Royal Commission into Family Violence
Casey Cardinia Community Legal Service Submission

Introduction

The Casey Cardinia Community Legal Service (**CCCLS**) welcomes the opportunity to make this submission to the Royal Commission into Family Violence. The CCCLS is a member of the Integrated Family Violence Partnership, Southern Melbourne (**IFVP**), which has prepared a general submission on behalf of the member services in our region. Given the different roles of the various family violence organisations in the IFVP, this present submission is intended to provide an agency-specific supplement to the IFVP submission.

This submission will set out some observations, trends and recurring issues encountered by the CCCLS, which broadly correlate with Questions Eight and Nine of the Royal Commission's Issues Paper.

The CCCLS duty lawyer service

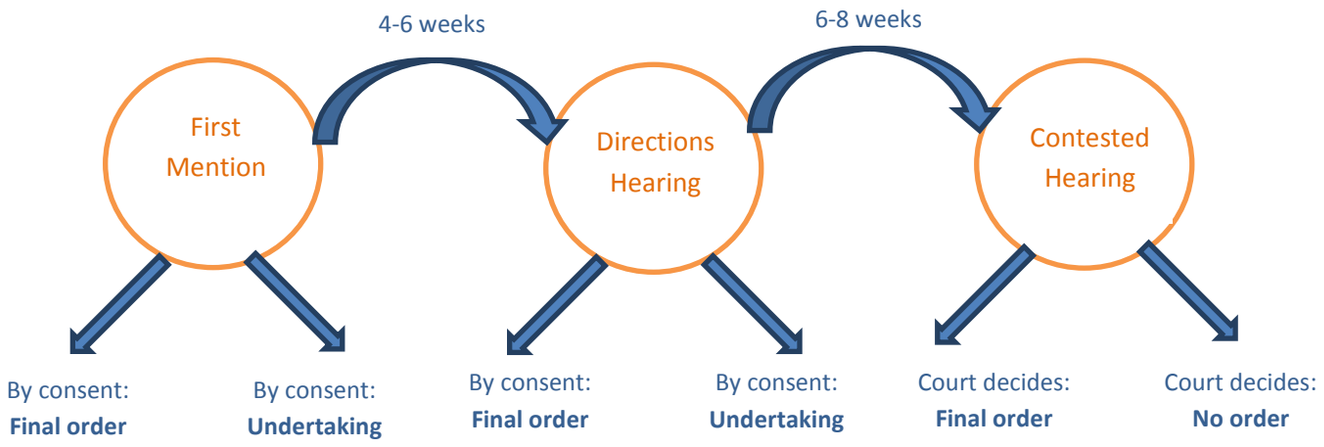
In addition to seeing clients who approach our service with family violence matters at our Dandenong and Narre Warren offices and working with the IFVP and various women's support services to provide training and information sessions, the CCCLS also operates a duty lawyer service at the Dandenong Magistrates Court. The duty lawyer provides advice and legal representation to people involved in both Family Violence and Personal Safety intervention order matters on list days. Our service predominantly assists Affected Family Members (**AFM**s) and Applicants, although we assist Respondents where they are already a client of CCCLS (for example, if we have assisted in their family law matters) or where either CCCLS have a conflict with the AFM for some other reason or where the Victoria Legal Aid duty service has a conflict.

Our duty service covers three family violence lists per week – one police list day and two non-police (self-brought intervention order application) list day. From 1 July 2013 to 30 June 2014, the CCCLS duty lawyers assisted 573 new clients and 225 existing and repeat clients in 907 instances. 74% of these clients were female.

The role of the duty lawyer involves:

- Explaining the court process – including the steps required to finalise an intervention order, the status of the client's matter, and what is likely to happen at court that day.
- Outlining the client's options.
- Assessing the strength of the application based on the summary information and interview.
- Advising on next steps and what the client will need to prepare/bring to court next time.
- Negotiating with the police or other party's lawyers about the conditions of the intervention order, including whether children are to be included on the order, the conditions of a parenting plan and other child arrangements.
- Appearing before the magistrate on contested issues.

The family violence intervention order process at Dandenong Magistrates Court is often explained to clients using the following diagram:



The current intervention order system

1. Affected Family Members

The *Family Violence Protection Act 2008* (Vic) (**the Act**) generally establishes an effective system for protecting women who want to effectively cut or minimise ties with a former domestic partner or perpetrator of family violence. For women seeking a no contact order (also called a 'full order'),[1] the police and magistrates at the Dandenong Magistrates Court are sensitive to the different forms that family violence can take and support women seeking these types of orders, especially where there are children involved.

However, the CCCLS has also seen several clients who have suffered serious family violence in the past, but have not been able to obtain an intervention order as they have been unable to satisfy the court that, on the balance of probabilities, their former partner is likely to commit family violence again.[2] Reported past behaviour has included the former partner causing broken bones or cracked ribs, stalking, harassment and threats to kill the AFM or the children. The perpetrator may have served a sentence of imprisonment, may have left the State or, in other cases, have simply stopped contacting the AFM. Accordingly, there have been no reports of recent incidents of family violence. However, the affected women continue to live in fear for themselves and their children, expecting the perpetrator to suddenly re-appear and carry out their threats. In our view, it may be appropriate to look at legislative reform to better accommodate these kinds of extreme cases.

[1] A "full order" is an intervention order that contains the eight standard conditions that may generally be imposed by the magistrate. These prohibit the Respondent from: (1) committing family violence against the protected person, (2) intentionally damaging the protected person's property or threatening to do so, (3) attempting to locate or follow the protected person or keeping them under surveillance, (4) publishing on the internet or by email or other electronic communication any material about the protected person, (5) contacting or communicating with the protected person by any means, (6) approaching or remaining within a certain distance of the protected person, (7) going to or remaining within a certain distance of where the protected person lives, works or attends school or childcare, (8) getting another person to do anything the respondent must not do under the order.
Where the AFM and the Respondent have children, the exceptions under section 92 of the Act are generally also included, unless Child Protection, the police or the court object.

[2] This is part of the test that the court must apply before making a final intervention order under section 74(1) of the Act.

In contrast to the generally supportive attitude towards female AFMs, the system's support for male AFMs is variable. Generally male AFMs are afforded more time and agency in voicing their concerns if the allegations involve harm or threats towards the children. Unless there is this level of overtly violent behaviour directed at children, often in conjunction with allegations that the female Respondent is suffering from a mental illness, male AFMs are not given the same access to support services, police resources or interim orders. Given the Act's stated purpose of predominantly protecting women and children, this gender bias is to be expected, but the difficulties faced in being taken seriously and unfair application of the system is a source of stress and frustration for many male AFM clients.

For many female AFMs who do not want a full order, the system's emphasis on protection and safety can be overbearing and disempowering. In our experience, while the current intervention order system has the ability to support families that want to stay together while addressing the issues of family violence, the judgement of AFMs on these matters is often overruled in practice. Specific examples are discussed under Observations, Trends and Issues below.

2. Respondents

Given the justifiably pro-AFM structure of the Act, the pressure on Respondents to 'just consent' to an intervention order is very real. This is due to a number of factors, including:

- The broad definition of family violence in the Act, which encompasses a lot of low-threat behaviour that may or may not be characterised as family violence depending on the intent of one party and the perception of the other. (For example, when does disagreement about family finances become economic abuse? Or when does a grumpy partner become a perpetrator of emotional abuse? When does expressing anger in an argument become abusive?)

  Even where a Respondent did not mean to cause fear or harm, it is difficult for them to argue that family violence has not occurred.

- The balance of probabilities threshold of proof, combined with the system's emphasis on protection of AFMs and the understanding that many acts of family violence occur in private, result in many contested issues being decided in favour of the AFM.

- The pressure on courts to manage their lists and encourage resolution before a contested hearing can lead some magistrates to unfairly pressure Respondents to consent to an order.

- The court's willingness to grant multiple adjournments to allow police and/or Child Protection to investigate or prepare reports, requiring the Respondent to attend multiple times.

- The length of the process and the detrimental effect that time off work will have on the Respondent's employment.

The difficulty of successfully defending an intervention order application, the pressure from the intervention order system authorities, and the length of the court process, all act to generate a

situation where many orders are consented to for convenience, even where a Respondent may have legitimate reasons to contest.[3]

It is then important to recognise that a final order made by the Respondent's consent without admission of the allegations is an unreliable indicator of the existence or not of family violence between the parties.

Observations, Trends and Issues

1. Police enforcement of intervention orders

Once an order prohibiting contact is in place, some of our clients have experienced difficulties in convincing police to take statements or act on minor breaches (such as text messages or letters). It is not clear to us why this is the case. It may be due to resourcing issues within the police force, or the result of a deliberate policy decision (perhaps due to the repercussions of criminal liability for simple contact). In any case, a common complaint we hear is that the AFM does not feel supported when trying to enforce the intervention order once granted.

We are conscious that the importance of sending the message that intervention orders are taken seriously, and that breaches will be acted upon, must be balanced with the consequences of making a person criminally liable for a minor or technical breach of an intervention order. Criminal conviction carries far-reaching consequences in terms of employment, travel and any future interactions with the police force. Therefore, it may not be appropriate or proportionate to deal with minor or technical breaches through criminal prosecution.

We emphasise that the reference to 'minor or technical' breaches is not intended to minimise the actions of the Respondent, but to refer to actions which would not ordinarily attract criminal consequences, such as:

- legitimate negotiations regarding children by letter, email or text message (a standard exception included in otherwise no contact orders) resulting in name-calling borne of frustration,
- attending at the AFM's home in response to an invitation from the AFM, where the AFM has subsequently changed their mind (or where an argument has ensued), or, for example, to deliver an ATM Card,
- telephone calls (about children or property matters).

Suggestion:

A. One way to balance these competing goals could be to introduce a different police response mechanism. For instance, mandating that the police take short statements (or complete a simple report form) on reported breaches or minor incidents.

[3] A Respondent may want to contest the order on the basis that the allegations are untrue, or because an order that includes the children as AFMs may prejudice their family law proceedings, or because their work or lifestyle requires them to have a firearms licence, e.g., they are a member of the armed forces, a security guard, or they live rurally.

This report could include the findings of any investigations and a note that the Respondent was spoken to about the matter, even if police do not ultimately criminally charge the Respondent with a breach. This would allow the AFMs to collect strong third party evidence that they could use in subsequent applications for extensions or variations in increase the restrictiveness of the intervention order, and may give them a better sense that their complaints were being taken seriously by police.

2. AFMs who do not want full orders in police applications

When representing AFMs at court on police list days, there are a number of circumstances where the wishes of the AFM do not accord with the wishes of the police as the Applicant. In these circumstances, the issue may go before the magistrate, who makes a decision about the conditions to be included in an interim intervention order.

In these situations, both the AFMs and Respondents lose their sense of control over what is happening to them. The risk is that if AFMs do not feel supported by the family violence intervention order system, they are less likely to seek the help of police or the courts in future. It is not uncommon for clients in this position to express regret that they called the police for help.

It is well known that many women (particularly with children) require several attempts to escape from an abusive relationship. In our view, ensuring AFMs have a sense of agency in the process is key to empowering AFMs to use the family violence intervention order system and other family violence services.

The following are some recurring frustrations voiced by clients in interviews:

a) Excluding the Respondent from the home against the wishes of the AFM

AFMs who want (and expect) only short term police intervention in a particular incident of family violence are often distressed when the police seek to exclude the Respondent from the family home for an extended period of time by making this a condition of an interim intervention order. At Dandenong Magistrates Court, the adjournment period between first mention and Direction Hearing is generally 4 to 6 weeks, and the exclusion is often for at least this period of time.

The reason for this exclusion is generally:

i. to allow time for the parties to 'cool off'.
ii. where there are children in the family home, to allow for a referral to the Child Protection to be made, and for Child Protection to report back to police before the next court date.
iii. to give the Respondent time to engage in counselling or a men's behavioural change program to show the police that he is willing to change his behaviour.

Many AFMs faced with this prospect experience heightened anxiety and distress at the prospect of having to fend for themselves and their children for weeks or months, often feeling more isolated despite referrals to support agencies. Women in this situation can struggle with the practicalities of juggling work (or finding other ways to meet the family's financial needs) and child care without the Respondent's support. On top of that, many dread the judgement of Child Protection about their parenting ability, and the real or perceived threat of having their children removed.

Most AFMs also fear the reaction of the Respondent – that he may withdraw financial support (often citing the need to pay for alternative accommodation as a result of the exclusion), blame the AFM for the situation, or become angry and intractable about engaging with the system, counsellors or the AFM about the causes of dispute. It is not uncommon for clients to express the view that enforced separation will 'destroy the family'.

We consider that while forced separation of the AFM and Respondent may be an appropriate mechanism to protect vulnerable women who are entrenched and at risk in abusive relationships, it can escalate the tension in families who are going through stressful times. Clients often disclose financial stress as a trigger of the argument or incident to which the police are called. Enforced exclusion can add the additional pressures of maintaining a second residence, finding alternative child care and taking time off work, and does not support these families to resolve the underlying cause of disputes. While the family violence intervention order framework is set up to focus on protection of AFMs, a more nuanced approach to individual circumstances may be required.

Suggestions

A. Give greater agency to AFMs to decide when exclusion from the family home is appropriate — especially where the evidence suggests the proceedings were prompted by an isolated incident.

B. Expand the operation of section 75 of the Act to include interim intervention orders.[4]

C. Provide more housing support for Respondents who are excluded from the family home, to help reduce the financial pressures of an exclusion clause. This support could be integrated with evening counselling, education, and/or behavioural change programs.

b) Child Protection agreements prohibiting contact with the children

In most police applications where it is alleged that children have been involved in, witnessed, or been present at an incident, a referral is made by police to Child Protection.

A number of female AFM clients with children have reported feeling pressured by Child Protection workers to sign an agreement that they would not allow any contact between the children and the Respondent until Child Protection have completed their investigation. In one instance, a client said that she felt bullied by the case worker. She felt that the threat to take her children if she didn't sign was more coercive and made her feel more powerless than anything the Respondent had ever done to her.

[4] Section 75 operates such that if an AFM has not consented to the making of the application, the court cannot exclude the Respondent from the family home in a final intervention order. However, in current practice, the police Applicant or the court can insist on such a condition being included on an interim basis until the matter reaches a contested hearing. By that time the Respondent may have been excluded from the family home for several months.

In another instance, a client complained that the worker had refused to allow her to contact an interpreter, despite her limited English skills, leading her to believe that her husband would be allowed to come home if she just signed.

AFMs often complain about the indefinite length of these agreements. Some Child Protection investigations take months with little contact to update the family on progress, and can outlive the intervention order court process.

Further, as a result of Child Protection involvement, AFMs often sign Child Protection agreements. These agreements can restrict the Respondent's right to have contact with the children. Even once a court has made or varied a family violence intervention order to allow contact between the Respondent and the children, AFMs can find themselves fighting for the Respondent's right to have contact with the children on a second front. AFMs have been confused and distressed at the complexity and emotional strain of having to fight the same battles in different systems.

Suggestions

Better integration between Child Protection and the intervention order process would help these matters resolve in a coordinated manner.

A. At a Dandenong Family Violence Court Users meeting, police suggested that having a Child Protection representative at court on police list days to manage the matters from a Child Protection perspective (ensuring timely reports, reviewing Child Protection agreements, providing a contact point for the family members) would assist the court to make more informed decisions about child contact in a timely manner. We strongly support this proposal.

B. Requiring Child Protection agreements to have an expiry date would increase certainty for AFMs, and provide a target date by which Child Protections must assess any safety concerns.

c) Police and the Court taking direction from Child Protection

The court and police applicant often rely on Child Protection's views to inform their decisions about intervention order conditions regarding child contact and exclusion of the Respondent from the family home. This kind of integration is generally beneficial, as Child Protection are better resourced and trained to assess the risks to the family and work with them in an ongoing manner.

However, problems arise when there is over-reliance on the view of Child Protection, to the point where Child Protection effectively dictates the conditions of the order and the timeline of the court.

A recent example involved a male Respondent client who had been excluded from the family home by the police following an altercation with his wife in November 2014. Child Protection was notified by police and became involved with the family.

Over the following 6 months, the Respondent was convicted of unlawfully restraining his wife and sentenced to comply with a Community Corrections Order. He also completed the Salvation Army men's behavioural change course and continued to see a psychologist, maintained full time employment, and sold his only property in his country of origin to pay for both the family home and his separate residence while the intervention order excluded him. He had not seen his son in 6 months and wanted to finalise the intervention order on any terms that would allow him to return to his family.

The police were satisfied that his criminal matters had been finalised and that he had complied with all orders. They were satisfied that the AFM wanted the Respondent to return to the family home. Nevertheless, the intervention order application had not been varied to allow the Respondent to return home because Child Protection had commenced proceedings in the Children's Court and had formed the opinion that, if the interim intervention order continued to prevent the father having contact with the child unless with Child Protection's approval, both the mother and the father were likely to consent to Child Protection's proposed orders on the next Children's Court date.

It is our view that it is inappropriate for Child Protection workers to dictate the terms and timelines of intervention order proceedings to the police or the court. We contend that it is an abuse of process to use the intervention order court to pressure parties to consent to orders in the Children's Court. Where there is a genuine concern about the appropriateness of the Child Protection orders being proposed, this should be properly decided by the Children's Court on evidence.

Suggestions

A. Focus on support and education of the parties in the prevention of family violence. Making prevention the responsibility of law enforcement and the courts increases the fear amongst police and magistrates of "getting it wrong", stymies decision-making and encourages deference to other agencies.

B. Improve resourcing of Child Protection investigations and matters to enable timely resolution of child protection matters.

3. Lack of Respondent support services

In police applications, it is common for the police to informally[5] require that the Respondent engage in counselling (anger management or drug/alcohol) or a behavioural change program, before the police will remove certain conditions of an intervention order – usually an exclusion from the home or contact with the AFM or children.

Long adjournments and further adjournments are often required to allow enough time for this to occur. Programs run for several months and the waiting lists for these programs can be very long.

[5] This is done informally as the Dandenong Magistrates Court is not empowered to make orders requiring Respondents to undergo counselling, unlike the specialised family violence courts at Heidelberg and Ballarat.

Since the beginning of 2015, the waiting list to gain a position in the (court-recommended) Relationships Australia Men's Behavioural Change Program has consistently been reported as over 6 months long.

Where engagement with a program is a prerequisite to contact between family members and rebuilding family life, long delays cause stress to all family members – the AFM, the Respondent and the children – and can contribute to a Respondent's disengagement with the system as frustration waxes and motivation wanes.

Suggestions

A. Increase the resourcing of Respondent support services, particularly counselling and behavioural change programs to increase accessibility and availability. A greater variety of targeted programs could also help Respondents to more easily find a program appropriate to their needs and backgrounds.

B. Better integration with, and referral to, independent child and family support services (such as Windermere) which can work with – and monitor – the AFM and Respondent in a family setting. This could be a less divisive way of encouraging families that want to stay together to engage with behavioural change services.

C. Increased access to services that address other practical barriers to underlying issues beyond drug and alcohol – for example, financial counselling or employment services, agencies that could facilitate child contact, and family law services.

4. Cultural sensitivity in the Family Violence intervention order regime

It is well known that there can be a disconnect between the legal definition of family violence (and the broad spectrum of behaviour it encompasses) and a person's expectation about acceptable behaviour in a marriage or family. This disconnect is greatest when the AFM and Respondent come from a background with a conception of marriage that differs from the present Anglo-Australian norm.

A significant number of the clients we encounter are from culturally and linguistically diverse (**CALD**) backgrounds – in the 2013-2014 year, approximately 40% of people we saw at the Dandenong Magistrates Court were born overseas.

For clients that come from a culture where family honour is highly regarded, or where a dispute between spouses is regarded as a private family matter, there is often distress and shame associated with the court's intervention, the public discussion of their internal disputes and the loss of agency in their own family dealings. This is particularly felt by female AFMs, who not uncommonly express a fear of being ostracised by family or their community. Some patiently explain that the relationship between a husband and a wife is different in their culture; that whilst violence in the marriage is certainly not acceptable, it is for the families, not the court, to sort out. Others tearfully express their fears that if the police or the court forces the Respondent to live separately from the family, the loss of face will cause the Respondent to end the relationship entirely instead of reforming his behaviour.

Suggestion

Women in these situations are particularly vulnerable. They need to feel supported, and that there are options open to them that do not require them to sacrifice their culture or community. The lack of culturally acceptable responses in the present intervention order system means that some women are reluctant to use the family violence intervention order system in its current form.

A. Empowering the court and police to adopt alternative dispute resolution mechanisms may be a way to create more culturally sensitive response to family violence in CALD communities. For instance, in cultures where mediation between the AFM's and Respondent's families is an accepted form of dispute resolution, having this mediation witnessed and documented by a respected member of the community could be used to supplement, or take the place of, formal counselling.

B. Community education to de-stigmatise the reporting of family violence and the court's involvement.

C. Enhancing and resourcing culturally appropriate support services like InTouch (for AFMs) and culturally-targeted behaviour change programs (for Respondents) to ensure that particularly vulnerable clients are appropriately supported.

5. Intersection between the family violence and family law systems

One of the recurring issues our duty service encounters is explaining the difference between family violence and family law disputes about property or parenting matters.

The majority of self-initiated family violence intervention order applications are brought by people going through separation, or who have separated and have children together. The allegations of family violence contained in the applications are often intertwined with unresolved family law disputes. While the allegations in some applications clearly fall within the realm of the family violence intervention order regime (keeping former partners under surveillance, making serious threats unless demands are met, harassment), other applications arise from circumstances that should be addressed by the family law system.

For example, we often see applications brought in response to arguments or bad behaviour at child changeover, frequent unwanted telephone contact, or the Respondent's stated intention to take the children if an agreement about their care arrangements cannot be reached. We have also seen AFMs apply for an intervention order to prevent the Respondent from coming to the former family home and removing disputed items of property, as these disputes escalate into arguments and threats.

Where such an application is made and there are no parenting agreements or Family Law Act orders in place to regulate the relationship between the parents and set out care arrangements for the children, or settle property ownership, the applicant is essentially asking the family violence court to decide a family law issue without the resources of the Federal Circuit and Family Courts.

The pro-AFM nature of this jurisdiction makes it difficult for Respondents to defend against such applications, and may be an incentive for some Applicants to try to circumvent or gain an advantage in family law matters by limiting the Respondent's ability to engage in direct negotiations. Respondents then face legal fees and time off work to begin proceedings in the Federal Circuit Court,

in addition to the fear of criminal sanction if they express frustration or are not compliant and the prejudicial effect of having an intervention order against them. This has been the case with both male and female Respondents.

Suggestions

A. Empowering Victorian magistrates to exercise family law powers (as they do in country circuit courts) and hear simple parenting or property disputes would allow the issues to be properly investigated and dealt with alongside the intervention order application – rather than intervention orders being made on assertions and incomplete evidence, which would carry over into Federal Circuit Court proceedings. Applicants would also be accountable to the same court for any false or exaggerated allegations made in the intervention order proceedings. While this would extend the intervention order process, in our view it would lead to better outcomes.
B. A referral system to the Federal Circuit Court (coupled with a feedback mechanism) would allow underlying family law issues to be dealt with, and allow for the Federal Circuit Court's findings to inform the making (or not) of any final intervention orders. The *Family Violence Protection Act 2008* (Vic) gives the family violence court broad powers to consider any evidence it thinks necessary. In cases where safety is dependent on how successfully the underlying family law issues are managed, it makes sense to have some mechanism to allow these jurisdictions to work together.

6. Tendency to deal with strangers in a family under the Personal Safety Intervention Order system

Increasingly, our legal service has come across allegations of violence perpetrated by either the first wife against the second or the second wife against the first. These applications have been made under the *Personal Safety Intervention Order Act 2010* (Vic), which does not allow for orders to be made for the parties to have court-appointed Victoria Legal Aid representation at hearing.[6] This has had the effect that the two wives are placed in a situation where they must cross examine each other.

These intervention orders are often hotly contested, as they may be seen as a ploy by a former spouse to create tension in the husband's new family by stopping any contact between the second wife and the children of the first marriage. On the other hand, an application by a new spouse can be seen as an attempt by the new wife to interfere with the former wife's care arrangements for children, if the children are named on the application.

Suggestion

A. We submit that these former partner-new partner relationships should come under the definition of family, and for these applications to be brought under the family violence intervention order regime, to better enable family arrangements and power dynamics to be taken into account.

   Given the ramifications that a contested hearing may have on the broader family relationships, it is desirable that both parties have access to the court-appointed lawyers available under the family violence regime and be assisted by lawyers during cross-

[6] Unlike parties in a family violence intervention order application, who may have orders made under sections 71 and 72 of the Act.

examination. In addition, the ability to include exceptions allowing structured communication in relation to arrangements for stepchildren under section 92 of the Act would facilitate effective communication between all parties involved in the care of the children.