

Chapter 6

Access to the Magistrates' Court

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INTRODUCTION

6.1 For the intervention order system to be effective, it is essential that it is accessible for every person in need of protection from family violence. This chapter outlines ways that access to the Magistrates' Court can be improved for all Victorians and for marginalised groups which have specific difficulties in accessing justice. It starts by outlining the need for cultural change in the Magistrates' Court, involving all people who work in the court, to make the system fair, consistent and responsive to the needs of people experiencing violence. We highlight the need for a specialist approach to family violence within the court, and for better information and support to be provided for people applying for orders. This includes the critical need for improved access to legal advice. This chapter also outlines necessary changes to improve the physical features of courts to ensure a safe environment for intervention order applicants.

6.2 A constant theme in the commission's consultations on family violence has been the need for fundamental changes in attitudes and approaches to family violence within the Magistrates' Court. Family violence is taken seriously by many people in the court system, however, the response is uneven. This leads to unpredictable outcomes for both applicants and respondents and to a minimisation of family violence and women's safety. The first section of this chapter outlines the commission's recommendations for change for registrars and magistrates. As registrars are the first point of contact with the court, they will be discussed first.

CULTURAL CHANGE IN COURT—REGISTRARS

6.3 Most people who apply for intervention orders do not have access to legal advice or any other form of assistance before attending court.⁵⁷⁴ Therefore, the court registrar is the first—and possibly the only—person they will have contact with who can explain the process and information necessary for their application. Registrars perform an essential task in difficult circumstances, and many registrars provide a high level of support to those dealing with family violence.

6.4 A registrar's role in the application process is outlined in the Magistrates' Court Family Violence and Stalking Protocols.⁵⁷⁵ These protocols refer to the Magistrates' Court Service Standards about registrars' behaviour: '[c]ourt personnel will be courteous and responsive to the public and accord respect to those with whom

574 See paras 6.42–6.50.

575 Magistrates' Court of Victoria, *Family Violence and Stalking Protocols* (2003).

they come into contact'.⁵⁷⁶ The protocols provide that registrars should serve applicants promptly and that applicants should appear before a magistrate on the same day if the complaint involves imminent violence or property damage, or the applicant is suffering a high level of distress.⁵⁷⁷ The protocols also guide what information registrars should include in the application, including the incident that brought the applicant to court, a brief description of the past relationship and what concerns the applicant has for future behaviour.⁵⁷⁸

VIEWS FROM SUBMISSIONS

6.5 Submissions received by the commission highlighted similar problems with registrars to those the commission outlined in the Consultation Paper. While submissions acknowledged that some Victorian registrars provide an effective level of service to people experiencing family violence, practice and approach vary considerably from registrar to registrar. The main problems raised by submissions were registrars:

- acting as gatekeepers to the intervention order system;
- acting as advisers;
- using inappropriate stereotypes or judgments in their work with family violence victims.

REGISTRARS AS GATEKEEPERS

6.6 A common concern raised in the commission's consultations and in submissions was that registrars act as gatekeepers to the intervention order system.⁵⁷⁹ This may happen because many court staff feel frustrated by the large number of intervention order applications that they consider 'trivial' or a misuse of the Act. Registrars may fail to distinguish between family violence intervention orders and stalking intervention orders (which are mainly used in neighbour disputes) and therefore feel that all applicants for all types of intervention orders are likely to be wasting the court's time.⁵⁸⁰ Some registrars assess whether an applicant is 'genuine'

576 Ibid 27.

577 Ibid paras 2.1, 2.3.

578 Ibid para 4.6.

579 Submissions 39 (Royal Women's Hospital), 44 (Anonymous), 52 (Gippsland Community Legal Service), 74 (Women's Legal Service Victoria), 77 (Anonymous), 81 (Anonymous); Interview with Julie, 27 April 2005.

580 Victorian Law Reform Commission, *Review of Family Violence Laws: Consultation Paper* (2004) above n 8, para 4.36–4.37.

based on their own beliefs about the nature of family violence and how a 'real' victim would behave. If registrars believe an applicant is not genuine, they may refuse to provide an application form; refuse to allow an application for an interim order; or try to dissuade the person from applying because the case is not serious enough.⁵⁸¹ One woman who had experienced family violence told the commission:

You go into the clerk's room and you give a brief run down of your situation. The clerks seem to be more concerned with how much they can actually fit onto the order. It is they who make the decision whether you can go into court there and then and apply for an interim order or whether you have to come back a couple of days later. I remember sitting there and sweating and thinking 'If I go home we're dead. We're dead. I really need this' and hoping that this person will say, 'Yes I can get you in to see the judge today'. I found that really hard, that a clerk had the right to decide on my life and the protection of my children. That wasn't how I thought it would be when I went to court. I thought you would go before the judge.⁵⁸²

6.7 Another woman told the commission:

I requested that my son be included on the intervention order I sought. I was promptly told by the registrar, not only what information on my application was going to make the cut onto the official application, but that if he had shown more physical violence against my son, then my son would be included. I complained that witnessing the violence was in my belief the main cause of much of the infant's distress, and was told that it did not matter. Because the application typed by the registrar did not include my son, when the court date two weeks later arrived, I was told I could no longer apply for my son and to deal with it.⁵⁸³

REGISTRARS AS ADVISERS

6.8 A related problem is the role of registrars in providing advice to intervention order applicants. A registrar's role is to provide information and assistance, but is not to be an advocate for either side to an application. However, in the absence of a police application or any legal advice, a registrar may be an applicant's sole source of information about the system. Therefore, the content of an application may depend heavily on the registrar's skills in eliciting information from the applicant, completing the application form or providing guidance to the applicant on how the form should

581 Submissions 9 (Cindy Smith, social worker), 39 (Royal Women's Hospital), 52 (Gippsland Community Legal Service), 74 (Women's Legal Service Victoria), 81 (Anonymous).

582 Interview with Julie, 27 April 2005.

583 Submission 44 (Anonymous).

be completed. Submissions mentioned the following examples where registrars have provided incorrect or inappropriate advice to applicants:

- Informing applicants they had no grounds for an order when it was clearly not the case.⁵⁸⁴ This included telling applicants that there must be severe physical or sexual violence to justify an intervention order application.⁵⁸⁵
- Informing applicants that their children could not be included on the application form, despite clear evidence that children had witnessed or heard family violence or where registrars had been specifically requested to include children.⁵⁸⁶
- Informing a potential applicant that she could not apply for an intervention order as she did not know her ex-partner's official address, even though he was attending her house daily to stalk and harass her.⁵⁸⁷

6.9 In addition to the problem of incorrect or inappropriate advice, submissions also mentioned instances where insufficient or no advice is given to applicants. This included: not informing applicants they can apply for an interim order on the day if they are in need of immediate protection;⁵⁸⁸ not informing applicants of the availability of legal or other support services at the court; not providing any assistance with filling out the application form; or filling out the form on behalf of the woman and leaving out crucial information.⁵⁸⁹ The Federation of Community Legal Centres believes this is often because registrars have insufficient time and resources to perform their role effectively, and that an increase in court staff may address this issue in some cases. The Magistrates' Court highlighted Victoria's magistrate to registrar ratio, which is the lowest in Australia, and the significant strain this places on registrars trying to complete their duties under the Magistrates' Court Protocols.⁵⁹⁰

584 Submissions 52 (Gippsland Community Legal Service), 74 (Women's Legal Service Victoria).

585 Submissions 39 (Royal Women's Hospital), 77 (Anonymous), 81 (Anonymous).

586 Submissions 44 (Anonymous), 74 (Women's Legal Service Victoria), 77 (Anonymous).

587 Submission 9 (Cindy Smith, social worker).

588 This issue is addressed in paras 7.23–7.28 (interim applications in court hours).

589 Submissions 74 (Women's Legal Service Victoria), 77 (Anonymous). Registrars are required under the court's protocols to inform applicants of 'any court support services that are available for emotional and practical support at Court and assist with or contact these sources': Magistrates' Court of Victoria (2003) above n 575, para 3.1(b).

590 The Magistrates' Court also highlighted physical constraints in complying with the protocols. Eg, the protocols provide that applicants must be interviewed in a private room, however, some courts do not have the facilities available for this to occur.

JUDGMENTAL REGISTRARS

6.10 A further problem raised in submissions is the attitude and approach of some registrars to family violence.⁵⁹¹ Some were described as very helpful, however, others were said to be 'rude', 'judgmental', 'dismissive', 'racist' and 'unhelpful'.⁵⁹²

6.11 Judgmental attitudes were a particular concern, especially about women who may have attended court on many occasions for family violence.⁵⁹³ In this situation, registrars may appear frustrated with applicants, blame them for the violence or feel they are 'deserving' of the violence.⁵⁹⁴ The Victorian Community Council Against Violence noted that these judgmental attitudes reveal a misunderstanding of the nature of family violence and its impact on the individual experiencing it.

6.12 Submissions noted that some registrars also demonstrate a lack of awareness of the nature of family violence by, for example, not appreciating the impact of family violence on children.⁵⁹⁵ Some registrars do not appreciate the impact of non-physical violence, such as economic or emotional abuse, on people experiencing family violence.⁵⁹⁶ Registrars may not see non-physical forms of violence as grounds for an intervention order and try to discourage people in these situations from applying.

6.13 One woman who was physically, sexually, emotionally and financially abused by her husband over many years and who sought an intervention order told the commission:

The Registrar at the Magistrates Court was most reluctant to grant me an application for an Intervention Order. He told me that Intervention Orders were for serious matters and that he felt I was wasting the court's time—he said it was unlikely that a Magistrate would grant me an Interim Order. The Registrar explained that people turn up at the court with broken arms and noses—Intervention Orders are for these people, not people like me.⁵⁹⁷

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- 591 Submissions 9 (Cindy Smith, social worker), 39 (Royal Women's Hospital), 44 (Anonymous), 69 (Victorian Community Council Against Violence), 74 (Women's Legal Service Victoria), 77 (Anonymous), 81 (Anonymous).
- 592 Submissions 9 (Cindy Smith, social worker), 69 (Victorian Community Council Against Violence), 77 (Anonymous); Victorian Law Reform Commission (2004) above n 8, para 7.24.
- 593 Submission 69 (Victorian Community Council Against Violence).
- 594 Ibid.
- 595 Submissions 44 (Anonymous), 69 (Victorian Community Council Against Violence), 74 (Women's Legal Service Victoria), 77 (Anonymous).
- 596 Submissions 69 (Victorian Community Council Against Violence), 77 (Anonymous), 81 (Anonymous).
- 597 Submission 81 (Anonymous).

SUGGESTIONS FOR CHANGE

6.14 Submissions contained recommendations for improving the service provided by registrars. The most common recommendation was that registrars should undertake thorough education and training about family violence.⁵⁹⁸ Submissions from people who have experienced family violence, the Gippsland Community Legal Service, the Royal Women's Hospital, the Federation of Community Legal Centres, the Victorian Community Council Against Violence and the Magistrates' Court all highlighted the importance of better training for registrars. The Magistrates' Court noted that sufficient resources are not available for comprehensive family violence training of all registrars in family violence, and that training has been provided 'inconsistently and invariably by other staff'. The Victorian Community Council Against Violence noted:

It is important that court staff are aware of the considerable strength it can take for a client to get to court, and that clients can be disempowered by court staff through their response to them.

6.15 Other suggestions included:

- increased availability of legal advice at courts, so applicants are not relying only on the registrar to make their application;⁵⁹⁹
- more registrars so they have time to provide information and assistance to applicants in a private location;⁶⁰⁰
- establishment of a complaints procedure so applicants can complain about service received from registrars.⁶⁰¹

ADEQUATE TRAINING AS A STATE RESPONSIBILITY

6.16 As outlined in chapters 3 and 5, combating violence against women is an international obligation of all States which are parties to CEDAW. Many international instruments recognise the importance of adequate training and education of people working in the justice system as part of this obligation. The committee in charge of

598 Submissions 25 (Barbara Roberts), 39 (Royal Women's Hospital), 52 (Gippsland Community Legal Service), 64 (Federation of Community Legal Centres (Vic)), 69 (Victorian Community Council Against Violence), 86 (Magistrates' Court of Victoria).

599 Submission 74 (Women's Legal Service Victoria). The commission has recommended improved access to legal advice for applicants at recommendations 39–41.

600 Submission 64 (Federation of Community Legal Centres (Vic)). Eg, the Federation of Community Legal Centres mentioned that the guideline for interviews to be conducted in a separate interview room is very rarely adhered to because there were too few counter staff.

601 Submission 64 (Federation of Community Legal Centres (Vic)).

monitoring the implementation of CEDAW has held that '[g]ender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention'.⁶⁰² The General Assembly Declaration on the Elimination of Violence Against Women also provides that States should:

[t]ake measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women.⁶⁰³

COMMISSION'S RECOMMENDATIONS

6.17 The commission agrees that registrars can sometimes create an inappropriate barrier to the intervention order system for applicants. Thorough training and education for all registrars who work with applicants for intervention orders is essential. Many of the problems experienced by applicants relate to a lack of understanding by registrars of the impact and nature of family violence. The commission acknowledges that family violence training will be provided to registrars completing the new Certificate IV Traineeship in Government (Court Services) at Victoria University. However, the numbers of trainee registrars undertaking this course is relatively small. Registrars working in the specialist Family Violence Court Division have also received specialist training, but again, only a small number of registrars are involved. Clearly, a more comprehensive training and education program for all registrars dealing with family violence must be provided.

6.18 Any training provided must cover:

- the effects of family violence, especially non-physical violence, on people experiencing it;
- the impact of family violence on children;
- the purposes and principles of a new Family Violence Act;⁶⁰⁴
- issues facing Indigenous Australians, migrant women and people with disabilities when experiencing family violence and seeking access to justice;
- clarification of the registrar's role, that is, registrars cannot refuse to allow a person to make an application, they must inform all applicants of the

602 Committee on the Elimination of All Forms of Discrimination against Women, *General Recommendation 19* (11th session, 1992) UN Doc A/47/38 at 1 (1993) para 24(b).

603 *General Assembly Declaration on the Elimination of Violence Against Women*, GA res 48/104, UN Doc A/RES/48/104 (1993) art 4(i).

604 We have recommended purposes and principles in recommendations 3, 4.

possibility of getting an interim order and they must inform applicants of support services available at courts;

- strategies for obtaining information from applicants and ensuring all relevant information is provided on the application form.

6.19 The commission has also recommended that registrars working in family violence receive specific training on safety at courts for applicants.⁶⁰⁵

6.20 It is also essential that registrars are provided with the time and resources they need to perform their role effectively. In any family violence list system,⁶⁰⁶ the court must provide an adequate number of registrars to perform the role that is required in this jurisdiction. This may involve an increase in the ratio of court staff to magistrates for the family violence jurisdiction. Registrars should also be provided with appropriate on-the-job support to deal with people experiencing and using violence. This should include peer support programs, debriefing, access to counselling and schemes for performance reviews and recognition. The potential for burnout and the need for counselling and debriefing has been recognised in some jurisdictions that operate specialist family violence courts or specialist days within a court.⁶⁰⁷

! RECOMMENDATION(S)

34. All registrars who come into contact with family violence cases, including all those working in the specialist family violence list, should receive specialised training. This training should include:

- the effects of family violence, especially non-physical violence, on people experiencing family violence;
- the impact of family violence on children;
- the purposes and principles of a new Family Violence Act;
- issues facing Indigenous women, migrant women and women with disabilities when experiencing family violence and seeking access to justice;

605 See Recommendation 61.

606 Recommendation 37 recommends a family violence list system for all Magistrates' Courts.

607 Julie Stewart, *Specialist Domestic/Family Violence Courts within the Australian Context* (2005) above n 420, 18–19.

! RECOMMENDATION(S)

- clarification of the registrar's role, that is, that registrars cannot refuse to allow a person to make an application for an order, should inform all applicants of the possibility of getting an interim order, and inform applicants and respondents of support services available in court;
 - strategies for obtaining information from applicants and ensuring all relevant information is provided on the application form.
35. The family violence Magistrates' Court list should include adequate numbers of registrars.
36. Registrars working in the family violence list should be provided with adequate support, including peer support programs, access to debriefing and counselling and schemes for performance review and recognition which take into account their specialist status.

CULTURAL CHANGE IN COURT—MAGISTRATES

He's been rough with you in the past. He says he's sorry. I assume that means he's not going to do it again. He's going to try and keep his temper. He's only human and he's a bloke. You've got to be tolerant of that you see. Blokes need tolerance.⁶⁰⁸

6.21 There is a significant variation in the attitudes and approach of Victorian magistrates to family violence. This can be partly attributed to the lack of guidance provided in the Crimes (Family Violence) Act on matters that should be taken into account when deciding on an intervention order application. However, this variation in approach is also due to the differing levels of understanding that magistrates have about family violence. Both of these factors may lead to magistrates refusing to make orders or making inappropriate orders. Examples provided to the commission in consultations include:

- refusal to grant intervention orders where there has been no physical violence but constant harassing behaviour or psychological abuse;

608 Magistrate to a woman applying for a change in contact handover arrangements: Submission 74 (Women's Legal Service Victoria).

- refusal to grant an order because an applicant was in a refuge and was therefore considered safe and not in need of an order;
- refusal to grant an order to a woman whose application was based on the fact that her partner had sexually assaulted her—the rationale given was that the parties had separated and that the woman was therefore no longer at risk because the respondent would be unlikely to sexually assault her on the street.

VIEWS FROM SUBMISSIONS

6.22 Submissions received by the commission wanted magistrates to be made aware of the nature and effects of family violence on people applying for intervention orders.⁶⁰⁹ Many service providers had experience of inappropriate and dangerous decisions being made by magistrates who had little understanding of the nature of family violence. The Women’s Legal Service Victoria told the commission:

Inconsistent decision making and poor treatment by magistrates of people in need of protection is probably the single worst problem with the current intervention order system ... Currently, the factor that is most likely to determine whether a person in need of protection will obtain an intervention order, and whether they will leave court with a belief that the justice system can and will protect them, is which magistrate hears their case.

6.23 An illustration of the lack of awareness of the impact of family violence was provided to the commission by one woman:

I remember [the magistrate] asked me about a specific date and I asked him whether it was ok if I checked my notes, because I had written everything down, times, dates, everything. He said ‘No’ in a raised voice, ‘I just want you to answer the question now’. It was like being stood over again, that sort of intimidation. I could have just sunk back into a hole.⁶¹⁰

6.24 Submissions were overwhelmingly in support of thorough, regular and compulsory family violence training for magistrates.⁶¹¹ Areas of particular concern

609 Submissions 12 (Sergeant Paul Evans, Victoria Police), 27 (Robinson House BBWR), 30 (Violence Against Women Integrated Services), 33 (Women’s Domestic Violence Crisis Service), 40 (Whittlesea Domestic Violence Network), 49 (Domestic Violence and Incest Resource Centre), 69 (Victorian Community Council Against Violence), 74 (Women’s Legal Service Victoria), 79 (Department of Human Services).

610 Interview with Julie, 27 April 2005.

611 Submissions 12 (Sergeant Paul Evans, Victoria Police), 27 (Robinson House BBWR), 30 (Violence Against Women Integrated Services), 33 (Women’s Domestic Violence Crisis Centre), 40 (Whittlesea Domestic Violence Network), 41 (Victoria Legal Aid), 46 (Royal Children’s Hospital), 49 (Domestic Violence and Incest Resource Centre), 58 (Family Court of Australia), 61 (Broadmeadows Community Legal Service), 63 (Darebin Family Violence Working Group), 64 (Federation of Community Legal Centres (Vic)), 65 (Associate Professor John Willis, La Trobe University), 66 (Aboriginal Family Violence Prevention and

included: the nature, dynamics and effects of family violence;⁶¹² the impact of family violence on children;⁶¹³ the nature of family violence in Indigenous communities and the barriers experienced in accessing the legal system;⁶¹⁴ and the issues that women with disabilities face when trying to apply for an intervention order.⁶¹⁵

6.25 Sergeant Paul Evans suggested that one way to ensure more consistent decision making would be to have designated family violence hearings. The Broadmeadows Community Legal Service suggested that only those magistrates who have completed family violence training should sit on family violence cases.

6.26 Other suggestions for improvements from submissions included:

- appointing court staff and magistrates who can empathise with those experiencing family violence;⁶¹⁶
- appointing more female magistrates and more magistrates from diverse backgrounds;⁶¹⁷
- including guiding principles in the Act, as well as factors for magistrates to take into account when deciding on an application;⁶¹⁸
- monitoring the effectiveness of any training,⁶¹⁹ including by conducting an attitudinal survey of Victorian magistrates to determine current views to measure any training outcomes;⁶²⁰

Legal Service (Victoria)), 69 (Victorian Community Council Against Violence), 74 (Women's Legal Service Victoria), 79 (Department of Human Services).

612 Submissions 30 (Violence Against Women Integrated Services), 49 (Domestic Violence and Incest Resource Centre), 69 (Victorian Community Council Against Violence).

613 Submissions 30 (Violence Against Women Integrated Services), 63 (Darebin Family Violence Working Group), 69 (Victorian Community Council Against Violence).

614 Submissions 57 (Victorian Aboriginal Legal Service), 66 (Aboriginal Family Violence Prevention and Legal Service (Victoria)).

615 Submission 79 (Department of Human Services).

616 Submission 27 (Robinson House BBWR).

617 Submission 40 (Whittlesea Domestic Violence Network). The commission acknowledges the efforts being made by the Attorney-General to promote more diversity in Victoria's judiciary, including the Magistrates' Court. These efforts have included changing the selection process for judicial officers to receive suggestions and expressions of interest from a wider range of organisations and individuals, creating the office of part-time magistrate and requesting the Judicial Remuneration Tribunal to examine judicial working conditions to create more flexibility and a more family friendly workplace: the Hon Rob Hulls, 'Speech' (Paper presented at the 'Women at the Bench Forum', 2 August 2005).

618 Submissions 30 (Violence Against Women Integrated Services), 49 (Domestic Violence and Incest Resource Centre), 64 (Federation of Community Legal Centres (Vic)). The commission has recommended principles and purposes for the Act at recommendations 3, 4.

- magistrates who deal with family violence matters meeting with each other regularly to discuss the way they interpret the Act and deal with particular issues.⁶²¹

JUDICIAL EDUCATION AS A STATE RESPONSIBILITY

6.27 As noted, education and training of people who work in the justice system is essential to uphold Australia's obligations under the CEDAW.⁶²² The UN Model Strategies provide more detailed guidance on the convention, stating that all governments, in cooperation with organisations seeking women's equality and relevant professional associations, should:

provide for or to encourage mandatory cross-cultural and gender-sensitivity training modules for police, criminal justice officials, practitioners and professionals involved in the criminal justice system that deal with the unacceptability of violence against women, its impact and consequences and that promote an adequate response to the issue of violence against women.⁶²³

6.28 The UN Beijing Platform for Action also notes the importance of measures and programs aimed at increasing the knowledge of judicial officers of the causes, consequences and mechanisms of violence against women.⁶²⁴ The Platform for Action provides that all governments should 'develop strategies to ensure that the re-victimisation of women victims of violence does not occur because of gender-insensitive laws or judicial or enforcement practices'.⁶²⁵

SPECIALISATION IN OTHER JURISDICTIONS

6.29 Over the past 15 years, several jurisdictions have developed specialist courts to deal with family violence. In the United States there are over 200 family violence

619 Submission 74 (Women's Legal Service Victoria).

620 Submission 49 (Domestic Violence and Incest Resource Centre).

621 Submission 30 (Violence Against Women Integrated Services).

622 Refer to para 6.16 in this report.

623 *General Assembly Resolution on Crime Prevention and Criminal Justice Measures to Eliminate Violence Against Women*, GA Res 52/86, UN Doc A/RES/52/86 (1998) Annex: Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice, para 12(a).

624 United Nations, *Report of the Fourth World Conference on Women*, UN Doc A/CONF.177/20 (1995) Annex: Beijing Platform for Action, para 124(g).

625 Ibid.

courts, all with different practices and procedures.⁶²⁶ Many focus on treatment programs for offenders, as well as improved outcomes for victims.⁶²⁷ There are also many specialised family violence courts in Canada and the UK.⁶²⁸ Some Australian jurisdictions have also experimented with pilot family violence courts.⁶²⁹ A common feature of these specialist courts is that judicial officers have specialised training or expertise in the area of family violence.⁶³⁰ A US study on models for family violence courts has found that ongoing training and education of court personnel is one of nine core principles that should underpin a specialist approach to family violence.⁶³¹ However, some jurisdictions have also recognised the need to rotate judicial and other staff working in this jurisdiction to avoid burnout.⁶³²

6.30 Many of these trials and experiments with specialised family violence courts involve an integrated system that is quite different to the court system a person will experience in an ordinary court. They involve high levels of additional resources and are therefore not usually implemented in all courts across the jurisdiction concerned. In a review of specialist courts in Australia and overseas, Julie Stewart concludes:

Legal and academic research ... has exposed shortcomings in the delivery of justice to victims of domestic violence and it is this research that has informed the resort to establish specialist court programs. The initiative of specialist domestic violence courts in their many forms merely requires participants in the delivery of justice ... to execute their roles and

626 Arie Freiberg, 'Problem-oriented Courts: Innovative Solutions to Intractable Problems?' (Paper presented at the AIJA Magistrates Conference, Melbourne, 20–21 July 2001) 17–18; Stewart (2005) above n 420, 20; Judge Amy Karan, et al, 'Domestic Violence Courts: What Are They and How Should We Manage Them?' (1999) *Juvenile and Family Court Journal* 75.

627 See, eg, Tony Newman, 'Family Violence Court—Adelaide Magistrates' Court' (Paper presented at the Innovation: Promising Practices for Victims and Witnesses in the Criminal Justice System, Canberra, 23–24 October 2003); Stewart (2005) above n 420, 2; Freiberg (2001) above n 626, 18; Betsy Tsai, 'The Trend Towards Specialized Domestic Violence Courts: Improvements on an Effective Innovation' (2000) 68 *Fordham Law Review* 1285.

628 Freiberg (2001) above n 626, 18; Jane Ursel, 'The Possibilities of Criminal Justice Intervention in Domestic Violence: A Canadian Case Study' (1997) 8 (3) *Current Issues in Criminal Justice* 263.

629 Eg, in Western Australia the Joondalup Family Violence Court in outer Perth has been operating since 1999. In 2005 two trial family violence courts were set up in New South Wales, in Campbelltown and Wagga Wagga: Stewart (2005) above n 420, 29. The Adelaide Magistrates' Court also operates a specialist Family Violence Court on particular days: Newman (2003) above n 627, 2–3; Freiberg (2001) above n 626, 18. The commission describes the more comprehensive and statewide programs operating in the ACT and Tasmania at paras 5.44–5.55.

630 Stewart (2005) above n 420, 9, 21; Freiberg (2001) above n 626, 18; Karan et al (1999) above n 626, 76.

631 Sack (2002) above n 447, 7, 19–20.

632 Stewart (2005) above n 420, 19; Young (2001) above n 444, 67.

tasks more appropriately and effectively. What is ‘new’ about the initiative is an intended vast improvement in the delivery of justice for victims.⁶³³

6.31 Julie Stewart also noted in her review that:

Insofar as the literature has explored different approaches, it seems likely that dedicated presiding judges/magistrates provide the most consistent and committed approach to the specialist court, possibly because they have elected to undertake the role and have an understanding of their purpose and role.⁶³⁴

SPECIALISATION IN VICTORIA

6.32 On 14 June 2005, the Family Violence Court Division of the Magistrates’ Court began sitting in two locations: Ballarat and Heidelberg. These locations will act as a pilot for specialist family violence courts in Victoria until June 2007. The aims of the division are to simplify access to the justice system for people who have experienced family violence, promote their safety and increase the accountability of people who have used violence.⁶³⁵

6.33 The key features of the division include:

- Special support services in the court, including information, advocacy, referral, legal services and links to family violence organisations in the community.⁶³⁶
- Better supports for applicants and respondents, including applicant workers, respondent workers, family violence outreach workers, additional Victoria Legal Aid and community legal centre services, dedicated police prosecutors and additional security staff.⁶³⁷
- Expanded court jurisdiction to hear a range of matters relating to family violence, including interim or final intervention order applications, applications to vary or revoke an order, criminal offences including breaching an order or assault, applications for victims of crime assistance, reviews of child support assessment and civil proceedings for damages for personal injury.⁶³⁸

633 Stewart (2005) above n 420, 7.

634 Ibid 10–11.

635 *Magistrates’ Court (Family Violence) Act 2004* s 1(1).

636 Family Violence Court Division, Magistrates’ Court of Victoria, *Applying for an Intervention Order* (2005) 23.

637 Ibid.

638 *Magistrates’ Court Act 1989* s 4I.

This expanded jurisdiction seeks to reduce the number of court appearances for people experiencing violence.

- Magistrates assigned to sit on the Family Violence Court Division by the Chief Magistrate.⁶³⁹ In assigning a magistrate, the Chief Magistrate must consider the magistrate's relevant knowledge and experience in dealing with family violence matters.⁶⁴⁰

6.34 The Magistrates' Court will also be implementing a Specialist Family Violence Service at three other court locations: Melbourne, Sunshine and Frankston.⁶⁴¹ These sites will provide additional police prosecutors, magistrates and registrars and will also provide a specialist worker to support people applying for orders. More court time will be devoted to intervention order applications where necessary.⁶⁴²

6.35 As the division only began operation in June 2005, the commission has not sought to review its operation or approach. The commission understands that a comprehensive evaluation will be conducted by the Department of Justice, starting in 2006 and covering the two-year demonstration period until June 2007.

COMMISSION'S RECOMMENDATIONS

6.36 The commission agrees that a fundamental change in approach is required by Victoria's magistrates to provide a fair and effective intervention order system. The commission recommends the Family Violence Court Division be extended beyond the two pilot courts in Ballarat and Heidelberg. While it may be too resource intensive to establish a specialised court in every region, each Magistrates' Court should operate a family violence specialist list. This would ensure that people living in regional or rural areas would still have access to the specialist expertise of magistrates who would be receiving continuing professional development and education in the field. The Magistrates' Court has informed the commission that it is considering the establishment of a 'specialist group of Magistrates and registrars across the state who manage the [family violence] matters in each Magistrates' Court'. This would involve imposing a requirement on magistrates and registrars to undertake professional development and education and is being considered in conjunction with the development of sexual offence and VOCAT lists.

639 *Magistrates' Court Act 1989* s 4H(3).

640 *Magistrates' Court Act 1989* s 4H(4).

641 Attorney-General Rob Hulls, 'Sites Chosen for Specialist Family Violence Service' (Media Release, 2 December 2005).

642 *Ibid.*

6.37 The commission has also recommended a specialist police prosecution unit to operate in the specialist list, along with some form of victim and witness assistance, at recommendations 23 and 24.

6.38 The benefits of a specialist approach to family violence cases include:

- Legal issues relating to family violence can be dealt with in the one court and possibly in the one hearing.
- Magistrates can be required to undertake family violence training in order to sit on family violence matters.
- A specialist list means that other staff in the courtroom can also be specialised, such as police prosecutors, Victoria Legal Aid and community legal centre lawyers, and registrars.⁶⁴³
- Cases can be resolved more quickly and efficiently as a result of specialist staff.⁶⁴⁴

6.39 Through the adoption of a specialist family violence list, a thorough program for judicial education and training can be developed for magistrates who hear family violence matters.⁶⁴⁵ It is essential that this training cover at a minimum:

- the effects of family violence, especially non-physical violence;
- the principles and purposes of a new Family Violence Act;⁶⁴⁶
- issues facing Indigenous women, migrant women and women with disabilities when experiencing family violence and seeking access to justice;
- the types of information that should be provided to applicants and respondents once an intervention order is made (ie clear explanation of the order's terms).

6.40 As recommended in this report, magistrates should also receive training on:

- the impact of family violence on children and matters to consider when deciding on conditions about children and child contact;⁶⁴⁷

643 We have recommended a specialist police prosecution unit and registrar training in recommendations 23, 34.

644 Efficiency gains have been a major benefit of the special family violence list in the ACT Magistrates' Court, operating as part of the Family Violence Intervention Program: Young (2000) above n 415, 78.

645 Enhanced understanding of the dynamics of family violence by key participants was found to be a major benefit of specialist courts operating in California: Judicial Council of California, Administrative Office of the Courts, *Domestic Violence Courts: A Descriptive Study* (2000) 21.

646 The commission has recommended purposes and principles for a new Family Violence Act at recommendations 3, 4.

- awareness of court safety issues;⁶⁴⁸
- awareness of the impact of breaches that may seem 'minor' or 'trivial' on victims.⁶⁴⁹

6.41 It is also essential that any judicial education and training is constantly reviewed and evaluated to ensure its effectiveness. The operation of a specialist list should also be regularly reviewed.

! RECOMMENDATION(S)

37. The Magistrates' Court should establish a specialist list for family violence matters, including intervention order applications, criminal charges relating to family violence and victims of crime compensation.

38. All magistrates who sit on the specialist family violence list should complete training on family violence issues. This training should cover:

- the effects of family violence, especially non-physical violence;
- the principles and purposes of a new Family Violence Act;
- issues facing Indigenous women, migrant women and women with disabilities when experiencing family violence and seeking access to justice;
- the types of information that should be provided to applicants and respondents once an intervention order is made (eg a clear explanation of the terms of the order).

LEGAL INFORMATION, ADVICE AND ASSISTANCE

6.42 The intervention order system was developed with the intention of providing an accessible legal remedy for victims seeking protection from family violence. During the commission's consultations, we were frequently told that most victims apply for

647 See Recommendation 116.

648 See Recommendation 61.

649 See Recommendation 135.

intervention orders in person and do not access legal advice or assistance.⁶⁵⁰ It is difficult to obtain legal assistance in family violence intervention order applications and many applicants are told that lawyers are unnecessary. The cost of legal assistance provided by private practitioners remains a significant barrier to many in the community.

6.43 Since the introduction of the Crimes (Family Violence) Act, community legal centres and women's services have focused on the production of plain language legal information and other education resources and activities for victims and perpetrators involved in intervention order applications. Community education performs an essential role in developing awareness and understanding of the law and contributes to the empowerment of individuals in their engagement with the legal system.

6.44 In support of the empowering potential of legal information, the Eastern Domestic Violence Outreach Service reported the following case where a victim wanted her partner to leave the family home:

In one instance, a woman gained information and legal advice about exclusion orders. She attended at the local Magistrates court to observe and familiarise herself with the court process. She presented this information to her husband as well as the evidence of the assault that she intended to present to the Magistrate in court. The husband was friends with a number of the local police and, worried that they would discover his use of violence, agreed to leave voluntarily. I believe that this demonstrates that in some instances, information about exclusion orders can be as valuable and effective as the order itself.⁶⁵¹

6.45 However, applying for intervention orders may raise a number of important legal issues for both applicants and respondents where the availability of legal advice and/or assistance would also benefit both the parties and the court.

6.46 Some submissions pointed out that many people find it difficult to exercise their legal rights or options because they have limited access to information about the legal remedies available to address family violence.⁶⁵² Where this is the case, applying for protection through the court can become bewildering and applicants may omit important information from the complaint form, the information may be insufficient or it may lack appropriate detail.⁶⁵³ Orders which are not understood by respondents or

650 See Victorian Law Reform Commission (2004) above n 8, para 10.27.

651 Submission 4 (Eastern Domestic Violence Outreach Service).

652 Submissions 8 (Werribee Legal Service); 44 (Anonymous); 52 (Gippsland Community Legal Service); 61 (Broadmeadows Community Legal Service).

653 Submissions 8 (Werribee Legal Service); 37 (County Court Law Reform Committee).

are not tailored to the circumstances may exacerbate or increase the incidence of order breaches.⁶⁵⁴ Obtaining legal advice can reduce confusion and enable parties to understand the orders' provisions.

6.47 Many intervention orders are generic. Legal advice can be useful to applicants who wish to tailor the terms of intervention orders to specific circumstances. Unrepresented applicants are much less likely to seek orders tailored to their needs.

6.48 Legal advice may also be relevant where the respondent wants to have contact with children before an agreement has been reached or orders for contact have been made. This is a source of great difficulty for police investigating and prosecuting allegations of breaches where the standard intervention order has been imposed which prohibits the defendant having contact with the applicant, except for the purpose of child contact.⁶⁵⁵

6.49 Where applications for intervention orders are contested, legal advice and assistance can be particularly useful to applicants to prepare the case and present appropriate evidence for the hearing.⁶⁵⁶ Submissions also pointed out that legal advice can be useful to respondents in making informed decisions about whether to contest orders⁶⁵⁷ and in ensuring compliance with the order.⁶⁵⁸ In contested cases, a failure to present a comprehensive statement of all the relevant incidents in the application means applicants may then be cross-examined about their credibility.⁶⁵⁹ Self-represented people may fail to provide appropriate evidence to the court, resulting in an inability to obtain protection.

6.50 People from migrant communities,⁶⁶⁰ Indigenous Australians,⁶⁶¹ and people with cognitive impairment all have specific needs. Access to legal advice and/or representation can help address language and communication issues, or lack of understanding of the Australian legal system.

654 Submission 49 (Domestic Violence and Incest Resource Centre).

655 This is discussed further in Chapter 9.

656 Domestic Violence and Incest Resource Centre, *Family Violence and Homelessness: Removing the Perpetrator from the Home*, Discussion Paper No 2 (2002) 67.

657 Submission 64 (Federation of Community Legal Centres (Vic)).

658 Submissions 41 (Victoria Legal Aid); 64 (Federation of Community Legal Centres (Vic)).

659 Submission 37 (County Court Law Reform Committee).

660 Submission 8 (Werribee Legal Service).

661 Partnerships Against Domestic Violence, *Home Safe Home: The Link Between Domestic and Family Violence and Women's Homelessness* (2000) 53–54; submission 57 (Victorian Aboriginal Legal Service).

PROVIDERS OF LEGAL ADVICE AND ASSISTANCE

6.51 Access to the intervention order system may be facilitated by police if they have attended a family violence incident and decide to apply for an intervention order on behalf of the victim.⁶⁶² In this situation, a police prosecutor will usually present the case to the court. If police have not attended or have not applied for an order, a victim of family violence who is seeking an intervention order may directly approach a registrar at the Magistrates' Court. Registrars should provide assistance to applicants to complete the necessary forms and provide them with information about the process.⁶⁶³

6.52 In some courts, community legal centres operate court support schemes to provide applicants for intervention orders with legal advice and assistance. Duty lawyer schemes run by community legal centres or Victoria Legal Aid are also in operation in some courts to provide legal advice and assistance to respondents who are contesting applications.⁶⁶⁴

COMMUNITY LEGAL CENTRES

6.53 Community legal centres in Victoria have been at the forefront of delivering legal support to applicants seeking intervention orders but lack of resources limits their reach. Some legal centres have developed models for the provision of legal advice and assistance in family violence matters, not only through volunteer duty lawyer schemes but also by coordinating local family violence services to provide additional support in courts for applicants. Through these initiatives, the community legal sector has developed expertise about the legal and social issues in family violence matters.

6.54 Some of the submissions received by the commission were from community legal centres. According to the Federation of Community Legal Centres, intervention order court support is currently provided by legal centres at 11 Magistrates' Courts on certain days and during limited hours, and is therefore available inconsistently across Victoria. This work is not directly funded but is undertaken by centres by drawing resources from their general budgets and sometimes relying on volunteer solicitors.

Even when a CLC [Community Legal Centre] lawyer is present at a court, CLCs can not assist all clients. Due to limited resources, the assistance is generally limited to advice only

662 The police obligation to apply for intervention orders on behalf of victims in specified circumstances is discussed at paras 5.83–5.94.

663 Problems with the role of registrars in the system are discussed at paras 6.3–6.20.

664 Victoria Legal Aid provides 36 duty lawyer services of which 15 are shared with the private profession, and 12 duty lawyer schemes are operated by private professionals under the Private Practitioner Scheme: email from Domenico Calabro to Judith Peirce, 1 December 2005.

or referrals and information. All courts have different procedures (ie some have contest mention systems and others do not) and therefore, depending upon the specific court process, the client may or may not get legal advice prior to the time that his or her matter is being called in the court. Legal representation is only available when there has been sufficient time to arrange for representation—a contest mention system or notice that a matter will be defended would assist this.⁶⁶⁵

6.55 Some community legal centres also participate in duty lawyer schemes at courts to provide advice and assistance on the day of the hearing for respondents who are contesting applications.

VICTORIA LEGAL AID

6.56 All assistance from Victoria Legal Aid is made subject to a strict means test. Unless the respondent is defending the application for an intervention order, Victoria Legal Aid does not assist applicants, except in specific circumstances.⁶⁶⁶ However, as the agency points out in its submission, applicants do not always know in advance whether the respondent is going to contest the application.

6.57 Duty lawyers are available on rosters in some courts on specific days to provide advice and/or assistance. Defendants who qualify for legal aid under the means test may obtain it for the hearing if they are a child, if an important legal right is at stake and the court may be persuaded to make a less restrictive or no order, or if they have been arrested and are still in custody.⁶⁶⁷

PRIVATE LAWYERS

6.58 Private legal advice usually involves the cost of obtaining advice from a solicitor and fees for representation in court by a barrister. Assisting applicants in family violence matters can be time intensive for lawyers and few applicants and respondents have the resources to engage private legal representation.

6.59 The Victorian Bar has a family violence sub-committee which has recently adopted resolutions to train, support and manage a specialist list of barristers in the

665 Submission 64 (Federation of Community Legal Centres (Vic)). We address the provision of a notice system at paras 8.66–8.80.

666 These specific circumstances are: if the applicant has a language literacy problem, an intellectual or psychiatric disability, or there is a prospect of benefit being gained not only by the applicant but also by the public or any section of the public.

667 This is interpreted to include situations where an order may be made excluding the respondent from the family home: Victoria Legal Aid, *Victoria Legal Aid Handbook* (12th ed, 2001) Appendix 2B, 6.2.

family violence area. The committee seeks to promote education and understanding of more members of the Victorian Bar in family violence issues, to improve participation and communication of barristers with the courts and legal service providers, assist intervention order programs run by community legal centres, and support advocacy training for community-based duty lawyers.⁶⁶⁸

INTERSTATE MODELS

6.60 In New South Wales, the Women's Domestic Violence Court Assistance Program has been operating since 1996. The program, administered by the NSW Legal Aid Commission, funds 33 domestic violence court support schemes across the state.⁶⁶⁹ A training and resource unit based at the Domestic Violence Advocacy Service provides training for the support workers and people who work with them, such as solicitors and community workers.⁶⁷⁰

VIEWS FROM SUBMISSIONS

6.61 In the commission's Consultation Paper, we asked four questions about legal representation and support in court for applicants and respondents in intervention order matters.⁶⁷¹ Submissions overwhelmingly supported the need for litigants in family violence matters to be able to access legal advice and/or representation.⁶⁷²

6.62 The Magistrates' Court of Victoria said:

668 Letter from Helen Symon SC, Chair—Victorian Bar Family Violence Sub-Committee, to Judith Peirce, 20 July 2005.

669 During 2003–04, 33 618 women were assisted: Legal Aid Commission of NSW, *Annual Report 2003–2004* (2004) 33.

670 Legal Aid New South Wales, *WDVAP Program* <www.legalaid.nsw.gov.au/asp/index.asp?pgid=611andcid=803andid=546> at 13 December 2005.

671 Victorian Law Reform Commission (2004) above n 8, questions 64–67, paras 10.26–10.36. Separate questions were asked about representation of children, where an application is being made on their behalf or where children are respondents.

672 Submissions 8 (Werribee Legal Service); 22 (Kim Robinson, social worker); 25 (Barbara Roberts); 27 (Robinson House BBWR); 30 (Violence Against Women Integrated Services); 37 (County Court Law Reform Committee); 39 (Royal Women's Hospital); 40 (Whittlesea Domestic Violence Network); 41 (Victoria Legal Aid); 44 (Anonymous); 46 (Royal Children's Hospital); 49 (Domestic Violence and Incest Resource Centre); 51 (Villamanta Legal Service); 52 (Gippsland Community Legal Service); 53 (Women's Electoral Lobby, Victoria); 57 (Victorian Aboriginal Legal Service); 61 (Broadmeadows Community Legal Service); 62 (Eastern Community Legal Centre); 64 (Federation of Community Legal Centres (Vic)); 65 (John Willis, Associate Professor, La Trobe University); 66 (Aboriginal Family Violence Prevention and Legal Service (Victoria)); 69 (Victorian Community Council Against Violence); 74 (Women's Legal Service Victoria); 79 (Department of Human Services); 85 (Deborah Weiner); 86 (Magistrates' Court of Victoria).

The Court considers legal advice to parties imperative and [it] should be appropriately funded ... The provision of legal advice is essential and fair—in our experience [it] invariably results in a better, more tailored outcome for the applicant and the defendant and ultimately their family. Issues that are important to each party have an opportunity to be ventilated at least in part in discussions between legal practitioners at court.

6.63 Pointing to the inconsistency of the current availability of legal advice and assistance across Victoria, the Women's Legal Service Victoria argues:

Legal advice and assistance and non-legal support should be available consistently across the state whenever and wherever intervention order applications are heard. The services provided should be consistent so that parties to proceedings know what help they will or will not be able to obtain. Legal assistance should include undertaking negotiations and appearing in court to have consent orders made or undertakings received. It may also be appropriate to provide that representation should be provided in interim matters for people who face particular difficulties, for example being unable to speak English. But it is important that realistic parameters are provided for the provision of legal assistance—for example, a duty lawyer service is not well placed to run full contested hearings, given the limited time available to obtain instructions and the demands of other clients. Where a final contested hearing is necessary, matters should be adjourned to allow full legal representation to be obtained.

6.64 The County Court notes in its submission that, with respect to appeals against intervention orders which would be heard in the County Court, a significant number of applicants and respondents are not represented in family violence matters and this:

potentially leads to unduly prolonged proceedings, an imbalance between parties' capacity to do their cause justice, and perhaps also the abandonment of appeals on grounds other than merit or prospect of success.

6.65 Victoria Legal Aid stressed the point in its submission that all child respondents should have access to legal representation. The agency also acknowledged that its guidelines may exclude many respondents from eligibility for legal aid, and that breaches may frequently result from respondents' failure to understand the effect and consequences of intervention orders.

CURRENT POLICY DIRECTIONS

6.66 The provision of legal information, advice and assistance to people is an important element in maintaining the community's confidence in the rule of law. In the *Justice Statement 2004–2014*, the Department of Justice identifies improvements that can be made to the provision of legal advice and assistance, along with legal aid

and victim support, and when alternative dispute resolution is necessary for building respect and protecting rights.⁶⁷³

6.67 The Magistrates' Court Family Violence Division provides legal and non-legal support services to applicants and defendants in family violence matters. The division may adjourn proceedings to give one or more of the parties a reasonable opportunity to obtain legal advice.⁶⁷⁴

SUPPORT SERVICES, LEGAL ADVICE AND INTERNATIONAL OBLIGATIONS

6.68 Various international standards have recognised the essential role that both government and non-government support services play in preventing and responding to violence against women.⁶⁷⁵ This includes the provision of legal advice. The Beijing Platform for Action states '[v]iolence against women is exacerbated by ... women's lack of access to legal information, aid or protection'.⁶⁷⁶ It provides that governments, including local governments, should:

Provide well-funded shelters and relief support for girls and women subjected to violence, as well as medical, psychological and other counselling services and free or low-cost legal aid, where it is needed.⁶⁷⁷

6.69 The UN Model Strategies and Practical Measures recognise the important role of 'partnerships between law enforcement officials and the services that are specialized in the protection of women victims of violence'.⁶⁷⁸ CEDAW General

673 Department of Justice, *New Directions for the Victorian Justice System 2004–2014: Attorney-General's Justice Statement* (2004) above n 150, 69.

674 *Magistrates' Court Act 1989* s 4J. The Family Violence Court Division is discussed in more detail at paras 6.32–6.35.

675 Committee on the Elimination of All Forms of Discrimination against Women, *General Recommendation 19* (11th session, 1992) UN Doc A/47/38 at 1 (1993) para 24(k),(q); *General Assembly Resolution on Crime Prevention and Criminal Justice Measures to Eliminate Violence Against Women*, GA Res 52/86, UN Doc A/RES/52/86 (1998) Annex: Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice, para 14(b); United Nations, *Report of the Fourth World Conference on Women*, UN Doc A/CONF.177/20 (1995) Annex: Beijing Platform for Action, para 125(a).

676 United Nations, *Report of the Fourth World Conference on Women*, UN Doc A/CONF.177/20 (1995) Annex: Beijing Platform for Action, para 118.

677 *Ibid* para 125(a).

678 *General Assembly Resolution on Crime Prevention and Criminal Justice Measures to Eliminate Violence Against Women*, GA Res 52/86, UN Doc A/RES/52/86 (1998) Annex: Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice, para 14(b).

Recommendation 19 provides '[s]tates parties should ensure that services for victims of violence are accessible to rural women and that where necessary special services are provided to isolated communities'.⁶⁷⁹

COMMISSION'S RECOMMENDATIONS

6.70 It is essential for litigants in family violence matters to have access to legal advice and representation. This is particularly important for applicants who face barriers when applying for intervention orders, for example Indigenous women, women with disabilities and immigrant women. An efficient and effective way of delivering legal advice and assistance would be to provide resources to the community legal sector so it is able to develop and improve the coverage and consistency of legal service provision. Such schemes would also be able to provide leadership and encouragement to professional legal bodies such as the Law Institute of Victoria and the Victorian Bar to take an active role in encouraging members to volunteer their services.⁶⁸⁰

RECOMMENDATIONS

39. Applicants and respondents should have access to legal advice prior to applications for intervention orders being finalised in uncontested applications and legal representation in contested matters.
40. Community legal centres should be funded to provide court assistance services for applicants.
41. Policies and programs should be developed for such services, including standards and management practices to improve consistency of access to legal advice and representation for litigants and courts.

679 Committee on the Elimination of All Forms of Discrimination against Women, *General Recommendation 19* (11th session, 1992) UN Doc A/47/38 at 1 (1993) para 24(q).

680 This was a direction proposed by the Australian Law Reform Commission, *Equality Before the Law: Women's Equality*, Report 69, Pt II (1994).

IMPROVING ACCESS TO INTERVENTION ORDERS

All governments are urged:

To make available to women who have been subjected to violence information on rights and remedies and on how to obtain them ...

To encourage and assist women subjected to violence in lodging and following through on formal complaints ...

To provide for court mechanisms and procedures that are accessible and sensitive to the needs of women subjected to violence and that ensure fair processing of cases.⁶⁸¹

6.71 The commission's Consultation Paper outlined the many barriers that people face when seeking to use the intervention order system. Some of these barriers apply to all people and others are specific to particular groups. This section will outline the commission's recommendations to make the intervention order system more accessible for everyone. The next section outlines changes that will benefit specific groups, including Indigenous people, people with disabilities and migrant women.

6.72 A key problem identified in the Consultation Paper was that people using the intervention order system often do not understand what is expected in applying for an order, what happens in court, or what the outcome of their case is. Consultation participants told the commission that this applies to people applying for orders, as well as those who have orders made against them. When people who have orders made against them do not understand the order, it increases the chances of it being breached. When people who have orders made for their protection do not understand the legal consequences of the order, it makes reporting of breaches less likely.

6.73 This section outlines the commission's recommendations in three areas to improve the understanding of all parties to the proceedings and therefore access to the system:

- increased availability of information on the intervention order system in a variety of formats, both at court and outside court;
- better explanations by magistrates of an order once it is made;
- clearer court forms, including application forms and intervention orders themselves.

681 *General Assembly Resolution on Crime Prevention and Criminal Justice Measures to Eliminate Violence Against Women*, GA Res 52/86, UN Doc A/RES/52/86 (1998) Annex: Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, paras 10(a),(b),(d).

6.74 In addition to these three areas, submissions consistently commented that legal representation for both parties would go a long way towards improving understanding of what happens at court and giving access to the system.⁶⁸² Legal representatives can prepare their clients for the hearing, and explain the outcome. The commission makes recommendations to increase the availability of legal representation for all parties at recommendations 39–41.

INFORMATION ABOUT INTERVENTION ORDERS

When little information on the process of court hearings, or likely outcome is conveyed to the applicant, it increases the stress, distress and worry of that person, in turn leading to an overwhelming feeling that can impede upon the understanding of what goes on in the courtroom. Such tremendous strain in participating in such proceedings may be largely lifted through some understanding and prior knowledge of the court process and possible outcomes.⁶⁸³

[All governments should] disseminate information on the assistance available to women and families who are victims of violence.⁶⁸⁴

6.75 A key way to improve people's understanding of the court processes would be to provide more information about how the system works, what to expect and the consequences of receiving an intervention order. This issue is particularly important for people with disabilities and those from migrant backgrounds. The information needs of these groups will be discussed separately in paragraphs 6.97–6.121.

6.76 Victoria Legal Aid and the Law Foundation provide two information booklets on intervention orders, one on applying for an intervention order and one on responding. These booklets provide relatively detailed information about the intervention order system and the court processes involved. However, they do not include any assistance in filling out an application form or understanding the conditions of an intervention order once it has been made.

682 Submissions 30 (Violence Against Women Integrated Services), 41 (Victoria Legal Aid), 44 (Anonymous), 61 (Broadmeadows Community Legal Service), 64 (Federation of Community Legal Centres (Vic)), 74 (Women's Legal Service Victoria).

683 Submission 44 (Anonymous).

684 United Nations, *Report of the Fourth World Conference on Women*, UN Doc A/CONF.177/20 (1995) Annex Beijing Declaration and Platform for Action, para 125(h).

VIEWS FROM SUBMISSIONS

6.77 The Magistrates' Court noted the need for the court itself to provide pamphlets and brochures, including 'how to' information on the intervention order system, which is not currently available.⁶⁸⁵ Other submissions contained suggestions for how information could be available to people affected by the intervention order system. Suggestions concerned information that should be available at the court at the time of the application, as well as information that should be available outside of court, for example, in community agencies or on the Internet.

6.78 Victoria Legal Aid, the Broadmeadows Community Legal Service, the Federation of Community Legal Centres, the Aboriginal Family Violence Prevention Legal Service and the Women's Legal Service Victoria suggested that an information sheet in plain English accompanying an intervention order when it is made would be useful. This sheet should explain the effects of the order, how to vary or revoke the order and how to report a breach.⁶⁸⁶

6.79 The Federation of Community Legal Centres suggested providing a video showing the intervention order process. The Aboriginal Family Violence Prevention Legal Service also supported the provision of visual information. A video could be made available for community education seminars and information programs run by community legal centres, and be available on the Magistrates' Court website. This type of video information is currently provided by the Victorian Civil and Administrative Appeals Tribunal and the Victoria Law Foundation in a video on mediation called 'Working it Out—Through Mediation'.⁶⁸⁷ The video clearly explains what happens at mediation, how to prepare, and what the process will look like.

COMMISSION'S RECOMMENDATIONS

6.80 It is essential for information to be made available in a range of formats to assist people using the intervention order system. The commission agrees that a short explanatory information source would be useful for people who obtain an intervention order. There may also be other forms of information that could improve people's understanding of the system. The commission therefore recommends the government

685 The court informed the commission that development of information for the Magistrates' Court website is underway, including the provision of downloadable forms. The commission welcomes this step as an important point of access to information on intervention orders.

686 Submissions 66 (Aboriginal Family Violence Prevention and Legal Service (Victoria), 74 (Women's Legal Service Victoria).

687 Victorian Civil and Administrative Tribunal and the Victoria Law Foundation, *Mediation Video*, Victorian Civil and Administrative Appeals Tribunal <www.vcat.vic.gov.au> at 18 October 2005.

audit, update and coordinate delivery of information about the process of applying for or responding to an intervention order. This review should consider how an explanatory sheet accompanying an intervention order could be developed and distributed.

6.81 The commission also agrees that audio and video information on the intervention order system would be a useful resource for people preparing for an intervention order hearing. The commission recommends that any review into the information available considers the provision of audio and video information.

! RECOMMENDATION(S)

42. The Department of Justice should audit, update and coordinate delivery of information about the process of applying for or responding to an intervention order.

PLAIN ENGLISH APPLICATION FORMS AND INTERVENTION ORDERS

6.82 It is important that the documentation used in the intervention order system can be easily understood by people using it. Many applicants and respondents do not have any form of legal or other support or information on how to fill out the application form or read an intervention order if one is made.

6.83 There are two different forms used to gather information for a family violence application. These forms gather the information necessary for the registrar to fill out the formal 'complaint' that goes before the magistrate. We will refer to these forms as 'application forms'. The 'standard' application form is used in all Magistrates' Courts, apart from the Family Violence Court Division, and is two pages long.⁶⁸⁸ The division is using a revised application form that was developed with plain English principles in mind. The revised form provides more space and more 'tick the box' questions. The form is under continual review and some parts have already been modified based on the way questions have been answered by applicants at the division's courts. This form addresses some of the criticisms of the standard form.

688 The standard form is included as Form 1 in the Magistrates' Court Family Violence and Stalking Protocols: Magistrates' Court of Victoria, *Family Violence and Stalking Protocols* (2003) above n 575, 25–27.

VIEWS FROM SUBMISSIONS

Application Form

6.84 Various submissions, particularly those from people who have experienced family violence, referred to problems with the standard intervention order application form.⁶⁸⁹ The Magistrates' Court told the commission that it intends to undertake a comprehensive redraft of the standard application form once the commission has made its recommendations. The two key problems with the standard application form identified were:

- It is not written in plain English.⁶⁹⁰ It is difficult to understand what information to include, and old fashioned language makes the form unclear. For example, the Federation of Community Legal Centres noted that the term 'molesting' is misinterpreted by many applicants.
- The form includes a very small space for 'past incidents'.⁶⁹¹ As one woman told the commission 'you have such little space to put in a few years of abuse, it's really hard to work out which incidents are the worst ones'.⁶⁹²

6.85 Submissions suggested the following changes to the application form:

- the form should be rewritten in plain English;⁶⁹³
- more space should be provided to include information about previous incidents of abuse;⁶⁹⁴
- the form should provide prompts, such as 'has the family member ever ...?';⁶⁹⁵
- the form should ask whether the applicant needs immediate protection, so the magistrate can consider making an interim intervention order.⁶⁹⁶

689 Submissions 7 (Barbara Roberts), 64 (Federation of Community Legal Centres (Vic)), 69 (Victorian Community Council Against Violence); Interview with Julie, 27 April 2005; Interview with Lucy, 4 May 2005.

690 Submissions 7 (Barbara Roberts), 64 (Federation of Community Legal Centres (Vic)).

691 Submissions 7 (Barbara Roberts), 64 (Federation of Community Legal Centres (Vic)), Interview with Julie, 27 April 2005.

692 Interview with Julie, 27 April 2005.

693 Submissions 7 (Barbara Roberts), 64 (Federation of Community Legal Centres (Vic)).

694 Submissions 7 (Barbara Roberts), 64 (Federation of Community Legal Centres (Vic)).

695 Submission 7 (Barbara Roberts).

696 Submissions 25 (Barbara Roberts), 28 (Murray Mallee Community Legal Service), 46 ((Royal Children's Hospital), 64 (Federation of Community Legal Centres (Vic)), 74 (Women's Legal Service Victoria). This is discussed further at paras 7.23–7.28 and recommendations 68, 69.

Protection/Intervention Orders

6.86 Individuals who have received orders have also told the commission that the order itself was difficult to understand and the consequences of breaching it were not clearly outlined.⁶⁹⁷ One woman, when asked how she felt about intervention orders, told the commission:

I don't know how I feel about them. I don't even know how to read them, I had to get someone to go through and help me read them. I have two in my bag because I have to carry them with me, or at least I prefer to.⁶⁹⁸

6.87 The Women's Legal Service Victoria also noted that the text of intervention orders is difficult for people to understand. The service suggested how the text of the order could be improved, including:

- referring to the parties by name rather than as the aggrieved family member and the defendant;
- clarifying terms such as 'other orders' and 'liberty to apply'.

6.88 The Magistrates' Court also acknowledged that plain English terminology in intervention orders would help. The commission understands that the Magistrates' Court has begun a review of the terminology used for the conditions in intervention orders.

COMMISSION'S RECOMMENDATIONS

6.89 The commission agrees that the language used on the standard intervention order application form and the intervention order itself is inaccessible and creates difficulties for people using the system.

Application Form

6.90 Some of the suggestions to improve the standard application form have already been incorporated in the application form being used in the Family Violence Court Division. The commission therefore recommends that the form used in the division should be reviewed according to other suggestions made throughout this report, and be used in all venues of the Magistrates' Court. In particular, it would be useful if the question on past incidents included an illustrative list of types of behaviours that may be acts of family violence, in line with the expanded definition of family violence that the commission has recommended at recommendations 14–16. It would also be useful

697 Submission 7 (Barbara Roberts); Interview with Lucy, 4 May 2005.

698 Interview with Lucy, 4 May 2005.

if the application form was available on the court's website, so that applicants or their support workers could have the option of completing it before going to court.

6.91 The commission has also recommended specific changes to the application form in other parts of this report. These recommendations are:

- the question on the division's application form about whether an applicant needs an interim order should be reviewed to ensure its meaning is clear to those who do not have assistance with completing the form;⁶⁹⁹
- the questions on the division's application form about cross-applications should be included on all application forms, to help the magistrate determine whether it is a cross-application;⁷⁰⁰
- the questions on the division's application form about the length of the order should be included on all application forms, to help magistrates determine an appropriate length for the order;⁷⁰¹
- the application form should ask applicants whether they wish to remain in the family home and have the violent person removed.⁷⁰²

Protection/Intervention Orders

6.92 The commission also recommends that the Magistrates' Court continue its review of the text of orders to ensure they can be easily understood. In particular, conditions in the order should:

- be written in plain English;
- refer to the parties by their own names rather than as 'aggrieved family member' and 'defendant';
- provide examples of what particular terms of the order mean, such as, 'this means for example you cannot telephone [name], drive past her home or go to her workplace';
- provide information on consequences of breaching and how to apply for changes.

699 See Recommendation 69.

700 See para 8.94.

701 See Recommendation 105.

702 See Recommendation 114. This recommendation relies on other recommendations of the commission that exclusion orders be named and outlined in a new Family Violence Act: see recommendations 109–111.

! RECOMMENDATION(S)

43. The intervention order application form currently being used in the Family Violence Court Division should be used at all venues of the Magistrates' Court. The form should be available on the Internet for electronic use by services which support people applying for intervention orders. Future revisions of this form should include:
- all questions written in plain English;
 - more space for details of previous abusive behaviours;
 - an illustrative list of types of behaviours that may be acts of family violence at the question on past incidents, in line with an expanded definition of family violence;
 - making the application form available on the Internet for electronic use by services who are supporting people applying for intervention orders.
44. The intervention order received by applicants and respondents should be redrafted to:
- be written in plain English;
 - refer to the parties by name rather than as 'aggrieved family member' and 'defendant';
 - provide examples of what particular terms of the order mean (eg 'this means you cannot telephone [name], drive past her home or go to her workplace');
 - provide information on consequences of breaching an order and how to apply for a variation of an order.

REQUIRING A MAGISTRATE'S EXPLANATION TO BOTH PARTIES

6.93 Another suggestion to improve parties' understanding of the court process was that magistrates should be required to explain the intervention order to both parties. Under the Act, magistrates are required to explain to the defendant, if the defendant is present in court, the purpose, terms and effect of the order, the consequences of

breaching the order and the way an order can be varied or revoked.⁷⁰³ There is no obligation to provide a similar explanation to the applicant.

OTHER JURISDICTIONS

6.94 In other Australian jurisdictions magistrates have a similar but more extensive obligation. For example, in Western Australia, the ACT, NSW and Queensland an explanation of the order must be given to the applicant, as well as the respondent.⁷⁰⁴ In NSW the magistrate must also provide a written explanation,⁷⁰⁵ in Western Australia the magistrate must provide a written explanation for parties who are not in court⁷⁰⁶ and in Queensland explanatory notes may be given as a form of explanation.⁷⁰⁷

VIEWS FROM SUBMISSIONS

6.95 Various submissions highlighted the importance of a clear verbal explanation by the magistrate to both parties at the time the order is made.⁷⁰⁸ The Magistrates' Court acknowledged that while these explanations are given to respondents, they are often not understood and the police are required to 'interpret' the information given.

COMMISSION'S RECOMMENDATION

6.96 The commission supports a requirement that the magistrate give an explanation to both the protected person and the respondent, if either is present in court, rather than only to the respondent. A written information sheet accompanying the order should also be considered, as discussed at paragraphs 6.75–6.81.

703 *Crimes (Family Violence) Act 1987* s 15.

704 *Domestic and Family Violence Protection Act 1989* (Qld) s 50, *Crimes Act 1900* (NSW) s 562GC, *Domestic Violence and Protection Orders Act 2001* (ACT) s 25, *Restraining Orders Act 1997* (WA) s 8.

705 *Crimes Act 1900* (NSW) s 562GC.

706 *Restraining Orders Act 1997* (WA) s 8.

707 *Domestic and Family Violence Protection Act 1989* (Qld) s 50.

708 Submissions 41 (Victoria Legal Aid), 61 (Broadmeadows Community Legal Service), 64 (Federation of Community Legal Centres (Vic)), 66 (Aboriginal Family Violence Prevention and Legal Service (Victoria)), 74 (Women's Legal Service Victoria).

! RECOMMENDATION(S)

45. The new Family Violence Act should require magistrates to provide a clear verbal explanation to the respondent and the protected person where either is present in court. This explanation should include the matters outlined in section 15 of the *Crimes (Family Violence) Act 1987*.

IMPROVING ACCESS FOR MARGINALISED GROUPS

6.97 As we have discussed, all groups within Victoria experience barriers to using the intervention order system. However, there are some groups who face additional barriers to accessing justice and therefore require particular attention. The commission's terms of reference state that we should give particular attention to accessibility for Indigenous Australians, people with disabilities, and immigrant women (particularly recent immigrants). Consultations also highlighted problems faced by young people, people from rural areas and people in same-sex relationships.

INDIGENOUS AUSTRALIANS

6.98 Indigenous Australians experience unique barriers in accessing the protection of the intervention order system. As discussed at paragraphs 2.76–2.79, Indigenous Australians experience high rates of family violence, however, many victims are reluctant to use the intervention order system. Problems in involving the police in family violence have previously been discussed at paragraphs 5.65–5.69. Therefore, this section will discuss barriers to using the court to apply for an intervention order.

INTERNATIONAL STANDARDS

6.99 The rights of the world's indigenous women experiencing violence have been specifically recognised at the international level. The UN Declaration of the Elimination of Violence Against Women and the Beijing Platform for Action recognise that indigenous women are especially vulnerable to violence.⁷⁰⁹ The declaration provides that all States should '[a]dopt measures directed towards the elimination of violence against women who are especially vulnerable to violence'.⁷¹⁰ A

709 *General Assembly Declaration on the Elimination of Violence Against Women*, GA res 48/104, UN Doc A/RES/48/104 (1993) preamble; United Nations, *Report of the Fourth World Conference on Women*, UN Doc A/CONF.177/20 (1995) Annex: Beijing Platform for Action, para 116.

710 *General Assembly Declaration on the Elimination of Violence Against Women*, GA res 48/104, UN Doc A/RES/48/104 (1993) article 4(l).

UN working group is developing a draft declaration on the rights of indigenous peoples, which will further outline governments' obligations to indigenous people.⁷¹¹

VIEWS FROM SUBMISSIONS

6.100 Submissions received by the commission outlined many problems that Indigenous Australians experience in accessing the court system. The Federation of Community Legal Centres and the Aboriginal Family Violence Prevention Legal Service highlighted inappropriate and sometimes racist responses Indigenous Australians have experienced when attending court, from both magistrates and registrars. Indigenous Australians may also fear institutional racism from the court, based on previous experiences and the experiences of others in their community.⁷¹² The court itself is a foreign and intimidating environment, particularly for many Indigenous Australians, and court procedures and formalities can deter them from pursuing their application.⁷¹³

6.101 Some Indigenous Australians also have a generally low level of awareness about the legal system and the options that are available to them.⁷¹⁴ There is a lack of sufficient community education on family violence and people do not know what they can do to address the violence. Another serious problem is the lack of Indigenous-specific family violence support services.⁷¹⁵ A lack of legal assistance and emergency housing, particularly in rural areas, was highlighted as a key problem by the Federation of Community Legal Centres and the Aboriginal Family Violence Prevention Legal Service. For example, there is only one Indigenous refuge in Victoria and it has only three beds.⁷¹⁶ Both organisations also highlighted the need for emergency legal advice for Indigenous women about child protection.

6.102 Submissions also suggested changes that could be made to improve access to the court for Indigenous Australians:

711 Office of the United Nations High Commissioner for Human Rights, *Working group on the draft declaration on the rights of indigenous peoples* <www.ohchr.org/english/issues/indigenous/groups/groups-02.htm> at 21 November 2005.

712 Elizabeth Hoffman House, *From Shame to Pride: Access to Sexual Assault Services for Indigenous People*, Consultation Outcomes, Reports and Recommendations (2004) 31.

713 Submissions 57 (Victorian Aboriginal Legal Service), 64 (Federation of Community Legal Centres (Vic)).

714 Submissions 64 (Federation of Community Legal Centres (Vic)), 66 (Aboriginal Family Violence Prevention and Legal Service (Victoria)).

715 Victorian Indigenous Family Violence Taskforce, *Victorian Indigenous Family Violence Taskforce Final Report* (2003) 203.

716 Submissions 64 (Federation of Community Legal Centres (Vic)), 66 (Aboriginal Family Violence Prevention and Legal Service (Victoria)). This refuge is Elizabeth Hoffman House.

- an increase in the numbers of Indigenous court staff and magistrates to make the court environment less intimidating;⁷¹⁷
- education and awareness raising for magistrates and court staff about Indigenous family violence and barriers to taking action;⁷¹⁸
- availability of Indigenous support workers at courts;⁷¹⁹
- an increase in Indigenous-specific support services, especially legal assistance and emergency housing⁷²⁰—legal assistance should include assistance after hours and with child protection issues;⁷²¹
- increased provision of community education about family violence and the legal system;⁷²²
- provision of visual information for use in community education about family violence and the intervention order system;⁷²³
- allowing women to make applications away from their local court.⁷²⁴

COMMISSION'S RECOMMENDATIONS

6.103 The commission agrees that serious efforts need to be made by the Magistrates' Court to ensure that the intervention order system is accessible and available to Indigenous Australians. The commission has recommended that these efforts should include comprehensive training on Indigenous issues for police, magistrates and registrars. Magistrates' Courts should also provide Indigenous support workers at courts when family violence matters are heard. The commission notes that an

717 Submission 57 (Victorian Aboriginal Legal Service).

718 Submissions 63 (Darebin Family Violence Working Group), 66 (Aboriginal Family Violence Prevention and Legal Service (Victoria)), 74 (Women's Legal Service Victoria), 78 (Department for Victorian Communities), 79 (Department of Human Services). The commission has recommended training for registrars and magistrates on Indigenous issues at recommendations 34, 38 and for police at Recommendation 27.

719 Submissions 66 (Aboriginal Family Violence Prevention and Legal Service (Victoria)), 74 (Women's Legal Service Victoria).

720 Submissions 64 (Federation of Community Legal Centres (Vic)), 66 (Aboriginal Family Violence Prevention and Legal Service (Victoria)), 74 (Women's Legal Service Victoria).

721 Submission 64 (Federation of Community Legal Centres (Vic)), 66 (Aboriginal Family Violence Prevention and Legal Service (Victoria)).

722 Submission 66 (Aboriginal Family Violence Prevention and Legal Service (Victoria)).

723 Ibid. —the commission has discussed the production of material in a range of formats at paras 6.77–6.81.

724 Ibid. The commission has recommended that all applicants should be able to apply away from their local court at recommendations 73, 75.

Indigenous support worker is available at Melbourne Magistrates' Court and suggests this service be expanded to other courts. The commission has also made general recommendations in other parts of this report that will improve access to courts for Indigenous people.⁷²⁵

6.104 The commission also agrees that community education, such as information sessions, are essential for increasing awareness and access to the intervention order system. The Aboriginal Family Violence Prevention Legal Service provides essential information through community education sessions in regional areas, however, these are limited.

6.105 The commission also agrees that an active policy to recruit more Indigenous staff at courts would help make the court a less intimidating environment for Indigenous Australians. The commission acknowledges the efforts being made by the Magistrates' Court to recruit court staff from diverse backgrounds. For example, the court advertises positions in Indigenous-specific media and conducts recruitment talks at a diverse range of schools and universities. The commission recommends that the government fund an initiative of the Magistrates' Court and Victoria University to provide preparatory training for Indigenous applicants for the Trainee Court Registrar positions at Victoria University. The preparatory training will be used to ensure that the applicants have the skills, knowledge and support necessary to complete the Certificate IV in Government (Court Services).

| ! RECOMMENDATION(S) |
|---|
| 46. Indigenous community agencies should be resourced to provide services to people seeking intervention orders. |
| 47. Community information sessions on family violence and the law should be more widely available for Indigenous Australians, particularly in regional and rural areas. |

725 These recommendations include: Indigenous-specific training for registrars, magistrates and police—recommendations 27, 34, 38; changes to the physical court environment—recommendations 56–60; changes to the rules of evidence—recommendations 140–147 and allowing applications away from the local court of the applicant—recommendations 73, 75.

! RECOMMENDATION(S)

48. The Department of Justice should investigate the most effective means of supporting provision of preparatory training for Indigenous applicants seeking to undertake the Certificate IV in Government (Court Services).

PEOPLE WITH DISABILITIES

6.106 People with disabilities also face specific obstacles to accessing the court to apply for an intervention order. As discussed in paragraphs 2.84–2.87, women with disabilities suffer from high rates of family violence. Violence against people with disabilities is often perpetrated by a carer, who may not come within the current definition of 'family member' under the Act. The commission has therefore recommended a change to the definition of family member to include carers at Recommendation 17. Aside from this definitional issue, people with disabilities experience other serious obstacles to accessing the intervention order system.

6.107 As discussed in Chapter 2, people with a cognitive impairment face particular barriers when dealing with the justice system, which the commission has previously reported in the context of sexual assault.⁷²⁶ These include not understanding that what has happened to them is wrong;⁷²⁷ complaints not being taken seriously by officials due to doubts over memory or credibility;⁷²⁸ complex courtroom language which makes it difficult for the person to understand the legal process; and the difficulty of dealing with cross-examination.⁷²⁹

Cross examination is when a witness is questioned by the lawyer from the opposing side.

726 Victorian Law Reform Commission, *Sexual Offences: Law and Procedure: Final Report* (2004) ch 6. In this report the commission recommended that the Attorney-General consider giving the commission a reference to consider a broader review of the treatment of people with cognitive impairment in the justice system, as victims, perpetrators and witnesses: para 6.8.

727 Moria Carmody and Joan Bratel, 'Vulnerability and Denial: Sexual Assault of People with Disabilities' in Jan Breckenridge and Moria Carmody (eds) *Crimes of Violence: Australian Responses to Rape and Child Sexual Abuse* (1992) 212–213; Disability Discrimination Legal Service, *Beyond Belief, Beyond Justice: The Difficulties for Victim/Survivors with Disabilities when Reporting Sexual Assault and Seeking Justice*, Final Report of Stage One of the Sexual Offences Project (2003) 21.

728 Victorian Law Reform Commission, *Sexual Offences: Interim Report* (2003) above n 485, paras 3.29–3.43; Frohmader (2002) above n 376, 23. The Department of Victorian Communities noted that people with dementia face particular misconceptions about their credibility when attempting to report abuse: submission 78.

729 New South Wales Law Reform Commission, *People with an Intellectual Disability and the Criminal Justice System*, Report No 80 (1996) 261.

INTERNATIONAL STANDARDS

6.108 The rights of women with disabilities experiencing violence have been specifically recognised at the international level by various international instruments. The UN Declaration of the Elimination of Violence Against Women recognises that women with disabilities are especially vulnerable to violence.⁷³⁰ The Beijing Declaration and Platform for Action states that governments should '[e]nsure that women with disabilities have access to information and services in the field of violence against women'.⁷³¹ A UN Committee is currently drafting an international Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities. The draft convention includes articles on freedom from violence and abuse, women with disabilities, and access to information. The draft convention specifically recognises the need to provide official public information in accessible formats and technologies.⁷³²

VIEWS FROM SUBMISSIONS

6.109 Submissions received by the commission outlined many barriers that are specific to people with disabilities. As an initial barrier, people with disabilities find it difficult to obtain information about family violence and the intervention order system in an accessible format.⁷³³ For example, information in braille, large print, audio or video format is not available.

6.110 Even if people are aware of the possibility of applying for an intervention order, it may be impossible for them to access outside assistance because they would have to rely on the person who is abusing them to do so.⁷³⁴ A lack of access to suitable accommodation if they leave the abuser is another serious obstacle preventing people

730 *General Assembly Declaration on the Elimination of Violence Against Women*, GA res 48/104, UN Doc A/RES/48/104 (1993) preamble.

731 United Nations, *Report of the Fourth World Conference on Women*, UN Doc A/CONF.177/20 (1995) Annex: Beijing Declaration and Platform for Action, para 124(m).

732 The draft convention is available on the United Nations Enable website: *International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities* <www.un.org/esa/socdev/enable/rights/adhoccom.htm> at 2 December 2005.

733 Submissions 49 (Domestic Violence and Incest Resource Centre), 79 (Department of Human Services).

734 Frohmader (2002) above n 376, 22.

with disabilities leaving violent relationships.⁷³⁵ Parents with disabilities also fear that a child protection order may be made if they report violence.⁷³⁶

6.111 Submissions also included numerous suggestions for how the court can be made more accessible for people with disabilities. These suggestions included:

- information strategies targeted at people with disabilities (eg providing information on intervention orders in braille, large print, audio or video format);⁷³⁷
- help lines for people with disabilities experiencing violence, including help lines using fax, text and email;⁷³⁸
- training for court staff on disability issues;⁷³⁹
- disability support workers should be available at courts where family violence matters are heard;⁷⁴⁰
- increased availability of appropriate accommodation services for people with disabilities;⁷⁴¹
- increased availability of support services for people with disabilities, including legal support;⁷⁴²
- improved physical accessibility of courts.⁷⁴³

COMMISSION'S RECOMMENDATIONS

6.112 Measures must be taken to improve access to the intervention order system for people with disabilities. The commission agrees that training for magistrates and court

735 Stephen Gilson, et al, 'Redefining Abuse of Women with Disabilities: A Paradox of Limitation and Expansion' (2001) 16 (2) *AFFILIA* 220, 222; Submissions 41 (Victoria Legal Aid), 51 (Villamanta Legal Service), 79 (Department of Human Services).

736 Submission 51 (Villamanta Legal Service).

737 Submissions 49 (Domestic Violence and Incest Resource Centre), 79 (Department of Human Services).

738 Submission 49 (Domestic Violence and Incest Resource Centre).

739 Submissions 51 (Villamanta Legal Service), 63 (Darebin Family Violence Working Group), 74 (Women's Legal Service Victoria), 78 (Department for Victorian Communities), 79 (Department of Human Services). The commission recommends training for magistrates and registrars on disability issues at recommendations 34, 38.

740 Submission 51 (Villamanta Legal Service).

741 Submissions 41 (Victoria Legal Aid), 51 (Villamanta Legal Service).

742 Submissions 41 (Victoria Legal Aid), 51 (Villamanta Legal Service), 74 (Women's Legal Service Victoria).

743 Submission 49 (Domestic Violence and Incest Resource Centre). The commission makes recommendations for improved physical accessibility of courts at Recommendation 63.

staff on disability issues is essential and has recommended that training for magistrates and registrars include disability issues at recommendations 34 and 38. It is also essential that specialist disability services have sufficient resources to provide support to people with disabilities who are applying for intervention orders.

6.113 The commission is also concerned that women with disabilities have limited access to information on family violence and the intervention order system. The commission therefore recommends that any information materials developed are also made available in braille, large print and audio tape. The commission has recommended at Recommendation 42 that the information provided by the Magistrates' Court is reviewed and provision of information in a range of formats is explored.

| ! RECOMMENDATION(S) |
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| 49. Specialist disability community agencies should be resourced to provide services to people seeking intervention orders. |
| 50. Any materials developed about the intervention order system should be made available in braille, large print and audio tape formats. This information should be available in Magistrates' Courts, police stations and community agencies such as support services, libraries and health centres. |

IMMIGRANT WOMEN

I don't know what's going on, I don't know the law ... I nearly have a nervous breakdown. There are so many courts. I had to go to court, but I just sat there and had to listen to [my partner who was representing himself] abuse me. I just don't know what it's all about and no-one can explain it to me.⁷⁴⁴

6.114 Immigrant women, particularly those who have recently arrived in Victoria, face specific obstacles in accessing the intervention order system. As an initial barrier, women from migrant backgrounds may have varied understandings about what behaviour constitutes family violence.⁷⁴⁵ There is also a lack of culturally specific and

⁷⁴⁴ Young (2000) above n 415, 71.

⁷⁴⁵ Partnerships Against Domestic Violence, *Attitudes to Domestic and Family Violence in the Diverse Australian Community: Cultural Perspectives* (2000) 36; Edna Erez, 'Immigration, Culture Conflict and Domestic

relevant community education about family violence and how to obtain assistance and support.⁷⁴⁶ This includes lack of awareness about legal options available to address family violence, including the visa regulations that are relevant where family violence has occurred and the victim is not a permanent resident of Australia.⁷⁴⁷

6.115 Migrant women may be further discouraged by the practical implications of accessing the system. For example, limited access to interpreters is a serious obstacle in accessing information and other forms of support.⁷⁴⁸ As the provision of interpreters is also relevant to those using non-verbal languages such as sign language, interpreters will be discussed separately in the next section. The Australian legal system in general, and the intervention order system in particular, are alien and unfamiliar to many migrant and refugee women.⁷⁴⁹ Issues relating to contact with the police have been outlined at paragraphs 5.70–5.74, therefore, this section will deal with access to the court directly.

INTERNATIONAL STANDARDS

6.116 The rights of immigrant women experiencing violence have been specifically recognised at the international level. The UN *Declaration of the Elimination of Violence Against Women* and the Beijing Platform for Action recognise that migrant women are especially vulnerable to violence.⁷⁵⁰ The Beijing Platform for Action provides that governments should '[e]stablish linguistically and culturally accessible services for migrant women and girls'.⁷⁵¹

Violence/Women Battering' (2000) 2 (1) *Crime Prevention and Community Safety: An International Journal* 27, 27–29; Department of Justice, *Cultural Diversity Project* (2003) 103–104.

746 Partnerships Against Domestic Violence (2000b) above n 745, 40, 41; Department of Justice, *Cultural Diversity Project* (2003) above n 745, 105.

747 Erez (2000) above n 745, 31; Anita Raj and Jay Silverman, 'Violence Against Immigrant Women: The Roles of Culture, Context, and Legal Immigrant Status on Intimate Partner Violence' (2002) 8 (3) *Violence Against Women* 367, 375.

748 Access to interpreters is discussed at paras 6.122–6.137.

749 Victorian Law Reform Commission (2004) above n 8, para 6.18.

750 *General Assembly Declaration on the Elimination of Violence Against Women*, GA res 48/104, UN Doc A/RES/48/104 (1993) preamble; United Nations, *Report of the Fourth World Conference on Women*, UN Doc A/CONF.177/20 (1995) Annex: Beijing Platform for Action, para 116.

751 United Nations, *Report of the Fourth World Conference on Women*, UN Doc A/CONF.177/20 (1995) Annex: Beijing Platform for Action, para 125(b).

VIEWS FROM SUBMISSIONS

6.117 Submissions outlined a number of obstacles for women from migrant communities to accessing the intervention order system.⁷⁵² These obstacles include a lack of awareness about how the legal system deals with family violence, limited access to information,⁷⁵³ and a lack of culturally appropriate support services.⁷⁵⁴ Groups from some countries, particularly refugees, may fear authorities such as courts due to bad experiences in their home countries.⁷⁵⁵ Women who are not permanent residents of Australia may be threatened by their violent partner that if they take any action their visa application will be rejected.⁷⁵⁶ The Federation of Community Legal Centres told the commission ‘[s]ome court staff and magistrates lack insight and understanding of cultural issues resulting in women disengaging from the court process’.

6.118 Submissions made suggestions for how the intervention order system can be made more accessible to migrant women, particularly those from newly arrived communities:

- increasing the amount of information available about family violence and the intervention order system—this could include translated information brochures available at courts and community agencies⁷⁵⁷ and community education⁷⁵⁸ (this type of information is particularly crucial for those who have recently arrived in Victoria, including asylum seekers);⁷⁵⁹
- improved cultural awareness training for magistrates and court staff, in particular about barriers that immigrant women may face when attempting to access the intervention order system;⁷⁶⁰

752 Obstacles raised by submissions that relate to interpreters are discussed separately at paras 6.125–6.132.

753 Submissions 2 (Vietnamese Community in Australia), 64 (Federation of Community Legal Centres (Vic)).

754 Submission 41 (Victoria Legal Aid).

755 Submission 64 (Federation of Community Legal Centres (Vic)).

756 Submissions 64 (Federation of Community Legal Centres (Vic)), 70 (Asylum Seeker Resource Centre).

757 Submissions 39 (Royal Women’s Hospital), 41 (Victoria Legal Aid), 49 (Domestic Violence and Incest Resource Centre), 61 (Broadmeadows Community Legal Service), 66 (Aboriginal Family Violence Prevention and Legal Service (Victoria)), 74 (Women’s Legal Service Victoria), 78 (Department for Victorian Communities).

758 Submissions 41 (Victorian Legal Aid), 53 (Women’s Electoral Lobby, Victoria), 54 (Andrew Compton), 78 (Department for Victorian Communities).

759 Submission 39 (Royal Women’s Hospital).

760 Submissions 41 (Victorian Legal Aid), 63 (Darebin Family Violence Working Group), 64 (Federation of Community Legal Centres (Vic)), 70 (Asylum Seeker Resource Centre), 74 (Women’s Legal Service Victoria), 78 (Department for Victorian Communities), 79 (Department of Human Services). This

- increasing culturally specific support services for victims of family violence, particularly housing services;⁷⁶¹
- access to specialist workers at courts for immigrants.⁷⁶²

COMMISSION'S RECOMMENDATIONS

6.119 It is essential that women from migrant backgrounds have access to information to explain the intervention order system. The commission recommends that information should be available in a range of languages. Aside from the translation of the English material, brochures in other languages should also include information on access to interpreters and access to immigration legal advice. These information brochures should be available at Magistrates' Courts and police stations, and should also be distributed widely to community organisations such as support services, libraries and health clinics.

6.120 To improve knowledge about the intervention order system, the commission recommends that a community education strategy be developed for specific migrant communities. This strategy could involve information sessions by community legal centres in conjunction with culturally specific services. This will ensure that people with limited literacy also have access to information about the system, and will assist service providers to advise on the legal options available.

6.121 The commission also agrees that cultural awareness training for magistrates and registrars is essential to improving migrant women's experience of court, and we have recommended this at recommendations 34, 38. It is also essential that culturally-specific support services are adequately funded in order to provide advice and support to immigrants seeking access to the intervention order system.

suggestion was also made by community participants and participants from within the court system in a 2003 study on diversity conducted by the Department of Justice: Department of Justice, *Cultural Diversity Project* (2003) above n 745, 83. The commission recommends training in migrant issues for magistrates and registrars at recommendations 34, 38.

761 Submissions 41 (Victorian Legal Aid), 74 (Women's Legal Service Victoria).

762 Submission 74 (Women's Legal Service Victoria).

! RECOMMENDATION(S)

51. Any materials developed on the intervention order system should be made available in a variety of community languages. Written information in other languages should include extra information on access to interpreters and access to immigration legal advice for those who are not permanent residents. This information should be available in Magistrates' Courts, police stations and community agencies such as support services, libraries and health centres.
52. A community education strategy about the intervention order system, including the role of police, should be developed for migrant communities. This could involve education forums run by community legal centres and other community agencies, in conjunction with culturally specific services.
53. Specialist community agencies should be resourced to provide services to immigrants seeking intervention orders.

ADEQUATE INTERPRETER SERVICES IN COURTS

6.122 Access to interpreters is crucial for people who do not speak English or who communicate in a non-verbal language such as sign language. The Magistrates' Court of Victoria Family Violence and Stalking Protocols provide:

- If it is apparent that the person cannot speak English at the interview with the registrar, the registrar must 'attempt to obtain a qualified interpreter or utilise the services of the telephone interpreter service. Children must *not* be used as interpreters'.⁷⁶³
- Before the hearing, the registrar is responsible for organising an interpreter. The protocols state that 'if both parties require an interpreter it is usually preferable, especially in contested matters, that two are provided ... Where one interpreter is available, it must be explained to all parties and the interpreter, that the interpreter is an independent person responsible to the Court, not the parties'.⁷⁶⁴

⁷⁶³ Magistrates' Court of Victoria (2003) above n 575, para 4.2 (emphasis in original).

⁷⁶⁴ Ibid paras 16.1.1, 16.1.2.

6.123 There are significant problems with the provision of interpreters for family violence matters and this severely impacts on access to justice for people who do not speak English.

VIEWS FROM SUBMISSIONS

6.124 Submissions were overwhelmingly concerned about inadequate arrangements for interpreters in family violence matters. Problems experienced related to two main issues—the availability of interpreters and their professionalism and independence.

Availability of Interpreters

6.125 Access to interpreters was described by some organisations as ‘difficult’, ‘limited’ and ‘problematic’.⁷⁶⁵ Many submissions noted problems with access to interpreters.⁷⁶⁶ In some areas it is common practice for registrars to book an interpreter for only half the day.⁷⁶⁷ This means the interpreter sometimes needs to leave before the case is finished. It is also common for only one interpreter to be booked for both parties, despite the protocols stating that separate interpreters should be booked.⁷⁶⁸ In other areas, interpreters in the relevant languages are just not available, particularly in languages of the newly arrived communities.⁷⁶⁹ The Murray Mallee Community Legal Service told the commission that in its area approximately 8.5% of the population do not speak English at home, but there are no court interpreters in the area:

Locally there is only one Turkish interpreter available for court interpreting, and they are not qualified to the level required for legal interpreting. We have difficulty obtaining on-site qualified interpreters in all other languages, most frequently Arabic and Vietnamese. We regularly witness and experience great difficulty in securing on-site interpreters,

765 Submissions 28 (Murray Mallee Community Legal Service), 39 (Royal Women’s Hospital), 61 (Broadmeadows Community Legal Service), 64 (Federation of Community Legal Centres (Vic)), 72 (Victoria Police).

766 Submissions 28 (Murray Mallee Community Legal Service), 39 (Royal Women’s Hospital), 40 (Whittlesea Domestic Violence Network), 61 (Broadmeadows Community Legal Service), 64 (Federation of Community Legal Centres (Vic)), 70 (Asylum Seeker Resource Centre), 72 (Victoria Police), 74 (Women’s Legal Service Victoria).

767 Submissions 61 (Broadmeadows Community Legal Service), 64 (Federation of Community Legal Centres (Vic)), 70 (Asylum Seeker Resource Centre), 74 (Women’s Legal Service Victoria).

768 Submissions 28 (Murray Mallee Community Legal Service), 61 (Broadmeadows Community Legal Service), 64 (Federation of Community Legal Centres (Vic)), 70 (Asylum Seeker Resource Centre), 74 (Women’s Legal Service Victoria).

769 Submissions 61 (Broadmeadows Community Legal Service), 72 (Victoria Police).

resulting in significant stress and confusion for applicants and their families who do not speak English.

6.126 The limited availability of interpreters also means that sometimes applications are not made at all or are withdrawn;⁷⁷⁰ friends or family are used as interpreters instead of professionals;⁷⁷¹ people do not understand what has happened as the interpreter leaves early;⁷⁷² and people do not receive adequate legal advice before or after the case as there is no interpreter available to explain.⁷⁷³

6.127 The Murray Mallee Community Legal Centre provided the following example where the lack of availability of an interpreter led to the withdrawal of an application for an intervention order:

A Vietnamese-speaking applicant ... in a contested application was required to provide her own interpreter—an unqualified friend whose standard of English was not sufficient to conduct the hearing. Both the applicant and interpreter were sworn in, and this was so intimidating for the interpreting friend that she refused to return to assist after the matter was stood down.

6.128 Submissions also noted that interpreters are often not provided where the registrar thinks it is not necessary, despite the applicant requesting an interpreter.⁷⁷⁴ The Women's Legal Service Victoria told the commission that this is particularly common where there is no apparent dispute:

For example, we have had frequent experiences of non-English speaking women who attend court with the respondent to seek a variation or revocation of their intervention order, just being asked by the magistrate in a loud voice in the presence of the respondent, 'do you understand?' If they confirm that they understand, sometimes even via the

770 Submissions 28 (Murray Mallee Community Legal Service), 74 (Women's Legal Service Victoria).

771 Submissions 28 (Murray Mallee Community Legal Service), 39 (Royal Women's Hospital), 74 (Women's Legal Service Victoria).

772 Submissions 64 (Federation of Community Legal Centres (Vic)), 74 (Women's Legal Service Victoria).

773 Submissions 61 (Broadmeadows Community Legal Service), 74 (Women's Legal Service Victoria).

774 Submissions 64 (Federation of Community Legal Centres (Vic)), 74 (Women's Legal Service Victoria); CALD Advisory Committee Meeting, 19 October 2005. Participants in the Department of Justice cultural diversity project also commented on this issue. Its report states 'Anecdotal evidence from focus groups indicates that on numbers of occasions, individuals who were deemed to have 'enough' English were denied access to interpreting services in the courts. The decision about whether to have an interpreter was not vested with the client but with the courts themselves. The fear this inspires, both in the individuals who are left wondering what is happening to them and in the communities which they belong, is significant.' Department of Justice, *Cultural Diversity Project* (2003) above n 745, 52.

'interpretation' of the respondent, the order [for variation or revocation] is generally made without an interpreter being requested.

6.129 Victoria Legal Aid was the only organisation which did not believe that access to interpreters is a problem, unless there is late notice to the court.

6.130 Submissions suggested improvements to the availability of interpreters, such as:

- a notice system, so that the court knows whether a matter will be contested and can therefore book an interpreter for the whole day if necessary⁷⁷⁵—the commission recommends a notice system at recommendations 83–87;
- interpreter training programs in regional areas where there are non-English speaking communities, so that potential interpreters do not need to move to Melbourne to become qualified by the National Accreditation Authority for Translators and Interpreters;⁷⁷⁶
- a strategic plan for the provision of interpreters in family violence cases;⁷⁷⁷
- increased funding so that court interpreters can be booked for the whole day;⁷⁷⁸
- courts to have on-call interpreters, particularly those in areas with large non-English speaking communities;⁷⁷⁹
- recruitment of interpreters in less common languages.⁷⁸⁰

Professionalism and Independence of Interpreters

6.131 Submissions were also concerned about the quality of interpreting services. Organisations expressed concerns that interpreters do not interpret accurately, sometimes because they are trying to resolve the dispute between the parties.⁷⁸¹ Interpreters may be male leaders within their community who feel it is their role to

⁷⁷⁵ Submission 70 (Asylum Seeker Resource Centre).

⁷⁷⁶ Submission 28 (Murray Mallee Community Legal Service). The Victorian government funded Goulburn Ovens Institute of TAFE in Shepparton to provide an interpreting course for 18 Arabic–English speakers in 2002. A language accreditation training course will be offered in Geelong in 2005–06. The Department of Human Services and the Office of Multicultural Affairs may provide occasional training for interpreters in regional areas.

⁷⁷⁷ Submission 70 (Asylum Seeker Resource Centre); CALD Advisory Committee Meeting, 19 October 2005.

⁷⁷⁸ Submissions 74 (Women's Legal Service Victoria), 78 (Department for Victorian Communities).

⁷⁷⁹ Submission 79 (Department of Human Services).

⁷⁸⁰ Submission 74 (Women's Legal Service Victoria).

⁷⁸¹ Submissions 2 (Vietnamese Community in Australia), 27 (Robinson House BBWR), 74 (Women's Legal Service Victoria).

mediate the ‘dispute’ and encourage the woman to return to her partner.⁷⁸² This demonstrates a fundamental misunderstanding of the role of an interpreter in court. The Women’s Legal Service Victoria gave the following example:

Our client ... was from the Horn of Africa, attended court seeking an intervention order against her husband, who was from the same Horn of Africa country. Only one interpreter was booked. On several occasions when seeking instructions and giving advice to our client we became concerned that the interpreter was not directly interpreting. Upon questioning him in relation to this he informed us that he was an elder in the community and that it would be better if [she] resolved her concerns within the community and that he was trying to facilitate this. [She] ultimately withdrew her application for an intervention order despite a long history of violence.

6.132 Submissions were also concerned that where only one interpreter is provided for both parties, problems of perceived or actual bias of the interpreter are exacerbated.⁷⁸³ Particularly in small communities, the interpreter may know one or both of the parties.⁷⁸⁴ The Federation of Community Legal Centres noted that ‘many of the court interpreters that are used are of incorrect dialect, ethnicity or gender—resulting in mistrust and communication breakdown’.

6.133 Submissions made suggestions to improve the professionalism and independence of interpreters:

- mandatory provision of separate interpreters where both parties require one;⁷⁸⁵
- requiring interpreters to undergo family violence training;⁷⁸⁶

782 Submission 27 (Robinson House BBWR).

783 Submissions 27 (Robinson House BBWR), 28 (Murray Mallee Community Legal Service), 74 (Women’s Legal Service Victoria), 79 (Department of Human Services).

784 Submission 64 (Federation of Community Legal Centres (Vic)).

785 Submissions 27 (Robinson House BBWR), 28 (Murray Mallee Community Legal Service), 30 (Violence Against Women Integrated Services), 39 (Royal Women’s Hospital), 41 (Victoria Legal Aid), 49 (Domestic Violence and Incest Resource Centre), 61 (Broadmeadows Community Legal Service), 62 (Eastern Community Legal Centre), 64 (Federation of Community Legal Centres (Vic)), 74 (Women’s Legal Service Victoria), 79 (Department of Human Services). The Magistrates’ Court told the commission that in theory it would support mandatory provision of separate interpreters, but that this would require a significant increase in budget.

786 Submissions 40 (Whittlesea Domestic Violence Network), 54 (Andrew Compton), 64 (Federation of Community Legal Centres (Vic)), 74 (Women’s Legal Service Victoria), 79 (Department of Human Services), 86 (Magistrates’ Court of Victoria). Participants in the Department of Justice cultural diversity project also felt that specialised training was needed for interpreters working in technical fields such as the courts: Department of Justice [Victoria] (2003) above n 745, 47.

- training for court staff about interpreting issues so they are aware of the serious problems that can arise where inappropriate interpreting arrangements are made;⁷⁸⁷
- provision of independent interpreters from interstate by telephone or video who do not know the parties;⁷⁸⁸
- interpreters should be seated away from the parties to show independence;⁷⁸⁹
- interpreters should always be required to swear an oath or affirmation regarding their obligation to interpret accurately, particularly where one interpreter is provided for both parties;⁷⁹⁰
- greater capacity to provide female interpreters for women;⁷⁹¹
- employment of interpreters by a government agency or department, or the court itself, rather than obtaining interpreters through outside agencies;⁷⁹²
- an accreditation process for court interpreting that is not only about accredited level of language ability, but also an understanding of legal and ethical obligations in the area of court interpreting;⁷⁹³
- planning for the provision of legal interpreters from projected migration demographics.⁷⁹⁴

COMMISSION'S RECOMMENDATIONS

6.134 Inappropriate interpreting facilities are creating a serious barrier to accessing the protection of the intervention order system for people who do not speak English. This is a barrier to justice for a significant proportion of the Victorian population and must be urgently addressed.

6.135 Many of the useful suggestions for change made in submissions will be difficult to implement without an overall plan by the government for the provision of interpretation services in the Magistrates' Court. The commission therefore

787 Submission 70 (Asylum Seeker Resource Centre).

788 Submission 39 (Royal Women's Hospital).

789 Submission 30 (Violence Against Women Integrated Services).

790 Submission 74 (Women's Legal Service Victoria); CALD Advisory Committee Meeting, 19 October 2005.

791 Submission 41 (Victoria Legal Aid), 74 (Women's Legal Service Victoria).

792 CALD Advisory Committee Meeting, 19 October 2005.

793 CALD Advisory Committee Meeting, 19 October 2005. The Magistrates' Court also suggested that interpreters should receive training in court procedures.

794 CALD Advisory Committee Meeting, 19 October 2005.

recommends a broader review of the provision of interpreters be conducted, with a view to developing a plan for the provision of suitably qualified, professional and appropriate interpreters in courts. This review should consider:

- whether interpretation services should be provided by a government department or service rather than by outside, unregulated agencies;
- how the accreditation of court interpreters can be regulated to ensure appropriate ethical standards and knowledge of court processes, rather than simply language ability;⁷⁹⁵
- how to develop a strategy for the recruitment of a wider range of interpreters, particularly women, those from newly arrived communities and those living in regional areas with significant non-English speaking populations;
- how to ensure the availability of interpreters in Magistrates' Courts, including the possibility of in-house or on-call interpreters in particular languages for courts with a large population of non-English speakers from a particular language group.

6.136 In the absence of a plan by government for the provision of interpreters, the Magistrates' Court can also take measures to improve the situation. The commission recommends that the Magistrates' Court review its Family Violence and Stalking Protocols. In particular, the commission recommends that new provisions in the protocols should provide:

- that where both parties need interpreters, separate interpreters *must be* provided, unless they are not available—this is in contrast to the current provision which states that separate interpreters are 'preferable';
- that where only one interpreter is used for both parties, the interpreter should take all possible steps to demonstrate independence, such as not sitting with one of the parties;
- that interpreters must always be required to swear an oath or affirmation before the case commences, repeating their obligation to interpret accurately⁷⁹⁶ —

795 Some interpreters are members of the Australian Institute of Interpreters and Translators. Those who are members must abide by the Institute's Code of Ethics, which covers professional conduct, confidentiality and impartiality: Australian Institute of Interpreters and Translators, *AUSIT Code of Ethics* <<http://server.dream-fusion.net/ausit2/pics/ethics.pdf>> at 24 November 2005.

796 Although the requirement to swear an oath or affirmation is not included in legislation, the form of the oath or affirmation is set out in the *Evidence Act 1958* pt IV.

although this is a requirement under the common law in Victoria, it is not consistently adhered to.⁷⁹⁷

6.137 The commission also agrees that magistrates and registrars should receive training about the provision of interpreting services as part of their training on family violence issues.

! RECOMMENDATION(S)

54. The government should conduct a review of the provision of interpreting services in the Magistrates' Court, with a view to developing standards for legal interpreting in family violence matters and the provision of and availability of interpreting services.

55. The Magistrates' Court should consider revision of the Family Violence and Stalking Protocols on the provision of interpreters. Specifically, the protocols should provide:

- that where both parties need interpreters, separate interpreters must be provided unless they are not available;
- that where only one interpreter is used for both parties, the court should ensure that interpreters behave consistently with their obligation of independence (eg by not sitting with one of the parties);
- the court should ensure that interpreters always swear an oath or affirmation regarding their obligation to interpret accurately before they interpret in the court.

6.138 Aside from the obstacles discussed, the commission also believes that physical access to the Magistrates' Court should be improved.

⁷⁹⁷ The Uniform Evidence Act (applied in the Commonwealth, NSW, and Tasmania) includes a requirement for interpreters to act on oath or affirmation: *Evidence Act 1995* (Cth) s 22. The commission is currently conducting a review of the Uniform Evidence Act and will be making recommendations on how the Act can be implemented in Victoria. It is therefore possible that the requirement for interpreters to swear an oath or affirmation will soon be introduced in legislation in Victoria as a result of the implementation of the Uniform Evidence Act.

SAFETY IN COURTS

6.139 Safety in courts is an important issue in making sure that the justice system works effectively, but particularly for family violence matters. In consultations and submissions, many victims said they feared for their safety in the court building when seeking an intervention order. They reported feeling unsafe when entering or exiting the courtroom, when waiting for their matter to be heard, or in the courtroom itself. They may have also experienced high levels of discomfort when making an application for an intervention order in a public place. The courtroom environment can also be particularly unwelcoming for disabled and Indigenous applicants, and for children.

6.140 These safety fears and other environmental issues need to be taken seriously for several reasons. First, fears of experiencing violence in the courtroom environment are real. Submissions and other evidence report a wide range of violent and threatening behaviour which has occurred in courtrooms, indicating that perpetrators will and do use any opportunities to perpetuate violent and controlling behaviour. Workers in the courtroom, such as solicitors, can also be involved in this dynamic as active adjuncts of the perpetrator's violent or threatening behaviour, as targets of the perpetrator's behaviour, or through simply being exposed to this violence through being with their client:

Many times we have sat with a client waiting for an I.O. to be obtained (and this can be many hours sometimes in local courts) and we have loud comments, fingers pointed to the head, staring down, and other behaviours to try and intimidate the client and their workers.⁷⁹⁸

[The] [p]arties were called into the courtroom. Only the bench clerk, applicant, respondent and his barrister were in the courtroom. After waiting some minutes the bench clerk left the room to get the magistrate. During this time the respondent's barrister questioned her about family law matters. This barrister had been aggressive in his conduct towards her earlier and she had refused to discuss any issues with him. This intimidation in the courtroom had been very distressing. At a time when she was trying to muster up all her strength to cope with the court hearing this incident had totally unnerved the applicant. A support worker had come into the courtroom and saw her distress and suggested that she wait outside until the magistrate arrived.⁷⁹⁹

798 Submission 27 (Robinson House BBWR).

799 Submission 61 (Broadmeadows Community Legal Service).

I felt intimidated by his friends at the court. They were swearing at me in the hall. I told my barrister. Rod and his friends waited out the front. We were let out the back. It was me and the worker from the refuge and we were scared. Then the second day, another worker came with me. We were scared too. He was sitting out the front just out of jail with his friends. There were fifteen of them. There should be more protection. This time I'll ask for protection or I'm not going.⁸⁰⁰

6.141 Secondly, it is important to appreciate these safety issues from the perspective of the parties involved in the process, and with an appreciation of the dynamics of family violence. For some victims, fear of the perpetrator is so acute that the potential of being in close proximity to them when in the courtroom makes them extremely anxious. For example, one woman who had been in an abusive marriage for 20 years told us that, when finally seeking an intervention order, knowing the perpetrator was travelling to the courtroom and was then in the courtroom, made her so anxious that she was unable to function in court: 'I couldn't even remember my own name'.

6.142 Going to court is a daunting experience for anyone, but going to court to seek an intervention order against a perpetrator who may have threatened you with extreme harm, or even death on separation, can be terrifying. Also, doing something against the wishes of someone who has had an extreme degree of control over you can take great personal strength and energy, which will only be lessened in a court environment which is inimical to victims' perspectives and circumstances. The reality and seriousness of these safety issues must be sufficiently taken into account when arrangements are made for family violence matters to be heard in court.

6.143 Failing to consider these issues can mean that justice system processes can contribute to, rather than lessen, a victim's potential exposure to violence. As the above quote suggests, a lack of safety and fear of violence in court also means that victims, and other witnesses, may not be able to participate as effectively in the justice process. Finally, it is also unacceptable for solicitors and other court staff to be exposed to threats, harassment and violence when working. The safety of such workers was a concern in several submissions.

CURRENT SAFETY PROVISIONS

6.144 Safety provisions vary between courts. Some courts were said to provide excellent security and have facilities that maximise the sense of safety of people seeking

800 Debra Parkinson, et al (eds) *A Powerful Journey: Stories of Women Leaving Violent Situations* (2004) 47.

protection, but other courts do not. Consultation participants cited regional courts as being particularly poor.

6.145 The Family Violence Court Division has instituted a number of safety features. There was a suggestion in some submissions that the family violence courts could be seen as providing 'best practice' in minimum safety mechanisms, and thus a model for other courts' safety practices to be based upon.

The family violence courts ... should set the benchmark for access and security of women and children.⁸⁰¹

We recommend that the minimum standards for safety that are determined for the Family Violence Courts be accepted as essential across all courts.⁸⁰²

6.146 There are Magistrates' Court protocols which registrars can implement if they are aware that a party in a family violence matter has already been involved in an incident in court involving violence, or has prior orders for violence.⁸⁰³ These measures include contacting the local police and, if in metropolitan Melbourne, the Protective Security Group, and communicating the concern and any threat or act of violence within the court building to the chief executive officer and registrar in charge of the relevant court region.

SEPARATE WAITING AREAS

6.147 The most frequently raised concern was that a lack of separate waiting space in some courts exposes applicants to abuse by respondents, or by their family or friends, while they are waiting for their matter to be called. Many submissions commented on this:

It is important that separate facilities including exits are incorporated in all designs of new Magistrate Court Buildings and where feasible modification to existing courts should be undertaken.⁸⁰⁴

Courts should have provision of at least two waiting areas so that people seeking protection can wait in a separate space, free from intimidation.⁸⁰⁵

801 Submission 79 (Department of Human Services).

802 Submission 49 (Domestic Violence and Incest Resource Centre).

803 Magistrates' Court of Victoria (2003) above n 575, para 8.1.

804 Submission 79 (Department of Human Services).

805 Submission 45 (Rochelle Campbell, women's health resource worker).

Court waiting areas were considered inappropriate as there are not separate areas and it was not possible for parties to avoid each other there. Strategies used to attempt to deal with these situations included women waiting in the toilets or sitting in their car until going into court.⁸⁰⁶

Court safety and security were of major concern to those consulted. While some described the courts as 'uncomfortable', others stated that they were 'potentially dangerous'. It was noted that clients can be scared and intimidated when they come to court and its layout and provisions do not enhance feelings of safety and security ... Those consulted described scenes that they had witnessed at court including parties yelling at each other and brawls related to matters being dealt with in court, taking place in and around the courthouse.⁸⁰⁷

Applicants upon arriving at Court need to be immediately directed to a separate waiting area.⁸⁰⁸

Separate waiting areas or a designated 'safe area' must be allocated to ensure applicants feel safe at court.⁸⁰⁹

Have a room clearly labelled 'Waiting Room—for applicants for Intervention Orders—You may wait here if it will help you feel safe' ... Need private room or booth in which to see Clerk of Courts to fill out [application] form and have it explained.⁸¹⁰

It seems obvious that all courts should have facilities for separate waiting areas for the concerned parties.⁸¹¹

Any court environment is intimidating enough for those not used to it, without having to share spaces with those who have assaulted or bullied you in the past.⁸¹²

There were a limited number of interview rooms, most of which had been taken over for other purposes, and so there were few places that solicitors can consult their clients. The safety of solicitors dealing with family law matters was also noted as a concern.⁸¹³

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- 806 Submission 69 (Victorian Community Council Against Violence).
807 Submission 69 (Victorian Community Council Against Violence).
808 Submission 66 (Aboriginal Family Violence Prevention and Legal Service (Victoria)).
809 Submission 61 (Broadmeadows Community Legal Service).
810 Submission 25 (Barbara Roberts).
811 Submission 20 (Mrs EF Belsten).
812 Submission 53 (Women's Electoral Lobby, Victoria).
813 Submission 69 (Victorian Community Council Against Violence).

Separate or ‘safe’ waiting areas received overwhelming support from users of the system. Such separate spaces also need to include places where victims can meet with their legal representatives.

! RECOMMENDATION(S)

56. All courts dealing with family violence matters should have separate waiting areas in which it is possible to ensure the safety of an applicant waiting for a matter to be heard.
57. The availability of separate and safe waiting areas should be brought to the attention of applicants wherever possible before they attend the courtroom, and immediately on their arrival at the courtroom.

ENTERING AND EXITING COURTS

6.148 The desire for separate and safe waiting areas also extended to separate and safe entrances, and particularly exits, to the courtroom. This was mentioned in some of the submissions cited.

6.149 Separate and safe exits are in some circumstances created not only through the geography of the building but also by the helpful actions of court staff:

At the Shepparton Magistrate’s Court, there existed an informal practice of alerting the court to potentially dangerous situations, and when alerted, court and police staff were considered to be helpful in such situations. The practice involved taking one party out an insecure back entrance through a car park while the other party was held up ‘chatting with police officers’.⁸¹⁴

6.150 However, most submissions suggested a more formalised version of ensuring such safe exits of applicants, specifically through providing them with sufficient time and space to leave separately from the respondent. This could also be engineered in the way that orders are made.

814 Submission 69 (Victorian Community Council Against Violence).

The respondent should be required to remain within the court surroundings for at least 10 minutes after the finish of proceedings, enabling the applicant to leave without harassment.⁸¹⁵

When orders are finalised, Registrars must ensure that applicants receive their copy first and given adequate time to leave the court before serving the respondent with their copy.⁸¹⁶

! RECOMMENDATION(S)

58. Wherever possible, there should be at least one separate and safe entrance and exit from the courtroom for the use of applicants in fear of their safety.

SECURITY STAFF

6.151 Overall, there was a strong call in submissions for greater security measures in courts. Many of these measures included an extended commitment and engagement to safety measures by court staff. This included a greater visible and effective presence of security staff and/or police so they were not only at the entrance to the courthouse, but also spread within it. Sufficient security staff were seen to be needed to adequately respond to violent incidents when they occur. Scanning for weapons was also seen as important. A number of submissions mentioned the need for first aid facilities to be available on site for use in emergencies.

All courts should have [Protective Service Officers] specifically for intervention order matters who not only sit in the courtroom when matters are being heard but are visible in the waiting areas.⁸¹⁷

There should be a constant visible presence by protected [*sic*] services in foyers/waiting areas (not just in security rooms or at entry points). Remote waiting/interviewing facilities (such as those at the Melbourne Children's Court) would also be helpful.⁸¹⁸

Security systems, including equipment to scan for weapons should be available at all courts and an adequate number of security staff need to be provided. Even at Melbourne

815 Submission 27 (Robinson House BBWR).

816 Submission 61 (Broadmeadows Community Legal Service).

817 Submission 61 (Broadmeadows Community Legal Service).

818 Submission 41 (Victoria Legal Aid).

Magistrates' Court, which has one of the busiest intervention order lists in Victoria, security guards are often not readily available when incidents occur.⁸¹⁹

PRIVATE AREAS FOR APPLICATIONS

6.152 There were concerns about the safety of certain places in the courthouse, specifically the place that applications are made, and the courtroom itself. In many courts applications are made in a public place. This is not only unsafe, but the application requires victims to list the reasons they need an order, which will require the disclosure of the family violence they have suffered. For some people, this constitutes the disclosure of many years of abuse, some of which may be of a particularly sensitive nature (eg sexual violence). A public place is obviously not the most appropriate venue for such a process. This was supported in submissions:

The application process, conducted in public areas, is unsafe and inappropriate in this context.⁸²⁰

Details should not be taken at the general counter.⁸²¹

When an applicant is first being interviewed by a registrar, the interview should take place in a separate, private room. In the Federation's experience, it is extremely distressing and humiliating for victims of family violence to have to relive their experiences at the "Inquiries" counter.⁸²²

There needs to be a private area in all courthouses to apply for intervention orders. The commission has also recommended at recommendations 34, 38 and 61 that all court staff working with family violence cases have specialised training, which should cover safety issues.

| ! RECOMMENDATION(S) |
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| 59. Applications for intervention orders should not be required to be made at the inquiries desk or other public spaces in court buildings. |

819 Submission 74 (Women's Legal Service Victoria).

820 Submission 69 (Victorian Community Council Against Violence).

821 Submission 66 (Aboriginal Family Violence Prevention and Legal Service (Victoria)).

822 Submission 64 (Federation of Community Legal Centres (Vic)).



RECOMMENDATION(S)

60. A private space should be made available for inquiries and applications for intervention orders.

IN THE COURTROOM

6.153 The other space that gained particular attention was the courtroom itself. First, giving evidence can be a particularly stressful experience, as discussed in Chapter 11. Submissions criticised the way this is done in the traditional courtroom:

The court set up in taking evidence from extremely stressed applicants needs review—the witness box, its placement and its symbolism in our experience adds enormous stress to applicants as well as the manner in which the oath is explained and administered. Thought needs to be given as to the way evidence on oath is received without in any way diminishing the serious nature of witness evidence. More information needs to be readily available about remote witness facilities to applicants and to lawyers.⁸²³

The power given to the Family Violence Court Division to exclude certain people from the courtroom whilst witnesses are giving evidence ... may also assist in improving safety of people in need of protection and witnesses and this should be extended to the wider Magistrates' Court once evaluated.⁸²⁴

Applicants should not be required to give evidence before a full Court dealing with other matters.⁸²⁵

6.154 Secondly, it seems that sometimes the applicant and respondent are left in the courtroom unattended by anyone except their own legal representatives. This has been used as an opportunity to harass the applicant and can be the source of great fear:

For many women having to face the perpetrator of the violence and be in the same room as him is extremely stressful ... under no circumstances should parties be left in a courtroom on their own.⁸²⁶

6.155 Many submissions also raised the need for training of court staff about safety and family violence matters:

823 Submission 66 (Aboriginal Family Violence Prevention and Legal Service (Victoria)).

824 Submission 74 (Women's Legal Service Victoria).

825 Submission 66 (Aboriginal Family Violence Prevention and Legal Service (Victoria)).

826 Submission 61 (Broadmeadows Community Legal Service).

[N]ew court staff are not always aware of procedures that have [been] put in place ... It is therefore paramount that *all* court staff have *ongoing* training relating to family violence, safety issues and court protocols.⁸²⁷

Courteous and helpful court staff can alleviate some anxiety and put people at ease in the formal environment and should possess a high level of interpersonal and communication skills.⁸²⁸

It seems that many of the safety recommendations suggested will be achieved not only through adjustments and additions to existing facilities, but also through a change in the knowledge, attitudes and behaviour of the people within those spaces. (We discuss training matters elsewhere). Clearly, the courtroom space can be transformed by the actions of staff. At the forefront of all action must be a prioritisation of victims' safety requirements.

| ! RECOMMENDATION(S) |
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| <p>61. Training of court staff should include awareness raising about victims' experiences at court, and perceptions of the courthouse space and courthouse processes. Private security staff should also be included in this training process.</p> |
| <p>62. Awareness raising provides the basis for training on safety considerations in court.</p> |

MARGINALISED GROUPS

6.156 Making the court safe will require different approaches for different people. Indigenous people may experience additional discomfort and anxiety in a courtroom where there are no Indigenous staff. The commission has recommended efforts to increase the number of Indigenous court staff at Recommendation 48. Existing court staff also need to have cultural awareness training,⁸²⁹ as recommended at recommendations 34 and 38.

827 Submission 61 (Broadmeadows Community Legal Service), emphasis in original.

828 Submission 45 (Rochelle Campbell, women's health resource worker).

829 Ibid.

PEOPLE WITH DISABILITIES

6.157 There also needs to be greater efforts to ensure the access of people with disabilities to the courts. Given the high levels of family violence suffered by people with disabilities, and the many barriers that prohibit them from accessing the justice system, it is simply not acceptable to still have court environments which do not provide sufficient access for them. Also, as we are recommending an expansion of the definition of family member to cover people with disabilities and their carers, there could well be an increase in people with disabilities accessing the courts, which will need to be adequately catered for.

As part of the Department of Justice, the courts should be responsible for the development and implementation of individual Disability Action Plans to ensure that people with a disability are not discriminated against within the court system. These plans should encompass all areas of accessibility from physical access, access to information through to employment issues. If the plans are well developed, it is hoped that the implementation of them would assist in eliminating barriers for people who have a disability. Villamanta further believes that there is a need for strong provisions to ensure such Disability Action Plans are implemented within reasonable time-frames.⁸³⁰

Disability access is imperative.⁸³¹

! RECOMMENDATION(S)

63. All courts dealing with family violence matters should ensure there is sufficient disability access. This could include the implementation of individual Disability Action Plans by the courts.

CHILDREN IN COURT

6.158 Sometimes applicants attend court with their children. As well as applicants often being stressed, traumatised and suffering the effects of family violence, their children may also be troubled. Lack of facilities for children can simply make the court process a lot more difficult for an applicant, as the following example demonstrates:

830 Submission 51 (Villamanta Legal Service).

831 Submission 45 (Rochelle Campbell, women's health resource worker).

I had direct experience of supporting a woman with two young children, to get an intervention order at Heidelberg court, both of us reasonably unfamiliar with court processes. She had no option but to bring her children to court, as the younger child refused to stay with anyone else but her mother. At court we had nowhere to go, and were not informed about the interview rooms. We ended up holed up under the stairs, in order to give the kids some room to play. When the kids play spilled out into the thoroughfare, we were eventually shown a room (by a court network volunteer). Surely this issue arises frequently enough for the court to designate specific space for women with young children.

It was extraordinarily stressful for the mother to try and keep a lid on things, not to mention if one of the children needed to go to the toilet!⁸³²

6.159 It is important that children are sufficiently accommodated within the courtroom. Doing so can substantially ease the burden and stress on an applicant of attending court and also make the stay more comfortable for children. Such measures could include: a separate play space for children, court network workers on hand to assist parents with children and a secure childcare facility.

Childcare facilities should also be provided.⁸³³

Courts need to accommodate children, and should respond to the needs of the most vulnerable members of our community who make up a significant proportion of court users.⁸³⁴

! RECOMMENDATION(S)

64. Measures should be taken to provide facilities for children attending court in the context of family violence matters.

CONCLUSION

6.160 The court environment must be ‘protective to the person seeking protection’.⁸³⁵ Consistent with our recommended aims for a new Family Violence Act, the justice system, in its everyday practice, must seek to model the respectful non-

832 Submission 22 (Kim Robinson, social worker).

833 Submission 79 (Department of Human Services).

834 Submission 45 (Rochelle Campbell, women’s health resource worker).

835 Submission 40 (Whittlesea Domestic Violence Network).

violent behaviour it wishes to implement. Making the court a safe and accessible space in the ways outlined is part of ensuring this happens. It is also essential to ensure that people gain the best access to justice and safety when they are seeking it through the legal system.