



# SUBMISSION TO FAMILY VIOLENCE REFORM IMPLEMENTATION MONITOR

BY  
WESTJUSTICE (WESTERN COMMUNITY LEGAL CENTRE)

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## **Acknowledgements**

We acknowledge the traditional custodians of the land on which we work, the Aboriginal people of the Kulin nations and pay our respects to elders past present and emerging, noting that sovereignty was never ceded.

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## **Endorsements**

This submission is endorsed by Barwon Community Legal Service.

## **Publication**

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## Abbreviations

Affected Family Members	<b>AFMs</b>
Family Violence Information Sharing Scheme	<b>FVISS</b>
Family Violence Reform Implementation Monitor	<b>FVRIM</b>
Intervention Orders	<b>IVOs</b>
Information Sharing Entities	<b>ISEs</b>
McAuley Community Services for Women	<b>McAuley</b>
Police Code of Practice for Investigation of Family Violence	<b>The Code</b>
Post-Traumatic Stress Disorder	<b>PTSD</b>
Protective Services Officers	<b>PSOs</b>
Restoring Financial Safety Project	<b>Economic Abuse Legal Clinic</b>
Sunshine Magistrates' Court	<b>SMC</b>
Western Community Legal Centre	<b>WEstjustice</b>
Werribee Magistrates' Court	<b>WMC</b>

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## **1. Introduction**

Western Community Legal Centre (**WEstjustice**) welcomes the opportunity to make this submission to the Family Violence Reform Implementation Monitor (**FVRIM**).

WEstjustice is a community legal centre that provides free legal help and financial counselling support to people living in the western suburbs of Melbourne. Our offices are located in Footscray, Werribee and Sunshine, with a number of outreach services available in other locations.

As part of its service, WEstjustice runs a Family Violence/Family Law Program which is responsible for coordinating the submissions and recommendations. An overview of the relevant programs are provided in section 2 below.

## **2. Overview of WEstjustice's Family Violence/Family Law Program**

This submission is informed by the experience of all arms of Family Violence/Family Law Program which includes working with members of the Economic Vulnerability Team and the Youth Team to support clients who are victim-survivors of family violence.

### **2.1 Family Violence and Family Law Program**

#### 2.1.1 Court assistance

We provide duty lawyer services at the Sunshine and Werribee Magistrates' Courts, namely on-the-day advice and representation primarily for applicants in family violence intervention order hearings at court.

#### 2.1.2 Family Violence and Family Law Clinics

Our Family Violence and Family Law clinics ensure that victim-survivors of family violence are able to obtain:

- early intervention family violence advice;
- family law assistance to ensure that safe parenting arrangements are made and limited property law advice is available;
- Divorce assistance;
- Victims of Crime assistance; and
- assistance in dealing with ancillary criminal law and civil issues.

#### 2.1.3 Mercy Hospital maternity clinic partnership

Through a Health Justice Partnership with Werribee Mercy Hospital, WEstjustice provides a maternity legal clinic for pre- and post-natal maternity patients who are at

risk of or experiencing family violence. The clinic provides family violence-related legal advice to patients and a limited number of hospital staff. This is a discreet clinic, being based within the hospital and relying solely on referrals from hospital staff. WEstjustice also provides additional secondary consultations and training to both hospital staff and external maternity services on the family violence legal and service system.

## **2.2 Economic Vulnerability Program**

### **2.2.1 Restoring Financial Safety Project**

As part of WEstjustice's Economic Vulnerability Program, we deliver the Restoring Financial Safety Project, which is a partnership between WEstjustice and McAuley Community Services for Women (**McAuley**), a provider of family violence crisis accommodation and support services in Melbourne's west. The program assists people experiencing economic and financial abuse and has improved financial security, financial safety, and ultimately, provided safe and secure housing for family violence victim-survivors.

The program sees a lawyer and a financial counsellor embedded at McAuley House women's refuge to address a victim-survivor's financial and legal problems in a supported and familiar environment.

### **2.2.2 Infringements**

Westjustice has deep expertise in infringements law. Utilising a trauma-informed approach, our lawyers assist victim-survivors to understand all of their options to resolve their fines. In particular we assist clients to prepare detailed Family Violence Scheme applications and we regularly contribute to law reform and advocacy in relation to the infringements system.

## **2.3 Youth Program**

WEstjustice also has a Youth Team which specialises in providing generalist legal advice (including in respect of family violence, criminal law and ancillary matters) to young people 25 years and under in Melbourne's western suburbs.

This service is delivered through two programs: the School Lawyer Program, based out of three high schools and one flexible learning centre in the Wyndham area, and the Youth Law Clinics, running out of two multi-disciplinary hubs to ensure wrap-around service and client referral pathways.

The generalist nature of the Youth Team's practice facilitates broad discussions with young people about their experiences, providing a broader perspective of the ways family violence impacts the lives of young people, even if they do not consider it their primary legal issue.

### 3. Executive summary and scope of submission

The Royal Commission into Family Violence made extensive and detailed recommendations to reform the entirety of the family violence system and related systems. Many of these recommendations have been implemented and have changed the space fundamentally. However, there is still much work to be done.

Our submission examines the family violence court system, the success of integrated partnerships to address family violence, the experience of children and adolescents in the family violence system, LGBTIQ people's experiences of family violence, and the fines and infringements system.

This submission is based on our organisational knowledge and experience founded on our extensive and diverse work in the family violence system space.

Our submission will focus primarily on **Question 2** of the Call for Submissions:

#### **Question 2:**

*Looking forward – what is still required in the family violence system?*

- *What are the most critical changes to the family violence service system that still need to occur?*
- *Are there any parts of the family violence reforms that have not yet progressed enough and require more attention?*
- *Are there any improvements that could be made to the implementation approach of the family violence reforms?*

Our submission will also make some comments on **Question 3:**

#### **Question 3:**

*Impact of the COVID-19 pandemic*

- *What has been the biggest impact of the COVID-19 pandemic on your organisation or sector? How have the services that your organisation or sector provides had to change?*
- *Has the COVID-19 pandemic highlighted any strengths or weaknesses in the family violence service system?*
- *Are there any changes resulting from the COVID-19 pandemic that you think should be continued?*

Our submission will also make general comments but does not comment in-depth on **Question 1:**

**Question 1:**

- *How has the family violence service system changed since the Royal Commission?*

In general, our submission sets out the key issues we continue to see as legal practitioners who are representing clients on a daily basis in the family violence jurisdiction and, where relevant, we make recommendations for change.

We also use scenarios drawn from the experiences of clients as examples, however none of these are intended to be representative of any one person's whole experience.

Wherever possible we have linked all our comments to the original Royal Commission into Family Violence report.

## **4. The family violence court system**

### **4.1 Overview of program and context**

WEstjustice provides free legal assistance to predominantly victim-survivors seeking legal protections of a family violence intervention order in the Magistrates' Court. We provide free legal advice, negotiation and representation for victim-survivors attending the Sunshine Magistrates' Court and Werribee Magistrates' Court. The service is usually provided to clients on the day of the hearing and is commonly referred to as a duty lawyer service. Victoria Legal Aid also provide a duty lawyer service predominately aimed at assisting respondents. WEstjustice lawyers are available to assist clients two days a week at each court.

Our recommendations and findings from our experience working in the western suburbs, will be broken up into four areas:

1. The Court Experience
2. The Client Experience
3. The Community Lawyer Experience
4. The Magistrates

## 4.2 The Court Experience

- *Recommendation 70 – The Victorian Government should fund and complete works to ensure that those magistrates’ courts (and children’s courts) that deal with a high volume of family violence-related matters have similar capacity to the Victorian Headquarter Courts.*
- *Recommendation 61 – The Victorian Government legislate to ensure that, subject to exceptional circumstances and the interests of the parties, all family violence matters are heard and determined in specialist family violence courts.*

The Sunshine region includes a headquarter court at Sunshine and a venue at Werribee. According to the Magistrates’ Court of Victoria Annual Report 2018-2019, the Sunshine region had the second highest number of family violence and personal safety matters per region in the State. This was a percentage increase of 5%.

Werribee Magistrates’ Court (**WMC**) was built in 1980 when Wyndham’s population was 40,000 people. But in 2019 Wyndham was home to 272,274 residents.<sup>1</sup> The courthouse is essentially a small house, with two floors, and two courtrooms, only one of which is used for intervention orders (**IVOs**). Applicants/Affected Family Members (**AFMs**) sit upstairs, and respondents sit downstairs at the Court. Often on busy days people are sitting on the floor, and lawyers are negotiating over the rubbish bin. Breaches of intervention orders are frequent, and the safety risks mean that WMC is one of the few courts in the state that has police members present rather than Protective Services Officers (**PSOs**). WMC has very little capacity to meet the security needs of the community due to infrastructure and resourcing.

While Sunshine Magistrates’ Court (**SMC**) has better facilities than WMC, there are still a number of infrastructure changes that are needed at both courts, including:

- separate entry/exit for both parties;
- separate lines for entry via security;
- express lanes or priority for duty lawyers seeking quick entry to the building;
- separate registry windows for applicants and respondents;
- not enough offices/interview rooms for police, duty lawyers and support workers;
- accessible duress buttons in our duty lawyer’s office;

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<sup>1</sup> Moore, Shorna (February 2014) *Outer Sight Out of Justice: Finding pathways to justice for Melbourne’s outer-metropolitan areas*, Wyndham Legal Service Inc. p.15

- introduction of a safe room at WMC;
- a separate safe room at SMC, that is large enough for families and stakeholders, with direct access to the Court building.

Below is a snapshot of the additional resourcing and infrastructure issues at WMC:

- no remote witness facilities;
- no capability to hear contested hearings;
- one lift and one stairwell;
- the screen to separate applicants and respondents at court is a pin board and it is not even permanently in place;
- not enough offices/interview rooms for police, duty lawyers and support workers, which creates the following issues:
  - only one interview room/office available upstairs for duty lawyers (where applicants are seated), second room is downstairs which means that some victim-survivors need to go downstairs to access our legal service;
  - police only have one interview room and so often police are forced to see different matters in the same room at the same time which creates issues for confidentiality, privacy and safety;
  - rooms are not sound proof and next to Victoria Legal Aid and/or police. We can often hear the conversations through the wall, which poses big issues for client confidentiality;
  - no accessible duress button in our duty lawyer's room.
- the Courtroom is often overcrowded and difficult for people to move through;
- the Courtroom is not accessible, there are not automatic doors or buttons to open the door;
- no court network volunteers available;
- no mental health practitioner available;
- no children support person available which means that clients are often forced to bring children into the Courtroom and interview rooms;
- no parking at the court;
- one water fountain downstairs, which means victim-survivors have to cross paths with respondents just to get a drink.

It doesn't have to be this way. In 2014, the state government allocated three hectares of land, directly behind Werribee police station, for a potential Wyndham integrated justice precinct.

Recommendations:

1. That the Wyndham integrated justice precinct is funded, zoned and built, and a Specialist Family Violence Court be established at Werribee.
2. Improve infrastructure at SMC so that it meets the Royal Commission recommended standards for a Headquarter court.

### 4.3 The Client Experience

- *Recommendation 62 – Family violence intervention orders should be granted speedily and safely.*
- *Recommendation 68 – The Magistrates' Court should make considerations for each court on family violence matters.*

There are a number of issues that need to be addressed to improve the court experience for victim-survivors in the western suburbs.

Unfortunately, family violence intervention orders are often not granted speedily and safely. In 2019, the family violence list at WMC had on average 38 matters listed per day, but on occasion was as high as 58. All clients are told that they are required to be at court at 9:30am and their matter will be allocated 5 minutes. Given the infrastructure issues discussed above, respondents and applicants often wait in long queues outside the courtroom together. Once they enter the court building, they again are forced to wait in line to speak to a Registrar together. They then are often forced to wait all day to have their matter heard. Capping the list and/or staggering hearings would increase the service and safety that is provided to victim-survivors in the west.

There are also very long delays in getting matters heard. We have had clients where it has taken as long as two years to get to a contested hearing. There have been proposals to increase the number of days dedicated to family violence matters, but this has not come with an increase in funding for duty lawyer services on those dates. At SMC, the number of family violence listing days was increased regardless, which meant clients did not have access to legal advice and representation at court.

Recommendations:

3. To ensure that family violence victim-survivors are provided access to justice safely, the family violence intervention order list is capped, with hearing times staggered throughout the day.

4. To ensure that family violence victim-survivors are provided access to justice speedily, an increase the number of days dedicated to listing family violence matters and a corresponding increase in funding for family violence duty lawyer services on those days.
5. That benchmarks be set and adhered to between application time and final listing date for all family violence intervention order matters.

- *Recommendation 158 – Specific funding be provided for family violence interpreters and the development of court guidelines for booking interpreters in Family Violence matters.*

When Family Violence Safety Notices are made by police, uniform members often do not indicate that both parties require interpreters. It may be that a person seems to understand at the scene, however court processes are complex and people need interpreters to provide instructions to their legal representatives. When the matter proceeds to Court, often only one interpreter is booked if any.

We understand that the Court has no capability to dial in a telephone interpreter during proceedings. Unfortunately, parties often end up using the same interpreter. This creates safety issues as clients have to sit in close proximity to each other in the courtroom. There also can be a perception of bias on the part of the interpreters, particular in small community groups.

Recommendations:

6. The implementation of court guidelines for booking interpreters, to ensure that two interpreters are booked if both parties require interpreters, and interpreters are sworn in and asked to confirm their interpreting level.
7. An increase in funding for technology for court rooms so that phone interpreters can be linked in where necessary.

*The Pandemic Perspective*

During the pandemic our clients have not had intervention orders granted quickly or with safety. In our local area, if a person were to apply for a family violence intervention order directly with their local Magistrates Court (in July 2020) by themselves (and not with the assistance of police) and where no interim orders are being sought, they could be allocated a date in November 2020 for their first hearing date in the matter unless her matter was deemed “urgent”.

We understand that the primary cause for the listing delay during the pandemic is that both Courts have needed to substantially and immediately reduce the volume of family violence intervention orders being listed for hearing in Court, in order to lower the volume of traffic through the Court and so that all court users can maintain social

distancing requirements. In combination with this, the Chief Magistrate released a Practice Direction in late March 2020 whereby “urgent” matters as defined in the Practice Direction must be prioritised for listing, resulting in lengthy delays for “non-urgent” applications.<sup>2</sup>

Both SMC and WMC have attempted to address this issue by asking court stakeholders to attend additional listing days in order to create more opportunities for matters to be heard, however some stakeholders have to date been unable to meet the request due to a lack of funding for human resources.

It is necessary to turn our minds to the effect of these delayed listing days and the inevitable release of the bottleneck of matters to be heard at a future point in time. For efficiency, we recommend that consideration be given to reintroducing specialised days where matters which are at a similar point in their progression through the intervention order process are grouped together, such as the “Super Directions Hearing Day” at SMC. The Super Directions Hearing Day was held once a month and lawyers were given materials on the court file in advance of the hearing day so that they could attend court prepared (rather than preparing on the spot which is often how the duty lawyer system operates). This will enable matters to be streamlined and dealt with in a more efficient manner.

#### Recommendations:

8. An immediate increase in funding to all court stakeholders to support an increased capacity to hear additional matters during the pandemic especially with regard to capacity to resolve a high number of matters which have been adjourned to a future date.
9. That benchmarks be set and adhered to during the pandemic between application time and first listing time for “non-urgent” matters to ensure that all matters are dealt with in a timely manner.

#### **4.4 The Community Lawyer Experience**

- *Recommendation 69 – Resourcing for legal services in family violence matters will be expanded.*

Each region and as a result each Magistrates’ Court has its own specific needs and set of challenges. Family violence matters in the western suburbs often require interpreters, and/or involve high risk family violence. In 2019, WEstjustice duty lawyers on average dealt with 7.2 matters at WMC in the family violence list, but on occasion it was as high as 18 matters. Due to this demand, WEstjustice provides two duty lawyers for intervention order matters, to ensure that our clients are receiving

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<sup>2</sup> Practice Direction No.2 of 2020 - Family Violence Protection and Personal Safety, Magistrates Court of Victoria, revoked and replaced by Practice Direction No. 6 of 2020 - Family Violence Protection and Personal Safety, Magistrates Court of Victoria

the appropriate advice and representation. It is important that funding for duty lawyer services reflects the complexity and volume of matters listed at the Courts.

Further and Better Particulars are ordered in most matters that progress to contested hearing at SMC and WMC. Preparation of these materials is time-intensive and puts a significant burden on applicants as they are forced to relive their often traumatic experience of family violence. There is also very little guidance from the court on the required content or format of these documents. It is especially difficult for clients whose first language is not English to complete these documents. There is a risk that the Magistrate will strike out an IVO application if the document is not completed. Unfortunately, drafting Further and Better Particulars is not funded at our community legal centre as part of the duty lawyer service and as such we are only able to assist a handful of highly vulnerable clients to prepare their Further and Better Particulars.

#### Recommendations:

10. A Practice Direction be developed by the Victorian Magistrates' Court to provide guidance and consistency on expectations for Further and Better Particulars, and when they will be required.
11. That the Victorian Government expand the resourcing of community legal centres to resolve the current over-burdening of duty lawyer services in family violence matters, including specific funding to assist clients with Further and Better Particulars.

#### The Pandemic Perspective

- *Recommendation 64 – Magistrates' Court staff hold daily meetings before hearings start in a family violence list.*
- *Recommendation 77 – Develop a safe, supported negotiation process for family violence intervention orders.*

During the pandemic, WEstjustice transitioned from an in-person duty lawyer service to a remote duty lawyer service, where we provided clients with advice by telephone on the day of the hearing and, if requested, negotiated with the other party or their lawyer also via telephone. The outcome of those negotiations would then be emailed to the relevant court for consideration by the Presiding Magistrate. We note that at the time of submitting this submission, our local courts at Sunshine and Werribee are located in "hotspot" zones where the number of active cases of infection in the local community are amongst the highest in the state.

Recommendation 64 states that Magistrates' Court staff should hold daily meetings before hearings start in a family violence list. During the pandemic there have been no daily meetings between court users. We understand that the reason for this is due to staffing shortages at the court (court staff having essentially moved to a Team A/Team B model with half at court half working remotely and alternating on a weekly

basis) and a lack of technology in which to host those meetings. We understand that court staff do not have computers with web-cams, microphones or speakers or the necessary software. We understand that they do not have the ability to host conference calls. As a result of this, it has been challenging to work collaboratively to identify high risk clients and promote a safe experience for people attending court, as stated in the aim of this recommendation.

Generally, a lack of ability for lawyers to appear remotely in hearings due to a fundamental lack of technology at the Courts has frustrated attempts for matters to be resolved quickly and safely. Whilst we understand that there has been a trial of the Webex platform for criminal law matters heard at SMC, no similar trial has yet been proposed for family violence intervention order matters. This issue also undermines the implementation of recommendation 77 which relates to the development of a safe, supported negotiation process for family violence intervention orders.

#### **Case Study**

*We assisted a client in a matter where a family violence intervention order had been served on the Respondent and there was no appearance by the Respondent. The affected family member was at court and was being assisted by WEstjustice remotely. The allegations of family violence were extremely serious and on-going. WEstjustice emailed submissions to the court and asked that they be placed on the court file. The written submissions set out the background, context and assessment of the level of risk by the lawyer. However, it appears that no consideration of the submissions was made when the matter was heard, as a short order was made in favour of the applicant. We believe that had the written submissions been given proper consideration in accordance with the Family Violence Protection Act 2008 (Vic) a longer order would have been made. Furthermore, had digital infrastructure been in place on the day allowing our lawyer to appear remotely before the Magistrate, our lawyer could have guided the Magistrate through the written submissions and answered any questions the Magistrate may have had in relation to the matter. This would have potentially saved the client being re-traumatised by attending court again in the near future to apply for an extension of the order.*

Recommendation 71 states that victim-survivors should be able to give evidence from a place other than the courtroom and we note that a trial is currently in progress in a regional location. Digital court rooms could result in more family violence matters being able to be heard during the pandemic whilst ensuring the safety and well-being of all court users without being limited by the physical infrastructure of our local courts.

## Recommendations:

12. That pre-court hearings be held via conference call facility and that telephone or computer technology be provided to court staff to facilitate this, if required.
13. An immediate increase in funding to all court stakeholders to support and increase capacity to hear additional matters during the pandemic and when the pandemic is over to deal with the release of the “bottleneck” which is currently building. This includes additional court staff, Magistrates, legal representatives, police and support staff.
14. An immediate increase in funding for technology for court rooms so that lawyers can appear remotely during the pandemic, including exploration of “Digital Court Rooms” so that family violence hearings are not limited by the physical infrastructure of court rooms. If “Digital Court Rooms” are successful, we recommend that these be retained as an optional court venue post-pandemic.

### **4.5 The Magistrates**

Magistrates who sit at Sunshine and Werribee Magistrates’ Courts (both current and reserve) do not have a specialist understanding of family violence or trauma informed practice. In our experience, these Magistrates differ greatly in their approaches, views and application of the *Family Violence Protection Act (Vic) 2008*.

The feedback from clients is that people feel their family violence is trivialised by the Court and they are not being heard or taken seriously. Clients often tell us that they feel just as victimised by the process of applying for an intervention order as by the family violence which preceded it.

*Unfortunately, Magistrates’ often make inappropriate comments to our clients. I recently represented a client who was told that she was being too sensitive, despite having experienced a long history of family violence and being assessed as high risk by the support practitioner at court. Another client was repeatedly pressured by a Magistrate to accept an undertaking because they didn’t want to impact the perpetrator’s employment opportunities (he was a security guard). These experiences at court are re-traumatising for victim-survivors, and place an emphasis on clearing the number of cases in the list rather than hearing women’s voices.*

*- Kate, Family Violence Lawyer*

Below is a snapshot of issues faced by victim-survivors applying for intervention orders in the western suburbs:

- Magistrates do not understand the history of family violence, as they are not taking the time to listen to the history and are then being dismissive of evidence given in the witness box.
- Magistrates failing to apply the law, allowing for re-hearings when there are no grounds, not taking the time to listen to practitioner submissions and instead suggesting that if parties are not happy with the decision they can appeal.
- Magistrates standing matters down to try and pressure clients to resolve or withdraw their applications.
- Magistrates are dismissive of high risk factors. For example, we had a client who had been hit with a weapon and then applied to extend her IVO. The Magistrate tried to pressure the client to accept an undertaking rather than adjourning the matter to a contested hearing, despite our client being very clear that she wanted an intervention order.
- Magistrates threatening clients with costs where family violence may not be extensive and there is an Extension Application on foot.
- Magistrates not hearing submissions and making Orders for a short duration, when a longer order is warranted, forcing applicants back to Court with Extension and/or subsequent Extensions.
- Magistrates making Orders for Further and Better Particulars routinely, even though the respondent has a criminal investigation on foot and/or SOCIT matters pending.
- Magistrates not managing matters in a case-sensitive manner. For example, Magistrates' should consider closing a courtroom if interim evidence is being given and the details could embarrass or endanger the safety of the individual if given in a public forum..
- Extension applications are not taken seriously if there are no breaches.

#### Recommendations:

15. All Magistrates be required to attend regular specialised family violence training with a focus on ensuring that Magistrates are trained to make decisions in accordance with the purpose set out in the *Family Violence Protection Act 2008 (Vic)*.
16. Establish an independent body to gather, analyse and publicise court statistics and court data relating to family violence intervention orders.
17. Establish an effective and transparent external complaint process to address Magistrate behavior.

- *Recommendation 90: An improved process for monitoring attendance at behaviour change program.*

Magistrates do not frequently order that the respondent attend a behaviour change program. The standard order is as follows:

*Respondent agrees to contact the Men's Referral Service to obtain confidential advice and information about services that may assist him.*

This means that there is no obligation for a respondent to participate in a behaviour change program as participation cannot be enforced; it is just encouraged.

In circumstances where the Order is made, there are few Magistrates who will follow up with a respondent to monitor their attendance. This information is particularly important if there is a Revocation, Variation or Extension which comes before the Court and the Applicant seeks to reduce the conditions to allow for contact when safety may be compromised. Generally if questioned a respondent will tell the Magistrate that he has made contact with the program and is on a waitlist. This creates issues where applicants feel they can reconcile with perpetrators on the belief that the person has completed the course, but in reality the respondent has not received the benefit of a behaviour change program.

#### Recommendations:

18. An improved process for monitoring attendance at behaviour change programs, including provision by the respondent of written evidence of their waitlist offer, attendance and completion of the course. This may be in the form of a Practice Direction.

## **5. Restoring Financial Safety Project: An Integrated Services Partnership**

### **5.1 Overview of program and context**

WEstjustice has developed an innovative new model of assisting people experiencing economic and financial abuse that has improved financial security, financial safety, and ultimately, safe and secure housing for family violence victim-survivors. Over the years, our research into family violence led to the creation of a partnership with McAuley Community Services for Women (**McAuley**) in which to deliver the Restoring Financial Safety Project (**Economic Abuse Legal Clinic**). McAuley is a provider of family violence crisis accommodation and support services in Melbourne's west. The program sees a lawyer and a financial counsellor imbedded at McAuley House women's refuge to address a victim-survivor's financial and legal problems in a supported and familiar environment. Through providing training to McAuley case managers, they are then able to identify when their client is

facing a legal or financial issues and refer them into the Economic Abuse Legal Clinic for further support. The program has prevented the escalation of legal and financial problems arising out of family violence through early intervention and provided holistic legal and financial counselling support through the complex processes and laws related to family violence.

Recent research revealed that up to 99% of the women who present to family violence support services experienced some form of economic abuse.<sup>3</sup> Economic abuse is also cited as the main reason a woman remains in, or returns to, a violent relationship,<sup>4</sup> and notably, family violence is the major cause of homelessness among Victoria's growing population of homeless women.<sup>5</sup>

Almost all victim-survivors struggle to fully recover from family violence without effective support to resolve related financial and legal issues. The majority of victim-survivors are forced to self-represent through the justice system and with creditors. Their legal and financial issues are intertwined, many of which have spiralled out of control, risking homelessness and poverty. Early intervention and effective representation by qualified legal professionals and financial counsellors is essential to intercept this downward spiral.

WEstjustice has been at the forefront of research and recommendations regarding economic abuse. Notably we provided both oral and written evidence at the Royal Commission on economic abuse and followed through with a pilot program and now our current Integrated Services Partnership: Restoring Financial Safety Project. We recommend that the government consider investment in this model and that the service be rolled out across Victoria.

## **5.2 The recommendations and findings from our Economic Abuse clinics**

Royal Commission Recommendations 107-121 relate to recommendations for recovery and financial security. Many of these recommendations have been implemented and are welcome protections for women experiencing family violence and financial abuse.

In particular the following recommendations have been actively monitored, utilised and relied upon when assisting victim-survivors with their financial and legal disputes within our clinic:

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<sup>3</sup> Jozica Kutin, Roslyn Russell, Mike Reid, 'Economic abuse between intimate partners in Australia: prevalence, health status, disability and financial stress' (2017) 41:3 Australian and New Zealand Journal of Public Health 269 at 269 <<https://onlinelibrary.wiley.com/doi/full/10.1111/1753-6405.12651>>.

<sup>4</sup> Australian Institute of Health and Welfare, Specialist Homeless Services Data Collection 2011-12 (2012) Cat. No. HOU 267 <<https://www.aihw.gov.au/reports/housing-assistance/specialist-homelessness-services-2011-12/contents/table-of-contents>>.

<sup>5</sup> Ibid.

- *Recommendation 108 – Amend the National Credit Code and Telecommunications Consumer Protections Code to include specific family violence financial hardship provisions;*
- *Recommendation 109 – Amend the Energy Retail Code and Customer Service Code to include family violence hardship provisions;*
- *Recommendation 110 – Encourage industry Ombudsman to publicise their dispute resolution processes to assist victim-survivors of family violence;*
- *Recommendation 111 – Encourage the Australian Bankers' Association to develop family violence industry guideline;*
- *Recommendation 112 – Investigate amendments to the Road Safety Act 1986 (Vic) to protect the safety of family violence victim-survivors;*
- *Recommendation 113 – Amend the Infringement Act (2006) to include special circumstances for persons experiencing family violence;*
- *Recommendation 116 – Consider amendments as part of the Residential Tenancies Act 2006 (Vic) review; and*
- *Recommendation 121 – Expand the delivery of financial literacy training for victim-survivors of family violence.*

The above reforms have certainly been fundamental in cementing a change in the way that Industry and Government treat family violence and economic abuse. However, WEStjustice has observed that even with the implementation of the reforms and shift in industry and government treating family violence as a standalone ground to access hardship programs and financial relief, many people are still unaware that these options are available to them or may not have been able to successfully self-represent through multiple complex systems. Many victim-survivors still report inconsistencies in the way they are treated by companies. In addition, many victim-survivors have a myriad of other issues they are facing all at the same time, including finding a safe place to live, trying to support their children, engaging in therapy and family violence case management and so on. This means that having to address their debts, including finding out what bills and debts they owe or have been placed in their name and individually contacting each service provider to explain their situation over and over again may not be possible for them. The mental capacity, level of financial literacy and time required to do this successfully cannot be understated.

WEStjustice believes that the success and utility of the above recommendations hinges on availability of a lawyer and financial counsellor at the right time and in the right environment. The in-situ integrated partnership between WEStjustice and McAuley has proved to be a successful and necessary way of providing the kind of

holistic support a victim-survivor requires when they leave a violent relationship. It means women are prevented from having to go to numerous places to get answers regarding the various financial and legal problems arising from family violence. It also means women can make informed decisions about their financial and legal options.

WEstjustice has observed that on average a victim-survivor presents to our service with approximately four legal and financial issues that they require assistance with. The most common issues that people present with are debts, intervention order proceedings, fines/infringements and tenancy. Almost all victim-survivors cannot fully recover from family violence without effective support to resolve related financial and legal issues. Without such support, the majority of victim-survivors are forced to self-represent through the justice system and with creditors. Their legal and financial issues are intertwined, many of which have spiralled out of control, risking homelessness and poverty and poorer or exacerbated mental health outcomes.

Early indications have revealed that providing both a financial counsellor and a lawyer while a victim-survivor is engaged with a family violence service has provided a number of benefits, not only to the client but also more broadly. These benefits include:

- **Early Intervention:** Victim-survivors have indicated that having the service available at McAuley House led to them accessing legal and financial counselling services earlier and more easily, many noting that they would not have known where to turn to for support without the service;
- **Economic Freedom and Financial Safety of Victim Survivors:** by providing a holistic legal and financial counselling service out of McAuley House we are able to improve a victim-survivor's financial literacy, security and capability and achieve positive legal outcomes. This leads to greater wellbeing, safety and confidence to recover and rebuild their lives and also reduced the likelihood that a victim-survivor will return to unsafe living conditions.
- **Keeping Industry and Government Accountable:** through our case work we are able to recognise strengths and weaknesses in industry and government responses to financial abuse in order to bring about wider systems change. We are able to use our experience to collaborate with the community sector to hold industry and government agencies accountable to their promises and codes of conduct to ultimately ensure they are responding proactively, flexibly, safely and appropriately to economic abuse;
- **Relieving Pressure off Family Violence Service Providers:** Easily accessible legal and financial counselling services have meant that family violence social workers can spend more time with their clients on matters of immediate safety and need, rather than chasing up multiple referrals; and

- **Victim-Survivors Housed More Quickly:** Assisting a victim-survivor to be free from debt and associated legal problems accumulated through family violence circumstances opens up money and capacity to afford stable housing. Early indications show that improving financial security also means victim-survivors and their children can be housed sooner, relieving pressure from the refuge/homelessness system.

Accessible financial counsellors and lawyers are central to the resolution of debts and legal issues and in turn vital to economic empowerment and recovery of many victim-survivors of family violence.

### **Case Study**

*Kate was forced into marriage at age 18 and shortly afterwards had her first child. When her child was only 11 months old our client was forced to leave her son overseas and come to Australia with the promise that her son would follow shortly after. Once in Australia, Kate was isolated and soon realised that there was never any intention to bring her son to Australia.*

*Kate was subject to severe physical, emotional and economic abuse. Every aspect of her life and her finances were controlled by her husband. Kate was forced to work in the family business for no salary, and her husband watched her on camera to ensure she couldn't 'steal' anything she was earning.*

*At times Kate was subjected to violence if she did not agree to sign loan or credit card applications. Kate's husband would come to her place of work and bully her into signing applications for credit or use her migration status to threaten her. Kate's sister in law would pretend to be Kate over the phone, as she knew our clients passwords, login details, driver's license number and passport details. Kate was treated as if she were a 'human line of credit'.*

*Kate was referred to us by her case manager at the McAuley Works program (a program within McAuley to provide women facing multiple disadvantages in getting work with intensive help to obtain meaningful, paid employment). Her case manager quickly realised that there was no way Kate could focus on getting a job while the debts were hanging over her head, so she made a referral to the economic abuse legal clinic. Her case manager said "We see that women in that situation can barely hold a conversation or think about their future with that massive worry taking up all their energies."*

*When she came to us, Kate had no idea how much debt had been placed in her name fraudulently and coercively and without her permission. Kate*

*thought her only option was to repay it, despite not receiving any benefit from any of the loans.*

*After obtaining a copy of her credit file, Kate was in more debt than she initially thought. She had over \$86,000 worth of debt with three different banks for various credit cards and personal loans. Kate had never received any benefit from these loans. Kate reported feeling “totally helpless”. She said that the “stress affects your whole body”. Kate simply could not move on with her life with this amount of debt following her. It was clearly causing her a huge deal of stress and anxiety and she had little money left over at the end of the week after paying off multiple payment plans. Kate reports that she had explained her circumstances to some of the lenders she was aware of and that they had offered her payment plans. One bank even told us that they had rejected one loan after picking up that she may have been under duress to sign the loan, however proceeded to offer loans in similar circumstances after that.*

*After advocating on her behalf and explaining her extreme circumstances to the relevant banks, we managed to secure debt waivers of the total amount of \$86,000. Kate told us that when she heard the debts had been waived it was the “luckiest and most precious day of [her] life”.*

*After the stress and worry of these debts were removed Kate was able to get her son back in her care and start studying again to ensure she is job-ready.*

### **5.3 Pathways to services**

Royal Commission Recommendations 35-40 revolve around pathways to services. Implementation of many of these recommendations have focused on the ‘Support and Safety Hubs’ now known as the ‘Orange Door’ which aim to provide region-specific single entry and intake points in order to provide more streamlined and accessible pathways to family violence and other support services. Amongst other goals, the program is supposed to offer a basis for co-location of other services likely to be required by victim-survivors and any children. Our statistics show that the ‘other services’ required by victim-survivors includes legal services and financial counselling services, both of which are still lacking in almost all family violence services.

There are also concerns held by many victim-survivors and community organisations that the involvement of police and close ties with child protection is a disincentive for people to access the Orange Door. Victim-survivors have identified concerns that by accessing the Orange Door support system Victoria Police or other statutory authorities will be alerted to their situation and that information may be inappropriately shared with the perpetrator (as the Orange Door service system is supposed to work with perpetrators as well). They are also concerned that they may

experience significant wait times and hasty referrals without any follow up. Currently the capacity of the Orange Door to provide tailored service responses is currently limited by the Orange Door workers' knowledge of services in the area.<sup>6</sup>

Unfortunately the implementation of the Orange Door has been slow and has yet to commence in Melbourne's inner west where WEstjustice provides its services. As such many family violence services and community legal centers have had to come up with their own innovative solutions such as the Restoring Financial Safety Project, the integrated services partnership between WEstjustice and McAuley.

It was made obvious in the Royal Commission recommendations that best practice requires a holistic, multi-sectorial approach to bring together a range of services who share the common goal to support a victim-survivor to live free from violence. Empirically these relationships are best placed between community organisations such as McAuley and WEstjustice who are independent from law enforcement or government agencies.

#### **5.4 Provision of sustainable funding arrangements**

Recommendation 224 urges the Victorian Secretaries Board to develop and promulgate principles for purchasing services that will contribute to achieving the goals of the Statewide Family Violence Action Plan. These principles should include:

- measures to encourage service providers to collaborate in order to enable clients to receive a broader range of services
- ways of simplifying pathways of support, ensuring victim-survivors and their children have access to a comprehensive range of services, regardless of where they live in Victoria
- allowing sufficient time for piloting, evaluation and adaptive management of new programs.

In noting the above recommendation, the Royal Commission was alerted to the difficulties caused by short-term funding of projects. The Commission noted that "projects should be funded for a period that provides some stability for service providers and allows sufficient time for evaluation and adaptation based on experience. When funding is provided for a service innovation, it should include some funding for determining whether the project has achieved its goals. The Commission does not want to set an arbitrary time limit, but it considers it would normally be difficult to justify funding for periods shorter than three years."

Currently many innovative projects such as the Restoring Financial Safety Project are showing tangible positive results but many are on time-limited funding or rely on

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<sup>6</sup> The Orange Door 2018 Evaluation, Prepared for Family Safety Victoria, PricewaterhouseCoopers Consulting (Australia) Pty Limited (PwC) and FSV, 31 August 2018.

philanthropic support. To this end, WEStjustice believes that the State should provide sustainable funding to the community sector to roll out similar projects which ultimately achieve the end goal of the Royal Commission Recommendations discussed in this submission. Rather than the implementation of 227 separate recommendations, programs like the Restoring Financial Safety Project help break down ‘silos’ and provide easy and accessible pathways to multiple services for vulnerable victim-survivors.

### Recommendations

19. Sustainably fund the expansion of the Restoring Financial Safety integrated partnership model to embed lawyers and financial counsellors specialising in economic abuse casework within family violence services.
20. Sustainably fund other holistic integrated partnership models to break down ‘silos’ and provide easy and accessible pathways to multiple services for vulnerable victim-survivors.
21. Prioritise funding to community-led responses to supporting victim-survivors of family violence.

## **6. Children and Young People in the Family Violence System**

### **6.1 Overview of program and context**

WEStjustice’s Youth Team provides generalist legal advice and advocacy to young people 25 and under who are based in Melbourne’s western suburbs. This service is delivered through two programs: the School Lawyer Program, based out of three high schools and one flexible learning centre in the Wyndham area; and the Youth Law Clinics, running out of two multi-disciplinary hubs to ensure wrap-around service and client referral pathways.

The Youth Team emphasises the value of positive life outcomes as well as optimal legal outcomes for our clients. We recognise young people are often marginalised and excluded from existing legal and supports, with broad ramifications for their futures.

Unlike WEStjustice’s specialised programs, the youth team practices in a generalist space – providing advice on a range of issues (including criminal law, consumer and debt matters, fines, civil law, family violence and employment). This facilitates broad discussions with young people about their experiences, clarifying for us the ways family violence impacts the lives of young people, even if they do not consider it their primary legal issue.

## 6.2 Young people and family violence

Across the Family Violence system, if they are considered at all, young people are mischaracterised as passive victim-survivors despite often being actively involved in safety planning and risk management. In many cases, our clients report a sense of responsibility for not only their own safety, but that of their mothers and younger siblings.

### **Case study**

*Zahra is 14 years old. She knows when her step-father begins shouting at her mother she should take her younger brother into her room and lock the door. Once they are safe she plays with him to distract him. She does this whenever an assault appears imminent. Her step-father will often come to find her brother to bring him back out into the family space. When this occurs, she waits until he is distracted and again removes him from the scene. This can continue for hours.*

While these young people are old enough to understand and influence family violence in their homes, they are not as often engaged in their own right by support services. They appear to be considered as a feature of the family violence situation, rather than as active participants whose choices and actions have meaning in the space. In this way, while young people are acknowledged as ‘victims’ of family violence, their equal truth as ‘survivors’ is not sufficiently recognised by systems and support services. This is compounded for adolescent victim-survivors, who after the age of about 14 are unlikely to be the subject of an intervention by Child Protection.

Anecdotally, from our work in the community, it appears this dynamic not only alienates young people from accessing support while they are enduring violence in the family home, but also establishes a learned distrust of family violence services.

Despite the significant ground covered by implementation of the 154 recommendations so far, we consider young people have not been sufficiently recognised by the reforms to date, and remain likely to be isolated from support services, police and the courts. We believe that the pressure points which exist are:

1. Reluctance to disclose family violence risks because of information sharing and mandatory reporting;
2. Lack of suitable crisis and permanent accommodation for adolescent victim-survivors;
3. Sense of disconnect from police and other authorities.

## 6.3 Reluctance to disclose family violence

- *Recommendation 5 – Create a family violence information-sharing regime.*

WEStjustice have pointed to the lack of autonomy young people experience upon becoming engaged with the Family Violence System in stark contrast to the heightened sense of responsibility they have in their homes. Our clients are cognisant of the implications of disclosing family violence to service providers, particularly in a school environment. Many of our clients have expressed a reluctance to speak to school wellbeing staff or engage with counselling because of mandatory reporting obligations. Common worries expressed include:

1. Their abusive parent or sibling will be removed and will therefore be without support;
2. Child Protection will become involved and younger siblings will be removed and the family separated;
3. Involvement of police could result in visa cancellation for abusive parents or siblings.

Tied to each is a concern about the intrusion of official services into their home lives. These support services, intended to protect victim-survivors, come to be perceived as an external threat because of the lack of control young people experience once they are involved.

An additional concern occasionally expressed by clients is that mandatory reporting and information sharing will be handled poorly by services, and ultimately result in a worse home situation. Many of our clients are aware Child Protection is unlikely to intervene seriously after they are older than 14. Without a clear outcome available to them, disclosure of family violence may lead to heightened home tensions without resolution.

Particularly for adolescent victim-survivors, these concerns can result in careful curation of which information they share, leading to limited support. The expansion of information sharing powers under the Family Violence Information Sharing Scheme (**FVISS**) has the potential to further alienate young people from seeking support. We note a second phase involves expanding the Information Sharing Entities (**ISEs**) to include organisations like schools and other educational institutions.

In its guidelines, the FVISS states that ‘a child’s safety is prioritised over any individual’s privacy.’<sup>7</sup> This approach, whilst understandable, undermines the autonomy of adolescent victim-survivors whose personal information may be shared without their consent, input or even knowledge. This stands in contrast to adult victim-survivors, who must consent to information sharing (with exemptions where they face an imminent threat).

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<sup>7</sup> Family Safety Victoria. Victoria State Government (2019) *Summary of the Family Violence Information Sharing Guidelines: Guidance for Information Sharing Entities*, p 3,

The FVISS recognises open and transparent relationships between service providers and child victim-survivors are ‘crucial’, however that intention is ultimately softened by the guide itself, which notes it may be appropriate not to seek a child victim-survivor’s views in circumstances as diverse as where it is impractical, unsafe or unreasonable to seek their views, or would otherwise ‘not promote the safety or wellbeing of the child’.<sup>8</sup>

This approach is understandable in young children, however it continues for adolescent victim-survivors. It is noted adolescents are likely to have ‘strong views’ about the sharing of their information, however the standard remains *only* that ISE’s *should* consult adolescent victim-survivors where ‘appropriate, safe and reasonable.’<sup>9</sup>

With emphasis placed on the safety of child victim-survivors, autonomy becomes only a preferred – though not prioritised – consideration. We believe a more measured balance is necessary for positive relationships between child victim-survivors and service providers.

### Recommendations

22. Further emphasis be placed in the guidelines on the autonomy of young people.
23. That the guidelines be amended to state that the views of the child victim-survivor *must* be sought where appropriate, safe and reasonable to do so.

#### **6.4 Lack of suitable crisis and permanent accommodation for adolescent victim-survivors**

- *Recommendation 24 – Support services providers to develop a broader range of supported accommodation options for young people.*
- *Recommendation 18 – Give priority to victims gaining stable housing as quickly as possible.*
- *Recommendation 124 – Develop additional accommodation options for adolescents who use violence at home.*

Anecdotally, adolescent victim-survivors may rely on friends and partners for crisis accommodation, through couch surfing. WEstjustice’s 2015 Youth Couch Surfing Clinic assisted 62 young people (aged 14-24) experiencing homelessness, 100% of whom had previously or were currently experiencing family violence.<sup>10</sup> Notably, of three groups enduring homelessness likely to have been undercounted in the 2016

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<sup>8</sup> Family Safety Victoria. Victoria State Government (2018) *Family Violence Information Sharing Guidelines: Guidance for Information Sharing Entities* p.72

<sup>9</sup> Ibid, p.76.

<sup>10</sup> Moore, Shorna (August 2017) *Couch Surfing Limbo: legal, policy and service gaps affecting young couch surfers and couch providers in Melbourne’s West*, WEstjustice, at 4.7.

census, the first two are people aged 12-18 who are couch surfing, and the second is women and children escaping family violence.<sup>11</sup>

Using couch surfing for crisis accommodation enables adolescent victim-survivors to control their own arrangements, and avoid the consequences of disclosing family violence to service providers (discussed above). However it is unstable and can be unsafe.

Per their Annual Report, in 2018/19 McAuley House – a prominent family violence service in Melbourne’s western suburbs – supported 251 children across their services (including crisis accommodation), however 77% of those children were under 10 years old.<sup>12</sup> Barriers do exist to adolescent victim-survivors accessing these more conventional crisis accommodation services. Male adolescent victim-survivors, in particular, can struggle to access refuges. This can be complex given adolescents who use family violence are often victim-survivors themselves.

In the western suburbs, the lack of options for emergency accommodation is a deterrent to adolescent victim-survivors who want to stay close to their places of education or work. This is compounded by the lack of reliable transport options. We note as part of the implementation of Recommendation 24 two new youth refuges are being constructed, and a review conducted into youth refuges. We are hopeful this will result in improved outcomes for adolescent victim-survivors.

Securing permanent accommodation is equally fraught for adolescent victim-survivors. Considered too mature for child protection involvement, however practically too young to access government housing or private rental accommodation, young people often enter informal arrangements in their social networks. These can include paying for board at friends’ homes, or living with partners. This can lead to serious power imbalances, where young people rely on the goodwill of their social networks for stable accommodation. Anecdotally, adolescents in these situations can face additional violence from intimate partners, or the family of their friends or partners.

### **Case Study**

*Emily moved into her boyfriend’s family home (located near her school) because of family violence in her own home. Her boyfriend is also violent. Emily would prefer to stay in a refuge but worries she will be placed too far from school to continue her education. It is simpler, she says, to live at her boyfriend’s home during term.*

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<sup>11</sup> Chamberlain, Chris. Johnson, Guy, ‘How Many Homeless People in Victoria: A research report prepared for the parliamentary inquiry into homelessness in Victoria’ January 2020, p.6.

<sup>12</sup> McAuley Community Services for Women (2019) *All Home Safely: Annual Report 2018/2019*, p.27.

Realistically, securing stable accommodation is difficult in these circumstances and many young people will continue couch surfing. This prevents consistent service access, stable employment and education opportunities.

WEstjustice notes the work done to implement Recommendation 24, in particular the funding of housing supports in the West for young people facing homelessness, exiting out-of-home-care or the justice system. However, these measures tackle youth homelessness without a family violence lens, and focus on young people already engaged in the child protection or criminal justice systems. As noted, a large portion of our cohort have narrowly avoided these pitfalls, but are still struggling to establish permanent housing after leaving violent homes. Similarly, implementation of Recommendation 18 thus far appears to focus on removing 'blockages' in crisis accommodation and transitional housing, which many adolescent victim-survivors may not be accessing.

WEstjustice remain concerned the barriers to securing permanent and safe housing remain insurmountable for young people not already linked in with youth justice or out-of-home-care services.

### Recommendations

24. Commitment to clear pathways to emergency accommodation.

25. Identify adolescent victim-survivors as a distinct group in need of stable housing.

### **6.5 Sense of disconnect from enforcement of the law: Police and Courts**

- *Recommendation 125 – Victoria Police determine a baseline model for family violence teams and consider dedicated youth resource officers.*
- *Recommendation 127 – Subject to the pilot program, establish a statutory youth diversion scheme.*

A significant number of the recommendations contemplate improving police response to family violence, however Recommendation 125 ultimately did not result in dedicated Youth Resource Officers for family violence matters. Rather, Victoria Police have elected to rely on existing structures and roles, including Family Violence Liaison Officers, Youth Resource officers and Youth Specialist Officers.

While the Police Code of Practice for Investigation of Family Violence (**the Code**) notes child victim-survivors' likely need for additional assistance and support, again, recognition of their autonomy and the role they play in the home is lacking. Notably, under the Code if an Officer believes a parent victim-survivor to be acting

'protectively' they are not required to interview children.<sup>13</sup> This may lead to only a partial picture of the incident.

#### **Case study**

*Ava was present when police attended a family violence incident between her mother and her father. Ava watched her mother describe the events to police. Her mother did not mention the history of violence, or her father's threats on that evening to kill them all. Her mother did not make a statement. Ava did not want to contradict her mother in front of police, and did not know if there was another reason she had left details out, so she stayed silent.*

It appears where a parent is present, adolescent victim-survivors may be relegated to the role of passive "victim". The exception to this is the adolescent who uses family violence. Statistically, and as noted by the Royal Commission, adolescents who perpetrate family violence are often themselves victim-survivors. This complex dynamic can impact their interaction with police, and it is noted by the Code, which requires police to 'consider' these underlying issues when responding to children or young people using family violence.<sup>14</sup>

However, there is a perception police do not handle these competing issues well. Participants in one 2018 study linked the 'inadequacy' of the police response to adolescents using family violence to the 'limited understanding [police have] of adolescent family violence and the complex issues that can arise from it'.<sup>15</sup> While Recommendation 41 provides guidance on police identifying the primary 'aggressor', it is complex when young people using family violence are the primary aggressor, but have endured prolonged violence themselves. However, whilst police are cognisant of the underlying issues which can contribute to adolescent use of family violence, this is at odds with laying charges wherever evidence permits in family violence matters. WEstjustice is firmly against the criminalisation of adolescent and young adult victim-survivors for family violence behaviour.

#### **Case study**

*Throughout his teenage years, Mohammed endured family violence at the hands of his uncle. Recently, when his uncle had attended his house without permission, they argued and Mohammed shoved him hard. Mohammed's uncle reported the incident to police, and Mohammed was*

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<sup>13</sup> Victoria Police, *Code of Practice for the Investigation of Family Violence*, at 2.4.2.

<sup>14</sup> Ibid.

<sup>15</sup> Fitz-Gibon, K, Elliot, k. and Maher, J (2018) 'Investigating Adolescent Family Violence in Victoria: Understanding Experiences and Practitioner Perspectives' *Monash Gender and Family Violence Research Program*. Faculty of Arts, Monash University, p.54.

*charged with a crime. Mohammed felt unable to explain the context or historical violence to police and accepted the charge.*

Engagement with police is a vital step in adolescent victim-survivors path towards support services and rehabilitation. It is essential police are equipped to engage with child and adolescent victim-survivors in a positive and compassionate manner.

These issues continue at Court, whether for IVOs or criminal matters.

Speaking first to IVOs, anecdotally while our clients will seek advice about obtaining IVOs, they rarely ultimately decide to pursue an application, even after leaving the home. Some commonly raised reasons for this are:

1. They feel commencing court action is a betrayal of their family, and jeopardises future relationships;
2. They are concerned engaging a parent in court action will ultimately lead to a higher risk of violence;
3. They are concerned that engaging external organisations will lead to negative outcomes for their family, particularly younger siblings (see discussed above in 'reluctance to disclose').

Without appropriate alternative accommodation or support services in place, an IVO would not necessarily mean protection for adolescent or young adult victim-survivors.

The issues faced by victim-survivors navigating the IVO systems has been discussed at length elsewhere in these submissions, and we acknowledge the Monitor has noted the Magistrates Court is committed to working to understand how specialist courts can 'better respond to the needs of children and young people.'<sup>16</sup>

The Youth Diversion Scheme recognises the trauma so often at the heart of adolescent use of family violence. At its best, this scheme allows adolescent victim-survivors who have commenced perpetrating violence to explore the underlying issues contributing to their offending behaviour. Many of our clients have benefitted immensely from this program.

However, this becomes complex when charges against adolescents are the result of mis-identification, or misunderstanding of the historical family violence. To participate in the Youth Diversion Program a young person must accept responsibility for their behaviour, as represented by the relevant charges. This can lead adolescent victim-survivors to accept responsibility for an incident in order to participate in the program in pursuit of a good legal outcome. The concern that prosecution could remove support for a matter proceeding to diversion can also pressure young people to enter

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<sup>16</sup> Family Violence Reform Implementation Monitor, Third Report of the Family Violence Reform Implementation Monitor at November 2019 (February 2020) p.15.

into a diversion plan, rather than pursue riskier advocacy around withdrawal. In our experience some prosecution units are also very reluctant to recommend Diversion for any family violence related offending, and fail to comprehend or appreciate the nuances around children and young people engaging in violent behaviour towards family members.

### **Case Study**

*Teuila is 15. Her mother is aggressive and violent when drunk. As Teuila has gotten older she has begun standing up to her mother. On one evening, this culminates in a fight between them. When police arrive, Teuila's mother identifies Teuila as the aggressor. When interviewed, Teuila states she acted in self-defence, but does not explain the history of violence. She is charged with criminal offences. At court, the prosecution state they will support diversion if Teuila is willing to accept responsibility for her conduct.*

Ultimately, however, the Youth Diversion Scheme is widely beneficial, particularly for offending outside the family violence space, but where family violence may have played a role. The case coordination and tailored Diversion Plans provide a structured path to rehabilitation for young people. Young victim-survivors over the age of 18 could benefit from this level of engagement, rather than the more hands-off and restricted approach of the Magistrates Court Diversion Program.

### Recommendations

26. Victoria Police should implement policies which recognise and support the autonomy of adolescent and child victim-survivors.
27. That the Youth Diversion Program, as modelled in the Children's Court, be extended to 25 year olds in the Magistrates' Court.
28. More uptake of cautions or electing not to prosecute children at all for family violence related incidents where there is evidence the accused is a victim-survivor, or has other vulnerabilities.

## **7. Accessibility of legal services for LGBTIQ people**

### **7.1 Introduction**

- *Recommendation 167 – All funded family violence services achieve Rainbow Tick accreditation.*

The Royal Commission Recommendations 166-169 resulted in unprecedented resourcing to address the needs of LGBTIQ people experiencing family violence. We recognise and applaud the implementation of Royal Commission Recommendations that have addressed the needs of the Victorian LGBTIQ community. However we further recommend that Recommendation 167, delivering of Rainbow tick

accreditation to all family violence services, be extended to include the Legal Assistance Sector (Victoria Legal Aid and Community Legal Centres).

## **7.2 What we know about LGBTIQ people's experiences of family violence**

Much of the research indicates that the rates of family violence in same sex relationships are equal to, or higher than family violence experienced in heterosexual relationships.<sup>17</sup> However the rates of family violence for trans and gender diverse people are often far higher than cis-gendered people. In 2006 the Private Lives Survey, a national study of LGBTI Australian's health and wellbeing, 32.7% of LGBTI respondents reported being in a relationship where their partner was abusive, however partner abuse for trans and gender diverse people ranged between 36% - 61.8%.<sup>18</sup> In a more recent Victorian survey 13.4% of LGBTIQ adults had experienced family violence compared with 5.1% of the broader population of Victoria.<sup>19</sup>

However, our ability to understand and respond to LGBTIQ people experiencing family violence is greatly hampered by the ongoing under-reporting of abuse to both family violence services and the Police. Only one in ten respondents to the 2006 Private Lives Survey who had experienced partner violence reported the abuse to police.<sup>20</sup> Similarly, *Coming forward* (2008) found that only one-third of respondents who had been subjected to abuse by their partner reported the violence.<sup>21</sup>

The consistent under-reporting of family violence has been attributed to the impacts of over-policing and mistrust in the legal system, the fear of experiencing prejudice and discrimination from authorities, and the fear of not being believed.<sup>22</sup> The added complexities of recognising family violence outside the context of cis-gendered heterosexual relationships creates further barriers to reporting abuse and is recognised as a significant factor that contributes to the under-reporting of LGBTIQ family violence in both the legal and response sectors.

## **7.3 Recognising inclusivity as cornerstone of equality – access to services**

The Victorian Government's LGBTIQ Equality index recognises the levels of trust that LGBTIQ people have in the justice sector (police, courts, legal services) as one of the strategies that will reduce the experiences of homophobia and transphobia

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<sup>17</sup> Ard, K.L., and Makadon, H.J., 2011, Addressing intimate partner violence in lesbian, gay, bisexual and transgender patients, *Journal of General Intern Medicine*, 26(8), p930 – 933.

<sup>18</sup> Pitts, M., Smith, A., Mitchell, A., and Patel, S., 2006, *Private lives: A report on the health and wellbeing of GLBTI Australians*, Australian Research Centre in Sex, Health and Society, La Trobe University, Melbourne.

<sup>19</sup> Victorian Agency for Health Information 2020. *Findings from the 2017 Victorian Population Health Survey*, State of Victoria, Melbourne.

<sup>20</sup> Pitts, Marian, Smith, Anthony, Mitchell, Anne and Patel, Suni, 2006, *Private lives: A report on the health and wellbeing of GLBTI Australians*, Australian Research Centre in Sex, Health and Society, La Trobe University, Melbourne, p.52.

<sup>21</sup> Leonard, W., Mitchell, A., Patel, S., and Fox, C. 2008. *Coming forward: the underreporting of heterosexist violence and same-sex partner abuse in Victoria*, Monograph Series Number 69. Melbourne: The Australian Research Centre in Sex, Health & Society, La Trobe University.

<sup>22</sup> Our Watch, *An analysis of existing research Primary Prevention of family violence against LGBTI Communities*, p 77 – 78.

within the Victorian community. The Royal Commission has undertaken significant work to address LGBTIQ family violence services and build LGBTIQ-inclusivity within family violence services (Recommendation 167).<sup>23</sup> This is expected to improve the rates of reporting family violence against LGBTIQ people and their access to legal protections.

One of the Royal Commissions Initiatives has been the development of the Neighbourhood Justice Centre's state-wide program for LGBTIQ family violence applicant and respondent support practitioners. The WEStjustice family violence duty lawyer service has worked with LGBTIQ clients that have been supported by the LGBTIQ family violence applicant and respondent practitioners. This service was implemented to support LGBTIQ people access the Magistrates' Court services when involved family violence intervention orders proceedings. The support of specialist court support practitioners had a significant impact upon our clients while accessing the legal system. This service built the confidence in our clients to seek family violence intervention orders, build rapport with their lawyers and feel heard and respected throughout the legal process.

In addition to the Royal Commission initiatives the St Kilda Legal Service has also established a state-wide LGBTIQ legal service, including the Roberta Perkins Law Project which is a trans and gender diverse legal clinic. The LGBTIQ legal service has also developed the LGBTIQ+ Inclusive Toolkit for community legal services.<sup>24</sup>

While these initiatives are making a difference to the experience of LGBTIQ people accessing the legal system a further systemic approach is required to ensure that culturally safe and inclusive legal services are widely accessible for LGBTIQ people seeking legal assistance to address experiences of family violence. For many LGBTIQ Victorians obtaining informed and inclusive holistic legal services will be dependent upon the legal practitioners own knowledge rather than being able to access appropriately trained and informed LGBTIQ inclusive legal services. The replication of Recommendation 167 for the legal assistance sector would create a more inclusive and informed legal assistance sector and enhance the ability of LGBTIQ people to engage with early intervention legal services and the broader legal system.

### Recommendations

29. That the funded delivery of the Rainbow Tick accreditation and the inclusion of LGBTIQ family violence training be expanded to include the legal assistance sector in line with Recommendation 167.

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<sup>23</sup> Victorian State Government, Discussion Paper for the Victorian LGBTIQ strategy, 2020, pg 33.

<sup>24</sup> To access the LGBTIQ+ Inclusive Tool Kit for community legal services go to <https://lgbtiqlegal.org.au/wp-content/uploads/2020/06/LGBTIQ-Inclusive-Practice-Toolkit-June-2020.pdf>

## 8. Fines and infringements

### 8.1 Introduction

The Family Violence Royal Commission recognised that fines and infringements can saddle victim-survivors with enormous and unfair debts for infringement offences over which they had no control due to the family violence to which they were subject. Fines can arise either because the victim-survivor committed the offence in unavoidable circumstances of family violence such as speeding when fleeing a family violence incident or parking offences while sleeping in her car after becoming homeless following family violence, or alternatively where fine offences are committed by the perpetrator of violence in a vehicle registered in the victim-survivor's name and it is unsafe for her to nominate the offender. The Commission noted that "victims face difficulties in nominating the perpetrator when they incur the infringement or fine in the victim-survivor's name, and in having a fine or infringement waived in situations where the victim-survivor incurred the fine or infringement in circumstances of family violence"<sup>25</sup>.

The Royal Commission made two recommendations addressing the infringements system, both of which have been implemented:

- *Recommendation 112 – The Department of Justice and Regulation investigate whether the Road Safety Act 1986 (Vic) should be amended so that, if a perpetrator of family violence incurs traffic fines while driving a car registered in the name of the victim, the victim is able to have the fines revoked by declaring:*
  - *They were not the driver of the vehicle at the time of the offending.*
  - *They are a victim of family violence—as evidenced by a statutory declaration, a copy of a family violence safety notice or family violence intervention order, or a support letter from a family violence worker, general practitioner or other appropriate professional.*
  - *They are unable to identify the person in control of the vehicle at the time for safety reasons.*
  
- *Recommendation 113 – The Victorian Government amend the Infringements Act 2006 (Vic) to provide that the experience of family violence may be a special circumstance entitling a person to have a traffic infringement withdrawn or revoked*

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<sup>25</sup> State of Victoria, Royal Commission into Family Violence: Summary and Recommendations, Parl Paper No 132 (2014–16), Vol IV, p120.

## 8.2 Family Violence Scheme

The initial scheme designed to implement recommendation 112 proposed by the then Department of Justice and Regulation had significant flaws including exposing victim-survivors to the risk of further violence, requiring them to identify the fines offender contrary to the Royal Commission's recommendations and requiring court attendance and 'transfer of liability' in some cases. However, following a period of consultation, the Department amended its proposed design and the scheme eventually implemented, now known as the Family Violence Scheme, struck the appropriate balance between public safety and safety of victim-survivors.

The Family Violence Scheme was introduced on 1 January 2018 and has been working well since. According to the Department of Justice and Community Safety, approximately 1,000 applications have been successfully processed under the Scheme.

For many victim-survivors of family violence assisted by WEstjustice, the Scheme has had an overwhelmingly positive impact, allowing victim-survivors to be diverted out of the infringements system without prejudicing their safety. The Scheme also helps to ensure that infringements are not able to become a form of violence and control over a victim-survivor whose access to information about the infringements or the financial resources to manage them may be impeded by the perpetrator.

Victim-survivors have explained to lawyers that a successful application under the Scheme feels like an acknowledgment of the seriousness of the family violence they suffered, as well as increasing their trust in the justice system. The Scheme also provides more appropriate outcomes for Victorians who have experienced family violence when compared to other infringement options, such as enforcement review based on special circumstances.

Despite the Scheme working well overall, there are a number of aspects of the Scheme which require strengthening.

### 8.2.1 Nexus between the family violence and the fines

Section 10T of the *Fines Reform Act 2014* (Vic) ("FRA") establishes the criteria for determining who is an eligible person for a Scheme application. Section 10T(1)(c)(i) provides that the family violence must have "substantially contributed to" the Scheme applicant being unable to control the conduct that constituted the offence. If the applicant was not the driver of the vehicle, s 10T(1)(c)(ii)(B) of the FRA provides that the family violence must have "substantially contributed" to the applicant being unable to make a known user statement in relation to an operator onus offence within the meaning of Part 6AA of the *Road Safety Act 1986* (Vic) (i.e. nominate the driver of the vehicle).

During 2019 and 2020, Fines Victoria has been taking a stricter interpretation of the words “substantially contributed” in ss 10T(1)(c)(i) and (1)(c)(ii)(B) of the FRA. This led to Fines Victoria refusing a large number of applications where family violence was not the “direct cause” of the applicant being unable to control conduct constituting an offence or make a known user statement, or where the family violence was not “current” at the time of offending.

This overly strict interpretation of the meaning of “substantially contributed to” is unfairly excluding many vulnerable victim-survivors from the Scheme. The ordinary meaning of “substantially contributed to” is causally influenced or contributed to a significant but not total extent. But Fines Victoria is holding applicants to a higher standard, being that the family violence must have been the sole or total causal factor in incurring the fines. This is ultra vires as it goes beyond that set out by Parliament. Fines Victoria is also requiring a temporal nexus, being that the family violence and fines occurred at the same time, even though this limitation is not established by the statutory test.

This strict reading of the nexus is particularly problematic and apparent in situations where victim-survivors have developed post-traumatic stress disorder (**PTSD**) as a result of the family violence. Even though the family violence and PTSD are connected and the PTSD arose as a direct consequence of the family violence, Fines Victoria have been treating the PTSD as if it is an event that disrupts the nexus between the family violence and the fines. This is troubling and leading to many victim-survivors being excluded from the Scheme in circumstances where their fines were “substantially contributed to” by the family violence to which they were subject because the fines were directly caused by the PTSD which was directly caused by the family violence.

#### Recommendations:

30. To ensure the Family Violence Scheme operates as intended, improves accessibility and prioritises the safety of victim-survivors of family violence faced with infringements:
  - (a) legally correct, consistent and transparent Fines Victoria policies and practices should be implemented to prevent the current interpretation of section 10T of the FRA, which requires victim-survivors to prove a direct causal and temporal nexus to be eligible for the Family Violence Scheme in contrast to the legislative requirement;
  - (b) these policies and practices should align with the Parliament of Victoria’s legislative aims, particularly in terms of sections 10T(1)(c)(i) and (1)(c)(ii)(B) of the FRA.

#### 8.2.2 Retraumatization of victim-survivors

The requirement to provide a statutory declaration from the applicant detailing the nexus between each fine and the family violence, in addition to another piece of

evidence, forces many clients to revisit and relive frequently traumatic events. This risks re-traumatising applicants, and for many victim-survivors, it is yet another time that they are expected to retell their experiences to a new person in trying to address their interconnected, complex vulnerabilities in the aftermath of family violence. In many cases, where there is other detailed evidence available, such as police statements, a report from a family violence service, intervention order applications or other previously prepared documents, a statutory declaration may be unnecessary and provide no additional information.

In many cases, Fines Victoria will seek further information to process a Scheme application. The information sought can relate to particularly sensitive issues, such as highly specific details of incidents of family violence. This places unrealistic expectations on victim-survivors to remember and discuss traumatic events, which may have occurred during different time periods. Further, the delays in processing Scheme applications can exacerbate the difficulty in remembering such events.

Even when the information gathered from these questions may help Fines Victoria process an application, the way in which these questions are phrased can be damaging to clients, as it can appear to victim-survivors of family violence as Fines Victoria not accepting the veracity or seriousness of their experiences of family violence.

On many occasions, the level of detail requested by Fines Victoria (such as demonstrating a 'direct link' between the family violence and the offending) is unnecessary to satisfy the statutory test of eligibility under the Scheme (see above section on the nexus).

#### Recommendations:

31. The evidentiary requirements to establish that family violence substantially contributed to a victim-survivor's infringements should be applied so that, provided a victim-survivor has provided sufficient supporting evidence, they can simply confirm the contents of that evidence in any statutory declaration rather than going into great detail about the nexus for each fine as is currently required.

#### 8.2.3 Excessive speeding

Currently, drink driving, drug driving and excessive speeding are not capable of being dealt with under the Scheme. This makes sense for drink and drug driving, where offences are detected by direct intercept of the offender. However, excessive speed offences are usually camera detected and often committed by the perpetrator of violence in the victim-survivor's vehicle, frequently as a way to exert direct financial control over the victim-survivor.

As the Royal Commission recognised, victim-survivors frequently cannot nominate the driver for those offences within 28 days because it is not safe to do so.

Excessive speeding offences result in long periods of licence suspension, which impedes a victim-survivor's mobility and independence and may prevent her from leaving a violent relationship.

In WEstjustice's view, excessive speeding should be capable of being dealt with under the Scheme.

#### Recommendations:

32. To ensure that family violence victim-survivors are not unfairly burdened by the fines and conduct of perpetrators, legislative change should be enacted to make excessive speeding an eligible offence under the Family Violence Scheme.

### **8.3 Family violence as a special circumstance**

Recommendation 113 was quickly implemented after the conclusion of the Royal Commission. Although victim-survivors do not often invoke family violence for special circumstances enforcement review (which replaced revocation under the FRA) because of the comprehensiveness of and preference for the Family Violence Scheme, the definition of special circumstances as encompassing family violence is significant for section 165 hearings after infringement warrants are executed and debtors are at risk of imprisonment. Family violence as a special circumstance means family violence can be taken into account by Magistrates to justify discharging fines against a debtor under section 165(2)(b). This is a crucial power for situations where victim-survivors do not apply to the Family Violence Scheme and instead warrants are executed against them for fines that were incurred in circumstances of family violence. It is therefore critical that family violence remain a special circumstance under section 3 of the Infringements Act 2006 (Vic).

## **9. Recommendations of this submission**

1. That the Wyndham integrated justice precinct is funded, zoned and built, and a Specialist Family Violence Court be established at Werribee.
2. Improve infrastructure at SMC so that it meets the Royal Commission recommended standards for a Headquarter court.
3. To ensure that family violence victim-survivors are provided access to justice safely, the family violence intervention order list is capped, with hearing times staggered throughout the day.
4. To ensure that family violence victim-survivors are provided access to justice speedily, an increase the number of days dedicated to listing family violence matters and a corresponding increase in funding for family violence duty lawyer services on those days.

5. That benchmarks be set and adhered to between application time and final listing date for all family violence intervention order matters.
6. The implementation of court guidelines for booking interpreters, to ensure that two interpreters are booked if both parties require interpreters, and interpreters are sworn in and asked to confirm their interpreting level.
7. An increase in funding for technology for court rooms so that phone interpreters can be linked in where necessary.
8. An immediate increase in funding to all court stakeholders to support an increased capacity to hear additional matters during the pandemic especially with regard to capacity to resolve a high number of matters which have been adjourned to a future date.
9. That benchmarks be set and adhered to during the pandemic between application time and first listing time for “non-urgent” matters to ensure that all matters are dealt with in a timely manner.
10. A Practice Direction be developed by the Victorian Magistrates’ Court to provide guidance and consistency on expectations for Further and Better Particulars, and when they will be required.
11. That the Victorian Government expand the resourcing of community legal centres to resolve the current over-burdening of duty lawyer services in family violence matters, including specific funding to assist clients with Further and Better Particulars.
12. That pre-court hearings be held via conference call facility and that telephone or computer technology be provided to court staff to facilitate this, if required.
13. An immediate increase in funding to all court stakeholders to support and increase capacity to hear additional matters during the pandemic and when the pandemic is over to deal with the release of the “bottleneck” which is currently building. This includes additional court staff, Magistrates, legal representatives, police and support staff.
14. An immediate increase in funding for technology for court rooms so that lawyers can appear remotely during the pandemic, including exploration of “Digital Court Rooms” so that family violence hearings are not limited by the physical infrastructure of court rooms. If “Digital Court Rooms” are successful, we recommend that these be retained as an optional court venue post-pandemic.
15. All Magistrates be required to attend regular specialised family violence training with a focus on ensuring that Magistrates are trained to make

decisions in accordance with the purpose set out in the *Family Violence Protection Act 2008 (Vic)*.

16. Establish an independent body to gather, analyse and publicise court statistics and court data relating to family violence intervention orders.
17. Establish an effective and transparent external complaint process to address Magistrate behavior.
18. An improved process for monitoring attendance at behaviour change programs, including provision by the respondent of written evidence of their waitlist offer, attendance and completion of the course. This may be in the form of a Practice Direction.
19. Sustainably fund the expansion of the Restoring Financial Safety integrated partnership model to embed lawyers and financial counsellors specialising in economic abuse casework within family violence services.
20. Sustainably fund other holistic integrated partnership models to break down 'silos' and provide easy and accessible pathways to multiple services for vulnerable victim-survivors.
21. Prioritise funding to community-led responses to supporting victim-survivors of family violence.
22. Further emphasis be placed in the guidelines on the autonomy of young people.
23. That the guidelines be amended to state that the views of the child victim-survivor *must* be sought where appropriate, safe and reasonable to do so.
24. Commitment to clear pathways to emergency accommodation.
25. Identify adolescent victim-survivors as a distinct group in need of stable housing.
26. Victoria Police should implement policies which recognise and support the autonomy of adolescent and child victim-survivors.
27. That the Youth Diversion Program, as modelled in the Children's Court, be extended to 25 year olds in the Magistrates' Court.
28. More uptake of cautions or electing not to prosecute children at all for family violence related incidents where there is evidence the accused is a victim-survivor, or has other vulnerabilities.

29. That the funded delivery of the Rainbow Tick accreditation and the inclusion of LGBTIQ family violence training be expanded to include the legal assistance sector in line with Recommendation 167.
30. To ensure the Family Violence Scheme operates as intended, improves accessibility and prioritises the safety of victim-survivors of family violence faced with infringements:
- (a) legally correct, consistent and transparent Fines Victoria policies and practices should be implemented to prevent the current interpretation of section 10T of the FRA, which requires victim-survivors to prove a direct causal and temporal nexus to be eligible for the Family Violence Scheme in contrast to the legislative requirement;
  - (b) these policies and practices should align with the Parliament of Victoria's legislative aims, particularly in terms of sections 10T(1)(c)(i) and (1)(c)(ii)(B) of the FRA.
31. The evidentiary requirements to establish that family violence substantially contributed to a victim-survivor's infringements should be applied so that, provided a victim-survivor has provided sufficient supporting evidence, they can simply confirm the contents of that evidence in any statutory declaration rather than going into great detail about the nexus for each fine as is currently required.
32. To ensure that family violence victim-survivors are not unfairly burdened by the fines and conduct of perpetrators, legislative change should be enacted to make excessive speeding an eligible offence under the Family Violence Scheme.