



4 June 2015

The Honourable Marcia Neave AO
Commissioner
Royal Commission into Family Violence
PO Box 535
FLINDERS LANE VIC 8009

Dear Commissioner Neave,

Submission to the Royal Commission into Family Violence

Moonee Valley Legal Service (MVLS) welcomes the opportunity to provide a submission to the Royal Commission into Family Violence.

This submission is made from the perspective of our family law practice where we assist clients who are often experiencing or have experienced family violence, as well as our “Safe from Harm” project, in partnership with Flemington and Kensington Community Legal Centre, which works to raise awareness of family violence amongst residents of the public housing estates in Ascot Vale and Flemington and provide legal advice and assistance to them.

WHO WE ARE

MVLS is a generalist community legal centre located at the Wingate Avenue Community Centre, which is situated in the middle of the Ascot Vale public housing estate in Melbourne’s inner north.

The service employs four lawyers, three of whom are part time. This includes an accredited family law specialist, a criminal lawyer, a generalist and community legal education lawyer and a family violence lawyer.

MVLS undertakes free legal advice and casework, legal education, community development, policy, law reform and project work. Our catchment is the entire City of Moonee Valley.

MVLS serves a diverse and disadvantaged community. Half of all of our clients were born overseas, and 60% of our clients are reliant on government pensions as their sole form of income. We assist male and female clients in almost equal numbers.

OUR FAMILY LAW PRACTICE

MVLS has an established family law practice that aims to assist clients who are not eligible for legal aid at all stages of their intervention order, family law and children's court proceedings. Many of our family law clients have multiple legal issues including immigration, infringements, debt, housing, social security, child protection and criminal matters. Many of our clients are self-represented litigants navigating the family law system and a high percentage of our cases include issues of family violence.

One third of the legal advice provided to clients in 2014 related to family law and family violence matters. The demands upon our service for assistance in relation to family violence are ever increasing.

We have good working relationships with many stakeholders in our catchment area and receive referrals from domestic violence support agencies, Victoria Police, Victoria Legal Aid, community workers, settlement workers, courts, housing workers and other community legal centres.

We also work in partnership with the Broadmeadows Community Legal Centre and the Family Relationship Centre (FRC) in Broadmeadows to provide legal information sessions, advice and casework to clients attending the FRC.

THE 'SAFE FROM HARM' PROJECT

Safe from Harm is a project funded by the Legal Services Board which aims to raise awareness about family violence amongst culturally and linguistically diverse (CALD) communities living in the public housing estates in Flemington and Ascot Vale. The project provides free legal advice, assistance and education on family violence and related legal issues to residents in these estates. It is a partnership based project run by Moonee Valley Legal Service and Flemington and Kensington Community Legal Centre (FKCLC).

Two family violence lawyers are employed as part of the project, one based at MVLS and one based at FKCLC. These lawyers are responsible for engaging with local CALD communities and providing them with free legal education, advice and assistance in relation to a range of legal matters related to family violence. A different approach towards engaging with the communities is used at each of the legal centres.

MVLS is located within the Wingate Avenue Community Centre in the middle of the public housing estate in Ascot Vale. The Community Centre is a vibrant hub where local residents are often present attending English classes, participating in the food share programs or accessing the variety of free services at the centre.

The lawyer at MVLS has utilised the strengths of the Community Centre to build relationships with the local CALD communities. They have done this by speaking to the English classes at the Centre, engaging with local community groups and community leaders, which includes offering them the “Settled and Safe” training developed by Victoria Legal Aid, and holding informal events for women at the Centre. They have also developed relationships with other service providers at the Centre, such as the Maternal Child Health Nurse and the New Hope Settlement Service and have worked closely with them to develop strong referral pathways and provide holistic services to their clients. This approach has shown success, with the number of clients accessing the service steadily increasing over the life of the project.

The lawyer at FKCLC has engaged with the community by offering outreach services at local primary schools, which are frequented by residents of the public housing estate in Flemington. This has given them access to clients in a safe and secure location, effectively meeting the client’s where they are most likely to be. These outreaches offer assistance in relation to a variety of issues with the aim of developing relationships of trust with the local community to increase the probability of disclosures related to family violence being made by them in the future. This approach has had positive outcomes, with a number of clients who first attended the outreach for minor issues, such as housing, returning to seek advice about family violence issues at a later date.

Both lawyers have developed relationships with other service providers in the area to strengthen referral pathways. This has been achieved by speaking to them about the project and providing them with education on a range of legal topics. A forum was also run at the beginning of the project which brought together the many local agencies that assist people affected by family violence so that they could share information about their services and strengthen referral pathways.

Education sessions run by the project’s lawyers have included information about what family violence is, how it affects families and how to access or link people in with services to address it. This information is often added onto, our couched within, less confronting topics such as fines, bills or housing.

Evaluation of the project is being conducted by an independent evaluator. The evaluator conducted baseline surveys on the housing estates at the beginning of the project to determine general family violence awareness amongst the community and will engage in a similar survey towards the end of the project. They have also examined evaluation data from events run as part of the project and statistical data related to the clients seen. The project is due for completion in December 2015 at which time there will be a final evaluation report. An interim evaluation report was drafted in February 2015 based on data from 2014.

HISTORICAL CHANGES IN RELATION TO FAMILY VIOLENCE

MVLS acknowledges that reforms and improved system responses have been implemented in relation to family violence over the past 10 years. Effective preventative measures have included publicity campaigns, training and education, targeted projects, and projects that focus on youth and respectful relationships.

Changes to the definition of family violence in the *Family Violence Protection Act 2008* (FVPA) have also had a positive impact with more people being able to obtain Intervention Orders through court processes. This has led to an increase in the number of clients seeking assistance from our service for family violence related matters.

However, despite the new definitions within the FVPA and increased public awareness of the issue, many clients still present to our service with the belief that only physical violence constitutes family violence.

It remains a concern to our service that women are continuing to be killed and injured at high rates as a result of family violence despite the reforms and innovations in this area. The prevalence of infanticide, filicide, elder abuse, child abuse, self-abuse and suicide are also concerning and show that women and children remain vulnerable within our society.

BARRIERS TO WOMEN SEEKING ASSISTANCE

There are many significant barriers preventing women seeking assistance when they are in situations of family violence. Clients of the family law service and the Safe from Harm project have reported a variety of factors which contributed to them being reluctant to seek assistance. These included:-

- Concern about being unable to financially support themselves and their children if they leave their abusive partner;
- Concern about being ostracised by their community (this was most common in women from CALD communities);
- Concern about being able to access or find suitable housing, or of losing existing public housing;
- Concern that the abusive partner would carry out threats such as:-
 - Threats to harm or kill them, their children or their pets;
 - Threats to commit suicide;
 - Threats to have their relatives who are living overseas harmed;
 - Threats to revoke their spousal visa's and have them "kicked out" of Australia;
 - Threats to take their children from them.
- Beliefs that an Intervention Order was "just a piece of paper" that would not give them the protection that they need;

- Beliefs that the police would not assist them if they reported the matter to them, which often arose as the result of a prior interaction with the police where they perceived that the police “did nothing” to help them.
- Social isolation and a lack of knowledge of the services available: many female clients described being socially isolated by their abusive partners and our service has heard many anecdotal stories amongst the local CALD communities of women who were only permitted to go grocery shopping and were otherwise kept entirely in the home. Women in these circumstances were often denied access to English language classes and had no knowledge of the services available to assist them, which meant that they did not actively seek assistance.
- Lack of knowledge about the laws in Australia.

MVLS submits that more needs to be done to address these factors and ensure that there is adequate support for women in violent relationships, who are leaving violent relationships or who have left them. More culturally specific services need to be made available to address the additional barriers faced by women from CALD backgrounds.

There should also be more emphasis on holding perpetrators accountable for their actions.

Case study

██████ came to Australia from ██████ years ago to live with her new husband, ██████. Since coming to Australia she has very rarely left the house. She knows very little English and doesn't know how to drive or use public transport. After the birth of their son, ██████ has become increasingly violent towards ██████. During the most recent incident, ██████ punched her repeatedly in the head. A neighbour heard ██████ screaming and called the police. They attended and assisted ██████ to take out an intervention order against ██████ which excluded him from the property. ██████ presented at MVLS seeking assistance to have the order removed. She was worried about having adequate financial support and was struggling to look after ██████ on her own. ██████ had always driven her to the supermarket, the doctor and other services and she did not know how to get to these services by herself. She felt isolated and alone as neighbours from her community had stopped speaking to her. She said it would just be easier if he could come home, even if it meant that she would be subjected to further violence.

NAVIGATING THE LEGAL SYSTEM

Most of the clients who access our service and are experiencing family violence either already have an intervention order in place or are in the process of applying for one. They have often been assisted by Victoria Police or a duty lawyer at the local Magistrates' Court to navigate this process.

Most male family law clients that we see have been the respondents in intervention order proceedings and are seeking advice and assistance to make arrangements to see their

children. Many women who present to our service are in the process of leaving a violent relationship or have left but are still suffering abuse at the hands of the perpetrator.

When parties separate from a violent relationship, they often must then traverse a variety of legal and non-legal processes to address all of their ongoing needs and issues arising from the separation. This occurs at a time where they usually already suffering under incredible stress.

After a woman leaves a violent relationship, this is often not the end of their interaction with the perpetrator. Often separation is just the beginning of many years of ongoing abuse where the perpetrator continues to exert control over the woman, particularly in cases where there are children of the relationship.

There may be ongoing proceedings related to intervention orders, child arrangements and property which require the woman to constantly negotiate with the perpetrator whether in person or through the assistance of a lawyer.

The current legal system requires many families affected by family violence with children and property related issues to traverse both state and federal jurisdictions which makes the legal system complex, daunting and sometimes inaccessible to them. The interaction between the jurisdictions is one of the most common areas that we provide advice on and one of the areas that clients are the most confused about.

It is therefore important that both parties have the legal matters associated with separation resolved in a timely manner and have ready access to appropriate legal and other support services to assist them to navigate the system from the very beginning.

Intervention Order proceedings

Magistrates' and duty lawyers in the family violence lists are often working at capacity and dealing with many complex family law situations in a high tension environment where clients are often upset, angry and confused.

Many clients present at our service, having come from intervention order hearings apparently completely unaware of the services that are available to assist them to negotiate parenting arrangements, or of family law processes in general. Whilst duty lawyers may have provided such advice and made referrals for these clients, the client's often fail to absorb this information whilst at court. The capacity of the duty lawyers to provide in depth family law advice on intervention order listing days is also quite limited.

Male clients who present to our service in this way have often not seen their children for many months and are angered by the situation, which can lead to them posing a higher risk to the other party. We note that there is often a discernible improvement in their anger levels and demeanour when they have a better understanding of the legal processes involved, but this is not always the case.

Many clients of both genders attend at MVLS in relation to confusion about the legal effect of intervention orders that have been put in place. This confusion often relates to a lack of awareness of the limitations the order places on the perpetrators behaviour, particularly in relation to the internet and social media, as well as how the exception provisions apply in their situation.

Family law proceedings

Where families are in high conflict, as is usually the case in matters involving family violence, this often permeates the entire family law process. The timely provision of legal assistance to these clients is therefore imperative.

We routinely enter into negotiations on behalf of clients to facilitate the negotiation of parenting arrangements, which helps to reduce the risk of respondents breaching intervention orders out of a lack of knowledge of the law and the legal processes that can be followed to resolve these issues.

Our service often assists self-represented litigants in family law proceedings. We frequently prepare court documents and sometimes attend hearings, depending on the needs of our clients. Once family law proceedings are on foot more in depth evidence is available to assist the court in ensuring that children are safe and protected. Counsellors' reports often provide useful insights into risk assessment and the welfare of children in such matters.

Mediation Services

MVLS routinely refers clients to mediation services for both property and children cases. Mediation services conduct a risk assessment to determine which cases are appropriate for mediation and often find it inappropriate in high conflict cases where there are severe power imbalances that make mediation untenable.

Whilst many family violence cases aren't suitable for mediation, it has proven to be a valuable service in some cases, particularly when clients are able to access mediation services where they have a lawyer assisting them through the process (such as Roundtable Dispute Management at Victoria Legal Aid, or legally assisted family dispute resolution sessions at the FRC).

The use of mediation services can assist parties to resolve the matter at an early stage, without prolonging their interaction through a lengthy family court process. In cases of family violence, however, careful risk assessment needs to be conducted and the provision of affordable and accessible legal services at this stage is recommended.

Children's Contact Services

Where there are concerns for children spending unsupervised time with a parent, Children's Contact Centres play a vital role in ensuring children's safety.

Children's changeovers post-separation frequently provide the opportunity for abusive behaviours, which may not always constitute a breach of an intervention order, and children are often exposed to ongoing conflict at changeover.

Contact centres provide the facilities and staff for supervised visits and supervised changeovers, prepare reports detailing how visits have progressed and make recommendations for future visits and referrals to parenting programs.

There are lengthy waiting times for supervised visits at Contact Centre's which creates difficulties for our clients who are unable to afford the cost of private supervision arrangements. Having family or friends supervise time or changeover is often not safe in cases of family violence.

A delay in accessing affordable child contact services can increase the stress of all parties concerned, and can lead to risky self-help behaviour on the part of the parent who is seeking time with a child.

Having more accessible services with shorter waiting periods would enable more clients to have the benefit of a safe changeover arrangement, which will have the flow on effect of reduce the occurrence of conflict and violence at changeover and the exposure of children to this behaviour.

The effectiveness of Intervention orders

Many female clients who present to MVLS with an existing intervention order do not feel safe. In some cases intervention orders do lead to the perpetrator restraining their behaviour, but this often only lasts until the order expires. Many women, particularly those in high risk situations, are often subjected to continuing violence despite an intervention order being put in place. In the most serious cases, the presence of an intervention order seems to do little to deter a violent perpetrator.

MVLS offers support to these women to pursue breaches with the local police, ensure that their intervention order offers as much protection as possible, and makes referrals to appropriate domestic violence agencies to assist them to look at alternate means of ensuring their safety. Many women are reluctant to report breaches to the police, however, due to fear of angering the perpetrator further and causing an escalation in their violent behaviour, or due to one or a combination of the factors listed on page 4.

Some women we assist are the respondents in intervention order applications where the perpetrator has anticipated proceedings being commenced against them and has "got to the door of the court first" in an effort to discourage the woman from seeking assistance or engaging in the court process. These women often feel as though there is no point commencing their own proceedings in these circumstances because they feel the court won't believe them.

COLLABORATIVE APPROACHES TO ASSISTING CLIENTS

MVLS and lawyers with the Safe from Harm project often work collaboratively with other local services including settlement services, community health and other support services. We also provide free legal education and training to workers who are coming into contact with people affected by family violence.

Many people in situations of family violence will be seeking assistance from a variety of services and agencies all at once. They may have a variety of legal and non-legal issues including housing, infringements and immigration matters. Often the various agencies may not know what other services are assisting their client, and each service may only have a small part of the picture when it comes to understanding the full circumstances and story of the client.

Having better coordination and integration amongst services will enable all of the services to get a fuller picture of their client's circumstances and therefore increase their ability to conduct a thorough risk assessment.

It is also incredibly beneficial when agencies can work together to provide a holistic service to the client, establish who is responsible for what and ensure that there is no overlap or conflict between the various services assisting.

Increased information sharing can also reduce the number of times a victim may be required to repeat their story to different services, and therefore reduce the re-traumatisation that can occur through this process.

There are many ways that there could be better co-ordination of services assisting people affected by family violence. This could be achieved through the appointment of one case manager to oversee and coordinate all of the services involved with a client, through better information sharing technology, through co-location of legal and other support services or a combination of all of these options.

It should be noted, however, that most services assisting clients in situations of family violence are bound by strict confidentiality requirements which make information sharing difficult, particularly in circumstances where client consent for the sharing of information is not provided or is unable to be obtained, particularly in urgent circumstances. Any approach to improving information sharing and coordination amongst services will therefore need to take confidentiality requirements and client consent into account.

RESPONDENT SERVICES

Many men who access MVLS are seeking our assistance because they have been removed from the family home and/or are not spending any time with their children as a result of an intervention order. These men often state that they consider the legal system to "favour" women and often express feelings of frustration and anger in relation to the legal process.

Where men are excluded from the family home, they often see this as women using the family violence legal system as a quick and cheap backdoor way of gaining sole occupation of the family home, which adds to their perception of gender bias.

This perception, coupled with a lack of knowledge about the legal processes, and lengthy wait times in court processes, leads some men to employ “self-help” remedies in an endeavour to see their children, such as removing the children from school without permission, or engaging in other threatening and violent behaviour. It is very common for clients who have admitted to committing family violence to continue to blame their current situation on unfair legal processes rather than their own behaviour.

As stated earlier, there are duty lawyers available who provide services for male respondents to intervention orders at court. However the highly charged atmosphere on family violence listing days at the Magistrates’ Courts doesn’t provide an atmosphere that is conducive to the parties absorbing and understanding the legal consequences and their options during the intervention order process.

Providing more advice to respondents at an earlier stage, whether at court or as soon as possible after court would clarify the terms of the intervention order and the formal legal processes that are available to resolve ongoing disputes about children and property. We believe this would reduce the chances of respondents taking matters into their own hands or engaging in further abusive behaviours. Having better access to men’s behaviour change and other counselling services after the first mention day would also be beneficial.

CONCLUSION AND RECOMMENDATIONS

Addressing issues of family violence through the legal system is becoming increasingly complex. Parties to a relationship of family violence are often required to navigate multiple court processes to resolve intervention order, children and property related matters. This prolongs their contact with each other after separation in high conflict and highly stressful circumstances and can lead to or exacerbate further abusive behaviour on the part of perpetrators.

Legal advice and assistance is important for both parties in proceedings involving family violence, particularly where a collaborative approach is adopted with the aim of reducing the ongoing conflict between the parties as far as possible. This will help to reduce the likelihood that perpetrators will take “self-help” steps which can cause further and significant harm.

In circumstances where we are currently operating at capacity, and the widening of the definition of family violence and increased awareness of the issue has led to an increase in family violence related matters presenting at our service, any actions taken which are likely to cause further demand upon legal services such as ours should be met with additional funding and support for such services.

Most importantly, any funding for family violence related services needs to be consistent and long term.

Recommendations

In light of our above submissions, we recommend that there be:-

- Increased resourcing of family violence programs targeted at CALD communities, including collaborative legal, social, settlement and other support with a view to reducing the barriers that prevent women from seeking assistance. Such programs should be funded as long term projects to ensure that relationships of trust can be built with communities and maintained over a long period.
- Increased resourcing of services at Magistrates' Courts to deal with increasing numbers of family violence intervention order matters, particularly duty lawyer services.
- Better systems put in place and resources allocated to ensure that parties involved in intervention order proceedings receive follow up advice and assistance in relation to associated legal matters such as family law and child protection after they leave the Magistrates' Court. This would include resourcing of legal services for respondents, which would assist with resolving legal disputes after separation in a timely matter, reducing the amount of contact required between the parties, and therefore the opportunities for further abuse, and reducing the likelihood of 'self-help' actions being taken.
- Free and low cost legal and mediation services to help parties to resolve disputes in relation to property (de facto or marital) and spousal maintenance.
- Increased resourcing of lawyer assisted mediation services in cases involving family violence.
- Increased resources for Child Contact Services to increase their capacity and reduce their waiting lists so that changeovers and supervised time can take place in a safe environment that reduces opportunities for ongoing abuse.
- Increased collaboration and information sharing across all services involved with parties affected by family violence to enable all services to conduct a more thorough risk assessment and ensure the clients are receiving all of the services that they need without having to constantly repeat the details of their abuse.