

# Will somebody listen to me?

INSIGHT, ACTIONS AND HOPE FOR WOMEN  
EXPERIENCING FAMILY VIOLENCE IN REGIONAL VICTORIA

 loddon campaspe  
community legal centre







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Supported by the  
Victorian Legal Services Board  
and Commissioner  
April 2015

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Victorian Legal Services  
**BOARD + COMMISSIONER**  
Funded through the Legal Services Board Grants Program



**Will somebody listen to me?**

*Insight, actions and hope for women experiencing family violence in regional Victoria*

April 2015

Published by the Loddon Campaspe Community Legal Centre, a program of ARC Justice, and written by Carolyn Neilson and Bonnie Renou.

A more detailed report of this research is available at [www.lcclc.org.au](http://www.lcclc.org.au)

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 arc  
justice

*... I've been through it. I suffered.  
I've had help. And as I said when  
you're in it you don't realise,  
you know and never in a million  
years did I ever think this would  
happen to me.*

MAUDE

*The police need to hear these  
stories without judgement,  
regardless of what they are  
perceiving.*

ALLY

*... the support worker knew the  
system. Oh my God, that was key  
to me ... you know what to say,  
what not to say.*

CARRIE

*... how do we change this for our  
young boys/men for the future?  
We have to get onto this problem  
of family violence especially with  
the children who witness it, sooner  
rather than later, they need a lot of  
help and support so that they don't  
become part of the cycle ... I want  
help for my boys, they absolutely  
require so much support*

CORDELIA

*I think abusers rely on their partners to be silent and I don't want to be one of them women who stay silent.*

WEONA

*I want to change this for every woman, just a normal thing that women and children should be safe. I don't know how it got all confused. Men should protect us.*

CORDELIA

*... this has actually been going on for years and years beforehand.*

*It was affecting me, I had depression and had gone into hospital, prior to leaving but I didn't realise it could be mental, verbal violence as well.*

KIRSTY

*The courts need to stop burying their heads in the sand, hoping that this epidemic of family violence will go away.*

BERYL

*... the violence got worse. It accelerated and got more violent to the point where I was concerned for my life and the children's lives.*

CORDELIA

*... the support worker knew the system. Oh my God, that was key to me ... you know what to say, what not to say.*

CARRIE

*I need him to say I'm sorry. He needs to say it to the kids as well. He never said I'm sorry to any of us, never, and I've asked for him to apologise and he won't.*

CHRISTINE

*The interim order brought us a bit of peace. I didn't have to answer the phone worrying if it was him and what he was going to say. My children felt safer, they had a choice about contact with their father. It brought respect into the communications, and situation, I felt more in control.*

HELEN

# Foreword

*Will somebody listen to me? Insight, actions and hope for women experiencing family violence in regional Victoria* makes a significant and timely contribution to the evidence on Victoria's family violence system. Throughout 2015 the Royal Commission into Family Violence will be conducting investigations of every aspect of the system, including the ways that police and the Magistrates' Courts handle family violence cases and how legal services work with their clients. Its recommendations will inform the future directions for the Victorian family violence system. This report, with its critical insights from the women who have lived experiences of family violence, will be an invaluable piece in that puzzle.

The summary and full reports give voice to the women whose safety and well-being has relied on the family violence system, women who have sought support from police, courts, legal and specialist services. In telling their stories, which are both positive and difficult, these women clearly identify the gaps and barriers as well as the supports and processes that determine a woman's experience of the justice system. Importantly, the reports draw on the particular challenges for the women accessing the justice system in rural and regional areas of Victoria. They reinforce the need to listen to what women want as outcomes from the processes. Listening and learning from these varied experiences is pivotal to developing a better and more responsive system.

In this year of the Royal Commission, it is exactly research like this, that honours women's experiences, that should be heard. I am confident that the extensive and thoughtful recommendations made in these reports will resonate with those working in the sector and the wider community.



**Fiona McCormack**  
CHIEF EXECUTIVE OFFICER  
DOMESTIC VIOLENCE VICTORIA

# Preface

This year, 2015, marks the 10th anniversary of services by the Loddon Campaspe Community Legal Centre (LCCLC). In 2005 it was born from the labours of a sustained campaign for community legal services in the region led by the family violence service EASE (now Centre for Non Violence), the Loddon Campaspe Centre Against Sexual Assault and the Advocacy and Rights Centre (now trading as ARC Justice). Those services recognised that, among other needs, legal assistance for women experiencing family violence was critical.

Since 2005 family violence legal assistance services have dominated LCCLC's client service profile, with thousands of women assisted. However, over this period LCCLC felt that insufficient attention was given to the views of clients themselves or outcomes such as safety, social well-being or health. This summary report and the more detailed online report seek, in part, to give greater voice to those views.

In our view the report represents one of the best data samples of women who have experienced family violence in rural and regional Australia. However, LCCLC also acknowledges the pragmatic and action-focused approach to this report. In a context of limited funds a stepping stone approach to researching the experience of the women is necessary. Where this report contains deficiencies in research methodology or analysis we encourage others to be inspired by its spirit and intent, dedicating themselves to creating systems that are truly responsive to the complex and diverse needs of victims and perpetrators.

In celebrating this publication I wish to firstly thank and honour the women who have participated in the research and shared their stories. I thank the researchers, report authors and project workers, Carolyn Neilson and Bonnie Renou, who have not only dedicated themselves to supporting women who have experienced family violence, but also conscientiously sought to understand the experiences of these women and represent them in this report and elsewhere to work for more effective justice responses for victims and

perpetrators of family violence. Indeed I thank all of the staff and volunteers of LCCLC who have committed themselves to supporting victims of family violence who have sought our assistance. I thank the Victorian Legal Services Board and Commissioner Grants Program, and specifically acknowledge the leadership of Susan Ball in championing a family violence prevention-focused grant round. I recognise and honour the groundbreaking work of Deakin University in also researching the experiences of women navigating the family violence legal landscape, especially researchers at its Centre for Rural and Regional Law and Justice including Lucinda Jordan, Lydia Phillips, Amanda George and Bridget Harris. Lastly, I thank the report editor Sally Woollett and designer Stephen Horsley of Propellant graphic design who have dedicated themselves to creating a dynamic publication that attempts to embody and communicate something of the lived experiences and aspirations of the women interviewed.



**Peter Noble**  
EXECUTIVE OFFICER  
ARC JUSTICE

## Acknowledgements

We acknowledge that the core of the Loddon Campaspe Community Legal Centre (LCCLC) catchment is on Dja Dja Wurrung Country of which the members, elders and their ancestors are the traditional owners of this land and have been custodians for many centuries and where they continue to perform age-old ceremonies of celebration, initiation and renewal. We also acknowledge the traditional owners of the other areas of our catchment, the Yorta Yorta, Barababaraba, Waddi Waddi and Wemba Wemba peoples of the Murray River area of the LCCLC catchment; and the Taungurong people of the east and south-east of the LCCLC catchment. They all play a vital and unique role in this region in all

aspects of life, including how we as a community and the justice system work together to address family violence.

We are grateful to the Victorian Legal Services Board and Commissioner and Commissioner Grant Program, which funded LCCLC to produce this publication. The Victorian Legal Services Board and Commissioner is an independent statutory authority, responsible for regulation of the legal profession in Victoria, and it awards and oversees a grant program aimed at improving access to justice and equity.

We thank the women who shared their most personal lived experiences of family violence and the justice system with integrity and insight. We have been impressed with your strength and resourcefulness and inspired by your generosity in sharing your lived experiences to assist other women and children.

We sincerely hope this research honours your lived experiences and leads to improved justice outcomes for other women and children who experience family violence. We would like to honour the mothers of whom the women spoke, who gave their daughters ongoing support through their daughters' struggle for justice.

We thank the following organisations and individuals for their support and acknowledge the high regard that women who experience family violence have for their support: Centre for Non-Violence, Bendigo, Women's Health Loddon Mallee; Ann Spittles, Indigenous Family Violence Regional Coordinator, Department of Human Services, Bendigo; Loddon Campaspe Centre Against Sexual Assault (CASA); Pat Mullens, Bendigo Court Network Programme Manager for the Bendigo regional courts and the Loddon Campaspe Family Violence Advisory Committee.

We also thank Adam Stevens and David Hillard of Clayton Utz Lawyers and their colleagues for providing pro bono transcription of the recordings of the women's conversations. This has been of tremendous assistance.



For an explanation of this and other cognitive maps throughout the report, see p. 31.



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# 1 About this project

## Overview

In 2011, the Loddon Campaspe Community Legal Centre (LCCLC) received funding through the Victorian Legal Services Board and Commissioner Grant Program to target family violence in the Central Victoria region. We provide family violence duty lawyer, advice and ongoing case work across the Loddon and Campaspe region, currently constituting 46.5% of the service's case work.<sup>1</sup> This project focuses on giving voice to women that have experienced family violence and the legal system. It aims to improve their safety, social and health outcomes. The funding gave LCCLC a real opportunity to dedicate the type of resources to this issue that are needed to respond to demand and to identify systemic improvements.

The project seeks to advocate new approaches to family violence legal assistance services that champion outcomes sought by women, as told by women. LCCLC prioritises legal assistance to women who are experiencing family violence, and we know through experience that many of those attending court arrive with little understanding of what to expect on their pathway through the system. The provision of legal services is geared to tangible outputs – intervention orders – with insufficient weight on the views of clients themselves or outcomes such as safety, social well-being or health.

As part of the project, we surveyed 190 women at Bendigo, Echuca, Maryborough, Kyneton and Swan Hill Magistrates' Courts, and had in-depth conversations with 27 women, to give voice to these experiences and provide recommendations that stem from these voices. We wanted to support clients to critique the legal system and the current solutions that it offers to women and children who experience family violence. The two-part quantitative survey asked

what the participant was seeking by applying for an intervention order, and what her experience of the legal system had been like. The in-depth semi-structured conversations with a non-legal LCCLC staff member qualitatively explored these hopes, experiences, difficulties and outcomes.

All the women engaged in conversations had experienced family violence committed by a male offender and so we acknowledge our gendered analysis of this type of family violence.<sup>2</sup>

Because of the localities of the women, the research drew out issues that are experienced by, if not more acute or unique for, women in rural and regional locations.

## The meaning of justice

Fundamental to the analytical task of this research is the definition of justice, and how the views of those who have experienced violence can help shape that.

Warren (2014) explores the multiple meanings of justice, and argues that the application of the rule of law and legal principles do not necessarily embody justice, but do exist to enable justice to be achieved. In this research we privilege what the women 'feel' (Hand 1953) is justice for them, and reflect on how this intersects with their needs, and their desire for a fair outcome.

In this research the women prioritised their desired outcomes from the legal process as:

- their concerns for their safety to be heard and respected
- their children to be safer (for those who had them)
- the offender to acknowledge the harm he has done
- the offender to change his behaviour
- community disapproval of the offender's behaviour
- to begin to heal from the harm that has been caused.

In the conversations they also prioritised the prevention of family violence, which, along with a sense of offender accountability and community accountability, enabled them to begin to heal from the harm caused to them. These justice needs already form the core government policy aims on a state and national level (National Council to Reduce Violence against Women and their Children 2009; Statewide Steering Committee to Reduce Family Violence 2005).

## Key elements to justice

Women who experience family violence, their children, their communities and their offenders have very diverse experiences and therefore very diverse demands of the justice process. However all women in this research referred to key elements important to their sense of justice:

- **participation** – the decision making to be more in their hands, to be well informed and understand the justice system and processes, and justice to be affordable and accessible
- **voice** – to be heard, that the legal actors really listen and that those experiencing family violence are empowered to say what is their truth; they define clearly what is safety and justice for them
- **validation** – their feelings, behaviour and experiences to be understood; to be believed, not judged or made to feel ashamed
- **offender accountability** – that the offender acknowledges the harm he has caused, apologises, changes his behaviour and that the community and justice system monitor his behaviour and hold him accountable



- **restoration** – the justice process to be the beginning not the end; healing for the women and their children and their community.

Such elements to their justice needs mirror those listed in the philosophy to a more survivor-centred approach in the Centre for Innovative Justice’s (2014) exploration of innovative justice responses to sexual offending.

Underpinning these justice elements is a restructuring of the systems of power, a reconceptualisation of male privilege and power.

*Like that man over there hasn’t been through family violence – why does he decide on what happens?’* SARAH



*How can (when it is gendered violence) men possibly know and feel what women feel?* ISOBEL

## Themes emerging in this study

This research study is one of the few, although growing in number, that has sought to explore women’s experiences of the family violence justice system. The women in this research raised issues or themes that have been identified in other policy reviews, national plans and research. These include:

- inconsistent and/or low police accountability in the family violence intervention order application process and investigation of breaches or contraventions of the intervention order
- lack of offender accountability
- inconsistent responses from justice practitioners
- infrequency of responses encouraging women’s rights of control as to the legal outcome
- inadequate addressing of the needs of children in the justice response
- need for a strong shift in community attitudes to occur so that violence is not acceptable
- need for improved multi-agency systemic integration in the justice response, family violence prevention and offender accountability programs
- inadequate crisis and long-term affordable housing for women and children
- issues and themes peculiar to regional and rural justice systems, such as lack of anonymity, accessibility to courts and court privacy and safety
- inadequate understanding and recognition of the different forms and continuum of family violence by the community and justice practitioners.

*It is such a lot of work, you have to do the hard yards, have to prove that your basic rights are being violated, and you just want to get on with your life. Why is it so?* CORDELIA

This research reinforces the importance of addressing these issues if the safety and well-being of women who experience family violence, including their children and their communities, are to be enhanced.

Other themes not so well researched elsewhere, but that appeared in this research, include:

- limitations of the law, and lack of monitoring and evaluation of the justice system
- lack of longitudinal studies of the impacts of intervention orders
- seeing family violence justice outside the narrow spectrum of 'victim and offender', encompassing children and community in the justice needs and response
- justice as honourable and restorative for these women, with a time frame and monitoring system that reflects and acknowledges the odyssey of their family violence experience
- the women's definition of safety, which is about an absence of fear rather than a mere lowering of exposure to violence
- women crafting their own strategies to keep themselves (and often their children) safe when the justice system fails them
- the potential, where women seek it, for the use of restorative justice processes in family violence matters.

Of all these themes explored, the most significant for the women were lack of offender accountability, low or inconsistent police accountability in the application process and investigation of breaches or contraventions of the intervention order, needs of children not addressed in the legal response and the subsequent lack of restoration for both the women and their children.

*So it was a big process from being so controlled and scared to getting my own power back to have the courage to do this. It takes a bit of time for you to realise that you can take your own power back.* CORDELIA



1. This is higher than the average for family violence work by other Victorian community legal centres.

2. A gendered analysis argues that the social phenomenon of family violence where women experience violence committed by men is rooted in gender and power and represents men's active attempts to maintain domination and control over women (Anderson 1997; Orr 2007).

# 2

# Executive summary

## Targeting our ‘darkest norm’

In the words of former Governor General Quentin Bryce (2014), family violence is the ‘insidious, unspoken evil that has been in our midst for too long. It crosses all socio economic boundaries. It causes lasting emotional and economic damage to victims and families and the future of our children. Australia must have zero tolerance to family violence’. In Australia, nearly one woman each week dies as a result of family violence,<sup>3</sup> one woman is hospitalised every three hours because of the health effects of family violence and one in three Australian women will experience physical violence during their life (Australian Bureau of Statistics 2013).

Ending family violence, especially men’s violence towards women and children, has proven to be a complex, daunting and lengthy process across all cultures (Crinall & Laming 2012). Jennings (2014) argues that ‘violence against women and children is the greatest criminal story of Australia. It reflects the darkest norms of Australian society’ or, as the former Police Commissioner Ken Lay (2014) describes, ‘It is the inconvenient truth of Australia’.

*Violence is perpetrated every day on women and children, regardless of culture.* KATARINA

◇◇◇

*[I’m] sick of it. Sick of it. Sick of it in our communities and in this day and age our children shouldn’t be worried about issues like that.* SHIRLEY



We acknowledge improvements in some areas of the justice system's response to family violence. The groundbreaking reform in Victoria of the past decade,<sup>4</sup> premised on improved integrated crisis elements including the police, family violence services and the court system, has led to an increase in applications for family violence intervention orders (MacDonald 2013). Recent Victorian legislative reform has further improved protection for those experiencing family violence and streamlined the justice response. However, there are still inadequacies in the justice response to these increasing family violence figures (MacDonald 2013).

*... there is a long, long way to go.* ISOBEL

In this project to target family violence in the Loddon and Campaspe region, we surveyed 190 women at Bendigo, Echuca, Maryborough, Kyneton and Swan Hill Magistrates' Courts and spoke with 27 Australian women who have experienced violence and sought legal protection. They are best placed to recognise the epidemic nature of family violence.

## Our research findings

### Before court

The women described their hopes of legal assistance and explained that what ultimately drove them to seek legal assistance was a critical tipping point in their lives where they feared for their own safety or that of their children.

Well before they decided to seek the protection of the law, the women had experienced a continuum of different forms of physical, social, sexual, financial, emotional, and psychological violence over a period ranging from 3 to 40 years.

Interestingly, the majority of the women in this research had not experienced physical violence; however, they recognised that many people (including sometimes themselves) did not recognise or validate non-physical forms of family violence.

Many women also did not realise they had been suffering family violence; they had normalised it for periods ranging from 4 to 26 years.

The women explained how this normalisation of family violence and lack of understanding and acknowledgement of the various and equally significant forms of and the continuum of family violence can lead to their experiences being trivialised and not addressed adequately, for example reduced police accountability with breaches and reduced police applications for intervention orders. The women also described how it can lead to lower confidence of those experiencing family violence in the justice system and, in the absence of other support mechanisms, the beginning of self-doubt.

*So I already knew things weren't right but I was not strong enough to deal with them to say no that's not right, because I doubted myself.* JAY

The women reflected that family violence is a relentless process of power and control, which has had a cumulative and devastating effect on them. Their identification of this continuum of violence clearly countered the myth that family violence is a one-off incident and is solely physical in nature. The women articulated that this continuum of family violence, with its devastating impacts, requires long-term restorative approaches that are not enabled by the current justice system.

Many women had been hesitant to apply for an intervention order because they were fearful of the consequences including the escalation of violence. They were fearful of the court process and going public about their experiences. Other women explained that they did not have confidence in the police to take their request for an application seriously, did not feel well informed, especially about support services, or had concerns about the impact of the order on the offender's job security or gun ownership.

They explained the importance of their first point of contact, seeking assistance for their experiences of family violence. They argued that the application process and effective and timely engagement and service delivery should be founded on a sound understanding of family violence, by the police, courts and family violence support agencies. These elements are extremely important to build on the women's autonomy.

## Police responses

The police play a pivotal role in the family violence justice process, especially during the application process, in their response to breaches of intervention orders (Garcia et al. 2008; Laing 2013; Munzel 2002). This research suggests this is a significant first point of contact for those experiencing family violence who seek information and support. (The majority of women in this research went to the police as a first point of contact.)

The police response is not only vital for the immediate safety of those experiencing family violence but also conveys an important social message about the way in which violence against women and children is regarded (Garcia et al. 2008; Mitchell 2011).

There is no doubt police practice has improved with the implementation of the Victoria Police *Code of Practice for the Investigation of Family Violence* (2014) and certain leadership within the police force (Diemer et al. 2013). However, women's experiences of the police response in this region varied greatly.

Some women commented on the efficacy of police response where they felt understood, supported and validated by the police, who took effective and timely action on their experiences of family violence and recognised community development and engagement aspects to their interventionist role.

However, as the women explained, due to increasing demands on the police – with an increase in family violence reporting, under-resourcing and lack of capacity of frontline officers to respond to family violence as guided by the *Code of Practice* (2014) – many women reported negative experiences of their respective police responses.

*If the police can't do anything nobody else is going to be able to do anything. They are there to serve and protect so if they can't do anything who is?* KIRSTY

The common concerns expressed by the women in their interactions with the police were:

- lack of focus on the offender and offender accountability
- lack of understanding of family violence and the complexities therein
- inadequate recognition of fear of those experiencing family violence
- inadequate recognition of non-physical forms of family violence
- inconsistent response across the police personnel
- potential trauma for the women associated with having to repeat their lived experience of family violence in their interactions with different police personnel
- lack of timely response
- negative attitudes shown towards the women.

The most significant concern was the inadequate response to breaches. More than half of the women (16) reported breaches, and 10 women had given up reporting certain legitimate breaches because of the poor police response – it was too exhausting and traumatising to report the breaches, they were too fearful of an escalation of violence with the reporting, or the police requested evidence that was difficult to provide.

The women have highlighted that this lack of offender accountability requires improved police responses, including earlier intervention, but also reflects inadequacies in the law, and therefore the need for other options of justice responses that focus more on the offender acknowledging the harm he has caused and on his behaviour change.

## Going to court

The women found the court process daunting to different degrees due to various combinations of:

- not being adequately informed of the process
- not feeling understood by court staff, lawyers and magistrates
- feeling intimidated by the feeling of heavy authority
- not feeling safe
- feeling emotionally overwhelmed
- being in an alien environment
- little or no privacy
- being given no time to feel comfortable to disclose their lived experience and rationally analyse their and their children's options to make informed decisions.

The women described how court processes and structures need to improve to assist women to feel safe and empowered when taking legal action, and to initiate more rigorous processes of offender accountability. Pivotal to improved court processes is a better understanding by court staff, lawyers and magistrates of the fear these women have for the offender and of the nature and diverse and complex dynamics of family violence.

While the women appreciated they were granted an order by the magistrate some women felt that there was very little opportunity for them to be adequately heard in the process. They also commented on the magistrate's negative attitudes towards them and feeling let down by court or magistrate practice and/or errors.

*We went in there as complete amateurs, knew nothing about the system, knew nothing about anything and that's what it's been like all the way through. We just clawed our way through in the dark.* MARGARET AND HER MOTHER

The women also explained that the role of consistent and understanding legal advocacy and support people at the family violence courts cannot be underestimated.

## Offender accountability

The women reported a lack of offender remorse, monitoring of his behaviour and behaviour change in their justice responses. This lack of offender accountability and subsequent lack of restoration experienced by the women are very significant injustices felt by the women and at times also their children.



In addition to low police accountability, low community accountability and normalisation of family violence as explored in the research, the women described other barriers to offender accountability: the offenders not adequately hearing the victims' experiences of family violence, the offenders themselves feeling that they are victims of the justice response and low level of engagement of offenders with men's behaviour change programs.

A small number of women would have advocated punishment by imprisonment for their respective offenders. They felt that it was the only way of bringing safety to their lives because their offenders were not capable of rehabilitation. However many women did not wish offenders to be punished by imprisonment. They wanted a broad integrated response to family violence that sees a shifting of focus from women to offenders. They recommended that this response include early offender intervention, the offenders to hear and understand the impacts their violence has had on the women and their children and acknowledge the harm they have caused. It also includes facilitating offender engagement with relevant men's behaviour change programs and long-term monitoring and mentoring that addresses individual offender needs not to reoffend.

The women thought that the justice response requires improved police accountability, community accountability and parallel family violence prevention addressing gender inequity and belief systems that see men having rights to violate women.

The concept of restorative justice, to improve on offender accountability and subsequent restoration for women and children, was explored as a potential option for certain family violence cases.

*He won't acknowledge the harm he has done, he is not accountable for anything he has done. He always blames someone else for things that are his fault, he never says sorry that is my fault, I did that ...* KIRSTY

## Community accountability

The women in their surveys hoped that the intervention order would bring community disapproval of the offender's violent behaviour. Some women demonstrated positive experiences of support from some community or family members in their struggle for justice. Unfortunately many women experienced the community being complicit in the continuation of family violence by not challenging the offender's behaviour, fuelled by fear or indifference and or holding 'small town' attitudes of shame and judgement towards them.

*[Family violence] is not okay you know, the acceptance of the community of this kind of violence, that is not okay, the community has to hold people accountable as well.* CHERIE

## Children

A very significant focus of the women's decision making in their struggle for justice was what they felt was best for their children in their individual family context in terms of safety and well-being, and also restoration. In some cases the focus was also on strengthening relationships between the children and the offenders (fathers) and between the children and themselves.

While all the women clearly wanted to protect their children and see their safety as paramount, they differed in terms of how the offender fitted into this picture of safety. Some women

didn't want the offender to have contact with their children, while others recognised the fathers' interests to have that contact.

Some women also explained how the interpretation of the interaction of family court orders and intervention orders by the police and magistrates can undermine the conditions of the intervention order and compromise the safety of their children.

The women conveyed strong concerns about the long-term restoration of their children and the cycle of violence continuing in their children's lives.

They also argued that children's needs should be more adequately addressed in the justice response through the greater inclusion of children in the decision making and a less siloed framework that brings different family violence agencies and court jurisdictions together to work more collaboratively on family violence.

*The court systems are failing our children.* HELEN

## Support

The women showed that the provision of information, support, advocacy and referral to other community supports can be significant to women pursuing rather than abandoning efforts to access legal protection and to optimising the chance of their and their children's restoration from the harm they have experienced.

*I definitely wouldn't have gone for an intervention order [without support of family violence services] – I probably would have fallen straight back into his trap and gone back home.* AGNES

## Impacts of the legal process

While some women were clear either that there were certain benefits from the legal process, or that that the whole experience left them more vulnerable, many women had mixed experiences.

None, however, had their justice needs of offender accountability or restoration met in their justice response. Many women spoke of a litany of issues that had arisen for them as a result of seeking legal assistance. They described their fear, isolation, health issues, financial pressures, sense of grief and loss, injustice, lack of self-belief, exhaustion and guilt.

The reluctance to proceed with an application is understandable if what the women describe is a fairly common aftermath of the order and associated processes.

*Now after what I went through to get the intervention order in place, I understand why women drop their intervention orders all the time. A number of times I thought this is crap, what is the point, just drop it.* KIRSTY

## Safety

In this research the women were clear that safety was not just a reduction of exposure to violence, but a complex state defined by the absence of fear brought about by offender accountability, and change in behaviour and confidence in the justice system being accountable and effective in its implementation.

Women explained how they crafted their own safety strategies when the justice system was ineffective, the most common strategy being to change locality.

*You know knowing that all these police and that are there didn't make you feel any safer. They don't make you feel any safer, because they don't understand what it is like [to be there as an applicant in fear of the offender].* MARIE

## Sense of injustice

The women felt a huge sense of injustice as a result of their experience of family violence and attempts to seek the protection of the law. Many women also had to leave their homes and some women had also lost connection with their children and/or their communities, who had chosen to support the offender.

Some women felt their access to justice was impeded by not being able to afford a private lawyer, or being eligible for a grant of legal aid.

*He mentally abused me and the kids for nearly eight years and it's not on, he was violent with things and in my case he's got away with it all. He got away with it. And he's laughing at me. That's not fair.* SOPHIE

## Accountability of the justice system

Threading through the research were failures of current justice practice and limitations of the law in addressing family violence. There was also a low accountability of the justice system, in that there is an absence of modes of monitoring and evaluation that hear the voices of women using the system. Some women argued that improved family violence multi-agency systemic integration<sup>5</sup> would improve this accountability and justice outcomes for women and their children.

*We will be screaming for change for a lot longer.* ANN

## Final words from the women

Most women were disappointed with the impacts of the legal protection they received. However most women felt that – provided they could access long-term support and receive timely information – they would still recommend seeking legal assistance. When there is no other option, it can be a step in the right direction.

They therefore hoped that this research – through myriad positive changes, including their voices being heard – improves justice outcomes for other women and their children so that what happened to them does not happen to anyone else.

*I hope that what happened to me could be used perhaps as a learning tool or a teaching tool ... I feel that I was brave to stand up to all these men. Maybe I could encourage some of these other women ... to stand up for herself.* KATARINA

## Old problem, new solutions

In the context of efforts to reform the family violence justice system in Victoria it is imperative that evaluation includes both output measures (e.g. family violence reports and prosecutions) and outcomes measures, including feedback from those who have used the system. Hearing the women's voices is essential for those who have experienced family violence, as attested in this report, and for long-term monitoring and evaluation of the impacts of the legal assistance they sought, which is crucial to the development of more women-and-children focused and responsive services.

The least we can do is to listen closely to their stories of lived experiences and use those to inform what is best practice in future family violence service delivery in the justice system.

Unfortunately, the justice system often fails to meet the justice needs of women and children experiencing family violence or their communities; nor does it cause offenders not to reoffend. The complexity in the initial decision making and ultimate accountability are not enabled by a rigid 'one fits all' (Eaton 2001) intervention order, and necessitate a range of effective and meaningful justice approaches. As Hulls (2014) argues, 'We need new solutions to an old problem'.

While these justice needs are supported in the national plans and state government policies it seems we need improved long-term political and community will, an ideological shift, collaboration, courage and leadership to implement significant change (Hulls 2014; MacDonald 2013).

The women in this research propose that we need improved justice system, community and offender accountability, and family violence prevention founded on a better understanding of the meaning, nature and dynamics of family violence. Gender inequity – the crux of gendered violence experienced by women when the offenders are men – must be challenged.

We need improved family violence multi-agency systemic integration that enables the crafting of long-term localised coordinated justice responses that are effective, restorative and liberating. These responses can then bring safety (including financial safety and absence of fear) to women and their children experiencing family violence, and allow a better chance of restoration for them, the offender and their communities.

*Women need to have their rights heard. Hopefully this research will help that. If enough women put their hand up and said 'Hey, we should be heard and we should have our rights listened to', then something might happen.* FRAN

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3. This mortality statistic had a particular poignancy for one of the research participants. During the six-month interview research period, two women she knew were killed by their respective ex-partners.

4. The *Crimes (Family Violence) Act 1987* (Vic.) was replaced by the *Family Violence Protection Act 2008* (Vic.).

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5. Bringing family violence services, police, child protection, prosecutors, legal aid and community legal centres and often housing services together to share information and integrate thinking and response systems to improve justice outcomes for women and children experiencing family violence (Attorney-General's Department 2010).



# 3

## Recommendations

If we are to truly honour these women's lived experiences and their courage, we need to champion these outcomes and their voices and act on the following recommendations with integrity and commitment. Change is possible: 'What we do know is that violence is a choice. It is not an instinct. ... It is never acceptable and no woman invites it or deserves it' (Rechter 2014).

The vast majority of these recommendations have already been proposed in other research. The first three categories are ordered according to the women's priorities. Points within the remaining categories are of similar importance.

### Offender accountability

- A1.** Improve early intervention and prevention programs, including increased availability of men's behaviour change programs.
- A2.** Increase the applicability of Part V of the *Family Violence Protection Act 2008* to all Victorian courts so that offenders can be ordered to attend counselling if deemed suitable.
- A3.** Give consideration to judicial monitoring of offender participation in men's behaviour change programs by delaying the finalisation of matters.

- A4. Develop community-based bystander training<sup>6</sup> to improve community monitoring of offenders.
- A5. Collect and collate recidivist data to provide an evidence base for the development and future funding of violence prevention programs.

## Police practice

### Improved training for all frontline police

- B1. Provide obligatory training in family violence at the commencement of frontline duties, as well as continuing professional development training, incorporating the common risk assessment framework<sup>7</sup>; involvement from those who have experienced family violence; and coverage of the specific needs of communities such as the indigenous, lesbian–gay–bisexual–transgender–intersex, disabled and culturally and linguistically diverse communities.
- B2. Require information to be provided on family violence support services and family violence intervention order processes to persons seeking assistance with applying for an intervention order with police.

### Monitoring the *Code of Practice*

- B3. Have family violence multi-agency monitoring and evaluation of the implementation of the *Code of Practice* (2014), including experiences of those using the police services, the safety of children, the exclusion of the offender, and the swiftness of following up on breach allegations.
- B4. Scaled police response – give consideration to providing an ‘official warning’ to an offender where there are allegations that will not result in the prosecution of a breach.

### Recording history of family violence

- B5. Create more effective ways of recording and relating the histories of family violence victims between agencies (such as the police and courts) to reduce retraumatisation and fatigue for applicants and protected persons.

### Specialist family violence and Aboriginal liaison role at all stations

- B6. Have a Family Violence and Aboriginal Liaison Officer role in all stations, which is a long-term committed role that also assists in the delivery of family violence training and engages with all relevant stakeholders providing services to those experiencing family violence.

## Children's justice needs

- C1.** Explore ways of hearing the voices of children affected by family violence to ensure that their views are considered throughout the response process. This could include the provision of dedicated legal representation where necessary.

### Protecting children with intervention orders

- C2.** Include children in the care of the applicant as protected persons on all intervention orders, unless the applicant specifically requests them not to be listed.
- C3.** Allow adequate time where parties are represented to negotiate and resolve any interim parenting arrangements that may be affected by an intervention order, rather than simply deferring to courts hearing family law parenting matters.
- C4.** Improve interactions of the state family violence jurisdiction and child protection jurisdiction, and the family court jurisdiction, such as information sharing protocols, with consideration given to setting up the 'one court' system to streamline services and outcomes. This includes the discouraging of practices that undermine the mother-and-child relationship.

### Children at court

- C5.** Give consideration to the provision of child care and child-friendly spaces at court so that women with child care duties are not prevented from accessing the justice system.

## Accommodation

- D1.** Increase crisis and long-term accommodation and a continuum of individualised support for both women and children experiencing family violence, and for excluded offenders.
- D2.** Ensure police and magistrate training emphasises that the exclusion of the offender is the preferred option where deemed safe by the women.

## Support services

- E1.** Make family violence information available at a range of well-known risk points: maternal child health centres, antenatal clinics, medical centres, hospitals, mental health facilities, family law courts and family relationship centres.
- E2.** Offer continuing professional development family violence training for medical general practitioners.

- E3.** Increase family violence services providing support for completing the intervention order application at court, and after the order is in place, including peer support programs.
- E4.** Improve community awareness of family violence support agencies.

## Court structures and practice

### Improved information and support

- F1.** Encourage all applicants to seek assistance with completing the application form to adequately capture the history of family violence and recent allegations.
- F2.** List details of previous applications on the application, as well as the outcome, so that the magistrate is aware if there is a history of intervention.
- F3.** Advise all applicants of the list of support services provided with the printed application and encourage them to contact the family violence support service and duty legal services, and refer them to online information.
- F4.** Allocate more time within the family violence lists to ensure that individual matters are given sufficient attention.
- F5.** Registry staff to advise an applicant prior to court where an application has not been served so that she does not need to attend if not required.
- F6.** Increase court applicant and respondent workers to ensure their presence at all courts.

### Comprehensive legal services

- F7.** Where possible, advise applicants of the legal process prior to their court day.
- F8.** Where possible, ensure applicants have the same lawyer throughout the legal process, or that the lawyer on duty is made aware of the previous instructions provided so that she does not have to repeat her story.
- F9.** Provide specialised training for all lawyers acting in family violence matters, including risk assessment, giving options, non-collusion with offenders, emotional support, being aware of the intimidation by the process and pressure to settle.
- F10.** Have at least two duty lawyers at all courts (applicant and respondent), as well as enhanced access to financial counselling services.
- F11.** Publish a detailed guide to self-representation if Victoria Legal Aid is not able to fund a contested hearing.

### Participation in court

- F12.** Offer the applicant or protected person the opportunity to address the magistrate if they seek it.
- F13.** On an applicant's request, have the allegations read in open court prior to the matter being finalised.



## Court safety

- F14.** Magistrates to chair a court user's group for agencies and legal services acting in family violence matters to address any ongoing or systemic issues at each court, and make changes to the court environment to improve safety (such as clear signage, and separate entrances, waiting areas and seating in the court space).
- F15.** Make private interview rooms available at all regional and country courts, ensuring that lawyers also utilise these rooms for negotiations to improve confidentiality of the cases.
- F16.** Improve security systems at regional courts including monitoring systems, escorts for applicants when entering and leaving the courts, improved dispersal of police throughout the court space and security check of people at entrance.
- F17.** Provide family violence training to all magistrates and registry staff including the common risk assessment framework training so that high-risk matters are identified early in the process and applicants are encouraged to apply for interim orders.
- F18.** Invite women who have experienced family violence to provide their perspective at registrar trainings.
- F19.** Have the option of video link-in at all courts to improve applicant safety.

## Community accountability and gender equity

- G1.** Educate the community on and raise awareness of gender equity and gendered violence.
- G2.** Encourage the development of community-based bystander training to improve community monitoring of offender accountability.

## Hearing the voices of women and their children

- H1.** Enable the voices of women and children to be included in systems of monitoring and evaluation of the family violence justice system and for them to be engaged in prevention and training programs.

## Government commitment

- I1. Have an integrated approach to family violence with bipartisan support and a whole-of-government focus that is formalised and directed at the federal level and coordinated with state and territory governments.
- I2. A bipartisan government integrated approach to addressing family violence must work with the family violence non-government sector.
- I3. A bipartisan government integrated approach to addressing family violence should include gender mainstreaming.<sup>8</sup>

## Multi-agency systemic integration

- J1. Design and implement family violence multi-agency monitoring and evaluation of court and police practice as part of a broader monitoring and evaluation system of outcomes of the justice system including offender behaviour change, women and children's ongoing safety and well-being, over a period longer than that of the intervention order or undertaking.
- J2. Improve family violence multi-agency systemic integration and prevention investing in and embedding structures and processes, not depending on particular leaders, to ensure the long-term viability of such collaborative family violence programs.

## Restorative justice

- K1. Pilot studies to trial restorative justice options for specific and appropriate family violence cases either as an adjunct to the formal court process or as an alternative.
- K2. Expand the application of restorative practices to schools and workplaces as part of their anti-violence practices and conflict resolution methods.
- K3. Provide more appropriate spaces for the offenders to hear the women's (and their children's) lived experiences of family violence.

6. Preventative programs reinforcing the message that family violence '...is everyone's business and that everyone has a positive role in eliminating it. It provides the mechanism to challenge violence-supportive attitudes and behaviours' (Women's Health Victoria 2011, p. 21).

7. Current best practice risk assessment training for professionals coming into contact with people experiencing family violence.

8. 'Gender mainstreaming is a strategy for promoting gender equality.' It ... 'involves ensuring that gender perspectives and attention to the goal of gender equality are central to ... policy development, research, advocacy/ dialogue, legislation, resource allocation, and planning, implementation and monitoring of programmes and projects.' Available at [www.un.org/women-watch/osagi/gendermainstreaming.htm](http://www.un.org/women-watch/osagi/gendermainstreaming.htm) (accessed 10 March 2015).

# 4

# Surveys and conversations

In this research we used a survey and had in-depth semi-structured conversations with women who had experienced family violence, to explore their experiences of the justice system.<sup>9</sup> A total of 190 surveys were completed by women in this research, and 27 women took part in the conversations.

## Surveys

The first component of the research was a short survey identifying the participants' expectations of the legal outcomes they were seeking and briefly exploring their experiences at court. They were asked if they would be willing to participate in a follow-up, in-depth conversation to explore whether the legal outcome was satisfying, or not satisfying, the justice needs they had prioritised in the survey.

The surveys had been in progress for more than two years at the commencement of the conversations, so women participated in the latter on a time spectrum of four months to nearly two years after the legal process had concluded, either with the granting of an intervention order, or the offender entering into an undertaking. This allowed the women to reflect on the impact of intervention orders over time.

Most survey and conversation participants were recruited through the duty lawyer service provided by the Loddon Campaspe Community Legal Centre at Bendigo Magistrates' Court, and also Echuca, Maryborough, Kyneton and Swan Hill courts. A small number of survey

participants were recruited via the Victoria Police Family Violence Liaison Officer, at court, for protected persons for whom the police were applying for an intervention order.

The staff lawyer or student volunteer would describe the research project to a potential participant at the point of taking client details and instructions at the beginning of a client interview. Participants were provided with an information sheet outlining the purpose of the research, as well as an explanation of the voluntary nature of participation (Appendix 1). The end use of the data was also described. The client was advised that they would be provided with legal advice or representation regardless of their participation in the research. If a client agreed to participate, a survey was provided.<sup>10</sup>

The survey included closed-ended questions to be rated on a five-point scale. The first part asked why the participants were seeking an intervention order, or what they hoped will be the outcomes of their application. Thirteen potential outcomes are listed on the survey, which also allowed the participant to list their own aim. The list was developed after reviewing a number of other court-based client surveys, and in consultation with LCCLC duty lawyer staff and family violence support workers.

The second part of the survey asked the participants to rate their interactions with various sections of the justice system. It also asked whether they felt informed about the process and whether they would recommend another person in their position to undertake an application. These questions were developed to provide spread across the different aspects of the system. The survey questions were also targeted to support LCCLC staff to provide an improving service to our client base.<sup>11</sup>

Generally, the first part of the survey was answered after the lawyer took instructions following the client interview at court. The second part was completed after the matter had been heard in court, enabling the survey participant to reflect on their experience.

## Conversations

Twenty five participants for the conversations were recruited from the 190 women surveyed and two women with the assistance of partner agencies. While there was a framework of questions for the conversations (Appendix 2), formulated with the assistance of partner agencies,<sup>12</sup> the approach aimed to allow the women to tell their lived experiences in their own words. The women were supported in relating their lived experiences in the amount of detail and in a manner that felt comfortable and appropriate for them. This approach is consistent with principles of research with marginalised communities in that it aims to listen and hear the voices of those who are significantly affected by policies and legislation and yet whose voices are often not heard (Chambers 2002).

There was flexibility in the questions used, and sometimes other questions were added depending on themes emerging from the sequence of conversations and those emerging in each individual conversation. Conversations with family violence support workers, family violence court network volunteers and family violence lawyers provided sensitising information that helped to shape the interviews.

The conversations with the women took a variety of forms depending on the latent trauma still experienced by the women and individual styles of relating their lived experiences. Sometimes the conversation was a free-flowing narrative with little requirement for questions. At other times the story was not chronological; rather, it came as a series of scattered recollections accompanied by sometimes very different emotions. Sometimes the women could not remember particular aspects or details of their lived experience.



The conversations lasted between 45 minutes and two hours. Some women required more than one conversation to enable them to more adequately relate their lived experience. The majority of women were interviewed face-to-face. Five women were interviewed on the phone where distance was an issue, or if meeting them was becoming increasingly difficult.

With prior consent, face-to-face conversations were recorded to provide an accurate record and to enable the interviewer to focus on the women's lived experiences and allow for better engagement. These recordings were then transcribed<sup>13</sup> and analysed. Notes were taken for the telephone interviews.

## The women

Twenty three women were Australian-born, English first language, Caucasian women; three were Aboriginal women and one was a culturally and linguistically diverse (CALD) woman. Twenty three women had experienced intimate partner violence. Two women had experienced family violence perpetrated by a brother and son, but had also had long-term experiences of family violence from their ex-partners. The final two women had experienced family violence perpetrated by ex-partners who inaccurately continued to recognise the relationship as defacto and who had commenced stalking and other forms of family violence. Four women were recruited at Maryborough Magistrates' Court, four at Kyneton court, four from Swan Hill court, five from Echuca court and 10 from Bendigo court. At the time of the conversations with the women they were aged between 18 and 83 years.

Fifteen women were in an intimate relationship with the offender at the time of making the application for the intervention order. The remaining 12 women who had been separated had experienced an escalation in the violence since separation, and three of them experienced further escalation at the time of making the application.

Twenty five women sought a final intervention order, and two accepted undertakings<sup>14</sup> at court. Fourteen women were applying for an intervention order for the first time and 11 for extensions or for a second or third order against the same offender. Seven women wished to have orders made 'until further order', or 'permanent' orders.

## Reflective process

Many of these women had never had the opportunity to share their complete lived experience of their family violence and struggle for justice. Indeed, the conversations for many of the women seemed to be both reflective and a process of discovery. Some women realised how significant support people had been for them; others realised how they had normalised the element of fear of the offender in their lives; others identified what may have assisted them to heal more adequately; one woman discovered that the benefits of the order that had been hidden by the overwhelming stress and confusion of her situation.<sup>15</sup> All women were offered copies of their transcripts for feedback. Four women requested their transcripts and were satisfied with them, and grateful for the more detailed record that might possibly be utilised in future proceedings.

## Power of language

It is important to use language that the women understand in the research. Legal jargon can alienate and can be disempowering, and doesn't necessarily allow room for the views or experiences of those who have experienced family violence.<sup>16</sup> As Davis (2014) explains, 'we use language to distance it and minimise it [family violence]'.

In this research the women were asked to choose the terms to be used in the report. The women were asked how they identify themselves in their lived experience of family violence, as 'victim', 'survivor' or 'applicant'. As per the diversity of their experiences, there were diverse responses. The majority saw themselves as 'someone who has experienced family violence', while some saw themselves as 'survivors' (some of the justice system itself), and three women saw themselves as 'victims'. None, however, saw their reality as a static state. They saw it as a variably transformative journey from victimhood, transcending to feeling more like a survivor, living through family violence as it shapes them for better or for worse. They also hoped, through either effective justice responses or their own external and internal resources, that they would finally feel some sense of restoration.

Most women identified the male committing family violence against them as an 'offender' rather than 'perpetrator' or 'respondent'. Some women explained that they preferred the term 'offender' because it referred to the women being offended against by violence, whereas 'perpetrator' and 'respondent' did not reflect the women's experience. The majority of the women saw the research process as a 'conversation' rather than an 'interview' and saw what they were sharing as a 'lived experience' rather than a 'story' or 'narrative'.

## Safety and empowerment of women

A significant aspect of the research process was the safety of those women participating. As outlined in the informed consent form (Appendix 1) and ethics code, processes were embedded in the research to ensure the safety of the women participating. While the research was clear in its regional context, the information was de-identified in terms of court or police station locality. The women, understanding the importance of de-identifying, each chose a pseudonym that they were confident would not lead to their identification.

The women were encouraged to choose a venue for the conversation that was safe, where they could be anonymous and where they felt comfortable relating their lived experience. To minimise the risk of retraumatisation by talking about the violence experienced, the focus of the conversations was on the women's experiences of negotiating the justice system and not on the violence per se. This gave the women a sense of control over the extent to which they discussed the family violence they had experienced.

After the conversation, if it was appropriate, there was an opportunity to debrief and it was ensured that they had someone they trusted to be with them or who they could contact after the conversation in case they wanted to debrief more extensively.

A phone call check-in was made sometime after both phone and face-to-face conversations, with their prior consent, and there was the opportunity of a referral to appropriate support services, depending on the impact of the conversation. While the extent of the suffering and injustice that these women had experienced was not minimised in this research, the women were supported to relay their experiences in a strengths-based way.<sup>17</sup> They recognised their skills and knowledge as invaluable and unique because they have evolved from their lived experience of engaging with and negotiating the justice system designed to assist them. While the popular construct of people experiencing family violence is 'a victim', very few of the women identified themselves this way.

After each conversation key messages were identified and reflections on the research process were recorded. Women's generosity and grace in telling the researcher, a relative stranger, their stories was touching. Their strength, integrity and compassion were inspiring.

## Debriefing and evaluation

Each woman was invited to debrief after the conversation and also to evaluate the recruitment, retainment and interview process by post.<sup>18</sup> The results of the evaluation were positive – women felt heard, valued and supported, and were glad they participated. One woman felt it was hard talking about something she had endured for so long and had not fully disclosed to anyone. However she felt the conversation was constructive because she realised that she was not alone and felt validated and understood in her lived experience being heard.

## Advocacy

The research also had aspirations of empowering the women to become advocates for change if the opportunity arose. Fortunately, the women had such opportunities to have their voices heard in other significant settings during the period of research. Some women participated in a closed workshop that was part of a regional family violence forum, 'Family Violence – It's Everybody's Business', in Bendigo,<sup>19</sup> which formulated some key messages on family violence to be directed to the media and to conference delegates, and was the start of a discussion informing a regional prevention program. Others attended family violence support group sessions facilitated by the Centre for Non-Violence<sup>20</sup> and plan to participate in a closed forum with regional police officers on police responses to family violence. Other women were invited to share their court experiences with Bendigo Magistrates' Court staff. We were able to link some of them in to media advocacy and community-based family violence responses in their locality. Hopefully this has brought further meaning to their participation in the research and validated their potential role in family violence prevention programs and informing family violence justice response best practice.

## Retention of women

When the women were recruited it was explained to them that the in-depth conversations with them would happen three to six months after the legal outcome. Their informed consent was requested to make contact with them via phone over that period to try to build a rapport with them and ensure their participation in the research. There was no attrition of the women participants recruited.

## Limitations of research

For the survey, ideally it was conducted by a separate staff member or student volunteer, and not by the lawyer providing advice or court representation. However, resource limitations were such that a separate staff member was not always available to attend court. There may have been a tendency for participants to therefore respond more positively about the interactions with the lawyer or about their court experience. Without additional resources such a confidential independent survey could not be conducted. For this research project we hoped this would be somewhat compensated by the in-depth conversations, which were conducted by an independent non-legal member of staff. Indeed the comparison between survey results and the in-depth conversations with respect to the women's experiences at court did provide some contrasts with women in their conversations painting a more daunting picture of their court experience.

For the conversations, attempts were made to recruit a representative sample of those who had experienced family violence. This included Indigenous, CALD and lesbian–gay–bisexual–transgender–intersex (LGBTI) communities, older women, disabled women and those from Australian-born, English-speaking Caucasian communities. Unfortunately those who have experienced family violence and are LGBTI or experience a disability or mental illness could not be recruited for this research. We recognise from the literature review the unique challenges these communities face in negotiating the family violence justice system (Chan 2005; Mulroney & Chan 2005; Woodlock et al. 2014).

It was contemplated that those who had negative experiences of the justice system would be more willing to be interviewed. However, out of all of the women approached at court during the recruitment process, only two were unwilling to be interviewed. One client had had a police-imposed order that she had revoked and she desired prompt closure. The other refusal was a client who was extremely traumatised and fearful of the family violence and, it was presumed, did not feel adequately safe to have an interview. The high rate of recruitment demonstrates that many women wish to relate their lived experiences of family violence and their experiences of the justice system.

## Cognitive maps

A cognitive map is a type of visual representation that serves an individual to reflect on and convey attributes of phenomena in their environment (Kitchin 1994).

Some of the women drew cognitive maps to represent their experience of the justice system. For example, the cognitive map shown on the inside front cover conveys the confusion, turmoil and feeling of being very busy that the intervention order process brought to the artist's life. On p. 6, the map reflects the woman's feeling that she had to be like a Samurai warrior, fearless and with eyes on the back of her head, so that she could protect herself and her children when the courts let her down. Their use in this research was not planned, but one woman described a very clear and powerful image of herself in the justice process that when prompted she drew to assist her clarify how she was feeling. Recognising the positive impact the cognitive map had on her, other (but not all) women were invited to draw cognitive maps. These maps should not be seen to simplify the complexity and full struggle in each woman's experience, but are an overarching image. The drawing appeared, in the interviewer's experience, to create some clarity in the emotional maelstrom that arises from intervention order applications or the interaction of family law and family violence courts.

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9. While we acknowledge that males in heterosexual relationships can experience family violence (Mulroney & Chan 2005) all the participants in this research were women because it was the focus of the research.

10. If requested, a participant may have a question clarified by a non-legal member of staff such as the researcher, social worker or centre volunteers.

11. The survey questions with respect to lawyers were developed from Curran and Legal Aid Commission (ACT) (2012).

12. Council to Homeless Persons (CHP).

13. With the pro bono assistance of Clayton Utz.

14. A solemn promise not to engage in any further family violence filed at court. On the basis of this promise the intervention order application is withdrawn, with a right to reinstatement if the promise is broken.

15. At the time of interview, she had revoked her intervention order. After the conversation experience she was considering making a fresh application because the conversation had assisted her to realise the benefits of the intervention order.

16. The interviewer had a non-legal background and thus was independent from the legal system and improved the quality of lived experiences recorded.

17. A research approach that recognises, respects and records research participants' strengths that are their particular knowledge and experiences of a particular issue (Rubin 2012).

18. To increase anonymity and encourage more honest feedback; see Appendix 3.

19. Held 7–8 October 2014.

20. A non-profit organisation that delivers a range of quality services and programs that respond to family violence and homelessness ([www.cnv.org.au](http://www.cnv.org.au); accessed 2 February 2015).



# 5

## Survey results

A total of 190 surveys were completed by women as part of this research. Over the period of recruitment, this represents a participation rate of approximately 40% of female clients of the LCCLC that we have assisted in applying for an intervention order.

### What did the women wish to achieve by applying for an intervention order?

In the first section of the survey women were asked to consider the statement, 'Today I came to Court because I wanted ...'. The top three responses were:

- 'for my concerns for my safety to be heard and respected'
- 'to make my children safer'
- 'to begin to heal from the harm that has been caused'.

Women applying for a family violence intervention order seek to achieve a number of aims relating to women's safety. Notably, the arguably symbolic impacts rate higher than the practical outcomes, such as:

- 'to make it easier for the police to respond to my complaints'
- 'to stay in my home and have him excluded'.

## What did the women wish for the offenders?

The strongly positive results with respect to the impact on the offender include:

- 'for him to acknowledge the harm he has done'
- 'for his behaviour to be monitored'
- 'for him to be challenged about his behaviour'
- 'for him to engage with services to help change his behaviour'.

One of the women added that she wished the offender to be forced to attend a behaviour change program.

With respect to whether the survey participants wished to maintain their relationship, but with boundaries – as could be achieved with a 'limited' order only prohibiting family violence:

- 54% responded 'not at all' and 8% responded 'not really'
- 23% responded 'very much' and 8% stated 'somewhat'.

This indicates that a relatively large proportion of intervention order applicants do hope that the order will draw a line in the sand, and will act as a shield in future interactions with the offender.

With respect to whether the survey respondents had desires for retribution or punishment to be meted out to the offender, responses were divided. Of all the 'outcomes' ranked by the survey participants, this was the lowest ranked impact on the offender:

- 23% responded 'not at all' and 16% responded 'not really'
- 28% responded 'very much' and 16% stated 'somewhat'.

This result is consistent with the research findings from the conversations and notable importantly because this is the only outcome provided in 'standard' courts.<sup>21</sup>

According to the results of this survey, a much greater proportion of the participants would prefer an outcome like a behaviour change program and monitoring of behaviour than punishment. The results of this survey would support increasing the powers of magistrates to order respondents to be assessed for the men's behaviour change program.

## Interaction with the legal system

Survey participants have indicated strongly positive responses in respect to their interaction with various aspects of the legal system, for example 'I felt respected and supported by the police'.

Not all women have spoken with police prior to attending court; however, this indicates that for those who have, the majority are satisfied with that interaction.

With respect to the legal service provided by the LCCLC, there were strongly positive responses.

While the limitation of a non-independent survey has been noted earlier, these results nonetheless indicate that the women report positively to the duty lawyer service.

The responses with respect to the magistrates and court staff were also positive.

Whether or not participants felt safe at court attracted lower positive responses. We disaggregated this data by location and found a slightly higher proportions answered 'very much' and 'somewhat' with respect to Maryborough (total, 81%) and Bendigo (71%) courts. Kyneton received the lowest rating (53%).

Other support staff, such as the Centre for Non-Violence family violence support workers, are also usually present alongside the LCCLC at court. With respect to these support services, the majority of respondents very much agreed that 'Other support staff were available to assist me'.

Responses relating to overall satisfaction with the process indicate that while a majority of the participants felt informed about the legal process, some participants have 'neutral' or negative feelings.

Although court registry staff in the Loddon and Campaspe region are overburdened, particularly with increasing numbers of people presenting at court and applying for intervention orders, there is an opportunity for the provision of basic information about the process prior to the court date. We understand that the Magistrates' Court of Victoria<sup>22</sup> is currently updating website content so that intervention order applicants and respondents can obtain information prior to attending court.

The LCCLC have utilised survey data and conversation findings to inform staff about the degree of support that women they assist at court are feeling. Over the life of the project the satisfaction rates have increased slightly.

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21. Or non-gazetted magistrates' courts. Specialist family violence courts (Ballarat and Heidelberg) can order a respondent to be assessed for the men's behaviour change program. Some of the magistrates then judicially monitor the progress of the offender. This cannot be ordered in the Bendigo region. Currently the only consequential outcome under the family violence legislation occurs if there is a breach of an intervention order. If a breach is proven to the criminal standard, this can lead to a fine or imprisonment. According to the Sentencing Advisory Council statistics (Sentence Advisory Council SACSTAT Sentencing Outcomes for 'contravene family violence intervention order', at [www.sentencingcouncil.vic.gov.au/sacstat/magistrates\\_court/08\\_52\\_123\\_2.html](http://www.sentencingcouncil.vic.gov.au/sacstat/magistrates_court/08_52_123_2.html); accessed 13 March 2015) some 22.3% of the matters that are adjudicated in a magistrates' court are dealt with by way of adjourned undertaking or dismissal.

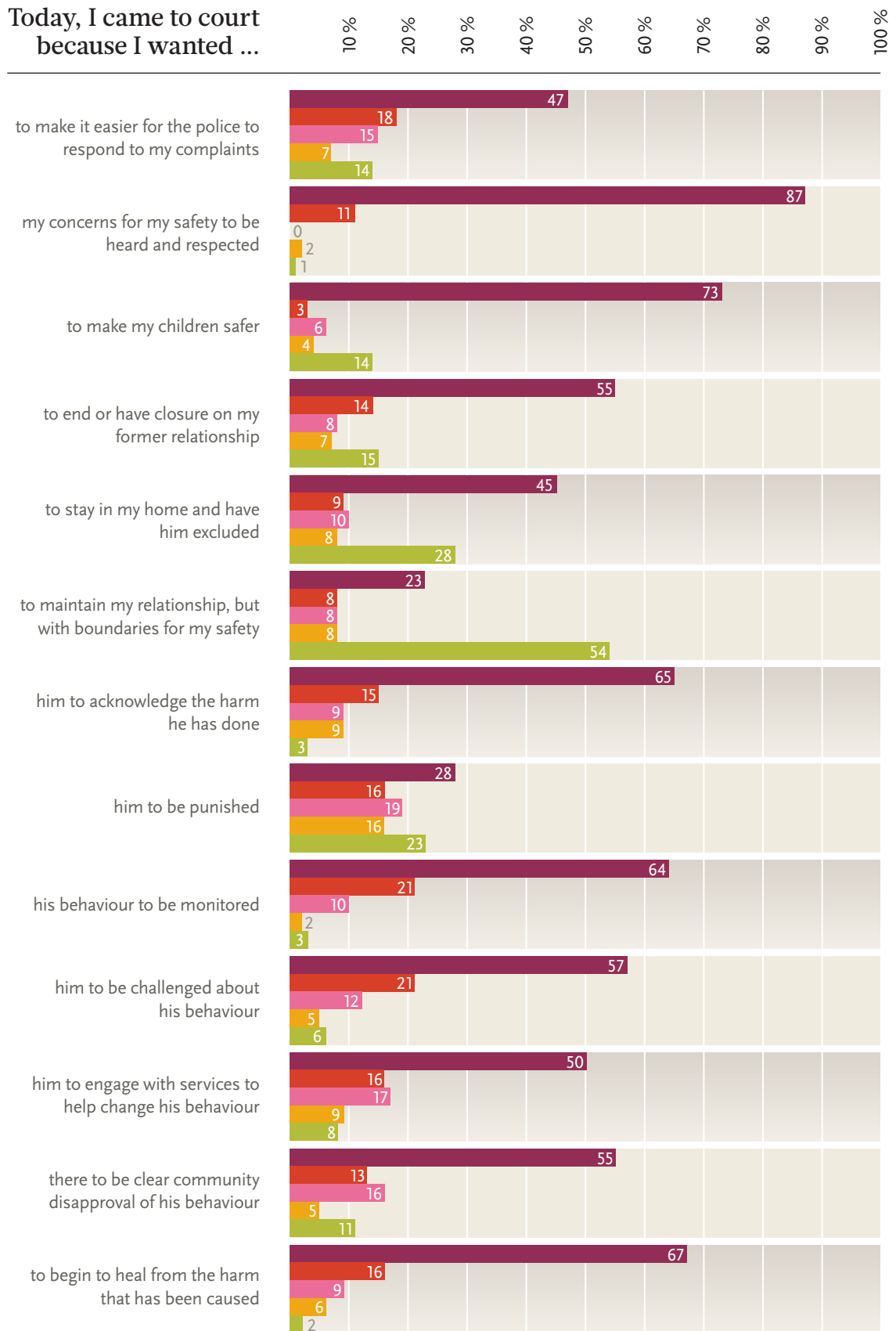
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22. [www.magistratescourt.vic.gov.au](http://www.magistratescourt.vic.gov.au)

# Survey results



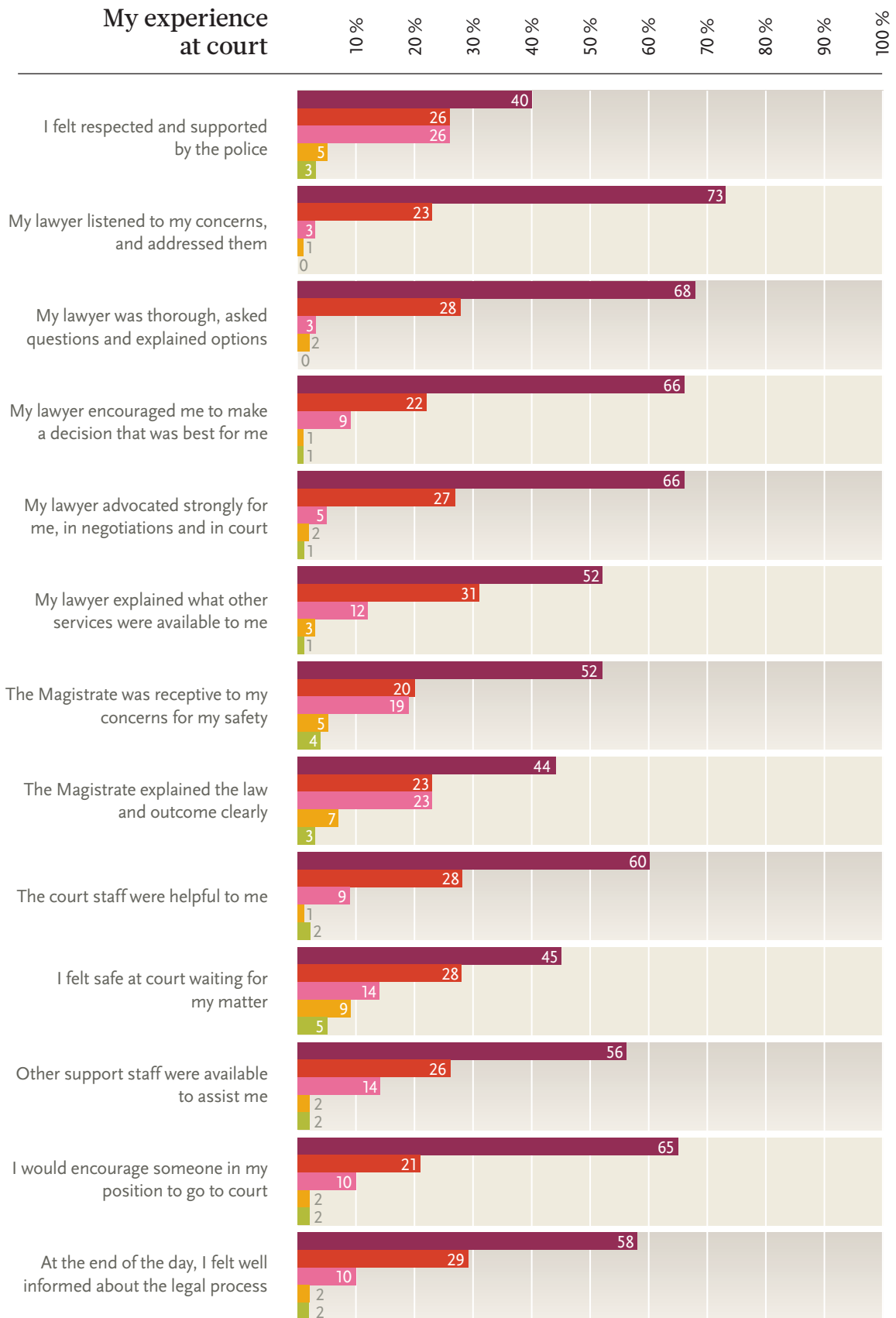
Today, I came to court because I wanted ...



NOTE: INDIVIDUAL QUESTION RESPONSES MAY NOT TOTAL 100% DUE TO ROUNDING AND FOR EASE OF REFERENCE

# Survey results

Very much  
Somewhat  
Neutral  
Not really  
Not at all



NOTE: INDIVIDUAL QUESTION RESPONSES MAY NOT TOTAL 100% DUE TO ROUNDING AND FOR EASE OF REFERENCE



*I just want to be able to smell the roses.* CORDELIA

6

# Before court

## Women's hopes of legal assistance

In the pivotal moment of seeking legal assistance the women had certain hopes of what the order or undertaking would bring. They hoped:

- to get on with their lives
- to no longer live in the offender's shadow
- to feel free and safe again
- for the offender to be accountable
- to restore their dignity.

### Offender accountability

Many women hoped that if they were successful with the application the offender would respect that order and, if not, be accountable for his behaviour. Katarina wanted *to tell him there are consequences for such behaviour. If you're going to behave that way there are laws and things in place now that helps people and I wanted him to know that you can't get away with it.*

Ann thought that the undertaking would be enough *that he would wake up to himself.*

Other women were also hoping that the intervention order would improve community awareness of family violence and that this would lead to increased offender accountability: *I wanted other people to know what he was like, for him to be more accountable for his behaviour* (HELEN).

In this hope for offender accountability the majority of women did not want the offender punished by imprisonment; they just wanted them to change their behaviour.

Carrie said, *I just didn't want him to go to jail, just wanted it to STOP, 'LEAVE ME ALONE'. She was hoping it would help the police to tell him to pull in his head and let me get on with my life.*

## For women and children to feel free and safe again

Many women held strong hopes of improving their and their children's safety. Helen primarily sought an order to protect her daughters from their father: *I wanted my daughters to feel safe, I wanted protection for them.*

Elizabeth, after 13 years of family violence, wished *to be able to walk out of there and know I was going to be safe, that would have been good.*

Some women articulated a desire to live a normal life: *I just want to be able to smell the roses* (CORDELIA).

Sophie, after having had a previous order on the same offender, was hoping for long-term safety. She wished for a permanent order but, thinking that that was not likely to be granted, wanted a five-year order: *I wanted peace of mind and safety. Knowing I was safe for at least five years. That was what I wanted.*

## To no longer live in his shadow

After enduring long-term family violence many women wished to free themselves from the offender, to never see him again.

Margaret (after 20 years of family violence, including sexual violence from an offender who claimed to be her de-facto, which he was not) said, *all I wanted was for him to be kept away from me. I didn't want sympathy from them, I just wanted to actually feel safe. I didn't want to be too scared to walk from one room to the other thinking that I might run into him.* Isobel, who had known the offender for 26 years, wanted *that I didn't ever have to see him again.*

The concept of physical distance from the offender and no contact was important. Marie hoped for *peace of mind that he can't contact me like and he can't be near my house. Like ... yes.* Agnes explained, *I was hoping to feel like I'd be safe. I was just hoping that he would stay away and like it would wake him up and he would go 'oh shit, she is actually you know serious about this'.*

## For children's well-being and positive relationship with the father

All the women recognised the impacts of family violence on their children and some women hoped an intervention order would, through improved offender accountability, lead to strengthened father-child relationships.

Ally wished for her youngest child to *have a life and relationship with her father free of judgement.* She wished for her oldest child that their relationship with their father is such that *he doesn't go off at her.*

## To break out of the cycle of domination and control by the offender

Margaret, like many of the women, wanted the intervention order because *he had that much control over me. I wasn't allowed to speak to anybody, he used to say I was less than a cockroach, and that is how I felt you know. He said 'you can't make a decision' – well, I couldn't make a decision, coz that's how bad it had got, but I was absolutely terrified.*

Elizabeth wanted to free herself from where *I was completely brainwashed basically.*

Some women hoped that to break out of that cycle of domination would lead to *more belief in myself. That was it, I never argued, coz I didn't argue, you just didn't because you were wrong anyway in his eyes* (JAY).

## Understanding, recognising and responding to the various forms and the continuum of family violence

To understand the women's justice needs it is important to demystify some myths around the nature and timespan of family violence that can compromise the efficacy of the justice response and can contribute to lack of community accountability in addressing family violence. These myths include that family violence is a one-off incident and does not include non-physical forms of violence.

Before they decided to use the law, these women had experienced a continuum of different forms of family violence across their lives.

### The continuum of family violence

The women were clear that family violence is not a one-off incident but a sustained process of power and control with a devastating effect on those experiencing it. 'It is a continuum of family violence across people's lives' (McCormack 2014).

Margaret experienced more than 20 years of family violence including sexual violence: *I had a breakdown and tried to commit suicide to get away from him. Well it got so bad. What he was doing to me, that I was absolutely terrified of him.*

Unfortunately this long-term narrative of violence is not always captured by the police in the application statement. Diemer et al. (2013, p. 8) that in the 'L17'<sup>23</sup> risk assessment supervisors note that 'attending members often miss the history of incidents'.

The women in this research had been experiencing family violence from 3 to 40 years. Some women had experienced family violence since they were young: *I've been through it all my life* (Sunny). She witnessed it as a child and has experienced it in most of her relationships.

Katarina had experienced family violence for more than 40 years, from family members and partners. She has the visible scars of *you know forty years of being stabbed and being cut up.*

For some women the continuum of violence included potentially lethal violence. Elizabeth experienced 13 years of *sexual abuse, and he tried to kill the [children] and I.*

### Different forms of family violence

Five women in the research had experienced years of physical and other forms of violence that have left visible and invisible scars.

Sunny survived a number of attacks on her life: physical beatings, attempts to burn her to death and a stabbing as well as relentless psychological violence, such as verbal abuse and threats.

Siân would be regularly *black and blue* and Maude endured incidents of physical violence that she *never will tell anyone about, I'll take them to my grave.*

The majority of the women (22) in this research had not experienced physical violence, but, as many of them commented, they recognise that many people –including sometimes themselves – don't recognise or validate non-physical violence (McKinnon 2008).

***You don't think that if there aren't any marks on the outside it isn't violence. You get bashed around, that's violence, you get verbal, mental violence you think it isn't family violence.*** KIRSTY

The women's thoughts on the significance of non-physical forms of family violence support contentions made by VicHealth (2013), who have reinforced that 'it is important to recognise "coercive control" because evidence suggests non-physical forms of violence can cause equal if not greater harm than physical forms'.

As Cordelia argued, *any violence is not to be seen lightly at all.*

Some women, while not wishing to trivialise physical family violence, argued that the impacts of non-physical violence are different, and can often be worse.

*... I would sooner he come and punched me in the head once ... just come and hit me once than what he did. What he did was worse ... payback and revenge ... because that's what it was. It was so much worse than if he just grabbed me by the scruff and thrown me on the ground. Seriously, it had more impact ... and it was harder to pinpoint and harder to label.* JOAN

These comments from Kirsty concur: *I reckon it may have been easier to deal with getting the crap beaten out of me rather than years and years of this crap. I could probably deal better with being beaten up than years of torment.*

Importantly the risks of non-physical violence should not be underestimated. Research of deaths of women in Victoria revealed that it is unknown whether women who experience physical violence are more at risk of losing their lives than those experiencing other forms of family violence (McKenzie 2014). However as McGowan (2014) argues, 'The best risk indicator is the fear level of the woman experiencing the violence'.

It is clear from these women's lived experiences that family violence is not just physical violence, and very rarely a one-off incident.

## Normalisation of family violence

Many women did not realise they had been experiencing family violence and had normalised it for periods of 4–26 years.

*The big question is why did I put up with it [family violence] for so long? When did the blinkers come off?* ANN

Some of those women felt that they normalised it because it wasn't physical violence.

*There were a number of people over the years [who recognised the family violence she was experiencing] ... a girl that I have known since I was 13. Many times over those years [she would say] why are you still there. What are you doing? [However because] there was no physical violence in my relationship. It was all psychological, financial, social. So yes I normalised it. And so those comments I just brushed aside.* ALLY

◇◇

*I didn't understand what family violence actually was until I actually started the process [court]. So this has actually been going on for years and years beforehand. It was affecting me, I had depression and had gone into hospital, prior to leaving but I didn't realise it could be mental, verbal violence as well.*

*You read the statistics and think shit that's what it is and how many women don't know what it is and put up with it, have accepted it as a way of life.*

*Only when you cut the cord and it gets worse do you realise what it is and you have no supports.* KIRSTY

Maude was married for 36 years and had suffered physical and non-physical violence before leaving her partner. She normalised it as part of her relationship: *Well when you're living with it I think you're more inclined to think well you don't look at it as violence. You feel that that's where you belong and there's no choice and as I said we were married a long time.*

Marie recognised that other people may normalise it, but she wanted to make a stand: *To me it was very important – do you know what I mean – things that he was saying and he pushed my older son around and stuff like that. But I don't know I sort of thought – to someone else that might not be significant ... but to me it was.*

## Extent of violence not always considered

Some of the women were concerned that this continuum and spectrum of violence that spanned into both criminal and civil proceedings is not acknowledged in a risk assessment and/or the decisions made by the court or police on the legal outcome for the offender. The courts and police are not necessarily accessing information or considering any previous criminal history or orders made against the offender.

Elizabeth's children assisted police with criminal charges against their father but the court would not allow evidence of the order brought out against him to be admitted: *... the jury was scared to send an 'innocent man' to jail. And they sort of bargained, with 'we won't say this, we won't say that'. But you are not allowed to mention the intervention orders, well why not?*

Other women later found out through members of the community that their offenders had orders taken out on them by other people, or that they were committing violence against other women and children in the community. While the *Privacy Act* prevents the police sharing this information the women argue it would have assisted in progressing their own risk assessment and safety planning. As Ann said, she would have moved to another town earlier.

The normalisation of family violence and lack of understanding of the various and equally significant forms of and the continuum of violence is a significant barrier to the women's experiences being validated and understood within the community and in the justice system.

As explored in the following sections, this may lead to their experiences being trivialised and not addressed adequately in terms of police prosecuting breaches or bringing offenders to account, low levels of police referrals to family violence support services, lower confidence of those experiencing family violence in the justice system and, in the absence of other support mechanisms, the beginning of self-doubt.

Such a continuum of family violence with its devastating impacts also requires long-term restoration.

## Pivotal moment in seeking legal assistance

### Factors in women's decisions to use the law

Women experiencing family violence generally reach what is known as a crisis point in their lives – a point where they fear for their own safety or that of their children. For some women this point is reached over a shorter period and may follow one (major) incident of violence. Others take many years to make the decision to address the violence, and this decision may follow changes in the frequency of violence against them or an escalation in the intensity of violence. It may also follow redirection of violence to their children, or their children witnessing the violence



and wanting the offender to be held accountable for that behaviour (Johnson et al. 2008; Laing 2013). It may also be a combination of these things.

## A particular incident of violence

By far the most common reason for the women's decision to apply for an order was a particular incident of family violence that represented a significant escalation of the abuse.

For all the women who had been separated, there had been an escalation of violence after the separation and that precipitated their application.

*The intervention order came, must be a few months later [after the separation] after because he's fozzing and he, phone calls for an hour, he said he would come here and kill me. He told me he'd get a bulldozer and bulldoze the place down here, in the middle of the night he was drunk screaming, screaming so ... [crying].* JAY

Sunny, supported by her father, had been trying to leave her partner on numerous occasions and managed to leave him once more and yet *he kept stalking me, he kept ringing my father saying he was going to burn his house down with him in it and going to kill my kids ... then he stabbed me and I thought, no, this isn't good.*

Beryl had suffered family violence from her husband and then at the time of this research was applying for an order against her son. She described the event that was the last straw.

*It was the most horrible day of my life ... he went off at me, yelling and screaming and then kicked me ferociously many times on my legs. I then went to be a support person for my daughter who was giving birth to my grandchild ... I just burst into tears when I got to the hospital ... and after the birth of my grandchild I went to the police to apply for an order.* BERYL

## Protecting children – now and in the future

For some women the decision to seek legal action was through a realisation of the impact of the violence on their children. Three women applied for an order to primarily protect their children.

Sophie recognised her children were traumatised: *I've got to protect the children.*

As Cordelia explained, *well yeah the violence got worse. It accelerated and got more violent to the point where I was concerned for my life and the children's lives.*

Other mothers realised that their children had become witnesses to family violence that had previously been hidden, and therefore they felt a need to protect them.

*It was probably after I had our daughter. It was suddenly this isn't about me anymore. And – he actually punched a hole in a door. And I thought, OK, so when our daughter is five or older or whatever, and she sees that hole in the door, I'm gonna have to tell her that Dad got angry and did that. And that's not fair. She shouldn't have to deal with that. ... I'm not going to let her be a victim of that. ... That's not right. And it was like an audience was there suddenly. There was someone else in the room and I didn't like that someone else, especially my daughter, I didn't like that someone else was seeing what was happening.* SARAH

## Feeling stronger through either informal or formal supports

Often women were supported to pursue an order by their mother (and in one case a father) and eight women were supported by family violence support services. This support was pivotal to the women feeling strong enough to continue seeking legal assistance.

*I couldn't have done it without Mum, she was always there supporting me when I felt I couldn't do it, she was great with the kids and we stayed with her for six months after we left.* CORDELIA



*... we ran away to my sister's you know the women's group and that were wonderful. And without their weekly or daily or whatever it was phone calls, I mean there was many a time where I said I'm not even going to go and get an order, and they said 'look you've got to do something, you know'.* MAUDE

Fran had five months of counselling with the Centre for Non-Violence to assist her to get to the point of feeling strong enough to apply for an order.

## Having had enough of family violence

Some women found themselves at a point where they are sick of the sustained process of power and control that the offender had over them.

*And I decided I don't want to have to put up with this all my life. Knowing there's, must be something better coz I mean I know life should not be to get treated like that I was just second rate, all of that, everything you do is worthless, is useless because you don't earn enough money, but you do everything.* JAY

Elizabeth had also had enough of the relentless family violence but unfortunately felt her only release was suicide.

*There were so many incidents, there was violence, sexual abuse, threatening to kill me, threatening to smash my belongings, he tried to kill the girls and I.*

*About thirteen years I put up with it and then I thought I can't do this anymore.*

*I actually attempted suicide and obviously I panicked because I had the kids and I thought they were going to find me, so we phoned Lifeline and they organised an ambulance then we woke up my daughter ... and then they stayed with us till someone came and a friend came and said it is either him or you, one of you is going to end up in the morgue.*

*It was a big reality check. I had taken a heap of [painkillers], cut my wrists but not deeply, not to do anything but it was very painful.* ELIZABETH

## Wanting the offender to realise that violence is wrong

Women described rising levels of frustration at the offender's violent behaviour and their lack of accountability.

Katarina was indignant: *You [the offender] don't have rights to bash this person or pull that person's hair or threaten that person in any way ... who the hell do you think you are?*

This knowledge of the crisis point reached by women experiencing family violence can be used to provide earlier strategic intervention by providing family violence information available at a range of well-known risk points: maternal child health centres, antenatal clinics, medical centres, hospitals, mental health facilities, family law courts and family relationship centres (Tually et al. 2008).

## First point of contact

Seven women went to family violence support agencies, 13 women went to the police, four women went to their general practitioner (GP) and three women went to the court as their first point of contact in their attempt to address their experiences of family violence. All three Aboriginal women in the research accessed Indigenous specialist services before seeking legal assistance.

A surprisingly high number of women went to the police as a first point of contact because, unfortunately, in rural and regional areas the family violence support services are limited and information available about them is limited (Jordan and Phillips 2013).

As Ann said, *the worst thing is that you don't know where to go when it happens ... we need better awareness of family violence and supports.*

All the women who went to support agencies had a positive experience and felt better informed, validated and supported to then take the next step in the application process.

When Ann fled from her partner she ran to the local family care centre who immediately took her to the local family violence support service who were *fantastic, brilliant*. Within hours she was in a safe house.

Ruth went to the local family violence support service *who were great getting me accommodation, counselling, and other referrals. At that point I had clinical depression and smoked dope. [The service] were brilliant, took me in straight away and helped me with my problems and saw me once a week.*

All the women had summoned the courage to do something, either as part of a supported plan or in a desperate spontaneous leap of faith to protect their children and themselves.

As Cordelia explained, *it was a big process from being so controlled and scared to getting my own power back to have the courage to do this. It takes a bit of time for you to realise that you can take your own power back.*

## Application process

### Barriers to application

Many women had been hesitant to fight back and apply for an order because they:

- were fearful of the consequences (escalation of violence)
- were fearful of the court process and going public about their family violence
- did not have confidence in the police to take their request for an application seriously
- did not feel well informed especially about support services
- had concerns about the impact of the order on the offender's job security or gun ownership.

These reasons mirror some of those barriers documented by Mouzos and Makkai (2004).

## Fear of the consequences as a barrier

Sunny had experienced long-term high-risk family violence including having her *teeth kicked in* by her offender and multiple beatings.

She explained how the fear she held of the offender prevented her from progressing the legal assistance.

*I've charged him [reported to police], but I was too scared to go to court for it. So it ended up getting dismissed a couple of times – I was just too scared.*

*But he got more aggressive and sort of... I felt as if I did do it like he'd blow up. So I didn't sort of do anything for peace.* SHIRLEY

Sarah assessed her risk as low because the family violence she was experiencing was not physical so had decided not to seek legal assistance.

*I knew things would get worse if I left, you go well he hasn't hit me so it's ok. It's not that bad.*

Maude talked of the fear that her and her son felt: *Yeah I knew about it [the order] fairly soon but I wasn't keen on it coz I was so frightened of him. We weren't eating, we weren't sleeping in our beds we were out on the road in a car too scared to go home you know and this went on for months and months and months.*

## Disclosing family violence: a daunting prospect

*You've got no idea how scary it is and also how something that you've held inside for so long*

... MARGARET

Ally explained how hard it can be to summon and then sustain the courage to put in the application.

*As with many women in this situation it takes a little while to take that step because it is, it's HUGE. Making a statement to the police. One it's acknowledging, first that it's happened outside of your own little network, and two, it's putting it on public record. Which that in itself is a huge step. Certainly from my work in supporting women I could understand their hesitancy through my own experience.* ALLY

## Lack of support and information

Jay explained that while she had a sense the violence she was experiencing was not right, she did not have the strength by herself to address it: *If I think back about it to that behaviour of his was before we got married. When I was eighteen. So I already knew things weren't right but I was not strong enough to deal with them to say no that's not right, because I doubted myself.*

*I didn't think it was bad or ... I knew it wasn't right. But I didn't feel the threat or need to involve the police ...*

*But it took me like 2 years to go through that to learn what I know right now and I wish that someone had told me ...* SHIRLEY

## Impact of intervention order on offender job security and gun licence

Beryl, Kirsty and Ann were worried about the implications of an order for their offenders' job security and gun licence.

Ann chose to seek an undertaking rather than the order because she was fearful of the consequences of her husband losing his gun licence, as occurs automatically if a final order is granted.<sup>24</sup>

## Court application process

Sixteen women went to the police for assistance to apply for an order and 11 went to the court without police assistance.<sup>25</sup> Of those women that went to court independently, six had support with them or support prior to applying for the intervention order.

In the application process those experiencing family violence have crafted a moment of autonomy from their constricted life space. In that moment of autonomy and going public about their lived experience the justice system must match and coalesce with their response (McGowan 2014). Some women had such a coalescence with that response.

Isobel had a positive response, the court staff were understanding and supportive and the granting and serving of the order was quick.

*So the very next day I went down to the clerk of courts and I gave her a list of what had been happening and how ... I really was frightened ... so she fixed it all up. She was wonderful, very very helpful and Tuesday morning I went down and she said come back this afternoon and I'll fix it all up for you. We'll take out the intervention order blah blah blah. Three o'clock that afternoon he was gone. That quick. I didn't even know that he was ... that was going to happen.* ISOBEL

Carrie had fled from her home with her children and was receiving 'great' support from a family violence support agency. They assisted her with the intervention order application: the support worker knew the system. *Oh my God, that was key to me ... you know, what to say, what not to say.*

Marie was encouraged by the court registrar to apply for an intervention order when she first went to court to seek support.

*She [the registrar] said to me no, stay around – let it be heard because he is threatening you. So she encouraged me to stay and have it heard ...*

*I had a good understanding of what was happening only because she felt that it was important. Do you know what I mean that he was ... she could see the messages that I'd written down and he was threatening me and ...* MARIE

Unfortunately other women did not have such a positive experience. They spoke of feeling disempowered and not feeling understood or safe, and did not realise the importance of writing a clear and adequate narrative in their application. Many women did not feel well informed so they did not understand what was happening. Although the printed application contains a sheet with telephone numbers for support services, applicants may not be aware of this or encouraged to contact support services.



Jay got an interim order but didn't know what that meant and had to access information online later. The clerk hadn't noticed that I wasn't in a state to listen properly. *By that time, I'd started to shake, I started stuttering a lot and shaking and I might start again occasionally, because that's what it's done. And, don't know, she put it in and then the interim order, I just didn't [understand], I tried looking up on the internet what it all meant.*

Some women explained their sense of disempowerment through confusion and lack of referral to support agencies.

***There was some confusion, we went to the court registrar to be told we had to go to the police to apply*** JAY.

Margaret felt that *I didn't have a voice and I didn't know what was going on. The first thing is people need, you might be distressed or under great pressure or whatever, but you need to know what the procedure is, maybe not the clerk of the court – well the clerk of the court or the first police officer I did the signed statement with – they should have advised me that there were people out there that I could talk to.*

Siân didn't feel safe and understood at all: *Oh it's archaic, an archaic, stand over there and fill in this bit of paper. You know, in a room full of people that could be anybody and anybody can walk in that door. ... someone should actually realise that traumatised people don't want to just sit here and fill in a bit of paper. ... So he could also walk in the door and so he knows what you're up to.*

Christine found the court staff cold and impersonal: *they just gave me some forms to fill out [without any real information or guidance so it was pretty] nerve wracking because you don't know whether I was going to get him kept away from me.*

Siân spoke about the importance of writing an adequate narrative and being supported in that.

***I think it was at some stages it was like why am I bothering, it'll just be – whatever will happen will happen but then I thought no I really need to write it all down and it needs to be written down and the truth needs to be told.***

***Trying to fit it, it's like do you want the real story so that something can actually be done at the end of this ... or do you just want us to scribble something down that might sort of look like ...***

***I must admit, once I'd written it all and I think I wrote you know filled in the back of all the pages and gave it to them, once they had read it, someone actually came out to make sure I was okay.*** SIÂN

If the response is not timely it can lead to frustration and reluctance to pursue the order.

Weona had to keep going back to court every two weeks because the police could not locate the offender to serve him the order: *That was hard, court was scary, and I was starting to get you know frustrated and thinking well oh, don't worry about it.* She was not excused from attending even though the matter would be adjourned.

The women explained that the early provision of information on family violence and engagement with support agencies is important in empowering women to seek legal assistance. In the first point of contact and in the application process, effective and timely engagement and service delivery, founded on a sound understanding of family violence, by the police, courts and family violence support agencies, are extremely important to build on the women's autonomy. Otherwise *their capacity to follow through and believe in themselves is gone* (ALLY).

## Recommendations

- B5** Create more effective ways of recording and relating the histories of family violence victims between agencies (such as the police and courts) to reduce re-traumatisation and fatigue for applicants.

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- F1** Encourage all applicants to seek assistance with completing the application form to adequately capture the history of family violence and recent allegations.

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- F2** List details of previous applications on the application, as well as the outcome, so that the magistrate is aware if there is a history of intervention.

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- F3** Advise all applicants of the list of support services provided with the printed application and encourage them to contact the family violence support service and duty legal services, and refer them to online.

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- G1** Educate the community on and raise awareness of gender equity and gendered violence.

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23. Mandatory Victoria Police risk assessment and risk management report completed for every family violence incident and interfamily-related sexual offence and child abuse reported to the police.

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24. See the definition of 'prohibited person' in section 3(c)(i) and 3(c)(ii) of the *Firearms Act 1996* (Vic).

25. See also section 7: 'Police responses'.

*If the police can't do anything nobody else is going to be able to do anything. They are there to serve and protect so if they can't do anything who is?* KIRSTY

# 7

## Police responses

The police play a pivotal role in the family violence justice process, especially during the application process, and in their response to breaches of an order (Garcia et al. 2008; Laing 2013; Munzel 2002). As this research suggests, they also serve as a significant first point of contact for those experiencing family violence who seek information and support; indeed, the majority of women in this research went to the police as a first point of contact.

The police response is not only vital for the immediate safety of those experiencing family violence but also conveys an important social message about the way in which violence against women and children is regarded by society (Garcia et al. 2008; Mitchell 2011).

The police role is no easy task and they are responding to increasing service demand. Diemer et al. (2013, p. 11) report that Victorian family violence reporting rate has increased 76% over the past six years to 1071 reports per 100,000 population and charging rates have increased 200% over the last six years to 450 per 100,000 population. They describe a police force disillusionment and disaffection (Diemer et al. 2013, p. 20) by these sheer numbers and time expended on family violence investigations.

As Carrie explained, *the police think the women survivors are taking the system for a ride, they are sick of family violence.*

The *Code of Practice* (2014) is robust in its aims, its understanding of family violence, holding offenders to account for contraventions of an order, systemic integration with other family violence stakeholder agencies and systems of monitoring and accountability.

There is no doubt that police practice has improved with the implementation and regular review of the *Code of Practice* and certain leadership within the police force, notably that of former Commissioner Ken Lay (Diemer et al. 2013, p. 20). However, women's experiences of the police in this region varied greatly.

Some women commented on the efficacy of police response, but unfortunately the majority of the women still had negative experiences of their respective police responses.

## Positive police experiences

In some cases the police had a reasonably consistent, sensitive and considered approach, which was very much appreciated by those experiencing family violence. The women felt heard and validated. Women commented on officers who were trusted by both men and women, who had some understanding of family violence and took each family violence case on its individual merit and applied appropriate strategies, referring women to support agencies, and seeing community engagement and development aspects to their interventionist role.

Cordelia noted that the local police were quietly supportive. While they did not inform her of the family violence her ex-partner was perpetrating on other women and children in her community<sup>26</sup>, they were easy to talk to and attentive.

Joan was phoned *out the blue* by a local police officer she didn't know who was concerned about her ex-partner's behaviour: *Yes the police officer was actually quite concerned clearly, because he really really was and he actually said to me I don't know how to help him. I've tried to steer to him off to a male counsellor. ... And he said if I am getting that many phone calls what are you getting. And when I said yeah all day. That's how that came and I decided to apply for an intervention order.*

While Sophie did not have positive experiences with the police she recognised that *the police women down here are awesome. I think there's only two they're awesome girls. They're really wonderful. She's a great bird. But you see she was on leave when all this happened with me so she wasn't around. And then when I sort of went to court and she came back. She was like ... I feel terrible I wasn't here. And I said oh my God it's not your fault.*

## Consistent positive response

Ann explained that the police had been very supportive, patient and considerate, and this experience was across all the personnel she engaged with: *they were absolutely brilliant.* Ann felt heard and supported even when the police were recommending an intervention order and she disagreed and instead accepted an undertaking.<sup>27</sup>

Even with the undertaking, where the police powers are limited, Ann felt that the police were supportive and reasonable in their interpretation of risk. When the offender tried to break into the house and on another occasion tried to assault her and banged on the car windscreen they responded to her call, came and took notes and discussed with her benefits of an order.

## Importance of effective and consistent Family Violence Liaison Officers

The Family Violence Liaison Officer is a supervisor responsible for the following activities within their station or cluster: providing a consistent and coordinated approach to family violence; monitoring and reporting on family violence, including adherence by members to the *Code of Practice* (2014); providing a station contact point for local referral agencies; maintaining

relationships between police and other agencies; and coordinating further responses for the applicant where issues of re-attendance or multiple attendances exist.

The position of Family Violence Liaison Officer can rotate frequently, but Ally had the same Family Violence Liaison Officer during the time she was considering taking out an order. She explained how they showed patience and understanding in the application process and worked well with both herself and her offender.

*Through my work [as a family violence support worker] I had got to know the domestic violence officer at the police station. So I'd had a number of conversations ... over a three month period with her about what was going on and then I had ... just gotten to the point where this was ... it was starting to scare me and she had wanted me to come in and make statements on a number of occasions and I thought no I just ... let's see if this settles down and it didn't and then [I] finally went in and spoke with her [the Family Violence Liaison Officer], made a formal statement and she applied then for full intervention order. She was really good with him as well.* ALLY

### Support of Police Aboriginal Liaison Officers<sup>28</sup>

The three Aboriginal women in this research really appreciated the support of their respective Police Aboriginal Liaison Officers. As Shirley explained, they provide ongoing support and develop a rapport and trust with both men and women.

*I just believe that she's built up trust with people and women in the community and I've had home visits and ... But it would be good if she within that unit had the support of the other police officers.* SHIRLEY

### Referral to family violence support agencies

There was a very low incidence of police referring women seeking their assistance to family violence support agencies. Thirteen women went to the police as a first point of contact and two were referred to a family violence support agency.<sup>29</sup>

Maude reported feeling unsupported by the police when she called them seeking their assistance, but she appreciated their referral to a support agency, which then assisted her to apply for an order.

*Well there were occasions in the past where they've [the police] been called and they would say well there's two sides to every story and I'd say yes I respect that and that you know I can understand that and you know for a couple of times there you really didn't know what they [the police] were thinking but in the end you know I could see well they you know advised me a couple of times to ring the women's group but I think in the end that women's group I think the police contacted them and they rang me.* MAUDE



## Negative police experiences

The majority of women for whom the police had applied for an order were successful. However, many women also commented that the police were not particularly helpful in giving them adequate information on procedures and/or the court process, or understanding of their experiences of family violence. They *did their job or did what they had to* (RUTH).

The common concerns expressed by the women in their interactions with the police were:

- lack of focus on the offender and offender accountability
- lack of understanding of family violence and the complexities therein
- inadequate recognition of fear of those experiencing family violence
- inadequate recognition of non-physical forms of family violence
- inconsistent response across the police personnel
- potential trauma associated with having to repeat their lived experience of family violence in their interactions with different police personnel
- lack of timely response
- negative attitudes towards the women.

These concerns are consistent with the literature (Bucci 2013; Garcia et al. 2008; George & Harris 2014; Laing 2013).

Some of these concerns are also listed by Diemer et al. (2013) in their review of the *Code of Practice* (2014), where police reflect on current and future challenges in the implementation of the Code.

Such concerns reduce the confidence of the women in the police to do their job effectively to the point that *I would recommend to other women to maybe apply for an intervention order but don't go to the police station. Go to a support agency and get a lawyer* (KIRSTY).

## Police and applications to court

Ally explained that in the application process that *survivor for that moment wants to fight back, she must get support, in that crucial moment otherwise their capacity to follow through and believe in themselves is gone.*

Thirteen women went to the police as their first point of contact to seek assistance for family violence. The *Code of Practice* (2014) is very clear about the importance and implications of police attitude towards those who have experienced family violence: 'The manner in which police handle the report is crucial, particularly when the victim has sought help. The first contact a person has with police can influence their experiences and impressions of the justice system and their future decisions. Police, according to the *Code of Practice* (2014, p. 9) must adopt an understanding and reassuring manner'.

Sixteen women went to the police for assistance to apply for an order. Eleven were successful with the application but many, while successful with their application, did not feel validated or understood.

Joan had experienced an escalation in family violence and one day returned home to find her husband had locked her out of her home and had changed the locks. He and her kids were inside.

*That moment when I couldn't get in and my kids were in the window looking at me wondering why Mummy couldn't get in ... it is the worst moment, memory I have, unbelievable shock, horror and*

*terror for my kids, he then proceeded to put bars up around the window ... he'd lost the plot. My kids were in there and I couldn't get them out. That's when I first went to the police. I backed away from the door that wouldn't open and I waved to the kids and I drove to the police station because I didn't know what else to do. But when I got to the police station I did feel a fool and I did feel like a feral and I did feel like this was a little bit of a waste of me spilling my guts because I'm just another ... I did feel a little bit like another basket case. ... the reception from the police is you're really not that special. You are just another ... whatever ... coming off the street ... yes another ...*

*I would have loved somebody. To spill out my story and then go what do I do. JOAN*

Unfortunately her husband wasn't removed from her home and she had to find somewhere to rent. Joan also had to *fight to see her kids*.

## Lack of empathy and understanding

Many women commented that the police did not 'adopt an understanding and reassuring manner' as required by police under the *Code of Practice* (2014).

*Ally explained, the police have lack of empathy and understanding for the AFM [affected family member] so that they can move forward. How can they move forward if the police don't understand? – they could lose faith very quickly.*

*Family violence undermines the survivor and their self-esteem and if the family violence isn't validated by the police it just confirms that it isn't happening, why bother.*

*The police need to hear these stories without judgement, regardless of what they are perceiving.*

*From a working perspective ... our officers need a greater understanding of the psychological impact. When they're called out to a family violence incident with the L17 [reports] that were coming in ... there would often be judgment in those. She was giving as good as she got. It was hard to work out who was the perpetrator and who was the protected person. On a number of occasions both myself and having taken other women in there to make statements sometimes the officers can be very – 'wasting our time' attitude. ALLY*

Cherie described a formulaic police response: *And I'd like to be when the police come to my house I'd like them to see me as a person not just as a stat. It's like a formula, because that's how it went, you know you call us, we come, interview you, take your statement, take his statement, put them together, charge him, you go to court, done ... well no it's not done!*

This lack of police empathy and understanding has implications for the quality of narrative that is recorded. Both Margaret and Maude had experienced long-term family violence and did not feel comfortable disclosing accurately their lived experience to the police, so their narratives did not do them justice.

Maude had not been able to tell anybody about her lived experience of family violence: *not to my sister, not to anybody. I haven't even told the police half of it. I have plenty evidence for it and all. I'll take most of it to my grave.*

Unfortunately she felt that the police, when recording her narrative, *didn't take a lot, they are careful what they take.*

Margaret, after more than 20 years of sexual, emotional, social and physical violence, felt she could not disclose her lived experience adequately *coz I was that scared, I was holding back from telling everything.*

She was disappointed with the police's response.

*I thought here I am, a person wanting protection, you've told them, you know X, X, X and X, and they've let me down [crying], and then they just, the police just left me for dead [crying] they were meant to go there with me to court and everything, they didn't come.*

*Anyway I heard the police say after the court 'did she get it'. They were talking about me. So they all knew that I'd been there, that I'd done a statement, and yet they'd just left me to the wolves.* MARGARET

Shirley was confused and scared by the police response to the family violence incident. She was pregnant and there had been an incident of severe physical violence, and she rang the police. Meanwhile, the offender had presented himself intoxicated to the police station, then they brought him back to her house to get her statement, which she thought was inappropriate: *Both times the police did it [applied for orders] which I'm really grateful for. So I'm not just having a go at the police just to think that things can be done differently and improved and better for safety.*

Five women were unsuccessful at obtaining interim safety from the police such as through a Family Violence Safety Notice:<sup>30</sup> two were refused assistance and three were told to go to court and to make an application themselves.

The *Code of Practice* (2014) states that 'under no circumstances are police to advise an AFM to "go to court to get an intervention order" when the safety, welfare or property of a family member appears to be endangered' (p. 37). Where the women were told to go to court they were all extremely fearful of the offender; Elizabeth had attempted suicide after years of sexual abuse and threats to kill her and her children: *I had never had an intervention order go through to the final stage because I'm always talked out of it [by the police]. The police actually wouldn't take one out for me.*

## Need for skills and approaches reflecting community engagement

Some women lamented the lack of appropriate police skills to fulfil their significant role in family violence matters: *The police are only interested in criminal matters, speeding fines, jaywalking etc it's totally ridiculous, totally* (KIRSTY).

They argued that the police need skills to understand the needs of each case. Some women argued that sometimes it may be better to support couples and refer them to appropriate services (e.g. counselling) than immediately take out an order.

Ally explained that we need *more family violence officers. Liaison officers who are specially trained in family violence and can see the complexity of cases and provide more nuanced support. For me [and for] ... the couples who are coming to court and getting an intervention order but who are wanting to stay together.*

Cherie did not really want an order prohibiting contact with the offender; she was hoping for some sort of reconciliation process focussing on changing her ex-partner's violent behaviour through appropriate supports.<sup>31</sup>

*... and so I called the police and then they came and they interviewed me. From that interview they went on to charge him with things and in the wording of the statement, made it quite closed, you know, and very one-sided. It didn't even – it's really difficult to explain because I don't condone his actions but at the same time, I think the police were very fast to just come down on him without any support or anything like that.*

*I actually would have preferred it not to have gone to court so that I could have perhaps gone to a negotiator or something with him [the offender]. You know that's the outcome I want that he gets support and help that he recognises his behaviour's not okay and starts to change that.* **CHERIE**

## Inappropriate manipulation

Cherie relates how the specialist family violence police officers threatened her ex-partner when they were serving him and he was upset: *That officer threatened to put the kids on the order when my ex-partner wouldn't be quiet. If you don't watch yourself son I'll put the kids on the order.*

## Lack of information on supports and court process

In the majority of police applications the women felt that the police did not adequately inform them about the effect of the order, court process or supports.<sup>32</sup> This is significant when most women are going to the police as a first point of contact.

*I know that with a lot of things unless you've experienced it yourself you can't really understand it, but if they were educated in that respect, at least they would do – say, for instance when I fronted up I honestly believe I should have been given information.* **MARGARET**

Sophie commented that there was *nothing, nothing on my rights, support agencies or what the intervention order is.*

Seven women were unsatisfied with police information and had tried to access information about the order, court processes and supports on the internet.

## Not recognising women's fear level

It is encouraging to see in Diemer et al.'s (2013) review that some police personnel do reflect on and gauge the fear level of women experiencing family violence as the most significant risk indicator in their risk assessment. However, women in this research described feeling fear and frustration when police minimised their experiences and failed to take seriously their reports of family violence.

Kirsty's lived experience shows that the police were under-resourced, not recognising non-physical forms of family violence, and did not provide a timely effective response

She had endured family violence for four years and seen it escalate after leaving her partner, including technology-facilitated stalking and emotional abuse at child handover.

*I went to the police but it was pretty much that unless it was physical or something I could record as evidence, nobody would do anything. It was really hard I put up with that for another year and a half. I didn't know about the order I just wanted them to do something, go and talk to him.*

*[The police] said you stupid bitch, I showed them the text messages but they said he is just angry, unless there is a real threat, we can't do anything.*

*He had all the power I had none.* **KIRSTY**

Rather than dealing with the offender's violent behaviour and assessing Kirsty's fear level the police advised her to be proactive about her own safety: *It was just 'block his number, ignore it', it just got pushed under the carpet. The police didn't do anything so I assumed there was no point in*

*going anywhere else. If the police can't do anything nobody else is going to be able to do anything. They are there to serve and protect so if they can't do anything ...*

*She had to wait until one day,*

*I went to pick my daughter up and he had totally lost it he threatened me, went to punch me, and just lost his shit. He was trying to get my daughter back out the car while I was getting her in, calling me names and throwing things.*

*I was trying to keep myself calm for my daughter.*

*As soon as she was up the driveway and I couldn't get her I burst into tears, that is it, I am going to the police station.*

*I was in tears at [a rural] police station. It wasn't manned so there was an intercom to a regional twenty four hour police station and they weren't that fussed, said, well we'll get in touch with him, it happened at twelve o'clock and I came out the interview room at 5pm.*

*It took hours and I thought – seriously, what do I have to do?*

*If I'd come in bleeding with my head punched in they may have been faster. I didn't see the liaison officer. I didn't know there was one ... Then it took me thirty six hours to get my daughter back.* KIRSTY

At one point, when Kirsty's daughter was still with her dad, one police man told Kirsty that they may not be able to remove her daughter because they did not have the resources. She was very fearful of her daughter's safety and thought her ex-partner may not return her daughter because the child care was based on a verbal agreement and not a court order.

The following lived experience relates that police indifference or incompetence may lead to women downplaying the violence they are experiencing. Sophie, after seven years of family violence, felt that she had had enough. After a night of physical and emotional violence, where her ex-partner was throwing dining chairs amongst other things at her and her daughters, they locked themselves in the bedroom, called the police and they came and *locked him up*. However, unfortunately *the police couldn't wait to get rid of him. Because he was annoying them in the lock up.*

Sophie and her daughters were horrified when he returned the next morning. She does not think the police did a risk assessment or L17 and she did not know that he'd been released on bail.

*... then at 6.30 the next morning he turned up at the door and came in the house and my girls slept in my bed with me they were that frightened. Well they were still in my bed and he came into the bedroom and ... ripped everything out of cupboards and abused them and ... they were sobbing in fear ... well I rang the police again. But by the time the police got there he'd gone. And then he got picked up out the road for drink driving because he was over .05 and then that was my fault. So he was really angry that I had got the police ...*

*So they [the police] were like oh well there's nothing we can do.* SOPHIE

While the offender was let out on bail, according to the *Code of Practice* (2014, p. 24), 'Bail does not replace the need to seek an intervention order'.

Sophie continued: *No, no one did anything. It was like I was a nuisance. So I felt like I was a nuisance then. I thought you're really carrying on about nothing. He just yelled and screamed and*



*threw a couple of chairs you know and pulled stuff out of the cupboards. See this is what we do. We tend to downplay but it was really really bad.*

Sophie was so discouraged by that experience she put up with more family violence from her partner for another two months, until *enough was enough, I just had to go down to the police station and say right I want an intervention order.*

## Inconsistent police response and personnel

The women reported that having to engage with different police personnel and repeat your narrative can be traumatic and intimidating.

The *Australasian Policing Strategy for Preventing and Reducing Family Violence* was launched by police commissioners across Australia in November 2008 (Australian Police Leaders 2008). The strategy aims to ensure that responses by Australasian jurisdictions are based on more consistent policies and practices; it outlines priorities for action to improve information and intelligence sharing between police, as well as between partner agencies. It clearly states that record-keeping methodologies should allow for the sharing of information between personnel in order to minimise trauma to those reporting crimes. It appears from the interview data that these personnel were not taking advantage of such a system.

Ally related her experience of inconsistent police personnel.

*One of the things both as a [family violence support] worker and as someone making a statement is that once you've been talking with one particular officer about your situation they understand it. If there is any further breaches you've actually got to go to the station, just to the watch house, and then whoever is on duty will take a statement.* ALLY

◇◇

*Then you're retelling your story to different police officers at the desk. That can be very intimidating.* SHIRLEY

Inconsistent police responses can be confusing and a deterrent to pursuing legal assistance. It can also be an issue in a small community where offenders are known to the police, on a personal level.

Robyn said, *previously when I'd gone to the police, and you know they'd ring him at the fire brigade at work and it was just a joke honestly, you know. Like I just remember, they sort of seemed to be in each other's pockets in some way.* She found that disheartening.

However, one day after an incident she decided to try to seek assistance from the police and she spoke to a police officer who was understanding and listened to her: *We talked for quite a length, about forty five minutes and you know I told him everything that happened the night before, he said definitely it's time you need to do it [apply for an order].*

## Importance of family violence units at police stations

To improve consistency of police response and consistency of police personnel some women emphasised the importance of local family violence units at as many police stations as possible.

*I really do believe that they need to have a local internal family violence unit within the police stations so that there is immediate access. We can deal with the same police officers who are*

*specifically allocated to families going through family violence and the orders that are happening in the families within the towns and that needs to happen so it can minimise the stressful process of re-explaining our personal family situations and circumstances to different police officers in the township.* SHIRLEY

Diemer et al. (2013) reports on the benefits of family violence specialist teams; they clarify the requirements for completing L17s, have a greater understanding of how to implement the *Code of Practice* (2014), more time to work on the incidents and build rapport with both parties, have an understanding of the focus required to deal with family violence, that the risk assessment isn't just about a Law Enforcement Assistance Program<sup>33</sup> form and that there has to be an outcome from a risk assessment.

Carrie argued that more women are required in the police force and in the family violence units as they generally have a better understanding of gendered violence.

## Negative experiences with Family Violence Liaison Officers

Ally explained that in her locality there had been three different Family Violence Liaison Officers in one year. She feels that such a significant role needs to be a more permanent position and well resourced.

All of the women in the research, apart from Ally, weren't aware of the existence of Family Violence Liaison Officers at 24-hour police stations.

Cherie didn't have such a positive experience with a Family Violence Liaison Officer.

*[The Family Violence Liaison Officer] was a female officer and she sat down with me and she was asking me you know why I was applying for the order and so forth and I told her that I was applying because you know I felt that things had escalated to a point where I couldn't communicate with [the offender] and couldn't maintain my safety on my own and then I knew that that just, just you know as a back-up. And so I sort of think that's all well and good but when she says to me so why do you want the children to be included and I said well because they're my children, and they witnessed it all, and until something changes then they're still the victim of domestic violence as well, and the look she gave me, I felt like an ant, and the thing, the way that she was saying to me, the children are not a part of the order, you shouldn't be doing that, almost like I was manipulative ...*

*That was really ordinary, I felt judged, I felt like I was not right in being there, that I had no case so to speak and I actually felt quite angry that I'd been even questioned as to my motives ...* CHERIE

## Police and multi-agency systemic integration

Often it is felt that the complex social and health issues involved in family violence – and the diversity of justice needs required of those experiencing family violence, their communities and the offenders not to reoffend – mean that the police can only be effective when working with other community agencies (Queensland Crime and Misconduct Commission 2005).

Indeed researchers have indicated a number of performance indicators that could be used by police to measure their effectiveness in responding to and reducing family violence (Rollings & Taylor 2008). As well as a recorded increase in family violence reports and family violence prosecutions by the courts, it includes the development of better working relationships between

the police and family violence support services (Australian Police Leaders 2008), incorporating community engagement and interventionist roles.

Diemer et al. (2013) also reported that police personnel morale and risk assessment would improve with better collaboration with family violence agencies. Indeed, Humphreys (2014) concludes that risk assessments should be done with information-sharing with other family violence support agencies or they can be inaccurate.

The women recognised the importance of multi-agency systemic integration that would improve the efficacy and consistency of response through a better, shared, understanding of family violence and better representation of those experiencing family violence in decision making and in training. There would be improved information sharing and better accountability throughout the family violence sector, cooperation between services and a change of culture, and eventually a shift in focus to the offender and their accountability. 'This can happen in constructed family violence collaborative spaces' (McGowan 2014).

The *National Council's Plan for Australia to Reduce Violence against Women and their Children (2009–2021)* (2009) as well as other literature recommends that family violence systems work collaboratively to provide more cohesive, streamlined responses to family violence.

In this region the Loddon and Campaspe Family Violence Advisory Committee brings together police family violence personnel with a range of family violence stakeholders<sup>34</sup> to collaborate and strengthen strategic direction on addressing family violence.

Shirley was voluntarily working with other women in her community advocating improved multi-agency systemic integration. She explained their rationale: *I don't believe in recreating the wheel I just think that's so tiring. Just ... it's going backwards. So there's so many different services, so many different opportunities, so many strains, why can't they all network and provide the result and outcome?*

She visualised a justice hub, a collaborative space for family violence stakeholders to share space and collaborate more effectively and within an established trusted agency such as a neighbourhood or community house where people will feel safe.

*One stop like when you go to a doctor. It should be that within the legal system now because people don't have the time, money or resources to be travelling from say here to DHS [Department of Human Services] on this side of town to here to the police station on that side of town, to other family services and then to a welfare support.*

*So to me the main focus would be networking and partner-shiping and making these partnerships so strong through MOUs [memorandums of understanding] whatever way to be collective in the approach from the mainstream.* SHIRLEY

Cherie felt that this collaboration would assist offender accountability: *Yeah because if the name [of the offender] pops up in a few different places you think mmm there's a bit of a pattern there. Yeah so whereas if there's only one organisation and go oh hang on no we haven't heard of that person before and this is a first time case let's see how ...*

Ann talked of 'informal' collaboration happening in her previous town, between police, her employers and family violence agencies that improved her and her community's safety.

Carrie argued that there is a role for those who have experienced family violence on some of these multi-agency groups and in helping with family violence training.

## Police and breaches

Responding to breaches has long been seen as one of the weakest links in the effectiveness of orders (Munzel 2002; Wangmann 2014). When a breach is not acted on effectively, either by police or in a prompt way by the courts, it undermines the effectiveness of the order, not only for that person experiencing violence but for the system as a whole (Wangmann 2014).

While 16 of the women in their surveys were hoping that the order would improve the police's responses to their complaints<sup>35</sup> there was only marginal improvement. Those women who had already had reasonable experiences with the police generally continued to do so but the majority felt that there wasn't sufficient accountability in investigating breaches of the order. In one case there was only accountability when a lawyer and family violence support worker advocated for a response from the police.

Sixteen women reported breaches to the police. This is higher than the Victorian average of approximately 33% (Wangmann 2014). Eight women reported that the offenders had breached their orders more than three times in one year.

Ten women gave up reporting – which is not uncommon (Bucci 2013; Wangmann 2014) – certain 'legitimate' or 'technical'<sup>36</sup> breaches because of the poor police response, it was too exhausting and traumatising to report the breaches, they were too fearful of escalation of violence with the reporting, or the police requested evidence that was difficult to provide. The most common breaches were verbal violence that happened at handover of children and so were difficult to record, or were technology-facilitated stalking or abuse which, while women had recorded the texts as evidence, were deemed not valid or technical breaches. It may be that the officers taking the report were not using a woman's fear level in assessing the risk.

Three women reported that the violence escalated after the order was granted, a concern reported by some prior to seeking the order, thus emphasising the importance of timely and effective police responses to those breaches.

In four cases the offender was charged, although the charges did not reflect the number of breaches that were alleged. The time from reporting the breach to the offender being charged was six to nine months. Two offenders were fined, one received an 'adjourned undertaking' to be of good behaviour for a period of seven months and one offender received a community corrections order but did not complete it and was not held accountable.

The women reported physical assaults, stalking, disturbances at their homes, verbal violence at handover of children or in public places, and technology-facilitated stalking or abuse. They also commented on how emotionally exhausting it was trying to get legitimate evidence and then reporting to the police, especially when the breaches were happening frequently, and women felt they were not then getting an appropriate response from police.

### Positive police response to a breach

Siân explained how her ex-partner would come and sit outside the house in his car, but drive off before she could take photos for evidence. The police were reasonably understanding and came and drove past her house a few times to ensure the offender was not there.

### What the *Code of Practice* says about breaches

The *Code of Practice* (2014) is clear that a breach of the intervention order should be taken seriously, a risk assessment must be done and an L17 submitted. Of paramount importance in the investigation of a breach is the impact of the breach on the women and children, as the women and children perceive it, and their safety and welfare. This practice is again conveying

an important social message about how violence against women and children is regarded by society.

Decisions to prosecute are based on the evidence gathered and 'should not be a subjective assessment by the responding police as to the seriousness of the contravention. If evidence of the contravention exists then police need to consider prosecution. In all cases the matter must be investigated and a brief of evidence submitted' (Victoria Police 2014, p. 29).

## Inadequate police response to breaches

Ally explained, *if there are breaches I have to see whoever is on the watch house. Yep the duty officer. They are not funded enough, they don't have the understanding, the training, yes. And I think that that's the issue around breaches not being followed up.*

Agnes explained the fear the repeated stalking caused but which the police did not assess.

*... and then I moved out with my sister in September and for months and months I was crawling into my sister's wardrobe at night crying and just so petrified to turn the lights on in the house at night because he like he would sit out the front of house – or he would get someone to go and sit out the front of my house so I would just hide.* AGNES

Unfortunately the police did not act: *Not at all. Like you know they take my statement and they'd act you know oh yeah we'll get onto it blah blah blah but they never did actually look after me the way I was hoping to be looked after, it didn't stop him* (AGNES).

Margaret *felt like I was made more vulnerable*. She related her lived experience of multiple breaches that were not acted upon by the police, leaving her feeling more unsafe.

*I told them [the police] the story, they took no report, no nothing, they didn't even follow it up ...*

*... I was in this deep depression and what worried my mother was that when I did go to sleep I couldn't wake up, don't hear alarms, don't hear phone, just go into like a coma, ... and he knew about this you see, and he was going to set fire to the house when I was asleep, and my mother was absolutely terrified because she thought that's what he would do.*

*... one night I did wake up and my heart nearly went through my chest, I just broke out in a cold sweat. ... I saw someone walk past the bedroom door and I thought to myself I'm going crazy, but he admitted later that he'd been coming into the house, taking my personal papers, and he would put a log on the fire to keep warm while he was going through my papers. He'd take them away and photocopy them and then bring them back.*

*I had absolutely no voice, no rights whatever, and I just thought – and when I couldn't think straight my mother and my friend they were saying it's the only thing you can do [report the breaches], and I thought that at least then even though he treated me like I was nothing and I had no rights and everything, that maybe if the police were there to help me or to back me that with their help that I would be protected, and I wasn't.* MARGARET

## Apparent police indifference leading to minimising violence

The women described apparent police indifference that then deterred them from reporting further breaches.



*He abused me ... what are you doing in my f'ing pub you know. And I just looked at him. Like what ... I can go wherever I like. Anyway the bouncers kicked him out because he just kept calling me everything in front of everybody at the top of his voice. Well I see I could have rung the police that night but they wouldn't have done anything. They would have gone oh, for God's sake Sophie get over it. So you don't bother.*

*He could do what he wanted. Because I said to them he's breached the interim order. Oh there's no such thing as breaching the interim order. That's what they [the police] said to me.* SOPHIE



*I did [try to report the breaches] I went in there and there's a woman at the police station just treated me like a bit of shit. God and I hate that. I walked out crying twice. Yeah, you know, they never said it's all right, you know it's just horrible.* JAY

## Not responding to non-physical violence

*And it's very interesting because unless you are physically hurt – he's threatened you – they won't follow up, and yet you are in fear. It has a major emotional impact. And at this point in time the law doesn't necessarily support that [acknowledge the impact].* ALLY

Unfortunately, the ineffective police responses to breaches of a non-physical form have led Elizabeth to have no faith in the police: And the police *don't believe you anyway when you call them and you have an order. They are not going to respond to a breach, not at all, unless he turns up with a gun they are not going to respond.*

## Not responding to multiple breaches

The *Family Violence Protection Act 2008* was amended<sup>37</sup> to include the introduction of the offence of a serious or persistent breach of the intervention order or safety notice.

*Unfortunately it has not protected Elizabeth from multiple breaches. Unfortunately he has breached the order ten times in the last year and sometimes the police respond to my calls and take statements but he is never charged. I have made statements, my daughter has made statements, in one of the breaches he was on [social media] dancing on my grave drinking muscat.* ELIZABETH

She also found out that *the police officer doing [investigating] the breaches never did a formal interview with my ex, they just had a chat, so when we went to court there was no evidence of the interview and he got off, he said he had an alibi, so he got off on ten breaches there and then he turned up at my daughter's school just a few weeks ago and another statement made and it sounds like he got away with that one as well ... And I'm due in court on Tuesday. That order [extension of an intervention order] isn't going to protect any of us, he is telling the girls he wants to take them on holiday to Tasmania and they are worried they won't come back* (ELIZABETH).

Elizabeth's experience of a lack of police accountability makes her wonder *so what is the point in having an order?*

## Reporting breaches is exhausting

Sunny was homeless and chronically suicidal after years of high-risk physical and emotional violence. Her offender had breached many times stalking her, trying to physically assault her and using technology-facilitated stalking. The relentless family violence and having to go through the trauma of reporting breaches is emotionally exhausting: *I just get sick of going to court and stuff over it. And it's exhausting going to the police every time.*

## The issue of evidence

The *Code of Practice* (Victoria Police 2014) explains that, while decisions to prosecute are based on the evidence gathered in reporting the contravention 'AFMs [affected family members] should only be advised to gather evidence like taking photographs or video if it does not put them or their family at risk as it is always better to prevent harm than to collect evidence' (Victoria Police 2014, p. 28).

Some common breaches are hard to record but have a significant impact on the women. There is a pattern among the accounts of the women of breaches that demonstrate the offender is intentionally breaching in a way that is difficult to record as evidence.

*A lot of it is difficult to evidence. If it is telephone messages you've got some evidence. If it is text messages you've got the evidence. He says he might ... he said she said – nobody else is around – he's driving past constantly – take photos. How difficult is it – oh here he comes. Quick better get the camera out ... ridiculous.*

*But stalking – he's rocked up and he's gone off and that time of handover of children, there's conflict, any of those things that there is no text or voice message, you can't record, you can't record phone or conversations. ALLY*

Agnes explained the breaches that were difficult to record: *He would stalk me. He'd drive past me accidentally not knowing I was there and then he would drive past again and he would drive past again and he would drive past again. To the point where I had to just leave or get someone to come and get me straight away. The police weren't interested.*

## Evidence of breaches deemed invalid by the police

The *Code of Practice* (Victoria Police 2014, pp. 28 and 29) says, 'There is no such lawful term as a 'technical contravention' and in investigating a contravention the police should assess the impact of the contravention on the woman (and children).'

Unfortunately, many of the breaches were those for which evidence was recorded on camera or as text messages but the police regarded as a 'partial breach' or 'technical breach' and not in their assessment a valid breach, even though the impact on the women was significant and there was a pattern of breaches again that suggest the offender was intending to cause harm.

Elizabeth explained that the police *just kept telling me that it was just coincidental that he [the offender] was there stalking me, ... that I didn't have proof he was intending to stalk me, ... that he wasn't filming me, ... it wasn't surveillance, ... that the IT stuff was nothing to go on, ... that when he rocked up at the school gates and scared my daughters that was just coincidental ... it just goes on ...*

Kirsty said, *he has breached heaps of times. He would text me x amount of times a day, he would text me with nothing to do with our daughter.*

*I would go to the police station and they would say, oh it's just a partial breach or it isn't anything we're going to get him on ... there was a whole thing on [social media] ... it was another 'partial breach' and what do you do ...* KIRSTY

Sadly only when in the end I got a lawyer and support worker involved and they talked to the police and in the end he was charged. At one point I thought don't worry about it, I'll drop the order what is the point, if I'd got one what is it doing for me? It is not stopping him doing anything he did before (KIRSTY).

### Long delays between reporting breach and offender being charged

In Carrie's case, the offender breached the order twice and was charged for one of the breaches, but six months after the statement was made. That time lag was a *nightmare*. She referred to the trauma of breaches not being acted on straight away.

Jay explained that the delay in charging caused her offender to escalate.

*That was it, I went to the police station and that's when – that was one of the breaches ... and then it took months ... so in the end he was angry and I cop it again because it was a day at court for him ... it was too long. It was too long because he thought – like it took a long time for him to go to court.* JAY

### Ineffective conclusion to breach

Two offenders were charged and received small fines but in both cases it did not stop them breaching and the police did not tell the women the outcome of the charges. The women were disappointed that there was no behaviour change program as part of the consequences of the breach.

*He ended up going to court. Yeah he had to go to court over that, all he got was a fine because he knew he wasn't the one doing the counselling or the community work or whatever it is that they're meant to choose and he gets away ... He's happy to do that [pay a fine] ... because that means he doesn't have to go to counselling or that sort of stuff. They forgot to ring me too just to let me know that they'd been to court and I ended up ringing them and saying what's gone on. Oh sorry, oh da da da, ...*

*I needed to know where I stood after that because he was angry and he could have done anything.* JAY

In Beryl's case, the offender did not complete his community corrections order commitments and was not held accountable.

### Feeling that the justice system is colluding with the offender

*Here in [her town] he got locked up, broke the interim order and no one did a thing about it. So he did come in my house and commit violence but he has not paid the price for anything, anything he's done to me. And see he still walks around thinking he's king shit and I'm the f'ing mole.* SOPHIE

Some women described how they felt understood, supported and validated by the police, who took effective and timely action on their experiences of family violence.

Such police responses should be applauded, recorded and inform what is best practice.

Unfortunately, due to increasing demands on the police – with an increase in family violence reporting, under-resourcing and lack of capacity of frontline officers to respond to family violence in an appropriate manner – many women reported negative experiences of their respective police responses.

Lack of offender accountability, evident in the high number of breaches that do not get acted on, requires improved police responses, including earlier intervention. There was also support for behaviour change programs<sup>38</sup> rather than only criminal sanctions, which are not enforced in the family violence jurisdiction in this region.

## Recommendations

- B1** Provide obligatory training in family violence at the commencement of frontline duties, as well as continuing professional development training, incorporating the common risk assessment framework; involvement from those who have experienced family violence; and coverage of the specific needs of communities such as the indigenous, lesbian–gay–bisexual–transgender–intersex, disabled and culturally and linguistically diverse communities.
- B2** Require information to be provided on family violence support services and family violence intervention order processes to persons seeking assistance with applying for an intervention order with police.
- B3** Have family violence multi-agency monitoring and evaluation of the implementation of the *Code of Practice* (2014), including experiences of those using the police services, the safety of children, the exclusion of the offender, and the swiftness of following up on breach allegations.
- B4** Scaled police response – give consideration to providing an ‘official warning’ to an offender where there are allegations that will not result in the prosecution of a breach.
- B5** Create more effective ways of recording and relating the histories of family violence victims between agencies (such as the police and courts) to reduce retraumatisation and fatigue for applicants.
- B6** Have a Family Violence and Aboriginal Liaison Officer role in all stations, which is a long-term committed role that also assists in the delivery of family violence training and engages with all relevant stakeholders providing services to those experiencing family violence.
- F1** Encourage all applicants to seek assistance with completing the application form to adequately capture the history of family violence and recent allegations.
- F2** List details of previous applications on the application, as well as the outcome, so that the magistrate is aware if there is a history of intervention.



26. Under the privacy legislation the police cannot discuss these matters with the women.
27. She was worried about the implications for her partner's job security and gun licence if she went ahead with applying for a family violence intervention order.
28. Police Aboriginal Liaison Officers are only available at some police stations.
29. This is a surprisingly low number: usually, police family violence reports have formal referrals to family violence support agencies and these are automatically sent to the referral agency when the report is submitted. These instances may have been referenced before the electronic referral system commenced.
30. An interim safety notice for which the police can apply that protects affected family members before an intervention order application is heard at court (Victoria Legal Aid 2014).
31. Victoria Police must investigate and record family violence incidents and do not have to rely on a victim's consent in applying for an intervention order. This is to the benefit of those experiencing family violence to minimise the risk of further morbidity or even mortality.
32. Current police training does include this and emphasises its importance.
33. Victoria Police system of electronically recording police records, such as criminal histories and incidents attended.
34. Family violence support services, the LCCLC and Victoria Legal Aid, the Department of Human Services and in particular Child Protection, family support services, housing support, community health services and the regional court registry.
35. This was higher than the statistic in the survey data that showed 46% of those surveyed hoped for an improvement in police responses to their complaints.
36. A term used historically to refer to breaches that were, if the order was interpreted strictly, a breach but that police failed to act because of a subjective belief that it was not serious enough. Refer to the *Code of Practice* (2014, p. 28) regarding the current zero tolerance policy with respect to breaches of intervention orders.
37. *Justice Legislation Amendment (Family Violence and Other Matters) Act 2012*, No. 83/2012.
38. See Offender accountability in section 8.



*We just clawed our way through the dark.* MARGARET

8

# Going to court

## Court structures and processes

We acknowledge that with increased reporting of family violence the family violence courts often have a significant number of family violence matters to consider, which can detrimentally impact on the time available for legal advocacy and for a court hearing sensitive to the needs of those experiencing family violence (Jordan & Phillips 2013). As Ann noted, *the family violence courts are overloaded, they are totally run off their feet.*

Consistent with the literature on court experiences of those who have experienced family violence (Laing 2013; Jordan & Phillips 2013; Mitchell 2011) the women found the court process daunting to different degrees and for various reasons:

- not being adequately informed
- not feeling understood
- feeling intimidated by the feeling of heavy authority
- not feeling safe
- feeling emotionally overwhelmed
- being in an alien environment
- having no or little privacy
- having no time to feel comfortable to disclose their lived experience
- having no time to rationally analyse their and their children's options and make informed decisions.

Where women were better informed prior to the court day, did not have lengthy waits, had uncontested cases and did not have children or other complexities that required more negotiation or attending to, the court process seemed more straightforward and therefore not as challenging. However, they still felt that the safety and privacy of the courts could be improved.

## General perceptions

Ally, who had been in court assisting many women in family violence matters in her waged work as a family violence support worker, found that as a female applicant, *that was probably the scariest day going from being a support worker to being one of the people listed for hearing ... I just went in and sat down and put my head down. Didn't even look at anyone and I had a really great support person with me.*

Shirley said

*... then it's the court process which is so daunting. You get there you're unsure that you can actually vary your order for your family so as a woman you can make that decision and a choice for your family what works best. When you get to the court there's no privacy at the court house. They should have an outreach service and a separate suite for these people who are victimised. When you are at the court house there's just so much going on it's overwhelming. You're already jumpy.* SHIRLEY

Sunny commented, I was nervous. I was a nervous wreck. *I felt like I was the bad one.*

Sophie's humour came through as she described a desensitised court system.

*And all the staff are wandering around they've been down to [the café] and got lattes and ... and you think oh yes we're all safe [sarcasm!]. And the police are all grumpy because they don't want to be there. They just want this court day to be over. Thank God it's only every Tuesday like you think it's alright guys ... you know ... just don't worry about us women who are going through the trauma. We'll be right you know. Oh God it's just terrible. But it needs to change.* SOPHIE

## Safety

There was an overwhelming consensus with the women about the lack of court safety and privacy.<sup>39</sup> The women felt that the fear they hold at facing the offender in court is not understood. None of the women felt safe or particularly comfortable waiting for their case and in the court room.

*That [waiting in the waiting room with the offender] is so intimidating. And you end up shaking. And your heart is racing and it's frightening because you're seeing that person again. And they're allowed to stand there.*

*So I really think it's important that any of the women that are there should be allowed to go and ... yes behind a closed door.* SOPHIE

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*At court I was totally crapping myself to be honest I knew he would have been angry because his guns and everything got taken off him. I knew he'd be angry, I was freaked out, I didn't know what was happening.* KIRSTY

For many women this fear had an impact on their capacity to disclose their lived experiences to either the lawyer or magistrate in a way that did them justice. They recommended well-signed supervised separate waiting areas for applicants and respondents, and separate entrances and exits.<sup>40</sup>

Bendigo, Swan Hill, and Maryborough courts have interview rooms. The Bendigo, Swan Hill and Echuca courts have a common waiting area while both Maryborough and Kyneton courts do not have a waiting area. People wait in the court room or outside and in Maryborough this reduces women's anonymity as the court is in the main thoroughfare.

The Maryborough interview room is accessed through the court room and is isolated, potentially reducing its safety.

Kyneton Court does not have private interview rooms and applicants and respondents are interviewed outside the court room or in a very small vestibule area within the court entrance. Neither space provides adequate privacy or safety.

The lack of court safety in all the courts compounds the chronic fear these women have felt for a long time: *And honestly I was ill with fear. Absolutely ill with fear* (MARGARET).

Carrie explained that, *in the court it is so much better when the offender isn't there* or, as Elizabeth explained, the women don't have to appear at court. Elizabeth was disappointed the family violence courts in this research don't consider, as can be recommended practice, video link for applicants who are extremely fearful of the offender: *I did video link when we went to trial [the offender was charged with a criminal matter] because I was terrified of him and then I come here and I have to be in the same room. That is not fair, that is hard.*

Elizabeth and Ally reflect on redesigning the court space to improve applicant safety and confidentiality.

*We need an area that is secluded from your ex-partner because at the moment there is nowhere.*

*I have also asked to use the staff exit on a couple of occasions to limit my proximity to him but have been refused. On one occasion I was told it was ok and escorted out which should happen. They could be all smoking outside and you have to walk past them. They have breached my intervention orders, they have stalked and filmed me. I walked out of that [court] gate and click, click, click [of cameras]. Makes it really hard.* ELIZABETH

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*I don't know how you'd do it without redesigning the entire court system where survivors go in that way, perpetrators go in that way and they are kept in separate areas and there is an interview area at the back where, you can go, you've got some confidentiality. They [the lawyers] can then communicate with each other without having that visual impact of what's going on. And they're talking about us.* ALLY

Ann and Elizabeth reported intimidating behaviour by their respective respondents' supports in the court room and therefore would recommend defined spaces in the court room to separate family and supports of respondent and applicant.

## Privacy

The Kyneton and Maryborough courts do not have waiting areas, so people can wait in the court room, thus compromising privacy of the court hearing. The Echuca and Kyneton courts

do not have interview rooms, so the significant interview process with lawyers occurs either outside of the court or inside in a very public small vestibule, again compromising privacy.

Swan Hill, Bendigo and Maryborough courts have separate interview rooms. However, only the LCCLC and duty lawyers have access to the interview rooms at the Bendigo court.

The Swan Hill interview rooms have large windows that compromise their privacy and are shared by all lawyers and therefore not always available. The Echuca, Bendigo and Maryborough courts are in the centre of main thoroughfares, thus reducing the potential of women's anonymity. The Swan Hill and Kyneton courts are slightly more offset from the main thoroughfare.

The women described how the lack of privacy in the court room is daunting.

*I don't think anyone would want to take a day out of their life to stand in front of court and expose all your privacy to complete random strangers for starters really ... there is people you don't know in that court room and the judge gets up says their bit and you are exposed somewhat that's the first thing. I have got some pride and dignity that's not my way of life. And thirdly a small town and people peek in when they are driving past. It's the whole thing. Degrading, I guess.* JOAN

As Ally reflected, *family violence, I mean you have hidden it for so long, for a reason. And yeah so the least you need is some privacy and to feel comfortable to disclose what you have experienced.*

Kirsty explained the disadvantage of living in a small town where the court can be a very public space: *There is NO privacy, everyone in this town knows everybody.*

Some women reported that the lack of privacy with the lawyers has an impact on their capacity to adequately disclose their lived experiences. They may have to communicate with their lawyer in the vicinity of the offender.

*It is very confronting both as a support person as well as having experienced it. It's very confronting when the ladies go in with their solicitor and then they come out and they're [the offenders] are just eyeballing them and then the 2 solicitors go and have a conversation about the case and then the solicitors come out and because they've limited interview space they're then standing in the waiting area having a conversation about the conditions ... The confidentiality – there is none.* ALLY

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*It's all there and there's people everywhere and it's just ... you're in the foyer. There's no such thing as privacy.*

*The first time I went to do it and went to speak to the duty lawyer he stood at the door and watched me the whole time. He eyeballed me.* SHIRLEY

## Lack of security systems

The women commented on the irony of this desensitised court system that brings together respondents and applicants, who are in an adversarial situation, into a common waiting area for at times lengthy periods, at a time of crisis in their lives without adequate security systems.

As Siân explained, *it seems so inhuman I don't know why they do that to people. We all just crowd into a room, everybody together, it's so bad.*

While police are in the precinct they do not have a consistent presence throughout the court space.

*And just that sometimes there's officers in the waiting area. Sometimes there's not. The majority of the time there's not and they're out the front. So you've got an officer sitting just inside the court room and you've got the family violence officers and the prosecutor's support coming in and out. But a lot of the time the survivors and perpetrators are in that same space with no effective security*

... ALLY



*There definitely needs to be more security as such ... It was really frightening. It wasn't like the most comfortable thing. Not at all, knowing the fact that he could just walk in at any time and you know, it was really nerve-racking like worrying you know he could turn up and God knows what will happen.* AGNES

However, as Marie pointed out, ... *knowing that all these police... are there didn't make you feel any safer. They don't make you feel any safer, because they don't understand what it is like [to be there as an applicant in fear of the offender].*

## Importance of timely court action and adequate time with lawyer at court

In rural and regional areas women have to wait a week at best and some up to a month between their application and their court hearing. There may not be a magistrate available to hear an application for an intervention order, or registrars may not be willing to issue a complaint and warrant to provide immediate protection. This time delay can cause much anxiety and be a deterrent to taking court action.

Waiting times in the court on the day can be long: at times a woman's case may not be called until the end of the day, which has implications for child care and compounds other deterrents.

Conversely, the time for relating lived experience and for decision making can be very short.

Some women who had support found that their supports could not always wait the required length of time. Kirsty explained, *for my directions hearing we sat for over six hours waiting just for me to say yes I have two witnesses, I don't know if this happens anywhere else.*

*... in some ways the bits that are important are really rushed and then the things they [survivors] want to happen really quickly, like attending to breaches or breach have been charged, just take forever. Or actually getting the intervention order in place if that's to contest it or whatever.* ALLY

Sophie reflected on the potential for further violence with the long waiting times and poor facilities (Federation of Community Legal Centres Victoria 2012).

*Because that was the worst. Bad enough going into the court room but then you're sitting out there for three or four or five hours with him wandering around.*

*And that's the thing they start getting angry and it can escalate a bit.* SOPHIE

Many women felt that their duty lawyer discharged their duty of care and that they had good intent but often there was not sufficient time to process the information adequately and make an informed decision.



Sarah explained: *I sort of felt like I was sitting there going oh I have to make the decision now like five minutes before we go into court, are you kidding me, like, coz I'm thinking of everything and I'm going I really don't think I want to get an order. I just really want him to change and get help.*

Ann suggested *maybe a twenty four hour buffer zone to reflect and let things sink in before you make a decision. Because you are quite emotional and anxious it clouds the info you are given. I am sure they did try and tell me but did it sink in ... no!*

She had the FVLO [Family Violence Liaison Officer], police and the prosecutor all telling me not to agree with the undertaking but it wasn't sinking in. ...

## Lack of information on the court process compounding the sense of vulnerability

*We [Margaret and her mother] went in there as complete amateurs, knew nothing about the system, knew nothing about anything and that's what it's been like all the way through. We just clawed our way through in the dark.* MARGARET

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*The police just told me to be at court Friday nine am, the prosecutor will be there and I would be told what to do. I'd never been to court before.*

*He was there and contested it, which I didn't know he could do and I didn't know what the processes were, what would happen next. A family violence support worker caught up with me that day, she rang me before I went to court but at that point I was overwhelmed, scared, I didn't know what to expect, what was coming next. She tried to explain a lot to me on the day of court but I just didn't get it, I couldn't understand, I was feeling totally sick [often while she is speaking, there are pauses of reliving shock]. It was really terrible.*

*The magistrate granted me an interim order, but had an exclusion on it re communication via text about my daughter which I didn't understand because I thought she was on the order and he wasn't allowed to see her.* KIRSTY

## Child care facilities

None of the women brought their children to court because of the lack of adequate child care facilities, the length of waiting times and also to protect them from any potentially traumatic experience at court.

*There's no way I'd bring my kids here.* MARIE

## Importance of support

Only eight women had accessed a family violence support agency prior to coming to court. Other women were pleasantly surprised to find family violence support workers at the court to assist them. This moral support and source of information was crucial to those women.

*The CNV [Centre for Non-Violence] girls were so beautiful. They did not leave my side. They were really supportive and made me comfortable because he was doing the stare thing. And they're going just don't look, don't ... they sat like this side of me and they were wonderful. So so wonderful. They were great.* SOPHIE

## Importance of having a good lawyer

*You sort of feel empowered, you're understood and not in the dark anymore* KIRSTY

Six women did not have lawyers (most were police applications<sup>41</sup>) and all of them would have preferred having a lawyer there. While they all were successful in being granted an order, they did not feel well informed about what was happening; not knowing the police prosecutor, who was representing them, made them feel more vulnerable.<sup>42</sup>

Sophie wished she had had a lawyer because when she arrived at court they did not have her application statement: *See I had to run around and ... the police prosecutor hadn't got all my details. I had to run around and take them to the court house. I had to go to the police station, pick it up personally myself and take it to the court.*

All women felt that they did feel much safer, were better informed and were more able to participate and be heard in the court process when they were represented by a good lawyer.<sup>43</sup>

*When I did have lawyer my lawyer has been absolutely brilliant, she has bent over backwards, any question she didn't know she has found out, she has kept me informed, ringing me straight away, she has made everything easy, communicating by email ...*

*I probably ask stupid questions all the time, but she doesn't look at me like ... you serious? She's very patient and understanding and takes the time to help me understand.*

*You sort of feel empowered, you're understood and not in the dark anymore.* KIRSTY

Many women felt that they would not have been able to pursue the order without a duty lawyer, as Maude attested, but she would not have done that [gone to court] if I'd had to appear on my own or do it myself there's no way I would have done it.. So ... those sort of support people, lawyer or police prosecutor are absolutely essential. *If the women hadn't of [sic] come with me or someone hadn't been there on the day you know.*

*I don't know where I'd be today if that [legal advocacy and support] hadn't happened. I would have just hidden from him.* MAUDE

The women also reported that inconsistent duty of care with different lawyers can potentially minimise the family violence in the narrative (the women may be reluctant to retell their lived experience to the same detail) and traumatise the women with having to repeat or explain aspects of their application. Agnes recognised the importance of having the same lawyer at each court. If she had had different lawyers *I think it would have been more traumatising having to go over what happened and go through it all. Especially that fresh in my head and being that scared – like that would have just made me feel horrible.*

Other women felt that they didn't have time to build a rapport with the lawyer. They preferred ongoing duty of care with the same lawyer.

*You're already jumpy ... and it's only on the day that you get to receive any legal advice from the lawyer on duty which you feel very rushed through the process because it's just on the spot that's all they have to offer. No outreach, no ongoing case management, no advocacy and there's a big demand for legal supports in this town.* SHIRLEY

Elizabeth had different lawyers *trying to find someone who can stand up for you, it was a bit of a run around.* She also experienced lack of accountability of some solicitors: *At times the lawyers don't really listen to you, sometimes you think they are really buddy buddy with the other lawyer.*

Ann felt frustration around manipulation by the legal system she experienced. She was told by her ex-partner 's lawyer that if she dropped the intervention order her ex-husband would settle the family law dispute.

## Magistrates

Many women were ambivalent about the role of the magistrate. While the women appreciated that they were granted an order, some women felt that they had very little meaningful interaction with this figurehead of justice. While the magistrate is significant in the decision making, they felt that there is very little opportunity for them to adequately share their lived experience and have the offender adequately hear it and thus initiate a more rigorous process of offender accountability. Often the women felt too fearful or traumatised to say anything or they may not have been given the opportunity to speak and/or supplement any deficiencies in the application narrative.

Some women also commented on magistrates' negative attitudes, and feeling let down by court or magistrate errors or magistrate practice.

## Wanting offender to hear lived experience of family violence

Some felt it would have been beneficial for the offender, in terms of their subsequent accountability, to hear the application narrative in the public space of the court room.

*On that day when you had to stand up and the lady judge said ... she kind of quoted some of his messages or the theme behind his messages and the amount of texts and she said that that is a form of harassment. Do you understand that? When he had to say yes it hit him.* JOAN

The magistrate then asked the offender to reflect back the application narrative and comment on the impacts that had on Joan. She described that having some other members of the public, whom the offender respected, witnessing the offender's reflection, prompted by the magistrate, on his behaviour appeared to her to improve his accountability: *He had the partner there whose [sic] a well-functioning member of society and having her there I think to reinforce to hear it was good* (JOAN).

## System reform

Isobel argued that decisions for family violence matters should be made in a trial by jury type system rather than a judge's decision. Her rationale was that this would potentially bring more women into the decision making and it would potentially diffuse the intimidating feeling of high authority associated with a magistrate.

## Role of women

Continuing on the role of women, Isobel wanted to advocate for more women to be appointed as magistrates,<sup>44</sup> more women in decision making and more female family violence liaison officers.

*I think that most ... most judges are men and unless a woman walks in and has got a black eye and broken arm and all sorts of things they don't think it's domestic violence and being a man and I'm not knocking men per se but they're not in a woman's body they don't know what's right ...*

## Apparent magistrate apathy

Sophie commented on the apparent apathy of the magistrate sitting during her matter: *Yes even the judge ... it's almost like they can't be bothered. It's almost like oh bloody nuisance, bloody women, bloody this bloody that. And he's grumpy anyway. I know that. Didn't matter if it was me or anybody else. But when I went in the police prosecutor ... couldn't find the paperwork. Like it was just a disaster and I just said to them well I'm not leaving until you do [find the paperwork] ... because I'm worried about my children's safety and mine. The magistrate didn't seem to care.*

Sophie wanted a long-term intervention order because she had had one order on the offender before, but they gave her a two-year order and she didn't feel the magistrate adequately explained why she couldn't receive a longer one.

## Women not being heard

*Oh God yeah [would have liked to say more to your lawyer] and my lawyer having said what I wanted to the judge. If the judge had actually heard what he had done you know I could have got my family orders suspended and then things that like what happened last week to my children wouldn't have happened.* ELIZABETH

Elizabeth felt frustrated at an inadequate court process that does not enable her to be heard: *Say look what he is doing to me, will somebody listen to me?*

*Helen thought the judge was horrible, he was arguing that violence shouldn't be done through the family court and the lawyer was arguing that this was an interim order situation. The way he talked to the lawyer was appalling, really disrespectful. He seemed to have no understanding of the situation.*

*That really put me off going further, you know I am pretty nervous and couldn't talk to a magistrate, there aren't enough women magistrates that would have more understanding. They just are of that generation that children are to be seen and not heard.* HELEN

Her motivation for applying for an order was primarily to protect her children.

## Women not enabled to have a voice

Maude felt frustrated that her offender was allowed to have more of a voice than her: *Well I asked for a twelve months order which he [the offender] refused and so it became a six month order AND this is what I find hard, they (the offenders) get to say!*

Cherie wanted to talk directly to the magistrate but wasn't allowed to: *It was really intimidating in the court room and then you don't even get to talk to the magistrate yourself it's like you're just this person on the outside and these people are saying things on your behalf but it's not even your words. And I think that's unfortunate too because if you're going to court applying for an order for your protection you have every right to have your side of the story put forward and from your own lips.*

Isobel would have preferred to have had been able to tell the magistrate her full lived experience of family violence but *you can't say it in court all these things I'm saying to you, I can't get up in court and say oh he did this and he did that. Wouldn't be able to would not be able to because I was so scared. That's [why] I think that there should be some way maybe a letter or whatever [could be provided to the magistrate] to say.*<sup>45</sup>

## Disempowerment

Cherie longed for a more empowering process for both the offender and those who have experienced family violence.

*... and that's what I think we all should be empowered in this situation so that we can move forward otherwise we sort of get so confused and ... I sort of think am I just a victim of domestic violence? You know no I'm not I'm also Cherie also you know the person studying to be a counsellor also the mother of two children also the friend of so and so ... I'm not just a victim of domestic violence and so I don't just want to be labelled as that.* CHERIE

Cherie had hoped for some sort of early behaviour change intervention for the offender rather than the formal intervention order process.

*But I was ... herded into a certain direction you know and that wasn't actually the direction that I wanted or wasn't the ultimate outcome that I wanted and so yeah it was ... quite a convoluted system.*

*So I sort of feel like in the end they've done nothing for me but put me through you know a rigmarole and an emotional rollercoaster.* CHERIE

She felt that through the intervention order process they were not informed and able to communicate adequately: *Because you feel powerless because you've had nowhere to move and you're stuck now in this room with this person who assumes I am there to you know rob him of his children because we couldn't communicate adequately.*

## Wanting accountability from the magistrates

A justice intervention should be primarily about the women and their children's safety, reflecting a clear community disapproval of family violence and ensure offender accountability and change in behaviour so far as is possible.

A father's interest to see his children, and indeed the children's rights to see their father, are important points to negotiate but should not be the primary factor in decision making in an intervention order process where their safety may be at risk.

Cordelia found it a lot harder to get the very first order, to prove that I needed protection [even though she] was concerned for my life and the children's lives, I was run down and to the point of a breakdown ... and the kids struggled with psychological problems and had problems at school.

Cordelia had one 12-month order then a 12-month extension. When Cordelia returned to apply for another order the magistrate told her *I couldn't keep coming back every twelve months.*



*That the father had a right to see his kids. So at that stage I was quite upset to hear that. Even though the offender had not changed his behaviour, her kids and she were living in fear, the offender was assaulting other women and children in their community, their fear was not validated by the sitting magistrate and the offender's right to see his children appeared to be of greater concern than their protection.*

***[in a strong voice] I thought to myself what do I have to do to protect my kids and myself? ... I saw myself as some samurai warrior with eyes on the back of my head.***<sup>46</sup> CORDELIA

Cordelia and her children had lived nearly two years without the protection of an order but the violence had escalated again and when interviewed she had an interim order again because otherwise *I've got to battle it by myself and protect my two children and live in that state every day of my life – that's what I have to do to stay alive. And yeah so it's very important that the courts give me that protection.*

## Women feeling let down by courts

Women related experiences where they had been let down by court or magistrate errors or magistrate practice that left them feeling more vulnerable.

Agnes had applied to extend her current order. The case was adjourned and in the meantime the current order lapsed without her knowledge. When she realised the error, she had to make a fresh application: *... having the court stuff up my intervention order like it was so hard and was so exhausting I almost don't want to do it. But I knew that I had to.*

Ann had a similar experience. She returned to court to extend her intervention order. The case was adjourned after the offender indicated he was contesting it. All parties believed there was an interim order in place to protect her but this was not reflected in the court file. When they returned to court she was told she would have to apply for an interim order but couldn't that day because the list of matters was too long and she would have to wait four to five weeks. She felt *absolutely gutted* and quite unsafe. The magistrate on that day acknowledged their frustration, asking *how did that slip through?*

Jay had similar frustrations: *We were told we had to be there [at court]. But we didn't have to. It was something ... somebody had mucked something up. So he had to take a day off work. So he was shitty then too. Because then I'd mucked his day up. And I was scared of what he would do ...*

## Cross-examination by the respondent

The *Family Violence Act 2008* prohibits the cross-examination of applicants for intervention orders by the respondent. However, Margaret, who *felt ill with fear* in court at having to face her offender, and had been experiencing violence for more than 20 years, explained: *And do you know that I had to go in a box and he interrogated me.*<sup>47</sup>

***Mum was sitting up the back of the court with this family friend. She said to me after 'that was absolutely shocking' ... I had to hang onto the box because I was shaking that much while he's interrogating me. He's a big man, you know the big man so authoritative, and mum said to me that although she was at the back of the court she said 'your whole body was shaking'.*** MARGARET

## Offender accountability

Maude thought the offender would be made to be accountable for the management of his mental health issues by the magistrate but this did not happen, much to her disappointment: *It's the magistrate who said well look it's obvious you [the offender] need help you know from this history and you are it's obvious you're unstable or something coz we had the certificates, but this wasn't enacted on or monitored.*

Applicants may not be aware of what a magistrate has the power to order under the family violence legislation.

## Minimisation of violence

Sunny suffered long-term and life-threatening physical violence including: *He locked me in a room and poured petrol all over me and like, lucky the lighter got wet from the petrol because it didn't light, I had to beg him for my life that time.*

When he stabbed her in the chest in a later incident and she went to the police he went to court. However, *he got 12 months bond or something, community hours. And CNV [Centre for Non-Violence] rang the detective and asked him why and he said because the incision wasn't big enough. He punctured my lungs ... but because the incision wasn't big enough – wasn't real big – he got off it.*

The women described how court processes and structures need to improve to assist women to feel safe and empowered to take legal action and to initiate more rigorous processes of offender accountability. Pivotal to improved court processes is a better understanding by court staff, lawyers and magistrates of the fear these women have for the offender and of the nature and diverse and complex dynamics of family violence.

The women also explained that the role of consistent and understanding legal advocacy and support people at the family violence courts cannot be underestimated.

## Recommendations

- F1** Encourage all applicants to seek assistance with completing the application form to adequately capture the history of family violence and recent allegations.
- F2** List details of previous applications on the application, as well as the outcome, so that the magistrate is aware if there is a history of intervention.
- F3** Advise all applicants of the list of support services provided with the printed application and encourage them to contact the family violence support service and duty legal services, and refer them to online information on court procedures.
- F4** Allocate more time within the family violence lists to ensure that individual matters are given sufficient attention.
- F5** Registry staff to advise an applicant prior to court where an application has not been served so that she does not need to attend if not required.
- F6** Increase court applicant and respondent workers to ensure their presence at all courts.
- F7** Where possible, advise applicants of the legal process prior to their court day.

- F8** Where possible, ensure applicants have the same lawyer throughout the legal process, or that the lawyer on duty is made aware of the previous instructions provided so that she does not have to repeat her story.
- F9** Provide specialised training for all lawyers acting in family violence matters, including risk assessment, giving options, non-collusion with offenders, emotional support, being aware of the intimidation by the process and pressure to settle.
- F10** Have at least two duty lawyers at all courts (applicant and respondent), as well as enhanced access to financial counselling services.
- F11** Publish a detailed guide to self-representation if Victoria Legal Aid is not able to fund a contested hearing.
- F12** Offer the applicant or protected person the opportunity to address the magistrate if they seek it.
- F13** On an applicant's request, have the allegations read in open court prior to the matter being finalised.
- F14** Magistrates to chair a court user's group for agencies and legal services acting in family violence matters to address any ongoing or systemic issues at each court, and make changes to the court environment to improve safety (such as clear signage, and separate entrances, waiting areas and seating in the court space).
- F15** Make private interview rooms available at all regional and country courts, ensuring that lawyers also utilise these rooms for negotiations to improve confidentiality of the cases.
- F16** Improve security systems at regional courts including monitoring systems, escorts for applicants when entering and leaving the courts, improved dispersal of police throughout the court space and security check of people at entrance.
- F17** Provide family violence training to all magistrates and registry staff including the common risk assessment framework training so that high-risk matters are identified early in the process and applicants are encouraged to apply for interim orders.
- F18** Invite women who have experienced family violence to provide their perspective at registrar trainings.
- F19** Have the option of video link-in at all courts to improve applicant safety.
- J1** Design and implement family violence multi-agency monitoring and evaluation of court and police practice as part of a broader monitoring and evaluation system of outcomes of the justice system including offender behaviour change, women and children's ongoing safety and well-being, over a period longer than that of the intervention order or undertaking.

39. Conversely, survey responses did not reflect this high level of concern.

40. It is encouraging to see that the provision of safe places for 'victims' in magistrates' courts is an issue identified by a new family violence task force launched recently on White Ribbon Day 2014 (Ford 2015).

41. In the case of a police application for a family violence intervention order the applicant should not require the services of a lawyer at court, unless her instructions differ from what the police are seeking, in which case she can seek independent advice. The police prosecutor should be informed of the application narrative and interests of the applicant.

42. Refer to section 7: 'Police responses'.

43. All but two women had been represented at the initial court application hearing and sometimes at subsequent extension application hearings by LCCLC family violence lawyers and all of them appreciated the legal advocacy they received.

44. Currently one of the four magistrates attending the Bendigo, Kyneton, Swan Hill, Echuca and Maryborough courts is a woman. The Magistrates' Court of Victoria list of Victorian magistrates has a closer gender balance: 66 male magistrates and 50 female magistrates ([www.magistratescourt.vic.gov.au](http://www.magistratescourt.vic.gov.au); accessed 11 February 2015).

45. Some of the women participating in the research wanted transcripts of their conversations and some of those have used the transcripts in further legal contexts to explain more fully the family violence they have experienced.

46. See Cordelia's cognitive map, p. 6.

47. The offender was self-representing.

*Nobody is saying to the offender you need to change your behaviour!* KATARINA

# 9 Accountability

## Offender accountability

In the past 10 years there has been much documentation advocating that the justice system significantly shift its focus from women and children experiencing family violence onto the offender, and their accountability (National Council to Reduce Violence Against Women and their Children 2009; Statewide Steering Committee to Reduce Family Violence 2005).

A key aspect of 'fairness' in the justice response is the accountability of the offender (Australian Law Reform Commission 2010, p. 63).

The women reflected that they felt the burden remained with them – to make the application, to prove what they allege is true and to report breaches.

Katarina wondered about the messages going out to the community in the justice response, *the draining process of the women doing it all, putting in for the intervention order, trying to keep their children safe, reporting breaches, trying to keep safe if things aren't working effectively ... but NOBODY IS SAYING TO THE OFFENDER YOU NEED TO CHANGE YOUR BEHAVIOUR!*

As well as a shift in focus there is discourse around the definition of 'offender accountability'. The women defined it as not just a reduction or ending of violence they experienced, but also long-term offender attitudinal and behavioural change. This would be achieved through acknowledging the harm they had done and apologising, accessing services to change their behaviour, their behaviour then being monitored (by potentially a combination of community and justice-based systems) and that there be community disapproval of any violent behaviour.

The women very much prioritised this outcome in the justice response and they hoped the change in behaviour would lead to:

- the chance of reconciliation (two women)
- the women feeling safer (all women)
- children (if involved) being safer in the offender's care (all women)
- a restorative aspect to the justice outcome (all women).

Unfortunately the orders or undertakings have not yet facilitated positive change in behaviour in any of the offenders. The women reported that none of the offenders had admitted to them the harm they had done, that there was a low level of police and community monitoring of offender behaviour and that the vast majority of the offenders had not changed their attitudes or behaviour.

Therefore, this lack of offender accountability is a very significant injustice felt by the women and at times their children, as Sophie laments.

*And he got ... to me in my case he's got away with it all. He got away with it. And he's laughing at me. [He's] laughing at me still to this day and that's not fair.* SOPHIE

## Lack of offender acknowledgement of the harm they caused

None of the offenders have acknowledged the harm they have done and apologised to the women (and their children).

There is denial and minimisation of the violence they have committed, facilitated by inconsistent police responses, time delays in any investigations and charging and inadequate monitoring of any sanctions placed on the offender (Smith et al. 2013).

Maude said, about her offender's view of her applying for an order, *I'd say he's very, very angry and he doesn't recognise that it's anything he's done so ...*

According to Jay, *they don't realise that what they're doing is wrong or they can't see it. That's like in his eyes I have just made all this up.*

## Absence of change in the offender

Twenty one of the offenders didn't appear to have changed their behaviour. One offender has attended an anger management course but *hasn't put the tools he now has into action* (RUTH).

Cherie's offender is attending a behaviour change program that was negotiated as part of their parenting plan.

In six cases the offender was no longer offending against the women because, according to those women, the offenders fear the consequences, having been to prison, or having some measure of respect for the law. However unfortunately, in four of these cases, the offenders – according to concerned community members as reported to the women – are seemingly perpetrating violence against other members of the community.

Significantly, despite the offender change in behaviour towards the women, the women reported still fearing these offenders and what they could do: *I realised that I didn't know what he was capable of doing, I didn't know him any more* (ALLY).

This lack of offender attitudinal change is consistent with Ally's experience as a family violence support worker: *It's only been in two and a half years that I've been working in DV [the area of domestic violence] there would only be ... I think I supported nearly 300 women throughout that period of time – maybe more ... there would be HALF A DOZEN maybe who acknowledge that he had changed.*

Indeed, in her own personal experience Ally tried to assist her offender change his behaviour so that his relationship with his daughters would improve, but to no avail.



*I spent 7 hours with him on New Year's Day 2013 at a camp [she was positioned near the car and in the open so she could be seen and flee if need be] talking about the impact his behaviour was having and how to ... how he can build a relationship with his [children]. And we just went over and over and over the same thing. Walking away from that the message was quite clearly stated he had sought mental health help. He'd been prescribed anti-depressants that were sitting on the dashboard of the car. But he refused to take them. And I said so you won't even try that medication in the hope that it might make a difference for your [children]? No. ALLY*

As explained in other chapters, contributing to this lack of offender accountability are low police accountability in terms of addressing breaches, lack of community disapproval of offenders' violent behaviour and the offender's belief systems that he has the right to violate women. These attitudes are fed and supported by inadequate understanding of the various forms of family violence and by community normalisation of gendered violence whose root is gender inequity (Women's Services Network 2000).

The women also commented on other barriers to offender accountability: the offenders not hearing the women's lived experiences of family violence, the offenders feeling that they are victims of the justice response and low level of offender engagement with men's behaviour change programs.

### Justice system not enabling offenders to adequately hear the women's lived experiences

As Davis (2014) said, 'we must have the offenders listening to the survivors' stories'.

*Ann laments he hasn't acknowledged the harm he's done, not to me, doesn't see my reasoning and why I left. He's pushed me beyond anything and I have never had any recognition of it. All I wanted was for him to listen to me, understand what has happened, to understand that you don't listen.*

### Offenders as 'victims'

Eleven of the women felt that their respective offenders saw themselves as the victims in the justice process, which had significant implications for them being able to acknowledge the harm they have done.

Sophie explained their victim rationale: *Because it's my fault because I don't shut my mouth. Oh God he's the victim.*

Regarding him acknowledging the harm her offender had done, Jay explained, *it won't happen because no ... I'm the one who's done this to an innocent person. He's the victim. He's always the victim. He's always ... that's him. You know he's ... always defensive and as if people are against him.*

Many of these 11 offenders had mental and/or other health issues that according to the women, they were not managing adequately and that can compound their sense of victimhood or lack of accountability.

*He won't acknowledge the harm he has done, he is not accountable for anything he has done. He always blames someone else for things that are his fault, he never says sorry that is my fault, I did that or I have a mental illness that caused me to do that. KIRSTY*

Other offenders claimed their sense of victimhood through being removed from the family home or misunderstanding that the conditions of the intervention order would mean that they were not able to see their children.

Sarah, who is blamed by her offender for him not having the same access to their daughter as before she left him, said, *oh my God [the offender feels that] he's totally, he's totally the victim in all of this.*

Siân reflected on how, even though she suffered physical violence – as well as other forms of family violence – that caused her to be black and blue, her offender was seen by the community as the victim, because, she believes, he was removed from their home: *Oh, poor, poor thing, look what you've done [to him the offender]. It's like hang on. Yeah, the bruises have gone now.*

## Men's behaviour change programs

The women identified a low offender engagement with men's behaviour change programs. They had different opinions of voluntary versus mandatory programs and most women did not think the offenders would voluntarily attend such programs.

The Australian Law Reform Commission (2010) also recognises these issues of engaging men effectively with such programs but argues these challenges ought to be creatively addressed as part of a broad integrated response to family violence.

Smith et al. (2013) note that in their men's behaviour change research, the majority of men talked about children having an impact on motivation for change and wanting to be a better parent. They also noted that men who were either still with partners, still in contact with children, employed and/or engaged with wider family supporting their behaviour change were the most motivated to change.

Maude believes mandatory programs are better than nothing: *... I mean for the history I had I felt well maybe he might be ordered mental health or something ... to me if they were ordered to do it and had no choice that would help me a lot.*

She had hoped that when the magistrate talked of the offender's significant mental health issues that there would be some accountability built into the justice response in terms of his accessing appropriate services, but this did not happen.<sup>48</sup>

Some women identified the need for significant offender support that they were not accessing. They spoke of individual needs-based supports and long-term mentoring in assisting the offenders change their behaviour.

***You know these people [offenders] need help as well, they're not doing it because they're, you know, rotten inside, they, you know they need help. Nobody goes along wanting to hurt other people you know if they're fully there.*** CHERIE

She felt that the application and court process was not a positive experience for either her or her ex-partner.

Six women described the offender as having mental health issues that, according to the women, were not being adequately managed. Carrie pleaded with medical services for her ex to have an assessment but to no avail.

Beryl, while not condoning the family violence she experienced, felt that *the courts need to wake up, need to advocate effective support, support groups, mentors etc* to assist these offenders to change their behaviour.

She was also concerned about the lack of housing for offenders who have to move out. She had moved to another property (a granny flat) to accommodate the offender and had applied for a variation in the order to allow him to live that close to her.

These sentiments concur with a growing desire to address individual risk factors in Victorian men's behaviour change programs (Smith et al. 2013).

The women described different 'types' of offenders they identified: those who commit violence against other people, those who commit violence only in the 'safety' of their own home and those who see themselves as above the law.

## Offender committing violence against other members of the community

In eight cases the women knew that the offender, while an order was in place for their protection, had committed violence against other women and their children and/or members of the community. Indeed, in three cases the women knew that the offender had one or two intervention orders taken out on them by other people.<sup>49</sup>

Katarina explained that other people had suffered violence at the hands of her offender: *He has chased my cousin with a gun. He has threatened my parents with a gun. They just put up with it and don't challenge him.*

Agnes related the risk her offender, who breached the intervention order many times without effective police response, posed to the community: *But he didn't [stop the violence] and it [the order] didn't save any of the other girls like that he started hitting after me from the beginning of abuse so ...*

## Offenders who commit violence only in their home

These offenders have a capacity to control their violence. They are making a choice about how they use their power. 'It is about choice, the offender has a choice not to reoffend' (Pease 2014).

As Marie views it, *I know that he won't carry on in front of people because he doesn't want people to know what he's like as well.*

*Ooooh, yeah, he is lovely to everyone else, so he can control his behaviour. Although at the rehab they picked up his true colours.* BERYL

◇◇

*He basically sweet-talked his way out of it and everyone that meets him thinks he is so charming. He's not that person that you know.* ELIZABETH

◇◇

*There are people ... it has been my unfortunate experience if I can put it that way. There are people who will not muck up if somebody's watching. They don't want witnesses so the minute you either stand up to them or there's somebody else around they are the nicest person you could possibly meet ... sheer cowardice. He's also been in prison a few times he knows what it's like ...* KATARINA

Where there are no other witnesses, and there is community disbelief of a woman's allegations, this may impact on her self-belief.

*I start to doubt myself maybe I over exaggerated maybe it was bigger maybe it wasn't as big as I thought.*

*I start to question my sanity. Maybe I just made out it was worse than it was when it wasn't. You know it was bad.*

*All his family and everyone seem to think that it's all me as well.* ELIZABETH

## Offenders seeing themselves above the law

*... the way [the offender] grew up and the personality he has he just doesn't care about like the law. He doesn't really abide by it and he is his own person in himself and he will do what he wants pretty much.* AGNES

For Carrie, the offender *doesn't respect the system, thinks he is in control, he thinks he is invincible.*

Cussen & Lyneham (2012) explore better systems of offender accountability and rehabilitation in the family violence jurisdiction, realising that these need strengthening. Our research recognises that current justice responses are, for the most part, inadequate in terms of their capacity to monitor offender behaviour and send consistent messages that will encourage them to be accountable and increase their compliance with any sanction or treatment.

The justice response needs to be more relevant to and have closer contact<sup>50</sup> with the offender.

## Offenders' responses to violence

Katarina explained how she showed her offender, to effect, that *I can fight too.*

She had a long history of family violence from partners and male family members both when she was younger and more recently. She believes that in her experience the offenders are cowards who, if you have the courage, physical strength or form to stand up to them, will stop.

For most of her experience of family violence, legal protection did not exist so,

*Well as the policeman said and he was just tired of seeing me out there all hours of the morning in a flimsy nightie covered in blood and he advised me to stand up to him ... my husband came home one day and he decided he'd have another bash of me and he wanted sex simple as that and I of course I wasn't going to do it. He grabbed a tiny little kerosene heater which are all I had to keep two children warm and he threw it out into this ... and exploded and that was it. I thought this is not for me, this is for my children and his children. I spotted his guitar on the wall. Took it down and stomped all over it. He didn't beat me after that any more. He came at me a few times but I was ready with a broomstick or something. That was it ... You know I said okay you know I can fight too.*

*... as I said in my case I mean I had abusive male relatives but once I stood up to them like really stood up and who do you think you are or whatever, that was it.* KATARINA

## Punishment for the offenders

Four women would have advocated punishment by imprisonment for their respective offenders. It was the only way to bring safety to their lives because they felt their offenders were not capable of rehabilitation.

*This particular individual has never ever in his life admitted that he's done anything wrong and he never will. As far as he is concerned he is an absolute perfect human being who tells the truth ... who does the right thing ... he lives in perpetual denial that he's ever done anything wrong.* KATARINA

However the vast majority of the women in their surveys indicated that they did not want the offenders punished for the family violence. Indeed, some women, while not condoning the family violence and making a firm stance against it, did not want the offenders to go to jail, even when they repeatedly breached an order or if the violence committed had been serious enough for criminal charges. The women were concerned that a period in prison would jeopardise any potential restoration of relationships with them or their children or worsen their mental health.

*I just didn't want him to go to jail ... that's not going to help him or his relationship with his daughters ... I just wanted it to stop, leave me alone.* CARRIE

Beryl's offender was charged with the violence he committed against her and was imprisoned for a short time. Unfortunately *he nearly went crazy in jail* and required seven weeks of support and rehabilitation after his imprisonment. She laments that it also worsened his relationship with her. She feels very strongly that prison for the offender does not lead to redemption or assist him change his behaviour.<sup>51</sup>

### Early intervention

In this region there are no non-legal respondent or men's support workers available at court. Ally commented on the importance of the availability of that support, and of strategic targeted early intervention.

*So, most times we are only able to support the women and there was nothing for the men. So when that first order is put in place some compulsory relationship counselling or men's behaviour change programs starting at that point would be really good I think. In those early first incidents. Because once they're three relationships along the same things are happening, nearly beaten the girlfriend to death, the violence is ingrained.* ALLY

Humphreys et al. (2013) notes that the family violence incident is often a crisis for the offender and particular support to optimise behaviour change should be initiated in the first two to three weeks.

Cherie also thinks that this early engagement is crucial but should be done a few days after the court session when the *heat is out of the situation*.

For the women interviewed, offender accountability does not just amount to criminal sanctions. The justice response should look beyond punitive methods to restorative processes that enable the offender to hear the women and children's lived experiences of family violence. Primarily, the women want to feel safe and want the offender behaviour to change, and all these elements play a part in drawing a line in the sand and clearly communicating that family violence will not be tolerated in any form.

The women's conversations indicated that when police treat a breach of an order as a 'technical breach', or do not support women when they report breaches, this reduces their faith in the justice system and devalues the order women work so hard to obtain. It is also clear that women feel that the broader community should also play a part in holding an offender to account, and not feed in to any victimhood claimed by offenders. The women argued that we need a broad integrated response to family violence that provides more effective early offender intervention and support, addressing individual needs not to reoffend and providing close long-term mentoring and monitoring to ensure behaviour change and safety, and well-being of women and children (Cussen & Lyneham 2012).



While we have acknowledged the importance of diverse needs of offenders not to reoffend, it is very important to cultivate the right approach for disaffected offender men to assist them to be accountable. Otherwise there is a danger of justifying their behaviour, allowing them to identify as the victim and ‘be a potential contagion effect for other male offenders’ (Humphreys 2014; McGowan 2014). ‘When we turn perpetrators into victims supported by male pain we are not seeing the violence against women purported by male entitlement, power and privilege’ (Ford 2014).

## Recommendations

- A1** Improve early intervention and prevention programs, including increased availability of men’s behaviour change programs.
- A2** Increase the applicability of Part V of the *Family Violence Protection Act 2008* (Vic.) to all Victorian courts so that offenders can be ordered to attend counselling if deemed suitable.
- A3** Give consideration to judicial monitoring of offender participation in men’s behaviour change programs by delaying the finalisation of matters.
- A4** Develop community-based bystander training<sup>52</sup> to improve community monitoring of offenders.
- A5** Collect and collate recidivist data to provide an evidence base for the development and future funding of violence prevention programs.
- B3** Have family violence multi-agency monitoring and evaluation of the implementation of the *Code of Practice* (2014), including experiences of those using the police services, the safety of children, the exclusion of the offender, and the swiftness of following up on breach allegations.
- B4** Scaled police response – give consideration to providing an ‘official warning’ to an offender where there are allegations that will not result in the prosecution of a breach.
- J1** Design and implement family violence multi-agency monitoring and evaluation of court and police practice as part of a broader monitoring and evaluation system of outcomes of the justice system including offender behaviour change, women and children’s ongoing safety and well-being, over a period longer than that of the intervention order or undertaking.

## Community accountability

It is encouraging that, integrated with the justice response, a more community-based holistic approach to addressing family violence is being cultivated and endorsed by the police, family violence stakeholder agencies and state and national decision-making bodies.

As Victoria Police’s Chief Commissioner Ken Lay (2014) said, ‘We need to apply our compassion and position to make this all too often private matter public.’

We require ‘A shift in community attitudes occurs so that violence is not acceptable’ (Statewide Steering Committee to Reduce Family Violence 2005).

The women in their surveys hoped that the intervention order would bring community disapproval of the offender's violent behaviour.

Some women demonstrated positive experiences of support from some community or family members in their struggle for justice. Unfortunately many women experienced the community being complicit in the continuation of family violence by not challenging the offender's behaviour. This was fuelled by belief in the myths around family violence already explored in this research, fear or indifference and or holding 'small town' attitudes of shame and judgement towards the women.

Such community attitudes described by the women align with those revealed in a VicHealth survey (2013).<sup>53</sup> These attitudes may contribute to the impunity of the offender in breaching the intervention order. Most notably, it reflected that many – more than 80% – felt that people chose to turn a blind eye to family violence.

### Community ignoring offender's behaviour due to fear or indifference

Isobel, an elder in her community, commented on worsening attitudes around community responsiveness to family violence.

*I think these days people are frightened to come to anybody's aid. I know that like years ago if you saw somebody in trouble you'd either ring the police or now they're frightened they might pull a gun out on you or you might have a knife or, and I just think people are genuinely frightened they don't like to interfere. There's no way in hell I would ask my neighbours to be witnesses or anything because I know they wouldn't do it, and when I think about it there's not many of my friends who would do it ... however I would for them because I'd tell the truth and I wouldn't worry if you tell the truth you can't get in trouble. ISOBEL*

Jay said, *people didn't say much; they were too scared because he's that sort of bloke, they wouldn't say it to him. You know, they knew*, which she felt trivialised and minimised the family violence they were experiencing.

When Agnes tried to get help off my GP, it was like talking to a brick wall.

Cherie felt frustrated at the lack of support and accountability from her family and community.

*... like that's [family violence] is not okay you know, and things like that you know the acceptance of the community of this kind of violence, that is not okay, the community has to hold people accountable as well. CHERIE*

The women reported that a 'small town attitude', where people know each other and don't want to challenge behaviour or where inaccurate gossip may develop is a barrier to orders being effective.

Sophie, in the absence of police and community accountability, is planning to leave her town to improve her situation. *Small towns tend to become ... she'll be right. 'Oh I know her she's a pain in the arse' sort of thing. Well no you don't know her and you think he's a good bloke – well yes he might be a good bloke down the pub with the boys but he's not a good bloke when he goes home.*

She advocated for a community that is not co-opted or silenced into inaction by gossip: *You know we all ... they all need to learn that as soon as there's any signs or someone asks for help or ... you've got to jump on it. Don't believe what other people say.*

Kirsty commented that *small town everyone knows so I tried to keep it small or gossip would just go off ...*

She, like many women, kept this quiet from my family and friends, my Mum and step sister knew. I kept it very quiet even with my best friends.

## Family violence as a community issue requiring community input and accountability including in sport

Sarah highlighted the significant role the 'footy' clubs play in perpetuating gender inequity that can lead to family violence.

*And that's the other thing, a lot of where [the offender] plays football, this [family violence] happens a lot ... it's so behind in everything, like, but that's the way they were, the men go and they drink and they party and they sleep around and they can do whatever they want it doesn't matter because you know, they're keeping the women happy coz they're, you know they're the ones who are working so they're allowed to do that and it's like no, that's not, that's not normal. It's not until you walk away from that, that you realise that that's not a normal way to be.* SARAH

Cherie reflected on individuals' responsibility to have the moral courage to challenge family violence.

*We are all, we are connected, you know. And I see somebody down the street, and they're struggling and I think, you know, that's a part of me, you know, that's a little bit of me struggling there.*

*I think it's important, you know, that each of us as individuals don't just let it go by the wayside. If something pricks your interest, or puts the hairs on the back of your neck up, do something about it. You know, in whatever little way you can.* CHERIE

## Offender concurrently committing violence against other people in the community

The women highlighted that too often the family violence is seen in a narrow context of proscribed 'victim' and 'offender', rather than as extending and impacting on the broader community. Their sentiments mirror the conceptualisation of family violence in the National Plan (National Council to Reduce Violence Against Women and their Children 2009). This describes the impact of family violence on other members of the community. It envisages outcomes including that the whole community is safe and free from violence.

Cordelia knew her offender was being violent towards other women.

*It affected other people within the community. That's something that I would have liked to very first warn people but I couldn't you know ... I can't protect anybody else at the moment, it's too much, and they're children which is sad. It's really sad you have to almost turn a blind eye ... it's worrying. To know that he's violent and see him with other women and children.* CORDELIA

Joan explained the ripple effect of the offender's violence on other members of the community.

*It was very wearing ... and isolating ... like really short of killing me he did it in every other way. In a small community he basically isolated me from contacts, friends and family ... with the violence. Some had to take time off work. Some had to put precautionary things in place within their lives, so that ... So a lot of people had to take a step back from knowing me and say look if you don't mind I'll get in contact in a little while. And I went, 'I understand'. They had had enough and then having to draw a line and go 'no more.'* JOAN

## Community attitudes of shame and judgement

Some women described feeling marginalised by community attitudes of shame and judgement.

Cherie said, *if they [the community and family] could be less critical, you know, like I feel like there's such a judgment about this whole thing.*

Women described feeling that to apply for an order meant that they were seen as breaking up the family.

Marie felt she *was seen as a witch by my community for isolating him and throwing him out.*

Jay described how she *heard rumours ... that I was gay ... I was lesbian that I'd left him. People judge me. You know I've had to hold my head up high around that town. And ... because he told everybody well I must be a lesbian, the community? There was nothing [in support] ... that was hopeless.*

Both Jay and Robyn felt the community and some of their children turned against them because they were seen to be breaking up the family, and or they wished to support the offender because they felt he was a victim of the justice process.

However for some women, community and family members did apply their 'compassion and position' (Lay 2014) to draw boundaries on the offender's behaviour and/or to support the women. Some women had been supported by members of the community to seek legal assistance.

Joan described that she *had a couple of co-workers mention it too, like 'have you got an intervention order? You know you need to stop him doing that', I just was letting it go.*

Maude said, *I know a neighbour rang the police once and someone in the neighbourhood did worry for our safety, someone else did and there's a man that lived next door to us that worked at the hospital he came out to me one day after he [the offender] took off on two wheels and said you know if you don't do something if you don't get help there's gonna be something terrible happen here, he said I've just witnessed him, what he did to you, and he said you've got to get out of it but it was weeks after that before I did ... but that was a bit of a reality check.*

Others found community support after the intervention order was granted. In some cases the offender had perpetrated violence against other people also, and the communities took a stand. In Cordelia's case the community were monitoring the offender's behaviour and offering support: *As soon as they heard he'd come back to my doorstep they were straight here saying we'd like you to go and get another intervention order and they couldn't really tell me why ... and I said I am and they said oh good. So he's been actively violent in the community since ...*

Ann was also supported by the community, especially her employers: *I couldn't have done it without them.* They would arrange rosters to minimise the potential of his interaction with her, phone her regularly to check on her, and once banned her ex-partner from the place of employment, a shop, for three months.

Siân had family rally around her when she went public with her allegations of family violence and was granted an order. She described that as significant in strengthening the message of

accountability to her offender: *six strong people to support me and that maybe was enough to say well it's done.*

Such responses demonstrate Hulls' (2014) and Ptacek's (2010) notion of an integrated community response to family violence. Hulls (2014) describes a 'circle of support' where communities take more responsibility for addressing family violence and monitoring offender accountability and don't abnegate it totally to the criminal justice system. This circle of support is part of a restorative justice process that can send repeated messages from mentors and/or respected peers to the offenders about their behaviour, which assists in shifting them towards accountability and increasing their compliance with any sanction, treatment or support (Hulls 2014).

Indeed, we can be inspired by diverse examples of localised community responses in all communities to family violence, which aspire to break down the barriers to community accountability that the women in this research have related (Augerinos 2014; Crinall & Laming 2012).

These responses focus more on community resilience and strengths; building community capacity to deal with family violence, through targeted localised coordinated responses involving many agencies and the justice system in violence prevention; and also, importantly, offender accountability.

Such collective efforts may lead to us building a respectful community, living in safety, and aspiring to, achieving and living a full life (Augerinos 2014; National Council to Reduce Violence Against Women and their Children 2009).

## Recommendations

- G1** Educate the community on and raise awareness of gender equity and gendered violence.
- G2** Encourage the development of community-based bystander training to improve community monitoring of offender accountability.

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48. Nor do magistrates readily mandate any mental health assessment or treatment through the family violence jurisdiction, which is notionally available by Section s81(1) of the *Family Violence Protection Act 2008* (Vic.).

49. In an attempt to assess more adequately the risk such offenders pose to the community, there is discussion (Humphreys, 2014; McGowan 2014) exploring the redefinition of the term 'recidivist' to include those offenders who have had intervention orders taken out by two or more people in one year.

50. Checking in as per 'recidivist' task force in the family violence unit, reporting such as the community corrections, or community monitoring as part of a community-based collaborative response.

51. There is confusion arising in the adoption of two conflicting approaches for treatment of offenders: retribution versus restoration (Stewart 2010).

52. Preventative programs reinforcing the message that family violence '...is everyone's business and that everyone has a positive role in eliminating it. It provides the mechanism to challenge violence-supportive attitudes and behaviours' (Women's Health Victoria 2011, p. 21).

53. Recently VicHealth (2013) released results of a National Community Attitudes Towards Violence Against Women Survey (NCAS) that reveals that community attitudes retain some of the myths about family violence. Since 1995 fewer people believe men are the main perpetrators of violence and since 2009 fewer people understand that violence against women is prevalent in the Victorian community.



*The court systems are failing our children.* HELEN

10

# Children in the justice process

A very significant focus of the women's decision making in their struggle for justice was their concerns for their children, the family context and their safety, well-being and restoration. In some cases the focus was also on strengthening relationships between the children and the offenders (fathers) and between the children and themselves.

## Mothers' concerns and priorities for their children

The women talked of the chronic impacts of family violence on their children, what restoration entails and the concerns they had for them not healing adequately. They also conveyed their concerns about the cycle of family violence continuing in their children's lives.

The women and their children's needs were complex and diverse. While all women clearly wanted to protect their children and saw their safety as paramount, they differed in terms of how the offender fitted into this picture of safety. Some women didn't want the offender to have contact with their children, while others recognised the father's interests in having contact.

Some of the women talked of their sadness and concerns of being isolated from their children due to the consequences of pursuing justice. Others spoke of their children disclosing further family violence once the offender had been excluded from the home.

## Protection of their children

Twenty five women in this research had children. All those women were the primary carers of the children and all of them prioritised that the order kept their children safe. Three women applied for the order to primarily protect their children.

As Sophie said, *I've got to protect the kids.*

This protection can be hard work and can involve relinquishing of women's own hopes for reconciliation with the offender.

Ruth was hoping for reconciliation but realised that it was not what her children wanted: *There was no way they wanted to go back to him so I realised I had to leave and never come back.*

Women, in dealing with their own trauma, also spoke of being strong for the children. This was exhausting; as Maude described, she wished protection and restoration for her child, who had experienced family violence that had significantly impacted their health: *Oh my child's witnessed shocking things, shocking things ... Yeah but it's hard to stay strong for my child, ... [voice trembles]*

## Impacts of family violence on the children

All the children were to differing degrees detrimentally impacted by the family violence they either witnessed or experienced, and all the women reported seeking external support for their experiences. The impacts of family violence on the children are consistent with those documented by Humphreys and Houghton (2008, ch. 2).

Elizabeth explained the effects of family violence on her children, even when there was an order in place, and the supports they have needed.

*They have participated in seasons for growth [psychological services], they have had counselling, I've had them at the psychiatrist I actually need to organise something today because there have been some incidents over the last few days that are going to muck them up for the rest of their lives.* ELIZABETH

In reference to the order making the kids feel safer, *that hasn't happened either. They are more terrified than ever... The kids have told him they don't want to go, they don't want to go, and he keeps them home from school so they can't go home and come home to me. He takes their phones off them things like that* (ELIZABETH).

In Helen's situation despite, an order, the children were still suffering, because the children have been and still are very reluctant to abide by the family court orders that give her father joint custody. *One child is very depressed, has had suicidal thoughts and doesn't go to school.*

Helen primarily applied for the order to protect her children, who need psychological help and the father, through his authority with the family court order, is prohibiting their access to a psychologist they really enjoy.

They are also thinking of employing a psychiatrist who, in another case, has been successful challenging the family court orders.

Cordelia described her children as *still struggling having to seek out doctors and then the children are not coping at school. My first child to the relationship struggled at school for three years and didn't learn a thing. And now their younger sibling that's three years younger is doing exactly the same thing. It's like they have learning difficulties, they have behavioural problems and it's only now that he's come back into the picture that all this that's happening has got worse. I got sick and run down and the kids started to get in trouble at school, not learning anything, running away and displaying trauma at school and even with the order they had ongoing post-traumatic stress.*

Maude said, *my youngest one lives with me, they are an absolute wreck, an absolute wreck. So that's why we've been going to counselling and that.*

Ally talked of the effects on her children.

*My oldest who suffers with anxiety had major attacks, [and] wasn't sleeping, she was pacing, the anxiety was causing her black outs. Not pass out black outs but had a period of time where they weren't present and she doesn't remember. It was having a huge emotional impact on my oldest as well so we got a variation on the order for them too.*

*They still have to live with that fear of their father and the impact that has had on them would rip your heart out. The impact of the separation, the continued family violence and order was worse on my children than the family violence during the marriage.* ALLY

Unfortunately in rural and regional Victoria there is limited access to children's support services. This is due to a limited availability of services but also the distance and transport required (Women's Services Network 2000).

Kirsty had waited six months for support services for her daughter and has been told by the service provider *they just don't have enough staff.*

## Importance of restoration from family violence for the children and preventing intergenerational violence

Ally reflected that *healing is certainly very important and an ongoing journey for the children, it keeps going on.* She has real concerns for children in the family violence justice process. *I think the healing takes longer than for the mothers. Mothers seem able to put it aside and move on somewhat whereas understandably with the children it may be more complicated and different and takes longer.*

The women spoke of their concerns of the strong chance of the cycle of family violence repeating itself. They pointed to an absence of strong supports for their children and family violence prevention methods, which could begin to make significant positive social change.

Sophie worried for her daughters' futures: *Because now as you would be able to tell as well the generation that's coming through is going to be twenty times worse than what this idiot [her offender] is.*

Shirley decided to end the relationship to protect her kids from the violence: *I grew up in it [family violence]. It is a thing in the cycle that we have to break and that's why there's workshopping and outreach because families don't even know, they just think it's normal. And it's really sad that they think that was as far as they can go in life and especially our babies and ... yes that's the stuff that concerns me.*

Cordelia was also concerned: *How do we change this for our young boys/men for the future? I would like them to grow up fulfilled, happy loving and loyal to their partners. We have to get onto this problem of family violence especially with the children who witness it, sooner rather than later, they need a lot of help and support so that they don't become part of the cycle ... I want help for my boys, they absolutely require so much support.*

Jay said, *it's only bought on by what he's said and done and what he's twisted around in the kids' minds because it's the kids I worry about. Kids I worry about.*

It was important to the women that they make a stand so that their children did not tolerate family violence.

*But by her leaving and saying I'm not going to continue to allow you to continue to treat me like that then the children are seeing that she is standing up and that's not accepting that behaviour and they learn that.* ALLY

Even though they sought safety for their children, the women still may not have wished to separate the offender from the children.

In cases where their children were older, or where the violence as assessed by the women and sometimes the children was not so significant or had not been directed at the children, the mothers acknowledged the father's interest to maintain contact with his children, and honoured that in initial negotiations.

However, women reported children being let down by the offender if he didn't follow up the opportunity to maintain contact or if the terms of the intervention or contact order were breached.

Marie explained, *I thought he would argue about the kids being on it [the intervention order] that was my biggest thing that he would argue and more so the youngest being on it but ... I don't know whether he fully understands it ... down the bottom [of the interim order] it says that he could contact me about the kids and then when the solicitor had spoken to him he didn't even know my phone number. So I'm just gathering that he sort of read that first bit about no contact and deleted my phone number and didn't realise underneath that he can contact me about his son. So that's what I said to the lawyer: I want you to make sure that he understands that he can contact me about his son.*

*Because I don't want to keep his son from him. Like do you know what I mean ... like what other kids don't see their Dad. And like yesterday he [his son] was on the phone ... hi Dad I love you. I miss you and it breaks my heart. Do you know what I mean ... like what do you do?* (MARIE)

Sarah and Ally trusted their children to make an informed decision about whether or not they continued to have contact with their father, the offender: *I want to let [them] make [their] own decision.* Unfortunately her child became more reluctant to visit their dad because they felt that he was not interested.

Ally acknowledged that, despite witnessing or experiencing family violence, sometimes children show conflicting feelings or a cognitive dissonance towards the offender (Morrison 2009) and may want to support and/or see their fathers.

*So my oldest child was there supporting him [in court] they'd seen that their father didn't have any support [in court] so they were there.*

*But later they said 'look no I can't do this. I'm stepping back just leave me alone. I can't support both of you. And so Mum, Dad needs the support'. And so that was fine. I just let it be. And just kept in contact with them. Mostly text messages just to let them know that I was thinking of them and whatever and gradually they sent them back in her own time. I had to be really mindful of giving them that space.*

*And they did that for as long as they could. But then he became quite aggressive towards them. And probably three months later they just stepped back and said I can't do this.* ALLY

*Her youngest child wasn't on the original order but he was also offending against them, then he'd get grumpy. He'd left some quite abusive messages on their phone. And so I just went back to the police. I wasn't going to tolerate this any further.*

## Importance of informing the mother in her decision making about children

Women reported facing a very complicated and confusing decision-making process, potentially dealing with more than one jurisdiction, family law, family violence and child protection. Many also reflected on the offender's interest to see his children, balancing her needs with the children's (and his). Ally explained how important it is to know the justice process and your rights.

*KNOWLEDGE IS POWER and understanding the impact that family violence has on children socially and emotionally and being able to respond to your very strong maternal instincts and for women that in this situation that don't have that knowledge. THEN IT TAKES AWAY THE POWER. ALLY*

Women described trying to make an informed risk assessment on their children having contact with their fathers, but facing a flawed system. There is reportedly no consistent risk assessment used for children in family violence matters (Humphrey 2014).

## Absence of offender accountability

In the absence of offender accountability some women reported not wanting the offender to have contact with their children.

Cordelia had her children included on the order and did not want her ex-partner to have contact with the children, but was in the process of negotiating a family law order with the offender. She argued that she did not think it was appropriate that the father had unsupervised contact with his children when they had witnessed him committing violence, and he has not changed his behaviour; despite this her application for an extension to her order was refused, reportedly because the magistrate indicated the offender had a right to see his children.

Humphreys (2007) and Holt (2003) describe the lack of accountability of offenders that remains a consistent theme across the family violence research on the justice system's attempts to protect children.

Some women described that their children only disclosed the real extent of their experiences of family violence some time after the offender was excluded from the home. Marie spoke of her child self-harming. Her daughter kept her lived experiences of family violence to herself and now that the offender is no longer living with the family she is disclosing more about what really happened in the past. They have tried to seek assistance from police but with no success.

Elizabeth's children have recently disclosed more serious family violence that happened to them in the past that she was unaware of, but will not disclose their experiences to the police because they do not trust them.

Both mothers felt frustrated at the incapacity of the justice system to resolve injustices that their children have suffered.<sup>54</sup>

## Isolation of mothers from their children

Some women had been isolated from their children, who had chosen to support the offender, to the exclusion of a relationship with their mother.

*... the oldest was home, now I don't see her. What he's done, brought her up, don't see her any more, she turned against me [crying]. My other daughter is very anti me, oh he's nasty at drop off and pick*



*up and the way he is through the kids and they don't realise it.*

*That's what kills me, I don't see the oldest daughter anymore.* JAY

Burke (1999) explained the importance of the strengthening of the relationship between mothers and children and other family members in children's recovery from family violence and in achieving a sense of justice.

Christine reflected on her children not being supportive of her because they couldn't be seen to take sides. She would have appreciated some sort of counselling with her children so that they could openly talk about how the family violence had had an impact on all of them: *It would have been nice to have, to be able to talk to them about it and that would have been good because I just tend to think that the kids are so hurt themselves that they don't want to know that I'm hurting too.*

Sunny hoped to reclaim her relationship with her children after the trauma of the violence caused isolation between them.

*My kids have troubles – I wanted to have them come with me but I couldn't because of him. I did, I had my second eldest son come up to Queensland and be with us but his father belted me and my other son got up and tried to protect me, so then he turned on my son and just big mess when, you know, he had my son down choking him and I said get off my son, I tried to save my son and then he came around and started bashing me again, so ... I just couldn't win. I've got to try and earn the respect back with my kids now, you know.* SUNNY

## Children and the justice system

The interpretation of the interaction between family court and intervention orders by the police and magistrates can lead women to report that the conditions of the intervention order were being undermined, compromising the safety of the children.

Jordan and Phillips (2013) and Laing (2013) report the emphasis on the principle of maintaining the relationship with both parents in the family law at the expense of concerns for their safety, through intervention order matters.

### Children on the intervention order

Generally, when the women in the research were not separated from the offender before the application, the children were included on the final intervention order. However, for those women already separated with family law orders in place it seemed that some magistrates interpreted the provision of family law orders as being sufficient to prohibit children from being exposed to family violence and did not list children on the final order.

Kirsty thought her daughter was listed on her order and found out later that she was not. She then had to return to court to apply for a variation to the order to have her daughter included.

Cherie described being challenged by the family violence liaison officer and the magistrate about her motives for wanting her children on the order, and found that very confusing and demeaning.

Most women had not separated before the application for an intervention order and so they were, at the time of their conversation, in the process of negotiating parenting arrangements. However six women had concurrent family law and intervention orders and three women felt

that the conditions of the intervention order were undermined by the family law orders so that the safety and justice needs of their children were compromised. The children's contact with the offender (consistent with the family law orders) was exposing them to further family violence.

The *Code of Practice* (2014, p. 41) states that if there is a family law contact order, the intervention order 'while allowing a child contact visit must also maintain a level of protection against family violence'.

Unfortunately in practice some children are not so well protected. In Helen's case, the order was primarily taken out to protect her children from the offender, the father, but the family court order allowed contact. One of her children, because of the violence still directed at them despite the intervention order, saw the family law order as a prison sentence (as quoted by her mother): *I'll go and do my time.*

In one incident, at child handover, one child was reluctant to get out of her mother's car and go with her father. Her father used physical force, put his child in a headlock and dragged them out of the car. A witnessing police member *told us that the father was within his right to behave like that and headlock his child and force her to visit him, it is called lawful chastisement.*

Helen was also told by the police, who witnessed this incident, that if she was not seen to be assisting the father encouraging the daughter to get out of the car it could be interpreted by the courts as inept or not very disciplined parenting.

*I felt totally let down by the police, the first police man didn't do a thing and because my daughter was scared to go to the police station he didn't take a statement.* She believed her children may not heal until the family court order is revoked or lapses. Helen quoted her child: *Dad has scarred us emotionally and until he stops we can't heal.*

Helen did not feel supported by the magistrate in court during the application.

***The magistrate wasn't very understanding. To me he was encouraging the offender to contravene the order. Rather than try to understand why my children didn't want to have contact with their father he recommended to him that if the children and I didn't comply with the family law order he could take us back to the family court, like we would get punished. He had absolutely no regard or empathy for my children's feelings. They just are of that generation that children are seen and not heard.*** HELEN

In summary, she laments that *the court system is failing our children.*

Frontline police exercise an incredible amount of power, using their discretion in interpreting and enforcing intervention orders. Elizabeth also explained in her situation, *I just feel like the police aren't doing their job.*

It says on the order that police don't get involved in family matters yet the police got involved that night and insisted my child went to her Dad's house when she was reluctant to do so.

***My child didn't want to go to her Dad's house so he used the tracking device in their phone – he had given them a mobile – to find them. He sat outside their friend's house – they rang me and said look I'm with [their friend] but Dad has found me somehow. So we rang her friend's dad who got to the house. Their dad [the offender] then rang the police and said that he had been threatened that they said that the friend's Dad was going to slit his throat and break his legs. So we had seven police cars and twelve police turn up at her friend's house and force them to go home with him. So you know ...***

*Unfortunately now the kids don't trust them [the police] either being in an extremely violent situation, the police don't give a rats, unless something devastating happens, then it is too late.* ELIZABETH

In recognising the issues arising from the interaction of separate jurisdictions, the Australian Law Reform Commission (2010) advocated getting away from siloed responses that focus only on the offender or survivor or children and ensuring that a more holistic practice develops within a multi-agency context. Indeed the Commission (p. 57) recommend the concept of 'one court' where the federal, state and territory courts responding to family law, family violence and child protection issues 'correspond to an appropriate degree so that those experiencing family violence can resolve legal issues relating to family violence in the same court'.

Humphreys and Houghton (2008, pp. 73, 74) set out some principles for decision making in respect to offender's contact with their children through the intersection of family law and family violence jurisdictions:

- Children's fears in relation to contact should be recognised.
- Many children do not want contact and in that case it should not be ordered.
- If children and women are put at risk or do not feel safe because of contact then it should not be ordered or should be reviewed urgently if previously granted.
- It must be recognised that some children want time to recover and be convinced they are safe before contact.
- For children who may want contact, every effort must be made to manage a dangerous situation and allow 'opt out' and reviews at any stage should the child be frightened.

## Children's interactions with the police and courts

Irwin et al. (2006) explain that in family violence situations very few children place their trust in professionals or feel that they will or do respond appropriately and that any interaction with children should be done with someone they trust and can comfortably speak to.

Some women reported that their children had not had positive experiences of their interactions with the police.

Elizabeth's children *don't trust the police either, being in an extremely violent situation* and not feeling their needs are being attended to. Sophie's daughters made police statements about the violence but found it *very traumatic*. The police officer had seemed very blasé about their experience.

Mullender et al. (2002) posit that children's active participation is crucial to their ability to cope with the experience of and recovery from family violence. This active participation includes being heard and being involved in the decision making in the family violence situation.

The women's lived experiences have shown that the justice needs of children in family violence situations in terms of well-being, safety and recovery from family violence can be complex and diverse. However, frontline justice agents should be guided by the aims of the legislation and comply with the *Code of Practice* (Victoria Police 2014).

We need consistent risk assessments, a less siloed framework with clear principles of decision making (Humphreys & Houghton 2008) and inclusion of children in the dialogue around their justice needs (Mullender et al. 2002).

As echoed in other sections, this notion of justice for children experiencing family violence depends on strong systems of parallel offender accountability and effective family violence prevention.

## Recommendations

- C1** Explore ways of hearing the voices of children affected by family violence to ensure that their views are considered throughout the response process. This could include the provision of dedicated legal representation where necessary.
- C2** Include children in the care of the applicant as protected persons on all intervention orders, unless the applicant specifically requests them not to be listed.
- C3** Allow adequate time where parties are represented to negotiate and resolve any interim parenting arrangements that may be affected by an intervention order, rather than simply deferring to courts hearing family law parenting matters.
- C4** Improve interactions of the state family violence jurisdiction and child protection jurisdiction, and the family court jurisdiction, such as information sharing protocols, with consideration given to setting up the 'one court' system to streamline services and outcomes. This includes the discouraging of practices that undermine the mother-and-child relationship.
- C5** Give consideration to the provision of child care and child-friendly spaces at court so that women with child care duties are not prevented from accessing the justice system.
- J1** Design and implement family violence multi-agency monitoring and evaluation of court and police practice as part of a broader monitoring and evaluation system of outcomes of the justice system including offender behaviour change, women and children's ongoing safety and well-being, over a period longer than that of the intervention order or undertaking.

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54. The Centre for Innovative Justice (2014, pp. 14–19) describes the high attrition rate through the criminal justice process and the low rates of conviction when the offender knows the victim.

*... and he stayed in the position of strength, he had the house,  
he had all the possessions ...* ROBYN

11

# Access to justice and safe accommodation

## Safe accommodation

The lack of adequate refuge space or alternative affordable safe accommodation is an issue for many of those women experiencing family violence, and it can be a barrier in their decision making to apply for an intervention order (Tually et al. 2008).

All but one of the 15 women not separated at the time of applying for the order wanted to end or have closure on their former relationship. The one woman hoping to be able to maintain her relationship but with boundaries for her safety with an order had to subsequently apply for a variation on that order because the violence escalated and she realised they needed to live separately.

Only 6 out of 15 women not already separated had the respondent excluded. For those women who did not have the offender excluded from their home, only Ann and Ruth found refuge through family violence support services. The remainder had to depend on friends and family due to a combination of not having the financial resources to immediately afford rental accommodation and, importantly, needing moral support in their efforts to ensure their and their children's safety.

## Leaving home

Carrie and her children moved to another city and stayed with friends; Cordelia and her children moved in with family for six months. Kirsty and her child stayed with friends, then her family, and Agnes stayed with friends, then her family. Maude and her son lived in their car for weeks



then stayed with family for six months. Joan and Robyn managed to find rental accommodation after staying with family and friends.

Unfortunately Sunny was homeless. She hoped for *anything just to help me get back on my feet, just so I've got my own little room* to stop her returning to her ex-partner. Safe affordable accommodation will *give myself some time to get my life back, more confidence...*

As described in MacKenzie and Chamberlain (2003, p. 45) for many of these women, 'Domestic violence related homelessness is reactive homelessness'. It is difficult to deliver 'early intervention' to maintain their accommodation because many women do not request assistance until they are forced to leave. While women did report considering leaving or doing something to stop the family violence they were experiencing, only eight women had accessed support to assist with a plan of leaving the offender.

Many of these women were not waged, were the primary carers of their children and had not had family custody arranged so they were not receiving any financial assistance from the fathers (offenders). This made it very difficult to access and sustain affordable housing for them and their children.

The women described a sense of injustice at having to leave their home and the financial implications of that.

*I left in the end I was kicked out of the house do you know and he stayed in the position of strength, he had the house, he had all the possessions ... We should have been given the position of strength, of staying you know.* ROBYN



*We had to move out and my son feels that we're in the middle of never-never, you know he has everything, my son always says he's got everything and we've got nothing.* MAUDE

Maude also explained that leaving home can lead women and their children into financial hardship.

*And the little bit of money I happened to have, get it out of my half term deposit a while back, through legal avenues, and I spent it all on white goods for the rental. It was an empty house. So we bought a bed each, bought a fridge, bought a washing machine, and the little bit of money I did have was gone. So we're just living from pension to pension.* MAUDE

## Staying safe at home and excluding the offender

The *Family Violence Protection Act 2008* aims to provide stability for children by allowing the court to order a respondent to be excluded from the family home. An exclusion condition, according to section 82 of the Act, should support 'minimising disruption to the protected person and any child living with the protected person and the importance of maintaining social networks and support which may be lost'. This practice would also support 'staying safe at home' models which challenge traditional assumptions about women leaving their homes to leave the family violence (Edwards 2004).

Despite having the offender excluded, Fran and Isobel had issues with the offender not adhering to appropriate protocols with regard to coming to the house to collect their possessions: *He tried to come every day to pick up one thing at a time, so I had to go to the police and eventually he was cautioned by them* (FRAN).

Marie was feeling marginalised by her community who were sympathetic to the offender because he was removed from his home. Beryl, while not condoning her offender's violence, was also concerned about the lack of housing for offenders who are excluded from their home.

The women's experiences highlighted that justice should encompass women and children being supported to 'stay safe at home' (Edwards 2004) and if that is not possible or seen as a viable option by the women, there should be adequate access to crisis and safe long-term housing and provision of a continuum of individualised support.

## Financial safety

Ten of the women in the research were financially dependent on social security benefits. Nine of these were the primary carers of primary school age children, and one was too traumatised to engage in waged work due to the impact of the violence. Three others were receiving pensions. As often is the case with women and children who have experienced family violence (Fehlberg & Millward 2013, 2014) their lack of independent financial resources led to them being financially 'unsafe'.

As Maude explained previously, having to leave the family home and set up home somewhere else can lead women and their children into financial hardship. Many of them had also experienced financial abuse, such as being prevented from working or forced to accrue debt, which compounds this financial hardship.

Christine explained that her ex-partner deceived her out of their joint savings: *Our bank balance, our retirement fund that we had together, and he's lied about that and taken that as well.*

Fehlberg and Millward (2013, 2014) also explain that many women in family violence situations may be reluctant to pursue their financial entitlements through the legal system after separation, for a variety of reasons.

Maude, in the shock of her situation, had not thought of pursuing settlement until lawyers prompted her.

*And it wasn't til I was approached from here, oh I got a phone call one day or something about settlement and I said I don't know what you're talking about, and they said well how are you going to live, the house is half in your name. And I said oh I don't know anything about that, and they said he can't get to own it. You know it didn't enter my head.* MAUDE

This lack of financial safety has implications for the legal advocacy they can access.

## Access to justice

### Affordable legal advocacy

Many of the women in this research have been daunted by the costs in legal proceedings, such as divorce proceedings, family law matters and contested hearings, to the point of giving up.

As Elizabeth explained, *it was just never having the support to get through to the next stage, you worry about money, whether you can get legal aid.*

She had spent \$10,000 recently successfully appealing against a recovery order her ex-partner sought for one of the children. The second magistrate commented that this recovery order 'had brought more family violence' to their situation.

She just felt that *I am constantly the victim of all this shit.*

As explained earlier, 13 of these women did not consider themselves to be in financially safe situations, and certainly not able to afford private representation for a contested hearing or to pursue complex family law matters.

Christine had to relinquish the possibility of pursuing an order because the offender contested the application and she could not afford the solicitor's fees and did not want to appear unrepresented.: ... *but I don't think it's fair that I had to let it go because I didn't have the money to get a paid lawyer. I had no choice, I had no money, I was barely keeping my head above water without having to pay that as well. Even though the separation one was going to be settled at the end of it, but I didn't have the money in the interim to go ahead with it.*

She reflected on the waste of expectations, resources and time and energy put into the application, then only to find out you cannot afford to be represented at the contested hearing: *Yeah because it's almost what was the point. Taking me on and then dropping me.*

She was really appreciative of the assistance of an LCCLC lawyer in the first court hearing but because of resource limitations he was not able to represent her in court: ... *so it was pretty daunting when my ex had his solicitor sitting with him and I was there by myself. It shouldn't be that way, we should all have a fair go.*

There are concerns regarding cuts to legal aid funding that 'have left the community's most vulnerable people exposed and the court system lurching towards crisis' (Lee 2013). Such funding cuts erode the principal of 'accessibility of the law' (Australian Law Reform Commission 2010, p. 49).

The Law Council of Australia (2014) considers that court and legal fees in most jurisdictions are already too high and beyond the capacity of many people to pay. This should be addressed through reductions in existing fees and substantially increased expenditure on the courts.

Access to justice should be about equal access to affordable legal advocacy for both applicant and respondent. Justice for women and children experiencing family violence must include financial safety, developing systems that assist women get on track financially (Fehlberg & Millward 2013, 2014).

## Recommendations

- D1** Increase crisis and long-term accommodation and a continuum of individualised support for both women and children experiencing family violence, and for excluded offenders.
- D2** Ensure police and magistrate training emphasises that the exclusion of the offender is the preferred option where deemed safe by the women.
- F10** Have at least two duty lawyers at all courts (applicant and respondent), as well as enhanced access to financial counselling services.
- F11** Publish a detailed guide to self-representation if Victoria Legal Aid is not able to fund a contested hearing.

*And I said where is it written that men are better than women?  
We really are made equal.* KATARINA

12

# Ending family violence and role of support

## Women and children free of family violence

The broader notion of justice the women in this research sought recognised the importance of parallel resourcing of effective justice responses, ensuring accountability and allowing women and children to be free of family violence.

As the women argued, to end family violence we need to focus more on the offender, their behaviour and what drives their behaviour, rather than focusing on how the women craft their own safety.

Most family violence, committed by men against their intimate partners, is underpinned by gender inequity founded on entrenched cultural attitudes that put men in a position where they can violate women: 'It is about male unregulated entitlement and frustration. ... It is about power and privilege that goes along with patriarchal behaviour' (Ford 2014).

### Gender inequity

Cherie described, ... *women are still second class citizens, it sucks to be a chick. If I had a penis my opinion would be more valid ... if women were more physically equal would men still commit violence against women?*

Sophie reflected on the gender oppression feeding family violence: *It's sad. It's so sad. And the mother [of the offender] is this poor woman, got the heart as big as the world and she works ... she's elderly, she still works six days a week. Husband's retired. He [the offender] and the girlfriend and her child and pets they all live in her house.*

Sophie explained that the offender did not like her challenging the gendered power dynamic in their relationship: *No it's because I didn't shut my mouth. No he's done nothing wrong. Because that's the way you treat women.*

Robyn commented on the complicity of the church she was attending in supporting such belief systems: *In their view, their prism, their paradigm, that the father is the head but still violent, like how do you, how do you deconstruct that, so they ... just sweep it under the carpet or it's normalised and you get on with it but what if people start dying within their congregation?*

Katarina explained how she tried to assist other women experiencing family violence realise the gendered nature of family violence and the gendered power dynamic in the relationship: *I said to some of these women. I said stand still and how about I slap your face a couple of times. Would you let me do that? No. Then why do you allow him to slap you around. Just because there's a piece of paper says you're married or you're in a partnership I said if you're going to let him slap you or kick you why don't you just let anybody do it to you.*

As other research suggests (AIDS Council of NSW 2003; Chan 2005; Mulrone & Chan 2005) this theoretical framework is not necessarily applicable to lesbian and gay family violence, or family violence experienced by males in heterosexual relationships. Other frameworks of understanding and subsequent relevant strategies to address those types of family violence are required. However, given that the majority of family violence occurs within the context described in this research, addressing gender inequity is directly relevant to any comprehensive and sustainable plan to reduce violence.

Family violence prevention education and public awareness raising are crucial to challenging the deeply entrenched attitudes that allow family violence to continue. Shirley recognised the importance of educating youth on family violence prevention and gender inequity.

*I think maybe workshop the information but it would be good to have some kind of awareness outreach.*

*And there's also none of the workshops to carry on to our youth about family violence and learning about it in a safe environment.* SHIRLEY

Sophie recognised the importance of role-modelling for other young women: *Teaching them – hopefully by watching me and what I've achieved I hope so that they think no well you don't put up with that sort of violence or bad behaviour and you can achieve stuff by yourself.*

The women have clearly articulated that in their view the ending of violence against women and children requires long-term strategies, such as education and public awareness-raising. The literature also points to 'gender mainstreaming' to change deeply entrenched attitudes that support gender inequity (Amnesty International 2008).

## Recommendations

- G1** Educate the community on and raise awareness of gender equity and gendered violence.
- I3** A bipartisan government integrated approach to addressing family violence should include gender mainstreaming.<sup>55</sup>



## Role of support agencies and support people

Family violence support agencies were reportedly significant in empowering women through the justice process, providing timely and appropriate assistance with the sometimes complex decision making, writing an appropriate and adequate application statement and supporting them in their needs before, during and after the court process.

Unfortunately in regional and rural areas their services are more limited (Jordan & Phillips 2013): only 5 out of the 23 Caucasian women had accessed support services before seeking legal action. Others fortunately met support workers at court. All three Aboriginal women accessed culturally appropriate support from their respective Aboriginal community controlled health organisations, family and communities. One Aboriginal woman had also accessed support from mainstream family violence support services, which assisted her with crisis accommodation and other significant logistics.

Some women described their experiences of the different types of support they accessed.

Carrie had been receiving counselling every two weeks then once every week leading up to separation from her partner. They also supported her in planning to apply for an order. She felt that she couldn't have done it without them.

Kirsty didn't have a positive experience through the application process with the police, but her situation improved once a family violence support worker engaged with her at court. This worker also assisted in demanding accountability, with the assistance of a lawyer, when the order was repeatedly breached: *If I had to do it again, I wouldn't go to the police, I'd go to CNV [Centre for Non-Violence] first, the support worker was brilliant, absolutely brilliant.*

Fran lamented the cuts in funding that have compromised some of the family violence support services. She had five months of counselling before applying for an order. The family violence support services also supported her in court where even though the support worker was between everybody she was there for you, that's what it felt like.

Agnes explained that, without support from the Centre for Non-Violence, *I definitely wouldn't have gone for an intervention order. I probably would have fallen straight back into his trap and gone back home.*

Siân explained how it can be difficult to properly engage with these support services when women are so traumatised and on that rollercoaster of trying to liberate themselves from offender power and control. This emphasises the fragility of the work context of these family violence support agencies.

*... to actually realise that one day I was this and then within a second I'm this ... so a stronger person ... and a weak person at the same time because I'm actually black and blue with whatever, I went to the Centre for Non-Violence, and I didn't go and then I'd go and then I didn't, you know it was a really hard process to actually go. SIÂN*

## Families and friends

Women also invariably talked of the crucial support of their mothers, friends and to a lesser extent fathers.

With the help of two friends who have accompanied her through her struggle for justice, Sophie realised that *in here [feeling her heart] I just went ... YOU KNOW WHAT I'M BETTER THAN THAT. I DESERVE MORE.*

*But if it wasn't for my friend and giving me that support and my friend and her husband. If it wasn't for them giving me the support and saying you can do this. You're better than this. You don't deserve this. The children don't deserve this. I don't think I would have [gone ahead with the intervention order].* SOPHIE

## Women helping other people experiencing family violence

Many of the women in this research had supported other women experiencing family violence who were not able to access support agencies.

Katarina tells of a culturally and linguistically diverse (CALD) woman she helped.

*My friend was in an abusive marriage. Hadn't lived in town for very long and she couldn't confide in anyone ... But one day I found her weeping while she was walking her two dogs and I extended my hand out so to speak and said would you like to come on over and talk about it, and she said to me 'I can't take this anymore' she said, 'I've got to leave you know for my own health and sanity. I've got to leave'. I went with her to the house and he was going to toss out something that was really hers that she purchased before they even met and I said [to the offender] 'by law you're not even allowed to touch it let alone throw it out'. The language from that man was just deplorable and I said to her 'I still got one room' and I said 'you know come and sort yourself out or whatever' and we became the best of friends but sadly cancer took her.* KATARINA

## Support of general practitioners

Medical GPs and emergency departments are often the front line in detection of family violence (Tually et al. 2008). Victorian data shows that second only to police, women experiencing family violence approach their GPs for assistance (Department of Justice 2012). However in this research women approached support agencies second to the police and only four women in this research approached their GPs for assistance.

Three women had positive experiences with GPs providing ongoing valuable assistance and strategic intervention. Helen's GP wrote a medical certificate for her daughter which assisted in arguing for the suspension of the family court order and was facilitating a conversation between the offender and his children about their safety concerns.

Fran spoke of the importance of the ongoing support of her GP. *I think 'cause I knew that my GP would help and that I could go and talk to him about anything, that it wasn't a hard process – it was yeah – it was just like a step in the process and to know – I've known my GP for a very long time – that like, he would be caring and that he wouldn't just fob it off.*

Given these experiences it is important that GPs are able to respond sensitively to such disclosures, and that information about family violence be available at clinics (Roberts et al. 2006).

It is widely recognised that legal outcomes alone are an insufficient response to the complex issue of family violence (Shepard 1999) and it has been seen in this research that women are unlikely to be able to make constructive use of the law without the provision of support, advocacy and information (Laing & Humphreys 2013).

As the women have shown, the provision of information, support, advocacy and referral to other community supports can be significant to women pursuing rather than abandoning efforts to access legal protection and to optimising the chance of their and their children's restoration from the harm they have experienced. Given the prevalence of family violence, we need

to ensure there is increased provision of family violence support services as well as strategies to ensure their increased uptake by women experiencing family violence.

## Recommendations

- E1** Make family violence information available at a range of well-known risk points: maternal child health centres, antenatal clinics, medical centres, hospitals, mental health facilities, family law courts and family relationship centres.
- E2** Offer continuing professional development family violence training for medical general practitioners.
- E3** Increase family violence services providing support for completing the intervention order application at court, and after the order is in place, including peer support programs.
- E4** Improve community awareness of family violence support agencies.

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55. 'Gender mainstreaming is a strategy for promoting gender equality.' It ... 'involves ensuring that gender perspectives and attention to the goal of gender equality are central to ... policy development, research, advocacy/ dialogue, legislation, resource allocation, and planning, implementation and monitoring of programmes and projects.' Available at <http://www.un.org/womenwatch/osagi/gendermainstreaming.htm> (accessed 10 March 2015).

*It's hard work but yeah it's either that or your life.* SUNNY

13

# Reflections on legal protection

The women's reflections on the value of attempting to obtain legal protection from family violence were divergent. Women were clear either that there were certain benefits or that that the whole experience left them more vulnerable. The more significant benefit the women identified was an improvement in safety. Most women, however, expressed a range of experiences largely dependent on their supports before, during and after the legal process, and their respective experiences of the police and courts.

## Legal protection bringing positive change

For some women and their children the intervention order brought positive change so that, as Joan explained, *I don't feel like I have that weight ...*<sup>56</sup>

In terms of the women's expectations, the intervention order brought positive outcomes where:

- the women (and children) were well connected to and supported by family violence support agencies
- the women (and children) felt heard and well informed in the application process, felt empowered to tell their truth and did not feel judged or ashamed
- the women felt heard and well informed in the court process
- the offender heard clear community, police and court disapproval of their behaviour
- there was effective police accountability in terms of breaches of the order

- there was community and or family support for the women and children
- the offender – although not having their violent behaviour justified or condoned at all – was not isolated in the justice process and had appropriate support during the court process and to change their behaviour.

For Helen *the interim order brought us a bit of peace. I didn't have to answer the phone worrying if it was him and what he was going to say. My children felt safer, they had a choice about contact with their father. It brought respect into the communications, and situation, I felt more in control. We didn't have to put up with his behaviour. He was more accountable, other people knew. The school knew.*

*And importantly Helen realised that I had normalised his behaviour and didn't need to put up with it.*

Some women noted improvements in their children's behaviour.

Cordelia described, *straight away my health improved, they [the children] improved at school ... So as soon as I felt like I had power to feel safe again everything came back a bit to normal.*

Carrie felt that *the intervention order isn't worth the paper it is written on* because she did not feel safe (her offender wasn't charged with some breaches, or when he was charged there was a significant time delay until that court hearing). However she did notice a reduction in safety when the order lapsed – during that few months she and the children were not as well protected: *... it was a nightmare ... the offender tried to kidnap the [children] and my mother who was looking after them at the time had to protect them and stop him which traumatised her, she was screaming and terrified.*

She found the legal process *busy and confusing*<sup>57</sup> and eventually moved further from the offender to improve her and her children's safety.

An application may prompt accountability if the offender must accept responsibility and complete formal documentation. Ally said, *the one thing that having that intervention order has helped with is actually getting [my child's] passport. Because [the] father refused to respond or sign.* She also described how it has made her a stronger person and given her more empathy to use in her work.

Joan explained, *it was the heaviest weight ... oh wow. Just you know to pick your phone up after an hour and get that churning in the tummy of is there a message on there and of what length will it be. Because they weren't short and sweet. They were quite long. And you can't not read them ... it was a real load off that he actually may have heard something.*<sup>58</sup>

*It was just a relief I guess that I didn't have to cop abusive and threatening messages* MARIE

## Legal protection not effective

A number of women (Ally, Isobel, Sophie, Carrie, Jay) described that they felt the order was *not worth the paper it is written on*.

Wangmann (2014, p. 1) argues that 'protection orders have clear benefits. They are relatively easy to obtain, address a range of behaviours beyond physical violence, look beyond incidents to the pattern of behaviour, and can be tailor made to fit the needs of the victim'.

Unfortunately, as explored in previous chapters, many women in this research have not experienced all of the clear benefits Wangmann describes.

Cordelia and Cherie did not feel their orders were tailored.

Cordelia's case highlights the predicament of women when the usual 12-month order is not adequate. If the offender does not change his behaviour, a long-term form of protection may



not exist for women and their children, except when (rarely) they are able to obtain an order 'until further order': ... *that's where there needs to be some different kind of protection out there for women that's ongoing ... otherwise women feel fear for the rest of their lives over their ex-partners.*

The complexity of decision making with diverse experiences of family violence does not always fit 'the one fits all' order (Eaton 2001).

Cherie was not sure if applying for an order was the most appropriate path or outcome.

She raised the issue that the legal process is not appropriate for the full range of experiences, or tailor made to fit the needs of victims.

*It certainly doesn't fit every situation, yeah, and it was almost like, it's one way or the highway. If something happens and people find themselves unable to communicate effectively and one person or the other is acting inappropriately then action needs to be taken, but does it have to be intervention orders, does it have to be the magistrates' court? I don't think so.*

*I want him to be there and accountable and responsible and all of those things that a parent should be, and I feel like the [court] process in that has really inhibited our ability to co-parent easily. You know, I had to go back to the court and apply for a variance of the order and then had to go in front of the magistrate and he was questioning me as to why I was doing all these things, and almost inferred that I shouldn't have applied for the order in the beginning and I was like well, what's a person to do?*

*What I want, I want to mediate with this person, I want to sort things out amicably so that we can move forward in the future pleasantly.* **CHERIE**

Cherie reflected on the rigid 'one fits all' potential response to a breach, intended or not: *I don't want to have formal orders put in place whereby he accidentally stuffs up or I accidentally stuff up, \$35,000 later and 2 years jail time, that's insane.*

The women, at the time of the research, were all successful in obtaining an order or undertaking. However, when it comes to the order being 'relatively easy to obtain' (Wangmann 2014), Fran argued for many of the women in their application experience: *I know some people think that you just get intervention orders really easy – you just get it. It's probably really hard to get it because you actually have to have the guts to go and do it. You have to actually get out of where you are and move on to be able to do – to go there.*

The women have also explained that their most significant need was offender accountability, which is not currently adequately addressed by the justice system. This then leads to a lack of much-needed restoration for the women and their children.

*He just continued, the breaches take too long, it doesn't stop*

*You're anxious around what [the offender] he is possibly capable of doing, you no longer know them.*

*So the healing doesn't really happen ... has sort of started but had to block it to continue the struggle, you can't let your guard down, because you are fearful and wondering what he is going to do...* **CARRIE**

◇◇

*Nothing went better as such, he doesn't even realise that what he did was bad and you know he just kept doing it.*

*Because he is not getting in trouble for what he has done.* **AGNES**

Ann explained that the impacts of the undertaking or intervention order can be unpredictable: *It is a double edged sword it depends what side you fall on.*

## Continuum of the women's struggle for justice

The women spoke of a litany of issues that had arisen as a result of their seeking legal intervention. They described their chronic fear of the offender, their isolation, health issues, financial pressures, sense of grief and loss, injustice, lack of self-belief, exhaustion and guilt.

The reluctance to proceed with an application is to be expected if we consider what the women describe as a fairly common aftermath of the legal processes: *Now after what I went through to get the intervention order in place, I understand why women drop their intervention orders all the time. A number of times I thought this is crap, what is the point, just drop it* (KIRSTY).

### Fear of the offender

Even with an intervention order in place, the vast majority of the women, and sometimes their children, still experienced a level of fear of the offender. This chronic fear often undermines their well-being, albeit to different degrees: *We're looking over our shoulder all the time* (MAUDE).

As explained in previous sections, often this fear can be seen as exaggerated or unreasonable by the justice system, but these women strongly reinforce that they need it to be understood in terms of the justice and the long-term safety they seek. What drove this fear is the feeling that they no longer knew these offenders and held a fear of *what he could do, what he is capable of doing ... don't underestimate him* (ANNE).

As McGowan (2014) argues, 'the victim's level of fear is an indicator of risk and should be considered more seriously by justice practitioners'. Indeed, it is these women who have endured the violence and know its patterns, and must by necessity become experts on his behaviour.

There exists a fragility in the situation and ongoing fear felt by the women associated with the need to interact with the offender through child change-over (Kaye et al. 2003; Sheehan et al. 2005), property settlement, or they may both continue to live in the same community.

Jay described her daily fear: *I have to see him every day because he makes sure he's there at school pick up. When the children go to their father she was told by him, more than once, take that f'ing smirk off your face or I'll f'ing drop you.*

*... even though nothing may have happened, ... that is my fear in life that I won't be here [crying].*

*There won't be a time that I won't ever now live in fear ... It's just that fear of him, you can't ignore it.* JAY

Sophie said, *but he's so angry with me that I don't think that anger will ever go away. It will always boil inside him. And that's why I would love to have a lifetime intervention on him. Because he is psychotic and I am fearful of that. ... He is a time bomb. A ticking time bomb.*

Sunny, who gave up reporting breaches because of her fear, exhaustion and difficulty in getting evidence for certain stalking-type breaches, was extremely fearful and described her hypervigilance: *I want to check in every car, I don't sleep, yes he's a very nasty man, He's done a lot of nasty things to me. I have nightmares and wake up, sweating and crying.*

Ally was fearful because, after a frightening incident that happened after the granting of the intervention order, *I realised that I didn't know what he was capable of.*

Christine realised that, despite a reasonable outcome from the intervention order process, including an absence of breaches, she was still very scared of her ex-partner. This had a significant impact on her well-being at family events: *I suppose really it still is in the back of my mind if he's ever going, when we do you know grandkids birthdays or whatever, is he going to approach me?*

She related how she didn't think she could go to her granddaughter's party if her ex-partner was going to be there but one of her children persuaded her to go and so *I ended up going but I was physically sick before that cause I didn't know how I was going to cope with it.*

Isobel had a reasonably timely and effective response from the courts but still felt fear of the offender: *I don't know if he would do anything but just the same I still feel fear and sure I got the mobile phone with me and the doors are always locked. There is a level of fear still.*

Maude had an order and her ex-partner was on a good behaviour bond after a breach. However she felt that *there's no way I want him to ever find out where I am I've just started renting. She reflected on the fear causing an inability to resettle in one locality. He was and probably still is a very dangerous person and I think that's why my [child] and I can't settle where we are now because we don't know what's gonna happen.*

*I can't mentally get myself out of the house* said Elizabeth. *Today is a struggle. Because I am just scared I'm going to see him wherever I go.*

This fear explains some women's demand for, in the absence of other effective responses, increasing the powers of magistrates to order respondents to be assessed for the men's behaviour change programs and/or permanent orders on their offenders.

## Financial and emotional costs

Many women had to move out of their home and start anew, at significant financial and emotional cost.

*... I lost a lot a couple of years ago when I left him, now I've lost the lot and I thought after two months in intensive care [she has only one functional lung and was hospitalised for cardiac issues] he might have a little bit more heart you know his mental illness is not acknowledged by him.*

*Oh he's cost me thousands and thousands and I've lost everything you know everything's at home with him.*

*I'll have to rent for the rest of my life I don't know ... I don't know where we gonna end up and that's what troubles me so.* MAUDE

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*Yeah I've lost too much you know, I've lost heaps. Family, contents you know and things that my mother left me when she passed away ... he wouldn't give me my stuff back so I had to start again I had to get all new clothes everything and one day he ripped my mother's blanket up.* SUNNY

◇◇

*The tears I've cried, the stress is overwhelming ... look at what I've been through.* CARRIE

## Guilt

Women explained their feelings of guilt, either for the impact the family violence has had on their children, that their children may repeat the cycle of violence, or for the change to offender contact with their children.

*Maude felt that well I should have got out of it two or three years ago I feel guilty the fact that I've pulled my [child] through more and more. She also feels guilt at leaving her ex-partner: You do go through the guilt, even seeing him the other day I know there's still that part that thinks oh what have I done to him ... he's going to be a lonely old man.*

***I worry constantly that my children will turn out violent like their Dad and I feel guilty that I let them get into this situation.*** CORDELIA

Sarah thought that her offender felt like he was the victim of the justice process because he had less contact with his child as a consequence of their parenting plan, *but like I'm sick of feeling guilty. You're trying to make me feel guilty for something that I haven't done, I haven't done anything wrong, I've done nothing wrong, the only thing I've tried to do is try to keep myself and my child safe that's the only thing I've tried to do. And now you are trying to, you know put this on me.*

## Lack of self-belief

The literature identifies the long-term impact of family violence on self-esteem and its corrosive nature (McKinnon 2008). Many women identified that a combination of the police and community not validating what they are experiencing and supporting them compounds this lack of self-belief and isolation.

*... because you get to the point where you think oh well I must be a pain in the backside. I must be annoying. I must be ... yes all those things.*

*... but then in the end you isolate yourself... you don't go out ... you don't go anyway. You don't visit friends. You don't do anything. You just sit there and listen to it.* SOPHIE

Elizabeth said, *he basically sweet talks his way out of it...and people believe him and then I start to doubt myself, I start to question myself and think maybe it wasn't as big as I thought.*

And then, said Kirsty, *in the end you feel that you have nothing, you are nothing, just a person who is screwed in the head and probably not that great for my child. You think that you're a low life piece of crap.*

## 'Hard yards' and exhaustion

The women reflected on the injustice of the exhausting hard work they had to do to apply for legal protection for them and their children and then sustain a level of safety.

***It is such a lot of work, you have to do the hard yards, have to prove that your basic rights are being violated, and you just want to get on with your life. Why is it so?*** CORDELIA

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***That's the worst thing. And I really had to work hard. It took me probably a year of sort of talking to myself, this [trying to seek justice] just throws you and so I've really had to work very hard. I've tried to commit suicide once.*** SOPHIE

Maude reflected on the tiring odyssey of seeking justice for her and her children: ... *it's just a long journey you know, and it's exhausting.*

## Health

The women talked of the stress, mental health issues and short- and long-term memory loss that result from the ongoing saga of trying to achieve justice.

Elizabeth explained, *I've got post traumatic stress disorder, depression, anxiety, leaving the house, I have to really really psyche myself up.*

***Like today I could have physio but I can't mentally get myself out the house. ... Today is a struggle because I just think I'm going to see him wherever I go. ... If I have someone with me it isn't so bad but just to go grocery shopping or an appointment, that's hard.*** ELIZABETH

Jay said, *I can't remember things ... It's hard, I can try and heal but back and forward, but now I can't go to it ... like banks and that ... I'll either be fine but suddenly snap ... it's just that fear ... and sadness about the kids [crying].*

Agnes talked about the health impacts of inadequate police accountability: *And [the order] didn't help at all, physically or mentally and I was always tired and run down and my whole life just pretty much shut down because I couldn't manage. I couldn't function, I couldn't do anything ... Yes I was hospitalised for like having a panic attack and just because I was sidled by a dog or ... I was laying in bed and the wind would smack the gate and I'd freak out and hide in the heater vent, or like, it's horrible.*

Ally said, *the justice process has had a detrimental effect on me initially with lots of stress, emotional impact, physically I lost a lot of weight. It has taken me eighteen months to start to get some weight back.*

Elizabeth described the huge impact the legal proceedings had on her life:

***It has consumed it, my kitchen table is this high with court documents, court orders, emails he sent me, so I can take this to court and say look what he is doing to me, will somebody listen to me?***

***And my new husband and I are on the verge of divorce because he is over it.***

***I know I am not safe, nobody will do anything.*** ELIZABETH

## Compounding effect of overlapping legal processes

In this research 15 women had not separated before applying for the order, and so in the aftermath there were sometimes parallel divorce and parenting proceedings that were costly and confusing.

Ann felt there wouldn't be closure until well after the divorce was granted and *when the dust settles.*

Christine had parallel divorce and intervention order proceedings on foot and couldn't afford a solicitor for the contested intervention order hearing because *I couldn't afford another solicitor, I was already doing the separation, and it was pretty expensive and I wasn't earning very much money so I just couldn't do it.*

Elizabeth and Helen both revoked their respective orders because Elizabeth felt that in the 'justice' process she was *just not being heard and it was more stress.*

Helen was overwhelmed by the toll, and the amount of time and energy both court processes were taking on her.



This echoed the sentiments of other women with children, that the process of two court battles is extremely wearing, discouraging and expensive: *Why bother?* (JOAN)

Elizabeth summed it up: ... *you know it [seeking legal protection] has been a nightmare. It's been just absolute hell.*

## Concept of 'safety'

The literature (Trimboli & Bonney 1997; Wangmann 2014) suggests that 'for many people who obtain an order, it is effective' (Wangmann 2014). Their definition of efficacy is that the order brings safety, defined as a 'reduction of violence' (Wangmann 2014).

In this research the women were clear that safety was not just a reduction of exposure to violence, but a complex state defined by the absence of fear brought about by offender accountability. Confidence in the justice system also contributes to a feeling of safety, with the various players being accountable and effective in aiding the justice process. The women and children's safety had to be long term and would lead to restoration.

The women's broader definition of safety aligns more with that of the Australian Law Reform Commission (2010), which sees safety as being safe from harm, with a clear long-term focus on offender accountability so that women, children and their communities are free from violence, but also encompasses financial security and independence.

All the women in their surveys prioritised in their expectations of the order that their concerns for their and their children's safety would be heard and respected and that their children would be safer.<sup>59</sup> They were hoping that they would 'feel' safer.

Most of them did feel an improvement in their safety; it reduced the fear of losing their and their children's lives.

As Ruth explained, *if we hadn't taken out the intervention order I would have lost my life or he would have lost his.*

Two women reported feeling their safety had not improved, with one opting to apply to revoke her order after three years of trying to achieve justice for her and her children.

All women, even those having better justice system experiences and outcomes, still felt fear of the offender for what he could still do, which undermined their 'feeling' safe. So, it was reported that often the women resorted to crafting or actively managing their own safety, especially if the police are not seen to be effective and accountable in enforcing intervention orders. Such strategies included:

- plans to keep safe after making an application if there was no temporary order in place<sup>60</sup> or if breaches are not being responded to
- prompting and demanding accountability from the police and court processes
- moving away to another town
- limiting their livelihood and lifestyle so they don't see the offender
- recruiting legitimate people, such as their GP, to support their struggle for justice.

Kirsty had no faith in the police to protect her and her daughter and thought there was no interim safety mechanism in place between her speaking with police and the court hearing.

*I wasn't sure if the police had taken out a safety notice. The day of the court my daughter was with my Mum because I was terrified he would go to the day care and take my daughter. Up until the interim order, because we weren't protected, and because I didn't feel safe we stayed with my Mum and friends.*

*In my town [there is only one day of the week] to put in an application because that is when the court is ... and the police don't protect survivors with a safety notice, frigging real? If I was in Melbourne it would be heard that day or the next day.* KIRSTY

For Kirsty, the active management of her own safety and intractable fear because the justice system was failing her were draining: *There was a couple of times when I said to Mum I can't keep doing this I can't and Mum would say, you have to do it ...*

When police keep telling her to change her phone number she said *why? why do I have to? what more do I have to do? why do I have to hide?*

Agnes moved from her friend's home to her sister's home to feel safer when the breaches committed by her offender were not being responded to adequately.

As Ford (2014) laments, 'Women should not have to educate themselves about safety or how to protect themselves ... it should be more about the offender'.

Three of the women had moved away and four women, one of whom had revoked her order, were planning to move to another city or town in the state as they felt this would give them a better feeling of safety.

As Ann said, *that has helped more than the order ... I have felt some healing starting with the move ... Before I suffered anxiety, panic attacks, was on antidepressants but the move has enabled me to come off my medication.*

Sophie had to isolate herself to keep safe as breaches were not being responded to when she went to the police: *I worry about running into him. So I don't go anywhere. I don't go out. I'd like to go out for dinner with girlfriends and do all that sort of stuff but after that night he abused me in the pub that was the last time I went out and that was eighteen months ago.*

Some women had to prompt and demand accountability from the police and court processes.

Sophie had a particularly bad experience at court when they couldn't find her paperwork. She then went to the police station herself to find the paperwork and bring it to court. She described feeling let down by the very people whose role is to protect those like her: *And the sad thing is it's only us women that can get these things done. ... I'm a lot harder now and more assertive whereas back then I was still meek... Whereas now I'd say no this is bullshit. I need this ... you need to do this. The kids are scared. Just do this. Do that. I know you can. We need to be more informed as to the victim as to what resources are out there. Because the police do just fob you off.*

Jay had to phone the police to be informed of the outcome of a breach charge because they forgot to phone her. She was worried that the offender would be angry at the outcome of the charge and she was worried for her safety.

Helen realised that *we shouldn't have to do it but ... it is worthwhile recruiting professionals who are seen as legitimate people to support your efforts ... I have pulled in psychiatrists and my GP who have been proactive in assisting me in demanding safety for my children.*

## Sense of injustice

The women felt a huge sense of injustice as a result of the family violence and their attempts to seek protection of the law.

Marie thought that *it's a bit of an injustice ... so many people don't talk to me now, if it wasn't for my Dad I would have moved ages ago ... they see me as the witch who isolated him and threw him out ... they don't know.*

Robyn explained, *I've been able to see that this concerns me a lot that the older children have, they've bought the, they bought the whole this is what we do and they've been turned against me*

you know and I, and I've been a good mum you know I had a lot of time with my kids, I home-schooled them and I had good relationships with them and they've been turned against me so there's this intimidation that's got quite a big hold ... and the kids aren't going to speak up.

Sophie said, *I refuse to not go to my friends' house because they're my friends – I don't care if they live next door. I will not stop living my life and enjoying my friends just because you're across the road. I just won't. That's not fair. Because I have done nothing to you.*

***He mentally abused me for nearly eight years and it's not on. And mentally he did that to the kids. He was violent with things. ... in my case he's got away with it all.*** SOPHIE

Threading through many of the women's lived experiences is the injustice of the incredible persistence of the offender to cause harm.

Isobel was still fearful of her offender and wanted to move locality but her offender had put a caveat on her house: *See I can feel frustration I think would be the word. I'm past the anger. I just feel I'm stuck ... I'm free but I'm not.*

*I want to get on with, I just want it finished, if I want to move from here or ... and I can't. He's got me. I can't do anything about it.*

Maude was concerned about what will happen when the order ends and she doesn't know whether with her health challenges and chronic fear she has the energy and finances to apply for an extension: *Yes you can have another order yes you can go for another order but I don't want to keep doing that I don't want to live like that ... I can't keep chasing orders, ... I just want to be free.*

Margaret felt a deep sense of injustice: *He did destroy me and took everything. It destroyed Mum too.*<sup>61</sup>

## Restoration from family violence

Many women prioritised in their surveys that the order or undertaking allow them to begin to heal from the harm caused to them. Unfortunately none of the women felt that this had started to happen primarily because of lack of offender accountability.

They had also learnt that *the order is not the end of the story, it is the beginning* (CARRIE) of the next stage of their justice journey, highlighting the need for a long-term justice response that reflects the timeframe required for restoration from such a continuum of family violence and for offender behaviour change.

Cordelia explained that there is still residual trauma *but even with an order it's ... it's put post-traumatic stress basically ... we all suffer from it, and it takes a long time to heal from that.*

Rosie Batty (2014), in her presentation at a family violence forum last year, describes the restoration journey: 'It takes time to rebuild your life ... you don't know how much you have fallen ... and then you get to a point feeling a bit more confident and you realise how affected you were'.

Fran said that *it actually put me back in a black hole and moving upward out of that is still an onward journey. And it's often a few steps backwards to be going forwards.*

Sarah explained that *it's been two and a half years [since the legal outcome] and it's only now he's beginning to back off.*

Siân wondered, *does it happen, do you actually heal all the way through?*

Women seeking such long-term protection when the offender isn't accountable only had the option of returning to apply for extensions or multiple orders on the same offender. Indeed all the women but one, whose order had expired at the time of the conversation, had done just that.

The women argued this is exhausting and unfair.

Maude explained that she did not want to continue applying for orders to try to keep safe. Despite the order she had not begun to heal: *I don't want to, I don't want to do that, it's no way to live and there's no quality of life I mean you're worried all the time we've had no quality of life now for years but I still got very little that's how I feel.*

Christine explained that she could not begin to heal until her ex-partner apologised.

*I've never known him to tell lies, and it was. You know even that's hurtful, that not only did he cheat on me and go off with this other woman after thirty five years of marriage, but he's lied about our money that we grew together. Our bank balance, our retirement fund that we had together, and he's lied about that and taken that as well so it's all to do with the way he is now. He's different, I've no idea who he is. ... I need him to say I'm sorry. He needs to say it to the kids as well. He never said I'm sorry to any of us, never, and I've asked for him to apologise and he won't.* CHRISTINE

However Joan was still holding on to a vision of restoration: *I was high up on a cliff with a view and there was a butterfly or something and I'm saying I will soar again. That was my hope and ambition and it still is, it still is.*

## Restorative justice

To assist this sense of closure and restoration from the continuum of family violence, restorative justice as a justice option for family violence cases is being explored (Hulls 2014; Ptacek 2010).

Restorative justice is an approach to justice that focuses on the needs of the women and children and the offenders, as well as the community in which the violence occurred. It represents a departure from depersonalising the offence, and a reliance on the justice system to enacting punishment on behalf of the state. Women and children take an active role in the process, while offenders are encouraged to take responsibility for their actions, 'to repair the harm they've done' by whatever method is deemed appropriate, such as providing an apology and participating in a men's behaviour change program (Anon 2009, p. 1). In addition, it provides help for the offender in order to avoid future offences. It is based on a theory of justice that considers crime and wrongdoing to be an offence against an individual or community, rather than against the state (Price 2000). Restorative justice that fosters dialogue between victim and offender shows the highest rates of victim satisfaction and offender accountability (Sherman & Strang 2007).

The women in this research had not heard of restorative justice; however, some of them, in describing justice options that were better than intervention orders, described such a space and process where they thought they would have a better opportunity to be heard by the offender in a more empowering and less adversarial context. These women believed that this would potentially initiate a better process of offender acknowledgement of the harm they had caused; offender behaviour change; and subsequent restoration for the women, children and the offender. They were clear that to engage in such a restorative process they would have to feel very safe, supported and empowered. Some women were very clear that they thought this process would not be appropriate at all because it would not adequately address their safety concerns.<sup>62</sup>

Restorative justice models also recognise the limitations of the adversarial law and the complexities of family violence. They may allow a nuanced response to harm, recognising the complexity of decision making required in each circumstance and the importance of monitoring offender accountability.

In assisting children with their recovery from family violence, a restorative process could provide a forum where children are better heard by the offenders and/or other significant agencies. Such an environment may allow women and children to more actively participate in discussions about their safety and well-being, facilitated by people they trust rather than by the authorities.

Helen had crafted a restorative justice type process for her children because they did not trust the police or courts after their experiences of both in dealing with their experience of family violence. This was potentially the only way she could think that the offender (their father) would hear what her children wished to say to him.

Their GP had accompanied them on their odyssey of family violence and their demands for direct justice. He had a deep understanding of their situation and was supportive of their needs. He was a trusted third party and offered to facilitate a conversation between the offender and the children, hoping it would lead to some better hearing and understanding of the girls' suffering and their not wanting to be partly in his care. As Helen said, *maybe it is the only way of getting through to him changing his behaviour.*

In one regional town, one police officer, who seemed to be well known and trusted in the community by both offenders and women, in particular cases tried to provide a type of restorative process for the woman and offender. If appropriate, the officer would also provide referrals to family violence support agencies before advocating for a formal justice process.

Christine wished that she and her ex-partner had had such an opportunity, although she was not sure if he would have voluntarily participated.

Cherie felt that the order was too rigid for the diversity of her family violence experiences and she felt they needed a less emotional, more empowering forum than the adversarial court system: *... you know give them a month of separation of total isolation from each other and then you know have a third party and let's see how it goes from there. Like I would be ninety per cent sure that you're gonna have a much more positive outcome.*

Christine would have appreciated a space where she and her children could speak to the offender about the impact of his behaviour and seek an apology: *I would just love to be able to do that even now, to say to him where's our apology? Because even my daughter, if he apologised to her as well she would be able to move on too.*

## Recommendations

- K1** Pilot studies to trial restorative justice options for specific and appropriate family violence cases either as an adjuvant to the formal court process or as an alternative.
- K2** Expand the application of restorative practices to schools and workplaces as part of their anti-violence practices and conflict resolution methods.
- K3** Provide more appropriate spaces for the offenders to hear the women's (and their children's) lived experiences of family violence.

56. See cognitive map, p. 11.

57. See cognitive map, inside covers.

58. See cognitive map, p. 11.

59. This aligns with the results of the surveys: 87% and 73% of women surveyed expected these respective outcomes of the legal protection.

60. Family Violence Safety Notice and interim orders are legal measures that put short-term intervention orders on offenders until and whilst the matter is being heard by the court.

61. Her mother had supported her through the intervention order process.

62. Stubbs (2004) argues that safety risks of women cannot be adequately addressed in restorative justice.



*... you know there's one in every family or you know someone is affected by it.* SHIRLEY

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# Unique needs in diverse communities

## Culturally and linguistically diverse women

Women from culturally and linguistically diverse (CALD) communities can face many barriers to using the law to gain protection (Burman et al. 2004; Immigrant Women's Domestic Violence Service 2006; Multicultural Centre Against Family Violence 2010) such as language, isolation, vulnerability, racism within the justice system and fear of loss of community.

While Katarina, a CALD woman, did not experience these barriers herself in her application for an order, she spoke of some of these issues in her experience as a volunteer supporting CALD women seeking legal assistance. She was clear that CALD women are predisposed to family violence because of cultural gendered violence that is normalised in their communities.

*In the days that I was interpreting and in the days I worked in hospital we had so many times we got migrant women in first time baby and it's a girl. And you know everybody runs and my beeper is going. He [the father] wants to kill her because she gave birth to a girl. The first one should be a son.* KATARINA

Katarina also related how she had to distance herself from her migrant community because of the way they were treating her when she left her previous husband who was violent towards her: *Me being a divorcee at the time, the men wanted to jump my bones as they say the women wanted to probably kill me. They were jealous. And because I didn't have a partner or anything you know. So therefore I was an open slather which I found revolting.*

## Aboriginal women

The underlying causes of family violence in Aboriginal communities are inextricably bound with the legacy of white settlement and colonisation in Australia. Lateral violence, arises from the effects of dispossession of land and traditional culture; breakdown of community, kinship systems and traditional law; racism and vilification; economic exclusion and entrenched poverty; institutionalisation and child removal policies and loss of traditional roles and status (Aboriginal Affairs 2008, pp. 12, 27) is recognised as a deeply destructive problem that must be overcome through positive, inclusive, affirming Aboriginal leadership and collective action (Crinall & Laming 2012).

Shirley concurred about the impacts of family violence on her Aboriginal community but also the white community: *So yes it's a big issue in terms of everyone pretty much in this day and age is affected by that ... you know there's one in every family or you know someone is affected by it.*

Although a statewide service, unfortunately the Aboriginal Family Violence Prevention and Legal Services are not resourced to have an office in the Loddon and Campaspe region.<sup>63</sup>

The literature describes a reticence and resistance in mainstream services to engage with Aboriginal clients, and the cultural inappropriateness of services sometimes experienced by Aboriginal people (National Family Violence Legal Services 2013). These were not issues expressed by the Aboriginal women in this research.

The three Aboriginal women interviewed had accessed culturally appropriate support through their respective Aboriginal Community Controlled Health Organisations, their families and the Police Aboriginal Liaison Officer prior to application and that had assisted them with feeling supported and validated.

*Yes I've got great family support. You know at some point I got cousins – women – and we marched him out. No violence, just told to leave which it was a good thing but you can't kind of ring family all the time to do that.* SHIRLEY

However, they all felt they required an order to improve their safety.

## Regional and rural issues

Our research supports the findings of George and Harris (2014) and Coverdale (2011) in terms of the prevalent issues experienced by those experiencing family violence in regional and rural areas, and the inequity of the services provided to those who are more vulnerable given their isolation. Recent data from the Victoria Police shows that the rates of family violence in rural and regional Victoria are much higher than in Melbourne (Willingham 2014).<sup>64</sup> Those inequities can compound barriers faced by women.

Some issues identified in this research include:

- geographical isolation and the less frequent court services associated with that
- less access to resources and supports for children who have experienced family violence (Women's Services Network 2000)
- fewer family violence support services for women and children (Jordan & Phillips 2013)
- geographical and social isolation: Margaret and Robyn lived in isolated areas and felt very lonely and isolated from supports. Margaret reported on occasion she did not see anyone for a week. Similarly, often the women were encouraged by the police to change their mobile number or not answer their phone to avoid technology-facilitated abuse

- or technology-facilitated stalking. The women, especially in rural areas, did not see this as fair as it disengages them from a significant medium of communication and a safety mechanism. There is also less chance of family violence being witnessed by neighbours.
- gun ownership: Many women mentioned their offenders had guns which was a risk factor in their family violence situation. The decision making by women may encompass concerns about having an impact on the gun licence of the offender (Ann). In other cases the women were extremely fearful of the consequences of the offender losing his gun licence if they were successful with their application.
  - limited access to crisis accommodation (Women's Services Network 2000), a combination of limited availability of crisis accommodation and distance prohibiting its access
  - potential lack of consistency with magistrates, and availability of lawyers and support workers because these justice practitioners may be on a court roster
  - less adequate responses by police, and 24-hour police services not available at smaller police stations: Shirley when fleeing the scene of a violent incident had to talk through an intercom at an unpersonned rural police station. Sarah commented on the impractical and rigid definition of police catchment boundaries in rural Victoria. Her nearest police station personnel refused to attend family violence incidents because technically they were in the jurisdiction of another police station, which was more than an hour's drive away. Kirsty remarked that on one occasion she was attended to by a police officer recently moved from a larger regional police station who commented on the lack of capacity of police personnel to address family violence at this smaller country station.
  - out-of-date court infrastructure including unsafe waiting areas and few confidential interview spaces
  - offender may be known personally by police: Robyn described that often her previous calls to the police about the violence were not taken seriously because the offender knew the police. Elizabeth's ex-partner is related to a police officer and she felt this compromised their responses to her family violence complaints.
  - lack of anonymity in accessing police and in courts: The women reported lack of anonymity in country courts and in their interactions with police who know them.
  - notions of rural masculinity enshrined in gender inequity: Wendt (2008) elucidates on the beliefs about rural masculinity which view women in a rigid subordinate role. The women spoke of embedded notions of gender inequity in the 'footy' and other rural subcultures. These beliefs also encourage stoicism and repressed emotions which lead to limited use of and access to support and health facilities. Many of the women had offenders who had mental health issues that the women felt they were not addressing adequately. This indicates that rural men require different assistance to men from urban areas to understand and address their use of violence against their partners and families.

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63. Family Violence Prevention and Legal Services funding programs have recently been subsumed into the Department of Prime Minister and Cabinet and put up for tender.

64. There were 4285 family violence incidents per 100,000 people reported in the Campaspe shire and 3345 incidents per 100,000 people in Central Goldfields shire, compared to only two councils in Melbourne having rates over 1500 per 100,000 people.

*We will be screaming for change for a lot longer.* ANN

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# Accountability of the justice system

## Limitations of justice practice

The research highlights current limitations of the justice system to address family violence: apparent desensitisation of some justice practitioners, the limitations of the adversarial legal context and the lack of systems of accountability.

As explored in the lived experiences of the women in this research, the police and criminal justice systems in Australia are commonly criticised for not treating family violence matters seriously enough (Holder & Caruana 2006; Mitchell 2011). The women have explained that their complex lived family violence experiences should not be seen through some institutional lens, and assumptions about the severity, nature and dynamics of family violence should not be made (McGowan 2014).

Beryl felt frustrated at the epidemic of family violence and the perceived reluctance of the justice system to acknowledge what is going on and reform: *The courts need to stop burying their heads in the sand, hoping that this epidemic of family violence will go away.*

## Limits of the law

The women in this research recognised the 'limits of the law' (Australian Law Reform Commission 2010, p. 5): the services available and also in their (sometimes) rigid application, and the difficulties encountered in the interaction of different laws (family violence and family law) and inconsistencies in practice.

## No rigorous long-term monitoring and evaluation of the family violence sector

There is internal monitoring and evaluation of the *Code of Practice* (2014) as part of the Code's recommended practice and there has been external evaluation of this Code according to the insights of interviewed police officers (Diemer et al. 2013). However there is no monitoring of the court process, no consistent longitudinal studies of the efficacy of orders to inform how they work for those using the system, or being impacted by the system, or ultimately how it is working for their communities. This may encompass recidivism or breach notifications, and women's subjective sense of safety.<sup>65</sup>

The accounts of the women implore us to develop rigorous systems of accountability that:

- hold family violence practitioners, including the justice system and support services, accountable for the long-term safety and well-being of those experiencing family violence
- hold family violence practitioners accountable for offender accountability and the monitoring and evaluation of offender behaviour change
- hold family violence practitioners accountable for systemic failures (McGowan 2014).

These systems of accountability provide 'a justice index' (Hulls 2014) that is based on 'listening to the experiences of women and children' (Vlais 2014).

The women offered examples of systemic and local response accountability. Some women envisaged a monitoring system from a local family violence unit that is preferably multi-agency in structure.

Siân explained, ... *and I think that's maybe what I am saying does someone just pop up and say how are you doing? And it isn't necessarily the police, it could be a support agency or whatever.*

Beryl's priority is the improvement in effective engagement of offenders in men's behaviour change programs and their monitoring and mentoring: *We need much better support and resources for these people at a local and wider level.*

Women highlighted the importance of listening to the experiences of women and children. Some recommended the participation of women who have experienced family violence in all tiers of decision making: legislative, local and regional prevention programs and localised responses.

*Like that man over there hasn't been through family violence why does he decide on what happens? ... The footy clubs should be listening to us, government too, on how to sort this stuff out.* SARAH

Ann described her concerns about the courts and decision makers' apparent indifference to the plight of those experiencing family violence, but warned that women will keep them accountable: *we'll be screaming for change for a lot longer.*

Helen's comments agree: *We'll stand our ground and keep fighting.*

We can agree that the intervention order can represent an 'important tool in reducing family violence' (Wangmann 2014), the efficacy of which can be enhanced by monitoring and evaluating its implementation and enforcement based on the experiences of women applying for the intervention order. The women have argued that for them to feel a better sense of justice, the justice response also requires strong long-term supports and parallel long-term effective offender and community accountability.

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<sup>65</sup> Stewart (2010) recommends closer monitoring and evaluation of how the justice system is working for those using it.



## Justice index

While there is no current family violence intervention order monitoring system a 'justice index' for the 27 women in this research might measure, for example, the following:

- One woman, who has parallel family law procedures that seem to undermine the conditions of her order, felt that her situation is worse and has subsequently revoked the order. She is also considering moving to another city in the state.
- One woman felt her situation was worse, because the justice system and especially the police she has dealt with were not accountable.
- A second woman has revoked her order because she found the navigating the intersections of the family law and family violence systems too confusing and exhausting.
- One woman withdrew her application because she did not have the financial capacity to continue her representation through to the contested hearing.
- Three women have moved towns to assist them and their children feel safe, and four more women are planning to move towns.
- One woman is homeless, chronically suicidal and often thinks of returning to the offender.
- Seven women want a permanent order placed on their offenders.
- Some women and their children felt safer but it was not a transformative experience – it has at least taken the edge off the feeling that their lives are in danger.
- In the five better experiences, driven by a fear of the consequences of a criminal charge, the offenders appear to have acknowledged they cannot be violent towards the women (and children) any more. However they have not acknowledged to the women or children the harm they have done.
- The majority of offenders appear not to have changed their behaviour.
- The vast majority of the women do not feel that they are beginning to heal from the harm done to them and still live in a climate of fear.

## Recommendations

- B1** Provide obligatory training in family violence at the commencement of frontline duties, as well as continuing professional development training, incorporating the common risk assessment framework; involvement from those who have experienced family violence; and coverage of the specific needs of communities such as the indigenous, lesbian–gay–bisexual–transgender–intersex, disabled and culturally and linguistically diverse communities.
- F17** Provide family violence training to all magistrates and registry staff including the common risk assessment framework training so that high-risk matters are identified early in the process and applicants are encouraged to apply for interim orders.
- J1** Design and implement family violence multi-agency monitoring and evaluation of court and police practice as part of a broader monitoring and evaluation system of outcomes of the justice system including offender behaviour change, women and children's ongoing safety and well-being, over a period longer than that of the intervention order or undertaking.
- K1** Pilot studies to trial restorative justice options for specific and appropriate family violence cases either as an adjuvant to the formal court process or as an alternative.

... it is a step, a strengthening step for you that you're doing. SIÂN

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# Final words from the women

At the end of their conversations the women were invited to comment on whether they would recommend that other women seek legal protection and about their motivations for participating in the research.

## Would they recommend other women seek legal protection?

The women's responses varied according to their respective experiences of the justice processes. This revealed the complexity and fragility of each situation and requirement for parallel supports and improved systems of accountability.

None of the women had their justice needs of offender accountability or restoration met in their justice response; however, most felt that, when there is no other option, seeking legal protection can be a step in the right direction.

Some women would recommend applying for an order but would recommend others in that position to collate vital evidence, access adequate long-term support, and be provided with information so they feel well informed on their options and empowered to pursue legal assistance.

*Sophie: I would be more demanding and I'd want to speak to people who could really help me. I'd want numbers. Who do I speak to to actually get this done?*

*Helen: Yes, but have plenty of evidence and get support.*

*There's no harm in applying for an order hence the reason I've gone back and done it a second time but there needs to be a long term support system for that person.*

*[Because in a family violence situation women's' personal circumstances are so fragile] ... regardless of how well they're looking then like everything can change in the snap of a second and it can just be a thorn in their lives like ... I went downhill so fast and I was ... like I looked like I was doing great a week before ...* AGNES

Katarina explained that support for the women is vital because of the risk of the offender escalating after the granting of the order: ... *but you have to be very careful. The restraining order sometimes can make that person even more volatile. You would have to be or the receiver would have to be fairly well supported ... especially from the ethnic background.*

Other women who had been in perilous situations recognised that it can save your life.

Sunny: *It's hard work but yeah it's either that or your life.*

Ruth hoped for reconciliation with her offender but also realised that her life was in real danger: *It's hard at the beginning to walk away but the reward of saving your life is priceless.*

Siân disagreed that the order can save your life but she did feel that it is a step in the right direction: ... *it can't stop a bullet or a punch or anything but it is a step, a strengthening step for you that you're doing.*

Some women were just not sure if they would recommend pursuing an order.

*But look I don't think that stops him, I don't think a piece of paper if a person loses control, I don't think any piece of paper, any court will stop him.* ISOBEL

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*I don't know. I don't know if I could answer that because for me being in like an extremely violent situation and the police just couldn't give a rats – really – but that's the way it feels like unless he comes at with me with a knife or... He had someone try and break into our house while the girls were at his house. It is only while they were there – four times I rang the police and they did nothing, you know. Unless something absolutely devastating happens it will be too late then.* ELIZABETH

Others emphasised that there is no other option ... *or put up with it* (CARRIE).

Well if you'd asked me that a year ago, said Maude, I would have said no but having had to do it, had to do it, it was the only option for me. ... And having had to do it I'd say yes please do. Even though there's plenty to say and running out of time and, it must help somewhere, it's helped me along the line anyway. It enabled me to get out and stay out. Without that order I would have went back probably.

Women agreed that leaving the offender early in the context of family violence, before the violence escalates, is paramount.

*The best thing and I know this is going to sound like sure it's like landing a man on Jupiter. But it's not. The best thing any woman who is abused physically or verbally or both, for God sake whether you've got one child or a dozen, run. Find ... just pick up any telephone book and there it is. Ring up refuges and women's centres or whatever because once they hit you only once that's it.* KATARINA

## Women's hopes of the research

The women were motivated to participate in the research because they wanted to be part of a collective voice advocating systemic change in addressing family violence, which includes governments taking effective action. They wanted what happened to them not to happen to anyone else, they wanted a different landscape free of violence for them, their children, and the community. They wished women to be better informed and they hoped to inspire women to take a stance against family violence.

Sadly, preventing family violence is also about saving lives, and when the continuation of violence depends on women keeping silent, it is about breaking the silence.

Many women participated in the research hoping that their contribution would lead to positive change in the justice system.

Elizabeth was *hoping that it will make some sort of difference. If there is enough people saying that the system isn't working then they might change it. ... And I know I am not the only person getting this shit.*

Cordelia wanted *to change this for every woman, just a normal thing that women and children should be safe. I don't know how it got all confused. Men should protect us.*

Other women were motivated to improve police and court accountability and to improve their children's future: *I'm happy to do surveys ... happy to talk and because it's got to change (SOPHIE).*

Sophie wanted to do the research *for my girls. For my girls. Firstly and I don't want it to be trivialised anymore. ... And I don't want anybody to feel like that anymore because these guys can't do this to us. The police can't do this. No more.*

Being a voice for other people was also an important motivator for women participating in this research.

*To hopefully be a voice out there women, you know, to be a voice to say well something needs to be done, people are crying out for it and, you know, I'll stand up and help if I can. SIÂN*

Sophie recognised that it is important to be a voice for so many women who for whatever reason do not have the capacity to free themselves of family violence: *And I just feel for them. I really do that they haven't got the strength to be able to say I need out. We ... us women know that ... how many poor women and children are dead?*

Some women also recognised the importance of research and women having their lived experiences heard: *Yeah, but it's an opportunity that actually someone does care about it and that's a good thing. You know, someone actually wants to know so that they can implement something that may one day before the end of this world that might help (SIÂN).*

Alli reflected on the importance of research and hearing women's voices: *... there needs to be change. Surveys are opportunities for change to start happening. Research is vital.*

There was a strong sense of solidarity and generosity of contribution to this research. Some women realised the importance of informing and educating other women of family violence and the justice system because they did not want any other woman to go through what they have experienced.

Maude wished to inform and warn women of family violence: *Well because I've been through it. I suffered. I've had help. And as I said when you're in it you don't realise, you know and never in a million years did I ever think this would happen to me.*

Carrie said, *let's do something to help them [other women and offenders], if we can improve education around family violence. I didn't want anyone to go through what I've gone through, it is not clear cut, the intervention order and court proceedings need to be changed.*

Kirsty reckons it [the justice process] hasn't been a great experience but if I can make one tiny little difference to someone else, it is worth it.

Ann would love to help other family violence survivors, hey I have been through it ... I have empathy for other survivors. I'm sure I am not the first and I'm sure I am not the last that is picked up, pushed around, buckled and folded or moved on. Helping other women would help me get a little bit of myself back too, bring it to me that I'm not the only one, that it is not my fault.

Isobel quoted her father on reflecting on an ethic of individual responsibility to act: *If you are on the earth, you're here for a reason, well if you can't help someone, why are you here? ... it's gonna help someone else you know if it doesn't help me it's gonna help someone else and then I thought it wouldn't hurt to talk about it because I don't like to tell my daughter things so yeah and I feel better.*

The women's contribution can be about saving lives.

Katarina said, *look if I could save one life, well I did save [my friend] but if I could ... although it was for a short time yes I'd do it.*

Katarina also hoped to inspire and empower other women, especially culturally and linguistically diverse women, to make a stance.

*I would like to see an outcome which I think is probably near impossible where ethnic women well actually all women that are abused, I would love to somehow empower these women you know. Maybe like the women from the East I'd say look I understand your culture to a point because I've got a different culture too. So I know what I'm talking about. You know. And I would love to be able to put it into their heads at least the idea you know you are no longer whatever you're in Australia there are laws here to protect you from whatever. You'll have the power to change what's going on and like I said if I could save maybe a couple of hundred women fantastic.*

*I hope that what happened to me could be used perhaps as a learning tool or a teaching tool to ... I feel that I was brave to stand up to all these men. Maybe I could encourage some of these other women and or one to stand up for herself.* KATARINA

Weona saw the importance of breaking the silence around family violence: *I think abusers rely on their partners to be silent and I don't want to be one of them women who stay silent.*

Finally, some women demanded accountability and commitment from the government so that women and children's rights are heard and enacted.

*Hoping that it will help other women. And also in the hope that maybe the government will realise that they can't just keep cutting things [funding] off – and I know they do.*

*As long as what is said about what women need – in the community – for understanding. Women need to have their rights heard. Hopefully this research will help that. If enough women put their hand up and said 'Hey, we should be heard and we should have our rights listened to', then something might happen.* FRAN



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# Appendix 1

## Why Didn't You Ask?

### Participant information

The Loddon Campaspe Community Legal Centre provides legal assistance to women who have experienced family violence. We are undertaking a project aimed at improving the safety, social and health outcomes for women seeking legal help. The legal process can often be daunting for women experiencing family violence and unfortunately some of the most vulnerable women do not seek legal assistance as a result. Our Centre considers the opinions of those at risk of family violence crucial to identifying how services can be improved, and we are seeking your help. Your participation in the survey is voluntary. Loddon Campaspe CLC will provide you with legal advice whether or not you participate.

### What is involved?

We ask that you complete a short survey, which should take 5–10 minutes. If you agree, we will then contact you about a follow up interview after your legal case is closed. This interview will be conducted how you prefer (over the phone, in person, or online) and should take no more than 45 minutes. You can inform us of the safest way to contact you. You can choose to 'opt out' on any question, or end the interview at any point.

### What will you be asked about?

We will ask about your expectations before coming to court and what needs you might have, and we will ask you about your experience at court. If you participate in the follow-up interview, we will ask you about whether your needs have been met through the legal process.

### What will happen to this information?

Our Centre will use the information you provide to produce reports about the needs of women who experience family violence and whether the legal process is meeting their needs. We will also produce reports about the assistance provided to women at court aimed at improving their experience. Your personal details will be kept confidential and if we use a quote of what you have said, we will not include your name. Our records will be kept in a locked archive and destroyed after ten (10) years. Only if you identify an imminent risk of harm to you or any other person may we disclose information you have provided us.

Contact Bonnie Renou at the Loddon Campaspe CLC on 5444 4364 if you have any questions about the project. If you do not feel comfortable speaking with the researchers you can contact Nickie King, Principal Solicitor at the Loddon Campaspe Legal Centre on 5444 4364.

## Informed consent

**Researcher:** Carolyn Neilson, Loddon Campaspe Community Legal Centre.<sup>A1</sup>

**Place of research:** Bendigo, Kyneton, Swan Hill, Echuca, Maryborough, Castlemaine, 2011-2015.

**Participating or supporting indigenous organisations and non-indigenous organisations:**

Njernda Aboriginal Corporation, Bendigo and District Aboriginal Co-operative, Swan Hill and District Aboriginal Cooperative, Centre for Non- Violence, Council to Homeless Persons, Cobaw Community Health Centre and Annie North Women’s Refuge.

### 1 I understand what this project is about

I have read [or had read to me] the “Why Didn’t You Ask ?” Information for Participants which explains what this research project is about and I understand it.

I have had a chance to ask questions about the project, and I am comfortable with the answers that I have been given. I know that I can ask more questions whenever I like.

### 2 I have volunteered to participate

I agree to participate in the research. I know that I do not have to participate in it if I don’t want to. I made up my own mind to participate – nobody is making me do it.

The researcher will not write anything down unless I agree that she can. The researcher will turn off the recorder if I ask her to.

### 3 What will happen if I want to stop participating?

I know that I can pull out at any time.

If I pull out, none of the information I have given the researcher can be used in the research.

OR

The information can still be used but only with my consent.

### 4 How the research will happen

I agree that the researcher(s) can complete a “Why didn’t you ask ?” survey with me and, if I am also willing, have a follow up interview with me for the research and write down or record what I say.

AND

If I accidentally tell the researcher(s) some information that is confidential and should not be recorded and conveyed to other people, that information will be deleted.

I understand the research will take place over, but not for all of, one or two days. During that time the researcher(s) will do the survey with me when I am at court or another place of my choosing. Then if appropriate interview me once or twice. Each interview will last for about 1 hour and will be at a place of my choosing.

## 5 Getting paid for participating in the research

I know that I won't get paid for participating in the research project.

## 6 Risks and benefits of the research

I understand that the research may have the following benefits as set out in the Information for Participants; the research findings will identify how legal services experienced by victims of family violence can be improved and this will hopefully lead to better safety, social and health outcomes for victims of family violence.

AND

I understand that the research is not guaranteed to achieve improvements in the legal services experienced by victims of family violence. e.g. 'it depends on what the researcher finds out' or 'it depends on whether other organisations listens to what the Loddon and Campaspe Community Legal Centre says'.

I know that the possible risk of the research in talking about any trauma is that I might feel temporarily worse but the researcher can assist me access appropriate support services

## 8 Who will be the authors of the research?

The researcher Carolyn Neilson and other staff at the Campaspe and Loddon Community Legal Centre will be the authors of the research.

I understand that the researcher will write the research report but my story might be in that report.

I understand that I can be acknowledged as a contributor to the report.

## 9 Will people find out personal things about me from the research?

I agree that my name, either first name or whole name can be used in the research findings  
OR: I understand that my name will NOT be mentioned in any reports that come out of this research, and that people won't know who I am but I can use a pseudonym if I wish.

AND

After ten years the Campaspe and Loddon Community Legal Centre will either destroy this information or give it back to me.

## 10 What about culturally restricted information?

I understand that, if I share information with the researcher that I identify as being secret or sacred, this information cannot be included in the research findings or conveyed to anyone without my and/or other people's consent.

## 11 Who will have access to the research results?

I understand that this research will produce a report for the Legal Services Board, the Alternative Law Journal and for distribution amongst the Loddon and Campaspe Community Legal Centre's partner organisations and networks.

AND I understand that anyone can read the report that comes out of this research, and that even people on the other side of the world might see it, maybe on the internet. That's OK with me.

AND: The Loddon and Campaspe Community Legal Centre will give me a copy of any reports/materials that she writes or produces out of the research.

## 12 Intellectual property

I understand that the Loddon and Campaspe Community Legal Centre will hold copyright in any reports, articles, or materials produced as a result of this research.

This means that:

The Loddon and Campaspe Community Legal Centre will be able to reproduce the information that is in the research report in other places (e.g. on the internet) or for other justice outcomes in accordance with the aims of this research, without asking for anyone else's permission. The Loddon and Campaspe Community Legal Centre will be able to let other people reproduce that information without asking for anyone else's permission.

## 13 Complaints

I know that, if I am worried about the research project, I can telephone the researcher on 0354444364 and talk to her about it.

I know that I can also complain to: Peter Noble, Executive Officer, ARC Justice, Tel No: 0354444364.

SIGNED:

.....

NAME:

.....

DATE:

.....



# Appendix 2

## Why Didn't You Ask?

### Conversation questions

1. When did you first seek help for your experiences of family violence? Who did you go to?
2. What was that like for you?
3. Do you have children? Have they received support for their experiences of family violence?
4. How did you hear of intervention orders?
5. Why did you decide to apply for one?
6. Did you feel supported you before you came to court? How?
7. Did you feel supported on the day you came to court? Why?
8. What were your expectations of coming to court?
9. What was your experience at court like?
10. Did your children attend court with you? (if yes) Do you feel their needs were met through the court process?
11. What do you think could be improved for those going to court that have experienced family violence?
12. How safe do you think you would have felt if a lawyer or a support service hadn't been there at court with you?
13. Would you have liked an opportunity to have said more to your lawyer?
14. Did your matter proceed to a contested hearing? (If your matter went to a contested hearing) Did you have the same lawyer for your recent court matters? Did whether you had the same lawyer or not make a difference to you? What was that like for you?
15. Now, x months after you were granted an order, (refer to survey) has this achieved the following objectives for you?
16. To make it easier for the police to respond to my complaints
17. My concerns for my safety to be heard and respected
18. To make my children safer
19. To end or have closure on my former relationship
20. To stay in my home and have him excluded
21. To maintain my relationship but with boundaries for my safety
22. Him to acknowledge the harm he has done
23. Him to be punished
24. His behaviour to be monitored
25. Him to be challenged about his behaviour
26. Him to engage with services to help change his behaviour
27. There to be clear community disapproval of his behaviour
28. To begin to heal from the harm that has been caused
29. Would you recommend someone in a situation similar to yours to apply for an order?
30. What has been going on for you since court? Have these experiences impacted on your health?
31. How has this affected your life?
32. Why did you choose to participate in the project?

## Why Didn't You Ask?

### Evaluation of interview/conversation

Dear everyone,

Thank you so much for your time and important contribution to this research, it is very much appreciated. It has been an absolute privilege to hear your lived experiences. Hopefully your voices will be heard and will lead to better outcomes in the justice system for other people experiencing family violence.

If you have time I would love to hear your honest feedback on the interview process. Please use the enclosed stamp addressed envelope to send your evaluation back to me.

***How did you feel during the interview?***

.....  
.....  
.....

***What was ok about the interview?***

.....  
.....  
.....

***What wasn't so good about the interview?***

.....  
.....  
.....

***How was the recruitment and engagement process (eg recruiting you at court or phoning you up and then touching base after the interview via phone calls)***

.....  
.....  
.....

***Any other comments?***

.....  
.....  
.....

Extracts from conversations with the following women appear throughout this report. We are grateful to these women and to all women who shared their stories during the conversations held as part of this project.

**Agnes** had two intervention orders on the same offender and still experienced total lack of offender accountability.

**Ally** worked as a family violence support worker prior to her application.

**Ann** eventually moved away to protect herself more effectively from her offender.

**Beryl** is a grandmother and applied for an order to protect herself from her son, but she had experienced family violence from her ex-husband. She wanted early offender intervention and improvements in offender accountability.

**Carrie**, despite allegations on her offender that could bring criminal charges, did not want punishment by imprisonment for her offender because it will compromise strengthening relationships with his daughters. She wanted him to change his behaviour.

**Cherie** was hoping for offender behaviour change, but was reluctant to pursue the intervention order.

**Christine** is a grandmother and was married for 35 years before she applied for an intervention order. She could not afford the contested hearing so had to drop the intervention order process.

**Cordelia** really wanted offender behaviour change before the offender has contact with his children.

**Elizabeth** revoked her intervention order because she felt it did nothing to improve her or her daughters' safety. A comment she made about not being heard is the title of this report.

**Fran** was supported by her GP. She demanded prompt and effective action from governments to address family violence.

**Helen** applied for the intervention order primarily to protect her children.

**Isobel** is more than 80 years old.

**Jay** had been isolated from her eldest daughter, who blamed her for breaking up the family and isolating her father.

**Joan** applied for an intervention order after her ex-partner's violence escalated after their separation.

**Katarina** had experienced more than 40 years of family violence from family members and ex-partners.

**Kirsty** had to endure lack of police accountability in the application process and investigation of breaches.

**Margaret** experienced more than 20 years of physical, sexual and psychological violence.

**Marie** was disappointed and saddened for her young son that the offender (father) had not made contact with them to arrange contact with his son as negotiated in the conditions of the intervention order.

**Maude** was married for more than 30 years before having to apply for an intervention order on her husband.

**Robyn** would like the churches to be more accountable in addressing family violence.

**Ruth** had to relinquish hopes of reconciliation with her ex-partner to keep her and her daughters safe.

**Sarah** applied primarily for the intervention order to protect her daughter.

**Shirley's** offender had another intervention order taken out on him from another woman.

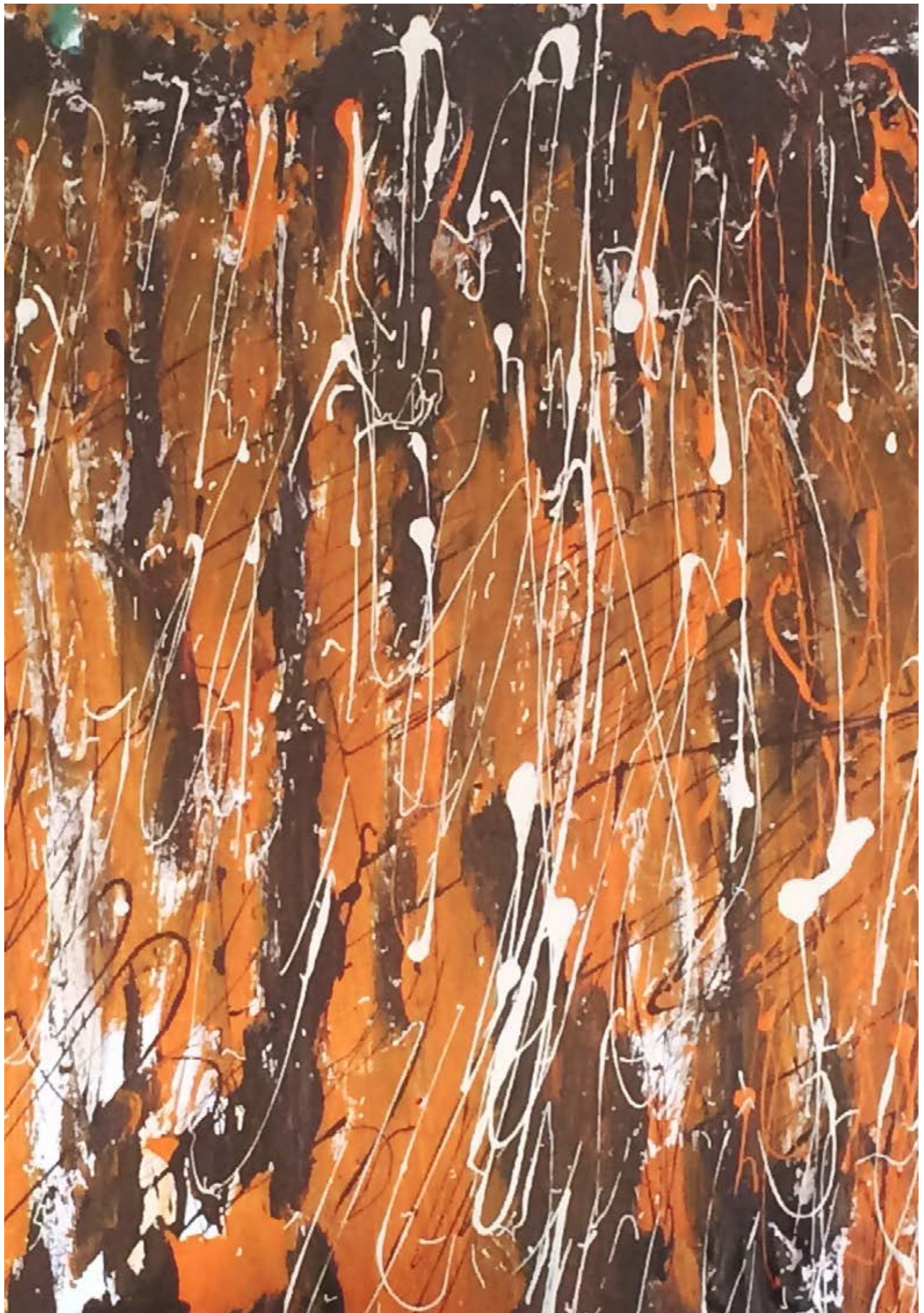
**Siân** is a grandmother who wished for restoration and improved local monitoring and evaluation of the intervention order process.

**Sophie** had to endure lack of police accountability in the application process and investigation of breaches and wished to move locality so that she and her daughters could feel safer.

**Sunny** is a grandmother who just wanted a safe home.

**Weona** hoped her children, especially her son, could recover from the family violence.









# Will somebody listen to me?

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