

Submission to the Victorian Law Reform Commission

Victims and the Criminal Trial Process

Kristy McKellar

My name is Kristy McKellar,

Since August 2013, I have been privileged to be actively engaged with various individuals regarding the family violence system and driving systemic reform. The individuals who have taken time to hear my insights on the current system and the opportunities for improvements have included both the previous and current Governments. Currently, I have been engaged on the issue of family violence with the Premier's office, the Honorable Attorney General's Department, various Police Commissioners, the Sex Discrimination Commissioner and with the Lord Mayor of Melbourne.

After my manifestly inadequate County Court outcome regarding a final extreme violent assault I suffered in 2012 from my now ex-husband, I wrote a personal letter to the then Attorney General regarding my experiences (a copy of the letter is attached). I was grateful to be invited to meet face to face with the Honorable Attorney General Robert Clark and his advisors regarding my matter.

I had the opportunity to speak to Attorney General around the systems failures, the perceptions and suggested improvements. Through this process I was successful in contributing to the development of bills from my work and was pleased to see these transform into legislation. The legislation that I was able to contribute towards included:

- police to issue family violence safety notices (FSVNs) to protect victims 24 hours a day, 7 days a week, instead of only outside of 9am to 5pm weekdays
- allow interim intervention orders to become final orders without need for a further hearing, if both the court and victim consider it appropriate and the respondent doesn't wish to contest the order
- lift current bans on the reporting of family violence intervention orders when reporting charges and convictions for breaches of such orders, so that adult victims can choose to speak out. Allowing adult victims to publish or authorise the media to publish the existence of a family violence safety notice or intervention order together with the identity of any offender who has been charged with or convicted of contravening the notice or order and the identity of the adult victim

I continue to be engaged with the current Attorney Generals' department on family violence improvements.

Previous Chief Police Commissioner Ken Lay and his team deemed my case as a significant failing of the system, whereby he delivered his address to the International Criminal Law Conference on 9th October 2014, using this forum to highlight various aspects of his push for reform within the broader justice system from my personal lived experience. He spoke of the realities I had discussed with his family violence and sexual crime command team regarding family violence, including the types of abuse involved, types of injuries suffered and the impact on children and the suffering of this ongoing. Further, the response by the justice system to my experience and how it left me living in fear.

I have partnered the Victoria Police as required in assisting on the below areas with the Sexual and Family Violence Crime Command:

- Identifying deficiencies and positive actions which can lead into internal policy reforms
- Working with Police Prosecution to review their practices around family violence and in particular victim support, advice and guidance
- Examination of the legal implications of social media and the potential need for legislative remedy. Commencing discussions with America/Australia facebook in respect to content removal found in breach and investigating potential means of speeding up information exchanges where breaches are alleged
- Feeding into member awareness and training
- Assisting in training programs and development
- The development of a regular survivor forum where the family violence sector could hear the experiences, good and bad, with the hope of improving the system for those it affects most
- Sitting on Victoria Police committee meetings to inform and guide practice

I have also been engaged with the Sex Discrimination Commissioner Elizabeth Broderick, in supporting her male champions of change initiative to develop a better understanding of family violence, community attitudes and gender inequality to influence major workplace initiatives. I have addressed approximately 25 senior business leaders/CEO's and diversity experts from major businesses and organisations in Australia. I have been engaged with Lt General David Morrison in his efforts to bring about change in the Army and he has presented my journey and insights at opportunities.

I have established a strong working relationship with the Lord Mayor Robert Doyle, assisting me to address family violence at various levels from community grassroots to initiating law reform. I have been actively presenting at family violence information sessions, at support groups for women and through community health services hearing their stories and the system failures for them.

I dedicate a great deal of time in educating and empowering other women suffering from violence or whom are in an unsafe environment by sharing my lived experience and my journey. I also present on my journey through the legal system and offer support and education on presenting an account of what they can expect, highlighting their rights and further what I found helpful or unhelpful. I have offered de-briefing support to women and children as required. I will be supporting development of survivor advocate reference groups.

As well as being a survivor of domestic and family violence, I have over twelve years experience as a qualified social worker and experience in policy development which has assisted me in facilitating change and also highlighting that family violence can happen to anybody. I am also a trained media advocate; I am trained to deliver the correct and key messages regarding family violence.

I am part of the Herald Sun "Take A Stand Campaign" and have been previously invited to speak along with Chief Commissioner Ken Lay and Senator Michaela Cash at the Vic Health to assist in the launch of the 2013 community attitudes survey results. I have attempted to shine a light on the injustices faced in the legal system and have raised some pertinent issues for the Sentencing Advisory Council about the current failings.

I hope to be able to contribute to law reform and legislation enhancements, as I feel I can make a difference in shaping the future direction of family violence and can effectively highlight the entirety of the systems failures whilst providing practical solutions in moving forward and rectifying issues.

I am passionate to contribute to creating a system that works a whole, both reliably and consistently. I hope that the Victorian Law Reform Commission may consider my ability to influence the process, being uniquely positioned to bring about important context from my lived experience and further from my previous two years of dedication and achievements.

I was delighted to provide a submission that may address victim's experiences and will finally be given the attention it deserves.

Yours Sincerely

Kristy McKellar

[REDACTED]
[REDACTED]

Situation Summary

ABUSIVE BEHAVIOURS:

My perpetrator was physically, verbally and emotionally abusive during the entire span of our relationship, even during my high risk pregnancy. Also sexually abused on the final attack, where I was indecently assaulted. I had been spat on, kicked, punched, slapped, choked, pulled by my hair, suffered with a black eye, held up against walls, intimidated, pushed to the ground/bed, held down by my wrists/neck.

I had required physiotherapy after one assault where I attended on 3 separate occasions to rectify my injuries, although was unable to disclose at the time as the perpetrator attended all appointments along with me. After I had left the abusive relationship and was medically examined, I was informed that vertebrae behind my ribs had been fractured; they believe this was from this prior assault consistent with the account I disclosed that happened years earlier.

My daughter and I had objects thrown at and around us including: car keys, mugs, glasses, cutlery, remote controls, pillows, doonas, plates, a sandwich press, books, magazines, towels, phones, hot and cold drinks and sprayed with water. I was repeatedly called vulgar names and sexist remarks including 'woman' and told my place was in the kitchen.

On the final assault in October 2012, I was rendered almost unconscious from being choked; I suffered momentary deafness in my right ear and needed medical care to ensure my eardrum was not ruptured, redness and broken capillary blood vessels in front of my right ear. I had a swollen right cheek bone. Also I had bruising and broken capillary blood vessels and swelling under my right eye, which days later formed into a bruised, swollen black eye. I had finger marks, redness and broken capillary blood vessels on my neck and jaw line. I incurred redness and bruising on my chin, and also redness behind my left ear. I suffered with a lacerated and swollen ankle, and further large severe bruising and swelling on my right shin. I also had bruising and swelling on my right wrist as well as bruising and swelling on my outer arm-both on my left and right. My perpetrator dissolved my chemotherapy treatment in water at this assault. I received medical treatment for these injuries from my GP. It was very difficult for me to care for my daughter for a few weeks after the assault as I was in a great deal of physical pain.

Psychological / Emotional / Verbal:

Throughout the pregnancy, the perpetrator would state that he did not want the baby or myself.

The perpetrator referred to me as 'fat' sporadically throughout the pregnancy; this affected my overall confidence when already dealing with both a high risk pregnancy and multiple medical concerns for my own health. Further this made me feel conscious of my weight and subsequently could have placed my baby's weight and growth in jeopardy.

My bonding and attachment with my daughter was disrupted after the final assault. Due to the level of stress and shock my body was subjected to, my breast milk supply rapidly deteriorated to the point that and I was no longer able to feed my daughter. At the time, this left a huge emotional scar on me and feelings of inadequacy, as I had planned to breastfeed my daughter until required. I was stripped of this intimate bond with my daughter as I was forced to place her on formula and bottle feed her. I was also under a great deal of stress at this time, as my daughter initially refused bottle feeding and she subsequently lost weight.

The perpetrator regularly used offensive and vulgar language to me in the presence of my daughter. Directing his offensive and vulgar language to me through my daughter. Stating on one occasion to my daughter "your mummy is a C--- isn't she". This statement was made to degrade and humiliate me. It was an inappropriate comment to make, immaterial whether my daughter was at a developmental age where she could comprehend the meaning of the statement.

Physical:

I was abused physically during my pregnancy on more than one occasion I was pushed in the stomach

On one occasion the perpetrator forcefully pushed a door into my stomach while trying to escape his violence and move into the bathroom

On other occasions I was forcefully pushed onto a bed and on the floor whilst pregnant without any consideration of potential injury or consequences to myself or our unborn baby.

I was driven recklessly in the car during my pregnancy. The perpetrator would exceed speed limits and at times would go through red lights.

On one occasion the perpetrator forcefully slammed the car brakes on deliberately in nature causing the seat belt to pull with extreme force on my pregnant stomach. The trauma received from this incident resulted in some vaginal bleeding, which I told the perpetrator had occurred as a result, this raised my anxiety and significant concern for the health of my unborn baby- thankfully I did not miscarry my baby.

When 8 months pregnant both myself and the perpetrator went on our last holiday as a couple to Echuca prior the baby's arrival. The perpetrator physically assaulted me the week prior to leaving for the holiday resulting in my body being badly bruised, so when on our holiday the perpetrator insisted I wear a long sleeve top despite the very hot weather to cover the bruises as he did not want people potentially seeing, commenting or questioning the origin of the bruises, he stated he would 'suffer with me by also wearing a long sleeve top in the heat'.

I was concerned that I would deliver my baby with bruises on my body that would reveal the physical abuse I was experiencing. These concerns were also present when I had to attend her regular ante natal appointments and scans nervous that my injuries would be seen, so I would dress to cover them.

On the final assault the perpetrator raised a glass vase lid above my daughter whilst she lay in her cot, gesturing to throw it at us, I stood with my arms outstretched across the cot as I was shaking knowing that if he was to throw it at us, it would hit me and hopefully I could protect majority of the impact for my daughter. Further on the final assault he threw a book at the wall next to my daughter's cot, this book landed in her cot hitting her feet.

On another occasion the perpetrator kicked me so servery in the shin again whilst holding my daughter, the force of this kick resulted in being kicked through the plaster wall behind me where I was standing. I sustained a painful lump and significant bruising on my shin on this occasion.

I was purposefully punched in my tender lactating breast with extreme force with a closed fist resulting in me being pushed from one side of the lounge room to the other side. This resulted in a significant bruise on my breast and made breastfeeding excruciatingly painful and difficult each time my daughter would feed. At the time my daughter required 2-3 hourly feeding intervals. It was difficult to breastfeed as the bruise was so large; I was forced to feed more privately and discretely until the bruise faded.

Unfortunately I was forced to wean my daughter onto formula due to the stress of the violence and unrelenting intimidation and abuse, my breast milk deteriorated completely. I had intended to breastfeed for as long as my daughter may have required to and I was deeply saddened as a result of this decision being taken away from me.

On more than one occasion the perpetrator would become aggressive and physically violent when my daughter was in my arms, using offensive language and becoming physically violent i.e. hitting, slapping or kicking me while my daughter was in my arms.

On one occasion I was forcefully kicked while holding my daughter in the hip that resulted in me becoming unstable on my feet and losing my balance endangering my daughter, almost dropping her from my arms onto floorboards, this bruise on my hip was documented and witnessed by a GP and a photograph provided at court.

Another time the perpetrator held myself and my daughter up against the wall as if to punch me, instead punching his own fist into his hand and smiling that I had cringed in fear whilst tightly holding my daughter.

During the assaults, my daughter would become distressed, cry and appear very scared and frightened in that environment clinging tightly to me to ensure her safety. It would take considerable time to console, reassure and calm my daughter.

When the perpetrator was becoming heightened or violent and I would ask for my daughter to be returned to me and he would forcefully push my daughter into my body and say "take it", manipulating my daughter's body in such a way that she was an object rather than a fragile and premature baby.

The perpetrator would forcefully throw objects toward myself and my daughter when violent. These objects were potential weapons that frequently threatened my daughter's life.

This repeated abusive behaviour resulted in my daughter becoming startled, jerking her body and terrified, before she would cry and scream in distress.

I would attempt to pick my daughter up to protect her by moving to another room however he would follow us.

On occasions I was forced to leave the house as I felt it was unsafe for both my daughter and I to be in the house.

Whenever the perpetrator displayed violence this would always affect my daughter's routines, she would not settle easily and would wake more frequently through the nights and be quite clingy for days.

Another incident involving the perpetrators erratic and reckless driving was when attending the Maternal and Child Health Centre for an appointment. My daughter was 8 weeks old at the time. The perpetrator drove with such speed that my daughters head was moving side to side in her rear car seat and when I went to my daughter's assistance to support her head, he stopped the vehicle after mounting a gutter and forcefully held my head down on top of my daughters head. I could feel my head pressing into my daughter's small skull and sinking into her soft spot as her head still wasn't formed entirely.

When my daughter was just 2 and a half months old, a Men's Behavioural Change Program that my abuser was engaged in, contacted me stating that the management team of the program would be directing the perpetrator to leave the family home for one week, as his behaviour was too unsafe for both myself and my daughter. If he did not agree to this recommendation and leave the program stated they would notify Child Protection and/or Police for the family's protection from his behaviour. He did leave the house as requested however; on his return one week later he continued to be abusive toward us.

Financial Abuse:

This had a deep financial impact on me and my daughter as I was on unpaid maternity leave after just having had my baby, 2 days after the assault, the perpetrator commenced transferring money out of our joint banking account to a new banking account he had created in his own name, so our daughter and I could not access these funds. Then 8 days later, he organised for his entire salary that we were reliant upon to be paid into his new account, which then left me and our daughter with no financial support at all.

Consequently, I initially had to rely on family and friends to assist with purchasing essential items such as food, nappies and formula, as I was no longer able to breastfeed.

Intervention Required

My daughter was very afraid of men after we escaped family violence and I had to address these anxieties by surrounding her with positive and safe male role-models. My daughter continued to be unsettled and showed signs of trauma and was very easily startled. My daughter was required to undergo regular medical checks, ensuring the early exposure to family violence had not affected her developmental growth.

At 6 and half months my daughter required regular observation and monitoring with the Universal Maternal and Child Health Service to ensure her early exposure to family violence had not affected her development. When my daughter was 13 months old she required further early intervention with a General Practitioner, an Enhanced Maternal and Child Health Nurse additionally to the universal maternal child health service, (the enhanced role service provided additional support for vulnerable families experiencing significant early parenting difficulties and for children who are at significant risk of harm) and further also intervention with a children's family violence specialist.

She was diagnosed with post-traumatic stress disorder, and it was acknowledged that suffering this type of severe family violence would have raised the stress hormone "cortisol" in utero for my baby.

The professionals' observations included:

That after living in an environment that my daughter reflected the experience of family violence in an elevated and abnormal startle response, demonstrated a fear of loud noises, separation anxiety, fear of various environments particularly if new to her, fear of males, and unstable emotions.

Unusually for her age, she could not cope with shopping centres, supermarkets, or strange adults approaching her to say hello.

She presented as highly anxious and could not walk away from me (i.e. out of touching distance) and mainly needed to stay on my lap or in my arms and was very easily upset.

She has been observed to shake if an adult's hand went towards her too quickly.

She would find change a lot to cope with in addition to her other anxiety, and she showed reduced appetite, frequent interrupted sleep, frequent night terrors, easily frightened, and became upset during transitions between normal activities.

At stages my daughter would develop stuttering, unable to get her words out when anxious.

At 13 months of age, she commenced nightmares and was very distressed in her sleep, this would occur 3-4 times per week

At 2 and a half years she was able to begin to articulate in words or communicate in ways to show me that she was frightened or anxious or point to things that distressed her

Research:

Current research in regard to the negative impact of Family Violence upon all children of all ages is conclusive. Attachment patterns are understood to develop prior to birth and after birth. Initial attachment patterns are considered to affect brain development, wellbeing, relationships and interactions throughout the life cycle (Bowlby 1982; Main et al. 2005; McCain & Mustard 1999; Prior & Glaser 2006).

HISTORY

Intervention Order:

After the final assault I was too terrified to apply for an intervention order, the police actioned a complaint and warrant intervention order on behalf of myself and my daughter for one year in 2012 and then I obtained a 5 year intervention order for both my daughter and I, as the perpetrator was found guilty of contravening this family violence intervention order on six occasions.

Criminal Charges:

The perpetrator was charged with:

- Recklessly causing serious Injury
- Recklessly causing Injury
- Unlawful assault
- Indecent assault

I have grave concerns for the lack of recognition for charges being place for children of family violence crimes. No charges were able to be placed for my daughter even though she was deemed a primary victim of the crime as she was not at an age whereby she could provide evidence.

My daughter may not have been of an age whereby she could articulate her story, but this did not mean she was not affected by her early exposure to family violence and this particular assault whereby her life was also in threat on the evening having had a glass vase lid help above her whilst laying in her portacot and having had the perpetrator throw a book that hit her during the attack.

The perpetrator was found guilty on both violent actions toward my daughter in both court hearings yet no charges pertained to this. Children's rights need to become a greater prioritisation and the recognition that family violence commences from utero. I feel new legislation would be paramount to ensure children that are not of an age to provide evidence are still accounted for and recognised in these hideous crimes.

Previous Criminal History:

Upon pressing charges I was made aware that the perpetrator had a criminal history in existence I had no awareness of.

Bail:

Immediately an appeal was lodged by the perpetrator to a higher court and the perpetrator was granted bail for a lengthy 8 months due to the Magistrate not deeming him as a 'flight risk', even though he posed significant risk to myself and my daughter. No risk assessment was ever conducted. I did not know how I would now protect us and keep us safe and felt powerless and vulnerable. I then was faced to live in a trauma filled space for 8 months feeling almost unable to leave my home, paralysed by fear and terrified of seeing my perpetrator or being followed or assaulted. My emotional and physical health begun to suffer immensely during this time, to the extent that my chemotherapy treatment began to fail and I was placed on organ transplant treatment.

Breaches of Intervention Order:

Initially a Complaint and Warrant Intervention Order was taken out by police for 1 year on behalf of myself and my daughter, as I was too fearful to seek one. I currently now have a 5 year Intervention Order for both my daughter and myself.

The conditions provided on my intervention order were completely unrealistic and were not as restrictive as they should have been. For example a distance of 5 meters of approaching me made me extremely uncomfortable and when I questioned the reasons behind this I was told that the perpetrator needs to live freely in the community and to be able to recognise me when approaching me. I was shocked that the perpetrators welfare and rights were being placed above that of mine as a victim.

Within 7 weeks of the initial intervention order, the perpetrator commenced breaching the order. I was required to return to court to vary the conditions whereby I had to request that a communication clause be removed as the court had enabled the perpetrator to be able to communicate through a variety of means as long as he did not commit family violence. I again was made to feel extremely uncomfortable and needed to face my perpetrator in court again to have this clause removed to ensure he could only communicate through a solicitor to my solicitor, again having to be an advocate for myself.

I was highly concerned that the breaches I reported were minimised and reduced. Initially 20 plus breaches existed, however these were reduced for court purposes to only 8, and then by the actual court hearing day they were reduced to 6. I was stood in the hallway by my prosecutor and had her suggested to me to dismiss a couple of breaches, as the perpetrator was not going to plead guilty to some, one breach which was of the seriousness of attending my residence.

Again only due to my ability to be an advocate for myself I proceeded against this suggestion and the result was successful with the perpetrator pleading guilty to all 6 breach charges. I should never have had to endure this conversation.

My perpetrator received only 2 months imprisonment initially for 6 breaches to my intervention order and then in the higher county court this was reduced on appeal to serve merely 50 hours of community service for the 6 breaches.

I have major concerns that when reporting breaches they are immediately dismissed by police and no statement is taken as they tell you as a victim that in reality they know that it is a too slighter breach and would not 'hold up'. It begs the question then as to why conditions on an intervention order are placed only to not be upheld by a magistrate. It is saddening that the police have experienced so many dismissed breaches by a magistrate that they do not now even proceed to take them to a court hearing.

My intervention order- conditions including 1 (further committing family violence) and 3 (keep the protected person under surveillance) and 4 (multimedia published communication) were contravened some of a sexual violence nature and even with supplying the evidence for this, the Family Violence & Sexual Crime Command strongly advised me not to pursue these breaches as even with the evidence we had it would not be upheld in a court by a magistrate and they did not wish to re-traumatise me having to provide evidence and have to confront my perpetrator knowing I would not be successful and that the perpetrator would perceive this as another win.

Criminal Court Proceedings:

Magistrates Court Hearing

I found my 2 day hearing in the Magistrates Court the most damaging and gruelling experiences of my life, giving graphic evidence, having to relive the entire assault again, be cross examined and face my perpetrator.

I found the court processes unable to effectively validate my violent experience, unable to provide me with a sense of safety within the court setting. I can confidently state that I was left re-assaulted by the court process and justice was not provided. I discovered that the court system has an inability to work as a whole and was unreliable and inconsistent.

My hearing took an excruciating 11 months before it was heard, as I had to endure 4 lengthy adjournments which was unacceptable and heightened my anxiety to have to re-appear continuously. I did not feel that the adjournments were necessary and were delay tactics by the defence.

It was difficult that I also had to face a delay in my 2 day magistrates court hearing, having to wait 6 days before the second day commenced which was extremely difficult to face re-attending the second part of my hearing after a break, this certainly was not ideal and exacerbated my health complications and further my post traumatic stress at the time.

After all evidence was heard, including 4 separate witnesses, 21 photographic evidence of my injuries suffered, the offenders video interview, my OOO call and a submitted GP medical report. The Judge heard the multiple and failed attempts of rehabilitation of the perpetrator, the perpetrators lack of remorse or insight into the crime, continued abuse, the seriousness of the crime, the offender pleading not guilty and still my perpetrator was sentenced to just 14 months Imprisonment term for this crime in the Magistrates Court.

County Court Hearing

I then had to re-live the entire ordeal once again for a 3 day hearing in a higher County Court whereby my attacker continued to plead not guilty once again. I was faced to give evidence and be cross-examined for a second time. During my county court hearing I was confronted with a legal study high school students entering unannounced into the court room and sitting in on my hearing when I was disclosing intimate details regarding the crime and describing the sexual assault that had occurred, this was highly insensitive and unsettling situation that could have been avoided.

I was under the impression that having my case heard in a higher court would provide justice to myself and my daughter and carry a lengthier sentence; however I found the County Court system more abhorrent than the Magistrates.

The original sentence of 14 months imprisonment was severely reduced on appeal in this higher court to a 2 year community corrections order serving merely 250 community hours, the perpetrator reassigned to the same rehabilitation programs previously completed, so essentially set free to walk out the front door alongside me.

Sentencing Remarks of Judge:

The County Court Judges sentencing remarks to my ex-husband were ***“the way in which you behaved was appalling...you went beyond what was in any way acceptable in what you did. What you did was absolutely disgraceful...Ms McKellar suffered significant injuries. They were serious injuries... You did not just carry out one action, you carried out multiple actions...you have committed this offence of recklessly causing serious injury after you had gone to a men’s behaviour change program....so that is concerning. It suggests that you are not capable of learning”***. Yet she reduced the sentence from 14 month imprisonment to a community corrections order with merely 250 community hours.

On the final assault I was not just psychologically or physically abused, but also sexually assaulted. The perpetrator was charged with Indecent Assault however, in my case the charge of Indecent Assault was not upheld, with the Magistrate stating to my horror ***“we are not able to accurately say how that infliction of pain actually occurred, she did not see what he actually did and that being the case how can we say that that is a deliberate action on his behalf”*** even though the court heard in evidence that my ex-husband had pulled a towel from my body leaving me naked during the hour long assault and 21 photographs were produced of my injuries to the court, with photographic evidence of finger marks bruising to my wrist was evident from being held down on a bed whilst he berated me with obscene indecent verbal assaults, sexually orientated.

Having been sexually assaulted by the perpetrator then increased and heightened my concerns of his inability to have respectful boundaries of the females body and the lack of respect with his previous years of sexist and offense remarks, which therefore led to fears and heighten concerns if he were ever to be around my daughter, grave concerns of him ever attending to intimate tasks such as changing nappies, dressing her or bathing her etc. being a female baby girl.

Victim Impact Statement:

I have attached my Victim Impact Statement and have highlighted the red section, which is what the Judge would not allow me to read, even though it fully complied with the charter and in effect she sent me a message that I must remain silent about the crime yet again after being brave enough to finally speak out.

Victims of Crime Assistance Tribunal:

Initially I was the only one deemed as a primary victim of the crime. The system failed to view or recognise my daughter and her suffering. It took one year of fighting for her rights and being her voice for the tribunal to acknowledge that she too was also a primary victim of the crime and the tribunal then officially deemed her as so.

Federal Circuit Court:

The perpetrator requested I attend a Family Relationship Centre to attempt the Mediation process. I had complied and attended this interview process. The Family Relationship Centre had made a decision with management to issue a Certificate B as the centre had concerns for the perpetrators history of family violence. The centre had further concerns around the risks and safety concerns for my daughter and myself, concerns for our emotional, psychological and physical health. The centre felt that I would not be able to negotiate freely in situation like this with my attacker and therefore they made a decision not to proceed.

The perpetrator then proceeded to take me through a gruelling Federal Circuit Court process.

The Federal Circuit Court is a separate area that is requiring immediate attention. This court is even more traumatic than the criminal courts and providing even more abhorrent outcomes for women and children.

The lack of information sharing between the federal circuit court and criminal courts is appalling and needs to be improved.

Affidavit submission in the family court enables perpetrators a way of further abusing victims and utilising the process in an attempt to have contact or remotely abuse their victim once again.

On the first court hearing the Judge made an opening statement of “is this woman alienating this child from the father?”, the Judge had not read any material nor had any documents or knowledge of the criminal matter or crimes committed, that both my daughter and I were primary victims of a serious crime, and no awareness of the extent of charges pertaining to the perpetrator.

The family assessment process was extremely re-traumatising and at times I would have deemed it extremely insensitive and intimidating. There was no consistency of assessors for each assessment.

The court were informed that the police had informed me that during the court proceedings the perpetrator was an even greater risk to myself and my daughter and had been admitted to a psychiatric ward, attempted suicide, had increased alcohol usage and was using various illegal drugs including daily usage of Ice, yet that still enabled my daughter's perpetrator to be in a room with her during the assessment process not having conducted any professional risk analysis.

Safety concerns are paramount in family court, security was not equipped with family violence training and this is paramount when children are present in the court building for family assessments. There was a lack of understanding of the potential consequences if a perpetrator is placed in a contact room with a child, or if they are ruled by a Judge to have no custody or contact at a court hearing. Perpetrators can display volatile reactions to decision making and can threaten a child's life in a contact setting, these situations placed myself and my daughter in serious potential danger and made it difficult leaving the court, no systems were capable of dealing with these situations.

I had to endure an excruciating 1 and a half years journey through this court system, be forced to see mine and my daughter's perpetrator and to endure further abuse and intimidation and such emotional stress that then impacted on my ability to parent to the quality I was capable of, exacerbated my physical health and carried such horrific consequences, including my chemotherapy treatment to stop its effectiveness and further being placed in financial debt.

Even though the perpetrator received no contact with my daughter or any custody rights, I was court ordered by the Judge to send photographs of my daughter to her perpetrator 4 times per year and the option of the perpetrator to provide letters 4 times per year.

This is concerning to me as a 5 year intervention order was provided for my daughter to be protected against her perpetrator, yet he is still able to identify her ongoing through photographs and this enforcement keeps myself and my daughter in contact with our attacker.

We are not able to move forward, it is anxiety provoking to have to provide these photographs, always being extremely vigilant as to where I take these photos so they do not disclose where we are living or locations the perpetrator may recognise. This decision forces victims to have a form of communication to their attacker and simply gives the victim a life sentence to endure and again rewards the perpetrator, giving them control.

Animal Abuse

I witnessed terrible animal abuse across the relationship, one episode where my perpetrator threw one of our dogs over a handrail, off our decking down a flight of stairs onto a bricked paved ground. My pet dogs would often view the assaults and be seen to shake or cringe during these attacks. Research has shown consistent patterns of animal cruelty among perpetrators of family violence and child abuse. "Family abuse and violence derives from a need to control and intimidate others who are more vulnerable. The abuser abuses the companion animal not only to injure the animal but to intimidate other family members, inflicting emotional and psychological harm. Thus, all family members are either directly or indirectly the target of the abuser and the abuse. When animals in a home are abused or neglected, it is a warning sign that others in the household may not be safe." (Joan E Schaffner "Linking Domestic Violence, Child Abuse, and Animal Cruelty" 2006).

Below I have stipulated the areas in which I feel from my lived experience that is in critical need of addressing pertaining to family violence to ensure we have the most reliable and consistent system. I will be highlighting issues that I feel will assist in learning of better policing practices and education within family violence in moving forward and ensuring victims feel safe, protected, supported and that victims gain justice.

Victorian Policing Matters:

1. Charges:

There is a lack of charges being placed and a lack of charges relevant to the crime. In my personal matter, the correct charges were not placed and nor were they sufficient. After having been indecently assaulted and disclosed this in my police interview and statement, the police failed to add this charge. I was placed in a position whereby I was required to call the Centre Against Sexual Assault to define that the sexual assault I endured had constituted a charge and they were horrified. Upon recontacting my police informant and defining this, the charge was then added.

I was significantly disappointed that the charges in my case did not accurately reflect the aggravating and intentional factors and I found many charges were disregarded. There were no charges that pertained to the perpetrator hiding my phone, not allowing me to leave the location I was at, having taken control of my car keys, being isolated on a rural property, dissolving my chemotherapy medication in water that I require daily for my life threatening condition and choking me during the assault knowing I have low lung capacity with my health disorder. I feel if these areas of the assault were accurately understood, the charges would have been additional and further held a higher seriousness such as 'Intentionally Cause Serious Injury' instead of 'Recklessly Cause Serious Injury', along with the lethality imposed and entrapment etc..

Further, I had to endure the experience of having my police prosecutor, a week prior my court hearing speak with me in a closed room in an attempt to reduce the higher charge, stating to me that it was 'unlikely we would be successful in gaining the higher charge as I did not suffer any broken bones so perhaps we should drop it'. I was highly disappointed and felt as though I must follow her instruction as she was the 'expert'. However thankfully I was able to somehow be my own advocate and say that I wanted to pursue the higher charge of Recklessly Cause Serious Injury, which in fact we did achieve, with the perpetrator being found guilty twice of this higher charge in two separate court hearings.

In my case the charge of Indecent Assault was not upheld, with the Magistrate stating to my horror *"we are not able to accurately say how that infliction of pain actually occurred, she did not see what he actually did and that being the case how can we say that that is a deliberate action on his behalf"* even though the court heard in evidence that my ex-husband had pulled a towel from my body leaving me naked during the hour long assault and photographic evidence of finger marks bruising to my wrist was evident from being held down on a bed whilst he berated me with obscene indecent verbal assaults, sexually orientated. It was concerning that my prosecution team never appealed this outcome within the timeframe they had to explore this as an option.

I have grave concerns for the lack of recognition for charges being place for children of family violence crimes. No charges were able to be placed for my daughter even though she was deemed a primary victim of the crime as she was not at an age whereby she could provide evidence. My daughter may not have been of an age whereby she could articulate her story, but this did not mean she was not affected by her early exposure to family violence and this particular assault whereby her life was also in threat on the evening having had a glass vase lid held above her whilst laying in her portacot and having had the perpetrator throw a book that hit her during the attack. The perpetrator was found guilty on both violent actions toward my daughter in both court hearings yet no charges pertained to this. Children's rights need to become a greater prioritisation and the recognition that family violence commences from utero. I feel new legislation would be paramount to ensure children that are not of an age to provide evidence are still accounted for and recognised in these hideous crimes.

Suggested Improvements:

To increase education on family violence for all uniform police members and police prosecution, to undertake sufficient training in family violence to better understand the link between family violent crimes and charges that may pertain and hold relevance to such cases, understanding charges that can and may be related.

Experience levels of police informants and their ability to manage cases is paramount. Family violence cases may at times need to be managed at a detective level to ensure it receives the dedication and expertise it deserves.

Resourcing may currently be an issue, however further recruiting and experience level needs to be established to ensure cases are managed professionally.

All possible charges pertaining to case should be placed and explored; they should be given an opportunity for a Magistrate/Judge to consider all possibilities regardless of police knowing if they will 'stand up'. All charges must be run past a senior sergeant, this would avoid charges being overlooked and ensure all appropriate charges are represented.

2. Breaches

Initially a Complaint and Warrant Intervention Order was taken out by police for 1 year on behalf of myself and my daughter, as I was too fearful to seek one. I currently now have a 5 year Intervention Order.

Within 7 weeks of the initial intervention order, the perpetrator commenced breaching the order. I was horrified to have been instructed by my local police when reporting the first breach, to wait and have them 'build up'. This is highly dangerous practice for uniform police to engage in and it holds significant consequences, they are running the risk of escalating assaults or even facing the potential for a victim to be killed. It also runs the risk of victims ceasing reporting breaches as they have lost confidence and this also may result in further endangering lives or result in death.

I was highly concerned that the breaches I reported were minimised and reduced. Initially 20 plus breaches existed, however these were reduced for court purposes to only 8, and then by the actual court hearing day they were reduced to 6. I was stood in the hallway by my prosecutor and had her suggested to me to dismiss a couple of breaches, as the perpetrator was not going to plead guilty to some, one breach which was of the seriousness of attending my residence.

Again only due to my ability to be an advocate for myself I proceeded against this suggestion and the result was successful with the perpetrator pleading guilty to all 6 breach charges. I should never have had to endure this conversation. My perpetrator received only 2 months imprisonment initially for 6 breaches to my intervention order and then in the higher court this was reduced to serve merely 50 hours of community service for the 6 breaches.

I have major concerns that when reporting breaches they are immediately dismissed by police and no statement is taken as they tell you as a victim that in reality they know that it is a too slighter breach and would not 'hold up'. It begs the question then as to why conditions on an intervention order are placed only to not be upheld by a magistrate. It is saddening that the police have experienced so many dismissed breaches by a magistrate that they do not now even proceed to take them to a court hearing.

My intervention order- conditions including 1 (further committing family violence) and 3 (keep the protected person under surveillance) and 4 (multimedia published communication) were contravened and even with supplying the evidence for this, the Family Violence & Sexual Crime Command strongly advised me not to pursue these breaches as even with the evidence we had it would not be upheld in a court by a magistrates and they did not wish to re-traumatise me having to provide evidence and have to confront my perpetrator knowing I would not be successful and that the perpetrator would perceive this as another win.

Suggested Improvements:

Police need further education and experience levels must be greater when managing breaches. All victims must report breaches as they arise and be supported and encouraged to do so, no matter how minor. Police need to be educated on patterns of breaches and relate this to an increased risk for the victim. Police need to ensure that all breaches are actioned and presented to court if the victim is wishing to pursue them and comfortable to attend to provide the require evidence and is supported with options to do this safely. Police need to approach the reporting of breaches as serious and not appearing as though it is an 'annoyance' to them or are ever minimised as the next breach could result in the death of that particular victim.

The courts need to demonstrate and embrace breach hearings and be supportive to police in presenting these at court and feel as though they will be given the correct consideration and to be treated as serious and not as an instant dismissal. The evidence to support a breach needs to be realistic and to be given a greater weight by both police and magistrates.

Leniency of sentencing for breaches need to be addressed. The severity and amount of opportunities for breaching an intervention order needs to be remedied. Harsher penalties must be enforcement and perhaps minimums are set and required for breaches, as at the present time extensive and multiple breaches are simply perceived to be either 'unpunishable' or a 'warning' scenario. Again magistrates/Judges must see the seriousness of a breach, the terror it places to the victims- even if it is one text message to a phone, the escalation in behaviour and what this potentially represents and that the perpetrator is still being given the opportunity to exert power and control.

3. Statements:

VICTIMS: After having been in an abusive relationship for almost a period of 4 years, the entire process was daunting and overwhelming to me. I was completely terrified of disclosing the various abuse I had suffered from across the years and terrified of the consequences and further violent reprisals. It was disappointing to be provided by a set meeting time with my police informant to come in and complete my statement to then have this appointment rescheduled on me when I had build up the courage to finally report the crimes committed. In the days leading up to the rescheduled time I did lose confidence in speaking up and questioned proceeding. I was not told how to prepare for giving a statement nor was I educated on the parameters in which my statement could take and what information was acceptable to include such as relevant history. I felt my police informant could have approached the statement process in a much more sensitive way rather than a mundane task or offered breaks, as the process for me took 3 hours to complete. Again this was due to the experience level of my particular informant having been a junior officer and the lack of understanding of family violence and further of issues surrounding this for me such as being re-traumatised reliving the assault and further my post traumatic stress associated with speaking of the crime in such graphic detail.

POLICE: It was highly disappointing that the police whom attended my incident submitted a less than acceptable statement. The statement lacked detail and did not marry up with my account of the evening. The consequences of this I feel did impact on my court hearing and the police officer looked unprofessional when being cross examined about his inability to recall the evening in detail.

Suggested Improvements:

Victims need to be educated and made aware by their police informant of what can be placed in the statements, that they are entitled to report and make reference to prior history of family violence and other integral information such as animal abuse etc. It is vital that the victim understands that their statement is a tool that will be utilised in cross examination process in a court setting and that they are comfortable to speak to it in that environment

Police need to support this process for victims, it is very re-traumatising and sensitivity is a must. Police must as best as they can attempt to keep indented appointments for all victim statements or they run the risk of having a victim not re-attend and have lost confidence to proceed. Victims need to be provided with reasonable allocated time so they only have to go through this once, to feel supported and able to take their time to relive these horrific incidences.

It is critical that all police statements are written with relevance, precise detail and are professional in every instance and treated as though they will be utilised in court hearings and evidence. These statements must be attended to within guidelines (perhaps these needs to be reviewed or senior sergeants are ensuring these deadlines are met more regularly) whilst the incident is fresh in their memory so they are accurate. Police reports presented with irrelevant information, lack of essential information or lacking in description of circumstances and specific injuries pose issues in hearings; they potentially weaken your case and place the victims under more pressure to defend their own stance or statement if they do not marry up.

4. Police Interviews:

Victim:

On the final assault, I was not comfortable to disclose when police officers arrived at the incident scene. I attended my local police station the following day sadly only because I was requiring my critical chemotherapy treatment from my residence that the perpetrator had dissolved in water the evening prior during the assault, so I was not able to take it. I still had no intention of disclosing, I attending to seek an officer to attend with me to my home in order to keep me safe whilst I could access my medication and leave.

However upon seeing me present and my injuries and the age and vulnerability of my young baby they were adamant that I be interviewed prior to assisting me retrieve my medication. As this was the very first disclosure for me in almost 4 years, I was not able to think logically and still had not processed what had just occurred. A police station was a foreign environment for me and I did not know how to simply proceed in talking openly about a hidden crime I had covered behind closed doors for years. I was thankful that the police insisted I be interviewed as I don't think I would have been able to take that first step without that direction.

I was seen initially by a senior sergeant whom said to me words no one had ever said to me before including 'you are not to be treated this way' it really placed some perspective to the situation, he had the skills and sensitivity to enable me to open up. I was not made aware that a complaint and warrant intervention order could be applied for by police or that owning a joint property with a perpetrator did not matter and they still could gain the power to arrest and remove the perpetrator from this property. If I had of had this knowledge earlier I may have spoken up a great deal sooner as I would have known what protective mechanisms were able to be put in place.

The police did not offer to take photographs of my injuries which should be a standard practice, after covering my bruises for years it was not a natural process for me to think about taking photographs or showing my injuries. Victims are traumatised and need prompting on these matters.

Perpetrator:

I was quite disappointed when I discovered that my perpetrators interview was run by a junior police officer whom lacked the experience in conducting a sufficient and thorough interview. It was disappointing that the lines of questioning did not relate to the charges and therefore did not provide the necessary evidence when presented in court to these alleged offenses. This was the time in which the perpetrator was most vulnerable, realising that I had finally been able to break my silence and expose him and therefore was the most critical time to gain omissions to provide good evidence for court, guilt findings and appropriate sentencing outcomes. It was again disappointing that upon arranging an interview time with the perpetrator the police then delayed and rescheduled this time which then enabled my perpetrator to have days to re-think accounts or to fabricate potential responses.

Suggested Improvements:

Victim's interviews need to be considerate and explained. This can support a victim feeling empowered to proceed, particularly if it is a first disclosure. Police need to be diligent in recording injuries seen at the time of the interview, the presentation of the victim and suggest to take photographs of injuries.

It is important to approach the potential for pressing charges in a way whereby the victim feels there are measures that will keep them protected if they proceed. Victims need to be informed of options such as compliant and warrant intervention orders to understand that they do not have to seek the order alone as this enables them further protection as the perpetrator is made aware that the police were in fact the initiator of such an order and this can eliminates further violent reprisals for the victim. Victims need to be made aware that the locks can be changed on a jointly owned property, if this knowledge given early in the piece, victims would feel more confident in proceeding with charging their attacker.

I feel that when it comes to utilising perpetrators interviews as evidence in a court hearing, the prosecution team must be more attuned to which medium would best facilitate a better outcome. Interview videos hold great importance to be shown in court as this enables a magistrate/Judge to gain a greater sense of the perpetrator, it is a visual demonstration of body language, disrespectful language in answering questions etc. If just audio is played or typed transcripts of the interview are submitted and read this can weaken cases.

Perpetrators interviews are critical and police informants conducting interviews must be trained in lines of questioning, they need to be prepared and well constructed and related to every charge. Preparation prior the interview should be a priority to ensure consultation with Senior Sergeants has taken place and all questions that can be asked have been covered and phrased correctly. Senior Sergeants need to be present in an interview room if a junior officer is running the interview for any errors or oversights to be attended to at the time. Victims rely on the informant of the matter to contribute to guilt findings and potentially gain greater sentencing outcomes from the quality of the interview conducted.

5. Intervention Orders:

Once my intervention order was granted, my perpetrator was instructed to remain at court until they could serve this on him. My perpetrator disobeyed this order and this left me feeling quite anxious that he was not in possession of the order and therefore may breach it and attempt to claim he was not familiar with the conditions.

The conditions provided on my intervention order were completely unrealistic and were not as restrictive as they should have been. For example a distance of 5 meters of approaching me made me extremely uncomfortable and when I questioned the reasons behind this I was told that the perpetrator needs to live freely in the community and to be able to recognise me when approaching me. I was shocked that the perpetrators welfare and rights were being placed above that of mine as a victim.

I was required to return to court to vary the conditions whereby I had to request that a communication clause be removed as the court had enabled the perpetrator to be able to communicate through a variety of means as long as he did not commit family violence. I again was made feel extremely uncomfortable and needed to face my perpetrator in court again to have this clause removed to ensure he could only communicate through a solicitor to my solicitor, again having to be an advocate for myself.

When I returned to court to tighten the conditions on my order, I was approached by the family violence court liaison duty officer and she questioned why I had attended and asked if it was to revoke the entire intervention order. I was shocked to be greeted with such a comment and I understand some woman may make these choices however for a duty officer in a court setting to make such generalisations is a dangerous practice and these attitudes can influence victims when they are so vulnerable instead of being encouraging and supportive.

Suggested Improvements:

Perpetrators must be made wait for orders to be served as directed, or implications should be put in place. If the perpetrator is not served this is concerning for the victim and the police find it difficult to locate them to serve it.

Conditions need to be realistic and be restrictive as possible to enable victims to live as freely as they can in their own community, condition must not prioritise the perpetrator. Police prosecutors need to partner victims in advocating for correct conditions that are reflective of the situation not just standard as per 'typical victim'.

Conditions need to be upheld and breaches immediately actioned if not or it sends a message to the perpetrator that they will not be held to account and the intervention order is seen as a piece of paper that holds no authority. This "piece of paper" is the only thing a victim can rely on to keep them safe and even at times alive, protected and cease the abuse.

Variation processes need to be more victim focussed and supported. Conditions such as distance a perpetrator can approach a victim, their workplace or home, currently these distances are terrifying and unrealistic. The conditions appear to centre on the prioritisation of perpetrators rights and welfare. When a victim is brave enough to vary an order and it is rejected or they are told not to proceed as it is 'unlikely' or unrealistic' of obtaining this is very disempowering and increases risk.

5. Victim Impact Statement's

I was appalled with the way in which the entirety of the victim impacts statements are being mismanaged, from the submission to the police prosecution team right through to the utilisation of them on the day of the court hearing. After having followed all instructions carefully and posting my victim impact statement to the prosecution office, I had follow up to ensure it had been received. I was never able to be given a clear answer and told not to worry as the court hearing was still some time away. As a victim you are made aware of how critical it is to ensure the victim impact statement is submitted to the prosecution in order for them to lodge it with the court and have it acknowledged to be read in court and further that time must allow for the defence to receive a copy also. I was then required to drive down to the prosecution office and ask if they had received this in person to which I discovered they could not locate it and was then required to resubmit it and hand it to them in person.

In the Magistrates court I had to suffer through objections by the other side in an attempt to prevent me from reading my statement and delays were encountered. The Magistrates court overruled this and allowed me to read the entirety of my statement in the court room. However in the appeal hearing in the county court I was completely horrified that the Judge took away my opportunity to read the entirety of my victim impact statement, which effectively sent me a message that I must again remain silent. It left me unable to tell the world what the crime had meant to myself and my daughter even though the statement fully complied with the charter and guidelines. The prosecutor stated that it was one of the best victim impact statements he had ever read in his career (I have attached a copy of my full victim impact statement and outlined in red the sections the Judge would not allow me to read). This process was humiliating to me and the perpetrator was quite pleased with this outcome, as the Judge restricted my rights and yet enabled all of his character witnesses to take the stand and defend him.

Suggested Improvements:

The process is not working effectively and again there is a perception that victim impact statements are enable victims to be heard, however this is not the case. They are not being attached to court documents in time, which does not enabling smooth submission and does not provide the other party awareness that a VIS will be submitted to be read and to limit delays and objections in the hearing. If this process is not managed effectively it can result in a victim not being able to read their statement at all in court which is devastating.

I feel it necessary that a magistrate or judge should not be able to interfere with a victim impact statement. The police prosecution should have sole responsibility to ensure it meets the required guidelines and charter and is presented in an acceptable fashion. I do feel it necessary to perhaps endorse legislation that ensures a victim impact statement is never restricted by a magistrate or judge to govern this change and further that the defence is not supplied a copy at all, there is no required need and it is the victims right to have their VIS kept private until read upon the stand.

6. Police Education / Awareness - Issues to be considered

- To increase education on family violence. These crimes destroy lives, the effects include psychological, physical, social, and other effects including employment disruption, the loss of secure housing and income, separation from our community and support networks, you attempt to remain safe in the community having to face property relocation and change your vehicle so it is unrecognisable.
- Post-traumatic stress needs to be understood by police.
- Explain police processes so they are known to victims
- Police to gain wider understandings why victims are presenting the way they do
- To be aware of the authority status police have and the tone they at times can use. Awareness of these issues are critical when dealing with vulnerable woman who have been controlled and dominated by men, and it can be re-traumatising and intimidating, even though it's not intentional
- To feel believed and validated- this could be the first disclosure for a victim

- Police are at the forefront and their response is critical and plays a significant role in victims feeling supported enough to speak up and press charges
- Recognise the need to develop a stronger partnership and long term accomplishments together
- Recognise the risks that are increased to a victim when speaking up and the importance of understanding the fear associated with family violence and the threats should not be minimised as the victim has lived it and seen what the perpetrator is capable of
- The reason most victims finally speak up is because finally the fear of staying outweighs the fear of leaving- they realise they will die either way and can no longer manage the situation alone
- The magnitude of the potential reprisals after disclosing to police are paralyzing for victims
- My informant went and completed a course in family violence after my case which is comforting to know the next victim she deals with will hopefully be managed at a higher standard and have increased awareness
- Police need more education on services available to victims when to provide support information and the appropriateness of this

7. Experience Levels of Police Officers – Issues to be considered

- Police need to be meticulous in simple tasks attended to, such as ensuring never to disclose victims addresses on paperwork that could be shown in court etc..
- More training, support and supervision needs to be provided by senior police to junior police prior attending giving evidence in a court setting. This is critical as when they are not prepared this can weaken court evidence.
- Junior officers need to feel more confident when cross examined and feel that they are able to say they have completed all required training and are competent in their role when they are questioned about their inexperience
- The importance of the role of police to ensure that they instruct all traumatised victims to take photos of injuries and to see a doctor for treatment and documentation. A victim is not able to consider this at the time and they are used to having injuries and bruises, not drawing attention to them and have become accustomed to avoid disclosures to doctors etc.. A victim has spent years hiding these injuries and excusing them, this is not a natural thought for them. If police ensure this as a standard practice this would enable stronger evidence and in my case having a doctor able to give evidence for me on the stand.
- Police who attended the incident did attend to his shift early the following day to phone me and check myself and my daughter were alright which should be common practice if victims are too fearful to disclose or press charges at the time as they may not survive the following day once the perpetrator has been made aware they contacted police

8. Communication – Issues to be considered

- Need to be aware you become a partnership- the victim, police and the prosecutors. Not denying the extreme workloads exists
- Explain their roles and how they can assist within their parameters
- Important to know what is happening: when papers are to be served or breaching arrest/interviews are to take place this is the high risk period...this escalates perpetrators. This communication enables a victim to have that knowledge to make good and planned safe choices, to re-locate for 48 hours if necessary
- Communication regarding escalation of behaviors- victims need to be called if perpetrator cannot be located and serious information police obtain that can affect the welfare/safety of the victims and the child and become further links and support in federal circuit matters- drug overdose disclosed
- Subpoenas- when informants receive this, to make a victim aware of this ASAP that it will be arriving, especially for a re-trial in a higher court, it's very distressing. Discuss the subpoena what is required of the victim

- Offer meeting opportunities, I had to seek out my own with prosecution and police when needed or leading up to hearings. It should be standard practice that a prosecutor offers victims the option for a court walk through/tours – so victims can understand the environment they will be in and not feel as confronted. This should be standard practice if a victim is committed and brave enough to give evidence they should be supported
- Prior criminal history disclosed- I never knew my perpetrator had prior criminal history, this would assist on multiple levels such as family court matters and proceeding with charges etc..
- When breaches are occurring it's important that police make you feel welcome to attend for support and intervention
- When a perpetrator is given consent to attend a joint property to collect 'essential' items after having been removed and arrested in police presence it is so integral this is managed sensitively and coordinated. Manipulation, control and power can be exercised and police can be unaware. In my property matters I asked to leave keys out as I did not wish to see my attacker. Police with the perpetrator arrived at the residence unannounced. I understand these issues are the least of the police's worries but it is of significance to have communication to support and protect victims. The perpetrator would attend and not collect all items, utilized this time to damage property and leave messages for me including taking screws out of doors etc.. Need to abide by minimal time limits in properties to minimize these opportunities to re-abuse victims
- Relationships between Prosecutors / police informants so important to support a case and hearing journey. Ensure a coordinated approach- more professional

9. Protection Levels – to be considered

- Standards offered needs to be constantly reviewed and considered especially when escalations occur-, such as offering to increase patrolling of your house etc
- court room protection- functionality of court room setting and the positioning of victims evidence on stand and VIS being read from, most are positioned next to the perpetrator which is very distressing
- Options of screening perpetrator in the court room need to be offered and reading your VIS from the bar or in a witness protection room etc..need to be offered
- awareness of tactics in court room, that intimidation can occur
- To continue to revisit the scope to vary intervention orders tighten conditions as circumstances change and support the actioning of breaches encouraging reporting and correct use of intervention orders

COURT SYSTEM MATTERS:

Court System- Magistrate and County

I found my 2 day hearing in the Magistrates Court and my 3 day hearing in the County Court, the most damaging and gruelling experiences of my life, giving graphic evidence, having to relive the entire assault again, be cross-examined and face my perpetrator.

I felt more supported and validated at the Magistrates level and did find the male Magistrates presiding over my case more compassionate and was more educated on family violence issues. I was however highly disappointed with the county court experience and the female magistrate's inability to understand the crime committed or family violence issues.

I found both court processes unable to effectively validate my violent experience, unable to provide me with a sense of safety within the court setting. I can confidently state that I was left re-assaulted by the court process and justice was not provided. I discovered that the court system has an inability to work as a whole and was unreliable and inconsistent.

The hearing was booked to be heard 7 months after the crime, however it actually took an excruciating 11 months before it was heard, as I had to endure 4 lengthy adjournments which was unacceptable and heightened my anxiety to have to re-appear continuously. I did not feel that the adjournments were necessary and were delay tactics by the defence. It was difficult that I also had to face a delay in my 2 day magistrates court hearing, having to wait 6 days before the second day commenced which was extremely difficult to face re-attending the second part of my hearing after a break, this certainly was not ideal and exacerbated my health complications and further my post traumatic stress at the time.

After all evidence was heard, including 4 separate witnesses, 21 photographic evidence of my injuries suffered, the offenders video interview, my OOO call and a submitted GP medical report. The Judge heard the multiple and failed attempts of rehabilitation of the perpetrator, the perpetrators lack of remorse or insight into the crime, continued abuse, the seriousness of the crime, the offender pleading not guilty and still my perpetrator was sentenced to just 14 months Imprisonment term for this crime in the Magistrates Court. Receiving 12 months for the crime committed and 2 months for contravening an intervention order of 6 occasions. I was able to feel some slight validation momentarily and then an immediate appeal was lodged and the perpetrator was released into the community on 8 months of bail.

I was not prepared for a Magistrate to allow my attacker to be granted bail due to him not being at 'flight risk' even though he posed significant risks to myself and my daughter and be released out the front door of the court beside me into the community. No mechanisms were put in place to keep us safe during this period and no risk assessment was ever conducted. Whilst on bail my perpetrator was admitted to a psychiatric ward, attempted to commit suicide, had increased alcohol usage and was using various illicit drugs including Ice daily. These increased risk factors were never conveyed to me at the time. I was not able to appeal the perpetrators appeal.

I then was faced to live in a trauma filled space for 8 months feeling almost unable to leave my home, paralysed by fear and terrified of seeing my perpetrator or being followed or assaulted. My health began to suffer immensely during this time. I then had to re-live the entire ordeal once again for a 3 day hearing in a higher County Court whereby my attacker continued to plead not guilty once again. I was faced to give evidence and be cross-examined for a second time. During my county court hearing I was confronted with a legal study high school students entering unannounced into the court room and sitting in on my hearing when I was disclosing intimate details regarding the crime and describing the sexual assault that had occurred, this was highly insensitive and unsettling situation that could have been avoided.

I was under the impression that having my case heard in a higher court would provide justice to myself and my daughter and carry a lengthier sentence; however I found the County Court system more abhorrent than the Magistrates. I found the Judge was less educated on family violence and her language was quite contradictory. Her sentencing remarks were obscure, the outcome was appalling.

The County Court Judges sentencing remarks to my ex-husband were *"the way in which you behaved was appalling...you went beyond what was in any way acceptable in what you did. What you did was absolutely disgraceful...Ms McKellar suffered significant injuries. They were serious injuries... You did not just carry out one action, you carried out multiple actions...you have committed this offence of recklessly causing serious injury after you had gone to a men's behaviour change program....so that is concerning. It suggests that you are not capable of learning"*.

In spite of this, the Judge then decided to severely reduce the prior sentence of 14 months imprisonment to a 2 year Community Corrections Order with 250 community hours to serve and compulsory attendance at various treatment programs already attended previously by the perpetrator whilst also stating this would give him an opportunity to continue to navigate through the federal circuit court for his child even after hearing that she was a primary victim of the crime.

This experience and outcome left me feeling re-assaulted by the Justice System and left me extremely vulnerable and re-traumatised. My health suffered incredibly and as a consequence my chemotherapy medication ceased to work. I was then required to be transitioned onto a dangerous organ transplant drug and still to this day I have not been able to be successfully placed into remission and have had to undergo a higher toxicity of chemotherapy infusions twice which now have further threatened my fertility, bone marrow, bone density and overall quality of life (I have attached my treating professors letter).

As my perpetrator was not adequately sentenced or imprisoned, I now live a life whereby I am alarmed 24hrs a day and have CCTV cameras installed around my home to ensure my daughter and I are safe.

Suggested Improvements:

The outcomes achieved for victims throughout the entirety of the process need to be reviewed, they are overwhelming poor outcomes with perpetrators receiving lenient sentencing and victims being the ones more harshly sentenced. A victim should be able to appeal a perpetrator's appeal.

Mandated education must be implemented for all magistrates and Judges on the devastating and for-everlasting effects violent crimes have on victims/survivors and families and the recovery journey. Magistrates and Judges must be educated on the different types of abuse that takes place within the context of family violence, as in their own court room intimidation tactics occur and yet they appear oblivious to recognising this. I feel it would be extremely beneficial to have a survivor advocate part of some aspects of training to convey their experiences to magistrates and judges, I feel this would have a greater impact.

School students education needs to be appropriate, the courts need to have some protocols around which court hearings are appropriate for student to sit in on and the timing is paramount.

Judges and Magistrates need to be aware of any life threatening health issues for a victim and the potential for exacerbation and how they can best protect their health care needs. This needs to be a new focus as the forever lasting impact and damage cannot be undone, and carries significant consequences.

I think Judges transcripts need to be sought and read to gain a greater understanding of their lack of insight, contradictions and the language used to victims in the court hearings.

Appeal processes for victims need to be reviewed, a victim should be entitled to appeal an offenders appeal in Victoria if the sentencing outcome is deemed as manifestly inadequate, perhaps legislation would remedy this.

I would like to see more interactive magistrates and judges asking questions and being involved in the hearings so they can better understand the experience. I would like to see an awareness in magistrates and judges presiding over cases to endorse some compassion and ability to understand just how hard it is to bare your soul to the law.

The prioritisation given to the perpetrators rights and welfare over that of the victims needs to be acknowledge and the balance needs to shift by giving greater recognition to the victims generally and practically. Ineffectual sentencing is a major problem, Judges are not imposing the maximum penalties and they are continuing to provide inadequate sentences that again send a message to the perpetrator that the crime was not significant enough to punish. I believe harsher sentencing standards need to be set, I feel there may be a place for further legislative remedy to ensure that judges are enforced to endorse stronger sentencing and perhaps ensure that they no longer carry such discretion when enforcing minimum and maximum penalties.

More prisons need to be built and committed to, community correction orders are being presented almost as the only option and they do not carry the conditions adequately nor are the successfully being monitored by corrections.

Objective, Subjective and Aggravating factors of crimes committed that are not appropriately weighed in court hearings.

I believe standards must be set around defining 'punishment' for violent crimes and further to challenge Judge's and Sentencing Councils views on 'rehabilitation' concepts for perpetrators that have previously failed rehabilitation programs multiple times, these are not working, offenders are not deterred and reoffending is occurring.

I believe a standard needs to be set regarding compulsory risk assessments for offenders found guilty of serious crimes and that these assessments must be conducted prior to any offender being granted bail.

Federal Circuit Court

The Federal Circuit Court is a separate area that is requiring immediate attention. This court is even more traumatic than the criminal courts and providing even more abhorrent outcomes for women and children. The lack of information sharing between the federal circuit court and criminal courts is appalling and needs to be improved. Affidavit submission in the family court enables perpetrators a way of further abusing victims and utilising the process in an attempt to have contact or remotely abuse their victim once again. Stricter criteria and awareness of this needs to be acknowledged and appropriate action taken to minimise this.

The Judge made an opening statement to me on the very first hearing, stating "is this woman alienating this child from the father?", the Judge had not read any material nor had any documents or knowledge of the criminal matter at hand or the charges pertaining to the perpetrator. I was astonished that these attitudes existed with the Judge and further that I was spoken to in this deeming way when I was acting protectively and my daughter and I were the victims of the violent crime, my daughter a primary victim of the assault also.

Family Assessors do not appear to have the necessary skills to conduct the required assessments and you do not have consistency of the same assessors for each assessment. Further the assessor can be intimidating and the language used is quite overwhelming as a victim, I would even say at times intimidating.

Safety concerns are paramount in family court, security are not equipped with family violence cases and especially when children are present in these building for family assessments. Judges and security officers do not understand the potential consequences if a perpetrator is provided with no custody or contact at a hearing, their volatile reactions to this decision and this places the mother and child in serious potential danger leaving the court, no systems are capable of dealing with this as I have experienced it firsthand.

When conducting the family court assessments the assessor still proceeded to place my daughter in a room with her perpetrator regardless of his increased risks, including admission to a psychiatric ward, suicidal tendencies and ice usage, no risk assessment was ever conducted, I do feel they placed my daughter in jeopardy.

After my family court assessment, court security walked us out of court to an apparent 'high risk' victim back secure exit where they had a taxi waiting. My 2 ½ year old daughter and I only got a couple of streets away from the court. We were sitting stationary in peak hour traffic when we were suddenly severely rammed at high speed by a four wheel drive from behind, which then immediately sped from the scene. I was taken by ambulance to Royal Melbourne hospital with neck and back injuries and admitted overnight. I had CT scans and X-rays for my spine and chest, and my young daughter suffered whiplash. I had expressed my fears of incidences such as this to the family court prior our assessment, however felt unheard.

Both independent court assessments concluded no contact and I was eventually granted full custody and no contact after an excruciating 1 ½ years and having been placed in extreme financial debt. However, even having deemed the perpetrator to never be around my daughter, that he lacked insight, was found guilty of the crime in 2 criminal court hearings and had shown no change or remorse, the Judge still enforced me to send photographs of my daughter to her perpetrator 4 times per year and the option of the perpetrator to provide letters 4 times per year. This is concerning to me as he is still able to identify her ongoing and still keeps myself and my daughter in contact with our attacker and we are not able to move forward as it is still anxiety provoking to have to provide these photographs, being extremely vigilant as to where I take these photos so they do not disclose where we are living etc. and still forces us to have communication.

Suggested Improvements:

Major discussion and consultation must take place regarding the federal circuit court, it is an extremely re-assaulting and abusive setting that does not prioritise children's welfare and rights. The integration between this court and criminal courts is essential. Major reform and improvements are needed to be established.

Risk assessments should be conducted on all perpetrators with high risk behaviours, breaching patterns and criminal history prior to being in a room with the child for an assessment process.

If no contact or custody is provided in a federal circuit court to a perpetrator, I do not feel any form of communication should be then forced upon a victim such as photographs or letters, this just simply gives the victim a life sentence to endure and again rewards the perpetrator, giving them control.

Support Services

Essential and long-term funding is critical. If funding is no longer continued and these services remain underfunded or become unavailable to women and children whom have escaped family violence, they would find it a real challenge to move around their community and do the things that are important to them—placing them in a position of potential further risk, whereby they feel extremely vulnerable, unsafe and are quite restricted to live as they chose to.

On a recovery level, these services really assist the healing process, feeling protected and safe is such an amazing relief, allowing survivor's scars to exist but not be a permanent glaring reminder of their past trauma. No woman or child should ever have had to fear violence or feel unsafe in their own home and should be provided with choice and opportunity. Feeling protected and safe would be impossible without assistance of these types of services and what they are able to provide in their critical programs. These services take the time to learn your story, walk the path to recovery with you, and commit to ensuring the past does not define you. It's important to remember, that an individual in need, may only be brave enough to reach out once for assistance- this response is critical and can save lives. The services that I engaged with that ensured I survived this journey included:

- EACH Social & Community Health
- Victims of Crime
- Eastern Centre Against Sexual Assault
- Eastern Domestic Violence Service

- Community Health Services
- Enhanced Maternal Child Health

Suggested Improvements:

Funding must be targeted and a thorough evaluation of services in the area needs to occur to define which services are the critical ones required and to cease duplication of services. Services must be coordinated and be regulated by the same guidelines and risk assessment criteria. There is a perception that individuals are receiving the required assistance and support and that it is readily available and targeted at the need. Major gaps exist in the service system and funds are not extending to the critical areas of need. We must ensure support services are further developed, well-resourced, sustainable, delivering high quality, beneficial and accessible services to individuals.

Legal Aid Criteria

My application for assistance for legal aid funding to contributed to a court ordered psychiatric assessment was rejected. I did not feel it was a fair process that I was required to pay a fee to have to attend a psychiatric joint assessment that stemmed solely from the perpetrator requiring the assessment and having been court ordered to do so. My contribution should have been covered by legal aid or by the perpetrator as a single mother on a pension who had not committed a crime.

Suggested Improvements:

I believe that legal aid is not accessible as it should be to victims and the criteria should be revisited and revised as it is not extending to the victims that require it the most.

Victims of Crime Assistance Tribunal (VOCAT)

I was disappointed with the lack of recognition for my daughter who was present on the evening of the assault. Initially I was told that she was not a victim at all, then that she was possible a secondary victims perhaps. It took one year to have my daughter officially recognised and deemed as a primary victim of the crime and that her life could have been taken on this evening. VOCAT rejected my application for the provision of a Safe T Card personal alarm for \$500 for my daughter and I. The tribunal rejection letter stating *“the Tribunal is not satisfied that at the present time the ‘Safe-T-Card’ is necessary to ensure the applicant’s safety, but rather it may assist in her having a sense of safety”*. Victims should not have to incur financial costings to feel protected and safe when the justice system lets them down.

Suggested Improvements:

A review of funding and approval processes is required to be undertaken along with compensation amounts, considering majority of victims are not able to take any civil action on a perpetrator if they do not have any assets (my perpetrator hid all his assets and police could not locate any for me to pursue civil action). VOCAT needs to be more effective when deeming who is a victim of the crime. Safe T Cards etc. must be an essential item approved for a victim when a high risk perpetrator is on bail or does not enter a prison term, without these types of safety mechanisms the victim cannot move about their community. VOCAT criteria requires an in depth review and further the tribunal decision makers should undertake family violence education/training.

Cultural Shifts

From an early age, young people are exposed to harmful messages that can support violence, discrimination and stereotypes, together we have the power to create change, educating and empowering our young people. We must challenge perspectives, make people stop and think about the impact their words and actions have. Both power and obligation sits with all of us to contribute to the prevention and elimination of family violence and we can all play a greater role. We need to create avenues for the community to be bold enough to use their voices to create change; ensuring opportunity is provided to everyone. Workplaces can play a significant role in cultural change and supporting those affected by violence.

Suggested Improvements:

Utilising reputable media to convey the correct messages regarding family violence in a sensitive and appropriate way. To utilise statistics to convey the prevalence and educate that attitudes shape perpetration. Continued funding for developments and community initiatives that educate the target audiences and support the true need.

To support the Government to embark upon reforms in the justice system to bring about cultural change within the system. Supporting national and state campaigns that continue to educate and inform the community of the prevalence and nature of family violence and how they can assist.

Compulsory educational components to be implemented into all school curriculums.

Workplaces can assist by having clear communication in the workplace about family violence, raising its profile in meetings etc. Workplaces can implement policy and procedures; creating defined roles for managers and leaders able to carry portfolios that specialise in family violence. Workplaces should be implementing family violence leave or flexible work arrangements and structured support within their human resources departments.

Workplaces can better support conditions relating to the workplace on intervention orders and further offer possible work location transfers where possible. Workplaces should engage survivor advocates to attend their workplace to educate them on practical ways they can support and assist victims and what signs to be aware of that family violence may be occurring such as absenteeism, withdrawing from work social events, staying back at work late or coming in early to escape violence at home, persistent calls or messages being received at the workplace by a current or former partner or company vehicle damage/repairs.

24 November 2014

ATTENTION: FEDERAL CIRCUIT COURT MELBOURNE

To Whom It May Concern:

Re: Kristy McKellar

I have been Kristy's treating specialist physician for the past twelve years for her rare autoimmune disorder called Wegener's Granulomatosis (WG); more recently renamed Granulomatous Polyangiitis (GPA). GPA is a chronic relapsing inflammatory disease that, in Kristy's case, has involved her upper airways and multiple peripheral joints resulting in painful debilitating inflammatory arthritis.

The natural history of this disease before modern treatment was that it resulted in death in the majority of cases. In the 1960s chemotherapeutic drugs (principally cyclophosphamide) in combination with steroids were able to induce remissions and markedly improve mortality. However these drugs have significant potentially life threatening side effects and it should be noted that the disease still has a 5 year mortality of 25%.

We now recognise 2 major forms of the disease, Microscopic Polyangiitis (MPA) and GPA or Wegener's Granulomatosis. Kristy has GPA. Unfortunately this is the more difficult form because, although disease remissions can be induced, the disease typically relapses when drugs are weaned off following remission induction. The drugs currently used cannot be continued indefinitely because of their toxicities. These include high risk of immunosuppression induced life threatening infections, reproductive sterility (occurring in virtually all women after 12 to 18 months use of cyclophosphamide) and a significantly increased risk of many forms of cancer. Unfortunately Kristy's form of the disease cannot be cured but follows a course of relapses and remissions often associated with progressive organ damage and a series of treatment (drug) induced complications.

Severe stress and anxiety has a detrimental effect on immune disorders, particularly Wegener's Granulomatosis. Significant trauma and stress contributes to disease exacerbation. Stress complicates treatment and in particular joint pain causing loss of capacity to mobilise and to physically function normally. Kristy has been subjected very severe physical and mental stress from her ex-husband. This has clearly exacerbated her pain and suffering and has made managing her chronic diseases much more difficult. It is also apparent that her young daughter is able to sense when Kristy is suffering with exacerbated symptoms caused by the immense trauma and stress.

Previously to Kristy having been in a violent and abusive relationship, I had been able to more successfully treat and control Kristy's symptoms and to place and maintain her in remission. During the entire timespan Kristy was in a relationship with her now ex-husband,

I witnessed ongoing flares of her disease, various hospital admissions and that she was less able to achieve full remission. Prior to this relationship she had not suffered these complications as severely or frequently and that they were more easily treated and that they were less frequent. In fact I can confirm that Kristy was in remission prior to meeting her ex-husband.

Re: Kristy McKellar

I have a clear understanding of the violence and various forms of abuse Kristy and her daughter were exposed to over her relationship with her ex-husband, even during her high risk pregnancy and I have seen photographs of the physical injuries Kristy was subjected to. I have also been aware of the emotional ramifications from this and the ongoing threats from her ex-husband which are understandably likely to result in poor health outcomes for her.

Kristy has reminded me of some specific incidents where her ex-husbands behaviour caused her seek emergency medical support.

In September 2010, Kristy developed an acute episode of panic and distress with dyspnoea (shortness of breath) and chest pain as a result of her having been assaulted the previous evening by her ex-husband. She was taken to hospital by ambulance.

In June 2011, Kristy suffered a major acute exacerbation of her underlying vasculitis. She required surgery that involved cartilage grafting which was the removal of cartilage behind her ear and placed into the bridge of her nose. Days after this painful surgery Kristy disclosed to me that she was assaulted by her ex-husband. He struck her face with a pillow and then a doona. This broke the plaster cast splint supporting her new nose cartilage.

In October 2012, Kristy was unable to take her critical chemotherapy and steroid medication, as it had been dissolved in water, which her ex-husband was responsible for at the final assault. Kristy's ex-husband attended frequent appointments my hospital with her and was well aware of the seriousness of Kristy's disorder and her need for these medications.

As a result of this and further episodes of trauma and the associated physical and psychological stress and constant fear Kristy lost ten kilograms of weight after the final assault, placing her in malnutrition; this weight loss was severe and dangerous. This rapid weight loss triggered acute cholecystitis requiring laparoscopy and cholecystectomy. Kristy suffered complications after this surgery including venous thrombosis necessitating further long courses of anticoagulation.

In summary the ongoing pressure she is under as a result of her ex-husbands behaviour is seriously complicating her care and increasing her physical suffering necessitating increased requirements for potentially dangerous drugs. Unless her ongoing stress from this unacceptable behaviour can be terminated, her health and her child's care will be severely at risk. I believe Kristy would benefit from being able to live in a more stable safe environment and that this would positively be reflected in her better health and ensure her daughter's normal development.

Yours sincerely



Stephen Holdsworth
Professor of Medicine
Director of Clinical & Diagnostic Immunology

18 June 2014

The Hon Robert Clark MP

Attorney General, Member for Box Hill, Minister for Finance and Minister for Industrial Relations

Level 26

121 Exhibition Street

Melbourne

Victoria, 3000

Dear Honourable Robert Clark MP- Attorney General

I write this letter to you, to inform you that I recently bared my soul to the law and I have been the one more harshly sentenced for having done so- I am confused as I was not the offender of this crime? How can it be that I am the one that received a harsher sentence than my offender? I am a survivor of domestic and family violence, I was a victim of a violent crime, but I am now a victim of the justice system. I have spent the past year and a half braving this unjust system, hoping to be seen and heard. It was a grueling and damaging process. Representation has been sent to you on 6th June 2014, regarding this appalling sentencing outcome and receipt of this communication has been acknowledged by your senior advisor. Please refer to Appendix A which outlines the media coverage surrounding the case.

I was privileged when informed that I was to be the representative for Chief Commissioner of Victoria Police Ken Lay's "Take A Stand Campaign", my story was released with significance on White Ribbon Day. As the face of this campaign I was to embrace the campaign and trust in its ability to deliver real outcomes. The Campaign stated that it was time for all Victorians to say enough is enough, it was everyone's business and that it would confront Victoria's hidden disgrace.

The perception is that the criminal law now gives greater recognition to the devastating effects of family violence, with sentencing outcomes to reflect the severity of the crime committed. I recently attended the Department of Justice Law Week Event 2014. You were a spokesperson on this evening, an historic event being the first time during law week that a function had been dedicated to Victims of Crime in the Court Process. You were described on this evening by the Honourable Philip Cummins as someone who has always been and remains a strong supporter of victims and of the rights of victims; therefore I refer my situation to you and request for your assistance to support the Director of Public Prosecutions or other permitted bodies in appealing against this manifestly inadequate sentence imposed and to further attention my case to all appropriate parties.

At the Law Week event, I heard you commended on establishing the Victims of Crimes Consultative Committee. You and various other speakers gave me inspiration, hope and alleviated my fears around being the victim in my offender's upcoming County Court Appeal hearing.

I heard you speak of the process of evolution and a struggle over a long time to ensure there would be greater recognition of the rights and roles of victims in the criminal justice system. What I absorbed from you was that victims' rights would be given reality in everyday practice and experience and that victims needed to be recognised and respected. You spoke of ensuring that the system worked as a whole, working reliably and consistency to ensure that problems are overcome and addressed. I now have not only seen firsthand but experienced the devastating unreliable and inconsistent system we have supplying abhorrent lenient sentencing outcome that reward serious violent offending behavior.

You discussed the reform enhancements that have been made to the Victim Impact Statements. The point of the statement is to allow a victim to have their say so the court and the world know what the crime has meant for them. You discussed the greater flexibility in the ways in which these statements may be presented. My Victim Impact Statement was minimised and virtually dismissed like it held no importance at all. You stated that Judges have been engaged to provide a lot of input in trying to ensure that the process of submitting and presenting Victim Impact Statements operates as respectfully and as effectively as possible and is not disrupted at the last minute by technicalities or legal objections. In both the Magistrate and County Court's, objections were made and delays were incurred.

I was encouraged to speak up and break my silence and the Judge took away my opportunity to read the entirety of my statement, which effectively sent me a message that again I must be silent, even though the statement complied fully with the victims charter and professionally addressed the principles of physical, emotional, social and financial.

The nature and gravity of the offence was extraordinary, it was over an hour long intentional, reckless brutal act that enabled the Victims of Crime Assistance Tribunal to deem both myself and my four and a half month old daughter to have been primary victims of this criminal act. I feel that it is my responsibility to set the scene as to what is actually occurring in the justice system when it comes to sentencing, so others can make an informed decision of whether to pursue this avenue. This is disheartening as my hope was to be an example to others that our justice system is protecting victims, applying the law adequately and is validating our violent experiences.

I pose the question to you, how does a of 14 month Incarceration sentence get so severely reduced to a Community Corrections Order in a County Court setting when the offender has pled not guilty in both a Magistrate and County Court hearing? Why has this Judge not considered the objective and subjective evidence, the offender's inability to be rehabilitated, or the victims suffering and welfare to be important enough to prioritise it over that of a perpetrator? So after almost losing my life and risking the life of my baby, my attacker receives a 2 year community corrections order with 250 community hours, and is to partake in treatment components which he has previously engaged in repeated times across the years.

This perpetrator made a conscious choice to degrade, disrespect and humiliate me as his wife and as the mother of our child. I will never be free of the confronting images that haunt me from the assault, or forget how frightened I felt watching my ex-husband feel powerful seeing me terrified, at times smiling during the attack. It is appalling that an offender who has such a distorted sense of right and wrong, and an unhealthy value system of this magnitude, being of the attitude and belief that it is acceptable to treat women and children in this way is enabled to re-offend yet again.

The system has not done enough and the law was not appropriately applied. Myself and my daughter were not protected, in fact I have been re-traumatised by having to relive this nightmare by giving evidence and having been cross-examined in two courts. I have had to re-locate housing and purchase an unrecognisable vehicle as safety precautions to prevent my attacker locating myself and my daughter. The Judge's decision now leaves myself and my daughter unprotected, vulnerable and to now continue living in fear, as she has permitted our attacker to be placed back out into the community to harm us again. I have lost confidence in the system. No words could ever be powerful enough to express the way the Justice System has betrayed and undermined my experience with its disgraceful sentencing handed out by an ineffectual justice system. Injustice is outrageous and deserves outrage. The Judge's are continuing to provide pathetic sentencing which does not deter family violence and supports the perpetrators of these hideous crimes.

I had hoped to get an outcome that fitted the crime and that justice would be done. This type of decision does not deter violent men; it sends a message that this behaviour is not severe enough to be punished and further continues to allow them to maintain power and control over their victim. A stronger message needs to be sent that these behaviours have severe consequences. You would expect more severe sanctions would be imposed in a higher court, the Justice System is meant to protect you, however my attacker was able to celebrate his outcome in front of me in the court room and then allowed to walk out the front door alongside me.

I ask for what happened to me and my daughter to not just become the subject of detailed consideration and consultation process but instead an appeal process, to be heard in the Court of Appeal. I ask respectfully of you, The Honorable Attorney General to recognise the original sentence imposed and the obscurity of the County Court's sentence is considered to be manifestly inadequate. The sentence imposed was one which can be described as unduly lenient, this offender pled not guilty and was convicted twice, being found guilty in two courts of Seriously Recklessly Causing Injury and twice founded guilty of 6 charges of contravening a 5 year family violence intervention order, one charge was of the severity of attending my property. How could the Judge provide this offensive sentence if she had properly weighed all the objective and subjective relevant factors and heard all the outlined aggravating factors in the case?

This assault was brutal and inexcusable; in fact the offender was rewarded for demonstrating the utmost confirmation of having no remorse or acknowledgement of his crime that he intentionally, consciously and recklessly committed to his own wife and child. I propose this case be given the opportunity to have this appalling sentence reviewed, with a commitment from Government to consider a more fitting sentence for this hideous family violence crime. How do I continue to encourage and empower other victims to speak up in my spokesperson role if these are the outcomes they will face?

I constantly relive every word, every hurt, every moment from the assault. The damage is irreversible and forever-lasting. The Justice System should be ashamed of having re-assaulted a victim and now left them fearing for their life.

Yours Sincerely



Kristy McKellar (previously Kristy Wardle)

VICTIM IMPACT STATEMENT OF KRISTY MCKELLAR

Emotional Impact of the Crime

The violence and abuse committed by my now ex-husband, has left both my daughter and I distressed and profoundly traumatised. It was unforgivable. I endured repeated physical, verbal and emotional abuse on this evening in the presence of our four and a half month old daughter. I had my body exposed intentionally, inappropriately viewed, and then was violently assaulted for over one hour time span in an excruciating attack causing multiple injuries. I was fortunate to not be that one woman who is killed every week by a current or former partner at this assault.

A heavy sadness continues to fill my soul, as how do you ever fully recover from such a cowardly, dangerous, intentional and reckless act? Words really fail me when attempting to describe how this crime has affected us. I constantly relive every word, every hurt, every moment. Arguably, the most damaging aspect of the assault is the ongoing trauma from being betrayed by the person that I thought I could love and trust. This inhumane attack turned my world upside down and all order completely disappeared. The wounds remain, in time the mind covers them with scar tissue and the pain lessens. But it is never gone. The nightmares remain, the fear stays and the words still go unspoken. The damage is irreversible and forever-lasting. You can never go back to the person you once were. Sometimes someone hurts you so bad, there are days it stops hurting at all.

I should never have had to fear violence of this kind or be violated in any way. My ex-husband made a conscious choice to degrade, disrespect and humiliate me as his wife and as the mother of our child. I will never be free of the confronting images that haunt me from the assault, or forget how frightened I felt watching my ex-husband feel powerful seeing me terrified, at times smiling during the attack. I was so vulnerable recently haven given birth to our first child, he was more powerful than me - not just physically, but emotionally, too as he was not the one living in fear. It is appalling that he has such a distorted sense of right and wrong, and an unhealthy value system of this magnitude, being of the attitude and belief that it is acceptable to treat women and children in this way.

I was left injured, bruised and shaking with his final words to me being "I will hunt you down" and I believed him. He left me and our daughter unseen, unheard, unwanted, as if we were nothing at all, intent on destroying our new precious family unit. It deeply saddens me that we have been victims of a violent crime. We had the right to feel safe, be treated with respect and not be physically or emotionally harmed. My ex-husband felt very entitled and that he had exclusive rights and privileges to treat me and our daughter any way he saw fit, regardless of the devastation he caused us.

Our daughter has been significantly affected by her exposure to family violence. At the time of the assault, she did not have the language skills to articulate her story, but this did not mean that she was not affected, as she was able to let me know in other ways that she felt frightened and unsafe. It is a reality that our daughter's life was at risk multiple times and her life could have been taken. I felt so shocked that my ex-husband seemed to have no awareness of the fragility of a four and a half month old (prematurely born) new baby and risked his own child's safety. After the assault, my bonding and attachment with my daughter was disrupted. Due to the level of stress and shock my body was subjected to, my breast milk supply rapidly deteriorated and I was no longer able to feed our daughter. This has left a huge emotional scar on me and feelings of inadequacy. I was stripped of this intimate bond with my daughter, forced to place her on formula and bottle feed her. The abuse I suffered from my ex-husband destroyed the joy of having my first child, which should be one of the most special times of my life.

Still today, our daughter is supported by a child psychologist, an enhanced maternal child health nurse and a children's domestic violence support worker. She is now of an age where she increasingly able to communicate and she has been recognised to have been directly impacted upon by this assault, officially regarded now as not a secondary but a primary victim of this crime, being awarded the necessary support services to aid her variety of post-traumatic stress symptoms for now and for in the future. I will be faced with supporting our daughter through processing what happened to us as she ages and emotionally matures.

I am continued to be supported by Victims of Crime, family violence workers, a women's domestic violence support group, and the Eastern Centre Against Sexual Assault. I have undergone exposure therapy to reduce my trauma by detailing the assault and returning to the bed and breakfast where I was attacked. All of these steps have been gruelling but integral to process the abuse, manage my post-traumatic stress symptom's and to remind me that I will never have to live that moment again. As a result of being emotionally mistreated, I am constantly living in a trauma filled space, a space where I am now unsafe, vulnerable and continue to experience the symptoms of post-traumatic stress. I find myself surveying my environment to detect any possible threats, unnecessarily fearing safe men, when previously to my ex-husband I never knew this type of violence could even exist in men. These scars are evident for all to recognise when they witness me flinching when someone places their arms around me or touches me, and this is all because my ex-husbands hands were not so gentle.

The crime has impacted on my career as a Manager in the social work field. I have had to rely on support services that are local and known through my own workplace. It has been humiliating to have to disclose my personal situation to other professionals and related service providers in my field of work. I feel that this has most definitely impacted on my professional integrity and has potentially limited my future employment prospects.

I feel my ex-husband has used the appeal process to emotionally re-traumatise me and to attempt to still hold power and control over me. It has been difficult to start the next chapter of my life when I have had to keep re-reading my last one. The progress from my past year and a half of healing has diminished having to relive the assault after already doing so in a Magistrates Court. I have been in an enhanced state of sensitivity knowing my ex-husband has been in the community for a lengthy 8 month bail timeframe. To survive these past 8 months I placed security measures necessary to feel safe and protected as I am scared of the things I now know my ex-husband is capable of.

Since the assault, I am slowly attempting to trust this new life. A life where I no longer dress to cover my bruises, remain silent, be embarrassed or frightened. I have since divorced my husband and secured a five year Intervention Order for myself and my daughter, I gradually feel a sense of pride, worth and freedom. This however doesn't mean the damage never existed, it means the damage no longer controls our lives. Having survived this ordeal does not mean it was ever ok.

Physical Impact of the Crime

On the night of the crime, I lost all hearing in my right ear immediately when I was struck with immense force by my ex-husband, slowly it returned across the next day. I needed follow up medical care to ensure my eardrum was not ruptured on two occasions. As a result of the assault, I suffered momentary deafness in my right ear, with also redness and broken capillary blood vessels in front of my right ear. I had a swollen right cheek bone. Also I had bruising and broken capillary blood vessels and swelling under my right eye, which days later formed into a bruised, swollen black eye. I had finger marks, redness and broken capillary blood vessels on my neck and jaw line. I incurred redness and bruising on my chin, and also redness behind my left ear. I suffered with a lacerated and swollen ankle, and further large severe bruising and swelling on my right shin. I also had bruising and swelling on my right wrist as well as bruising and swelling on my outer arm-both on my left and right. I received medical treatment for these injuries from my GP. It was very difficult for me to care for my daughter for a few weeks after the assault as I was in a great deal of physical pain from my injuries and relied on my family to assist in the caring of my daughter as well as supplying nappies, formula and my groceries for us.

My injuries healed in the weeks following the attack however stress aggravated my rare life threatening disease called Wegener's Granulomatosis, which I am treated for with Chemotherapy. This is an autoimmune disease and prior the assault I was in a state of full remission. Since the assault I have relapsed twice and had to be hospitalised on one occasion. I have had to increase my chemotherapy treatment, along with steroid treatment. I have also needed a reintroduction of arthritis, anti-nausea and antibiotic medication again. Since the crime occurred, I lost ten kilograms of weight, placing me in a seriously underweight category. This rapid weight loss resulted in emergency surgery, and then I was faced with an introduction of painful blood thinning injections.

Financial Impact of the Crime

This crime has also had a deep financial impact on me and my daughter as I was still on unpaid maternity leave when I was assaulted. Two days after the assault, My ex-husband commenced transferring money out of our joint banking account to a new banking account he had created in his own name, so our daughter and I could not access these funds. Then eight days later, he organised for his entire salary that we were reliant upon to be paid into his new account, which then left me and our daughter with no financial support at all.

Consequently, I initially had to rely on family and friends to assist with purchasing essential items such as food, nappies and formula. Further, my ex-husband froze our joint mortgage account without my consent or any discussion with me and ceased paying any repayments on our house. He ceased paying our joint loans and left me to pay these, which was impossible on a single parent pension. My ex-husband also disconnected our home phone and our family car e-tag account without any consent or providing any notice to me, so I then incurred reconnection fee costs to reinstate these services.

I am fortunate that my employer has been extremely supportive and were able to extend my maternity leave and are open to flexible working arrangements to cater for the fact that I am a single mother and need to attend support service appointments with my daughter and for myself.

Since the assault I have incurred increased medical costs and the expenses associated with attending appointments with police, support services, doctors and solicitors.

Further Information

I supported my ex-husband through an entire year of rehabilitation and support services, I learnt myself and my daughter didn't mean enough for him to want to stop being an abusive man. I am fearful that regardless of the intensive support and treatment my ex-husband was provided with for an entire year, including a GP, psychiatrist, psychological counsellor and a men's 13 week intensive behavioural change course, he was not able to be successfully rehabilitated. My ex-husband chose not to put any of the strategies he learnt into practice and continued to be abusive, extremely angry, impulsive and communicating with his fists and vulgar language.

My ex-husband has showed no remorse or insight into the extreme impact of his actions and he has never provided an apology for any of the pain and suffering he has caused to my daughter or to me, and continues to demonstrate patterns of abusive and threatening behaviour. It is alarming that he continues to plead not guilty to a crime he committed and fails to take responsibility and ownership for his actions and choices.

I have huge concerns about my ex-husband's lack of respect for consequences and the law. I have been required to return to Court to have my Intervention Order conditions varied to prevent further abuse, he repeatedly breached the Intervention Order, police have needed to contact my ex-husband on several occasions with warnings regarding his intimidating behaviour and contacting my family members rather than following formal procedures and communicating through his lawyer. I have fears regarding my ex-husband's inability to control his impulsive aggression and am very anxious about what the future holds.

I called for the police to protect my daughter and I this time was because the fear of staying in a relationship with my ex-husband outweighed the fear of leaving him finally and I knew I could no longer manage the situation alone. This was brutal and inexcusable physical and psychological abuse, what he did to me and his daughter was wrong. We both can now gain some much needed closure and feel validated and protected by the law.

You never think that violence like this can exist in someone who is supposed to love and protect you as your husband and as a father. This has taught me a lesson I'm not sure I could ever have been prepared to learn. I have learnt that love from a man should not leave you bruised lying on the floor, it should not leave you choked and out of breath with tears in your eyes, it should not leave you begging and screaming to please stop, and I have learnt that love should never be this cruel. No love from a man should make you wish you would die.