

Submission to the Royal Commission into Family Violence

Executive Summary

Inner Melbourne Community Legal (**IMCL**) is a not-for-profit community organisation that provides free legal assistance, education and advocacy to marginalised people in the City of Melbourne area (North Melbourne, West Melbourne, the Central Business District, Carlton, Parkville and Docklands). Our mission is to promote social justice through advocacy, education and casework delivered by a passionate and talented team.

IMCL has a team of eight staff members, a number of secondees and a pool of volunteers and carries out pioneering innovative work through its co-located partnerships, Health-Justice Partnerships (**HJPs**), extensive community legal education program and innovative projects.

IMCL focuses its resources towards assisting some of the most disadvantaged members of the community including individuals experiencing homelessness, mental illness, disability, substance dependency and individuals from culturally and linguistically diverse backgrounds. IMCL promotes social justice and aims to improve the health and wellbeing of the community through the provision of high level, accessible legal advice. Acting on the findings of the Legal-Australia Wide survey¹, IMCL is committed to collaborations and partnerships, and conducts legal outreach programs at Ozanam Community Centre, the Royal Women's Hospital (**the Women's**), the Royal Children's Hospital, the Centre Against Sexual Assault (**CASA House**), Women's Information and Referral Exchange (**WIRE**) and Inner West Area Mental Health Service (**IWAMHS**). IMCL also participates in legally assisted family dispute resolution (**LAFDR**) at the Family Relationships Centre in Melbourne.

IMCL welcomes this opportunity to make a submission to the Royal Commission into Family Violence.

IMCL recognises that family violence is a major health, legal, social and economic issue for our community. In response, IMCL works closely with a number of partner organisations including health-care services, community organisations and Victoria Police to reduce the barriers to women accessing timely and supportive interventions.

Since its inception in 1978, IMCL has provided significant legal assistance and casework services to victim/survivors and others impacted by family violence. In recent years, approximately 20 per cent of clients assisted by IMCL have been affected by family violence. Victim/survivors of

¹ Christine Coumarelos et al 'Legal Australia-Wide Survey: Legal need in Australia' (Report, Law and Justice Foundation of New South Wales, August 2012).

family violence often have multiple and complex legal issues and accordingly, legal cases involving family violence are often the most intensive matters worked on by IMCL lawyers. Legal issues surrounding family violence make up a rapidly increasing portion of the casework and legal advice that IMCL provides to its clients, growing by over 200 per cent from 2011/12 to 2013/14.

IMCL has a two-pronged strategy to reduce the incidences of family violence in our community.

First, in partnership with a number of hospitals and community organisations, IMCL aims to provide a holistic, multi-disciplinary response to assist victim/survivors of family violence by providing legal intervention alongside health, social and welfare intervention. Recognising that health-care providers are the major professional group women trust with disclosures of violence, IMCL has integrated legal services at the Women's and IWAMHS ensuring that patients can access timely and free legal advice and assistance on-site. Further, IMCL also provides an outreach program at the WIRE and CASA House, whereby a lawyer visits those services and provides free legal advice and information to service users.²

Secondly, IMCL is committed to primary prevention programs which include the provision of community legal education in schools. Through its Youth Advocates Against Family Violence Program (**Youth Advocates Program**), IMCL has worked in collaboration with cohealth (formerly Dousta Galla Community Health) to deliver education sessions to students at local secondary schools. The Youth Advocates Program focuses on equipping young people to identify family violence and its causes, raising awareness of legal and support services available to people experiencing family violence and valuing healthy and respectful relationships.

IMCL draws on the above experiences in making its recommendations to the Royal Commission into Family Violence.

² Claudia Garcia-Moreno, Kelsey Hegarty, et al 'The health-systems response to violence against women' (2015)385(9977) *The Lancet* 1567.433.

Recommendations

- 1. That recognition is increased for Health-Justice Partnerships and agencies engaged in multi-disciplinary and holistic models of care aimed at providing health, welfare and legal intervention in one location in order to ensure that victim/survivors do not fall through the safety net.**

This includes the need for:

- 1.1 Increased funding and resources in order to further develop and enhance this model of service delivery in Victoria and nationally;
- 1.2 Increased recognition of the importance of legal services as a necessary intervention in a holistic model of care;
- 1.3 A longitudinal study to show the impact of a multi-disciplinary and holistic intervention;
- 1.4 Multi-disciplinary training to be introduced in to all tertiary degrees where students may later work with victims/survivors of family violence including degrees in law, medicine, social work, nursing and midwifery;
- 1.5 Mandatory training at all community legal centres, hospitals and health-care sites on how to respond to family violence; and
- 1.6 Increased clarity around overcoming the ethical barriers to interdisciplinary integration.

- 2. Recognising that the antenatal and postnatal periods are high risk periods for victim/survivors of family violence, that the process for registering births in Victoria should be amended and that the birth registration statement should include information of state-wide service providers including health, welfare and legal services who are available to assist victim/survivors of family violence.**

This includes the need for the adoption of the recommendations made by the Victorian Law Reform Commission in its report of August 2013³ that:

- 2.1 The Registry of Births, Deaths and Marriages must contact the Applicant before contacting the alleged perpetrator if there is any indication on a birth registration statement of a risk of family violence⁴;

³ Victorian Law Reform Commission, *Birth Registration and Birth Certificates*, (August 2013) 33.

⁴ Ibid.

- 2.2 The Birth Registration Statement should “include a question about whether the applicant fears that family violence may be an issue if the Registry contacts the alleged perpetrator”; and⁵
- 2.3 The Birth Registration Statement should “clearly outline what information may be sought from the alleged perpetrator and whether it will appear on the birth certificate”.⁶

3. That respectful relationships education should be included in the national curriculum.

This includes the need for:

- 3.1 The delivery of respectful relationships material, including the nature and extent of family violence in the community, the legal responses to family violence and the support services available to victim/survivors of family violence to be delivered in partnership between local schools, community organisations and community legal centres; and
- 3.2 Increased funding and resources to address primary prevention programmes in schools provided by legal services in conjunction with community organisations.

4. That the intervention order framework should be improved to better support victim/survivors of family violence

This includes the need for:

- 4.1 Leave to be sought from the Magistrates’ Court in order to apply for a cross-application in an intervention order proceeding;
- 4.2 Education to be provided to Affected Family Members at the time that an intervention order is issued as to the process to follow if an intervention order is breached including calling the police, documenting breaches, recording relevant evidence and identifying witnesses;
- 4.3 Greater training and awareness to be provided to the community as well as to the justice sector as to the significant impact of economic abuse on victim/survivors of violence; and

⁵ Ibid 34.

⁶ Ibid.

4.4 The Victoria Police Code of Practice Investigation of Family Violence to be included in the Victoria Police Manual – Policy Rules to direct and compel police action.

5. That Magistrates’ Courts around Victoria should be upgraded to ensure that they are safe places for victim/survivors to attend for intervention order proceedings.

In all courts across Victoria, this includes the need for:

- 5.1 Remote witness facilities;
- 5.2 Safe rooms;
- 5.3 Reduced waiting lists for appointments with Family Violence Registrars; and
- 5.4 The ability for Family Violence Registrars to assist applicants to complete application forms for intervention orders.

6. That amendments to the fines and infringements system expressly recognise family violence.

This includes the need for:

- 6.1 The Infringements Act to be amended to recognise family violence as a “special circumstance”; and
- 6.2 The Road Safety Act to be amended to allow more flexible timeframes and evidentiary requirements for victims of violence to nominate another driver where they did not commit the infringement offences.

7. That utility and telecommunication providers should be required to amend their financial hardship policies to recognise family violence as a hardship indicator and provide consideration of family violence in policies such as termination and late fees.

This includes the need for utility and telecommunication providers to:

- 7.1 Amend their financial hardship policies to recognise family violence as a hardship indicator and provide consideration of family violence in policies such as termination and late fees; and
- 7.2 Provide training to their staff about recognising and responding to family violence and understanding the impacts of family violence.

Recommendation 1

That recognition is increased for Health-Justice Partnerships and agencies engaged in multi-disciplinary and holistic models of care aimed at providing health, welfare and legal intervention in one location in order to ensure that victim/survivors do not fall through the safety net.

This includes the need for:

Increased funding and resources in order to further develop and enhance this model of service delivery in Victoria and nationally;

Increased recognition of the importance of legal services as a necessary intervention in a holistic model of care;

A longitudinal study to show the impact of a multi-disciplinary and holistic intervention;

Multi-disciplinary training to be introduced in to all tertiary degrees where students may later work with victims/survivors of family violence including degrees in law, medicine, social work, nursing and midwifery;

Mandatory training at all community legal centres, hospitals and health-care sites on how to respond to family violence;

Increased clarity around overcoming the ethical barriers to interdisciplinary integration.

Whilst individuals experiencing family violence are particularly vulnerable to legal problems, including substantial and multiple legal problems⁷, they often face several barriers to accessing the legal system. For women who are chronically abused, these barriers may include threatening and coercive behaviour from their partner which may prevent them from leaving the house and behaviour that controls or monitors their ability to research and contact or communicate with a lawyer. Nonetheless, women who are experiencing violence may be exposed to a range of legal issues. In the United Kingdom, a survey of justiciable problems was conducted and found that 337 (6 per cent) of 5,611 adult respondents reported “one or more family justiciable problems in the preceding 3.5 years” with 88 of those reporting domestic violence.⁸ Seminal Australian research has highlighted that individuals seek legal assistance from non-legal advisers in approximately 69.7 per cent of cases and that in 27.2 per cent of

⁷ Coumarelos et al, above n 1, 19.

⁸ Pascoe Pleasence et al, ‘Family Problems – What Happens and to Whom – Findings from the LSRC Survey of Justiciable Problems’ (2003) 497 *Family Law*.

cases, individuals seek to resolve their legal issue by consulting health or welfare advisers.⁹ Further, people often seek assistance for legal problems from services with which they are already in contact and rarely from more than one source for each legal issue.¹⁰ Studies in the United States of America have found that increased provision of legal services was one of three key factors contributing to the decline of violence against women by their intimate partners.¹¹

In juxtaposition to the ability of women to access legal services, the use of health-care services has been found to increase with intimate partner violence¹² and health-care providers are the major professional group to whom women disclose violence.¹³ In addition, interviews with survivors of partner abuse in Australia have shown that health professionals are the major group to whom women want to disclose violence,¹⁴ and an Australian study shows that “a full time primary care clinician is probably seeing at least one currently abused woman each week, although she may not be presenting with obvious signs or symptoms”.¹⁵

Further, research shows that family violence significantly impacts pregnant women. Across many developed countries, between 4-9 per cent of women are abused during their pregnancy and/or after the birth.¹⁶ In a study conducted of 399 pregnant women at the Royal Women’s Hospital, it was found that 20 per cent of the women surveyed did experience and continued to experience violence during their pregnancy.¹⁷

Recognising that women often disclose violence to health professionals; that pregnancy and illness may be one of the rare occasions when chronically abused women are permitted to go to a doctor; and that victim/survivors face significant barriers to accessing legal services, IMCL supports the concept of integrating legal and welfare services into health-care settings. This

⁹ Coumarelos et al, above n 1, 135.

¹⁰ Mary Anne Noone, ‘Towards an Integrated Service Response to the Link between Legal and Health Issues’ (2009) 15 *Australian Journal of Primary Health*, 203.

¹¹ Amy Farmer & Jill Tiefenthaler, ‘Explaining the Recent Decline in Domestic Violence’ (2003) 21(2) *Contemporary Economic Policy*, 158. .

¹² Garcia Moreno, Hegarty et al., above n.2, 1567.

¹³ Kelsey Hegarty and Angela Taft, ‘Overcoming Barriers to Disclosure and Inquiry of Partner Abuse for Women Attending General Practice’ (2001)25(5) *Australian and New Zealand Journal of Public Health* 433.

¹⁴ Gwenneth Roberts, Kelsey Hegarty and Gene Feder (eds.), *Intimate Partner Abuse and Health Professionals: New Approaches to Domestic Violence* (Churchill Livingstone Elsevier, 2006) 81.

¹⁵ Kelsey Hegarty, ‘Measuring a Multidimensional Definition of Domestic Violence: Prevalence of Partner Abuse in Women Attending General Practice’ (Unpublished doctoral thesis: University of Queensland, 1999) cited in Gwenneth Roberts, Kelsey Hegarty and Gene Feder (eds.), *Intimate Partner Abuse and Health Professionals: New Approaches to Domestic Violence* (Churchill Livingstone Elsevier, 2006) 36.

¹⁶ Angela Taft, ‘Violence Against Women in Pregnancy and After Childbirth: Current Knowledge and Issues in Health Care Responses’ (2002) Issues Paper 6 *Australian Domestic & Family Violence Clearinghouse* 17.

¹⁷ Deborah Walsh and Wendy Weeks, *What a Smile Can Hide* (Royal Women’s Hospital, 2004)26.

model of integrated service delivery has the capacity to provide wraparound care to victim/survivors of family violence. This in turn has the capacity to inform women about their rights and entitlements without the risk of entering or contacting a legal service. Accordingly, developing a hospital environment as a holistic, multi-disciplinary care provider for women experiencing violence has the capacity to empower women experiencing violence.

The importance of a coordinated, integrated, multidisciplinary approach to family violence cannot be overstated. The Victorian Systemic Review of Family Violence Deaths (**VSRFVD**) was established in 2009 to assist Victorian Coroners investigating family violence related deaths involving children and adults. Its first report came out in 2012 and stated that:

“a number of individuals known to the victim appeared to have wanted to offer further assistance and support, but did not due to a range of reasons. These included fear of the perpetrator; lack of recognition of the signs of escalating violence; lack of awareness as to the range of legal and community services that could provide assistance; a reluctance to get involved in family disputes; and hesitation about contacting police or other services. Witness statements also revealed that individuals were not always clear about the range of behaviours that comprised family violence, particularly in connection to non-physical forms of abuse.”¹⁸

In Canada, the Domestic Violence Death Review Committee (**DVDRC**) was established over ten years ago and in a recent report, it highlights the importance of multi-disciplinary practice, stating: “the first 10 years of the DVDRC has demonstrated that positive change is possible and that with a collaborative and multi-disciplinary effort we can continue to learn from the past in order to make Ontario a healthier and safer place in the future”.¹⁹ Senior Project Manager and Lawyer at IMCL undertook a Churchill Fellowship in 2014 to research the practical and ethical barriers of integrating legal assistance into a health-care setting. During a meeting between IMCL’s Senior Project Manager and Lawyer and Deborah Sinclair, a member of the DVDRC, Ms Sinclair explained that “everything that’s written in our reports from day one has always been about trying to break the siloes down and trying to find out where the breaks in the chain are and trying to integrate law, mental health, hospitals, child welfare...”²⁰ IMCL has drawn on this

¹⁸ Domestic Violence Death Review Committee, ‘Report of the Victorian Systemic Review of Family Violence Deaths’ (Annual Report, 2012) 43.

¹⁹ Office of the Chief Coroner for Ontario, ‘Domestic Violence Death Review Committee’ (Annual Report, 2012) 39.

²⁰ Interview with Deborah Sinclair (Toronto, Barbra Schliffer Commemorative Clinic) 2 May 2014 during Churchill Fellowship

experience and has established Health-Justice Partnerships with a number of health-care providers.

Recommendation: Increased recognition of the importance of legal services as a necessary intervention in a holistic model of care is required.

The Acting on the Warning Signs Project: IMCL's Health-Justice Partnership with the Royal Women's Hospital

IMCL and the Women's have developed the Acting on the Warning Signs project (**the AOWS Project**), a ground-breaking project which complements training to clinicians at the Women's to recognise the warning signs of family violence with an integrated, on-site legal service which provides free legal advice and assistance to all patients of the Women's.

The aims of the AOWS project are to:

1. Build the capacity and willingness of health professionals to identify signs of family violence and provide appropriate information and referral pathways;
2. Empower patients from low socio-economic backgrounds who are experiencing family violence or at risk of family violence to obtain appropriate legal and non-legal assistance; and
3. Develop and evaluate a model for a multi-disciplinary approach to addressing family violence in the hospital context.

Training

In order to provide a multi-disciplinary model of care for women experiencing violence, it is critical that the frontline health professionals to whom disclosures of violence occur are provided with adequate and appropriate skills to identify violence, respond to disclosures and refer appropriately. Since August 2012, the AOWS Project has provided training to 219 health professionals including 27 doctors. Two training modules have been developed. These include a full-day study day for all hospital staff as well as a 90-minute session for doctors. The training for doctors has received accreditation from the Royal Australian and New Zealand College of Obstetricians and Gynaecologists and accordingly, participating doctors receive continuing professional development points for their attendance.

Both training modules are modelled on a multi-disciplinary approach and include presentations from clinicians at the Women's, allied health professionals at the Women's and lawyers from IMCL. Further, the full-day study day includes presentations from members of Victoria Police. This multi-disciplinary training approach not only ensures that participants are provided with an understanding of the necessity of a holistic approach to family violence, but it also solidifies

the partnerships between the presenters in an effort to ensure that referrals are seamless between welfare providers, health providers, police and legal services.

An external evaluation of the AOWS Project conducted by the University of Melbourne has found that “training significantly improved health professional’s self-reported knowledge of family violence and the common presenting symptoms of family violence. There was also a significant improvement in their self-reported confidence in having sufficient knowledge and skills to respond to women experiencing family violence and to refer”.²¹ Further, all of the 67 health professionals who responded to the survey felt that they were able to help or knew what to do if they had a patient with family violence and after training, 90 per cent (compared to 66 per cent prior to the training) understood the role of lawyers in a hospital setting.²² The evaluation also showed a notable increase in total referrals to the IMCL legal service following the training including both family violence and non-family violence related clients.

Recommendation: As a means of bringing about cultural change within professions, multi-disciplinary training should be introduced in to all tertiary degrees where students may later work with victims/survivors of family violence including degrees in law, medicine, social work, nursing and midwifery.

Recommendation: Mandatory training should be provided at all community legal centres, hospitals and health-care sites to build the capacity of front-line health professionals to respond to disclosures of family violence.

On-site legal service

The on-site legal service provides all patients of the Women’s with an opportunity to see a lawyer in the safety of a hospital setting. Since establishing the outreach at the Women’s hospital, IMCL has provided almost 300 instances of free legal advice on-site to patients of the Women’s. In 2012, funding was received from the Legal Services Board major grants programme to continue and expand this work. The project now sees an IMCL lawyer based in a dedicated office in the social work department twice a week. Further, an IMCL lawyer also attends the Women’s Alcohol and Drug Service Clinic at the Women’s every second week and is part of a state-wide drug and alcohol service which provides specialist services to pregnant women with complex substance use dependence.

²¹ Kelsey Hegarty et al, ‘Acting on the Warning Signs Evaluation: Final Report’ (University of Melbourne, August 2014), 2.

²² Ibid.

By providing this direct referral pathway within the hospital to IMCL lawyers, patients are provided with an opportunity to be referred to a lawyer by their trusted health professional and to see a lawyer within the safety of the hospital setting.

The legal service provided at the Women's recognises that family violence can trigger other legal issues,²³ and that women experiencing violence may have a clustering of legal issues, including issues relating to debts, infringements, housing, employment, crime and discrimination. Accordingly, the on-site legal services are generalist in nature. However, approximately 62 per cent of clients seen at the Women's since 2009 have indicated that they are at risk of family violence.

The on-site legal service at the Women's is also complemented by a secondary consultation service provided by IMCL lawyers to all clinicians at the Women's. Accordingly, clinicians at the Women's can call IMCL during business hours and discuss legal issues that their patients may be facing with a lawyer with a view to determining whether the clinician can provide information to the patient immediately without the need for a referral to a lawyer. If legal advice is required, then an appointment is made for the patient to see a lawyer from IMCL.

This ability to access legal services can provide women with the foundations to make informed choices that provide them with alternatives to remaining in violent relationships and support their continued engagement with healthcare.

The University of Melbourne evaluation of the AOWS project found that "the co-location of a regular and consistent legal practitioner within social work appears to be the mechanism that led to increased awareness and accessibility for social workers to refer women to this service"²⁴ and that "seven of the eight women [who attended the IMCL outreach and were surveyed] believed that receiving legal advice had a positive impact upon their psychological and emotional health immediately during or after the consultation."²⁵

Recommendation: A longitudinal study measuring the impact of legal, health and social interventions on victim/survivors of family violence and the impact of such interventions being provided in one setting would assist in further developing this model of service provision. The research could measure the impact of multi-disciplinary intervention as well as the financial and social impact of the intervention being provided in one setting. By conducting longitudinal research over five years, the impact on the lives of victim/survivors could be measured as could

²³ Coumarelos et al, above n 1, 167.

²⁴ Hegarty et al, above n 21.

²⁵ Ibid.

the number of readmissions to hospitals thereby providing significant evidence of the possible outcomes of such work.

Ethical barriers to integrating legal assistance into a health-care setting

Bringing together different professions with different cultural and ethical norms involves several challenges. Several ethical barriers exist for lawyers including issues around confidentiality, document security, secondary consultations and third parties attending client consultations. Health professionals often work in a collaborative and open way within the care team, sharing ideas and practices in forums such as rounds and unit meetings. This creates a tension when a lawyer seeks to join the care team and raises the question of whether lawyers can be part of the care team, and indeed whether their confidentiality obligations to their clients allow them to join the care team. IMCL's Senior Project Manager and Lawyer has addressed options for overcoming the ethical barriers of integration during a recent Churchill Fellowship. However, policy guidelines would provide increased clarity and guidance for those seeking to integrate legal services into health-care settings.

***Recommendation:** Policy guidelines should be introduced to provide increased clarity and guidance for those seeking to integrate legal services into health-care settings.*

Common legal issues that arise for patients at the Women's

1. Family law matters

Maternity patients at the Women's are often grappling with questions around intervention orders, parenting, child support, childbirth maintenance, birth certificates, airport watch list applications and property matters. Answers to these questions may impact on a woman's decision to leave a violent relationship.

2. Child protection

IMCL provides advice and casework assistance to a number of patients at the Women's in relation to child protection matters. IMCL has seen cases where a mother of the child is experiencing family violence and cannot or will not leave the father of the child. As a result, the Department of Health and Human Services (DHHS) has become involved with a view to acting protectively towards the child and has placed the child with the paternal grandparents. Placement of the child or children with the paternal grandparents creates an added barrier for the mother to leave the violent relationship, as her contact with her children is mediated by the parents of her violent partner.

3. Spouse visas

IMCL lawyers have also provided advice to patients in cases where they have migrated to Australia to marry a partner and the relationship has violence. Women in this situation may have a lack of understanding about their rights and entitlements to leave the relationship often feeling that they must stay in the relationship in order to remain in Australia. Many victim/survivors in this situation are unaware of the provisions of the *Migration Act 1958* which allow them to leave a violent partner in these situations. In response, IMCL has an accredited migration agent in order to provide advice to women in this situation. Community legal education is required in order to raise awareness around this issue.

4. Pregnancy discrimination

Financial security and independence for women during their pregnancy and upon their return to work following maternity leave is critical in order to empower women. Pregnancy and parental discrimination affects 49 per cent of women in the workplace.²⁶ This means that women who are pregnant or have children have more unsecure employment, and are therefore more vulnerable to financial insecurity, and more reliant on their partner, which can be a significant risk factor for family violence. As part of the AOWS project, IMCL has developed a 'train the trainer' program to educate Childbirth Educators about pregnancy discrimination. Childbirth educators at the Women's have been encouraged to include a segment in their training to expectant mothers around this critical issue. Further, IMCL has also developed a brochure around women's rights and entitlements during their pregnancy and upon their return to work following maternity leave.

Funding

The AOWS project is predominantly funded by the Legal Services Board major grants programme and partly funded through a grant made by the Federal Attorney-General's office. The Legal Services Board funding expires on 31 July 2016.

Recommendation: Increased and secured funding and resources are required in order to further develop and enhance this model of service delivery in Victoria.

²⁶ Australian Human Rights Commission, 'Supporting Working Parents: Pregnancy and Return to Work National Review Report, (2014) 7.

*Case Study from the Royal Women's Hospital - Kate's Story**

Kate was referred to a lawyer at IMCL through the social work department at the Royal Women's Hospital. Kate was in a violent relationship and had been violently assaulted by her partner. Kate was pregnant at the time of the assault, and as well as being physically assaulted and falsely imprisoned, threats to kill were made to both Kate and her unborn child. Kate reported the incident to the police and the police applied for an intervention order on Kate's behalf.

For a time after the assault, Kate stayed away from her partner. However, after he made assurances that it would not happen again, Kate returned to him because she was pregnant and felt there was nowhere else to go. During that time, Kate applied for a variation to the intervention order to allow her partner to see and contact her, and that application was pending before the Magistrates' Court. However, several days later, her partner was again violent and abusive to Kate, this time in front of Kate's friend's children and this prompted Kate to take action.

When IMCL first met with Kate, she had recently given birth. IMCL assisted Kate to withdraw her variation application to ensure that a full intervention order remained in place to protect Kate. IMCL also advised Kate on how to add her child to the intervention order. The Department of Human Services had contacted Kate when her child was born due to concerns for her child's safety, and IMCL also gave Kate advice on how to work with the Department of Human Services to ensure that her and her child remained safe and together. The Department of Human Services subsequently closed its file, satisfied that Kate was taking all available measures to protect her child.

*IMCL also assisted Kate to apply to the Victims of Crime Assistance Tribunal (**the Tribunal**) for financial assistance to help Kate to recover from the crime. Within four months of making the application, the Tribunal made an award of financial assistance to Kate, which included a lump sum of special financial assistance, approval for counselling, the installation of a security system, remedial massage and self-defence classes. In total, Kate received just under \$9,500 in financial assistance.*

** Kate's name has been changed to protect her identity*

Recommendation 2:

That recognising that the antenatal and postnatal period are high risk times for victim/survivors of family violence, the process for registering births in Victoria should be amended and that the birth registration statement should include information of state-wide service providers including health, welfare and legal services who are available to assist victim/survivors of family violence.

This includes the need for the adoption of the recommendations made by the Victorian Law Reform Commission in its report of August 2013²⁷ that:

The Registry of Births, Deaths and Marriages must contact the Applicant before contacting the alleged perpetrator if there is any indication on a birth registration statement of a risk of family violence²⁸;

The Birth Registration Statement should “include a question about whether the applicant fears that family violence may be an issue if the Registry contacts the alleged perpetrator”;²⁹

The Birth Registration Statement should “clearly outline what information may be sought from the alleged perpetrator and whether it will appear on the birth certificate.”³⁰

A common question that arises amongst patients seen by IMCL at the Women’s is around birth certificates. There can often be confusion and anxiety regarding whether victim/survivors of family violence are required to provide details of their child’s father in situations where they may have fears for their safety. Often, victim/survivors do not understand the risk factors of including the father’s name including the risk that he may be notified of the birth nor do they understand the ramifications of not listing the father on the birth certificate, including significant ramifications for receipt of child support. Accordingly, it is critical that if confusion or anxiety arises in relation to the birth certificate that women are provided an opportunity to seek legal advice.

Generally, whilst still an inpatient at the hospital, an attending midwife or nurse provides a mother with a child health and development record, birth registration statement form, information on paid parental leave as well as other Centrelink forms where appropriate. In addition to these documents, all mothers should also be provided with a list of relevant telephone numbers including details for family violence services as well as free legal services to

²⁷ Above n3, 33.

²⁸ Ibid.

²⁹ Ibid 34.

³⁰ Ibid.

ensure that new mothers are able to seek advice in relation to their rights and entitlements at law.

IMCL supports the right of a child to know both of their parents. However, in our work, we are aware of many situations in which to simply list the father on the birth registration statement without further support and information provided to the mother would place women and/or their children at serious risk of harm. Accordingly, the birth registration process should provide women with more information about their rights and entitlements and provide women with further clarity about the process.

Victim/survivors of family violence may be hesitant to list the name of the father of the child on the birth certificate for fear of harm to herself or to her child/children. An example of a situation in which a woman may feel at risk may be that her violent ex-partner threatened to harm her if she did not have a termination of the pregnancy. Deciding to continue with the pregnancy, the woman may have fled the relationship and not indicated to her ex-partner that she had decided to keep the child.

A concern amongst patients is that by registering a birth, it may prompt a violent ex-partner to attempt to locate the mother by applying to the Registry of Births, Deaths and Marriages for a copy of the birth certificate, particularly as the birth registration statement requests the addresses of both parents. Accordingly, further clarity is required around the birth registration process.

In 2013, IMCL submitted a report on this topic to the Victorian Law Reform Commission (**VLRC**) and several of its recommendations were referred to by the VLRC. IMCL supports the recommendations of the VLRC in its August 2013 report which states that the registrar of Births, Deaths and Marriages should develop a policy for processing birth registration statements where the applicant is at risk of family violence.³¹

1. The VLRC recommends that the Registry should be required to contact the applicant before contacting the alleged perpetrator if there is any indication on a birth registration statement of a risk of family violence.³²
2. Step 4 of the birth registration statement should be amended to: include a question about whether the applicant fears that family violence may be an issue if the Registry contacts the alleged perpetrator; clearly outline what information may be sought from the alleged perpetrator and whether it will appear on the birth certificate; and note that

³¹ Above n 3, 15.

³² Ibid 33.



if potential violence is identified as an issue, the Registry will not include the address of the applicant on the birth certificate and contact the applicant before contacting the alleged perpetrator.³³

³³ Ibid 34.

Recommendation 3

That respectful relationships education should be included in the national curriculum.

This includes the need for:

The delivery of respectful relationships material, including the nature and extent of family violence in the community, the legal responses to family violence and the support services available to victim/survivors of family violence be delivered in partnership between local schools, community organisations and community legal centres;

Increased funding and resources to address primary prevention programmes in schools provided by legal services in conjunction with community organisations.

Reduced occurrence of family violence is associated with increased provision of primary prevention programs such as community legal education about the causes and impacts of family violence. IMCL has been delivering targeted primary prevention programs to young people since 2013.

In 2013, IMCL, in partnership with Doutta Galla Community Health Service (now cohealth) designed and delivered the 'Youth Advocates Against Family Violence' Program (**YAAFV Program**). The YAAFV Program was a pilot education program delivered to a number of secondary schools in the City of Melbourne which aimed to address both response and prevention of family violence and the promotion of respectful relationships.

The YAAFV program sought to address this prevalence of family violence in the inner-North West community, particularly in relation to culturally and linguistically diverse (**CALD**) communities, by focusing on young people as potential gatekeepers of information about family violence for their families, peers and communities.

The structure and content for the program were modelled on the good practice guidelines developed by VicHealth, on behalf of the Department of Education and Early Childhood Development (**DEECD**), as part of the 'Violence Prevention, Intervention and Respectful Relationships Education in Victorian Secondary Schools Project'.³⁴

³⁴ VicHealth, Respectful Relationship Education: Violence Prevention and Respectful Relationships Education in Victorian Secondary Schools (Department of Education and Early Childhood Development, November 2009).



In 2013, the YAAFV program delivered 12 sessions across four local secondary schools to over 200 students, primarily at year 9 level. In addition, the program was delivered to young adults from a CALD background, outside of the school setting. An evaluation of the YAAFV program found that participation in the project left students with a vastly improved understanding of the nature and extent of family violence, and the legal response to the issue in Victoria. Students demonstrated a nuanced understanding of the forms of family violence under the *Family Violence Protection Act 2008*, and the options for addressing family violence through the legal system.

The evaluation data establishes that participants in the program felt enhanced confidence in identifying and accessing appropriate support services and information for responding to family violence or relationship issues. The evaluation recommended that multi-year programs of a longer duration be explored to ensure that knowledge amongst young people was consolidated. Long term evaluation of the program was also recommended to measure the impact and need for further education on family violence and respectful relationships in the final years of high school.

The pilot program of YAAFV was originally funded by a grant from the Victoria Law Foundation. In 2014 the program received further funding from the City of Melbourne until 2016.

Delivery of the program has continued in 2014-2015 across a number of local secondary schools, and in other community based settings, with an added emphasis on prevention and speaking out against attitudes that contribute to family violence.

In the second phase of the program, IMCL is also exploring professional development for teachers to improve their knowledge and confidence in assisting students experiencing family violence. Feedback from teachers has been that there is a definite lack of confidence amongst them in providing appropriate responses to students. Working directly with teachers affords a more lasting impact on students beyond the brief engagement of a visiting program, and promotes a 'whole of school' approach to family violence education and response.

Recommendation 4

That the intervention order framework should be improved to better support victim/survivors of family violence

This includes the need for:

Leave to be sought from the Magistrates' Court in order to apply for a cross-application in an intervention order proceeding;

Education to be provided to Affected Family Members at the time that an intervention order is issued as to the process to follow if an intervention order is breached including calling the police, documenting breaches, recording relevant evidence and identifying witnesses;

Greater training and awareness to be provided to the community as well as to the justice sector as to the significant impact of economic abuse on victim/survivors of violence; and

The Victoria Police Code of Practice Investigation of Family Violence to be included in the Victoria Police Manual – Policy Rules to direct and compel police action.

Cross-applications in intervention order matters

The practice of respondents to intervention order applications issuing cross-applications at the Magistrates' Court so that they are listed as a respondent in one application and an affected family member in another application is serving to undermine the intervention order system and entrench coercive and threatening behaviour in the court environment. Often, such cross applications are taken out by perpetrators of violence in an effort to continue the controlling behaviour, and to use the court as an instrument of such behaviour. This cross application may then be used as a bargaining tool to try and persuade the original affected family member to withdraw their application, limit the conditions applied for in the application or to remove the children from the application.

This practice could be avoided or minimised by requiring those seeking to apply for a cross application to seek the leave of the court in order to make the application in order to ensure that the application is not seeking to control the victim/survivor of family violence.

Recommendation: *Cross-applicants in intervention order matters should be required to seek leave from the Magistrates' Court in order to apply for a cross-application*

Breaches of intervention orders

Many clients who access IMCL instruct that their intervention order has been breached on numerous occasions. In some cases, victim/survivors do not know what to do if an intervention order is breached and in other cases, victim/survivors instruct that despite reports to the police, the respondent has not been charged with a criminal offence. IMCL recommends that at the time an intervention order is made by the Court, affected family members should be provided with education about how to report a breach to the police as well as how to record information around breaches, including documenting breaches, recording relevant evidence and identifying witnesses.

Recommendation: Education should be provided to Affected Family Members at the time that an intervention order is issued as to the process to follow if an intervention order is breached including calling the police, documenting breaches, recording relevant evidence and identifying witnesses.

Economic abuse

Section 5 of the *Family Violence Protection Act 2008* (**the Act**) includes economic abuse within its definition of family violence. Further, section 6 of the Act defines economic abuse. In its work with victim/survivors of family violence, IMCL has recognised that economic abuse and its implications are not well understood. Greater training and awareness should be provided to the community as well as to the justice sector as to the significant impact of economic abuse on victim/survivors of violence.

Recommendation: Greater training and awareness should be provided to the community as well as to the justice sector as to the significant impact of economic abuse on victim/survivors of violence.

The Victoria Police Code of Practice Investigation of Family Violence

The increased powers of Victoria Police to issue family violence safety notices, and to exclude perpetrators of family violence from a house shared by the victim/survivor and perpetrator have increased safety for victim/survivors of family violence. The Victoria Police Code of Practice for Investigation of Family Violence (**the Code**) in its current iteration has also been an invaluable addition to the State's response to family violence. However, its status as a policy document means that the policies set out within do not have the power that the Victoria Police Manual – Policy Rules has in directing and compelling police action.

For example, the Code clearly states that *'one primary aggressor should be identified. Do not make cross applications for intervention orders'*. However, perhaps due to insufficient training or understanding of the Code by officers, IMCL has assisted in at least one case where police applied for cross applications for intervention orders. This is not only contrary to the Code, but also to a number of best practice models where the importance of identifying the primary aggressor is highlighted.³⁵

The case study below highlights the difficulties that arise when police apply for cross applications:

M■■ and her boyfriend T■■ were expecting a child. One night, T■■ got very drunk and became physically and verbally abusive towards M■■. He began to damage her property and her car. M■■ was scared of him and he wouldn't let her leave the apartment, so she called the police. When the police arrived, M■■ was concerned that T■■ would be charged, so she refused to assist police with their enquiries. While M■■ had called the police and appeared to be the victim in the matter, the police applied for two separate family violence intervention orders against both M■■ and T■■. This was because, during the course of the altercation, both M■■ and T■■ had been verbally abusive. Neither M■■ nor T■■ attended the hearing at the Magistrates' Court and interim orders were made which prevented M■■ and T■■ from contacting or seeing each other.

M■■ thought that while there were cross orders, they in effect cancelled each other out and she continued to meet with T■■. During one of those meetings, T■■ and M■■ had another argument and afterwards T■■ went to the police and reported that he had seen M■■. T■■ also alleged that M■■ had slapped him.

Both M■■ and T■■ were charged with breach of the intervention orders and M■■ was charged with assault.

M■■ sought the assistance of IMCL at the Royal Women's Hospital following a referral from a social worker. M■■ had just given birth and was concerned about the upcoming hearing. She also didn't understand why the police had applied for intervention orders against both her and T■■.

³⁵ See, eg, Heather Douglas and Robin Fitzgerald, 'Legal Processes and Gendered Violence: Cross-Applications for Domestic Violence Protection Orders' 36 *University of New South Wales Law Journal* 56; Julie Mansour, 'Women Defendants to AVOs: What is their Experience of the Justice System?' (Women's Legal Services NSW, March 2014).

IMCL helped M■ by negotiating with the police about the charges. IMCL requested that the charges be withdrawn, primarily because the police had failed to do a proper risk assessment when they first attended and they had applied for cross applications without identifying a primary aggressor in breach of the Code.

The prosecution agreed that the police making cross applications against both M■ and T■ was against police policy and all charges against M■ were withdrawn.

Ultimately, M■'s matter was resolved appropriately, but the resources that went into ensuring that outcome, as well as the additional stress and anxiety M■ endured could all have been avoided if more police officers were aware of the policy regarding cross applications as well as the basis for that policy.

The Code, or the principles espoused in the Code should be elevated to the status of the Victoria Police Manual – Policy Rules (**VPMPR**). While the VPMPR does not have the status of legislation, the Policy Rules provide mandatory accountability for officers within Victoria Police.

Recommendation: The Victoria Police Code of Practice Investigation of Family Violence be included in the Victoria Police Manual – Policy Rules to direct and compel police action.

Recommendation 5

That Magistrates' Courts around Victoria should be upgraded to ensure that they are safe places for victim/survivors to attend for intervention order proceedings.

In all courts across Victoria, this includes the need for:

Remote witness facilities;

Safe rooms;

Reduced waiting lists for appointments with Family Violence Registrars; and

The ability for Family Violence Registrars to assist applicants to complete application forms for intervention orders.

Whilst significant improvements have been made in recent years, courts are still not safe places for affected family members. Only a few courts have safe spaces for women, including separate waiting rooms and remote witness facilities. Attending court and applying for an intervention order is a daunting undertaking for our clients. This coupled with the risk of seeing the alleged perpetrator at court and not having a safe environment at the court can be re-traumatising for many of our clients.

Further, in order to make an application for a family violence intervention order, an appointment must be made with a family violence registrar. In several courts, scarce resources are overstretched and waiting lists to see family violence registrars can be significant. Waiting lists should be reduced and Family Violence Registrars should be provided with training to assist applicants to complete application forms for intervention orders.

Recommendation 6

That amendments are made to the fines and infringements system to expressly recognise family violence.

This includes the need for:

The *Infringements Act 2006* to be amended to recognise family violence as a “special circumstance”; and

The *Road Safety Act 1986* to be amended to allow more flexible timeframes and evidentiary requirements for victims of violence to nominate another driver where they did not commit the infringement offences.

Family violence intersects with a range of legal issues, including the infringements system.

IMCL is a member of the Infringements Working Group (**IWG**), a joint working group of the Federation of Community Legal Centres (Victoria) and the Financial and Consumer Rights Council, supported by lawyers from Victoria Legal Aid.

IMCL endorses and supports the IWG submission to the Royal Commission into Family Violence and in particular the two key recommendations set out therein to reduce the current impact of the fines and infringements system on victims of family violence:

1. **Recognise family violence as a ‘special circumstance’.** The Infringements Act should be amended to recognise that family violence contributes to victim/survivors of violence incurring infringements (for example, driving, tollway, public transport or parking fines when they are fleeing violence, sleeping in cars or moving between crisis or short-term accommodation).
2. **Amend processes for identifying that the victim/survivors of violence did not commit the infringement offence.** It is common for perpetrators of violence to incur fines and infringements in their partner’s name. The current system requires the nomination or identification of the driver. This is often not possible for victim/survivors of violence due to fear of the consequences. Timeframes and evidentiary requirements for identifying that victim/survivors of violence did not commit the infringement offences should be amended.

Further detail on each of these recommendations is set out in further detail in the IWG’s Submission.

Recommendation 7

That utility and telecommunication providers should be required to amend their financial hardship policies to recognise family violence as a hardship indicator and provide consideration of family violence in policies such as termination and late fees.

This includes the need for:

Utility and telecommunication providers to provide training to their staff about recognising and responding to family violence and understanding the impacts of family violence.

IMCL provides a range of assistance to victims/survivors of family violence, including where debts have been incurred or spiralled out of control as a result of family violence. There are two common scenarios that IMCL sees:

1. Women who have ‘sexually transmitted debt’ or ‘relationship debt’, which is where a woman becomes liable to pay for her ex-partner’s debts or debts they incurred together; and
2. Women, who due to the stress and dislocation often associated with family violence, have fallen behind in their own utility, phone or other accounts and face either disconnection or debt recovery action.

A 2014 report prepared by the Consumer Utilities Advocacy Centre Ltd has recognised the significant impact of debts on victim/survivors of family violence:

“Domestic violence can create unique circumstances of financial hardship when there has been a breakdown of the domestic setting and a victim is at a point of crisis ... The economic stress can hinder the ability of victims to free themselves from the abusive setting, and contribute to a cycle of violence.”³⁶

IMCL’s experience of working with victim/survivors of family violence mirrors this observation, and for many women, the very fact that they continue to receive letters of demand and calls from debt collectors for accounts such as gas or electricity that were incurred during an abusive relationship can serve to extend and exacerbate the effects of the violence and hinder their ability to move on from a point of crisis.

Currently, the experience of, and options available to, women who have debts to utility and telecommunications companies vary depending on the company to which the debt is owed. This is because, while required to have hardship policies and programs to deal with customers

³⁶ CUAC (2014), *Helping Not Hindering: Uncovering Domestic Violence & Utility Debt*, Consumer Utilities Advocacy Centre Ltd., Melbourne, 2.

experiencing financial hardship,³⁷ utility and telecommunication companies are not mandated to recognise family violence in those hardship policies.

While at least two utility companies have taken the initiative to include family violence in their hardship policies, these examples are the exception rather than the norm. For example, clause 3.1 of AGL's *Staying Connected: Hardship Policy and Program* provides that hardship indicators might include a customer experiencing domestic violence or separation; while clause 7.2 of Energy Australia's *National Hardship Policy* provides that with the customer's consent, their hardship team will refer a customer to an appropriate organisation including domestic violence counsellors. IMCL is not aware of any other financial hardship policy for a utility company that includes a reference to family violence.³⁸

This inconsistency creates difficulties for victims/survivors of family violence and their legal and other support workers who they may approach for assistance.

Accordingly, IMCL recommends that all utility and telecommunication providers should be required to amend their financial hardship policies to recognise family violence as a hardship indicator. In addition, their policies should be amended to make provision for family violence in other circumstances – such as early termination of accounts or late fees.

Extensive training is also required for staff at utility and telecommunication providers on how to recognise and respond to family violence so those staff applying policies understand the impacts of family violence on their customers.

³⁷ s43(1)(a) *Electricity Industry Act 2000* (Vic); s48G of the *Gas Industry Act 2001* (Vic); clause 6.11 of the *Telecommunications Consumer Protections (TCP) Code 2012* registered under s117 of the *Telecommunications Act 1997* (Cth).

³⁸ As at time of writing, there is no reference to family or domestic violence in the hardship policies of Alinta Energy, Click Energy, Diamond Energy, Dodo Power and Gas, Neighbourhood Energy, Origin, People Energy, Power Direct, Powershop, Red Energy or Simply Energy.