FAMILY LAW SECTION

Representing Family Lawyers Throughout Australia

Submission to the Victorian Royal Commission into Family Violence

This submission is prepared by the Family Law Section of the Law Council of Australia.

The Law Council of Australia is the peak national organisation of the legal profession representing approximately 60,000 practitioners across the country. The Family Law Section is the largest of the Law Council's specialist Sections. Since its inception in 1985, the Family Law Section has developed a strong reputation as a source for innovative, constructive and informed advice in all areas of family law reform and policy development. With a national membership of more than 2400 it is committed to furthering the interests and objectives of family law for the benefit of the community.

Family Lawyers are regularly instructed to act on behalf of both applicants and respondents to family violence proceedings under State and Territory laws, thus having a unique view of the way both victims and perpetrators are impacted by the legal system. In most cases the applicant and respondent have been in some form of intimate partner relationship. Family lawyers are also instructed to act on behalf of applicants or respondents who have not been in an intimate relationship with each other, but have some other relationship that attracts the protection of the law. We draw a distinction between those two different groups of applicants and respondents because the former may also need to access relief under Commonwealth family laws, whilst the latter usually don't.

This submission deals primarily with the particular problems that confront people who experience family violence within existing or former intimate partner relationships, although some of our comments about the legal system apply equally to other people who experience family violence. The submission is also focussed on the extent to which people who experience family violence interact with the legal system, and with lawyers.

Resourcing

Question 21 of the Royal Commission's Issues Paper asks what changes in the response to family violence could produce the greatest impact in the short and longer term.

It is our submission that a significant increase in resources to the 'family violence sector' would make an immediate and significant improvement to the lives of people who are

affected by family violence (both victims, their families and perpetrators). Whilst we appreciate that such a position is unlikely to attract an enthusiastic response from government, it is our strong view that the sector has been significantly under-resourced for many years and that without increased resources no systemic or other changes will be effective.

In this submission we deal with the impact of under-resourcing of the court system and the legal assistance sector in particular. However we acknowledge that there are other key parts of the sector that are also under-resourced, such as the providers of emergency housing and men's anger management programs. We anticipate that the Commission will receive submissions directly from those organisations which will highlight their resourcing concerns. Family lawyers are often a point of referral for both victims and perpetrators to such services and we support the call for better resourcing for those services.

Resourcing of the court system

Family lawyers in Victoria represent victims and perpetrators of family violence in, usually, three courts - the Magistrates Court of Victoria, the Federal Circuit Court of Australia and the Family Court of Australia.

Magistrates Court of Victoria

The main impact on people affected by family violence of the under-resourcing of the Magistrates Court of Victoria, is the delays that they experience in obtaining (and defending) applications for family violence orders under *the Family Violence Protection Act 2008*.

The first delay is experienced at the point that a person makes an application for an *ex parte* interim family violence order. Whilst Victoria Police now more regularly issue family violence protection notices under the *Act*, many applicants for interim orders still make that application themselves, directly to their local Magistrates Court. A combination of the increased demand for the issuing of such interim orders and a lack of judicial resources, means that in many cases it is no longer guaranteed that a person who attends a Magistrates Court, will have their application for an interim order dealt with that same day. In many cases the applicant is asked to make an appointment with court staff, on a later date, at which time they will then complete the application and have the matter heard on an interim basis by a Magistrate. Anecdotally, we understand that appointments are often made a week away from the person's initial attendance at Court in some registries. We anticipate that the Commission could obtain more conclusive data directly from the Magistrates Court of Victoria about the delays in obtaining an interim order.

Once an *ex parte* interim order is made, typically the application is then listed for a mention within 2 to 3 weeks. That mention hearing is procedural only, and if either party seeks to vary the interim order, in most circumstances a later hearing date is appointed.

If the respondent proposes to challenge the making of a final order, in the experience of our members, it is not uncommon for final hearings to be listed at least six or more months later. We are aware of some, albeit complex, cases where the time from the interim order being made to final hearing has exceeded more than a year.

Impact of the delays in the Magistrates Court of Victoria

Impact on Applicants

- The risk to an Applicant's safety if they are not able to apply for an interim order on the day that they attend Court. It is sometimes difficult for a person living in a violent relationship to safely attend Court the first time. They are often subjected to controlling behaviour from their partner who demands to know their whereabouts at all times, or who covertly tracks their movements. Many people are too frightened to call Victoria Police, and prefer to use the *ex parte* family violence process. However, those people are placed at risk if they attend Court and the Court is not able to assist them that day. They may find it difficult to attend Court again without their partner's knowledge, or they may face an escalation of the violence because their partner discovers their first (unsuccessful) Court attendance.
- The uncertainty of not knowing whether or not an order for their protection (and their children) will be made on a final basis. That uncertainty can have an impact on decisions that the victim might make about housing, employment and parenting arrangements. The uncertainty of not knowing whether or not a final order will be made might, in relation to the latter, mean that an applicant may feel more pressure to agree to a regime of contact between a perpetrator of family violence and children than they might otherwise feel is best for the children (to 'keep the peace', or to strategically protect themselves in any parenting proceedings).
- The cost of ongoing legal action. The longer that it takes for the court to finally deal with the matter, the higher those costs will be. That is because while Court proceedings are pending, the more likely it is that parties will require legal assistance to resolve disputes that arise pending a final determination.
- Being involved in ongoing litigation with a perpetrator of family violence can exacerbate the impact of the family violence itself on the victim. It means that the victim must continue to have contact with the perpetrator (albeit filtered in some cases through legal advisers or the Victoria police). In extreme cases perpetrators of family violence can use the litigation itself as a means to perpetrate a different form of family violence that does not contravene most interim family violence orders, in the form of vexatious legal tactics such as lengthy and regular legal communications and the issuing of multiple interim applications.

Impact on respondents

- As with applicants, the legal costs increase because of the delay in resolution of the matter.
- The uncertainty about whether or not a final order is going to be made. In circumstances where the effect of an interim order is to exclude the respondent

from the family home, this uncertainty is often related to financial and housing issues.

- The anxiety about the making of a final order, particularly in circumstances where the respondent is employed in an area of work where the making of a final family violence order may place that employment at risk (for example, police officers).
- If the interim order names the children of the relationship as 'affected family members', then the respondent is usually excluded from any contact with the children. Because the Magistrates Court rarely exercises its powers under the *Family Law Act 1975 (Cth)* to make interim parenting orders in these circumstances (particularly where the Magistrates Court is in the greater Melbourne area), the respondent must then commence proceedings in the Commonwealth courts.
- In some circumstances, applications are made to gain a time or tactical advantage in an associated family law dispute. Because interim orders are obtained on an *ex parte* basis, and because they are quicker to obtain than orders in the Family Court or Federal Circuit Court (because of the delays in those courts), the *Family Violence Protection Act* process can be used to more quickly obtain sole use and occupation of a home, or to create a tactical advantage in relation to parenting matters.

Children

- Significant uncertainty about their future living arrangements and their care arrangements with each parent.
- An exacerbation of the effect of the conflict on them.
- In some cases, significant harm to their relationship with one or both parents

The overall effect of the lengthy delays between the time an interim order is made and the time that the Court can list the matter for a final hearing, is that the overwhelming majority of applications for family violence orders are settled by consent, with the making of 'no admission' final orders. It is our view that if it were not for the significant rates of settlement of *Family Violence Protection Act* proceedings, the Magistrates Court system dealing with these cases would grind to a halt due to the overwhelming volume of cases it faces. It cannot be in the interests of justice that access to justice is stymied, and determination of cases on their merits rather than by delay induced acquiescence is prevented.

Family Court of Australia and Federal Circuit of Australia

Whilst funding of the Family Court of Australia and the Federal Circuit Court of Australia is a matter for the Federal government, it is relevant, when considering the effects of family violence in Victoria, to consider the impact of delays in those family courts.

There are considerable and long standing funding shortfalls in each court which have significantly hampered the capacity of each court to meet the workload of the family law disputes before them in a timely and efficient way.

Additionally, both Courts have experienced unnecessary and unexplained delays in the appointment of replacements for retiring Judges, even when the relevant retirement date is known to Government many months in advance. Each such delay exacerbates what are already unacceptable overloads in the relevant Court.

The majority of proceedings under the *Family Law Act* are now dealt with by the Federal Circuit Court (about 92% of filings, as we understand it). In simple terms, the Family Court now hears mainly complex financial and parenting matters (including parenting matters in the Magellan List, which are the parenting cases involving allegations of serious risk to children), and the Federal Circuit Court hears the less complex matters.

The Federal Circuit Court was initially established (then known as the Federal Magistrates Service) to deal with less complex matters in the simplest and cheapest manner. Increases to the jurisdiction of the Federal Circuit Court in family law matters (for instance, when the Court was first established it could not hear contested 'custody' cases) and general increases to the workload of the Court, have increased delays. The time taken to process individual cases in the Federal Circuit Court can now be as long, or longer, as the time taken in the Family Court (in some registries).

As with the Magistrates Court of Victoria, there are two critical points of delay in the Family Court and the Federal Circuit Court systems for people experiencing family violence.

The first delay is the time that it takes to get an interim hearing before a judicial officer. In many cases where a party seeks urgent parenting orders and financial relief, the delay to first hearing will be many months from the time of filing. Both Courts' capacity to list and hear very urgent matters at short notice has significantly diminished over time, such that urgent cases listed within days or a week or so of filing are now very rare.

Many interim family violence orders made under the *Family Violence Protection Act* which name children of the relationship as 'affected family members', will include an interim order to the effect that the respondent may do anything that is permitted by a *Family Law Act* order or a written agreement about parenting arrangements, without having committed a breach of the interim family violence order. The effect of such an order means that the applicant and respondent must either negotiate parenting arrangements in written format (which is not common given the circumstances which have led to the making of the interim family violence order and the allegations contained therein), or one party must initiate *Family Law Act* proceedings.

The circumstances in which an applicant for a family violence order might also need to issue *Family Law Act* proceedings in a Commonwealth court include:

- Where the Magistrates Court is reluctant to accept filings of *Family Law Act* proceedings (albeit that they have been conferred with the jurisdiction to make, at least, interim orders). This is commonly the case in Melbourne registries.
- Where the children of the relationship are not named as 'affected family members', they may require an order that confirms that the children live with them. That is because, in the absence of parenting orders, many institutions (including schools, for

instance) will advise the applicant that, based on the interim family violence order alone, they have no power to prevent the other party from removing the children from school. If the applicant is worried that the respondent will take such action, the only option is to seek *Family Law Act* orders.

- If the applicant is concerned that the respondent may attempt to remove the children from the Commonwealth of Australia, the only option is to obtain a Watch List order (a form of injunction) under the *Family Law Act*.
- If the applicant has been wholly or in partially financially dependent upon the respondent, and the respondent withdraws that financial support after the making of the interim family violence order, then there may be a need for proceedings under the *Family Law Act* for maintenance and urgent Child Support.
- Depending on the terms of the interim intervention order made, the applicant might also need other financial or ancillary relief to protect their position.

The circumstances in which a respondent might need to issue proceedings under the *Family Law Act* in a Commonwealth Court include:

- As outlined above, if the effect of the interim intervention order prevents them from having contact with their children (either by force of the order, or because the applicant refuses to agree), the Respondent will need to issue proceedings for a parenting order. In many cases the Magistrates Court will not entertain an application under the *Family Law Act*.
- If the respondent has been removed from the family home pursuant to an interim family violence order, in some circumstances they may require interim financial orders so that they are able to fund alternative accommodation.

Many of the same facts which are alleged/contested in the Magistrates Court family violence proceedings will be the same facts alleged/contested in the *Family Law Act* proceedings. It is a very common experience of family lawyers for their clients to be involved in litigation in both courts, at the same time, and involving the same substratum of facts.

The impact on both parties and children is uncertainty, anxiety and cost. The tactical use of litigation to further perpetrate different forms of family violence that are not a contravention of family violence order, can also be done in *Family Law Act* proceedings.

The resourcing of the legal assistance sector

The Commission would no doubt be aware of the recent Productivity Commission's enquiry and report – 'Access to Justice Arrangements', released publicly on 3 December 2014. In recommendation 21.4, the Productivity Commission recommended that to address the more pressing gaps in the legal assistance service sector, all governments should provide additional funding for the sector. The Commission estimated that the total amount required was around $200 million.

The Family Law Section acknowledges that whilst its members are regularly acting in family violence matters, many sections of the community affected by family violence cannot afford private lawyers and cannot access legal aid. Providing access to a lawyer for people experiencing family violence is not simply a matter of ensuring access to justice for those people. The entire legal system and the people who want to use it, are benefited by appropriate levels of funding for the legal assistance sector. Cases involving unrepresented litigants take longer to progress in Court and use a significant amount of Court resources. That impacts on all people who want to use the system, by the creation of more delay.

Interaction between State and Commonwealth laws

The Commission would be aware of the constitutional issues which create complexity in the interaction of Commonwealth laws regarding divorce, financial settlements (at the conclusion of marriages and de facto relationships) and parenting arrangements, and State laws in relation to family violence/personal protection. The Family Law Section offers its further assistance to the Commission if it requires further advice or opinion about the constitutional issues, the statutory regime and the interaction between State and Commonwealth laws.

The effect of these constitutional issues, means that families experiencing family violence may need to access a combination of State and Commonwealth laws, and State and Commonwealth Courts.

The Family Law Section supports in general the concept of 'one court-one family'. That is, that the most efficient and holistic way to deal with both the personal protection and family law issues that arise from family violence and which need legal intervention, would be for one court to deal with all issues.

As a national organisation, the Family Law Section is well aware of the potential advantages to families that flow in many areas in Western Australia because that state has a State Family Court. Even in Western Australia, however, the absence of the constitutional issues which inhibit reform elsewhere cannot overcome the lack of resources available to enable the Court to make use of those advantages.

Because of the lack of resources, family violence protection orders are not generally made by the Family Court of Western Australia and are almost exclusively made under that State's *Restraining Orders Act 1997* in local Magistrates Courts. Thus, people experiencing family violence in Western Australia still face many of the same problems as those experienced by Victorians in relation to the same substratum of facts being tested in two Courts.

The Family Law Section is also aware of the discussion by the Queensland Task force on Domestic and Family Violence in their recent report "Not Now, Not Ever" regarding the interaction between the *Family Law Act* and Queensland's *Domestic and Family Violence Protection Act 2012*. The Family Law Section notes that the option of a 'one-court model' was canvassed in the memorandum of advice provided to the task force by the Crown Law Department. That advice recognises the significant difficulties in achieving such a model at either Federal or State level.

The Family Law Section suggests that while the 'one court- one family' model may be the ideal solution, achieving that model would involve significant legal and political issues, which are unlikely to be resolved in the short to medium term.

However the Family Law Section suggests that there may be some more limited, but achievable changes which could be made to the interaction between State and Commonwealth laws to achieve a 'one court- one family' model, at least in the early stages of litigation, as well as some practical measures that might make better use of existing laws.

The Family Law Section wishes to highlight the following areas of potential law reform:

1. Use of the limited *Family Law Act* jurisdiction already conferred on the Magistrates Court of Victoria (s39(6)) to make interim parenting orders.
2. Use of the injunctive powers within the *Family Law Act* by Family Court and Federal Circuit Court, including consideration of how those orders might be enforced by Victoria Police.
3. The conferral of powers to allow the Family Court and the Federal Circuit Court to vary family violence orders.

Interim parenting orders

Jurisdiction already exists for the Magistrates Court to make interim parenting orders under the *Family Law Act*. The resolution of any urgent parenting issues could be dealt with by the Magistrates Court exercising this power at the same time as it is exercising power under the *Family Violence Protection Act*, yet in many cases it does not do so. (The Family Law Section acknowledges that rural and regional Magistrates are more likely to make such orders.)

This is probably, mainly, a question of inadequate resourcing of Magistrates Courts. In places where there is a convenient, full time registry of the Family Court or Federal Circuit Court, it is understandable that, given the workload of the Magistrates Court, Magistrates do not exercise the additional jurisdiction conferred on them to make interim parenting orders at the same time as interim family violence orders. However, it would be of benefit to many people who are experiencing family violence, to be able to avoid the need for litigation in two courts, at least at the beginning. For many people, the process of applying for or defending a family violence application occurs at the same time as separation. Research suggests that this is a particularly vulnerable time for victims, and a time at which they are likely to experience an escalation of violence. Disputes over parenting arrangements immediately after separation can exacerbate that vulnerability. The Magistrates Court dealing with both issues on an interim basis would be of assistance in mitigating some of that vulnerability.

We acknowledge that this would involve a change to the current listing procedures of the Court, in that the current 'mention' hearing that occurs about 2-3 weeks after the *ex parte* order has been made, would need to be expanded to allow time for the hearing of interim parenting applications.

The reluctance to make interim parenting orders may also reflect a view on the part of Magistrates that they lack the experience and knowledge of the parenting orders regime in the *Family Law Act* to appropriately deal with the matter. The Family Law Section acknowledges that the parenting provisions of the *Family Law Act* are overly and unnecessarily complex, and we have made regular submissions to the present and former Federal Attorneys General that Part VII of the *Act* needs substantial simplification. The Commission may be interested in reading two papers published and delivered at the 2014 Family Law Section National Family Law Conference regarding the impact of that complexity on decision makers, lawyers and clients by the Hon Richard Chisholm and Prof Helen Rhoades.

The determination of interim parenting matters also requires an understanding of social science, including the impact on children of exposure to family violence.

There have been some calls for the establishment of a specialist division of the Magistrates Court in Victoria to deal with family violence matters. That approach has some attraction to the Family Law Section if it meant that Magistrates sitting in that division developed specialist knowledge of family violence and family law, and could make interim parenting orders at the same time as interim family violence orders.

Injunctive powers under the Family Law Act 1975

Using either s114 or s68B of the *Family Law Act,* the Family Court and Federal Circuit Court have the power to make orders for the personal protection of a person who has experienced family violence, and their children. However the sections are now rarely used, and such orders are rarely applied for. That is because State police forces will not enforce those orders, even though the powers of arrest set out in s114AA apply to members of State police forces.

However in situations where parties are already involved in litigation in the Family Court or Federal Circuit Court and they then need a family violence order, we suggest that it is of benefit to those parties and their children, and of benefit to the efficient administration of justice, that personal protection injunctions are made under the *Family Law Act,* and that they are capable of enforcement by State police. To do so avoids people experiencing family violence in this situation from having to issue new proceedings in the State Court.

We recognise that there are some ramifications of such an approach which would require further thought, including:

- Whether there should be a system for the *Family Law Act* order to be registered in the State Court, and then enforced as if it was an order made under the State law.
- The impact on breach of family violence proceedings if the original order is made under Commonwealth Law, and using a different test.
- Whether there should be a limited conferral of State power on the Family Court and Federal Circuit Court to make personal protection family violence orders under State law in circumstances where there are already family law proceedings on foot (as opposed to use of s114 or s68B).

Conferral of power on Commonwealth Courts to vary State family violence orders

Division 11 of the *Family Law Act* has the effect that:

- State Courts, when making a family violence order, have the power to revive, vary, discharge or suspend certain orders already made under the *Family Law Act* – s68R
- The Family Court and Federal Circuit Court do not have power to vary State family violence orders, but there is a process to allow those Courts to make inconsistent orders, and if they do so, the order made under the *Family Law Act* prevails – s68P & s68Q.

Whilst requiring negotiation between State and Federal governments, the conferral of powers to allow the Family Court and Federal Circuit Court to vary family violence orders would appear to be in the interests of efficient administration of justice.

The Family Law Section recognises that where the conferral of State powers is concerned, it would be desirable for this to occur nationally. However the Family Law Section acknowledges that in other areas of reform of the sharing of powers in aspects of family law, unanimity has not always been achievable. For instance, Western Australia has declined to refer the power to make financial orders upon the breakdown of de facto relationships.

Training of family lawyers

The Family Law Section is committed to promoting the highest technical standards and awareness among the national profession. Family law is such a dynamic and constantly changing area of law that continuing professional development is an essential part of family law practice. FLS has a strong focus on educating the profession and continually explores innovative and practical ways of raising awareness about family violence.

<u>Education Programs</u>

The Family Law Section is a leading provider of professional development for family lawyers. The Section has taken a number of positive steps to raise awareness of family violence amongst the national profession. The following professional activities undertaken by the Section in the last four years include a focus on family violence:

Independent Children's Lawyer Training Program

The Independent Children's Lawyer Training Program is an intensive two and a half day program presented by the Family Law Section in conjunction with the Family Court of Australia, the Federal Circuit Court of Australia, and National Legal Aid. The program material is currently being reviewed and rewritten to reflect current practices. The program is aimed at practitioners who wish to become an Independent Children's Lawyer.

It is a comprehensive program which covers all aspects of child representation including:

- Evidence gathering, procedural matters and decision making
- Urgent, interlocutory and interim matters
- Preparation for trial; and
- Post-hearing and appellate matters.

The program includes:

- Presentations by very experienced ICLs, judicial officers from the Family Court and Federal Circuit Court, and social scientists; and
- Six workshops based on a fictitious family – family violence forms part of the family scenario and is discussed throughout the program.

Biennial National Family Law Conferences

The National Family Law Conference is the biennial conference of the Family Law Section. It brings together many stakeholders including representatives from government, the judiciary, academia, non-government organisations, the practicing profession and many associated disciplines from all parts of Australia and from many other parts of the world. The conference is the largest regular event in the Australian legal calendar. Recent conferences have included the following sessions:

- 2014 – Family Violence: Working with Families in Crisis
- 2014 – Mental Health Issues: DSM V – what all family lawyers must know.
- 2012 – Parental alienation: the facts and the fiction
- 2012 – Addressing family violence in financial and parenting cases.

National Family Law Intensives

The Family Law Intensives are developed and presented by the Family Law Section each year in Sydney, Melbourne and Perth, and every second year in Adelaide. They serve a national market with a significant number of registrants coming from outside the state of the venue. The focus of the program is to equip practitioners with up-to-date information which will enhance their skills and knowledge, and to provide practical solutions for problems encountered in everyday practice.

At each program there is a session which provides an overview and analysis of significant decisions by the Family Court of Australia, including the Full Court, and the Federal Circuit Court of Australia during the preceding year, including cases involving family violence. A specific session was also developed to look at screening tools, risk assessment, gathering information and presenting evidence and court protocols.

Detection of Overall Risk Screen (DOORS)

The Family Law Section was invited and funded by the Attorney-General's Department to deliver a national program, specifically targeting family law practitioners, about the DOORS Framework.

DOORS, which is short for the Detection of Overall Risk Screen, is an evidence based framework that helps professionals detect risks to the safety and wellbeing of their clients. It is particularly geared to 'risks' for those families exposed to family violence and child abuse.

The screening tool is designed to help professionals develop client safety plans and refer clients to other appropriate services.

In 2013/2014, twenty individual events were presented by the Family Law Section as part of a national program, which was delivered in two parts:

- Part 1 – a national series of introductory seminars; attended by almost 1,000 practitioners. The purpose of these seminars was to raise awareness and provide family law practitioners with general information about the DOORS Framework. These introductory seminars ran for approximately 1 – 1 ¼ hours; and

- Part 2 – a series of webinars/web based forums, attended by almost 300 practitioners. The webinars built on the introductory Part 1 sessions, and were presented by Dr Claire Ralfs, who is the co-author of the Family Law DOORS.

A total of twenty individual events were presented as part of the project:

Publications

The Family Law Section prepares and disseminates information to those working in the family law arena. Our flagship publication, *Australian Family Lawyer*, includes articles on the practical aspects of family law, family relationships and associated areas, as well as those with a broader academic, theoretical or philosophical nature. Articles about family violence have featured in several editions of the journal.

In 2004, the Family Law Section, in conjunction with the Family Law Council, published the *Best Practice Guidelines for Lawyers Doing Family Law Work*. The second edition was released in 2010. The aim of this publication, which is again currently under review, is to encourage best practice in family law. Part 9 of the Guidelines focuses on family violence.

Other issues

Whilst not a matter of Victorian law, the question of cross examination of victims of family violence by perpetrators in *Family Law Act* proceedings has received publicity and is a matter which may arise from other submissions made to the Commission. The Family Law Section makes the following brief comments in relation to that issue.

Parenting proceedings under the *Family Law Act* are guided by different principles to those which guide criminal proceedings (where we are aware that there are various mechanisms in place to offer assistance to people giving evidence and being cross-examined by offenders).

The best interests of the child is the paramount consideration in making parenting orders.

Parties who seek parenting orders must be permitted to test evidence relevant to the question of best interests, which will sometimes include evidence about family violence.

In many cases the cross-examination of a victim directly by the perpetrator occurs either because of limited access to legal aid or because the perpetrator chooses to self-represent.

The Family Law Section supports the decision made by legal aid bodies that in the absence of sufficient legal aid to fund both parties to the litigation, that preference for funding should be given to the victim of family violence, even if that means that person will be subject to cross-examination directly by the perpetrator. The victims own lawyer provides a level of protection to that person by being able to object to cross examination that offends the *Evidence Act.*

Judges sitting in such cases are usually cognisant of the impact of such cross examination on the victim and conduct their Court with that impact in mind. Where court resources allow it, there are sometimes arrangements for victims to give evidence via video link.

The Family Law Section would be happy to further discuss the comments provided in this submission. Please contact the Section's Deputy Chair, Wendy Kayler-Thomson by [redacted]