



## **Response to Royal Commission into Family Violence**

Springvale Monash Legal Service Inc.



## OUR ORGANISATION

Springvale Monash Legal Service Inc. (SMLS) is a community legal centre that has operated within a diverse community for 40 years. For all of our operation, we have been co-located with the Springvale Community Aid and Advice Bureau within the Local Government Area (LGA) of the City of Greater Dandenong. We have been addressing the needs of marginalised community members, the majority who reside within the City of Greater Dandenong and its surrounds. The City of Greater Dandenong is the second most culturally diverse municipality in Australia, and the most diverse in Victoria. People from over 150 different countries reside in Greater Dandenong and 60% of the residents were born overseas.<sup>1</sup> It also has highest number of resettlements from newly-arrived migrants, refugees and asylum seekers in Victoria.<sup>2</sup> Data from the 2011 Census revealed that Greater Dandenong was the second most disadvantaged LGA in Socio-Economic Indexes for Areas (SEIFA) ratings.<sup>3</sup>

For most of the 40 years in operation, SMLS has been running a clinical legal education program in conjunction with Monash University's Faculty of Law, whereby law students undertake a practical placement at the legal service as part of their undergraduate degree. Additionally, as a community legal centre, we offer legal assistance as well as an extensive community legal education program that is developed in response to feedback from the range of community engagement and community development activities that we are and have been involved in. For example SMLS has contributed to reforms in family violence laws and practices, access to civil procedure reforms, discrimination towards young community members in their use of public space and their interactions with the criminal justice system, as well as in highlighting the needs of refugees and asylum seekers, particularly unaccompanied humanitarian minors and women escaping family violence.

## SMLS ENGAGEMENT WITH CLIENTS AFFECTED BY FAMILY VIOLENCE

SMLS provides a duty lawyer service at the Dandenong Magistrates Court one day a week. This position is funded by state funding. The majority of the clients seen are victims of family violence under the *Family Violence Protection Act 2008* (VIC) (FVPA). The remaining clients are either respondents (i.e. perpetrators of family violence) or persons referred to SMLS for advice regarding parenting arrangements when an Intervention Order (IVO) is in place.

SMLS also has a joint clinic with the South Eastern Centre Against Sexual Assault which funds a position for a lawyer working 1.5 days per week with victims of sexual assault. SMLS prepares applications to the Victims of Crime Assistance Tribunal (VOCAT) under the *Victims of Crime Assistance Act 1996* (VIC). In the 2013/2014 year, the SECASA lawyer dealt with 54 applications to VOCAT for compensation for injuries suffered predominantly from family

<sup>1</sup> City of Greater Dandenong, *A Profile of Health and Wellbeing in Greater Dandenong* <<https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CB4QFjAA&url=http%3A%2F%2Fwww.greaterdandenong.com%2Fdocument%2F26113%2Fhealth-and-wellbeing-profile&ei=pc1nVaPmNdKF8gXg8YGwAg&usq=AFQjCNEJKJVTxEoiuWNm1YyXoYjki34cUw&bvm=bv.93990622.d.dGc>>, 2013, (accessed 20 April 2015)

<sup>2</sup> City of Greater Dandenong, 2013

<sup>3</sup> Australian Bureau of Statistics, *Census of Population and Housing: Socio-Economic Indexes for Areas (SEIFA)*, <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/2033.0.55.001main+features100132011>>, 2011, (accessed 20 April 2015)



violence. Most of these applications involved an alleged perpetrator who met the definition of 'family member' under the FVPA.

The SMLS Family Violence Duty Lawyer is also employed to prepare applications to VOCAT for victims of family violence. In the 2013/2014 year 15 applications were made to VOCAT for compensation for injuries from family violence.

The times for processing VOCAT claims are lengthy, depending on whether criminal proceedings are on foot. Some can take up to 8 months to finalise. The clients must have evidence of a psychological and/or physical injury resulting from the family violence.

SMLS assists clients in the criminal jurisdiction through their student program.<sup>4</sup> These matters will include breaches of IVO and related offences.

Victoria Police data not only indicates that reports of family violence incidents are high in the Local Government Areas which we service - the Greater Dandenong, City of Casey and Shire of Cardinia - but that there has also been a steady increase in reports.<sup>5</sup> Their data shows that these areas have a higher rate of incidents in comparison to other metropolitan areas. This is congruent with our statistics which shows that family violence is the primary problem type that clients identify requiring advice on.

Community Legal Centres (CLC) have a long history of providing holistic support to redress experiences of disadvantage, especially with individuals and families experiencing the impacts of family violence. The service delivery of legal assistance, partnered with other social services provides an inter-sectoral, multi-disciplinary response. In addressing the outcomes of this Royal Commission, SMLS submits that the CLCs continue to be at the forefront of service delivery. It is noted that funding cuts to both legal and social services challenges the capacity to meet need and prevent violence before it occurs.

SMLS welcomes the opportunity to make a submission to the Royal Commission into Family Violence.

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<sup>4</sup> SMLS runs a Professional Practice unit as part of the Monash Law undergraduate degree.

<sup>5</sup> Victoria Police, *Family Violence Incident Reports – 2009/10 to 2013/14*, <[https://www.police.vic.gov.au/retrievemedia.asp?Media\\_ID=72311](https://www.police.vic.gov.au/retrievemedia.asp?Media_ID=72311)> , 2014 (accessed 27 May 2015)



## Question Two

**The Royal Commission wants to hear about the extent to which recent reforms and developments have improved responses to family violence, and where they need to be expanded or altered.**

In 2002, the Victorian Government established a State-wide Steering Committee to Reduce Family Violence, including representatives from police, the justice system, family violence and sexual assault services, and the Victorian Health Promotion Foundation.<sup>6</sup> Despite the various sectors represented in the Steering Committee, the system that family violence applicants and respondents have to navigate continue to be fragmented and disjointed. We acknowledge the urgency for an increase in funding for crisis services, however resourcing other responses and strategies are necessary to create change in the current situation. Many family violence response services experience a duality of problems - understaffing and operating over capacity - which has a direct and negative impact on the safety of victims. In their submission to the Senate Inquiry into Domestic Violence in Australia, Women's Health in the South East reported that women in the Southern Metropolitan Region are often provided with 2 days of crisis accommodation, minimal food allowances and no guarantee of ongoing security.<sup>7</sup> They stated that the current situation leads to a 'revolving door' whereby victims are "being provided with the bare minimum support rather than a holistic wrap around approach which is needed."<sup>8</sup>

Victims report being advised to contact various services, while they continue to process emotions and practical concerns, such as their and their children's safety after a violent incident. In addition, parties navigate a complex court system, often having to attend court appearances in multiple jurisdictions. It is our experience that violence leaves victims confused and overwhelmed, and their anxiety is exacerbated by the need to attend multiple services in order to address both legal and non-legal issues even before they attend the initial court hearing for an IVO. In her 2010 report, Laing established that there was a lack of coordination between State and Federal legal jurisdictions.<sup>9</sup> That research found that:

In order to protect themselves and their children, the women found that they had to navigate a fragmented and uncoordinated service system, marked by delays and barriers to accessing accurate information.<sup>10</sup>

The current system is focused on safety, and is punitive rather than restorative. The use of IVO's in Australia as the primary legal response for women who are experiencing violence is evidence of this.<sup>11</sup> This is mirrored in other industrialised countries, as the UK, US and Canada use IVO's as one of the first legal responses to victims of family violence.

SMLS strongly advocates for a review of current legal processes designed to tackle family violence. Although we recognise the gendered nature of family violence and the prevalence of female victims, we believe that a system which allows both victims and perpetrators to

<sup>6</sup> Australian Law Reform Commission, *Family Violence - A National Legal Response*, [http://www.alrc.gov.au/sites/default/files/pdfs/publications/ALRC114\\_WholeReport.pdf](http://www.alrc.gov.au/sites/default/files/pdfs/publications/ALRC114_WholeReport.pdf), 2010, (accessed 20 May 2015)

<sup>7</sup> Women's Health in the South East, *Submission to the Senate Inquiry Into Domestic Violence In Australia*, WHISE, Melbourne, 2014, p.5

<sup>8</sup> WHISE, 2014, p.5

<sup>9</sup> L Laing, *No Way To Live: Women's Experience Of Negotiating The Family Law System In The Context Of Domestic Violence*. Faculty of Social Work and Education, University of Sydney, Sydney, 2010

<sup>10</sup> Laing, p.7

<sup>11</sup> H Douglas & R Fitzgerald, 'Legal processes and gendered violence: cross-applications for domestic violence protection orders', *UNSW Law Journal*, Vol. 36, 2013



access a range of support services, both legal and non-legal, in a timely manner is paramount to effectively address this issue. Perpetrator recidivism programs must be evidence based, therapeutic and culturally appropriate.

### **FAX BACK PROGRAM**

While the fax back program may seem slightly out-dated, it plays a key role in providing follow up with victims by family violence services where police referrals are provided. SMLS believes there is a need for more services to be involved in this program. Specialist family violence services are advised about the incidents, DHS are involved if children are present or are included as victims, and the Men's Referral Service receive referrals for male perpetrators. However, legal services are not advised of the incident and it is apparent that neither victims nor perpetrators are provided with referrals for legal advice.

We welcome the introduction of applicant and respondent workers at the Magistrates' Court. We believe that these workers should be included in the fax-back program as it will enable them to understand the circumstances of the victim or perpetrator prior to court attendance. This could enable these workers to organise in advance other support services that should be present at the hearing. Providing appropriate referrals to support services, such as drug and alcohol services, settlement services or mental health services can alleviate stress for both victims and perpetrators at court. However we acknowledge that providing referrals and ensuring follow through by both the victim and perpetrator is difficult especially when they are both experiencing the tumultuous after-effects of violence with the added pressure of attending court.

### **FEDERAL CIRCUIT COURT**

SMLS recommends a direct, expedited link to the Federal Circuit Court for individuals experiencing family violence where children are involved. Our experience mirrors findings in Australian and International studies - that women are most vulnerable at the time of separation, as the perpetrator intensifies violent tactics to maintain control over the victim.<sup>121314</sup>

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

Dandenong Magistrates' Court linking respondents with Men's Behaviour Change Programs is incorporated as part of the intervention process, however compliance is unenforceable. We believed that the ability to follow up on attendance would be as a mechanism to keep the respondent engaged in a program after the Intervention Order Hearing.

### **Question Three**

**Which of the reforms to the family violence system introduced in the last ten years do you consider most effective? Why? How could they be improved?**

The FVPA was a very progressive step in the direction of assisting victims involved in family violence, and the broad definition of family violence allows it to capture a range of behaviours in family and kinships relationships. The introduction of exclusion orders within the legislation

<sup>12</sup> D Bagshaw et. al, 'The Experiences and Views of Children and Adults from Families who Separated Post-1995 and Post-2006', *Family Matters*, Issue 86 < <https://aifs.gov.au/publications/family-matters/issue-86/effect-family-violence-post-separation-parenting-arrangements>>, 2010 (accessed 29 May 2015).

<sup>13</sup> J Campbell, D Webster, J Koziol-McLain et al. 'Risk factors for femicide in abusive relationships results from a multisite case control study' *American Journal of Public Health* 93(7), 2003

<sup>14</sup> T Hotton. 'Spousal violence after marital separation', *Juristat*, Vol 21, 2001



has proven to be invaluable in securing the safety of victims by allowing perpetrators to be removed from the household. The legislation is concise and easy to use and access, however remains the competing interest of the Family Law Act.

### **FEDERAL CIRCUIT COURT**

The FVPA allows the Magistrates' Court to suspend current Family Court orders subject to a 21-day limitation period under the *Family Law Act*. This period of time is not sufficient to get an emergency application into the Federal Circuit Court. This 21-day time frame causes confusion for the applicant, the respondent and their children. Consistency is paramount in the life of children. In our view, these processes can lead to further confusion and stress that arguably runs counter to the paramountcy principle in the *Family Law Act*.

Often victims are unable to make an application to the Federal Circuit Court within the 21 days and then are faced with resuming the original Federal Circuit Court orders. This puts the children in grave danger if the perpetrator's suitability to resume contact with the children as per court orders has not been reviewed by the court.

### **Recommendation**

- A recommendation to the Commonwealth that Section 68R and 68T of the Family Law Act is amended to extend the 21 day period, or, consideration for an expedited referral from the Magistrates' Court to the Federal Circuit Court.

### **Question Six**

**What circumstances, conditions, situations or events, within relationships, families, institutions and whole communities, are associated with the occurrence or persistence of family violence?**

We acknowledge that family violence does not exist in isolation. From the work that we undertake, we find that there are intersecting factors which affect individuals and communities, all of which may contribute to violence. For example, this can include the imbalance of power in relationships, mental health issues and drug and/or alcohol issues as well as income stress. We submit that there is a strong correlation between a victim obtaining an IVO and the other party's conduct in their family law matter. This is particularly evident where family violence has been present for some time. For example, in one of our more complex litigation matters regarding parenting orders in the Federal Circuit Court, the perpetrator increased the intensity of threats against the victim, including death threats once litigation was underway and the perpetrator was not content with the interim orders made by the court.

### **FINANCIAL SECURITY**

The 2014 *Access to Justice Report* revealed that women have a greater degree of unmet legal needs related to health, which includes personal injury, than do men.<sup>15</sup> Family violence, property and child support have been determined as the primary legal needs for family violence victims experiencing violence and relationship breakdown.<sup>16</sup> Women experience numerous barriers to leaving violent relationships. The economic reality for many victims is

<sup>15</sup> Productivity Commission, *Access to Justice Arrangements*, Canberra, Commonwealth of Australia, 2015

<sup>16</sup> C Povey and K Moore, *Dividing Walls: An Examination Of Unmet Legal Needs In Family Law, Family Violence And Child Protection: Women (And Their Unaccompanying Children) Who Are Homeless Or At Risk Of Homelessness*, Melbourne, PILCH Homeless Person's Legal Clinic, 2012



that financial hardship acts as a barrier for them to leave the perpetrator. Their inability to fulfil caring responsibilities and provide for the basic needs of their children without the perpetrator's income can be an overwhelming factor in the decision to stay in a violent relationship. Recent Australian research found that women who had escaped violent relationships spent a substantial amount of time and financial resources in order to resolve their matter through the justice system.<sup>17</sup> Timely resolution of legal problems in the context of family violence is crucial for the financial stability of families facing complex issues. Our service sees the negative effects of family violence on victim's economic security and the repercussions in key areas of their life such as securing safe accommodation for themselves and their children, paying for bills and accessing child support.

### **Question Seven**

#### **What circumstances and conditions are associated with the reduced occurrence of family violence?**

SMLS advocates for a holistic and multi-disciplinary approach to dealing with family violence. We have observed the benefits of taking a broader approach through our work at the Dandenong Children's Court. SMLS provides legal advice and representation for young people at the Dandenong Children's Court in relation to IVO matters. Often, the young person is the respondent to the application and the affected family member is a parent.

We see many of these young people have been diagnosed with a mental illness or intellectual disability, may be experiencing alcohol and/or drug issues, or have experienced homelessness. It appears that these underlying issues play a significant role in contributing to the behaviour leading to the incidents which result in an application for an IVO being made. Rather than limiting our role to what may be considered a narrower and more traditional role of the lawyer in providing in-court legal advice and representation, we have broadened our role to take more proactive steps in liaising with support services for the young person to address any underlying issues.

A common occurrence is that a young person is listed as the respondent, and one, or both parents are listed as affected family members in a police application. We have found that our young clients in these matters are often recommended to seek additional support through relevant services, such as anger management or counselling, however as a result of parental poverty are unable to access these resources where costs are involved. Families who are eligible for government funding to access these services face significant delays which impedes the young person's enrolment. In these instances we provide a holistic service, liaising with support workers such as school welfare coordinators or social workers to obtain supporting letters to show plans for ongoing support. This has led to the police withdrawing applications in some matters. We see great benefits in providing a holistic and tailored approach when dealing with family violence IVO matters. We see the benefits of giving our young respondent clients an opportunity to seek support services to effectively address underlying issues. We are concerned that family violence intervention orders alone may not effect long-term behavioural change and may unduly place young people at the risk of entering the criminal justice system.

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<sup>17</sup> R Braaf and I Meyering, *Seeking Security: Promoting Women's Economic Wellbeing Following Domestic Violence*, Sydney, Australian Domestic and Family Violence Clearinghouse, 2011



In our view, it appears that the family violence intervention order framework needs to be supplemented with sufficient health and social supports for young people and their families to address the underlying factors which may shape adolescent behaviours. Ideally, these supports should be provided early, as far as this is possible, so as to minimise the risk of incidents which give rise to IVO applications in the first place. It also demonstrates that support services need to be sufficiently funded and resourced to adequately meet the demand. We consider that this tailored, holistic and multi-disciplinary approach should equally apply to family violence intervention order matters in adult courts. In addition, primary prevention and education across the community is paramount to eliminating family violence.

## EDUCATION

Family violence is experienced across Australian society, regardless of age, socio-economic position or culture. The difficulty in measuring the true extent of family violence due to underreporting is widely acknowledged. The NSW Bureau of Crime Statistics and Research revealed that less than half of victims who experience incidents of family violence report it to the police,<sup>18</sup> and research in 2011 found that victims who are married, older or those who have been assaulted without serious injury or without involvement of a weapon were also less likely to report.<sup>19</sup> We believe that ongoing investment in primary prevention strategies, including legal education, is paramount to reduce the occurrence of family violence. Education to create attitudinal shifts in the social, cultural and behavioural spheres is necessary, and awareness must be raised for both men and women to bring about important structural and ideological changes. There are a number of programs which target specific cultural communities, however there is a need for universal education within schools and communities to create this shift. Continuing education and primary prevention strategies must go beyond short-term, recurrent campaigns such as White Ribbon Australia, to ensure that there are continuing and consistent messages condemning family violence and that education plays a role in challenging current community attitudes which enable and sustain a culture of violence. Commonly held myths include the notions that: certain cultures are 'naturally' or innately violent; and that mental health issues, poverty and/or drug and alcohol issues 'cause' violence. Family violence must be seen as an issue which affects the whole of society rather than as an individual problem. Targeted primary prevention strategies which include secondary school students from educational and social support for young people experiencing family violence should be continued.

### Question Eight

**Tell us about any gaps or deficiencies in current responses to family violence, including legal responses. Tell us about what improvements you would make to overcome these gaps and deficiencies, or otherwise improve current responses.**

Our discussion focuses on the limitations within the legal framework. This is particularly problematic when considering the outcomes of an IVO under the FVPA when children are also at risk from violence from the respondent and there are no family law orders. It is our experience that children may or may not be listed as an Affected Family Member (AFM). It is

<sup>18</sup> Women NSW, *Safety and Justice*,

[https://www.women.nsw.gov.au/women\\_in\\_nsw/current\\_report/safety\\_and\\_access\\_to\\_justice/focus\\_topic\\_under-reporting\\_of\\_domestic\\_violence\\_assaults](https://www.women.nsw.gov.au/women_in_nsw/current_report/safety_and_access_to_justice/focus_topic_under-reporting_of_domestic_violence_assaults), 2015, [accessed 25 May 2015].

<sup>19</sup> K Grech & m Burgess 2011 cited in Women NSW, *Safety and Justice*,

[https://www.women.nsw.gov.au/women\\_in\\_nsw/current\\_report/safety\\_and\\_access\\_to\\_justice/focus\\_topic\\_under-reporting\\_of\\_domestic\\_violence\\_assaults](https://www.women.nsw.gov.au/women_in_nsw/current_report/safety_and_access_to_justice/focus_topic_under-reporting_of_domestic_violence_assaults), 2015, [accessed 25 May 2015].





common for the Department of Human Services (Child Protection) (DHS) to provide the police with a report when the police are the applicant and a child is listed as an AFM.

We believe that this report should also be available to a duty lawyer representing the AFM, and note that the Police liaise with the duty lawyer regarding any DHS involvement even if it is a brief verbal exchange.

### **IVO APPLICATION FORM**

The IVO Application Form asks the Applicant to tick a box to indicate which conditions to include. The note indicates that the magistrate **may not** include the conditions chosen if an order is made. The heading 'Children's Arrangements' includes items asking the applicant to decide if their children's safety will be jeopardised. The applicant is also required to acknowledge the court will require any children's arrangements to be in writing. An affected person may not be aware the children are at risk as their understanding of the definition of 'family violence' may be limited. We note that this is particularly relevant for our CALD clients who may not recognize that a child is at risk as the respondent's conduct may not be considered 'family violence' as per legislation. Consequently a child at risk may not be included in the IVO application. However, we find that when the police are the applicant the children are usually included if the police have identified there is a risk.

### **Recommendation**

- Remove the self-identifying risk question and leave this to be determined by the Court



## CONSIDERATION OF RISK BY THE COURTS

The legislation provides for 'exceptional' conditions allowing contact between a respondent and a protected person regarding parenting arrangements where a child is not at risk. Under section 92 of the FVPA if the court decides that a child's safety is not jeopardised the court must include conditions regarding arrangements for the child to live with, spend time or communicate with the respondent. Usually this would mean a child is not included as a protected person. These conditions are worded on IVOs as condition 9:

- (a) The respondent may do anything permitted by a Family Law Act order, child protection order or written agreement about child arrangements;
- (b) Negotiate child arrangements by letter, email or text message;
- (c) Communicate with a protected person through a lawyer or mediator; or
- (d) Arrange and/or participate in counselling or mediation;  
Provided family violence is not committed while doing so.

When a child is at risk the exceptions are to be excluded. However in practice the conditions are not excluded when a child is at risk. For example, condition 9(b) permitting the respondent to negotiate child arrangements by letter, email or text message can be used by respondents to continue their family violence by pressuring a protected person to allow them to contact the children when it may not be safe to do so. Although coercion is included in the definition of family violence a protected person may not readily identify it as such. Further, any coercion may not be reported to the police when it is clearly a breach of the IVO. Consequently a respondent avoids further scrutiny from the court.

## Recommendation

- When a child is found to be at risk condition 9(b) should be excluded.

## WRITTEN PARENTING AGREEMENTS

This section deals with the written agreements referred to in section 92 of the FVPA and specified as Condition 9 in the IVO.

Section 92 of the FVPA and condition 9(a) of the IVO refer specifically to a 'written agreement'. Sometimes the police applicant will refer a protected person to a duty lawyer to negotiate a written agreement with the respondent on the day prior to or after the hearing. Without the benefit of thorough advice from a duty lawyer regarding family law matters, a protected person is not necessarily in a position to know if it is in the best interests of the child to have contact with the respondent. Even if the duty lawyer practices in family law, there is insufficient time to allow for proper advice about parenting arrangements when they have a busy list and 10 – 15 clients to see in one day.

In our experience a respondent can pressure the applicant to agree to contact under a written agreement that day. Sometimes the written agreement is drafted and signed hastily by the parties **before** the court decides whether a child is at risk. This makes little sense because if the court decides there **is** a risk then section 93 of the FVPA applies and the court **cannot** include a condition for contact between a child and the respondent.



A signed and dated 'written agreement' under the FVPA is defined as a 'parenting plan' under the *Family Law Act 1975* (Cth) (FLA). The family courts must then give the parenting plan weight in any proceedings for parenting orders regarding the parties intentions for living with, spending time with and communicating with the children. A judge must consider a signed and dated parenting plan and whether a child is at risk from family violence. This is underpinned by the principle of what is in the best interests of the child. Under the FLA the court must give greater weight to a child at risk from family violence when considering the child's best interests in having a meaningful relationship with a parent.

A written agreement drafted at court and attached to an IVO can be produced as evidence in a family law proceeding by the person seeking to rely on it. For example, if a protected person and a respondent agreed to unsupervised regular time with a child, the judge will give that plan weight in their deliberations and may consider (with other evidence available) that a child will not be at risk in the respondent's care.

Therefore a written agreement made at the IVO hearing stage, without the benefit of advice from a family lawyer fully apprised of all the facts regarding family violence has unintended consequences in future family law proceedings. It can include inappropriate provisions that are not in the best interests of the children. Only the family law system can appropriately consider whether this is in the best interests of the child when all the facts are before the court in the family that jurisdiction.

Section 63C of the FLA states that a 'written agreement' is not a parenting plan if it was agreed to under threat, duress or coercion. We are concerned that protected persons may be coerced into a written agreement on the day of their hearing when the respondent is present at the hearing. In our experience a protected person who is frightened and stressed can instruct us to draft a written agreement because the respondent has threatened 'court action' if they are not allowed contact with the children. Alternatively, they may feel they will look 'bad' in front of a judge in the family law jurisdiction by preventing contact even when it was appropriate to prevent such contact. The respondent can later rely on that written agreement as evidence of the parenting arrangements and the protected person will now be required to prove coercion on the day.

The protected person pressured by respondent to make the children available is not usually in a position on the day to fully appreciate the risks to the children who may be exposed to family violence.

This is where the need to protect children under the FVPA and FLA intersect. Without the benefit of thorough family law advice from a family lawyer a protected person may sign a written agreement permitting a respondent to have regular unsupervised time with a child when it is not appropriate to expose a child to risk of family violence from the respondent.

'Written Agreements' under the FVPA if they are ever appropriate, should only be short term to cover, for example, a forthcoming holiday.



Every protected person with children needs the opportunity to have family law advice regarding parenting arrangements. The family law system is complex and a written agreement hastily made on the day is not appropriate, particularly when condition 9 on the IVO applies and the child is at risk.

**Recommendation:**

- Court staff/police/judicial training on written agreements and their consequences in the family law jurisdiction; and
- Funding to develop a service (preferably administered by CLCs & VLA) to ensure adequate family law advice is available at court on family violence list days to give advice to parents regarding the best interests of the children and family violence prior to the matter being heard.

**INTER-RELATIONSHIP IVO'S AND FAMILY LAW ORDERS**

Section 90 of the FVPA states if there are family law orders and an IVO will be inconsistent with those orders the court must use its powers to vary, suspend or discharge those orders. The relevant provision for the magistrate to do so is Section 68R and 68T of the *Family Law Act*. It says a Magistrates' Court has the power to revive, vary, discharge or suspend a parenting order. However if the proceedings are for an interim IVO, the variation, discharge or suspension of the family law orders cease after 21 days from the date the interim IVO is made.

If a magistrate is considering varying, suspending or discharging family law orders because they will be inconsistent with an IVO, the court must also consider whether contact with both parents is in the best interests of the child concerned. 'Best interests' of the child are dealt with in Sections 60CB to 60CG of the *Family Law Act*.

In one case in the Magistrates' Court, SMLS argued that the Court should use its power to vary a parenting order because the respondent was using a communication book required under the order to continue committing family violence. The magistrate refused to exercise that power indicating it was a "family law matter". This is not an isolated incident; indeed, in our experience, magistrates are frequently reluctant to use their powers based on an assumption or belief that such matters are best dealt with in either the Family Court or Federal Circuit Court.

It is costly and time consuming for a victim to make a further application in the Family Court to limit or prevent a violent parent from spending time with a child. Therefore, if the magistrate has evidence before them that the current family law orders mean a child is at risk from the respondent, the magistrate should exercise their power and vary the parenting order accordingly.

**Recommendations**

- If there are family law orders in place and those orders are inconsistent with an IVO and a court is satisfied a child is at risk it must use its powers to vary those orders. To assist magistrates in their decision making, the court can adopt the 'Family Violence Best Practice Principles' (April 2013) guidelines produced by the Family Law Court Family Violence Committee, designed to assist Family Court and Federal Circuit Court judges. These principles are often relied on by legal practitioners when family violence



is an issue in a family law matter. Although the principles are not a mandatory consideration, a judge can use them in their deliberations.

**Question Seventeen Are there specific cultural, social, economic, geographical or other factors in particular groups and communities in Victoria which tend to make family violence more likely to occur, or to exacerbate its effects? If so, what are they?**

Our experience providing legal assistance to individuals affected by family violence confirms the diversity of individuals who are impacted by it. Family violence is experienced across cultural and socio-economic groups, however intersectional disadvantage such as isolation, poverty and discrimination can increase risk and create additional barriers to accessing justice. We will focus on three groups within our community that we work with whose experience of family violence are impacted by multiple experiences of disadvantage, and where there continues to be challenges for appropriate responses.

**CULTURALLY AND LINGUISTICALLY DIVERSE COMMUNITIES**

SMLS believes that further strategies are needed to recognise the complexities within the dynamics of violence experienced by people of migrant, refugee and asylum seeker backgrounds. In a review of recent studies, the Australian Institute of Criminology found mixed results in the available research on the prevalence of family violence in culturally and linguistically diverse (CALD) communities<sup>20</sup>, while others, such as the report by the Family Law Council found that CALD victims were over-represented in statistics for family violence support services.<sup>21</sup> CALD victims experience intersectional disadvantages, and although they may experience violence in culturally specific ways, it is acknowledged that violence transcends cultures, and generalisations based on ethnicity ignore complex, multifaceted factors which affects people's lives.<sup>22</sup> Both research and our experience in supporting victims of family violence find that the barriers they experience in leaving situations of violence or accessing justice have structural roots, such as isolation, limited social capital, stigma, lack of knowledge of rights and where to access support, migration legislation and policies which reduce victim's access to support as well as racial stereotypes of inherent violence or passivity.<sup>23 24 25</sup> Our work with CALD clients have also found, as some research suggests, that community attitudes that tolerate violence within relationships are commonalities which are found across many cultures, including within mainstream Australian culture.<sup>26</sup> In respect to barriers to justice, we believe that language proficiency, a lack of knowledge of their rights and the legal system, or conversely, a fear of authority and the legal system are all factors which discourages victims from reporting violence or seeking legal advice. Not only are

<sup>20</sup> Australia Institute of Criminology, *Emerging Issues In Domestic/Family Violence Research*, [http://www.aic.gov.au/documents/b/7/2/%7Bb720c47b-56f2-4c4d-aa2c-57a2278fd87e%7Drip10\\_001.pdf](http://www.aic.gov.au/documents/b/7/2/%7Bb720c47b-56f2-4c4d-aa2c-57a2278fd87e%7Drip10_001.pdf), 2010, (accessed 21 May 2015)

<sup>21</sup> Family Law Council, *Improving the Family Law System for Clients of Culturally and Linguistically Diverse Backgrounds*, ACT, Family Law Council, 2012.

<sup>22</sup> B Pease, 'Theorising Men's Violence Against Women in Refugee Families: towards and intersectional feminist framework', *Just Policy*, vol. 47, 2008

<sup>23</sup> Family Law Council, 2012

<sup>24</sup> C Poljski, *On Her Way: Primary Prevention Of Violence Against Immigrant And Refugee Women In Australia*, Melbourne, MCWH, 2010

<sup>25</sup> N Ghafournia, 'Battered At Home, Played Down In Policy: Migrant Women And Domestic Violence In Australia', *Aggression and Violent Behaviour*, Vol. 16, 2011

<sup>26</sup> Pease, 2008



victims unaware of their rights but they also do not know where to begin to seek information and assistance. This, together with other compounding factors significantly limits their ability to seek assistance until crisis point is reached. We support the Family Law Council's recommendation for holistic, inter-sectoral collaboration to share organisational expertise to address family violence.<sup>27</sup>

## PEOPLE WITH DISABILITIES

People with disabilities have a higher likelihood of having multiple legal issues,<sup>28</sup> and are at a higher risk of experiencing violence in comparison to the general population.<sup>29</sup> A recent Victorian study by the Office of the Public Advocate found that victims reported incidents of violence in 45% of the cases they investigated, however indicated that the number of incidents could be higher as family violence is commonly underreported.<sup>30</sup> Our experience is that people with disabilities have significant barriers to achieving justice. Through *Making Rights a Reality*, a partnership project with the South Eastern Centre Against Sexual Assault (SECASA), SMLS worked to address the inequities that victims of sexual assault with cognitive impairments had in accessing legal assistance. The current evidence supports our experience, which indicates that victims with disabilities experience the same forms of family violence as victims without disabilities, however the risk that they will experience 'disability-based violence' is greater, more frequent and prolonged.<sup>31</sup> The evaluation of *Making Rights a Reality* highlighted the difficulties for victims to report violence.<sup>32</sup> Some individuals did not have access to information to assist them to recognise their experience as abuse, others do not have ways of 'saying' what their experience of violence was, may not be believed, or do not have people other than the perpetrator of violence to disclose it to.

## YOUNG PEOPLE

Adolescent Violence in the Home (AVITH) is understood as continuum of abusive behaviour by adolescents (young people aged between 12 to 24) who commit acts of violence against parents.<sup>33</sup> <sup>34</sup> Family violence data collated by the Department of Justice from 1999 – 2008 revealed that a parent was listed as the victim in 13% of family violence incidents recorded by the police.<sup>35</sup> Refer to question seven for further discussion on legal responses youth and family violence.

<sup>27</sup> Family Law Council, 2012

<sup>28</sup> Productivity Commission, *Access To Justice Arrangements*, [http://www.pc.gov.au/data/assets/pdf\\_file/0018/145404/access-justice-volume1.pdf](http://www.pc.gov.au/data/assets/pdf_file/0018/145404/access-justice-volume1.pdf), 2015, (accessed 26 May 2015)

<sup>29</sup> P French, *Disabled Justice: The barriers to justice for persons with disability in Queensland*, <[http://www.cjn.org.au/docs/disabled\\_justice\\_-\\_the\\_barriers\\_to\\_justice\\_for\\_persons\\_with\\_disability\\_in\\_queensland.pdf](http://www.cjn.org.au/docs/disabled_justice_-_the_barriers_to_justice_for_persons_with_disability_in_queensland.pdf)>, 2007, (accessed 22 May 2015)

<sup>30</sup> M McGuire, *Voices Against Violence Paper Four: A review of the Office of the Public Advocate's Record on Violence Against Women With Disabilities*, Women With Disabilities Victoria, Melbourne, 2014

<sup>31</sup> K Howe, 'Violence Against Women with Disabilities: An overview of the literature', in *Women Against Violence*, vol. 7, 1999, 11-19.

<sup>32</sup> P Frawley, *Making Rights Reality: Final Evaluation report*, La Trobe University, Melbourne, 2014, p.30

<sup>33</sup> N Bobic, 'Adolescent Violence Towards Parents', *Australian Domestic And Family Violence Clearinghouse Topic Paper*, Australian Domestic and Family Violence Clearinghouse, 2004.

<sup>34</sup> J Howard, 'Adolescent Violence in the Home - The Missing Link in Family Violence Prevention and Response', Australian Domestic and Family Violence Clearinghouse, 2011,

<sup>35</sup> Department of Justice 2009 cited in Howard, 2011



### Question Eighteen

**What barriers prevent people in particular groups and communities in Victoria from engaging with or benefiting from family violence services? How can the family violence system be improved to reflect the diversity of people's experiences?**

Many of the barriers that prevent people in the first instance from addressing family violence which impacts on their life are the same barriers that prevent people from engaging or benefitting from the family violence services. These may include cultural barriers, language and social stigma (from family and friends).

Often the issues of people accessing services are multi-faceted. Service provision needs to be less siloed and sensitive to the issues of clients. For instance, appropriate levels of privacy (for both victim and perpetrator accessing relevant services) to access services that provide a range of programs that can address the various needs of a person. SMLS is co-located with Southern Community Aid and Advice Bureau ("SCAAB") that provides counselling, financial counselling, housing assistance and youth support services. This provides opportunities for cross-referrals to address the multiple issues of these clients. These issues compound and contribute to the existence of family violence.

It is also important to note that an attribute such as ethnicity or religion, are the basis for support of culturally specific programs/services. Whilst these are invaluable, it is also the case that stigma around family violence inhibits individuals from accessing culturally specific services. Mainstream services must be able to respond in a culturally safe manner by providing additional pathways for victims and perpetrator where stigma inhibit their access to multicultural support services.

### Question Nineteen

**How can responses to family violence in these groups and communities be improved? What approaches have been shown to be most effective?**

Throughout our submission we have touched on some of the effective responses to target groups. For instance;

- Education in schools so that children experience violence in the home are supported and teenagers are taught healthier relationship choices.
- Appropriate levels of funding to provide for support services for both victims and perpetrators to address the systemic issues holistically
- To ensure access to legal assistance for applicant and respondent both in the context of IVOs and Family law considerations
- Ensuring all service providers in the family violence context are working collaboratively
- Funding for an increase in multi-disciplinary programs

### Recommendations

The following recommendations were made throughout the report:

- A recommendation to the Commonwealth to amend Section 68R and 68T of the *Family Law Act* to increase the 21 day limitation period, or consideration for an expedited referral from the Magistrates' Court to the Federal Circuit Court
- Remove the self-identifying risk question on the IVO application form and leave this to be determined by the Court



- When a child is found to be at risk condition 9(b) of an IVO should be excluded
- Court staff/police/judicial training on written agreements and their consequences in the family law jurisdiction
- Funding to develop a service (preferably administered by CLCs & VLA) to ensure adequate family law advice is available at court on family violence list days to give advice to parents regarding the best interests of the children and family violence prior to the matter being heard
- Practice directions for Magistrates that they are required to give consideration to their powers to vary, suspend and discharge family law orders under the FVPLA
- Increased levels of funding for community legal centres and social services to provide crisis response and prevention programs