

## SUMMARY OF RECOMMENDATIONS ROYAL COMMISSION INTO FAMILY VIOLENCE

### SUBMISSION 1

### IMPROVING THE FAMILY VIOLENCE LEGAL SYSTEM

#### High level recommendations

##### **Governance**

1. The State Government create a governance structure that places responsibility for addressing and eliminating family violence across multiple Departments and Ministerial Portfolios.
2. The State Government develop protocols and processes that strengthen communication, collaboration and accountability across Departments and Ministerial portfolios.
3. The State Government and Federal Government share a dedicated and secure recurrent funding stream to address and eliminate family violence.

##### **Creating equitable access to justice**

4. The Victorian Equal Opportunity and Human Rights Commission (VEOHRC) work closely with specialist agencies and Victoria Police to
  - a. undertake an audit of police practice, protocols and policies that create barriers to victims from high risk groups and
  - b. develop operational tools, protocols, policies and training that improve police response to women from high risk groups.
5. The Victorian Equal Opportunity and Human Rights Commission work closely with specialist agencies and the Magistrates' Court to
  - a. undertake an audit of accessibility and issues that create barriers to victims from high risk groups in the court system, having particular regard to policies, practices, physical spaces, knowledge and understanding of staff and Magistrates.
  - b. develop policies, frameworks, strategies and training to address and remove barriers for women in high risk groups.

##### **Strengthening victim participation in influencing change**

6. The State Government build a strong and effective advocacy network led by women who have experienced family violence by funding the establishment of a peak advocacy organisation led by victims.

7. The State Government, Victoria Police and the court system formalise the participation of women who are victims of family violence in the development of reforms. This could be achieved through an advisory group structure.

### **Building specialisation**

8. The State Government develops minimum standards of practice and an accreditation framework for Government funded agencies and services to promote excellence in family violence practice.
9. The State Government commission a review and update of the Common Risk Assessment Framework in particular:
  - a. strengthening risk assessment for children
  - b. targeted risk assessment of perpetrators
  - c. developing stronger risk managements process and
  - d. developing a range of usable tools to assist in implementation across the system.
10. The State Government establish a data collection and evaluation framework that can assist departments, courts, police, services and programs monitor and measure their success and impact in addressing and responding to family violence.

### **Strengthening the family violence legal system**

11. The State Government and Magistrates' Court build on existing elements of the family violence intervention order system to strengthen the focus on intervening early, reducing ongoing risk to victims and preventing future incidences of family violence.
12. The Magistrates' Court Family Violence Divisions are established in all Victorian court regions.

### **Improving the quality of information available to the court at an early stage**

13. The Magistrates' Court and Victoria Police review and update safety notices and applications forms to facilitate a more effective collection of relevant case information. More tailored questions and an improved structure for safety notices and applications forms will assist in drawing out the necessary information. It may be of assistance for family violence experts to support this review.
14. The Magistrates' Court addresses current software limitations and develop protocols to provide the full application and all relevant material to parties and legal representatives at the first mention hearing.
15. Specialised training is provided to police and registrars to strengthen their skills and capacity to collect case relevant information. Such training could be developed and delivered in collaboration with family violence specialists. The training may incorporate interview techniques, red flagging and information recording techniques.

16. The Department of Justice and Regulation investigate current good practice in criminal proceedings with respect to briefs of evidence, including the preliminary brief process and its value in the intervention order jurisdiction.
17. The Magistrates' Court roll out the online application process across Victoria. This could be based on the Neighbourhood Justice Centre application process that is accessible on a smartphone, tablet or computer.
18. The State Government fund the expansion of the CLC family violence duty lawyer program to provide additional legal advice and assistance to victims at the time of first making an intervention order application or at the time of a police application.
19. Once family violence duty lawyer programs are expanded to provide early legal advice and information, a referral pathway be established between the police, courts and local community legal centres to link in with victims at an early stage in the process.

### **Developing a court-based case assessment and case management process**

20. The Department of Justice and Regulation and the Magistrates' Court develop a case assessment and case management model for the family violence intervention order court. It will be important that there be broad consultation with stakeholders, in particular users of the court system and organisations that work within the court system, for example CLCs, police and family violence agencies.
21. Family violence case assessment and case management expertise be strengthened in the Magistrates' Court. Consideration be given to achieving this by expanding the role of the applicant support worker or by employing a pool of specialist family violence workers to work alongside court staff and Magistrates.
22. The Magistrates' Court, in the interim, works with family violence duty lawyers and police prosecutors/civil advocates to develop strategies to improve risk identification and case coordination.

One example of an interim measure is the morning meeting at the Magistrates' Court between duty lawyers, the registrar, police and support workers to go through the daily family violence list. This occurs in some courts and not others. Morning meetings are a good way to share information regarding cases and to red flag particular issues in cases.

### **Improving court forms, notices and information**

23. The Magistrates' Court engage external experts to undertake a comprehensive accessibility audit of its family violence court forms, notices, orders and information.
24. The Magistrates' Court re-draft forms, notices, orders and information in plain English. The Court should work with specialist family violence agencies, disability quality advisors, learning experts and users of the court system improving these resources.
25. The Magistrates' Court develop resources to support parties from diverse backgrounds to navigate the family violence court system. The Court should work with specialist family violence agencies, disability quality advisors, learning experts and users of the court system to develop resources that can be available at court and online. This information

should be available in a range of different formats and languages accessible to people with disabilities.

26. The Magistrates' Court translates standard court notices, court information and court orders to be available in a range of different languages for use by people with limited English skills.

### **Improving access to interpreters**

27. Funding for Magistrates' Court interpreters includes a specific allocation of funding for family violence interpreters.
28. The Magistrate's Court engages specialist family violence trainers to train all court-based interpreters working in the family violence jurisdiction.
29. The Magistrates' Court develops guidelines to assist court staff in booking family violence interpreters. Guidelines to include:
  - procedure at intake to check whether a party requires an interpreter
  - a practice of booking two interpreters if both parties require an interpreter
  - a presumption that a female interpreter will be booked for a female party.
  - a practice of booking interpreters for a full day.

### **Strengthening support and safety for victims in the intervention order process**

30. The State Government allocate funding to the Magistrates' Court to employ court-based culturally-competent family violence support workers. These workers could be based in court regions where there is a high CALD population.
31. The State Government allocate funding for courts to employ a disability quality advisor to improve accessibility of courts for people with disabilities.
32. The State Government allocate funding for the expansion of the Koori family violence pilot program to all Victorian regions.
33. The State Government report publicly on its safety audit of courts and invest in creating safe spaces in high to medium risk courts.
34. The State Government ensure that safe spaces that are created in courts, are built to be "child friendly" spaces supported by child care workers.
35. The Department of Justice and Regulation investigate and consult on expanding current provisions with respect to recorded statements to enable family violence victims to give evidence via recorded statement.
36. The Magistrates' Court evaluate and report on the family violence video-conferencing pilot.
37. The Magistrates' Court develops protocols to enable video-conferencing to be offered to victims of family violence on the day of their hearing.

38. The Magistrates' Court roll out the evaluated family violence video-conferencing pilot program to all court regions.
39. The State Government identify and establish off-site locations in each court region for victims to attend on the day of their hearing to access video-conferencing and support services.

### **Building family violence expertise in the legal system**

40. The State Government fund the Magistrates' Court to work collaboratively with family violence specialists to develop a family violence training program for all court staff delivered on a regular basis.

The training could have different levels depending on whether the staff member works directly with family violence victims. Such training could incorporate elements of experiential learning and cover issues of unconscious bias and cultural competency.

41. The Judicial College of Victoria work with family violence specialists to develop and deliver a comprehensive professional development program to Magistrates and County Court and Supreme Court Judges across Victoria.

We acknowledge the positive initiatives currently on foot with respect to Magistrates professional development however believe that this could be strengthened, particularly with a focus on improving "court craft" skills and using more innovative learning techniques such as peer reviewing and experiential learning.

42. The State Government fund training programs such as Safer Families, to strengthen the skills of family violence duty lawyers in:
  - the nature and dynamics of family violence
  - the implications of family violence for particular client groups
  - the FVPA and its intersections with the Family Law Act and the Children Youth & Families Act
  - negotiation, advocacy and other court skills

### **Ensuring victims' voices are heard in the intervention order process**

43. The Department of Justice and Regulation develops and pilots a therapeutic court model to manage family violence cases where either party presents with complex needs.

The Department of Justice and Regulation consider current therapeutic approaches in other courts across Victoria and how best practice from those courts could inform the development of a therapeutic model in the family violence jurisdiction.

44. The Department of Justice and Regulation investigates the role, if any, for victim impact statements in the family violence intervention order system.
45. The Centre for Innovative Justice develops a draft framework for restorative justice approaches to family violence in intervention order proceedings and criminal proceedings.

The framework should be piloted and evaluated to determine whether, and in what circumstances, restorative justice approaches can promote, at both an individual and societal level:

- victims' rights to live free from violence and
- perpetrators' accountability for their use of violence

46. Subject to the evaluation of the pilot the Centre for Innovative Justice revise the draft framework and the Department of Justice and Regulation make restorative justice approaches available in each court region
47. Specialist agencies such as InTouch and AFVPLS are funded by the State Government to expand existing programs to provide specialist support to victims from high risk groups.
48. The Magistrates' Court develops a "warm referral process" with specialist agencies for applications where victims require specialist support services to link in with before the hearing date.
49. Policies are developed in the Magistrates' Court to ensure that matters are not listed within 48 hours of the family violence incidence.
50. Guidelines and tools are provided to Magistrates to improve "court craft" around engagement with victims.
51. The Magistrates' Court hears ex parte interim orders in closed court rooms as a matter of practice.

### **Reducing court delay and multiple adjournments**

52. The Magistrates' Court and Victoria Police develop a protocol to contact victims to notify them if an application has not been served and to adjourn the case "on the papers" so that victims do not have to attend court multiple times.
53. The Magistrates' Court and Victoria Police develop a protocol to gather information from the victim regarding alternative addresses for service as part of the initial application/safety notice process.
54. Victoria Police enable civil advocates and police prosecutors to make final decisions to withdraw an application on the day of the hearing.
55. Victoria Police Liaison Officers at court have the power to take complaints from parties where allegations have been raised and not investigated and issue applications on their behalf.

### **Exercising power and control through the court system – cross-applications, re-hearings**

56. The Magistrates' Court strengthen cross-application and re-hearing processes to identify cases with little or no merit or cases where there is a history of the perpetrator applying for re-hearings, cross-applications and appeals.

This could be achieved by introducing an application for leave process for cross-applications. Additionally stronger guidelines and training could be developed to assist registrars and Magistrates to identify “systems abuse cases”.

57. Research is commissioned into “systems abuse” as a form of family violence that identifies the mechanisms and patterns of behavior of a perpetrator engaging in such abuse.
58. Development of resources to improve the identification and understanding of “systems abuse”.

### **Holding men responsible and accountable for their violence**

59. The State Government invest in evidence-based specialist responses to men who use violence.
60. The Magistrates’ Court develops “early intervention” strategies and potentially an “early intervention” court list for first time offenders with no history of family violence.
61. The State Government fund the expansion of the Court Integrated Services Program to be accessible to family violence perpetrators with complex needs.
62. Perpetrators that are assessed as high to medium risk are intensively case-managed and monitored. This should include the court, police, victims, lawyers and support workers actively participating in identifying and managing risk.
63. The State Government fund culturally appropriate programs and services to work with men from diverse cultural and linguistic backgrounds and Aboriginal and Torres Strait Islander Communities.
64. The Department of Justice investigate a broader range of penalties for breaching an intervention order such as:
  - a. an automatic extension of the intervention order
  - b. a compulsory requirement to attend court within 7 days of a perpetrator being charged with a breach

### **Promoting access to the Victims of Crime Assistance Tribunal**

65. The Department of Justice undertake a comprehensive review of the Victims of Crime Assistance jurisdiction having particular regard to the experience of victims of family violence.
66. Upon completion of the review, the VOCA jurisdiction is reformed to improve access to it by victims of family violence.
67. The Family Violence Protection Act be amended to enable a Magistrate hearing a family violence intervention order case to grant leave for a VOCA application.
68. The Victims Support Agency and the Magistrates’ Court develop information and resources to assist family violence victims to access the VOCA jurisdiction.

## **Improving Victoria Police response to family violence**

69. Victoria Police expand the civil advocates program to all Magistrates' Courts.
70. Victoria Police expand the family violence liaison program to all Magistrates' Courts.
71. Victoria Police undertake a comprehensive review of its current Code of Practice and an audit of police compliance with the Code. This audit should be open to public consultation and input.
72. Victoria Police update its Code of Practice to ensure that it reflects best practice in responding to family violence.
73. Victoria Police strengthen family violence response teams to include social workers that can attend an incident and provide victims with support at the time of an incident.
74. The State Government fund a comprehensive family violence training program rolled out across Victoria for all new and existing police members, every twelve months that includes external experts and women experiencing family violence in developing and delivering the training.

Given the examples of inadequate responses to Aboriginal and Torres Strait Islander women, women from culturally and linguistically diverse backgrounds and women with disabilities, it is essential that training includes modules on cultural sensitivity, unconscious bias and disability.

75. Accountability in Victoria Police strengthened through a streamlined complaints and feedback process in family violence incidences.
76. Greater focus within Victoria Police on improving police responses in regional, rural and remote communities where family violence has occurred.
77. Victoria Police develop protocols and provide training to police members to improve police responses to children in family violence incidences.

## **Strengthening the role of CLC's in the family violence system**

78. The future funding for CLCs include ongoing funding for programs, such as the LINK program at WLSV, that use technology to provide access to justice for women facing geographic, cultural, economic and other barriers to accessing legal services, with a particular focus on access for women from rural and regional areas.
79. The future funding of CLCs include ongoing funding to provide family violence workers with tools and training to identify and respond appropriately to legal problems. WLSV's critical legal issues map and training could be used as a foundation.
80. The State Government increase funding to Victoria Legal Aid to be made available to victims of family violence in contested hearings

## **Recent legislative amendments that are barriers to accessing justice**

81. The State Government amend section 327 of the Crimes Act 1958 as follows

*Failure by a person in authority to disclose a sexual offence committed against a child under the age of 16.*

*...a person ~~of or over the age of 18 years (whether in Victoria or elsewhere)~~ in authority in a relevant organisation who has information that leads the person to form a reasonable belief that a sexual offence has been committed in Victoria against a child under the age of 16 years by another person of or over the age of 18 years must disclose that information to a member of the police force of Victoria as soon as it is practicable to do so, unless the person has a reasonable excuse for not doing so.*

82. The State Government repeal amendments made to the FVPA with respect to finalisation conditions in interim orders.

## **SUBMISSION 2**

### **ECONOMIC ABUSE AND**

### **ECONOMIC RECOVERY OF FAMILY VIOLENCE VICTIMS**

#### **Legal recognition and treatment**

1. The Chief Magistrate of the Magistrates Court of Victoria considers issuing a practice direction regarding family violence intervention orders and economic abuse. The direction to set out additional conditions that can be included in intervention orders to address economic abuse, including: orders regarding the return of specific items of property that are being used to perpetrate economic abuse, that a victim be given possession of a vehicle, access particular chattels or a bank account and that women are able to deal with essential service contracts, including severing joint utility accounts and entering hardship arrangements without having to deal directly with a perpetrator.
2. Judicial College of Victoria and the Law Institute of Victoria engage specialist organisations working with women experiencing financial hardship and family violence (including Women's Legal Service Victoria) to design and deliver professional development for judicial officers, court staff and lawyers on the nature and impact of economic abuse in the family violence and family law jurisdictions.

#### **Police response**

3. Victoria Police ensures training programs are compulsory for all officers on the nature and impacts of family violence and in particular economic abuse and financial issues faced by victims of family violence.
4. The Victorian Government fund Victoria Police and Women's Legal Service Victoria to design and deliver training for police on family violence intervention orders and in particular economic abuse. The training should include: identifying economic abuse, the significance of family violence on the financial hardship and homelessness women experience and applying the code of conduct to deal with economic abuse when applying for and enforcing family violence intervention orders.
5. Amend the Family Violence Code to include practical examples which will assist police officers in identifying instances of economic abuse.

6. The Victorian Government and Victoria Police consider the ways in which current practice does not adequately address economic abuse for victims of family violence and implement strategies to improve practice, strategies might include:
  - a. police officers to take a more proactive role in the enforcement of intervention orders as they relate to property;
  - b. creation of a specialist team within Victoria Police, such as Protective Services Unit (PSU) or Sheriff's Operations within Civic Compliance to assist women with enforcing property provisions of an intervention order;
  - c. greater police accountability in ensuring victims (and their children) can remain in their home after a family violence incident and property provisions of intervention orders are sought and enforced; and
  - d. creation of a more accessible and robust police conduct complaints system for family violence victims, which should include accountability in ensuring victims (and their children) can remain in their home after a family violence incident and property provisions of intervention orders are sought and enforced.

### **Access to compensation**

7. The Department of Justice undertake a comprehensive review of the Victims of Crime Assistance jurisdiction having particular regard to the experience of victims of family violence.

### **Debts and banking**

8. Banking industry codes of practice and the Credit Protection Act is amended to allow for splitting of joint liabilities in circumstances of economic abuse where the parties agree to the splitting of the debt.
9. Banking industry codes of practice and the Credit Protection Act be amended to allow for the removal of victims' names from joint liabilities in circumstances of economic abuse where the debt is unable to be split by consent and where a victim would be otherwise unable to pay the debt due to financial hardship.
10. The banking sector to continue to consider the issues facing victims of family violence and identify areas for reform. For example, developing specific family violence policies to supplement existing financial hardship policies, including practices that do not require a victim to negotiate with a perpetrator to resolve their debt issue.
11. The Australian Banking Association engage specialist organisations working with women experiencing financial hardship and family violence to design and deliver training programs to financial institutions and credit providers on the nature and impact of economic abuse, and financial issues faced by victims of family violence.
12. The Australian Banking Association publish guidelines for banks in respect of family violence intervention orders and standards of best practice for dealing with victims of family violence experiencing financial hardship.

## Utility companies

13. The Essential Services Commission in consultation with financial counsellors and family violence services develop industry guidelines or a comprehensive set of principles addressing the treatment of customers in circumstances of financial hardship, including specific policies for family violence.
14. The Essential Services Commission in consultation with financial counsellors, community legal centres and family violence services are funded by the Victorian Government to design and deliver training programs to utility providers on the nature and impact of economic abuse and financial issues faced by victims of family violence.

## Assistance for victims

15. The Victorian Government provide funding for the Financial and Consumer Rights Council in consultation with family violence services to develop a specialist family violence financial counselling qualification and training program.
16. The Victorian Government provide funding for the Financial and Consumer Rights Council to develop and deliver a new specialist family violence financial counselling program, where financial counsellors are embedded in existing family violence services and work collaboratively to assist women. Services will include: community legal services, health services and other community services.
17. The Victorian Government provide funding for the continuation of the successful Stepping Stones pilot program at WLSV for three years from 2016 (at a cost of \$177,000 per year).

## **SUBMISSION 3**

### **MULTI-JURISDICTONAL ISSUES**

#### **Improving responses to family law in the family violence system**

##### **Knowledge and understanding of family law issues**

1. The CLC funding program includes funding to strengthen the capacity of CLCs that have family violence duty lawyer programs to provide family law advice and representation.
2. The Magistrates' Court and Victoria Police work with CLCs and VLA to establish a warm referral process to enable parties to obtain timely family law legal advice.
3. The State and Federal Government fund family violence/family law experts, such as WLSV, to develop a digital family law information session for parties in family violence proceedings.
4. Expand opportunities for barristers and private practitioners to undertake continuing professional development in family violence and intersectional issues.

5. The State Government fund training, such as that delivered by WLSV through its Safer Families training program, to strengthen the capacity of CLC family violence duty lawyers to provide appropriate family law advice in family violence cases.

### **Information sharing between courts**

6. State and Federal Government jointly fund the development of a central database of Family Court, Magistrates' Court and Children's Court orders.
7. The development of information sharing protocols and Memorandums of Understanding between DHHS, the Magistrates' Court and Family Courts.
8. The Magistrates' Court work with DHHS to develop and implement a pilot program that places a DHHS liaison officer at the Magistrates' Court in the family violence list.

### **Exercise of family law powers in the Magistrates' Court**

9. The Judicial College of Victoria develop continuing professional development modules for Magistrates to strengthen understanding of family law, intersectional issues with family violence.

We recognise that the recently developed Family Law Bench Book may go some way towards supporting improved engagement with family law issues.

10. Judicial appointments include Magistrates that have a background in family law and family violence.
11. The Magistrates' Court develop a practice direction restricting parties from negotiating parenting agreements at court during intervention order hearings.
12. Section 68R, S & T of the FLA be comprehensively reviewed and redrafted by the Federal Attorney General's Department.
13. The 21 day time limit in section 68T be repealed.
14. A process be established between the Magistrates' Court and Family Court registries providing that a section 68R suspension order trigger an application in the Federal Circuit Court for variation of a parenting agreement/order.

### **Piloting a "one family, one court" model**

15. We recommend that the Department of Justice and Regulation research and develop a "one family, one court" model, engaging in broad consultation with stakeholders and family law / family violence experts. The model should then be piloted and comprehensively evaluated before being expanded.

### **Strengthening family violence frameworks in the family law system**

#### **Family consultants**

16. The Australian Institute of Family Studies be provided with a reference to undertake research into the practices and assessments of family consultants.

17. The Federal Government, in consultation with family violence and family law experts develop an accreditation process and minimum standards for family consultants.
18. The Federal Government establish an oversight mechanism and complaints process to monitor and review the conduct of family consultants.

### **Family violence victims directly cross-examined in family law hearings**

19. The Federal Government amend the Family Law Act to include legislative protections for “vulnerable witnesses” such as family violence victims from direct cross-examination by a perpetrator of family violence.

### **Access to legal representation for family violence victims in the family law system**

20. The Australian Institute of Family Studies be provided with a reference to undertake research into the experience of unrepresented parties in family law proceedings, with a specific focus on parties that experience disadvantaged (eg family violence victims, people with a disability, people from culturally and linguistically diverse communities and Aboriginal and Torres Strait Islanders)
21. The Federal Government increase funding to legal aid commissions specifically in the area of family law.
22. VLA’s funding guidelines in family law are amended to promote greater access to legal aid for women who are victims of family violence.