



# Submission to the Royal Commission into Family Violence

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### **Murray Mallee Community Legal Service (MMCLS)**

The Murray Mallee Community Legal Service is a program delivered to the Northern and Southern Mallee of Victoria and South West NSW. It covers more than 100,000 square km with ten Local Government Areas within its catchment

The service offers free, confidential legal advice, information, referral and case work. It also provides legal education and engages in law reform activities.

The service aims to assist people from low socio-economic backgrounds and in particular young people, people from culturally and linguistically diverse backgrounds, Aboriginal and Torres Strait Islander people, people with disabilities and people living in isolated rural communities.

Regular Outreach Services are delivered in Dareton and Wentworth in NSW and Robinvale and Swan Hill in Victoria.

### **Intervention Order Support Service (IOSS)**

The Intervention Order Support Service (IOSS) is a free, confidential legal service that is provided by MMCLS to members of the community who are involved in intervention order proceedings. It involves the provision of legal advice and representation in Court for non contested intervention order proceedings. The Service is provided through a Specialist Family Violence Solicitor who also provides legal education to groups within the community on the Family Violence legislation.

The IOSS is delivered across MMCLS's Catchment Courts at Mildura, Robinvale, Swan Hill and Wentworth (NSW). Family violence matters are listed in Mildura every Monday, every second Wednesday in Swan Hill and monthly on a Tuesday in Robinvale. The Local Court sits in Wentworth and Balranald in NSW in the first week of each month however the service is not often taken up there because almost all persons in need of protection are represented by the Police and Respondents have access to Legal Aid duty lawyers.

There is a high incidence of family violence amongst our catchment areas. In Victoria in 2013 there were approximately 65,000 cases of family violence reported to police. The number two ranked municipality for incidences of family violence was Swan Hill, with Mildura third as opposed to Melbourne at 40.

Due to uncertainties with ongoing Commonwealth funding of the IOSS in early 2015 the incumbent Specialist Family Violence Solicitor employed by MMCLS for approximately 2 years resigned and returned to Sydney to find more secure employment. The newly

employed Principal Solicitor was able to step into the role and provide the required Court representation, at least until another specialist is found. However the Service lost access to the significant observations and experiences that the Specialist Solicitor could have contributed to these submissions.

### **Question 8**

**Tell us about any gaps or deficiencies in current responses to family violence, including legal responses. Tell us about what improvements you would make to overcome these gaps and deficiencies or otherwise improve current responses**

#### **Issues.**

MMCLS has two main issues that it wishes to bring to the attention of the Royal Commission:

1. The number of applications for intervention orders initiated and prosecuted by Police appears to be significantly lower than in other States such as New South Wales or Queensland; and
2. There appears to be a gap in the representation available to non-Police Applicants for intervention orders when the Respondent seeks a contested hearing.

#### **Number of Police Applications.**

An examination of the published Court Lists for our Victorian catchment from mid-May 2014 to date shows that of approximately 1,440 applications filed the Police have initiated and prosecuted approximately 52.5% of all Family Violence/Personal Safety Intervention Order applications listed. That means that 47.5% of all Applicants in the past year had to rely upon their own resources, access the IOSS or engage a private practitioner.

Anecdotally our Principal Solicitor's experience of the systems in Queensland (1991 to 1998) and in New South Wales (1998 to 2012) has been that Police have been responsible for initiating and prosecuting a significant majority of all family violence/personal safety intervention orders. Private applications in those States are possible but they are the exception rather than almost half of the whole.

We know from our contact with the Mildura Police Family Violence Officers and the Prosecutors that they take the issue of family violence and personal safety seriously and use their best efforts to assist those in need of help. It seems however that there is a lack of willingness to engage amongst some officers more distant from the specialist services within

the Police. The general duties Police in Queensland and New South Wales appear to have a more robust attitude to initiating appropriate applications for family violence and personal safety orders.

By way of example, one female client who this service acted for on 11 May 2015 instructed that she approached Police for assistance to obtain an order, gave details to Mildura Police and heard nothing further from them. She further instructed that her husband's uncle was a serving officer at Mildura Station. Eventually she approached the Court and made the application herself.

Another female client who we appeared for on 25 May 2015 instructed that a former acquaintance arrived at her doorstep one day and attempted to enter her home by force. Our client suffered from an intellectual disability and had a friend who was present ring Police and stay on the telephone during the balance of the incident with Police hearing the commotion of the Respondent yelling abuse and attempting to enter. The Police despatched officers to the scene and the Respondent left before they arrived. Rather than being assisted to bring an application by the Police our client was advised to attend the Court and bring the Application herself.

Another elderly, intellectually disabled, female client attended our office on 28 May 2015 in some distress. Her son was in gaol and she had been telephoned at about 9.00 pm the night before by his partner wanting some of the son's possessions and asking also for a small TV that belonged to our client. She was told over the phone: "We are going to come and get you." At approximately 1.00 am on 28 May 2015 the partner and her sister came to our client's home shouting obscenities and verbally abusing her. Our client rang Police who attended but the culprits had debunked. The Police took no action to assist our client to bring applications for intervention orders despite the culprits being identified to them. We assisted our client to complete applications for appropriate orders at the Mildura Magistrate's Court.

It would appear that while the issue of family violence is currently prominent there needs to be greater real and effective assistance to victims to obtain relief from that violence. One of the important ways to achieve that end is to have timely and appropriate legal representation at the initiation and resolution of applications to the Court for orders. It would appear that has been achieved in other jurisdictions by Police being available and willing to initiate and prosecute the significant majority of applications to the Court.

### **Contested Hearings.**

Our service is funded to provide assistance and advice to people involved in intervention order proceedings, whether Applicants or Respondents. Our focus is on acting for Applicants as in most circumstances Respondents have access to the duty lawyer schemes funded by Victorian Legal Aid in Mildura and Robinvale and provided directly by VLA in Swan Hill. In some circumstances where there are cross applications and in others if there are conflicts of interest we will swap with the duty lawyer and act for Respondents.

On the first return date of an application there are several possibilities for an Applicant that we appear for:

1. If the application is not served then we appear and obtain an adjournment to a later date. In some circumstances we may make an application for substituted service or provide the Court with alternate places where service may be affected. Sometimes it is necessary to call evidence from the Applicant to seek interim orders for their protection if this has not already been done;
2. If the application has been served and there is no appearance for the Respondent we can seek ex-parte final orders;
3. If the application has been served and the Respondent appears they may consent to the making of final orders with or without admissions;
4. If the application has been served and the Respondent appears they may agree to provide an Undertaking not to engage in prohibited behaviour. If accepted by the Applicant the Undertaking has no force as orders of the Court but allows the application to be reinstated if breached and provides further evidence of the need for final orders;
5. If the application has been served and the Respondent appears and wishes to contest the orders we appear and obtain an adjournment date for directions. Sometimes it is necessary to call evidence from the Applicant to seek interim orders for their protection until that time and often that application is contested.

We have the ability to obtain a result for the Applicant in each of the first four situations above either at that time or at a later return date in situation 1. In respect of situation 5 however we are not able to appear for people at a contested hearing and we need to refer that Applicant to a private solicitor to conduct the hearing for them. Whether or not the Applicant can obtain the services of a private solicitor at the hearing will depend on their ability to pay for that service from their own funds and/or to obtain a grant of legal aid from VLA.

Some magistrates are prepared to make orders under s.72 of the *Family Violence Protection Act 2008* at the first return date. That order means that the Applicant has guaranteed access to legal aid funding for the purposes of being cross examined at the ultimate hearing of the matter. Similarly orders made under s.71 of the Act guarantee the Respondent access to legal aid for the purpose of cross examining the Applicant as a protected person. Such grants of aid are subject to any conditions that VLA can impose under s.27 of the *Legal Aid Act 1978*. We understand that VLA apply the letter of the law strictly for such aid and it is only provided to assist in the cross examination of the protected persons at the hearing, not for any other part of the hearing, such as leading their evidence or submissions.

In our area when a matter is contested it is adjourned for a directions hearing date at which time details are taken as to the witnesses to be called and the possible length of the hearing so that an appropriate hearing date is allocated by the Court. The matter is then heard and determined at the hearing date. It is difficult for our service to appear for an Applicant at that stage because it involves making forensic decisions as to the running of the ultimate hearing that essentially should be made by the lawyer conducting the hearing.

As we understand VLA's practice if the Applicant applies for a grant of aid at the hearing VLA will not consider that grant until the contested hearing date has been given by the Court. Similarly if aid is ordered pursuant to a s.72 order no action is taken until the hearing date has been given. This effectively means that an Applicant who is not able to fund the hearing themselves and relies upon legal aid can be left with no representation at the directions hearing and limited representation at the hearing.

We understand that the magistrates will question such Applicants to obtain the information required to allocate a date but in many cases this must be difficult if not traumatic to the Applicant. We have no statistics as to how many Applicants withdraw or do not proceed at this stage but we are concerned that in many cases this may occur. Even if only a few Applicants do not proceed at this stage it is a grave concern that they are left with no protection and at significant risk of further violence.

It is necessary for all Applicants for family violence orders to be able to obtain appropriate legal representation for the whole of the process not just for the initial steps by way of community legal services and some limited Legal Aid funded assistance for cross-examination only not the directions hearing or the rest of the hearing process. In effect this system fails to properly assist the most vulnerable victims at a time when they need help the most. The end result of that can only be greater unnecessary stress and trauma to already vulnerable people when they need it least.

**Other Matters.**

We have had the opportunity to read the research papers published by Loddon Campaspe Community Legal Centre (LCCLC) on family violence, the interim project report "Why Didn't You Ask?" published in October 2013 and the final report "Will Somebody Listen to Me?" published in April 2015 and endorse the matters referred to therein.

We specifically endorse comments in the interim report (para 4 at p.8) and in the final report (F15 at p.27) as to the inadequacy of and lack of safety at some physical court facilities. In Robinvale there is one small room available for client interviews for which the Police, the duty lawyer, aboriginal legal service and IOSS must compete. Otherwise the only place to interview clients is in the open grass area outside the Court. There is no suitable safe area for Applicants at Robinvale. At Swan Hill there are a number of interview rooms which are shared between various services but there is no specific area where Applicants can wait away from members of the public or Respondents.

We particularly endorse the recommendation by LCCLC in the final report (F11 at p.26) that a detailed guide to self representation be available for contested hearings. Such guide should address the matters dealt with at the directions hearing as well as the final hearing.

As a cross-border Community Legal Service we are particularly cognizant of the difficulties faced by Applicants having orders that have been made in New South Wales or Victoria not being immediately recognized in the other State. We are supportive of the move to have a National Intervention Order which is universally recognized and capable of being acted upon by any Australian Police Officer if need be.

Dated: 29 May 2015

**Murray Mallee Community Legal Service**



**Steven Bliim**

**Principal Solicitor**