

CENTRAL HIGHLANDS COMMUNITY LEGAL CENTRE

SUBMISSION: Royal Commission into Family Violence

Date: 29 May 2015

Overview of the Centre

Central Highlands Community Legal Centre Inc ('CHCLC') is based in Ballarat, Victoria, and has a catchment area which covers eleven different local government areas including West Wimmera and Yarriambiack. This area includes ten regional and rural courts being Ararat, Bacchus Marsh, Ballarat, Stawell, Horsham, Hamilton, Nhill, Edenhope, Hopetoun and St Arnaud. CHCLC provides services at our office in Ballarat, along with outreach services to Federation University, Hopkins Correctional Centre, Langi Kal Kal Prison, and the Grampians Community Health Centres located in both Stawell and Ararat. Our solicitors conduct regular information sessions at the Family Relationships Centre in Ballarat. Solicitors and administrative staff also conduct Community Legal Education programs off-site as requested by a range of community groups including Dads In Distress and Hospice. CHCLC solicitors and staff have also provided legal training to other service providers as requested.

Solicitors from CHCLC provide a duty lawyer service at the Ballarat Magistrates' Court in the Family Violence Division two days per week to assist patrons of the Court in relation to Family Violence Intervention Orders. Whilst our service aims to assist affected family members ('AFMs'), we are also available to assist respondents who are previous clients of CHCLC or who are unable to be legally represented by Victoria Legal Aid ('VLA') who also provide a duty lawyer to assist with intervention orders. In rare occasions we also provide assistance at Court to individuals who are involved in Personal Safety Intervention Orders which are related to a Family Violence Intervention Order which is listed on the same day.

Outside of our duty lawyer service, we also provide advice and casework to clients in relation to Family Violence matters by appointment. Our assistance can include Victims of Crime Applications, Family Law matters and assistance to clients to draft additional documents related to their intervention order application such as Further and Better Particulars.

Since 1 July 2014 our service has provided representation at Court in 450 intervention order matters, and across that time assistance has been provided to 392 different clients.

This submission is to inform the Royal Commission of the issues relevant to our service in line with the questions raised in the issues paper.

Question 8: Tell us our 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.

Question 18: 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?

Access to advice by clients

Due to the small numbers of solicitors that we have available on staff, CHCLC is rarely able to assist clients with intervention order applications which are not listed on duty lawyer days in Ballarat, and we are unable to support clients appearing in the other nine regional and rural courts which are within our catchment area.

On duty lawyer days at the Ballarat Court, clients still experience issues with obtaining access to advice and representation at Court due to conflicts of interest. There are only two free legal services available in Ballarat and often one party to an intervention order has been to both VLA and CHCLC; this may be purely accidental, due to unrelated matters or as a result of a strategic move by that party. This can mean that parties, AFMs and respondents alike, find themselves at Court unrepresented. Both CHCLC and VLA assist where possible to provide procedural advice, and often the Court will rely on the generosity of private practitioners who are available at Court to step in and provide advice where CHCLC and VLA cannot.

In recent times the lengths of the duty lawyer listings have increased markedly. This also has an impact on the ability of clients to obtain legal advice on the day simply because the duty lawyer may not have adequate time to obtain full instructions from the client, or deal with clients who are incredibly stressed or suffering mental health issues. This pressured time frame at court often leaves

the clients confused and anxious. Highly stressed clients can also make the job of the duty lawyer more difficult as well.

For those parties with matters listed in rural Courts such as Ararat and Stawell the experience is very different. The only duty lawyers available are from VLA to assist clients at those courts and often VLA cannot act due to conflicts of interest. These small courts must then rely on police prosecutors to assist where they can, or otherwise the party to the intervention order must attempt to navigate the Court process on their own with no advice or support. We are aware of one AFM who was unable to obtain representation from VLA and could not afford private representation withdrawing her application because it was too hard for her to continue on her own.

Adequacy of court space, non-legal supports, interpreters and security measures

The Ballarat Magistrates' Court is made up of three levels with seating available on all levels. The Court house also has several small interview rooms which can be locked from inside as well as a remote witness room. However, there is no security screening system at the front door of the Court house and the entire complex is manned by only two security guards. Smaller courts such as those at Ararat and Stawell are only one level and often only have one court room. As a result, AFMs and respondents cannot be adequately separated whilst waiting for their matters to be called on. In addition to this, neither of these courts have security screening or any non-legal support services. In court security is provided by the local police officers.

On the days which our service provides a duty lawyer service, respondents and AFMs are seated separately; AFMs are seated on the ground level and respondents on the first level. The applicant support worker's office is located on the ground floor and the respondent worker's office is located on the first floor. Where the AFM requires additional safety measures, the AFM can be placed in a small interview room on the first level with a door which can be locked from the inside. In these cases, support staff and duty lawyers will come to the AFM to provide assistance rather than requiring the AFM to leave the room. If there is no need for the AFM to be present in Court the duty lawyer will indicate to the Magistrate that the AFM is present at Court but has asked not to be present in the actual court room. If the AFM is required to give evidence and the AFM is uncomfortable seeing the respondent there are screens available to be used in Court and, when available, the remote witness room can also be used. However, where these options are not utilised and the AFM does appear in the court room and the respondent is present, the current procedure is

that the AFM and the respondent sit in the same row in the court room while the matter is being dealt with. Where possible parties will be seated on either end of the row with support persons in between, but often this is not the case. In addition to this, some of the court rooms are set up so that for the AFM to be seated in the front row the AFM will need to walk past the respondent. In some cases this has caused issues where the respondent will then whisper abuse to the AFM or the AFM's support persons. In one instance the AFM's support person responded in the court room to the respondent quite loudly which only aggravated the situation and disrupted the next matter which was being heard in the court room.

Whilst generally there is no issue for our service in seeing clients in private rooms, when the Federal Circuit Court is running in Ballarat it can be more difficult finding a private room.

So as to avoid too many conflicts of interest the respondent worker only sees the male parties in any matter, whether they are a respondent or AFM, and the applicant support worker only sees the females. As a result, this will sometimes mean that the respondents will need to come to the ground level to see the applicant support worker, and vice versa. This can sometimes cause some distress for the AFMs.

Where it is identified prior to the first mention, the court staff will arrange for interpreters and generally the process is no different. However, our service did provide assistance to one female AFM from Africa who spoke a unique dialect and could only speak broken English. There were only three interpreters available in the state with suitable qualifications in that dialect, all of whom knew the respondent, were males, and had pressure on the AFM to withdraw her application whilst providing her with the interpreting services. As a result of this issue our client was forced to carry on her application in the Court without the assistance of an interpreter.

There was also an issue which arose at the Ballarat Court where an AFM was highly stressed by the court processes and began threatening suicide both to the duty lawyer and in open court. The matter had been listed on a normal duty lawyer day, however the court employed psychiatric nurse did not work on this day. The matter eventually resolved in the AFMs favour, but until that time both the court staff and the duty lawyer were put under enormous stress in trying to deal with the AFM without adequate supports.

Police issues

The Family Violence Division of the Ballarat police are easy to work with and very helpful to our service. Currently liaison officers from the Ballarat police will attend the Court to deal with applications where the police have applied for AFMs, and a police prosecutor will deal with the matter in the court room; civil advocates are not currently used in Ballarat.

As is likely to be a common issue in all areas, we often come across AFM clients who have experienced serious assaults and threats to kill, which have been reported to police, yet the police have not made the application for an intervention order on behalf of the client.

In addition to this, there are also issues where police have attended an incident and the result has been that the police have applied for intervention orders for both parties. The effect of this at Court then becomes that the police have to withdraw from acting in both matters due to a conflict of interest. Recently a client approached our service for an appointment regarding intervention orders which had been listed for hearing in a rural court. In that case the same police officer had applied for intervention orders both for and against the client in relation to the same incident. If this matter proceeds to a contested hearing, it is likely that the police will withdraw and the client will be left to run her own case in a situation where she alleges that the other party assaulted her.

In the past few months our service has also been required to step in at Court when the police have withdrawn from acting on the basis that the respondent has lodged a cross-application or where the AFM applied to re-instate an original police application following a breach of an undertaking. In the past few days we were approached by an AFM from Ararat for assistance to extend an intervention order which was originally applied for by police as the police had indicated to the AFM they would not assist with the application; the respondent has had discussions previously with the duty lawyer from VLA and as such it is likely that she will be unable to obtain representation from VLA.

Finally, our solicitors have also noticed that victim impact statements do not appear to be provided in court where the respondent is facing criminal charges. It appears to be that the police are failing to inform the AFMs of their rights to have such a statement drawn up or read out in court. In addition to this the AFMs do not appear to be receiving appropriate referrals to counselling services or legal services to assist with victims of crime applications more than providing a written statement attached to the police statement that has been made to the AFM. As such, many AFMs are missing out on their opportunities to lodge victims of crime claims and have victim impact statements read out in court. We have also dealt with clients who have made complaints that police are not keeping them apprised of the status of any investigation and/or charges which have been laid against the

respondent; in some cases the police refuse to provide such details to the AFM even when requested by the AFM. This is in breach of the Victim's Charter.

Involvement of Child Protection (DHHS)

Whilst this is an issue only in a very small number of cases, we have dealt with matters where DHHS have used the intervention order process to obtain orders which are best for DHHS's purposes by reducing the need for intervention by DHHS, but the involvement of DHHS has not assisted the parties in the matter.

The best example of this was a recent matter where DHHS had become involved with a family where both parents had been suicide risks. The children of the relationship were living with their grandparents at the direction of DHHS but there were no written agreements or orders. The mother had applied for an intervention order against the father with the children included on the application; at the first mention hearing a worker from DHHS attended and the court house and directed the father to apply for a cross application also including the children on the application. As there were no written orders or agreements the matter could not settle until a conciliation conference was held with the parties and DHHS two days later. The matter was adjourned for one week to allow for the issues to be resolved at the conference. At the conference a voluntary agreement was made for the children to continue to live with their grandparents but nothing was committed to writing despite DHHS being aware of the pending intervention order applications that they had insisted should be applied for. At the next hearing our client was informed by DHHS that an order simply listing the children at clause one regarding no family violence would be sufficient for DHHS.

It has often been an issue where DHHS have not taken adequate investigative roles in matters particularly where there are child AFMs and respondents, in particular where the child is around 16 years of age. In one case the Magistrate was so displeased with the lack of involvement by DHHS that the matter was stood down for a worker from DHHS to attend court and report to the Magistrate. In other cases matters have been adjourned off and the Magistrate has ordered that DHHS be notified again and that DHHS investigate the issues involved in the cases.

Assistance with documents by private solicitors

Often where an AFM has made their own application to the Court and not had adequate support in lodging that application there is a need for all the allegations to be fleshed out by way of Further & Better Particulars. For many AFMs this is not something that they can prepare on their own and there is a need for a solicitor to help the AFM draft the document. As there is no legal aid funding for private solicitors to perform this role clients must either pay a private solicitor up front for this service or rely on CHCLC to assist. In light of the fact the CHCLC is not available to assist clients at contested hearings it is our view that it would be more preferable for the private solicitor who is conducting the contested hearing to draft these documents, especially in the cases where the private solicitor is acting for the client in family law matters and is able to draft the Further & Better Particulars using information that they may have available from their family law file.

Avoidance of service by respondents

Service of applications for intervention orders and interim orders on respondents often causes issues for both the AFM and the Court. In many cases the respondent is known to police for other matters and will avoid service. This often means that AFMs are required to come back to Court several times only to have the matter adjourned with no progress made, wasting not only the AFMs time but the Court's time also. It also means that if an interim order has not been served the respondent cannot be charged with breaches of the order.

Service of documents by Facebook is not widely used. We have only applied for service by Facebook once and it was difficult to organise with police for this to take place. When contact was made with the Ballarat office we were told that service via Facebook was conducted by a specialist unit in Melbourne. It was very difficult to find the contact details of the unit so that the request for service could be made and when we were able to contact the relevant person we were told that he could not serve the documents as he was not a police officer; as such the documents were never served by Facebook. In the end the AFM did not take her application any further because it was too difficult to serve the respondent.

How family law issues impact on the clients' understanding of the purpose of Family Violence Intervention Orders and the court process?

Often at our first meeting with an AFM at Court where the AFM has applied for their own application for an intervention order there is significant confusion for the client about the differences between the family court procedures and the family violence procedures. In these cases the real issue is not safety concerns but issues about how each parent should be spending time with the children of the relationship; in other words some AFMs will use an intervention order application as a tactic to sort out family law issues.

What could be improved?

We feel that the Family Violence Division as it operates at the Ballarat Court works very well and should be rolled out state-wide to all courts dealing with family violence matters. The network of police liaison officers, police prosecutors, duty lawyers from CHCLC and VLA, court staff, Magistrates and non-legal supports which are provided by the Division allows for family violence matters to be dealt with in a stream-lined matter and so that each party to the proceeding has the opportunity to obtain legal assistance and appropriate referrals and support. The mandated Men's Behaviour Change Program provides an additional option to the Court with the aim that participants in the program are not the perpetrators of future family violence incidents.

However, we are aware that to roll out the model that is in use in Ballarat would require significant funding. If such funding was not available, the minimum requirement to improve the current systems outside of Ballarat would be to ensure that there was provision for two duty lawyers at all courts hearing family violence matters, and potentially the ability of all courts to be able to order participation in the Men's Behaviour Change Program or a similar such program.

Improvements need to be made in relation to security at all regional and rural courts. Despite numerous incidents at the Ballarat Court, the Court is yet to receive appropriate security scanning equipment and security staff at Ballarat are often stretched on busy court days. In the rural courts, whilst there is no issue with the service provided by the local police, it would be more appropriate for those courts to have their own security staff.

We feel that it would assist AFMs greatly if funding was able to be granted to private solicitors acting in contested hearing matters for the drafting of documents relevant to the contested hearing such as witness statements and Further & Better Particulars. Whilst CHCLC are willing and able to provide this service, we believe that the AFMS would benefit more if their current private solicitor, who is

usually acting in family law matters to which an intervention order is relevant, could provide the assistance to draft these documents.

In the cases of a respondent avoiding service, ideally it should be a matter of course that at the second mention date an order be made for substituted service. Following that hearing date, if service still has not been completed prior to any subsequent hearings contact should be made to the AFM the day prior to the hearing to determine if the matter should be adjourned without the need for the AFM to attend or if the AFM can provide further information for a further order for substituted service. This would prevent the AFM needing to come to Court if the matter is just to be adjourned and would reduce Court time also.

Following on from this, service by Facebook is an underutilised resource, presumably due to the issues that CHCLC found. In many case of family violence, there are allegations of abuse via Facebook and as such service by Facebook would be an appropriate method. There needs to be a reform of the system regarding how service by Facebook can be effected, for example de-centralising the Facebook service system so that police officers in any station throughout Victoria can effect service via Facebook.

In relation to police applications, police should not be allowed to withdraw from acting in a matter simply because a cross-application has been lodged, or the AFM has applied to re-instate an application or vary a previous police order.

Finally, there needs to be more training for all police, not just police working in the family violence division police. The training needs to focus on promoting that police should be applying for intervention orders not just when they attend at incidents but also where an AFM has later reported an incident to police rather than sending the AFM to the Court to make their own application. There also needs to be more training around police providing AFMs with appropriate information in relation to their rights as victims and ensuring that the police are complying with the Victim's Charter throughout the entire process.

Question 20: Are there any other suggestions you would like to make to improve policies, programs and services which currently seek to carry out the goals set out above?

Whilst this matter is not related to any of the issues which this submission has already raised, we would like to see an alteration in the length of time that family law orders can be suspended by a

Magistrate under s.90(2) of the *Family Violence Protection Act 2008* (Vic). Currently the suspension only lasts for 21 days which in some circumstances is not enough time for an AFM to engage a private solicitor and initiate family law proceedings to vary a current family law order. It would be beneficial if there could be an extension of this initial period, or clarification around the ability for an AFM to apply for to extend the suspension period prior to the expiration of the initial 21 day suspension.

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