

# IMPROVING THE ACCESSIBILITY OF THE FAMILY LAW SYSTEM

A submission to the Australian Law Reform Commission's Review of the Family Law  
System prepared by the Women's Rights Group of the  
Monash Law Student Society's *Just Leadership* Program

Shehara Skilbeck, Amanda Darshini Selvarajah, Michael Deighton-Smith, Ema  
Stefanovic, Sofia Jacquiery

**May 2018**

## **ACKNOWLEDGEMENTS**

We would like to thank the nine participants who took the time to be interviewed for the purposes of this submission. We thank them for sharing their views and experiences of working with disadvantaged and vulnerable people navigating the Family Law Courts. We also thank them for the incredible work they are doing in supporting people navigating the court system.

We also want to thank our Chief Investigator Shehara Skilbeck for leading this submission and recruiting many of the participants for the purpose of this submission.

## **TERMS OF REFERENCE**

We humbly submit our findings and recommendations to improve the accessibility of the family law system. The focus of this submission is on disadvantaged and marginalised users of the family law system. This submission explores the following terms of reference (in the order they appear in the Issues Paper):

1. In what ways could access to information about family law and family law related services, including family violence services be improved?
2. How might people with family law related needs be assisted to navigate the family law system?
3. What changes can be made to court procedures to improve their accessibility for litigants who are not legally represented?
4. How can parties who have experienced family violence or abuse be better supported at court?

## **Executive Summary**

### **1. Introduction**

- 1.1. Policy Context
- 1.2. Family Violence is a Gendered Phenomenon
- 1.3. Approach to Addressing the Terms of Reference

### **2. In what ways could access to information about family law and family law related services, including family violence services be improved?**

- 2.1. Introduction
- 2.2. An Integrated System
- 2.3. Catering to Those with Special Needs
- 2.4. Community Education

### **3. How might people with family law related needs be assisted to navigate the family law system?**

- 3.1. Introduction
- 3.2. Increasing information for vulnerable persons in the court system
- 3.3. Increasing support services for vulnerable persons navigating the court system
- 3.4. Increasing funding to legal services
- 3.5. Increasing the accessibility of the courts

### **4. What changes can be made to court procedures to improve their accessibility for litigants who are not legally represented?**

- 4.1. Introduction
- 4.2. Access
- 4.3. Support

### **5. How can parties who have experienced family violence or abuse be better supported at court?**

- 5.1. Introduction
- 5.2. Early identification of family violence
- 5.3. Increasing information for family violence victims at court
- 5.4. Increasing funding to family violence services
- 5.5. Victorian Legal Aid and Community Legal services
- 5.6. Family Law Court and Federal Circuit Courts

- 5.7. Child-friendly spaces
- 5.8. Increasing support services for family violence victims navigating the court system
- 5.9. An Integrated System
- 5.10. Independent Children's Lawyers (ICL)
- 5.11. Preventing re-traumatisation of family violence victims
- 5.12. A more culturally sensitive service

## **6. Conclusion**

## **7. Bibliography**

## **8. Appendices**

- 8.1. Appendix A: Participant 1 Interview Responses – Social Worker
- 8.2. Appendix B: Participant 2 Interview Responses – Youth and Families Support Worker
- 8.3. Appendix C: Participant 3 Interview Responses – Former Family Lawyer, Current Social Worker
- 8.4. Appendix D: Participant 4 Interview Responses – Social Worker in Women's Crisis Service
- 8.5. Appendix E: Participant 5 Interview Responses – Judge in the Family Court
- 8.6. Appendix F: Participant 6 Interview Responses – Former Volunteer Court Support Worker at Moorabbin Court, Current Housing Support Worker in a Women's Crisis Service
- 8.7. Appendix G: Participant 7 Interview Responses – Family Violence Support Worker
- 8.8. Appendix H: Participant 8 Interview Responses – Retired Supervising Lawyer in Community Legal Centres
- 8.9. Appendix I: Participant 9 Interview Responses – Supervising Solicitor at Springvale Monash Legal Services

## **Executive Summary**

Below is a list of recommendations based from the nine participants who interviewed for the submission. Our terms of reference largely deal with common issues surrounding the accessibility of the Family Court and improving access to information and support services. As such, some recommendations may apply to several of the terms of reference.

### **In what ways could access to information about family law and family law related services, including family violence services be improved?**

#### *An integrated system*

- Consolidating existing help lines and online chats to address both legal and supplementary needs
- Further publicity about existing help lines and online chats
- Establishing a portal (potentially modelled after the Commonwealth Court Portal) which would allow users to:
  - Document all information received from relevant supporting services
  - Find all the relevant contact information for family law related services
  - Share their profiles with relevant parties including lawyers or social workers. This can avoid repetition and ensure all parties are kept abreast of a client's needs and advice that has been provided
  - Reduce the caseload of social workers who might also benefit from using the portal for clients with complex needs that might not be able to manage the portal themselves

#### *Catering to those with special needs*

- Providing explicit exceptions for compliance with practice directions and court procedures for disadvantaged and marginalised users
- Making clear the available provisions for online chat / help line services for those with disabilities or language barriers
- Consulting local community leaders to ensure the information provided is culturally sensitive

#### *Community education*

- Further training for professionals who work with victims of family violence (including emergency services, lawyers and barristers) to:

- Identify signs of family violence
- Effectively communicate potential next steps (both legal and non-legal) for victims of family violence
- Be aware of existing services and options (both legal and non-legal) to refer potential victims of family violence
- A national ad campaign focused not only on preventing family violence but also educating the larger community about the court system and relevant support services
- Providing information on the court system and support services in local shopping centres, churches, community centres or schools
- Build partnerships with local community leaders of culturally or linguistically diverse (CALD) communities to understand how to effectively communicate information on sensitive topics such as family violence

### **How might people with family law related needs be assisted to navigate the family law system?**

#### *Increasing information for disadvantaged and marginalised people in the court system*

- Increasing the amount of social workers available in the court to provide information to disadvantaged and marginalised persons on the court system and their rights in court
- Placing social workers in police stations, community legal services and other community health centres to inform disadvantaged and marginalised persons of the court system and their rights in court

#### *Increasing support services for vulnerable people navigating the court system*

- Increasing the provision of social workers in the court to provide emotional support and advocacy support for disadvantaged and marginalised persons navigating the court system
- Increasing the provision of social workers in the court to conduct risk assessments and safety planning for victims of family violence
- Increasing the provision of social workers in the court to provide material aid to disadvantaged and marginalised persons
- Providing transport arrangements (taxi vouchers) for victims of family violence when leaving the court to address safety concerns

### *Increasing funding to legal services*

- Further funding for Legal Aid and community legal services to improve the provision of free legal services for disadvantaged and marginalised persons
- Supporting and educating private law firms to take on pro bono work for disadvantaged and marginalised people in need of family legal advice
- Funding more student legal clinics and programs run by universities
- Funding for Less Adversarial Trials for disadvantaged and marginalised persons

### *Increasing the accessibility of the courts*

- Having the court travel to areas where it is difficult for disadvantaged and marginalised persons to access the court
- Providing childcare in the court for parents accessing the court with their children (possibly modelled after the services at Victoria's Neighbourhood Justice Centre) at all Family Courts
- Having workers from CALD backgrounds present in the court

### **What changes can be made to court procedures to improve their accessibility for litigants who are not legally represented?**

#### *Access*

- Providing duty lawyers at court to assist self-representing litigants (SRLs) with inquiries, in the absence of actual representation
- Improving information about:
  - Legal processes and requirements
  - Informal services at court aimed at helping SRLs navigate legal processes
- Documents explaining legal processes should:
  - Use simpler language
  - Be available in all major languages

## *Support*

- Family Courts should provide SRLs with:
  - Interpreters
  - Social workers
  - Signage above services so they are more accessible and readily available to SRLs
- Family Courts should be more customer-service oriented
- Family Courts should place court administrators on the floor of the court and not behind a desk
- The Courtroom in a Family Court should have a lower bench
- Regional centres hosting Circuit Courts should be as supported and staffed with as many duty lawyers and supplementary services as their metropolitan counterparts

## **How can parties who have experienced family violence or abuse be better support at court?**

### *Early identification of family violence*

- The provision of social workers who are able to gain a holistic picture of family violence experienced by an individual
- Professional training for lawyers on family violence
- Reducing the workloads on judges so they can read and consider the entirety of material in front of them involving family violence

### *Increasing information for family violence victims at court*

- Fact sheets accompanying each step of their legal process on next steps
- Information on how to register intervention orders in all jurisdictions

### *Increasing funding to family violence services*

- Increased funding to legal services like Legal Aid and Community Legal Centres
- Increased funding for the Family Court and the Federal Circuit Court

### *Introduction of child-friendly spaces*

- Providing childcare in the court for parents accessing the court with their children (modelled after the services at Victoria's Neighbourhood Justice Centre) at all Family Courts

### *Increasing support services for family violence victims navigating the court system*

- The provision of social workers for cases involving a high family violence assessment
- Having a team of social workers available and permanently in the court
- The Social Work program can be modelled on the Court Networkers at the Federal Circuit Court in Dandenong

### *A more integrated system*

- Dealing with all family law matters (such as family violence orders and juvenile justice) in one location
- Greater communication between ancillary services such as DHHS and the courts
- Establishing a national family violence assessment scheme

### *Independent Children's Lawyers (ICLs)*

- Auditing ICLs
- Further training for ICLs
- Further funding for ICLs

### *Preventing re-traumatisation of family violence victims*

- Additional safety measures, such as provision of taxi vouchers so that parties can travel home safely
- Inclusion of canine companions for people who allege family violence during cross examination; and

- Modelling current sections of the *Family Law Act* on the *Family Violence Protection Act* to ensure that unrepresented litigants who are the alleged family violence perpetrators are not cross-examining victims in defended hearings

*A more culturally sensitive service*

- Build partnerships with local community leaders of culturally or linguistically diverse (CALD) communities to understand how to best communicate information on potentially sensitive topics like family violence
- Having workers from CALD backgrounds present in the court

# 1. Introduction

## 1.1 Policy Context

Many of those who need to utilise the family law system currently face real issues of access. There are a number of barriers that may dissuade people from using the courts or prevent them from achieving an effective, just, or timely resolution of a matter. Many of these barriers are systemic and are reflective of broader issues surrounding the cost and delays associated with cases in Australian courts.<sup>1</sup>

The cost of the family law system is arguably the most significant barrier to access, as matters can be prohibitively expensive for families, and potentially lead to financial ruin.<sup>2</sup> For example, the House of Representatives Standing Committee on Social Policy and Legal Affairs has stated that it is not uncommon for family law matters with legal representation to cost in excess of \$100 000.<sup>3</sup>

Likewise, the sheer complexity of court processes can pose significant difficulties, especially for those who self-represent.<sup>4</sup> Such complexity can create confusion for litigants and potentially raise cost and productivity issues for courts.<sup>5</sup>

Research has indicated that women in particular face greater challenges in accessing justice due to the economic and social disadvantages they face.<sup>6</sup> However, barriers to access are even greater for disadvantaged and marginalised groups of people. CALD people, Aboriginal and Torres Strait Islanders, people with disabilities, people based in rural areas, victims of family violence, and those with limited financial resources, all face greater challenges in accessing justice through the family law system. For example:

---

<sup>1</sup> Productivity Commission, *Access to Justice Arrangements* (Inquiry Report No 72, Vol 1, 2014).

<sup>2</sup> House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, *A Better Family Law System to Support and Protect Those Affected by Family Violence* (2017) 3.31.

<sup>3</sup> *Ibid* 3.32.

<sup>4</sup> *Ibid* 3.38.

<sup>5</sup> Australian Law Reform Commission, *Review of the Family Law System: Issues Paper* (2018) 42.

<sup>6</sup> Australian Women Against Violence Alliance, *Access to justice for women and children living with or at risk of violence*, Accessed 6 May 2018 <<https://awava.org.au/2016/08/22/research/7424>>

- People with disabilities may struggle to receive the support needed to ensure their instructions and interests are protected, and legal professionals may lack the required level of understanding of disability, which may negatively affect any decisions they make.<sup>7</sup>
- Aboriginal and Torres Strait Islanders are reportedly underrepresented in the family law systems - for a range of reasons, including a lack of understanding about the family law system, resistance to engagement and a lack of culturally responsive services.<sup>8</sup>
- Similarly, people from CALD backgrounds are less likely to access the family law system - with a lack of knowledge of the law or availability of services, language and literacy barriers, cultural or religious issues and concerns about the perceived cost all presenting barriers to access.<sup>9</sup>
- Women (and children) who suffer from family violence face significant barriers in accessing justice through the courts and are at greater risk of social and economic marginalisation.<sup>10</sup>
- Those living in regional areas can face geographical barriers which may limit their access to family law services, as well as concerns of “visibility” - of being seen to use services.<sup>11</sup>

As a result, the very groups who may be most at need of a quick and just resolution from the courts are the least likely to be able to access them. This submission is ultimately concerned with the disadvantaged and marginalised groups identified above and aims to provide recommendations on how to better accommodate their needs and ensure greater access to the family law system.

## **1.2 Family Violence is a Gendered Phenomenon**

Family violence is complex and no two experiences are the same. There can be many forms of violence and it is experienced in different ways, but abuse of power and the exercise of coercion and control are at the heart of all violence.<sup>12</sup>

Women and men can be victims of family violence:-

---

<sup>7</sup> Ibid 28.

<sup>8</sup> Family Law Council, *Improving the Family Law System for Aboriginal and Torres Strait Islander Clients* (2012) 4.

<sup>9</sup> Family Law Council, *Improving the Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds*, (2012) 30–47.

<sup>10</sup> Australian Women Against Violence Alliance, *Access to Justice for Women and Children Living with or at Risk of Violence: Policy Brief* (2016), 1.

<sup>11</sup> Australian Law Reform Commission, *Review of the Family Law System: Issues Paper* (2018) 33–4.

<sup>12</sup> State Government of Victoria, 2017, *Free From Violence: Victoria’s strategy to prevent family violence and all forms of violence against women*, 11.

- i) 1 in 4 Australian women have experienced emotional abuse by a current or former partner
- ii) 1 in 4 Australian women have experienced physical or sexual violence from a partner
- iii) 1 in 7 Australian men have experienced emotional abuse by a current or former partner
- iv) 1 in 19 Australian men have experienced physical or sexual violence from a partner

We recognise that men are victims of family violence and do not wish to diminish the impact family violence can have on them. However, the Royal Commission into Family Violence uncovered an uncomfortable truth, family violence is a gendered phenomenon. The majority of victims (**75%**) are women.<sup>13</sup> In addition, the majority of acts of family violence and sexual assault are perpetrated by men against women and this violence is likely to have more severe impacts on female than male victims.<sup>14</sup> For this reason, the focus of this submission is predominantly female victims of family violence.

### 1.3 Approach to Addressing the Terms of Reference

This submission was undertaken as part of the Monash University Law Students' Society's *Just Leadership Program*. However, it has been undertaken independently, and is therefore not a reflection of the views of Monash University.

As discussed above, our submission chose to focus on questions from the Issues Paper that focused on problems regarding the accessibility of the family law system and how the system might better accommodate disadvantaged and marginalised persons - these people include victims of family violence, which disproportionately consists of women, those with disabilities, with CALD backgrounds, those based in rural areas and those with limited financial resources.

These questions were (in the order they appear in the Issues Paper):

1. In what ways could access to information about family law and family law related services, including family violence services, be improved?
2. How might people with family law related needs be assisted to navigate the family law system?

---

<sup>13</sup> Victorian State Government, *Safe and Strong Victoria: Preventing Violence Against Women Through Gender Equality*, iii.

<sup>14</sup> Our Watch, *Understanding Facts and Figures* accessed 6 May 2018  
<<https://www.ourwatch.org.au/understanding-violence/facts-and-figures>>

3. What changes can be made to court procedures to improve their accessibility for litigants who are not legally represented?
4. How can parties who have experienced family violence or abuse be better supported at court?

This submission is based predominantly on answers from nine participants in response to these questions. All nine participants have worked with disadvantaged and marginalised people accessing the family law system. All correspondence for the submission was in English. Participants were based in Melbourne and recruited through professional connections and referrals.

All participants were offered anonymity prior to their interview. This was to ensure participants felt free to communicate openly and not have their personal views associated with their workplaces. As a result, some participants chose to withhold their names. However, all participants shared their job descriptions.

Table 1.1 lists the participants interviewed for this submission. This includes the names of those who agreed to be identified and their corresponding professions. The participants have been numbered in no particular order:

Table 1.1

Full Interviews		Job Descriptions	Interview details
Appendix A	Participant 1 – Chelsea Leatham	Social Worker	Phone Interview (21 April 2018)
Appendix B	Participant 2 – Lydia Sorensen	Youth and Families Support Worker	E-mail Responses (26 April 2018)
Appendix C	Participant 3 – Eleni Bailey	Former Family Lawyer, Current Social Worker	E-mail Responses (23 April 2018)
Appendix D	Participant 4 – Shehara Skilbeck	Social Worker	E-mail Responses (24 April 2018)
Appendix E	Participant 5 – Judge Ron Curtain	Judge in the Family Court	Phone Interview (26 April 2018)
Appendix	Participant 6 –	Former Court Support Volunteer for Victims of	Phone Interview

F	Suzanne Marriner	Domestic Violence at Moorabbin Magistrates' Court, Current Housing Support Worker at a Women's Crisis Service	(26 April 2018)
Appendix G	Participant 7 – Anonymous	Family Violence Support Worker	Phone Interview (29 April 2018)
Appendix H	Participant 8 – Malcolm Bennett	Retired Supervising Lawyer – worked in Community Legal Centres for over 30 years	E-mail Responses (29 April 2018)
Appendix I	Participant 9 – Robyn Heath	Supervising Solicitor at Springvale Monash Legal Services, South Eastern Centre Against Sexual Assault (SECASA) Division	E-mail Responses (3 May 2018)

Table 1.1 identifies the participants who provided written responses over e-mail and those who were interviewed over the phone where their responses were subsequently transcribed. Responses varied in length depending on participants' availability. The phone interviews sometimes included follow-up questions in addition to those from the Issues Paper. Participants 1 & 2 answered only three questions.

Our submission is limited to the views and perspectives of our professional and personal contacts. Further research needs to be done with disadvantaged and marginalised people to gain their views and experiences of navigating the Family Court.

Though a limited sample, all participants have had firsthand experience working extensively with disadvantaged and marginalised people navigating the Family Court. Collectively, the nine participants offer valuable insights from which we have been able to draw recommendations to improve the accessibility of the family law system for disadvantaged and marginalised people.

## **2. In what ways could access to information about family law and family law related services, including family violence services be improved?**

### **2.1 Introduction**

The interview responses revealed three major themes across their answers. Firstly, the need for information about the family law system and supplementary services to be better integrated. Participants spoke about creating a ‘one-stop shop’ for disadvantaged and marginalised people who might need a multitude of supplementary services to support them in issues beyond their legal disputes. Secondly, the court system must focus on providing user-oriented experience, particularly for disadvantaged and marginalised people. Thirdly, that publicity surrounding the availability of support services should be targeted to the community. This can help create an informed general community, as opposed to only targeting those who already find themselves embroiled in the system.

### **2.2. An Integrated System**

*“I think services work separately rather than together.” – Participant 4*

There was repeated emphasis of the importance of providing information that was integrated. A litigant in the family court system will often need the help of several services. Yet, as Participant 4 who works as a social worker noted from her experience, lawyers often would not speak to social workers or other services that had been assisting their client.<sup>15</sup> However, as Judge Ron Curtain said, ‘the best outcomes are the ones where everyone works well together’.<sup>16</sup>

---

<sup>15</sup> Interview with Suzanne Marriner (Melbourne, 26 April 2018).

<sup>16</sup> Interview with Judge Ron Curtain (Melbourne, 26 April 2018).

Participant 6 felt there was a lot of potential in call centres to create a “one-stop shop”.<sup>17</sup> Call centres and helplines were cited as an important information tool by five of the eight participants. As Participant 1 notes, a lot of helplines and services are presently available for women and ‘an area that is getting a huge amount of funding’.<sup>18</sup>

Currently, help lines for legal advice and supplementary services tend to be distinct. The Family Law National Enquiry Centre (NEC) provides information about ‘family law procedures and provide the right forms’.<sup>19</sup> The NEC also assists in registering for the ‘Commonwealth Courts Portal where you can file most applications and supporting documents, track the progress of your case and access your case information’.<sup>20</sup> This service also has a live chat option that Participant 3 felt would be helpful.<sup>21</sup> However, this helpline is limited to administrative questions about the court process.

For help with ‘information about the family law system’ or referrals to other necessary services, there is a separate hotline, the Family Relationship Advice Line (FRAL).<sup>22</sup> Other hotlines include the National Sexual Assault, Domestic Family Violence Counselling Service also known as 1800 RESEPCT.<sup>23</sup> These services can help connect callers or those who use their online chat with different services like counselling groups and so forth, but not legal services.<sup>24</sup>

These information centres are huge steps in the right direction, but finding a way to consolidate these helplines and record a client’s needs across all areas would be an incredible tool to help victims. Also, while we were dealing with an admittedly limited sample of participants, four of the five participants that addressed helplines or online chats were either unaware of these hotlines or what they covered. This suggests a need for further publicity around these existing avenues in the meantime.

---

<sup>17</sup> Interview with Suzanne Marriner (Melbourne, 26 April 2018).

<sup>18</sup> Interview with Chelsea Leatham (Melbourne, 21 April 2018).

<sup>19</sup> Family Court of Australia, *Family Law National Enquiry Centre (NEC)* (3 May 2016) Family Court of Australia <<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/contact-us/national-enquiry-centre/>>.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid; Interview with Eleni Bailey (Melbourne, 23 April 2018).

<sup>22</sup> Family Relationships Online, *Family Relationships Advice Line*, Family Relationships Online <<https://www.familyrelationships.gov.au/talk-someone/advice-line#a1>>.

<sup>23</sup> National Sexual Assault, Domestic Family Violence Counselling Service, *1800RESPECT*, (2016) 1800RESPECT <<https://www.1800respect.org.au/>>.

<sup>24</sup> Ibid.

Participant 4, recommended a support worker who can ‘act as an advocate and speak to the lawyer if needed, educate the client on the court system [and] [i]f women need access to housing after court the social worker can offer assistance’.<sup>25</sup> Participant 4 envisaged a support worker being able to act as a consistent intermediary between the victim and the many services they might need. This would admittedly require caseworkers with sufficient funding and time to work consistently with a client throughout their family law journey.

A more economical alternative might be establishing a portal, similar to the Commonwealth Court Portal. This would allow users to ‘track the progress of [their] case and access [their] case information’.<sup>26</sup> For family law participants, a similar portal could help users document the progress of both the legal and non-legal services they may engage with. The portal could provide contact information and descriptions of all potentially relevant services. The portal could also provide a way for services to update the user’s file for the client to see all the advice they’ve received thus far and steps they need or should take. This would also provide an easier method for clients to share an overview of all their needs and steps that have been taken across all the professionals that might come into contact with their case. This could also potentially lessen the workload of social workers that could use the portal for clients who might not be able to use it themselves. Catering to these particularly disadvantaged and marginalised groups of people was another point of importance to the participants.

### **2.3 Catering to Those with Special Needs**

*“How does a person with no computer skills, where English is not their first language, cope or understand?” – Participant 8*

Participant 8 felt ‘the family law system started off with the proposition that unrepresented parties could navigate the system’ and that ‘this ‘culture ... remains today’.<sup>27</sup> According to participant 8 the increasing workload of the family law system seemed to be increasing the complexity of the system.<sup>28</sup> Participant 8

---

<sup>25</sup> Interview with Shehara Skilbeck (Melbourne, 26 April 2018).

<sup>26</sup> Family Court of Australia, *Family Law National Enquiry Centre (NEC)* (3 May 2016) Family Court of Australia <<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/contact-us/national-enquiry-centre/>>.

<sup>27</sup> Interview with Malcolm Bennett (Melbourne, 29 April 2018).

<sup>28</sup> *Ibid.*

cited ‘at the first hearing, in the Federal Circuit Court, parties will only be able to file affidavits of ten pages or less or the judges will only need to read ten pages of an affidavit that the parties consider relevant.’<sup>29</sup> This example, to Participant 8, was indicative of a shifting of the workload of family disputes on to users of the system.

Participant 3 echoed the findings outlined in our introduction that people with ‘disabilities or in DV [domestic violence] situations’ needed ‘specific help and protection as they were often particularly lacking in resources’.<sup>30</sup> Participant 4 noted that the same could be said of those from CALD backgrounds. As such, increasing procedural requirements in the interest of the courts’ workload should at the very least come with exceptions for particularly disadvantaged and marginalised users, if not curtailed entirely.

Of the hotlines discussed above, only 1800 RESPECT, made note of its availability for Australians ‘who don’t speak English, ... [who] find it easier to speak through an interpreter or translator’ or who have vision, hearing or speech impediments.<sup>31</sup>

The NEC made no mention on their home pages about how users might overcome language barriers but had a chat option for those who presumably had speech or hearing impediments. FRAL had arrangements for those who may have hearing or speech impairments. However, for those who did not speak English, FRAL merely provided an external link at the bottom of their website to the Translating and Interpreting service of the Australian Government Department of Home Affairs.<sup>32</sup>

All information services should make clear their options for those with specific language or ability requirements and have those options available. Participant 4, also noted, however, that there should also be sensitivity for the obstacles that certain cultural differences might cause.<sup>33</sup> She suggested working with

---

<sup>29</sup> Ibid; Federal Circuit Court of Australia, *Practice Direction No 2 of 2017 – Interim Family Law Proceedings*, 7 December 2017, [6], [12].

<sup>30</sup> Interview with Eleni Bailey (Melbourne, 23 April 2018).

<sup>31</sup> National Sexual Assault, Domestic Family Violence Counselling Service, *1800RESPECT*, (2016) 1800RESPECT <<https://www.1800respect.org.au/>>.

<sup>32</sup> Family Relationships Online, *Family Relationships Advice Line*, Family Relationships Online <<https://www.familyrelationships.gov.au/talk-someone/advice-line#a1>>; Australian Government Department of Home Affairs, *Translating and Interpreting Service*, Translating and Interpreting Service <<https://www.tisnational.gov.au/>>.

<sup>33</sup> Interview with Shehara Skilbeck (Melbourne, 26 April 2018).

‘community leaders... to help support people from their culture navigating the system’.<sup>34</sup> This might admittedly be difficult to implement across all potential cultural backgrounds that might engage with the system. However, it does go to another point that became apparent in participants’ responses, which was improved community education and engagement.

## 2.4 Community Education

*“They are just living in a bubble – they often don’t talk about it in their community and they just suffer.”*

*– Participant 7*

Participants also noted the importance of creating larger community awareness. Participant 2, for example, recommended that information be made available in ‘community organisations’ and to ‘emergency services and community service workers’.<sup>35</sup> Participant 7 also expressed an interest in having ‘more training for lawyers and barristers’.<sup>36</sup> From these results, it seems apparent that professionals likely to come into contact with victims of family violence should have further training to both identify family violence and be better informed as to how to inform potential victims of possible next steps.

Participants noted that an informed and confident community attitude to early intervention for cases of family violence might go a long way in improving victims’ access to information. Participant 6, made reference to the “Say No to Violence” ad campaigns that have been on television but noted that while they were important in creating cultural shift to prevent family violence, they did not necessarily empower the community with information on steps for those currently facing family violence.<sup>37</sup>

Moreover, victims of family violence may not necessarily be actively seeking such information until it might be too late. Also, as Participant 9 points out, family violence victims ‘are often isolated by their partner or partner’s family and it may be difficult for them to leave the family home’.<sup>38</sup>

---

<sup>34</sup> Ibid.

<sup>35</sup> Interview with Lydia Sorensen (Melbourne, 26 April 2018).

<sup>36</sup> Interview with Participant 7 (Melbourne, 29 April 2018).

<sup>37</sup> Interview with Suzanne Marriner (Melbourne, 26 April 2018); Commonwealth of Australia, *Violence Against Women. Let’s Stop It At the Start* (2018) Respect <<https://www.respect.gov.au/>>.

<sup>38</sup> Interview with Robyn Heath (Melbourne, 3 May 2018).

Therefore, it is important that information is made available in places that are accessible to all members of the community, where victims would not have the onus of seeking this information. For example, Participant 6 suggested providing information at local supermarkets because ‘I think everyone does shopping at the supermarket at some point’.<sup>39</sup> Participant 7 noted further examples like going to local churches and Participant 9 suggested ‘outreach services at hospitals, community centres, [and] maternal child health centres’.<sup>40</sup> She noted that these efforts would be particularly important for areas with large CALD populations because ‘[a] lot of women who do need help and are part of minority groups don’t go outside their community’.<sup>41</sup> This observation is supported by findings from the Victorian Royal Commission into Family Violence that found victims of family violence from CALD backgrounds, in particular, were often denied access by family to phones, internet, employment and even English language classes.<sup>42</sup>

---

<sup>39</sup> Interview with Suzanne Marriner (Melbourne, 26 April 2018).

<sup>40</sup> Interview with Participant 7 (Melbourne, 29 April 2018); Interview with Robyn Heath (Melbourne, 3 May 2018).

<sup>41</sup> Interview with Robyn Heath (Melbourne, 3 May 2018).

<sup>42</sup> Victoria, Royal Commission into Family Violence, *Report and Recommendations* (2016) Vol V 105.

### **3. How might people with family law related needs be assisted to navigate the family law system?**

#### **3.1 Introduction**

The interview responses identified five key areas to help disadvantaged and marginalised people navigating the court system. The first key area was the need to improve the accessibility of information about the court system. The second was the need to increase the provision of support services for disadvantaged and marginalised people navigating the court system. The third key area was to increase the amount of funding to community legal services to increase the provision of free legal support available for disadvantaged and marginalised people accessing the court system. The last key area was improving the accessibility of the court for those who experience barriers in getting to court.

In particular, participants discussed the need for more social workers inside the court to act as advocates for vulnerable women and children. One participant specifically noted the lack of childcare in the court and how this is a barrier for many women accessing the court. Two participants also spoke about the need for the court to have workers who speak different languages to help those from CALD backgrounds, especially women, feel more comfortable in the court environment.

#### **3.2 Increasing information for vulnerable people in the court system**

*“I would like to see each party, given a social worker/support worker on top of their lawyer who can accompany them to court, support them in the process, explain to them what’s going to happen and liaise with their lawyer.” - Participant 3*

Participants spoke about the need to improve access to information to help women navigate the family law system. For example, Judge Ron Curtain felt people needed access to more information about the court system, resources available and options for help.<sup>43</sup>

Providing information on the court system can be done both inside and outside the court, as noted by Participant 4.<sup>44</sup> Participant 4 stated this could begin by having more social workers in police stations.<sup>45</sup> This can provide assistance to women who are already in contact with police due to family violence related issues.<sup>46</sup> A social worker could sit down with victims in a safe environment and explain to them their rights and what to expect if they want to take the matter to court.<sup>47</sup>

All participants highlighted the need for more social workers or advocates in the court system. Participant 6 who works in a women's crisis service previously worked in a court support role.<sup>48</sup> The court support role was a volunteer program, which involved a consortium of organisations.<sup>49</sup> Workers were on a roster and worked at the Magistrate's court in Moorabbin to support women who were there for family violence intervention order matters.<sup>50</sup> The entry point for the service was through the registrars at the court.<sup>51</sup> Participant 6 noted once women spoke to the registrar, they were asked if they had any support with them and if they would like to see a support worker.<sup>52</sup> Participant 6 felt this service was positive for vulnerable women and highlighted the need for all courts to have a family violence worker.<sup>53</sup>

Participant 4 similarly noted that this type of service was both lacking and needed in the court system as it could help victims of family violence feel better supported in coming to court.<sup>54</sup> Similarly, Participant 8 noted ancillary services like a social worker or volunteer services should be available on a permanent

---

<sup>43</sup> Interview with Judge Ron Curtain (Melbourne, 26 April 2018).

<sup>44</sup> Interview with Shehara Skilbeck (Melbourne, 26 April 2018).

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> Interview with Participant 6 (Melbourne, 26 April 2018)

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

<sup>54</sup> Interview with Shehara Skilbeck (Melbourne, 26 April 2018).

basis at the courts like Court Networkers.<sup>55</sup> All participants felt this lack of non-legal expertise in the court was a significant gap in the court system. This highlights the need for the courts to provide more access to professionals with complementary expertise and information about court processes, particularly to vulnerable people.

### **3.3 Increasing support services for vulnerable people navigating the court system**

*“People with specific needs, such as people with disabilities, or in DV [domestic violence] situations also need specific help and protection as they are often particularly vulnerable.” – Participant 3*

Participants identified three key areas to improve the provision of support for disadvantaged or marginalised users in the family law system. The first key area was improving the provision of legal support.

Judge Ron Curtain stated this support is needed from legal aid, police and the legal profession as a whole.<sup>56</sup> According to Judge Ron Curtain this could also come from community legal centres and lawyers doing pro bono work as well as paid work.<sup>57</sup>

The second key area was the provision of emotional support for vulnerable people accessing the Family Court. This was a common theme that emerged from many of the participants. Participant 4 noted all court registrars should offer people the chance to see a social worker and explain what a social worker does in the court.<sup>58</sup> If people wanted this service they should have the opportunity to speak to someone immediately who can inform them of the court process, provide emotional support and arrange referrals.<sup>59</sup>

The third key area was the provision of safety measures for women and children and their support workers leaving court, which was noted by two participants. Participant 7 said there had been times when

---

<sup>55</sup> Interview with Malcolm Bennett (Melbourne, 29 April 2018); Court Network, *Court Network* (2016) Court Network <<http://www.courtnetwork.com.au/>>.

<sup>56</sup> Interview with Judge Ron Curtain (Melbourne, 26 April 2018).

<sup>57</sup> Ibid.

<sup>58</sup> Interview with Shehara Skilbeck (Melbourne, 26 April 2018).

<sup>59</sup> Ibid.

the perpetrator would leave the women alone after court but would follow their case workers to the train station.<sup>60</sup> This highlights the need for social workers in the court to conduct risk assessments to assess the safety of women, children and workers leaving court.

### 3.4 Increasing funding to legal services

*“Fund family lawyers at Community Legal Centres and encourage, facilitate and help fund the relevant services provided by universities as part of clinical legal training.” – Participant 9*

Five participants noted the issue of funding and the need for more legal resources for vulnerable people. Participant 8, for example, noted the need for more legal aid funding for people who cannot afford their own legal costs.<sup>61</sup> According to Participant 8, legal centres need more funding as funding from the Commonwealth had been cut down year after year in the family law area.<sup>62</sup> This was a concern for many of the participants interviewed in this submission. Participant 9 expressed the need for more funding for Victorian Legal Aid as too many people do not meet the guidelines for assistance.<sup>63</sup> By providing more funding to Victorian Legal Aid and other community legal centres this can make legal services more accessible for vulnerable people.

The participants’ findings are supported by data. Commonwealth funding has reduced substantially since 1997, from around \$10.88 per capita in 1996 to \$8.01 per capita, a decline, which PWC estimates will continue in the near future.<sup>64</sup> Entry requirements to the services have also been tightened to ensure the most vulnerable of litigants get access to representation and funding.<sup>65</sup> Moreover, as with Legal Aid, Commonwealth funding for Community Legal Centres (CLCs) has continued to decline, and will decrease by a further 30% by 2020.<sup>66</sup> In 2015, 150 000 people were turned away from CLCs due to a lack

---

<sup>60</sup> Interview with Participant 7 (Melbourne, 29 April 2018).

<sup>61</sup> Interview with Malcolm Bennett (Melbourne, 29 April 2018).

<sup>62</sup> Ibid.

<sup>63</sup> Interview with Robyn Heath (Melbourne, 3 May 2018).

<sup>64</sup> Law Council of Australia, *2017–2018 Federal Budget* (2017) 6, 19, 22.

<sup>65</sup> Ibid.

<sup>66</sup> National Association of Community Legal Centres, *Media Release: One year until crippling cuts to legal assistance sector*, 1 July 2016.

of capacity.<sup>67</sup> The Productivity Commission has recommended an additional \$200 million for legal assistance services to the state and federal governments.<sup>68</sup>

Participant 6 highlighted that a hotline run by both lawyers and social workers could support those who would not be able to access CLCs because of conflicts of interests.<sup>69</sup> As discussed above, while there are hotlines offering advice on family law matters, many of the respondents seemed unaware of them. This is despite their connection to the industry, suggesting issues with awareness rather than availability.<sup>70</sup>

Participant 9 also discussed how she would prefer to see an increase in funding for Less Adversarial Trials where the judge or Registrar can talk informally with the parties.<sup>71</sup> This is to reach a final agreement, and organise compulsory case conferences for small property disputes where a final agreement must be reached.<sup>72</sup> A range of women's legal services has made similar calls, with calls for streamlined case management for smaller property disputes with simpler procedural and evidentiary requirements.<sup>73</sup> This would help better address the power and economic imbalances often felt by women in the family law system.<sup>74</sup>

### 3.5 Increasing the accessibility of the courts

*“Accessibility helps make sure people can access this stuff. So there’s no barriers, making it easy to come to court and also easy to get duty lawyers to help represent people in court and write applications.” –*

*Judge Ron Curtain*

---

<sup>67</sup> Ibid.

<sup>68</sup> Productivity Commission, *Access to Justice Arrangements*, Final Report, September 2014, Commonwealth of Australia, Recommendation 21.4.

<sup>69</sup> Interview with Participant 6 (Melbourne, 26 April 2018).

<sup>70</sup> See discussion regarding hotlines and online chats in parts 2.3–2.4 above.

<sup>71</sup> Family Court of Australia, *Less Adversarial Trial*, Family Court of Australia <<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/publications/court-events/less-adversarial-trials>>.

<sup>72</sup> Ibid.

<sup>73</sup> Women's Legal Service Victoria, *Small Claims, Large Battles Report* (2018) 5.

<sup>74</sup> Ibid.

Another key area participants identified was making the court more accessible for disadvantaged and marginalised people. Participants noted four key areas to improve the accessibility of the courts. The first key area was addressing the costs for having to come to court. Participant 3 described the family law system currently as a complex, costly, time consuming activity for families who are already in a state of high stress.<sup>75</sup> Participant 3 highlighted the need for court processes to be streamlined with simple forms and affordable filing fees.<sup>76</sup>

The second key area was the issue of childcare. Participant 7 described the Court as ‘not a place set up for women’.<sup>77</sup> Participant 7 discussed how the lack of childcare in the court makes it difficult for women having to go to court for intervention orders.<sup>78</sup> According to Participant 7 women are forced to bring their children with them, which can be frowned upon and work against them because they are seen as ‘bringing the children through the Court to overhear what Dad has done to her’.<sup>79</sup> The lack of childcare was a significant issue for Participant 7 as this was not a service that could be provided by their organisation.<sup>80</sup> This highlights a gap in services for vulnerable women and children who require childcare while they navigate the court system.

These concerns were mirrored in submissions to the ALRC.<sup>81</sup> To address this issue, a service modelled after those available at the Neighbourhood Justice Centre, where childcare is available when needed, could be introduced in all Family Courts.<sup>82</sup>

The third key area was the need to make the court more culturally sensitive to women from CALD backgrounds. Two participants noted this, in particular. Participant 7 felt that courts needed workers that speak the language of CALD women accessing the court.<sup>83</sup> Participant 7 stated having women of colour

---

<sup>75</sup> Interview with Eleni Bailey (Melbourne, 23 April 2018).

<sup>76</sup> Ibid.

<sup>77</sup> Interview with Participant 7 (Melbourne, 29 April 2018).

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

<sup>81</sup> Australian Law Reform Commission, *Review of the Family Law System: Issues Paper* (2018) 39, 120.

<sup>82</sup> State of Victoria, *Family Violence/Personal Safety Matters* (4 May 2018) Neighbourhood Justice Centre <<https://www.neighbourhoodjustice.vic.gov.au/attend-court/going-to-court/family-violencepersonal-safety-matters>>.

<sup>83</sup> Interview with Participant 7 (Melbourne, 29 April 2018).

in the court plays a huge part to help women from CALD backgrounds.<sup>84</sup> According to participant 7 this is the same for Indigenous women as '[t]hey don't want to speak to white women'.<sup>85</sup>

Participant 7 discussed how having women of colour who work in the court system can help CALD women open up.<sup>86</sup> As participant 7 highlighted 'women are the ones that have to open up when they go to court. They have to air their dirty laundry whether they like it or not', making it crucial that their emotional needs are met.<sup>87</sup>

This was similar to the views from Participant 4 who stated family violence and sensitive family issues are not always discussed in some cultures.<sup>88</sup> Participant 4 explained in some cultures it can be seen as 'taboo' to talk about these issues.<sup>89</sup> This makes it difficult for women of CALD backgrounds to seek help and go through the court system even when they need it. Participants 4 suggested further support for community leaders to educate them about the court process.<sup>90</sup> This is to equip community leaders to share this information to people they might know who are experiencing family violence.<sup>91</sup>

The last key area was making the court come to people who find it difficult accessing the court. Judge Ron Curtain felt the court should go to people.<sup>92</sup> Judge Ron Curtain said the Family Court is the only Central Court that circuits and felt that more of that was needed.<sup>93</sup> Having the court circuit to a greater extent could help address one of the most significant barriers for women who live in rural areas, the geographical barrier which can limit their access to Family Courts or support services.<sup>94</sup> However, simply having the court circuit may be insufficient if the required support services aren't present.

---

<sup>84</sup> Ibid.

<sup>85</sup> Ibid.

<sup>86</sup> Ibid.

<sup>87</sup> Ibid.

<sup>88</sup> Interview with Shehara Skilbeck (Melbourne, 26 April 2018).

<sup>89</sup> Ibid.

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> Interview with Judge Ron Curtain (Melbourne, 26 April 2018).

<sup>93</sup> Ibid.

<sup>94</sup> Amanda George and Bridget Harris, 'Landscapes of Violence: Women Surviving Family Violence in Regional and Rural Victoria' (Report, Centre for Rural Regional Law and Justice, Deakin University School of Law, 2014) 59.

## **4. What changes can be made to court procedures to improve their accessibility for litigants who are not legally represented?**

### **4.1 Introduction**

*“I have three words for you ... information, support and accessibility.” – Judge Ron Curtain*

Ideally, when a person enters into a dispute with another person, they turn to the expertise of lawyers who are trained to navigate legal processes and structures. However, the cost of litigation is expensive and is beyond the reach of many.<sup>95</sup> Thus, many represent themselves as self-represented litigants (SRLs).

SRLs are defined as people ‘who are involved in legal proceedings who act and speak for themselves. They do not have a lawyer who gives them advice or speaks for them’.<sup>96</sup> Litigants may be self-represented as a result of lack of funds, but also because they believe they are the best placed to represent themselves.<sup>97</sup> There are two significant issues with SRLs. Firstly, a SRL may pose a risk to their own substantive rights due to the lack of ability to defend or assert their rights.<sup>98</sup> Secondly, SRLs place a significant burden on the efficiency and effectiveness of court processes.<sup>99</sup> Currently, roughly half the family trials in the Federal Circuit Court include SRLs, and those who do face a significant barrier to

---

<sup>95</sup> E Richardson, T Sourdin and N Wallace, *Self-Represented Litigants: Literature Review* (Australian Centre for Court and Justice System Innovation, Melbourne, 2012) 14.

<sup>96</sup> Victoria State Government, ‘Access to Justice Review: Background Paper – Self-Represented Litigants’ (Review, Victoria State Government Department of Justice and Regulation) 1.

<sup>97</sup> *Ibid* 2.

<sup>98</sup> *Ibid* 3.

<sup>99</sup> *Ibid*.

access justice.<sup>100</sup> SRLs are confronted with complex rules and forms, and can have difficulty understanding the evidence required.<sup>101</sup>

Thus, exploring the ways in which court procedures can be changed to improve its accessibility for SRLs is an important question in need of critical attention. At the heart of the solutions we received from our 9 participants were two themes – access and support. Issues of access related both to improved access to legal aid and duty lawyers as well as to information. Issues of support related to support for SRLs and the court. There was an overlap in the responses that we received indicating that issues relating to self-representation and access are commonly held opinions amongst those in the delivery of family law services.

## 4.2 Access

A significant barrier to justice is the financial position of the litigants. As mentioned earlier, this is also one of the main reasons litigants may choose to represent themselves. The main solution, as argued by the majority of our participants, was access to representation. Access could predominantly be accounted for by offering more duty lawyers in courts and by increasing funding to Legal Aid who could then provide more services to litigants. Participants 4, 5, 7 and 8 highlighted the need for more funding of institutions like Legal Aid.<sup>102</sup> If assistance by way of representation cannot be provided, then they should be provided by way of duty lawyers tasked with offering advice to litigants as the case unfolds. This would require increased funding on both a state and federal level.<sup>103</sup>

---

<sup>100</sup> Australian Law Reform Commission, *Review of the Family Law Systems: Issues Paper* (2018) 37, 110.

<sup>101</sup> Women's Legal Service Victoria, *Small Claims, Large Battles Report* (2018) 20.

<sup>102</sup> Interview with Shehara Skilbeck (Melbourne, 26 April 2018); Interview with Judge Ron Curtain (Melbourne, 26 April 2018); Interview with Participant 7 (Melbourne, 29 April 2018); Interview with Malcolm Bennett (Melbourne, 29 April 2018).

<sup>103</sup> See discussion outlining recent cuts to funding in part 3.4 above.

A second recommendation we received was the need to provide SRLs better access to information.<sup>104</sup> Access to information overlaps with the second of the two themes, support, as providing access to information is a form of support. The participants in our study noted the difficulty in understanding the systems and processes of the family law system, which was largely due to the complexity of information.<sup>105</sup> Knowledge of litigation processes is difficult to understand without formal education, which doesn't aid litigants who may have different education backgrounds and different cultural backgrounds, especially if they are not going to be legally represented. Thus, solutions to this issue are reshaping the language of the information so that it is simple and also providing the information in all major languages. One of our participants noted the shift in recent years to make information on the Family Law Court's website more accessible, especially for litigants who are self-represented. He noted that while these user-friendly articles exist, they could be set out much clearer.<sup>106</sup>

Another way in which it was recommended that there be better access to information was through the increased provision of informal services at Family Law Courts. For example, providing more volunteers or employed support workers who are tasked with aiding SRLs in navigating the legal processes. Specifically, aiding any enquiries relating to lodging documents, making applications, and other administrative tasks.

### 4.3 Support

What is clear from the interviews, is that litigants are often under supported. This can be at all stages of the litigation process. From commencing a dispute, progressing the dispute, to resolving the dispute, the legal system can be a confusing process. Issues of support are pronounced when the litigant is of another cultural background. Thus, Participants 3 and 5 asserted that Family Law Courts need to better aid CALD litigants by providing interpreters, and other staff that can help a SRL navigate the court system.<sup>107</sup>

---

<sup>104</sup> Interview with Chelsea Leatham (Melbourne, 21 April 2018); Interview with Eleni Bailey (Melbourne, 23 April 2018); Interview with Judge Ron Curtain (Melbourne, 26 April 2018); Interview with Participant 6 (Melbourne, 26 April 2018); Interview with Malcolm Bennett (Melbourne, 29 April 2018).

<sup>105</sup> Ibid.

<sup>106</sup> Interview with Malcolm Bennett (Melbourne, 29 April 2018).

<sup>107</sup> Interview with Eleni Bailey (Melbourne, 23 April 2018); Interview with Judge Ron Curtain (Melbourne, 26 April 2018).

Additionally, it was recommended that other forms of services be provided to litigants such as social workers. Judge Ron Curtain called for a need for courts to be ‘multi-resourced’, and in effect, a one-stop shop for litigants to access psychologists, social workers, duty lawyers, interpreters, and well-informed court employees.<sup>108</sup>

Improving the court experience can also better support a SRL. As is widely known and accepted, attending court can be an extremely stressful process for a person, let alone a disadvantaged or marginalised person. Judge Ron Curtain asserted that the court experience could be improved by making courts more customer-service oriented.<sup>109</sup> For example, this may be achieved by removing court employees from behind the counter, placing them on the floor of the foyer of the courthouse, allowing those employees to better recognise people who are confused or in need of help in order to better direct their attention.<sup>110</sup>

Within the courtroom, it was recommended that courts adopt a position of flexibility.<sup>111</sup> To this point, Judge Ron Curtain asserted the need for informal language between judges and litigants and in making the courtroom structure less formal. It was recommended that this could be achieved by lowering the Bench. This slight structural shift could allow an SRL to feel more comfortable and less intimidated by the courtroom.<sup>112</sup>

An area that was highlighted by our interviewees was the need to support litigants in regional centres.<sup>113</sup> This is already achieved to a certain degree by providing circuit courts. However, the existence of a circuit court does not guarantee the availability of the services offered in metropolitan centres. Specifically, duty lawyers may not always be available in regional circuit courts. Thus, a solution to this would be to attach duty lawyers to circuit courts.

---

<sup>108</sup> Interview with Judge Ron Curtain (Melbourne, 26 April 2018).

<sup>109</sup> Ibid.

<sup>110</sup> Ibid.

<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

<sup>113</sup> Ibid.

Another recurring comment amongst our interviewees who were all familiar with the Family Court and its processes was the urgent need for more funding to courts.<sup>114</sup> One of the participants, a retired Family Law Solicitor who practiced law in CLCs for a number of decades, raised a concern about insufficient time available in hearings and the rise in matters listed for courts.<sup>115</sup> As a result, courts are congested and wait-times for cases to be heard are in excess of one year.<sup>116</sup> More funding would solve a lot of the issues facing courts as it would reduce lengthy wait times and litigants, self-represented or not, to access justice.

---

<sup>114</sup> Interview with Eleni Bailey (Melbourne, 23 April 2018); Interview with Shehara Skilbeck (Melbourne, 26 April 2018); Interview with Judge Ron Curtain (Melbourne, 26 April 2018); Interview with Malcolm Bennett (Melbourne, 29 April 2018).

<sup>115</sup> Interview with Malcolm Bennett (Melbourne, 29 April 2018).

<sup>116</sup> Robyn Powell, 'Family Court Underfunded, Letting People Down, Chief Justice Says', *ABC News* (online), 1 May 2017 <<http://www.abc.net.au/news/2017-04-30/family-court-letting-families-down-chief-justice-says/8483858>>.

## 5. How can parties who have experienced family violence and abuse be better supported at court?

### 5.1 Introduction

In Australia, violence within intimate relationships contributes more to the disease burden for women aged 18 to 44 years than any other risk factor like smoking, alcohol use or being overweight or obese.<sup>117</sup> Family violence is caused by gender inequality and it is even more of a problem when it intersects with other forms of inequality and injustice such as sexual orientation, ethnicity, Aboriginality, rurality and socio-economic status.<sup>118</sup> Hence when members of our society who have experienced family violence and abuse attend our Family Court System to access justice and resolve their family law issues it is essential that they have appropriate support mechanisms in place.

Our interviewees revealed a number of ways that could ensure people who have experienced family violence and abuse can be better supported at court including:

- Early identification of family violence by judges
- Increased for people when attending court
- Increase of funding to family law services
- Child friendly spaces
- Allocation of support workers to cases
- Having an integrated family law system that deals with family law issues under the one roof
- Auditing of independent children's lawyers
- Prevention of traumatisation and having a more culturally sensitive service.

These recommendations are further explored below.

---

<sup>117</sup> Australia's National Research Organisation for Women's Safety (ANROWS), *A preventable burden: measuring and addressing the prevalence and health impacts of intimate partner violence in Australian women* (30 October 2016).

<sup>118</sup> Victorian State Government, *Safe and Strong Victoria: Preventing Violence Against Women Through Gender Equality*, ii.

## 5.2 Early identification of family violence

An estimated 2 194 200 women in Australia have experienced violence by a male intimate partner since the age of 15 years.<sup>119</sup> This is three quarters of the total estimate for women who have experienced violence by a known male.<sup>120</sup> The overwhelming majority of family violence against women is perpetrated by their partners.<sup>121</sup> It is important that the Family Law System recognises the prevalence of family violence in the community.

Participant 7, a family violence support worker, outlined her concern that duty lawyers who are present in court are not fully aware of the circumstances and the fear that victims of family violence experience.<sup>122</sup> She outlines that duty lawyers are rarely able to read between the lines and truly assess what a victim of family violence wants and needs.<sup>123</sup> A recommendation that Participant 7 makes is to have social workers assisting victims of family violence when duty lawyers are not available, or in addition to duty lawyers to ensure that the large picture is encompassed. Participant 7 states ‘there is room for improvement’ in the zeal with which duty lawyers act in relation to cases involving family violence.<sup>124</sup> Hence, greater training and education in responding to allegations of family violence should be given to lawyers because of the intersection of issues and complex needs of family law clients.

Identification of family violence is achieved through the filing of Notice of Risks, which is compulsory for all parenting matters. However, this is just one component. Affidavit material details the extent to which individuals experience family violence. It is essential that judges have the time to read through and are able to identify the entire context through which the family violence is presented.

However, judges have immense work pressures and during a duty list day, can hear up to 30 matters in one morning.<sup>125</sup> There is no time to read all the material before them. A new practice direction was introduced in the Federal Circuit Court of Australia that limits affidavits accompanying initiating applications to 10 pages with 5 annexures which attempts to resolve the issue of judges not getting

---

<sup>119</sup> Victoria, Royal Commission into Family Violence, *Report and Recommendations* (2016) Vol I 51.

<sup>120</sup> Ibid.

<sup>121</sup> Ibid.

<sup>122</sup> Interview with Participant 7 (Melbourne, 29 April 2018).

<sup>123</sup> Ibid.

<sup>124</sup> Ibid.

<sup>125</sup> Interview with Participant 9 (Melbourne, 3 May 2018).

through all the duty list material for each case.<sup>126</sup> However, this creates problems for self-represented litigants who are not trained in identifying relevant legal issues. A further problem is that it limits judges' ability to properly identify family violence in certain cases.<sup>127</sup>

### **5.3 Increasing information for family violence victims at court**

In our interview with Judge Curtain, he outlined that there are safe rooms that victims of violence can access, to avoid being near the offender.<sup>128</sup> However, this is not public knowledge and so people cannot request this service if they do not know that it exists. There needs to be more transparency and information about the court system. The Royal Commission into Family Violence received a number of submissions that raised concerns about victims and perpetrators waiting in the same waiting room for hours, which could be potentially dangerous and contributes to already high feelings of anxiety and stress.<sup>129</sup> Some justice centres provide safe rooms, which could be a model worth pursuing.<sup>130</sup>

Participant 6 recommends that victims should be given fact sheets of the services available to them for support if they require or if they feel unsafe after they are given an intervention order.<sup>131</sup> The courts could retain the fact sheets to help disseminate information.<sup>132</sup> Information relating to registering intervention orders in different jurisdictions can be included. Hence, if the victim is planning on travelling interstate because the Australian criminal system is a state-by-state system they will be protected or at least have peace of mind when outside Victoria.

### **5.4 Increasing funding to family violence services**

---

<sup>126</sup> Federal Circuit Court of Australia, *Practice Direction No 2 of 2017 – Interim Family Law Proceedings*, 7 December 2017; Interview with Participant 8 (Melbourne, 29 April 2018).

<sup>127</sup> See also discussion about transferring the burdens of the Family Law system onto its users and the problems that might cause in part 2.3 above.

<sup>128</sup> Interview with Judge Ron Curtain (Melbourne, 26 April 2018).

<sup>129</sup> Victoria, Royal Commission into Family Violence, *Report and Recommendations* (2016) Vol III 130.

<sup>130</sup> See e.g. the Neighbourhood Justice Centre in Victoria.

<sup>131</sup> Interview with Participant 6 (Melbourne, 26 April 2018).

<sup>132</sup> See also discussion above about importance of disseminating information to community at large in part 2.4 above.

*“It’s a frustration for us as judges and we hope the government will give us more resources.” -*

*Judge Ron Curtain*

Parties who have experienced family violence can be better supported at court if they are *ready* for court and have obtained sufficient legal advice and assistance. The discussion here is divided into two subsections: community legal centres and the courts. It is essential that both are recognised as serving different but complementary purposes. Funding for both is desperately needed.

## **5.5 Victoria Legal Aid and Community legal centres**

The Crime Statistics Agency reports that in five years (from July 2009 to July 2014) there has been an increase in services provided by Victoria Legal Aid where the primary matter was related to family violence.<sup>133</sup> Victoria Legal Aid told the Royal Commission into Family Violence that duty lawyer services were at a saturation point and have not kept pace with the number of applications for intervention orders, and ‘cannot meet the increase in demand for such services without additional resource investment.’<sup>134</sup>

Participant 8, who is an experienced family law supervising solicitor saw first-hand year after year funding from the Commonwealth being cut down in the family law area.<sup>135</sup> Not only has funding been cut at the Commonwealth level but Monash University has changed the way its specialist family law program functions, making it a more generalist approach. Funding family law cases is so important,

---

<sup>133</sup> Victoria, Royal Commission into Family Violence, *Report and Recommendations* (2016) Vol I 56. Crime Statistics Agency, *An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009–10 to 2013–14* (January 2016) 18.

<sup>134</sup> Victoria, Royal Commission into Family Violence, *Report and Recommendations* (2016) Vol I 56; Victoria Legal Aid, *Untitled*, provided by Victoria Legal Aid to the Commission, 20 January 2016.

<sup>135</sup> Interview with Participant 8 (Melbourne, 29 April 2018).

particularly because it helps support children who are the innocent parties and helps meet human rights standards.<sup>136</sup>

## 5.6 The Family Court and the Federal Circuit Courts

A medial release by the Family Court in 2016 outlines there is a desperate need for additional funding in family violence related cases.<sup>137</sup> The Family Violence Committee of the Family Court of Australia and Federal Circuit Court of Australia ('the Committee') has reviewed the recommendations outlined in the Safety First in Family Law proposals and has identified a 5-step plan to respond to the increasing community needs around family violence.<sup>138</sup>

The media release requested funding for the 5 step plan which involves the following:-

- i) Ongoing training of the judiciary and court employees
- ii) Additional screening initiatives for family violence
- iii) Establish on the ground family violence specialists in Federal Court buildings
- iv) Helping people to navigate the legal complexities involving family violence, especially between Federal and State laws
- v) Early access to information, hearing dates and decisions

The Committee called for a \$6 million injection of funding to allow additional training and to introduce initiatives that will greatly assist the courts to quickly identify and assess issues of family violence.

Participant 9's responses recommended funding more judges to ease the work pressure and allow judges more time to properly assess risk in cases.<sup>139</sup> She outlined that a judge on the duty list may have up to

---

<sup>136</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 19. See also discussion on importance of providing these services to disadvantaged and marginalised people and SRLs in parts 3.4 and 4.2 above.

<sup>137</sup> Family and Federal Circuit Court of Australia, *Media Release: Family law system needs more resources to deal with an increasing number of cases involving family violence*, 20 June 2016.

<sup>138</sup> *Ibid.*

<sup>139</sup> Interview with Participant 9 (Melbourne, 3 May 2018).

thirty matters in one morning and there is no time to read the material.<sup>140</sup> Another way to attend to this issue is to ‘fund a team of support workers at court who are experienced in family violence and can provide direct feedback to a judge.’<sup>141</sup> There should also be better access to duty lawyers for any improved response to family violence to be achieved.<sup>142</sup>

## 5.7 Child friendly spaces

*“Courts should have more appropriate family friendly spaces for children” - Participant 2*

Participant 2, a youth and families support worker, emphasised the need for family friendly spaces for children who attend court with their primary carers for filing of court documents or attendance due to intervention orders.<sup>143</sup> This would assist victims of family violence and abuse and ensure they feel better supported at court, because they are not worrying about leaving their children.

Please refer above to Part 3.5 for a more comprehensive discussion about our recommendation involving child friendly spaces.

## 5.8 Increasing support services for family violence victims navigating the court system

*“Parties who have experienced family violence need more support at every step through the process.” - Participant 3*

Over 18 years ago, in 2000 Chief Justice of the Family Court, the Honourable Justice Alastair Nicholson saw our future as a unified system of family courts which include (under the one roof of the court) other

---

<sup>140</sup> Interview with Participant 9 (Melbourne, 3 May 2018).

<sup>141</sup> Interview with Participant 9 (Melbourne, 3 May 2018).

<sup>142</sup> See discussion of the importance of duty lawyers in parts 4.2 and 4.4 in the context of SRLs above.

<sup>143</sup> Interview with Participant 2 (Melbourne, 26 April 2018).

relevant professions such as psychologists, social workers and mediators.<sup>144</sup> In 2018 we are still talking about much of the same issues but it is now time to embrace that future. There are current psychologists who conduct s11F Reports under the roof of the court system and court appointed mediators. The final element to Chief Justice Nicholson vision is social workers. All of our interviewees recommended the inclusion of a social worker on a permanent basis at court.

Participant 3, who is a social worker, sees the need to appoint a support worker/social worker to family law cases on top of the family lawyer who can accompany parties to court and support them beyond their legal issues. Participant 9 also recommends the introduction of a team of social workers in the family court system that are experienced in family violence and can provide direct feedback to the judge.

Participant 8 recommends a social worker being available on a permanent basis and the model that can be used is the Court Networkers who volunteer their time at the Federal Circuit Court in Dandenong.<sup>145</sup>

## 5.9 An integrated system

Former Chief Justice Alastair Nicholson in 2000 outlined that it is “bewildering, costly and inefficient to deliver services through a plethora of courts, tribunals and social welfare agencies.”<sup>146</sup> Part of a unification of forums is to have a nationally consist risk assessment to family violence.<sup>147</sup> The Productivity Commissioner in 2014 noted that obtaining access to justice in the family law system can be more difficult for cases involving family violence.<sup>148</sup> Family law disputes involving allegations of family violence face many hurdles.<sup>149</sup> Some of these hurdles are caused by the fragmentation of the Australian

---

<sup>144</sup> The Honourable Justice Alastair Nicholson Chief Justice Family Court of Australia, 10<sup>th</sup> World Conference: Family Law: Processes, Practices and Procedures, *Future Directions in Family Law*, 10 July 2000, 11.

<sup>145</sup> Interview with Participant 8 (Melbourne, 29 April 2018).

<sup>146</sup> The Honourable Justice Alastair Nicholson Chief Justice Family Court of Australia, 10<sup>th</sup> World Conference: Family Law: Processes, Practices and Procedures, *Future Directions in Family Law*, 10 July 2000, 9.

<sup>147</sup> Rae Kaspiew, et al, *Evaluation of the 2012 Family Violence Amendments: Synthesis Report* (2015, Australian Institute of Family Studies, Commonwealth of Australia) 45.

<sup>148</sup> Productivity Commission, *Access to Justice Arrangements Inquiry Report* (Commonwealth of Australia, No 72, 2014) Volume 2, 855.

<sup>149</sup> VicHealth, *The health costs of violence: Measuring the burden of disease caused by intimate partner violence: A summary of findings* (2004, Melbourne) 10.

legal system, which is constitutionally entrenched. Unfortunately, parties who have experienced family violence must use multiple federal and state systems to resolve their legal disputes and obtain orders, which are necessary for safety, parenting and property matters. Families experiencing greater levels of family violence may have contact with the state criminal system, the child protection system and the federal law system.<sup>150</sup> This all becomes too complex and confusing for individuals who are already under incredible stress and pressure.

Furthermore, poor risk assessment practices can mean that crucial information received by one agency is not shared, which can have devastating consequences for the safety of women and children affected by violence, as shown by the Luke Batty case. The development of a revised CRAF in Victoria, which is currently underway, has the potential to provide a best-practice model for a validated risk assessment tool that could be used nationally.<sup>151</sup>

## **5.10 Independent Children's Lawyers**

Currently the general practice is to appoint an Independent Children's Lawyer ('ICL') when the judge has identified allegations of family violence, if the parties are unrepresented or if a represented party's lawyer requests this from the judge. The role of the ICL is to serve the best interests of the child by ensuring that the child is involved in decision-making about the proceedings. However, this does not mean that the child is the decision maker. The ICL considers factors such as the wishes of the child and the appropriateness of the child's involvement having regard to the child's age, developmental level, cognitive abilities and emotional state and views.<sup>152</sup> As outlined by Participant 9, often ICLs do a lot more than are specified in the guidelines, such as advising the judge during the proceedings when both parties are unrepresented.<sup>153</sup>

As Participant 9 outlined, ICLs should receive more training and should be audited to ensure a high standard of ICL work is being delivered because often ICLs are key drivers in litigated family disputes

---

<sup>150</sup> Royal Commission into Family Violence, *Report and Recommendations* (State of Victoria, 2016) Volume IV, 190.

<sup>151</sup> Royal Commission into Family Violence, *Report and Recommendations* (State of Victoria, 2016) Volume IV.

<sup>152</sup> Family Court of Australia, *Guidelines for Independent Children's Law*, (May 29, 2013).

<sup>153</sup> Interview with Participant 9 (Melbourne, 3 May 2018).

where the parties are unrepresented.<sup>154</sup> More often than not, these members are the most vulnerable in our community. Guidelines published by the Family Court outline that ICLs are responsible for case planning and need to seek to develop a case plan at the earliest opportunity and where appropriate consult with a Family Consultant or other expert involved in the case.<sup>155</sup>

### 5.11 Preventing re-traumatisation of family violence victims

Participant 4 outlines that safety measures are key. She recommends having social workers on site, or referred to by judges, who can provide taxi vouchers to victims travelling long distances and to ensure they get home safely from court.<sup>156</sup> This would go a long way to achieving accessibility at court for victims of violence and abuse.

Participant 9, Robyn Heath, who is the supervising solicitor at Springvale Monash Legal Service/South Eastern Centre Against Sexual Assault suggested that provisions in the *Family Law Act* could be modelled on sections 70, 71 and 72 of the *Family Violence Protection Act* to ensure that unrepresented litigants who have serious family violence allegations against them are not allowed to cross examine the victim in defended hearings.<sup>157</sup>

Victoria has trialled canine support for victims of sexual assault cases who have had to be cross-examined during hearings. The program has received support from the Victorian Premier and Victorian Attorney General. The Attorney General, Martin Pakula stated, ‘Giving evidence in court can be extremely daunting, particularly for young children and vulnerable witnesses. This unique program is helping to make the process a little less stressful for people in the system.’<sup>158</sup> Participant 4 similarly recommended having a pet in court can help reduce people’s anxiety and it can help provide a sense of safety in a stressful situation.<sup>159</sup>

---

<sup>154</sup> Ibid.

<sup>155</sup> Family Court of Australia, *Guidelines for Independent Children’s Law*, (May 29, 2013).

<sup>156</sup> Ibid.

<sup>157</sup> Interview with Robyn Heath (Melbourne, 3 May 2018).

<sup>158</sup> Victorian Government, *Media Release: Support Dogs Comfort Victims of Crime*, 19 January 2018.

<sup>159</sup> Interview with Participant 4 (Melbourne, 24 April 2018).

## 5.12 A more culturally sensitive service

Some groups and communities experience family violence at increased rates. For example, Aboriginal and Torres Strait Islander peoples might be at *least* 6.5 times more likely than non-Aboriginal and Torres Strait Islander to report being a victim of family violence.<sup>160</sup> Furthermore, Aboriginal and Torres Strait Islander women are 32.4 times more likely to be hospitalised as a result of family violence.<sup>161</sup> There were a number of suggestions made to the Commission about the benefits of specialist courts for family violence matters involving Aboriginal people.<sup>162</sup> If the proposed expansion of the Koori Court was to occur and include matters such as family violence protection orders this would go a long way in assisting victims of family violence who are also Aboriginal or Strait Islander peoples.

In addition, some of the general barriers which prevent culturally and linguistically diverse clients from fully utilising the family law system come down to a distrust in the system, uncertainty that the services would be culturally appropriate or sensitive and a desire to deal with issues within the community.<sup>163</sup>

A recommendation is to include a visible number of people from varied backgrounds working in the court system, which could address some of these concerns.<sup>164</sup>

## 6. Conclusion

The responses from our participants highlight key areas that need to be addressed to improve the accessibility of the Family Law Court. These key areas include the provision of social workers in the court, further funding to Legal Aid and other community services and the provision of childcare services in the court. This submission highlights the need to change these key areas in order to help disadvantaged and marginalised groups in the community access the Family Law Court.

---

<sup>160</sup> Royal Commission into Family Violence, *Report and Recommendations* (State of Victoria, 2016) Volume I, 59.

<sup>161</sup> Royal Commission into Family Violence, *Report and Recommendations* (State of Victoria, 2016) Volume I, 59.

<sup>162</sup> Royal Commission into Family Violence, *Report and Recommendations* (State of Victoria, 2016) Volume V, 42

<sup>163</sup> Australian Government: Australian Institute of Family Studies, *Enhancing access to family dispute resolution for families from culturally and linguistically diverse backgrounds*, 18 November 2010. See also discussion above about importance of working with community leaders from CALD backgrounds in part 2.4 above.

<sup>164</sup> See more expanded discussion about this in part 3.5 above.

## 7. Bibliography

Amanda George and Bridget Harris, 'Landscapes of Violence: Women Surviving Family Violence in Regional and Rural Victoria' (Report, Centre for Rural Regional Law and Justice, Deakin University School of Law, 2014)

Australian Government: Australian Institute of Family Studies, *Enhancing access to family dispute resolution for families from culturally and linguistically diverse backgrounds*, 18 November 2010

Australian Government Department of Home Affairs, *Translating and Interpreting Service*, Translating and Interpreting Service <<https://www.tisnational.gov.au/>>

Australia's National Research Organisation for Women's Safety (ANROWS), *A preventable burden: measuring and addressing the prevalence and health impacts of intimate partner violence in Australian women* (30 October 2016)

Australian Law Reform Commission, *Review of the Family Law System: Issues Paper* (2018)

Australian Women Against Violence Alliance, *Access to Justice for Women and Children Living with or at Risk of Violence: Policy Brief* (2016)

Crime Statistics Agency, *An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009–10 to 2013–14* (January 2016)

Committee on the Elimination of Discrimination against Women, *General Recommendations*

Commonwealth of Australia, *Violence Against Women. Let's Stop It At the Start* (2018) Respect <<https://www.respect.gov.au/>>

Court Network, *Court Network* (2016) Court Network <<http://www.courtnetwork.com.au/>>

E Richardson, T Sourdin and N Wallace, *Self-Represented Litigants: Literature Review* (Australian Centre for Court and Justice System Innovation, Melbourne, 2012)

Family and Federal Circuit Court of Australia, *Media Release: Family law system needs more resources to deal with an increasing number of cases involving family violence*, 20 June 2016

Family Court of Australia, *Family Law National Enquiry Centre (NEC)* (3 May 2016) Family Court of Australia <<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/contact-us/national-enquiry-centre/>>

Family Court of Australia, *Guidelines for Independent Children's Law*, (May 29, 2013)

Family Court of Australia, *Less Adversarial Trial*, Family Court of Australia

<<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/publications/court-events/less-adversarial-trials>>

Family Law Council, *Improving the Family Law System for Aboriginal and Torres Strait Islander Clients*, (2012)

Family Law Council, *Improving the Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds*, (2012)

Family Relationships Online, *Family Relationships Advice Line*, Family Relationships Online

<<https://www.familyrelationships.gov.au/talk-someone/advice-line#a1>>

Federal Circuit Court of Australia, *Practice Direction No 2 of 2017 – Interim Family Law Proceedings*, 7 December 2017

House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, *A Better Family Law System to Support and Protect Those Affected by Family Violence* (2017)

Law Council of Australia, *2017–2018 Federal Budget* (2017)

National Association of Community Legal Centres, *Media Release: One year until crippling cuts to legal assistance sector*, 1 July 2016

National Sexual Assault, Domestic Family Violence Counselling Service, *1800RESPECT*, (2016)

1800RESPECT <<https://www.1800respect.org.au/>>

Our Watch, *Understanding Facts and Figures* accessed 6 May 2018

<<https://www.ourwatch.org.au/understanding-violence/facts-and-figures>>

Productivity Commission, *Access to Justice Arrangements* (Inquiry Report No 72, Vol 1, 2014)

Productivity Commission, *Access to Justice Arrangements*, Final Report, September 2014, Commonwealth of Australia

Rae Kaspiew, et al, *Evaluation of the 2012 Family Violence Amendments: Synthesis Report* (2015, Australian Institute of Family Studies, Commonwealth of Australia) 45

Robyn Powell, 'Family Court Underfunded, Letting People Down, Chief Justice Says', *ABC News* (online), 1 May 2017 <http://www.abc.net.au/news/2017-04-30/family-court-letting-families-down-chief-justice-says/8483858>

State Government of Victoria, 2017, *Free From Violence: Victoria's strategy to prevent family violence and all forms of violence against women*

State of Victoria, *Family Violence/Personal Safety Matters* (4 May 2018) Neighbourhood Justice Centre <<https://www.neighbourhoodjustice.vic.gov.au/attend-court/going-to-court/family-violencepersonal-safety-matters>>

The Honourable Justice Alastair Nicholson Chief Justice Family Court of Australia, 10<sup>th</sup> World Conference: Family Law: Processes, Practices and Procedures, *Future Directions in Family Law*, 10 July 2000

VicHealth, *The health costs of violence: Measuring the burden of disease caused by intimate partner violence: A summary of findings* (2004, Melbourne)

Victorian Government, *Media Release: Support Dogs Comfort Victims of Crime*, 19 January 2018

Victoria Legal Aid, *Untitled*, provided by Victoria Legal Aid to the Commission, 20 January 2016

Victoria, Royal Commission into Family Violence, *Report and Recommendations* (2016)

Victoria State Government, 'Access to Justice Review: Background Paper – Self-Represented Litigants' (Review, Victoria State Government Department of Justice and Regulation)

Victorian State Government, *Safe and Strong Victoria: Preventing Violence Against Women Through Gender Equality*

Women's Legal Service Victoria, *Small Claims, Large Battles Report* (2018)

## 8.1 APPENDIX A

### **PARTICIPANT 1 -Chelsea Leatham, Social Worker, Phone Interview (21 April 2018)**

#### **1. How can parties who have experienced family violence or abuse be better supported at court?**

Parties need to become more informed about their rights and options when going to court. E.g. - Separate rooms when waiting in court, knowing what to do with safety concerns. I had a friend who had to state her full name and address in front of her perpetrator. How is that protecting other parties in the family law system?

#### **2. What changes can be made to court procedures to improve their accessibility for litigants who are not legally represented?**

Having advocates, information and assistance more easily accessible in the court space for people who are involved in court proceedings but do not have legal representation. There are people who are contracted to do this informal work but this is not always known for people coming to court. For example - more signage could be shown to inform people of this service available to those who need it.

#### **3. In what ways could access to information about family law and family law related services, including family violence services, be improved?**

I feel there are lots of help lines and services available for women in domestic violence. This is an area that is getting a huge amount of funding.

## 8.2 APPENDIX B

### **PARTICIPANT 2 -Lydia Sorensen, Youth and Families Support Worker, E-mail Responses (26 April 2018)**

#### **1. How can parties who have experienced family violence or abuse be better supported at court?**

More resources such as professionals with expertise in family violence need to be available at court for additional support such as referrals to safety hubs and emergency accommodation. Courts should also have more appropriate family friendly spaces for children waiting at court with their primary carer for Intervention Orders etc. Court cases many not have to be held in a traditional court space to make the victim feel less victimised when giving evidence.

#### **2. What changes can be made to court procedures to improve their accessibility for litigants who are not legally represented?**

I found this question a little confusing. I'm assuming the people not being represented are the victims however the word litigants seem to mean the person fighting the legal case (such as the perpetrator)? I've answered this the best way I can.

As the family unit has modernised over the decades, such as same sex marriage court there had to be incorporated changes to the system such as identifying family violence within such relationships.

Harsher penalties for perpetrators of family violence when they breach Intervention Orders such as prison time with rehabilitation/ education. The families and community require more confidence in the system as it seems to be at an all time low (incorporating the criminal justice system).

I know the Royal Commission has outcomes/ findings (not read this but it will be interesting to see what they say about the court process and procedures.

#### **3. In what ways could access to information about family law and family law related services, including family violence services, be improved?**

More accessible information should be available to families from court information service.  
Place based Law services in Community organisations.

Further education to Court clinicians, Emergency services and Community services workers about all options available to those who report family violence 'therefore in time the community ideally become more confident and knowledgeable about family law service through such key community professionals. More integrated legal aid system that supports vulnerable victims to be able to seek representation regardless of who is represented first or what you own.

Legal Aid representative to be given more funding and resources to be able to represent more case that will come to court in light of more awareness for people.

Judges to have mandated family violence training and education before able to hear cases which include family violence.

## 8.3 APPENDIX C

### **PARTICIPANT 3 -Eleni Bailey, Former Family Lawyer, Current Social Worker, E-mail Responses** **(23 April 2018)**

#### **1. How can parties who have experienced family violence or abuse be better supported at court?**

This is a complex question and I don't believe that a 'one size fits all' approach should be applied. Parties who have experienced DV [domestic violence] need more support at every step through the process. From filing and paying for forms, to gathering evidence and being represented by lawyers who truly understand the complex and oppressive nature of DV. I would like to see each party given a social worker / support worker on top of their lawyer who can accompany them to court, support them in the process, explain to them what's going to happen and liaise with their lawyer. I think there needs to be separate entrances and exits so parties are physically protected, and no one should ever be forced into mediation with an abusive partner. The needs and desires of each individual DV party needs to be assessed and taken into account as each situation is so different and complex. A children's lawyer who is truly independent should also be assigned to families automatically in DV situation with follow up counselling offered to both the children and the 'victim'.

#### **2. What changes can be made to court procedures to improve their accessibility for litigants who are not legally represented?**

The needs to be more resources so that judges have more time to properly hear evidence, ask questions and make decisions in complex cases. There needs to be an 'onsite' lawyer for particularly vulnerable parties so they can have their questions answered as their case unfolds. i.e. a free duty lawyer. All information needs to be provided in simple language and in all major languages. People with disabilities should have access to free support as required. E.g. - Auslan.

#### **3. In what ways could access to information about family law and family law related services, including family violence services, be improved?**

There could be a 24/7 helpline number as I've suggested above.

A free, government funded support worker for particularly vulnerable parties as noted above.

A government funded online 'chat' service to ask questions and a very clear website which outlines the steps people need to take to set up support and take action.

#### **4. How might people with family law related needs be assisted to navigate the family law system?**

The family law system in its current state is a complex, costly, time-consuming activity for families who are already in a state of high stress. Processes need to be streamlined, simple forms, affordable filing fees and support people (like social workers) who can help people navigate the complex system. There could be a 24/7 hotline for family law questions, a better referral system and a more equipped judicial system so the wait times aren't extremely lengthy (like they currently are). People with specific needs, such as people with disabilities, or in DV situations also need specific help and protection, as they are often particularly vulnerable and lacking in resources.

## 8.4 APPENDIX D

### **PARTICIPANT 4 -Shehara Skilbeck, Social Worker, E-mail Responses (24 April 2018)**

#### **1. How can parties who have experienced family violence or abuse be better supported at court?**

Having social workers in the court who can help them navigate the court system, provide referrals to necessary services (counselling, GP, child protection, legal aid, housing services, employment services etc.). Having community elders (Indigenous and other community elders) who can provide assistance for women and children from different cultures.

Also having child friendly rooms in the court to help children feel safer coming to court. Have safety rooms for women who do not feel safe waiting around as well as safety measures for women leaving court (e.g. the social worker can provide taxi vouchers to them to get home safely).

I would love to see judges and court registrars from different cultures working in the courts. This can make a difference in helping provide a culturally sensitive service.

I would also like to see more accessibility to legal aid services and a hotline that people can call before court to find out what to expect and their rights during the court process.

I think having the court room less formal-so not having the bench so high can help make the court room less intimidating for women and children accessing the court system.

Having pet therapy dogs come in to help children and women who have to speak in the court room ... pet therapy in court has been seen to help reduce people's anxiety and can help provide a sense of safety in a stressful situation.

#### **2. What changes can be made to court procedures to improve their accessibility for litigants who are not legally represented?**

I think there needs to be more accessibility to free legal representation. Family violence can take place in all forms-financial abuse, physical abuse, emotional abuse etc. So think about a women going through financial abuse. Her partner stops her from having access to the money and drags her through the court system numerous times. The women is then having to pay for court fees to help fight for custody over her children. Her partner is aware that the women don't have a lot of money so continues to drag her through the court process. This can be stressful for women as they can't see legal aid, as they are seen as having

assets (their name is on the house and car etc), but their partner is financially abusing them so they do not have access to money to pay for ongoing court fees. I think this is a massive issue that the courts need to address. There needs to be more funding to the courts to stop lengthy wait times, to offer more legal aid services and for private law firms to offer more pro bono work to support women and children who are being financially abused and who are going through the court system multiple times.

Again if there was a social worker in the courts part of their job could be doing a risk assessment and identifying if financial abuse is an issue and whether that women needs to be seen by a legal aid lawyer to stop their partner from further financially abusing them through the court process. Centrelink and other services also need to change their system so that even if women are seen as having “assets” that does not mean they have access to the assets and have the finances to pay or necessities.

### **3. In what ways could access to information about family law and family law related services, including family violence services, be improved?**

I think services work separately rather than together which is an issue for women and children who need to go to court. For example-lawyers often work in the court but often won't speak to the client's social worker. I think all clients in everyone court should have the opportunity to speak to a social worker who works in the court. The social worker can act as an advocate and speak to the lawyer if needed, educate the client on the court system etc. If women need access to housing after court the social worker can assist with this. I think there needs to be community leaders there-Indigenous elders, Sudanese elders etc. to help support people from their culture navigating the system.

I think the courtroom also needs to have DHS there to assist with any child protection matters. Any other professional that works with women and children should be there in the court to help provide a more integrated service.

I think there should be a hotline specifically for family violence that women and children can call if they wish to speak to someone about how to go to court, what to expect, access to legal representation etc. I think this hotline should be available in all languages and should be available 24/7 and advertised everywhere.

### **4. How might people with family law related needs be assisted to navigate the family law system?**

I think there needs to be more support in the court and outside the court for women navigating the court system. The court needs to have more support workers and social workers to offer assistance to women

who want support to navigate the court system. I think every court should offer this to everyone regardless of their gender. I think all court registrars should offer people at the desk whether they want to see a support worker/social worker and explain what a support worker/social worker does in the court. Then if people want this service they can speak to someone immediately who can inform them of the court process, provide emotional support, arrange referrals-access to interpreters, legal aid lawyers if needed, counselling during the court process, access to safe transport after the court process and a safe waiting room when waiting to see the judge (if safety is an issue) etc. I think this service is lacking in the court system and can help women in the family law system feel better supported in coming to court

I think it also starts outside of court too-so having more social workers in police stations so if women are coming in due to family violence related issues a social worker could sit down with them in a safe environment and explain to them their rights are and what to expect if they want to take this to court. I think it also starts with training other professionals who work with women and children who might need to go to court-GPS, teachers, church leaders and other health professionals. Family violence is everywhere and occurs behind closed doors-I think people would be surprised how common family violence is in our society. It could be your next-door neighbour! So I think if people were more informed about the court system and their rights this could help women know what to expect before they even enter the court system.

I also think it is important the courts including the family law court think about the cultural needs of people accessing the court system. Family violence and sensitive family issues is not always discussed in some cultures. In some cultures it can be seen as “taboo” to talk about this. So you can understand for people in these types of cultures it can be difficult for them to seek help and go through the court system even when they need it. So I think the courts need to also think about the cultural needs of people and how might cultural barriers stop people from coming to the family law court.

To address this I think it starts with working with community leaders. I did a lot of work with the Apex gang and worked with Sudanese elders in Dandenong. So I think the court should really get behind these community leaders and educate them about the court process so that they can share this information with people they might know who are experiencing family violence or who need to go the family law court (or any court). That way women and children might feel more supported to come to the court knowing their community elder is aware of it and has a partnership with the courts. Having community elders work in the court too is important. That way if a person comes into court and they are from a specific culture

having a community leader there who can speak their language and is aware of the cultural norms in their culture can help them get the support they need while navigating the court system.

## 8.5 APPENDIX E

### **PARTICIPANT 5- Judge Ron Curtain, Judge in the Family Court, Phone Interview (26 April 2018)**

#### **1. How might people with family law related needs be assisted to navigate the family law system?**

“I have three words for you. The first is information. Information about the system, resources available and options for help.

The next word is support. Support from legal aid, police and the legal profession as a whole. Meaning in there, community legal centres and lawyers doing pro bono work as well as paid work.

Third word is accessibility to make sure people can access this stuff. So there’s no barriers, making it easy to come to Court and also easy to get duty lawyers to help represent people in Court and write Applications.

Information, support and accessibility.

**As things are do you think there needs to be more accessibility? This is more of question one.**

Yeah we need to improve accessibility because we have a number of problems in a number of areas. The first one is the lack of knowledge of our system. We take it for granted if you come from an Anglo Saxon background but if you come from culture that has system based on predominantly the male being preferred over the female, say in Arabian countries or Asian countries. For example in Japan they had a number of presumptions. That’s a big problem. The second is language. And the thing is with people from overseas is access to resources. Just money so they can go to Court or feed their kids or whatever. I think Centrelink does a pretty good today compared to what it was like 20 years ago but it could be better.

**Great and I guess within that, focusing on financial abuse and financial pressure..**

Well you see the key to stopping financial abuse is Centrelink support. That is the immediate and then they can come to this place and seek orders for spousal maintenance or they can apply to the child support agency for child support. But all of that takes some time.

So there’s the immediate need and then there’s the short-term need by getting Court Orders and the long term need by getting property relief and property orders. But Centrelink is doing a pretty good job in

assisting people at least it keeps them stable until they come to this place where they can get more long-term help.

**So what do you think of women whose partners are financially abusing them and they're often seen as having assets like their names on the house and the car but their partner is controlling them and women who are struggling can't have access to Centrelink**

The really important thing is education. Freedom comes from knowledge and I think we really have to start at a secondary school level. And we have to disabuse boys thinking they are better than girls. We have to disabuse anyone thinking they are better than anyone else and instruct them in basic accounting. Instruct them in how to use a bank account. Instruct them on how to be financial independent. So that women or men who enter into a relationship, same sex I don't care what ... there's got to be equality in that partnership. If there's not equality across the board in terms of respect for each other, there's got to be financial equality and social equality.

There's got to be social equality and all those things that come with love such as mutual respect and adoration and passion. They're no good if you don't have equality and respect for each other. That respect means not only, in the real sense is in person but in a financial sense as well."

**Judge Curtain referring to his work as a judge**

It's very satisfying. I deal with about 700 cases a year and I try to get people to leave my Court in a better financial and physical state than when they entered. And usually I can do that, not always but usually. If you want to come and visit the Court you are more than welcome any time. When you're free just ring up."

**The Court can be such a tool to help victims and help people.**

It's a matter of resources and making sure it has the ability to help people. See a lot of people are scared of Courts and that could be part of culture. For example people coming from Africa where the Courts are punishing. That's the last thing we want to do.

**That's so true... the cultural differences. I guess that leads to my second question,**

**2. What changes can be made to improve the accessibility for litigants who are self- represented. A lot of my social worker friends when asked this question talked about having separate entries, social workers who can follow up with victims and can follow up with lawyers and speak to them on the**

**client's behalf. I am interested to hear from you what you think should be changed to better help self-represented litigants.**

I think the Courts have to become multi-resourced. We have to work with psychologists, social sciences, social workers and have well informed people employed by the Court. The door has to be wide open for people who want to walk through. It's gotta be accessible and important for people to know where Courts are and that the door is always open so when they walk past the door they get to see a well-informed public servant who can guide them. If you want to see a social worker, there you go. If you want to see a duty lawyer there you go. So we get them information about what we have got and where they can access it.

So what's available and how you can access it and how we can improve access in terms of skilling up people to assist those who come in and get public servants who are not behind counters so much but might be near the door welcoming people saying 'good day how can I help you?' And this problem might be a linguist problem, provide an interpreter, if you need someone to translate documents, then provide someone.

Access to the Internet is important. Having good software available to help people access family law documents that are up on the Family Court website. I think what we have to do is be available.

In terms of changing Court procedures is to be flexible. We cannot be rigid, gone are the days where the Court can rule in a way it's been doing for 100 years and then expect people to bend with the Court's requirements. I think the courts have to be more willing to be flexible. I think we have about 80 different cultures and so we have to be flexible to work with all different cultures. Whatever the number may be, in Court we have to be informal and we have to be able to communicate. The trick today is good communication. If people know what they want and we know what they want then we can work together for that outcome. Too much in the past we were up in the bench and weren't talking to people and it was rigid. When I say we have to be informal, I am not just talking about the judge, I am talking about the Courtroom itself. So it's not full of hardwood and a high bench. A low bench is just fine. But a bench is necessary anyway. People are easily intimidated by courts and at the same time the level of formality needs to be such to engender respect.

**This leads to the next question:**

**3. In what ways could access to family law and family law services be improved? You have already spoken about social workers, legal aid lawyers being available and judges being available but at the**

**moment often lawyers are separately working with social workers and although it's in relation to the same client there's not much communication.**

It goes back to communication again. We are not communicating in a way where we can work together effectively. We deal a lot with social workers and psychologists but the best outcomes are the ones when everyone works well together. We work with DHHS we have a lot of cases in front of us that should be in front of the Children's Court and vice versa. They do reports for us and then when we do reports back to them we give our reports. We never did that 5 years ago. And things like that. If you have some info in your Court that can assist, we have this scheme going where DHHS will be attached to the Court and this could be a few years and yeah it's a step in the right direction. It's all about getting those resources working together for people."

**As a judge, what would work best for you? What's the best case scenario for you? How do you see social worker, psychologist and police working with you? How would you want that? Would you want a social worker working within the Court?**

If I could, what I use is the best tools [inaudible] it's called the Independent Children's Lawyer ('ICL'). This is the lawyer the Court appoints to investigate what's going on with children in children's cases. Have a look at the Family Law Act, s7. What we do is we get them to talk to school principals, social workers and psychologists. The ICL can arrange a social worker who can take the matter further i.e. if the parent needs further support and counselling or financial advice. It comes back to good communication for good outcomes."

**Last question, you have sort of touched on this again.**

**4. How can parties who have experienced family violence or abuse be better supported at Court? I guess in that talking about victims who do not make it to the Court system who may be scared to do that. Children have had to go to Court... this can be traumatising.**

First thing is to ensure people are safe at Court. We now have what's called a 'safe room.' If people state they are victims of violence and we have a look at that and we say that prima facie we are satisfied that they are victims of violence, we will isolate them from the perpetrator and put them in a safe room so that they're not in the waiting room. They're sitting in the safe room for security. If they feel anxious they can press a button and security can come running. This ensures their privacy and protects them from the perpetrator.

The other way we keep them and the perpetrator apart is we use video links between Courts. Right, so I will put the victim in another Court with the video screen and I bring the perpetrator to my Court with the video screen. I talk to the victim in the other court on the video screen and I don't let the perpetrator intimidate the victim. I ensure they are physically separated then I make orders for the victim to go first and the perpetrator to wait, or the other way round if there's a complication.

We also have cells here if we need them for extreme violent cases and we have security, which can place people in those cells. But I have to say that's extremely rare. But if you tell people then these people with violent tendencies tend to settle down. But we have some very sad people out there. I would be guessing that about 20% of people out we see have a disorder of some kind. Whether it would be a personality disorder or a disorder where they've had violent parenting ... they have a lot of trouble just controlling themselves. They're a much of a victim as the victim is, some of these perpetrators (not all of them. Some of them are monsters). But they're easier to deal with than people who have issues of their own. Emotional dysfunction is the difficult ones.

The trick with victims who are victims of violence is to ensure that we do not re-victimise them too because we can do that by going over the past too often, asking them to repeat the bashing they've had and the violence they've endured. You try not to get them to revisit that too often. The last thing they want to do is go through the process again.

You get it investigated. You get the police involved and the independent children's lawyer and make enquiries and assist the Court whether or not this is likely to happen. They might go about issuing a subpoena to the police or the DHHS and investigating that. Then they can present this at trial. If I am satisfied there's been violence then I minimise the re-enactment of that event. But the trouble of course and the nature of how the Court system is structured, is that there has to be some investigation and some testing of the evidence. But you can control test the evidence so that you investigate the issue without re-traumatising the victim but it can be a subtle thing and you have to do is be alert to it.

We encourage them to come with supports. Some come with social workers, some come with other people and I think that's a good thing. We are alert to their needs if they're finding it stressful and difficult. The longest we need information [inaudible] they can stay home and we can say look 'this is what is going on' ... we can video link and we don't need to have them in the Court.

There are many ways you can minimise the trauma and re-traumatising them and you have to be sensitive to that. Domestic violence is still a terrible thing. I am finding allegations are made in about 60%,

violence having occurred in probably 40%. There are all forms of violence. Like you said there's financial and psychological and emotional and long term that's very dangerous.

A lot of good people make that effort. A lot of people do not want a failed relationship the separated spouses association, no one is proud of that...Most people try not to separate but when it does most people want it to be dealt with effectively and in a quick way. You can drag it out. That's one of the problems now. It's that we lack judges, social workers and psychologists. Cases are taking 18 months when they should take 12 months.

That's a frustration for us as judges and we hope the government will give us more resources.

**In relation to my last question and within this question.. I guess I have worked as a social worker for a lot of victims who do not want to go to Court. Either they do not have the money or the resources and do not want to put their kids through it. What would you say about those people who don't even make it to the Court system for various different reasons?**

Then we have to have an alternative support system for them. If they do not want to come to Court because it's all too hard then we have to make sure that the vulnerabilities that they've suffered in relation to ... aren't repeated. It means sort of less obvious resources in terms of accommodation, financial resources and job training and re-training so then when children attend Court they can become financially independent. A lot of it is psychological support. Emotional and psychological support is important when you have a relationship breakdown. We need to let them know about information about options. Options are important. People are scared sometimes that they do not have the options they want. They do not have the accessibility to the options and resources that are so important. We go back to information and communication. We inform and we assist in many ways. We have to make sure that that person leaves better emotionally. If they do that then you're successful.

**In terms of those who do not make it to Court, is there anything that can be done to encourage them to attend Court? You talked about it being more informal so it's not so intimidating and make social workers more accessible.**

The other thing is accessibility by actually going to people. We are the only Central Court that Circuits. We go to Bendigo, Geelong etc. so that people can have their case heard there rather than come to Melbourne. That being available that way is important. The Court should go to the people and the people should go to the Court. The people know that in country towns or in regions... so they go and file

Applications. We have to do more of that. In that process of going on Circuits is important. I go with two associates.

The other thing I want is each country town access to duty lawyers. The first thing I say is 'is legal aid here?' or a lawyer scheme but a lot of good lawyers will help people for free. When we travel and provide that service."

## 8.6 APPENDIX F

**Participant 6 -Suzanne Marriner, Former Court Support Volunteer for Victims of Domestic Violence at Moorabin Magistrates' Court, Current Housing Support Worker at a Women's Crisis Service, Phone Interview (26 April 2018)**

**1. How might people with family law related needs be assisted to navigate the family law system?  
What do you think your clients need or how can we assist them to navigate the court system?**

Women Check in first with the family court support worker after they go to the information desk and Women's Legal Aid.

**Do you think that's enough to support them?**

Probably not because there's so many women turning up. So there are services there but sometimes it takes so long to be seen, and that delays the matter.

**Seen as in by the duty lawyer?**

By the duty lawyer or by the family law court support worker there's one in the Magistrates' Court and there's also one now at Moorabin court.

They took us off it because the courts employed somebody to do the job, we were all volunteers.

The volunteer program was a consortium of organisations that workers were on a roster once a month and we went to Moorabin Magistrate's court to support women who were there for family violence intervention order matters .

**Do you think that was a program that worked well?**

I think it did, because there was nothing there before that and we always got a good response when we were there on the Monday morning.

**What sort of work did you do?**

We would make sure they'd spoken to a legal aid [lawyer], and at that time St Kilda legal aid were volunteering their time to see women whilst Vic legal aid were there for the perpetrators. So there was

someone for each party. But St Kilda legal service only volunteered their time and when we were there they were applying for a grant but it was not a government-funded service.

**What was your job title when you were there?**

Family law support worker.

**What did the courts hire instead?**

At Moorabin they hired a woman who works there five days a week and Melbourne already has someone who works there five days a week. Don't know what their job is...

**Is something like that still needed?**

Yes, not sure how she goes with that now. Cause we had two workers rostered every morning. And she's on her own.

**Can you give us a summary about how women knew to come to you, what you'd do with them and what main aim of your job was?**

The entry point for the service was the registrar check in - so when women checked in they were asked if they had any support with them today and if they'd like to see a support worker also asked if they had legal representation and if they needed to see someone.

From there if they said yes, their name was put on a list and we would collect the list from the registrar and then call the person to the counter and then we would have an interview room in which to meet the person and find out if they have any material aid needs, if they had housing needs, Salvation Army was stationed there to provide funding for locks being changed, so material aid, housing info, refer them to legal aid services for counselling – that was mainly we would ring connections for them so we would make a call there in the room and refer them to counselling.

**So this is something you thought worked well – do you think it should be implemented?**

All courts should all have a family violence support worker.

**Are salvos still there?**

I believe they would because they were there long before the consortium program started, I know they're in Melbourne Magistrates court.

I haven't had any experience with Family Law Court – but it could work there.

## **2. How do you think parties who've experienced abuse could be better supported at court?**

I know there was a very real problem for when women are leaving court, and perpetrators are leaving and security would often say they couldn't leave the building so then whose job was it to walk the women to the car/ station – that was a real gap in services.

So an intervention order might have just been issued but is that enough for a perpetrator to not then follow the client?

I suppose they need an info sheet of all the services they might need, because often on the day they're overwhelmed with what they need to do – just being in court or not understanding and having to go up to the witness box – and so it would be handy if they had a flyer to take with them as well if they didn't want services on the day.

I think the way I haven't mentioned – we had three workers some days because we had two volunteers for the women and then we had one worker for the men's program for the men's behavioural change program. So I think that's something that's available and aware in the court if you get into court but I don't know if it's well advertised if there's help out there at the beginning or end of proceedings for men's behavioural help program.

**Women of different cultures, sometimes FV is something shameful and hard for women to acknowledge and having the courage to go to court when English isn't their first language- with women like them how could anyone better support people like that so they could go to court?**

I think there's a lot of hit and miss with interpreters being there on the day – that can be arranged but still sometimes it happens sometimes it doesn't. Knowledge I have is – is In Touch ? Is that what they're called – name of the multicultural domestic violence service, and they're the ones who offer support to victims where English is not their first language – I haven't had any experience with them.

**3. What changes can be made to court procedures to improve their accessibility for representatives who aren't legally represented – talked to judge and talked about having atmosphere not so intimidating for women and children who have to come to court and also talked to going to more rural areas for those who can't travel out – in terms of your role at launch housing what changes do you think – other lawyers have talked about less wait times, sometimes if you're applying for an order it can be a long wait**

I think what springs to my mind is the ridiculous letters that people receive and everyone turns up at the same time having no idea that no one's got five thirty or everyone has nine o'clock and people don't know that that's not the time they will be heard, and no explanation that that's the time they have to be there but they might actually have to be there all day, and that information is lost and it's kind of just turn up at nine o'clock so then they get long waits and wonder why and that can be avoided if they just had something on that first letter.

Without legal representation, I think the client will have to somehow even VCAT in Collingwood in the NJC even that bench is still formal so most Mag are pretty lenient with people not being familiar with court proceedings and encourage them to seek legal representation and are likely to recommend that they seek some kind of representation before commencing.

**Do you think there should be more duty lawyers?**

Yeah for sure even social workers and support workers, doesn't have to be duty lawyers even social workers – inform them about court processes where to next, how it all works.

**4. In what ways could access to information about family law and family law related services, including family violence services, be improved?**

I know there's an app for domestic violence that people can bring up on their phone Ask Annie? – but promotion – we have the say no to violence ads on TV but even those shopper dockets, cause I think everyone does shopping at the supermarket at some point.

**What do you think they should say?**

They'd need to know there's help out there, it could even be a court 1800 number, a call centre type thing like Centrelink has – I don't know if clients get to talk to courts – a hotline for people who want to go to court.

You hear people ringing up on the radio when they have a lawyer from the community and people ring up with their inquiries and they don't know where to head to and they get free advice as much as they can and I think legal services advertise very well, or the big ones advertise on TV, and they advertise what they specialise in but yeah I think there's more of a role for the government to play and the court system to play there rather than looking at private law firms.

**If they were to implement that hotline what should it include?**

I think there should be a separate one for family violence and domestic violence, there's no reason why there couldn't be another one for general inquiries.

**Who would run the hotline?**

I think both lawyers and social workers like a one-stop-shop so people can get legal advice over the phone and then get educated about the court system.

Because at the moment you refer people to local community legal aid centres but sometimes they can't help them if the other person that they have an issue with has already been to them so then they're excluded from getting any assistance so where else do they turn to?

**Do you think there should be rules around if they're supporting one party?**

Oh yes of course but phone advice would just be general advice, can't represent multiple people.

**Any additional comments?**

In terms of gaps in the system – I think the housing response and the money that the government has thrown at the system and housing has been absolute shit – because if we've seen it first hand and seen it on TV I think in Parkville there were people squatting in the houses that they government wanted to use for women victims of family violence and there was horrible interaction in the community about who needed that housing, and I witnessed clients both pregnant and fleeing family violence being moved into another property in St Kilda called Citygate apartments and that has now turned into the second {inaudible} and it's just wrong, it's just not working, I'm not sure what the answer is and it's not just working.

**Fair point to make that women – obviously housing is a massive issue, and if they don't have a safe house how can they go to court – and probably a lot of women who don't got to court for that reason – it's too stressful – and if courts want to address the family court it starts with making sure women do have access to these kinds of services**

## 8.7 APPENDIX G

### **Participant 7-Anonymous, Family Violence Support Worker, Phone Interview (29 April 2018)**

#### **1. How can parties who have experienced family violence or abuse be better supported at court?**

More time is needed with the duty lawyers -more allocated time with the duty worker/lawyer because often our women come back from court and have no idea what has happened. No one has fully explained everything to them. That is why we also need social workers in the court to help navigate the court system with these women.

Having a social worker there can also help in this but you have also seen it in the children's court duty lawyers are so busy and they are literally like "this is what I think you should do" "this is what can give you the best outcome...it's not perfect and it's not what you want but here" and that informed choice isn't always there. The lawyers hold so much power and yes they are working for them but are they really taking into account what the women want. This can also help the lawyer understand what family violence is and where is she in that. Actually looking into what has she gone through-I am not talking about a counselling session but when people can actually feel that moment and actually understand and see that fear in the women they are going to be more inclined to fight more and fight harder. Not saying that they don't but that there is room for improvement.

For children - there needs to be available childcare in court. It needs to be a locked down space. It needs to be child friendly. Have social workers there and if child protection needs to be there have the police. Because if women are coming in they are coming to have their intervention order varied, or for interim intervention orders or extensions on their IVO's so often Dad can have contact with the kids. The children's safety needs to be paramount. It's not just mum that has been affected it's the children as well. A lot of the women that we work with the abuse and the trauma that the women and children have experienced is just mind blowing and it is devastating.

I think traditionally with family violence it has really been women's focused and with the royal commission we are moving towards child friendly practices but we aren't moving at a fast speed. Children are victims as well and are often overlooked because mum has to be the person that has to take the lead but what about them? Where is that safety?

We often work on video link for children who have to speak in court. So women can choose to come to our service and choose to do that. I don't know how that plays out in court. I haven't actually been present for that. We will have a support worker present. We don't have enough children's workers. We don't have enough of them in services.

## **2. What changes can be made to court procedures to improve their accessibility for litigants who are not legally represented?**

For women with no income or who don't have PR (permanent residency) and who can't get Centrelink need to be given access to free legal representation. They need to have access! Some of our clients come to Australia where the perpetrator is an Australian citizen. The perpetrator has returned to their country of origin bought a women over on a spousal visa and family violence has been occurring right from the start and women are often too scared to speak out as the perpetrator will often threaten her with deportation.

The women on sponsorship are left with absolutely nothing as she is cut from the spousal visa if she leaves... and she has kids. All she is eligible for is special benefit, which is only \$260 a fortnight, and she is not eligible for any housing or crisis accommodation because the housing services have cut down on that. Entry points to housing services will only assist that woman and child for a maximum of two weeks. Our system is clogged up... and these women end up in refuge for years. These women need to have court support as they need to have custody over their children because often Dad will start the court proceedings of I want to have access to the kids and threatens to take the children back to his country of origin and trying to get him on a no fly list is really difficult...and yeah just give them access to legal representation.

## **3. In what ways could access to information about family law and family law related services, including family violence services, be improved?**

Community engagement - get into the community. Like basic stuff-go to church-this is where it starts. This is happening in Footscray - there is a lot of people from the Ethiopian community and Sudanese women. We need to get into the community. A lot of women who do need help and are part of minority groups don't go outside their community. The services need to be available to them. We need to let them know it is available. Women need to know there are options and right now they don't. They are just living in a bubble - they often don't talk about it in their community and they just suffer. It is up to our State

government to do this-and having interpreters. The amount of services that don't have information in other languages is astounding and quite common.

Services also need to work collaboratively with each other. There needs to be more training for lawyers and barristers. They need more training on what family violence looks like. They might just see a woman and not see her in that crisis state but understanding what that financial abuse looks like is important.

There also needs to be a women's specific phone service to address legal issues.

#### **4. How might people with family law related needs be assisted to navigate the family law system?**

We have a family violence support worker who can assist women and children in court. They do a family violence needs assessment and if the woman needs accommodation we will help with that. There are limits on how much court support she can offer... it is more offering emotional support and helping women navigate the physical court space. But this is something that is more needed. The court is not friendly. Especially for women from CALD backgrounds it is absolutely terrifying for them... terrifying for anyone but it is a space that is not set up for women.

Court is not a place set up for women. In terms that there is no child care provided - and if women have to go to court for intervention orders and things and women are forced to bring their children with them that is frowned upon and can work against her... because why is she putting the children through the court to overhear what Dad has done to her. This really stands out to me because we can't provide this service to women. Apart from the refuge service we provide, we are a phone service. We do have a court support worker at the Magistrates Court who provides case management but it really has been difficult trying to get Mum to court and try and organize childcare from a distance. But if we were just outreach workers we could probably help sit outside from a distance in a park with the kid...

Also the court needs to have workers that speak their language (for women from CALD backgrounds). Having interpreters is fine but some of the interpreters are difficult to get and in some cultures it can be near impossible to find someone that speaks her language that doesn't know her. Having women of colour in the court plays a huge part to help women from CALD backgrounds. I know I would feel more comfortable. This is the same for Indigenous women. They don't want to speak to white women. Having women of colour can help women open up. They have to go to court they are the ones that have to open up. They have to air their dirty laundry whether they like it or not. This is crucial for their emotional needs and is so important.

The court also needs to provide safety for the women leaving and for the workers. There have been times when the perpetrator will leave the women alone after court but will follow our workers to the train station. Some of these perpetrators are next level.

## **8.8 APPENDIX H**

### **Participant 8- Malcolm Bennett, Retired Supervising Lawyer – worked in Community Legal Centres for over 30 years, E-mail Responses (29 April 2018)**

#### **1. How can parties who have experienced family violence abuse be better supported at court?**

I think ancillary services within the courts would be beneficial. Say a social worker or some volunteer services be available on a permanent basis such as the Court Networkers.

#### **2. What changes can be made to court procedures to improve their accessibility for litigants who are not legally represented?**

Some of it I have answered above. In theory, there are enough systems in place to assist unrepresented clients. The use by the court varies and is haphazard. There is nothing to stop a more concerted drive occur by the courts to assist unrepresented clients if they have the will to do so.

#### **3. In what ways could access to information about family law and family law related services, including family violence services, be improved?**

Partly answered above but the family law system started off with the proposition that unrepresented parties could navigate the system. This is a culture that remains today. But, running alongside it is the increasing complexity of the system because over the perceived workload of Judges and court staff. An example is the recent directive that at the first hearing, in the Federal circuit court, parties will only be able to file affidavits off 10 pages or less or the Judges will only need to read 10 pages of an affidavit that the parties consider relevant.

So, I think the whole system would have to go back to basics and re-look at how it services their "customers". I don't think that this will be done. A prime example is the filing of documents on line. How does a person with no computer skills and English not their first language cope or understand?

#### **4. How might people with family law related needs to be assisted to navigate the family law system?**

Assuming that they cannot afford a lawyer obviously there are some elementary answers. Spend more money! By that I mean make more legal aid funding available to people who cannot afford their own legal costs. Make more funding available to legal centres to enable them to provide more legal advice. Funding from the Commonwealth has been cut down year after year in the family law area. There are concerns now about insufficient time available in hearings and the family law lists blowing out uncontrollably. I wonder if any study has been done about the increased costs of court cases and if it relates to increased time taken because parties are unrepresented. I suspect there has. Do the extra costs of court time balance out the increase in legal aid funding to enable more people to be funded?

There are a number of user friendly articles on the family court website for unrepresented parties but from my experience they could be set out much clearer.

## 8.9 APPENDIX I

### **Participant 9 -Robyn Heath, Supervising Solicitor at Springvale Monash Legal Services, South Eastern Centre Against Sexual Assault (SECASA) Division, E-mail Responses (3 May 2018)**

#### **1. How might people with family law related needs be assisted to navigate the family law system?**

Fund family lawyers at Community Legal Centres and encourage, facilitate and help fund the relevant services provided by universities as part of clinical legal training.

Family relationship centres on the whole do a good job and some now have CLC lawyers helping with mediation which is a good initiative.

Provide more funding for Victoria Legal Aid as too many people do not meet the guidelines for assistance yet do not have the capacity to represent themselves either in mediation or litigation.

But the reality is that the worst conflicts end up in court. Many parties will never have the skills to navigate the family law system and it is unrealistic to expect them to understand the complexity of running litigation, including preparing and filing applications, responses and affidavits and negotiating consent orders.

I do not support the pilot program in NSW where the government is setting up a system to hear and settle proceedings without the involvement of lawyers. This will just increase the power imbalance already present with many cases and result in poor outcomes for women.

I would prefer to see an increase in funding for Less Adversarial hearings where the judge or Registrar can talk informally with the parties to reach a final agreement, and compulsory case conferences for small property disputes where a final agreement must be reached.

## **2. In what ways could access to information about family law and family law related services, including family violence services, be improved?**

There is a large amount of family law and family violence information online, so people that have access to a computer, are literate and have some level of education are well serviced (Court websites, VLA website, many CLC websites, family relationship websites etc).

The problem is if the person is unable to access the information (due to language, health, cultural, religious, financial, isolation or education barriers, or a controlling partner). For these people outreach services at hospitals, community centres, maternal child health centres, DHHS, police or other safe environments are essential. These people need more than just a few brochures - they need to speak to real people about their problems so that they can be referred to specialist services. Outreach services must be funded long term to retain experienced staff. The current Victorian government initiative for family violence hubs looks promising.

But many women suffering family violence are isolated by their partner or partner's family and it may be difficult for them to leave the family home. Safe Steps are fantastic. I have had several clients that were given the phone number of Safe Steps by DHHS or sometimes the police and were able to call Safe Steps when in danger. Safe Steps arranged a taxi and emergency accommodation and then temporary accommodation such as at a women's refuge.

The support staff at the refuges and organisations such as the Berry Street Family Violence teams are then able to help the victims apply for an intervention order, bank account, Centrelink payments, permanent residency (if relevant), child care, counselling and even grants for further study and training. The funding for these organisations has increased which is promising but more can be done and we shouldn't get complacent.

On the other side, police are not always helpful or sympathetic. When police come to a home after a family violence report, the victim should be able to receive fair and legally correct advice regarding their options. Unfortunately this does not always occur, and the police require better training. Too many women are abandoned by the police and told it is a "family law matter."

### **3. What changes can be made to court procedures to improve their accessibility for litigants who are not legally represented?**

Change the legislation so that there are not different forms, rules and procedures for the Federal Circuit Court and the Family Court.

Increase funding for staff at the Registries as many self-represented parties find it very difficult to use the Commonwealth portal. The staff at the Registries are the front line for the court and deal with a continuous stream of self-represented people asking procedural questions.

Fund additional duty lawyers so that all litigants that ask for help can receive legal advice, have help with drafting documents, and negotiating consent orders. There is currently a triage system and many litigants do not receive assistance.

Have a dedicated reception desk at each court located immediately next to the security entrance, instead of people having to ask security for help. The staff at reception could be the first triage step - directing people to the duty lawyers, registry, child services for family consultant appointments, court rooms, court connect and detect any safety concerns. But of course this will all cost money!

### **4. How can parties who have experienced family violence abuse be better supported at court?**

In my experience nearly all matters that go to litigation include family violence (the definition is very broad and includes controlling behaviour which is very common).

Funding more judges to ease the work pressure and allow judges more time to properly assess the risk should be a high priority. A judge on the duty list may have up to 30 matters in one morning and there is no time to read the material.

If a party is unrepresented, there are children involved and there are allegations of family violence then the current trend is for a Federal Circuit Court judge is to appoint an Independent Children's Lawyer. The ICL is appointed to represent the best interests of the children but the reality is that the ICL does a lot more including advising the judge during proceedings. There are some very bad ICLs with too many matters and funding for proper training and auditing of ICLs is urgently needed.

One suggestion is to fund a team of support workers at court who are experienced in family violence and can provide direct feedback to a judge. As discussed above there should also be better access to duty lawyers.

Finally, there must be a change in legislation so that an unrepresented abuser cannot cross-examine the victim in defended hearings. This could be modelled on sections 70, 71 and 72 of the Family Violence Protection Act.