

29 May 2015

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



Dear Commissioner Neave,

**FAMILY VIOLENCE AND RURAL REGIONAL AND REMOTE COMMUNITIES –  
 A SUBMISSION FROM THE  
 HUME RIVERINA COMMUNITY LEGAL SERVICE (HRCLS)**

**THE CONTEXT OF OUR SUBMISSION**

**ABOUT HUME RIVERINA COMMUNITY LEGAL SERVICE (“HUME RIVERINA CLS”)**

Hume Riverina CLS is uniquely positioned as a cross border community legal centre<sup>1</sup>. Based in Wodonga on the Victorian/New South Wales border, the centre receives Commonwealth, Victorian and a small portion of New South Wales funding to provide generalist legal services to a vast catchment area of 21 Local Government Areas (LGA's) in North East Victoria and the Southern Riverina of New South Wales.

The Victorian catchment area encompasses 7 LGA's being Wodonga Council, Wangaratta Rural City Council, Towong Shire, Mansfield Shire, Indigo Shire, Benalla Rural City and Apline Shire. This covers towns such as Wodonga, Wangaratta, Benalla, Mount Beauty, Myrtleford, Bright and Corryong.

ABS statistics from 2011 indicate a total population of 116,824 people being serviced in the Hume Riverina CLS Victorian catchment area (with a total population of 292,497 within the 21 Local Government Areas serviced by Hume Riverina CLS). In the 2013/2014 year, 57% of our clients resided in Victoria and 43% in New South Wales.

Funding is provided to employ 4 lawyers full-time (including the principal lawyer who is also the manager), as well as an operations manager, part-time receptionist and part-time community development worker. The Centre relies heavily upon student volunteers.

Services provided include legal advice and casework assistance with family law issues (child contact, property disputes, child support and spousal maintenance), family violence, child protection, credit and debt problems, fines, motor vehicle accidents, criminal law issues, consumer law issues, neighbourhood disputes, wills and estates, employment issues and tenancy issues.

Hume Riverina CLS focuses on assisting disadvantaged people who are not eligible for legal aid, yet cannot afford to pay for a private lawyer.

In addition, Hume Riverina CLS hosts a lawyer who is employed by Victoria Legal Aid and seconded to Hume Riverina CLS to deliver family law and family violence services to clients who are eligible for legal aid. These services include legal advice, minor assistance, and casework including assistance at mediation, representation in the Federal Circuit Court, and

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<sup>1</sup> Murray Mallee Community Legal Service is the only other cross-border community legal centre in Victoria.

a family violence duty service to Wodonga Magistrates Court. This service is funded by Victoria Legal Aid to increase access to family law legal aid services in North East Victoria, due to there being no Victoria Legal Aid office in the region. The nearest office of Victoria Legal Aid is located in Shepparton, a 2 hour drive away.

In the 2013/2014 year, we gave nearly 1800 advices, provided legal education to over 1300 people, and provided intensive casework to more than 200 people.

### **FAMILY VIOLENCE ASSISTANCE PROVIDED BY HUME RIVERINA CLS**

Matters involving family violence make up a large percentage of our work at Hume Riverina CLS. In the 2013/2014 year we gave 208 advices and provided casework assistance in 110 matters specifically relating to family violence protection orders.

Overall, however, a larger number of clients consulting our service disclosed that family violence was a factor in relation to their legal problem (whether that legal problem related to intervention orders, family law, credit and debt issues, housing issues or other legal issues).

In total:

- 436 (24.5%) of the clients we gave advice to in 2013/2014 had family violence indicators; and
- 329 (21.7%) of the clients we provided casework assistance to in 2013/2014 had family violence indicators.

### **SPECIFIC FACTORS IN OUR COMMUNITY WHICH INCREASE OR EXACERBATE FAMILY VIOLENCE**

North East Victoria has particularly high instances of family violence and there has been an increase in the locations of Wodonga, Wangaratta and Benalla for reported family violence incidents between 2009 to 2014. These statistics also show a large increase in the applications made for Intervention Orders, in particular in Wodonga. However less than 20% of clients referred by Police to support services actually take up the assistance offered.

According to the Victorian Crime Statistics Agency, 2% of the population within the Hume Riverina Community Legal Service Victorian catchment area reported family incidents to Victoria Police in 2014.<sup>2</sup> This is higher than the state average of 1.3%.

A 2014 study about family violence in rural and regional Victoria notes that the barriers to obtaining assistance and access to justice that might be experienced in metropolitan centres may be further exacerbated by “geographic and social isolation, limited private finances, greater opportunities for the surveillance of survivors, challenges with maintaining anonymity and privacy, expensive private and limited public transport networks, limited crisis accommodation, less access to support and health services than is available in metropolitan areas, and limited access to legal services”.<sup>3</sup>

### **SUBMISSION ON THE BARRIERS, GAPS AND DEFICIENCIES IN CURRENT SYSTEMS AND RESPONSES TO FAMILY VIOLENCE**

<sup>2</sup> Victorian Crimes Statistics Agency, 2015.

<sup>3</sup> George, Amanda and Harris, Bridget “Landscapes of Violence: Women Surviving family Violence in Regional and Rural Victoria”. Deakin University (2014)

## 1. Limited Access to Free or Affordable Legal Advice and Legal Aid

Some of the issues that impact on Hume Riverina CLS being able to assist people (including people seeking legal help where family violence is a factor) include:

- [3. 1] **Lack of free face-to-face legal services regionally.** The Hume Riverina CLS is the only free legal service within a 2 hour radius. The nearest alternative community legal centre is Goulburn Valley Community Legal Centre in Shepparton.

There is no Victoria Legal Aid office located in our catchment area in North East Victoria. The nearest office of Victoria Legal Aid is located in Shepparton, a distance of 170 kilometers or a 2 hour drive away. The nearest office of Legal Aid NSW is a similar distance away.

- [3. 2] **Inadequate funding** for Hume Riverina CLS to service the catchment area. There is a high demand for our service, so people seeking assistance with their legal problems are often turned away due to the limited capacity of the service. The chronic underfunding to community legal centres generally has been well documented in recent times<sup>4</sup>. This underfunding has an increased impact in regional communities where there is only one free legal service that can assist people located within the community.

Furthermore, there is no specific funding for Hume Riverina CLS to provide family violence services. Hume Riverina CLS does not receive any of the Commonwealth "Dreyfus funding" that some Community Legal Centres receive to provide family violence assistance. The only specific family violence funding Hume Riverina CLS receives is provided through Victoria Legal Aid's secondee lawyer, who supplies intervention order services. It should be noted however that this lawyer also provides family law legal aid and child protection services, so assistance with intervention orders is limited to the provision of a duty service.

Whilst Hume Riverina CLS can provide a duty service to the Wodonga Magistrates Court on Wednesdays (when intervention order matters are generally dealt with in Wodonga), it does not have the resources to provide duty services at other regional Courts in its catchment area, including larger regional Courts such as Wangaratta Magistrates Court or Benalla Magistrates Court.

This is compounded by the fact that the family violence list is scheduled on Wednesday in both Wodonga and Wangaratta Magistrates Courts, making it impossible for the secondee lawyer from Victoria Legal Aid to attend both Courts to provide assistance to a larger number of people within our catchment area.

- [3. 3] **There is limited access to alternative free legal help** with intervention order matters, if Hume Riverina CLS is unable to assist. In Wodonga, Wangaratta and Benalla, private lawyers receive funding from Victoria Legal Aid to provide a duty service in relation to intervention order matters. Anecdotally, we understand that private lawyers are concerned that the funding they receive from Victoria Legal Aid to provide this service is too low and that they have

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<sup>4</sup> See, for example, the Australian Government Productivity Commission Report on Access to Justice Arrangements.

expressed concern about the viability of continuing to provide services funded by legal aid.

A further concern is that the duty service is limited to the first return date for intervention orders. If assistance is needed at a contested hearing, strict guidelines apply in relation to Victoria Legal Aid grants and many do not meet the criteria. This can act as a disincentive for women seeking protection. If they do not have confidence that they will be represented at a contested hearing, they may withdraw their intervention order application rather than face the prospect of self-representing at a contested hearing against their ex-partner.

Although Magistrate's have the option under section 72 of the *Family Violence Protection Act* to make an order for Victoria Legal Aid to fund a lawyer for the respondent for the purposes of cross-examination, this assistance does not extend to the full contested hearing.

It is noted that in family law proceedings, there is no similar provision to ensure that women who have experienced family violence do not have to experience being cross examined by their violent ex-partner in child contact or property proceedings, if their ex-partner is unrepresented.

[3. 4] **Conflict of interest issues** arise more frequently for lawyers in regional communities and this often results in an inability to access services. During April 2015, Hume Riverina CLS turned away 20 people who had sought assistance from our service, due to a conflict of interest. During that month, there were 85 family violence matters listed at Wodonga Magistrates' Court. Our service had previously been contacted by at least one of the parties in 54% (46) of these cases, and was conflicted out of assisting on a duty basis in 14% (12) of them.

[3. 5] **Limited help for women seeking to lodge an application for an intervention order.** The Victoria Legal Aid seconded lawyer to Hume Riverina CLS is able to assist with intervention order matters on a duty basis at Wodonga Magistrates Court. However, Hume Riverina CLS does not have funding or capacity to assist clients to complete their intervention order applications.

There are many women who apply for intervention orders without police assistance or help from a lawyer. Many vulnerable or disadvantaged people lack the skills to complete their intervention order applications correctly. Sometimes it means that a client is required to give further evidence from the witness box, potentially increasing the trauma of an already stressful event. In many cases, where an application has been completed incorrectly or the necessary evidence has not been documented in an application, the intervention order application has been unsuccessful. This often occurs in circumstances where there was a factual basis that could have supported an intervention order being obtained, if the application had been completed correctly.

[3. 6] **Limited help for men and women with other legal issues arising from family violence.** There are many other legal issues that may arise from family violence, apart from the need to seek an intervention order. For example the legal issues that cluster with family violence may include divorce or de-facto separation, child contact and property settlement issues, child protection, child support, criminal law problems (including infringements), victim's

compensation, credit and debt issues, or rented housing issues. These issues exist within the spheres of family law, civil law and criminal law, as well as encompassing both federal and state laws.

The concept of legal ‘problem clusters’ is not a new one and it was highlighted in the 2012 Legal Australia-Wide Survey Report.<sup>5</sup> It was noted there that legal and non-legal problems tended to multiply or co-occur – ‘clustering’ – unless they were addressed.<sup>6</sup>

In particular with family law matters (which are often an issue for people that approach our service within family violence issues), the authors noted that legal problems such as divorce, separation and family violence can have a “trigger effect” as they may result in “substantial changes in life circumstances, such as financial hardship, poorer housing, employment problems, difficulties as a single parent, and dependence on maintenance, child support and welfare benefits.”<sup>7</sup>

To get assistance with the range of legal problems arising from family violence, people may have to apply to several different courts such as the Federal Circuit Court of Australia, the Magistrates Court of Victoria, the Children’s Court of Victoria, and the Victims of Crime Assistance Tribunal. This process often involves different sets of legislation, different Government services, different court systems, and different lawyers.

With border regional centres, this problem is exacerbated due to the commonality of people having to engage with Court systems in both New South Wales and Victorian. This means that for residents in regional centres such as Wodonga, it can be extremely complex to get full resolution for legal problems.

In our region, most private lawyers specialise in criminal law or family law and cannot assist with all of the legal problems arising from family violence. This is highlighted by the fact that the private lawyers who are on the Victoria Legal Aid panel to provide family law legal aid assistance to people in North East Victoria, are not the same lawyers who are on the panel to assist with intervention order matters. There is only one lawyer who we are aware of within our catchment area, apart from the Hume Riverina CLS, who is on both of the above panels.

Furthermore, there are not many lawyers who are on both the Victoria Legal Aid panel and NSW Legal Aid panel to deliver family law services, apart from Hume Riverina CLS.

Hume Riverina CLS is well placed (like other community legal centres) to provide advice and assistance with a range of legal issues. Being a cross-border service, we are able to assist people to navigate the system whether they reside in New South Wales or Victoria. However, a limited capacity due to a lack of funding means that Hume Riverina CLS cannot often provide the extensive assistance that is needed by many people within our catchment area. This means that people seeking help with their legal issues arising from family violence often have to seek help from more than one lawyer, to get resolution for the range of legal problems being experienced. These problems apply equally to victims and perpetrators seeking legal assistance.

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<sup>5</sup> Coumarelos, C., Macourt, D., People, J., McDonald, H. M., Wei, Z., Iriana, R., & Ramsey, S. (2012). *Legal Australia-wide survey: Legal need in Australia* (Vol. 8). Law and Justice Foundation.

<sup>6</sup> Ibid, 87.

<sup>7</sup> Ibid, 167.

In relation to victims of family violence, this issue is particularly concerning as individuals can experience a merry-go-round of referrals and be required to disclose their experiences with multiple different service providers.

## 2. Cross-Border Complexities

People living on the Victoria/New South Wales border frequently travel between the states to access services such as shopping, health care, child care, schooling, and Courts, as well as to visit family or friends, recreational facilities, for child contact purposes, and for many other reasons. Residents of Wodonga, Victoria frequently travel to Albury, New South Wales (a 6 kilometre distance or 10 minute drive). The two border communities are seen as interconnected by the community. As such, it is common for victims of family violence living within our catchment area to have experienced family violence in both New South Wales and Victoria.

According to data collected to date by Hume Riverina CLS in an ongoing survey, 44% of people living in Albury-Wodonga cross the border more than 10 times per week and 51% more than 7 times per week. As a result, the following issues can exacerbate the experience of victims of family violence who live on the border:-

[3. 1] ***Incidents of family violence which occurred in New South Wales are not always taken into account when a person seeks an intervention order in Victoria***

Magistrates are often unable to take into account incidents occurring in New South Wales when determining whether there is a need to make an intervention order in Victoria. Occasionally, Magistrates will adopt a flexible approach and admit evidence of the incidents that occurred in New South Wales, but only if there is also evidence presented of incidents occurring in Victoria.

[3. 2] ***Registration of interstate orders do not happen automatically***

An Intervention Order made by Wodonga Magistrates Court has no effect in New South Wales and an Apprehended Domestic Violence Order made in the Albury Local Court has no relevance in Victoria, unless the order is registered in the other State (which is the responsibility of the protected person).

Legal advice is not automatically provided to victims living on the border about the need to have their order registered interstate and the onus is on the victim to know and understand that they are required to take this additional step to get the protection they need within their regional area.

Although there are procedures for registering orders from one court in the other, there is no protocol or understanding between court registries or police that ensures this happens. There is also no requirement that a person who has an intervention order taken out against them in Wodonga be notified if it is registered in New South Wales, leading to further confusion and the potential for breaches to occur accidentally.

Members of the public and even police officers often do not understand this jurisdictional gap and its practical implications.

[3. 3] ***Enforcement of orders is problematic in a cross-border environment***

Police are restricted by state boundaries in relation to enforcing orders and

taking action regarding breaches of intervention orders that are reported to them. Furthermore, Court proceedings that are brought in Victoria arising from intervention order breaches cannot take into account incidents that occurred in New South Wales, even though that incident may have constituted a breach of the intervention order if it had occurred within Victoria.

[3. 4] ***Funding for services is often limited to state borders, leading to siloed services as well as unnecessary duplication of services***

There are two different family violence networks that are funded to assist women in Wodonga and Albury. The dual networks exist despite the fact that the Albury Wodonga community is a twin community and residents move freely between both states.

Family violence crisis support services are state-based services, and do not have funding (or knowledge of the legal system in the other state) to support women when they move across the border. This means women potentially have to access two different support services (one in Victoria, one in New South Wales) to get the help that they need.

### 3. Lack of services for young people aged 25 and under

The recent Legal Australia Wide (LAW) Survey found that young people aged between 15-24 years are 2.4 times more likely to experience a legal problem when compared with older age groups, yet are less likely to seek help from professionals for their legal problem.<sup>8</sup> This is compounded in regional areas where there is a lack of services compared with metropolitan areas.<sup>9</sup>

Hume Riverina CLS has identified through its own data that there are concerning levels of family violence disclosed by young people. In the 2013/2014 year, 29% of young people who received legal advice from HRCLS (80 out of 279 clients in the 15-25 age group) disclosed family violence.

There are no tailored services available to young people experiencing family violence in North East Victoria. According to the LAW survey, "specialist legal services for specific age groups, such as young people, may be of value in geographical regions that include large populations of those age groups".

Hume Riverina CLS has applied for a grant from the Legal Services Board, Victoria to provide dedicated assistance to young people aged 15-25 years in North East Victoria who are at risk of family violence. The project aims to identify the hurdles that prevent young people from accessing legal assistance, and to develop service delivery models that most effectively overcome those hurdles with the aim of increasing the capacity of young people to engage with the legal system.

The Victoria Police Family Violence Advisor covering our catchment area has noted a low rate of family violence reporting in women under 30. He has suggested that if young people have a good experience of the legal system when they first encounter and/or report family violence, there is an increased likelihood that they will seek help when they need it in the future. This could ultimately improve safety for young people as they move into adulthood, by helping them identify family violence and what services are available

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<sup>8</sup> Ibid.

<sup>9</sup> Coverdale, Richard. "Postcode justice: Rural and regional disadvantage in the administration of the law." *Deakin L. Rev.* 16 (2011).



to help them at the earliest possible stage. This would in turn lead to decreased instances of family violence in later years.

#### **4. Lack of Local Awareness of Available Legal Resources**

The LAW Survey found that, when faced with a legal problem:-

- 18.3% of people took no action<sup>10</sup>;
- 51.1% sought advice from a professional or formal advisor<sup>11</sup>; and
- In cases where advice was sought from a professional or formal advisor, only 30.3% of individuals sought advice from a legal advisor<sup>12</sup>.

Hume Riverina CLS is actively working to increase our visibility and presence in our community, so that potential clients are aware of the assistance and resources available to them.

#### **5. Challenges for Legal Services in Coordinating with Other Service Providers**

Although the need for coordinated and cooperative care for clients with complex needs is well recognised, a legal practitioner's duty of confidentiality creates an obvious challenge.

This challenge is further complicated by the family violence reporting requirements that are now mandated for a number of support service providers.

Despite this, Hume Riverina CLS is actively working to create pathways and relationships with other organizations in our community:

- Our service is part of Upper Murray Family Care (who auspice our service, and we are able to provide referrals through that organisation)
- We have developed partnerships and run regular outreach clinics at both the local Family Relationship Centre and at Gateway Health (a local primary health-care provider). These clinics provide appointments on a booking and walk-in basis.

To work well with non-legal service providers, such providers must have the capacity to identify where there are potential legal issues, and the knowledge about where to refer their client or patient.

Hume Riverina CLS is actively involved within our community, attempting to raise awareness of our service. We also regularly deliver 'Legal Health Checklist' training to community workers to increase their ability to identify legal issues and provide early referrals.

#### **6. Inconsistent police responses**

Whilst we are aware that there are policies about when Victoria Police will apply for an intervention order to protect a person escaping family violence, we have noticed inconsistencies in Police responses. It is unclear in our experience when a victim can expect the Police to apply for an order on her behalf, and when the victim will be referred to the court to make the application themselves.

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<sup>10</sup> Coumarelos et al (2012), 93.

<sup>11</sup> Ibid, 106.

<sup>12</sup> Ibid, 111.



We have also noticed inconsistencies in relation to prosecution of breaches of intervention orders. This can be a frustrating experience for victims escaping family violence, causing them to lose confidence in the system, and also makes it more difficult to provide accurate legal advice.

## **RECOMMENDATIONS**

### **1. Adequate funding provided for free legal services like the Hume Riverina Community Legal Service, including funding for specific services such as:**

#### **1 (a) *Holistic, joined, integrated legal and non-legal services;***

The “**Holistic Outreach and Legal Assistance**” (**HALO**) project currently being piloted by Hume Riverina CLS is a partnership with Gateway Health, Wodonga. The partnership enables a lawyer from the Hume Riverina CLS to deliver free legal advice appointments on-site at Gateway Health on a fortnightly basis. Although not a specific family violence legal service, it allows clients to access legal support, family violence specialist agencies and other supports in the one building/location.

Clients in regional areas may feel more comfortable accessing legal advice anonymously at a Health Centre, where they are not seen walking into the community legal centre. Furthermore, being co-located with a health service encourages referrals from health professionals (such as GPs) at the earliest opportunity.

This service is a pilot service that was possible through a one-off grant to Hume Riverina CLS but the future of this service is in doubt as there is no specific funding for it to continue. If additional funding was provided, then Hume Riverina CLS could provide intensive training to the health professionals (including GPs) about how to identify family violence issues and refer to the legal service.

#### **1 (b) *Duty services by community legal centres at all regional courts;***

It is important that Community Legal Centres are funded to assist people at intervention order duty list days at the Magistrates Courts regionally. In particular it is noted that Wangaratta and Benalla Magistrates Courts do not have a lawyer from a community legal centre funded to help people at the intervention order duty lists.

Community Legal Centres have strong links to non-legal support services that clients can be referred to for support. Also, community legal centres are able to provide assistance with a range of legal problems, so that clients who need ongoing assistance with legal problems (such as child contact) can receive assistance from the same lawyer that assisted them at the Magistrates Court on a duty basis. Such services also provide a better experience for victims of family violence, who no longer have to repeat their story to a different lawyer.

#### **1 (c) *Increased funding for community legal centres* to assist both perpetrators and victims with all legal issues arising from family violence (including family law**

issues and also including cross border legal help), so that assistance is not limited to duty assistance at intervention order days;

**1 (d) Funding for services specific to young people under 25;**

Such specific services should include frontline education on family violence issues, the provision of legal advice and casework for those affected by family violence and interconnected non-legal referral pathways/service provision to provide holistic care for young people affected by family violence; **and**

**1 (e) Funding for community legal centres to provide education session to community groups and service providers, about issues such as:**

- i. What constitutes family violence under the law,
- ii. What other legal problems can arise from family violence,
- iii. What legal services are available to assist people affected by family violence.

**2. Improved partnerships between legal and non-legal services, including Victorian and New South Wales service providers (in the case of cross-border regions)**

For example, joint funding for family violence networks to deliver cross-border projects to improve the coordination of services that assist women with family violence and family law issues.

**3. Increased funding to Victoria Legal Aid** so that private lawyers are adequately funded to provide duty services at regional intervention order days

**4. Training for private lawyers** in relation to:

- a. Family violence risk assessments;
- b. Legal issues arising from family violence that they may not have expertise in, such as family law, credit and debt and homelessness, so that referrals can be made to appropriate services.

**5. Funding for community legal centres to have social workers employed in-house**

**6. Amendment to the Family Law Act 1975** to enable grants of aid for litigants to be represented when conducting cross examination, where family violence is a factor. If this were to occur, additional funding would need to be provided to Victoria Legal Aid and other Legal Aid Commissions to meet such demand

**7. Training for community workers and service providers supporting women escaping family violence**, in relation to the family law system and other legal frameworks to ensure that myths about the Family Law Act are not circulated to women within the family violence sector

**8. Improve resourcing to Victoria Police** so that a higher proportion of police applications can be brought, and a smaller proportion of women are required to self-represent.

Alternatively, introduce funding for Community Legal Centres and Victoria Legal Aid to provide assistance to people with preparing intervention order applications

9. **Improve the Police response to breaches of family violence** so that there is consistency in relation to prosecutions
  
10. **Consider introducing a scheme like the New South Wales Women's Domestic Violence Court Assistance Scheme.** The scheme is provided to 114 Local Courts in NSW. Support workers attend the Local Court to provide support to women escaping family violence. Their role is to link women with solicitors, and other services like housing, financial counselling, and family law assistance.  
For further information see:- <http://www.legalaid.nsw.gov.au/what-we-do/community-partnerships/womens-domestic-violence-court-advocacy-program>

Submitted by:

**Hume Riverina Community Legal Service**

*29 May 2015*

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