

Centre for Innovative Justice  
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Submission to the Royal Commission into Family Violence regarding legal, professional and judicial education on family violence.

Friday, 29 May 2015.

## Introduction

The Centre for Innovative Justice ('the CIJ') has contributed two submissions to the Royal Commission, the first being its report entitled *Opportunities for early intervention: bringing perpetrators of family violence into view*, which highlights ways in which the justice system might hold perpetrators more effectively to account, and the second being a joint submission with the Mental Health Legal Centre and its program, Inside Access, on the importance of recognising family violence as a backdrop and contributor to women's offending.

Other submissions will no doubt explore the value of specialist training across a range of professions which deal with the impacts of family violence. This includes child protection workers, alcohol and drug treatment services, mental health services and other forms of community supports. The CIJ endorses the value of this sector wide training, as well as the more universal adoption of a refined Common Risk Assessment and Management Framework, or CRAF, as will no doubt be the subject of other submissions as well.

The purpose of this subsequent and brief submission, however, is not to explore any subject matter in detail but, rather, to draw the Commission's attention to the dearth of legal education – whether at graduate, post-graduate or professional development level – that specifically concerns family violence.

## The CIJ's Report

In the Report referred to above, the CIJ highlighted that family violence was 'core business in our justice system'. Given this, and given the matters that come before our courts which feature family violence as either a backdrop or predominant factor, it makes sense that all those trained in the law should develop an understanding of the complexities in this area.

In particular, the Report noted the importance of the interaction that both victims and perpetrators have with a Magistrate – the quality of the experience affecting a victim's confidence in the process and outcome of a hearing, as well as the likelihood that a perpetrator will accept the authority of the court and comply with any orders imposed.

For this reason, the CIJ expressed support for the recent decision of the Magistrates' Court of Victoria to require all Magistrates, rather than only those sitting in its specialist lists and divisions, to undergo two days of specialist family violence training. Given that the Report was commissioned by the Commonwealth Attorney-General's Department and therefore took a nation-wide perspective, it recommended that Magistrates in all jurisdictions undergo similar compulsory specialist training, while also flagging that this training ought to be ongoing, rather than a 'one-off', in order for it to have maximum effect.

It also recommended that lawyers practising specifically in the area of family violence – such as those providing duty lawyer services and attached to Community Legal Centres – undergo similar specialist training. Duty lawyers from Victoria Legal Aid have recently undergone specialist training by No to Violence in order to increase their understanding of the dynamics of family violence and increase the likelihood that their clients will comply with an orders imposed upon them. The CIJ recommended that lawyers providing duty services in all jurisdictions should receive similar training, so that their interaction with perpetrators (or victims) of family violence be as effective and purposeful as possible.

### **Tertiary legal education**

Beyond this, however, the CIJ urges the Commission to consider the value of wider family violence education across the legal profession. For example, the CIJ notes with interest that there seem to be limited courses available at a tertiary level dedicated solely to the topic of family or gendered violence. In fact, an internet search suggests that only a handful of universities around Australia offer courses or units specifically targeting this subject matter, although not necessarily as part of a law course.<sup>1</sup>

Family violence may, of course, be a significant topic *within* other subjects, such as those concerned with feminist legal theory, as well as Family Law, given the relevant legislative provisions. Equally, it can be embedded in the curriculum, as it is in the RMIT Juris Doctor program, through the clinical legal education program and associated work that students conduct for the Inside Access program, a free civil legal service which regularly visits the Dame Phyllis Frost Centre to provide advice and assistance to women prisoners. In addition to this, it is a feature of a legal research placement at Dandenong Magistrates' Court in which students are researching ways to mainstream therapeutic approaches to sentencing in family violence matters. A study tour to New Zealand in June/July will also feature family violence as a significant focus.

With family violence 'core business in our justice system', however, and so many law graduates likely to encounter family violence in a professional capacity - whether they practise in criminal law; consumer law; family law; employment law; medical negligence; immigration; probate; residential tenancies or almost any area involving individual rather than corporate clients - the CIJ urges the Commission to consider whether there are any recommendations that the Commission can make within the scope of its Terms of Reference which would encourage undergraduate and graduate law courses based in Victoria to examine whether components of their course work increase knowledge of the complexity and dynamics of family violence.

More specifically, of course, the Commission will be aware of the Diploma at Swinburne University which provides specialist training for facilitators of behaviour change programs – through which all practitioners in this field should ideally be trained. During the course of its consultations for the Report identified above, however, the CIJ heard that limited places in this course and the limited number of graduates that it therefore produces restricts the capacity of the behaviour change sector to develop at a constructive pace. The CIJ therefore urges the Commission to consider whether further recommendations can be made for the funding of more courses of this specific and dedicated nature.

### **Continuing professional development**

Legal education, of course, does not end at graduation. Continuing Professional Development (CPD) requirements compel legal practitioners to update and expand their legal knowledge and skills on an ongoing basis. Many current legal practitioners in Victoria will have encountered family violence in their professional capacity (and potentially in their personal lives as well, as do every other occupation) and would be likely to benefit considerably from a course exploring its complexity and dynamics.

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<sup>1</sup> See, for example, Victoria University. At <https://www.dvandwork.unsw.edu.au/training>

Despite this, a search of the Law Institute of Victoria's CPD Calendar for the remainder of 2015 reveals no event or course dedicated to the subject of family violence, although the CIJ is currently finalising a date to present a LIV seminar regarding the Report mentioned above. The CIJ therefore asks that the Commission consider whether there are any recommendations that it can make which would encourage the inclusion of family violence as a dedicated area of CPD for Victoria's legal profession on a regular and ongoing basis.

### **Judicial education**

Finally, and perhaps most importantly, the capacity of a judicial officer to identify and understand the nuances of family violence can be instrumental in terms of interrupting its cycle and providing adequate support for victims. The Judicial College of Victoria leads the nation in terms of its provision of judicial education and, in particular, facilitates the abovementioned family violence training for Victorian Magistrates as well as having developed a Family Violence Benchbook for use by all judicial officers.<sup>2</sup> The CIJ endorses any recommendation that the College or the Court may make to strengthen these efforts and has met with the JCV to discuss the CIJ's Report and the value of judicial education in this regard.

While the Magistrates' Court of Victoria is certainly the jurisdiction which encounters the greatest volume of matters specifically identified as concerning family violence, both the County and Supreme Courts encounter the manifestations of family violence as well. In other words, whether as the context for a sexual assault, an aggravated burglary or a homicide, family violence is also a feature of the superior jurisdictions, although only the most recent or extreme incident may be the subject of the allegations of the court, despite sustained campaigns of violence and coercion by the accused over preceding years.<sup>3</sup>

Training for County Court and Supreme Court judges, therefore, may help them to recognise and understand the dynamics of family violence, as well as provide a more meaningful experience for the parties before the court. Certainly, the sentence (and accompanying remarks) that an accused receives and the experience of a victim should not depend on the awareness of the relevant judge.

Equally, members of VCAT who regularly encounter family violence in residential tenancy matters, for example, need support to navigate this complex area. The CIJ therefore urges the Commission to consider making recommendations for the resourcing and provision of compulsory specialist family violence training for *all* members of Victoria's judiciary, including VCAT, where those members sit in lists in which they can potentially encounter the manifestations of family violence. The CIJ endorses any recommendations that the JCV may make in this regard in its own submission to the Commission.

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<sup>2</sup> At <http://www.judicialcollege.vic.edu.au/publications/family-violence-resources>

<sup>3</sup> S Butcher, 'Repeat domestic offender jailed for 10 years', 27 October 2014. At <http://www.theage.com.au/victoria/repeat-domestic-violence-offender-jailed-for-10-years>.