




The Magistrates' Court of Victoria and Victims of
Crime Assistance Tribunal joint submission to the
Victorian Law Reform Commission's review of
the *Victims of Crime Assistance Act 1996*

Part 1 of 2

November 2017

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1. Introduction

In response to the findings and recommendations of the Royal Commission into Family Violence (RCFV), the Attorney-General, the Honourable Martin Pakula MP, asked the Victorian Law Reform Commission (VLRC) on 22 December 2016 to review and report on the provision of state-funded financial assistance to victims of family violence under the *Victims of Crime Assistance Act 1996* (the Act).

The VLRC released the consultation paper 'Family Violence and the Victims of Crime Assistance Act 1996' in June 2017, inviting written submissions by 28 July 2017.

On 7 July 2017, the Attorney-General, by supplementary terms of reference, asked the VLRC to expand its review to consider the operation and effectiveness of the Act and the Victims of Crime Assistance Tribunal (VoCAT) for all victims of crime. The VLRC released the supplementary consultation paper 'Review of the Victims of Crime Assistance Act 1996' in August 2017, inviting written submissions on both consultation papers by 31 October 2017.

The Magistrates' Court of Victoria (MCV) and VoCAT welcome the expanded terms of reference for the review and are pleased to provide the following joint submission.

The expanded terms of reference provide for the first comprehensive review of the Act in the 20 years of its operation. This provides a platform for a close examination of the legislative, policy, operational and administrative barriers to the efficient operation of VoCAT, and opens discussion on options for reform across these areas. The MCV and VoCAT see the review as a critical opportunity to improve VoCAT's role in assisting victims of crime seeking financial assistance and recognition of their experience of violence as part of their journey to recovery.

1.1 Submission governance arrangements

VoCAT is an administrative tribunal that operates within the MCV. The Chief Magistrate is responsible for the arrangement of VoCAT's business and accordingly this submission has been endorsed by Chief Magistrate Peter Lauritsen and VoCAT Supervising Magistrates Andrew Capell and Johanna Metcalf.

A Working Group provided oversight for the preparation of the submission, with representation from:

- VoCAT members;
- MCV;
- Specialist Courts;
- Court Support Programs;
- the Family Violence Programs and Initiatives Unit; and
- Courts Services Victoria.

The Working Group was supported in its work by a Project Group, which consisted of Registry and administrative staff from all areas represented by the Working Group membership. A full list of Working Group and Project Group membership is at [Attachment 1](#).

1.2 Submission deadline extension

MCV and VoCAT are grateful to the VLRC for accommodating a requested extension to the deadline and structure of this submission, which includes preparing and lodging the submission in two parts:

- | | |
|--------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Part 1 | consisting of a thematic analysis of key issues and considerations raised in the consultation papers, and a summary overview of key issues and options for the review to consider. Part 1 will be lodged with the VLRC on 14 November 2017; and |
| Part 2 | consisting of a more in-depth appraisal of the key legislative, administrative and operational issues and options for reform raised in Part 1. Part 2 will be lodged with the VLRC on 18 December 2017. |



1.3 Submission structure

This submission constitutes Part 1 of the joint MCV/VoCAT submission and consists of five sections, including:

- Section 1 an introductory overview;
- Section 2 VoCAT's current service delivery model;
- Section 3 system demand and pressures;
- Section 4 an improved specialised assistance model; and
- Section 5 an overview of key areas of legislative and other considerations to be addressed in Part 2.

A note on data: all figures and charts in the submission have been drawn from CourtLink and VoCAT Annual Reports, including the 2016-17 Annual Report. For this reason, specific source references are not included in the body of the submission.

2. VoCAT's current service delivery model

The Tribunal was established by the VOCA Act in 1996 for the purpose of providing financial assistance to victims of crime to assist them in their recovery journey. The Act was introduced to provide a scheme that was more responsive to the financial support and recovery needs of victims than that which was provided previously under the *Criminal Injuries Compensation Act 1983*.

The Tribunal is an integral part of Victoria's criminal justice system. It supports victims to recover from violent crimes by acknowledging their pain and suffering, and providing financial assistance to help meet the costs of their recovery, such as:

- funeral expenses;
- reasonable costs of counselling;
- medical and safety-related expenses;
- loss of or damage to clothing worn at the time of the crime;
- loss of earnings; and
- other expenses that will assist a victim (in exceptional circumstances).

VoCAT also has the power to make lump sum payments to certain victims of crime. These payments are offered as symbolic expressions of our community's recognition of – and empathy towards – victims and their distress.

VoCAT operates in the context of other victim financial assistance and redress schemes, including:

- the state-based Victims Support Agency, which operates the Victims of Crime Helpline, and coordinates the Victims Assistance Program to provide victims with practical assistance, counselling and support through the justice system; and
- Victoria's family violence flexible support packages that are distributed by service providers for health and safety needs and other supports to promote the safety and wellbeing of victims/survivors of family violence.

Additionally, the broader context of financial assistance schemes for victims of violence within which VoCAT operates is likely to expand:


- The Commonwealth's planned federal redress scheme for victims of institutional child sexual abuse will provide compensation for survivors of child sexual abuse in Commonwealth institutional settings, with the states being provided the opportunity to opt-in to the scheme. At present, the Victorian government is engaged in consultations with the Commonwealth regarding its implementation.
- The Victorian Sentencing Advisory Council is also currently undertaking consultations on whether restitution and compensation orders made for the benefit of victims under Divisions 1 and 2 of Part 4 of the *Sentencing Act 1991* should become sentencing options.

2.1 'Administrative' or 'Quasi-Judicial'?

The Tribunal is now in its 20th year of operation. Located within the MCV, the Tribunal operates at all 51 court venues across the state. Each of the MCV's 110 Magistrates, including the Chief Magistrate, are Tribunal members. The MCV's 12 Judicial Registrars also have powers delegated to them by the Chief Magistrate to determine certain, less complex, applications.

VoCAT is unique in being an administrative tribunal embedded within a court. Victims of crime can choose to have their application decided 'on the papers' (which is the case for 85 per cent of applications) or seek to have their application heard by a Judicial officer in the criminal justice system – albeit in a more flexible, informal and intimate manner. This is a therapeutic and iterative process that offers victims tailored support that recognises the specific and changing needs of each individual victim on their journey to recovery. The process is demonstrably victim-centred and gives priority to both the symbolic and practical assistance available to victims.

In applications where there are issues to be explored or questions about the expenses sought, the Tribunal may



schedule a Directions Hearing to discuss the issues. It is not uncommon for a range of issues to be resolved at a Directions Hearing, allowing the application to be finalised shortly afterwards and appropriate awards of assistance to be made on the papers.

Hearings before a Tribunal member will take place once all necessary documents have been provided and the applicant is ready to proceed. Hearings provide the opportunity for an applicant to have their experiences of trauma validated, the financial impact of the crime recognised, and to receive support services aimed at expediting their recovery from the act of violence. Feedback from applicants who elect to have their applications heard before a Tribunal member is consistently positive (see [Attachment 2](#)).

In certain cases, Tribunal members may also decide that a hearing is more appropriate than finalising an applicant's case 'on the papers'. A significant benefit of the model is that all Tribunal members bring criminal justice experience to their deliberations in an administrative/inquisitorial environment which is therapeutic and victim-centric. Likewise, Magistrates who have Tribunal experience bring valuable insight into the impact of violent crime on victims, to their criminal justice deliberations – particularly in relation to sentencing.

2.2 Specialisation a key feature

2.2.1 Koori VoCAT List

The flexibility and specialisation offered by VoCAT is noteworthy. The Koori List, for example, which was established in 2006, is a best-practice example of a tailored process for people who identify as Aboriginal or Torres Strait Islander. It prioritises:

- experienced and culturally aware Magistrates, Registrars and administrative staff;
- continuity in the management of each application (the same Magistrate manages an application from start to finish);
- culturally appropriate venues and communication; and
- a strong community engagement element to raise awareness of the List and to encourage dialogue with communities.

Importantly, the list is also supported by a Koori Family Violence and Victims Support Program that includes Koori Family Violence Practitioners who help in removing barriers to assist victims and provide culturally appropriate targeted assistance. The program was re-funded through the 2017-18 Victoria State Budget following a recommendation by the RCFV that the program be re-established.

This noteworthy model of specialisation positions VoCAT well to support and enhance the successful development, expansion and effective operation of the Specialist Family Violence Courts (SFVCs).

2.2.2 Family Violence and VoCAT

The RCFV recommended the establishment of SFVCs to hear all related family violence proceedings together, such as intervention orders, criminal matters and VoCAT applications. This is a unique, victim-centric approach. More detailed information about SFVCs is provided at [Attachment 3](#).

In response to the RCFV, the 2017-18 Victorian State Budget allocated \$130.3 million to establish five SFVCs at Ballarat, Frankston, Shepparton, Moorabbin and Heidelberg. SFVC's build and expand on the Family Violence Court Division model that exists at Heidelberg and Ballarat Magistrates' Courts.

SFVCs will operate with an overarching philosophy of an integrated, specialist, victim-centric approach. SFVCs will be staffed by specialist family violence Magistrates and Registrars, as well as specialist respondent and applicant practitioners. As the SFVC model is implemented, the effective integration of VoCAT within the SFVCs will be essential to the SFVCs achieving their aim.

Whilst the SFVC model is progressively funded and expanded, the MCV is actively increasing specialisation in response to family violence in the mainstream environment. This includes initiatives like Lead Family Violence Magistrates, accelerated timeframes for the hearing of family violence related cases, more specialist support staff, as well as safer and appropriate court environments for victims. This means courts are well placed to increase victim-centric VoCAT



specialisation and close the gaps within the wider service system.

2.2.3 Expanding specialisation

The establishment of an 'off-site' registry contact centre (as per RCFV Recommendation 63) will improve timely access to specialist family violence services. Regional Victorians can access the contact centre for initial contact with the court for information about the court process and accessing support services. Contact centre staff may also provide specialist family violence services such as risk assessments, applications for an interim family violence intervention order and applications to VoCAT. Design is currently underway to consider building locations and investment in enhanced digital technology.

To complement this specialised, integrated and victim-centric approach, Magistrates dealing with family violence intervention order applications in the Children's Court of Victoria (CCV) could also be better supported to deal with VoCAT applications related to the incident in question, reducing the need for a victim to attend at multiple courts and Tribunals. In regional court locations where the MCV and CCV are integrated, this may already be occurring, as Magistrates sit in multiple jurisdictions within the one venue, as required.

MCV and CCV's joint submission to the RCFV outlined a number of current restrictions which can exclude or reduce accessibility to VoCAT assistance for family violence victims and survivors. A copy of the submission is at [Attachment 4](#). Some of the options raised in the submission to expand on the specialised approaches for victims of family violence in other jurisdictions included:

- introducing procedural and evidentiary protections for VoCAT proceedings involving family violence and sexual assault, to replicate the special arrangements that apply to sexual assault complainants and protected witnesses under the *Criminal Procedure Act 2009* and the *Family Violence Protection Act 2008*;
- listing family violence as a relevant factor in the exercise of the discretions under ss 52 and 54 of the Act;
- ensuring s 34 (alleged offender notification) operates approximately having regard to the specific safety risks which commonly arise in applications involving family violence; and
- enabling 'related acts' occurring in the context of family violence to be considered eligible for category A special financial assistance award amount (currently \$10, 000) for category B, C or D acts of violence

These still stand as options for consideration and will be given further attention in Part 2 of this submission.



3. System demand and pressures

3.1 Award types

The legislation allows VoCAT to make three types of awards for victims of crime: Interim, Final and Variations.

3.1.1 Interim awards

These may be made for expenses already incurred as well as those not yet incurred for various items such as medical, counselling, and safety related expenses. Interim awards enable the Tribunal to provide timely financial assistance to applicants where a finalised order is not yet possible, for instance where the Tribunal has to await the outcome of a police investigation or criminal proceedings, or where further medical evidence is not yet available. The availability of multiple interim awards for any one applicant enhances the Tribunal's responsiveness to the changing needs of victims as their applications proceed.

3.1.2 Finalisation awards

These are the final determination from a Tribunal member on the amount of financial assistance to be awarded to a particular applicant. Depending on the type of application made, the final amount awarded may include assistance to cover medical and counselling expenses, loss of earnings, funeral expenses, other amounts to assist the victim in their recovery, and special financial assistance as a symbolic expression of the community's sympathy.

3.1.3 Variations

These are orders made to alter a previous Final award, for instance by increasing the amount that was originally awarded. Variations can only be ordered by the Tribunal after an application is made by the individual (for whose benefit the award of assistance was made) within the prescribed time limit. Variations may be necessary for instance where there is fresh evidence to support a particular payment that was initially denied, or where the victim's circumstances have later changed and new expenses are sought. A typical example of a variation order is where an applicant requires assistance to cover additional counselling sessions.

3.2 Demand trends

Over the past 20 years, the Tribunal has received 93,944 applications for financial assistance, and awarded \$747 million to victims of crime. This has included 72,947 awards of financial assistance, and tens of thousands of awards of interim financial assistance. A detailed overview of VoCAT demand and performance data is at [Attachment 5](#).

The figures regarding average times taken to finalise an application are not a true measure of the VoCAT's responsiveness as they do not reflect the role of interim awards in providing timely assistance to applications. Similarly, the increasing number of pending cases and overall throughput metric is not a direct correlation with VoCAT's efficiency and responsiveness.

A therapeutic, victim-centred approach can be complex and can take time. Interim awards of assistance and the ability to vary Final awards play a fundamental role in assisting victims in their recovery. The question of improved ways of measuring VoCAT's performance will also be addressed in Part 2 of this submission.

Chart 1 and Table 1 provide a breakdown of the various orders made by the Tribunal between 2012-13 and 2016-17 and show that the most pronounced upward trend is in the making of interim awards. A sharp increase in the number of all order types occurred between 2015-16 and 2016-17.

Chart 1
Trends in the volume of key VOCAT activities

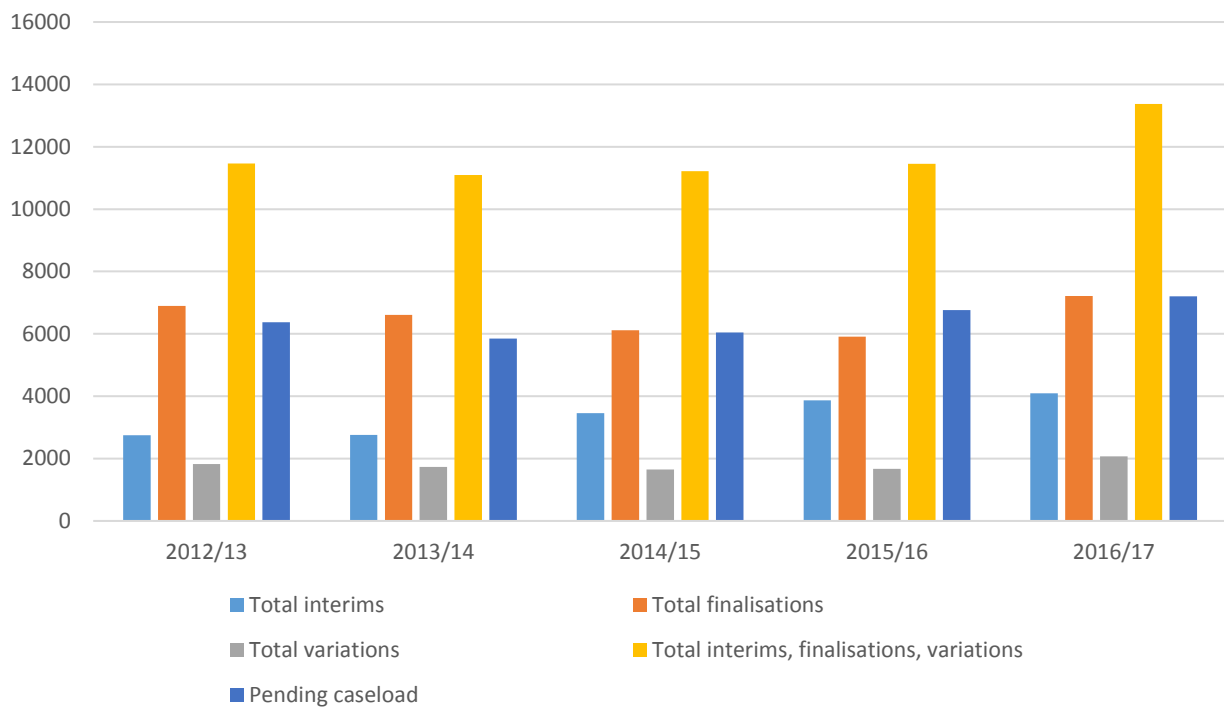


Table 1 Total Interims, Finalisations and Variations

	2012/13	2013/14	2014/15	2015/16	2016/17
Total Interims	2747	2758	3455	3871	4093
Total Finalisations	6894	6611	6113	5910	7209
Total Variations	1824	1727	1647	1668	2068
Total Interim, Final and Variation Orders	11465	11096	11215	11449	13370

3.3 Demand drivers

A number of demand drivers can be identified, including:

- major justice reforms over recent years in response to landmark inquiries such as the RCFV and the Access to Justice Review;
- the commencement of online applications in May 2014 (a significant contributing factor in the sharp increase in applications between 2015-16 and 2016-17 – the largest growth in the Tribunal's history); and
- increasing community understanding and rejection of the 'normalisation' of violence, particularly family violence, and the Government prioritisation of community safety initiatives, including promoting awareness of supports such as VoCAT for victims of violence.

3.4 Operating budget

VoCAT's operating costs include all allowances and benefits payable to Tribunal staff. Despite rising demand pressures on VoCAT, however, budget increases averaged just 3.5 per cent over the five years to 2016-17.

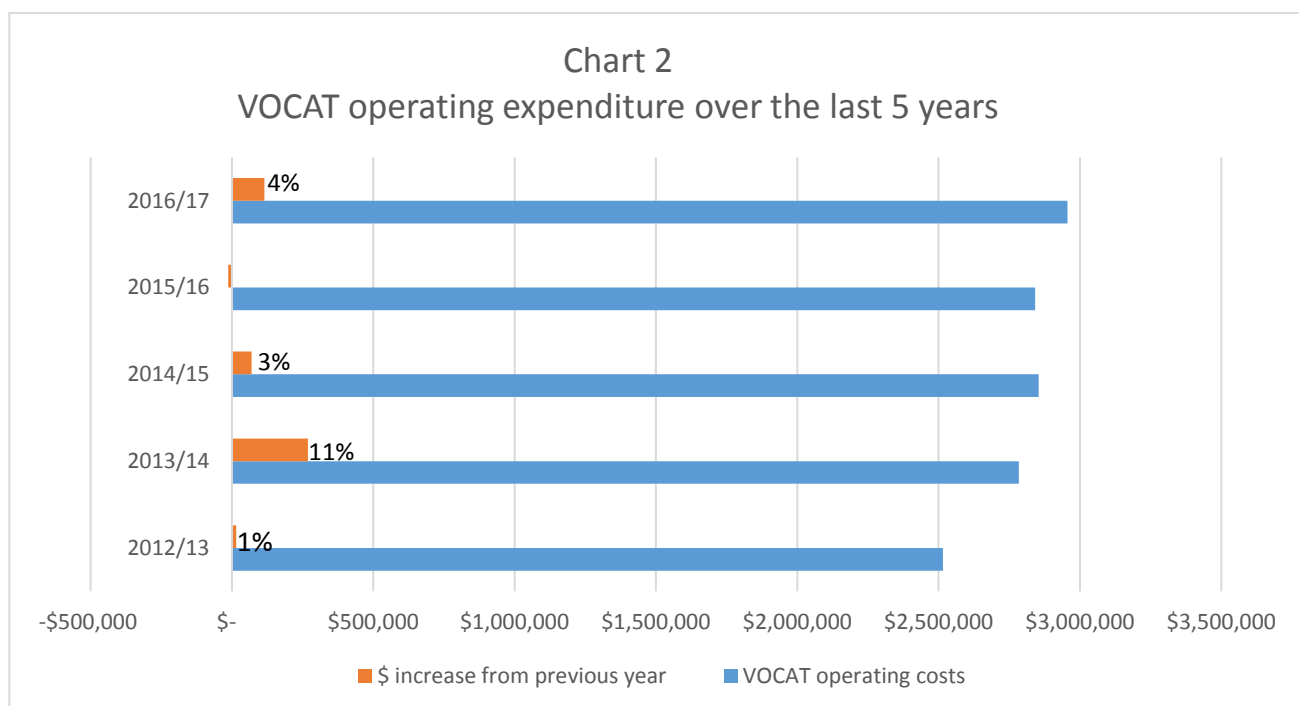


Table 2 Trends in VoCAT Operating Expenditure

Year	2012/13	2013/14	2014/15	2015/16	2016/17
VoCAT operating costs	\$ 2,515,697	\$ 2,784,087	\$ 2,853,810	\$ 2,841,031	\$ 2,956,328
\$ increase from previous year	15697	268390	69723	-12779	115297
% variation from previous year	1	11	3	0	4
Average \$ variation per annum	\$ 106,258.67				
Average % variation per annum	3.5				

3.4.1 Significant reliance on MCV subsidisation

What is not reflected in VoCAT's operating costs is the degree of subsidisation provided by MCV. Salaries and employee-related expenses for Tribunal-funded positions comprise most of VoCAT's operating costs. The balance is made up of expenses associated with the payment of applicants' legal costs, legal costs relating to appeals, training and incidental operating costs.

Chart 3 and Table 3 provide a cost breakdown of VoCAT salaries and operating expenditure, legal expenditure and award payments. All expenses have remained relatively stable between 2012-13 and 2016-17, with an annual variation of 4-5 per cent – except for legal expenses. It is noteworthy that legal expenditure, mainly comprising costs awarded to lawyers assisting applicants, accounts for approximately 11 per cent of special appropriations. This is almost twice the amount of VoCAT salaries and operating expenditure.

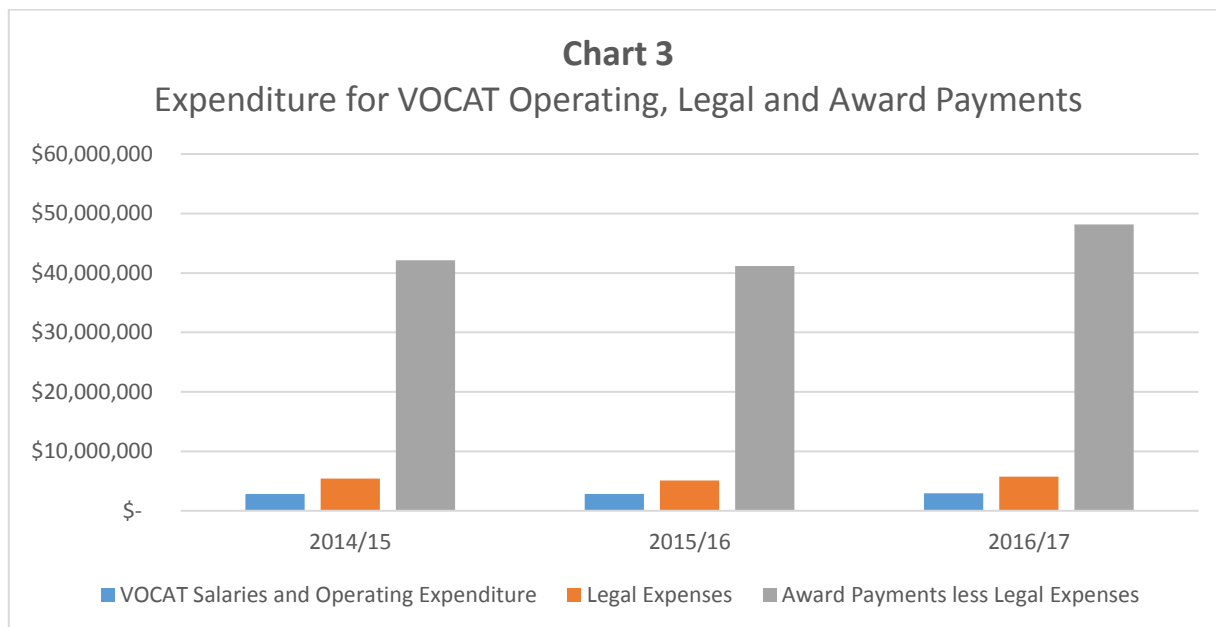


Table 3 Expenditure for VoCAT Operating, Legal and Award Payments

Year	2014/15	2015/16	2016/17
VoCAT Salaries and Operating Expenditure	\$ 2,853,810	\$ 2,841,031	\$ 2,956,328
Legal Expenses	\$ 5,399,559	\$ 5,095,278	\$ 5,762,959
Award Payments less Legal Expenses	\$ 42,138,270	\$ 41,151,633	\$ 48,156,216
Award Payments plus Legal expenses	\$ 47,537,829	\$ 46,246,911	\$ 53,919,175
Legal expenses as a proportion of Award Payments	11	11	11

Seemingly disproportionate legal expenses are arguably a result of complex legislative eligibility requirements. One of the benefits of simplifying the VoCAT Act could be an increase in the number of applicants who feel confident to apply to the Tribunal without the need for legal representation, and so occasioning less expenditure on legal costs. This will be addressed in Part 2 of this submission.

3.5 Quantum of awards

The VLRC's terms of reference include consideration of the quantum of awards that are currently made by VoCAT for victims of crime. Chart 3 and Table 3 above demonstrate an increase in the amount of assistance being awarded by VoCAT between 2015-16 and 2016-17. This is in keeping with the upward trend in the number of applications lodged, as demonstrated in Chart 4 and Table 4 (particularly the spike between 2015-16 and 2016-17).

One component of the awards made by VoCAT, particularly in the case of special financial assistance, is to provide a symbolic expression of the community's sympathy for the significant impact of crime on the lives of victims. It is important that the monetary amounts offered keep pace with community expectations. To ensure that more than a nominal amount is available to recognise the impact on victims of crime, special financial assistance under the Act could be increased or indexed to meet this important aspect of the Act's objectives.

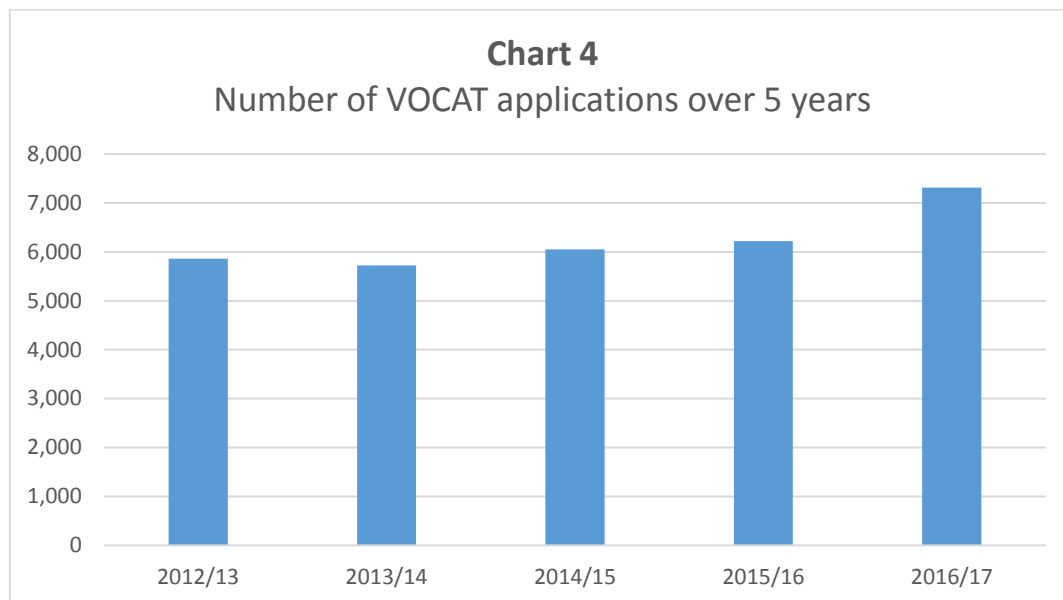



Table 4 Number of VoCAT Applications Over 5 Years

Year	2012/13	2013/14	2014/15	2015/16	2016/17
Number of applications lodged	5,863	5,722	6,053	6,221	7,312
Variation in number of applications lodged	-237	-141	331	168	1091
Variation in % of applications lodged	-3.89	-2.40	5.78	2.78	17.54

3.6 VoCAT initiatives in response to system pressures

The Tribunal has introduced a number of initiatives and advocated for legislative reforms aimed at improving system efficiencies and responsiveness to victims of crime. Examples include:

- increasing the financial delegation for Registrars to make interim awards from \$1,000 to \$5,000;
- changes to enable increases in the number of awards of interim financial assistance made by Registrars;
- enabling Judicial Registrars to consider less complex applications and variation requests;
- developing Guidelines and Practice Directions around common expense types such as funerals, psychological and psychiatric assessment reports and counselling fees;
- introducing the Koori VoCAT List to increase opportunities for Koori victims of crime to access their entitlements under the Act;
- creating a referral process for Koori VoCAT List applicants to the Koori Family Violence and Victims Support Program workers at Melbourne Magistrates' Court;
- improving consistency in decision making and administrative practices by enhancing training for and support to Tribunal members, Judicial Registrars and Registrars;
- introducing strategic coordination of applications for assistance arising from major incidents, such as:
 - the Burnley Tunnel incident in March 2007;
 - the Kerang rail disaster in June 2007;
 - the William Street shooting in June 2007;

- 
- the Black Saturday bushfires in February 2009;
 - the Ravenhall Metropolitan Remand Centre riots in June 2015; and
 - the Bourke Street tragedy in January 2017.
- streamlining the processing of applications arising from sexual offences alleged to have been committed against multiple applicants by the same offender; and
 - improving access and communication, through improving the VoCAT website, launching the on-line application process in 2014 and through community engagement activities.

4. An improved specialised assistance model

An overview of the reform priorities and options proposed by the MCV and VoCAT joint submission to the VLRC's review is at [Attachment 6](#). VoCAT is committed to improving efficiencies and evolving its service delivery model, within the given legislative and budgetary limitations, and the service system framework in which it operates.

Part 2 of the submission will provide a detailed examination of a number of legislative, administrative and operational issues and reform options that would improve how VoCAT works. Collectively, these will be examined in the context of the following rationale for an improved specialised assistance model.

This joint submission suggests that shifting VoCAT's service delivery model from its current diffused operating structure to a centralised ('hub and spoke') model could strengthen VoCAT's specialised service capacity, improve its efficiency and service accountabilities and improve responsiveness to victims, regardless of where they are located. It would also position VoCAT to provide optimal support for the roll out of SFVCs and the Government's broader family violence reform agenda.

4.1 The current diffused model

VoCAT's current service delivery model is a diffused one. Operating at 51 locations and relying on all 110 Magistrates and 12 Judicial Registrars and Registrars across all of these locations to process the VoCAT workload has both benefits and drawbacks for all stakeholders. Some key benefits include:

- all Tribunal members bring criminal justice experience to their deliberations in an administrative/inquisitorial environment which is therapeutic and victim-centric. Likewise, Magistrates who have Tribunal experience bring valuable insight into the impact of violent crime on victims, to their criminal justice deliberations – particularly sentencing; and
- with 51 locations, Tribunal members and staff bring valuable local knowledge (particularly about local service supports) to the VoCAT response.

Drawbacks of the current diffused model, however, include:

- the VoCAT workload is one of many daily competing priorities across MCV. Matters that involve court appearances often demand priority over administrative jurisdictions like VoCAT;
- administrative inefficiencies caused by a model where VoCAT forms part of a generalist Registrar role, (which has high levels of rotation and turnover) meaning that the degree of specialist expertise and process knowledge is difficult to sustain;
- difficulties in maintaining oversight of practice which ensures accountability and transparency of funding for a range of support service provider types across multiple locations.


Many features of the current service delivery model are positive and deliver benefits to victims of crime, including VoCAT's location within the MCV, its specialisation capacity, and its therapeutic approach. The benefit of Magistrates bringing a keen understanding of the impact of crime on victims when considering sentences in the criminal court cannot be overstated.

Together with the areas of proposed legislative reform that are touched on in the next section, replacing the current diffused service delivery model with a centralised 'hub and spoke' approach could yield significant efficiencies, service improvements, and better outcomes for victims.

4.2 An improved specialised assistance approach

The key feature of an improved specialised service delivery model would include a centralised VoCAT team consisting of a dedicated, specialist registry with access to a pool of specialist Tribunal Members and Judicial Registrars to determine applications.

A specialist, centralised model would support the further development of victim-centred practice and improve experiences and outcomes for those accessing the system. This would provide the opportunity for a multi-disciplinary



team comprised of Registrars, victim support practitioners, Koori support staff and 'Lead' VoCAT Registrars (with expanded decision making powers).

This may provide an opportunity to strengthen system integration and ensure that VoCAT responses and outcomes are trauma-informed and timely. The model would be supported by ongoing (cross-disciplinary) professional development to improve:

- victim proficient approaches and practice;
- the level of information and assistance provided to navigate the VoCAT process (reducing legal costs, improving service quality and consistency, and associated effort);
- the support provided and referrals and service navigation for victims; and
- case assessment, triaging and case management, including coordination of cases across jurisdictions.

There may be an opportunity to request additional resources to co-locate VoCAT staff in an off-site location that is being designed for the Family Violence Contact Centre and leverage technology to provide an additional digital service to victims. Therefore, in addition to face-to-face VoCAT services, victims could potentially have an option to interact with courts online. Access to this type of service could reduce the reliance on legal services and reduce the time taken to progress applications.

Consideration could also be given to increasing the Chief Magistrate's delegation powers to enable delegation of the power to make final determinations to a legally qualified Registrar. This would allow a proportion of less complex cases to be finalised administratively without the need for referral to a Magistrate or Judicial Registrar. The Chief Magistrate has written to the Attorney-General requesting amendments to s 24 of the VOCA Act to this effect - and the Attorney-General suggested that this matter falls under the terms of reference of the VLRC's review. The role of an expanded delegation power will be further explored in Part 2 of this submission.

Some benefits of a 'hub and spoke' model include a more stream-lined, accessible VoCAT with:

- a single entry (triage) point, with more low complex cases potentially being determined by legally qualified Registrars, allowing for swifter finalisations without the need for a referral to a separate decision-maker;
- capacity to circuit specialised decision makers to the regions or provide immediate online (including video conferenced) specialist responses from the 'hub' to regional MCV venues and other non-court locations;
- improved consistency in decision making and accountability standards;
- dedicated case management resources;
- while the bulk of applications would be managed centrally, applicants living in rural or regional settings could still elect to have their cases heard locally by Magistrates, either on circuit, or via video-link; and
- increased therapeutic value by having a greater capacity to schedule hearings without the competing demands of other jurisdictions.

4.2.1 Challenges

This model would represent a major change in how VoCAT operates, and would come with significant transitional challenges. Some of the issues that would need careful consideration include:

- the reduction in the direct physical presence of VoCAT at Magistrates' Court venues across the State;
- finding a suitable location for co-located team and files;
- the availability of sufficient specialist Magistrates and Registrars;
- insufficient resourcing;
- the need for appropriate workforce planning and training to support the specialised nature of the model; and
- how a more specialised VoCAT would intersect with the SFVCs, especially in areas where a SFVC is not located.

5. Legislative reform considerations

The Act has been amended in a piecemeal approach since its inception. The VLRC review provides an opportunity for a wholesale review of its operation, application and interaction with other relevant legislation, in an environment moving towards greater specialisation.

It is a complex task because modernising, clarifying or streamlining some provisions will necessarily impact on other sections within the Act, and in other legislation. Further, there are risks associated with unintended consequences that will need to be thought through.

Part 2 of VoCAT's submission, which will be lodged on 18 December 2017, will examine in detail the most pressing areas for reform to better align the legislation with the intent of the family violence reforms, and to improve its operation generally.

Importantly, Part 2 will include an appraisal of how the proposed legislative changes, together with a shift to a specialised assistance model (a centralised 'hub and spoke' approach) would provide an optimal service delivery model for victims of crime seeking financial assistance. Part 2 will give particular consideration to the provisions governing:

- eligibility;
- categories of awards;
- time limits;
- variations;
- evidentiary requirements;
- hearings;
- delegations; and
- automatic review.

5.1 Eligibility


Currently, a person is eligible for financial assistance under the Act if they are the 'primary', 'secondary' or 'related' victims of an 'act of violence', and that act of violence directly results in their suffering 'injury', 'death' or, for primary victims, 'a significant adverse effect'.

The eligibility criteria are a barrier for many victims to access assistance, particularly victims of family violence. The categories of victims, the definitions of 'victim', 'act of violence' and 'injury' are narrow, outdated and fail to take into account distinct victim experiences.

This submission notes the potential changes to the eligibility criteria discussed in the VLRC's first and second consultation papers, including:

- explicitly including family violence within the definition of 'an act of violence' (by importing the definition from s 5 the *Family Violence Protection Act 2008*);
- including non-contact sexual offences within the definition of 'an act of violence', such as grooming and image-based abuse, such as taking and distributing intimate photographs of individuals;
- categorising children who hear, witness, or are otherwise exposed to family violence as 'primary' rather than 'secondary victims';
- explicitly providing the nature and dynamics of family violence, sexual assault and child sexual abuse as relevant factors to be taken into consideration when exercising the discretions under ss 52 – 54 of the Act; and
- removing the requirement to establish 'injury' for specific applications, such as those resulting from family violence and sexual offences, and instead recognising the inherent harm of such offending.

In some cases, these changes would depart from the requirement that a criminal offence is established before eligibility for assistance arises under the Act, and would expand eligibility beyond offences against the person. Such reforms may



result in a marked increase in the number of applications made to the Tribunal, which may impact upon the timeliness of awards made by the Tribunal, as well as the amounts of assistance which may be awarded.

Also, embedding the s 5 definition of family violence from the *Family Violence Protection Act 2008* within the VoCAT Act could lead to unintended consequences. Because of the complex nature of family violence incidents, it is not uncommon for responding police officers to incorrectly identify the primary aggressor and primary victim. Embedding an expansive definition of family violence within the Act could enable an incorrectly identified primary victim to access financial assistance.

Some of the potential concerns with expanding eligibility under the Act may however be addressed by increasing specialisation. A smaller number of full time Tribunal members, Judicial Registrars, Assessing Registrars and other staff could work exclusively on Tribunal matters, with potential for Magistrates to specialise in particular kinds of applications. This would promote consistency across determinations and ensure that decision makers with an in-depth understanding of the Tribunal jurisdiction undertake assessments regarding eligibility.

The MCV is also in the process of rolling out its SFVCs model. This model will see all family violence matters determined by specialist Magistrates with an extensive understanding of the nature and dynamics of family violence. This jurisdiction will include family violence related VoCAT applications that will be triaged into the SFVCs, as necessary.

5.2 Categories of awards

The categories of awards made under the Act are dependent on whether an individual is classified as a 'primary', 'secondary' or 'related victim'. In the case of primary victims, these categories are further supplemented by special financial assistance which may be awarded in accordance with s 8A. The *Victims of Crime Assistance (Special Financial Assistance) Regulations 2011* stipulate the four sub-categories of acts of violence for which special financial assistance may be awarded.

These categories are complicated and in many instances necessitate legal advice to ensure that a victim has applied for all forms of assistance for which they are eligible. A reduced number of simplified categories could help victims understand more easily what kind of assistance they may apply for without the need to seek legal assistance.


Possible amendments to the categories of awards include:

- abolishing the ranges within each special financial assistance category, and instead specifying one set amount per category in an effort to help to expedite decision making;
- increasing the amounts of special financial assistance payments outlined in s 8A of the Act and indexing these to ensure that they are adequate to meet the needs of victims;
- changing the way cumulative harm is addressed under the Act for repeated acts of violence, including child abuse and family violence. Currently, s 4(1) of the act permits the Tribunal to treat 'related criminal acts' as a single act of violence, thereby reducing the amount of financial assistance awarded. Cumulative harm resulting from a pattern of family violence or child abuse may be better recognised if 'related acts' in these contexts were explicitly included as circumstances in which the highest category of special financial assistance (currently category A) is made available; and
- reviewing the operation of exceptional circumstances awards.

5.3 Time limits

Section 29 of the Act does permit the Tribunal to accept some applications outside of the prescribed two year time limit. However, the Act could be improved to better recognise the barriers that some victims face in reporting and disclosing the details of particular acts of violence. This may be achieved by expanding the matters to which the Tribunal must have regard to under s 29(3) to explicitly include the presence of family violence, sexual assault or child abuse. Alternatively, the time limit could be removed for particular offences.

5.4 Variations



Awards may be varied or refunded in accordance with ss 60 and 62 of the Act. Current practice in the Tribunal suggests that awards are refunded in rare circumstances. Under s 60, variations must be applied for by a person for whose benefit the award of assistance was made within six years of the making of the award. An exception is made for individuals who were under the age of 18 when the original award was made, in which case an application for variation must be made before they reach the age of 24.

The variation time limit could be extended to reflect the barriers faced by victims of particular offences, such as victims of child sexual assault. Further, the variation application process could be improved to address procedural burdens associated with applying for certain variations, for example to cover additional counselling or medical expenses.

5.5 Evidentiary requirements

The evidence required to support particular applications is not prescribed by the Act. Instead, applicants are informed what documentation will be required by the Tribunal after submission based on Tribunal procedure and practice directions.

These evidentiary requirements, and the way they are communicated to applicants, could be simplified to make the application process easier for victims for understand without seeking legal advice. Further, certain evidentiary requirements – such as the provision of counselling reports in support of applications for counselling expenses – could be dispensed with unless specifically requested by a Tribunal member.

5.6 Hearings

Changes to the hearing process are largely dependent on whether the current quasi-Judicial model is retained and improved upon, or a purely administrative model is introduced. Currently, hearings are fixed by the Tribunal in accordance with s 34 of the Act. The Tribunal may determine applications without a hearing pursuant to s 33. These sections give applicants the ability to choose whether they engage in the hearing process and provide flexibility in the way the Tribunal may determine applications.

If a wholly administrative model is introduced, applications could be determined exclusively ‘on the papers’, or before a panel. If the current quasi-Judicial model is instead improved upon, legislative changes could help the hearing process to be more trauma-informed. Currently, s 37(2) of the Act provides that the Tribunal can direct that alternative arrangements be made for the giving of evidence by a witness. This could be expanded upon, to embed procedural and evidentiary protections in the Act for certain proceedings such as those involving family violence, sexual assault, and child victims to replicate the special arrangements that apply to sexual assault complainants and protected witnesses under the *Criminal Procedure Act 2009* and the *Family Violence Protection Act 2008*.

Further, while in practice offender notification occurs in relatively few instances, s 34 could also be improved upon to ensure that an alleged offender is only notified of a hearing in appropriate circumstances and where no specific safety risks are present. This could be achieved by making the presence of family violence, sexual assault or other offences an explicit factor that the Tribunal must have regard to in determining whether an offender should be notified. Alternatively, a presumption against perpetrator notification could be included within s 34 where these forms of violence are present.

5.7 Delegations

Section 24 of the Act currently permits the power to determine applications for interim awards of assistance to be delegated to Tribunal Registrars. The utilisation of this delegation power since 2004 has led to greater efficiency in the decision-making process for interim awards.

The Act could be amended to allow the Chief Magistrate to delegate the power to determine certain less complex matters to legally qualified Registrars, in accordance with s 33 of the Act.

5.8 Evaluation

An automatic review provision should be included in the Act, similar to s 119 of the *Victims Rights and Support Act 2013* (NSW), to enable a systematic and regular process for reviewing the operation of the Act.

ATTACHMENT 1

VoCAT Working Group

Magistrates' Court of Victoria

Peter Lauritsen, Chief Magistrate

Felicity Broughton, Deputy Chief Magistrate

Franz Holzer, Deputy Chief Magistrate

Lance Martin, Deputy Chief Magistrate

Andrew Capell, VOCAT Supervising Magistrate

Johanna Metcalf, VOCAT Supervising Magistrate

Fiona Hayes, Latrobe Valley Regional Co-ordinating Magistrate

Kay Robertson, Sunshine Regional Co-ordinating Magistrate

Timothy Bourke, Magistrate

David Fanning, Magistrate

Michelle Hodgson, Magistrate

Gail Hubble, Magistrate

Pauline Spencer, Magistrate

Rob Challis, Director, Specialist Courts & Programs

Lisa Eldridge, Manager, Family Violence Programs and Initiatives Unit

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Drew Rudland, Strategic Adviser, Specialist Courts & Programs

Victims of Crime Assistance Tribunal

Rod Ratcliffe, Principal Registrar

Andrew Chidzey, Acting Standards and Compliance Officer

Sandy Tennant, VOCAT Family Violence Registrar

Court Services of Victoria

Anne O'Hehir, Project Manager

Nadja Diessel, Principal Policy Analyst

Cat Andersen, Policy Officer



VoCAT Working Group

Magistrates' Court of Victoria

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Cat Andersen, Policy Officer



ATTACHMENT 2

Feedback on Hearings before Judicial Officers

The validation some victims receive through the hearing process is, in the experience of the Tribunal, a significant benefit of this system, although of course, difficult to quantify. It is perhaps best illustrated by comments made by applicants themselves about their own experience, such as those found in the following letter received from a Koori VOCAT list applicant:

I want to start by saying thank you again for believing in me. When I came to court I was feeling very sick and scared. You changed all that when you asked could you sit with us. When you started speaking & you told me that the room had been smoked, I was lost and confused as to why you would do that for me. Nobody really cares about my culture or my feelings. Once they know I'm Aboriginal, they treat me like I don't even exist. But you did, and that made me feel happy but sad because for once in my life someone saw me for who I was and respected me. My fear went away and I felt like I was sitting with a friend, not a Judge.

I want to say so many things to you, and explain just what you did to me that day. It took just one person to make things right for me & that was you. (Because you believed in me)

After 52 years of abuse you showed me that just the right person can change another person's life. I didn't need to see a psychologist, I just needed someone to believe me. I needed someone that wasn't going to tell me to go away, that I need to get myself some help.

I would just like to express my sincere gratitude and my appreciation to you for believing in me. And also for healing me.

Correspondence received by the Tribunal from a senior solicitor within the Office of the Public Prosecutions (OPP) again exemplifies the importance of this validation. This correspondence was directed to a Tribunal member after she had conducted a hearing at the request of a sexual assault victim. The act of violence was committed by cousins of the applicant, with each offender ultimately dealt with in the Children's Court of Victoria. The correspondence from the OPP reads, in part, as follows:

Sally¹ recently contacted this office really just trying to understand why [the offender] was dealt with so lightly and she also had queries regarding changes to the way the system deals with victims of sexual assault, as she felt she did not get the support she needed, from either the police, this office or the courts.

Sally did say, however, that you [the Tribunal Member] greatly assisted in making her feel that she was important and her claims were valid at the VoCAT hearing. She said it was the only time she felt that the court acknowledged her in the whole process...the hearing made a huge difference to her and helped provide her with some sense of vindication.

Former Chief Magistrate, Ian Gray, has previously observed that there is a complimentary benefit for Magistrates sitting as tribunal members. In the Tribunal's Annual Report for the year ending 30 June 2008, the Chief Magistrate stated that:

[I]t is my firm view that in working within this challenging jurisdiction, Magistrates acquire an understanding of the impact of crime upon victims that informs...decisions made within the criminal jurisdiction of the Magistrates' Court.

¹ 'Sally' is not the real name of this applicant.



This benefit is again reflected, anecdotally, in the correspondence from the OPP:

When I informed her [Sally] that you were also one of the Magistrates conducting the sex [offenders] list in the Magistrates' Court,² she said that was fantastic and that she was pleased to see that Magistrates like you were involved in cases like these...

The following excerpt is taken from the evidence given by a lay witness to the Royal Commission into Family Violence. The excerpt explains the applicant's positive experience of the VoCAT hearing process, and how this gave her a feeling of confidence in the justice system through her continued experience of the courts for family violence-related matters:

In the period following the rape, I had gone through the VoCAT processes and received an outcome. As part of this process I had participated in a closed VoCAT hearing. I had the experience of speaking to a Magistrate, who believed what I had to say, and I felt validated. Even though the person who raped me had left the country and was not prosecuted, I felt satisfied with having spoken about my experience and having been believed.

As a result, when the harassment by my ex-partner escalated again in 2010, I had the confidence to decide to try again to seek an intervention order. I felt empowered enough and removed from the relationship enough to proceed. The escalation of the harassment in 2010 involved harassing phone calls and threats when we were out and about.

I reported this behaviour to the police and on this occasion the police took a statement from me and heard the whole history of the relationship. The police then made the application for the intervention order on my behalf. The hearing was also held at the Family Violence Division of the Heidelberg Magistrates' Court. I felt a huge difference walking into the court knowing that the police were on my side. I also felt comfortable with the court itself, because the VoCAT proceeding had been held at Heidelberg Magistrates' Court too.

After having reported the family violence to the police, I also received a call from Berry Street offering me counselling and support. I was adequately supported at that stage, as a result of my experience through VoCAT, and didn't need to take up their offer, but I was so grateful that it had occurred. It would have made a huge difference had this referral been made the first time.³

There may be other ancillary benefits from embedding VoCAT within the criminal justice system. Research undertaken in Victoria of sexual assault victims' experiences of the criminal justice system found that:

Victim/survivors in this study, as in other research, expressed that being believed by system officials was essential in criminal justice responses. Those whose reports were met with belief and empathy by officials found this extremely powerful; largely because of the status they afforded the criminal justice system within society.⁴

The research also found that:

participants consistently emphasised that they wanted the justice system to play a role in supporting and validating their experiences of the assaults and the impacts they had on their lives...validation

² The Sexual Offences List of the Magistrates' Court of Victoria is established by section 4R of the *Magistrates' Court Act 1989*. The List consists of any proceeding that relates wholly or partly to a charge for a sexual offence.

³ Excerpt from lay witness evidence, Victoria, Royal Commission into Family Violence, *Report and Recommendations* (2016) vol I, 257.

⁴ Haley Clark, 'What is the Justice System Willing to Offer? Understanding Sexual Assault Victim/Survivors Criminal Justice Needs' (2010) 85 *Family Matters* 28, 32 (citations omitted).



was demonstrated by supportive, respectful interactions with officials, as well as mechanisms that held the perpetrator accountable.

Participants advocated for a forum through which they could voice their experience. For many, the most customary place for this was a courtroom. Many stipulated that they wanted their 'day in court'.⁵


Importantly, the location of VoCAT within the criminal justice system can provide important acknowledgement from that system of the harm suffered, particularly in circumstances where the criminal trial process has not resulted in a finding of guilt. As suggested in the Victorian Law Reform Commission report on the role of victims within the criminal trial process:

Where the criminal trial process does not lead to an acknowledgment of harm or public accountability through a finding of guilt, an award by VoCAT is an acknowledgment by the state of the harm caused. This may have an emotionally restorative effect. The lower burden of proof that applies to VoCAT proceedings means that victims of violent crimes may be awarded financial assistance despite an offender having been acquitted or a decision being made not to prosecute.⁶

The current quasi-judicial model has the capacity to strengthen a victims' connection with the service system. This is significant in the move towards specialist courts, particularly the implementation of the Specialist Family Violence Courts which have the capacity to hear VoCAT matters at the same time as family violence-related matters, and before the same judicial officer. In contrast, an administrative model for VoCAT, divorced from the justice system, may have the effect of disengaging victim survivors and creating yet another service provider with whom they need to make contact with.

⁵ Ibid 33-4.

⁶ Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (2016) 244 (citations omitted).



ATTACHMENT 3

An overview of the SFVC's intended service delivery model

Ongoing reforms are taking place within MCV and Children's Court of Victoria (CCV) in parallel with the implementation of the recommendations of the Royal Commission into Family Violence (RCFV). These reforms include the development of new service delivery models (including an increased use of problem solving courts), the creation of better and fit-for-purpose facilities, and workforce development. The new case management system is critical to achieving these reforms and court family violence initiatives.

In addition to current expansion of Family Violence Specialist Court services as described in the body of the report, the following information provides additional context of the current environment and expands on key points.

Family Violence Reform and Specialist Family Violence Courts

Level 5 courts have been proposed in the Court Services Victoria Strategic Asset Plan 2016-2031 and intended to be more informal facilities for limited lower jurisdiction activities. These activities are inclusive of but not limited to moving non-dedicated family violence lists (or other matters which currently consume a large amount of resources) at target SFVC's to other forums, for example: moving them online; into new Level 5 courts; and delegating authority to judicial Registrars to deal with certain matters or classes of matters under the *Family Violence Protection Act 2008* (Vic). This would in turn free up Magistrate time and courtroom capacity (RCFV Recommendation 62).

The SFVC Model

The SFVC model for service delivery is based on three core components:

1. Integrated service delivery model;
2. Specialised and multi-disciplinary team; and
3. Safe and accessible court facilities.

Key features of the new service delivery model include:


- all family violence matters will be heard and determined in the SFVC;
- where possible, related matters will heard together; and
- risk assessment and safety will be a priority.

SFVCs will be staffed by specialist family violence Magistrates, family violence Registrars, respondent and applicant practitioners, and a family violence VoCAT Registrar, in addition to culturally appropriate support services, including interpreters and Court Network.

The SFVC will incorporate facilities and processes that meet victims' needs and provide effective justice interventions to prevent family violence, together with comprehensive legal and non-legal support for victims at court and in the community.

The experience of every victim is unique and on that basis the model has been developed to safeguard victim engagement and visibility within the system. To improve the court experience for victims and to keep perpetrators in view, the SFVC will hear related family violence matters together where possible. This will reduce the number of court attendances required by victims, expedite proceedings and increase the number of families whose legal issues are heard by one Magistrate – the 'one judge, one family' approach.

Hearing matters together also minimises the risk that orders across jurisdictions will be inconsistent, helps victims' experiences to inform court decisions, and provides perpetrators with consistent messages from the court. Where related matters cannot be heard together, they will still be heard in the SFVC.



The key element of family safety is the importance of timing. The cycle of family violence is dynamic and in a time of crisis, MCV is in the best position to respond in a practical sense. A SFVC can be dynamic and nimble in its response. MCV views VoCAT as an important element of the SFVC model to ensure victims and survivors have equal access to a specialist family violence response, within a dedicated integrated service delivery system.

VoCAT is often a soft entry point into the justice system. It promotes confidence and builds trust in that system. As part of a specialised assistance model, all family violence VoCAT matters will be triaged into the SFVC as necessary, reducing the need for multiple appearances before multiple judicial officers. If VoCAT applications were to fall outside of the courts, it would entail a reduction in the capacity of the SFVC model to function to its full extent. This is perhaps best illustrated by the following example:

Consider an adult sexual and physical assault victim who is assaulted in the presence of her children by her partner. A police application for an intervention order may be sought on behalf of the family members, and made by a SFVC Magistrate. The Magistrate is also able to make a VoCAT award of interim financial assistance (such as urgently required financial assistance for safety expenses, for example, to change the locks) for the protection of the family. Even if no criminal charges proceed in relation to the assault, VoCAT is able to determine a final application for assistance based on the available evidence, which may include the police evidence at the hearing of the intervention order application.

Triaging

Matters will be triaged by VoCAT and SFVC staff ahead of time based on narratives provided by applicants and other available information, such as L17 forms received from police or reports from family violence services. This triage process will factor in both risk assessments and listing type. For this to occur effectively, information will be shared between court and non-court agencies, and lists will be circulated to duty lawyers, practitioners and family violence services ahead of time.

SFVC staff, which includes a FV VoCAT Registrar, will have a range of responsibilities that extend beyond court sitting days. These include reviewing lists for triage, following up referrals, managing files, writing case notes, community engagement, court user meetings, and preparing matters for court. Providing judicial officers with adequate non-sitting time ensure that victims and perpetrators' experience at court is in line with best practice, with time available to ensure:


- better safety outcomes for victims and perpetrators who are provided with quality information and advice and support tailored to their needs;
- better provision of available information to inform court decision;
- an enhanced therapeutic approach;
- a reduction in matters that are stood down or adjourned and
- improved staff wellbeing.


Listing Matters

Listing matters in the SFVC by default and hearing related matters together will require effective list management. To enable the therapeutic approach recommended by the RCFV, court staff – including Magistrates, Registrars and duty lawyers – require sufficient time per matter to engage with both victims and perpetrators. The SFVC model allows lists to be capped at 35 matters per day, which includes family violence intervention orders, criminal matters, VoCAT and other family violence-related hearings.

Diversity

Family violence takes many forms and occurs in many different communities. While all victims need support from the SFVC, the nature of the support required will differ from victim to victim. The SFVC model has been designed to





address the needs of victims of family violence, whatever their cultural background, sexual orientation, gender identity, disability, or age. The needs of Victoria's many diverse communities are integral to the model and will be further developed with specific responses based on victim and perpetrator journey mapping and developing responses to the specific access and service needs of diverse communities through a collaborative process.

Professional development and trauma informed practice

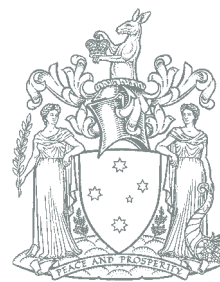
Professional development and trauma informed practice are essential enablers for specialisation. The SFVC model requires that all court staff have an understanding of the nature and dynamics of family violence. SFVC team members will have additional specialist training appropriate to their role. Consistent family violence training will ensure that victims are provided with a respectful and professional service and perpetrators are similarly engaged in a consistently respectful yet non-collusive manner. Additionally, providing staff with cultural awareness training that reflects the demographics of local communities will increase the effectiveness of the SFVC response. The Judicial College of Victoria also play a central role in providing specialist training for the Judiciary.

Through the family violence reform, work is underway to ensure that the entire specialist workforce will obtain this level of trauma informed training. In addition, in line with holistic changes to family violence legislation and the broader family violence service system, workforce industry plans have been developed that involve training, developing and upskilling not only specialist staff but also the broader courts workforce.

Family Violence and VoCAT Awareness

In partnership with other stakeholders, VoCAT is well advanced in promoting the specialisation synergies between SFVCs and VoCAT. Funding was sought and obtained for a dedicated Family Violence Registrar to assist the Tribunal to design and implement strategies that will facilitate more streamlined assistance for victims of family violence in Victoria. This is a funded position for twelve months and, despite only commencing in March 2017, several significant initiatives have commenced, including:

- participation in the 'walk in her shoes tour' operating out of the Melbourne Magistrates' Court. This initiative was designed to offer participants an understanding of the assistance VoCAT may provide family violence victims attending court for the purposes of obtaining an intervention order;
- designated VoCAT training for all family violence applicant support practitioners within MCV;
- participation in a range of forums to enhance awareness of VoCAT with key stakeholders of the family violence jurisdiction;
- designated meetings between the VoCAT family violence Registrar and the Victorian Police Inspector for the Victims Advisory Unit. These meetings are designed to enhance communication between the Tribunal and Victoria Police, with a view to expediting the provision of material to enable swifter interim and final awards;
- design of a proposed 'family violence referral program' to operate at the Melbourne Magistrates' Court. This would see the VoCAT family violence Registrar participate in the daily family violence coordination meeting (RCFV recommendation 64), as well as be available to take referrals from the judiciary, specialist Registrars, and support services to initiate VoCAT applications for eligible victims attending court for the purposes of obtaining an intervention order; and
- assisting with the design and implementation of the Koori Family Violence Support Program (RCFV recommendation 149).



Magistrates' Court of Victoria Children's Court of Victoria

**Submission to the Royal Commission into
Family Violence**

June 2015

FOREWARD

The Magistrates' Court of Victoria and the Children's Court of Victoria support the goals of the Royal Commission into Family Violence and are pleased to provide our submission.

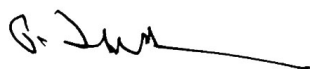
Every day Magistrates' Courts and Children's Courts across Victoria witness the devastating impact family violence has on the safety and well-being of women and children in our community.

We are committed to developing and delivering court services and programs that support, protect and improve outcomes for vulnerable members of our society and protect them from further harm by holding perpetrators to account for their actions.

In recent years our courts have made great progress in improving the way in which we respond to those affected by family violence. There is, we think, much to be proud of. There is also much still to be done to achieve the vision we have for providing an appropriate response to the problem of family violence.

In our submission we have used case studies, based on the experiences of victims of family violence when they seek the protection of courts. Their stories serve to highlight the reforms we have developed and implemented over the past decade to improve the experience of victims of family violence in court settings.

They illustrate the challenges and barriers our courts encounter in our ongoing efforts to improve our part of the family violence system and most importantly the vision we are working toward, which incorporates best practice court response to victims and perpetrators of family violence.



Peter Lauritsen
Chief Magistrate
Magistrates' Court of Victoria



Amanda Chambers
President
Children's Court of Victoria

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EXECUTIVE SUMMARY

“An effective court response to family violence enhances the safety of women and children, provides consistent specialist services across the state, is delivered with sensitivity, ensures coordinated and efficient case management and provides referral pathways for victims and offenders to support services and programs.”¹

Women and children affected by family violence are a defining feature of all jurisdictions within the Magistrates' Court of Victoria (MCV) and the Children's Court of Victoria (CCV). In the past decade for MCV, the overwhelming increase in the number of family violence matters, perhaps more than any other single factor, has shaped the Court's workload. For CCV, the increase in family violence has been shadowed by the growth of child protection applications in the Court's Family Division. In over 90 per cent of these cases, family violence is a factor.

The prevalence of family violence in the Victorian community has been fundamental to the development of court based reforms, in particular in MCV where efforts to build a responsive approach to managing family violence have included policy, program, and service delivery change to improve the experiences of, and outcomes for, those who are affected by family violence.

In this setting, our submission will highlight:

- current best practice in family violence courts
- key challenges and barriers the courts face in responding to family violence; and
- recommendations for the Royal Commission's consideration to enhance MCV and CCV responses to family violence.

Recent reform in court responses to family violence

Procedural and legal reforms, including the introduction of the Victoria Police Code of Practice for the Investigation of Family Violence in 2004, and the implementation of the *Family Violence Protection Act 2008*, (FVPA) have led to increased reporting of family violence. This has provided the impetus for development of court based responses, to effectively manage the huge increase in the number of family violence related matters before the courts. Equally important, is a court system that is just, accessible and equitable.

In response to the significant growth in the number of family violence related matters coming before the Court, MCV has been pivotal in developing integrated, specialist family violence court reforms, which aim to enhance the safety of women and children, improve access to and the quality of services for women, and strengthen the accountability of perpetrators of family violence.

The most significant and effective of these reforms is the Family Violence Court Division (FVCD).

FVCD's provide specialist magistrates, dedicated family violence court registrars, court based applicant support workers (ASW's) and respondent support workers (RSW's), family violence outreach workers, comprehensive family violence legal services, dedicated police prosecutors and additional safety measures at the two locations where the Division operates. The FVCD model enables the Division's magistrate to hear related matters simultaneous to dealing with the family violence intervention application. The model also empowers the magistrate to direct perpetrators to attend counselling programs. Together, these measures serve to enhance the focus on acknowledging and responding to the experiences and needs of vulnerable woman and children.

The Court Integrated Services Program (CISP) provides short-term assistance for accused persons prior to sentencing to address the causes of offending behavior through individual case management support. In addition to issues of family violence, the accused often presents with a range of complex issues, including disability, mental illness, drug and alcohol addiction, long term unemployment, homelessness and social and cultural isolation. The program has proven to be effective, as a measure to hold perpetrators of family violence to account, while addressing underlying causes of offending. CISP is a distinct program and not part of the current FVCD model.

The FVCD has been described as “the closest example of a ‘one stop shop’ model for victims of family violence in Australia”². It provides a holistic, therapeutically based model to ensure the best possible outcomes for those affected by family violence, and incorporates all the features of a best practice family violence court response.

In practice, the effectiveness of the FVCD model is constrained by overwhelming demand, inadequate resourcing and severe limitations imposed by court facilities which are not fit for purpose, are unsafe and can't accommodate the specific needs of people in crisis.

The CCV has concurrent jurisdiction with the MCV to hear and determine applications for intervention orders under the FVPA. In the context of family violence, the CCV intersects with the lives of children and young people who are often victims of family violence, witnesses to family violence or, increasingly, where they appear as perpetrators of family violence. The CCV does provide a number of services and programs to support those affected by family violence, including the Children's Court Clinic and conciliation conferences in child protection cases. However, the CCV has not been resourced to provide equivalent specific family violence services. Of particular concern is the current lack of service pathways and programs to address the growing number of young people appearing before the CCV as perpetrators of family violence against parents, siblings and carers in the home.

Best practice in family violence courts

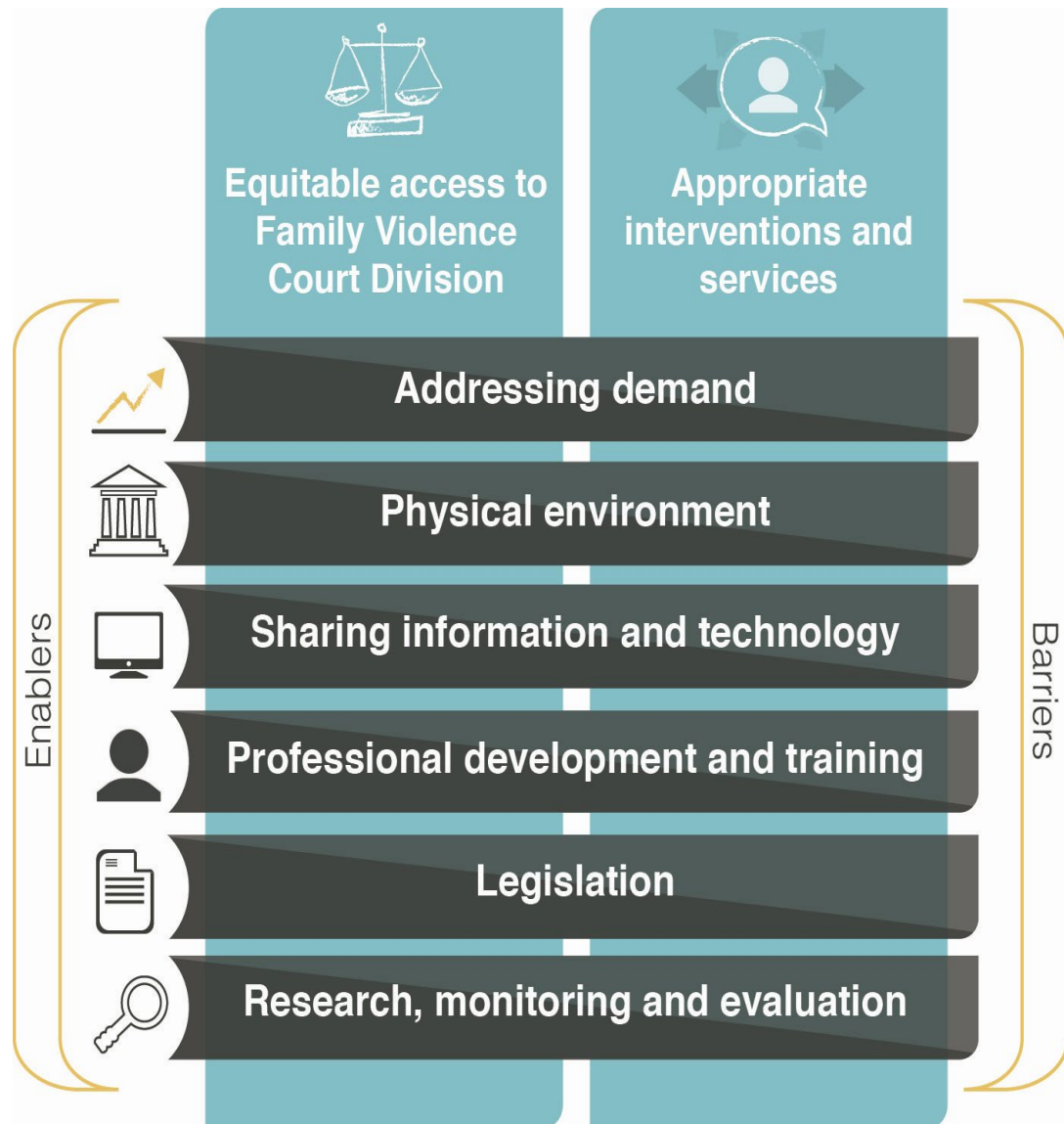
Magistrates' Court of Victoria and Children's Court of Victoria together propose a statewide expansion of the Family Violence Court Division, as the model and framework to provide equitable access to a best practice family violence court response.

A number of key prerequisites for achieving best practice in family violence courts have been identified in Australian and international research. These include:

- Specialisation, including personnel with specialist training and experience in family violence, specialised procedures (such as dedicated family violence lists, intake and case coordination) and an emphasis on specialised support services
- Integrated cross jurisdictional approaches to family violence cases to enable a single judicial officer (where appropriate) to determine the range of proceedings that a family experiencing family violence may encounter
- Holistic, therapeutically based support services which hold perpetrators to account, while addressing the range of underlying including mental illness, drug and alcohol addiction, homelessness, unemployment and social and economic disadvantage
- Safety and support for victims to ensure that victims have a positive court experience, have access to appropriate services and feel physically safe while attending court
- A broad suite of appropriate sentencing tools which promote perpetrator accountability and ensure victim safety.

The framework for achieving best practice

The diagram below demonstrates, there are six key enablers and barriers that provide the foundation for the courts to achieve our vision for best practice.



Our submission outlines 36 recommendations for the Royal Commission's consideration. The recommendations aim to:

- Address case and workload pressures experienced by the courts
- Ensure court buildings are safe, comfortable and accessible for parties in family violence cases
- Implement processes and systems which allow appropriate sharing of information relating to family violence and risk
- Develop skilled specialist magistrates, court registrars and court support staff
- Define a legislative framework that facilitates best practice responses to family violence
- Develop court programs and services, informed by research and evaluation

Summary of Recommendations

Equitable access to Family Violence Court Division

1. An enhanced Family Violence Court Division model be available and resourced across all Victorian Magistrates' Court and Children's Court venues to provide equitable access to a best practice specialist family violence court. This includes resourcing for:
 - a. specialist magistrates, registrars, applicant and respondent support workers, including youth specific workers, and Court Integrated Services Program case managers
 - b. dedicated police prosecutors and civil advocates, family violence outreach workers and access to legal representation
 - c. functional court buildings that promote safety, including adequate security measures at all locations
 - d. statewide priority access to court-ordered Men's Behaviour Change Programs
 - e. operational resources to effectively manage existing and future case and workload demand
 - f. an integrated service model resourced to support the exercise of both federal and state jurisdictions.
2. That funding is available to establish a taskforce of state and federal courts and government departments, to address the challenges experienced by families whose needs intersect across state and federal jurisdictions.

Appropriate interventions and services

For perpetrators of family violence

3. Statewide access to a broad range of court interventions, including:
 - a. Court Integrated Services Program
 - b. priority access to Men's Behaviour Change Programs (in accordance with No To Violence minimum standards)
 - c. specific programs for children and young people using family violence in the home (including youth specific behaviour change programs and expansion of the services available for children and young people engaging in sexually abusive behaviours)
 - d. Children's Court Youth Diversion Programs
 - e. sentencing options which promote compliance with orders

delivered flexibly to meet the needs of perpetrators across the various divisions of the courts.

For victims and witnesses (including children)

4. Implement a statewide integrated approach to support for victims and witnesses of family violence, including children, which encompasses:
 - a. expanding the role of the applicant support worker and the Court Integrated Services Program to support victims in criminal, VOCAT and child protection proceedings
 - b. a court-based program to assist all witnesses in family violence cases across the Magistrates' Court of Victoria and the Children's Court including assistance in preparing Victim Impact Statements
 - c. expanding witness support programs for vulnerable witnesses including:
 - i. expanding the capacity of the Child Witness Service to enable a service to be provided to children who are witnesses in criminal and civil family violence and sexual assault proceedings at all venues of the Magistrates' and Children's Courts across Victoria
 - ii. exploring options for delivering a dedicated service to witnesses who live with a cognitive impairment or a significantly disabling communication impairment
 - iii. introducing an intermediary program
 - d. expanding and resourcing support services and programs for children accompanying their mothers at court, such as the Court Play Worker Program.
5. Implement strategies for ensuring that all victims are offered the opportunity to provide Victim Impact Statements and that these are provided to magistrates as part of the sentencing process and used appropriately in court for the purposes of sentencing.

For the Koori community

6. Statewide access to culturally appropriate services for Koori people impacted by family violence, which includes court based, legal and community based services, and ongoing funding for the Court's Koori Family Violence and Victims Support Program.

For CALD communities

7. Statewide access to culturally appropriate Men's Behaviour Change and other support programs for all family members experiencing family violence
8. Funding to be provided to courts for:
 - a. adequately qualified legal interpreters for all family violence cases
 - b. information and materials on family violence available in a range of languages and delivered using modern best practice communication approaches in a culturally appropriate manner.

Addressing demand

9. Additional recurrent funding be provided to the courts to meet existing family violence demand for services.
10. That resourcing be provided to the Magistrates' Court and Children's Court to meet the increasing number and complexity of court cases including the need to meet the additional demand generated by the implementation of government reforms across the broader family violence system.

Physical environment

11. Investment in new and existing court facilities and related off site facilities to address current and future needs.
12. Investment in security and safety measures to ensure all court buildings and related off site facilities are safe environments.
13. Courts be provided with additional funding to ensure all court facilities comply with accessibility standards, including hearing loops, wheelchair access, seating arrangements and accessibility in courtrooms.

Sharing information and technology

14. Investment in a new case management system for the Magistrates' and Children's Courts to support the delivery of modern court services, enable fast and accurate exchange of information between agencies and replace resource intensive manual processing.
15. Develop systems that enable appropriate information to be shared across courts, family violence and justice agencies to manage risk and enable informed decision making, incorporating:
 - a. single database for family violence, child protection and family law orders that can be accessed by each of the relevant courts
 - b. access to reports used in other court jurisdictions
16. Resources to enable courts to move from inefficient and outdated modes of communication to contemporary communication platforms, including the introduction of Wi-Fi in courts.

Professional development and training

17. The Magistrates' and Children's Courts endorse the recommendations of the Judicial College of Victoria to support the professional development of its judicial officers, in relation to:
 - a. a contemporary family violence professional development program for judicial officers
 - b. a revised family violence bench book
 - c. extension of the Judicial Research Hub
18. Funding to support the continued development of a comprehensive family violence learning and development package, targeted to match the varied roles and functions of court registry and support staff.
19. Specific funding to support the professional development of state judicial officers, court registry and support staff in relation to family law, particularly in the context of family violence and child protection.
20. Statewide access to counselling, de-briefing and support to ensure the wellbeing of judicial officers and court staff.

Legislation

Various

21. Consider legislative reform to support and clarify how information can be shared across agencies and courts.
22. Consider legislative reform to:
 - allow documents to be signed electronically, such as warrants
 - allow documents to be transmitted electronically, where legislation restricts such communication to facsimile transmission
23. Consider whether the statutory scheme for special hearings in criminal trial proceedings where the complainant is a child or cognitively impaired should be extended to summary contested hearings in the Magistrates' Court and Children's Court.
24. Consider the operation of appeals from family violence related summary criminal and civil intervention proceedings in the Magistrates' Court and Children's Court to the County Court of Victoria.

Victims of Crime Assistance Act 1996

25. Consider amending the *Victims of Crime Assistance Act 1996*, and related regulations, to:
- introduce procedural and evidentiary protections for VOCAT proceedings involving family violence and sexual assault to replicate the special arrangements that apply to sexual assault complainants and protected witnesses under the *Criminal Procedure Act 2009* and the *Family Violence Protection Act 2008*
 - list family violence as a relevant factor in the exercise of the discretions under sections 52 and 54
 - ensure section 34 (alleged offender notification) operates appropriately having regard to the specific safety risks which commonly arise in applications involving family violence
 - include "related acts" occurring in the context of family violence as a circumstance in which the category A Special Financial Assistance award amount (currently \$10,000) is available for category B, C or D acts of violence pursuant to Rule 7 of the Victims of Crime Assistance (Special Financial Assistance) Regulations 2011.

Sentencing Act 1991

26. The Sentencing Advisory Council to give consideration to developing a broader suite of appropriate sentencing tools for family violence related criminal matters that ensure:
- strict monitoring of compliance with programs
 - immediate, consistent and firm consequences for non-compliance with programs
 - immediate, consistent and firm consequences for further offending
 - individual treatment plans that deal with reducing risk factors such as drug and alcohol abuse
 - monitored participation in comprehensive Men's and Youth Behaviour Change Programs
 - ongoing support for victims.

Bail Act 1977

27. The Magistrates' Court to be given power to issue a warrant to remand a respondent to a family violence intervention order in custody who has been arrested under the application and warrant process.

Family Law Act 1975

28. Amend the *Family Law Act 1975* to:
- clarify the capacity of the Children's Court to exercise federal family law jurisdiction as a court of summary jurisdiction for the purposes of s69J of the Act (and associated amendments to the *Family Violence Protection Act 2008* to facilitate this)
 - provide the Magistrates' Court and Children's Court with increased access to supports and information available, including access to independent children's lawyers and relevant family law reports (s11F and s62G)
 - allow magistrates broader discretion in terms of the time a family law order is suspended or varied where it is considered appropriate to do so under section 68T and make any consequential amendments to the *Family Violence Protection Act 2008* as necessary.

Family Violence Protection Act 2008

29. Repeal section 133 of the *Family Violence Protection Act 2008*, which requires the Secretary, Department of Justice and Regulation to approve respondent support workers and counselling providers.
30. Amend the *Family Violence Protection Act 2008* to specifically allow for respondents to be bailed to a relevant court support service, such as the Court Integrated Services Program.

Children Youth and Families Act 2005

31. Consider amending the *Children Youth and Families Act 2005*:

- a. to provide a statutory basis for sexual offences lists in both the criminal and family divisions of the Children's Court
- b. to provide a statutory basis for diversion
- c. to enable Therapeutic Treatment Orders to be made with respect to young people engaging in sexually abusive behaviours who are aged 15 - 17 years

and that funding be provided to support the operation of these lists and for diversion across Victoria including to support the process of diversion into treatment for low level offences by children and young people engaging in sexually abusive behaviours.

Research, monitoring and evaluation

32. Australia's National Research Organisation for Women's Safety to give consideration to court based research in relation to family violence and seek input from courts to identify key areas of focus.
33. Further research to be conducted on:
 - a. the effectiveness of available perpetrator interventions
 - b. how interventions are effectively targeted
 - c. perpetrator interventions beyond men's behaviour change programs
34. Update the No To Violence minimum standards to reflect current best practice and introduce an accreditation process.
35. Courts have funded capacity to identify, develop, implement and evaluate family violence best practice court initiatives to ensure continual improvement.

Sexual Assault Reforms

36. The Victorian Government to adopt the key findings and recommendations from the Sexual Assault Reform Strategy evaluation that are equally applicable to family violence and adapt the successful elements of both the integrated family violence strategy and the Sexual Assault Reform Strategy to achieve consistent best practice in sexual assault and non sexual assault related family violence proceedings.

Case study – The vision

Jenny is 32 and lives with her husband Danny, and their three young children. Last night, Jenny was getting the children ready for bed when Danny came home. He started yelling the moment he walked in the door. He accused Jenny of having an affair and contacting other men. Jenny tried to get the children into their room and shut the door.

Danny came into the children's room and continued yelling at Jenny. When Jenny tried to reason with Danny, he struck her across the face. He then knocked her to the ground and continued to hit her. The children started screaming and Danny left the room. Danny continued to yell and smash items in the house. He threw a vase at the TV and kicked holes in the walls. Jenny ran to the bathroom with the children, locked the door and called police.

Police arrived at the house and spoke to both Jenny and Danny. They took Danny to the police station. Jenny told police that she did not want Danny charged, but also told them that she did not feel safe. The Police issued a Family Violence Safety Notice and explained to Jenny the conditions of the notice, the protection it provides, how long it would last and provided information about going to court. They also explained that they would refer her to a local family violence service who could provide further assistance. Police informed Jenny that due to the children being present at the incident they would have to notify child protection, who could help her with specific referrals.

When Jenny woke up the next day, she was exhausted and confused by what had happened the night before. Although the police had given her lots of information, she couldn't remember the details, so she rang the number for the Magistrates' Court that the police had given her.

Jenny spoke to the Family Violence Registrar. She said the police had taken Danny away last night and she didn't know where he was and was frightened about what was going to happen to her and the children. She had been given a copy of the family violence safety notice. She didn't know if Danny had been charged with criminal offences.

The Registrar then provided Jenny with contact numbers of her local community legal centre and legal advice lines so that she could access further legal advice before her court date. The Family Violence registrar asked whether Jenny could arrange care for the children on her court date.

The Registrar explained what Jenny could expect when she came to court. When she arrived, she would enter the court through a secure entrance, where all people entering the court are scanned for weapons or prohibited items.

Once inside the court, she would be directed to the area of the court that only victims of crime or applicants for intervention orders can enter. There, she could speak with the Registrar, to let her know that she had arrived, and the Registrar would confirm what is needed for her case to go ahead. The Registrar would also tell her whether or not Danny had come to court.

The Registrar will arrange for Jenny to speak with police, support workers and lawyers. As the police had issued a safety notice against Danny, they would make the intervention order application on her behalf, and they would speak for her in court. However, if she would like independent legal advice, there will also be a lawyer available for her to see. They can also give her advice about other legal issues, and make a follow up appointment to go through those things on another day.

The applicant support worker can provide her with information and guidance about family violence, the court process, services she can access to help her and help her develop a safety plan. The applicant support worker can support Jenny in court or link her in with Court Network for support throughout the day.

She could also speak to the Registrar about the Victims of Crime Assistance Tribunal, and the sort of assistance, including any urgent assistance that could be provided to her and the children (including changing her locks and counselling).

The Registrar explained that getting all the information together might take some time during the day, but Jenny would be able to remain in the separate space during that time, and would not need to see Danny. There are separate toilets, baby change rooms and food and drink facilities in the space, so she would not need to leave the area.

If Jenny felt unsafe coming to court, the court could arrange for her to participate via videolink from another place, rather than attending court in person. She would still be able to speak to the police, support services and lawyers from the remote location.

The registrar explained how the intervention order hearing works, and that if the magistrate makes an intervention order, the magistrate will explain the order, how long it will last, and tailor any conditions to meet the family's needs, including safety of children. There will also be people at court who can answer questions about how the order works. The Registrar explained to Jenny that she can request which conditions she would like included in her intervention order. If Danny comes to court, he can also access a worker to provide him with support, and that the order would be explained to him, so he understands what he can and can't do, and consequences for breaching the order.

The registrar said that if Danny had been charged with criminal offences, the case could be heard at the same time by the same magistrate. If he was on bail, she would be consulted about any bail conditions and the magistrate would also have the ability to order Danny to attend programs and counselling that could help him, and the court would monitor his progress.

Jenny was also referred to the family violence page on the Magistrates' Court website which contains a written and oral explanation, in the Vietnamese language, of the information she had just been given.

The registrar made sure that Jenny had contact details for the Family Violence Unit at the local police station, the local FV service, the local community legal centre and the applicant support worker at the court, so that if she wanted to, Jenny could get in contact with them before she came to court.

The Reality

Kyneton Court

The Police could not issue a Family Violence Safety Notice, as it is a legislative requirement for the safety notice to return to court within 5 working days. Jenny's local court is Kyneton, which only has intervention order sitting days once a fortnight.

Jenny went to the court to apply for an intervention order herself. When she arrived at the courthouse, there was a line of people coming out the door, all the way down the driveway. Jenny waited for approximately 15-20 minutes before she reached the counter and was able to speak to the registrar.

Jenny felt ashamed and upset that she had to tell the registrar what had happened with Danny in front of other people waiting. Jenny is Vietnamese and speaks limited English, which made it even more difficult for her to speak to the registrar. The registrar explained the court process as best she could and gave Jenny an application form to complete. The registrar explained to Jenny that she could arrange an interpreter for the next hearing date, who would travel to Kyneton from Melbourne.

Jenny went back out to her car to complete the application form, as there was no waiting area or seating in the courthouse. Jenny waited for over an hour before the registrar had enough time to process her application and list her interim order application.

Jenny was then required to wait in the crowded courtroom for her matter to be called. Again, she felt anxious and upset that she had to tell the magistrate what had happened with a room full of people. Her limited English also made this process even more difficult. The magistrate granted her application for an interim order.

Jenny returned to the Kyneton Court two weeks later for the next hearing of her application. The registrar advised her that there was only one duty barrister there that day who Jenny was unable to see, as Danny had already requested to see them. The registrar also advised that unfortunately the support worker from the Centre for Non Violence was only at the court every second week and was not there that day. An interpreter was available to assist Jenny in court.

Jenny was asked to wait outside the courthouse until her matter was ready to be called. She had to wait only metres away from Danny and could see him staring at her while he spoke to the duty barrister. This was very intimidating. Jenny noticed that there was no security present at court. She was too afraid to go to the bathroom, as there were no toilet facilities available at the court, only public toilets across the park.

Danny indicated to the magistrate that he wanted to contest Jenny's application, which meant it was adjourned to another date. The registrar made sure that the application was adjourned to a date when a solicitor from the local Community Legal Centre and the support worker from the Centre for Non Violence would both be present. The registrar also provided Jenny with a contact number for the Centre for Non Violence to contact in the meantime.

On the next hearing date, Jenny was able to briefly speak to a support worker and solicitor. There were no interview rooms at the court, so these conversations took place outside under a tree, where everyone could see, including Danny. Jenny was again required to tell the magistrate what had happened with a courtroom full of people.

The magistrate granted Jenny's application for a final order. Her and Danny were both given copies of the orders by the registrar at the front counter. Jenny waited a few minutes after Danny left the courthouse and felt scared walking back to her car.

Broadmeadows Court

Jenny attended the Broadmeadows Court on the date advised by the police officer. When she arrived at the courthouse, she was required to go through security at the front door and was scanned for weapons and prohibited items. Jenny then walked into a big crowded waiting area with a counter at the back. This was very overwhelming. Jenny waited in the line to speak to the registrar and had to walk past Danny, who was seated in the waiting area.

Jenny felt anxious that she had to speak to the registrar at the open counter with a crowd of people waiting behind her. The registrar advised that there was a secure waiting area upstairs where Jenny could wait and explained that Danny would be asked to wait downstairs. Jenny went upstairs and felt at ease that there was a security officer patrolling the area.

The registrar had explained to Jenny that there was a police Family Violence Liaison Officer, a support worker from Berry Street and a solicitor from the local Community Legal Centre that Jenny was able to speak to and who were all located upstairs where Jenny was waiting. Jenny was taken into a private interview room to speak to each of these services. This made Jenny feel a lot more comfortable and she felt that she could fully explain what had happened with Danny. The police had also arranged for a Vietnamese interpreter to attend that day to assist Jenny.

When her matter was called, a Court Network volunteer supported Jenny by sitting with her in court. It was very intimidating sitting in court with Danny in close proximity. Jenny also felt ashamed having to tell the magistrate what had happened with Danny in front of a courtroom full of people. Even with an interpreter, it was still difficult for Jenny to understand exactly what was going on and the language that was used.

The magistrate granted a final intervention order. After the matter was finalised, the registrar asked Jenny to wait inside the courtroom. Danny was taken out of court and was served with the intervention order. The registrar then waited for Danny to leave and gave Jenny a copy of the intervention order and explained the conditions. Even though Danny had left, Jenny was scared to walk out to her car, in case Danny was waiting for her. She told the registrar this and the registrar arranged for a security officer to escort Jenny out to her car. This made Jenny feel more at ease.

Werribee Court

Jenny attended the Werribee Court on the date advised by the police officer. There was no car park at the court so Jenny had to park down a side street and then walked five minutes to the courthouse. She was fearful of being confronted by Danny during this walk. Jenny had no alternative care available for her youngest child who had to accompany her to court. When she arrived, there was a line of people coming out the front door and onto the footpath.

Jenny was required to go through security at the front door, was scanned for weapons, and prohibited items. The line continued inside the court building and it was at least 10 minutes before Jenny could speak to the registrar. Jenny was struggling to entertain her three year old and keep him with her. The line of people weaved between the seats in the waiting area and Jenny had to walk directly past Danny. This was very intimidating. Jenny became more distressed as her three year old kept attempting to run to Danny, she was worried as she did not know the legal restrictions of the safety notice or whether Danny would try and take her son.

Jenny had to speak to the registrar at the open counter with Danny only metres behind her and a crowded waiting area. The registrar advised that the police officer had not arranged an interpreter, however she could arrange for one to attend but they would not arrive until the afternoon. Jenny had not prepared food or snacks for her son and was stressed about the long wait.

Jenny went to the upstairs waiting area to get away from Danny. However, he followed her upstairs, sat right across from her and stared at her. Her son became upset and started crying. Jenny felt frightened and noticed that there were no security officers upstairs. She went back downstairs, followed by Danny, to tell the registrar how frightened she was and the registrar explained that her only option would be to wait downstairs where the registrar could see her. Danny stood against the wall still staring at Jenny and trying to get her sons attention.

The registrar put Jenny on the list to speak to the Applicant Support Worker at the Court. However, Jenny was unable to speak to her until the interpreter arrived in the afternoon. By the time the interpreter arrived at court, the Applicant Support Worker did not have the time to speak to Jenny as she had a number of other women waiting.

Jenny was able to speak to the police Family Violence Liaison Officer. She was anxious to explain what had happened with Danny, she wanted police to understand the family pressures she was experiencing, her fears, and her concerns around her future housing prospects if Danny was excluded from the house. She was upset by the rushed nature of the interview and confused about her options in regard to the intervention order. She was distressed and hoped she would have the opportunity to explain to the magistrate her concerns.

Jenny was exhausted from waiting at court all day and her matter was not called in court until 3pm. The magistrate made enquiries about the progression of the criminal charges, the civil advocate had not been provided with this information. This was the first time that Jenny had heard a mention of criminal charges. Danny indicated to the magistrate that he wanted to contest Jenny's application, which meant it was adjourned to another date. Jenny was advised that contested hearings were not heard at the Werribee Court and that her application would be transferred to the Sunshine Court on the next occasion.

This whole experience was so overwhelming for Jenny that she advised the police that she did not want to proceed with the application and requested that the application be withdrawn.

1. INTRODUCTION

1.1 Magistrates' Court of Victoria

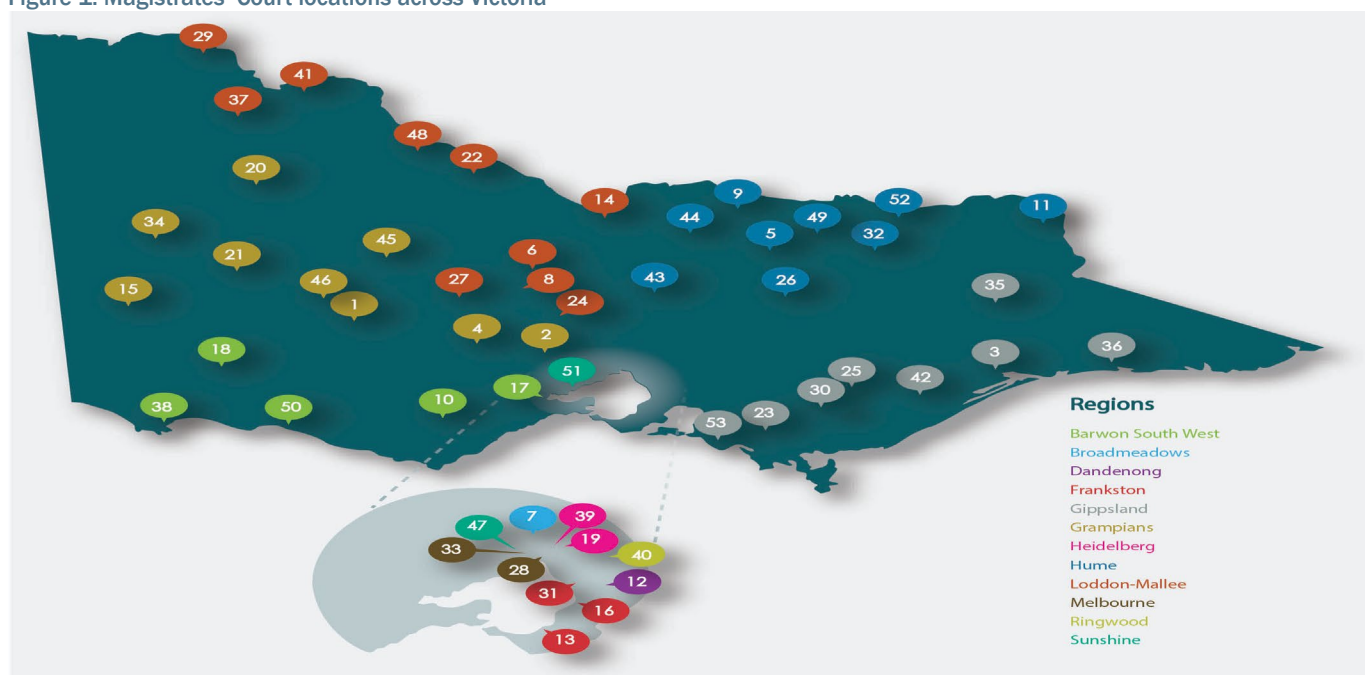
The MCV is established under section 4 of the *Magistrates' Court Act 1989* and exercises jurisdiction in criminal, civil, family law and intervention order matters. The Court also operates a number of divisions and specialist lists, including the Drug Court, Koori Court, Neighbourhood Justice Centre, Sex Offences List, Assessment and Referral Court (ARC) List and the Family Violence Court Division. Specialist support services and programs are also offered including the Specialist Family Violence Service, the Courts Integrated Services Program (CISP) and the Credit Bail program.

The Victims of Crime Assistance Tribunal (VOCAT) is established under the *Victims of Crime Assistance Act 1997* as a separate Tribunal, but in practice, it operates as a division of the MCV, with all magistrates holding dual appointments as Tribunal members.

The MCV is the busiest court in Victoria and handles approximately 90 per cent of all cases that come before Victorian courts each year. In 2013/14, the Court heard and determined approximately 300,000 cases, with approximately 2,500,000 people visiting the Court. In the same period, VOCAT finalised 6,611 applications.

Across Victoria, 53 Magistrates' Court locations are situated within 12 regions. Each region consists of a headquarter court and some regions are made up of multiple satellite courts (Figure 1). VOCAT sits at all venues of the MCV.

Figure 1: Magistrates' Court locations across Victoria³



Family violence related matters account for a large proportion of the MCV's workload. In 2013/14, a total of 50,208 intervention order applications were finalised (including interim orders), 6,331 contravention of a family violence intervention order criminal related matters were finalised⁴, 1,204 family law matters⁵ were finalised and family violence matters accounted for 24 per cent of all VOCAT hearings. The After Hours Service also received 10,583 family violence intervention order applications.

³ Magistrates' Court of Victoria (2014) Annual Report 2013/14, available at: <https://www.magistratescourt.vic.gov.au/sites/default/files/Default/Annual%20Report%202013-2014.pdf>

⁴ Accurate data for other criminal offences committed in a family violence context cannot be produced, however will be available in the future. This data relates to contravention of an intervention order charge and does not capture all family violence related offending, such as assaults and property damage.

⁵ Not all these cases are known to be family violence related proceedings.

Most Magistrates' Court venues have dedicated family violence intervention order lists in response to the growing demand of applications coming through the Court. All headquarter courts have family violence intervention order lists operating across multiple days a week. Data capturing the average list sizes for major metropolitan court venues show average list sizes of 55 intervention order matters a day. On occasion, there have been lists in excess of 80 intervention order matters.⁶

In recognition of the growing proportion of family violence related matters coming before the Court, the MCV released its response to family violence in November 2014 (Appendix 1). The Court's vision in response to family violence is to *"increase the safety of women and children by ensuring a consistent service across the state, delivered with greater sensitivity, ensuring coordination and efficiency in the management of cases, and the ability to refer victims and offenders to services."* In considering the current demand for family violence related matters coming before the Court, six strategic priorities have been identified, including:

- Expansion of family violence services
- Video conferencing pilot
- Fast tracking listing model
- Professional development
- Online engagement
- Improved use of technology and information sharing.⁷

1.2 Children's Court of Victoria

The CCV is created by the *Children Youth and Families Act 2005* (CYFA) to deal with matters involving children and young people up to the age of 18 years, and in some cases up to 19 years.

As a specialist jurisdiction, the purpose of the CCV is to bring expertise and experience to consideration and determination of matters involving vulnerable children, young people and their families.

The Court has three divisions:

- The Family Division hears a range of applications and can make a variety of orders upon finding that a child is in need of protection, or that there are irreconcilable differences between a child and his or her parents.
- The Criminal Division hears and determines summarily all offences⁸ where the alleged offender is under the age of 18, but of or above the age of 10 years, at the time an offence is committed, and under the age of 19 when court proceedings are commenced. The Court also has jurisdiction to hear and determine committal proceedings into all charges against children for indictable offences, to hear applications pursuant to the *Bail Act 1977* and to deal with breaches and/or variations of sentencing orders.⁹
- The Children's Koori Court deals with young Koori people who plead guilty or are found guilty of criminal offences and consent to participate in that process.

With the exception of the Melbourne Children's Court, the CCV sits at MCV venues in metropolitan and regional locations across Victoria. The Melbourne Children's Court sits daily in both the Family and Criminal Divisions and it currently has a dedicated family violence intervention order list that sits one day a week. Child protection cases emanating from the Department of Health and Human Services (DHHS) Southern Metropolitan Region are heard daily at Moorabbin Children's Court and later in 2015, the new Broadmeadows Children's Court will commence hearing Family Division cases originating in the Northern Metropolitan Region.

Magistrates at other metropolitan courts also sit as Children's Court magistrates on gazetted days, hearing criminal division and intervention order matters only. Magistrates at regional courts sit as Children's Court magistrates in both divisions on gazetted days.

⁶ Data captured over a nine-month period from July 2014 to March 2015 for 7 headquarter courts and the Moorabbin Magistrates' Court show the average list size for family violence intervention orders matters have been as high as 56 matters (Dandenong Magistrates' Court).

⁷ MCV (2014) Response to Family Violence 2015-2017, available at: <http://www.magistratescourt.vic.gov.au/sites/default/files/Default/141126%20FV%20Strategic%20Objectives%20Overview%202015-17%20%28final%29.pdf>

⁸ Other than murder, attempted murder, manslaughter, child homicide, defensive homicide, culpable driving causing death and arson causing death.

⁹ See sections 516(1), 516(2) and 516(3) of the CYFA.

In the Family Division, the Court also has jurisdiction to hear applications relating to intervention orders pursuant to the FVPA and *Personal Safety Intervention Orders (PSIO) Act 2010* where the “affected family member” (family violence matters) or “affected persons” (personal safety matters), or the respondent is a child.

While the number of intervention order applications finalised by the Court has increased in recent years, the significance of family violence in the CCV is reflected not only in this increase but is manifest in increasing numbers of child protection matters where it is implicit that children have been victims of, or witnesses to family violence. In the past decade the workload of the CCV has been shaped by increasing numbers of primary¹⁰ and secondary¹¹ child protection applications in the Court's Family Division. Section 162 of the CYFA describes a child as in need of protection when any of the following grounds exist:

- a. the child has been abandoned by his or her parents
- b. the child's parents are dead or incapacitated
- c. the child has suffered, or is likely to suffer physical injury
- d. the child has suffered, or is likely to suffer sexual abuse
- e. the child has suffered, or is likely to suffer emotional or psychological harm of such a kind that the child's emotional or intellectual development is, or is likely to be significantly damaged
- f. the child's physical development or health has been, or is likely to be, significantly harmed and the child's parents have not provided basic care or effective medical, surgical or other remedial care.

In January, 2013 the CCV initiated a pilot to intensively case manage protection applications where it is alleged a child had suffered, or was likely to suffer, sexual abuse. These applications are brought under section 162(1)(d) of the CYFA and as such, the list is known as the “D List”. These complex and challenging cases are proactively case managed by specialist magistrates sitting in the CCV. Since January, 2014 the D List ceased being a pilot program and is an ongoing specialist list based in the Melbourne Children's Court. As an aspect of family violence, protection applications that arise in circumstances of sexual abuse are prioritised for case management by the CCV.

Where protection applications are made pursuant to section 162(1)(c) and 162(1)(e) of the CYFA, while there may be a combination of factors, including drug and alcohol abuse and mental illness that are the nucleus of protective concerns, often it is the case that children have also been victims of family violence in respect of applications under s162(1)(c) or have been otherwise exposed to, or witnessed, family violence in applications made under s162(1)(e). In light of this, it is estimated that in approximately 94 per cent of child protection applications, protective concerns in relation to vulnerable children have their genesis in family violence. This estimation is supported by a recent study of 100 randomly selected primary and secondary child protection applications pending for hearing at the Melbourne Children's Court¹². In 94 of 100 cases examined, exposure to family violence was explicitly disclosed by Department of Health and Human Services (DHHS) reports in relation to affected children.

Of equal concern, is the increase in the number of young people aged between 10 and 17 years of age who are appearing before the Court as perpetrators of family violence. Increasingly, adolescents are appearing as respondents in intervention order applications and/or charged with criminal offences, committed in the home against their parents, carers or other relatives, including siblings. Research is clear that this type of behaviour will likely continue into adulthood unless it is addressed. The CCV is uniquely placed to make appropriate interventions in the lives of these children and their families to reduce the risk of them progressing to more violent behaviours and in doing so, to break the cycle of intergenerational family violence.

¹⁰ Primary applications are new cases including protection applications by notice, apprehension, irreconcilable differences, search warrants and applications for permanent care.

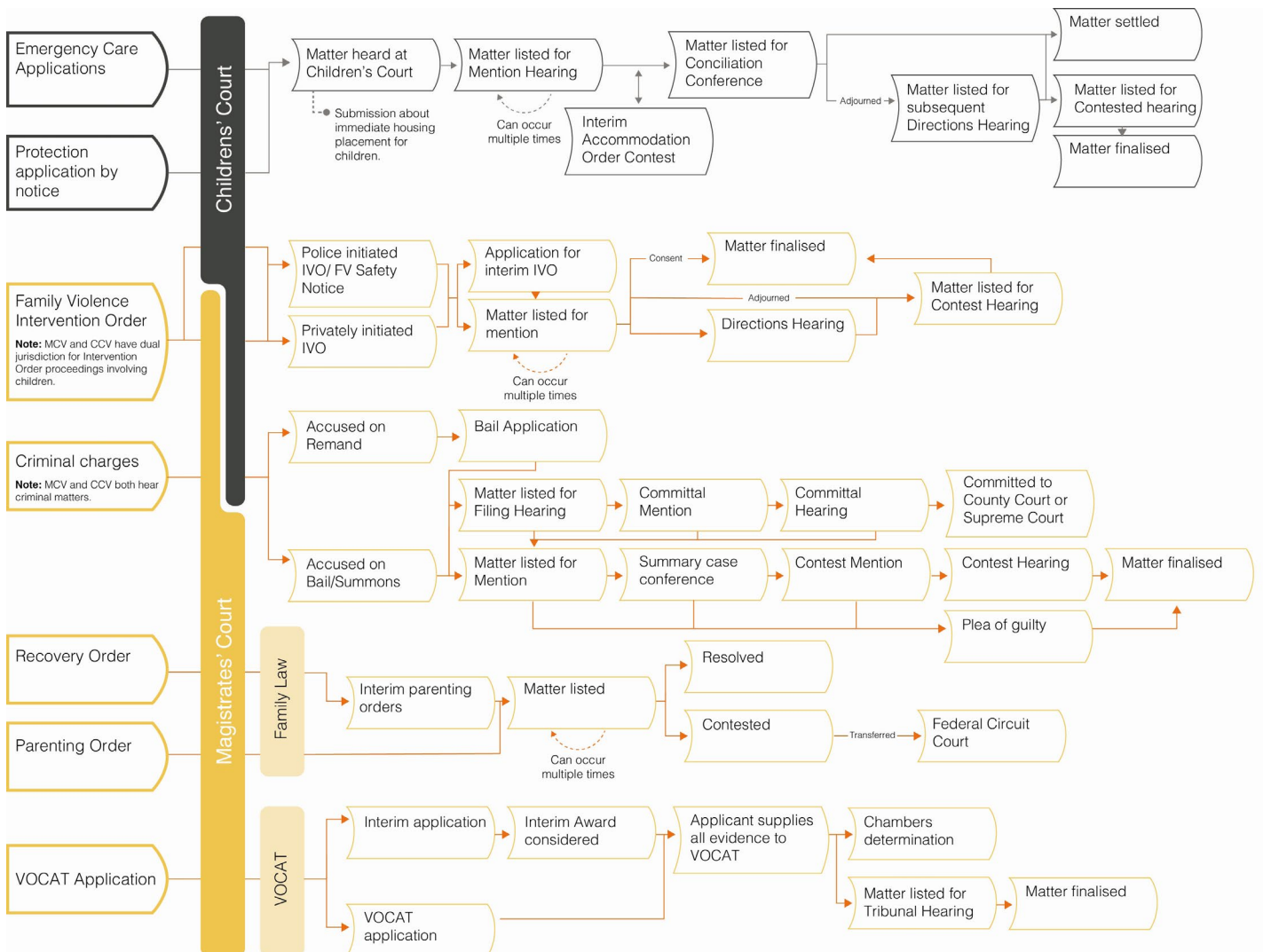
¹¹ Secondary applications are applications made in relation to existing cases including applications to extend, vary and revoke.

¹² File analysis was undertaken by two experienced CCV magistrates on 27 May 2015 to capture a snapshot of the extent to which family violence is a factor in child protection cases.

2. FAMILY VIOLENCE RELATED MATTERS HEARD ACROSS THE MCV AND CCV

Family violence related matters are dealt with across multiple jurisdictions in the MCV and CCV (Figure 2).

Figure 2: MCV and CCV jurisdictions that hear family violence related matters



2.1 Child protection matters involving family violence

Under section 215B of the CYFA, in the management of child protection proceedings, the CCV has power to ask if the child or any person connected to the proceeding has been, or is at risk of being, subjected to family violence. Sub section 215B (2) goes on to define family violence as having the meaning given in the FVPA.

2.2 Family violence intervention order matters

The MCV and CCV have dual jurisdiction to hear and determine applications to make, vary, revoke or extend a family violence intervention order under the FVPA. The CCV specifically deals with intervention order matters where either the respondent or an affected family member is a child.¹³ The Court can also hear an application for an intervention order when both the affected family/affected person and the respondent are adults if there is a related child protection proceeding.

This may occur when the:

- child who is the subject of the child protection proceeding is the child of, or is under the care and supervision of, the affected family member or the respondent; and
- the application for the intervention order raises the same or similar concerns relating to the safety of the child as those raised in the child protection proceeding.

2.3 Family violence related criminal matters

The MCV and CCV both have jurisdiction to hear family violence related criminal matters. These may include:

- contravention of a family violence intervention order
- offences in a family violence context, which include:
 - ◆ sex offence charges eg. rape, indecent assault, incest, indecent act with a child under 16
 - ◆ non sex offence charges eg. intentionally or recklessly cause injury or serious injury, unlawful assault, threat to kill, threat to inflict serious injury, criminal damage, aggravated burglary.

Applications arising out of offences in a family violence context, such as bail applications and applications for forensic procedures.

2.4 Family law jurisdiction

Magistrates sitting in the MCV exercise limited jurisdiction under the *Family Law Act 1975* (Cth) to hear family law matters.¹⁴ Family law matters, which may involve allegations of family violence, are primarily considered in the following instances:

- Applications under the *Family Law Act 1975*¹⁵, which are usually applications for:
 - ◆ parenting orders as to the arrangements for the children spending time with parents
 - ◆ recovery orders.¹⁶

When considering intervention order applications under the FVPA; applications under 68R of the *Family Law Act 1975* for the revival, variation, discharge or suspension of parenting orders must be considered.

In the CCV there is uncertainty regarding the capacity of the Court to exercise federal family law jurisdiction. Subject to clarification of the legislative framework surrounding cross vesting, the Court seeks to exercise family law jurisdiction in circumstances where to do so would likely bring about the effective and appropriate conclusion of child protection proceedings. In these circumstances, it would be appropriate to limit the jurisdiction of the CCV in family law matters to agreed parenting orders.

¹³ As a result, the CCV has Commonwealth jurisdiction to vary Family Court orders that conflict with intervention orders made under the FVPA 2008, provided that the jurisdiction is exercised by a magistrate (section 68R of the Family Law Act 1975)(Cth).

¹⁴ Family law matters are predominantly dealt with in the Federal Circuit Court.

¹⁵ In practice, most applications involving allegations of family violence involve families with children and are applications for parenting orders and/or recovery orders made in country venues of the Magistrates' Court.

¹⁶ The MCV also considers applications for child support, parentage testing and property orders (primarily applications for final consent orders). However, it is rare that a family violence allegation is evident in these applications.

2.5 Victims of Crime Assistance Tribunal (VOCAT)

VOCAT is unique in being an administrative tribunal whose staff are located within the Court. All magistrates are also appointed as Tribunal Members. VOCAT hearings are more informal and flexible than Court proceedings, and provide a therapeutic setting for a victim's experience to be acknowledged by a judicial officer experienced in hearing criminal cases. The increasing prevalence of family violence related cases in the criminal justice system is also reflected in the experience of VOCAT.

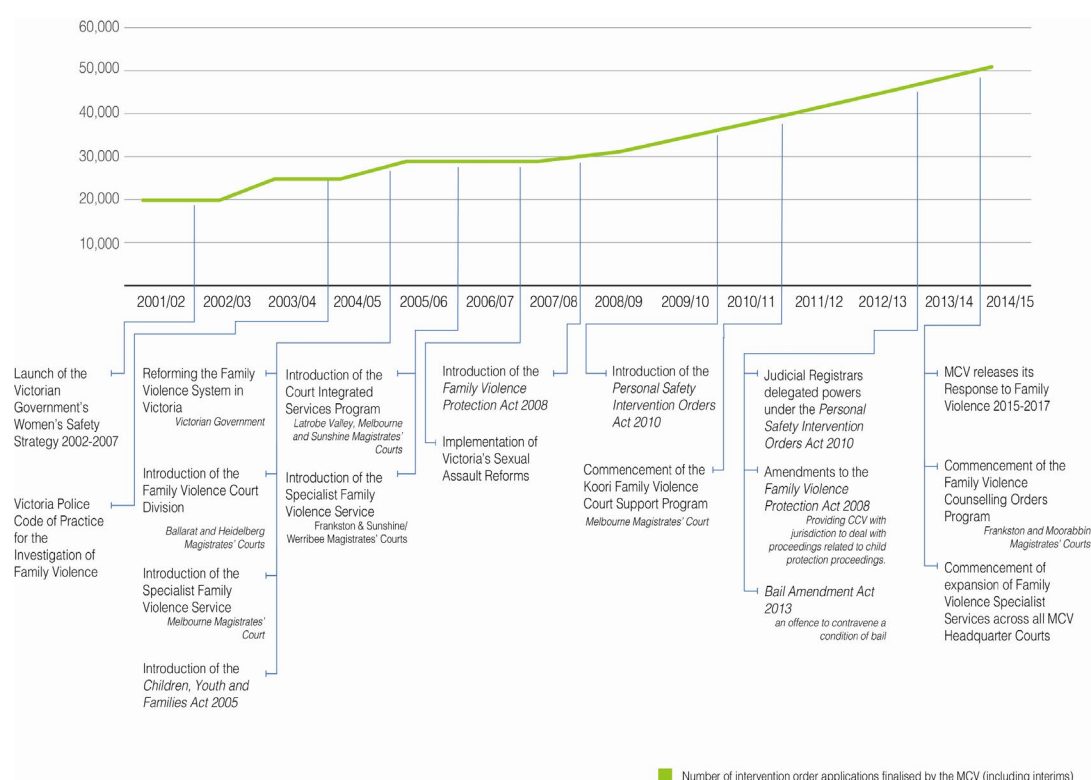
VOCAT supports victims to recover from violent crimes committed in Victoria, acknowledging their pain and suffering and providing assistance to help meet the costs of their recovery. VOCAT can make lump sum payments to certain victims to recognise their traumatic experience, as well as payments to cover:

- funeral expenses
- counseling
- medical expenses
- loss of earnings
- safety related expenses
- other expenses, that will assist the victim in their recovery.

3. BACKGROUND AND CONTEXT OF COURT RESPONSE TO FAMILY VIOLENCE

Victoria has undergone significant reform in response to family violence over the past 15 years. These reforms, which include policy, program and legislative changes, have led to an increase in the number of family violence related matters coming before the Courts. To accommodate this, the MCV has made changes to its listing practices, workforce, culture and staffing structures to meet the demand. Figure 16, which provides a timeline showing the introduction of key reforms and the number of finalised family violence intervention order applications in the MCV, attempts to demonstrate the impact of these reforms on the Courts' workload.

Figure 3: Timeline: Victoria's family violence reforms and number of intervention order applications finalised by the MCV, 2001/02 to 2014/15



The Victorian Government's targeted policy response to family violence commenced in 2002 with the development of the Women's Safety Strategy. This strategy was informed, in part, by a series of investigations that documented the negative experience of court for victims of family violence, many of whom found the process overwhelming and distressing. Furthermore, these investigations revealed that the family violence service system was complex, fragmented and disconnected, and that the majority of people who experienced family violence did not have contact with specialist services or utilise the criminal justice system. More specifically, it highlighted that there were an absence of guidance for victims at court, a lack of family violence specialisation across courts and little integration between family violence services.

In response to these concerns, the Women's Safety Strategy emphasised that collaboration between the criminal justice system and community agencies was critical to ensure an effective and efficient response to family violence. A state-wide 'Steering Committee to Reduce Family Violence' was convened with representatives from across the government and community sectors to advise the Victorian Government on the development of an integrated response to family violence.

In 2005, the State-wide Steering Committee to Reduce Family Violence released the 'Reforming the Family Violence System in Victoria' report, which informed the Victorian Government's social policy statement, A Fairer Victoria. Family violence was identified as a profound cause of social disadvantage, with serious social and economic consequences for families, communities, and society. To implement this policy agenda, the Victorian Government committed \$35.1 million over four years to deliver a new approach to family violence services aimed at actively supporting the prevention and reduction of family violence in the longer term.¹⁷

¹⁷ This included funding for the MCV Specialist Family Violence Service across the Melbourne, Frankston and Sunshine / Werribee Magistrates' Court and the development and

Since this time, the Victorian Government has continued to commit funding to a range of reforms to improve responses to family violence.¹⁸

Alongside the financial investment by the Victorian Government, wider procedural reforms were also being implemented. These reforms, which included the introduction of the Victoria Police Code of Practice for the Investigation of Family Violence in 2004¹⁹, and the implementation of the FVPA in 2008, have had a substantial impact on the Courts, in terms of the increased volume of family violence intervention order applications and criminal matters associated with family violence coming through the Courts. The increased levels of reported family violence related incidents, criminal and intervention orders proceedings also reflect changing community attitudes to and awareness of family violence. The 2008 Act provided for Victoria Police to issue Family Violence Safety Notices which has contributed to the increase in police applications made on behalf of AFMs. Police applications now make up 66 per cent and 74 per cent of all applications in the MCV and CCV respectively.²⁰

As part of the Victorian Government's reforms to the family violence service system, the Family Violence Court Division (FVCD)²¹ and Specialist Family Violence Service (SFVS) were developed in the MCV to address the fragmented court-based response to family violence. These programs were implemented in targeted locations and involved comprehensive expansion of necessary components of the court system to deliver an integrated and specialist court response to family violence. The overall aim of these specialist court responses was to improve the safety of women and children, improve access to services and the quality of services for all Victorian women, and strengthen the accountability of perpetrators. These improvements were expected to increase women's confidence in the system and make it easier for them to report family violence.

In parallel with the improved responses to family violence, reforms were also being undertaken in relation to sexual assault in Victoria. The Sexual Assault Reform Strategy was developed following the Victorian Government's consideration of the Victorian Law Reform Commission's Final Report, *Sexual Offences*, which made 201 recommendations for improving the system.²² The strategy's overall aim was to improve the effectiveness of the criminal justice system's response to sexual offending and victim survivors of sexual assault.²³ The Victorian Government committed \$34.2 million in 2006/07 to fund a range of initiatives to transform the system's response to sexual assault.²⁴ Despite the overlap between family violence and sexual assault²⁵, reforms in these two areas have largely been implemented in isolation from one another.²⁶

implementation of the Male Adolescents at Risk Project (otherwise known as the GRIPP Program), an innovative family violence prevention project targeting young males between 13 - 17 years who were at risk of becoming future perpetrators of family violence.

18 Funding has been provided for (but not limited to): the development of the FVPA; state-wide implementation of the Common Risk Assessment Framework; continuation of the FVCD and the court-directed family violence counselling program; new specialist family violence lawyers; and provision of the Koori Family Violence Court Support Program.

19 The Code of Practice provides police members with explicit guidelines and procedural requirements for how police respond to family violence incidents.

20 Data for 2014/15 (up until 30 April 2015).

21 The establishment of the Family Violence Court Division in the MCV was highlighted in the Victorian Government's Justice Statement 2004-2014 as a means for testing the processes and services needed to most effectively support victims of family violence.

22 Victorian Law Reform Commission (2004) *Sexual Offences Final Report*, Melbourne.

23 Success Works (2011) *Sexual Assault Reform Strategy: Final Evaluation Report*, Department of Justice: Melbourne.

24 Some initiatives included: establishing the Child Witness Service to assist children and young people who are required to give evidence in court; providing Specialist Sexual Offences Lists in the Magistrates' and County Courts; introducing and Specialist Sexual Offences Unit within the Office of Public Prosecutions in Melbourne; providing additional treatment places for 15 to 17 year olds engaging or displaying sexually abusive behaviours; and providing an integrated response to victims of sexual assault including police, counselling and forensic examinations through two multidisciplinary centres in Frankston and Mildura.

25 The Final Evaluation Report of the Sexual Assault Reform Strategy (2011) noted that sexual assault is frequently a component of family violence and family violence can involve sexual assault.

26 Opportunities to adopt a more integrated approach between family violence and sexual assault will be highlighted in Part 2 of our submission.

4. CURRENT COURT RESPONSES TO FAMILY VIOLENCE

4.1 Magistrates' Court of Victoria

4.1.1 Family violence services available in the MCV

There are a number of court funded services currently available in the MCV for court users presenting with family violence issues (Figure 17).

Figure 4: Family violence services available in the MCV – headquarter courts and Moorabbin Magistrates' Court

Family violence services provided at headquarter courts (+ Moorabbin)						
	Specialist FV court programs		Specialist FV court support staff*		Court support programs	
Ballarat	FVCD^		FV Registrar	Applicant Support Worker	Respondent Support Worker	CREDIT/Bail Support Program
Bendigo						
Broadmeadows						CREDIT/Bail Support Program
Dandenong				Applicant Support Worker		CREDIT/Bail Support Program
Frankston	SFVS	FV Counselling Orders Program		Applicant Support Worker	Respondent Support Worker	CREDIT/Bail Support Program
Geelong						CREDIT/Bail Support Program
Heidelberg	FVCD^			Applicant Support Worker	Respondent Support Worker	CREDIT/Bail Support Program
Latrobe Valley						CISP
Melbourne	SFVS	Koori FV & Victims Support Program		Applicant Support Worker	Respondent Support Worker	CISP/Koori Liaison Officer Program
Ringwood				Applicant Support Worker		CREDIT/Bail Support Program
Shepparton						
Sunshine	SFVS			Applicant Support Worker		CISP
Moorabbin	FV Counselling Orders Program		Applicant Support Worker	Respondent Support Worker	CREDIT/Bail Support Program	

^ FVCD also includes the Family Violence Court Intervention Program.

* Applicant and respondent support workers will be recruited to every headquarter court (and Moorabbin) throughout 2015.

Note:

1. There are also a range of other services available at the Court for those presenting with family violence issues, including community service providers, legal services and police liaison officers. With the exception of the Ballarat and Heidelberg Magistrates' Courts, where the FVCD exists, the Court does not fund these services.
2. The MCV also provides a 24-hour response to urgent intervention orders through its state-wide after-hours service.
3. The CISP will be expanded to additional venues from July 2015. These venues include Bendigo, Dandenong, Frankston, Geelong, Mildura, Ringwood and Warrnambool Magistrates' Courts.

Family Violence Court Division (FVCD)

The FVCD, which is established under the *Magistrates' Court Act 1989*, commenced operations in June 2005 at the Ballarat and Heidelberg Magistrates' Courts. The aims of the FVCD are to:

- make access to the Court easier, including the process of applying for a family violence intervention order
- promote the safety of persons affected by violence
- increase the accountability of persons who have used violence against family members and encourage them to change their behaviour
- increase the protection of children exposed to family violence.

Key features of the FVCD include:

Specially-appointed and gazetted magistrates (based on their knowledge and experience in responding to family violence matters).

Dedicated family violence registrars, applicant support workers (ASWs) and respondent support workers (RSWs), family violence outreach workers, additional legal services from Victoria Legal Aid (VLA) and Community Legal Centres, dedicated police prosecutors and additional security guards who have received specialist family violence training.

Magistrates hearing other related matters at the same time as hearing family violence intervention order matters, including summary criminal proceedings (such as breaches of family violence intervention orders), committal proceedings for indictable charges, family law and child support matters (including Parenting Orders), VOCAT matters involving family violence, civil personal injury claims, and compensation and restitution cases.

Providing alternative arrangements for people to give evidence, such as via video link from another location, through written affidavits or by using screens to ensure the respondent is not in the AFMs line of sight.

Increased focus on recognising and responding to the needs of AFMs from culturally and linguistically diverse (CALD) communities, Koori AFMs, and AFMs with a disability, as well as children affected by family violence.

In practice, the FVCD provides support, information on court processes and referral to legal services for both AFMs and respondents. The FVCD also provides referrals to address longer term needs such as housing, community care, Centrelink benefits, and children's support programs.

Family Violence Court Intervention Program (FVCIP)

In addition to the key features identified above, magistrates sitting in the FVCD can also order eligible respondents to attend the FVCIP, a court-directed men's behaviour change program (MBCP) to increase their accountability and promote the safety of women and children.

The FVCIP is enshrined in the FVPA and operates alongside the FVCD at the Ballarat and Heidelberg Magistrates' Courts. Section 129(1)(b) of the FVPA provides for the FVCD to order a respondent to attend an eligibility assessment interview to determine their eligibility to attend approved counselling. Section 130(1) of the FVPA provides for the FVCD to order a respondent to attend approved court directed counselling if satisfied that the respondent is eligible. Orders to undertake an eligibility assessment and counselling orders are separate to the family violence intervention order.

The aims of the FVICP are to:

- enhance the safety of those women and children who have experienced family violence
- increase accountability of those men who have used violence toward family members, through the provision of:
 - court-directed counseling to male respondents against whom an intervention order is made in response to their violence toward their partner/former partner
- support programs and services to AFMs who are the partner/former partner of the respondent and any child of their family affected by the respondent's violence.

Under the legislation, men subject to a family violence intervention order appearing at the Ballarat or Heidelberg Magistrates' Courts can be ordered by a FVCD magistrate to attend a group-based MBCP delivered by selected community-based service providers. Certain eligibility criteria must be met, including the requirement that the violence occurred in the context of an intimate partner relationship. In addition to the group-based program, individual counselling services are available as required.

A key feature of the MBCP is that the service provider maintains contact with the man's (ex) partner/s where safe and possible to do so. This contact fulfills a number of functions, including ongoing assessment of risk to the AFM and the opportunity to validate men's reports in group discussions. The FVICP also offers group and individual counselling for women and their children, as family members affected by family violence.²⁷

Specialist Family Violence Service (SFVS)

The SFVS commenced operating in the Melbourne Magistrates' Court in December 2005 and in the Frankston, Sunshine and Werribee Magistrates' Courts in July 2006. Unlike the FVCD, the SFVS is not a division of the MCV, it is a specialist initiative designed to enhance the existing services already in place at the court venues to simplify access to the justice system and increase safety for AFMs and affected children.

Key features of the SFVS include:

- dedicated family violence registrars and ASWs
- specially trained police prosecutors to represent police in applications for a family violence intervention order that have been made by a police officer
- specialist family violence training for magistrates and court staff.

In practice, the SFVS is limited to family violence intervention order proceedings, however criminal proceedings involving the same parties and/or incidents as family violence intervention order proceedings are routinely dealt with in the same list. In addition, SFVS venues have adopted procedures to enable interim orders to be made by VOCAT for expenses such as urgent security measures, relocation expenses and medical bills. In the absence of magistrates in the SFVS being able to order respondents to MBCPs, the SFVS courts have established relationships with voluntary men's referral services.

Family Violence Counselling Orders Program (FVCOP)

The Family Violence Counselling Orders Program (FVCOP) commenced in 2014 at both the Frankston and Moorabbin Magistrates' Courts to support the expansion of court-directed MBCPs across the Court. To support the operation of the program, specialist family violence registrars, ASWs and RSWs (where they were not already in place) were employed at both Courts.

Under the program, the Court can make a counselling order (upon the making of a family violence intervention order) directing eligible men to attend a MBCP that is delivered by a Community Service Organisation on behalf of the DHHS. The program seeks to enhance the safety of women and children who have experienced family violence as well as encourage men to be accountable for their violent behaviour.

²⁷ Effective Change, Evaluation of the Family Violence Court Intervention Program: Final Report.

Koori Family Violence and Victims Support Program

The Koori Family Violence and Victims Support Program (formerly the Koori Family Violence Court Support Program²⁸) recommenced operations at the Melbourne Magistrates' Court in December 2013.²⁹ The program provides assistance to Koori families who have a family violence related matter before the Court. The program employs a Koori Men's and Women's Family Violence Support Worker to provide support and information about the court process and available family violence services. The program accepts referrals from court registry staff and magistrates, other court programs, Victoria Police, and external agencies.

The program is located in Melbourne, however staff attend other metropolitan courts and provide secondary consultations. Funding for this program is due to cease on 30 June 2015.

Expansion of specialist family violence court staff and court support services

Funding obtained by the MCV in October 2014 included:

- \$1.5 million of capital funding (2014/15) for minor works/arrangements to accommodate the specialist court staff and the CISP staff
- \$2.75 million (2015/16) to create safe waiting areas in more courts, where current infrastructure allows
- \$15.39 million over five years (commencing with an advance of \$2.1 million in 2014/15) for specialist family violence staff³⁰
- \$9.55 million over four years (commencing 2015/16) to expand the CISP to additional locations, with a specific focus on family violence offenders.

The expansion of these key court based services will enable a more effective and consistent response to family violence across the state. All family violence registrars have been employed across the courts, while the recruitment of ASWs and RSWs is currently being undertaken through a staged process. The expansion of the CISP will commence from July 2015.

Planning has commenced to assess appropriate locations where accommodation and safe waiting areas can be built at court venues. An assessment of 20 venues has been undertaken and an initial estimate of approximately \$13 million has been provided. As the total amount available to conduct this work is \$4 million, the MCV will prioritise those venues where works are necessary.

The Court also received funding in the 2015/16 budget to conduct safety audits to assess the physical structure and operation of MCV court venues to ensure victims of family violence are safe and not intimidated while attending court.

After Hours Service

The MCV provides a 24-hour response to urgent family violence intervention orders through its state-wide After Hours Service³¹. The service is staffed by a magistrate and registrars between the hours of 5pm and 9am each weekday and 24 hours on weekends and public holidays. In addition to processing urgent applications from Victoria Police, staff provide procedural information about family violence intervention orders and child protection proceedings.

²⁸ The Koori Family Violence Court Support Program commenced operations as a 12-month pilot program in July 2011.

²⁹ The program was funded until 30 June 2013, however program operations were suspended on 3 May 2013 due to program positions becoming vacant. Further funding was allocated by the Victorian Government to reestablish the program, which occurred in December 2013. The program was revised to include Koori VOCAT and became known as the Koori Family Violence and Victims Support Program.

³⁰ The family violence registrar roles were upgraded to reflect the importance of the work they are leading in each region. This has allowed the Court to attract highly passionate and experienced people (with an appropriate level of seniority within the Court) to these roles.

³¹ The after hours service responds to intervention order applications for both the Magistrates' and Children's Courts

4.1.2 Court support services

Court Integrated Services Program (CISP)

The MCV is currently funded to provide the CISP, a multi-disciplinary case management program for accused persons on bail or summons in the criminal jurisdiction. While this support service is not family violence specific, people who are presenting with family violence issues at the Court are increasingly accessing them.

The program, which commenced operating in the Latrobe Valley, Melbourne and Sunshine Magistrates' Courts in 2006, aims to:

- provide short-term assistance for accused with health and social needs before sentencing
- identify and address the causes of offending through individualised case management support
- reduce re-offending rates and contribute to a safer community.

The program works within a risk mitigation framework with the aim of reducing the risks of future violence, including the development of risk management plans. This usually involves a higher rate of contact with the accused and more frequent reports to the magistrate responsible for the matter.

The CISP currently employs 30 full-time equivalent staff across the three CISP Magistrates' Court venues and provides case management support to approximately 1,000 participants annually. The MCV is also trialing the CISP Remand Outreach Pilot, with support from Corrections Victoria, to assist remandees who are on remand and considering applying for bail.

The Koori Liaison Officer Program, which also operates as part of the CISP, works with Koori accused when they enter the court system with the aims of addressing the over-representation of Koori people in the Victorian justice system and assisting Koori people to maximise their chances of rehabilitation through culturally appropriate and sensitive intervention. The Koori Liaison Officer Program is a state-wide service located at the Melbourne Magistrates' Court.

An independent evaluation of the CISP conducted in 2009 found that those people participating in the program had an average reduction of 32.6 days of imprisonment when compared with a control group. The evaluation also found that 50.5 per cent of CISP participants incurred no further criminal charges. Furthermore, the evaluation also highlighted the cost effectiveness of the program in terms of savings for the community. For each dollar spent on CISP, there were savings of \$1.70 at two years and \$2.60 at five years.³²

In response to the increasing number of accused persons accessing the CISP who are presenting with family violence issues, the program is referring perpetrators of family violence to MBCPs and psychologists for one-on-one behaviour change interventions. In addition, they may also be referred to programs to address other factors, such as substance abuse and mental illness, which may be contributing to their violent behaviour. Victims of family violence, who may also be accessing the services of the CISP, are referred to appropriate support services and provided with assistance with practical supports such as emergency accommodation and financial counselling.

While working with alleged perpetrators of family violence, CISP case managers liaise regularly with Victoria Police prosecutors and informants, as well as other statutory agencies such as the Child Protection Service in order to manage their risk. Information regarding risks to victim(s) and the community are shared, as is information about any further offending. The program has also adopted the Family Violence Common Risk Assessment Framework (CRAF) and embedded the framework into intake assessment processes for court support services.

³² Ross, S (2009) Evaluation of the Court Integrated Services Program: Final report, The University of Melbourne: Melbourne.

CREDIT/Bail Support Program

The CREDIT/Bail Support Program is a combination of two court programs that were established to work with accused on bail. The Program is a pre-sentence response that seeks to increase the likelihood of an accused being granted bail and successfully completing a bail period. It provides case management, including access to drug and alcohol treatment, accommodation, health, welfare, legal and other community supports according to the assessed needs of the participant.

The program is available at the Ballarat, Broadmeadows, Dandenong, Frankston, Geelong, Heidelberg, Moorabbin and Ringwood Magistrates' Courts venues³³ and provides assistance to approximately 500 participants annually. Around 15% of people assessed for the program identify family violence issues. The Credit Bail program provides family violence specific referrals to participants in the same manner as CISP.

4.1.3 Other initiatives that support MCV's response to family violence

In addition to the services and programs described above, a number of initiatives have been introduced to enhance the MCV's response to family violence through improvements to systems and processes. Some of these initiatives are outlined below.

Enhancing the electronic interface between the Court and Victoria Police

The MCV and Victoria Police have worked closely to develop an electronic interface between the Court's case management system, Courtlink and the police database, LEAP, to enable family violence intervention order information to be electronically sent between the two organisations. This project ensures that both organisations have timely and accurate information concerning family violence intervention orders. It also reduces the manual double handling of documents across both organisations.

Improvements to assist in better identification and management of family violence related criminal matters

As family violence related criminal charges may be generic offences, such as assaults and property damage, it is not always apparent from the charge sheets filed by Victoria Police whether the offences occurred in a family violence context. Often this will only become apparent when evidence is presented to the Court, or a police summary is read which is late in the proceeding and does not allow specialised action to be taken on the family violence related case.

The MCV and Victoria Police have been working together for a number of years to strengthen the ability of police and the Courts to easily identify family violence related criminal matters. This includes the implementation of the following measures to ensure data is captured by police and received by the Court:

- A family violence/sexual assault notation has been incorporated into the standard form of charge sheet used by Victoria Police.
- Modifications have been made to the family violence flag in Courtlink, so that it more meaningfully captures this information when provided by police (such as changes to ensure it is retained when a case is consolidated).
- Police have made the inclusion of this information mandatory on a charge sheet.
- Police and the Courts have made changes to their IT systems to include the family violence flag in information that is electronically transmitted from LEAP to Courtlink (with charge details).
- Further changes have been made to Courtlink to enhance the Court's ability to receive this information in a timely manner.

³³ One case manager is available at the Magistrates' Court venues, with the exception of Dandenong Magistrates' Court, which has two case managers, one of whom provides a relief case manager role to CREDIT/Bail Support Program court venues.

The MCV now has greater oversight of the number of family violence related criminal charges being dealt with by the Court. This assists with reporting and appropriately structuring court lists and will help the Court work towards better outcomes for court users.

Fast tracking criminal family violence matters

The MCV, Victoria Police and Victoria Legal Aid have commenced a pilot of fast tracking of family violence related criminal cases. This involves prioritising and setting specific timeframes for the hearing of family violence related criminal charges before the Court and using information technology systems to identify these matters. This initiative, which is currently being trialled in the Dandenong Magistrates' Court, recognises that timely criminal justice responses increase perpetrator accountability, reduce recidivism, enhance the safety of victims, and increase the reporting of family violence related criminal matters.

This initiative is underpinned by research that shows the importance of early intervention when it comes to holding perpetrators accountable and changing behaviour, as well as ensuring the safety of victims. Research also suggests that the longer it takes for a matter to come before the Court, the more likely a victim will be reluctant to continue with the process.

Delegation of powers under the Personal Safety Intervention Orders Act 2010 (PSIO)

In order to ease the demand pressures on magistrates dealing with family violence intervention orders, rules of court were made which delegated powers to allow Judicial Registrars to deal with applications made under the PSIO Act. Judicial Registrars now hear the PSIO lists at many courts, allowing magistrates more time to hear family violence intervention order matters (where physical space permits).

Video conferencing pilot project

The MCV has commenced a pilot with the Womens' Legal Service and a specialist family violence service whereby high risk AFMs can attend the Court from a remote location via videolink. This avoids potential contact with their perpetrator at Court during hearings, improving safety and enhancing their ability to participate in the proceedings in a supported environment. This project has the potential to flexibly allow access to Courts from undisclosed locations and improve access to justice for women in regional and remote locations. It aims to decrease the number of people physically attending court at any one time, improving general safety.

Family Violence Online Engagement project

The Family Violence Online Engagement project is currently being developed³⁴, to create a new online experience about the intervention order process. The website will be a stand-alone site accessible from the MCV's website and will be optimised for use on tablets and smart phones.

The website will host a number of short videos and materials that explain different parts of the intervention order process at the Court and how the Court interacts with other services, including Victoria Police and legal services. Information will be directed at unrepresented clients of intervention order proceedings and will be tailored to both applicants and respondents.

The Neighbourhood Justice Centre has also introduced an online application form for applicants applying for a family violence intervention order. Further information is outlined in the Neighbourhood Justice Centre's submission.

³⁴ The Court is expecting this project to be delivered by the end of 2015.

4.2 Children's Court of Victoria

4.2.1 Services available in the CCV to respond to family violence

There are no court funded family violence specific services operating within the CCV. However, the Court does provide a number of specialist support services and programs for those coming before the Court (both court funded and provided by external agencies) and which can be accessed by those experiencing family violence.

Children's Court Clinic

The Children's Court Clinic (the Clinic) is established by section 546 of the CYFA and is able to:

- make clinical assessments of children
- submit reports to courts and other bodies
- provide clinical services to children and their families.

The clinicians employed within the Clinic are experienced and skilled psychologists and psychiatrists who maintain specialist knowledge in the areas of child protection and youth offending. Clinicians provide advice about children and their families, the course and trajectory of a child's development, special needs identified within the family and treatment options that may be necessary and available. Clinic reports also make recommendations to the Court as to disposition.

Given that children experiencing or otherwise being exposed to family violence is a feature, in combination with other factors, of an increasing number of applications made under s162(1)(c) and (e) of the CYFA, the Clinic provides a valuable resource in identifying and determining the risks to children where family violence has been identified as a risk to the wellbeing of the child. Additionally, a number of family violence intervention order referrals are made to the Clinic each year.

Child protection conciliation conferences

The Court, in collaboration with the DHHS and VLA, developed conciliation conferences in response to the recommendations of the Child Protection Proceedings Taskforce in 2010. Conciliation conferences are available for child protection cases across Victoria. All conference convenors are trained and nationally accredited mediators. The Court also employs a Koori co-convenor to provide a culturally appropriate model for Koori children and families.

The key aim of conciliation conferences is to provide parties with an opportunity to resolve matters in dispute without the need for a contested court hearing, a process that leads to better outcomes for children and families and reduces the length of the court process. A unique feature of the Court's conferencing model is the focus on identifying the strengths as well as risks within vulnerable families and to build on these strengths in the best interests of the child or children involved.

Other features of the CCV conferencing model include:

- wherever possible, conferences are conducted at a venue away from the Court
- better preparation by participants including document exchange prior to the conference date
- more time available for discussion in an appropriate environment
- having decision makers present at the conference
- allowing children to speak for themselves
- requiring appropriate behaviour by all participants.

Anecdotally, conciliation conference intake officers have indicated that the vast majority of parties attending conciliation conferences have a family violence intervention order in place (or have previously had one in place).

From the program's inception to the completion of the state-wide rollout in 2014, conference outcome indicators have been consistently positive. In 2013/14, 2,500 conciliation conferences were listed across the state. Of these, 48 per cent of matters settled outright, 22 per cent settled partially, and the remaining 30 per cent proceeded to directions hearing or contest for judicial determination.

Family Drug Treatment Court

The Family Drug Treatment Court (FDTC) is a pilot program operating within the Family Division. The FDTC provides participants with an intensive therapeutic 12-month judicially monitored program that seeks to promote family reunification, child safety and well-being. The program is designed to assist families whose children have been placed in out of home care due to parental substance misuse. Program data indicates that all participants of the FDTC have presented with a current or past history of family violence.

The FDTC is chaired by a Children's Court magistrate and is supported by a multi-disciplinary team comprising drug and alcohol clinicians and a dedicated social worker. It works with agencies providing services for parents in the program including:

- residential treatment
- counselling for drug and/or alcohol and mental health issues
- housing programs.

Due to the pilot nature of the FDTC, the program is currently only available for those parents:

- living in, or with significant ties (in the case of homeless or transient people) to the DHHS Northern Region
- at least one child aged between 0-3 years and currently in out of home care
- committed to reunification with their child or children and where reunification is in the child or children's best interests
- with substance use issues and who are committed to ceasing their drug use with a view to creating a safer and more stable home environment
- provided informed consent to participate fully in the program for 12 months.

Youth Diversion Pilot Program

The CCV has received funding to deliver a 12-month Youth Diversion Pilot Program at the Dandenong, Broadmeadows, Sunshine, Werribee, Ballarat, Ararat and Stawell Children's Courts. The program will commence in June 2015 and will be delivered by the Jesuit Social Services. It seeks to:

- provide support and intervention to young people who may be starting out on a path of offending
- facilitate diversion away from the criminal justice system
- assist young people to address any problems likely to lead to further offending behaviour.

Young people who acknowledge the offence/s and who have little or no history of offending will be targeted for the program, and for those who successfully complete the program, will avoid a finding of guilt being recorded.

Education Justice Initiative

The Department of Education and Training (DET) provides pilot funding to Parkville College to implement the Education Justice Initiative at the Melbourne Children's Court. The aim of the initiative is to connect young people appearing before the Criminal Division at the Melbourne Children's Court or the Dandenong, Heidelberg and Melbourne Children's Koori Court to an appropriate, supported education pathway through liaison and advocacy with schools and training providers, and engagement with relevant DET regional staff. Raising the educational attainment and inclusion of young people who offend is considered to be one of the most effective ways of reducing risk factors associated with criminal behaviour.³⁵

Contact with the young people can be initiated through direct outreach by staff in the CCV, referral from Youth Justice, VLA, the Koori Court Officer or magistrates presiding in the Children's Court.

Gain Respect Increase Personal Power (GRIPP) Program

The GRIPP Program was an early intervention voluntary initiative for young males between 13 and 17 years who had come to the attention of the Court or police for violent offending, including but not limited to family violence. The program was available for those young males who resided in the Frankston, Dandenong, Casey and Cardinia Local Government Areas and who were placed on a bond or order with conditions attached. Young males were assessed for the program and participated in 12 individual sessions combining cognitive behaviour and aggression replacement therapy. A family intervention involving a crisis response and collaborative problem solving model was also available for the parents, siblings and carers of the young males.

Although evaluation findings identified improved family, community and intimate relationships, improved impulse control for young males, and reductions in violence towards significant others³⁶, this program is no longer funded.

4.3 State-wide services available to the MCV and CCV

In addition to the services and programs identified above for the MCV and CCV, there are a number of state-wide services available in these courts that provide information and support to court users. While these services are not family violence specific, they can be accessed by those with family violence related matters. Services include Court Network, Salvation Army, VLA³⁷ and Youth Justice Court Advice Service.

The Child Witness Service is another state-wide service available to the Courts to support child witnesses.³⁸ The service aims to reduce the trauma and stress experienced by a child witness through:

- preparing them for the role of being a witness
- familiarising them with the court process and personnel
- supporting them and their family throughout the criminal proceedings and court
- providing debriefing and referral to community agencies.

The service is located in a purpose built facility in Melbourne's court precinct, which hosts remote witness rooms. The service also supports children giving evidence in the rural regions via outreach and visits witnesses at local court locations and provides support to regional witnesses while they are giving evidence.³⁹

35 McLaren, 2003; Reid, 2009, cited in Te Riele, K., & Gould, R (2015) Evaluation of the Education Justice Initiative, Interim Report, The Victoria Institute for Education, Diversity and Lifelong Learning: Melbourne, p1.

36 Marov, S., & Ottobre, J (2012) 'Gain Respect and Increase Personal Power (GRIPP)', Presentation to the No to Violence Conference, Melbourne, November 2012.

37 Duty legal representation is often provided by VLA (their own in house lawyers or funded private practitioners who are part of a duty lawyer scheme) or through funding community legal centres to provide representation. In relation to contested hearings, VLA also provides representation in the context of the 'protected witness' provisions under sections 70, 71 and 72 of the FVPA.

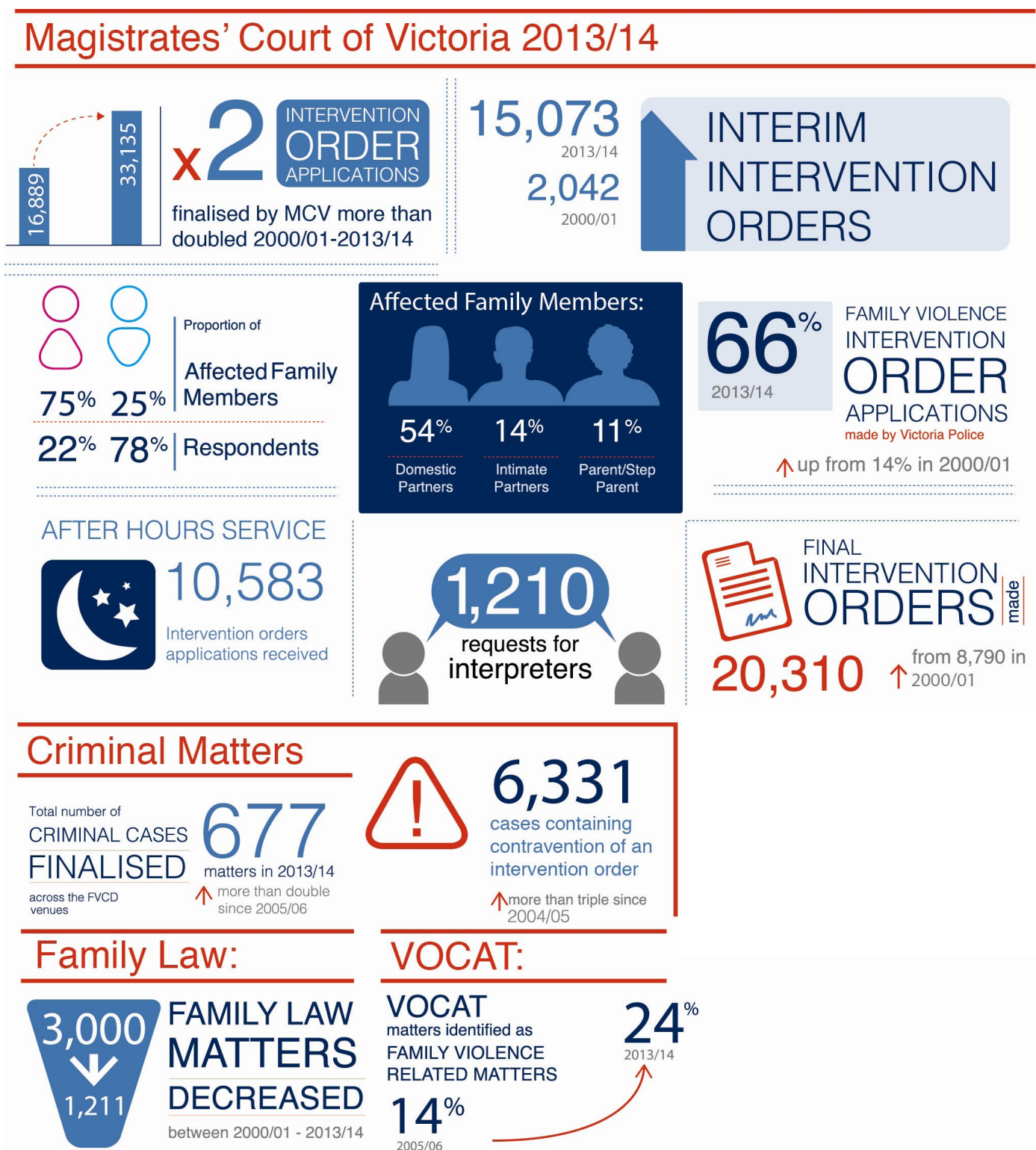
38 The Child Witness Service has been commonly used for matters being heard in the Sex Offences List.

39 Department of Justice and Regulation, Child Witness Service information, available at: <http://www.victimsofcrime.vic.gov.au/home/going-to-court/giving-evidence/child-witness-service/>

5. TRENDS IN FAMILY VIOLENCE RELATED MATTERS APPEARING BEFORE THE COURTS

Figures 5 and 13 highlight the increasing demand on the Courts' family violence related matters. Further analysis is outlined below.

Figure 5: Data overview: family violence related matters being heard in the MCV ⁴⁰



⁴⁰ Family Violence data from the 2013/14 financial year. Does not include data for IVO applications made under the Personal Safety Intervention Orders Act 2010. Criminal figures are case counts, and do not reflect the number of individual charges contained in a case. Interpreter figures count the number of requests made by case. Interpreters may be requested on more than one occasion for a case.

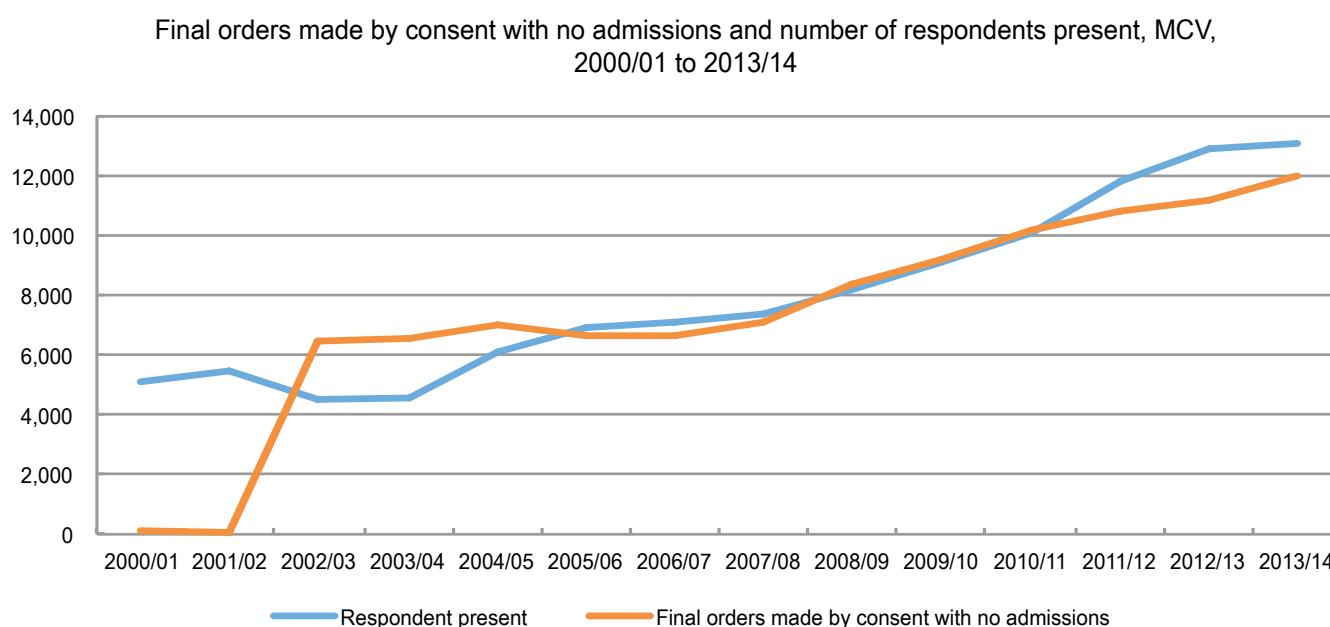
5.1 Magistrates' Court of Victoria

5.1.1 Family violence intervention order matters

The number of finalised family violence intervention order applications⁴¹ nearly doubled for the MCV, from 16,889 applications in 2000/01 to 35,135 applications in 2013/14 (see Appendix 2 for a breakdown of original intervention order applications finalised by court venue). The total number of interim family violence intervention orders heard also increased from 2,042 orders in 2000/01 to 15,073 in 2013/14. The majority of finalised family violence intervention order applications are application and summons. However, since 2009/10, the MCV has experienced an increase in the number of applications being initiated through Family Violence Safety Notices (representing 27% of all applications in 2013/14).

Respondents attended the Court in answer to an application for an intervention order in approximately 44 per cent of all cases. When respondents attended the Court, the vast majority of orders were made by consent with no admissions of the allegations made (Figure 6).

Figure 6: Final orders made by consent with no admissions and number of respondents present, MCV, 2000/01 to 2013/14



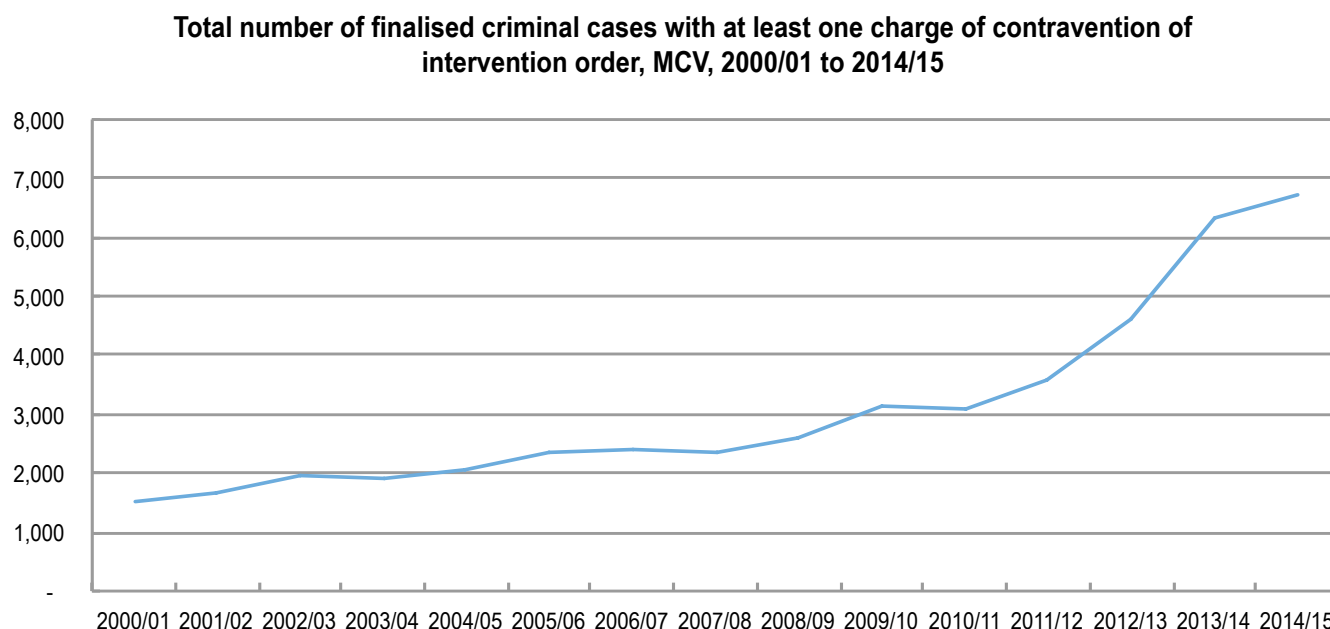
Domestic partners represent the majority of affected family members (AFMs) in family violence intervention order matters heard by the MCV (54% in 2013/14). 14 per cent were in an intimate partner relationship with the respondent and 11 per cent were parents/step parents. Since 2009/10, police have represented the majority of applicants for family violence intervention orders and this has continued to increase, with police representing 66 per cent of all applicants for family violence intervention orders in 2013/14.

⁴¹ While the MCV also has jurisdiction to hear intervention order matters under the Personal Safety Intervention Order Act 2010, data outlined is only related to those intervention orders heard under the FVPA.

5.1.2 Family violence related criminal matters⁴²

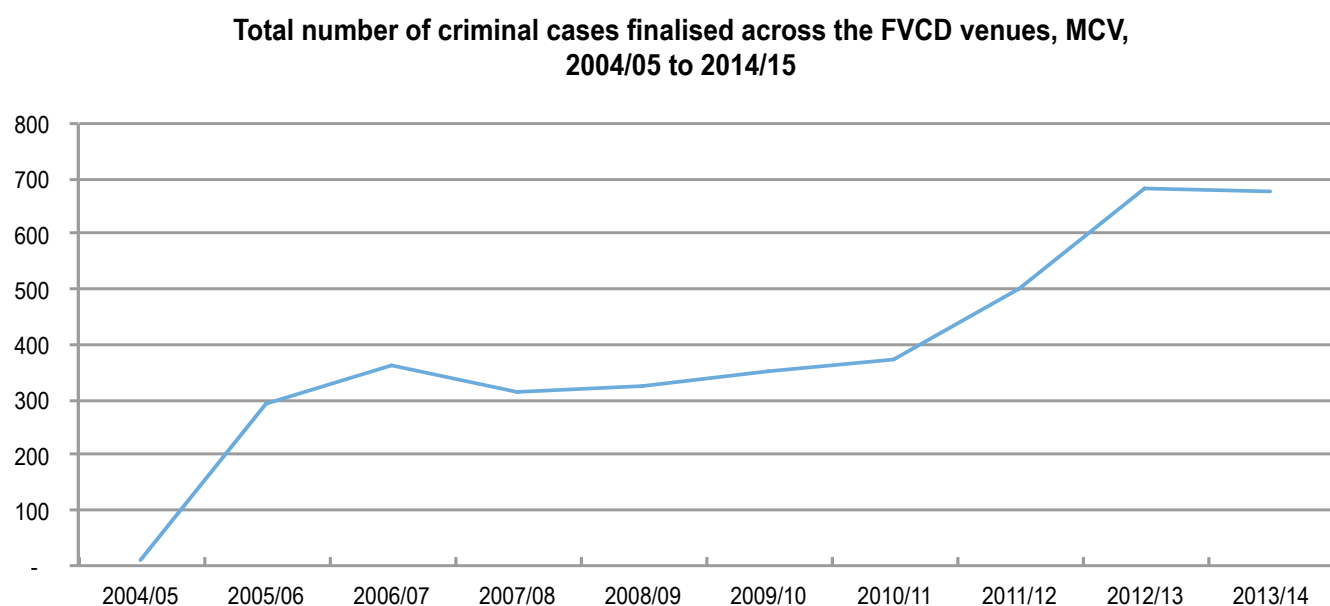
The number of contraventions of an intervention order⁴³ being heard by the MCV has increased at a pronounced rate, more than tripling since 2004/05 to 6,331 matters in 2013/14 (Figure 7).

Figure 7: Total number of finalised criminal cases with at least one charge of contravention of intervention order, MCV, 2000/01 to 2014/15



Other than charges for contraventions for an intervention order, the court cannot collect accurate data on criminal offences, which take place in a family violence context.⁴⁴ The most accurate data that the Court has is from the Family Violence Court Division (FVCD) venues. The number of criminal cases finalised across the FVCD venues remained steady between 2004/05 and 2010/11. Between 2010/11 and 2013/14, there was a steep increase in the number of criminal cases finalised in the FVCD venues (82%) (Figure 8).

Figure 8: Total number of criminal cases finalised across the FVCD venues, 2004/05 to 2014/15



⁴² The data below does not highlight the added complexities in family violence related criminal matters, such as the increased number of remands for family violence matters and consequently contested bail applications, all of which put additional pressure on the Court. Adjournments are also required where victim impact statements need to be obtained for family violence related criminal matters.

⁴³ Charges for contravention of an intervention order are a specific type of family violence related offending. This does not capture all of the family violence criminal offending, such as other types of charges including assaults and property damage.

⁴⁴ The Court's current IT system, Courtlink, which was built in the 1980s does not allow for this to occur. Further discussion about the Court's IT case management system will be discussed in Part 2 of our submission.

Another source of data is the MCV weekend court. The number of family violence related criminal matters heard in the MCV weekend court has increased reasonably steadily between November 2013 and April 2015, while family violence related criminal matters as a percentage of all matters listed has remained relatively constant at around 20 per cent over this period.

Preliminary data from the fast tracking of criminal family violence cases project being trialled at the Dandenong Magistrates' Court also shows an increase in the number of family violence related criminal matters being heard. Data captured over a six-month period shows 19 per cent of all criminal matters were related to family violence.

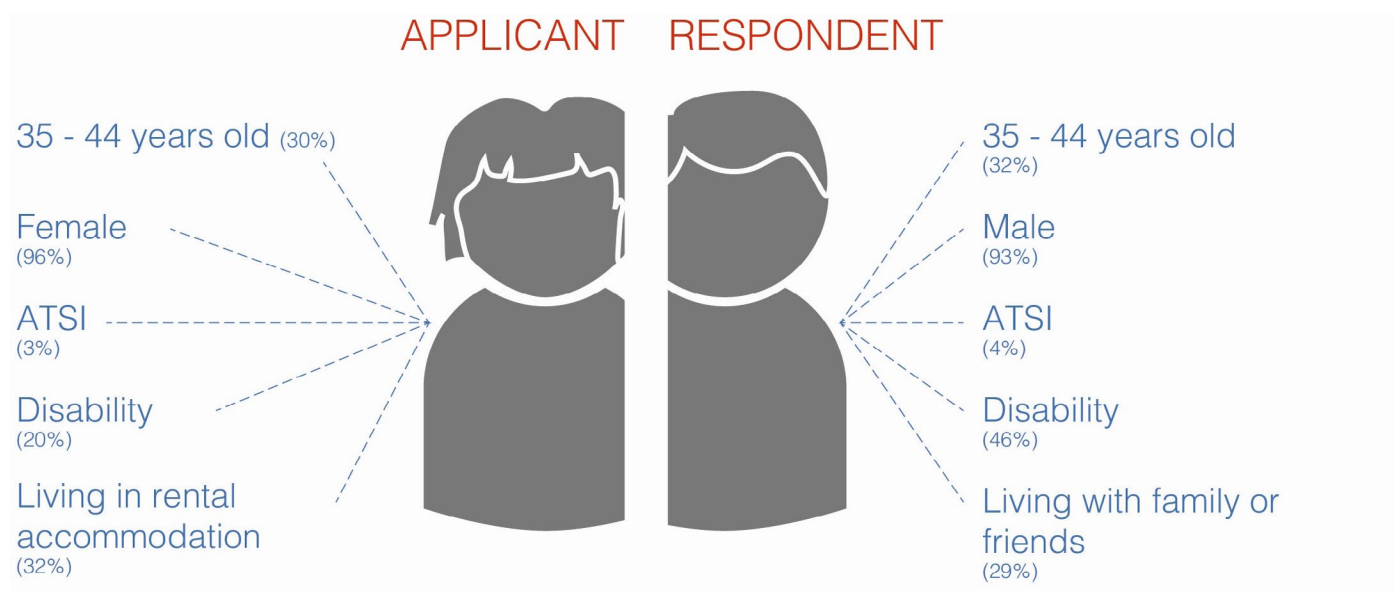
5.1.3 Specialist family violence services

Between 2005/06 and 2014/15⁴⁵, a total of 13,971 applicants and 3,427 respondents were supported across the venues of the MCV with specialist family violence services⁴⁶. A further 420 applicants and 219 respondents were also supported under the Koori Family Violence and Victims Support Program between 2011/12 and 2014/15.⁴⁷

Most applicants supported through the MCV's specialist family violence services were female (96%), and more than half (59%) were between the ages of 25 to 44 years. Only a small proportion of applicants (3%) identified as Aboriginal or Torres Strait Islander (ATSI) and 20 per cent presented with a disability. Just under one-third of applicants (32%) were living in a private rental (Figure 7). Between 2007/08 and 2014/15, 10,169 risk assessments were conducted with applicants attending the MCV's specialist family violence services.

Respondents supported through the MCV's specialist family violence services were predominantly male (93%) and were largely between the ages of 25 and 44 years (62%). 4 per cent of respondents identified as ATSI and nearly half of all respondents (46%) presented with a disability. 29 per cent of respondents indicated that they were living with family or friends (Figure 9). Between 2005/06 and 2013/14, a total of 3,182 respondents were assessed in terms of their eligibility to attend court-directed counselling. Over the same period, a total of 1,809 respondents were ordered to attend court-directed counselling.

Figure 9: Applicants and respondents supported by the specialist family violence services



45 Up until 28 May 2015.

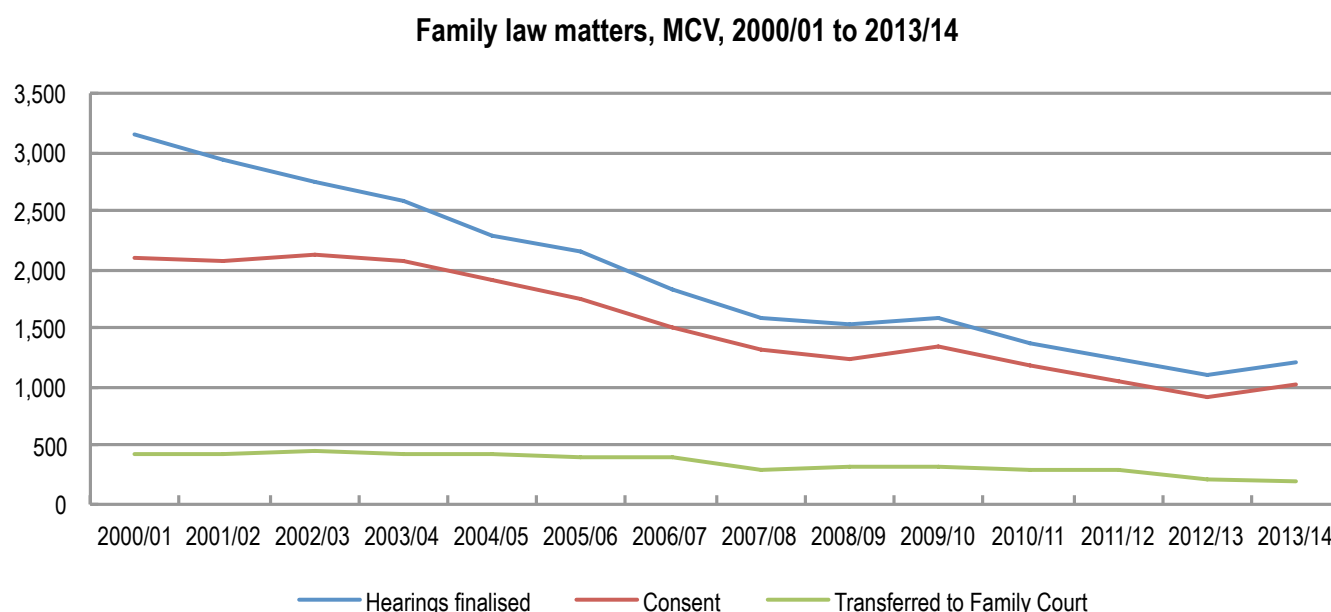
46 ASW's for this period were available at Melbourne, Heidelberg, Ballarat, Frankston, Sunshine, Werribee and Moorabbin venues only. RSW's were available at Ballarat and Heidelberg, and Moorabbin and Frankston from August 2014

47 Up until 28 May 2015.

5.1.4 Family law matters

The number of family law matters finalised in the MCV has decreased from just over 3,000 matters in 2000/01 to 1,211 in 2013/14. The number of family law matters transferred to the Family Law Court has also decreased over this same period (Figure 10).

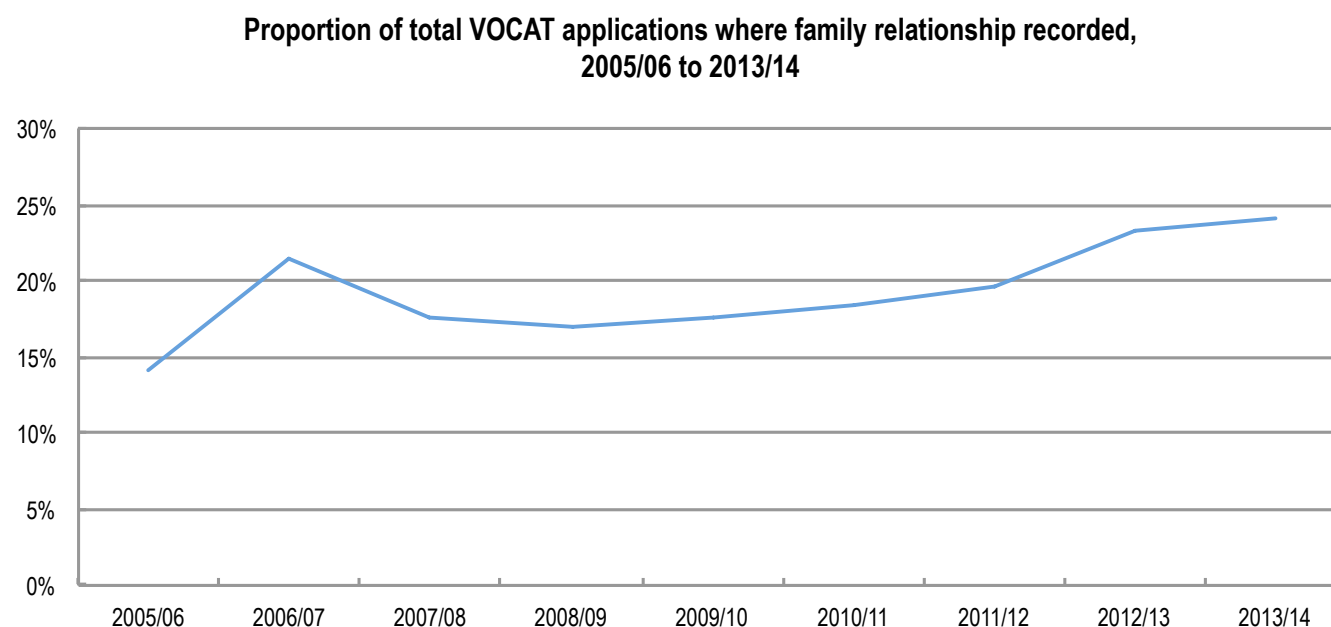
Figure 10: Family law matters, MCV, 2000/01 to 2013/14



5.1.5 VOCAT matters

An increasing number of applications to VOCAT for a range of criminal offences record a family relationship between the victim and alleged offender, which may be indicative of family violence related matters. In 2005/06, 14 per cent of all VOCAT matters were identified as being family violence related matters. In 2014/15, this increased to 24 per cent of all VOCAT applications (Figure 11).

Figure 11: Proportion of total VOCAT applications were family relationship recorded, 2005/06 to 2013/14



5.1.6 Interpreters

The MCV⁴⁸ currently arranges and pays for interpreters for:

- accused persons in criminal proceedings (includes appointments with support services)
- applicants and/or respondents in intervention order proceedings
- applicants in VOCAT proceedings.

Interpreters are arranged for each hearing before the MCV.

In 2013/14, there were a total of 1,210 cases where interpreters were requested by applicants and/or respondents to family violence intervention order applications.⁴⁹ The number of respondents requesting interpreters in the MCV has nearly doubled since 2004/05 from 235 to 417 in 2013/14.

Requests for interpreters for intervention order proceedings represent approximately half of the MCV's total interpreter expenditure.

5.1.7 Court support services – Court Integrated Services Program

Data collected through the CISP over the past nine years shows an increase in the proportion of total assessments involving people who are presenting with family violence issues. Since 2006/07, the proportion of total assessments involving family violence has increased from 12 per cent to nearly one in five cases in 2014/15 (until 30 April 2015).⁵⁰ CISP clients presenting with family violence issues tend to be male (86%), between the ages of 25 and 34 years (43%), and present with multiple and complex issues, including long-term unemployment (48%), drug and alcohol use, abuse or dependence⁵¹ and mental health issues (46%) (Figure 12).

Figure 12: CISP clients presenting with family violence issues

Those presenting at programs with family violence issues:

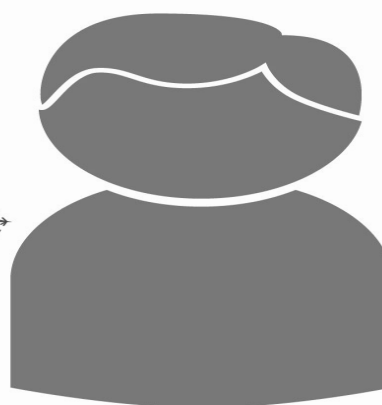
Age: 25 - 34 years

Male

Unemployed

Drug and alcohol use

Mental health issues



⁴⁸ The CCV also arranges and pays for interpreters when requested.

⁴⁹ Courtlink only records when a party to an intervention order application requires an interpreter. To provide an estimate of the number of family violence intervention order interpreter bookings, the total number of interpreters requested in 2014/15 (1,210) should be multiplied by the average number of bookings for family violence intervention order applications (2.39), which suggests that a total of 2,892 interpreters were requested in 2014/15.

⁵⁰ 19 per cent of all CISP assessments identified family violence in 2014/15 (until 30 April 2015).

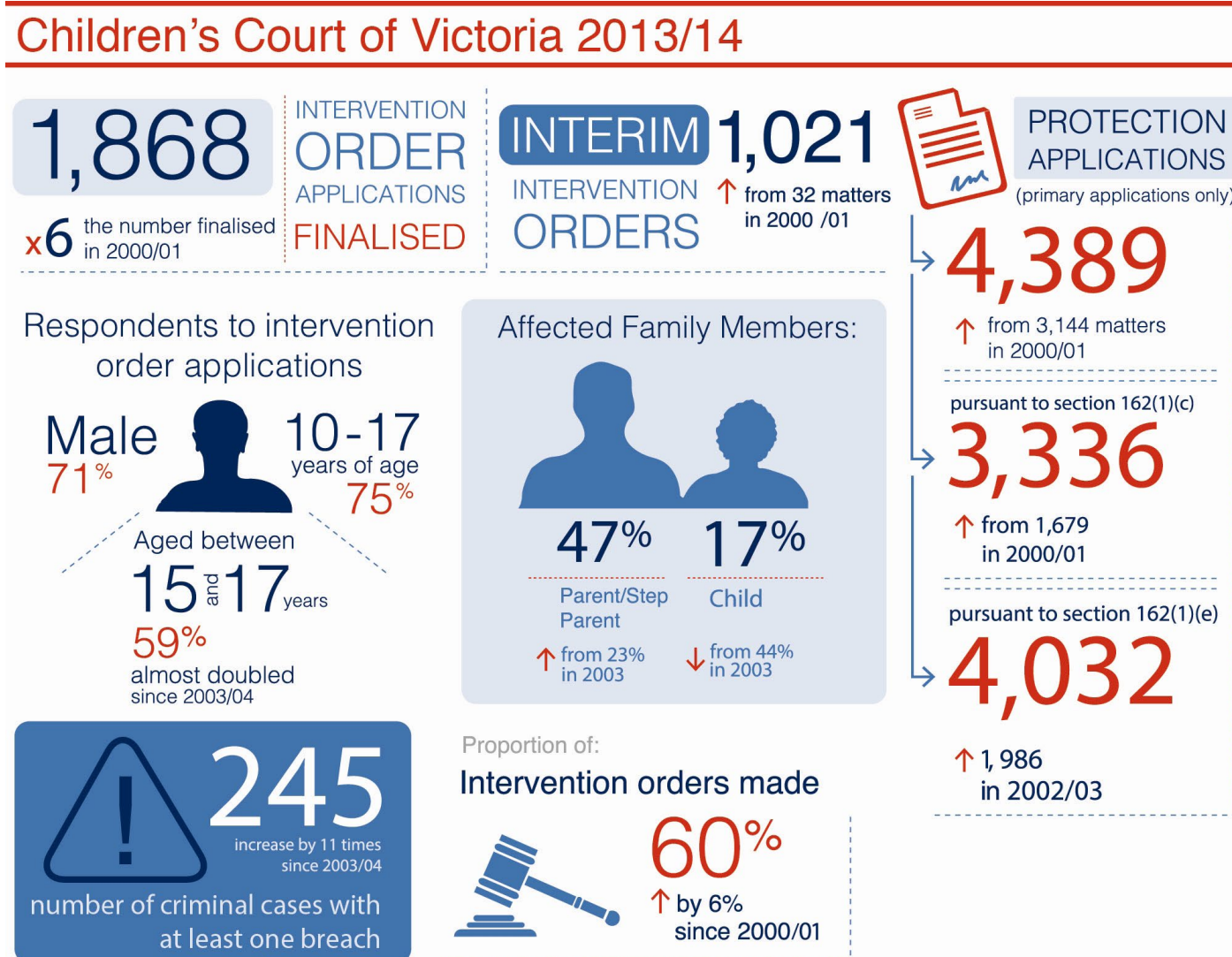
⁵¹ 31 per cent of CISP clients identified with drug use, abuse or dependence and 32 per cent identified with alcohol use, abuse or dependence.

5.1.8 Credit Bail program

CREDIT/Bail Support Program clients presenting with family violence issues represented 15 per cent of all assessments in 2014/15 (up until 30 April 2015). Clients presented with similar multiple and complex issues to the CISP clients. Mental health issues were more prevalent for the CREDIT/Bail Support Program clients (82%).

5.2 Children's Court of Victoria

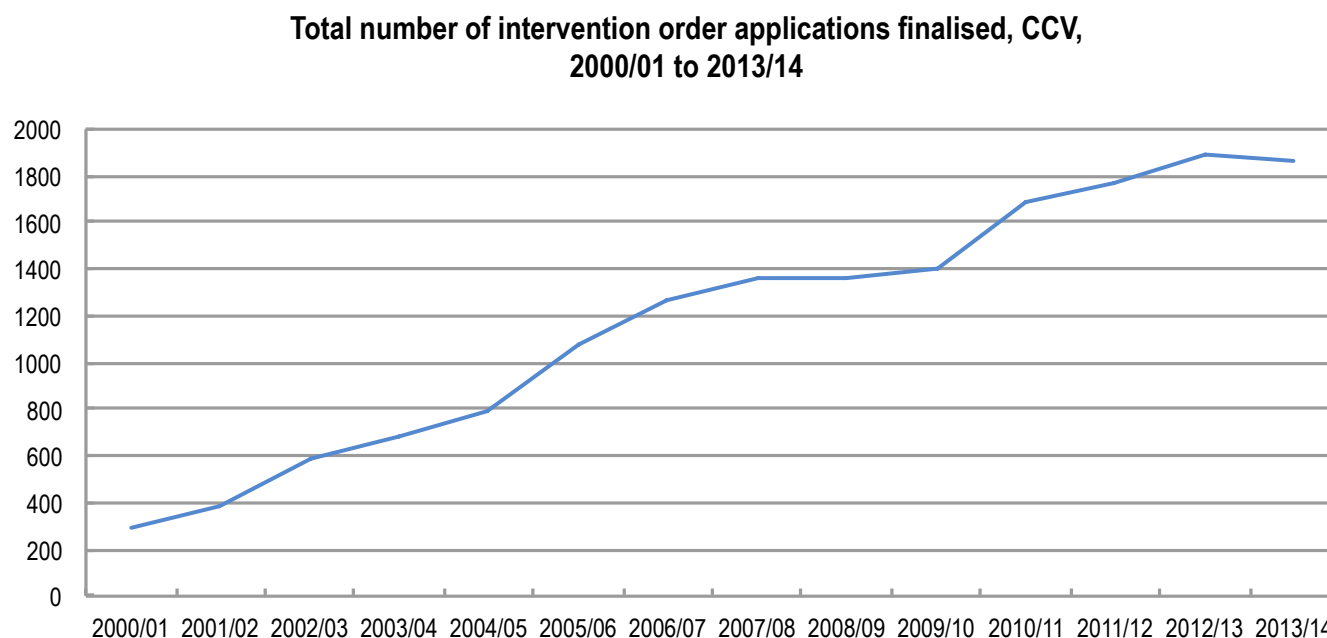
Figure 13: Data overview: family violence related matters being heard in the CCV



5.2.1 Family violence intervention order matters

1,868 family violence intervention order applications were finalised in 2013/14, representing an increase of more than six times the number of applications finalised in 2000/01 (n=293) (Figure 14).

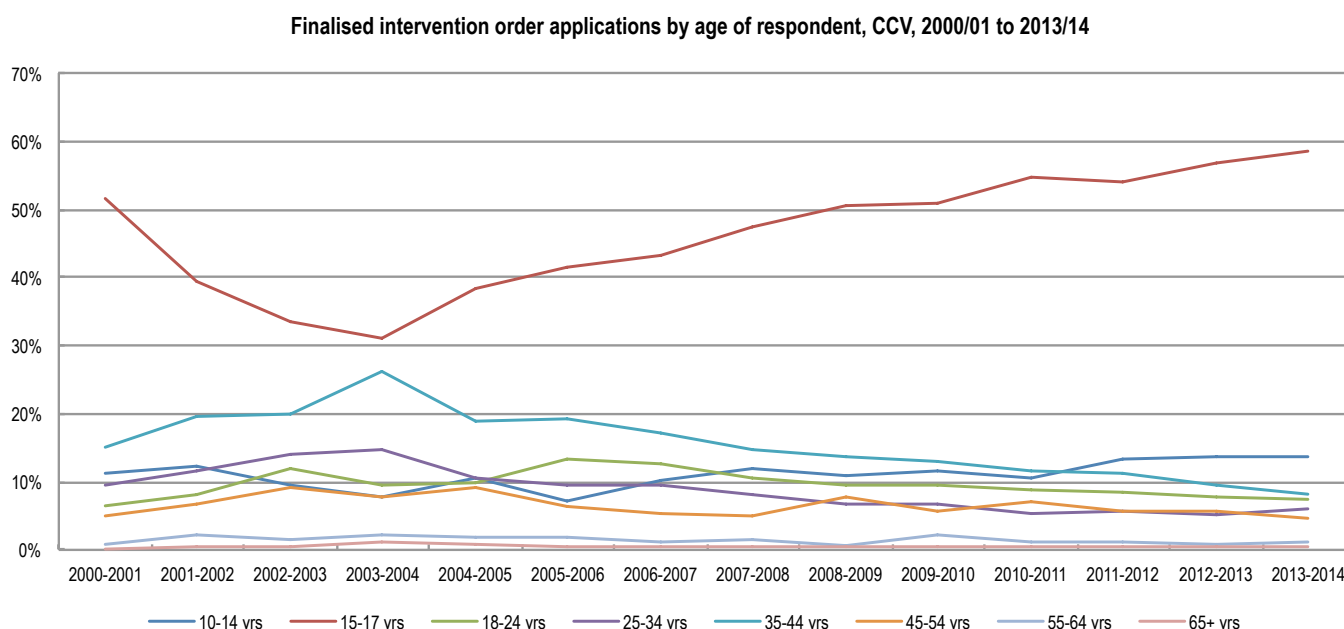
Figure 14: Total number of intervention order applications finalised, CCV, 2000/01 to 2013/14



The total number of interim intervention orders made has also increased substantially from 32 orders in 2000/01 to 1,021 in 2013/14. 97 per cent of finalised family violence intervention order applications in 2013/14 were application and summons.

Respondents to family violence intervention order applications in the CCV were mostly male (71%) and between the ages of 10 and 17 years (75%). The proportion of respondents between the ages of 15 and 17 years has almost doubled since 2003/04 to 59 per cent in 2013/14 (Figure 15).

Figure 15: Finalised intervention order applications by age of respondent, CCV, 2000/01 to 2013/14

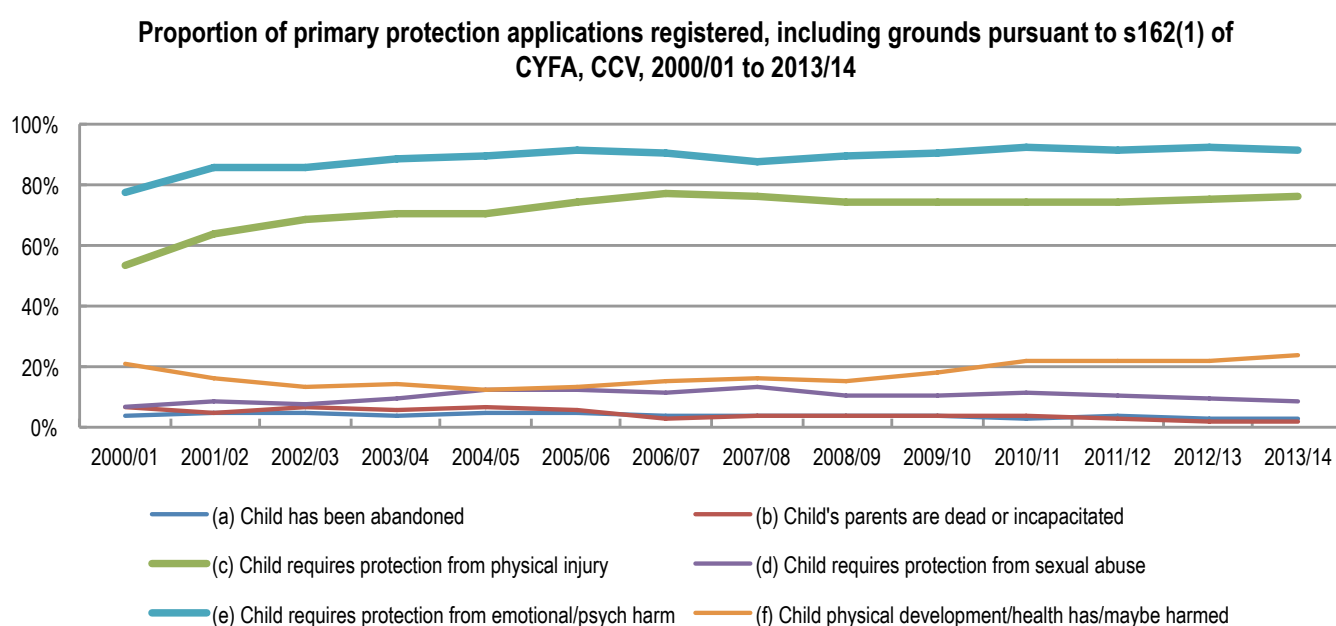


Parents/step parents represent the majority of AFMs in family violence intervention order matters being heard by the CCV (47% in 2013/14). A substantial proportion of child AFMs were recorded in 2003/04 (44%) but this has declined with children representing 17 per cent of AFMs in 2013/14.

5.2.2 Protection applications

As mentioned in section 1.2, where protection applications are made pursuant to section 162(1)(c) and 162(1)(e) of the CYFA, more often than not it is likely that children have also been victims of family violence in respect of applications under s162(1)(c) or have been otherwise exposed to, or witnessed, family violence in applications made under s162(1)(e). Figure 16 shows the proportion of primary protection applications registered, including grounds pursuant to s162(1) of the CYFA. In 2013/14, 76 per cent of primary protection applications registered identified the child as requiring protection from physical injury (ground c) and 92 per cent identified the child as requiring protection from emotional and psychological harm (ground e).

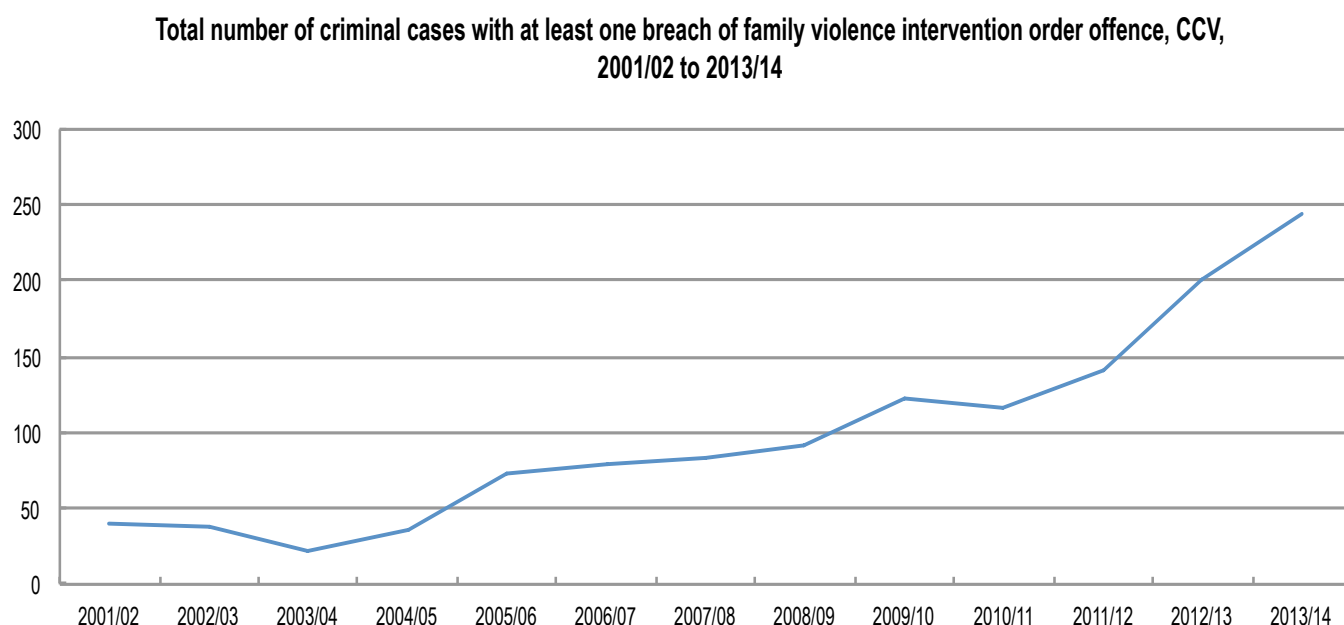
Figure 16: Proportion of primary protection applications registered, including grounds pursuant to s162(1) of CYFA, CCV, 2000/01 to 2013/14



5.2.3 Family violence related criminal matters

The number of criminal cases with at least one breach of a family violence intervention order offence in the CCV has increased by 11 times since 2003/04, with a total of 245 cases recorded in 2013/14 (Figure 17).

Figure 17: Total number of criminal cases with at least one breach of family violence intervention order offence, CCV, 2001/02 to 2013/14



The CCV is not funded to provide any specialist family violence support services, including specialist support services for young people who are committing criminal offences which arise in the context of family violence.

6. KEY LEARNINGS FROM MCV'S SPECIALIST FAMILY VIOLENCE PROGRAMS

The value of specialist family violence courts in the context of protecting family members and children subjected to violence or abuse and holding those who use violence accountable is well documented, with a range of reported benefits including greater consistency, integration, coordination, efficiency and most importantly better outcomes for those affected by family violence.

6.1 What has worked well

Key learnings from the specialist family violence responses, which have been identified by court staff and stakeholders and supported by research, suggest that the following elements have been useful in promoting the safety of victims and holding perpetrators accountable.

6.1.1 Specialist family violence court support workers

The ASW is critical to enhancing the safety of women and children (through safety planning and information provision) and ensuring that appropriate information and support is provided to applicants to assist them to navigate their way around the Court and understand court processes. This has bearing on how they experience the court process overall. Research conducted by the Victims Support Agency (2013) found that victims who lacked the knowledge of the court process were often more likely to experience heightened anxiety due to the uncertainty of what to expect. For some victims, this increased their fear and concern about their safety, which potentially could result in court matters being withdrawn.⁵²

The RSW is equally valuable. Similar to the ASW role, the RSW provides respondents with information and support to assist them in navigating the court process. The emotional support offered to respondents is also critical for containing respondents who are distressed or angered by the court process and assists respondents to understand the terms of any orders imposed. The presence of the RSW is beneficial in increasing the sense of safety for applicants as respondents have someone to debrief them and guide them through the court process. In terms of accountability, the RSW is in a position to send out strong messages about the unacceptable nature of using violence and respondents needing to take responsibility and accountability for their behaviour.

6.1.2 Specialist family violence registrars

The Family Violence Registrar is the lynchpin in the operation of the Court's specialist family violence responses. They provide the first point of specialist contact for applicants and respondents and are central to the efficient preparation of matters for the Court and the effective presentation of matters before the magistrate.

6.1.3 Training and professional development for specialist family violence court staff

The MCV provides specially designed induction programs for the family violence registrars and the support worker roles⁵³ and conducts a number of professional development sessions for specialist staff throughout the year. The Court's forthcoming training schedule for specialist family violence court staff will focus on a range of topics, including ice and drug use, suicide, mental health, dealing with aggressive situations, technology and staff wellbeing. Professional development sessions for family violence registrars and/or support workers over the past 12 months have focused on cultural awareness training, responding to women experiencing violence, and technology and family violence training.

Peer support days are also held for the family violence registrars and support workers.

⁵² Victims Support Agency (2013) Information and Support Needs of Victims and Witnesses in the Magistrates' Court of Victoria: Melbourne.

⁵³ The MCV is in the process of finalising a comprehensive induction program for ASWs and RSWs. The program will provide an overview of the specialist family violence services, relevant legislation, the court process, and other services available at the Court. Specific training for the support worker roles will focus on creating safety plans, facilitating referrals, and explaining family violence intervention order conditions. For the ASW role, specific training will also be provided on conducting risk assessments and advocacy, while the training directed to the RSW role will include engaging respondents in conversation, conducting eligibility assessments and explaining breach consequences.

6.1.4 Training and professional development for court staff

Family violence has been incorporated as an area of focus in a number of the Court's training programs for staff, including:

- General induction program for all new Court staff
- Induction program for Trainee Court Registrars
- Certificate in Court Services⁵⁴ for Trainee Court Registrars.

Case managers and frontline managers from a number of the court support services⁵⁵ have also received training on the dynamics of family violence and the use of the CRAF, and have attended a workshop run by the No To Violence (NTV) on working with perpetrators of family violence.

6.1.5 Specialist magistrates

Having specially trained and assigned magistrates has strengthened the leadership across the MCV in the management of family violence matters. Magistrates sitting in the FVCD and SFVS have undergone specialist professional development to increase their understanding of the dynamics of family violence and the issues faced by applicants and respondents. Furthermore, as they hear a larger number of family violence matters, specialist magistrates tend to become increasingly familiar with relevant issues and able to deal efficiently with matters. Specialist magistrates play a key role in sending strong messages about the seriousness of family violence to both applicants and respondents. Their interactions with applicants can also help them to feel respected and understood while their messages to respondents can reinforce that violence is not tolerated. Additionally, specialisation with respect to sex offences has further enhanced capacity in this area.

6.1.6 Professional development for magistrates

The MCV provides internal professional development for magistrates consisting of initial one on one induction and mentoring for all new magistrates, based upon that person's professional experience. Subsequent professional development is provided at regular whole of court professional development days on various aspects of family violence theory, practice, legislative and legal developments. Local sessions are held with magistrates at each suburban and headquarter court location. This professional development capacity has been enhanced through a recent partnership with the Judicial College of Victoria (JCV) to develop and provide an ongoing best practice curriculum of family violence education to all magistrates in Victoria. The first of three, two day courses, focusing on the social context of family violence was held in February 2015. The remaining programs will run in August 2015 and February 2016. Future programs for professional development have been identified in JCV's submission.

An online family violence bench book and resources for Judicial Officers is maintained and supported by the JCV.

6.1.7 Dedicated and specialist police prosecutors

Dedicated and trained police prosecutors, and civil advocates employed by Victoria Police are another key role in the FVCD and SFVS models. Not only are these roles important to the efficient processing of police initiated intervention order applications and family violence related matters, they also hold respondents accountable in those situations where women may not feel confident or safe in pursuing intervention order applications. Trained police prosecutors also allow for a greater degree of understanding of the complexities involved in family violence matters. Additionally, in the crossover between family violence and sexual offending, the importance of specialist police prosecutors has been highlighted.⁵⁶

⁵⁴ A specific family violence subject is delivered, titled "Provide crisis intervention and support for those experiencing domestic and family violence". Family violence components are also contained in the workplace-based subjects – "Provide court registry and information services" and "Perform court duties". The workplace subjects require a certain amount of time be spent undertaking duties in the family violence intervention order registry – which includes bench clerking in intervention order proceedings, processing court orders, making appointments for intervention orders, observing the serving of documents, processing notices, providing advice to parties and observing interviews between an applicant and a registrar.

⁵⁵ Services include the CISP, Assessment and Referral Court List, Drug Court, and the CREDIT/Bail Support Program.

⁵⁶ The final evaluation report on the Sexual Assault Reform Strategy highlighted the impact that specialist police prosecutors were having on the experience of sexual assault victim survivors.

6.1.8 Police Liaison Officers

Police liaison officers are often 'attached' to the family violence intervention order lists (which occur within the civil jurisdiction). As uniformed officers at the Court, they provide a useful go-between for police prosecutors in the Court and police informants, providing magistrates with up to date information about matters, including dynamic risk assessments. They can also discuss concerns raised by magistrates specifically with local police, and ensure timely follow up on risks that have materialised during the Court process. Their presence also adds to the sense of security at the Court.

6.1.9 Legal services

The availability of legal services to provide advice and representation for applicants and respondents accessing the FVCD is considered to be a strength of the Court's specialist response. Research undertaken by the RMIT's Centre for Innovative Justice (2015) highlights the importance of legal representation for both applicants and respondents. Legal representation assists with increasing applicants' understanding of the process as well as their ability to negotiate the terms of the intervention order. For respondents, legal representation provides another opportunity for respondents to hear that their behaviour is unacceptable and reinforces compliance with any intervention orders made.⁵⁷

6.1.10 Community service providers

Community service providers have been useful in working with the specialist family violence responses across the MCV to respond to particular areas of need. For example, the RSW at Moorabbin Magistrates' Court has worked with Caulfield Community Health Services to establish referral pathways for respondents requiring interpreting services to participate in MBCPs. Another example includes the establishment of the Court Play Worker Program at the Sunshine Magistrates' Court, whereby the SFVS and McAuley Community Services for Women identified an increasing need to protect children from the stress that is associated with accompanying their mothers who are applying for intervention orders.

Case Study - Court Play Worker Program

The Court Play Worker Program was developed in response to the increasing number of children accompanying their mothers for family violence intervention orders at court. In the absence of available support services for children at court, they are often required to sit through court proceedings and appointments, which involve the retelling of incidents of family violence.

The program operates at the Sunshine Magistrates' Court to accompany children through the court process, monitor their safety and wellbeing and offer them a safe and positive diversion through creative play while their mothers are attending to their family violence related proceedings. The program is funded and delivered by McAuley Community Services for Women.

6.1.11 Security

The presence of additional security at the FVCD court venues has been beneficial for increasing the sense of safety for court users and increasing the capacity of court matters to proceed. The presence of court security is a deterrent against overtly aggressive behaviour and has also resulted in a decrease in the number of violent incidents in the court venues.

At the Ballarat Magistrates' Court, the security funded through the FVCD is the only security available at that court. Security staff are not present at regional courts (with the exception of the Geelong and Ballarat Magistrates' Courts).

⁵⁷ Centre for Innovative Justice (2015) Opportunities for Early Intervention: Bringing perpetrators of family violence into view, RMIT: Melbourne.

6.1.12 Court-directed men's counselling programs (FVCIP and FVCOP)

Failing to engage with respondents before the making of intervention orders increases the safety risks of women and children. MBCPs are the only intervention currently available in Victoria for men who use family violence. In this context, the Court accepts that MBCPs that meet the NTV minimum standards, together with appropriate sanctions and therapeutic responses, are a valuable component of Victoria's integrated response to family violence.

6.1.13 Community engagement

Community engagement under the Court's specialist family violence responses has been particularly effective in terms of providing information and explaining the court process. Activities include, but are not limited to, attending meetings across the broader family violence system, presenting at various forums, youth engagement activities⁵⁸ and being actively involved in White Ribbon Day activities. The Walk in her Shoes tour is one example of an effective community engagement initiative.

Case Study - Walk in her Shoes tours

The Walk in her Shoes tours are an education tool used by the SFVS staff to outline the process of applying for an intervention order in the Magistrates' Court to family violence stakeholders. The tours promote the services provided by the MCV and related court services such as VOCAT, the After-Hours Service and remote witness facilities.

The program invites government and non-government agencies, with a vested interest in the area of family violence, and final-year tertiary students to come to a Magistrates' Court and witness first-hand the process of applying for an intervention order. The tours provide participants with the opportunity to hear from and speak with court staff and magistrates, and view facilities and services available at the Court.

Participants complete the tours with a clear understanding of court processes and services available to support victims of family violence seeking access to the justice system.

The tours first commenced at the Melbourne Magistrates' Court in 2008 and have been expanded to the Ballarat, Frankston and Sunshine Magistrates' Courts.

⁵⁸ Broadmeadows Magistrates' Court, in collaboration with the Broadmeadows Community Legal Centre and Roxburgh College run an annual activity for year 9 students at Roxburgh College. It includes an information session at the school, which explains applying for an intervention order, referral to support services available, and identifying early warning signs of family violence. Of the 150 students at the information session, 30 are then selected to attend the Broadmeadows Magistrates' Court and participate in a mock trial where they apply for and contest an intervention order. The mock trial is based on a script written by the Legal Focus Group centred on the characters of a Year 9 English textbook, 'Kill the Possum', which explores the subject of family violence.

7. ACHIEVING BEST PRACTICE IN FAMILY VIOLENCE COURTS



Equitable access to Family Violence Court Division

The model

The FVCD operates at Ballarat and Heidelberg Magistrates' Courts, and has been described by the Australian Law Reform Commission (ALRC) as "the closest example of a 'one stop shop' model for victims of family violence in Australia".⁵⁹ The FVCD is a credible model, representing a best practice approach as identified by current international research and literature.

The FVCD model, which is described in Chapter 4 of our submission, offers a range of benefits for those affected by family violence. The FVCD provides specialist magistrates, staff and legal services, separate waiting areas, remote witness and videoconferencing facilities, and a range of funded services, including ASW's, RSW's, and family violence outreach workers, all of which support the problem solving, therapeutic approach encompassed by the FVCD. The FVCD is also supported by legislation, which gives the power to hear and determine family violence related cases together, including intervention orders, criminal proceedings, some applications under the Family Law Act and VOCAT applications. Magistrates in the FVCD can also direct respondents to attend MBCPs.

While other MCV court venues also provide some access to specialist elements consistent with the FVCD, such as the SFVS court venues and specialist court staff (family violence registrars, ASW's and RSW's) across all MCV headquarter courts, access to the FVCD is currently not equitable across Victoria.

The CISP, which is described in Chapter 4, is another key program available in MCV. CISP operates at three locations and is important in the context of family violence as a mechanism to enhance perpetrator accountability, and provide a treatment and support regime to address underlying issues which can contribute to offending behaviour. The CISP approach has proven value in delivering benefits to the community and should be available, as part of an enhanced FVCD model, across the state.

To implement the FVCD model effectively, some refinement to the existing program models would be needed to ensure flexibility and consistency of access for all parties to family violence cases. For example, CISP currently only provides case management support services to accused persons in criminal proceedings. The courts see an opportunity for this program to expand its reach to support all parties in family violence cases, regardless of whether there are related criminal proceedings, or whether they are victim or perpetrator.

The CCV has similar service requirements as the MCV in terms of responding to family violence related matters, yet at present, does not have access to any specialist family violence services. Data highlighted in Chapter 5 shows a clear increase in family violence related matters presenting at CCV and it is increasingly important that the CCV has access to specialist family violence responses, including ASW, RSW and dedicated family violence registrars. Equally important is the need to address the significant shortfall in the availability of programs and services appropriately targeted to the needs of vulnerable children, young people and their families. Of particular concern is the current lack of programs which aim to address violent behaviour by young people, particularly young men who are increasingly presenting at the CCV as perpetrators of family violence against parents, siblings and carers.

⁵⁹ ALRC (2010) *ibid*, p1499.

The people

The key to achieving equitable and effective court responses to family violence, through the statewide expansion of the FVCD with CISP, is wholly dependent on provision of an appropriate level of resourcing to support the operations of the court, and those organisations that in turn support the court process. Sufficient numbers of magistrates, registrars, support workers, case managers, prosecutors, police, lawyers, security staff and family violence workers must be available to support the number of people who seek to access the FVCD.

Specialisation has been shown to have a range of positive outcomes for the Courts. Specialisation is associated with lower rates of dismissal, an increase in convictions by guilty plea, greater satisfaction and willingness to report offending on the part of victims, greater offender compliance, increased coordination and information sharing, and more efficient case processing.⁶⁰

There are other advantages associated with a specialist approach. Specialisation facilitates a depth of understanding of family violence among practitioners and personnel involved in those matters, which results in more consistent and effective processing of cases. Efficient case handling delivers savings elsewhere in the court and broader service system – for example, more effective legal intervention early in a case can reduce the likelihood of a family becoming involved in the child protection system, and cases where effective offender /perpetrator programs form part of the outcomes can reduce the likelihood courts having to deal with subsequent breaches and related criminal offences.

A compassionate, supportive court system provides families affected by family violence to have their stories heard, to be provided with appropriate advice and support, and to be afforded considered decision making by the courts when imposing orders.

Burnout and turnover can also be a risk where specialist personnel are dealing with intellectually and psychologically demanding cases in a more intense manner,⁶¹ without respite and in a high volume, high pressure environment.

Together all of these factors lend weight for a court system that needs more people, with more time, to be working across all aspects of the family violence system.

The environment

Courts face clear challenges in implementing a best practice model across the state. Already, some court venues are struggling to accommodate additional staff which were funded in 2014. Infrastructure to support accommodation for even larger numbers of staff, support services and court users is expensive, and often slow to bring to fruition. Providing an appropriate physical court environment is absolutely critical if risk is to be managed and minimised and if family violence victims are to be, and to feel safe in court buildings.

The programs

As discussed above, a key component of the FVCD should include access to CISP, which is integrated and appropriately co-located to provide timely delivery of the services those programs offer to support to families affected by family violence.

In addition to measures to enhance perpetrator accountability afforded through CISP, the other key component of the model which supports improving perpetrator accountability is the FVCD's ability to direct eligible men to attend a men's behaviour change program. There is currently limited scope for the court to make these orders across the state, and while counselling orders can be made these are only available for respondents residing in defined catchments of the Heidelberg, Ballarat, Moorabbin and Frankston courts. The total funding provided to the MCV to broker places in MBCP's means it can only access a total of 340 places across those four court locations. Those four courts finalised over 8500 family violence intervention orders last year. The number of funded places available to the court is inadequate to service the need for places in these programs required by the courts.

⁶⁰ Australian Law Reform Commission (2010) *ibid*; Diffily, K, Kane, K.M., Newmark, L & Rempel, M (2001), *Specialized Felony Domestic Violence Courts: Lessons on Implementation and Impact from the Kings County Experience*, The Urban Institute Justice Policy Center; Stewart, J (2010) *Specialist domestic violence courts: what we know now – how far have Australian jurisdictions progressed?*, Australian Domestic and Family Violence Clearinghouse.

⁶¹ Australian Law Reform Commission (2010) *ibid*.

Integration with Federal Courts

One of the challenges encountered with dealing with families affected by family violence, is the complex nature of their associations with various courts. While the FVCD model can address many of the cross jurisdictional issues that arise within the state courts, there are frequently proceedings in both state and federal courts.

The MCV has a limited jurisdiction to hear matters under the *Family Law Act 1975*, however the vast majority of proceedings commenced under this Act are heard in either the Federal Circuit Court or Family Courts. The role of the CCV in this context requires clarification.

The CCV submission to the Family Law Council's reference on Families with Complex Needs and the intersection of Family Law & Child Protection Systems supports the clarification of the capacity of the CCV to exercise federal family law jurisdiction conferred by s69J of the Family Law Act and for agreed parenting orders to be made where protective concerns no longer exist.

It is timely that Family Law Council is considering these issues in its reference on Families with Complex Needs and the Intersection of Family Law and Child Protection Systems⁶². The VLA has also made a submission to the Family Law Council, which indicates that there are a small, but significant number of families with matters that cross over the family violence, child protection and family law jurisdictions.⁶³ The cross over with the criminal jurisdiction, including with respect to contraventions of intervention orders; was not included in that exploration but would be worthy of further enquiry. The experience of the MCV and CCV is that contraventions of intervention orders frequently take place in the context of unclear and fraught parenting arrangements. By providing funding for legal services for a significant cohort of complex families across each of the separate jurisdictions, the VLA has unique experience in relation to these issues. The VLA has made a number of recommendations for practice improvements, which the Courts support.

It is imperative that judicial officers, lawyers, registrars and support workers have an understanding of cross-jurisdictional issues and effective service coordination. Formal coordination can assist families to move across jurisdictions easily, remaining supported by the system throughout the process.

A joint Federal - State response is necessary to achieve a system that enables families with cases in the federal and state systems to move seamlessly between the jurisdictions to bring finality to parenting issues, where it is in the best interest of children to do so.

Both the MCV and CCV support an improved integration of the state and federal jurisdictions to achieve this outcome within the one court and thereby reduce the risks to families experiencing family violence which results from poor communication and integration between the different courts.

Recommendation 1

An enhanced Family Violence Court Division model be available and resourced across all Victorian Magistrates' Court and Children's Court venues to provide equitable access to a best practice specialist family violence court.

This includes resourcing for:

- a. specialist magistrates, registrars, applicant and respondent support workers, including youth specific workers, and Court Integrated Services Program case managers
- b. dedicated police prosecutors and civil advocates, family violence outreach workers, and access to legal representation
- c. functional court buildings that promote safety, including adequate security measures at all locations
- d. statewide priority access to court-ordered Men's Behaviour Change Programs
- e. operational resources to effectively manage existing and future case and workload demand
- f. an integrated service model resourced to support the exercise of both federal and state jurisdictions.

⁶² MCV, *Families with Complex Needs: Submission to the Family Law Council* April 2015 and CCV *Submission to the Family Law Council*, May 2015

⁶³ Victoria Legal Aid (2015) *Families with Complex Needs: Submission to the Family Law Council's Terms of Reference*, Melbourne.

Recommendation 2

That funding is available to establish a taskforce of state and federal courts and government departments, to address the challenges experienced by families whose needs intersect across state and federal jurisdictions.

The following chapters of our submission will detail the main barriers to achieving this outcome, and how, with investment, a best practice family violence court response can be delivered.



For perpetrators of family violence

CISP and other court support programs

The MCV has a number of court support programs which provide support and access to treatment for underlying issues which contribute to offending. Programs such as CISP, the Assessment and Referral Court List (ARC list), the Drug Court and the Koori Courts are increasingly dealing with family violence related offending and are effective mechanisms in addressing the needs of perpetrators, which if left untreated can leave victims at greater risk.

Men who use family violence may present with a range of complex issues, including drug and alcohol abuse, cognitive impairment, mental health, housing and homelessness issues. Access to case management support services helps to address co-existing factors which may impact on their ability to comply with orders, and likelihood of further offending.

Accountability of the offender to the court is key component of these programs. Accountability includes weekly meetings between the court case manager and the accused, monitoring of attendance at appointments with treatment providers, and regular reporting to the magistrate. Accused who are participating in programs are usually required to appear before a magistrate on a regular basis to review their program compliance and any other emerging issues. If case managers become aware of further offending, breaches of court orders or heightened risks of offending behaviour then appropriate actions are taken such as, notifying the police informant or requesting police assistance. Case managers are also trained to avoid collusion with offenders.

Court support programs including CISP, ARC List and Drug Court have been evaluated by independent consultants in recent years. Each of the programs has demonstrated effectiveness by reducing offending during and post participation and delivers a positive cost benefit on investment. In addition, the programs have been shown to improve a range of health and welfare indicators.

Currently, these programs are only available in criminal proceedings and are not available at all venues of the courts. Access to these programs is dependent on the court location a matter is listed. MCV has been criticised in the past for providing differing levels of access to services across different locations⁶⁴. The Rural and Regional Committee of Parliament's Inquiry into the Extent and Nature of Disadvantage and Inequity in Rural and Regional Victoria, 2010, recommended that there are "strategies to ensure access for rural and regional Magistrates' Court participants at locations which do not have access to the specialist courts and court programs available at larger centres".

⁶⁴ 'Postcode Justice, Rural and Regional Disadvantage in the administration of the law in Victoria' in 2011

The development of a comprehensive range of specialist court and court support services that can be equally accessed across the state is a current strategic priority for MCV.

Men's Behaviour Change Programs

In both criminal and civil intervention order proceedings, MBCPs provide an intervention to address men's violent and controlling behaviour, combined with a supervision and monitoring mechanism which, in conjunction with partner contact enhances the safety of victims. Timely access to MBCPs is central to the courts holding perpetrators to account for their behaviour. Courts are of the view that failure to engage men beyond the making of an intervention order is likely to increase the risk to the safety and wellbeing of women and children.

A key challenge for courts in terms of MBCPs is the lack of access to funded places for men who use family violence, outside the funded programs available at four court locations.

Courts that are not empowered to direct that men attend counselling under the FVPA rely on places being available in community programs. The CISP program also relies on community programs when referring men to MBCP as part of bail conditions in criminal proceedings. This part of the system is overwhelmed by demand; there are lengthy delays in men being able to access places in these programs. These delays dilute the courts' authority to hold men accountable for their violence. It is imperative that courts have dedicated and priority access to program places.

Youth specific programs

The CCV sees a similar level of complexity in terms of the range of issues with which young people who are perpetrators of family violence are presenting. Assessment for support services is undertaken through the Children's Court Clinic but the CCV is not otherwise funded to provide specialist family violence support workers or youth specific liaison officers at Court. There is also a concerning absence of youth specific behavioural change programs available to young people, particularly young men, such as the now defunded GRIPP program.

The CCV sees merit in an integrated response to address adolescent violence in the home, such as that being proposed by Kildonan UnitingCare. This model encompasses a joined up response involving key agencies including police, courts, youth justice, child protection, alcohol and drug and mental health services working with young people and their families where children come before the CCV in relation to violence committed in the home. The initiative being proposed by Kildonan will seek to engage these children and their families and provide them with information about legal and community options, individual and family casework and counselling for parents and children and referral to other supports services.

The CCV also supports the expansion of funded diversionary programs for young people perpetrating violence. In June 2015, the CCV commenced a Youth Diversion Pilot program, at a limited number of locations, in partnership with Jesuit Social Service and, in the Grampians, with Centacare. The aim of the pilot program, which is supported by Victoria Police, is to divert young people from the criminal justice system by providing targeted and appropriate supports for the duration of the diversion program. A nuanced approach to diversionary programs is envisaged whereby the intensity of supports will match the particular needs and address the young person's behaviour.

When the family violence involves sexually abusive behaviours, there are a number of programs to which young, mainly men, can be referred. If the young persons is aged 10 to 14 years, the CCV has power to make a Therapeutic Treatment Order (TTO). Treatment is also available through the Male Adolescent Program for Positive Sexuality (MAPPS) upon a plea being entered and a supervisory order being made. A range of DHHS funded voluntary treatment programs also exist.

It has been a cause of considerable concern that the eligibility for a TTO was based solely on age rather than the consideration of any other factors including stage and nature of development and level of offending. An informal diversion program (quasi-TTOs) was undertaken in the Melbourne Children's Court sex offence list, with the agreement of the prosecution and in consultation with victims and their families. 15 to 17 year olds were referred for treatment to voluntary programs for young people engaging in sexually abusive behaviour. This was an enormous incentive for offenders to enter treatment as at the end of the diversion period of up to 12 months, their charges would be struck out.

The success of this informal diversion program was dependent upon the trust and good will generated between the court, prosecution, police, and defence lawyers and was not supported by a dedicated legislative framework. It is the recommendation of the MCV and CCV that TTOs be extended to young people with sexually abusive behaviours aged 15 to 17 and that there be a legislative amendment to support the process of diversion into treatment for low level offences. This would also require appropriate funding for places for treatment for the 15 to 17 year old age group which is a significant impediment in country regions.

Sentencing

Magistrates' currently have a range of sentencing options under the *Sentencing Act 1991* including imprisonment and a Community Corrections Order (CCO). CCO's may be ordered as a standalone sentence or may follow a term of immediate imprisonment.

Under a CCO, an offender is supervised in the community by Community Correctional Services (CCS). Compliance may also be monitored by a magistrate under a condition of judicial monitoring. A CCO may include certain restrictions on their movements such as alcohol exclusions and a curfew. Offenders may also be required to undertake offender behaviour programs related to the use of violence and to address factors that may heighten the risk of family violence such as alcohol and drug abuse.

MCV is concerned that the delivery of necessary programs under CCO's vary, often with extended wait lists for access to Men's Behaviour Change Programs. The court is concerned that there are currently inadequate systems and processes in place to enforce compliance with CCO conditions and ensure timely accountability for offenders who commit further family violence offences during the course of a CCO.

Family violence offending is often recidivist in nature. Research demonstrates that the most effective interventions involve:

- strict monitoring of compliance with programs
- immediate, consistent and firm consequences for non-compliance with programs and for further offending
- individual treatment plans that deal with reducing risk factors such as drug and alcohol abuse; monitored participation in a comprehensive men's behaviour change programs and ongoing support for victims.⁶⁵

While the enactment of sentencing law and CCS programming is a matter for government, MCV is of the view that magistrates would be assisted by amendment to current sentencing law and improvements of CCS programming to improve the effectiveness of interventions in family violence offending.

To this end, the courts recommend that consideration be given to a strengthened CCO, to maximise perpetrator accountability and victim safety.

Recommendation 3

Statewide access to a broad range of court interventions including:

- Court Integrated Services Program
- priority access to Men's Behaviour Change Programs (in accordance with No To Violence minimum standards)
- specific programs for children and young people using family violence in the home (including youth specific behaviour change programs and expansion of the services available for children and young people engaging in sexually abusive behaviours)
- Children's Court Youth Diversion Programs
- Sentencing options which promote compliance with orders

delivered flexibly to meet the needs of perpetrators across the various divisions of the courts.

65 Salter, M (2012) Managing Recidivism Amongst High Risk Violence Men (Australian Domestic & Family Violence Clearinghouse, Issues Paper 23); Center for Court Innovation, Bridging Theory and Practice: A Roundtable about Court Responses to Domestic Violence; Center for Court Innovation & Bureau of Justice Assistance (2014) Evidence Based Strategies for Reducing Recidivism; Klein A.R.(2008) Practical Implication of Current Domestic Violence Research, Part III: Judges (US Department of Justice); Project Mirabal (2015) Domestic Violence Perpetrator Programs: Steps Towards Change (Durham University & London Metropolitan University).

For victims and witnesses

Courts acknowledge the significant trauma for victims and witnesses involved in family violence proceedings including the giving of evidence. Access to short term support and ongoing case management services for victims is necessary to address the effects of family violence. Access to services, victims' assistance programs and a range of other community services is also affected by increasing demand and resourcing constraints. Violence is the leading contributor to death, disability and illness of women aged 15 to 44 years.⁶⁶ Women who are victims of family violence may present with a range of co-occurring issues including mental and trauma related illness, drug and alcohol addiction, cognitive impairment and homelessness.

Notwithstanding the risk assessment and referral process undertaken by police when they attend a family violence incident, many women attending court are not engaged with services.

To address this, modifications to existing models of court support are required to enable courts to provide a more holistic response to those affected by family violence. Currently ASW's are only available to assist applicants in intervention order proceedings, even though the same victims may be required to be witnesses in criminal proceedings. Similarly, CISP provides assistance and support to those charged with criminal offences, even though the victims of those offences, or applicants to intervention order and VOCAT proceedings have an equal need for assistance.

Victim Impact Statements

Victim Impact Statements (VIS) were introduced into the Sentencing Act in 1994 to provide a mechanism for victims to explain the impact of a crime in their own words as part of the sentencing process. In 2009, an evaluation found that VIS are the most appropriate way of informing the courts about the impact of a crime and that they can assist the courts when making decisions about sentencing and that they contribute to increased satisfaction for victims.⁶⁷ Following the evaluation, legislative amendments were made to allow victims, or their representatives, the right to read their statements in court. However, in the courts experience, VIS are not being regularly provided. Currently, Victoria Police prosecutorial briefs only indicate whether or not a VIS is available. As such, courts cannot confirm whether victims are aware that they have the right to provide a VIS. Furthermore, children and witnesses with cognitive impairments may require additional support in providing VIS. The courts see this as a challenge, where magistrates are making sentences without knowing the full impact of the crime on victims.

Witness support programs

In recognising the trauma associated with giving evidence, reforms to the criminal justice response to sexual assault have highlighted the importance of protecting victims when giving evidence and providing alternative mechanisms for doing so. For example, in sexual assault cases, children and cognitively impaired victims can give a pre-recorded video statement. This same mechanism is not currently afforded to adult or child victims of family violence, however similar experiences of trauma and distress can be present for these victims.

In terms of options for giving evidence, the MCV and CCV have access to video conferencing facilities to provide alternative arrangements for AFMs and children. In the MCV, a pilot project has commenced in collaboration with the Women's' Legal Service and a specialist family violence service to allow for high risk AFM's to attend the court from a remote location. The Child Witness Service (CWS) is a well regarded service, subject to a high level of demand. The CWS:

- prepares children involved in criminal proceedings for the role of giving evidence
- helps them to become familiar with the court process and staff
- supports them and their family throughout their experience at the court
- provides de-briefing and referral to external agencies⁶⁸

66 VicHealth (2004). The Health Costs of Violence: Measuring the Burden of Disease Caused by Intimate Partner Violence. VicHealth, Melbourne.

67 Success Works (2011) Sexual Assault Reform Strategy: Final Evaluation Report, Department of Justice: Melbourne.

68 Department of Justice and Regulation (2015) Child witness service information, Victorian Government, accessed on 10 June 2015, available at: <http://www.victimsofcrime.vic.gov.au/home/going-to-court/giving-evidence/child-witness-service/>

In 2011 an evaluation of the Sexual Assault Reform Strategy found strong support for the CWS however recommended that it be extended to address concerns regarding equitable regional access. The CWS is a state-wide service, and supports rural areas via outreach, however an equitable level of access to the CWS does not exist for regional and rural areas. Further, the CWS only provides extremely limited support to children involved in proceedings in suburban courts. It is for this reason that summary sex offence contested hearings in the MCV involving a child complainant are transferred from suburban venues to Melbourne to ensure that the child can give evidence from the dedicated CWS facility in Melbourne.⁶⁹

Victims and witnesses with a cognitive impairment

Applicants with a cognitive impairment are particularly vulnerable as witnesses and require assistance in obtaining, framing and understanding orders. This support, as well as individualised services, are required at the time of application, to prevent attrition of cases and to ensure that these vulnerable witnesses are appropriately supported throughout their engagement with the court. Given the complexity of issues facing witnesses involved in family violence related matters (including the distress involved in giving evidence and additional challenges for people with cognitive disabilities), it may be useful to explore the introduction of a vulnerable witness service to provide support similar to that provided by the CWS, throughout the court experience.

The MCV has a number of services in place to support people with cognitive disabilities, including the ARC List at the Melbourne Magistrates' Court and the Mental Health Court Liaison Service⁷⁰, available at 12 MCV venues.

Intermediaries

It may also be useful to investigate the introduction of 'intermediaries' to support all vulnerable parties and witnesses. The intermediary program is well established in England and Wales⁷¹. An intermediary is an expert accredited communication assistant. Their primary duty is to the court. The intermediary's role is to assess the vulnerable person's particular communication impairments and to provide expert assistance to the court to ensure that all communication with the person is comprehensible and fair. The intermediary's background may be in speech and language therapy, psychology, social work, nursing, teaching or occupational therapy. The intermediary's specific area of expertise is matched with the type of impairment. It is primarily used to assist children, persons with a cognitive impairment and persons with communication impairment who do not otherwise have a cognitive impairment. Such a program could be of powerful assistance to the community and the court in addressing the significant challenges which exist in meeting the additional safety needs of vulnerable witnesses in family violence proceedings.

Woman and children

There are limited support services available in the courts for children accompanying their mothers for family violence intervention orders at court. Often children are required to sit through court proceedings and appointments, which involves the retelling of incidents of family violence.

The Court Play Worker Program which operates at the Sunshine Magistrates' Court is an example of a service that accompanies children through the court process, while monitoring their safety and wellbeing and offering them a safe and positive diversion through creative play while their mothers are attending to their family violence related proceedings. The program, which is funded and delivered by McAuley Community Services for Women, was developed together with the Sunshine Magistrates' Court in response to the increasing number of children accompanying their mothers to court.

⁶⁹ Chief Magistrates' Practice Direction 2 of 2015, accessed at <http://www.magistratescourt.vic.gov.au/practice-directions-publications/practice-directions-2015>

⁷⁰ The Mental Health Court Liaison Service is provided by Forensicare

⁷¹ See <http://www.theadvocatesgateway.org/intermediaries>

Recommendation 4

Implement a statewide integrated approach to support for victims and witnesses of family violence, including children, which encompasses:

- a. expanding the role of the applicant support worker and the Court Integrated Services Program to support victims in criminal, VOCAT and child protection proceedings
- b. a court-based program to assist all witnesses and victims in family violence cases across the Magistrates' Court of Victoria and the Children's Court of Victoria including assistance in preparing Victim Impact Statements
- c. expanding witness support programs for vulnerable witnesses including:
 - i. expanding the capacity of the Child Witness Service to enable a service to be provided to children who are witnesses in criminal and civil family violence and sexual assault proceedings at all venues of the Magistrates' and Children's Courts across Victoria
 - ii. exploring options for delivering a dedicated service to witnesses who live with a cognitive impairment or a significantly disabling communication impairment
 - iii. introducing an intermediary program
 - iv. expanding and resourcing support services and programs for children accompanying their mothers at court, such as the Court Play Worker Program.

Recommendation 5

Implement strategies for ensuring that all victims are offered the opportunity to provide Victim Impact Statements and that these are provided to magistrates as part of the sentencing process and used appropriately in court for the purposes of sentencing.

For the Koori community

The Victorian Indigenous Family Violence Taskforce estimated that "one in three Indigenous people are the victim, have a relative who is a victim or witness an act of violence on a daily basis in our communities across Victoria."⁷² The importance of culturally sensitive and appropriate family violence responses in Aboriginal communities is well recognised, and requires a long term approach.

Koori specific support programs and services available across the MCV aim to improve responses to Koori victims of crime. The Koori Family Violence and Victims Support Program (KFVSP) was established to provide a culturally appropriate response to Koori victims of family violence while improving the court's capacity to engage with Koori respondents who use family violence.

The program has supported 196 Koori clients between December 2013 and May 2015, with support provided at the Melbourne, Heidelberg, Ringwood and Sunshine Magistrates' Court and the Neighbourhood Justice Centre.

The MCV has been unable to secure ongoing funding for the program, resulting the program ceasing operation in its current form on 30 June 2015. This represents a significant gap in the MCV's service delivery, and the court is urgently seeking funding or support arrangements to allow it to continue.

The Koori VOCAT List was created to increase the number of Koori victims of crime accessing their entitlements, as numbers of Koori applicants to the Tribunal were very low. There is a specialist Koori VOCAT registrar and the list has access to the Koori Support Workers funded by the KFVSP, however funding for this program will cease on 30 June 2015.

Additionally, the Koori VOCAT List does not include the involvement of Elders, which would assist in providing information about the circumstances of the applicant in the Koori community and provide the Tribunal with an understanding of the needs of Koori victims.

⁷² Department for Victorian Communities (2003) Victorian Indigenous Family Violence Taskforce Final Report: Melbourne, p4.

In the CCV, a Koori co-convenor is available to provide culturally appropriate support for members of the Koori community participating in conferences. The CCV Koori Court was established in 2005 to address the over-representation of young Koori people in the criminal justice system. The Children's Koori Court sits at Melbourne and some metropolitan courts and at eight regional venues, and deals with young Koori people who have been found guilty of committing a criminal offence, including criminal offences that arise from breaches of intervention orders. The CCV is not currently funded for any Koori specific family violence services.

Recommendation 6

Statewide access to culturally appropriate court services for Koori people impacted by family violence, which includes court based, legal and community based services, and ongoing funding for statewide access to the court's Koori Family Violence and Victims Support Program.

For Culturally and Linguistically Diverse (CALD) communities

The issues associated with accessing appropriate programs for victims and perpetrators are exacerbated for CALD communities, who have limited access to culturally appropriate support programs and services. These difficulties are heightened for recently arrived communities, many of whom come from refugee or other trauma backgrounds. There is a particular need for culturally appropriate MBCP's for perpetrators including young people. Where these programs do exist, they are unable to cope with current demand, and have significant waiting lists with all the concomitant problems which have been outlined above. CALD women's experience of family violence is often aggravated by social isolation, lack of understanding of Australian institutional and mainstream cultural practices and there are limited services practically available to them. Further, the children and young people from these families often have complex needs.

Recommendation 7

Statewide access to culturally appropriate Men's Behaviour Change and other support programs for all family members experiencing family violence

Interpreters

The MCV⁷³ currently coordinates and funds interpreters for –

- accused persons in criminal proceedings,
- applicants and/or respondents in intervention order proceedings (both family violence and personal safety), and
- applicants in VOCAT proceedings.

MCV's expenditure on interpreters has increased markedly over the last ten years and has exceeded \$1.5 million per year for the last five years. Available data suggests that approximately half of all interpreter bookings are made in intervention order proceedings⁷⁴ The Court does not receive specific funding for interpreters, and the increased use of interpreters has placed a substantial financial burden on the operations of both courts.

Data indicates that interpreters are increasingly required to support both applicants and respondents to family violence intervention orders, and the breadth of languages required is also expanding. For example, in 2013-14 there were more than 100 ethnic identities listed for clients of ASWs, and interpreters were requested in 39 different languages. This places considerable pressure on the court in ensuring accessible processes for all communities.

⁷³ The CCV also arranges and pays for interpreters when requested.

⁷⁴ This also includes personal safety intervention order proceedings, however these only represented approximately one-quarter of all intervention order proceedings that required an interpreter booking.

For new and emerging communities, it can be difficult to find appropriately qualified interpreters who are not known to the parties involved, and who also have an understanding of the complexities and sensitivities of family violence. In the courts' experience, there is a great deal of variability in the quality of interpreting services and this variability has contributed to concerns about maintaining confidentiality and safety, particularly in small language groups. Sometimes courts will only be able to secure one interpreter for a case, meaning that interpreter must provide assistance to both the applicant and respondent to an intervention order. This is highly unsatisfactory.

CALD communities present additional complexity for courts as there is a need to understand the dynamics of the community and culture, as well as communicate complex concepts to parties through interpreters. Legal and support services and registry staff must also assist in explaining court processes and orders to parties before they leave court, to ensure they understand the mechanisms in place to promote safety.

Family violence intervention orders are currently only available in English. Translations are not accommodated by the courts' case management system and are difficult to implement, due to the personalised nature of intervention orders. Courts are obliged under the FVPA to ensure family violence intervention orders are explained clearly to respondents but often further explanation can be required (through an interpreter) to ensure respondents fully understand the content of the order and the consequences of a breach.⁷⁵

Competent, ethical and highly skilled interpreters are an essential element in meeting some of the significant safety risks which exist for families from CALD communities living with family violence. An independent governance structure for interpreters, such as an improved accreditation process, would give the court greater confidence that the high standards of professionalism and accountability which are essential to the court process and the safety needs of families is appropriately met with the use of interpreters.

The Neighbourhood Justice Centre has translated some information about family violence intervention orders into a number of different languages. There may be opportunities for the MCV to provide information in different languages through the Family Violence Online Engagement Project currently being developed, however due to funding constraints, this is not part of the project's current scope.

Using modern communication techniques, including in the online environment, is an essential element in effectively delivering, consistent legal and practical information to and addressing the safety risks of families involved in family violence proceedings. This is particularly needed for CALD communities so that this information can be delivered in their first language and in a culturally nuanced way. The additional pressure of existing and future demand makes this an urgent priority.

Recommendation 8

Funding to be provided to courts for:

- a. adequately qualified legal interpreters for all family violence cases
- b. information and materials on family violence available in a range of languages and delivered using modern best practice communication approaches in a culturally appropriate manner.

⁷⁵ The Court is obliged under the FVPA to ensure family violence intervention orders are explained clearly to respondents.



Addressing demand

Family violence demand

Chapter 5 highlights the growth in family violence cases in the MCV and CCV. This growth has been driven by increased awareness and willingness to report family violence, as well as the increased focus on responding to family violence by Victoria Police. The majority of all intervention order applications are now made by Victoria Police (66% in 2013/14).

In recent years, courts have progressively increased the number of lists and the amount of hearing time devoted to intervention orders and these lists now represent a substantial and growing component of every court's workload. In particular, overwhelming demand in relation to family violence matters has, more than any other single factor, shaped MCV's caseload and workload over the past decade. This increase has been mirrored in the growth of child protection matters in CCV where family violence is a factor and also in VOCAT.

An ongoing challenge for courts is to meaningfully assess the growth in family violence in the context of the court's criminal workload. We do know that there has been an increase of 240% in the number of contravention of intervention orders charges filed in the past decade and that contravention charges are now the fifth most common charge heard by the MCV.

Victoria Police data shows that police attended 65,393 family violence incidents in 2013/14, and laid charges in 29,403 of those incidents. This represents a 14% increase in the laying of charges from the previous year. Since the introduction of the Victoria Police Code of Practice for the Investigation of Family Violence in 2004, the proportion of assaults recorded as arising from family violence incidents has tripled, to 45.7%⁷⁶

This enormous growth in family violence as a component of court workload has necessitated a shift in focus for the court's workforce. In 2014, the MCV received funding to employ specialist family violence registrars at each of 12 headquarter courts, where these staff were not already in place. In practice, teams of registrars are assigned to the family violence area of the court at each venue. On family violence listing days, additional registrars are required to assist with the operation of the list, redirecting them from their normal functions. This can create delays in other areas of the courts, as the processing of intervention orders takes precedence in the court's business. The impact of family violence on resourcing at courts is evident even at the Ballarat FVCD, which although considered comparatively well resourced to deal with family violence cases, allocates at least two additional registry staff to service this area and requires all registrars to assist on IVO listing days.

The FVCD has been in operation at the Heidelberg Magistrates' Court since 2005. Heidelberg services the northern metropolitan growth corridor, and this has driven a considerable increase in family violence matters in the FVCD. In 2013/14, Heidelberg finalised the highest number of family violence intervention orders of any court venue across the state. Its caseload is 2.5 times greater than the caseload at the Ballarat FVCD, yet Heidelberg has not received a level of resourcing that reflects this. The sheer volume of the family violence caseload at the Heidelberg FVCD has compromised the effectiveness of the model at this court. Additionally, the effective operation of the FVCD has been impacted by the lack of availability of legal and family services which are inundated by the volume of cases, have been unable to provide the comprehensive services envisaged by the FVCD model.

Wider changes across the family violence and justice systems have also significantly affected the courts. The government recently announced that it would build a new police station in Mernda to service that area's growing population. This will inevitably increase the number of cases at Heidelberg, compounding the difficulty of managing existing demand at that court. Where increases in police numbers are being considered, there is generally no concurrent consideration given to the need for additional court resources, to meet the increased workload which inevitably results from additional police.

⁷⁶ Victoria Police Crime Statistics 2013-14

Of course, the rationale for the new police stations is primarily to respond to the population growth in one of Melbourne's major growth corridors. The courts have not been funded to respond to population growth. It is not surprising that some of the court's major challenges exist in courts which service the major growth corridors to the south-west, north and south-east.

It has been many years since contemporaneous planning took place for the building of police stations and courts. This lack of planning has also aggravated inefficiency and delay. For instance, the relatively new Bendigo Police Station is two kilometres from the 19th century Bendigo Court complex. There are regular court delays caused by the need to bring people in custody from the Bendigo Police Station cells to the court. Access to the court rooms is through inappropriate and unsafe entry points.

Similarly in CCV, in the recent budget the government allocated approximately \$65m to fund an additional 111 child protection workers, 88 of whom will be allocated to frontline child protection. No additional funding was allocated to the CCV to manage the inevitable growth in child protection matters that will result from the deployment of additional child protection workers.

This issue has been of concern for many years. The impact of these resourcing decisions, that do not consider flow on effects to courts, continues to compound over time.

Demand across the courts

While this submission focuses on demand increases in the family violence areas of the court, this aspect cannot be viewed in isolation. Significant increases are being mirrored in other divisions of MCV and CCV and these need to be accommodated in listing structures. In the criminal division alone, applications relating to bail have increased by 1,437% over a 15 year period. Contested applications are routinely complex, and can take significant amounts of court time to finalise.

Overall finalised caseload of Magistrates' and Children's Courts

Source: MCV and CCV Annual Reports

Court Division	2001/02	2013/14*	% change
Criminal (MCV and CCV) Includes all cases and applications finalised in the criminal divisions.	125,712	322,683	157%
Intervention Orders (MCV and CCV) Includes original and secondary applications made under the FVPA and PSIO Acts – does not include interim applications	21,627	48,310	123%
Family Division (CCV) Original applications only	1,970	3,667	86%
Civil (MCV) Cases finalised before a judicial officer only	6,957	4,094	-41%
Victims of Crime Assistance Tribunal	1,510	6,611	337%
TOTAL	157,776	385,365	144%

* Children's Court data from 2012/13 Annual Report, as 2013/14 report not yet available.

The courts have not received a comparative increase in resourcing to meet this demand. In addition, new specialist courts and programs as well as policy and legislative reform have increased the complexity and range of cases heard across the courts. Significant changes to sentencing laws have increased the complexity of the sentencing process, whilst providing the ability for the court to monitor offenders more closely. Courts are supportive of measures to enable more effective sentencing, however the flow on impact of increasing numbers of hearings has not been matched with any proportional increase in resources to accommodate those hearings.

The table below shows the increase in judicial resourcing for MCV and CCV over the same 15 year period. Although the caseload of the two courts has increased by 144 per cent, the number of judicial officers to hear that caseload has only increased by 30 per cent.

Judicial officer	2001/02	2013/14	% change
President Children's Court (Judge)	1	1	0%
Magistrates	96	114	19%
Acting/Reserve Magistrates	8	14	75%
Judicial Registrars	0	8	100%
TOTAL	105	137	30%

Resources including court space, courtrooms and court hearing time are finite resources. Within these constraints, courts will continue to struggle to meet existing and future demand across all divisions and programs. This challenge is compounded by the impact of inadequate technology systems and infrastructure, lack of adequate security at many venues, overcrowding in public spaces in courts and the lack of wide availability of specialist family violence court services. This is highlighted by the experience at the Dandenong Magistrates' Court.

Recommendation 9

Additional recurrent funding be provided to the courts to meet existing family violence demand for services.

Recommendation 10

That resourcing be provided to the Magistrates' Court and Children's Court to meet the increasing number and complexity of court cases including the need to meet the additional demand generated by the implementation of government reforms across the broader family violence system.

The experience at Dandenong Magistrates' Court

The Dandenong Magistrates' Court is a large metropolitan court, which services one of Melbourne's growth corridors, through the south eastern metropolitan area. The Court also houses the state's only Drug Court, sits as the Children's Court, VOCAT and provides courtroom space for VCAT hearings.

Dandenong is one of the busiest courts in the state for intervention orders. Family violence intervention order applications alone have increased by 58% since 2001, and the list sizes in the FV IVO court average 55-60 cases on the days where Victoria Police applications are listed. Large lists are commonplace, as a 2014 Herald Sun article outlined –

*"This is last Thursday in an eastern suburbs court, when a record is set for the most intervention order applications processed in a day 76 cases through Court No. 1. For five long hours, [the] magistrate decides on case after case of family bonds turned nasty, violent, and often dangerous. By 1.15pm, when [the magistrate] adjourns for lunch, he's decided on 51 cases, some simple, some not so. But the common thread is a high level of violence often associated with drug and alcohol use."*⁷⁷

The criminal jurisdiction caseload has increased by over 100% in the same period. The building is home to eight courtrooms, which are in use in each session, every day. Even if the court wanted to add extra court lists to cope with the demand, there is simply no more courtroom space available.

⁷⁷ Powley, Katherine, "He versus She", Herald-Sun, 23 February 2014

Intervention orders are heard in courtroom 7 at Dandenong, in a separate area of the building, away from the criminal matters. However this area of the building is very small, offering minimal seating, and limits the ability of court staff and security to separate parties. Often parties spill out onto the back lawn of the court while waiting to see a lawyer and have their case heard. The three security staff do their best to have a presence and increase the feeling of safety.

In 2014, the Magistrates' Court of Victoria received funding to expand family violence services to all headquarter courts. This was the first time Dandenong had received funding for any specialist FV staff. A specialist FV Registrar has commenced, however this has simply upgraded an existing staff member, so there is no additional staffing capacity in the registry. Applicant and respondent workers will commence when space within the building can be found to accommodate them. The same problem is encountered with the proposal for the CISP to be expanded to Dandenong, to provide assistance for the burgeoning criminal caseload.

In reality, the functional area of the existing court is quite limited, which severely compromises the ability to appropriately accommodate any new staff. So when looking for space within the building to accommodate the applicant and respondent workers it has been identified that any works will have a flow on effect in displacing staff who service other jurisdictions such as the Children's Court and VCAT. This creates a succession of interrelated building works at a significant cost.

This is not to say that Dandenong is without services to support both victims and perpetrators of family violence. In spite of the overwhelming demand, Dandenong has implemented a number of innovative programs and ideas

- FV services attending on return days – the court has worked closely with a number of community agencies to provide at court support. The services include women's outreach services, men's referral services, services focussed on CALD victims and drug and alcohol support. The services currently provide the court support within their existing funding resources.
- Duty lawyer service, comprising of representatives from Victoria Legal Aid, Casey Cardinia Community Legal Service and Springvale Monash Legal Service. The duty lawyer service provides legal advice in relation to family violence intervention orders (and related family law issues).
- Fast tracking for family violence related criminal charges – the fast tracking model commenced as a pilot on 1 December 2014. The intention is to hold perpetrators more accountable for their behaviour by bringing them before the Court in a timely manner. A perpetrator is to be brought to Court within seven days of being entered into bail, or within 28 days if on summons. The model also sets out strict listing timeframe for the conduct of a matter once listed at Court.
- This listing model was implemented due the increasing listing delays that were being experienced at Dandenong. The delays were a result of the overall increase in criminal, FV, PSIO matters being filed at the Court. Prior to the introduction of the fast tracking model, the first listing for these charges was approximately 3 months from entering into bail, or from the issue of a summons. It may have been some months from then until a matter was finalised. In the 6 months of operation to 30 May 2015, the Court had finalised 335 matters, with a further 220 pending cases.
- All registry staff are responsible for responding to family violence. Each day one registrar is assigned to coordinate the Intervention Order List. They are responsible for taking appearances, agency referrals, and overseeing the operation of the Court. One registrar is assigned to process new applications and conduct interviews, based on an appointment system. All other registry staff assist with telephone and counter enquiries, and assist the list coordinator and interviewing registrar where necessary. This places significant pressure on the other jurisdictions of the court.
- Protective Services Officers (PSO's) are present within the courthouse, however are not always present in the waiting area for Intervention Order matters. PSOs respond quickly when requested, and will maintain a vigil if issues are raised regarding certain people. Despite this, and due to the congested nature of the foyer area, security incidents cannot always be prevented.
- Community engagement – the Family Violence Registrar is heavily involved with community organisations, ensuring the Court has appropriate networks and referral pathways with local organisations, as well as providing community and agency education where necessary and when requested.
- Family Violence Court Users Group – the Court hosts a bi-monthly meeting of court staff, legal services, and support services that regularly attend the Court. This meeting is used to raise any issues, and ensure that the Court and support services provide a coordinated and collaborative response to family violence.

Dandenong Court is one of the many Magistrates' Courts that are operating under considerable pressure. There has been a lot of work done with Victoria Police and other agencies to improve the services offered within the existing resource framework.



Dandenong Magistrates' Court – intervention order list waiting area



Court 7, Dandenong Magistrates' Court



Physical environment

'I remember the awful feeling of going to court for the first time. It is a horrible place to be when you're not used to it. You can feel very small and out of your depth. It's traumatic. And the system is terribly overloaded. There are good people trying to do an impossible job. But you go and sit in the Frankston Magistrates' Court and it's like a cattle yard'.⁷⁸Rosie Batty

The physical environment of courts shapes the experience and outcomes of court users and their confidence in the court system. Victims of family violence seeking the protection of the courts must be and feel safe within the court environment. This is far from reality at a number of court venues.

The MCV comprises a number heritage listed buildings, 41 per cent of Victorian courts are 50 years or older. It's not surprising then that many courts are not able to meet modern day demand. The emergence of problem solving courts, the need to integrate systems and co-locate services as well as increases in the volume and complexity of cases has dramatically altered the physical requirements of court buildings. Ultimately, changes in the ways that courts deliver services and changing community expectations of courts has outstripped corresponding investment in modernising existing court facilities and building new courts. Investment in new and existing court facilities has also not been commensurate with corresponding capital investment across other justice agencies.

Of particular concern are those courts located in or near Victoria's growth corridors, including in the south-west⁷⁹, north and south-east of Melbourne and in some regional centres. Existing courts in these areas are unable to cope with existing and future demand.

There are also long standing, serious maintenance concerns at a number of courts and these require urgent works to address the ongoing viability of these court facilities. As identified in the CSV submission, the poor overall condition of court buildings is the result of historically inadequate spending on maintenance. Further information on the state of Victoria's court buildings and the challenges this presents are outlined in CSV submission.

In October 2014, MCV received additional funding to expand specialist family violence services and improve safe waiting areas in courts. This included \$1.5 million of capital funding for minor works and arrangements to accommodate specialist court staff and \$2.75 million to create safe waiting areas in more courts. Whilst this is an important initiative that will deliver significant improvements in some courts, the assessment process confirmed that most courts are at full capacity and this constrains service delivery. Specifically, this assessment process identified:

- a chronic lack of office space, with cramped and poorly laid out registries
- a chronic lack of interview rooms and spaces that enable court staff to accommodate victims of family violence in a secure area
- unsuitable shared counters that limit privacy
- inadequate court room and building design with only one secure entry that does not provide alternate entry points to minimise risk of intimidation
- poorly designed reception areas and entry /exit points, which creates bottlenecks and long queues

The inadequate family violence waiting areas at many courts is specifically highlighted above in the 'experience at Dandenong Magistrates' Court'.

⁷⁸ www.thesaturdaypaper.com.au/opinion/topic/2015/02/07/rosie-batty-why-passion-must-lead-change

⁷⁹ The Victorian Government announced funding to assist with the development of the East Werribee Justice Precinct in Wyndham in April 2015.

There are opportunities to redevelop existing vacant facilities into a dedicated FVCD sites, such as the recently closed Moe Court in the Gippsland region. In addition to the FVCD, this building could accommodate support staff and agencies on site, which would ensure parties have early, easily attainable engagement with the services. With some redesign, it could provide secure waiting areas and allow for separate entry points.

For the CCV, there are a range of practical considerations regarding the capacity of their existing infrastructure to accommodate specialist services. The Protecting Victoria's Vulnerable Children Report (the Cummins Report) emphasised the need to decentralise the Family Division of the CCV response, a process which has commenced at two court locations. The need for decentralisation relates both to increasing demand on current infrastructure at the Melbourne Children's Court and the need for equity of access in regional areas and growth corridors.

Recent investment in a new CCV facility at Broadmeadows and a new multijurisdictional complex at Shepparton set the benchmark for modern functional court design. The new Broadmeadows Court will incorporate child and family friendly public spaces and other features including:

- a purpose designed separate waiting area for children in safe custody
- accommodation for practitioners including a shared break-out space
- flexible, multi-purpose spaces such as waiting areas, meeting rooms, interview rooms and separate children and adult courtyards.

Beyond the challenge of meeting increasing service and workload demand in existing court facilities, is the challenge of inadequate safety and security in many court buildings. This is especially acute in relation to family violence matters where the volume of these matters, coupled with the inherently volatile nature of these proceedings makes safety a critical concern in court buildings. Victims can be at real risk during when they attend court, the trauma and anxiety that accompanies the court process is heightened where victims know they will be in close proximity to the perpetrator and his supporters⁸⁰.

Most regional⁸¹ court venues have no security infrastructure, and at these locations courts rely on local police to provide an immediate response when incidents occur. Deakin University recently identified widespread concerns about safety in regional courts, with particular reference to waiting areas and lack of privacy in small towns.⁸²

Entry screening, supported by a roving security presence, has been shown to be effective in enhancing perceptions and experiences of safety. In a family violence context, the FVCD at Ballarat and Heidelberg locations are funded for additional security officers that provide practical support for victims of family violence including providing escorts for victims to and from the court building and diffusing confrontations between parties. Importantly, a security presence at court enables a swift response to incidents when they occur. Where protective orders are breached at court, security staff can and often do support the investigative and evidentiary requirements of police in enforcing orders.

Later in 2015, CSV will conduct a safety audit of all courts and provide advice to government about funds required to upgrade existing court facilities to address safety concerns. As part of the safety audit, CSV will also review security measures, systems and resources at existing court facilities and advise government about funding requirements to achieve satisfactory security requirements.

The CCV shares facilities with MCV in suburban and regional centres, which are limited in their ability to cater for the specific needs of children and young people. At the Melbourne Children's Court, security has been upgraded in recent years and further improvements have also been made in line with the recommendations of the Cummins Report. However, security remains an issue in circumstances where overcrowding, noise and the heightened emotion and stress implicit in Children's Court matters make the threat of violence a significant concern.

80 Victims Support Agency (2013) Information and Support Needs of Victims and Witnesses in the Magistrates' Court of Victoria: Melbourne.

81 The Geelong Magistrates' Court is currently the only regional court to operate fixed entry screening, which comprises X-ray machines and walk through metal detectors. This type of security detects the majority of restricted items being brought into court buildings.

82 George, A. & Harris, B. (2014) Landscapes of Violence: Women Surviving family violence in regional and rural Victoria, Geelong: Deakin University, p4. Retrieved from http://www.deakin.edu.au/__data/assets/pdf_file/0003/287040/Landscapes-of-Violence-online-pdf-version.pdf

Recommendation 11

Investment in new and existing Court facilities to address current and future needs.

Recommendation 12

Investment in security and safety measures to provide consistent and equitable access to safety across all court venues.

Recommendation 13

Courts be provided with additional funding to ensure all court facilities comply with accessibility standards, including hearing loops, wheelchair access, seating arrangements and accessibility in courtrooms.



Sharing information and technology

Information sharing

An effective, integrated family violence system must be built around timely, appropriate information and data sharing across agencies, if decision making is to be properly informed and evidence based. Specifically, in relation to family violence, if the inherent risks associated with these matters is to be properly assessed and managed then it is critical that there be effective communication across involved agencies, including courts.

Importantly, effective information sharing better supports victims by reducing the need for them to re-tell their story numerous times, the trauma of which may see them disengage or not engage at all with the system.

When considering the making of an intervention order to effectively manage risk, it is imperative that courts have access to accurate, current information concerning families. This might include the existence of orders in other jurisdictions such family law orders or child protection orders. Similarly, courts need to be aware of the existence of any relevant court orders or risk factors when assessing whether accused persons should be granted bail.

Many organisations may need to know about the existence of intervention orders, child protection orders or sentencing orders, in order to ensure compliance with those orders, or to assist in the decisions they make about providing supports, services and protections for victims of family violence, in particular women and children. Legislation should provide a framework to enable the sharing of information, and ideally, systems should be development to enable this to happen.

The MCV and CCV are supportive of proposals to develop databases to facilitate information sharing, including:

- the proposal for a national domestic violence order information sharing system
- Victoria Legal Aid's proposal to establish a single database of family violence, child protection and family law orders to facilitate information sharing across each of the relevant courts.

Information sharing also affects the courts' ability to ensure those affected by family violence and perpetrators of family violence are linked into appropriate supports. In recognition of the importance of service integration and information sharing, the CCV is looking to introduce a new role to ensure that the Court is informed about, and has pathways to link with available community services and programs for families and children in the Court's Family Division. It is hoped that harnessing the capacity of the broader service sector will go some way to ensuring magistrates have adequate referral pathways to assist their decision making in relation to vulnerable children and families.

Recommendation 14

Investment in a new case management system for the Magistrates' and Children's Courts to support the delivery of modern court services, enable fast and accurate exchange of information between agencies and replace resource intensive manual processing.

Technology

The capacity to share appropriate information quickly and securely across courts, police, and family violence legal and support services is a critical prerequisite for any systemic reform aimed at improving the efficiency and responsiveness of the court's approach to meeting the needs of families experiencing family violence.

Currently, even if the requisite legislative frameworks were in place to facilitate comprehensive information and data sharing across jurisdictions and agencies, the case management systems of MCV and CCV do not have adequate functionality to support this aim. This presents as a significant barrier to creating a more integrated justice response to family violence. For the courts, this significantly impacts upon the capacity to deploy and manage resources for

service delivery. Case management functions are largely reliant on resource intensive manual handling of cases which has a significant adverse impact upon the accuracy and timely availability of critical case information and data.

Courtlink is the court record and case management system for MCV, CCV and VOCAT. Courtlink was developed and deployed in the 1980's and currently handles in excess of 300,000 cases and more than one million transactions each year. Courtlink is described as a "legacy system" for good reason. It is out-dated, inadequate and has not evolved to reflect the increased complexity and breadth of the courts' caseload nor the massive increase in the volume of cases each court is now required to manage. This creates significant operational and organisational risk and heavily impacts upon the courts ability to develop and deliver a modern, integrated service delivery model. There are real risks to the stability of Courtlink.

The Platypus system (LEX) is a system which comprises the CCV's Family Division case management system for child protection matters, as well as providing the client databases for criminal and family violence support services in the MCV.

The major barriers created by current technology infrastructure and functionality include:

- Lack of visibility for cases across all divisions of the courts. For example, a name search of the criminal database of Courtlink will return results only for that division. There is no ability to see related cases which may be listed in the Children's Court, or to see related intervention order matters or VOCAT applications without undertaking a separate searches in each of those separate databases. Courtlink does not have functionality to enable any interface with Platypus systems.
- The difficulty of updating and upgrading these systems. Upgrades and program changes to reflect legislative change and to enhance the courts' capacity to efficiently manage caseload are complex, expensive and time-consuming .
- Increasingly, as these system age, reliability and performance are being compromised as they struggle to cope with the growth in caseload, users, and new changes, which impacts the courts' daily business.
- While data links between Courtlink and other justice systems do exist, these links are unsophisticated and do not provide the full range of the information that needs to be, and should be, transmitted between agencies.
- The limitations of these system has necessitated many manual "work-arounds" to fill gaps in system capacity to meet modern business requirements. Invariably, these measures are comparatively inefficient and they increase the overall cost of administering not just family violence cases but all court cases.
- The modern demand for data to support the operational and planning requirements of the Court to respond to the justice needs of the community cannot be adequately met.

These constraints serve to compound resourcing issues for courts, as staff are engaged in a high volume of manual processing tasks to give effect to court orders, many of which should and could be automated within an appropriate technology platform. One example of this is the current requirement that courts fax intervention orders to police stations for service.

Although the courts and police are committed to exploring improved technology to support their operations, efforts have been hindered by existing case management systems. Courtlink is unable to produce electronic versions of intervention orders, and the court has been unable to secure support from the Department of Justice and Regulation to implement technology which would convert facsimiled orders into electronic documents.

In the short term, MCV and CCV are undertaking work to stabilise Courtlink, and create basic functionality that will enable e-services such as electronic document lodgement and increased automation and digitisation of current paper based and manual processing functions.

In the longer term, MCV and CCV will pursue partnerships to secure investment in the budget process for a case management system that will fundamentally re-shape the way in which IT can support a modern court and client service delivery model, enable fast and accurate information sharing between jurisdictions and justice agencies and to unlock human capital from the delivery of manual administrative tasks to high value client based services and support. Government investment will be critical to achieving outcomes in this area.

Simultaneously, a review of the legislative framework which governs the courts operations will be necessary to ensure that electronic communication is supportable. Currently, there are legislative constraints on the court's ability to send and receive documents in formats other than in hard copy or facsimile. There is also lack of clarity about the legality of court documents, such as a warrants, which are endorsed with a digital signature. This continues to constrain the operations of the court's after hours service which is an integral part of the courts response to family violence and child protection.

Broader available technologies, such as wi-fi across all court venues would also enhance the court's ability to harness innovative technology to provide improved, more streamlined and consistent services while also providing court users with improved access to online resources. As previously discussed, using modern communication techniques, including in the online environment; is an essential element in effectively delivering, in a timely manner, consistent legal and practical information to and addressing the safety risks of families involved in family violence proceedings in a high demand environment particularly for CALD and vulnerable court users. The additional pressure of existing and future demand makes this an urgent priority.

Improved technology will also improve the provision of timely, relevant and accurate information to the court.

The MCV acknowledges government funding of \$14m to expand video conferencing capability in 148 court rooms across the state. This will give the courts greater ability to separate victims from perpetrators, and trial different modes of audio visual technology, especially in regional areas.

Recommendation 15

Develop systems that enable appropriate information to be shared across courts, family violence and justice agencies to manage risk and enable informed decision making, incorporating:

- a single database for family violence, child protection and family law orders that can be accessed by each of the relevant courts
- access to reports used in other court jurisdictions

Recommendation 16

Resources to enable courts to move from inefficient and outdated modes of communication to contemporary communication platforms, including the introduction of Wi-Fi in courts



Professional development and training

Training, professional development and support for staff

Family violence related work is challenging both in its legal complexity and in terms of the content itself. In recognition of the complexity of responding to family violence matters in a court setting, specialist approaches are underpinned by comprehensive, ongoing and multi-disciplinary training and professional development. All training should be regular, ongoing and systematic and should include magistrates, court staff, legal representatives, police and non-legal support workers.

The MCV has identified professional development as a key component of its response to family violence. Magistrates⁸³ and staff across all areas of the court have participated in specialist training and regular professional development. The MCV together with the Judicial College of Victoria (JCV) is also developing and providing an ongoing best practice curriculum of family violence education to all magistrates across Victoria.⁸⁴ MCV and CCV generally endorse the submission of the JCV.

Across both courts, family violence is a core feature of many training programs for staff, including the induction program for all new court staff and the Certificate in Court Services completed by all Trainee Court Registrars.

As previously identified, families with family violence related matters may be engaging with multiple jurisdictions and agencies at the same time. This is particular so in relation to the work of magistrates and court staff. To respond to the complexity of family violence proceedings; magistrates, court staff and legal practitioners must have access to comprehensive and accessible cross jurisdictional specialist family violence professional development. A significant barrier has been that individual jurisdictions have been approached in silos. The impact is felt in different ways. For instance, in relation to magistrates and court staff, there are no dedicated federal resources to support the exercise of the family law jurisdiction in the state MCV and CCV. All professional development, including the creation of dedicated written materials is essentially produced from within existing resources. The court also understands that the JCV is not funded to provide professional development for the federal Family Law jurisdiction.⁸⁵ Another example is in relation to VLA's specialist panels⁸⁶, whereby legal practitioners are trained in a specific area. This can lead to families being supported by a number of different legal practitioners across the various jurisdictions. The Courts see merit in collapsing these panels and providing legal practitioners that can work across multiple jurisdictions. This would allow for one legal practitioner to support one family across all jurisdictions and be more consistent with a unified court approach.

In addition to professional development and training, the impact of family violence related work on the workforce needs to be considered – in particular in the context of specialisation. For magistrates, legal practitioners and frontline court staff who work with family violence clients and matters on a regular basis, mechanisms to prevent and manage the risk of vicarious trauma through regular counselling and de-briefing should be considered. Many practitioners in other professions (such as social work and psychology) receive regular clinical supervision and de-briefing to assist with managing the impact of the work. While court staff do have access to the Employee Assistance Program (EAP) and critical incident de-briefing, consideration needs to be given to the cumulative impact of family violence on those who work in this area and how to manage this on an ongoing basis. The courts note that CSV has commenced a vicarious trauma project, involving representations from across all court jurisdictions and supports its plan to outline to government the additional support required to address the impact of family violence on judicial officers and court staff.

⁸³ FVCD Magistrates must engage in regular training and professional development to maintain their gazettal.

⁸⁴ The JCV's submission provides a more comprehensive analysis of a program of education for judicial officers in family violence.

⁸⁵ The JCV is hosting on JOIN the recently developed online 'Family Law Bench Book for Magistrates' which was produced by MCV

⁸⁶ The VLA has six specialist panels pursuant to section 29A of the Legal Aid Act 1978, including Child Protection Panel, Family Law Panel, Family Violence Panel, Independent Children's Lawyer Panel, Indictable Crime Panel including Youth Crime Subset and Summary Crime Panel, including Youth Crime Subset.

Recommendation 17

The Magistrates' and Children's Courts endorse the recommendations of the Judicial College of Victoria to support the professional development of its judicial officers, in relation to:

- a. a contemporary family violence professional development program for judicial officers
- b. a revised family violence bench book
- c. extension of the Judicial Research Hub

Recommendation 18

Funding to support the continued development of a comprehensive family violence learning and development package, targeted to match the varied roles and functions of court registry and support staff.

Recommendation 19

Specific funding to support the professional development of state judicial officers, court registry and support staff in relation to family law, particularly in the context of family violence and child protection

Recommendation 20

Statewide access to counselling, de-briefing and support to ensure the wellbeing of judicial officers and court staff



Legislation

To deliver best practice approaches to family violence, the Courts need to be supported by effective legislative frameworks. There are a number of legislative considerations related to how the courts deals with family violence related matters.

Various legislative changes

The courts support the development of a legislative framework that enables meaningful and efficient information sharing across the family violence system.

Such a framework should also support sharing of information via modern and efficient technology solutions.

Recommendation 21

Consider legislative reform to support and clarify how information can be shared across agencies and courts

Recommendation 22

Consider legislative reform to –

- a. allow documents to be signed electronically, such as warrants; and
- b. allow documents to be transmitted electronically, where legislation restricts such communication to facsimile transmission.

Recommendation 23

Consider whether the statutory scheme for special hearings in criminal trial proceedings where the complainant is a child or cognitively impaired should be extended to summary contested hearings in the Magistrates' Court and Children's Court.

Recommendation 24

Consider the operation of appeals from family violence related summary criminal and civil intervention proceedings in the Magistrates' Court and Children's Court to the County Court of Victoria.

Victims of Crime Assistance Act 1996

VOCAT is established to support victims to recover from violent crimes, providing assistance and support to meet the costs associated with their recovery. A number of the legislative requirements of the *Victims of Crime Assistance (VOCA) Act 1996* (the Act) could be amended to better recognise and support family violence victims applying for assistance from the VOCAT.

The Act defines a primary victim as someone who is injured or who dies as a direct result of a violent crime committed against him or her. Eligibility for financial assistance is therefore tied to whether or not the Tribunal is satisfied on the balance of probabilities that an offence of the relevant kind has occurred. However, the definition of family violence under the FVPA, giving rise to the ability to make an intervention order, encompasses a broad range of behaviours, not all of which constitute criminal offences.

In addition to setting out threshold criteria that must be met before eligibility for assistance arises, sections 52, 53 and 54 of the Act allow Tribunal Members discretion in balancing up competing policy factors (described further below) when deciding whether to make, refuse to make, or reduce an award of assistance.

Section 4 of the Act will often apply in family violence related applications so that a series of criminal acts against the victim will be classified as “related criminal acts”. As a consequence, only one application for assistance may be made, rather than several applications, with implications for the amount of financial assistance that is available to be awarded.

Section 34 of the Act allows the Tribunal to notify any person “whom the Tribunal considers to have a legitimate interest in the matter” of the victim’s application and reflects the obligation to accord procedural fairness. In practice, the most common “interested person” will be the alleged offender. Where the Tribunal is considering notifying the alleged offender, the applicant is given an opportunity to object to the notification, and the Tribunal will consider the victim’s reasons for objecting before making a final decision on the issue. Safety concerns are a common reason why a victim objects to the offender being made aware of the application.

VOCAT is aware that recommendation 29-5 of the ALRC Report into Family Violence recommended that state and territory victims compensation legislation:

- a. should define an ‘act of violence’ to include family violence and ensure
- b. that evidence of a pattern of family violence may be considered;
- c. should not provide that acts are ‘related’ merely because they are committed by the same offender, and should provide that victims have the opportunity to object if claims are to be treated as related; and
- d. should ensure that victims’ compensation claims are not excluded on the basis that the offender might benefit from the claim.

These changes would mean that more victims of family violence would be eligible for financial assistance under the Act, and in a broader range of circumstances.

However, the adoption of some of these measures, particularly widening the definition of ‘act of violence’, would mark a departure from the requirement that a criminal offence must be established before eligibility for assistance arises. Not only would there be more applications to the Tribunal, but applications falling under the expanded category may be more complex to determine, and result in unintended consequences. For example, individual Tribunal Members may feel obliged to notify an alleged offender about the application in a greater proportion of cases (because of the need to accord procedural fairness), even though a victim may have safety concerns about that notification.

An alternative way to address the issues of concern to the ALRC within the structure of the current Act would be amendments to ensure that decision makers take into account family violence issues where relevant.

Sections 52, 53 and 54 oblige the Tribunal to consider:

- whether the applicant reported the act of violence to police within a reasonable time;
- whether the applicant provided reasonable assistance to investigating authorities;
- the character, behaviour and attitude of the applicant at any time;
- whether the perpetrator of the alleged act of violence will benefit directly or indirectly from an award of assistance.

Depending on how the Tribunal member weighs up these considerations, an application may be refused outright, or an award of assistance reduced.

The requirements of these three sections are often relevant in applications arising out of abusive relationships. This is because of the power dynamics at play in family violence, and the fact that there may be numerous reconciliations before the victim terminates the relationship.

There are many examples of how these sections may become relevant. A victim may call 000 for police to attend at the time of an incident, but then be unwilling or unable to go on to make a formal police statement about the crime. She may make a formal statement, but later withdraw it. She may not support the police in their application for a full intervention order, with the result that only a “basic” order can be made to promote her safety. In cases where she has cooperated fully with investigating authorities and the perpetrator has been found guilty, she may nevertheless have reconciled with the offender; will he now benefit from an award?

Section 52 of the Act provides that the Tribunal must refuse to make an award of assistance if the act of violence was not reported to the police within a reasonable time, or the applicant failed to provide reasonable assistance to investigating or prosecuting authorities, unless it finds that “special circumstances” brought about that result. (“Special circumstances” is not defined. The case of *Nichol v VOCAT* [2000] VCAT 840 held that this referred to something out of the ordinary.)

Section 53 provides guidance as to what may constitute a “reasonable time” for reporting the act of violence, while also allowing the Tribunal to have regard to any matters it considers relevant. The factors set out are:

- a. the age of the victim at the time of the offence;
- b. whether the victim is intellectually disabled or mentally ill;
- c. whether the alleged offender was in a position of power, influence or trust in relation to the victim;
- d. whether the alleged offender threatened or intimidated the victim;
- e. the nature of the injury alleged to have been suffered by the victim

Section 54 (a) requires the Tribunal to take into account the character, behaviour (including any criminal history) or attitude of the applicant at any time before, during or after commission of the act of violence when determining whether or not to make an award, or the amount of assistance to award. Under section 54(e), another relevant factor is whether the alleged perpetrator will benefit directly or indirectly from the award.

There are good public policy reasons why the Act requires Tribunal Members to consider the factors set out in sections 52, 53 and 54, reflecting the reality that VOCAT expends public funds in the making of awards. The Act allows Tribunal Members to weigh up the competing public policy concerns, and exercise discretion to arrive at a just outcome in the individual circumstances of each application.

Consideration should be given to adding in reference to family violence as a relevant factor to be weighed in applications where sections 52, 53 and 54 are relevant. This would clearly direct Tribunal members to the importance of considering any relevant family violence matters in the exercise of their discretion.

Section 4(1) deems multiple criminal acts against the same person to be related criminal acts if they:

- occurred at approximately the same time; or
- occurred over a period of time and were committed by the same person or group of persons; or
- share some other common factor

Unless the Tribunal considers that, having regard to the particular circumstances of those acts, they ought not to be treated as related criminal acts. There is therefore some ability for the Tribunal to depart from that categorisation if appropriate in a particular case.

Related criminal acts are deemed, under section 4(4), to constitute a single act of violence. This means that the victim makes a single application for assistance and has a one-off eligibility for SFA and expenses to assist recovery, rather than being able, or required, to make multiple applications for each individual criminal act.

It also means that a victim of long-term, chronic family violence (a series of related acts) is placed on an equivalent footing to someone who has been injured in a one-off assault, for example in a brawl between strangers, when it comes to the amount of available SFA.

Section 8A of the Act prescribes the maximum amounts of SFA that can be awarded to an eligible victim, tied to the seriousness of the offending involved. If additional criteria specified in the Victims of Crime Assistance (Special Financial Assistance) Regulations 2011 (the Regulations) are met, the Tribunal may increase the amount of SFA awarded for an act of violence.

The Regulations do allow for higher amounts of SFA to be awarded for related acts of violence. However, the qualifications and extra requirements that must be satisfied to demonstrate eligibility for uplift are complex, and will most often only increase the maximum award amount from \$650 to \$1,300 (category D to category C)

It is arguable that this does not adequately recognise the seriousness of offending in a family violence context, and the damaging effects on victims of such violence, as well as on society more broadly.

The purpose of SFA, set out in section 1 of the Act, is as a symbolic expression by the State of the community's sympathy and condolence for, and recognition of, significant adverse effects experienced or suffered by them as victims of crime. One way to symbolically recognise the seriousness of violence arising out of an abusive relationship would be to increase eligibility for an award of SFA to within the highest category, being a maximum award of \$10,000.

Consideration should be given to amending order 7 of the Regulations to include related acts in the context of family violence as a circumstance in which the category A maximum SFA amount is available for category B, C or D acts of violence. This would allow the Tribunal to award up to \$10,000 SFA to recognise the impact of family violence. (This recommendation assumes that the 10,000 SFA "ceiling" for SFA under the Act is unchanged).

Some VOCAT applications proceed to a hearing, and will involve a victim of family violence having to testify and be cross-examined by the alleged offender. Yet the specific procedural and evidentiary provisions that protect sexual assault complainants and protected witnesses in criminal proceedings and intervention order matters do not explicitly extend to VOCAT hearings. Consideration should be given to extending the operation of such provisions to the VOCA Act to ensure, for example, that victims cannot be personally cross-examined by the alleged offender, that questioning is appropriately constrained, and that they have access to remote witness facilities and other alternative arrangements for giving evidence as a matter of right.

Recommendation 25

Consider amending the *Victims of Crime Assistance Act 1996*, and related regulations, to:

- a. introduce procedural and evidentiary protections for VOCAT proceedings involving family violence and sexual assault to replicate the special arrangements that apply to sexual assault complainants and protected witnesses under the *Criminal Procedure Act 2009* and the *Family Violence Protection Act 2008*.
- b. list family violence as a relevant factor in the exercise of the discretions under sections 52 and 54
- c. ensure section 34 (alleged offender notification) operates appropriately having regard to the specific safety risks which commonly arise in applications involving family violence.
- d. include "related acts" occurring in the context of family violence as a circumstance in which the category A Special Financial Assistance award amount (currently \$10,000) is available for category B, C or D acts of violence pursuant to Rule 7 of the Victims of Crime Assistance (Special Financial Assistance) Regulations 2011

VOCAT case study

Ella is a 43 year old Koori woman. She had been in a relationship with Chris for over 18 years and they have two children together. Ella started experiencing family violence in the last five years of their relationship. Things began to turn bad when Chris became involved with some undesirable associates and made some poor business decisions. The family violence commenced around this time when Chris started drinking heavily and taking drugs. To start with, Chris would become angry, yelling abuse and smashing possessions in the house, as well as putting holes in the walls.

As time went on, the abuse was directed towards Ella. On numerous occasions, Chris choked Ella and dragged her around by her hair. Many of these incidents happened in front of the children. Ella ended the relationship and Chris left the family home to stay with his brother. Chris would continue to come over to the house and smash windows and damage items in the house. This would often occur when the children were at home. The children would let Chris into the house.

Police applied for an intervention order on Ella's behalf, which prevented Chris from contacting her and the children (unless supervised), damaging property and attending the family home. Police identified that Ella was in a high risk situation and linked her in with a family violence outreach worker, from a local family violence service.

Despite the order, Chris continued to contact Ella relentlessly. She would receive up to 50 text messages a day, threatening her with rape and death. He would also make threats to hurt the children. Chris continued to break into the house. Ella reported many of these incidents to police, and Chris was charged with criminal offences, however the behaviour did not stop. Chris continued to breach the order and on various occasions came to the house and stared at Ella through the windows. He threw bricks through the window and tried to run her off the road.

Chris would threaten to commit suicide, and tell Ella it would be her fault. He continually told her that it was her fault that their family was being torn apart. Chris would tell the children that Ella was seeing other men, and called her a whore.

Chris's family also blamed Ella for reporting Chris to the police and for breaking up the family. They said she should have done more to help him with his drug problems. Ella's family were part of the stolen generation and she felt pressure from the community and was worried about what would happen to Chris if he were placed in custody.

The children, who loved their father, were confused and upset by his behaviour and the effect it was having on Ella. They became anxious and at times acted out. It became more difficult for Ella to manage their behaviour. Ella also started to get worrying reports from the school about their behaviour.

As a result of the injuries and property damage caused by Chris, Ella has had to take a lot of time off work to attend medical appointments, give police statements, attend appointments with lawyers and attend court. She was worried about keeping her job because she has had a lot of time off and she knows she is not performing as well as she can.

As well as seeking parenting orders under the Family Law Act, Ella started proceedings for property orders which included seeking a share of the house which they had bought when they were first married. It was a very difficult process because Chris vigorously contested the application. Ella has also ended up with a number of outstanding debts in her name, which arose as a result of debts incurred by Chris but for which she had joint liability. These debts gave Ella a bad credit rating. The mounting debts and legal costs meant that by the time the family law proceedings finished, there was virtually nothing left. The house was sold and Ella and the children are in rental accommodation.

Police charged Chris with numerous criminal charges, including multiple counts of breaching the intervention order, making threats to kill, assault and property damage. He was sentenced to 18 months imprisonment. However, Chris continued to harass Ella, by writing letters to her employer from prison.

With the assistance of a local legal service, Ella made an application to the Victims of Crime Assistance Tribunal (VOCAT) for assistance with counselling expenses, new locks and security screens, loss of earnings and general financial assistance. The VOCAT registrar made an interim award of assistance, which allowed Ella to access counselling with a psychologist, while further information was gathered to support a final decision on her application.

Ella later attended a hearing where she was able to discuss her experiences and the impact of the family violence upon her and her family with the VOCAT Tribunal Member (magistrate) in the Koori VOCAT list.

While the physical abuse was terrifying, Ella explained that it was the physiological abuse that caused her the most stress. She was diagnosed with post-traumatic stress disorder.

It was important for Ella that the Tribunal Member acknowledged what she had been through and the final award of assistance was tailored to help her and her family get their lives back together. The Tribunal member also explored with Ella what culturally appropriate future assistance she needed for herself and the children and she was given additional information about the Magistrates' Court Koori Family Violence and Victims Support Program which could provide her with some additional support.

Ella was awarded special financial assistance, financial assistance for security expenses, additional counselling, loss of earnings and the cost of a holiday to assist her and the children in their recovery. As discussed with the Tribunal, Ella also indicated that she wanted to make an application for an award variation to fund further practical assistance to assist in her and the children's future recovery.

Ella's situation highlighted what can best be described as a modest award for special financial assistance. Notwithstanding the years of abuse and trauma she had experienced, Ella was awarded special financial assistance of \$1300 being the maximum amount available in the relevant category, C pursuant to the VOCA Act and Regulations.

Sentencing Act 1991

Whilst magistrates currently have a range of sentencing options under the *Sentencing Act 1991* including imprisonment and a Community Corrections Order (CCO), MCV & CCV believe there are opportunities to improve sentencing options and practice in family violence cases.

Recommendation 26

The Sentencing Advisory Council to give consideration to developing a broader suite of appropriate sentencing tools for family violence related criminal matters that ensure:

- a. strict monitoring of compliance with programs
- b. immediate, consistent and firm consequences for non-compliance with programs
- c. immediate, consistent and firm consequences for further offending
- d. individual treatment plans that deal with reducing risk factors such as drug and alcohol abuse
- e. monitored participation in comprehensive Men's and Youth Behaviour Change Programs
- f. ongoing support for victims

Bail Act 1977

One challenge for the Courts in terms of current legislation is that there is no power to issue a warrant to remand a respondent in custody who has been arrested under the application and warrant process. Although the FVPA states that the *Bail Act 1977* applies, section 79 of the *Magistrates' Court Act 1989* only provides power to issue a remand warrant when a person has been charged with an offence or is a witness, or as authorised by any other Act. While amendments to the *Bail Act* in 2013 now make it an offence to contravene a condition of bail, this only represents a partial solution to this issue. The *Bail Act*, on its face gives power which doesn't exist. A risk exists that a respondent may be remanded which could well constitute a false imprisonment. It also weakens the protection of the affected family member in circumstances where applications and warrants are contemplated to be used in the most serious of family violence circumstances.

In considering the Courts' earlier proposal to expand the application of bail for respondents to attend a relevant court support service (section 3.1.3), legislative amendments would be required to the FVPA.

Recommendation 27

The Magistrates' Court to be given power to issue a warrant to remand a respondent to a family violence intervention order in custody who has been arrested under the application and warrant process.

Family Law Act 1975

Section 68R of the *Family Law Act 1975* deals with the inconsistency between intervention orders made under the FVPA and Family Law Act orders that provide, require or authorise a person to spend time with a child. Section 68R comes into effect when an applicant seeks a family violence intervention order after a parenting order has been made and seeks conditions in the family violence intervention order that are inconsistent with the existing parenting order. As conditions in a parenting order made under the Family Law Act override any inconsistent conditions in a family violence intervention order, a family violence intervention order may not provide effective protection applicants. Section 68R provides a mechanism for the MCV to amend the parenting order to remove the inconsistency and ensure that the applicant is protected from family violence.⁸⁷

Section 68R operates differently depending on whether a parenting order is amended by the MCV during proceedings for an interim or final family violence intervention order. When a parenting order is revived, varied or suspended under s68R in proceedings to make or vary an interim family violence protection order, s68T provides that a parenting order only has effect for the period of the interim family violence intervention order or 21 days from the date of the order, whichever is earlier.⁸⁸ The MCV does not consider the 21-day period to be practical and suggests legislative amendments to give broader discretion to magistrates in terms of appropriate timeframes. Legislative amendments should also be considered under the FVPA to facilitate the proposed amendments under section 68R.

As noted, the CCV supports the recommendation of the ALRC that the Family Law Act be amended to clarify its jurisdiction to make orders under s69J.

⁸⁷ Australian Law Reform Commission (2010) *ibid*.

⁸⁸ Australian Law Reform Commission (2010), *ibid*.

Recommendation 28

Amend the *Family Law Act 1975* to:

- a. clarify the capacity of the Children's Court to exercise federal family law jurisdiction as a court of summary jurisdiction for the purposes of s69J of the Act, and associated amendments to the *Family Violence Protection Act 2008* to facilitate this
- b. provide the Magistrates' Court of Victoria and Children's Court of Victoria with increased access to supports and information available, including access to independent children's lawyers and relevant family law reports (s11F and s62G)
- c. allow magistrates broader discretion in terms of the time a family law order is suspended or varied where it is considered appropriate to do so under section 68T and make any necessary consequential amendments to the *Family Violence Protection Act 2008* as necessary

Family Violence Protection Act 2008

Under section 133 of the FVPA, the Secretary of the Department of Justice and Regulation (DJR) must provide authorisation to approve the engagement of RSWs and counselling providers. The transfer of this power did not occur when the Court Services Victoria was established, which means that the MCV is still required to seek approval from the Secretary, DJR.

The MCV does not believe the provisions are necessary, as they currently make the short term backfilling of RSW roles difficult, as these approvals are required. It is also inconsistent with the newly independent courts governance arrangements.

Recommendation 29

Repeal section 133, which requires the Secretary, Department of Justice and Regulation to approve respondent support workers and counselling providers.

Recommendation 30

Amend the *Family Violence Protection Act 2008* to specifically allow for respondents to be bailed to a relevant court support service, such as the Court Integrated Services Program.

Children Youth and Families Act 2005

The CCV's criminal division includes all sexual offences, including rape, committed by children and young people between the ages of ten and seventeen. A significant proportion of these sex offences take place in a family violence context. The overwhelming majority of victims are also children and adolescents and many are the younger family members of the accused. The CCV has developed specialist Sex Offence Lists (SOL). This development took place in 2 parts, firstly as an adjunct to the development of the country SOLs in the MCV and secondly with the development of the SOL at the Melbourne venue of the CCV.

The country venues of the Children's Court are all co-located within the multijurisdictional country venues of the MCV. In the context of the larger sexual assault reform strategy, the opportunity was there to undertake the contemporaneous expansion of 'best practice' including specialisation to the CCV at country venues when the MCV country SOLs were introduced. A specialist SOL was later established at the Melbourne venue of the CCV in February 2009. Unlike the partial funding of the SOL in the MCV, this list was not funded despite the Children's Court's extensive jurisdiction in this area.

The aims of the MCV SOL were based on two convictions. First, that no matter what legislative reforms were introduced, it would continue to be an ordeal for young children to have to re-live their experience of sexual abuse in a court room. Second that all available research pointed to the efficacy of adolescent sex offender treatment.

A deliberate effort was made to reduce the number of children, especially the very young, giving evidence. Related to this was the aim, except in cases of very serious offending, to direct offenders into appropriate sex offender treatment or education at the earliest stage.

Like the MCV, the CCV SOL should also have a statutory basis. The *Children Youth and Families Act 2005* should replicate section 4R of *Magistrates Court Act 1989*

It is an anomaly that children and cognitively impaired complainants in the indictable stream of the criminal division are protected from having to repeat their evidence upon an appeal, while those in the summary stream are not. Reference is made once again to the fact that charges of sexual penetration and rape are heard in the Children's Court. There is an attrition rate as to complainant's participation in the criminal justice system when they are forced to give evidence upon a County Court appeal against conviction. It is not uncommon for complainants to be both children and cognitively impaired. The CCV recommends that consideration be given to the special hearing process being extended to child and cognitively impaired complainants who give their evidence in the summary contested hearings.

Melbourne Children's Court Sexual Abuse Management List ('d' list)

The Family Division of the CCV also deals with sexual abuse allegations in child protection applications where there is an allegation of harm, or the risk of harm, from sexual abuse. These are now managed in the Family Division's sexual abuse management list (the 'd' list). The risk of harm is generally, though not always, from a family member. This list operates in some ways like the Family Court's Magellan list with one significant difference: the Children's Court is required to make findings of fact as to whether the allegation of sexual abuse has been made out. Child protection applications with a sexual abuse allegation have traditionally generated a great deal of conflict between the parties and the proceedings have been subject to "case drift".

This list is tightly case managed so that the proceedings are dealt with in a timely manner. The 'd' list was auspiced by a consultative committee made up of magistrates, DHHS, Australian Institute of Family Studies, Royal Children's Hospital Gatehouse, Children's Protection Society, Victorian Legal Aid and others. After a successful pilot which was the subject of a favourable independent evaluation by Monash University, the 'd' list is now an ongoing specialist list⁸⁹. The 'd' list is to be expanded to the Moorabbin Children's Court and the new Broadmeadows Children's Court. This list has not been established in country venues of the Children's Court.

Recommendation 31

Consider amending the *Children Youth and Families Act 2005*

- a. to provide a statutory basis for sexual offences lists in both the criminal and family divisions of the Children's Court
- b. to provide a statutory basis for diversion
- c. enable Therapeutic Treatment Orders to be made with respect to young people engaging in sexually abusive behaviours aged 15 to 17

and that funding be provided to support the operation of these lists and for diversion across Victoria including to support the process of diversion into treatment for low level offences by children and young people engaging in sexually abusive behaviours.



Research, monitoring and evaluation

In order to ensure that Victoria's approach to family violence remains consistent with best practice, there should be mechanisms to ensure that research and evaluation underpins the policies and practices of the Court. Where further research and evaluation is needed, this should be undertaken as a matter of priority. Where research and evaluation findings already exist, these should inform any reforms, legislative changes, procedures and practices.

Australia's National Research Organisation for Women's Safety (ANROWS) is well positioned to drive the research agenda for the response to family violence, with appropriate input from the Courts. There are a range of opportunities for further research that should be considered, such as research into those people coming before the Courts for family violence related matters.

MBCP's are the primary intervention for men who use family violence in Victoria. Evidence regarding the effectiveness of programs for men who use violence is mixed and has largely been focused on those programs operating in United States, which are often incorporated as part of a criminal justice response. The recent UK evaluation of Project Mirabel found that domestic violence perpetrator programs achieved reductions in the level and severity of family violence experienced by women and children, as well as increases to their sense of safety.⁹⁰ The Courts support further research in relation to the effectiveness of MBCP in Victoria. One of the evaluation challenges in Victoria has been reliable data. This challenge needs to be addressed to allow for future research and evaluation.

The Courts welcome further research in relation to the effectiveness of court-directed MBCP's to establish evidence in relation to which cohorts these programs are most effective. This could assist with prioritising access to programs for those men who are likely to benefit most from these interventions, and tailoring new programs and interventions in the future.

The current NTV Minimum Standards, are outdated⁹¹ and do not specifically contemplate court-ordered attendance at MBCPs. For example, minimum standard 14 requires men to "acknowledge that they have a problem or at least demonstrate a willingness to consider the possibility of acknowledging their violent behaviour."⁹² However, the court routinely orders men to attend MBCP's following the making of a family violence intervention order by consent and without admissions.

For existing court family violence programs to continue to evolve courts will need to be resourced to provide policy expertise for analysis, development and implementation of robust family violence responses and initiatives.

Recommendation 32

Australia's National Research Organisation for Women's Safety to give consideration to court based research in relation to family violence and seek input from courts to identify key areas of focus.

Recommendation 33

Further research to be conducted on:

- a. the effectiveness of available perpetrator interventions
- b. how interventions are effectively targeted
- c. perpetrator interventions beyond men's behaviour change programs

⁹⁰ Kelly, L & Westmarland, N (2015) Domestic Violence Perpetrator Programmes: Steps Towards Change – Project Mirabel Final Report, Durham University and London Metropolitan University.

⁹¹ The minimum standards were developed ten years ago.

⁹² No To Violence (2005) Men's Behaviour Change Group Work: Minimum Standards and Quality Practice: Summary Document, Melbourne, p11.

Recommendation 34

Update the No To Violence minimum standards to reflect current best practice and introduce an accreditation process.

Recommendation 35

Courts have funded capacity to identify, develop, implement and evaluate family violence best practice court initiatives to ensure continual improvement.

Sexual assault reforms

As discussed earlier, in parallel with the implementation of Victoria's integrated response to family violence, reforms were made to practice and procedure in relation to sexual assault proceedings. From 2006, the Victorian government funded and implemented nearly all of the recommendations made in the 2004 Victorian Law Reform Commission's Report, *Sexual Offences: Law and Procedure*.

What has been evident is that sexual and non-sexual related family violence reforms have developed in silos, despite the characteristics they share.

There has been a significant move to specialisation in the management of sex offences. As part of the implementation of the Law Reform Commission's recommendations, Section 4R was introduced into the *Magistrates' Court Act 1989*. This section established the Sexual Offences List (SOL)⁹³. However, the main thrust of the 2006 Sexual Assault Reform Strategy (SARS) was in the higher courts, particularly affecting County Court sex offence trials; with some attention given to the committal processes in the Magistrates' Court as the preliminary process before trial in the higher courts. Little attention was given to the summary disposition of sex offences in either the Magistrates' or Children's Courts and many of the reforms in the Magistrates' Court and Children's Court were unfunded.

In contrast, the main thrust of the family violence court based reforms was in the civil intervention order system in MCV. There has been very little specialisation in the management of non-sex related family violence criminal proceedings except as part of the development of the FVCD in 2005 and the recently introduced fast –tracking pilot at the Dandenong Magistrates' Court. The non-sex family violence related charges are listed along with all other criminal charges in the committal and summary stream generalist lists of the court. It has been impossible to introduce any systemic tracking or analysis of these proceedings. Some of the key data which is available in sex related family violence proceedings such as volume of cases, case flow data such as measuring delays, systemic witness data such as age of complainants or whether a complainant has a cognitive impairment is not available in non-sex related family violence proceedings in either the committal or summary streams of the MCV. The OPP does not have specialist non-sex family violence prosecutors and it is not known how many non-sex family violence cases result in committal to the County or Supreme Courts. Equally, there has been little if any provision of an integrated service response or a civil intervention response to family violence proceedings which involve allegations of sexual assault.

The SARS⁹⁴ was comprehensively evaluated and offers a number of important insights and recommendations that could equally apply to the area of family violence.⁹⁵ There are also a series of specific recommendations which have yet to be funded and implemented.

⁹³ Practice Directions setting out the procedures for the SOLs are as follows:
[Practice Direction 2/2007](#) - Sexual Offences List - Melbourne Magistrates Court
[Practice Direction 3/2007](#) - Sexual Offences List - Country Magistrates Courts
[Practice Direction 2/2015](#) - Sexual Offences List - Suburban Magistrates' Courts - Child Complainants

⁹⁴ The reforms were introduced in parallel with Victoria's integrated response to family violence.

⁹⁵ There are a number of similarities between family violence and sexual assault matters coming before the Courts, including sexual assault being commonly identified as a component of family violence related matters and family violence matters involving sexual assault.

The SARS evaluation found that there was a need for greater integration between all parts of the criminal justice system to provide victims with a coordinated and coherent response that acknowledges the seriousness of the offending and offers appropriate protection and support. As such, the report recommended that “action be taken to integrate the responses to sexual assault and family violence at the practice level where sexual assault is a feature of family violence”.⁹⁶ The Courts see value in applying these findings and recommendations to the area of family violence. The court also sees value in applying some of the insights and practices arising from the family violence reforms which are relevant to sexual offence proceedings.

Recommendation 36

The Victorian Government to adopt the key findings and recommendations from the Sexual Assault Reform Strategy evaluation that are equally applicable to family violence and adapt the successful elements of both the integrated family violence strategy and the Sexual Assault Reform Strategy to achieve consistent best practice in in sexual and non sexual related family violence proceedings.

⁹⁶ Success Works (2011) *ibid*, p223.

Magistrates' Court of Victoria

RESPONSE TO FAMILY VIOLENCE 2015 - 2017

Vision

Increase the safety of women and children by ensuring a consistent service across the state, delivered with greater sensitivity, ensuring co-ordination and efficiency in the management of cases, and the ability to refer victims and offenders to services.

Demand

FAMILY VIOLENCE INTERVENTION
ORDER APPLICATIONS
FINALISED 2013/14 (INCLUDING
INTERIM ORDERS)

50,208

↑49% SINCE 2008/09



15,073

↑58%

SINCE 2008/09

FAMILY VIOLENCE
INTERIM
INTERVENTION
ORDERS MADE
2013/14



NUMBER OF
CONTRAVENTION OF
INTERVENTION
ORDER CHARGES
2013/14

15,016

↑284%

SINCE 2008/09

99,868

TOTAL INTERVENTION ORDER
LISTINGS 2013/14

INTERVENTION ORDER
APPLICATIONS RECEIVED BY
AFTER HOURS
SERVICE 2013/14

11,448

Strategic Priorities

**Expansion of Family
Violence Services**

**Video Conferencing
Pilot**

**Fast Tracking Listing
Model**

**Professional
Development**

Online Engagement

**Improved use
of technology and
information sharing**

Objective

Improve and encourage
state wide consistency and
best practice in the Court's
response to family violence.

Enhance the safety and
security of applicants by
enabling them to appear at
court via video conferencing
from remote locations.

Improve perpetrator
accountability and enhance
the safety of victims by having
criminal matters dealt with as
early as possible.

Ensure that staff and
magistrates receive appropriate
professional development in
family violence.

Make information relating
to the intervention order
process easily accessible and
understood.

Promote consistent
information sharing across
the state with other
government agencies and
family violence stakeholders.

Actions

- Dedicated Family Violence services to be expanded to all head quarter courts across the state; this includes specialised Family Violence Registrars, applicant support workers and respondent support workers, providing assistance to all court regions
- Implemented expansion in a staged roll-out, with stage one to commence in early 2015.
- Expansion of CISP program to additional courts.
- Improved waiting areas in courts for applicants and children to increase safety.
- Improved responses to Koori and CALD clients.

- Develop a Family Violence Video Conferencing Pilot in conjunction with workers from support and legal services to improve access to courts and provide alternative arrangements for victims and witnesses to give evidence in family violence matters.
- Pilot to be conducted in Heidelberg and Melbourne and to commence in February 2015.
- Evaluate the outcomes of the pilot and explore possibilities for the further expansion of the approach.
- Ensure affected family member will have access to legal and support services from the remote location.

- The Court has worked closely with Victoria Police and Victoria Legal Aid to develop a listing model that will see Family Violence related criminal charges, including contraventions of intervention orders listed before a court within set time frames.
- The model will be rolled out across the state through a staged implementation, with the first stage commencing at the Magistrates' Court at Dandenong in December 2014.

- Commencing in 2015, all magistrates will be provided with an intensive 2-day session on family violence, facilitated by the Judicial College of Victoria.
- Family violence registrars will receive education on family violence risk factors and risk management, and a professional development plan will be implemented for all Applicant and Respondent Support Workers.
- All Trainee Court Registrars will receive extensive and specialised family violence training, which will be undertaken both in the classroom and the workplace.

- Develop a new website specifically for information relating to family violence intervention orders. The website will be a 'one-stop' shop for information on intervention orders including written content, videos and helpful links to existing family violence resources.
- Collaborate with Victoria Legal Aid and other stakeholders on content for the site.
- New website will be available for use by March 2015.

- Improved identification of criminal proceedings involving family violence.
- Work with Victoria Police to further develop the electronic interface between Courtlink and LEAP to ensure timely and accurate information exchange regarding intervention orders.
- Continue to work closely with stakeholders to improve information sharing processes.


8. Appendix 2: MCV – Number of FV IVO applications finalised by court venue, by year

Includes original and secondary applications (applications to vary, extend and revoke). Does not include interim orders or applications made under the PSIO Act

MCV venue	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09/10	10/11	11/12	12/13	13/14	14/15*
Ararat	61	69	41	46	47	61	58	44	51	71	77	77	118	112	110
Bacchus March	56	36	31	49	38	67	47	69	64	102	126	137	155	138	172
Ballarat	621	625	603	583	793	756	718	804	817	856	928	1,076	992	1,064	1,044
Edenhope	0	0	0	0	0	0	0	2	0	3	1	0	1	1	4
Hopetoun	0	2	2	0	1	0	0	0	0	0	1	3	5	9	5
Horsham	128	153	165	196	211	225	190	187	182	206	209	321	296	344	428
Nhill	4	4	2	6	2	3	7	1	5	2	1	1	8	4	2
St Arnaud	29	36	13	29	27	33	16	19	23	18	30	34	30	38	36
Stawell	22	26	28	17	43	32	36	48	46	48	39	60	81	76	98
Bendigo	424	471	479	469	515	489	568	621	713	816	753	951	1,024	1,083	1,026
Castlemaine	39	56	43	43	65	75	58	69	76	51	73	78	53	69	68
Echuca	119	158	124	107	100	104	101	125	154	181	213	225	221	221	246
Kerang	36	31	29	13	45	61	56	45	69	55	39	51	61	85	55
Kyneton	70	85	81	83	87	86	93	123	146	107	123	121	109	177	133
Maryborough	78	80	77	98	141	94	90	92	114	96	94	98	117	134	142
Mildura	357	374	401	370	442	444	493	534	582	671	690	763	751	710	733
Ouyen	5	4	8	5	1	3	3	5	2	4	6	2	5	0	1
Robinvale	29	17	11	22	32	40	33	50	46	40	36	60	38	27	42
Swan Hill	112	131	106	108	139	90	143	112	192	153	163	256	267	248	235
Broadmeadows	1,159	1,207	1,201	1,269	1,600	1,590	1,669	1,847	1,926	2,218	2,436	2,555	2,631	2,645	2,658
Moonee Ponds	56	50	2	0	0	0	0	0	0	1	1	0	0	1	0

MCV venue	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09/10	10/11	11/12	12/13	13/14	14/15*
Dandenong	2,065	2,170	2,106	2,039	2,534	2,622	2,597	2,582	2,617	2,960	3,148	3,379	3,336	3,265	3,228
Frankston	1,230	1,250	1,314	1,281	1,837	1,598	1,702	1,860	1,737	2,027	2,259	2,450	2,845	2,739	2,693
Moorabbin	0	0	0	0	0	0	0	477	876	821	973	1,132	1,315	1,395	1,378
Dromana	89	57	50	25	46	19	8	31	94	81	55	43	36	30	20
Geelong	1,183	1,119	1,152	1,007	1,158	1,095	1,048	1,124	1,189	1,325	1,255	1,649	1,781	1,888	1,879
Colac	122	126	131	88	103	125	93	91	120	112	101	114	131	136	123
Hamilton	81	69	67	35	83	97	91	79	68	65	93	97	124	101	115
Portland	79	68	40	52	80	94	100	88	93	66	101	106	94	123	130
Warrnambool	206	179	182	198	266	338	303	285	309	289	350	406	490	528	520
Heidelberg	797	195	1,286	1,313	1,648	1,702	1,762	1,687	2,094	2,313	2,349	2,743	3,019	3,307	2,598
Preston	819	1,170	84	0	0	0	0	2	5	4	10	3	1	2	2
Melbourne	1,456	1,438	1,327	1,420	1,791	1,814	1,885	1,577	1,510	1,563	1,683	1,763	1,827	2,224	2,656
Neighbourhood Justice Centre	0	0	0	0	0	0	35	168	194	194	210	236	293	253	277
Latrobe Valley	0	0	0	0	0	14	567	771	914	962	1,065	1,463	1,525	1,538	1,689
Bairnsdale	224	227	245	216	263	255	256	330	291	372	386	416	445	558	539
Korumburra	104	96	96	91	115	117	114	117	73	132	124	145	163	180	165
Moe	628	610	635	578	666	737	183	51	96	58	56	45	33	23	11
Omeo	0	0	0	1	0	1	0	1	0	0	4	0	0	0	0
Orbost	14	11	11	13	25	18	14	13	8	14	30	10	23	29	16
Sale	166	145	177	159	175	173	199	190	268	252	233	314	302	339	389
Wonthaggi	64	77	67	59	77	88	106	106	118	102	140	162	243	275	256
Ringwood	1,280	1,504	1,465	1,438	1,867	1,799	1,888	1,717	1,681	1,961	2,274	2,340	2,488	2,613	2,804
Shepparton	413	455	446	412	467	453	453	490	639	645	742	746	888	885	760
Benalla	74	87	62	76	97	96	86	67	79	82	76	96	115	143	169
Cobram	42	41	25	41	31	28	48	33	35	21	21	22	22	38	37

MCV venue	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09/10	10/11	11/12	12/13	13/14	14/15*
Corryong	4	0	2	2	8	5	6	2	1	0	6	3	0	1	0
Mansfield	25	11	9	25	26	39	23	30	28	33	27	13	27	34	53
Myrtleford	38	26	27	26	37	19	18	18	11	13	6	11	14	18	12
Seymour	109	134	122	123	98	128	138	148	171	191	193	174	227	275	275
Wangaratta	166	184	205	215	231	222	234	231	231	273	297	289	369	340	334
Wodonga	283	340	243	259	284	266	265	255	274	298	359	378	463	490	474
Sunshine	1,434	1,474	1,465	1,460	1,844	2,130	1,987	2,114	2,273	2,185	2,595	2,719	3,032	2,984	2,907
Werribee	289	260	268	255	306	413	533	665	777	964	1,107	1,153	1,245	1,191	1,206

 MCV Headquarter Court

* 2014/15 data until 30 May 2015

ATTACHMENT 5

Demand and performance data – 2016-17 VOCAT Annual Report Applications lodged

There were 7,312 applications filed in the reporting period 2016-2017 which represents a 17.5 per cent increase over the previous year (6,221). This was the highest number of applications in any year by some margin. All of the major courts saw an increase in applications lodged, except Ballarat and Shepparton. Sunshine and Werribee received 44 per cent and 43 per cent increases respectively. Each of Broadmeadows, Dandenong, Ringwood, Melbourne, Moorabbin, Geelong, Warrnambool and Heidelberg all saw increases of over 20 per cent.

Approximately one third of applications arise from an incidence of family violence. Almost 85 per cent of victims of family violence are female.

Female victims made up 57 per cent of the total applications. Around 84 per cent of all rape victims during the reporting period were female and 53 per cent of all assault victims were male.


Applications arising from allegations of assault comprised roughly half of the total applications filed, some of those were assaults that occurred in a family violence context. There were 680 applications for assistance from victims of aggravated burglary, up from 423 in the previous year. This is an increase of over 60 per cent.

Over 11 per cent of all victims in the reporting period were under the age of 18 at the time of the offence. Around 6 per cent of all victims were over 60 years of age.

Application outcomes

VOCAT finalised 7,209 applications in the reporting period. This is 22 per cent higher than the previous year. We awarded 4,739 applicants financial assistance (representing 65.7 per cent of all final orders made) compared to 4,161 in the previous year. Additionally:

- Applications were determined at hearings in 14 per cent of cases, which is significantly less than the 18.8 per cent in the previous year.
- 374 applications were refused (no assistance awarded), compared to 105 in the previous year. This significant increase was due mainly to approximately 280 applications for assistance by bushfire victims being refused following findings from the Coroner that no act of violence was established. Refused applications comprised 5.2 per cent of all finalising orders made.
- 2,096 applications were withdrawn by the applicant or struck out by the Tribunal, compared to 1,644 in the previous year (an increase of 27.5 per cent). Matters that are withdrawn or struck out have a right of reinstatement.
- As in previous years, the majority of awards (85.6 per cent) went to primary victims, with 4,058 awards being made this reporting period, compared to 3,577 last year (an increase of 13.4 per cent).
- The Tribunal made 314 awards of financial assistance to secondary victims, compared to 287 last year. Secondary victims represented 6.6 per cent of all awarded applicants.
- For related victims, 357 final awards of financial assistance were made, compared to 289 in the previous year. Related victims' applications, which all arise out of homicide cases, including culpable driving, represent 7.5 per cent of all awarded applications. Related victim applications are often the most complex and time consuming matters.
- 8.2 per cent of all applications finalised during the reporting period arose where the act of violence was identified as aggravated burglary. This is up from 6 per cent in the previous reporting period.



	2014-15	2015-16	2016-17
Caseload			
Number applications lodged	6,053	6,221	7312
Number orders made finalising claims	6,113	5,910	7209
Number applications pending on 30 June	6,039	6,757	7207
Case processing times			
Proportion of applications finalised within 9 months of lodgement	54.7%	47.6%	51.5%

Financial assistance awarded

In the reporting period, VoCAT awarded a total of \$53.9 million in financial assistance and legal costs to victims of crime, which was 16.6 per cent higher than the \$46.2 million awarded in the previous year. This is commensurate with the increase in the number of finalisations during the reporting period.

The average amount of financial assistance awarded was \$7,983, compared to \$7,784 in the previous year. This figure has remained fairly consistent over the past 20 years showing that the Tribunal Members are applying the legislation consistently. Small increases are expected, flowing from the increase in the cost of services and annual increases to the costs guidelines for services such as counselling.

The amount awarded for special financial assistance has decreased from 22.5 per cent of the total amount awarded down to 21.9 per cent. Distress payments (payable to related victims) have risen from 10.9 per cent to 13.4 per cent. Safety Related Expenses has risen from 4.9 per cent to 5.3 per cent. Loss of earnings awards went from 7.3 per cent down to 6.6 per cent.

OVERVIEW OF REFORM PRIORITIES & OPTIONS FOR VOCAT

