodated by the  
22 RAMPs.

23 It's in that context I think that you find the  
24 northern model has emerged. Likewise you have seen a  
25 similar model emerge in div 3. Taskforce Alexis, if you  
26 like, is an example of such a model, as is the process and  
27 practice that's applied in division 4, in Frankston.

28 Many of these models have differences, and  
29 I would say that those differences by and large are  
30 informed by who the local players are, who the local  
31 agencies are, who the local service providers are, and

1 I think it's quite right that we give our people the  
2 ability to leverage those local services and those local  
3 capabilities. So you might expect that what we are  
4 seeing, say, in Taskforce Alexis in div 2, it may  
5 well - and it does look very different to what you see in  
6 the northern model that was described by Spriggs in his  
7 evidence.

8 So I'm not interested in a "one size fits all".  
9 I'm interested in a principles based approach, and I think  
10 that's what my colleague Assistant Commissioner McWhirter  
11 was pointing to, and so the question of leadership by and  
12 large ought be determined by the players who are sitting  
13 around the table and committing to an engaged process for  
14 taking it forward.

15 With the RAMPs, it's a very different  
16 proposition. The RAMPs are in fact a very highly  
17 developed model. It provides a robust framework, a formal  
18 framework, an accountable framework by which nominated  
19 agencies come together, and it's appropriate that the  
20 leadership in that space is a reflection of who in that  
21 partnership environment actually has ownership of the  
22 drivers and is in an ability not only to lead the RAMP  
23 process but also back in their agency context drive the  
24 commitments that they commit to in that RAMP process. So  
25 the RAMP process, where you have a DHHS chair and a Vic  
26 Pol chair, is a reflection of that model.

27 Just because police are the first responders at a  
28 scene and the police are the ones who have had the  
29 opportunity to eyeball an AFM and a perpetrator, that of  
30 itself isn't a reason for police to assume the leadership  
31 role. Police certainly bring those insights and those

1 perspectives to the table, and that informs our assessment  
2 of risk and our assessment of the referral and support  
3 services that might be brought to bear to support AFMs and  
4 to deal with the behaviour of a perpetrator. But the  
5 leadership piece actually needs to be a reflection of  
6 where is the accountability in this between police and the  
7 other agencies, and my view is I think the RAMP model  
8 probably has the leadership piece right in terms of the  
9 co-chair arrangement.

10 Getting back to the northern taskforce model,  
11 that's a taskforce model that has been evolved like many  
12 other models have been evolved, and often times police  
13 find themselves in a leadership situation by default. In  
14 the short term that might make sense, but in the longer  
15 term and in terms of having a sustainable development of a  
16 capability in this space I think the RAMP based approach  
17 is the way to go.

18 MR MOSHINSKY: Commissioners, I don't have any further  
19 questions.

20 COMMISSIONER NEAVE: I have a couple of questions. We have  
21 focused both really today and yesterday on the serious  
22 people who breach frequently, who are recidivists and so  
23 on. Do you have any impression on the extent to which you  
24 have people who are violent in one particular situation,  
25 an intervention order is obtained against them and then  
26 they go and sin no more, as it were, they don't do it  
27 again? Do you have any feeling from your experience about  
28 what size of the population they are, what size of the  
29 total population of people?

30 ASSISTANT COMMISSIONER CORNELIUS: Commissioner, that's  
31 actually a very good question. I asked exactly the same

1 question this morning, and I'm looking forward to being  
2 provided with that information. The question that I asked  
3 was this: of the family safety notices and the  
4 police-issued intervention - sought intervention orders  
5 and the privately sought intervention orders, how many of  
6 those orders and notices have not been the subject of a  
7 breach?

8 That will give us a line of sight on whether or  
9 not the order itself and the telling of the  
10 accountabilities that go with the service of that order,  
11 so both the AFMs and the perpetrators understand what the  
12 order means - you know, that will give us a line of sight  
13 on how effective we are on impacting the thinking of, if  
14 you like, those once-off offenders.

15 I was hedging around a number earlier in my  
16 evidence. We think from the preliminary soundings that we  
17 have got the worst case scenario is that it would be - we  
18 are seeing repeat offending or subsequent offending in  
19 about 12 per cent of matters that are the subject of  
20 intervention orders and safety notices.

21 COMMISSIONER NEAVE: Twelve per cent?

22 ASSISTANT COMMISSIONER CORNELIUS: Yes. So the salutary impact  
23 of an intervention order appears to be quite impactful.

24 COMMISSIONER NEAVE: Are you going to be able to provide the  
25 Commission with that? That would be very helpful.

26 ASSISTANT COMMISSIONER CORNELIUS: Yes. I have said that's the  
27 preliminary sounding. But I'm really hedging around it  
28 because I'm actually not confident in that number, so  
29 I don't want to be held to it. That's the advice that we  
30 received as of five minutes before we joined your good  
31 selves this afternoon. I'm being fairly cagey about it

1 because I think that very specific question around how  
2 many of these notices have never been the subject of the  
3 breach is the right question. The problem is we have all  
4 up until now been asking the question around repeat  
5 breaches, and we have been focusing on the bad end of the  
6 spectrum and I think it is really important that we have  
7 that broader perspective.

8 COMMISSIONER NEAVE: Thank you. I have one further question.

9 Given the fact that, despite the good policies that you  
10 have in place and operating principles and so on, slip-ups  
11 are made. At the moment when people want to complain  
12 I presume they go through the normal police complaints  
13 process. Would it be helpful for one of the roles of  
14 family violence advisers to take these complaints as some  
15 sort of a way of measuring performance in their area, and  
16 would it be helpful for people to be told, "If you are not  
17 satisfied with the process, this is who you talk to?"

18 ASSISTANT COMMISSIONER CORNELIUS: I think there's significant  
19 merit in that. But can I say, because I get out and about  
20 a fair bit, and people will on occasion, as occurred at a  
21 public meeting on ice last week - a citizen told me a  
22 story about a poor piece of service, and the issue for me  
23 is, "If you send me an email, I will deal with it," and  
24 I get the response that I'm looking for.

25 But you don't have to send, please, an email to  
26 an Assistant Commissioner. Every station has a sergeant.  
27 We have supervisors right across our organisation, and  
28 it's their professional responsibility to take complaints.  
29 I guess my key piece of advice to people who aren't  
30 getting the service or attention that they expect is, if  
31 you are not getting what you need from a constable or a

1 senior constable or who you happen to find at the counter,  
2 ask to see the supervisor.

3 The other piece is, if you are the victim of a  
4 breach of an intervention order, call 000. All calls to  
5 000 are recorded, they are voice-recorded. There is an  
6 accountable record made of that contact. 000 calls are  
7 allocated for service via CAD, and, again, that's an  
8 accountable process.

9 Walking up to a station to seek assistance on a  
10 family violence matter, look, I would have to say, and the  
11 evidence discloses this, it's a bit of a lottery. I would  
12 love it for it not to be a lottery. I would love at every  
13 point where people contact Victoria Police that they got  
14 the level of service that I have articulated and as  
15 reflected in the Code of Practice. But it doesn't happen.

16 So the key point that I would make is look to  
17 speak to the supervisor, consider calling 000. I would  
18 have to say to you actually often times with station  
19 walk-ups if the van is out the member on the counter isn't  
20 going to be able to magic the van back to the station to  
21 deal with it, and often times the member at the counter in  
22 fact will him or herself call 000, quite literally, to get  
23 it onto the CAD system so that a police response can be  
24 provided, and often times the closest van to attend isn't  
25 going to be from that station anyway.

26 COMMISSIONER NEAVE: I understand that. Thank you.

27 MR MOSHINSKY: Commissioners, could the witnesses please be  
28 excused?

29 COMMISSIONER NEAVE: Thank you very much indeed, Assistant  
30 Commissioner Cornelius and Acting Inspector Rudd. Thank  
31 you very much.



1 MR MOSHINSKY: That concludes the evidence for today,  
2 Commissioners.

3 COMMISSIONER NEAVE: So tomorrow.

4 <(THE WITNESSES WITHDREW)

5 ADJOURNED UNTIL THURSDAY, 6 AUGUST 2015 AT 9.30 AM

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