

# Submission to the Family Violence Reform Implementation Monitor 2020

A joint submission of Victoria Legal Aid (VLA), the Federation of Community Legal Centres (Federation) and Women's Legal Service Victoria (WLSV).

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Victoria Legal Aid



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## Acknowledgement of Country

Victoria Legal Aid, the Federation of Community Legal Centres and Women's Legal Service Victoria acknowledge the Traditional Owners of the lands across Victoria and note that this document was developed on the lands of the Wurundjeri people of the Kulin Nations.

We recognise that the over-representation of Aboriginal and Torres Strait Islander families and children in the justice system, many of whom have experienced family violence, is in part a devastating consequence of colonisation, intergenerational trauma and ongoing experiences of systemic racism.

We pay our respects to the strength and resilience of Aboriginal and Torres Strait Islander peoples and cultures and to all Elders past, present and emerging and recognise their unceded sovereignty.

## Executive Summary

Victoria Legal Aid (VLA), the Federation of Community Legal Centres (the Federation) and Women's Legal Service Victoria (WLSV) welcome the opportunity to provide comment on the implementation of the recommendations of the Royal Commission into Family Violence ('Commission' or 'Royal Commission') in the four years since the Commission handed down its final report and recommendations.

Victoria should be immensely proud of its world-leading Royal Commission into Family Violence and the opportunity it presented for improving the lives of people who experience family violence, predominantly women and children, whilst holding perpetrators to account.

However, it was clear from the time of the Commission that the scale of reform required was significant and that this would bring challenges. We share the concerns the Family Violence Reform Implementation Monitor (FVRIM) recognised in its first report to parliament (2017): that the Victorian government needs to invest more time in planning and coordinating the implementation of its family violence reform package – particularly in developing a more systemic approach to reform. Implementation has often focused on 'ticking-off' each of the 227 recommendations at the cost of measuring whether broader outcomes in preventing or reducing family violence are occurring. A centralised governance structure is required to coordinate an inter-departmental approach to reform that plans for and monitors implementation relative to the Outcomes Framework outlined in the Family Violence Rolling Action Plan 2017-2020.

For example, at the time of the Royal Commission, the Department of Justice also released its Access to Justice report which made important recommendations for justice system reform that, together with the recommendations of the Commission, would improve broader systemic approaches in responding to family violence. However, not all of these recommendations have been implemented and the justice system has tended to be viewed as, while related, outside of other family violence reforms.

A consequence of not having a strong centralised governance structure is that there is no structure or mechanism for adapting or coordinating the implementation of recommendations across the family violence service sector or elevating risks and issues where recommendations of the Commission have since become impractical or been surpassed by other changes.

Given the scale of change envisioned by the Commission, there was unsurprisingly a gap in the specialist family violence workforce and the skills and expertise required to deliver the reforms both in terms of frontline service delivery and the management and coordination of reform. It takes time to train and build workforce capacity to a point that cultural change has occurred, yet there has not been sufficient recognition of the impact the workforce skills shortage has (and will continue to have) on the ability to achieve the desired outcome.

This submission does not attempt to comment on all areas of family violence reform. We focus on the justice system response to family violence and seek to draw the FVRIM's attention to some of the challenges and opportunities that we believe should be prioritised in the next stage of family violence reform including noting the necessary time still required for implementation to continue and take effect. We also provide our endorsement of submissions made by Aboriginal Legal Services.

## Summary of recommendations

### Recommendation 1 – holistic, systemic reform to family violence

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Ensure the ambition for holistic, systemic reform to family violence occurs by:

- Establishing a more coordinated, functioning inter-departmental governance structure that includes key stakeholders from across the family violence service system to:
  - coordinate implementation relative to the Outcomes Framework in the Family Violence Rolling Action Plan 2017-2020
  - provide the opportunity for a range of issues and risks to be raised for decision and determination.
- This governance structure should:
  - facilitate the incorporation of more and new information as implementation occurs, including recommendations for reform that may sit outside the Royal Commission's recommendations (e.g. the 2016 Access to Justice report and 2020 Positive Interventions for Perpetrators of Adolescent Violence in the Home (PIPA) report)
  - recognise the pace and scale of reform and workforce capacity to deliver the changes recommended; and
  - recognise the necessary time still required for implementation to continue and take effect.

### Recommendation 2 – legal services are integral in responding to family violence

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Recognise legal services are an integral part of responding to family violence by:

- developing a consistent model for the state-wide integration and connection of legal services to The Orange Door and specialist family violence services.
- funding legal services to support family violence workers to respond to legal needs.
- meeting the Royal Commission's intention of extending the Family Violence Safety Notice (FVSN) period from 5 to 14 days by putting in place the necessary structures and associated funding to support the pre-court legal assistance that was envisaged.
- adequately funding legal services to provide family violence legal assistance.
- committing to funding for general demand in the court system including the rollout of the remaining Specialist Family Violence Courts (SFVCs).
- implementing Recommendation 3.5 of the Access to Justice report: Include legal triage in the Support and Safety Hubs and family violence services and support all workers including child first/child welfare workers to know how to identify legal needs and make safe and effective referrals to legal services.
- implementing the findings of the Victorian Auditor-General's Office (VAGO) report into Support and Safety Hubs and fully integrating legal services within the Orange Door model.

## Recommendation 3 – a different response for particular communities

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### Recognise the different responses required for particular communities by:

- implementing and adequately resourcing recommendations 123 to 128 from the *Royal Commission into Family Violence* for establishing a specialised response for adolescents.
- implementing the recommendations of the Positive Interventions for Perpetrators of Adolescent Family Violence in the Home (PIPA) report.
- continuing current work in developing a framework that recognises and explains elder abuse as a specific form of family violence with its own drivers and risk factors; and provide ongoing and sustainable resourcing of services and programs, including Men's Behaviour Change programs, to prevent and address elder abuse and ageism.

## Recommendation 4 – improving the broader systems response

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### Improve the broader systems response to people who have experienced family violence by:

- improving processing, policies and implementation of the Family Violence Scheme (**FVS**) in the *Fines Reform Act 2014* (Vic) (**Fines Reform Act**) to provide a more effective mechanism for victim/survivors to have their infringements and associated demerit points withdrawn.
- amending the Fines Reform Act to increase access and eligibility for victim/survivors to apply to the FVS.
- reinstating the Special Circumstances List to provide a single therapeutic forum for victim/survivors to have their infringements special circumstances matters heard and determined.
- further amending the *Residential Tenancies Act* (**RTA**) to ensure the beneficial provisions for victim/survivors are fully effective.
- requiring and funding mental health services to develop policies to ensure family violence risk screening is undertaken as part of the intake process within the mental health system (e.g. risk identification, referrals to family violence services for safety planning).
- providing guidance to require all aspects of the mental health and justice systems (e.g. mental health services, Victoria Police, courts) to improve their responses to people who use family violence and are experiencing mental health issues.
- We also encourage any family violence reform to consider the findings and recommendations of the current Royal Commission into Victoria's Mental Health system (RCVMHS).

### Client stories

The client stories and case studies used throughout this submission are real cases but have been de-identified (names and other details have been changed to protect privacy and confidentiality). Client consent has been obtained to include each client story.

## About Victoria Legal Aid

Victoria Legal Aid (**VLA**) is a Victorian statutory agency responsible for providing information, advice and assistance in response to a broad range of legal problems. VLA assists people with legal problems such as family separation, child protection, family violence, discrimination, criminal matters, fines, social security, mental health and tenancy.

In 2018–19, VLA provided assistance to over 100,000 unique clients across Victoria, including over 16,900 family violence duty lawyer services and over 25,000 family violence related community legal education and information sessions. Our clients are diverse and often experience high levels of social and economic disadvantage. Almost half of our clients are currently receiving social security and one in three of our clients receive no income at all. Over 25,000 people disclosed having a disability or experiencing mental health issues and a significant proportion live in regional Victoria or are from culturally and linguistically diverse backgrounds.

## About the Federation of Community Legal Centres

The Federation of Community Legal Centres is the peak body for Victoria's community legal centres (CLCs). CLCs are localised, independent, community-based organisations that provide free legal assistance to people across the country and work to ensure equitable access to justice. CLCs help the public with tenancy, employment, social security, family law and family violence, consumer law and many other legal problems. These types of legal problems are often complex, stressful and almost always carry serious implications for affected individuals' lives and livelihoods.

The Federation works with CLCs to continually improve the impact of community legal services and to strengthen the capacity of Victoria's community service network. We also work to drive creativity and innovation in the delivery of integrated legal services to communities and enable a strong collective voice for justice and equality.

The Federation received detailed input to inform this submission from the following CLCs:

- Youthlaw
- Law and Advocacy Centre for Women
- Seniors' Rights Victoria
- Justice Connect Homeless Law
- Mental Health Legal Centre
- Barwon Community Legal Service
- Inner Melbourne Community Legal



## About Women's Legal Service Victoria

Women's Legal Service Victoria is a not-for-profit organisation that has been providing free legal services to women since 1982. We work with women experiencing disadvantage to address legal issues arising from relationship breakdown or violence.

Women's Legal specialises in family violence, family law, child protection, and victims of crime assistance – recognising the intersection between the jurisdictions. We do this by:

### **Providing legal advice and representation to women**

- Full legal representation (through to final hearing, if necessary) and daily duty lawyers services
- Integrated and holistic practice, with in-house financial counselling and social work support, and outreach to 20 family violence partner organisations
- Health Justice Partnership with Monash Health providing legal, social work and financial counselling help to women during pregnancy who are experiencing family violence and at risk of child protection intervention, with the aim of their baby remaining with them (where this is in the baby's best interests) once discharged from hospital
- Video conferencing service delivery to clients in regional and remote locations, and through the Magistrates' Court pilot of video conferencing in Family Violence Intervention Order matters

### **Campaigning for law and policy that respects and promotes the rights of women**

- Integrating our legal and policy practices to identify systemic issues and solutions
- Forming alliances and partnerships with stakeholders and influencers to campaign for changes that will improve justice outcomes for women
- Advocating policy and law reform that improves women's safety and socio-economic wellbeing

### **Delivering professional & community development, and prevention of violence against women programs**

- Building capacity of legal and family violence professionals to identify and respond appropriately to legal need
- Undertaking community development and legal education that strengthens women's ability to make informed decisions about their relationships
- Leading workplace prevention of violence against women across the legal and justice workforce

## Our submission

### Governance

It has been challenging for the existing governance structure, the Family Violence Steering Committee (FVSC), to meet the needs of the family violence reform agenda or the needs of family violence stakeholders. This was acknowledged by the recent review of the structure by Family Safety Victoria (FSV) and highlighted in two reports of the Family Violence Reform Implementation Monitor.

Recommendation 193 recognised that non-government and community organisations are the main source of support for women and children affected by family violence and that they are the repositories of expertise on family violence policy and practice. It was intended that non-government and community organisations would have the ability to contribute to policy development and to bring gaps and weaknesses in service provision and possible solutions to government through the FVSC. In making this recommendation the Commission sought to ensure government receives the benefit of input from the experts who deliver family violence response and prevention services (legal, housing, health, Courts, Police etc) by a governance structure that reflects different perspectives and is underpinned by genuine consultation and co-design principles.

Our experience of the FVSC is that it has functioned more as a stakeholder group to communicate about work in progress or completed rather than as a body to facilitate input or decision making by the non-government and community service sector. Functioning in this way has, for example, limited the opportunity for the FVSC to draw on and incorporate new and emerging information (such as recommendations of the 2016 Access to Justice and 2020 PIPA reports). Additionally, it is unsurprising that there is a gap in the specialist family violence workforce and the skills and expertise required to deliver the scale of reform envisioned, both in frontline service delivery and the management and coordination of reform. However, the current operation of the FVSC has, in our view, contributed to an insufficient recognition of the impact the workforce skills shortage has (and will continue to have) on the ability to achieve the desired outcome and to adapt to the time still required to train and build workforce capacity to a point that cultural change has occurred.

It is our view that a strong governance structure for reform of this scale should provide the opportunity for non-government and community organisations across the family violence service sector to contribute their specialist knowledge to the development of policy and the identification and management of issues and risks that could impact the reform agenda. Community organisations have direct knowledge of how system or policy changes to one part of the service sector can adversely impact the client experience in other parts. A better functioning governance structure would allow for these impacts to be identified and managed to reflect changing needs and context.

### Looking forward – what is still required:

- The establishment of a more coordinated, functioning governance structure that includes actors from across the family violence service system that provides the opportunity for a range of issues and risks to be raised for decision and determination.
- This governance structure should:
  - facilitate the incorporation of more and new information as implementation occurs, including recommendations for reform that may sit outside the Royal Commission's recommendations (e.g. the 2016 Access to Justice report and 2020 Positive Interventions for Perpetrators of Adolescent Violence in the Home (PIPA) report).
  - recognise the pace and scale of reform and workforce capacity to deliver the changes recommended; and
  - recognise the necessary time still required for implementation to continue and take effect.

## The Specialist Family Violence Courts (SFVC)

The Royal Commission identified that victims of family violence can find the legal system confusing and complex to navigate. As part of recommendations 60 – 70, which include expanding the specialist family violence division into courts at 14 locations across the state, VLA received specific purpose funding to co-ordinate the provision of legal services by the legal assistance sector to ensure legal services are provided to people accessing the SFVCs.

The SFVC Legal Practice Model, which was designed by VLA in collaboration with the Federation and family violence practice partners, aims to deliver client centred quality legal services in the SFVCs that are easy to access, safe to use and integrated within the family violence service system<sup>1</sup>. Legal services delivered under this model aim to foster a trauma-informed, culturally safe and non-collusive environment for both applicants and respondents. Importantly, this model aims to provide support to the client from pre-court through to post-court, reflecting both client feedback and the Royal Commission's observations that a client's legal and non-legal issues extend beyond just their day/s in court.

The Legal Practice Model is being implemented across the SFVC locations as the Magistrates' Court also introduces new practices to ensure the SFVCs provide a more intensive and therapeutic model of justice.

Holding those who use family violence to account was a feature of the Commission's recommendation in setting up the SFVCs. In developing the Legal Practice Model, we used each of its eight foundations, created in consultation with the family violence service sector, to help promote accountability for people who use family violence.

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<sup>1</sup> The family violence service system is treated in the Legal Practice Model as including, but not limited to, legal services, Police, specialist family violence services, universal community and social services, The Orange Door and the Courts.

### **The legal practice model foundations:**

#### **1. Easier access to legal services**

People with legal needs are supported to access legal help from any point of contact with the family violence service system.

#### **2. Client centred processes, practices and services**

People with legal needs are at the centre of all legal processes and practices and legal services are developed in partnership with the family violence service system.

#### **3. Creating a safe and responsive quality legal practice**

People with legal needs receive legal services that are trauma-informed, are responsive to diversity and recognise their agency throughout the legal process.

#### **4. Addressing clients' practical needs at court**

People with legal needs feel safe, supported and respected, are kept informed and have their practical needs met at court.

#### **5. Increasing duty lawyer accessibility**

People with legal needs who attend court proceedings receive timely, safe and quality services from adequately resourced duty lawyer services.

#### **6. Enhancing lawyers' capabilities**

People with legal needs receive advice, information or appropriate referrals for their range of legal issues from lawyers who have the skills and capabilities to identify them.

#### **7. Improving service continuity**

People with legal needs receive a more seamless legal service experience throughout the legal process that is focused on the early resolution of their matters.

#### **8. Continuous improvement**

We will listen to people with legal needs and modify our services to continually improve and be responsive to their needs.

To date, funding has been allocated and service delivery has commenced in Shepparton, Ballarat and Moorabbin and the process for the next two locations (Frankston and Heidelberg) is underway.

In our experience the SFVCs are operating well, and this is in part due to their additional and specialist resourcing. During the COVID-19 response, we have seen that SFVC locations have been more equipped to resolve issues and provide for client services as compared to non-specialist courts. For example, we are seeing the way in which the specialist courts are addressing court backlog (as a result of COVID-19). They were quickly able to implement processes to make client referrals to duty lawyer services, with police operating in the specialist courts sending out all service documents to parties prior to them attending court.

This does, however, illustrate an emerging concern of postcode justice (where, for example, regional Victorians experience disadvantage in access to justice system services in comparison to their metropolitan counterparts<sup>2</sup>). In this case clients who have their matter heard in the SFVCs are receiving a more holistic and specialised response than clients whose matters are continuing in non-specialist courts.

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<sup>2</sup> Cloverdale, Richard, *Postcode Justice Rural and Regional Disadvantage in the Administration of Law* in Deakin Law Review Vol 16, No.1 (2011) p156

Given that building the necessary infrastructure for the SFVCs will take time, it is important that there is a clear and transparent commitment from the Government outlining the implementation plan for expansion and associated funding. However, it is our view that, with funding, specialist elements of the Legal Practice Model could also be implemented prior to the completion of the SFVC built environment and that this would have a positive impact for people with family violence legal needs.

#### **Looking forward – what is still required:**

- A Government commitment to:
  - funding the rollout of the SFVC model to all headquarter court locations across the state; and
  - set out its plans for achieving recommendation 61 where all family violence matters are heard and determined in SFVCs.

### **Legal assistance for people who experience and use family violence**

As legal service providers, we see the way in which family violence impacts a range of legal problems that can include family law, child protection, discrimination, housing and tenancy, criminal charges and debt. Concerningly, Aboriginal women are the fastest growing prison population, many of whom have experienced family violence and often have multiple legal needs<sup>3</sup>.

We are concerned that the implementation of the recommendations of the Royal Commission has not sufficiently recognised legal services as an integral part of keeping women safe and holding people who use violence to account. We note that Recommendation 69 has been marked as implemented despite legal services not being adequately resourced to deliver family violence legal services to the extent envisioned by the Royal Commission (including from the Commonwealth), beyond place based funding such as that received for the Specialist Family Violence Courts (SFVCs).

The Access to Justice report<sup>4</sup> made extensive findings about legal need in Victoria, including providing strong recommendations for legal assistance in the family violence context that are complementary to the findings of the Royal Commission recommendations and which we encourage the Victorian government to implement, including:

- Recommendation 3.5 - Including legal triage in the Support and Safety Hubs

The Victorian Government should ensure that the design of the Support and Safety Hubs recommended by the Royal Commission into Family Violence includes legal professionals to perform legal triage, to provide legal information, education, and referrals to people experiencing family violence, and to build the capacity of non-legal personnel working in the Hub to identify legal problems; and

- Recommendation 6.9 - Improving co-ordination across departments

The Victorian and Commonwealth Governments should improve co-ordination on policy and legislative initiatives that are likely to affect demand for legal assistance services by establishing relevant cross-portfolio committees involving, at a minimum, the justice and human services portfolios, and others as necessary. This co-ordination would also support

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<sup>3</sup> Department of Justice and Regulation, *Access to Justice Review (Full Report)*, (August 2016) p73

<sup>4</sup> Ibid.

integrated service design and provision to meet the needs of vulnerable and disadvantaged members of the community. The Victorian Department of Health and Human Services, and the Department of Justice and Community Safety should commence these co-operative arrangements at the State level, even if agreement cannot be reached with the Commonwealth.

### **Looking forward – what is still required:**

The Victorian Government should:

- incorporate the recommendations made in the Access to Justice report and other recommendations made in this submission into the next phase of implementation, including sufficient resourcing.
- develop a consistent model for the state-wide integration and connection of legal services to The Orange Door and specialist family violence services.
- fund legal services to support family violence workers to respond to legal needs.
- meet the Royal Commission’s intention of extending the Family Violence Safety Notice (FVSN) period from 5 to 14 days by putting in place the necessary structures and associated funding to support the pre-court legal assistance that was envisaged.
- adequately fund legal services to provide family violence legal assistance.
- commit to funding for general demand in the court system including the rollout of the remaining Specialist Family Violence Courts (SFVCs).

## **The Support and Safety Hubs (The Orange Door)**

We commend the Commission’s vision to provide victims and families the help they need, when they need it through a simplified, single entry point whilst also increasing and ensuring perpetrator visibility, in their recommendation for Support and Safety Hubs ‘The Hubs’ (The Orange Door).

We share the concerns raised in the recent Victorian Auditor-General’s Office (VAGO) report on the Support and Safety Hubs and the first FVRIM report to parliament that the scale and pace of change required was not fully recognised in the implementation of the first five hubs, resulting in service coordination not yet being consistent or effective<sup>5</sup>.

While the VAGO report raises concerns that the Family Safety Victoria (FSV) “governance structure does not support effective performance management of hubs” and “In addition, the large number of statewide governance groups makes it difficult to identify responsibilities for hub performance at the statewide level<sup>6</sup>” without a whole-of-government governance structure, it is our view that a coordinated and consistent point-of-entry for clients will be challenging to realise.

As we have mentioned earlier in this submission, we are concerned that legal services have not been fully integrated into family violence reform. One example of this is the lack of a consistent model for the state-wide integration, connection and funding of legal services to The Orange Door and specialist family violence services. While over time local arrangements have been made for legal services to deliver some services to hub clients, the level and availability of legal assistance is not

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<sup>5</sup> Victorian Auditor General’s Report, *The Support and Safety Hubs* (May 2020) pp12

<sup>6</sup> Ibid p16

consistent across sites. The result for clients is they get a different level of service or engagement depending on which hub they attend.

In the absence of a state-wide model and support for family violence workers to identify and respond to legal needs, our practice experience is that we continue to see that people with legal needs are not always referred to legal services in a timely and effective manner. As the VAGO report states, “although not explicitly recommended by the Royal Commission, these components<sup>7</sup> are critical to meeting the intent of its recommendation to provide coordinated, accessible and timely support to clients<sup>8</sup>.”

The VAGO report made several findings on children and young people,<sup>9</sup> beyond this, we frequently see clients who are viewed as semi-independent or nearing 18 and who will not receive a service referral for child protection or the Orange Door. This leaves these young people even more vulnerable, without supports and at risk of (further) criminalisation.

Further, we are concerned that the Orange Door hubs are not adequately equipped to deal with circumstances where vulnerable women are identified as both the victim and perpetrator of family violence. We see this occur in a range of different circumstances, including:

- where a woman has been misidentified by police as the primary aggressor in a family violence incident, for instance, in circumstances where she has defended herself against intimate partner violence;
- where cross intervention orders have been made or sought; or
- where a woman is the protected person on an intervention order involving her partner or former partner and is also identified as the perpetrator on an unrelated order involving other members of her family. The connection of legal services to the Orange Door model can also help women who have been misidentified as the primary aggressor in the identification of legal needs and through legal referrals.

#### **Looking forward – what is still required:**

- Implement Recommendation 3.5 of the Access to Justice report: Include legal triage in the Support and Safety Hubs and family violence services and support all workers including child first/child welfare workers to know how to identify legal needs and make safe and effective referrals to legal services.
- Implement the findings of the VAGO report into Support and Safety Hubs and fully integrate legal services within the Orange Door model.
- Improve linkages between SFVCs and the Orange Door and family violence services.
- Establish a whole-of-government governance structure to support the development, implementation, monitoring and evaluation of the Hubs and other recommendations of the Commission.

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<sup>7</sup> ‘These components’ refers to a range of a ‘future set of functions’ including legal services to expand the function of the Hubs “An example of a component in the future hub model is co-locating other services in hubs, such as legal services”

<sup>8</sup> Ibid p12

<sup>9</sup> Ibid p14

## **Family Violence Safety Notices (FVSNs)**

When the Commission made recommendation 76 to extend the amount of time before a FVSN came before the courts to within 14 days, the intention was for this to allow sufficient time for the police to prepare intervention order matters for hearing including discussing the affected family member's wishes with them before court, and for respondents and victims to understand the court process and prepare for the consequences of an order, including having received legal advice prior to attending court. If this extra time of the FVSN is used appropriately, the first mention in court of a FVSN could be substantial, purposeful and more efficient at resolving matters in a safe and effective manner.

VLA has previously raised concerns that the legislative extension of the FVSN time period alone, would be unlikely to result in more parties receiving legal advice prior to the first mention or the police prosecutor or police civil advocate (and consequently the legal representatives also) being better prepared on the first return date, unless other service changes were made. VLA recommended two additional measures – effective legal referrals from police to legal services at the time of issuing the FVSN and changes to police practice to ensure the preparation of matters prior to court.

Despite the acquittal of recommendation 76, legal services still see most clients through our duty lawyer services on the first mention date and the onus remains largely on the parties to recognise legal need and pursue legal advice. In addition, in practice FVSNs are still brought to court very quickly without additional time being taken for earlier preparation.

### **Looking forward – what is still required:**

- We suggest improved collaboration between the Court, police and specialist family violence services to increase pre-court referrals legal assistance, such as we've seen through some recent changes in light of COVID-19.

## **Family violence and young people including adolescents who use violence in the home (AVITH)**

The Royal Commission made six recommendations to address and respond to Adolescent Violence in the Home (AVITH), and it acknowledged that AVITH is poorly understood and requires a systematic response.

Adolescent family violence is a distinct phenomenon to adult-perpetrated intimate partner violence and requires a distinct response. This includes recognising that the adolescent may themselves also be a victim of family violence and potentially still currently at risk of violence being perpetrated by a parent or other family member. Research has found that childhood trauma is a major contributor to adolescent use of violence in the home, yet our family violence court system does not systematically record or respond to this or necessarily understand or respond to intergenerational violence and trauma.

While several of the recommendations of the Royal Commission related to AVITH have been implemented and the remaining recommendations are listed as 'in progress', two of the most significant recommendations of the Royal Commission have still not been implemented in any substantive way, namely:

- Recommendation 123 - state-wide roll out of Adolescent Family Violence Program, and



- Recommendation 124 - additional crisis and longer term supported accommodation options for adolescents who use violence in the home.

Despite these important recommendations, post Royal Commission there is still a critical service gap in the family violence service system for adolescents who are using violence in the home and more specialist services and dedicated crisis accommodation is needed.

The recently released PIPA report provided a much needed and detailed examination of the policy response to AVITH, which expands on the analysis and recommendations made by the Royal Commission and seeks to fill these gaps by developing awareness of AVITH and identifying available response and service gaps across three jurisdictions: Tasmania, Western Australia and Victoria.<sup>10</sup>

The PIPA report found that police, courts, child protection services and social support services are not equipped to respond constructively and holistically to AVITH, and service responses are not tailored to the unique situation and vulnerabilities of adolescents who use violence in the home. Responding to AVITH by preventing contact between adolescents and their parents and criminalising their behaviour is not always appropriate and may sometimes be counterproductive. It may result in parent victims not seeking assistance from the police or support services for fear of the repercussions for their family life. This reduces victim safety and may also result in a missed opportunity to connect the child or young person with support services that will assist them to develop respectful relationship skills that they can carry with them through life.

#### **Looking forward – what is still required:**

The Victorian Government should implement and adequately resource<sup>1</sup>:

- recommendations 123 to 128 from the *Royal Commission into Family Violence* for establishing a specialised response for adolescents; and
- the recommendations of the PIPA project: Positive Interventions for Perpetrators of Adolescent violence in the home report (2020).<sup>1</sup>

### **Elder abuse as a form of family violence**

The Royal Commission also recognised that older people may have particular needs when engaging with the family violence system (when victims or perpetrators of family violence) and that elder abuse is a unique form of family violence, which requires tailored services and supports.

There were a number of recommendations related directly to elder abuse which have been fully or partially implemented, including a trial of a police response to financial abuse (recommendation 155) and the development and delivery of information on family violence for older people, including a media campaign to raise awareness of elder abuse (recommendation 153). We also note the current work being undertaken by Family Safety Victoria (FSV) to improve responses to elder abuse.

However, despite Seniors Rights Victoria seeing a 60% increase in service demand for elder abuse since the Commission's report, we continue to see elder abuse minimised or under-recognised. This is compounded by a court system and the use of family violence intervention orders that can be a

<sup>10</sup> Campbell, E., Richter, J., Howard, J., & Cockburn, H. (2020). *The PIPA project: Positive interventions for perpetrators of adolescent violence in the home (AVITH)* (Research report, 04/2020). Sydney, NSW: ANROWS p.211

difficult system to navigate for older people, particularly those with age-related communication difficulties or from non-English speaking backgrounds.

Through our work we see the way in which perpetrators of elder abuse are often not held accountable for their actions. Currently there are no perpetrator interventions (including behaviour change programs) designed to respond to elder abuse or that recognise ageism as a driver of such abuse.

In many situations the older person wants the abuse to be resolved, but also holds concerns for the perpetrator. Many situations are complicated by external factors affecting the perpetrator such as financial difficulties, experience of mental or physical health issues, substance abuse or a lack of housing. A history of family conflict and family violence can also affect the parent–child relationship. As with other forms of family violence, the potential for elder abuse within families to be exacerbated by such external factors is likely to increase during and as a result of the COVID-19 public health measures.

### Looking forward – what is still required:

The Victorian Government should:

- continue current work in developing an overriding framework that recognises and explains elder abuse as a specific form of family violence with its own drivers and risk factors. This framework should include specific responses to guide how the elder abuse system integrates with the family violence system.
- provide ongoing and sustainable resourcing of services and programs to prevent and address elder abuse, including Men’s Behaviour Change Programs, ensuring that those services, including the courts system and law enforcement, understand the unique characteristics of elder abuse and the responses needed.

## Infringements

The Federation, VLA and Financial Counselling Victoria’s Infringements Working Group<sup>11</sup> welcomed the introduction of the Family Violence Scheme (**FVS**) in the *Fines Reform Act 2014* and the amendment to the *Infringements Act 2006 (Vic)* to include family violence as a ‘special circumstance’, as part of the Victorian Government’s implementation of recommendations 112 and 113<sup>12</sup> of the Royal Commission into Family Violence.

We welcome and support the FVS, which can provide an effective mechanism for victim/survivors to have their infringements and associated demerit points withdrawn. The majority of VLA and CLC applications to the FVS have resulted in successful outcomes, with clients expressing relief when their infringement debt has been waived in full.

Former Justice Connect client Laila’s story below highlights the importance of the FVS for victim/survivors facing fines.

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<sup>11</sup> The Infringements Working Group, which is co-convened by Justice Connect, WEstjustice and Uniting, is an alliance of 38 organisations from the legal assistance and financial counselling sectors that provide frontline help with infringements to vulnerable Victorians, including family violence victim/survivors.

<sup>12</sup> Royal Commission into Family Violence, Report and Recommendations, available at: <http://rcfv.archive.royalcommission.vic.gov.au/Report-Recommendations.html>

### **Laila's experience of the Family Violence Scheme**

Laila has experienced extensive family violence, is diagnosed with PTSD, grief disorder, depression and anxiety and is in remission from substance dependence. When she first spoke with community lawyers from Justice Connect, she had an outstanding arrest warrant for failing to appear at a Magistrates' Court hearing involving s 165 of the FRA.

A significant number of Laila's historical infringements and fines had been incurred in the context of family violence as her ex-partner often drove the car which was registered in her name. Laila was highly anxious about going to court, but Justice Connect's integrated legal and social work assistance ensured she was able to get the warrants executed and received a new court date. At the s 165 hearing, Laila's infringements were waived in full on the grounds of family violence, mental health, and substance dependence.

Laila also had more recent infringements directly related to her experiences of family violence, which could not be dealt with as part of the s 165 hearing. Justice Connect helped Laila to lodge a FVS application in relation to those infringements, ensuring she experienced a tailored process that successfully exited her from the fines system without returning to court.

The fines that Laila was facing were significantly exacerbating her anxiety and Laila expressed her relief at the outcomes achieved in relation to her fines. Laila explained that resolution of her fines meant that she could start a new chapter of her life. As a result, Laila has now been able to prioritise her safety, addiction issues and ongoing health recovery.

However, there have been unanticipated issues in the implementation of the FVS. When it commenced, the FVS was quick, with applications being processed within 6 to 8 weeks. Since then, processing times have lengthened – in some cases to over 12 months. Further, Fines Victoria has mandated a Statutory Declaration from applicants which explains in detail their experience of family violence and connection to their infringements, even where this evidence is already provided in a family violence intervention order or a report. Fines Victoria has also applied an overly technical and inconsistent interpretation of the term "substantially contributed", at times requiring detailed evidence of a direct causal and temporal nexus between an applicant's experience of family violence and their infringements. These evidentiary requirements are not mandated under the FVS. The delays and evidentiary requirements imposed by Fines Victoria have created anxiety and uncertainty for applicants and have even been retraumatising for some clients, unduly limiting access to the FVS. The FVS also excludes excessive speed infringements, meaning that victim/survivors who fail to nominate within 28 days are penalised financially, with a licence suspension or cancellation, and a conviction recorded on their criminal record, even where they were not the driver.

Victim/survivors are also excluded from the FVS unless they apply within seven days of receiving a 7-day notice. In many cases, service of a 7-day notice is the first time a person becomes aware of the infringements and seven days is too short for most applicants to compile an FVS application.

### Looking forward – what is still required:

- We consider that increased uptake and efficiency of the FVS could be achieved through: improving efficiency of FVS applications by Fines Victoria, including implementing a policy to process an FVS application within three months.
- ensuring that FVS applications are assessed in a legally correct, transparent, and consistent way, without requiring detailed evidence of a direct causal or temporal nexus.
- amending the evidentiary requirements for FVS applications by removing the statutory declaration requirement.
- further legislative reform to make excessive speeding fines eligible for the FVS; and
- allow all applications to the FVS after expiry of a 7-day notice.

## Tenancy

Recent reforms to sections 233A-233D of the *Residential Tenancies Act (RTA)* make it easier for victims/survivors of family violence to apply to end a tenancy or create a new tenancy where there is family violence. These reforms are welcome and implement recommendation 116 of the Commission.

However, subsection 233B(2) of the RTA requires further legislative amendment to be fully effective. As presently drafted, a person wanting to leave a tenancy early due to family violence needs to show that they can reasonably be expected to comply with the duties of a tenant under a tenancy agreement and that they would suffer hardship if they were compelled to leave.<sup>13</sup> These tests should only apply to applications to end an existing tenancy and then create a new tenancy, not applications only to end an existing tenancy.

Recommendation 117 encouraged the use of applications under section 233A of the RTA, including through training and education. Applications must be made in the tenancy jurisdiction, which is heard by the Victorian Civil and Administrative Tribunal. However, given that many clients experience family violence, family law, tenancy and financial problems simultaneously, this usually means separate applications in separate courts and jurisdictions.

To encourage greater use of applications under section 233A of the RTA, the Magistrates' Court should also have jurisdiction to deal with matters arising under the family violence provisions in sections 233A-233D of the RTA. This would allow the tenancy agreement to be dealt with at the first hearing of an intervention order application. It would ensure applicants do not have to make multiple applications to deal with family violence and its related impacts, including changing a tenancy agreement due to leaving the rental property or having another tenant excluded and a new tenancy agreement created.

### Looking forward – what is still required:

- We recommend that s 233B of the RTA be further amended so that the matters in subsections (2)(a) and (b) only apply where a person wants an order under s 233B(1)(b) to create a new tenancy agreement due to family violence and not to an application under s 233B(1)(a) to end a tenancy.
- To encourage use of s 233A of the RTA, the Magistrates' Court should have jurisdiction to deal with matters arising under the family violence provisions in sections 233A-233D of the RTA.

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<sup>13</sup> s233B(2)(a) and (b) of the RTA

## The mental health system and family violence

We note the recorded implementation of recommendations 98 and 99. However, in our experience family violence and the experience of trauma continues to be under-recognised and too frequently responded to solely as an individualised mental health issue. There remains a lack of collaboration between mental health and family violence services to provide trauma-informed responses and active referral processes into the family violence sector from mental health services. There is also a lack of adequate access to appropriate mental health supports and services in the community for people who use and experience family violence, which contributes to increased risk<sup>14</sup>.

VLA's Independent Mental Health Advocacy non-legal advocates have continued to see mental health services either dismissing people who disclose family violence or sexual assault or considering it to be a symptom of their mental health issues. VLA client experiences demonstrating the ramifications of a poor understanding of family violence, include:<sup>15</sup>

- As part of their control or abuse, perpetrators of family violence can make allegations that the victim is experiencing mental health issues. We have seen women admitted to mental health units solely on the basis of their partners' reports of their behaviour or mental state; and
- Reports of family violence can be dismissed as symptomatic of mental health issues, therefore not properly addressed or responded to.

This can lead to clients missing out on early access to legal and non-legal support and family violence services. It can also cause or exacerbate mental health issues, putting women in particular at greater risk of experiencing legal problems, including child protection involvement, and the continuation of family violence.

A better understanding of the dynamics of family violence may prevent tipping people into the mental health system and keep them safer.

### Looking forward – what is still required:

The Victorian Government should:

- require and fund mental health services to develop policies to ensure family violence risk screening is undertaken as part of the intake process within the mental health system (e.g. risk identification, referrals to family violence services for safety planning).
- provide guidance to require all aspects of the mental health and justice systems (e.g. mental health services, Victoria Police, courts) to improve their responses to people who use family violence and are experiencing mental health issues.

We also encourage any family violence reform to consider the findings and recommendations of the current Royal Commission into Victoria's Mental Health system (RCVMHS), particularly any recommendations that support people who experience and use family violence to access family violence services, and seek to improve responses to family violence in the mental health system.

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<sup>14</sup> Victoria Legal Aid, Submissions to the Royal Commission into Victoria's Mental Health System, *Roads to Recovery: Building a better system for people experiencing mental health in Victoria* (July 2019) and *Paving the Roads to Recovery: Our recommendations* (May 2020)

<sup>15</sup> Roads to Recovery, above, p.53.